Staff Findings
and Recommendations

Connecticut's Whistleblower Law

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Legislative Program Review
& Investigations Committee

CONNECTICUT GENERAL ASSEMBLY

Introduction

Connecticut's Whistleblower Law

Connecticut's whistleblower law was initially established in 1979 to provide state employees a safe channel for reporting corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety. This reporting process, known as whistleblowing, was viewed as a major step toward more effective state government.

In May 2009, the Legislative Program Review and Investigations Committee voted to undertake a study of *Connecticut's Whistleblower Law*. The study focus is the process and structure currently in place to handle whistleblower complaints within state government. In particular, the study evaluates how the two agencies responsible for handling whistleblower complaints—the Office of State Auditors and the Office of the Attorney General—actually implement their statutory obligations A briefing report on this topic was provided to the committee in October 2009. This report provides the committee staff's findings and recommendation resulting from its study.

As noted in the briefing report, a two-phase, two-entity process has been in place since 1987. The first phase is carried out by the Office of the State Auditors, an independent office headed by two legislative appointees one from each party. The second phase is completed by the Office of the Attorney General, headed by an elected constitutional officer. It is commonly understood that the current statutory structure and process was the result of a legislative compromise, largely based on opinions of those offices at the time, rather than a reasoned belief that this was the optimum structure or process to fully carry out the purpose of the statute.

The committee staff's study found that the present whistleblower system has operated in compliance with existing statutory requirements and has been effective on several levels. However, the two-phase two-entity whistleblower process contains inefficiencies and several deficiencies in its structure, process, and responsibilities. Time-consuming and duplicative steps, poor communication with whistleblowers, and inadequate follow-up with agencies' responses to substantiated complaints are among some of the issues that jeopardizes the State's ability to achieve the law's policy intent.

Methodology

The committee staff used a variety of research methods to conduct its study. Specifically, the committee staff reviewed the literature of best practices and principles for designing a good complaint system. Numerous different agencies in other states were surveyed to identify various whistleblower provisions. Interviews with Connecticut whistleblower staff and key personnel of other related agencies were also conducted.

Staff examined all proposed legislation, public hearing transcripts, and written submitted testimony on the whistleblower topic for the last three Connecticut legislative sessions (2007,

2008, and 2009). Committee staff also reviewed a random sample of 91 whistleblower case files including general whistleblower complaints and retaliation allegations. The case file review followed complaints from receipt at the State Auditors' office to review by the Attorney General's staff and included an examination of twelve retaliation complaints receiving a hearing with the Chief Human Rights Referee.

From the files, committee staff developed specific process information such as the type of investigation activities performed, level of communications with complainants, extent of agency response or evidence of corrective action. Committee staff, however, did not review the cases to determine whether the investigation conclusions were correct or to question the approach taken. The case file review did provide some examples of situations that illustrate particular issues.

Report Organization

The report contains three sections. Section I sets out committee staff findings about how the two agencies responsible for handling whistleblower complaints implement their statutory obligations, through the results of the committee staff's case file review. Section II present the staff findings and recommendations for the current structure, process, and policy in general as well as an example of how a new proposed recommended structure could work. Section III examines the issues related to whistleblower retaliation claims and presents a range of options and considerations for alternative approaches. It also makes several recommendations on the handling of whistleblower retaliation complaints.

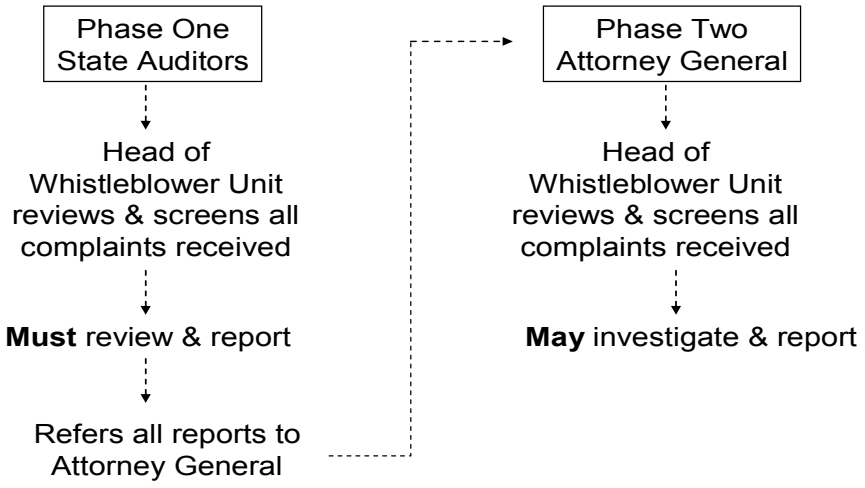
Whistleblower Investigations: Best Practices and Case File Review

