

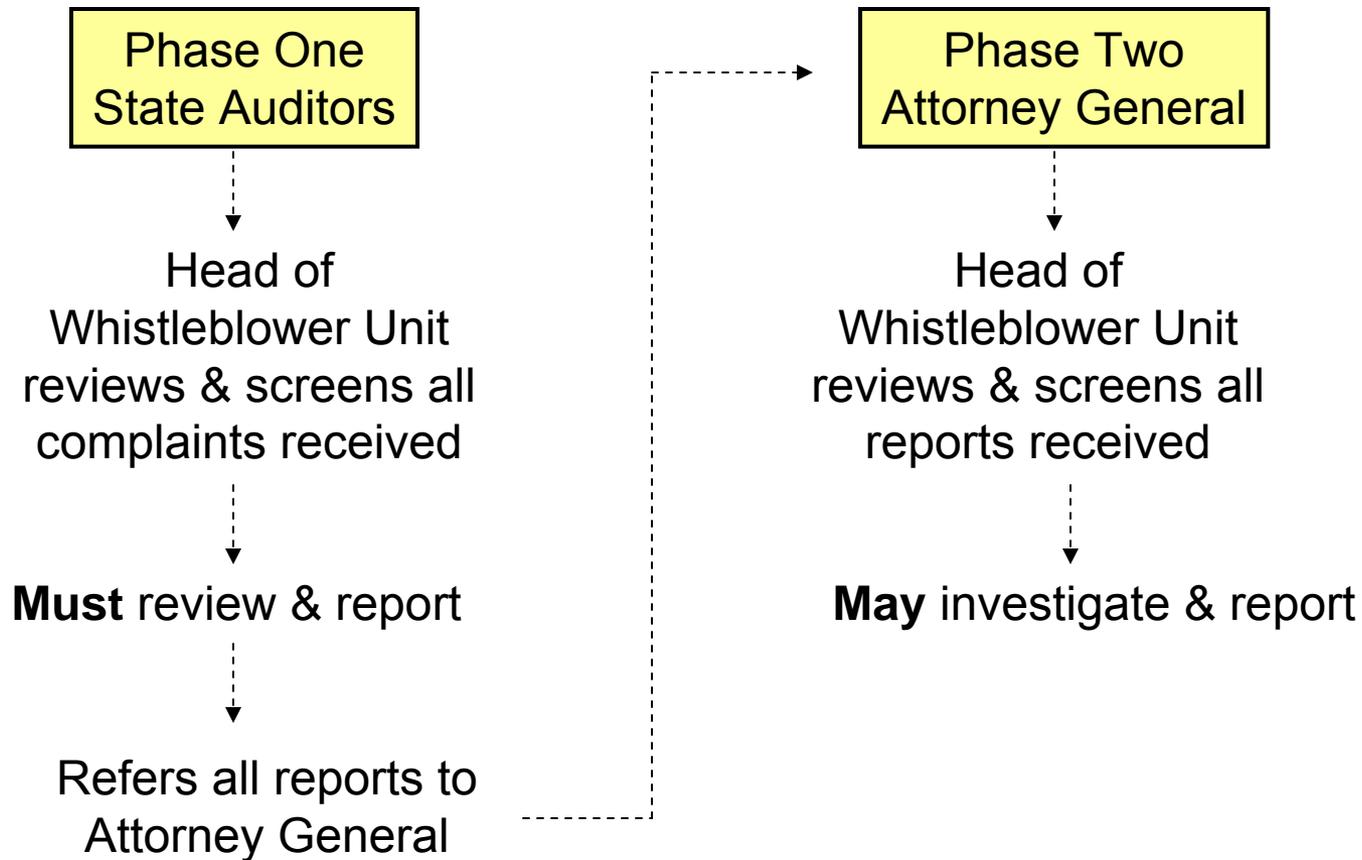
Connecticut's Whistleblower Law

**Staff Findings & Recommendations
Legislative Program Review & Investigations
December 15, 2009**

Study Focus

**Process and structure
currently in place to handle
whistleblower complaints within
state government**

Two Phase Whistleblower Process pursuant to §4-61dd



Whistleblower Structure & Process

- Result of 1987 legislative compromise
- Separate steps & entities
- Benefit of each office's expertise (financial & legal)

Basic Elements of Good Complaint System

- *Easily accessible & simple*
- *Quick*
- *Objective*
- *Confidential*
- *Reasoned & understandable*
- *Regularly analyzed for patterns*

Case File Review Results

Who submits whistleblower reports? Where were allegations first reported?

- **Mix of sources provide general whistleblower complaints. Many come from anonymous sources.**
- **Frequently complaints are made to other agencies or officials before the State Auditors.**
- **Attorney General received complaints first in at least 41% of the cases.**

What types of allegations are reported?

Was the agency aware prior to the reported complaint?

- **Complaints cover a broad range of allegations from employee attendance, misuse of state resources, and variety of mismanagement and misconduct.**
- **Agencies are aware of the incident, allegation or issue involved in most (75%) complaints.**

How many whistleblower allegations were substantiated?

- **Slightly more than a third of allegations are found to be substantiated (supported by facts).**
- **45% were unsubstantiated but in 10% an area of concern was identified.**
- **A decision could not be made in close to 20%.**

How often did the Attorney General agree with the results of State Auditors' report?

