



**Dora**  
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

# **2010 Sunset Review: Identity Theft and Financial Fraud Deterrence Act**

October 15, 2010





**Executive Director's Office**

Barbara J. Kelley  
Executive Director

Bill Ritter, Jr.  
Governor

October 15, 2010

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Identity Theft and Financial Fraud Deterrence Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2011 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the program created under Part 17 of Article 33.5 of Title 24, C.R.S. The report also discusses the effectiveness of the Colorado Identity Theft and Financial Fraud Board and the Colorado Bureau of Investigation's Fraud Investigators Unit in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





Bill Ritter, Jr.  
Governor

Barbara J. Kelley  
Executive Director

## **2010 Sunset Review: Identity Theft and Financial Fraud Deterrence Act**

### **Summary**

#### ***What Is Identity Theft?***

Identity theft occurs when someone uses the personal identifying information, such as a name, Social Security number or credit card number, without the permission of the rightful owner of the information, to commit fraud or other crimes.

#### ***Why Is It Identity Theft Important?***

In 2009, Colorado ranked ninth, nationally, in identity theft crimes, with 4,775 victims and a rate of 95 victims per 100,000 population. Since at least 2003, Colorado has ranked in the top 10, nationally.

#### ***Who Is Regulated?***

The Identity Theft and Financial Fraud Deterrence Act (Act) creates the Colorado Fraud Investigators Unit (Unit) within the Colorado Bureau of Investigation as well as the Colorado Identity Theft and Financial Fraud Board (Board). The Unit is tasked with providing identity theft and financial fraud-related education to the public, financial institutions and law enforcement; assisting local law enforcement with identity theft and financial fraud-related investigations; and intelligence gathering and dissemination. The nine-member Board is tasked with, among other things, establishing the general criminal activities on which the Unit should focus its efforts.

#### ***What Does It Cost?***

In fiscal year 09-10, expenditures totaling \$467,171 were associated with the Unit.

#### ***What Results Have Been Realized?***

Since the Unit was created in 2006, it has provided 115 training sessions to the public, financial institutions and law enforcement. The Unit has also been directly involved in cases resulting in the arrest of 70 thieves who stole more than \$30.6 million from 463 victims.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### **Continue the Act for five years, until 2016.**

Colorado has consistently ranked in the top 10 states for identity theft. This is a top 10 ranking that should be avoided, not coveted. Additionally, identity theft and financial fraud costs Colorado businesses and consumers hundreds of millions of dollars each year. Therefore, identity theft and financial fraud are very real, very serious problems in this state. The public needs protection. The Unit and the Board are well equipped to monitor and act upon new and evolving identity theft and financial fraud schemes.

### **Add a representative of a consumer or victim advocacy organization to the Board.**

The Board's current membership brings to the table three of the five major stakeholder groups with respect to identity theft. Noticeably absent from the list of statutory Board members is a consumer or victim advocate. A representative of consumers could bring a real-world perspective to the Board. Consumers are victims of identity theft and they lack a voice on the one organ of state government directly tasked with addressing identity theft.

## Major Contacts Made During This Review

AARP ElderWatch  
Colorado Alliance for Retired Americans  
Colorado Bankers Association  
Colorado Bureau of Investigation  
Colorado Department of Law  
Colorado Department of Public Safety  
Colorado District Attorneys' Council  
Colorado Division of Criminal Justice  
Colorado Division of Financial Services  
Colorado Division of Insurance  
Colorado Identity Theft and Financial Fraud Board  
Colorado Judicial Department  
Colorado Law Enforcement Officer Association  
Colorado Organization for Victim Assistance  
Colorado Public Interest Research Group  
Communities Against Senior Exploitation  
Credit Union Association of Colorado

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.state.co.us/opr](http://www.dora.state.co.us/opr)

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## Background

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### *Introduction*

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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Not all of these criteria apply to sunset reviews of programs that do not regulate professions or occupations. However, DORA must still evaluate whether a program needs to exist to protect the public health safety and welfare; whether the level of regulation established for the program is the least restrictive consistent with the public interest; whether the state administers the program efficiently and effectively; and whether administrative and statutory changes are necessary to enhance the public interest.

### *Sunset Process*

Programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The functions of the Identity Theft and Financial Fraud Board (Board) and the Colorado Bureau of Investigation's (CBI's) Colorado Fraud Investigators Unit (Unit) relating to Part 17 of Article 33.5 of Title 24, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2011, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board and Unit pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board and Unit should be continued for the protection of the public and to evaluate the performance of the Board and Unit. During this review, the Board, Unit and the CBI must demonstrate that the program serves to protect the public health, safety or welfare, and that the program is the least restrictive program consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### *Methodology*

As part of this review, DORA staff attended Board meetings; interviewed Unit and CBI staff; interviewed officials with state and national professional, industry and consumer associations; interviewed individuals with expertise in identity theft prevention and the consequences of identity theft; and reviewed Colorado statutes.

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## *Identity Theft in Colorado*

In general, identity theft occurs when someone uses the personal identifying information, such as a name, Social Security number or credit card number, without the permission of the rightful owner of the information, to commit fraud or other crimes.

Skilled identity thieves may use a variety of methods to obtain the identifying information of others, including:

- Dumpster diving – rummaging through trash looking for bills or other documents with identifying information.
- Skimming – stealing credit or debit card numbers by using special electronic devices while processing such a card for legitimate purposes.
- Phishing – pretending to be financial institutions or companies, typically through the use of email, and sending spam or pop-up messages to get victims to reveal identifying information.
- Changing addresses – diverting a victim's billing statements to another location by completing change of address forms.
- Old fashioned stealing – stealing wallets, purses and mail (including bank and credit card statements, pre-approved credit offers, new checks and tax information); gaining access to personal records; and bribing employees who have access to identifying information.
- Pretexting – using false pretenses to obtain identifying information from financial institutions, telephone companies, and other sources.

Once in possession of the identifying information, an identity thief may use the stolen identity to, among other things:

- Rent an apartment;
- Take out a mortgage or other loan;
- Obtain new credit cards;
- Access existing credit card or bank accounts;
- Establish telephone or other utilities accounts;
- Obtain a driver's license or official identity card with the victim's information, but with the thief's photograph;
- Obtain medical services;
- Obtain government benefits;
- Obtain a job;
- File fraudulent tax returns;
- Provide as identifying information to law enforcement; and
- Sell the identifying information to others.

In short, identity theft facilitates financial fraud.



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A consumer can take some proactive measures to reduce the likelihood of having his or her identity stolen, and to detect sooner, rather than later, that his or her identity has been stolen. However, typically a consumer only finds out about the theft after some damage has been done. This generally comes as a surprise and occurs when the consumer is contacted by debt collectors, applies for a mortgage or other loan, or receives something in the mail about an apartment the victim never rented, a home he or she never owned, or a job the victim never held.

