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# Identity Theft Victims' Legal Rights and Remedies

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- Views expressed in this presentation are not necessarily those of the Commission or any Commissioners.
- Any answers to questions are my own opinion and not the Commission's or any Commissioner's.



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# Definition for Today's Presentation

- Identity Theft is when someone uses personal information of someone else to pose as that consumer, in order to
  - fraudulently obtain goods or services in the victim's name from private and public institutions, or
  - conceal their true identity from authorities or others who perform background checks
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# What information is valuable to identity thieves:

- Personal information that can be used to commit identity theft includes
    - Name
    - Social Security Number
    - Address
    - Date of Birth
    - Financial account numbers or access cards
    - Passwords, Mother's maiden name, Father's middle name
    - Telephone number
    - Biometric data
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# How Many New Victims Annually?

- 2003 FTC: 9.9 million adults
- 2005 FTC: 8.3million
- 2005 BJS: 6.4 million (*households*)
- 2005 Javelin: 9.3 million
- 2006 Javelin: 8.9 million
- 2007 Javelin: 8.4 million

BJS is doing an ID Theft supplement to its NCVS survey of over 40,000 households nationwide in January – July 2008.

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# Purposes of Identity Theft

Percent of all ID Theft Victims 2001 – 2005,  
FTC 2006 Survey

## *Financial Gain*

■ Credit Card Fraud	63.5%
■ Bank Fraud	33.2%
■ Telephone Fraud	15.3%
■ Internet Payment Accounts	7.0%
■ Medical	4.5%

