

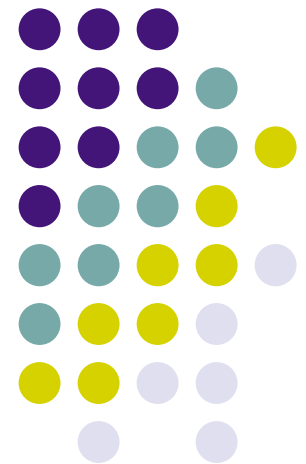
# Identity Theft: When Victims Need Legal Help

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# What We Will Cover

- Understanding Identity Theft and its Victims
- When Victims Need Pro Bono Attorneys
- Rights of Identity Theft Victims in the Criminal Justice System
- General Steps for Assisting Victims with Civil Consequences of Identity Crimes
- Resources



## ABA Recommendation

Urges, bar associations and lawyer referral services to establish:

- Programs for pro bono representation of victims of identity theft who need assistance in recovery
- Development and dissemination of materials for use in such programs



## ABA Recommendation

American Bar Association's  
Recommendation, available at:

[http://www.abanet.org/  
adminlaw/conference/2007/  
Tabs/  
Tab8idtheftprobono.pdf](http://www.abanet.org/adminlaw/conference/2007/Tabs/Tab8idtheftprobono.pdf)

# Definition for Today's Presentation



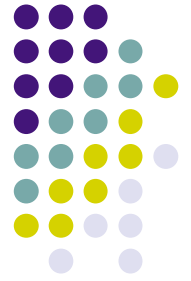
- Identity Theft is when someone uses personal information of someone else to pose as that consumer, in order to
- fraudulently obtain goods or services in the victim's name from private and public institutions, or
- conceal their true identity from authorities or others who perform background checks

# What information is valuable to identity thieves:



- Personal information that can be used to commit identity theft includes
  - Name
  - Social Security Number
  - Address
  - Date of Birth
  - Financial account numbers or access cards
  - Passwords, Mother's maiden name, Father's middle name
  - Telephone number
  - Biometric data

# Why all victim advocates should know about Identity Theft



- ID theft is the fastest growing crime in America – over 11 million victims a year\*
- Victims of other crimes are vulnerable to ID theft and need information about protecting themselves, discovering the crime, reporting, and repairing the damage