Enacted in 1979, Connecticut's Whistleblower Act provides a venue for state employees as well as the general public to report suspected improper governmental activity including reports of corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety. The two significant purposes of the whistleblower law are to:

- Establish procedures to insure that allegations of wrongdoing within state government is properly reviewed and reported, and
- Protect from reprisals those employees who disclose information about agency wrongdoings.

This section presents the committee staff findings on how the first purpose, the whistleblower investigations, has been implemented. This is shown through the results of a random case file review of whistleblower complaints conducted by the committee staff. As described in the introduction and Figure I-1, the current law establishes a two-phase, two-entity process to handle whistleblower complaints.

Figure I-1 Two Phase Whistleblower Process pursuant to §4-61dd



Source: LPR&IC

First, the State Auditors must review and report their findings, along with any recommendations, to the Attorney General. After receiving the Auditors' report, the second phase begins as the Attorney General may pursue any such investigation he deems proper. The sequence of events is the same except that the Attorney General's process is allowed discretion by statute while the State Auditors process is afforded none. In addition, Phase One must be completed before Phase Two may begin.

Overall, the existing two-phase process seems to be functional but the program review committee staff finds, as supported by the case file analysis provided below, that it is not an efficient way to approach and implement the state's whistleblower policy. The existing statutory provisions create a duplicative and time-consuming process in an area where time may be critical. The separate steps and entities also result in periods of time where each office is working in a vacuum rather than collaboratively. Although they may ultimately work collaboratively on a complaint, it is typically not until the first phase is complete and second phase is started. Having both offices involved in the process provides the benefit of each individual group's expertise (financial/legal); however, the process itself is not necessarily the best use of existing limited resources. Discussion on various structural approaches for managing whistleblower complaints is provided in Section II.

Basic Elements of a Good Complaint System

Although a whistleblower is not always personally or negatively affected by the alleged reported state misconduct, a whistleblower engages in the complaint process with an expectation that his or her concern will be heard and promptly addressed. A review of the literature on best practices for devising a good complaint system[1] indicates that a system must be:

- *easily accessible* and conspicuous to users;
- *simple* to use, with the stages clearly set out and responsibility clearly allocated;
- *quick,* offering prompt action and speedy resolution according to pre-determined time limits;
- *objective,* including provision for review and investigation by knowledgeable persons not directly involved in the matter at issue;
- *confidential* in that it will protect the complainants privacy as far as is possible; and
- *reasoned and understandable*, in that the reasons for upholding or denying the complaint must accompany the decision. It must produce a result which, even though it may not be acceptable to the complainant, is capable of being understood by him or her.

[1] United States National Performance Review, "Serving the American People. Best Practices in Resolving Customer Complaints", Federal Benchmarking Consortium Study Report, March 1996

Finally, the system should also be regularly analyzed to spot patterns of complaints and lessons for service improvement.

How Connecticut's whistleblower law and its implementation compare in terms of these elements is useful to consider in assessing them. To get a sense of how the law is being implemented, committee staff conducted a case file review. The results are presented below.

Case File Review

The committee staff conducted a case file review of a randomly selected sample of 79 whistleblower complaints filed since 2005 with the State Auditors and referred to the Attorney General's office. Thirty-five of the files were complaints alleging a broad spectrum of whistleblower matters while 44 of the case files were retaliation complaints. The whistleblower complaint investigation results for non-retaliation cases are discussed here. (Results of the retaliation complaint case file review are presented in Section III.)

Overall, the analysis of the case file review reveals the following.

Who submits whistleblower reports and where were the allegations first reported?

- In terms of who submits whistleblower reports, the largest group of complainants chose to remain anonymous (43%), while current employees submitted 26 percent and individuals external to the agency such as clients or the general public submitted 31 percent.

