



ALLIANCE
for **CHILDREN'S**
RIGHTS

**Resolving Consumer
Identity Theft
for Foster Youth**

2013 Edition

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About the Alliance for Children’s Rights

The Alliance for Children’s Rights provides free legal services and advocacy to protect the rights of impoverished and abused children and youth so that they have safe, stable homes, healthcare and the education they need to thrive. For many of our clients, the Alliance is the only connection to a safer, brighter future. The Alliance staff includes lawyers, social workers, and advocates supplemented by over a thousand pro bono attorneys and other volunteers who donate their time to help disadvantaged children. Since its founding in 1992, the Alliance has helped over 100,000 children.

Los Angeles County is home to our nation’s largest population of abused and neglected children. More than a quarter of all Los Angeles children live in poverty. Approximately 30,000 Los Angeles children are now in foster care – more than any other foster care system in the country. Child abuse and neglect have reached epidemic proportions. These children share a need for trained, sensitive advocates who understand prevailing laws and regulations and whose sole purpose is to ensure that children have the opportunity to reach their full potential.

A Note Regarding this Manual

Individual children, circumstances, and cases vary greatly, and the laws and regulations governing delayed registrations of birth are subject to change at any time. For individual assistance or specific questions, please contact The Alliance for Children’s Rights.

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I) Identity Theft and Foster Youth

Recognized as one of the fastest growing crimes in the United States, identity theft is a major concern for youth in foster care since many people have access to their personal information. In fact, some agencies estimate that as many as half of all foster youth in California have been victimized.¹ Unfortunately The Alliance is unable to identify the perpetrator in most circumstances, and when we can, it is often a relative of the youth.

There are two common types of identity theft: (1) using another's personal information to obtain credit, goods, and services; and (2) using another's personal information at the time of arrest. This manual only deals with consumer identity theft matters.

For foster children who "age out" of the system as young adults, the consequences of identity theft are particularly devastating. They are unable to rent an apartment or obtain educational loans due to poor credit that is usually no fault of their own. This is made even more overwhelming by the fact that they do not have the support of a family to help them through the process of clearing their credit or co-signing for them.

Unfortunately, resolving identity theft is not as simple as merely requesting a new social security number. It is only in extremely egregious instances of identity theft that a person may be assigned a new number.²

The Alliance is committed to removing barriers to employment, housing, and education for these youth, and assisting them through this process is one of the ways we help. Thank you for your interest in helping our youth clear their credit of identity theft.

II) The Process for Resolving Identity Theft

This part of the manual explains the process for resolving identity theft in California. The information in this manual and the attached samples do not apply to youth located in other states. Keep in mind that this manual is merely a "best practices" guide, and that dealing with individual creditors will differ on a case-by-case basis.

Step One: Prepare your client.

- Interview your client. Get a clear understanding as to how your client became aware he or she was the victim of identity theft, how it happened, when it happened, etc. Be aware that your client may not know the answer to some of these questions, and may only know about the identity theft through a credit report.
- Avoid legalese.
- Inform the client that resolving identity theft can be a lengthy process, and can take anywhere from three months to a year or longer.

¹ See <http://www.thedailybeast.com/newsweek/2009/02/06/sabotaged-by-the-system.html>. (last visited December 14, 2011).

² See <http://www.ssa.gov/pubs/10064.html#new> (last visited December 16, 2011).

- Advise the client that the first step towards fixing the problem is for him or her to file a police report at the police station closest to his or her residence (*see* CAL. PENAL CODE § 530.6). If the client knows the perpetrator, he or she may be reluctant to file a police report, especially if it is a family member. Let the client know the decision as to whether to file a police report is entirely up to him or her, but that you cannot move forward in resolving identity theft without a police report. Without one, creditors will refuse to give credence to any claims of identity theft. The client should bring a government issued ID and a copy of his or her credit report (see Step Two, below).
 - **PRACTICE TIP:** A client who knows the perpetrator might suggest that he will have that person pay the bill, or will just pay the bill him or herself. This will not resolve the underlying problem, as creditors will view it as an admission of responsibility for the bill. Additionally, once a debt is reported on a consumer credit report it will remain as a negative account for up to seven years, even if the bill is subsequently paid off in full. So even if the client pays the bill, it will continue to negatively affect his or her credit.
- Share prevention techniques, such as:
 - Never share personal information like ATM pin codes, social security numbers, credit card numbers, etc.;
 - Never carry your social security card, unless you know for a fact you will be needing it that day;
 - Never cash a check for someone else;
 - Read your bank and credit card statements on a regular basis (at least once a month);
 - Check your credit report once a year;
 - Report any suspected identity theft immediately.

Step Two: Obtain credit reports.

