



1-1-2001

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Recommended Citation

Jerilyn Stanley, *Crimes / Identity Theft: Supporting Victims in Recovering from the Crime of the Information Age*, 32 MCGEORGE L. REV. 566 (2001).

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Identify Theft: Supporting Victims in Recovering From the Crime of the Information Age

Jerilyn Stanley

Code Sections Affected

Penal Code §§ 530.6, 530.7 (added).

AB 1862 (Torlakson); 2000 STAT. Ch. 631

AB 1897 (Davis); 2000 STAT. Ch. 956

I. INTRODUCTION

Imagine graduating from law school, and showing up for the first day of your legal career at a job with the District Attorney's office only to be arrested, handcuffed, strip searched, and taken to jail due to an employment background check revealing an outstanding arrest warrant for drugs and gun charges that someone else committed in your name.¹ Or, imagine receiving a phone call from a bill collector demanding credit card, car, utilities or loan payments from accounts you never knew existed, much less opened.² Unfortunately, these experiences are becoming more common.³ According to Privacy Rights Clearinghouse,⁴ 500,000 to 700,000 people will find themselves a victim of identity theft in the next year.⁵ This number has increased sixteen times in just one year.⁶ Identity theft has been defined as: one person committing financial fraud by illegally using another persons identifying information, including name, address, birth date, and social security

1. See Valerie Alvord, *When Dreams Turn Ugly: Stolen Identity Put Her Budding Career in Handcuffs*, SAN DIEGO UNION TRIB., Aug. 29, 1999, at B1 (recounting Namia Allen's ordeal as a victim of identity theft when she showed up to work as a law clerk in the San Diego District Attorney's Office and was arrested, strip searched, and arraigned before being found factually innocent of a crime that another women had committed in her name).

2. See *Identity Theft: How to Protect and Restore Your Good Name, 2000: Hearing Before the Judiciary Subcommittee on Technology, Terrorism and Government Information, 107th Cong.* (2000) available at <http://www.privacyrights.org/victims8.htm> (last visited July 12, 2000) (copy on file with the *McGeorge Law Review*) (statement of Michelle Brown describing her ordeal as victim of identity theft).

3. See Beth Givens, speech before the SEARCH National Conference on Privacy, Technology and Criminal Justice Information (June 1, 2000) available at <http://www.privacyrights.org/ar/wcr.htm> (last visited July 12, 2000) (copy on file with the *McGeorge Law Review*) (stating that according to the Federal Trade Commission, identity theft is the "fastest growing crime for our time").

4. See *Nowhere to Turn: Victims Speak Out on Identity Theft*, available at <http://www.privacyrights.org> (last visited Aug. 4, 2000) (copy on file with the *McGeorge Law Review*) (noting that the Privacy Rights Clearinghouse is a nonprofit advocacy group, located in San Diego, California, that conducts research and consumer education programs on identity theft and was established in 1992).

5. See Emily Bazar, *ID Thefts Spark Drive for Safeguards*, SACRAMENTO BEE, May 10, 2000, at A6 (reporting the Privacy Rights Clearinghouse estimate); Linda Goldman-Foley, *We Have No Place for Us to Hide from Identity Theft*, SAN DIEGO UNION TRIB., May 10, 2000, at B7.

6. Goldman-Foley, *supra* note 5, at B7.

number.⁷ Identity thieves use personal information to open new credit accounts, rent apartments, establish utilities, or commit crimes.⁸ They often run up tens of thousands of dollars of debts, and get arrested for other crimes all in the victims' names.⁹ The consequences to a victim can be extensive.¹⁰ While victims are not legally liable for such debts, damage to their credit history, criminal record, and emotional well-being can take years to repair.¹¹ Unfortunately, victims often face greater challenges in clearing their names than the criminals do in assuming them.¹²

To address these concerns, the Legislature enacted passed Chapter 956 allowing victims to initiate law enforcement investigations,¹³ and Chapter 631 making an Identity Theft database available to support victims in reclaiming their credit and legal histories.¹⁴

II. EXISTING LAW

A. State Law

In 1996, Arizona became the first state to enact legislation recognizing identity theft as a crime.¹⁵ The next year, the California Legislature followed Arizona's lead and became the second state¹⁶ to make the unauthorized use of another's personal identity a crime punishable as a misdemeanor.¹⁷ In 1998, the Legislature increased the penalty for identity theft to a possible felony, with a maximum fine of \$10,000 or a state prison sentence, or both.¹⁸

7. See G.A.O. REP. NO. GGD-98-100-BR, at 11 (1998) (integrating reports from federal agencies regarding identity theft including: Secret Service, Social Security Administration, United States Postal Inspection Service, Internal Revenue Service, and private national credit agencies including: Visa, MasterCard, and Associated Credit Bureaus, Inc.).

