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**SUBSTITUTE HOUSE BILL 1784**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Children & Family Services (originally sponsored by Representatives Boldt, Bush, Cooke, Lambert, L. Thomas, Backlund and Sullivan)

Read first time 03/03/97.

1 AN ACT Relating to public assistance fraud; amending RCW 43.20A.020  
2 and 41.06.076; adding new sections to chapter 43.20A RCW; creating a  
3 new section; providing an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

11 The legislature also finds that one of the most effective ways to  
12 protect against these criminal acts is to have specific personnel whose  
13 focus is to discover and refer for prosecution individuals who receive  
14 assistance improperly. Currently, there is instability as to which  
15 state agencies are responsible for investigating the various types of  
16 fraud and abuse.

17 Therefore, the legislature intends to establish specific entities  
18 within the Washington state patrol and the department of social and

1 health services whose purpose is to protect the state's limited  
2 resources by focusing on public assistance fraud.

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

5 ~~((As used in this chapter, unless the context indicates))~~ The  
6 definitions in this section apply throughout this chapter unless the  
7 context clearly requires otherwise:

8 (1) "Chief investigator" means the chief investigator of the  
9 department.

10 (2) "Department" means the department of social and health  
11 services.

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

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

16 ~~(4) "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 ~~(5))~~ (3) "Deputy secretary" means the deputy secretary of the  
21 department.

22 (4) "Disclosable information" means public information that:

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

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

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

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

31 (6) "Office" means the office of the chief investigator of the  
32 department.

33 (7) "Overpayment" means any department payment or department  
34 benefit to a recipient or to a vendor in excess of that to which the  
35 recipient or vendor is entitled by law, rule, or contract, including  
36 amounts in dispute pending resolution.

37 (8) "Secretary" means the secretary of the department.

1       (9) "Vendor" means an entity that provides goods or services to or  
2 for clientele of the department and that controls operational  
3 decisions.

4       NEW SECTION.   **Sec. 3.** (1) There is established in the department  
5 an office of chief investigator in order to create an independent unit  
6 to:

7       (a) Conduct and supervise investigations relating to allegations of  
8 fraud or abuse;

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

11       (c) Provide a method of informing the secretary and the legislature  
12 about vulnerabilities and deficiencies relating to the detection and  
13 prevention of fraud or abuse as may be discovered as a result of  
14 completed investigations conducted or coordinated by the office.

15       (2) The office of chief investigator is designated a criminal  
16 justice agency as defined in RCW 10.97.030 and 43.43.705.

17       NEW SECTION.   **Sec. 4.** The chief investigator is the head of the  
18 office and is appointed by the secretary solely on the basis of  
19 integrity and demonstrated ability in law enforcement management,  
20 public administration, and investigations. The chief investigator  
21 reports to and is under the general supervision of the secretary in all  
22 matters related to fraud and program integrity.

23       NEW SECTION.   **Sec. 5.** If the chief investigator discovers that  
24 improper governmental action, as defined in RCW 42.40.020, has occurred  
25 during an investigation with respect to an employee, such as an abuse  
26 of authority so as to impede or interfere with an investigation, then  
27 the chief investigator may report the improper governmental action to  
28 the auditor under chapter 42.40 RCW.

29       NEW SECTION.   **Sec. 6.** (1) It is the duty and responsibility of the  
30 chief investigator to:

31       (a) Conduct, supervise, and coordinate fraud and abuse  
32 investigations and provide policy direction as it relates to program  
33 integrity and fraud and abuse;

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

4 (c) Recommend policies for and coordinate activities carried out or  
5 financed by the department for the purpose of preventing and detecting  
6 fraud or abuse;

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

10 (i) Matters relating to the prevention and detection of fraud or abuse  
11 in programs and operations administered by the department; or (ii) the  
12 identification and prosecution of participants in such fraud or abuse;  
13 and

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

17 (2) In carrying out the duties and responsibilities established in  
18 sections 3 through 14 of this act, the chief investigator must refer  
19 all investigations in which the chief investigator has found  
20 substantial evidence supporting a finding of a violation of federal or  
21 state criminal law to the appropriate prosecuting authority for  
22 possible criminal prosecution.

23 NEW SECTION. **Sec. 7.** In addition to its other powers and duties,  
24 the office of the chief investigator has the power to enforce the penal  
25 provisions of sections 3 through 14 of this act, and as it may be  
26 amended, the penal laws of the state relating to programs administered  
27 by the department. The office of chief investigator has the authority  
28 to apply for and execute all warrants and serve process of law issued  
29 by the courts in enforcing the provisions of sections 3 through 14 of  
30 this act. The office of chief investigator has the power to issue and  
31 serve subpoenas under RCW 43.20A.110 and 43.20A.605.

