



WASHINGTON STATE ATTORNEY GENERAL
ROB MCKENNA
AG REQUEST LEGISLATION - 2008 SESSION

GUARDING CONSUMERS FROM IDENTITY THEFT

THE PROBLEM

Identity theft is one of our state's fastest-growing crimes. Despite tougher laws and aggressive outreach and educational campaigns, much work remains to be done. Law enforcement and prosecutors report that investigations are frequently prolonged by legal processes that require individuals to testify to the authenticity of records before they are submitted as evidence. Police reports are essential to help identity theft victims clear their name, but victims say that some law enforcement agencies are reluctant to take reports. Stricter penalties are needed to deter identity theft and bring thieves to justice.

BACKGROUND

- The 2005 Legislature passed a bill amending Washington's identity theft statute to require police and sheriff's departments to provide police reports to identity theft victims. However, the law did not require law enforcement to take reports. Identity theft victims are required to file police reports in order to seek certain protections. Victims must file a police report in order to avoid paying a fee to the credit bureaus in connection with freezing their credit reports.
- Law enforcement agencies, prosecutors and criminal defense attorneys routinely rely on records as evidence. Investigations and legal proceedings can be hindered when records are unavailable. Currently, records custodians often must fly long distances to provide just five minutes of testimony authenticating an unchallenged record. Law enforcement and prosecutors complained about this flawed process during the Attorney General's Statewide Identity Theft Summit in 2005, resulting in the AGO Identity Theft Advisory Panel's recommendation to develop regulations to authorize and ensure out-of-state businesses comply with the criminal process. New regulations are needed to expedite investigations and legal proceedings, save costs and clarify procedures that out-of-state businesses must follow.
- Attorney General Rob McKenna created LEGIT, Washington's Law Enforcement Group against Identity Theft, in 2006 to look at ways law enforcement can effect positive change in this area. This policy-advising group is headed up by a King County deputy prosecutor and includes representatives from local police and sheriff's departments, state government and the private sector. LEGIT suggested many legislative changes, including those introduced below.

GUARDING CONSUMERS FROM IDENTITY THEFT

The Attorney General's Office has requested three bills this session to assist in the investigation and prosecution of identity theft cases. These bills would:

- Create a statutory requirement for police to take police reports from victims of the crime. The bill would not require investigation by police but only requires the report be taken. Victims have the option to file a report in their local jurisdiction or with the agency where the crime occurred.
- Allow prosecutors to bring separate charges against an accused identity thief for each use of a particular piece of someone's personal information. This bill would work to reject the court's ruling in *State v. Leyda*, 157 Wn.2d 335, 138P.3d 610 (2006), where the Washington Supreme Court held that a defendant may only be charged once for use of someone else's information even when that information is used in multiple locations multiple times.
- Allow records provided by out-of-state businesses to be authenticated by affidavit, rather than in person, in criminal cases. When properly served with a request for records, the recipient must provide the records within 20 business days and verify the authenticity by providing a signed affidavit, declaration or certification.