8. *Id.*

9. See *Prepared Statement of the Federal Trade Commission on Identity Theft Before the Subcommittee on Technology, Terrorism and Government Information*, 106th Cong. (2000) (statement of Jodie Bernstein, Director of the Bureau of Consumer Protection, Federal Trade Commission) (on file with the *McGeorge Law Review*) (summarizing the affects of identity theft).

10. *Id.*

11. *Id.*; see *supra* notes 1-5 (describing experiences of several victims averaging two years each to recover their credit histories and criminal records and of one victim, Valerie Brown, estimating that in excess of 500 hours were spent to clear up her credit history).

12. Goldman-Foley, *supra* note 5, at B7.

13. CAL PENAL CODE § 530.6 (enacted by Chapter 956).

14. *Id.* § 530.7 (enacted by Chapter 631).

15. See ARIZ. REV. STAT. § 13-2708 (1998).

16. See CAL. PENAL CODE § 530.5 (West 1999) (enacting Chapter 768 of 1997 imposing state criminal penalties for identity theft crimes).

17. *Id.*

18. See *id.* § 530.5 (West 1999) (enacted by Chapter 488 of 1998, SB 1374 (Leslie), a law that increased the penalty to a wobbler to a potential three year prison term and a \$10,000 fine). This also expanded scope to include obtaining medical information. *Id.*

Personal identification is defined as an individual's name, address, telephone number, driver's license number, mother's maiden name, social security number, and bank account and credit card numbers.¹⁹ If an identity thief is convicted of a crime under the victim's name, court records can affirmatively state that the identity theft victim did not commit the crime.²⁰ Furthermore, a victim of identity theft can petition the court to be found factually innocent of the crime the identity thief was arrested for, as long as the identity thief was not convicted.²¹ And upon sufficient proof, victims can have erroneous records sealed and eventually destroyed.²²

B. Federal Law

In 1998, Congress passed House Resolution 4151, the Identity Theft and Assumption Deterrence Act of 1998.²³ This Act criminalized the use of another's identity, without permission, to commit any federal crime or state felony.²⁴ In considering Senate Bill 512, the precursor to House Resolution 4151,²⁵ the Senate Judiciary Committee²⁶ intended to include this provision as an amendment to the current federal criminal code which focused on false identification documents.²⁷ The committee eliminated confusion by including the new crime of "assuming an identity," which does not always include the manufacturing of a false document, within the criminal section applicable to fraudulent identification documents.²⁸

Additionally, in an effort to recognize and support identity theft victims, the federal legislation, House Resolution 4151, established the Federal Trade Commission as the primary federal agency responsible for tracking complaints,²⁹ referring victims to the appropriate law enforcement agencies,³⁰ and providing educational services for the prevention of identity theft.³¹ Under federal law, if an

19. *Id.* § 530.5(b) (West 1999).

20. *Id.* § 530.5(c) (West 1999).

21. *See id.* § 851.8(a)-(c) (West 1985) (providing a mechanism for a finding of factual innocence for people who have been arrested, have had an accusatory pleading filed against them, or were acquitted of charges). Although this statute can also be used by identity theft victims when an identity thief is arrested for a crime the thief committed under the victim's name, this statute was not specifically designed for identity theft victims. *Id.* Since this remedy is not available after there is a conviction, even if the person convicted was an identity thief convicted in the victim's name. *Id.*

22. *See id.* § 851.8(a)-(b) (West 1985) (providing a mechanism for anyone to remove the criminal arrest records of a crime).

23. 18 U.S.C. § 1028 (1998).

24. *Id.*

25. *See* 105 CONG. REC. H9997 (including an explanatory statement of Rep. Bill McCollum on the substitute amendment to H.R. 4151, which incorporated S. 521).

26. S.REP. NO. 105-274, (1998).

27. 18 U.S.C. § 1028 (1998).

28. *See* S.REP. NO. 105-274 (1998) (noting that 18 U.S.C. § 1028 limits fraud to identification documents and that S.512 amends this section to include fraud of identification information).

29. Pub. L. No. 105-318 § 5(a)(1) (1998).

30. *Id.* 105-318 § 5(a)(3).

31. *Id.* 105-318 § 5(a)(2).

identity thief obtains over one thousand dollars within a one-year-period, the thief can be imprisoned for up to fifteen years,³² while any lesser amount is limited to three years imprisonment.³³

House Resolution 4151 also grants victims the right to restitution, including any costs the victim incurs in correcting her credit history.³⁴ Victim's advocates and the Federal Trade Commission testified that federal legislation was necessary because identity thieves often cross state lines, making state law remedies less effective.³⁵ However, federal agencies usually focus on fraud investigations involving organized crime operating over several states and losses exceeding two hundred thousand dollars.³⁶ Therefore, state law is necessary to address the remaining incidents of identity theft not addressed by the federal law.