- Although the statute indicates that the State Auditors must conduct the first mandated review (Phase I), in at least 41 percent of the case files, the whistleblower first submitted the report to the Attorney General's office rather than the State Auditors. Twenty-four percent were also initially sent to other offices such as the Governor's, individual legislators, or the Commission on Human Rights and Opportunities.

What types of allegations are reported?

- As noted in the briefing report, the complaints cover a broad range of allegations from employee attendance, misuse of state resources, and variety of mismanagement and misconduct. Appendix A provides a listing of the allegations reported in the case files.

Was the agency aware of the incident/allegation prior to the reported complaint?

- The agency subject to the investigation was aware of the issue, incident, or allegation in 75 percent of the cases prior to the whistleblower filing a complaint.

How many whistleblower allegations were substantiated?

- Seventeen (35%) of the 48 allegations in the case file review were substantiated. (Substantiated means supported by facts.) Forty-five percent were unsubstantiated with 10 percent of the unsubstantiated cases identifying an area of concern. In 9 cases, no decision could be made.

- There was an almost equal ratio of substantiated and unsubstantiated anonymous complaints. Fewer allegations were substantiated from external sources such as clients and the general public.

Table I-1. Final Outcome of Allegation by Type of Source (N=35)*

Final Outcome	SOURCE			TOTAL
	Anonymous	External	Internal	
Substantiated	10 (38%)	2 (18%)	5 (45%)	17 (35%)
Unsubstantiated	9 (35%)	5 (45%)	3 (27%)	17 (35%)
Unsubstantiated but Area of Concern	3 (12%)	1 (9%)	1 (9%)	5 (10%)
No decision could be made	4 (15%)	3 (27%)	2 (18%)	9 (19%)
Total Number of Allegations	26	11	11	48

***Case may have more than one allegation.**
Source: LPR&IC Analysis

How often did the conclusion of the Attorney General (Phase Two) agree with the results of State Auditors' report (Phase One)?

- In all cases reviewed by the committee staff, the State Auditors' and Attorney General's staff was in general agreement in the final assessment of the complaint.

What steps did the Attorney General's staff take upon receiving the Auditors' reports?

- In 44 percent of the cases reviewed, the Attorney General's staff determined that the State Auditors' report was sufficient and required no further investigation.
- In 30 percent, the Attorney General conducted further investigation but in only 9 percent was a published report issued.
- The Attorney General's staff placed a majority of the sample case files on monitoring status.

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

- In 68 percent of the files, there was an indication of corrective action by the subject agency.

Was there communication with the whistleblower after the investigation?

- Close to 75 percent of the cases at the State Auditors' and the Attorney General's office had no evidence of communication with the whistleblower after its investigation.

Appendix A provides additional tables and graphs on the committee staff's case file analysis.

Section II

Findings and Recommendations: Whistleblower Structure & Process

The case file review, together with an examination of the statutory provisions and interviews with various agency personnel, identified several areas where deficiencies and inefficiencies are apparent. This section provides the committee staff's findings and recommendations regarding the structure, roles, and responsibilities for handling whistleblower complaints.

Two-Phase, Two Entity Statutory Structure

As noted earlier, the current two-phase process set out in §4-61dd (a) was established as a result of legislative compromise. However, the end result creates problems with few benefits including:

- The two-phase system is *time-consuming* as each agency is statutorily required to conduct independent reviews at separate times.

- The two-phase system is *duplicative* as each agency is statutorily required to review and evaluate each matter separately.

- The two phase system provides for *uneven statutory responsibilities* with the State Auditors required to review all matters and has mandatory reporting requirements to the legislature while the Attorney General has discretion to investigate complaints as he deems proper and has a discretionary reporting requirement to the governor.

- Both the State Auditors and Attorney General have *different authority to access information* necessary for complaint investigation. The State Auditors have open access to all state records while the Attorney General has subpoena power. A combination of access methods may be necessary depending on the complexity of the allegations.

- The system *creates a potential for a conflict of interest* in having the Attorney General investigate whistleblower complaints against state agencies to which he also has responsibility for providing legal representation.

- Each office has *limited staff resources* occasionally requiring assigning staff away from other agency responsibilities and at times delaying the start of a whistleblower investigation.

