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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/07

SPONSOR Anderson LAST UPDATED \_\_\_\_\_ HB 540

SHORT TITLE Identity Theft Police Reports SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

**Conflicts with,**  
HB 480.

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Corrections Department

#### SUMMARY

##### Synopsis of Bill

**Section 1:** amends Section 30-1-8 NMSA 1978 to specify that the statute of limitations for prosecuting an identity theft crime is 5 years from the time the crime was discovered.

**Section 2:** amends Section 30-16-24.1 NMSA 1978 to expand the elements of the crime of theft of identity to include willfully obtaining, recording or transferring personal identifying information of another with the intent to sell or distribute the information to another for an illegal purpose, and using the identifying information of another or of a fictitious person, dead or alive, to avoid summons, arrest or prosecution or to impede a criminal investigation. The Act adds to the definition of “personal identifying information” to track with technological advancements. The Act provides that a sentencing court may issue orders as are necessary to correct errors in credit reports or identifying information, in addition to public records.

**Section 3:** provides that a law enforcement officer who interviews an alleged identity theft victim shall make a written report of the information provided by the victim and by witnesses on appropriate forms provided by the attorney general (AG). The Act requires that a copy of the police report be filed with the AG.

**Section 4:** provides that if a person claiming to be a victim of identity theft provides specified documents to the AG, the AG, in cooperation with the Department of Public Safety (DPS), shall issue that person an identity theft passport, which passport shall state the basis for its issuance. The Act provides that the passport shall be accepted by law enforcement officers and others challenging the holder's identity. The Act further provides that upon issuance, the AG shall transmit record of such to the motor vehicle department, which shall note on the person's driver record that a passport has been issued. Under the Act, the AG is required to maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The AG may provide access to the database to criminal justice agencies and to identity theft passport holders and their representatives. The Act also requires that the AG prepare and distribute to local law enforcement agencies and to the general public an information packet regarding how to prevent identity theft.

**Section 5:** provides that a person, whose identity was used, without consent or authorization, by another person who was charged or arrested using such identity, may file a petition in district court requesting a determination of factual innocence. The Act further provides that if a court finds that there is no reasonable cause to believe that the person committed the offense, the court shall issue an order certifying the person's factual innocence. The Act also provides that if a court finds the person factually innocent, the court shall order: 1) that the person's identifying information contained in the court records is removed; and 2) that the arrest information is expunged pursuant to Section 29-3-8.1 NMSA 1978. Additionally, under the Act, a court may at any time vacate the determination of factual innocence if the petition, or information submitted in support of the petition, contains a material misrepresentation or fraud.

**Section 6:** The effective date of the Act is July 1, 2007.

## FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The expansion of this felony offense could increase the Corrections Department's costs by the minimal addition to the inmate population and probation/parole caseloads. However, the financial impact would be minimal to slight based upon the anticipated low number of convictions for these offenses. This may be offset some by a minimal amount of revenue generated by the probation/parolee supervision fees paid during the probation/parole period.

## **SIGNIFICANT ISSUES**

There is no definition of “identity theft passport” and there is only limited direction to the AG and the DPS as to what information such a document shall contain.

While the Act provides that a court may vacate a determination of factual innocence at any time – Section 5.C – there is no guidance as to who may challenge the court’s determination after petition proceedings have concluded, nor the procedure to be followed by a person presenting a challenge.

## **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **ADMINISTRATIVE IMPLICATIONS**

HB 540 provides that a person, whose identity was used, without consent or authorization, by another person who was charged or arrested using such identity, may file a petition in district court requesting a determination of factual innocence. This may increase caseloads in the district court, where additional resources will be required to handle the increase.

## **CONFLICT,**

HB480 (STATUTE OF LIMITATIONS FOR CERTAIN CRIMES) Sponsored by Rep Rehm

## **TECHNICAL ISSUES**

Section 4, relating to the new “identity theft passport” contains a subsection directing the AG to prepare and distribute information on how to prevent identity theft. (Subsection G.) This may not be appropriate placement of this subsection.

## **ALTERNATIVES**

Possible Amendments:

Section 5.C.: Provide guidance as to who may request a vacation of the determination of factual innocence, and the procedure for doing so.

Define “identity theft passport” and provide additional direction to the AG and the DPS as to what information such a document shall contain.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt