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## Identity Theft: Are the Elderly Targeted?

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Erin Leigh Sylvester\*

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### I. Introduction

A 101-year-old woman's hired caregiver stole nine checks from the woman and then forged her signature, stealing \$63,000 in two weeks.<sup>1</sup> A nephew convinced his elderly aunt to trade in her \$1.7 million bond portfolio and buy stock in his one-year-old oil and gas firm that had not done any business.<sup>2</sup> A social worker assigned to an elderly woman in a hospital used his position to gain access to her house, mail, and bank accounts. He promised to pay all her bills and then wrote himself checks from her account.<sup>3</sup> These are just three examples of the numerous elderly identity theft victims who must now attempt to reclaim their identity from known and unknown violators.

Identity theft is a rapidly growing national problem. More than 700,000 Americans have been victimized.<sup>4</sup> Major news stations, magazines, and newspapers are reporting these stories on a regular basis. The elderly are colloquially considered an 'easy' target group for criminals, especially defrauders and schemers. As a greater target, the elderly must receive adequate protection, which can be accomplished by an increase in legislation and education.

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<sup>1</sup> BILL RITTER, JR., *IDENTITY THEFT & FINANCIAL EXPLOITATION OF THE ELDERLY*, (2003), at <http://spillanevaluation.com/id-elder03.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Sheila R. Cherry, *Al-Qaeda May Be Stealing Your ID*, *INSIGHT ON THE NEWS*, Aug. 26, 2002, at 18; Brooke A. Masters & Caroline E. Mayer, *Identity Theft More Often an Inside Job*, *NEWSBYTES NEWS NETWORK*, Dec. 3, 2002, at A1. (Privacy experts are suggesting the number could be over a million); *Id.*

This note explains the need for greater criminal penalties for those who defraud the elderly and risk prevention education for the elderly in order to prevent victimization. Covered first is an explanation of this new, growing crime, including whom it targets and what affects it has on various parties. Next is a recounting of existing legislation for identity theft, primarily the Identity Theft and Assumption Deterrence Act of 1998. The analysis section identifies characteristics of the elderly that make them more susceptible to identity theft, such as a trusting nature, inexperience with the Internet, and an attractive lifetime of savings. Recognizing the importance of technology to identity thieves is crucial for understanding the threat to the elderly. Next, the paper discusses the hearings held by the Senate Special Committee on Aging and proposed bills aimed at protecting every citizen, but especially the elderly. This includes the Social Security Number Misuse Prevention Act and the Seniors Safety Act of 2003. Finally, suggestions on deterring identity theft are offered.

Recommended solutions to the growing problem of elderly identity theft include enacting the proposed legislation, implementing mitigation programs aimed at the elderly, and proposing additional legislation aimed at safeguarding information identifying the elderly.

## **II. Background: Definition of Identity Theft and the ITADA**

### **A. What is Identity Theft?**

Identity theft “occurs when a person knowingly uses another person’s information in a fraudulent manner for the purpose of obtaining goods, services, or credit.”<sup>5</sup> The identity thief looks for information he can use to create official documents or gain access to financial

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<sup>5</sup> Janice A. Alwin, Comment: *Privacy Planning: Putting the Privacy Statutes to Work for You*, 14 DEPAUL BUS. L.J. 353, 357 (2002). See also, *Hearing on Preserving the Integrity of Social Security Numbers and Preventing Their Misuse by Terrorists and Identity Thieves, Before the House Subcomm. on Soc. Sec. of the House Ways and Means Comm. and Subcom. on Immigration, Border Sec. and Claims Comm. on the Judiciary*, 107th Cong. (2002) [hereinafter *Hearing*] (testimony of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service).

accounts.<sup>6</sup> With this information, he can open a new credit card account for his own use, apply for loans in the victim's name, pilfer the victim's bank accounts, and illegally obtain professional licenses, drivers licenses and birth certificates.<sup>7</sup> When searching for personal information from a victim, the Social Security number is the most important form of information because it provides easy access to bank accounts, brokerage accounts, and other important and private information.<sup>8</sup>

The common assumption is that the thief obtains this information by stealing purses, wallets, and mail, or scouring the trash, and then spends the money as quickly as possible.<sup>9</sup> However, with increased access to information via the "information age," thieves are much more creative. In fact, the new tactic used by identity thieves is to gain employment at a financial institution, which provides access to consumer credit reports, financial databases, and other personal information.<sup>10</sup> These insiders then have unlimited access to all the information needed for fraud.<sup>11</sup> In addition, the Internet is quickly becoming the choice tool of the trade for gaining access to databases and selecting victims.<sup>12</sup>

## **B. What are the Effects of Identity Theft?**

### **1. Individual Victims**

It is not always easy to detect that a person is a victim of identity theft, and even once they do, it is not an easy problem to correct. First, the victim has to prove to lenders and credit agencies that he did not personally incur the debt nor did he authorize the thief to use his name and credit to incur the charges. He then must prove that he was in fact the victim of identity

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<sup>6</sup> Martha A. Sabol, *The Identity Theft and Assumption Deterrence Act of 1998: Do Individual Victims Finally Get Their Day in Court?*, 11 LOY. CONSUMER L. REV. 165, 166 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 166.

<sup>9</sup> Phillip A. Parrott, *Financial Exploitation of the Elderly: How Lawyers Can Help Protect their Clients*, 31 COLO. LAW. 8, 39-40 (2002).

<sup>10</sup> Sabol, *supra* note 6, at 166. Masters & Mayer, *supra* note 4, at A1.

<sup>11</sup> Masters & Mayer, *supra* note 4, at A1.

<sup>12</sup> Sabol, *supra* note 6, at 166.

theft.<sup>13</sup> Second, the victim has to work to repair his credit rating and get the fraudulent information off his report.<sup>14</sup> Third, he needs to stop the thief from continuing to destroy his credit report.<sup>15</sup> To assist victims, the Federal Trade Commission (FTC) created the ID Theft Affidavit, which allows a victim to fill out one standard form and disseminate it to all credit bureaus and financial institutions.<sup>16</sup>

While the victim is attempting to correct the fraud, he is susceptible to further problems such as losing a job, being denied education or housing loans, or in some circumstances, even being arrested for crimes he did not commit.<sup>17</sup> This does not even include the emotional damage that occurs, such as frustration, anger, and hopelessness.<sup>18</sup> Rectifying identity theft is a long and arduous process.

## 2. Credit Institutions

Identity theft not only harms the individual consumer, but also has an effect on the credit bureaus. In fact, it is the credit bureaus that shoulder most of the losses. Federal law determines that a consumer's liability for credit card fraud cannot exceed \$50 per credit card account.<sup>19</sup> As a result, financial institutions "are viewed by law as the primary victims of identity fraud" and often as accruing the only losses involved.<sup>20</sup> These creditors have an advantage over individuals because the creditor can write off the loss or pass it off to consumers who must pay higher interest rates and fees.<sup>21</sup> Since the creditors do not feel the effects of fraud as harshly as an

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *ID Theft Affidavit* (Consumer Sentinel, Federal Trade Commission, Washington DC) at [www.ftc.gov/bcp/online/pubs/credit/affidavit.PDF](http://www.ftc.gov/bcp/online/pubs/credit/affidavit.PDF).

<sup>17</sup> FEDERAL TRADE COMMISSION, *ID THEFT: WHEN BAD THINGS HAPPEN TO YOUR GOOD NAME*, 1 (2002) at <http://www.ftc.gov/bcp/online/pubs/credit/idtheft.htm>.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> Sabol, *supra* note 6, at 167.

<sup>20</sup> *Id.* at 167.

