



Stolen Future

Foster Youth Identity Theft

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Imagine that you are a foster child who just turned 18, ready to start life on your own. You try to rent an apartment or apply for student loans only to find out that you have horrible credit because you were a victim of identity theft. Unfortunately many foster youth face this scenario each year. And fortunately legal aid advocates offer critical assistance in dealing with foster youth identity theft.

The foster care system in the United States serves approximately 700,000 youths.¹ Every year over 26,000 of those children age out of foster care.² As those youths transition into adulthood, good credit is essential. If a foster youth's credit has been damaged by identity theft, then that young person may not be able to get a job, apply for student loans, obtain a car loan, or even get a cellphone. Indeed, as youths age out of foster care, poor credit can be a major obstacle to their independence and financial stability.

Here we examine how legal aid attorneys help foster youths recover from identity theft. We discuss the scope of the problem of identity theft in the foster care system. We describe a recent federal law, which seeks to solve the problem of foster care identity theft. And we focus on how legal

aid advocates can help foster youths recover from identity theft, repair their credit, and start the path to a secure future; we also outline resources that can assist legal aid advocates working with foster youths. We highlight a recent project in Cleveland, Ohio; the project demonstrates how legal aid attorneys are working with the Federal Trade Commission

suggest that children are victimized at a much higher rate than adults.⁵

Children are particularly vulnerable to identity theft for various reasons. First, children have clean credit. Second, children's personal information is readily available in such contexts as schools, pediatrician's offices, and sports or social

While studies regarding the rates of child identity theft vary, most suggest that children are victimized at a much higher rate than adults.

(FTC) as part of the FTC's Legal Services Collaboration, and their local child welfare agencies to address foster child identity theft.³ And we discuss how the FTC and legal services can work together to tackle the problem of foster youth identity theft.

Scope of the Problem

Identity theft is a serious problem and children—especially foster children—are particularly vulnerable to becoming victims. For over a decade, identity theft has been the top complaint that the FTC receives through its Consumer Sentinel complaints database.⁴ While studies regarding the rates of child identity theft vary, most

clubs. Third, since most people do not check children's credit, a thief of children's credit may go undetected for years.

A number of factors make identity theft a particularly dire problem for foster youths. Their personal information passes through many hands as they move through the system—from biological parents who were abusive or neglectful, to foster parents, and to social workers or other child welfare system staff. To exacerbate this problem, some states use the child's social security number as the child's foster care identification number. Furthermore, when foster children become victims of identity theft, remedying the problem may be more

1 [Melanie Delgado et al., Children's Advocacy Institute & First Star, The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security](#) (2011).

2 [Jennifer Miller & Rebecca Robuck, Annie E. Casey Foundation, Youth and Credit: Protecting the Credit of Youth in Foster Care](#) (2013).

3 The Federal Trade Commission (FTC) Legal Services Collaboration includes representatives in Washington, D.C., and in the FTC's regional offices in New York, Cleveland, Atlanta, Chicago, Dallas, Los Angeles, San Francisco, and Seattle.

4 [FEDERAL TRADE COMMISSION, CONSUMER SENTINEL NETWORK DATA BOOK FOR JANUARY–DECEMBER 2012](#) (Feb. 2013).

5 See [Jamie May, AllClearID Alert Network, Child Identity Theft Report 2012—Identity Thieves Target Young Children: What Parents Need to Know to Protect Their Kids](#) (2012) (children had someone else using their social security number at rate 35 times higher than adults); [Richard Power, Carnegie Mellon CyLab, Child Identity Theft: New Evidence Indicates Identity Thieves Are Targeting Children for Unused Social Security Numbers](#) (2011) (children had someone else using their social security number at rate 51 times higher than adults); [Press Release, ID Analytics, More than 140,000 Children Could Be Victims of Identity Fraud Each Year](#) (July 12, 2011) (children were seven times more likely to experience identity theft than adults).

difficult for them because they rarely have a support network of adults to help them clean up their credit. The consequences of identity theft mentioned earlier can be more severe for foster youths and negatively affect their successful transition into financial independence and adulthood.