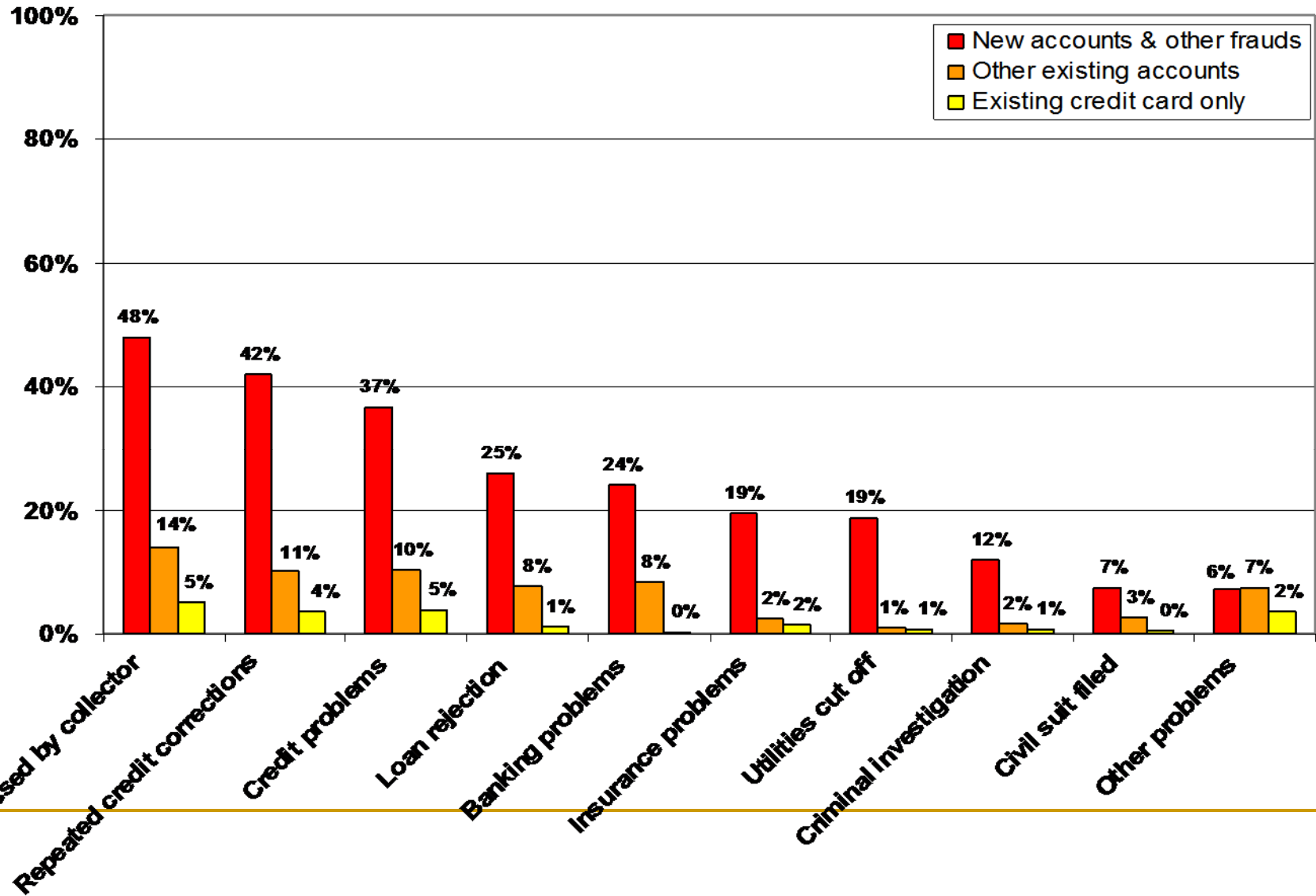
## *Concealment*

■ Given to Police	5.0%
■ Employment	1.0%

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# Selected Victims' Problems

(2001-2005 Victims, FTC 2006 Survey)



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# Consequences: Hardest Part of Experience

(2001 – 2005 victims, FTC 2006 Survey)

## 1. All categories said:

1. The shock of the discovery itself
2. The time involved to recover
3. Not knowing who did it, how it happened, what else might happen
4. The loss of money or access to funds/accounts

## 2. Most Serious Fraud Victims said:

1. Difficulty convincing companies you didn't do it, so you could be absolved of the debt/charges/record
  2. Difficulty providing proof of your innocence to get new credit
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# The Emotional Impact of Identity Theft

## Victims experience:

- ❑ embarrassment
- ❑ sadness
- ❑ helplessness
- ❑ anger
- ❑ isolation
- ❑ betrayal
- ❑ rage
- ❑ suicidal feelings

## Victims should seek medical care when:

- Their sleep or eating patterns are disrupted
  - They are unable to work or cope with daily life
  - They experience social isolation
  - They have suicidal thoughts or ideation
  - Symptoms last more than two weeks
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# Proving the Victim is Not Responsible – Proof of Identity

- FTC “Appropriate Proof of Identity Rule” applies to CRAs, but is illustrative
    - Under Rule, reasonable requirements include, but are not limited to:
      - Full name, any other or previously used names
      - Current and/or recent address
      - Social Security Number and/or Date of Birth
      - Copies of government issued IDs
      - Utility bills, monthly statements showing address
      - Challenge questions only consumer might know
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# Proving the Victim is Not Responsible

## – Helpful Documents

- Credit Report marked up to indicate fraudulent activity
  - Police Report
  - ID Theft Affidavit
  - Victim's Recovery Log
  - Proof of crime – collection letters, credit card or bank statements
  - Business records – applications showing signature, statements showing billing address
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# ID Theft Victims' Legal Rights

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# Federal Laws Sets Up Ways for Victims to Help Themselves

- Many people can resolve their own financial issues independently
    - Federal and State laws protect victims from losses
  - Critical for Victims to notify companies in writing to trigger legal protections
  - ***“Identity Theft Report” is key tool***
    - Detailed, verified police (law enforcement) report
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# Credit Report Information Blocking – FCRA §605B Blocking Rights

- Right to permanently block identity theft-related information from appearing in credit report.
  - CRAs must block information within four business days after accepting Identity Theft Report
  - CRAs must notify furnishers of information that it is result of identity theft
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# CRA Responsibilities Under § 605B

- Upon accepting “Identity Theft Report” CRAs must
    - Notify other two CRAs
    - Notify Furnishers of Information
    - Block information from appearing on Credit Report within 4 business days
      - Without conducting reinvestigation
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# Responsibilities of Furnishers of Information Under § 605B

- CRAs required to notify the Information Furnisher (creditor) that a Blocking Request and ID Theft Report have been filed regarding the information it provided
  - Then, creditor cannot *refurnish* blocked information to CRAs, and
  - Cannot sell or place for collection the debt resulting from the ID Theft
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# Fraud Alerts

- Fraud Alert signals would-be creditors that consumer is at risk of identity theft
  - Creditor must take additional steps to confirm the applicant's identity before issuing credit
    - Imposter would be detected
  - Initial: 90-day, renewable
  - Extended: 7-year, need ID Theft Report
  - FCRA Sec. 603
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# Free Credit Reports

## Many Opportunities for Free Credit Reports

- Initial Fraud Alert, one free copy
  - Extended fraud alert, two free copies in 12-month period
  - Free Annual Credit Report
    - Every twelve months
  - Adverse Action Disclosure
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# Business Record and Information Disclosure