- **AG determines that State Auditors report is sufficient in 44% of the cases.**
- **In 26%, AG asked the Auditors for more information.**
- **AG investigated further in about 30 percent of the cases reviewed.**
- **In all cases, AG was in agreement with Auditors' assessment.**

What was the response of the agency subject to the investigation?

- **The agency addressed all of the substantiated issues in 45% of the cases reviewed.**
- **In 23%, the agency provided some corrective action.**
- **In 32%, the agency response was not evident in case file.**

Was there communication with the whistleblower after the investigation?

- **Case files at both the State Auditors' and the Attorney General's office showed there is frequently (75%) no communication with whistleblowers after investigation.**

How long does the process take?

- The total processing time for both Phases ranges from slightly more than 1 month to 4 years.
 - Median time 9.1 months
 - Average 1 year

Findings & Recommendations: Structure

Two-Phase Two-Entity Structure

- **Time-consuming & duplicative**
- **Uneven statutory duties**
- **Different authority to access information**
- **Creates a potential conflict of interest**
- **Has limited staff resources**
- **Primarily financial accountants**

Single Agency Approach

Options:

- Place functions within Attorney General
- Locate functions with State Auditors
- Transfer existing staff resources into newly created separate entity

Staff Recommendation(1)

- Repeal two-phase process
- Adopt a Joint Team (financial/legal) approach with State Auditors & Attorney General

Findings & Recommendations: General Whistleblower Process

Whistleblower Process Issues

- Broad categories of reportable incidents
- Absence of statutory timeframes
- Lack of enforcement authority & follow up
- Limited reporting requirements

Staff Recommendations (2&3)

Joint Team should:

- Develop working definitions & examples
- Be granted discretion when:
 - Another available remedy exists
 - Complaint is frivolous or not in good faith
 - Other complaints more worthy of attention
 - Staff resources insufficient for adequate investigate
 - Complaint too long delayed to merit examination

Staff Recommendations (4&5)

Joint Team must –

- Be allowed to screen and refer complaints to avoid overlapping jurisdiction and to leverage staff resources
- Conduct status update every 90 days until case is closed

Staff Recommendation (6)

Enforcement & Follow Up:

- Every substantiated investigation report must include corrective action steps & implementation dates
- Within a year, Joint Team will follow up and report any non-compliance to governor and legislature

Staff Recommendations (7-9)

Reporting Requirements:

- Outcome of investigation reported to complainant upon request
- Summary description, results, & outcome posted every 6 months on website including:
 - Agency involved
 - Type of allegation
 - Date referred
 - Investigation status
 - Outcome
- Annual summary report of description, results, & outcomes to legislature

Staff Recommendations (10-12)

Administrative Improvements:

- Priority on improving electronic tracking/ monitoring system
- Development of minimum requirement guidelines for all investigative & enforcement reports
- Provide whistleblower staff training opportunities within available resources

Staff Recommendations (13-16)

Public Awareness:

- Adopt clear policy statement
- Include policy statement in DAS website & guide for state managers
- Provide policy info on agency websites
- Require conspicuous posting of policy notice at all agencies

Staff Recommendations (17&18)

- Clearly articulate any statutory exceptions to scope of review
- Annual list of large state contractors should be prepared by Comptroller

Findings & Recommendations: Whistleblower Retaliation

Whistleblower Protection Pursuant to §4-61dd

- Employee discloses whistleblower info to:
 - Auditor/AG
 - State Agency Employer
 - Mandated Reporter
 - Contracting State Agency
- Employer takes or threatens adverse personnel action
- Employee chooses forum to report retaliation

Whistleblower Retaliation Options

Attorney General Process:

- No individual relief or remedy
- Difference of opinion about involvement of State Auditors

CHRR Process:

- Contested case hearing
- Individual relief and remedy

Whistleblower Retaliation Issues

CHRR Process:

- Length of filing period
- Availability of rebuttable presumption
- Additional authority discretion for human rights referee to-
 - Amend original complaint when subsequent incidents occur
 - Order temporary relief during pending hearing

Staff Recommendations (20-23)

CHRR Retaliation Process:

- Extend 30-day filing requirement to 90-day
- Expand 1 year rebuttable presumption to 2 years
- Grant referees authority to order temporary relief during hearing
- Provide referees discretion to allow reasonable amendments alleging additional incidents

AG Retaliation Case File Analysis

- More than 50%, the initial underlying disclosure was only reported internally to employer
- 14% had the initial underlying disclosure reported to Auditors/AG
- 36% of complainants did not disclose to an entity covered by the statute

AG Retaliation Case File Analysis

- 28% went on to another forum such as CHRO, EEOC, other grievance proceeding
- Only 3 retaliation claims were substantiated through AG process
- Frequently, the “whistleblower disclosure” was a disagreement about a policy/administrative decision or involved a personnel issue

Whistleblower Retaliation Issues

Attorney General Retaliation Process:

- is not a contested case proceeding so inadequately designed to determine retaliation;
- does not provide individual relief or remedy so produces minimal benefit to the individual; and
- contributes to a potential conflict of interest for the Attorney General.

Alternative Options

Option 1: Only Auditors investigate

Option 2: Remove AG as legal representation for agencies

Option 3: Create new entity to investigate & represent

Option 4: Add retaliation to CHRO responsibilities

Option 5: Repeal AG process entirely

Staff Recommendations (24)

(OPTION 5)

**Attorney General process for retaliation
should be repealed.**