The Child and Family Services Improvement and Innovation Act of 2011

Recognizing the severe consequences of foster child identity theft, groups such as the Children's Advocacy Institute pushed for legislation to solve the problem.⁶ In September 2011 President Obama signed the Child and Family Services Improvement and Innovation Act of 2011.⁷ Among other provisions, the Act requires that each foster child, from age 16 until emancipation, (1) receive a free credit report each year; and (2) "receive[] assistance (including, when feasible from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report."⁸ To determine where legal aid advocates fit in, we look at each of the prongs of the Act in turn.

The first prong of the Act, requiring child welfare agencies to obtain credit reports, is probably best performed by the child welfare agencies themselves, in most instances. The three largest credit-reporting agencies—Equifax, Experian, and TransUnion—have set up procedures for child welfare agencies to batch-process their requests for foster youths' credit files.⁹ Generally obtaining the

The remedies differ depending on whether the debts were incurred when the foster youth was a minor or when the youth was over the age of majority (which in most states is 18).

reports will be easier and more efficient for child welfare agencies. In those instances where that is not the case, legal aid advocates should request a "manual search" or "Social Security Number only" ("SSN only") search of the child's credit report. While the standard advice for adults is to get your credit report at annualcreditreport.com, this advice does not work well for children because much child identity theft involves use of the child's social security number with the thief's name or a phony name. Annualcreditreport.com (which searches for the child's name in connection with the social security number) will not catch those instances of child identity theft, while a manual or SSN-only search should.

As for the second prong of the Act, legal aid can play a substantial role. The second prong requires child welfare agencies to assist foster youth in resolving inaccuracies on their credit reports. The second prong of the Act does not specify, however, exactly what child welfare agencies must do to help foster youth resolve any inaccuracies. For example, would merely referring a foster child to the local consumer credit counseling agency fulfill a child welfare agency's obligations under the law? Or must the child welfare agencies make phone calls on the child's behalf until the credit-reporting inaccuracies are fixed? In the absence of clear requirements, legal aid advocates can fill the gap to ensure that the credit-reporting problems of foster youth get meaningful resolution. Next we explain how to do that.

How Legal Aid Advocates Can Help Repair Foster Youth Credit

Legal aid advocates are well situated to assist foster youth in reading and correcting their credit reports. The FTC has varied tools that can help. Here we lay out the process. First we walk through the legal tools to help a foster youth correct credit repair problems. Then we discuss ways that legal aid agencies can collaborate with local child welfare agencies to assist foster youth on credit repair. The sidebar outlines resources that can help legal aid advocates.

TOOLS FOR LEGAL AID ADVOCATES. When helping foster youth repair a credit report, the first step is to determine when the fraudulent debts were incurred and whether the child was a minor at the time. The remedies differ depending on whether the debts were incurred when the foster youth was a minor or when the youth was over the age of majority (which in most states is 18).¹⁰

Debts Incurred When the Foster Youth Was a Minor. If the identity theft-related debts were incurred when the foster youth was a minor, then the remedy is relatively straightforward. Since minors generally have no capacity to contract under law, any debts incurred while the youth was a minor

6 See Delgado et al., *supra* note 1.

7 Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, 125 Stat. 369 (2011) (codified in various parts of the code). The Act renews Title IV-B of the Social Security Act to extend the child welfare services program through 2016. In doing so, it adds requirements related to foster child identity theft.

8 See 42 U.S.C. § 675(5)(I).

9 See Staci GolbergBelle & Sarah Chenven, Credit Builders Alliance, Accessing Credit Reports for Foster Youth: A Reference Guide for Child Welfare Agencies (n.d.).

10 See USLegal, Age of Majority (2014). Exceptions are Alabama (age 19) and Nebraska (age 19 or upon marriage). A child who is legally emancipated by a court automatically attains legal status of majority upon the signing of the court order, even if the child has not actually reached the age of majority established under state law.

could not possibly belong to the youth.¹¹ You merely need to provide proof to the credit-reporting agencies that the foster youth was a minor when the charges were made. This usually involves sending a copy of the child's birth certificate, along with a letter explaining that the child was a minor when the debts were incurred.¹² The FTC has also created a "Uniform Minor's Status Declaration" that you may use in lieu of a cover letter.¹³ Based on this information, the credit-reporting agencies should remove the fraudulent charges from the child's credit report.