Source: Javelin, 2010

# Identity Theft and Other Crimes

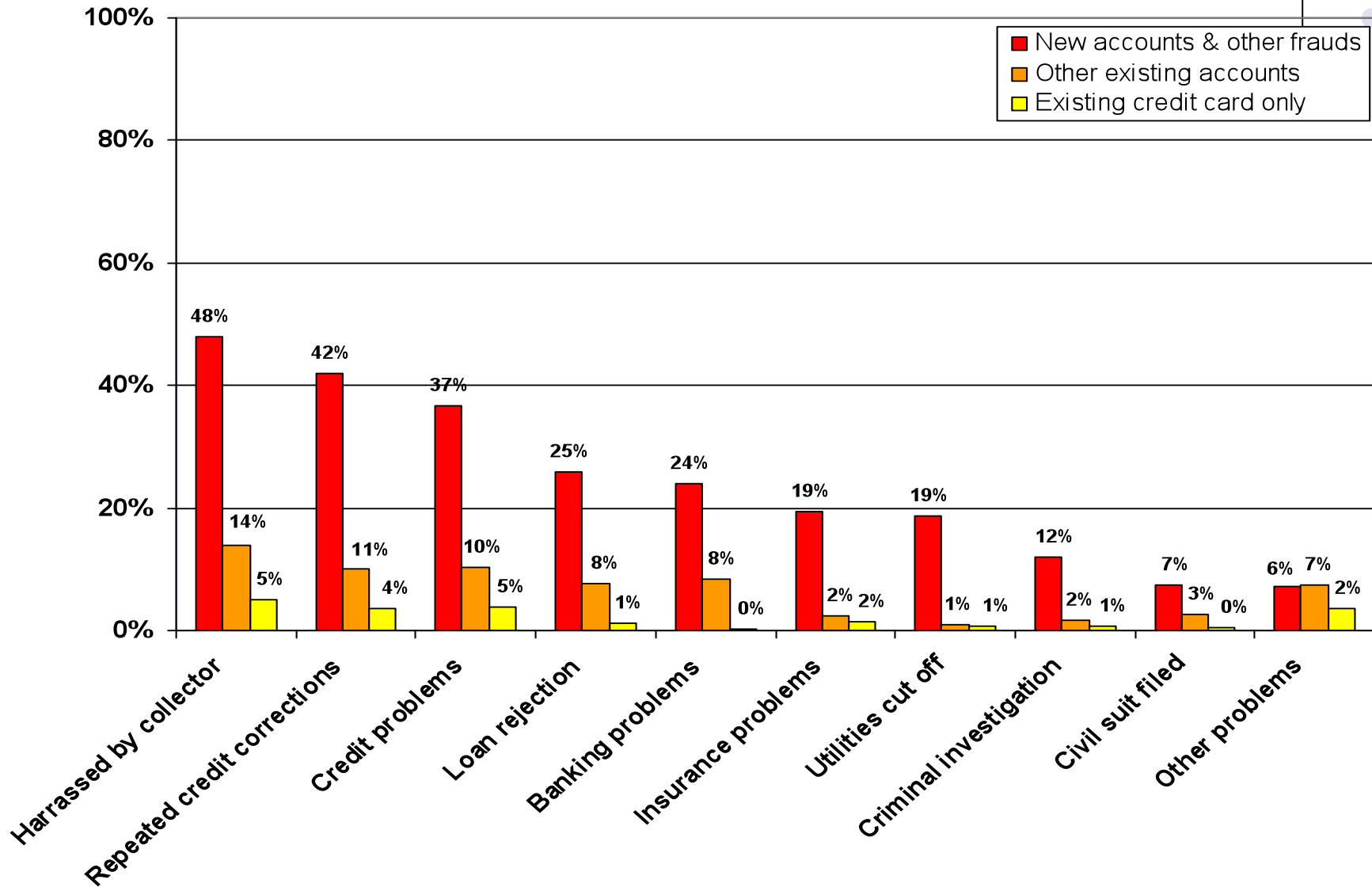


- Domestic Violence
- Sexual assault, assault, burglary, robbery
- Homicide
- Terrorism
- Drug Trafficking



# Selected Victims' Problems

(2001-2005 Victims, FTC 2006 Survey)



# The Emotional Impact of Identity Theft



## Victims experience:

- embarrassment
- sadness
- helplessness
- anger
- isolation
- betrayal
- rage
- suicidal feelings

## Victims should seek medical care when:

- Their sleep or eating patterns are disrupted
- They are unable to work or cope with daily life
- They experience social isolation
- They have suicidal thoughts or ideation
- Symptoms last more than two weeks

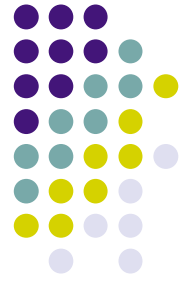


# Targeted Victims

Anyone can become a victim, but certain groups are more adversely affected because they have access to fewer resources:

- the elderly
- persons with limited English proficiency
- minors
- persons with disabilities
- the mentally ill

# Victims need a lawyer when



- their age, health, language proficiency, or economic situation prevents them from making disputes
- they are sued by creditors attempting to collect debts incurred by an impostor
- they are being harassed by creditors attempting to collect debts incurred by an impostor
- creditors or credit reporting agencies are uncooperative
- their identity thief is arrested to assist with their rights
- their case is complex or involves non-financial identity theft



# **Rights of Identity Theft Victims in the Criminal Justice System**

# FEDERAL LAW-Crime Victim Rights Act – Federal Prosecutions



- 18 U.S.C. § 3771
  - Guarantees/ crime victims rights to
    - Be reasonably protected from the accused
    - Reasonable, accurate & timely notice of public court proceedings
    - Not be excluded
    - Be reasonably heard at any public proceeding
    - Confer with the attorney for the government
    - Full and timely restitution
    - Proceedings free from unreasonable delay
    - Be treated with fairness and with respect for their dignity and privacy