- Obtain credit reports from all three major credit reporting agencies (Experian, Equifax and Transunion) through www.annualcreditreport.com (last visited December 19, 2011) and print the reports. You will need the client to be present or on the phone for this, as the website will contain questions to verify your client's identity. If your client is on the phone with you, ensure that nobody is within earshot of him or her.
- Be aware that these identifying questions can include "trick" questions to which the answer is "none of the above."
- If online access is denied, the website will provide a form to request the reports by mail. Send the form and a Limited Power of Attorney (see Step Three, below) through the mail to the address listed on the form . Include a copy of your client's government issued ID, and proof of current address if the address on the ID is out-of-date.
- Review the credit reports with your client to determine whether there has been any unauthorized activity. In addition to the credit accounts, be sure to review any addresses, employment information, and any other personal identifying information to ensure accuracy. Incorrect addresses are frequently a warning sign that your client's identity has been compromised.

Step Three: Gather and prepare documents.

- Contact the police station to obtain a copy of the police report filed by your client.
- Fill out the Federal Trade Commission Identity Theft Affidavit with your client, available at <http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf> (last visited December 19, 2011).
- Obtain a copy of your client's government-issued identification (passport, drivers license, California State ID).
- If your client received any relevant notices from financial agencies, collection agencies, banks, demand letters, legal notices, etc., keep the originals and provide copies to your client.
- Have your client sign a Limited Power of Attorney in the presence of a notary public (see attached sample).

Step Four: Working with credit reporting agencies and creditors.

- Alert the three credit reporting agencies that your client has been a victim of identity theft, and request that a fraud alert be placed on your client's credit profile. Identify the specific items on the credit report your client will be disputing with creditors. Also include copies of the police report, power of attorney, FTC affidavit, and your client's ID. Send these to the fraud departments of the credit reporting agencies:
 - Experian, Consumer Assistance
PO Box 2104
Allen, TX 75013
 - Equifax Fraud Division
PO Box 740241
Atlanta, GA 30374
 - Transunion Fraud Division
PO Box 6790
Fullerton, CA 92634
- Initiate contact with creditors. Note that if a debt has already been sold to a collection agency, you should initiate contact directly with the collection agency. Alert the creditors in writing that your client is disputing the account. Include copies of the police report, power of attorney, FTC affidavit and your client's ID. Generally, the credit reporting agencies will have the contact information of the creditors listed on your client's credit report. Double check the accuracy of the contact information, as these reports occasionally do not contain the most up-to-date information. Follow up by phone if you have not received a response within 30 business days, pursuant to CIVIL CODE § 1785.30. Each company will have a separate process for handling identity theft and fraud claims. Be patient, but diligent in assisting your client. If you have provided the aforementioned documentation, most creditors will accept that as proof that the identity theft occurred, and will close the account. However, if you are still experiencing resistance from the creditors, please contact The Alliance for advice on how to proceed.
- Once a creditor investigates the claim and determines that the account was fraudulently opened, the creditor should close the account and alert you in writing that the account has been closed due to fraudulent activity.

- When you have received confirmation in writing that all of the fraudulent credit accounts have been closed, provide copies of those letters to the three different credit reporting agencies. Ask them to provide notice to you that the accounts have been deleted from your client's credit report.

Step Five (Optional): Referring for Criminal Prosecution

- If your client is willing, you may refer the case to the local city attorney for prosecution. There is no guarantee that the city attorney will choose to file charges against the perpetrator.
- There must be a cooperative victim, an identified suspect, a police report, and evidence (such as a credit report under your client's name, but listing the perpetrator's address).
- If the theft occurred in the city of Los Angeles, you may refer the case to:
 - Jerry C. Baik, Supervising Assistant City Attorney
Identity Theft and Fraud Unit
200 N. Main St., 500 C.H.E.
Los Angeles, CA 90012
General: (213) 473-9948
Direct: (213) 473-5794
Fax: (213) 473-9753
jerry.baik@lacity.org

Step Six: Final Steps

- After completing the above steps, you should provide copies of all letters from creditors and the credit reporting agencies to your client. Advise him or her to keep those letters in a safe place for at least seven years (preferably, your client should keep them indefinitely), just in case the accounts are inadvertently reported on future credit reports.
- When your representation is complete, you may provide a disengagement letter, per your firm's policy. At that point, please provide a copy of your file to The Alliance.

III) Applicable California Law

When assisting a youth in resolving identity theft, pay particular attention to the following code sections. This list is not exhaustive, and the laws are subject to change at any time. They read, in pertinent part:

- Beginning July 1, 2013, "when a youth in a foster care placement reaches his or her 16th birthday, the county welfare department shall request a consumer disclosure...on the youth's behalf...to ascertain whether or not identity theft has occurred. ...[I]f the consumer disclosure reveals any negative items, or any evidence that some form of identity theft has occurred, the county welfare department shall refer the youth to an approved counseling organization that provides services to victims of identity theft..."
CAL. WELF. & INST. CODE § 10618.6.