<sup>21</sup> *Id.* at 167-68. *See also*, Jonathan Alter, *America's Real Identity Crisis; An identity thief took \$1,700 from me. But*

individual victim, they are less likely to pursue prosecution of identity thieves.<sup>22</sup> The other problem is that there must be a loss of \$50,000 to warrant prosecution before they are taken over by law enforcement agencies.<sup>23</sup> The average loss is only \$18,000.<sup>24</sup> As a result, most victims feel that their cases are not prosecuted due to a loss that is considered insignificant.<sup>25</sup>

Despite the appearance to consumers, the credit bureaus are not unaffected. One major credit bureau estimates that 480,000 people in the United States inquire into its fraud division annually.<sup>26</sup> Authorities estimate that identity theft imposes a cost, due to the raising of interest rates and fees, on consumers approaching \$100 million per year.<sup>27</sup> According to credit reporting firms, fraud reports have climbed from less than 12,000 annually in 1992, to more than 500,000 currently.<sup>28</sup>

Are credit agencies responsible, should they be held liable, or could their practices make prevention easier?<sup>29</sup> Banks and credit institutions lobby against identity theft legislation because they do not want the responsibility of ensuring the privacy of an individual or be prohibited from selling lists to creditors.<sup>30</sup> The victim of identity theft finds it hard to sympathize with the credit agency.

### C. The Identity Theft and Assumption Deterrence Act of 1998

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*the bank wasn't interested in pursuing the matter. It seems that crime does pay – if you steal small enough,* NEWSWEEK, Dec. 9, 2002, at 51.

<sup>22</sup> Sabol, *supra* note 6, at 167-68.

<sup>23</sup> *Id.* at 167-68.

<sup>24</sup> Alter, *supra* note 21, at 51. Jennifer Barrett, 'It's Just Too Easy'; Sen. Diane Feinstein explains why she's promoting tougher laws – and harsher sentencing – for identity thieves, NEWSWEEK, Nov. 27, 2002. (web exclusive).

<sup>25</sup> Alter, *supra* note 21 at 51. In the article the author pleads for legislation that would require the financial institutions to pursue identity-fraud cases despite the dollar amounts.

<sup>26</sup> Kurt M. Saunders & Bruce Zucker, *Counteracting Identity Fraud in the Information Age: The Identity Theft and Assumption Deterrence Act*, 8 CORNELL J.L. & PUB. POL'Y 661, 663 (1999).

<sup>27</sup> *Id.* at 663.

<sup>28</sup> *Id.*

<sup>29</sup> See generally Alwin, *supra* note 5, at 358 (discussing legislation and credit bureaus, especially FCRA, 15 U.S.C. § 1681 (1970)).

<sup>30</sup> Barrett, *supra* note 24.

In March 1997, Senator Jon Kyl of Arizona introduced The Identity Theft and Assumption Deterrence Act (“ITADA”) to the House of Representatives. The bill “made the theft of identity information a crime, and . . . established restitution provisions for individual victims.”<sup>31</sup> In July 1998, the bill received unanimous consent in the House and was approved by the Senate shortly thereafter.<sup>32</sup> President Clinton signed the bill into law in October of 1998.<sup>33</sup> ITADA was the first comprehensive effort to rewrite the federal criminal code to address the effects of identity theft on individuals.<sup>34</sup> ITADA defines identity theft as a crime, recognizes the consumer as the victim, and provides for specific remedies and penalties.<sup>35</sup>

ITADA regulates fraud and related activity in connection with identification documents and information.<sup>36</sup> The statute covers individuals who knowingly and without lawful authority produce or transfer an identification document, or those who know that it is stolen or intend to use it illegally, or use one that is not theirs with the intent to defraud the United States.<sup>37</sup> Also included are those with document-making equipment that intend to use it.<sup>38</sup> It is illegal to use the identity of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable state or local law.<sup>39</sup> For a violation of ITADA, one may be subject to a fine and imprisonment up to 15 years or up to 25 years if it facilitates an act of international terrorism.<sup>40</sup>

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<sup>31</sup> Sabol, *supra* note 6, at 168-69.

<sup>32</sup> *Id.* at 168-69.

<sup>33</sup> *Id.* at 168-69.

<sup>34</sup> 28 U.S.C. §1028 (2000).

<sup>35</sup> Saunders & Zucker, *supra* note 26, at 670. The purpose of ITADA is “(1) to expand the scope of 18 U.S.C. 1028(a), which makes identification document fraud a criminal offense, now making ‘the unlawful transfer and use of identity information’ a criminal offense as well, and (2) to legally recognize the individual as a victim of identity theft, and to establish their rights to restitution.” Sabol, *supra* note 6, at 169.

<sup>36</sup> 28 U.S.C. §1028 (2000).

<sup>37</sup> 18 U.S.C. § 1028 (2000).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

The ITADA made “it illegal to steal another person’s personal identification information with the intent to commit a violation, regardless of actual possession of identity documents.”<sup>41</sup> The problem is that ITADA leaves most victims of privacy invasion and identity theft without adequate legal remedies.<sup>42</sup> If no false documents or identification devices are involved, the federal statutory scheme does specifically prohibit a person from illegally assuming an identity with the intent to engage in fraudulent activity.<sup>43</sup> The current Federal law does not provide for restitution to the individual victim for costs related to the identity theft, but does allow the affected financial institutions to receive restitution.<sup>44</sup> A related problem is that no additional funding was given, so “federal investigators will primarily focus on identity theft cases involving \$200,000 or more and will have to ignore the small crimes.”<sup>45</sup> As a result, states will have to adopt their own laws to protect individuals and to give local law enforcement agencies more authority to investigate crimes and prosecute criminals.<sup>46</sup>

The last portion of ITADA directs the Federal Trade Commission<sup>47</sup> to establish a centralized clearinghouse “to record and track complaints, and to provide consumer education service for victims of identity theft.”<sup>48</sup> The FTC “was designated as a communications post, which receives victim complaints and educates consumers on prevention methods.”<sup>49</sup> The FTC not only compiles information, but also serves as a focal point for law enforcement agencies throughout the country.

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<sup>41</sup> *Hearing, supra* note 5 (Statement of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service).

<sup>42</sup> Alwin, *supra* note 5, at 367.

<sup>43</sup> Saunders & Zucker, *supra* note 26, at 667.

<sup>44</sup> Alwin, *supra* note 5, at 363-64.

<sup>45</sup> Sabol, *supra* note 6, at 169.

<sup>46</sup> *Id.*

<sup>47</sup> *See infra* Part II.D.

<sup>48</sup> Saunders & Zucker, *supra* note 26, at 673.

<sup>49</sup> Alwin, *supra* note 5, at 364.

In addition to ITADA, there is other legislation designed to protect privacy.<sup>50</sup> However, it is the ITADA that “makes identity theft a federal offense and gives victims rights and means to be compensated for their losses.”<sup>51</sup>

#### **D. The Role of the Federal Trade Commission**

The Federal Trade Commission monitors reports of identity theft and maintains a clearinghouse of information. The Identity Theft Data Clearinghouse is a tool for law enforcement that provides access to a central database of complaints, information on trends in identity theft, and interaction with other law enforcement agencies locally and abroad.<sup>52</sup> In 2000, there were 31,113 complaints called in, which more than doubled to 85,820 in 2001, and almost doubled again to 161,819 in 2002.<sup>53</sup> Major complaints compiled by the FTC in 2001<sup>54</sup> show that

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<sup>50</sup> See, The Internet False Identification Prevention Act of 2000, which enables law enforcement organizations to pursue sellers of counterfeit Social Security cards legally by claiming such cards were ‘novelties’ rather than counterfeit documents. Internet False Identification Prevention Act of 2000, P.L.106-578 (codified as amended at 18 U.S.C. §§ 1001, 1028). See also, *Identity Theft and the Elderly, Before the Senate Special Committee on Aging*, 107th Cong. (2002) [hereinafter *Identity Theft*] (Statement of Douglas Coombs, Deputy Special Agent in Charge, United States Secret Service, Financial Crimes Division). The Freedom of Information Act (FOIA) requires accurate information about credit history. 5 U.S.C. § 522. The Graham-Leach-Bliley Act (GLBA) determines what information can be shared by financial institutions. 15 U.S.C. § 6801. The Fair Credit Reporting Act (FCRA) ensures reporting agencies retain accurate information about consumer credit histories. 15 U.S.C. § 1681. Under FCRA, the credit bureau and the organization providing information to the credit bureau are responsible for correcting inaccurate or incomplete information in the credit report. Once information of inaccuracy is forwarded to the credit bureau, it has thirty days to investigate. If it thinks the claim is frivolous, it has five days to inform the complainant, otherwise, the documents must be forwarded to the organization providing the information. The organization must then investigate and report back to the credit bureau. If inaccuracies are found, then the organization must notify all nationwide credit bureaus it reports to. Any disputed information that cannot be verified must be deleted from the file. If a change is made and the complainant asks, the credit bureau must send notices of the corrections to anyone who received a credit report in the previous six months. FEDERAL TRADE COMMISSION, *supra* note 17.