# United States v. Keifer

- [2009 U.S. Dist. LEXIS 16384](#), No. [2:08-CR-162](#), In the U.S. Dist. Ct., S. Dist. Ohio
- Court held that identity theft victims are entitled to the rights enumerated in the CVRA
- Victim was represented by MCVRC

# STATE LAWS – Victims’ Rights– State Prosecutions



Varies from state to state –  
resources to ascertain:

- Victim Law – National Center for Victims of Crime - [www.ncvc.org](http://www.ncvc.org)
- National Crime Victims Law Institute - [www.ncvli.org](http://www.ncvli.org)



# Federal Statutes pertaining to Identity Theft & Fraud



- identification fraud (18 U.S.C. § 1028)
- credit card fraud (18 U.S.C. § 1029)
- computer fraud (18 U.S.C. § 1030)
- mail fraud (18 U.S.C. § 1341)
- wire fraud (18 U.S.C. § 1343)
- financial institution fraud (18 U.S.C. § 1344).
- Each of these federal offenses are felonies that carry substantial penalties in some cases, as high as 30 years imprisonment, fines, and criminal forfeiture.

## Work with law enforcement and prosecution



- May prove mutually beneficial
- Can encourage investigation and prosecution
- Can obtain information to assist client
- Help client obtain some justice
- Restitution may be possible in criminal case

# Identity Theft Enforcement and Restitution Act of 2008



- Amended 18 U.S.C. § 3663(b)
- Allows victims restitution for time spent repairing their credit
- Directs Sentencing Commission to review guidelines re: ID crimes to achieve consistency and allow for aggravating or mitigating circumstances

# ***U.S. v. Flores-Figueroa***

**No. 08-108, U.S. Supreme Court**



Decided May 4, 2009

18 U.S.C. §1028(a)(1) requires a showing that the defendant knew that the means of identification at issue, *e.g.*, a made up Social Security number, belonged to another person.

# How to Represent Victims when the Thief is Arrested



- Making an appearance on behalf of the victim
- Assisting with victim impact statement
- Requesting restitution
- Enforcing victim's rights



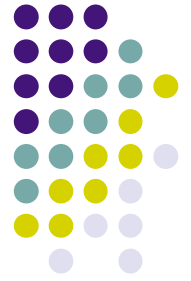
# **General Steps for Assisting Victims with Civil Consequences of Identity Crimes**



## **BASIC STRATEGY**

- Stop impostor activity
- Report the crime
- Repair the damage

# Stop Impostor Activity



- Get a credit report
- Place a one call fraud alert
- Call all businesses/creditors and close or renumber accounts – follow up in writing
- Consider a credit freeze





# Fraud Alerts

- Initial: 90-day, renewable, one free credit report
- Extended: 7-year, need ID Theft Report, two free credit reports
- Military: available for deployed personnel
- Set fraud alert by contacting *only one* of the three CRAs
  - Equifax 800-525-6285
  - Experian 888-397-3742
  - TransUnion 800-680-7289
- Must Provide Personal Information to Match File
- Beware of diversion to “free annual report” or other commercial services during call

# Fraud Alert vs. Credit Freeze



- One call
- Creditors must take “reasonable steps” to verify identity
- Less effective
- 90 day, 7 years
- Write each bureau
- No one can apply for new credit – must thaw the report
- More effective
- Effective until thawed
- Fees vary state by state

No credit? No problem!

Neither will prevent new accounts with merchants that do not check credit reports.

# What a Fraud Alert and Credit Freeze *Won't* Do



- Won't Stop Ongoing Fraud
- Won't Protect Existing Accounts
- Won't Prevent Non-Financial Account Fraud
  - Many companies, such as medical service providers, utilities, and banks do not check credit report before providing services, opening accounts
  - Concealment, Rental, and Employment Fraud likely not prevented

# Report the Crime



- Gather information
- Make online report to FTC, print, and sign
- Report to local law enforcement and arrange to get a copy of the report
- Report to other agencies, if applicable

# Proving the Victim is Not Responsible – Helpful Documents



- Credit Report marked up to indicate fraudulent activity
- ID Theft Affidavit
- Victim's Recovery Log
- Proof of crime – collection letters, credit card or bank statements
- Business records – applications showing signature, statements showing billing address

