

Deter Criminals with Greater Penalties for Aggravated Identity Theft

Identity theft is a low-risk, high-profit crime. In order to deter and effectively prosecute criminals who prey on vulnerable groups and manipulate legal loopholes, New York State needs to create an aggravated identity theft law.

How would an aggravated identity theft statute protect New Yorkers?

Criminals have developed complex identity theft schemes, targeting multiple individuals and netting millions of dollars. Yet the highest penalty for identity theft is a class D felony, no matter the number of victims or whether the thief stole \$3,000 or \$1,000,000.

Solution: Create a B and C felony for identity theft. Much like the graduated grand larceny statutes, these higher level penalties for identity theft will punish offenders commensurate with the number of victims and the amount of money stolen.

The elderly and disabled are particularly vulnerable to identity theft and are often targets of the most serious kind of identity theft, where new accounts are opened in their names. Last year, recognizing that certain populations are more vulnerable to identity theft and find it harder to recover from the crime, New York State created enhanced penalties for identity thieves who steal from deployed military personnel.

Solution: Extend enhanced penalties vulnerable populations such as the elderly and disabled.

What changes would make current laws more effective?

It is a crime to illicitly possess information such as bank account numbers or passwords with the intent to further a crime. Social Security numbers, however, are not protected.

Solution: Add Social Security numbers to the list of personal identification information under Unlawful Possession of Personal Identification Information and protect this confidential information.

Sophisticated, well-organized identity theft rings are increasingly common. However, Enterprise Corruption, which criminalizes leading organized crime, does not recognize identity theft as a qualifying criminal act.

Solution: Add identity theft to the list of criminal acts that can be prosecuted using Enterprise Corruption, making ringleaders of these crimes accountable for their actions.

Identity theft cases frequently cross county lines. Yet while the law allows prosecutors to aggregate crimes under identity theft statutes, the crimes that nearly always accompany identity theft, such as grand larceny, can only be prosecuted in the county in which they occur, forcing prosecutors in each county to bring smaller charges for each criminal count. This inefficient drain of resources also opens the door to claims of double jeopardy.

Solution: Amend the Criminal Procedure Law so that all of the related crimes that form part of the criminal venture in one county can be charged together in identity theft cases. The defendant will be held accountable for the sum total of his crimes in the most efficient, effective manner possible.

Why do we need these changes?

- New York has the highest rate of identity fraud among states -- complaints rose 17 % from 2006-2007.
- Not only the quantity, but the severity of identity theft crimes has increased.

What will these changes cost taxpayers?

- **Nothing.** By changing the statutory scheme identity theft would be more effectively deterred and prosecuted, particularly in the most severe cases.

New York State Law Enforcement Council

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