- "Every person who willfully obtains personal identifying information...of another person...and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense. ...Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information...is guilty of a public offense. ..." CAL. PENAL CODE § 530.5.
- "A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another...may initiate a law enforcement investigation by **contacting the local law enforcement agency that has jurisdiction over his or her...residence**...which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts." CAL. PENAL CODE § 530.6 (emphasis added).
- "If a person discovers...that an account in his name has been opened...by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report...the person...shall be entitled to receive information related to the application or account. Upon request by the person...in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which...the account was opened shall provide copies of all paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations required by this section, **without charge, within 10 business days** of receipt of the person's request and submission of the required copy of the police report and identifying information." CAL. PENAL CODE § 530.8 (emphasis added).
- "Upon the request of a person who has obtained a police report...a credit card issuer shall provide to that person...copies of all application forms or application information containing the person's...identifying information pertaining to the application. ...The credit card issuer shall provide copies of all forms and information...without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information." CAL. CIV. CODE § 1748.95.
- "Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request." CAL. CIV. CODE § 1785.10.
- "A consumer credit reporting agency shall furnish a consumer credit report...in accordance with the written instructions of the consumer to whom it relates." CAL. CIV. CODE § 1785.11.
- "A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. '**Security alert**' means a notice placed in a consumer's credit report, at the request of the

consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods and services in the consumer's name. ...A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of the existence of a security alert in the credit report of that consumer. ...A consumer credit reporting agency shall place a security alert on a consumer's credit report no later than five business days after receiving a request from the consumer. ...The security alert shall remain in place for at least 90 days, and a consumer shall have the right to request a renewal of the security alert..." CAL. CIV. CODE § 1785.11.1.

- "A consumer may elect to place a security freeze on his or her credit report by making a request in writing by mail to a consumer credit reporting agency. 'Security freeze' means a notice placed in a consumer's credit report, at the request of the consumer...that prohibits the consumer credit reporting agency from releasing the consumer's credit report...without the express authorization of the consumer..." CAL. CIV. CODE § 1785.11.2.
- "...Every consumer credit reporting agency shall, upon the receipt from a victim of identity theft of a police report...provide the victim, free of charge and upon request, with up to 12 copies of his or her file during a consecutive 12-month period, not to exceed one copy per month, following the date of the police report..." CAL. CIV. CODE § 1785.15.3.
- "If the completeness or accuracy of any item...contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge, reinvestigate and record the current status of the disputed information before the end of the 30-business-day period...the agency shall notify any person who provided information in dispute at the address and manner specified by the person. A consumer credit reporting agency may require that dispute by consumers be in writing. ...In conducting that reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. ...If the disputed item of information is found to be inaccurate, missing, or can no longer be verified by the evidence submitted, the consumer credit reporting agency shall promptly add, correct, or delete that information. ...If a consumer submits to a credit reporting agency a copy of a valid police report...the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report..." CAL. CIV. CODE § 1785.16.
- No creditor may sell a consumer debt to a debt collector...if the consumer is a victim of identity theft...and with respect to that debt, the creditor has received a notice...[this] does not apply to a creditor's sale of debt to a subsidiary or affiliate of the creditor if, with respect to that debt, the subsidiary or affiliate does not take any action to collect the debt." CAL. CIV. CODE § 1785.16.2.
- Upon receiving notice of a dispute...with regard to the completeness or accuracy of any information provided to a consumer credit reporting agency, the person that provided

the information shall (1) complete an investigation with respect to the disputed information and report to the consumer credit reporting agency the results of that investigation..." CAL. CIV. CODE § 1785.25.

- "...[A] consumer may make a written demand on any person furnishing information to the consumer credit reporting agency to correct any information that the consumer believes to be inaccurate. The person upon whom the written demand is made **shall acknowledge the demand within 30 days**. ...If upon investigation the information is found to be inaccurate or incorrect, the consumer may require the consumer credit reporting agency to delete or correct the item or items of information within a reasonable time. If within 90 days the consumer credit reporting agency does not receive any information from the person requested to furnish the same or any communication relative to this information from this person, the consumer credit reporting agency shall delete the information from the report." CAL. CIV. CODE § 1785.30 (emphasis added).
- "Upon receipt from a debtor of...a copy of a police report...the debtor's written statement that the debtor claims to be the victim of identity theft with respect to [a] specific debt...[the debt collector shall cease collection activities]..." CAL. CIV. CODE § 1788.18.