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January 5, 2004

RECEIVED
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COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: City of Newport Beach: Identity Theft Test Claim
No. 03-TC-08

Dear Ms. Higashi:

This matter has been sent to the Office of the Attorney General for comment. The test claim does not impact any programs of the Office of the Attorney General or the California Department of Justice.

We do however, have comments regarding the validity of the test claim.

The City of Newport Beach claims Penal Code section 530.6 is a state mandate because it permits a victim of identity theft to file a police report with the authorities at their place of residence. Newport Beach reasons this requires a higher level of service because:

> "the location where a crime is committed determines where it will be investigated and where jurisdiction and venue for the investigation and possible subsequent criminal enforcement may take place." (Test Claim, page 1.)

But identity theft is a crime against the person and occurs where the victim is located. Identity theft is a form of fraud or trespass against the victim who is in constructive possession of their identity. But venue for crimes of this nature has long been permitted where the property is located or the trespass occurs. (See *People v. Robinson* (1930) 107 Cal.App. 211, 222.) Even if identity theft was committed by persons outside the state, venue would be proper where the crime was consummated, that is where the victim lives. (See Pen. Code § 778.) Thus, we question whether the test claim legislation has changed the venue rules to impose a higher level of service on local police departments.

Additionally, we wish to bring to the Commission's attention that the test claim legislation was sponsored by the Los Angeles County District Attorneys Office, the Los Angeles County Sheriff and other sheriffs as well as the League of California Cities and several individual cities. (See attached Senate Rules Committee Analysis of AB 1897.)[1] Assuming Penal Code section 530.6 does create a mandate, there should be no subvention of funds because local government requested the mandate. (Cal. Const. Art. XII B, § 6 (a).)

Thank you for the opportunity to review and comment on this matter.

Sincerely,

RAMON DE LA GUARDIA
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: See Attached Service List
Louis Mauro, SAAG

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[1] Chapter 956, Statutes of 2000.

Senate Rules Committee Analysis of AB 1897

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

AB 1897

THIRD READING

Bill No: AB 1897
Author: Davis (D)
Amended: 8/18/00 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 6/27/00
AYES: Vasconcellos, Burton, Johnston, McPherson, Polanco, Rainey

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 78-0, 5/30/00 - See last page for vote

SUBJECT : Identity theft: remedies

SOURCE : Los Angeles County District Attorney

DIGEST : This bill creates a judicial process whereby victims of identity theft can clear their names.

Assembly Amendments :

1. The first provision in the amendments sets out specific factors a court must consider in ruling on request for a determination of factual innocence by a victim of identity theft. This provision would allow courts and litigants to focus on specific facts and would perhaps make appellate review of these actions more clear.

2. The second provision concerns a new Judicial Council form that would allow victims to fairly easily file for

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a necessary hearing. Judicial Council forms are usually fill-in-the-blank documents that require little or no

legal training.

ANALYSIS : Existing law:

1. Provides a process for a person arrested for a crime to obtain a court order for destruction of arrest records based upon the person's factual innocence. This process would be available to a victim of identity theft.

2. Provides that it is an alternative felony/misdemeanor for a person to willfully obtain personal identifying information, as defined, of another person and use another individual's personal identifying information and obtain, or attempt to obtain, credit, goods, or services in the name of the other person without the consent of that person.

3. Defines "personal identifying information" as the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number of an individual person.

4. Provides that every person who falsely represents or identifies himself as another person or a fictitious person to certain enumerated peace officers upon a lawful detention or arrest to evade proper identification is guilty of a misdemeanor.

5. Provides that a person who manufactures or sells documents falsely purported to be government identification is guilty of a misdemeanor punishable by imprisonment in county jail for one year and/or by a fine of not more than $1,000 for a first-time conviction and not more than $5,000 for a subsequent conviction.

6. Provides that any person who possesses a document falsely purported to be government identification knowing that it is not a government issued document is guilty of a misdemeanor, punishable by a fine of not less than $1,000 and not more than $2,500.

7. Provides that any person who gives false information to a peace officer performing his or her duties under the Vehicle Code is guilty of an infraction.

This bill:

1. Allows a person who suspects that he or she is a victim of identity theft to initiate an investigation at his or her local law enforcement agency and to obtain a police

report to document the fact of the identity theft and that the law enforcement agency "shall begin an investigation of the facts, or if the suspected crime occurred in a different jurisdiction, refer the matter to the law enforcement agency where the suspected crime was committed . . ."

2. Provides that a victim of suspected identity theft may petition the court for an "expedited" judicial determination of factual innocence under the following circumstances and pursuant to the following procedures:

   A. Where the perpetrator of the identity theft was convicted of a crime under the victim's identity.

   B. Where the identity theft victim's name has been mistakenly associated with a record of criminal conviction.

   C. Judicial determination of these issues shall be made after consideration of declarations, affidavits, police report and reliable information submitted by the parties. Where the court determines that the petition is meritorious and that there is no reasonable cause to believe that the petitioner committed the offense for which the perpetrator of the identity theft was arrested or convicted, the court shall find the petitioner factually innocent of that offense.

   D. Where the court finds the petitioner factually innocent, the court shall issue an order certifying

that fact. The Judicial Council would be required to develop a form for use in issuing an order pursuant to these provisions. A court issuing a determination of factual innocence may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation of fraud.

Prior Legislation

SB 1374 (Leslie), Chapter 488, Statutes of 1998.

AB 156 (Murray), Chapter 768, Statutes of 1997.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 8/18/00)

Los Angeles County District Attorney (source)
Attorney General
Los Angeles County Superior Court

California Public Interest Research Group
Consumers Union
League of California Cities
Privacy Rights Clearinghouse
Sacramento County Sheriff's Department
San Bernardino County Sheriff's Department
San Diego County Sheriff's Department
City of Lakewood
City of Dana Point
City of Stockton
City of San Diego
Culver City
California District Attorneys Association

ARGUMENTS IN SUPPORT : According to the sponsor, the Los Angeles County District Attorney, "Criminal identity theft" - the use of another's identity information during arrest or through prosecution - is sharply on the rise. Criminal identity theft creates a false criminal record for a blameless victim. Today, growing numbers of innocent victims of this practice are subject to erroneous arrest and incarceration, or collateral harm such as denial of

employment, because a false criminal history has been created by criminal's use of their identifying information.

ASSEMBLY FLOOR :
AYES: Aanestad, Ackerman, Alquist, Aroner, Ashburn, Baldwin, Bates, Battin, Baugh, Bock, Brewer, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Frusetta, Gallegos, Granlund, Havice, Honda, House, Jackson, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, Mazzoni, McClintock, Migden, Nakano, Olberg, Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

RJG:sl 8/21/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **03-TC-08: IDENTITY THEFT**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 5, 2004, I served the attached **LETTER TO MS. PAULA HIGASHI DATED JANUARY 5, 2004,** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, addressed as follows:

SEE ATTACHED MAILING LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 5, 2004, at Sacramento, California.

JESSICA L. TAYLOR	Jessica L. Taylor
Declarant	Signature

MAILING LIST
03-TC-08: IDENTITY THEFT

Paul L. Seave Attorney General's Office Crime & Violence Prevention Center 1300 I Street, Ste 1120 Sacramento, CA 95814	Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd., #307 Sacramento, CA 95842
Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Ms. Annette Chinn Cost Recovery Systems 705-2 East Bidwell Street, #294 Folsom, CA 95630
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