- Businesses that transacted with the identity thief must share the credit, account, and application documents with the victim and their authorized law enforcement representative without a subpoena
    - FCRA Sec. 609e
  - Debt collectors must share information about the debt upon request of identity theft victims
    - FCRA Sec. 615g
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# General Steps Victims of Financial Account Identity Theft Need to Take

- 1) Contact Credit Reporting Agencies (CRAs)
  - 2) Contact Companies
  - 3) File a Complaint with the FTC
  - 4) File a Police Report
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# Contact CRAs

- Place Fraud Alerts on Credit Reports
  - Obtain Credit Report *free of charge*
  - Request Credit Report Information Blocking
    - Or file standard dispute
  - Consider Credit Freeze – available under some state laws, or for a fee
    - Prohibits CRAs from releasing the consumer's credit reports or credit scores without consumer's authorization
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# Place Fraud Alerts

- Initial: 90-day, renewable, one free credit report
  - Extended: 7-year, need ID Theft Report, two free credit reports
  - Set fraud alert by contacting *only one* of the three CRAs
    - Equifax 800-525-6285
    - Experian 888-397-3742
    - TransUnion 800-680-7289
  - Must Provide Personal Information to Match File
  - Beware of diversion to “free annual report” or other commercial services during call
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# Tell CRA & Furnisher to Correct the Credit Report

- Fastest and most comprehensive result with “Blocking,” a new consumer’s right under FCRA § 605B
    - Requires Filing “Identity Theft Report” w/ CRA
      - Requires client to report to law enforcement agency
  - Alternative: Standard dispute procedures under FCRA § 611
    - Use when client does not want to file police report
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# Packet for § 605B Blocking Request - Send to CRAs

- Proof of Identity
  - Letter stating individual is victim of identity theft and is not responsible for the fraudulent transactions
  - Marked-up Credit Report indicating all transactions and inaccuracies that result from ID Theft
  - **Identity Theft Report** – official police report with sufficient detail (account numbers, company names, relevant dates) to verify allegations
    - **Identity Theft Affidavit may be helpful**
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# Identity Theft Affidavit

- Provides critical information in a comprehensive and standardized manner
  - Can be used in disputes with creditors, credit reporting agencies – widely accepted
  - Start with the FTC online complaint  
[www.ftc.gov/idtheft](http://www.ftc.gov/idtheft)
    - Gather information first - credit reports, billing statements, collection letters
    - Include as much detail as possible
  - Print complaint, “ID Theft Affidavit”
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# FTC's ID Theft Complaint and Affidavit

Average time to complete: 10 minutes

## Identity Theft Victims' Universal Complaint

A voluntary form for filing a report with law enforcement and disputes with credit reporting agencies and creditors about identity theft-related problems. Visit [ftc.gov/idtheft](http://ftc.gov/idtheft) to use a secure online version that you can print for your records.

### Before completing this form:

1. Place a fraud alert on your credit reports, and review the reports for signs of fraud.
2. Close the accounts that you know, or believe, have been tampered with or opened fraudulently.

### About You (the victim)

#### Now

- (1) My full legal name: \_\_\_\_\_  
First Middle Last Suffix
- (2) My date of birth: \_\_\_\_\_  
mm/dd/yyyy
- (3) My Social Security number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
- (4) My driver's license: \_\_\_\_\_  
State Number
- (5) My current street address: \_\_\_\_\_  
Number & Street Name Apartment, Suite, etc.  
City State Zip Code Country
- (6) I have lived at this address since \_\_\_\_\_  
mm/yyyy
- (7) My daytime phone: (\_\_\_\_) \_\_\_\_\_  
My evening phone: (\_\_\_\_) \_\_\_\_\_  
My email: \_\_\_\_\_

This section is for the victim's information, even if he or she cannot complete the form.

Leave (3) blank until you provide this form to someone with a legitimate business need, such as when you are filing your report at the police station or sending the form to a consumer reporting company to correct your credit report.

#### At the Time of the Fraud

- (8) My full legal name was: \_\_\_\_\_  
First Middle Last Suffix
- (9) My address was: \_\_\_\_\_  
Number & Street Name Apartment, Suite, etc.  
City State Zip Code Country
- (10) My daytime phone: (\_\_\_\_) \_\_\_\_\_ My evening phone: (\_\_\_\_) \_\_\_\_\_  
My email: \_\_\_\_\_

Skip (8) - (10) if your information has not changed since the fraud.

