

# HOUSE BILL REPORT

## SB 5878

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### As Passed House - Amended:

March 4, 2008

**Title:** An act relating to identity theft.

**Brief Description:** Concerning the filing of police incident reports for victims of identity theft.

**Sponsors:** By Senators Hargrove, Kline, Eide, Marr, Shin, Jacobsen, Kohl-Welles, Rasmussen and Keiser.

### Brief History:

#### Committee Activity:

Public Safety & Emergency Preparedness: 2/20/08 [DPA].

#### Floor Activity:

Passed House - Amended: 3/4/08, 95-0.

### Brief Summary of Bill (As Amended by House)

- Clarifies that each act prohibited by the identity theft statute is a separate unit of prosecution.
- Allows, under certain circumstances, the value of separate incidents of identity theft to be aggregated for purposes of determining the degree of identity theft.
- Authorizes identity theft victims to file an incident report with a law enforcement agency and requires that the law enforcement agency create a police report of the matter.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

**Staff:** Yvonne Walker (786-7841).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

A person commits identity theft if he or she knowingly obtains, possesses, uses, or transfers another person's means of identification or financial information with the intent to commit, or aid or abet, any crime. A person who obtains the identification for the sole purposes of misrepresenting his or her age is not guilty of identity theft.

A person commits identity theft in the first degree if he or she, or an accomplice, uses the means of identification or financial information to obtain an aggregate total of credit, money, goods, services, or anything else of value in excess of \$1,500. Identity theft in the first degree is a class B felony with a seriousness level of IV.

A person commits identity theft in the second degree if he or she, or an accomplice, uses the victim's means of identification or financial information and obtains: (a) an aggregate total of credit, money, goods, services, or anything else of value less than \$1,500; or (b) no credit, money, goods, services, or anything else of value. Identity theft in the second degree is a class C felony with a seriousness level of II.

In *State v. Leyda*, 157 Wn.2d 335 (2006), the Washington Supreme Court ruled that the Legislature, when it enacted the identity theft statute, intended that the unit of prosecution for the crime be any one act of knowingly obtaining, possessing, using, or transferring a single piece of another person's identification or financial information. In other words, once the defendant commits an act that constitutes identity theft, any subsequent prohibited conduct relating to the initial offense constitutes the same offense for purposes of prosecution.

Under the Fair Credit Reporting Act, in order for a victim to have certain information blocked on his or her consumer report due to an identity theft crime that has occurred, the victim must provide the consumer reporting agency with a copy of the police report. Generally, a police incident report indicating an offense has occurred is required in order to freeze credit, to place a long-term fraud alert on a credit report, and to obtain records of fraudulent accounts from merchants.

Police incident reports are used for many reasons such as: recording arrests, domestic disputes, traffic accidents, burglaries, fraud, thefts, stalkings, violence, recording injuries, crimes, and other incidents. Washington law does not specify when, where, or if an incident report has to be created by a law enforcement officer during incidents where an identity theft crime has occurred.

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**Summary of Amended Bill:**

It is clarified that the relevant unit of prosecution for identity theft is each unlawful use of a means of identification or financial information. In other words, a defendant may be prosecuted and punished separately for every instance he or she unlawfully uses the means of identification or financial information, unless the instances constitute the same criminal conduct. Likewise, unlawfully obtaining, possessing, or transferring the means of

identification or financial information of any individual is a separate unit of prosecution for each victim and for each unlawful act.

Whenever any series of transactions involving a single person's identification or financial information would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated for purposes of determining the degree of identity theft involved. If a person commits another crime during the commission of identity theft, he or she may be prosecuted and punished separately for the other crime as well as for the identity theft.

If at any time a victim learns or suspects that he or she has been a victim of an identity crime, that victim may file an incident report with a local law enforcement agency. The incident report may be filed with the local law enforcement agency in the jurisdiction where the crime occurred or in the jurisdiction of the victim's residence or place of employment.

The law enforcement agency must create a police incident report of the matter, provide the complainant with a copy of that report, and may refer the incident report to another law enforcement agency. The law enforcement agency taking the incident report is not required to investigate the identity theft report and any incident report filed is not required to be counted as an open case for purposes of compiling open case statistics.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 18, 2008.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is a recommendation that came out of the Governor's Law Enforcement Group against Identity Theft. It is simply a record reporting bill and it requires law enforcement to take a report regardless of where the crime may have been committed. Many victims may not know where the crime actually occurred so this gives victims an option of where to file the report. In addition, many insurance companies will only cover identity theft crimes if the victim has made and obtained a police report.

The striking bill that is being added onto this bill not only defines identity theft but also defines the unit of prosecution and allows for aggregation.

(Opposed) None.

**Persons Testifying:** Senator Kline; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Hunter Goodman, Office of the Attorney General; and Susan Storey, Law Enforcement Group against Identity Theft.

**Persons Signed In To Testify But Not Testifying: None.**