

AN ACT

RELATING TO IDENTITY SECURITY; REQUIRING POLICE REPORTS;
PROVIDING FOR IDENTITY THEFT PASSPORTS; ALLOWING FOR REMOVAL
OF A FALSE IDENTITY IN CRIMINAL RECORDS; EXTENDING THE TIME
LIMIT FOR PROSECUTION OF CERTAIN CRIMES; CLARIFYING
DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 29 NMSA 1978 is
enacted to read:

"IDENTITY THEFT REPORTS.--When a law enforcement officer
interviews an alleged identity theft victim, the law
enforcement officer shall make a written report of the
information provided by the victim and by witnesses on
appropriate forms provided by the attorney general. A copy of
the police report shall be filed with the office of the
attorney general."

Section 2. Section 30-1-8 NMSA 1978 (being Laws 1963,
Chapter 303, Section 30-1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--
A person shall not be prosecuted, tried or punished in any
court of this state unless the indictment is found or
information or complaint is filed within the time as provided:

A. for a second degree felony, within six years
from the time the crime was committed;

- B. for a third or fourth degree felony, within five years from the time the crime was committed;
- C. for a misdemeanor, within two years from the time the crime was committed;
- D. for a petty misdemeanor, within one year from the time the crime was committed;
- E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;
- F. for a felony pursuant to Section 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;
- G. for an identity theft crime pursuant to Section 30-16-24.1 NMSA 1978, within five years from the time the crime was discovered;
- H. for any crime not contained in the Criminal Code or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and
- I. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

Section 3. Section 30-16-24.1 NMSA 1978 (being Laws 2001, Chapter 138, Section 1, as amended) is amended to read:

"30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY ELECTRONIC FRAUD.--

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another or with the intent to sell or distribute the information to another for an illegal purpose.

B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

C. As used in this section:

(1) "fraudulent electronic communication" means a communication by a person that is an electronic mail message, web site or any other use of the internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right;

(2) "personal identifying information" means information that alone or in conjunction with other information identifies a person, including the person's name, address, telephone number, driver's license number, social security number, date of birth, biometric data, place of employment, mother's maiden name, demand deposit account number, checking or savings account number, credit card or debit card number, personal identification number, electronic identification code, automated or electronic signature, passwords or any other numbers or information that can be used to obtain access to a person's financial resources, obtain identification, act as identification or obtain goods or services; and

(3) "biometric data" means data, such as finger, voice, retina or iris prints or deoxyribonucleic acid, that capture, represent or enable the reproduction of unique physical attributes of a person.

D. Whoever commits theft of identity is guilty of a fourth degree felony.

E. Whoever commits obtaining identity by electronic fraud is guilty of a fourth degree felony.

F. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

G. In a prosecution brought pursuant to this section, the theft of identity or obtaining identity by electronic fraud shall be considered to have been committed in the county:

(1) where the person whose identifying information was appropriated, obtained or sought resided at the time of the offense; or

(2) in which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

H. A person found guilty of theft of identity or of obtaining identity by electronic fraud shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the offense. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing the person's credit history, credit rating, criminal history or criminal charges or costs incurred in connection with a legal proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the offense.

I. The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct public records and errors in credit reports and identifying information that contain false information as a

result of the theft of identity or of obtaining identity by electronic fraud."

Section 4. IDENTITY THEFT PASSPORT--DATABASE.--

A. The attorney general, in cooperation with the department of public safety and the motor vehicle division of the taxation and revenue department, shall issue an identity theft passport to a person who claims to be a victim of identity theft pursuant to Section 30-16-24.1 NMSA 1978 and who provides to the attorney general:

(1) a certified copy of a court order obtained pursuant to Section 5 of this 2009 act or a full set of fingerprints;

(2) a driver's license or other government-issued identification or record; and

(3) other information as required by the attorney general.

B. An identity theft passport shall contain a picture of the person to whom it was issued and other information as the attorney general deems appropriate.

C. The attorney general may enter into a memorandum of understanding with the motor vehicle division of the taxation and revenue department for the development and issuance of a secure form of identity theft passport. When an identity theft passport is issued, the motor vehicle division shall note on the person's driver record that an identity

theft passport has been issued.

D. An identify theft passport shall be accepted as evidence of identity by law enforcement officers and others who may challenge the person's identity.

E. The attorney general shall maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The attorney general may provide access to the database only to criminal justice agencies. For purposes of identification and authentication, the attorney general may allow access to specific information about a person who has become a victim of identity theft to that person or to that person's authorized representative.

F. The attorney general shall keep on file each application for an identity theft passport and each police report of identity theft submitted by a law enforcement agency.

G. The attorney general shall prepare and make available to local law enforcement agencies and to the general public an information packet that includes information on how to prevent and stop identity theft.

Section 5. EXPUNGEMENT FROM POLICE AND COURT RECORDS.--

A. A person whose name or other identifying information was used, without consent or authorization, by another person who was charged, arrested or convicted of a

crime while using that person's name or identification may, with notice to the prosecutor, file a petition in the criminal action, if pending, or if the criminal action is not pending, then in a court of competent jurisdiction, requesting expungement of the petitioner's personal identifying information from the record. If the court finds that the petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall expunge the petitioner's personal identifying information from the record.

B. When a court finds that a petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall order that the petitioner's name and other identifying information contained in the court records be removed and the records labeled to show that, due to identity theft, the information is not accurate and does not reflect the perpetrator's true identity. The court may also order expungement of the innocent party's arrest information pursuant to Section 29-3-8.1 NMSA 1978.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009. _____