<sup>51</sup> Sabol, *supra* note 6, at 165.

<sup>52</sup> *Identity Theft Data Clearinghouse* (Consumer Sentinel, Federal Trade Commission, Washington, DC), at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) [hereinafter *Clearinghouse*].

<sup>53</sup> Jennifer Fermino, Angelina Cappiello, & Al Guart, *I.D. Crooks are Running Wild: Bushels of Victims for Apple-Pickin’ High-Tech Con Men*, N.Y. POST, Nov. 17, 2002, at 9; FEDERAL TRADE COMMISSION, INFORMATION ON IDENTITY THEFT FOR CONSUMERS AND VICTIMS FROM JANUARY 2002 THROUGH DECEMBER 2002, at <http://www.consumer.gov/idtheft/reports/CY2002ReportFinal.pdf>. See also, Masters & Mayer, *supra* note 4, at A1.

<sup>54</sup> Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends on Identity Theft*, January 2001 through December 2001, 2, available at <http://www.consumer.gov/sentinel/images/charts/idtheft01.pdf> [hereinafter *FTC Data*]; *Hearing, supra* note 5 (Statement of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service); *Identity Theft, supra* note 50 (Statement of Douglas Coombs, Deputy Special Agent in Charge, United States Secret Service, Financial Crimes Division).

of the victims that called in, 42% reported credit card fraud.<sup>55</sup> This includes opening new accounts as well as changing information on old accounts. Another 20% reported activation of telephone or other utility service, most of which was new cellular service.<sup>56</sup> Thirteen percent reported bank accounts or fraudulent checks, and 7% reported cases of new consumer loans or mortgages.<sup>57</sup> Nine percent reported employment-related fraud, 6% reported government documents/benefits fraud, and 19% reported miscellaneous crimes, including medical, bankruptcy, and securities.<sup>58</sup>

Federal laws were passed in 1982 and 1984 that give the Secret Service primary authority for the investigation of access device fraud and authority in identification fraud cases.<sup>59</sup>

According to a Senate report, 93% of the United States Secret Service Financial Crimes Division arrests made in 1995 involved identity theft, and 94% in 1996 and 1997.<sup>60</sup> These crimes resulted in individual and institutional losses of \$442 million in 1995, \$450 million in 1996, and nearly doubled to \$745 million in 1997.<sup>61</sup> Additionally, the Social Security Administration has seen a threefold increase in improper use of Social Security numbers.<sup>62</sup> Identity theft is of special concern to various government agencies, all of which are seeing tremendous growth in the relatively new crime.

### III. Analysis

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<sup>55</sup> FTC Data, *supra* note 54, at 2.

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Hearing, supra* note 5 (Statement of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service). *Identity Theft, supra* note 50 (Statement of Douglas Coombs, Deputy Special Agent in Charge, United States Secret Service, Financial Crimes Division). FTC Data, *supra* note 54, at 2.

<sup>59</sup> *Hearing, supra* note 5 (Statement of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service).

<sup>60</sup> Sabol, *supra* note 6, at 166-67 (quoting senate report 105-274 (1998)).

<sup>61</sup> *Id.* at 166-67

<sup>62</sup> Saunders & Zucker, *supra* note 26, at 663.

### A. Is Identity Theft of Heightened Concern for the Elderly?

The elderly are a special group that warrants heightened awareness, due to several factors. First, they tend to be alone, lonely, and isolated.<sup>63</sup> Often they have few or no family members or friends living in close proximity and are dependent on assistance from caregivers and advisors.<sup>64</sup> Second, the elderly usually live off fixed incomes or lack knowledge of, or experience in, complex financial matters.<sup>65</sup> Third, the elderly tend to give a seemingly caring person the benefit of the doubt and may place unquestioning trust in other members of an organization (such as a church group).<sup>66</sup> Fourth, the elderly often fail or refuse to get a second opinion and are too embarrassed to report an incident to family, friends, or law enforcement.<sup>67</sup> Scam artists target seniors because it can take longer for them or family members to recognize financial abuses.<sup>68</sup>

This group is particularly dependent on other caregivers for assistance, such as relatives, medical staff, service personnel, and oftentimes, complete strangers.<sup>69</sup> Such dependency “increases their vulnerability to certain schemes involving identity theft.”<sup>70</sup> Lack of awareness of potential identity theft makes the elderly an even more attractive victim group. One survey determined that more than one-third of adults over sixty years and over did not know what identity theft is, compared to less than one-fifth of younger adults.<sup>71</sup>

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<sup>63</sup> See Parrott, *supra* note 9, at 39 (listing factors that make the elderly victims in the Denver area).

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> Keisha Stewart, *Roanoke, Va., Senior Citizens Urged to Be Ruder to Telemarketers*, ROANOKE TIMES, Aug. 28, 2002.

<sup>69</sup> See generally Parrott, *supra* note 9, at 39.

<sup>70</sup> *Hearing, supra* note 5 (Statement of Robert Bond, Deputy Special Agent in Charge, Financial Crimes Division, United States Secret Service).

<sup>71</sup> *Capital One: Older Doesn't Necessarily Mean Financially Wiser*, PR NEWSWIRE, Dec. 3, 2002. The survey was conducted by International Communications Research, who interviewed a national sample of 552 Americans aged 35-59 and 511 Americans aged 60 and over. *Id.*

Credit cards are one device used by identity thieves. Over 75% of adults over sixty have at least one credit card and 20% have four or more.<sup>72</sup> Another common tool is the Internet, and due to hacking and increasing fraudulent use against the elderly, this is a high-risk area.<sup>73</sup> According to the 2002 Capital One Fiscal Fitness Survey, around one-quarter of seniors using the Internet knew where to turn for financial help online.<sup>74</sup>

Any crime that targets a group in society with a decreased ability of self-defense plays on the heartstrings of other citizens. Considering the above-mentioned weaknesses of the elderly, it is no surprise that identity thieves prey on elderly victims. There is some evidence that the elderly are aware that they are a targeted group. According to the American Association of Retired People (AARP), identity theft is among the most commonly reported elderly fraud schemes.<sup>75</sup> In addition, there is a federally designated week: National Fraud Against Senior Citizens Awareness Week.<sup>76</sup> The 1998 National Elder Abuse Incidence Study<sup>77</sup> estimates that financial exploitation constituted 12.3% of all elder maltreatment in 1994.<sup>78</sup> Additionally, in 1996, financial abuse accounted for 30.2% of all substantial elder abuse reports submitted to Adult Protective Services.<sup>79</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> James D. Polley, IV, *Issues Presented by Prosecutors to Congress at Capital Conference*, 36 PROSECUTOR 44, 46, (2002).

<sup>74</sup> *Capital One*, *supra* note 71.