Unfortunately, some people discover they are victims when they are arrested because an identity thief provided law enforcement with the victim's identifying information during the thief's own arrest, and then failed to appear in court.

Once a victim discovers that he or she is, indeed, a victim, the path to recovery is less than clear. At a minimum, the victim should file a police report. Unfortunately, due to the cross-jurisdictional nature of many identity theft crimes, this can be a difficult process.

The cross-jurisdictional nature of these crimes is best illustrated by way of example: a victim lives in Colorado and had his credit card number stolen while shopping in Florida. The credit card number is then used to purchase goods or services in Wisconsin. Where did the crime occur? Which police department has proper jurisdiction to take the report?

Although Colorado law attempts to simplify this process for the victim, in the sense that it requires Colorado law enforcement agencies to take such a report if the victim lives in that jurisdiction, anecdotal evidence suggests that not all law enforcement agencies seem to be aware of this requirement, or if they are, they are not willing to comply with it.

Identity theft cases are complicated, time-consuming and often fail to result in any arrests, let alone convictions. In the end, even if a victim is able to file a police report, he or she will likely be informed that nothing will come of it.

Regardless, filing of the police report is key to the remainder of the process. With the police report in hand, the victim must begin the process of closing existing accounts, opening new accounts, notifying those institutions that the victim believes have also been defrauded, and alerting the credit reporting bureaus so that an alert or freeze can be placed on the victim's Social Security number.

In short, the victim, unlike in any other crime, must take proactive measures to prove his or her innocence. This can be an emotionally draining, and never ending process for the victim. There is also the concern that the victim will never know if or to whom the thieves sold the victim's information. As a result, the victim lives in constant fear of being revictimized.

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Additionally, many victims are encouraged to file a report with the Federal Trade Commission (FTC). Although the FTC has no ability to act upon such reports, it tracks such data on both national and state levels. In examining such data, however, it must be disclosed that FTC data are generally considered to be conservative since, in all likelihood, not all victims file reports with the FTC.

From 2005 to 2009, the FTC received over 5.4 million identity theft and fraud-related complaints.<sup>2</sup>

It is no secret that Colorado has consistently ranked high on the list of states with identity theft victims. Table 1 illustrates Colorado's national ranking for the past several years, as well as the number of Coloradans, per 100,000 population, who have been victimized.

**Table 1**  
**Colorado's National Ranking and Identity Theft Victims per 100,000 Population**  
**By Calendar Year<sup>3</sup>**

	<b>National Rank</b>	<b>Victims Per Capita</b>	<b>Number of Victims</b>
2003	8	81.3	3,698
2004	5	95.8	4,409
2005	5	97.2	4,535
2006	6	92.5	4,395
2007	8	89.0	4,328
2008	10	100.9	4,983
2009	9	95.0	4,775

These figures are informative on a number of levels. First, Colorado has consistently ranked in the top 10 for each of the last seven years.<sup>4</sup> Second, although Colorado's overall rank has fluctuated somewhat, these figures indicate that Colorado has not necessarily gotten significantly better, in terms of reducing the number of identity theft victims, but rather that other states have become worse.

Finally, it must be remembered that these figures should not be interpreted as providing a complete picture of identity theft in Colorado. They represent only those few who knew to file a complaint with the FTC and who actually followed through and completed the complaint process. Therefore, these figures should be viewed as minimums, rather than absolutes.

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<sup>2</sup> *Consumer Sentinel Network Data Book for January-December 2009*, Federal Trade Commission (February 2010), p. 3.

<sup>3</sup> State Data, ID Theft Data Clearinghouse 2003-2008. Retrieved on February 19, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html)

<sup>4</sup> Rankings are based on the number of complaints per 100,000 population.

Further, the FTC data provide some insight into who is victimized. Table 2 illustrates the age ranges for those victims filing reports with the FTC.

**Table 2  
Complaints by Victim Age  
By Percentage of Reports and Calendar Year<sup>5</sup>**

	2003		2004		2005		2006		2007		2008 <sup>6</sup>		2009	
	CO	US	CO	US	CO	US	CO	US	CO	US	CO	US	CO	US
Under 18	5	3	3	4	4	5	3	5	4	5	7	7	6	7
18-29	30	28	29	29	30	29	30	29	30	28	26	24	26	24
30-39	23	25	27	25	24	24	24	23	24	23	22	23	22	22
40-49	22	21	21	20	20	20	20	20	19	19	19	19	20	19
50-59	13	13	12	12	14	13	14	13	14	13	14	14	14	15
60-64	3	4	3	3	3	3	4	4	4	4	7	7	7	8
65 and Over	5	6	5	6	5	6	5	6	5	6	4	5	5	5

These data demonstrate that the highest incidence of identity theft occurs to individuals between the ages of 18 and 50.

**Table 3  
How Victims' Information is Misused  
By Percentage of Reports and Calendar Year<sup>7</sup>**

	2003		2004		2005		2006		2007		2008		2009	
	CO	US	CO	US	CO	US	CO	US	CO	US	CO	US	CO	US
Credit Card Fraud	26	33	22	28	24	26	23	25	20	23	17	20	15	17
Phone or Utilities Fraud	17	21	15	19	15	18	14	16	15	18	12	13	13	15
Bank Fraud	20	17	22	18	19	17	17	16	14	13	10	11	8	10
Employment-Related Fraud	17	11	15	13	15	12	17	14	21	14	22	15	25	13
Government Documents / Benefits Fraud	7	8	6	8	6	9	6	10	7	11	11	15	14	16
Loan Fraud	5	6	6	5	5	5	5	5	5	5	4	4	3	4
Other Identity Theft	24	19	26	22	28	25	27	24	29	25	25	24	23	23
Attempted Identity Theft	7	8	6	6	6	6	6	6	5	5	5	6	5	6

The figures reported in Table 3 may not total 100 percent because victims are able to report in more than one category.

<sup>5</sup> State Data, ID Theft Data Clearinghouse 2003-2008. Retrieved on February 19, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html)

<sup>6</sup> Beginning in 2008, FTC changed the manner in which it reported identity theft by age. Although the age ranges remained roughly the same, the new categories became: 19 and under (reported here as under 18); 20-29 (reported here as 18-29); 30-39; 40-49; 50-59, 60-69 (reported here as 60-64); and 70 and over (reported here as 65 and over).

<sup>7</sup> State Data, ID Theft Data Clearinghouse 2003-2008. Retrieved on February 19, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/state-data.html)

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Credit card fraud includes new accounts, existing accounts and other, unspecified activities.

Phone or utilities fraud includes new telephone and other utilities services, unauthorized charges to existing accounts, and other, unspecified activities.

Bank fraud includes existing accounts, electronic funds transfers, new accounts, and other, unspecified activities.

