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SENATE BILL 500

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Gerald P. Ortiz y Pino

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:

"[NEW MATERIAL] 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."

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

3 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--  
4 [~~No~~] A person shall not be prosecuted, tried or punished in any  
5 court of this state unless the indictment is found or  
6 information or complaint is filed [~~therefor~~] within the time as  
7 provided:

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

10 B. for a third or fourth degree felony, within five  
11 years from the time the crime was committed;

12 C. for a misdemeanor, within two years from the  
13 time the crime was committed;

14 D. for a petty misdemeanor, within one year from  
15 the time the crime was committed;

16 E. for any crime against or violation of Section  
17 51-1-38 NMSA 1978, within three years from the time the crime  
18 was committed;

19 F. for a felony pursuant to [~~Sections~~] Section  
20 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978 [~~or Section 4 of this 2005~~  
21 ~~act~~], within five years from the time the crime was committed;  
22 provided that for a series of crimes involving multiple filing  
23 periods within one calendar year, the limitation shall begin to  
24 run on December 31 of the year in which the crimes occurred;

25 G. for an identity theft crime pursuant to Section

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1 30-16-24.1 NMSA 1978, within five years from the time the crime  
2 was discovered;

3 ~~[G.]~~ H. for any crime not contained in the Criminal  
4 Code or where a limitation is not otherwise provided for,  
5 within three years from the time the crime was committed; and

6 ~~[H.]~~ I. for a capital felony or a first degree  
7 violent felony, no limitation period shall exist and  
8 prosecution for these crimes may commence at any time after the  
9 occurrence of the crime."

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

12 "30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY  
13 ELECTRONIC FRAUD.--

14 A. Theft of identity consists of:

15 (1) willfully obtaining, recording or  
16 transferring personal identifying information of another person  
17 without the authorization or consent of that person and with  
18 the intent to defraud that person or another or with the intent  
19 to sell or distribute the information to another for an illegal  
20 purpose; or

21 (2) using personal identifying information of  
22 another person, whether that person is dead or alive, or of a  
23 false or fictitious person, to avoid summons, arrest or  
24 prosecution or to impede a criminal investigation.

25 B. Obtaining identity by electronic fraud consists

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1 of knowingly and willfully soliciting, requesting or taking any  
2 action by means of a fraudulent electronic communication with  
3 intent to obtain the personal identifying information of  
4 another.

5 C. As used in this section:

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

15 (2) "personal identifying information" means  
16 information that alone or in conjunction with other information  
17 identifies a person, including the person's name, address,  
18 telephone number, driver's license number, social security  
19 number, date of birth, biometric data, place of employment,  
20 mother's maiden name ~~[of the person's mother]~~, demand deposit  
21 account number, checking or savings account number, credit card  
22 or debit card number, personal identification number,  
23 electronic identification code, automated or electronic  
24 signature, passwords or any other numbers or information that  
25 can be used to obtain access to a person's financial resources,

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1 obtain identification, act as identification or obtain goods or  
2 services; and

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

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

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

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

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

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

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

25 H. A person found guilty of theft of identity or of

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1 obtaining identity by electronic fraud shall, in addition to  
2 any other punishment, be ordered to make restitution for any  
3 financial loss sustained by a person injured as the direct  
4 result of the offense. In addition to out-of-pocket costs,  
5 restitution may include payment for costs, including attorney  
6 fees, incurred by that person in clearing the person's credit  
7 history [~~or~~], credit rating, criminal history or criminal  
8 charges or costs incurred in connection with a [~~civil or~~  
9 ~~administrative~~] legal proceeding to satisfy a debt, lien,  
10 judgment or other obligation of that person arising as a result  
11 of the offense.

12 I. The sentencing court shall issue written  
13 findings of fact and may issue orders as are necessary to  
14 correct [~~a public record~~] public records and errors in credit  
15 reports and identifying information that [~~contains~~] contain  
16 false information as a result of the theft of identity or of  
17 obtaining identity by electronic fraud."

18 Section 4. [NEW MATERIAL] IDENTITY THEFT PASSPORT--  
19 DATABASE.--

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

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

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

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

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

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

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

21 E. The attorney general shall maintain a database  
22 of identity theft victims who have reported to a law  
23 enforcement agency or have been issued an identity theft  
24 passport. The attorney general may provide access to the  
25 database only to criminal justice agencies. For purposes of

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1 identification and authentication, the attorney general may  
2 allow access to specific information about a person who has  
3 become a victim of identity theft to that person or to that  
4 person's authorized representative.

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

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

13 Section 5. [NEW MATERIAL] DETERMINATION OF FACTUAL  
14 INNOCENCE--EXPUNGEMENT FROM POLICE AND COURT RECORDS.--

15 A. A person whose name or other identifying  
16 information was used, without consent or authorization, by  
17 another person who was charged, arrested or convicted of a  
18 crime while using that person's name or identification may,  
19 with notice to the prosecutor, file a petition in the  
20 criminal action, if pending, or if the criminal action is not  
21 pending, then in a court of competent jurisdiction,  
22 requesting a determination of factual innocence and an  
23 expungement of the petitioner's personal identifying  
24 information from the record. If the court finds by clear and  
25 convincing evidence that the petitioner did not commit the

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1 offense with which the petitioner's identity has been  
2 associated, the court shall issue an order certifying the  
3 petitioner's factual innocence.

4 B. When a court finds a petitioner factually  
5 innocent pursuant to Subsection A of this section, the court  
6 shall order that the petitioner's name and other identifying  
7 information contained in the court records be removed and the  
8 records labeled to show that, due to identity theft, the  
9 information is not accurate and does not reflect the  
10 perpetrator's true identity. The court shall also order  
11 expungement of the arrest information pursuant to Section  
12 29-3-8.1 NMSA 1978.

13 C. A court may at any time vacate the  
14 determination of factual innocence if the petition, or  
15 information submitted in support of the petition, contains a  
16 material misrepresentation or fraud. If the court vacates  
17 the determination, the court shall rescind all orders made  
18 pursuant to this section.

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