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## Inside this Brief

- **How it Happens**
- **Sentencing**
- **Information for Victims**
- **Staff and Agency Contacts**

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Background Brief on ...

# Identity Theft

The 1999 Legislative Assembly created the new crime in Oregon of identity theft. It did so in response to the rapidly expanding use by criminals of other people's identity for the purposes of fraud.

A person commits a Class C felony of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters, or converts to the person's own use the personal identification of another person. Personal identification is defined broadly in statute to include almost any identification (including name, date of birth, driver's privileges, personal identification number, or photograph) of a real or imaginary person.

The law applies to misuse of identification for pecuniary or non-pecuniary reasons. However, it does not apply to:

- A person under 21 who uses a false ID to buy alcohol
- A person under 18 who uses a false ID to buy tobacco
- Any underage person who uses a false ID to enter a bar or other place with an age restriction

The 2003 Legislative Assembly again addressed the problem of identity theft by:

- Creating the crime of unlawful possession of a personal identification device and classifying it as a Class C felony - a person commits the crime if the person, with the intent to commit a crime, possesses a device that is used to manufacture or print a driver license or permit, an employee identification card, or a credit or debit card
- Creating the crime of unlawful possession of fictitious identification and classifying it as a Class C felony - a person commits the crime if the person possesses a personal identification card containing identification information for a fictitious person with the intent to use the personal identification card to commit a crime

- Expanding the crime of unlawful factoring of credit card transactions to debit and other such cards and enhances the penalty for second and subsequent such convictions
- Increases the penalty for unlawful production of identification cards, licenses, permits, forms, or camera cards from a Class A misdemeanor to a Class C felony

On October 30, 1998, Congress enacted the “Identity Theft and Assumption Deterrence Act.” In doing so, it made it a federal crime to transfer or use another person’s identity with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal law, or that constitutes a felony under any applicable state or local law.

Of the victims who reported identity theft to the Federal Trade Commission, 42 percent reported credit card fraud, 20 percent reported the identity thief obtained unauthorized utility services or telecommunications or equipment in their name, and 13 percent reported identity theft targeting their checking or savings account.

### **How it Happens**

Identity theft takes three primary forms. The first, *true name fraud*, occurs when someone uses a consumer’s personal information to open accounts in the consumer’s name. The thief then uses these fraudulently obtained accounts to purchase goods and services, leaving the consumer with the bills. The consumer may find accounts in her name owing thousands of dollars if victimized in this manner.

A second form of identity theft is *account takeover fraud*. This occurs when a criminal gains access to existing accounts and makes fraudulent charges on the victim’s checking, savings, or credit accounts.

The third type of identity theft occurs when a criminal provides a victim’s personal information to law enforcement when the criminal gets arrested. Unless discovered and corrected by law enforcement, a victim can have an outstanding warrant or criminal record attached to their name without even realizing it

until a background check uncovers the deception.

Criminals use several techniques to gain access to a person’s identity. Some may steal mail from a business or residence, usually stealing outgoing checks. The thief then may attempt to forge new checks using the victim’s name or account number, or merely attempt to cash the checks the victim wrote for an intended payee. Another “low tech” means of gaining access to identification that is being used by criminals is known as “dumpster diving.” These are usually late-night expeditions into trash cans or dumpsters to obtain checks, copies of credit card statements, or credit card applications.

The information age has allowed those with the ability to use the Internet and computers to obtain and utilize personal information. Check-writing software allows a person with the use of a computer, security paper, and a laser printer to create high-quality, forged checks if the criminal can obtain the account number or other information of a victim. On the Internet, some unsuspecting victims fall prey to unsolicited emails, known as “spam,” that promise some benefit if the victim enters his or her identifying data. Finally, some computer “hackers” have been able to glean large amounts of personal data from bank or government databases. Such crimes violate Oregon’s forgery laws and Oregon’s computer crime statute in addition to constituting identity theft.

### **Sentencing**

The presumptive sentence for a first conviction of identity theft is an 18-month probation sentence that usually includes a short jail sentence, work release, and an order to pay restitution. However, identity theft is subject to the Repeat Property Offender statute, codified as ORS 137.717. If a person is convicted of misusing several people’s identities in one indictment, each subsequent count after the first is considered to have occurred after that first conviction. Consequently, an identity thief may be considered a repeat property offender for stealing several people’s identity during one criminal episode. The presumptive sentence for

a conviction of identity theft as a repeat property offender is 24 months. The 24-month sentence applies to crimes committed after January 1, 2009. However, as a result of severe budget shortfalls and the need to reduce prison costs, those sentenced between February 15, 2010 and January 1, 2012, will receive a 13-month sentence. Repeat property offenders will receive a 24-month sentence for certain property crimes committed after January 1, 2012.

Senate Bill 447 (2007) added “deceased” to the definition of a person under the statute and added trust company account information to the definition of personal identification.

### **Information for Victims**

The Federal Trade Commission recommends victims take the following action immediately if they find they have been a victim of identity theft:

- Contact the fraud departments of each of the three major credit bureaus, and tell them to flag your file with a fraud alert, including a statement that creditors should get your permission before opening any new accounts in your name. The three credit bureaus are:
  - [Equifax](http://www.equifax.com) - 800-525-6285
  - [Experian](http://www.experian.com) - 888-397-3742
  - [Trans Union](http://www.transunion.com) - 800-680-7289
- Contact the creditors for any accounts that have been tampered with or opened fraudulently, ask to speak to the fraud department, and then follow up in writing with a letter explaining your accounts have been compromised.
- File a report with your local police department or the police in the locations where the identity theft took place.

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