Employment-related fraud, an area where Colorado has consistently outpaced the rest of the nation, includes using another person's identifying information to secure employment. It also includes instances in which false job advertisements are placed in an attempt to glean identifying information from job applications.

As Table 3 indicates, employment-related fraud accounted for a full quarter of Colorado's reported identity theft cases in 2009. This is entirely consistent with other southwestern states.<sup>8</sup>

Government documents or benefits fraud includes fraudulent tax returns, drivers' licenses, government benefits applied for/received, Social Security cards issued/forged, other government documents issued/forged, and other, unspecified activities.

Loan fraud includes business, personal and student loans; auto loans and leases; real estate loans and other, unspecified activities.

Other identity theft includes illegal/criminal, medical, Internet/e-mail, bankruptcy, insurance, property rental, child support, securities and other investments, magazines and other, unspecified activities.

The costs of identity theft are, as one might expect, quite high, both in terms of time and money.

Estimates as to the amount of time a victim of identity theft can expect to spend repairing the damage caused by the theft vary from between 4 and 141 hours.<sup>9</sup>

Similarly, estimates as to the amount of money a victim may spend, out of pocket, to repair the damage vary from between \$0 and \$2,000,<sup>10</sup> to an average of \$527.<sup>11</sup>

Importantly, consumers are not the only victims of identity theft and financial fraud. Retailers and financial institutions, too, are victims. Financial institutions, once identity theft is reported, absorb the losses, which are generally recognized to be in the tens of billions of dollars nationally, and in the hundreds of millions of dollars in Colorado.

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<sup>8</sup> *Consumer Sentinel Network Data Book for January – December 2009*, Federal Trade Commission (February 2010). These states include Arizona, California, Nevada, New Mexico, Texas, Utah and Wyoming.

<sup>9</sup> *Federal Trade Commission – Identity Theft Survey Report*, Synovate, November 2007, page 5. "Aftermath 2009," Identity Theft Resource Center. Downloaded on June 3, 2010, from [www.idtheftcenter.org/artman2/publish/headlines/Aftermath\\_2009.shtml](http://www.idtheftcenter.org/artman2/publish/headlines/Aftermath_2009.shtml)

<sup>10</sup> *Federal Trade Commission – Identity Theft Survey Report*, Synovate, November 2007, page 5.

<sup>11</sup> "Aftermath 2009," Identity Theft Resource Center. Downloaded on June 3, 2010, from [www.idtheftcenter.org/artman2/publish/headlines/Aftermath\\_2009.shtml](http://www.idtheftcenter.org/artman2/publish/headlines/Aftermath_2009.shtml)

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## Legal Framework

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### *History of Regulation*

Prior to the enactment of the Colorado Identity Theft and Financial Fraud Deterrence Act (Act) in 2006, Colorado had no centralized investigatory body dedicated to the investigation and prosecution of identity theft crimes. House Bill 06-1347 (HB 1347) changed that with the creation of the Colorado Fraud Investigators Unit (Unit) and the Colorado Identity Theft and Financial Fraud Board (Board), both of which are housed in the Colorado Bureau of Investigation (CBI).

Testimony offered at the time of HB 1347 characterized identity theft as the “crime of this era,” and suggested that Colorado’s banks alone lost between \$100 million and \$150 million each year to identity theft and related fraud.

The idea behind the Act and the Unit was to create a centralized resource to which local law enforcement and prosecutors could turn for assistance, consultations and guidance in investigating and prosecuting such crimes. The Unit was specifically intended to support, not supplant, the efforts of these agencies.

House Bill 1347, as finally enacted (with the support of the banking community, prosecutors, law enforcement and consumer groups), created the Unit and the Board. The bill directed the Board to approve a plan for the Unit, and directed the Unit to prepare regular status reports to the Board and the Colorado Senate and House of Representatives Judiciary Committees. Additionally, the Act required the Unit to:

- Provide education to law enforcement, financial institutions and the public;
- Provide technical assistance to law enforcement and prosecutors; and
- Gather intelligence for dissemination to law enforcement and the banking communities.

To fund the program, fees would be imposed on those who suffered the greatest financial loss from identity theft. These same entities (primarily lenders and money transmitters) stood to gain the most from a reduction in identity theft and the resultant financial fraud.

More specifically, surcharges were placed on:

- Uniform Commercial Code filings made with the Secretary of State (primarily made by secured lenders such as credit unions and banks);
- Uniform Consumer Credit Code-supervised lenders regulated by the Colorado Attorney General (Attorney General), such as payday lenders, pawn shops and others; and
- Money transmitters regulated by the Department of Regulatory Agencies’ (DORA’s) Division of Banking, such as Western Union, PayPal and American Express.

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## Federal Statutes

A number of federal laws address identity theft in the sense that they either limit how consumer information can be disclosed, or limit a consumer's liability for fraudulent conduct perpetrated in the name of that consumer:

- The Driver's Privacy Protection Act places limitations on the disclosure of personal information maintained by departments of motor vehicles.<sup>12</sup>
- The Electronic Funds Transfer Act provides consumers with protection for transactions using a debit card or electronic means to debit or credit an account, and it limits a consumer's liability for unauthorized electronic fund transfers.<sup>13</sup>
- The Fair Credit Billing Act establishes procedures for resolving billing errors on credit card accounts, and limits a consumer's liability for fraudulent credit card charges.<sup>14</sup>
- The Fair Credit Reporting Act establishes procedures for correcting mistakes made on credit records and specifies that credit reports may be accessed only for legitimate business purposes.<sup>15</sup>
- The Fair Debt Collection Practices Act prohibits debt collectors from using unfair or deceptive practices to collect overdue debts.<sup>16</sup>
- The Family Educational Rights and Privacy Act establishes limitations on the disclosure of educational records maintained by agencies and institutions that receive federal funding.<sup>17</sup>
- The Gramm-Leach Bliley Act requires financial institutions to protect the privacy of consumers' personal financial information.<sup>18</sup>
- The Health Information Portability and Accountability Act requires covered entities to ensure the security and confidentiality of patient information.<sup>19</sup>

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<sup>12</sup> Federal Trade Commission, *Federal Laws: Privacy and Information Security*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html)

<sup>13</sup> Federal Trade Commission, *Federal Laws: Credit*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html)

<sup>14</sup> Federal Trade Commission, *Federal Laws: Credit*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html)

<sup>15</sup> Federal Trade Commission, *Federal Laws: Credit*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html)

<sup>16</sup> Federal Trade Commission, *Federal Laws: Credit*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-credit.html)

<sup>17</sup> Federal Trade Commission, *Federal Laws: Privacy and Information Security*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html)

<sup>18</sup> Federal Trade Commission, *Federal Laws: Privacy and Information Security*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html)

<sup>19</sup> Federal Trade Commission, *Federal Laws: Privacy and Information Security*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-privacy.html)

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- The Identity Theft and Assumption Deterrence Act makes identity theft a federal crime when someone,
    - [k]nowingly transfers possesses or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of federal law, or that constitutes a felony under any applicable state or local law.<sup>20</sup>

### *Colorado Statutes*

A person commits identity theft if he or she:<sup>21</sup>

- I. With the intent to defraud, falsely makes, completes, alters, or utters a written instrument or financial device containing any personal identifying information or financial identifying information of another; or
- II. Knowingly uses or possesses the personal identifying information, financial identifying information, or financial device of another without permission or lawful authority:
  - a. with the intent to use or to aid or permit some other person to use such information or device to obtain cash, credit, property, services or any other thing of value or to make a financial payment;
  - b. to use in applying for or completing an application for a financial device or other extension of credit; or
  - c. with the intent to obtain a government-issued document.