The Paperwork Reduction Act requires us to display a valid control number (in this case, OMB control #3084-0047) before we can collect – or sponsor the collection of – your information, or require you to provide it.

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## Using the FTC's ID Theft Complaint and Affidavit for the "Identity Theft Report"

- Police can incorporate a completed ID Theft Complaint and Affidavit into the police report to provide the detail necessary for acceptance by CRAs
  - Police and victims should sign the ID Theft Complaint and Affidavit at the in-person meeting with police
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# Contact Companies where Thief Committed Fraud

- Contact fraud department, not customer service
- Instruct company to immediately close or freeze the accounts that have been fraudulently opened or used
- Send written dispute including an Identity Theft Affidavit – police report should *not* be required
- Request closure letter from company describing results of their actions
- Request identity theft-related documents
- Ask where to send dispute and document request

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# Obtain Documents Relating to Identity Theft – FCRA § 609(e)

- Business must give victim copies of applications and other business records resulting from theft of identity
    - Within 30 days, at no cost
    - Without subpoena
    - Must also provide a copy to designated law enforcement officer, upon victims' request
  - Victim must send request in writing, at the address specified for such requests, if any
  - Request must include police report, proof of identity, Identity Theft Affidavit
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# File a Complaint with the FTC

- The FTC provides Hotline Phone Counselors and Web-based Consumer Guidance to help victims recover
- To file an ID Theft Complaint with the FTC:
  - [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft), 877-438-4338, TTY: 866-653-4261, or by mail
- Print complaint, called the “FTC ID Theft Affidavit”
- Filing with FTC does not substitute for a report to criminal law enforcement
- FTC does not take enforcement actions on behalf of individuals

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# File a Police Report

- Call the local police as soon as possible
    - Request appointment for in-person report filing
    - Request copy of Official Police Report
    - Officer may attach ID Theft Affidavit to police report, or department's own police report's details may suffice
      - Goal: to get an ***Identity Theft Report***
  - Some state laws require police to write reports for identity theft victims
    - A map of the states with such laws is at [www.idsafety.org/map](http://www.idsafety.org/map)
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# Assisting Victims of Non-Financial Identity Theft

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# Medical Identity Theft

- Happens when a thief uses another's identity or health insurance to receive care
  - Dangerous because thief's medical records become merged with victim's records
  - Difficult to remedy because of HIPAA concerns
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# How to Assist Medical IDT Victims

- Report to local law enforcement, get a copy
- Obtain HIPAA compliant authorization forms from victim
- Request medical records from victim's regular provider as a baseline for comparison
- Request victim's medical records and privacy policy from each provider that gave care to the impostor.  
**Important:** Do not mention identity theft at this point.
- Review records, write providers who gave care to impostor requesting correction or segregation and flagging of records. Attach: police report, victim's ID, relevant portions of genuine records.
- Confirm that records have been corrected and review corrections.

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# Employment Identity Theft

- Use of victim's personal identifying information to get or keep employment
  - Usually discovered through IRS or denial of public benefits
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# How to Assist Employment IDT Victims

- Get a copy of victim's earnings record from SSA
  - Mark impostor activity, provide supporting documentation, request corrected statement
  - Provide corrected earnings statement and supporting documents to IRS
  - Request that victim's SSN be flagged
  - IRS Identity Protection Specialized Unit: 1-800-908-4490
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# Criminal Identity Theft

- Use of false identity in connection with commission of a crime
  - Hard to detect until victim fails background check, is arrested, receives notice of outstanding warrants, or is unable to renew drivers license
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# How to Assist Criminal IDT Victims

- Some states have statutory procedures or passport programs
- Some states allow expungement or sealing of records for identity theft victims
- If not, enlist help of victim's local law enforcement if possible and get fingerprints and photos for comparison
- Contact law enforcement where criminal activity occurred, provide proof of victim's identity and alibi information, request letter of clearance
- Provide letter of clearance to relevant businesses, agencies, and data brokers

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# Clearing Fraudulent Utility Accounts

- Includes electric/gas/water, cable TV, cell phones, landlines, internet, and satellite TV
  - Use procedure for clearing fraudulent financial accounts:
    - Send blocking letter to CRA's if the account appears on victim's credit report;
    - Send dispute letter and request for account documents to utility provider including copy of victim's ID, proof of residence, ID theft report, and/or police report + ID theft affidavit
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# QUESTIONS?

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