<sup>75</sup> Julia Cosgrove, *New York Aims to Make Elderly Consumers Aware of Fraud Schemes*, N.Y. DAILY NEWS, Aug. 7, 2002.

<sup>76</sup> Stewart, *supra* note 68.

<sup>77</sup> Administration on Aging, *The National Center on Elder Abuse*, American Public Human Services Association, *THE NATIONAL ELDER ABUSE INCIDENCE STUDY: FINAL REPORT* (1998).

<sup>78</sup> *Id.*; *Hearing on Financial Abuse of the Elderly, Before the Senate Committee on Health, Education, Labor, and Pensions*, 108th Cong. (2003) [hereinafter *Financial Abuse of Elderly*] (testimony of W. Lee Hammond, Board Member, American Association of Retired Persons, Salisbury, Maryland).

<sup>79</sup> *Financial Abuse of the Elderly*, *supra* note 78 (testimony of W. Lee Hammond, Board Member, American Association of Retired Persons, Salisbury, Maryland).

In addition to their trustworthy nature and reluctance to report such theft, “[t]he elderly are ideal victims for identity theft” for further reasons.<sup>80</sup> The elderly tend to have excellent credit histories and are not as likely to realize that they were rejected for credit because the identity thief opened too many accounts.<sup>81</sup> Additionally, the elderly are less likely to apply for more credit.<sup>82</sup> Local prosecutors recognize that this is a trendy new area of crime. Now that the baby boomers are aging with “longer life spans and more affluence, the setting is there . . . for an increase in crimes against the elderly.”<sup>83</sup> Identity theft happens to the elderly because they are older and have accumulated things, making theirs easy money.<sup>84</sup> In their attempt to exploit fear, greed, and desire to avoid taxes, thieves tend to prey on the elderly, especially those in the early stages of Alzheimer’s disease and senility.<sup>85</sup>

### **B. Scams Against the Elderly**

There are numerous scams aimed specifically at the elderly. One such scam identified by the FTC targets elderly African Americans.<sup>86</sup> Scam artists circulate flyers claiming that African Americans born before 1928 may be eligible for slave reparations under the “Slave Reparation Act” and those born between 1917 and 1926 may be eligible for Social Security funds as a result of a fix in the system.<sup>87</sup> Identity thieves making these false claims ask people to reveal their

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<sup>80</sup> Josh Ard, *Elder Law*, 81 MICH. B. J. 17 (2002).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Polley, *supra* note 73, at 46.

<sup>84</sup> Angela Heywood Bible, *ScamJam Alerts Seniors to Fraud*, THE NEWS & OBSERVER, Nov. 15, 2002, at B1 (paraphrasing investigator John Moore).

<sup>85</sup> *Id.* at B1 (paraphrasing David Kirkman of the state Attorney General’s Office).

<sup>86</sup> FEDERAL TRADE COMMISSION, *Hoax Targets Elderly African Americans*, (Consumer alert, FTC, Washington DC) Oct. 2000, available at [www.ftc.gov/bcp/online/pubs/alerts/hoaxalrt.html](http://www.ftc.gov/bcp/online/pubs/alerts/hoaxalrt.html).

<sup>87</sup> *Id.*

names, addresses, phone numbers, dates of birth, and Social Security numbers.<sup>88</sup> The thieves then use this information to open credit card and bank accounts.<sup>89</sup>

According to Frank Abagnale, subject of the movie “Catch Me if You Can” and an authority on check fraud, one recent scam is to drive through a neighborhood of expensive houses and look for elderly people.<sup>90</sup> The thief then goes to the public records to see who lives at the address.<sup>91</sup> With the name and address, the thief can go to a bank and apply for a loan using ‘his’ house as collateral.<sup>92</sup> As long as the loan is for less than 1% of the mortgage, the bank does not require an appraisal.<sup>93</sup> The elderly victim is left to repay the new loan.<sup>94</sup>

Another recent incident occurred in Newark, New Jersey, where a man and woman were charged in an identity theft scheme involving more than \$98,000.<sup>95</sup> The woman used her position as a nurse’s aide at a retirement community to steal checks from the rooms of the residents and distribute them to other participants.<sup>96</sup> The pair faces five years in prison and a fine of approximately \$250,000.<sup>97</sup> In these examples, the elderly are targets in their own homes.

### **C. Identity Theft is Increasingly Accomplished Through Technology**

According to Senator Judd Gregg, “[t]echnology is advancing, but unfortunately, cyber-crime is advancing right along with it.”<sup>98</sup> Most of the conventional methods thieves use to get personal information require little technology. Stealing a wallet or purse, which has a plethora of

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Stacy Forster, *To Avoid Identity Theft, Get Yourself a Shredder*, WALL ST. J., Feb. 4, 2003, at D2.

<sup>91</sup> *Id.* at D2.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Eleanor Barrett, *Another Arrest Made in Senior ID Scam – Bernards Township Residents Fleeced of Nearly \$100,000*, THE STAR-LEDGER, Feb. 12, 2003.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Roy Mark, *Internet Identity Theft Bill Introduced*, Jan. 27, 2003, at <http://dc.internet.com/news/article.php/1575201>

identification and banking information, is the most common.<sup>99</sup> A similar scheme is stealing mail, including bank statements, pre-approved credit card offers, new checks, and tax information.<sup>100</sup> Other thieves will complete a "change-of-address" form, sending the mail to another location.<sup>101</sup> Also common is sifting through trash or finding personal information in the home.<sup>102</sup> However, the Internet and email scams are also becoming frequent sources of personal information for thieves.<sup>103</sup>

Identity theft requires the doctoring of official documents, gaining access to private accounts, or recreating official documents by using easily obtained personal information. However, today's methods are increasingly facilitated with knowledge of, and access to, the Internet. For example, birth certificates, driver's licenses, and Social Security cards are all available inexpensively on the Internet.<sup>104</sup> These documents are harder to forge, so it makes more sense to 'steal' an identity.<sup>105</sup> In fact, "[h]igh-quality duplicates of state licenses are available on the Internet, with only a removable sticker warning 'novelty item' to deter criminals."<sup>106</sup> Authorities also identify breeder documents, which are easily reproduced documents that are then used to obtain more identity documents.<sup>107</sup>

However, Internet purchases of doctored documents are not required. A person with a credit card number and expiration date can order merchandise over the phone or on the Internet.<sup>108</sup> A thief can use a person's name, address, date of birth, and social security number to

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<sup>99</sup> FEDERAL TRADE COMMISSION, *supra* note 17, at 3.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Hearing, supra* note 5 (Statement of Charisse M. Phillips, Office of Fraud Prevention Programs, Bureau of Consular Affairs, US Department of State).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Fermino, Cappiello, & Guart, *supra* note 53, at 9.

set up cellular phone lines and other accounts.<sup>109</sup> A more technologically skilled criminal can use a computer coupled with a check and driver's license data to take out loans or access bank accounts.<sup>110</sup>

Identity thieves also use sophisticated schemes. One such method is business record theft, accomplished when the thief secures low-level employment with a financial institution or other entity that gives him access to consumer credit reports, or other identifying data, for his personal exploitation or for use by organized identity theft rings.<sup>111</sup> For example, one fraud ring used such credit reports quickly to acquire fake I.D. cards, open 'instant credit' accounts, and then run up thousands of dollars in debt.<sup>112</sup>

In January 2003, Senators Dianne Feinstein, Judd Gregg, and Patrick Leahy, recognizing the increased threat technology provides, introduced a bill to provide greater protection against identity theft that occurs on the Internet.<sup>113</sup> According to Feinstein, "[t]he goal of this legislation is straightforward – to get Social Security numbers out of the public domain so that identity thieves can't access the number."<sup>114</sup> The bill, Social Security Number Misuse Prevention Act,<sup>115</sup> proposes to prohibit the sale or display of Social Security numbers to the public, removes them from government checks and all drivers' licenses, and requires them to be removed from all public records published on the Internet.<sup>116</sup>

Regardless of the technological skill required to obtain the information, it is up to the victim to protect himself from identity theft by knowing how his identity can be stolen. When

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<sup>109</sup> *Id.* at 9.