Identity theft is a Class 4 felony.<sup>22</sup> The courts may sentence a person convicted of such to twice the presumptive range if the defendant is convicted of identity theft or of attempt, conspiracy or solicitation to commit identify theft and the defendant has a prior conviction for a similar crime.<sup>23</sup>

The presumptive range for a Class 4 felony is two to six years' imprisonment.<sup>24</sup>

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<sup>20</sup> Federal Trade Commission, *Federal Laws: Criminal*. Downloaded on June 2, 2010, from [www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-criminal-law.html](http://www.ftc.gov/bcp/edu/microsites/idtheft/reference-desk/federal-criminal-law.html)

<sup>21</sup> § 18-5-902(1), C.R.S.

<sup>22</sup> § 18-5-902(2), C.R.S.

<sup>23</sup> § 18-5-902(3), C.R.S.

<sup>24</sup> § 18-1.3-401(1)(a)(V)(A), C.R.S.

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Additionally, the Colorado criminal code addresses other, related offenses, such as:

- Criminal possession of a financial device;<sup>25</sup>
- Criminal possession of an identification document;<sup>26</sup>
- Gathering identity information by deception;<sup>27</sup> and
- Possession of identity theft tools.<sup>28</sup>

A victim of identity theft may file a report of such with the law enforcement agency having jurisdiction over the victim's residence or over the place where a crime was committed. Colorado law enforcement agencies must take these reports.<sup>29</sup>

In passing the Act, the General Assembly recognized the consequences of identity theft and financial fraud, including:<sup>30</sup>

- The trauma of recovering stolen identities and repairing related damage to personal finances;
- The direct and indirect financial costs to various victims, consumers and businesses;
- The time dedicated to guarding against and resolving such crimes; and
- The overall economic impact of such crimes.

To protect Colorado citizens from such crimes and to enhance the investigation and prosecution of such crimes, the General Assembly created the Board and the Unit.<sup>31</sup>

The Unit, which is part of CBI<sup>32</sup> and which is intended to supplement and not replace existing law enforcement and prosecution efforts,<sup>33</sup> is specifically charged with assisting the Colorado Attorney General (Attorney General), sheriffs, police and district attorneys in investigating and prosecuting identity theft and the resulting financial fraud crimes.<sup>34</sup>

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<sup>25</sup> § 18-5-903, C.R.S.

<sup>26</sup> § 18-5-903.5, C.R.S.

<sup>27</sup> § 18-5-904, C.R.S.

<sup>28</sup> § 18-5-905, C.R.S.

<sup>29</sup> § 16-5-103(3), C.R.S.

<sup>30</sup> § 24-33.5-1702(1), C.R.S.

<sup>31</sup> §§ 24-33.5-1702(2) and (3), C.R.S.

<sup>32</sup> § 24-33.5-1704(1), C.R.S.

<sup>33</sup> § 24-33.5-1704(4), C.R.S.

<sup>34</sup> § 24-33.5-1704(2), C.R.S.



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The Unit is specifically directed to:<sup>35</sup>

- Gather information concerning identity theft and financial fraud, and to analyze the information to identify relevant criminal activities, patterns and trends throughout the state and region, whether multijurisdictional or not;
- Target specific forms of identity theft and financial fraud on which to concentrate;
- Disseminate information to the public, law enforcement agencies, prosecutors, depository institutions and other businesses concerning current and anticipated identity theft and financial fraud crimes, recommended steps to prevent such crimes and patterns and trends in such crimes;
- Prepare and present classes, briefings and materials to assist local law enforcement agencies, district attorneys and the Attorney General in their investigations and prosecutions; and
- Provide consultation on an individual case, but only upon the request of a local law enforcement agency, a local district attorney or the Attorney General.

The Board is charged with overseeing the Unit and comprises nine members:<sup>36</sup>

- Executive Director of the Department of Public Safety;
- Attorney General;
- Executive Director of the Colorado District Attorneys' Council;
- A representative of a police department;
- A representative of a sheriff's department;
- Three representatives of depository institutions, at least two of whom must be from a state or national bank; and
- A representative of a payment processor.

The final six members of the Board, as outlined above, are appointed by the Governor to serve no more than two, three-year terms.<sup>37</sup>

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<sup>35</sup> § 24-33.5-1704(3), C.R.S.

<sup>36</sup> § 24-33.5-1703(2), C.R.S.

<sup>37</sup> § 24-33.5-1703(3), C.R.S.

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The Board is charged with routinely interacting and communicating with local authorities and constituency groups to increase awareness of the Board and Unit and their mission.<sup>38</sup> Toward these ends, the Board has the power to:<sup>39</sup>

- Approve the Unit's comprehensive plan;
- Establish the general criminal activities on which the Unit should focus its efforts, priorities among those crimes and among regions of the state, general categories of information to be disseminated by the Unit, and guidelines for consultation provided by the Unit on requested local investigations;
- Review the Unit's quarterly reports;
- Specify the information to be contained in periodic public disclosures of performance data on the Unit's work and results so that the Attorney General, sheriffs, police, district attorneys, depository institutions and the public can review the effect of the resources used and the Unit's efforts;
- Determine procedures for reviewing the success of the Unit;
- Enter into and execute all contracts, leases, intergovernmental agreements, and other instruments as necessary;
- Review and comment on the Unit's budget; and
- Receive and accept, from any source, aid or contributions of money, property, labor, or other things of value.

Additionally, the Board was required to report to the judiciary committees of the Colorado Senate and House of Representatives, no later than May 1, 2009, on the implementation of the Act and the results achieved by the Board,<sup>40</sup> including:<sup>41</sup>

- Criminal activities, patterns and trends throughout the state and surrounding region;
- The specific forms of identity theft and financial fraud identified by the Unit and the evolution of those forms;
- Information disseminated by the Unit about current and anticipated patterns of identity theft and financial fraud crimes and recommendations to deter and protect citizens against such crimes;
- Classes, briefings and materials disseminated by the Unit to assist local law enforcement agencies, district attorneys and the Attorney General;
- Consultation provided by the Unit on individual cases, requested local investigations, and related activities and results;
- The number of arrests, investigations and prosecutions for identity theft and financial fraud crimes and the effect that the Unit had on the number of such cases throughout the state; and
- Recommendations for legislative changes to assist in the prevention of identity theft and financial fraud crimes and the apprehension and prosecution of criminals committing such crimes.