Debts Incurred When the Foster Youth Was Over the Age of Majority—Fair Credit Reporting Act Remedies. If the identity theft-related debts were incurred when the foster youth was above the age of majority, then you must rely on the remedies in the Fair Credit Reporting Act to clear the fraudulent information from the report.¹⁴ There are two primary Fair Credit Reporting Act mechanisms for disputing fraudulent information on a credit report: (1) Section 605B, commonly referred to as "blocking;" and (2) Section 611, commonly referred to as the traditional dispute process.¹⁵

Section 605B—Blocking. Section 605B of the Fair Credit Reporting Act provides

The FTC has created a "Pro Bono Guide for Assisting Identity Theft Victims" that walks through many of the steps and even includes sample letters pursuant to Section 605B or Section 611 of the Fair Credit Reporting Act.

that a credit-reporting agency must block erroneous information on a credit report within four business days, without an investigation.¹⁶ The credit-reporting agency must notify the furnishers of the information that it is blocking the information.¹⁷ In order to be eligible for blocking under Section 605B, individuals must submit proof of identity and an "Identity Theft Report," which consists of an "Identity Theft Affidavit" and a police report. The "Identity Theft Affidavit" is available in the FTC's "Taking Charge" publication (see sidebar).

In the alternative, an "Identity Theft Affidavit" may be prepared by filing a complaint at www.ftc.gov and printing out the complaint, which will be generated in affidavit form. For the foster child who has difficulty in getting the police to take a police report, the FTC has created a "Memo to Law Enforcement" that is available in its "Pro Bono Guide for Assisting Identity Theft Victims" (see sidebar), which explains the importance of police reports in identity-theft cases. Police should be educated about the importance of having a police report in victim recovery. The Section 605B blocking provision was created by the Fair and Accurate

Resources for Legal Aid Advocates Working with Foster Youth

FTC'S LEGAL SERVICES COLLABORATION

The Federal Trade Commission (FTC) Legal Services Collaboration seeks to identify consumer protection issues affecting low-income communities and to establish collaborative projects that benefit advocates and the communities they serve. To join the Legal Services Collaboration e-mail list, contact Monica Vaca at mvaca@ftc.gov.

FTC RESOURCES

The FTC has a variety of consumer education resources that [legal aid offices can order in bulk](#) for free:

- [Taking Charge: What to Do If Your Identity Is Stolen](#) (April 2013) (updated and comprehensive guide for victims of identity theft; with to-do lists, contact information, blank forms, and sample letters).
- [Identity Theft: What to Know, What to Do](#) (n.d.) (brief overview of how to recover from identity theft and how to reduce your risk).
- [Safeguarding Your Child's Future](#) (May 2012) (guide for parents of child identity-theft victims; with to-do lists, contact information, blank forms, and Uniform Minor's Status Declaration).
- [Guide for Assisting Identity Theft Victims](#) (Sept. 2013) (help for attorneys and victim service providers in charting their way through and resolving legal problems that pro bono clients may have following theft of their identity; with sample letters, relevant statutes, and consumer education materials).

11 See, e.g., IDAHO CODE ANN. §§ 32-101, 32-103 (2013); 755 ILL. COMP. STAT. 5/11-1 (2013); IOWA CODE § 599.2 (2013). In some states a minor may not void a contract for necessities such as food, clothing, or housing. In some states, if the benefits continue past the age of majority, then the contract may not be voidable. See, e.g., GA. CODE ANN. § 13-3-20 (2010).

12 For an adopted child without a birth certificate, you may submit a final adoption proceeding order or certificate (see [Federal Trade Commission, Safeguarding Your Child's Future](#) (May 2012)).

13 See *id.*

14 Fair Credit Reporting Act, 15 U.S.C. § 1681.

15 Fair Credit Reporting Act § 605B, 15 U.S.C. § 1681c-2 (as amended by the Fair and Accurate Credit Transaction Act of 2003, Pub. L. 108-159, 117 Stat. 1952, 1964–1965 (2003)); Fair Credit Reporting Act § 611, 15 U.S.C. § 1681i. For additional information about the many other tools that may be used to assist identity-theft victims, see [FEDERAL TRADE COMMISSION, GUIDE FOR ASSISTING IDENTITY THEFT VICTIMS](#) (Sept. 2013).