# Reporting the Crime



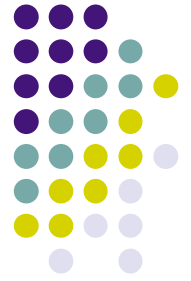
- Initial report must be made to police/sheriff/other law enforcement where the victim lives
  - Provide copies of all relevant documents
  - Request that ID theft affidavit be attached to report (this becomes an ID Theft Report)
- Get the report number & officer contact:
  - You'll need it to get a copy of the report
  - You'll need to update with information you receive from creditors
- Encourage victims to report to FTC
- Other agencies: SSA, DPS, postal inspector, secret service, Federal Bureau of Investigation-Internet Crime Complaint Center (IC3), IRS

# How to File a Complaint with the FTC



- The FTC provides Hotline Phone Counselors and Web-based Consumer Guidance to help victims recover
- To file an ID Theft Complaint with the FTC:
  - [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft), 877-438-4338, TTY: 866-653-4261, or by mail
- Print complaint, called the “FTC ID Theft Affidavit”
- Filing with FTC does not substitute for a report to criminal law enforcement
- FTC does not take enforcement actions on behalf of individuals

# Repair the Damage



- **File disputes with credit bureaus and request that disputed items be blocked;**
- **File disputes with creditors and collection agents, request that items be removed from credit reports, and request copies of all documents related to impostor accounts;**
- **Notify FTC if credit bureaus fail to block items from reports**
- **All contacts need to be followed up in writing;**
- **All written contact needs to include:**
  - **Copy of victim's ID;**
  - **Copy of police report, if available;**
  - **ID theft affidavit.**



# Credit Report Information

## Blocking - §605B Blocking Rights



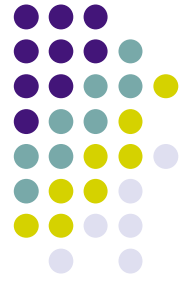
- Right to permanently block identity theft-related information from appearing in credit report.
- CRAs must block information with four business days after accepting Identity Theft Report
- CRAs must notify furnishers of information that it is result of identity theft

# Contact Companies where Thief Committed Fraud



- Send written dispute to fraud department
- Attach Identity Theft Affidavit, proof of identity, and police report
- Close or freeze the accounts that have been fraudulently opened or used
- Request confirmation letter
- Request identity theft-related documents

# The Right to Obtain Documents Relating to Identity Theft – FCRA § 609(e)



- Business must give victim copies of applications and other business records resulting from theft of identity
  - Within 30 days, at no cost
  - Without subpoena
  - Must also provide a copy to designated law enforcement officer, upon victims' request
- Victim must send request in writing, at the address specified for such requests, if any
- Request must include police report, proof of identity, Identity Theft Affidavit

# Standard Credit Information Dispute Rights: Designed for Non-ID Theft Corrections



When a consumer notifies CRA of dispute:

- CRA must send dispute to furnisher of disputed information – often send only a code number
- Furnisher must investigate dispute and report back to CRA – low standards for verifying
- CRA must notify consumer of results of investigation
- If no corrections to credit report, consumer has a right to file a dispute statement
  - 100 words, but CRA can replace with code number
- Must be completed generally in 30 days



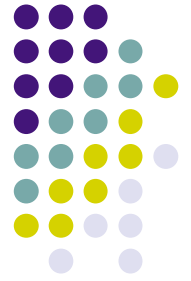
# **Assisting Victims of Non-Financial Identity Theft**



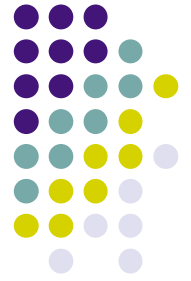
# Medical Identity Theft

- Happens when a thief uses another's identity or health insurance to receive care
- Dangerous because thief's medical records become merged with victim's records
- Difficult to remedy because of HIPAA concerns

# How to Assist Victims



- Report to local law enforcement, get a copy
- Obtain HIPAA compliant authorization forms from victim
- Request medical records from victim's regular provider as a baseline for comparison
- Request victim's medical records and privacy policy from each provider that gave care to the impostor.  
**Important:** Do not mention identity theft at this point.
- Review records, write providers who gave care to impostor requesting correction or segregation and flagging of records. Attach: police report, victim's ID, relevant portions of genuine records.
- Confirm that records have been corrected and review corrections.