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<sup>38</sup> § 24-33.5-1703(5), C.R.S.

<sup>39</sup> § 24-33.5-1705, C.R.S.

<sup>40</sup> § 24-33.5-1703(8), C.R.S.

<sup>41</sup> §§ 24-33.5-1703(8) and 24-33.5-1706(2), C.R.S.

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The Unit's comprehensive plan, as approved by the Board, includes similar information.<sup>42</sup>

The Unit and Board are funded by a variety of sources. First, the Unit's parent agency, the Colorado Department of Public Safety, is authorized, as is the Board itself, to receive gifts, grants and donations, including in-kind donations from public or private sources.<sup>43</sup>

Second, the Act directs the Colorado Secretary of State to impose a surcharge of \$3 on every Uniform Commercial Code filing.<sup>44</sup>

Next, the Act directs the Attorney General to impose a surcharge of \$100 on each new and renewed supervised lender license and supervised lender branch license.<sup>45</sup>

Finally, the Act directs the Colorado Division of Banking to impose a surcharge of \$500 on each new and renewed money transmitter license.<sup>46</sup>

All funds, regardless of source, are to be deposited in the Colorado Identity Theft and Financial Fraud Cash Fund.<sup>47</sup>

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<sup>42</sup> § 24-33.5-1706, C.R.S.

<sup>43</sup> § 24-33.5-1707(1)(a), C.R.S.

<sup>44</sup> § 24-33.5-1707(2)(a), C.R.S.

<sup>45</sup> § 24-33.5-1707(2)(b), C.R.S.

<sup>46</sup> § 24-33.5-1707(2)(c), C.R.S.

<sup>47</sup> § 24-33.5-1707(1)(a), C.R.S.

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## Program Description and Administration

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The Identity Theft and Financial Fraud Board (Board) comprises nine members:

- Executive Director of the Department of Public Safety;
- Colorado Attorney General (Attorney General);
- Executive Director of the Colorado District Attorneys' Council;
- A representative of a police department;
- A representative of a sheriff's department;
- Three representatives of depository institutions, at least two of whom must be from a state or national bank; and
- A representative of a payment processor.

The Board typically meets every two months. Although most meetings have been held at the offices of the District Attorney for the First Judicial District in Golden, meetings have been held at other locations in the Denver area. This was particularly true earlier in the Board's history.

Although members of the public rarely attend Board meetings, non-Board members, particularly staff members of the Colorado Bureau of Investigation's (CBI's) Colorado Fraud Investigators Unit (Unit) and of the First Judicial District regularly attend and participate in discussions.

The Board and the Unit are funded through three primary sources:

- \$3 surcharge on each Uniform Commercial Code (UCC) filing made at the Secretary of State's Office;
- \$100 surcharge on each supervised lender license issued by the Attorney General; and
- \$500 surcharge on each money transmitter license issued by the Colorado Department of Regulatory Agencies' (DORA) Division of Banking.

UCC filings represent the recording of various types of liens placed on various types of property across the state.

Table 4 illustrates, for the fiscal years indicated, the amount of revenue each of these sources has produced for the Unit and the Board.

**Table 4  
Program Revenues**

<b>Revenue Source</b>	<b>FY 06-07</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>Total</b>
Gifts, Grants & Donations	\$25,000	\$0	\$0	\$97,204	\$122,204
Interest	\$7,980	\$14,161	\$9,749	\$5,990	\$37,880
Department of Law	\$290,400	\$169,600	\$121,900	\$105,800	\$687,700
Department of Regulatory Agencies	\$16,500	\$22,500	\$21,500	\$27,750	\$88,250
Secretary of State	\$279,894	\$308,894	\$268,896	\$242,361	\$1,100,045
<b>Total</b>	<b>\$619,774</b>	<b>\$515,155</b>	<b>\$422,045</b>	<b>\$479,105</b>	<b>\$2,036,079</b>

The Colorado Department of Public Safety (DPS), the parent organization of the Unit, is authorized to receive gifts, grants and donations in order to fund the Unit and the Board. In fiscal year 06-07 the Colorado Bankers' Association, one of the main proponents of the legislation that created the Unit and the Board, donated \$25,000.

In fiscal year 09-10, the U.S. Department of Justice awarded DPS a Justice Assistance Grant to fund a victim advocate position for one year.

Table 5 illustrates, for the fiscal years indicated, the total expenditures of the Unit and Board, as well as a comparison of the number of full-time equivalent (FTE) employees budgeted for, versus those actually employed.

**Table 5  
Program Expenditures**

<b>Fiscal Year</b>	<b>Expenditures</b>	<b>Budgeted FTE</b>	<b>Actual FTE</b>
06-07	\$265,124	7.0	5.0
07-08	\$450,841	7.0	5.0
08-09	\$525,515	7.0	4.8
09-10	\$467,171	7.0	6.0

The slight drop in FTE in fiscal year 08-09 is attributable to staff turnover. In that year, an investigator was reassigned within CBI, and the position was later filled by a second analyst position. In fiscal year 09-10, the increase in FTE is due to the addition of the victim advocate position made possible by the federal grant.

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Although CBI budgets for 7.0 FTE, only 6.0 FTE were funded as of the end of fiscal year 09-10. Staff includes:

- Agent-in-Charge (1.0 FTE Criminal Investigator III) is responsible for adherence to the Unit's goals and objectives and accountable for the program's overall success.
- Agents (2.0 FTE Criminal Investigator II) are responsible for carrying out the day-to-day mission of the Unit, which includes criminal enforcement, intelligence gathering and education of law enforcement, the public and financial institutions.
- Analysts (2.0 FTE General Professional III) collect, analyze and help to interpret data for dissemination to law enforcement and financial institutions as it relates to the crimes associated with identity theft and financial fraud.
- Victim Advocate (1.0 FTE General Professional II) assists victims in navigating the system to report an identity theft, and then the process of repairing the damage. The victim advocate also provides education to law enforcement, the public and financial institutions.

While most staff is assigned to CBI's headquarters in Denver, one agent is assigned to the CBI field office in Grand Junction.

The Unit and its staff have three primary areas of focus: providing educational presentations, conducting investigations and gathering and disseminating intelligence.

### *Education*

The Unit is tasked with providing educational presentations to the public, law enforcement and financial institutions. Table 6 illustrates, for the fiscal years indicated, the type of educational presentations offered.