III. THE NEW LAWS

A. Chapter 631

Chapter 631 directs the Department of Justice (DOJ) to establish and maintain an Identity Theft Database for victims of identity theft.³⁷ This provision will allow a victim of identity theft, after obtaining a court order and submitting a full set of fingerprints, to be included in the database.³⁸ This database will allow identity theft victims to grant access to authorized representatives who can then establish that the victim has in fact been a victim of identity theft.³⁹ The DOJ is charged with verifying the identity of the victim against their driver's license or identification card through the Department of Motor Vehicles (DMV).⁴⁰

B. Chapter 956

Chapter 956 adds section 530.6 to the California Penal Code, allowing a person who reasonably believes that they are a victim of identity theft to initiate an investigation by the local law enforcement agency, including a written report.⁴¹ Additionally, any person believing that someone else has been arrested or convicted of a crime under their identity can petition the court for an expedited determination

32. 112 STAT. 307 (1998); 18 U.S.C § 1028 (b)(1).

33. 18 U.S.C § 1028(b)(2) (1998).

34. See S.REP. NO. 105-274 (1998) (noting that United States code section 1028 provides that victims who have suffered financial losses, including fees and costs, can recover under 18 U.S.C § 3663A).

35. See S.REP. NO. 105-274 (1998).

36. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1949, at 5 (Apr. 4, 2000).

37. CAL. PENAL CODE § 530.7(c) (enacted by Chapter 631).

38. *Id.* § 530.7(a) (enacted by Chapter 631) (allowing the DOJ to require additional information for inclusion within the database).

39. *Id.* § 530.7(c) (enacted by Chapter 631).

40. *Id.* § 530.7(b) (enacted by Chapter 631).

41. *Id.* § 530.6(a) (enacted by Chapter 956).

of factual innocence.⁴² If the court finds that there is no reasonable cause to believe that the petitioner committed the offense, a finding of factual innocence will be awarded.⁴³ However, the court can reverse its determination of factual innocence upon a showing of any material misrepresentation or fraud regarding any of the information submitted to the court.⁴⁴

IV. ANALYSIS OF THE NEW LAWS

A. Chapter 631

The intent behind Chapter 631 is to support individuals in establishing their status as victims of identity theft, and to aid victims in efforts to reclaim their identity from identity thieves, by providing a legal, publicly accessible, record of their status as victims of identity theft.⁴⁵ According to the DOJ, the sponsor of this law, Chapter 631 will allow an identity theft victim access to the database to prove that they are a victim of identity theft and that they have no criminal history.⁴⁶ Therefore, an essential ingredient to the effectiveness of this database is the accuracy of the information.

However, this Chapter does not require the DOJ to cross-check criminal histories or verify fingerprints.⁴⁷ Chapter 631 only directs the DOJ to verify the identity of a victim of identity theft through the victim's driver's license or identification records at the DMV.⁴⁸

1. The DMV's Role in Identification Theft

While a California driver's license or identification card is relied upon as a primary form of identification,⁴⁹ the DMV issues over 100,000 fraudulent driver's

42. *Id.* § 530.6(b) (enacted by Chapter 956).

43. *Id.*

44. *Id.*

45. See Letter from Beth Givens, Director of Privacy Rights Clearinghouse, to Senator John Vasconcellos, Chairperson, Senate Public Safety Committee 1 (June 19, 2000) (on file with the *McGeorge Law Review*) (expressing support for AB 1862 and stressing the importance of establishing an official record of innocence).

46. See Letter from Nini Redway, Legislative Advocate for Attorney General, Bill Lockyer, to Senator John Vasconcellos, Chairperson, Senate Public Safety Committee 1 (June 7, 2000) (on file with the *McGeorge Law Review*) (identifying the Attorney General as the sponsor of AB 1862 and stating that access to the database would be limited, and that intent of establishing the database was to provide some relief to victims).

47. See CAL. PENAL CODE § 530.7 (enacted by Chapter 631) (noting that section (a) only requires the victim to submit a full set of fingerprints and that no other section in this Chapter requires the DOJ to maintain or use the fingerprints). However, the DOJ could establish fingerprint verification procedures through regulatory process. *Id.*

48. *Id.* § 530.7(b) (enacted by Chapter 631).