- While the nature and complexity of allegations made sometimes requires specialized skill sets, the State Auditors' staff are *primarily financial accountants* without legal or investigative training.

Connecticut's two phase/agency approach is unique among states. Most other states do not designate one agency to specifically receive and handle whistleblower complaints. The states that do have a single agency for whistleblower complaints typically place the responsibility in either a specialized unit with their office of the state auditor, the attorney general or within an Office of Inspector General, or an Ombudsman's Office.

Single agency approach. The program review committee staff considered a number of possibilities to consolidate Connecticut's two phase system. First, all responsibilities could be transferred either back into the Attorney General's office as it was originally established or into the State Auditors' office. One advantage of consolidating all functions within the Auditors' office is that it would eliminate the potential conflict of interest in having the Attorney General involved in both investigating complaints against state agencies as well as providing legal representation to the state agencies. The drawback to both these options is that each would lose the benefit of the experience and skills (financial/legal) available currently. As a result, each office would have to acquire additional skilled staff resources to adequately meet its obligations.

Another single agency approach would be to create an independent unit through a transfer of the staff positions already dedicated to this function from the State Auditors and the Attorney General. A separate unit could provide several advantages. Since it would involve a transfer of existing resources, any additional costs would primarily be from the establishment of a new head of the office and associated administrative costs. It would eliminate any potential conflict of interest involving the Attorney General's office. It would also bring together the staff resources with necessary skill sets that would be dedicated solely to the single function of handling whistleblower complaints. What would be lost is the support of being part of a larger agency can provide, for example, in the case of workload spikes. The experiences in other states such as Nebraska's Ombudsman Office and the Georgia Office of Inspector General shows this function can done with a fairly small number of skilled staff. (Appendix B provides a description of the Nebraska and Georgia approach.)

Following a single agency model, the program review committee staff believes would ideally maintain the whistleblower structure, roles, and responsibilities within one independent entity dedicated to eliminating fraud, waste, and abuse with adequate staff resources, investigative authority, and enforcement powers. However, creating a new entity or seeking additional resources given the current state fiscal crisis is not realistic. Rather, committee staff believes that changes to the current statute should be made to create an integrated, streamlined process with better leverage of existing state resources and more public information about the outcomes of the law.

Therefore, the program review committee staff recommends t**he two entities, the State Auditors and the Attorney General, shall continue to be responsible for handling whistleblower allegation reports. However, the current two-phase system set out in §4-61dd(a) shall be repealed. The State Auditors and the Attorney General shall develop a team approach (financial/legal) for handling of whistleblower matters. Together, through a memorandum of agreement, they will serve as joint coordinators (the Joint Team) in managing the timely resolution of whistleblower complaints. The Attorney General's subpoena authority and the confidentiality provisions shall remain.**

Improvements for the General Whistleblower Process

The following findings and recommendations relate to the improvements needed in the implementation of the whistleblower process identified by program review committee staff. The issue areas addressed include: broad categories of reportable incidents, the absence of statutory timeframes, a lack of enforcement authority and follow up, and limited reporting requirements.

Broad Categories of Reportable Incidents

One area where streamlining would be beneficial to the whistleblower process is in the intake and screening phase. In particular, the development of working definitions and examples as well as allowing the Joint Team additional discretion in managing complaints will assist in more efficient case processing and leveraging of existing staff resources.

Need for working definitions and examples. It is clear from the growing number of complaints, complainants do eventually find their way to the appropriate offices but additional awareness and education is needed to focus the types of complaints received. The case file review revealed the nature of submitted whistleblower complaints includes a broad range of allegations (See Table A-1 in Appendix A).

The Connecticut provisions were based on federal legislation using a similar scope of reportable topics of improper governmental activity. Currently, Connecticut has seven reportable categories for whistleblower matters (e.g. corruption, abuse of authority, mismanagement, gross waste of funds). *The broad categories of reportable incidents allow practically any incident to be reported.* For example, the category of mismanagement allows allegations of just about any personnel issue such as dissatisfaction with management decisions and styles to be submitted. In addition, the term "gross waste" of funds is not defined which permits essentially any financial complaint regardless of the dollar amount involved in comparison to the level of resources needed to determine the validity of the complaint.