**Table 6  
Trainings Offered**

Type of Training	FY 06-07	FY 07-08	FY 08-09	FY 09-10
Public	12	18	21	9
Law Enforcement	2	15	20	16*
Financial Institutions	0	0	0	5*

\* Three of these presentations were made to both law enforcement and financial institutions.

Due to resource limitations, the Unit has focused its training efforts on law enforcement and the general public. As a result, it has only recently (since the hiring of the victim advocate in May 2010) offered trainings specifically to financial institutions. However, when the Unit is invited to speak at various forums, it does so.

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As part of this sunset review, a representative of DORA attended a public educational presentation and a presentation to law enforcement.

The public educational presentation was offered at the invitation of a local chamber of commerce and was approximately one-hour long. The materials presented included a variety of statistics relating to identity theft, information on some current trends or modes of operation for identity thieves, tips on how to prevent identity theft and some information on what to do if a person suspects that he or she is the victim of identity theft.

The full-day law enforcement presentation was offered in Cañon City. In addition to the information provided at the presentation to the public, this presentation included information on a variety of databases available to law enforcement. In short, this seminar was designed to provide attendees with the basic tools needed to investigate an identity theft case.

In addition to these formal presentations, the victim advocate had 12 informal outreach contacts in fiscal year 09-10: six to public organizations; four to law enforcement; and two to financial institutions.

### *Investigations*

True to its CBI roots, the Unit also conducts investigations, though mostly at the request of local law enforcement seeking assistance.

The Unit's involvement in a case can vary, depending on the case itself and the resources that have already been dedicated to a particular investigation by local law enforcement. Typically, however, the Unit only becomes involved when it is clear that a particular case has cross-jurisdictional implications.

In some instances, a local law enforcement agency may specifically request assistance from the Unit. This can take the form of asking for advice on how to obtain certain information, or by asking for certain information.

In some of these instances, the Unit may recognize a pattern developing among the requests it receives from various local law enforcement agencies. In such a case, the Unit may coordinate the efforts of the various local agencies to avoid duplication of efforts and to assist the local agencies in their resource allocations.

Regardless of how the Unit becomes involved, the investigation of identity theft is substantially similar to the investigation of any other white collar crime. A lot of time is spent sifting through documentation (often electronic) and looking for connections. Towards this end, the Unit accesses a variety of databases to establish those connections.

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Table 7 illustrates the number of arrests and convictions that can be directly attributed to the Unit since its creation.

**Table 7**  
**Arrests and Convictions**

Performance Measure	FY 06-07	FY 07-08	FY 08-09	FY 09-10	Total
Arrests	1	16	32	21	70
Convictions	0	12	11	8	31

The data in Table 7 demonstrate that identity theft cases are resource-intensive and often do not result in an arrest. However, taken in conjunction with the data illustrated in Table 8, the data clearly show that a single identity thief can victimize a large number of victims at great profit.

**Table 8**  
**Victims Information**

Performance Measure	FY 06-07	FY 07-08	FY 08-09	FY 09-10	Total
Victims	6	52	204	201	463
Estimated Dollar Loss of Victims	\$174,100	\$609,000	\$29,704,500	\$184,430	\$30,672,030

Tables 7 and 8, taken together, demonstrate that since its creation, the Unit is directly responsible for 31 convictions, and investigating crimes involving 463 victims and the theft of over \$30.6 million.

### ***Intelligence Gathering and Analysis***

The final component of the Unit's statutory mission is intelligence gathering. To accomplish this, the Unit employs two analysts. Since the Unit's inception, these analysts have provided the following types of services the indicated number of times:

Analytical (6) – this relates to the production of charts, that include timeline, association charts and link analysis charts that can be used to further an investigation, prosecution, or both.

Newsletters/briefs/alerts (64) – these types of communications are used to distribute information concerning trends, patterns and criminal activity to the law enforcement and financial institution communities.

Intelligence inquiries (318) – these requests for intelligence are received from local law enforcement agencies, as well as financial institutions.

Assist local Colorado law enforcement agencies (22) – these requests may be received by phone or email and may pertain to searching a specific database or simply providing contact information.



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Assist out-of-state law enforcement agencies (38) - these requests may be received by phone or email and may pertain to searching a specific database or simply providing contact information.

Assist with CBI investigations (78) – these requests come from CBI agents across the state and may entail simply searching a specific database, or performing a full subject workup, which could include a search of all databases, obtaining photos, and obtaining copies of police reports.

Criminal investigations (8) – this entails assisting Unit investigators with various tasks.

Assist government agencies (5) – these requests come from non-law enforcement agencies regarding suspected criminal activity.

### *Victim Advocacy*

Although not technically part of the Unit's statutory mission, in late 2009, CBI secured a grant from the U.S. Department of Justice to fund a victim advocate position. Due to a variety of circumstances, this position was not filled until May 2010.

The original intent of the position was to provide training to other victim advocates around the state, in recognition of the fact that identity theft is out of the ordinary realm of expertise for most advocates.

While this is still part of the plan for this position, the victim advocate has been providing direct services as well. These include assisting victims navigating the system to report an identity theft, and then the process of repairing the damage. During the months of May and June 2010, the victim advocate provided direct assistance to 48 individuals from 10 different Colorado counties,<sup>48</sup> three other states<sup>49</sup> and two other countries.<sup>50</sup>

Additionally, the victim advocate developed a state-wide telephone hotline for victims to call to seek assistance. The victim advocate arranged for the Unit to contract with an existing victim advocate hotline, which will be staffed 24 hours a day, seven days a week, 365 days per year by volunteers with experience in victim assistance. The Unit provided hotline staff with identity theft- and financial fraud-specific training in late July 2010. However, as of this writing, the hotline had not yet begun receiving calls.

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<sup>48</sup> Adams, Arapahoe, Denver, Douglas, Fremont, Jefferson, Larimer, Morgan, Rio Blanco and Sedgwick.

<sup>49</sup> Kansas, Massachusetts and Ohio.

<sup>50</sup> Canada and South Korea.

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## Analysis and Recommendations

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### *Recommendation 1 – Continue the Identity Theft and Financial Fraud Deterrence Act for five years, until 2016.*

The first sunset criterion asks whether the program under review serves to protect the public health, safety or welfare. As applied to the Identity Theft and Financial Fraud Deterrence Act (Act), the question becomes two-fold:

- Does the Colorado Fraud Investigator’s Unit (Unit) protect the public?
- Does the Identity Theft and Financial Fraud Board (Board) protect the public?

According to Federal Trade Commission (FTC) data, Colorado has consistently ranked in the top 10 states for identity theft. This is a top 10 ranking that should be avoided, not coveted.

Additionally, identity theft and financial fraud costs Colorado businesses and consumers hundreds of millions of dollars each year.