49. See *Perkey v. California Department of Motor Vehicles*, 42 Cal. 3d 185, 188, 721 P. 2d 50, 51, 228 Cal. Rptr. 169, 170 (1986) (quoting legislative intent that a driver's license is a reliable form of identification, with regard to the need for requiring a thumb print to which plaintiff had objected and filed suit); THE JOINT LEGISLATIVE TASK FORCE ON GOVERNMENT OVERSIGHT, COMMITTEE REPORT ON HOW DMV POLICIES PROMOTE DRIVER'S

licenses to identity thieves each year.⁵⁰ Identity thieves can easily obtain a duplicate license of another person.⁵¹ Once an identity thief obtains a fraudulent driver's license, they are able to obtain access to that person's personal, criminal, and financial records and funds.⁵² In 1998, the California Legislature became aware of the DMV's policy of placing priority on customer service over accuracy, in a report suggesting reforms to DMV's procedures prepared by the Joint Legislative Task Force on Government Oversight.⁵³ However, many of the reforms suggested in the report have still not been implemented,⁵⁴ and the DMV continues to issue fraudulent driver's licenses.⁵⁵ The DMV even opposed legislation introduced earlier this year that would have required the DMV, after issuing a duplicate driver's license, to compare the photographs and personal information prior to the mailing of the permanent license.⁵⁶ Currently, the DMV only requires an unverified application and thumb print along with twelve dollars to issue a duplicate driver's license.⁵⁷ Furthermore, a change of address can be completed over the telephone without any further verification.⁵⁸

Additionally, since 1997, DMV officials have continued to discover DMV clerks selling fraudulent licenses, and the DMV has failed to implement changes in

LICENSE FRAUD, (Apr. 1998) (stating that due to government and business practices, the California driver's license is "California's most important personal identification document").

50. See Kimberly Kindy, *Identity Theft in the DMV Lines*, ORANGE COUNTY REG., Sept. 24, 2000 (copy on file with the *McGeorge Law Review*) (reporting on an investigation where despite evidence of the DMV's duplicity in identity theft, customer service was found more important than increasing security measures).

51. See *id.* (explaining how easy it is for criminals to obtain duplicate driver's licenses and describing how one man was victimized by eighteen different individuals who had secured his license as a duplicate, and another man who obtained the duplicate driver's license of a woman).

52. *Supra* notes 1-5 (describing stories of victims of identity theft and the access that identity thieves were able to obtain).

53. See The Joint Legislative Task Force on Government Oversight, Committee Report on How DMV Policies Promote Driver's License Fraud (Apr. 1998) (indicating that DMV procedures are not designed to promote accurate records, but to ensure shorter lines).

54. *Id.* at 7, 11, 12; see Kindy, *supra* note 50 (summarizing DMV investigators' reports showing similar recommendations that the DMV has not yet implemented, including verification of Social Security Numbers, comparing identifying information on the application against the original license, and comparing pictures, which are kept on a computer database, between the original licensee and the duplicate applicant). The DMV has refused to place more emphasis on accuracy even though internal sources warned DMV officials that failure to implement some changes in issuing duplicate licenses would result in financial losses and costs to the department through legal actions brought against the agency due its duplicity in identity theft crimes. *Id.*

55. Kindy, *supra* note 50.

56. See AB 2382 (2000) (as introduced on Feb. 24, 2000, but not enacted) (requiring the DMV to verify identity prior to issuing duplicate licenses). This bill was held in the Assembly Appropriations Committee due to objections by the DMV to the \$2.4 million three year cost, even with the state awash in an unprecedented budget surplus and the Department spending over \$70 million each year to investigate fraud, according to DMV records. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2382, at 1 (May 3, 2000); Interview with Assemblywoman Lynne C. Leach, in Sacramento, Cal. (Jan. 16, 2001) (notes on file with the *McGeorge Law Review*).

57. See DMV website available at <http://dmv.ca.gov/faq/dlfaq.htm> (last visited Nov. 12, 2000) (copy on file with the *McGeorge Law Review*) (stating the requirements for obtaining a driver's license or identification card).

58. *Id.*

hiring or oversight practices to prevent such abuses.⁵⁹ Senator Jackie Speier, Chairperson of the Government Oversight Task Force, has directed the DMV to make administrative reforms under the threat of legislative action.⁶⁰ The Director of the DMV, Steve Gourley, has promised to implement the necessary reforms to prevent the issuance of fraudulent driver's licenses.⁶¹ Without reforms, the DMV's lax policies will undermine the reliability of the DOJ's Identity Theft Database.