32 NEW SECTION. **Sec. 8.** (1) The chief investigator must submit a  
33 report summarizing the activities of the office to the appropriate  
34 committees of the senate and house of representatives by November 30,  
35 1997, and by November 30, 1998, and biennially thereafter. The report  
36 shall contain only disclosable information, including:

1 (a) A description of significant fraud or abuse, and of  
2 vulnerabilities or deficiencies relating to the prevention and  
3 detection of fraud or abuse, discovered as a result of investigations  
4 completed during the reporting period;

5 (b) A description of corrective action taken by the department  
6 regarding fraud and abuse discovered as a result of investigations  
7 conducted by the office of chief investigator;

8 (c) Recommendations for improving the activities of the office with  
9 respect to the vulnerabilities or deficiencies identified under (a) of  
10 this subsection;

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

14 (e) A summary of matters referred to prosecution authorities during  
15 the reporting period and the charges filed and convictions entered  
16 during the reporting period that have resulted from referrals by the  
17 office; and

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

19 (2) The chief investigator must forward a draft of the report to  
20 the secretary not less than twenty days prior to the date that the  
21 report is to be issued.

22 (3) Within sixty days after the transmission of the report of the  
23 chief investigator to the legislature, the secretary must make copies  
24 of the report available to the public upon request and at a reasonable  
25 cost.

26 NEW SECTION. **Sec. 9.** (1) In carrying out the provisions of  
27 sections 3 through 14 of this act, the chief investigator is authorized  
28 to:

29 (a) Request information or assistance as is necessary for carrying  
30 out the duties and responsibilities provided by sections 3 through 14  
31 of this act from a federal, state, or local governmental agency or unit  
32 of a governmental agency;

33 (b) Issue subpoenas for witnesses, documents, information, and  
34 other data necessary in the furtherance of an investigation conducted  
35 by the office. The subpoenas are enforceable under RCW 34.05.588.  
36 Prior to issuing subpoenas to a state agency, the chief investigator  
37 must make a reasonable request to the agency for documents and  
38 information in possession of the agency;

1 (c) Administer oaths and take testimony, when appropriate in the  
2 performance of the duties and responsibilities provided in sections 3  
3 through 14 of this act, unless otherwise prohibited by law;

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

8 (e) To the extent and in the amount as may be provided by  
9 appropriation, enter into contracts and other arrangements for audits,  
10 studies, analyses, and other services with public agencies and with  
11 private persons, and make the payments necessary to carry out the  
12 provisions of sections 3 through 14 of this act, subject to compliance  
13 with civil service laws, collective bargaining agreements, and other  
14 applicable law; and

15 (f) To the extent and in the amount as may be provided by  
16 appropriation, purchase or lease facilities, equipment, and supplies  
17 necessary to carry out the provisions of sections 3 through 14 of this  
18 act.

19 (2) Whenever information or assistance requested under subsection  
20 (1)(a) of this section is, in the judgment of the chief investigator,  
21 unreasonably refused or not provided, the chief investigator must  
22 report the circumstances to the secretary without delay.

23 NEW SECTION. **Sec. 10.** (1) In carrying out the provisions of  
24 sections 3 through 14 of this act, the chief investigator is authorized  
25 to:

26 (a) Have reasonable access to the secretary or his or her designee  
27 when necessary in the performance of the duties and responsibilities  
28 provided by sections 3 through 14 of this act;

29 (b) Have prompt access to all individuals, records, electronic  
30 data, reports, audits, reviews, documents, and other materials  
31 available to the department that relate to operations of the office  
32 that is not otherwise prohibited from disclosure to the chief  
33 investigator.

34 (2) Whenever information or assistance requested under subsection  
35 (1)(a) or (b) of this section is, in the judgment of the chief  
36 investigator, unreasonably refused or not provided, the chief  
37 investigator must report the circumstances to the secretary without  
38 delay.

1        NEW SECTION.    **Sec. 11.**    (1) The chief investigator may receive and  
2 investigate complaints or information from an employee of the  
3 department or a citizen concerning the possible existence of an  
4 activity constituting a violation of law or rules, or mismanagement,  
5 gross waste of funds, abuse of authority, or a substantial and specific  
6 danger to the public health and safety.

7        (2) The chief investigator must not, after receipt of a complaint  
8 or information from a complainant, disclose the identity of the  
9 complainant without the consent of the complainant, unless the chief  
10 investigator determines that the disclosure is unavoidable during the  
11 course of investigation, except as otherwise provided by state law.

12        (3) An employee who has authority to take, direct others to take,  
13 recommend, or approve a personnel action, must not, with respect to the  
14 authority, take or threaten to take an action against an employee as a  
15 reprisal for making a complaint or disclosing information to the chief  
16 investigator, unless the complaint was made with willful disregard for  
17 its truth or falsity.

18        NEW SECTION.    **Sec. 12.**    (1) The chief investigator may be  
19 contracted by other state agencies to conduct investigations into  
20 allegations of fraud and abuse in those agencies. The requesting  
21 agency must reimburse the office of chief investigator for the cost of  
22 the investigation.

23        (2) The chief investigator must provide the requesting agency a  
24 report of findings and may also file the findings with the appropriate  
25 prosecuting attorney.