Therefore, identity theft and financial fraud are very real, very serious problems in this state. The public needs protection.

The Unit has three primary functions:

- Education – of the public, law enforcement and financial institutions;
- Investigation – assist local law enforcement with investigations when so requested; and
- Intelligence gathering – assemble data from a wide variety of sources to identify, and hopefully head off, new trends in identity theft and financial fraud.

Each of these functions is critical to addressing identity theft and the resulting financial fraud in a meaningful way. Education of the public and financial institutions can be thought of as a form of prevention. The Unit provides information on measures consumers can take to reduce the likelihood that they will become victims, and if they should become victims, what to do.

Intelligence gathering, too, can be thought of as a form of prevention. By identifying trends early on, particular forms of identity theft and financial fraud can be shut down before they can do more harm.

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Education of law enforcement, investigations and intelligence gathering can all be thought of as means to protect the public once identity theft occurs. The Unit's law enforcement education component trains local law enforcement agencies on how to investigate identity theft cases. These can be complex cases that require an investigator to access a unique set of resources.

Investigations and intelligence gathering go hand-in-hand. The Unit assists local law enforcement upon request, and gathers intelligence from multiple sources to assist in those investigations. Additionally, the Unit provides intelligence to local law enforcement, even if the Unit is not directly involved in the investigation.

Many of these functions could be performed by someone other than the Unit. However, the Unit, as a unit of the Colorado Bureau of Investigation (CBI), provides a state-wide perspective and is in a unique position to assist with multi-jurisdictional cases.

As the data in Tables 6 and 7 on pages 17 and 19 illustrate, the Unit has been active in all of its functions. These functions will be necessary for the foreseeable future, as identity theft itself shows no signs of waning.

Indeed, the data in Tables 5 and 8 on pages 16 and 19 illustrate that the state has spent a total of \$1.7 million on the Unit and Board, and the Unit has succeeded in arresting 70 thieves who stole more than \$30.6 million. This represents a remarkable return on investment.

Therefore, the General Assembly should continue the Unit.

The Board, too, serves an important role, though perhaps less direct than that of the Unit. Rather, the Board provides guidance to the Unit and, perhaps more importantly, provides an arena in which law enforcement, prosecutors and financial institutions can interact on a somewhat formal basis to share information. No other such arena exists in Colorado.

A recent spate of corporate identity theft incidents provides an example of the value of the Board. The Unit received word of several Colorado corporations that had their identities stolen and credit taken out in their names. This was accomplished by thieves accessing the corporations' records on the Colorado Secretary of State's website. The thieves changed the corporations' addresses and contact information, and then obtained credit in the names of those corporations.

When the Unit brought this information to the Board, the Board quickly identified the problem and a potential solution. Using the resources of the Board, the Secretary of State's Office was alerted to the problem; the Secretary of State's Office alerted the public and suggested ways to mitigate the problem. This rapid collaboration helped to potentially reduce the amount of harm from this particular form of identity theft.

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Indeed, Unit staff reports that law enforcement from other states has since contacted the Unit to determine how to address similar problems in those states.

Therefore, the Board should be continued.

Because identity theft continues to evolve, the Unit and the Board may need to evolve as well. Therefore, a five year renewal period is appropriate.

For all of these reasons, the General Assembly should continue the Act for five years, until 2016.

***Recommendation 2 – Add a representative of a consumer or victim advocacy organization to the Board.***

The Board comprises nine members:

- Executive Director of the Department of Public Safety;
- Attorney General;
- Executive Director of the Colorado District Attorneys' Council;
- A representative of a police department;
- A representative of a sheriff's department;
- Three representatives of depository institutions, at least two of whom must be from a state or national bank; and
- A representative of a payment processor.

The last six of these members are appointed by the Governor.

The Board's current membership brings to the table three of the five major stakeholder groups with respect to identity theft:

- Law enforcement;
- Prosecutors; and
- Financial institutions.

Noticeably absent from the list of statutory Board members is a representative of consumers or victims, as well as a judge.

Law enforcement investigates cases, prosecutors try the cases before the judges who, when a guilty verdict is found, pass sentence. Financial institutions and consumers are the victims in identity theft cases. Yet, consumers and judges are not represented on the Board.

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With respect to judges, a seat is likely not practicable. The Colorado Supreme Court's Judicial Ethics Advisory Board (CJEAB) has found that the Colorado Code of Judicial Conduct,

generally prohibits a judge from participating on governmental commissions unless there is a close nexus between the work of the commission and the improvement of the law, the legal system, or the administration of justice. Service on the commission must also not call into question the judge's impartiality, independence, and effectiveness.<sup>51</sup>

Using this reasoning, the CJEAB has already found it improper for a judge to sit on a crime prevention and control commission. Arguably, the same reasoning would apply to a judge serving on the Board. However, an alternative to this is addressed in Administrative Recommendation 1 of this sunset report.

The absence of a representative of consumers or victims was noted during the legislative hearings that created the Board in 2006. At that time, proponents of the bill envisioned a second, non-statutory advisory board that would have such a member. However, that second body was only recently convened.

Financial institutions, like consumers, are the most direct victims of identity theft. Typically, financial institutions make consumers and retailers whole in cases of identity theft. As such, their membership on the Board is justified.

However, consumers, too, are victims. In fact, they continue to be potential victims for years afterward. Although consumers may pay relatively little out of pocket, their investment of time and emotional stress cannot be overstated. Yet they do not have a seat on the Board.

A representative of consumers could bring a real-world perspective to the Board. Such a member could make identity theft real, as opposed to an abstract concept.

None of this is to say that the Board does not take its mission, or the interests of consumers seriously.

However, consumers are victims of identity theft and yet they lack a voice on the one organ of state government directly tasked with addressing identity theft.

For all these reasons, the General Assembly should add a seat to the Board to be filled by a representative of either a consumer or victim advocacy organization, and to be appointed by the Governor.

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<sup>51</sup> Colorado Supreme Court CJEAB Advisory Opinion 2005-04 (October 7, 2005), p. 1.

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***Recommendation 3 – Allow certain Board members to send designees in their places.***

The Board members include, among others, the:

- Attorney General;
- Executive Director of the Department of Public Safety; and
- Executive Director of the Colorado District Attorneys' Council.

However, it may not always be practical for these executives to attend. Additionally, there may be individuals within their respective organizations who could more appropriately and meaningfully participate in the Board's activities.

Therefore, the General Assembly should authorize these Board members to designate individuals within their respective organizations to attend Board meetings in their places.