16 See Fair Credit Reporting Act, 15 U.S.C. § 1681c-2(c) (1). The credit-reporting agency may refuse to block the information if the agency reasonably determines that the consumer (1) has not told the truth about the consumer's identity theft; (2) erroneously requested the block; or (3) acquired goods, services, or money as a result of the transactions identified in the blocking request.

17 See *id.* § 1681c-2(b).



Credit Transactions Act of 2003 to give identity-theft victims a stronger tool for correcting their credit reports than the regular dispute procedures under Section 611 of the Fair Credit Reporting Act.¹⁸

Section 611—Dispute Procedure. The other Fair Credit Reporting Act mechanism for disputing erroneous information is the traditional dispute procedure under Section 611, which any consumer may use whether or not the consumer is a victim of identity theft. Under this procedure, the credit-reporting agencies have 30 days to work with the furnisher of information to investigate the alleged erroneous transactions and determine whether to remove the transactions from the credit report. If they decide in favor of the consumer, then they will modify, delete, or permanently block the inaccurate information.¹⁹ Otherwise the information will remain on the credit report, and the consumer may ask the credit-reporting agency to insert a brief statement explaining why the consumer disputes the charges.²⁰ Even though Section 611 is not as strong as Section 605B, it has one key advantage for some individuals—no police report is required to assert your rights

under Section 611. A foster youth who does not want to file a police report against, for instance, a family member who perpetrated identity theft will still have recourse under Section 611 of the Fair Credit Reporting Act.

The FTC has created a “Pro Bono Guide for Assisting Identity Theft Victims” that walks through many of the steps and even includes sample letters pursuant to Section 605B or Section 611 of the Fair Credit Reporting Act. The resources listed in the sidebar give legal aid advocates a wealth of additional tools upon which to rely in assisting foster youth.

WAYS TO PARTNER WITH CHILD WELFARE AGENCIES. Armed with these tools to assist foster youth on credit repair, advocates may want ideas about how best to work with child welfare agencies to solve this problem. A variety of models may work. In some states, such as Nevada, the child welfare agencies have sought out the help of local legal aid agencies. In other instances, such as at New York’s Fordham Law School, law school clinics may offer assistance to child welfare agencies and may train pro bono attorneys on how to assist low-income identity-theft victims. At legal aid agencies (such as Maryland’s Legal Aid Bureau) whose advocates are court-appointed to represent children in abuse and neglect proceedings, each advocate may

OTHER RESOURCES

- **Annie E. Casey Foundation:** [*Youth and Credit: Protecting the Credit of Youth in Foster Care*](#) (2013).
- **Credit Builders Alliance:** [Staci GolbergBelle & Sarah Chenven, Credit Builders Alliance, Accessing Credit Reports for Foster Youth: A Reference Guide for Child Welfare Agencies](#) (n.d.).

work directly with the advocate’s client to make sure that the youth’s credit report is cleaned up before the youth is emancipated from foster care. Next we highlight a particular successful partnership among legal services, the FTC, and child welfare agencies to tackle foster child identity theft.

Partnering to Help Foster Youths Repair Their Credit: Spotlight on Cleveland

Legal aid advocates in Cleveland, Ohio, have been helping solve the problem of foster youth identity theft. Beginning in the fall of 2011, attorneys from the FTC’s East Central Regional Office agreed to join the Legal Aid Society of Cleveland to offer programs to local agencies assisting teenagers aging out of the foster youth system. Harold Williams, who for many years headed the Legal Aid Society’s Consumer Law Practice Group, identified this population as one that could particularly benefit from consumer education. Following Williams’s lead, the FTC and the Legal Aid Society’s attorneys contacted the Cuyahoga County Department of Children and Family Services and set up a meeting with supervisors of the department’s Independent Living Division.²¹

18 See *supra* note 15.

19 See Fair Credit Reporting Act § 1681i(b)–(c).

20 See *id.* The credit-reporting agency is permitted to limit the statement to 100 words or use a code to indicate the nature of the consumer’s statement.