<sup>110</sup> *Id.* at 9.

<sup>111</sup> FEDERAL TRADE COMMISSION, *supra* note 17, at 3. Saunders & Zucker, *supra* note 26, at 663.

<sup>112</sup> Saunders & Zucker, *supra* note 26, at 663.

<sup>113</sup> Mark, *supra* note 98.

<sup>114</sup> *Id.*

<sup>115</sup> *See infra* Part III.E.2.

<sup>116</sup> *Id.*

the Internet is used to find victim specific information, the elderly are especially at risk.

However, the business records schemes are less likely to target specific victims.

#### **D. Detering Identity Theft**

Legal authorities are aware of the upsurge of identity theft and are advocating increased deterrence. Boris Melnikoff, an official of the American Bar Association Fraud Prevention and Oversight Council, testified that identity theft is on the rise.<sup>117</sup> Activists and former victims John and Mary Elizabeth Stevens charge, “Identity theft is only possible with the full cooperation of three major participants: the impostor, the creditor and the credit bureau. All are co-conspirators and equally guilty of identity theft.”<sup>118</sup>

The occasional thief who does not significantly incorporate technology can be easily deterred. The State Department’s Office of Fraud Prevention recommends verifying SSNs online, encouraging states to automate birth and death records, creating a database of lost or stolen blank documents, developing standards for birth certificates, and standardizing drivers’ licenses.<sup>119</sup>

The Social Security number is useful to agencies and organizations for keeping track of individuals. Unfortunately, it is also useful to the thief who finds a world of personal and financial information accessible. Are SSNs overused or misused? Social Security Administration Inspector General James Huse, Jr. states that “[i]dentity theft is an ‘enabling’ crime, ... [that] begins with misuses of the Social Security number.”<sup>120</sup> He advocates a system that verifies SSNs through government and private means.<sup>121</sup> It is important to end the

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<sup>117</sup> Cherry, *supra* note 4, at 18.

<sup>118</sup> *Id.* at 18.

<sup>119</sup> *Hearing, supra* note 5 (Statement of Charisse M. Phillips, Office of Fraud Prevention Programs, Bureau of Consular Affairs, US Department of State).

<sup>120</sup> Albert B. Crenshaw, *Victims of Identity Theft Battle Creditors as Well as Crooks*, WASH. POST, July 21, 2002, at H4.

<sup>121</sup> Cherry, *supra* note 4, at 18.

availability of SSNs on public documents, especially over the Internet.<sup>122</sup> SSN verification can be easily implemented by middle digit verification, since they are assigned by an administrative system that would be easy to verify.<sup>123</sup>

One of the difficulties in increasing basic protections against Social Security numbers comes from the credit agencies. They are opposed to any laws that would restrict their ability to use consumers' Social Security numbers since changing the current system would be costly.<sup>124</sup> Credit agencies claim that by making their access to such information more limited, the agencies will have a more difficult time verifying credit applications, and as a result more fraudulent crimes will occur.<sup>125</sup>

## **E. Recognized Need for Increased Legislation to Protect the Elderly**

### **1. Senate Special Committee on Aging**

In July of 2002, The Senate Special Committee on Aging held a public hearing on identity theft and on Senate Bill 2541.<sup>126</sup> The committee was established in 1961 as a temporary Committee, and was granted permanent status in February 1977.<sup>127</sup> Although it has no legislative authority, the Committee studies issues, investigates fraud and waste, and conducts oversight of programs.<sup>128</sup> The Committee serves as a focal point for matters related to older Americans and will often submit its findings and recommendations to the Senate.<sup>129</sup> The Senators proposed Bill 2541 to lengthen prison sentences for this crime because only two- thirds

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<sup>122</sup> Crenshaw, *supra* note 120, at H4.

<sup>123</sup> Cherry, *supra* note 4, at 18.

<sup>124</sup> Sabol, *supra* note 6, at 171.

<sup>125</sup> *Id.* at 171.

<sup>126</sup> S. 2541, 107th Cong. (2001). Introduced by Senator Dianne Feinstein.

<sup>127</sup> Background of the Committee, available at <http://aging.senate.gov/index.htm>. "It shall be the duty of the Special Committee on Aging to conduct a continuing study of any and all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing, and, when necessary, of obtaining care or assistance." *Id.* See also The Congressional Standing Committee System, congressional Research Service, Library of Congress, Report 92-707 GOV, Sept. 14, 1992.

<sup>128</sup> Background of the Committee, at <http://aging.senate.gov/index.htm>.

<sup>129</sup> *Id.*

of those convicted of identity theft were sent to prison.<sup>130</sup> Senate Bill 2541 requires a two-year prison sentence for a felony violation.<sup>131</sup> If the identity theft is tied to a terrorism offense, the imprisonment term jumps to five years.<sup>132</sup> Members of the Committee that are proposing tougher penalties for aggravated identity theft include Senators Larry Craig, Dianne Feinstein, Jon Kyl, Jeff Sessions, and Chuck Grassley.<sup>133</sup> The Committee heard testimony from several agencies that represented the efforts to deter identity theft or that represented the victims. Their testimony follows.

**a. Federal Trade Commission, Bureau of Consumer Protection**

Howard Beales, Director of the Bureau of Consumer Protection of the Federal Trade Commission, testified that ITADA “directed the Federal Trade Commission to establish the federal government’s central repository for identity theft complaints and to provide victim assistance and consumer education.”<sup>134</sup> The FTC’s “analysis indicates that although consumers over sixty represent 16% of the population, they represent only 10% of our ID theft complainants.” In addition, the “persons over sixty who provide their complaints to us report the most common form of identity theft – credit card fraud – at a slightly higher level than the population under 60 years of age.”<sup>135</sup> Analysis of the 2001 data found that older complainants were more likely to report a greater variety of identity theft crimes than other complainants.<sup>136</sup> While the elderly may not report figures disproportionate to population overall, there is evidence that they are disproportionate victims of credit card fraud.

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<sup>130</sup> Jennifer Barrett, *supra* note 24.

<sup>131</sup> S. 2541, 107th Cong. (2001).

<sup>132</sup> *Id.*

<sup>133</sup> Cherry, *supra* note 4, at 18.

<sup>134</sup> *Identity Theft*, *supra* note 50 (Statement of Howard Beales, Director of the Bureau of Consumer Protection, Federal Trade Commission).

<sup>135</sup> *Id.*

<sup>136</sup> *Financial Abuse of the Elderly*, *supra* note 75 (testimony of W. Lee Hammond, Board Member, American Association of Retired Persons, Salisbury, Maryland).

ITADA created the role of the FTC, which is “primarily one of facilitating information sharing among public and private entities.”<sup>137</sup> One goal of the FTC is education aimed at seniors. AARP’s Bulletin and My Generation run articles on the topic.<sup>138</sup> In addition, the FTC created the booklet: *Identity Theft: When Bad Things Happen to Your Good Name*.<sup>139</sup> The FTC serves as the main organizing agency for information on identity theft.

### **b. Department of Justice**

Alice S. Fisher testified for the Department of Justice. According to Fisher, “[t]here is no doubt, . . . that in certain situations, criminals plan and carry out identity theft and fraud knowing full well that their victims are senior citizens.”<sup>140</sup> She then enumerated several cases where the elderly were targets of identity theft. In the *United States v. Billings*, equity was stripped out of houses owned by elderly.<sup>141</sup> *United States v. Hooks* was a case of stolen mail used to produce fake drivers’ licenses and counterfeit checks.<sup>142</sup> The criminal in *United States v. Robinson* was a live-in companion who used the credit cards of the victim without his knowledge or consent.<sup>143</sup>

As a result of this attack on the elderly, the DOJ has “undertaken a three-pronged approach to identity theft.”<sup>144</sup> First, the Department is prosecuting identity theft across the United States.<sup>145</sup> Second, the Department is pursuing additional legislation to increase public

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<sup>137</sup> *Identity Theft*, *supra* note 50 (Statement of Howard Beales, Director of the Bureau of Consumer Protection, Federal Trade Commission).