2. Support for Chapter 631

Supporters of Chapter 631 believe this database will be beneficial because it will aid victims of identity theft in reclaiming their identity.⁶² By creating an official record, victims of identity theft will be able to establish their status as a victim to prospective employers conducting background checks.⁶³ Establishing this official record through a database will also benefit law enforcement officials by providing a source of reliable information regarding the identification of an individual as a victim of identity theft, as well as alerting them to the possibility that the individual they are investigating may be an identity thief instead of the victim.⁶⁴ As more identity thieves are committing crimes under victims' names, the amount of time spent by law enforcement officials in determining the actual identity of a person as the thief or victim will also increase.⁶⁵ This measure allows victims to empower themselves by offering them a means in which to take affirmative steps towards recovering their identity.⁶⁶ Thus, summarily, supporters of Chapter 631 advocate

59. See Kimberly Kindy, *DMV's Mass License Fraud Persists*, ORANGE CO. REG., Oct. 1, 2000 (copy on file with the *McGeorge Law Review*) (reporting on the DMV's continual problem of clerks selling driver's licenses). There are currently 60 current investigations of employees even after DMV announced its "Clean Sweep" of 80 employees fired in 1997-1998 for similar fraudulent activities. *Id.*

60. See Kimberly Kindy, *DMV License Breach Spurs Reform Cry*, ORANGE CO. REG., Sept. 26, 2000 (copy on file with the *McGeorge Law Review*) (quoting Senator Speier's astonished response to the DMV's procedures).

61. See Kimberly Kindy, *DMV Primed to Make Changes*, ORANGE CO. REG., Sept. 26, 2000, <http://www.ocregister.com/politics/dmv/s0926cci.shtml> (last visited Sept. 27, 2000) (copy on file with the *McGeorge Law Review*) (reporting the director's promise to implement reforms including inserting computer flags when an attempt is made to obtain a fraudulent duplicate license). These flags would attempt to stop thieves from just going to another DMV field office to try again. *Id.*

62. See Letter from Nick Warner, Legislative Advocate for California State Sheriffs' Association, to Assemblyman Tom Torlakson, at 1 (Apr. 4, 2000) (on file with the *McGeorge Law Review*) (expressing the Sheriffs' Association's support for the measure).

63. Letter from Beth Givens, Director Privacy Rights Clearinghouse to Senator John Vasconcellos, Chair Senate Public Safety Committee, at 1 (June 19, 2000) (on file with the *McGeorge Law Review*).

64. See *id.* (stating that the database would be able to provide accurate information and allow victims of identity theft to prove they have no criminal history).

65. *Id.*

66. Letter from Nick Warner, Legislative Advocate for the California State Sheriff's Association to Assemblyman Tom Torlakson, at 1 (Apr. 4, 2000) (on file with the *McGeorge Law Review*).

that this measure is necessary to provide California citizens with the ability to protect themselves if even an identity thief was to plague them.⁶⁷

3. Problems with Chapter 631

In voting this measure off the Assembly Floor at the end of the 2000 Legislative Session,⁶⁸ Legislators were informed that the database would be linked to the real criminal's fingerprints⁶⁹ as an additional verification measure, to prove that an identity thief committed the crime in question and not the victim.⁷⁰ However, Chapter 631 does not require the DOJ to conduct this additional verification or to link this database to any criminal database.⁷¹

An additional concern is the DOJ's ability to maintain the case load and, thereby, the reliability of the database. The DOJ is also responsible for maintaining the DNA and warrant databases, which are both proving to be ineffective due to backlogs in updating the systems.⁷² However, the number of identity theft victims that could apply for this database will be much fewer than either the DNA or warrant systems.⁷³

The lack of accuracy in the verification process and the potential backlogs will significantly weaken any protection this database can provide for identity theft victims.⁷⁴ While these weaknesses in Chapter 631 can be remedied through regulatory procedures or future legislation, these concerns have not been resolved

67. Letter from James Provenza, Special Assistant District Attorney on behalf of Gil Garcetti, District Attorney for Los Angeles County, to Assemblyman Tom Torlakson, at 1 (Apr. 6, 2000) (on file with the *McGeorge Law Review*) (expressing support for this measure as it will help victims avoid additional problems due to incorrect criminal records resulting from identity theft).

68. Compare Legislative Daily Journal (Aug. 30, 2000) (showing the Assembly floor vote to Concur with Senate Amendments taken on August 30, 2000) with CAL. CONST. art. IV § 10(c) (stating that all bills of an even year must pass both houses of the legislature by September 1).

69. See ASSEMBLY CONCURRENCE IN SENATE AMENDMENTS, FLOOR ANALYSIS OF AB 1862, at 2 (Aug. 18, 2000) (failing to reflect committee amendments that previously removed the verification of the criminal records provision).

70. *Id.*; Videotape: the Author's statement on the Assembly Floor (on file with the *McGeorge Law Review*).

