

2 SHB 1784 - S COMM AMD

3 By Committee on Health & Long-Term Care

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. Sec. 1. The legislature finds that it is imperative  
8 that the limited resources dedicated to assist those in need be  
9 protected from fraud and abuse. While the legislature recognizes that  
10 it is a small percentage of the population that seeks to defraud the  
11 public assistance system, those who do defraud the public assistance  
12 system take significant resources from the needy.

13 The legislature also finds that one of the most effective ways to  
14 protect against these criminal acts is to have specific personnel whose  
15 focus is to investigate and refer for prosecution individuals who  
16 receive assistance improperly.

17 Therefore, the legislature intends to establish a specific entity  
18 within the department of social and health services whose purpose is to  
19 protect the state's limited resources by focusing on public assistance  
20 fraud.

21 Sec. 2. RCW 43.20A.020 and 1987 c 283 s 1 are each amended to read  
22 as follows:

23 ~~((As used in this chapter, unless the context indicates))~~ The  
24 definitions in this section apply throughout this chapter unless the  
25 context clearly requires otherwise:

26 (1) "Director" means the director of the division of fraud  
27 investigations.

28 (2) "Department" means the department of social and health  
29 services.

30 ~~((2) "Secretary" means the secretary of the department of social~~  
31 ~~and health services.~~

32 (3) ~~"Deputy secretary" means the deputy secretary of the department~~  
33 ~~of social and health services.~~

34 (4) ~~"Overpayment" means any department payment or department~~  
35 ~~benefit to a recipient or to a vendor in excess of that to which the~~

1 ~~recipient or vendor is entitled by law, rule, or contract, including~~  
2 ~~amounts in dispute pending resolution.~~

3 ~~(5)) (3) "Deputy secretary" means the deputy secretary of the~~  
4 ~~department.~~

5 ~~(4) "Disclosable information" means public information that:~~

6 ~~(a) Is not exempt from disclosure under chapter 42.17 RCW;~~

7 ~~(b) Does not pertain to an ongoing investigation; and~~

8 ~~(c) Has not previously been disclosed in a public record.~~

9 ~~(5) "Fraud or abuse" means acts and practices of fraud or abuse in~~  
10 ~~programs administered by the department, including criminal or~~  
11 ~~administrative misconduct by clients or vendors. This does not include~~  
12 ~~provider fraud as it relates to the department's administration of~~  
13 ~~funds under Title XIX of the federal social security act, medicaid.~~

14 ~~(6) "Division" means the division of fraud investigations of the~~  
15 ~~department.~~

16 ~~(7) "Overpayment" means any department payment or department~~  
17 ~~benefit to a recipient or to a vendor in excess of that to which the~~  
18 ~~recipient or vendor is entitled by law, rule, or contract, including~~  
19 ~~amounts in dispute pending resolution.~~

20 ~~(8) "Secretary" means the secretary of the department.~~

21 ~~(9) "Vendor" means an entity that provides goods or services to or~~  
22 ~~for clientele of the department and that controls operational~~  
23 ~~decisions.~~

24 NEW SECTION. **Sec. 3.** (1) The division is established in the  
25 department in order to create an independent unit to:

26 (a) Conduct and supervise investigations relating to allegations of  
27 fraud or abuse;

28 (b) Provide leadership and coordination in recommending policies  
29 and procedures designed to detect and prevent fraud and abuse; and

30 (c) Provide a method of informing the secretary and the legislature  
31 about vulnerabilities and deficiencies relating to the detection and  
32 prevention of fraud or abuse as may be discovered as a result of  
33 completed investigations conducted or coordinated by the division.

34 (2) The division is designated a criminal justice agency as defined  
35 in RCW 10.97.030 and 43.43.705.

36 NEW SECTION. **Sec. 4.** The director is the head of the division and  
37 is appointed by the secretary solely on the basis of integrity and

1 demonstrated ability in law enforcement management, public  
2 administration, and investigations. The director reports to and is  
3 under the general supervision of the secretary in all matters related  
4 to fraud and program integrity.