<sup>138</sup> [www.aarp.org/confacts/money/identity](http://www.aarp.org/confacts/money/identity).

<sup>139</sup> *Identity Theft*, *supra* note 50 (Statement of Howard Beales, Dir. of the Bureau of Consumer Protection, Fed. Trade Comm’n).

<sup>140</sup> *Id.* (Statement of Alice S. Fisher, Deputy Assistant Attorney Gen., Criminal Div..)

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

protection through enhanced criminal penalties.<sup>146</sup> Third, the Department prioritizes educating law enforcement and the general public about identity theft.”<sup>147</sup>

Also acknowledged by Fisher was the need for inter-agency cooperation, and she pointed to the Identity Theft Data Clearinghouse of the FTC.<sup>148</sup> The DOJ serves as the main enforcing agency of identity theft.

### **c. Social Security Administration**

The Social Security Administration was represented by James G. Huse, Jr., Inspector General. Huse lamented that “[c]riminals do not steal the identities of the elderly so they can pretend to be old and wise.”<sup>149</sup> Rather, they do it because senior citizens have significant assets, including savings, investments, paid-up mortgages, good credit, and Federal entitlement checks.<sup>150</sup> In fact, “people over age fifty control at least seventy percent of the Nation’s household net worth.”<sup>151</sup> Huse then referred to the FTC Identity Theft Data Clearinghouse, which has reported “incidents of identity theft targeting persons over the age of sixty increased from 1,821 victims in 2000 to 5,802 victims in 2001, a threefold increase.”<sup>152</sup> One of the reasons the elderly are good targets is that they are less likely to review their statements and do not make a big deal if they do notice problems for fear relatives will think they are incapable of remaining alone.<sup>153</sup> The problem increases when it is not reported since the process of assembly and dissemination is overly facile and extremely fast due to the modern information media.<sup>154</sup>

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* (Statement of James G. Huse, Jr., Inspector Gen. of the Soc. Serv. Adm.).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

One way to assist the elderly is to make sure that they are aware of the toll-free numbers, such as the SSA Fraud Hotline (1-800-269-0271), and Internet sites, such as [orig.hotline@ssa.gov](mailto:orig.hotline@ssa.gov), where they can check on suspicious government mailings.<sup>155</sup> Taking minor precautions can save time and effort. “In 1999, a Privacy Rights Clearinghouse survey found the average amount of time spent by victims to regain their financial integrity was 175 hours, over a period of two years, at an average cost of over \$800.”<sup>156</sup>

Like other testifiers in front of the committee, Huse advocates restricted use of the SSN through legislation.<sup>157</sup> He suggests provisions that restrict the private and governmental use of SSNs, especially the sale of SSNs by governmental agencies.<sup>158</sup> Huse also advocates for prohibition of the display of SSNs on government checks and drivers’ licenses, and other government and private documents.”<sup>159</sup> These are included in the Social Security Number Misuse Prevention Act.<sup>160</sup>

It is important to protect the Social Security number. The SSN is important for employers, financial institutions and credit checks.<sup>161</sup> However, some businesses just want the SSN for general record keeping. There is no requirement to give out the SSN just because it is requested.<sup>162</sup> Additionally, an individual should not carry his SSN and when it is used as an identifying number, he should ask for another number to be substituted.<sup>163</sup>

#### **d. United States Secret Service**

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *See infra* Part III.E.2.

<sup>161</sup> FED. TRADE COMM’N., *supra* note 17, at 6.

<sup>162</sup> *Id.* When a SSN is requested, the following questions should be asked: 1. Why is the SSN needed? 2. How will the SSN be used? 3. What law requires a person to give the SSN to the requestor? 4. What will happen if the individual does not give out the SSN? *Id.*

<sup>163</sup> *Id.*

Douglas Coombs, Deputy Special Agent in charge of the United States Secret Service, Financial Crimes Division, testified that, “[i]n most of the cases our agency has investigated involving identity theft, criminals have used another individual’s personal identifiers to apply for credit cards or consumer loans.”<sup>164</sup> He foresees that older Americans will become an increasingly attractive target by criminal elements given the fact that a majority of our nation’s wealth is controlled by seniors and that the common perception is that it is difficult for elderly victims to repair the effects of identity theft due to a lack of technical knowledge and uncertainty on how to protect themselves.<sup>165</sup> Unfortunately, it is only after the elderly discover fraudulent activity that they increase their level of diligence in monitoring personal finances.<sup>166</sup>

**e. Washington Operations International Biometric Group**

In his testimony before the Senate Special Committee on Aging, Dennis Carlton, Director of the Washington Operations International Biometric Group, explained how biometrics could increase identity security.<sup>167</sup> According to Carlton, “biometrics is the automated measurement of behavioral or physiological characteristics of a human being to determine or authenticate their identity.”<sup>168</sup> Carlton advocates that the “physical characteristics of the human body such as the friction ridges on the pads of our fingers, the geometry of our hands, the shape of our face, and the patterns of our irises and retinas can be measured and matched against computerized databases.”<sup>169</sup> One of the fears of biometrics is that they invade the privacy of individuals. However, according to Carlton’s testimony, biometrics are privacy neutral, yet it is the way that

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<sup>164</sup> *Identity Theft*, *supra* note 50 (Statement of Douglas Coombs, Deputy Special Agent in Charge, United States Secret Serv., Finan. Crimes Div.).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* (Statement of Dennis Carlton, Director of Washington Operations International Biometric Group, LLC).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

biometrics are used that make them either privacy-invasive or privacy-protective.<sup>170</sup> According to research done by the Washington Operations International Biometric Group, “senior citizens were some of the most enthusiastic proponents of the system.”<sup>171</sup>

## 2. Social Security Number Misuse Prevention Act

On January 28, 2003, Senator Dianne Feinstein introduced the Social Security Number Misuse Prevention Act to the Senate, and on February 5, 2003, Representative Sweeney introduced the act to the House of Representatives.<sup>172</sup> The primary purpose of the act is “to limit the misuse of Social Security numbers,” and “to establish criminal penalties for such misuse.”<sup>173</sup> All citizens of the United States are required to have SSNs, and an unfortunate result is that they have become a tool “used to facilitate crime, fraud, and invasions of the privacy of the individuals.”<sup>174</sup> The bill requests that the Federal Government take steps to reduce the abuse of SSNs since the Federal Government does not allow individuals to exempt themselves from the required number.<sup>175</sup>

The bill calls for an addition to 18 U.S.C. § 1028, which would read “[p]rohibition of the display, sale, or purchase of social security numbers.”<sup>176</sup> According to the definitions, ‘display’ includes making a Social Security number available on the Internet.<sup>177</sup> Section 1028A also will

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<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. (2003).

<sup>173</sup> *Id.*

<sup>174</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 2(3) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 2(3) (2003).

<sup>175</sup> *Id.*

<sup>176</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 3(a) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 3(a) (2003).