***Recommendation 4 – Repeal the Board's authority to enter into contracts, leases and other legally binding agreements.***

Section 24-33.5-1705(1)(i), Colorado Revised Statutes (C.R.S.), authorizes the Board:

To enter into and execute all contracts, leases, intergovernmental agreements, and other instruments, in writing, as necessary to accomplish the purposes of [the Act];

This authority is inconsistent with the Board's status as an advisory body to the Unit. Section 24-33.5-1703(1)(b), C.R.S., clearly states that the Board is a Type 2 body. The powers outlined above are already innately vested in CBI, as the organization that houses the Board.

Therefore, the General Assembly should repeal this provision.

***Recommendation 5 – Require the Board to submit a report to the General Assembly on October 1 of even-numbered years beginning in 2012.***

Section 24-33.5-1703(8), C.R.S., requires,

On or before May 1, 2009, the Board shall report to the Judiciary Committees of the Senate and the House of Representatives, or any successor committees, on the implementation of [the Act] and the results achieved . . .

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This report was submitted on May 1, 2009, and addressed:

- Criminal activities, patterns and trends throughout the state and surrounding region;
- The specific forms of identity theft and financial fraud identified by the Unit and the evolution of those forms;
- Information disseminated by the Unit about current and anticipated patterns of identity theft and financial fraud crimes and recommendations to deter and protect citizens against such crimes;
- Classes, briefings and materials disseminated by the Unit to assist local law enforcement agencies, district attorneys and the Attorney General;
- Consultation provided by the Unit on individual cases, requested local investigations, and related activities and results;
- The number of arrests, investigations and prosecutions for identity theft and financial fraud crimes and the effect that the Unit had on the number of such cases throughout the state; and
- Recommendations for legislative changes to assist in the prevention of identity theft and financial fraud crimes and the apprehension and prosecution of criminals committing such crimes.

The compilation of this type of information, on a regular basis, is not only helpful to policy makers, but can serve as a means by which the Board and Unit can reevaluate their priorities. Additionally, such a report can serve as a vehicle by which the Unit and Board communicate new legislative ideas to the General Assembly.

For example, as Table 3 on page 6 illustrates, the percentage of identity theft in Colorado that is attributed to employment-related fraud is particularly high compared to the nation as a whole. However, it is entirely consistent with other southwestern states. The Unit could work to identify the reasons behind this and perhaps develop legislative solutions that address those reasons. A periodic report, such as that envisioned by this Recommendation 5, would ensure that such initiatives are brought to the attention of the General Assembly.

Another area where such a report could prove beneficial is in the area of sentencing for identity theft-related crimes. Most of these crimes are Classes 4 through 6 felonies, which carry fairly minimal sentences. The Board and Unit could work to develop new sentencing guidelines for such crimes.

For all of these reasons, the General Assembly should continue the reporting requirement such that the Board submits reports to the General Assembly by October 1 of even-numbered years, beginning in 2012.

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***Administrative Recommendation 1 – Work with the Colorado Judicial Department to offer identity theft and financial fraud training for the state’s judges.***

Identity theft is a property crime. As such, many view it on par with single-incident crimes such as theft, burglary, larceny and the like.

However, identity theft, unlike other property crimes, has the potential to repeatedly revictimize the victim. It is rare for an identity thief to steal someone’s identity and not sell that information to others. Once the information is out of the victim’s control, the victim faces potential revictimization for the rest of his or her life.

With respect to law enforcement, identity theft cases are difficult cases to investigate. They are complex and require a tremendous time commitment from investigative staff. Investigators are less likely to be willing to put the necessary time into building a case if, at the end of the day, the perpetrator is going to get the minimum sentence.

This also feeds the general perception that identity thieves are as brazen as they are because they know that even if they get caught (a truly remote possibility), they face minimal sentences.

To help judges better understand the unique complexities of identity theft, the Unit should work with the Judicial Department to present a series of training classes for judges that focus on the severity of victimization that occurs as a result of identity theft and the true costs involved.

***Administrative Recommendation 2 – Develop a website through which Colorado residents can report identity theft.***

Colorado statute requires Colorado law enforcement agencies to take reports of identity theft when the victim resides in the jurisdiction or the crime occurred in the jurisdiction.<sup>52</sup>

There are two problems with this: 1) anecdotal evidence suggests that law enforcement agencies are reluctant to take such reports; and 2) it retains a fragmented reporting system.

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<sup>52</sup> § 16-5-103(3), C.R.S.



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Identity theft cases are difficult to investigate, in part, because the vast majority of them cross jurisdictions. For example, a Denver resident may have a credit card number swiped in a restaurant in Lakewood. The number is sold to someone in Grand Junction who then creates a forged credit card and uses it in Durango. Denver, Lakewood, Grand Junction and Durango could all take the report, but each would face challenges in investigating the case.

As a result, anecdotal evidence suggests that law enforcement will either tell the victim to report the crime in a more appropriate jurisdiction, or will take the report but tell the victim, truthfully, that little will come of it. This is frustrating to victims.

Complicating this is the fact that there is no central repository for compiling cases of identity theft and the circumstances surrounding them. In the example above, the jurisdictions are isolated from one another. Little do they know that, in all likelihood, this one theft is part of a larger ring involving multiple perpetrators and multiple victims.

However, a central reporting mechanism, a website for example, could help to alleviate this. A website could be created to enable victims to more easily report cases of identity theft. Naturally, certain safeguards would have to be built into the system to prevent false reporting.<sup>53</sup>

Such a system should be designed to alert all relevant law enforcement agencies.

Additionally, such a system would assist the Unit in its intelligence gathering role. With all cases of identity theft reported in a single location, trends could be more easily, and more quickly, identified. Thus, what starts as an isolated case could quickly be put in the context of a larger case brought under the Colorado Organized Crime Control Act. This would make investigation and successful prosecution more likely, and less resource-intensive.

Other states, such as Utah, have developed such systems with great success. The Unit should spearhead the effort to create such a system in Colorado.

***Administrative Recommendation 3 - Continue to seek gifts, grants and donations to fund the Unit.***

When the Unit was created in 2006, Colorado's economy was still relatively robust. As a result, the General Assembly determined that the Unit should be funded primarily through a surcharge on Uniform Commercial Code (UCC) filings made at the Secretary of State's Office.

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<sup>53</sup> One form of financial fraud involves the "victim" conspiring with others. For example, the "victim" and a co-conspirator agree that the co-conspirator will use the "victim's" identity to obtain a credit card and then purchase merchandise, for example. Then the "victim" claims to be a victim of identity theft, files the police report, and the credit card issuer absorbs the loss.

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However, as the economy has deteriorated since 2006, UCC filings, as a funding source for the Unit, have fallen short of expectations. As a result, the Unit has historically been underfunded and understaffed.

In 2010 alone, the Unit was successful in securing two rather sizeable grants from the federal government. These two grants have essentially ensured the short-term viability of the Unit.

Unfortunately, no funding solutions were identified during the course of this review. Therefore, the Unit should continue to seek out grants to ensure the continued viability of the Unit.