# Employment Identity Theft

- Use of victim's personal identifying information to get or keep employment
- Usually discovered through IRS or denial of public benefits





# How to Assist Victims

- Get a copy of victim's earnings record from SSA
- Mark impostor activity, provide supporting documentation, request corrected statement
- Provide corrected earnings statement and supporting documents to IRS
- Request that victim's SSN be flagged
- IRS Identity Protection Specialized Unit:  
1-800-908-4490



# Criminal Identity Theft

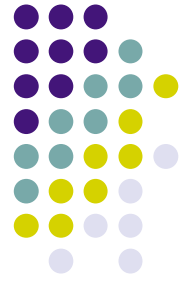
- Use of false identity in connection with commission of a crime
- Hard to detect until victim fails background check, is arrested, receives notice of outstanding warrants, or is unable to renew drivers license



# How to Assist Victims

- Some states have statutory procedures or passport programs
- Some states allow expungement or sealing of records for identity theft victims
- Enlist help of victim's local law enforcement if possible and get fingerprints and photos for comparison, request NCIC identity theft file
- Contact law enforcement where criminal activity occurred, provide proof of victim's identity and alibi information, request letter of clearance
- Provide letter of clearance to relevant businesses, agencies, and data brokers

# Clearing Fraudulent Utility Accounts



- Includes electric/gas/water, cable TV, cell phones, landlines, internet, and satellite TV
- Use procedure for clearing fraudulent financial accounts:
  - Send blocking letter to CRA's if the account appears on victim's credit report;
  - Send dispute letter and request for account documents to utility provider including copy of victim's ID, proof of residence, ID theft report, and/or police report + ID theft affidavit

# Using Declaratory Judgments to Assist Victims



- When a fraudulent or forged public record is involved, must have a court order to amend or remove it.
- Most states have a procedure for obtaining a declaratory judgment.
- Request an order declaring applicant to be a victim of identity theft and ordering the agency involved to remove the victim's name from the public record
- Serve petition on the agency involved, on the impostor if known, and on businesses if the court order will direct that victim's identifying information be disassociated with accounts
- Be creative!

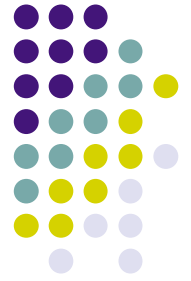
## ***Collaborative Case Example***



### Colorado Victim

- ID Stolen when 17 in Mexico
- Victimization occurred in Nebraska
- VICARS assisted with civil issues
- U.S. Attorney prosecutes in Nebraska
- MCVRC assists with victims' rights
- America's Most Wanted to feature case

# Resources



- Federal Trade Commission, [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft), 1-877-ID-THEFT; <http://bulkorder.ftc.gov> to order consumer education materials
- Identity Theft Resource Center (national), 1-858-693-7935, [www.idtheftcenter.org](http://www.idtheftcenter.org)
- Texas Legal Services Center's VICARS  
1-888-343-4414, [www.idvictim.org](http://www.idvictim.org)
- Maryland Crime Victims Resource Center (statewide victim assistance in Maryland, representation of victims in federal court nationally through referrals from NCVLI), 1-877-VICTIMS-1 [www.mdcrimevictims.org](http://www.mdcrimevictims.org)

# Additional Resources



- Identity Theft Action Center of Nebraska, (402) 880-9596, [www.idtheftne.org](http://www.idtheftne.org)
- Privacy Rights Clearinghouse, [www.privacyrights.org](http://www.privacyrights.org)
- National Center for Victims of Crime, (202) 467-8700, [www.ncvc.org](http://www.ncvc.org)
- National Crime Victim Law Institute, [www.ncvli.org/](http://www.ncvli.org/)
- Department of Justice, Office for Victims of Crime, searchable database of victim service providers, <http://ovc.ncjrs.gov/findvictimservices/>
- IRS Identity Protection Specialized Unit, 1-800-908-4490



# Acknowledgments



This presentation is supported by Grant Nos. 2007-VF-GX-K032 and 2007-VF-GX-K033 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

# Questions



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# Identity Theft: When Victims Need Legal Help – Contact Information



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