<sup>177</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 3(a)(1) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 3(a)(1) (2003).

apply to public records posted on the Internet.<sup>178</sup> Section 1028B would prohibit “[d]isplay, sale, or purchase of public records containing social security numbers.”<sup>179</sup>

The bill also addresses factors that the Attorney General should consider when promulgating the regulations.<sup>180</sup> Included in these factors is the “presence of adequate safeguards and procedures to prevent . . . misuse of [SSNs] by employees within a business; and . . . misappropriation of [SSNs] by the general public, while permitting internal business uses of such numbers.”<sup>181</sup> An additional factor to consider is the existence of preventative measures against identity thieves and other individuals attempting to obtain SSNs.<sup>182</sup>

Other sections of the bill propose additional measures for protecting the SSN, for example, prohibiting inmate access to SSNs.<sup>183</sup> Another section states that commercial entities cannot require an individual to provide his SSN in exchange for commercial goods and services.<sup>184</sup> Section 8 extends civil monetary penalties when misuse occurs and as a penalty for criminal violations.<sup>185</sup> Section 9 provides criminal penalties when a SSN is misused.<sup>186</sup> Finally, Section 10 provides for civil action and civil penalties of \$500 up to the actual monetary loss.<sup>187</sup>

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<sup>178</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 4(c)(1) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 4(c)(1) (2003).

<sup>179</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 4 (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 4 (2003).

<sup>180</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 5(b)(2) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 5(d)(2) (2003).

<sup>181</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 5(b)(2)(D) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 5(d)(2)(D) (2003).

<sup>182</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 5(b)(2)(E) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 5(d)(2)(E) (2003).

<sup>183</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 6(c) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 6(c) (2003).

<sup>184</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 7(a) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 7(a) (2003).

<sup>185</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 8(a)-(b) (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 8(a)-(b) (2003).

<sup>186</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 9 (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 9 (2003).

<sup>187</sup> Social Security Number Misuse Prevention Act, H.R. 637, 108th Cong. § 10 (2003). Social Security Number Misuse Prevention Act, S.B. 228, 108th Cong. § 10 (2003).

The importance of this act is apparent in its call for more Social Security number protection and greater penalties for violators. The Act does not state that the elderly are at heightened risk, but does warn all citizens that they are at risk because they hold a SSN.

### **3. Justice Enhancement and Domestic Security Act of 2003**

On January 7, 2003, Senator Daschle introduced the Justice Enhancement and Domestic Security Act of 2003.<sup>188</sup> Among the proposed changes is Title II, Protecting America's Children and Seniors.<sup>189</sup> Subtitle B, the Seniors Safety Act of 2003, calls for enhanced Federal sentencing penalties based on the age of the victim.<sup>190</sup> The change is proposed to "ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious economic and physical harms associated with criminal activity targeted at seniors due to their particular vulnerability."<sup>191</sup> The Act also calls for stricter punishment for those who defraud any retirement arrangement, including pension benefit plans and medical savings accounts.<sup>192</sup> This is evidence that the elderly are a targeted group, worthy of stricter penalties.

Title III, Deterring Identity Theft and Assisting Victims of Crime and Domestic Violence, establishes measures to help all victims of identity theft.<sup>193</sup> This portion of the act, also called the Identity Theft Victims Assistance Act of 2003, recognizes that "[T]he Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name."<sup>194</sup> The act calls for mitigation of identity theft.<sup>195</sup> The credit agency or business that allows a fraudulent transaction must give any information to the victim, government, and law

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<sup>188</sup> Justice Enhancement and Domestic Security Act of 2003, S.B. 22, 108th Cong. (2003).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at § 2211.

<sup>191</sup> *Id.* at § 2211(b)(1).

<sup>192</sup> *Id.* at § 2214.

<sup>193</sup> *Id.* at § 3111.

<sup>194</sup> *Id.* at § 3112(5).

<sup>195</sup> *Id.* at § 3113.

enforcement agencies when requested.<sup>196</sup> The Act also proposes amending the Fair Credit Reporting Act<sup>197</sup> so that the consumer reporting agency will block the reporting of any information identified by the consumer that might be related to identity theft.<sup>198</sup>

Part Two of this subsection, the Identity Theft Prevention Act of 2003, calls for preventative measures.<sup>199</sup> In addition to recommending government agencies and businesses proceed with greater responsibility when dealing with personal information, it states that “the private sector can better protect consumers by implementing effective fraud alerts, affording greater consumer access to credit reports, truncating of credit card numbers, and establishing other prevention measures.”<sup>200</sup> The Act specifically calls for inclusion of fraud alerts in consumer files upon request and notice of that alert sent to credit information seekers by the consumer reporting agency.<sup>201</sup> Section 3124 requests truncation of credit card account numbers to only five numbers on receipts.<sup>202</sup> Finally, Section 3125 mandates free annual disclosure of credit reports when requested by the consumer.<sup>203</sup> The act then reiterates the Social Security Number Misuse Prevention Act and enumerates other consumer issues.

The Judicial Enhancement and Domestic Security Act of 2003 serves two purposes. First, it identifies senior citizens as a highly targeted group for criminals. Recognizing this fact, the Act calls for harsher penalties for those who commit crimes against seniors. Second, the Act acknowledges that identity theft is a fast growing crime. In an attempt to mitigate, this Act calls for harsher penalties and increased consumer rights of protection.

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<sup>196</sup> *Id.* at § 3113(b)(1).

<sup>197</sup> *See generally supra* note 50 (FCRA). *Id.* at § 3114.

<sup>198</sup> Justice Enhancement and Domestic Security Act of 2003, S.B. 22, 108th Cong. § 3114 (2003).

<sup>199</sup> *Id.* at § 3121.

<sup>200</sup> *Id.* at § 3122(10), (11).

<sup>201</sup> *Id.* at § 3123(b)(2), (3).

<sup>202</sup> *Id.* at § 3124.

<sup>203</sup> *Id.* at § 3125.

## F. Overcoming Identity Theft

When a person suspects that he is the victim of identity theft, there are several steps he needs to take. First, the victim needs to call each of the three major credit bureaus, report the theft and request a fraud alert be placed on the account.<sup>204</sup> Second, if the victim knows that any accounts have been accessed or opened, he should call those institutions, close the accounts and put passwords on any new accounts.<sup>205</sup> Third, the victim should file a report with the local police, making sure to retain a copy or the report number.<sup>206</sup> Finally, the victim should call the FTC Clearinghouse Hotline, where counselors will advise the victim on additional steps, including completion of the ID Theft Affidavit.<sup>207</sup>

However, there are numerous steps a person should take to prevent being victimized in the first place. Local communities around the nation are attempting to bring these programs to the elderly to make sure they are being informed.<sup>208</sup> Some of the tips presented to seniors include removing names from marketing lists, installing a lock on their mailbox, mailing bills from the post office, not printing Social Security numbers on checks, shredding pre-approved credit card statements, not carrying extra credit cards, and always reviewing statements for charges.<sup>209</sup> Tips aimed especially at seniors include never sending mail requesting personal information without checking out the organization through the FTC or local police

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<sup>204</sup> *Clearinghouse*, *supra* note 52. The phone numbers are; Equifax 1.800.525.6285, Experian 1.888.397.3742, and Trans Union 1.800.680.2789. *Id.*

<sup>205</sup> *Clearinghouse*, *supra* note 52.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* The toll-free hotline is 1.877.ID.THEFT (1.877.438.4338) available at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft). *Id.*

<sup>208</sup> Sandra Mathers, *Disaster Training Offered to Elders; Campaign Will Help Seniors Deal with Major Emergencies*, ORLANDO SENTINEL, Jan. 23, 2003 at J1. The Orlando Police Department set up the Senior Citizen Police Academy, a 12-week program, to educate seniors about the police department and scams. *Id.* The Raleigh, North Carolina police department held a half-day seminar, ScamJam: Learn to Protect Yourself, for more than 200 senior citizens. Bible, *supra* note 84 at B1.

