

IDENTITY THEFT: WHAT ARE LOCAL LAW ENFORCEMENT AND PROSECUTORS DOING TO COMBAT THE PROBLEM?

SUMMARY

Identity theft is the fastest growing crime category in the United States. Recent reports issued by both the United States Federal Trade Commission and the Gartner Research Group note that identity theft is increasing at an alarming rate in this country. Interviews with several Orange County police agencies and prosecutors confirmed that identity-theft crimes are rapidly increasing in Orange County as well.

The 2003-2004 Orange County Grand Jury conducted an in-depth study focused on practices and procedures that local prosecutors and police agencies utilize in dealing with identity-theft crimes. The Grand Jury found that:

- Identity theft is a very complex crime category, usually involving distant and multiple jurisdictions.
- The District Attorney's Office supports the formation of a specialized unit for investigation and prosecution of identity-theft crimes as resources allow.
- Some city police agencies complained that they felt deficient in the specialized training required to investigate and compile necessary information required by the District Attorney's Office for successful prosecution.
- Identity Theft Sub-Task Forces that provide for more efficient communication, coordination and cooperation among all levels of law enforcement and prosecutors in dealing with identity theft are in place in other major population centers in California.
- The Orange County District Attorney's Office, Orange County police agencies and the Orange County Sheriff-Coroner Department are doing a commendable job of providing public information materials and resources as well as specialized crime reporting forms that greatly reduce the time and effort required by identity-theft victims to repair their damaged credit history.

PURPOSE

The purpose of this study was to address the emerging crime of identity theft in Orange County and identify methods and procedures not presently in place that local law enforcement and prosecutors should adopt to fight this crime more effectively.

METHOD OF STUDY

The Grand Jury interviewed representatives of the Orange County District Attorney's Office, Orange County Sheriff-Coroner Department, selected city police departments and the Orange County Clerk-Recorder's Office. For the purpose of gathering background information, the Grand Jury interviewed the United States Postal Inspector's Office, private identity-theft resource provider organizations and financial-institution security department personnel. In addition, mail-in surveys were completed and returned to the Grand Jury by those city police departments not interviewed in-person.

BACKGROUND

In September 2003, the Federal Trade Commission issued the report "Federal Trade Commission-Identity Theft Survey Report" in which the Commission notes that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million in the last year alone. Similarly, a July 2003 survey conducted by the Gartner Research Group reported that identity theft had increased 79 percent in the period from July 1, 2002, through June 30, 2003, compared to the previous fiscal year. Information gained from interviews with local Orange County police agencies indicates that identity theft has increased significantly in Orange County as well. It is important to note that the method by which identity theft was documented initially by police agencies makes it difficult to accurately measure the increase in identity-theft crime through comparison with past years. When identity theft first emerged, many police agencies recorded it as fraud, general theft, or other categories that, at the time, more closely fit the crime definition.

California's legal definition of identity theft is "the unauthorized use of personal identifying information to obtain credit, goods, services, or medical information in the name of another person" (*California Penal Code* §530.5). Such unauthorized use involves a credit card number, Social Security number, bank account number or other specifically assigned identification number, password or name to fraudulently gain access to and take money from a financial resource. Identity thieves may also assume an innocent person's identity to implicate that person in

crimes committed by the thief, thereby delaying or preventing prosecution of the thief for his or her crimes.

As personal identity information is used more frequently for Internet and other financial transactions, that information has become accessible to those who have learned how to use it for their own gain. Thieves also have learned that they can dig through residential trashcans and often retrieve valuable personal information. A stolen or lost wallet or purse can yield information useful to identity thieves. More sophisticated criminals use the Internet to collect information that can be used to defraud an unsuspecting Web site or e-mail user.

California Penal Code §530.5 states that the maximum punishment for conviction of the legal definition of identity theft is “punished with either imprisonment in the county jail not to exceed one year, a fine not to exceed \$1,000 or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed \$10,000, or both that imprisonment and fine.” A maximum of three years in state prison can be assessed.

Of the 291 identity-theft cases referred to the District Attorney by all Orange County police agencies between July 1, 2002 and June 30, 2003, 126 (43 percent) were filed under *California Penal Code* §530.5 as one or more of the charges.

DISCUSSION

In discussions with the District Attorney’s Office, it was learned that investigators and prosecutors are not always experienced in very complex identity-theft crimes. Due to the shortage in staff, they are often not as capable of conducting the investigation and prosecution vertically. Vertical prosecution refers to a process where the investigators and prosecutors are the same individuals throughout the progress of a case from initial charge determination to conviction.

Several local police agencies indicated that they were not well trained in their part in investigation and preparation of an identity-theft case for proper presentation to the District Attorney. They expressed the opinion that the District Attorney should provide them with more intense training in the process and procedures to more adequately prepare a case for successful prosecution. Thorough training of police department identity-theft investigators in case preparation is vital in order to reduce errors and omissions in investigations of identity theft and provide greater assurance that a case referred to prosecutors is properly prepared.

Unfortunately, funding for such training has been cut due to budgetary constraints.

The Orange County District Attorney, local police departments and the Orange County Sheriff-Coroner Department (the Sheriff provides contract police services for 12 Orange County cities and the unincorporated part of the county) do an admirable job of providing public information on identity-theft preventive and corrective action techniques to the people they serve. The Irvine Police Department has developed an excellent brochure on both preventive and corrective steps for identity theft victims. Other police agencies have produced useful public service announcements on identity theft for local cable television. Most of the city police departments and the Sheriff-Coroner Department will provide expert public speakers on the subject when requested.