26        NEW SECTION.    **Sec. 13.**    (1) All powers, duties, and functions of  
27 the division of fraud investigation pertaining to the investigation of  
28 fraud and abuse and other duties set out under sections 3 through 14 of  
29 this act are transferred to the office of the chief investigator of the  
30 department of social and health services.

31        (2)(a) All reports, documents, surveys, books, records, files,  
32 papers, or written material in the possession of the division of fraud  
33 investigation pertaining to the powers, functions, and duties  
34 transferred shall be delivered to the custody of the office of the  
35 chief investigator of the department. All cabinets, furniture, office  
36 equipment, motor vehicles, and other tangible property employed by the  
37 division of fraud investigation in carrying out the powers, functions,

1 and duties transferred shall be made available to the office of the  
2 chief investigator of the department. All funds, credits, or other  
3 assets held in connection with the powers, functions, and duties  
4 transferred shall be assigned to the office of the chief investigator  
5 of the department.

6 (b) Any appropriations made to the division of fraud investigation  
7 for carrying out the powers, functions, and duties transferred shall,  
8 on the effective date of this section, be transferred and credited to  
9 the office of the chief investigator of the department.

10 (c) Whenever any question arises as to the transfer of any  
11 personnel, funds, books, documents, records, papers, files, equipment,  
12 or other tangible property used or held in the exercise of the powers  
13 and the performance of the duties and functions transferred, the  
14 director of financial management shall make a determination as to the  
15 proper allocation and certify the same to the state agencies concerned.

16 (3) All employees of the division of fraud investigation engaged in  
17 performing the powers, functions, and duties transferred are  
18 transferred to the jurisdiction of the office of the chief investigator  
19 of the department. All employees classified under chapter 41.06 RCW,  
20 the state civil service law, are assigned to the office of the chief  
21 investigator of the department to perform their usual duties upon the  
22 same terms as formerly, without any loss of rights, subject to any  
23 action that may be appropriate thereafter in accordance with the laws  
24 and rules governing state civil service.

25 (4) All rules and all pending business before the division of fraud  
26 investigation pertaining to the powers, functions, and duties  
27 transferred shall be continued and acted upon by the office of the  
28 chief investigator of the department. All existing contracts and  
29 obligations shall remain in full force and shall be performed by the  
30 office of the chief investigator of the department.

31 (5) The transfer of the powers, duties, functions, and personnel of  
32 the division of fraud investigation shall not affect the validity of  
33 any act performed before the effective date of this section.

34 (6) If apportionments of budgeted funds are required because of the  
35 transfers directed by this section, the director of financial  
36 management shall certify the apportionments to the agencies affected,  
37 the state auditor, and the state treasurer. Each of these shall make  
38 the appropriate transfer and adjustments in funds and appropriation  
39 accounts and equipment records in accordance with the certification.



1 (7) Nothing contained in this section may be construed to alter any  
2 existing collective bargaining unit or the provisions of any existing  
3 collective bargaining agreement until the agreement has expired or  
4 until the bargaining unit has been modified by action of the personnel  
5 board as provided by law.

6 NEW SECTION. **Sec. 14.** (1) The department shall transfer to the  
7 Washington state patrol all administrative investigations focusing on  
8 department employees that concern:

9 (a) Alleged criminal conduct constituting a gross misdemeanor or a  
10 felony; or

11 (b) Administrative investigations involving allegations of willful  
12 or wanton disregard for the policies and procedures of the department.  
13 These include, but are not limited to, allegations of abuse of position  
14 and any other matter deemed necessary by the secretary of the  
15 department in consultation with the chief of the Washington state  
16 patrol.

17 (2) The Washington state patrol and management from the department  
18 shall develop specific procedures for referring matters from the  
19 department to the Washington state patrol. The Washington state patrol  
20 shall provide training for department staff regarding the  
21 implementation of the procedures. The department shall provide  
22 training for Washington state patrol investigators regarding unique  
23 issues relating to department employees, clients, programs, policies,  
24 or guidelines that will assist Washington state patrol investigators in  
25 conducting both criminal and administrative investigations.

26 **Sec. 15.** RCW 41.06.076 and 1993 c 281 s 22 are each amended to  
27 read as follows:

28 In addition to the exemptions set forth in RCW 41.06.070, the  
29 provisions of this chapter (~~shall~~) do not apply in the department of  
30 social and health services to the secretary; the secretary's executive  
31 assistant, if any; not to exceed six assistant secretaries, thirteen  
32 division directors, six regional directors; one confidential secretary  
33 for each of the above-named officers; not to exceed six bureau chiefs;  
34 the chief investigator and deputy chief investigators; and all  
35 superintendents of institutions of which the average daily population  
36 equals or exceeds one hundred residents(~~(: PROVIDED, That)~~). However,  
37 each (~~such~~) confidential secretary must meet the minimum

1 qualifications for the class of secretary II as determined by the  
2 Washington personnel resources board.

3 NEW SECTION. **Sec. 16.** Sections 3 through 14 of this act are each  
4 added to chapter 43.20A RCW.

5 NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 July 1, 1997.

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