5 NEW SECTION. **Sec. 5.** If the director discovers that improper  
6 governmental action, as defined in RCW 42.40.020, has occurred during  
7 an investigation with respect to an employee, such as an abuse of  
8 authority so as to impede or interfere with an investigation, then the  
9 director may report the improper governmental action to the auditor  
10 under chapter 42.40 RCW.

11 NEW SECTION. **Sec. 6.** (1) It is the duty and responsibility of the  
12 director to:

13 (a) Conduct, supervise, and coordinate fraud and abuse  
14 investigations and provide policy direction as it relates to program  
15 integrity and fraud and abuse;

16 (b) Review proposed legislation and rules relating to the detection  
17 and prevention of fraud and abuse in programs administered by the  
18 department, and make recommendations for improvement;

19 (c) Recommend policies for and coordinate activities carried out or  
20 financed by the department for the purpose of preventing and detecting  
21 fraud or abuse;

22 (d) Recommend policies for, and conduct, supervise, and coordinate,  
23 relationships between the department and federal, state, and local  
24 governmental agencies, and nongovernmental entities, with respect to:

25 (i) Matters relating to the prevention and detection of fraud or abuse  
26 in programs and operations administered by the department; or (ii) the  
27 identification and prosecution of participants in such fraud or abuse;  
28 and

29 (e) Keep the secretary and the legislature informed by means of  
30 reports concerning the detection and prevention of fraud or abuse, and  
31 to make recommendations for improvement of the activities.

32 (2) In carrying out the duties and responsibilities established in  
33 sections 3 through 12 of this act, the director must refer all  
34 investigations in which the director has found substantial evidence  
35 supporting a finding of a violation of federal or state criminal law to  
36 the appropriate prosecuting authority for possible criminal  
37 prosecution.

1        NEW SECTION.    **Sec. 7.**    The division has the authority to apply for  
2 and execute all warrants and serve process of law issued by the courts.  
3 The division has the power to issue and serve subpoenas under RCW  
4 43.20A.110 and 43.20A.605.

5        NEW SECTION.    **Sec. 8.**    (1) The director must submit a report  
6 summarizing the activities of the division to the appropriate  
7 committees of the senate and house of representatives by November 30,  
8 1998, and by November 30, 1999, and biennially thereafter. The report  
9 shall contain only disclosable information, including:

10        (a) A description of significant fraud or abuse, and of  
11 vulnerabilities or deficiencies relating to the prevention and  
12 detection of fraud or abuse, discovered as a result of investigations  
13 completed during the reporting period;

14        (b) A description of corrective action taken by the department  
15 regarding fraud and abuse discovered as a result of investigations  
16 conducted by the division;

17        (c) Recommendations for improving the activities of the division  
18 with respect to the vulnerabilities or deficiencies identified under  
19 (a) of this subsection;

20        (d) An identification of each significant recommendation described  
21 in the previous reports on which corrective action has or has not been  
22 completed;

23        (e) A summary of matters referred to prosecution authorities during  
24 the reporting period and the charges filed and convictions entered  
25 during the reporting period that have resulted from referrals by the  
26 division; and

27        (f) Any comments the secretary determines to be appropriate.

28        (2) The director must forward a draft of the report to the  
29 secretary not less than twenty days before the date that the report is  
30 to be issued.

31        (3) Within sixty days after the transmission of the report of the  
32 director to the legislature, the secretary must make copies of the  
33 report available to the public upon request and at a reasonable cost.