California Penal Code §530.6 requires that local police agencies take a crime report from an identity-theft victim in their jurisdiction. Even though a report is documented, the perpetrator of the crime may operate outside the city, county, state or even country where the victim resides. This fact makes it imperative that excellent communication, coordination and cooperation be utilized by all jurisdictions while conducting identity-theft crime investigations.

Many Orange County police departments, such as that of the City of Tustin, have developed specialized identity theft crime report forms incorporating standardized terms and information formats. The identity-theft victim receives a copy of this form which can ease the process of notifying his or her financial institutions, credit providers and others in efforts to correct any damaged credit history.

Another factor adding to the difficulty in investigating and prosecuting identity theft is that financial institutions are reluctant to prosecute cases and often will offer little assistance in investigations. Victims are frequently required to get a subpoena in order to obtain copies of credit applications made fraudulently in their name.

Five Regional Identity Theft Sub-Task Forces have been formed within existing High-Tech Task Forces specifically to deal with economic and fraud crimes in major population centers in California. These task forces are typically comprised of city police departments, county sheriff departments, district attorney's offices, United States Postal Inspectors, United States Secret Service, United States Immigration and Naturalization Service and the United States Federal Trade Commission. Representatives of these agencies meet on a regular basis to discuss common problems and goals in the investigation and prosecution of identity theft.

The major advantages of task forces are that they:

1. Facilitate improved communication and coordination between the agencies involved in investigation and prosecution of identity theft.
2. Allow for more vertical investigation and prosecution of identity theft where investigators and prosecutors work the same case from initial reporting through investigation and finally to prosecution and conviction.
3. Allow for cross-designation of local law enforcement personnel, which means they can be deputized by a federal agency such as the Secret Service, and serve as both local and federal officers. This greatly simplifies inter- and intra- state/county/city jurisdictional issues.
4. Foster the growth of relationships between agencies working together toward a common goal. Task force members become familiar with each other and tend to work more seamlessly on complex investigational and prosecutorial problems.

Orange County does not presently have an Identity Theft Task Force or Sub-Task Force. The Orange County Grand Jury, local law-enforcement agencies and prosecutors agree that an Orange County Identity Theft Task Force should be a top priority in combating identity theft.

FINDINGS

Under *California Penal Code* §933 and §933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury arrived at the following findings:

1. The Orange County District Attorney's Office is in need of additional staff to effectively investigate and prosecute complex and time consuming identity-theft crimes.
2. Some city police agencies need more training by the District Attorney's Office to properly investigate and prepare identity-theft cases for presentation to prosecutors.

3. Identity Theft Sub-Task Forces are in place in five major population centers in California and are functioning to facilitate better communication, coordination and cooperation among federal, state and local law enforcement and public record-keeping agencies involved in prevention, investigation and prosecution of identity theft. Orange County does not have an Identity Theft Task Force or Sub-Task Force.
4. The Orange County District Attorney's Office, Orange County city police agencies and the Orange County Sheriff-Coroner Department provide some form of public information and resource materials outlining how one can prevent identity theft as well as corrective steps to take where identity theft has occurred.
5. Eight city police agencies in Orange County have developed specialized identity-theft crime reporting forms that incorporate standardized terms and information formats. These forms can help identity-theft victims repair damaged credit history more quickly.

Response to Finding 1 is required from the Orange County Board of Supervisors.

Responses to Findings 1-4 are required from the Orange County District Attorney.

Responses to Findings 3-5 are required from the Orange County Sheriff-Coroner.

Responses to Findings 3-5 are required from the cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Beach, La Habra, La Palma, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Tustin, Westminster and Yorba Linda.

RECOMMENDATIONS

In accordance with *California Penal Code §933 and §933.05*, each recommendation requires a response from the government entity to which it is addressed. These recommendations are submitted to the Presiding Judge of the Superior Court. Based upon the findings, the 2003-2004 Orange County Grand Jury recommends that:

1. The Orange County District Attorney increase the number of investigators and prosecutors to allow for both identity-theft specialization and in-depth case investigation.
2. The Orange County District Attorney provide more training to local police agencies in investigative techniques and case preparation to ensure that cases will be accepted by the District Attorney for prosecution. (Finding 2)
3. The Orange County District Attorney, the Orange County Sheriff-Coroner Department and the city police departments in Orange County take steps to form and actively participate in a countywide Regional Identity Theft Task Force comprised of representatives of each of these agencies. The task force should seek the cooperation and participation of the United States Postal Inspector, the United States Secret Service, the United States Immigration and Naturalization Service and the United States Federal Trade Commission. (Finding 3)
4. Orange County city police departments and the Orange County Sheriff-Coroner Department work cooperatively to develop standardized public information materials, possibly modeled after excellent pamphlets that now exist, for use by all departments. (Finding 4)
5. Orange County city police departments and the Orange County Sheriff-Coroner Department adopt a standardized identity-theft crime- reporting form, possibly modeled after forms now in use by several police departments. (Finding 5)

Response is required to Recommendation 1 from the Orange County Board of Supervisors.

Responses are required to Recommendations 1-3 from the Orange County District Attorney.

Responses are required to Recommendations 3-5 from the Orange County Sheriff-Coroner.

Responses are required to Recommendations 3-5 from the cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Beach, La Habra, La Palma, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Tustin, Westminster and Yorba Linda.

BIBLIOGRAPHY

Synovate, "Federal Trade Commission–Identity Theft Survey Report," Federal Trade Commission, September 2003

"Survey on Identity Theft," Gartner Research Group, July 2003

Gayer, Jennette, "Policing Privacy: Law Enforcement's Response to Identity Theft," The California Public Interest Research Group, May 2003

"ID Theft–When Bad Things Happen to Your Good Name," Federal Trade Commission, September 2002

"Identity Theft: The Aftermath 2003," Identity Theft Resource Center, Summer 2003