71. CAL. PENAL CODE § 530.7 (enacted by Chapter 631).

72. See Bill Rams, *State Lags in Compiling Inmate DNA Database*, ORANGE CO. REG., Oct. 2, 2000 (copy on file with the *McGeorge Law Review*) (expressing officials' comments that the "DNA database is woefully incomplete" and backlogged); Kenneth Howe & Eric Hallissy, *A System in Deep Trouble: How California's Warrants Tracking System Breaks Down*, S.F. CHRON., July 11, 1999, at B8 (stating that one problem with the current warrant system is that hundreds of thousands of warrants are not entered and that there is a lack of centralized authority or reporting requirements); Patrick Hoge & Andy Furillo, *Laguna Killer Bought Gun Despite Warrant*, SACRAMENTO BEE, Aug. 20, 1999 (reporting on a killer who was able to purchase a gun used to kill four people because his outstanding warrant which should have prevented his gun purchase was only entered into a local warrant system and never entered into the DOJ's system.) Officials claim there are too many warrants, and "it would be too hard to put them all in." *Id.*

73. Telephone interview with Nini Redway, Legislative Consultant with the Department of Justice, in Sacramento, Cal. (Jan. 12, 2001) (notes on file with the *McGeorge Law Review*).

74. *Id.*

as of yet.⁷⁵ However, this Chapter will not take effect until September 1, 2001, giving the DOJ and the next Legislature time to implement new regulations or legislation to address these concerns.⁷⁶ Although there are foreseeable weaknesses in the use of the Identity Theft Database, the necessity of Chapter 631 was bolstered by the fact that the Legislature received no formal opposition to this measure.⁷⁷

B. Chapter 956

Chapter 956 is intended to support identity theft victims in reclaiming their identity.⁷⁸ Currently, some law enforcement agencies do not place a high priority on identity theft as a crime and are reluctant to take a written report when a victim reports an identity theft crime.⁷⁹ In order for a victim to stop an identity thief from continuing to use the victim's identity, the victim's driver's license number must be changed.⁸⁰ Having a police report of the identity theft crime will provide documentation of the victim's claim and increase the likelihood of DMV approval of the victim's request.⁸¹ Additionally, if a thief has been arrested or convicted of crimes in a victim's name, the victim can use the police report to pursue a finding of innocence and clear her incorrect criminal record.⁸² By requiring law enforcement to take a written report, victims will be able to move forward in obtaining a new driver's license number or pursuing a finding of factual innocence.⁸³

1. Chapter 956—Closing a Loophole

Chapter 956 also closes a loop hole in existing law by allowing victims of identity theft to pursue and obtain findings of factual innocence when an identity

75. *Id.*

76. CAL. PENAL CODE § 530.7 (enacted by Chapter 631).

77. *See* SENATE RULES COMMITTEE, ANALYSIS OF AB 1862, at 3 (Sept. 8, 2000) (indicating that no opposition was listed).

78. *See supra* Part III.B.

79. *See* Letter from Dan Jacobson, Associate Legislative Director for California Public Interest Research Group (CALPIRG) to Assemblymember Carl Washington, Chairperson of Assembly Public Safety Committee, at 1 (Apr. 6, 2000) (on file with the *McGeorge Law Review*) (citing frequent complaints of identity theft victims at identity theft support group meetings and the need for a police report to obtain new identifying information, and discussing how this measure will encourage law enforcement officials to take this crime more seriously).

80. *See* Fact Sheet #17a: Identity Theft: What to Do if it Happens to You *available at* <http://www.privacyrights.org/fs/fs17a.html> (last visited Nov. 15, 2000) (copy on file with the *McGeorge Law Review*) (listing suggestive steps for identity theft victims).

81. *See* Letter from Shelly Curran, Consumers Union to Assemblywoman Susan Davis, at 1 (Apr. 5, 2000) (on file with the *McGeorge Law Review*) (stating that victims will be able to use police reports to obtain a new driver's license number).

82. *See* CAL. PENAL CODE § 530.6(b) (enacted by Chapter 956) (including police reports in the list of documentation required before a finding of factual innocence can be made).