34        NEW SECTION.    **Sec. 9.**    (1) In carrying out the provisions of  
35 sections 3 through 12 of this act, the director is authorized to:

36        (a) Request information or assistance as is necessary for carrying  
37 out the duties and responsibilities provided by sections 3 through 12

1 of this act from a federal, state, or local governmental agency or unit  
2 of a governmental agency;

3 (b) Issue subpoenas for witnesses, documents, information, and  
4 other data necessary in the furtherance of an investigation conducted  
5 by the division. The subpoenas are enforceable under RCW 34.05.588.  
6 Before issuing subpoenas to a state agency, the director must make a  
7 reasonable request to the agency for documents and information in  
8 possession of the agency;

9 (c) Administer oaths and take testimony, when appropriate in the  
10 performance of the duties and responsibilities provided in sections 3  
11 through 12 of this act, unless otherwise prohibited by law;

12 (d) To the extent and in the amount as may be provided by  
13 appropriation, select, appoint, and employ personnel as may be  
14 necessary to carry out the provisions of sections 3 through 12 of this  
15 act;

16 (e) To the extent and in the amount as may be provided by  
17 appropriation, enter into contracts and other arrangements for audits,  
18 studies, analyses, and other services with public agencies and with  
19 private persons, and make the payments necessary to carry out the  
20 provisions of sections 3 through 12 of this act, subject to compliance  
21 with civil service laws, collective bargaining agreements, and other  
22 applicable law; and

23 (f) To the extent and in the amount as may be provided by  
24 appropriation, purchase or lease facilities, equipment, and supplies  
25 necessary to carry out the provisions of sections 3 through 12 of this  
26 act.

27 (2) Whenever information or assistance requested under subsection  
28 (1)(a) of this section is, in the judgment of the director, unreasonably  
29 refused or not provided, the director must report the circumstances to  
30 the secretary without delay.

31 NEW SECTION. **Sec. 10.** (1) In carrying out the provisions of  
32 sections 3 through 12 of this act, the director is authorized to:

33 (a) Have reasonable access to the secretary or his or her designee  
34 when necessary in the performance of the duties and responsibilities  
35 provided by sections 3 through 12 of this act;

36 (b) Have prompt access to all individuals, records, electronic  
37 data, reports, audits, reviews, documents, and other materials

1 available to the department that relate to operations of the division  
2 that is not otherwise prohibited from disclosure to the director.

3 (2) Whenever information or assistance requested under subsection  
4 (1)(a) or (b) of this section is, in the judgment of the director,  
5 unreasonably refused or not provided, the director must report the  
6 circumstances to the secretary without delay.

7 NEW SECTION. **Sec. 11.** (1) The director may receive and  
8 investigate complaints or information from an employee of the  
9 department or a citizen concerning the possible existence of an  
10 activity constituting a violation of law or rules, or mismanagement,  
11 gross waste of funds, abuse of authority, or a substantial and specific  
12 danger to the public health and safety.

13 (2) The director must not, after receipt of a complaint or  
14 information from a complainant, disclose the identity of the  
15 complainant without the consent of the complainant, unless the director  
16 determines that the disclosure is unavoidable during the course of  
17 investigation, except as otherwise provided by state law.

18 (3) An employee who has authority to take, direct others to take,  
19 recommend, or approve a personnel action, must not, with respect to the  
20 authority, take or threaten to take an action against an employee as a  
21 reprisal for making a complaint or disclosing information to the  
22 director, unless the complaint was made with willful disregard for its  
23 truth or falsity.

24 NEW SECTION. **Sec. 12.** (1) The director may be contracted by other  
25 state agencies to conduct investigations into allegations of fraud and  
26 abuse in those agencies. The requesting agency must reimburse the  
27 division for the cost of the investigation.

28 (2) The director must provide the requesting agency a report of  
29 findings and may also file the findings with the appropriate  
30 prosecuting attorney.

31 NEW SECTION. **Sec. 13.** Sections 3 through 12 of this act are each  
32 added to chapter 43.20A RCW."

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4 On page 1, line 1 of the title, after "fraud;" strike the remainder  
5 of the title and insert "amending RCW 43.20A.020; adding new sections  
6 to chapter 43.20A RCW; and creating a new section."

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