21 Meeting arranged through an e-mail from Maria Del Monaco (FTC) to Harold Williams and Julie Robie (Legal Aid Society of Cleveland) and Larissa Bungo (FTC) (Nov. 9, 2011).

The Independent Living Division turned out to be the perfect partner for the Legal Aid Society and the FTC. The division was already providing year-round, 10-week training sessions to teenagers, 16 and older, who would soon be leaving the foster youth system. Discussions among the Department of Children and Family Services, Legal Aid Society, and FTC staff members revealed many subjects, besides identity theft, in which the department's staff members were interested. The participants agreed to begin the project with an all-day training session for the department's staff.

The staff training session took place in the spring of 2012. Over the course of a full day, 25 department supervisors, case managers, and others assisting the Independent Living Division, heard presentations by legal aid attorneys and by one of us (Maria Del Monaco) on six topics: consumer issues, education, public benefits, housing and utilities, family law, and employment. The presentations gave the department's workers practical information and resources for solving problems that the teenagers were likely to face. The consumer presentation focused on four areas thought to be of special importance: identity theft, Internet safety, avoiding scams, and establishing good credit.

Following the staff training session, Legal Aid Society and FTC attorneys became a resource for the Independent Living Division. The recent passage of the Child and Family Services Improvement and Innovation Act of 2011 required the department's workers to obtain credit reports for the teenagers under their supervision and to help resolve any inaccuracies in those reports. FTC and Legal Aid Society attorneys assisted by providing resources for handling these new responsibilities and alerting the department's workers to a new Identity Theft Unit established by the Ohio attorney general's office. FTC attorneys provided a tutorial on interview-

ing identity-theft victims, contact information for the three major credit-reporting agencies, and the FTC's step-by-step guide for assisting victims of identity theft.

Legal Aid Society and FTC staff members also turned their attention to foster youth training sessions. Resuming their initial focus on the topics of identity theft, Internet safety, and the importance of establishing good credit, and having been warned to supply interesting and interactive content, the two agencies developed games that could both entertain and instruct. The Legal Aid Society advocates started with a short quiz, followed by a *Jeopardy*-like game, in which each teenager could select a category and a question and give the correct answer. The FTC attorneys played "Unscam Yourself," an original game developed by the FTC's Division of Consumer and Business Education.²² Each right answer allowed the winning team to play "wastepaper basketball." Both games awarded correct answers with candy.

The training sessions have been successful. Each class has had 15 to 20 teenagers, and although the teenagers' knowledge of these topics was impressive, in many instances they lacked important information. These classes, in conjunction with budgeting and other classes offered by the department's staff, seem clearly to be giving the teenagers instruction that they will apply later in life. The FTC and Legal Aid Society staff members plan to continue this outreach and to explore opportunities for additional prevention education for teenagers in the foster care system. Anne Sweeney, Legal Aid Society's managing attorney for community engagement, commented:

The foundation established by the FTC and consumer attorneys at Legal Aid allowed me to work collaboratively with the Cuyahoga County Teen Advocacy Group—a group of youth preparing

to age out or who recently aged out of care—to plan a legal workshop for teens on topics they identified as important to them. We hope to expand these kinds of events in the future.²³

Access to justice for the nation's most vulnerable populations is a goal that the FTC and legal aid agencies share. Working together, the FTC and legal aid advocates can help ensure that foster youth victims of identity theft get meaningful help resolving their credit repair problems. FTC attorneys are available to discuss with legal aid advocates opportunities for collaboration on foster youth identity theft and other consumer law issues. Together we can help foster youth enter adulthood with a clean financial slate. Let's work together to forge a brighter future for foster youth across the country.

AUTHORS' NOTE

The views in this article are our views alone. They do not express the views or opinions of the Federal Trade Commission or any individual commissioner.

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²² [Federal Trade Commission, Unscam Yourself](#) (2012).

²³ E-mail from Anne Sweeney, Managing Attorney for Community Engagement, Legal Aid Society of Cleveland, to Maria Del Monaco, FTC (Nov. 4, 2013).