83. *Id.*

thief has been convicted of a crime under a victim's identity.⁸⁴ Currently, California Penal Code section 851.8 applies more appropriately when a person is incorrectly arrested for a crime, but this section is not applicable if there has been a conviction.⁸⁵ Conversely, Chapter 956 is more appropriate for identity theft victims when a perpetrator of identity theft has been arrested and convicted in a victim's name.⁸⁶ Under these circumstances, a victim can still apply for a finding of factual innocence if the identity thief has been convicted of the crime under the victim's name.⁸⁷ Furthermore, Chapter 956 is included within the Penal Code section relating to identity theft victim assistance.⁸⁸ Additionally, under existing law a finding of factual innocence can take several months during which time an identity thief can continue to abuse a victim's identity.⁸⁹ The requirement of an expedited finding under Chapter 956 will decrease this delay.⁹⁰

A finding of factual innocence will also satisfy the court ordered requirement for a victim to participate in the identity theft database through the DOJ.⁹¹ The expedited finding requirement under Chapter 956 will shorten this time frame and assist victims in obtaining new driver's license numbers sooner, thereby expediting the ending of the identity thief's fraudulent use of the victim's identity.⁹² While this finding of factual innocence is to occur on an "expedited" finding, a specific definition for "expedited" is not included within this statute.⁹³

a. *Supporters of Chapter 956*

Sponsored by the Los Angeles District Attorney's Office, Chapter 956 is an effort to provide remedies for criminal identity theft victims in clearing their names.⁹⁴ This provision is supported by law enforcement and community groups.⁹⁵

84. Compare *id.* § 530.6(b) (enacted by Chapter 956) (allowing a finding even with a conviction and noting its location under section 530 which relates to identity theft) with CAL. PENAL CODE § 851.8(a) (West Supp. 2000) (restricting to arrest prior to filing an accusatory pleading, therefore, unavailable to a victim whose name was used by another in a conviction).

85. CAL. PENAL CODE § 851.8(a) (West Supp. 2000).

86. See SENATE PUBLIC SAFETY COMMITTEE, COMMITTEE ANALYSIS of AB 1867, at 8 (June 27, 2000) (comparing the two sections and recommending a clarification amendment).

87. *Id.*

88. CAL. PENAL CODE § 530 (West 1999).

89. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS of AB 1897, at 4 (May 9, 2000).

90. CAL. PENAL CODE § 530.6(b) (enacted by Chapter 956).

91. See *id.* § 530.7(a) (enacted by Chapter 631) (providing for a court order).

92. Letter from Shelly Curran, Consumers Union to Assemblymember Susan Davis (April 5, 200) (on file with the *McGeorge Law Review*).

93. CAL. PENAL CODE § 530.6(b) (enacted by Chapter 956).

94. Letter from James Provenza, Special Assistant District Attorney, on behalf of Gil Garcetti, District Attorney of Los Angeles, to John Vasconcellos, Chairperson, Senate Public Safety Committee, at 1 (June 5, 2000) (on file with the *McGeorge Law Review*).

95. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS of AB 1897, at 5 (May 9, 2000) (listing support from several sheriff's departments, the Attorney General, the Los Angeles District Attorney's office, and the League of California Cities).

Supporters recognize this measure will not deter identity theft crimes,⁹⁶ but believe that this measure will support victims in reclaiming their identity.⁹⁷ Establishing a mechanism specifically for identity theft victims to correct criminal records will protect victims from incorrect arrests or job denials.⁹⁸

b. Effectiveness of Chapter 956

Chapter 956 sets new precedent by requiring law enforcement officials to begin an investigation after an identity theft victim contacts the appropriate law enforcement agency.⁹⁹ Usually law enforcement officials have the discretion in determining whether to conduct an investigation on the facts of a complaint.¹⁰⁰ Under Chapter 956, even reluctant law enforcement officials will most likely take a report as failure to follow state law could be easily established.¹⁰¹ While a written report will help victims by providing additional documentation of the crime, there is some doubt as to this statute's ability to force a thorough investigation by law enforcement officials.¹⁰² Because Chapter 956 does not clarify the extent of the investigation to satisfy this statute,¹⁰³ the discretion of law enforcement official's will likely remain intact.¹⁰⁴ However, while this Section does leave discretion to law enforcement officials with regard to the scope of the investigation,¹⁰⁵ the legislative intent codified in this measure will encourage law enforcement officials to increase their efforts in pursuing identity thieves.¹⁰⁶ There was no opposition filed on this measure.¹⁰⁷

96. Letter from Susan Golding, Mayor of San Diego, to Susan Davis, at 1 (May 2, 2000) (on file with the *McGeorge Law Review*).

97. *Id.*

98. Letter from Beth Givens, Director of Privacy Rights Clearing House, to Senator John Vasconcellos, Chair Senate Public Safety Committee, at 1 (June 19, 2000) (on file with the *McGeorge Law Review*).

99. CAL. PENAL CODE § 530.6(a) (enacted by Chapter 956).

100. Telephone interview with Dan Jacobson, Associate Legislative Director, in Sacramento, Cal. (Aug. 13, 2000) (notes on file with the *McGeorge Law Review*).

