

Testimony of
The Honorable Strom Thurmond

July 9, 2002

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE JUDICIARY SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION, REGARDING IDENTITY THEFT, TUESDAY, JULY 9, 2002, SD-226, 2:30 PM.

Madame Chairman:

Thank you for holding this hearing today regarding S. 2541, the Identity Theft Penalty Enhancement Act. I am pleased that we are addressing the growing problem of identity theft, and I commend both you and Senator Kyl for your leadership in this area.

The crime of identity theft is a growing national problem. According to a March, 2002, report by the General Accounting Office, the prevalence of identity theft is increasing. The GAO identified several disturbing trends over the past few years. For example, in March of 2001, the Federal Trade Commission's Identity Theft Clearinghouse received just over 2,000 complaints of identity fraud per week. By December of that same year, the number of complaints had skyrocketed to 3,000 per week. The Social Security Administration also reported an increase in the number of identity theft-related calls to its Fraud Hotline. The number of calls alleging the misuse of social security numbers increased from 11,000 in Fiscal Year 1998 to 65,000 in Fiscal Year 2001.

The two major credit card associations, MasterCard and Visa, have reported increased losses due to fraud. According to the GAO, losses increased from \$700 million in 1996 to approximately \$1.0 billion in 2000, representing an increase of about 45%.

However, the big losers are the individual victims themselves, who often face a difficult and arduous process of cleaning up their credit records. According to a 2000 survey conducted by the California Public Interest Research Group and the Privacy Rights Clearinghouse, victims of identity theft spent an average of 175 hours attempting to clear their credit and prove their good names.

I am pleased that the Bush Administration has made a commitment to stemming the tide of identity theft crimes. The Attorney General has announced an increased emphasis on the prosecution of these crimes and has actively pursued a coordinated approach between Federal and state law enforcement agencies. With this renewed commitment to prosecuting identity thieves, it is important that the Congress provide the Department of Justice with improved criminal statutes that will allow for the appropriate prosecution and punishment of lawbreakers. The Identity Theft Penalty Enhancement Act of 2002 is a significant step in the right direction. This bill would create the crime of aggravated identity theft and would provide for enhanced penalties. Aggravated identity theft would be defined as the unlawful and knowing transfer, possession, or use of a means of identification of another person while in the course of specific felony violations. These felonies would include, among others, theft from employee benefit plans, bank fraud, and fraud relating to passports and visas.

Due to the nature of the most damaging identity theft crimes, the creation of a new offense of

aggravated identity theft would be sensible. Because a person's identity is often stolen in connection with another crime, prosecutors would only be required to prove that a thief knowingly stole an identity during the commission of the underlying, or predicate, crime. Therefore, criminal intent would only have to be proved for the predicate crime, which would streamline the jobs of prosecutors in bringing these criminals to justice.

In addition to the creation of the new offense of aggravated identity theft, the bill would also increase the maximum term for ordinary identity theft and for identity theft committed in the course of an act of domestic terrorism. Furthermore, the bill would also make an important change in the statute by making it unlawful to merely possess a means of identification, such as a Social Security number, with the intent to commit a crime. Current law only makes the transfer or sale of a means of identification unlawful, but not the possession.

I am encouraged by the goals of the Identity Theft Penalty Enhancement Act. I agree that we should punish those who commit identity theft with enhanced sentences. However, I have concerns about the particular sentencing requirements of this bill. As written, S. 2541 would require an additional two-year term of imprisonment for the commission of identity theft in the course of other specified felonies. This kind of approach, if adopted on a widespread basis, could begin to erode the structure and purpose of the Federal Sentencing Guidelines. Instead of allowing a judge to enhance a sentence based on the particular circumstances of the case, the bill would impose a rigid two-year requirement for all categories of cases. In many circumstances, the additional penalty of two years may be too low. I hope that this Committee will carefully consider the implications of the sentencing provisions of this bill. The Sentencing Guidelines have been very successful, and the approach incorporated into this bill has the potential to interfere with the proper operation of the guidelines.

This problem could be addressed by imposing a maximum penalty for the offense of aggravated identity theft. Then, the Sentencing Commission would incorporate the new crime into the guidelines as is done with most other Federal offenses. In order to make sure that the identity theft results in an enhanced sentence over the predicate crime, the bill could also direct the Sentencing Commission to structure the guidelines in this manner.

Madame Chairman, thank you again for holding this hearing on the critical issue of identity theft. Congress must provide new tools to law enforcement if we are to stop this growing problem. The Identity Theft Penalty Enhancement Act is an important step in the right direction. I look forward to working with you on this bill, and I welcome our witnesses here today.