
HOUSE BILL 1784

State of Washington

55th Legislature

1997 Regular Session

By Representatives Boldt, Bush, Cooke, Lambert, L. Thomas, Backlund and Sullivan

Read first time 02/07/97. Referred to Committee on Children & Family Services.

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) Appoint not more than two deputies;

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

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

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

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

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

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

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

35 (2) Whenever information or assistance requested under subsection
36 (1)(a) or (b) of this section is, in the judgment of the chief
37 investigator, unreasonably refused or not provided, the chief

1 investigator must report the circumstances to the secretary without
2 delay.

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

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

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

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

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

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

33 (2)(a) All reports, documents, surveys, books, records, files,
34 papers, or written material in the possession of the division of fraud
35 investigation pertaining to the powers, functions, and duties
36 transferred shall be delivered to the custody of the office of the

1 chief investigator of the department. All cabinets, furniture, office
2 equipment, motor vehicles, and other tangible property employed by the
3 division of fraud investigation in carrying out the powers, functions,
4 and duties transferred shall be made available to the office of the
5 chief investigator of the department. All funds, credits, or other
6 assets held in connection with the powers, functions, and duties
7 transferred shall be assigned to the office of the chief investigator
8 of the department.

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

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

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

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

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

37 (6) If apportionments of budgeted funds are required because of the
38 transfers directed by this section, the director of financial
39 management shall certify the apportionments to the agencies affected,

1 the state auditor, and the state treasurer. Each of these shall make
2 the appropriate transfer and adjustments in funds and appropriation
3 accounts and equipment records in accordance with the certification.

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

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

12 (a) Alleged criminal conduct constituting a gross misdemeanor or a
13 felony; or

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

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

29 (3) Investigations under this section are funded by the department
30 of social and health services, division of fraud investigation budget.

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

33 In addition to the exemptions set forth in RCW 41.06.070, the
34 provisions of this chapter (~~shall~~) do not apply in the department of
35 social and health services to the secretary; the secretary's executive
36 assistant, if any; not to exceed six assistant secretaries, thirteen
37 division directors, six regional directors; one confidential secretary

1 for each of the above-named officers; not to exceed six bureau chiefs;
2 the chief investigator and deputy chief investigators; and all
3 superintendents of institutions of which the average daily population
4 equals or exceeds one hundred residents(~~(; PROVIDED, That)~~). However,
5 each (~~such~~) confidential secretary must meet the minimum
6 qualifications for the class of secretary II as determined by the
7 Washington personnel resources board.

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

10 NEW SECTION. Sec. 17. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 July 1, 1997.

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