101. *Id.*

102. *Id.*

103. *Id.*

104. CAL. PENAL CODE § 530.6(a) (enacted by Chapter 956).

105. *Id.*

106. Letter from Dan Jacobson, Associate Legislative Director for the California Public Interest Research Group (CALPIRG), to Assemblymember Carl Washington, Chairperson Assembly Public Safety Committee, at 1 (Apr. 6, 2000) (on file with the *McGeorge Law Review*).

107. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1897, at 1 (June 27, 2000) (stating that no opposition was known).

V. CONCLUSION

The increasing occurrence of identity theft and the resulting devastation to victims captured the California Legislature's attention this year.¹⁰⁸ The Legislature responded by conducting identity theft and privacy constituent forums throughout the state,¹⁰⁹ and by introducing several identity theft bills¹¹⁰ that focused on increased investigation,¹¹¹ as well as additional avenues of identity reclamation and prevention of future identity theft.¹¹² Both Chapters focus on supporting victims in reclaiming their identities.¹¹³ Chapter 631 supports victims through establishing a database so victims can provide legal verification of their status as victims of identity theft.¹¹⁴ Chapter 956 requires law enforcement officials to take a report,¹¹⁵ allows victims to initiate a legal investigation of the facts,¹¹⁶ and provides a specific code section for identity theft victims to obtain an expedited finding of factual innocence when an identity thief is arrested or convicted of a crime in the victim's name.¹¹⁷

The effectiveness of the Identity Theft Database under Chapter 631 is questionable due to the limited verification procedures which rely solely on DMV records to establish verification of identification.¹¹⁸ Given the DMV's own duplicity in identity theft crimes,¹¹⁹ the DOJ will need to establish additional verification procedures to ensure the reliability of this database.¹²⁰ In addition to these verification concerns, the DOJ's inability to remain current with data entry on other databases could weaken the effectiveness of the Identity Theft Database.¹²¹

108. Interview with Assemblymember Lynne C. Leach, Vice-Chair of Assembly Consumer Protection, Governmental Efficiency, and Economic Development, in Sacramento, Cal. (Jan. 16, 2001) (notes on file with the *McGeorge Law Review*).

109. *Id.* (discussing the identity theft forum she conducted in the East Bay area of the State, and that Assemblymember Susan Davis, Chairperson of Assembly Protection, Governmental Efficiency, and Economic Development conducted a constituent forum in San Diego on Privacy).

110. See AB 1949 (2000) (as introduced Feb. 15, 2000, but not enacted) (providing grants for regional identity theft investigative units); AB 2452 (2000) (as introduced Feb. 14, 2000, but not enacted) (allowing identity theft victims to enjoin creditors from collecting on identity theft charges and requiring credit reporting agencies to block information once a consumer alleges identity theft); SB 1767 (2000) (as introduced Feb. 23, 2000, but not enacted) (prohibiting credit grantors from extending credit once a credit report indicates a fraud alert, prohibiting the use of social security numbers as an account or identifying number, and requiring the credit grantor to give a consumer a copy of the fraudulent credit application).

111. AB 1949 (2000) (as introduced Feb. 15, 2000, but not enacted).

112. AB 2452 (2000) (as introduced Feb. 14, 2000, but not enacted); SB 1767 (2000) (as introduced Feb. 23, 2000, but not enacted).

113. See *supra* Part III (discussing the provisions of Chapter 631 and Chapter 956).

114. CAL. PENAL CODE § 530.7 (enacted by Chapter 631).

115. *Id.* § 530.6(a) (enacted by Chapter 956).

116. *Id.*

117. *Id.* § 530.6(b).

118. See *supra* Part IV.A.1 (discussing the DMV's role in identification theft).

119. *Supra* Part IV.A.1.

120. *Supra* Part IV.A.3.

121. See *supra* Part IV.A.3 (listing problems with Chapter 631).

Supporters believe this measure will give victims the ability to establish their status as victims of identity theft to employers and law enforcement officials.¹²²

Chapter 956 was adopted to support victims in recovering from identity theft crimes.¹²³ In addition, this measure closed a loophole in existing law by providing a mechanism specifically for identity theft victims to obtain a finding of factual innocence.¹²⁴ The requirement of law enforcement officials to take a written report and investigate each claim of identity theft will encourage law enforcement officials to more effectively respond to these claims.¹²⁵ Both of these measures demonstrate the Legislature's desire to provide additional remedies to re-empower victims who, in many cases, suffer through several years of trying to clear the wreckage created by an identity thief.

122. *See supra* Part IV.A.2 (noting the support for Chapter 631).

123. *See supra* Part IV.B (asserting the intent of Chapter 956).

124. *See supra* Part IV.B.1 (remarking on how Chapter 956 closes a loophole in existing law).

125. *See supra* Part IV.B.1(b) (summarizing the effectiveness of Chapter 956).