<sup>209</sup> Bible, *supra* note 84, at B1. *See also* FEDERAL TRADE COMMISSION, *supra* note 217, at 6.

department.<sup>210</sup> Seniors are also told to trust their instincts, use their experience, and to stay connected with other seniors.<sup>211</sup>

It is important to inform seniors of ways to safeguard information on their personal computers. Installing an updated virus program is of primary importance.<sup>212</sup> They should be advised not to download files from strangers.<sup>213</sup> For seniors on a high-speed cable, they should look into firewalls.<sup>214</sup> It is also important for seniors to have a secure browser that encrypts information sent over the Internet.<sup>215</sup> Any financial information stored on a computer should be protected by a password.<sup>216</sup> Seniors should avoid automatic login features and always logoff when finished.<sup>217</sup> Before disposing of a computer, the hard drive should be 'wiped'.<sup>218</sup> Finally, they should be aware of the privacy policy of any website that they use.<sup>219</sup>

The AARP offers several methods for the elderly to protect themselves from financial exploitation. The Money Management program provides a bill payer for individuals who cannot sign checks or a representative payee for those who receive some form of federal government income.<sup>220</sup> This program is available in twenty states and served 4,845 individuals in 2002.<sup>221</sup> A second program is ElderWatch, which is designed to help a surviving spouse who is suddenly responsible for the management of a large estate.<sup>222</sup> The program offers a hotline to refer the elder person to the appropriate services as well as to document the types of crimes committed,

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<sup>210</sup> Bible, *supra* note 84, at B1.

<sup>211</sup> *Id.* at B1.

<sup>212</sup> FEDERAL TRADE COMMISSION, *supra* note 17, at 7.

<sup>213</sup> *Id.* at 7.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 7.

<sup>216</sup> *Id.* at 8.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Financial Abuse of the Elderly*, *supra* note 78 (testimony of W. Lee Hammond, Board Member, American Association of Retired Persons, Salisbury, Maryland).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

information that is then provided to law enforcement as well as to the community.<sup>223</sup> A third program is the Campaign Against Predatory Lending, which empowers older homeowners to preserve the equity in their homes by alerting them to signs of predatory practices.<sup>224</sup>

#### **IV. Recommendation**

There are several solutions to the problem of the elderly as targets of identity theft. The first recommendation is increased enforcement. The second is education and the third is minimizing the elderly as targets. These measures taken together will reduce identity theft for all citizens, but especially for the elderly.

The easiest route to increasing enforcement is to enact the Social Security Number Misuse Prevention Act, the Seniors Safety Act of 2003, and the Identity Theft Victims Assistance Act of 2003. The Social Security Number Misuse Prevention Act is aimed at all citizens, not just those over 55. However, the elderly have a vested interest in protecting their Social Security numbers. Many seniors are living solely or primarily off income from Social Security entitlement checks. Reducing access to these numbers is a key component of decreasing identity theft. The Seniors Safety Act of 2003 is the most important act concerning enforcement. Reiterating the reasons mentioned previously, senior citizens are easy targets.<sup>225</sup> They are trusting and may not know of the resources available to guard against identify theft or correct the transgression. Finally, the Identity Theft Victims Assistance Act of 2003 demonstrates that the legislature recognizes the growing problem of identity theft and the need for additional and increased deterrence. Enacting this legislation is a first major step towards protecting the elderly.

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<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *See infra* Part III.A.

The need for enforcement is recognized in local communities as well.<sup>226</sup> In San Francisco, the city attorneys are planning “an aggressive new program to pursue civil remedies in elder financial abuse cases.” The attorneys recognize that the elderly are “the most vulnerable among us” and one step towards protecting them is cracking down on “the physical, emotional, and financial abuse”.<sup>227</sup> The attorneys are also proposing legislation requesting neighborhood police to go to nursing homes and assisted-care facilities with records of violations.<sup>228</sup> Enforcement needs to occur at the local level as well as the national level.

Equally important to enforcement is implementing mitigation and education programs aimed at the elderly. The primary goal is to instruct the elderly how to reduce their appeal as targets. Communities across the country are implementing programs that bring information to senior citizens about the increase in identity theft, how to deter it, and once victimized, how to overcome it. Primarily, these programs teach the elderly how to protect themselves from scams and thieves. For example, a program in Orlando, Florida, teaches the elderly how to “minimize [their] risk by managing [their] personal information wisely and cautiously.”<sup>229</sup>

Another strategy includes teaching the elderly how to protect their assets. One option is to introduce them to instruments such as trusts. A trust is “a legal device that allows a person, known as the settlor, to transfer ownership of property from himself to a designated trustee, who

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<sup>226</sup> In Colorado, the statute reads, “Any person who commits theft [of an adult who is over 60 years of age] . . . commits a class 5 felony if the value is less than \$500, or a class 3 felony if the value is \$500 or more.” COLO. REV. STAT. §18-6.5-103(5) (2002). Regular theft in Colorado requires \$500-\$1500 to be a class 4 and more than \$1500 to qualify as class 3 felony. *Id.* Illinois also “calls for stricter sentencing if the crime is against an elderly or disabled person.” Sabol, *supra* note 6, at 170. In Texas, the legislature recently introduced new bills designed to limit public access to government records due to an increase in identity theft. David Pasztor, *Bills Seek to Modify Access to Records*, AUSTIN AMERICAN-STATESMAN, Feb. 22, 2003, at A25. Representative Tony Goolsby filed House Bill 500, which would restrict access to property tax forms because they contain private information that makes “elderly Texans particularly susceptible to fraud.” *Id.* Another bill proposes to make access to Social Security and driver's license numbers more difficult. *Id.*

<sup>227</sup> Rachel Gordon, *S.F. Officials Target Elder Abuse Cases/ Monitoring, Prosecution Part of Program*, THE SAN FRANCISCO CHRONICLE, Feb. 12, 2003, at A25.

<sup>228</sup> *Id.* at A25.

<sup>229</sup> FEDERAL TRADE COMMISSION, *supra* note 17, at 1.

will manage the property for the benefit of the settlor and/or in accordance with instructions imposed by the settlor.”<sup>230</sup> The key is that trusts are not public documents, so the information is never recorded with any public office or financial institution.<sup>231</sup> Another option is the limited liability company, which is “a statutorily authorized form of business organization . . . typically comprised of one or more members and a registered agent, who may or may not be one of the members.”<sup>232</sup> This is a good tool since the owner’s name need not ever be provided.<sup>233</sup> Key to educating the elderly is teaching them how not to be attractive targets, instructing them how to protect their assets, and making them aware of potential scams.

Finally, it is important to propose additional legislation aimed at safeguarding information identifying the elderly. Legislation could call for increased protection of information from elderly interest subscriptions, and databases that include date of birth information.

## V. Conclusion

Identity theft is a rapidly growing problem for all individuals. There is an increasing need for legislation to prevent identity theft from occurring and to punish identity thieves. The escalation of the problem is largely made possible through the increased reliance on the Internet and overuse of the Social Security number. Government agencies and private businesses alike use the Internet as a tool to communicate internally and externally. Consumers rely on information being available on the Internet. These agencies and businesses also use the SSN as an identifying number for records. While the SSN was intended primarily for government work and tax documents, it has grown to be a tool widely used for identification purposes and record

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<sup>230</sup> Alwin, *supra* note 5, at 371.

<sup>231</sup> *Id.* at 371.

<sup>232</sup> *Id.* at 371.

<sup>233</sup> *Id.* at 372.

keeping. The overuse of the SSN, coupled with the increased availability of personal information over the Internet, has made identity theft a tremendous problem.

The elderly are targeted because it is assumed they are gullible, unsuspecting, and ignorant of scams. In addition, it is assumed that after a lifetime of work they have assets to steal. It is important to educate seniors about ways to protect themselves and minimize potential damage. However, educating the elderly alone will not solve this problem. Legislation needs to be created with the primary goal of deterrence. Increasing the penalties against identity thieves could do this, especially when the victim is a senior. An equally important objective is to enact legislation that protects the personal information of citizens that is publicly available because too many people have learned the difficult way, a little information in the wrong hands can cause thousands of dollars of damage.