The federal legislation that provided the basis for most of these categories does not provide definitions. Most other states with similar coverage also do not define these reportable categories but a few states have developed working definitions or examples for certain categories. For example, the Georgia Office of the Inspector General (OIG) that investigates instances of fraud, waste, abuse and corruption in state agencies provides definitions and examples of some of the categories of wrongdoing under its jurisdiction on its website. Table II-1 illustrates the OIG definitions and examples.

These examples provide individuals considering submitting complaints guidance as to the type of reportable incidents that would be subject to the whistleblower law. The program review committee staff recommends **the Joint Team should develop working definitions and examples of reportable incidents subject to Connecticut whistleblower law (§4-61dd), which should be published on both offices' websites.** These examples would assist the complainant as well as the Joint Team charged with reviewing the complaint by preempting the submission of complaints that would not be applicable.

Table II-1. Definitions and Working Examples of Georgia Office of Inspector General

Definition	Examples
Fraud is an act of intentional or reckless deceit to mislead or deceive.	• Fraudulent travel reimbursement • Falsifying financial or payroll records to cover up theft • Intentionally misrepresenting the costs of goods or services provided • Conducting a business on state time for personal gain
Waste is a reckless or grossly negligent act that causes state funds to be spent in a manner that was not authorized or represent significant inefficiency and needless expense.	• Purchase of unneeded supplies or equipment • Purchase of goods at inflated prices • Failure to reuse major resources or reduce waste generation
Abuse is the intentional, wrongful, or improper use or destruction of state resources, or seriously improper practice that does not involve prosecutable fraud.	• Improper hiring practices • Significant use of state time for personal business or unauthorized time away from work • Receipt of favors for awarding contracts to vendors • Falsification of time records to include misuse of overtime or compensatory time • Misuse of state money, equipment, supplies and/or other materials
Corruption is an intentional act of fraud, waste or abuse or the use of public office for personal, pecuniary gain for oneself or another.	• Accepting kickbacks • Bid rigging • Contract steering
A **Conflict of Interest** is a situation in which a person is in a position to exploit their professional capacity in some way for personal benefit. It may occur when a person has competing professional obligations and private interests. A conflict of interest may exist even if no unethical or improper act results from it, as it may be evidenced by the appearance of impropriety.	• Purchasing state goods from vendors who are controlled by or who employ relatives • Nepotism • Accepting gifts from vendors • Outside employment with vendors • Inappropriately using one's position to influence the selection of vendors with a personal interest/relationship • Using confidential information for personal profit or to assist outside organizations

Source: Georgia Office of Inspector General website (December 2009)

Discretion provided to whistleblower staff. Both the State Auditors' and Attorney General's offices independently review and screen each complaint submitted to them. Each office ensures that the complaint is within the statutory scope of the law (i.e., that it relates to a state agency, quasi- public, or large state contract and that it is covered by at least one of the seven broad reportable categories of misconduct). As discussed earlier, the use of working definitions and examples should preemptively screen the submission of incidents not appropriate for this complaint process.

The committee staff believes that *the whistleblower process would also benefit from providing more discretion to the Joint Team responsible with reviewing the complaint.* One area where discretion should be allowed is to consider the length of time between when the individual submitted the complaint and when the underlying incident/allegation complained about occurred.

In 21 percent of the case files reviewed, the incident complained about occurred more than a year before the complaint was filed, in some instances longer than six or eight years. As time passes, the probability increases that the length of time since the incident occurred may likely impact the recollection or the availability of the individuals involved. A determination should be made whether the limited staff resources for whistleblower complaints should be used to address such a complaint. The application of a statute of limitations would be too restrictive and could possibly dismiss a serious complaint that should be reviewed despite the time element. As such, the Joint Team receiving whistleblower complaints should be allowed to consider a time factor when determining whether to proceed with an investigation.

Another discretionary consideration should be whether another enforcement mechanism or entity exists to handle the type of allegation made. The state already provides resources to several existing entities for the enforcement of many state laws and topics covered by the seven categories of reportable whistleblower matters. For example, the Office of State Ethics, CHRO, and Departments of Environmental Protection, Public Health, and Consumer Protection all have investigative and enforcement authority or licensing units. In addition, many large state agencies such as the Departments of Children and Families and Social Services have their own internal quality assurance divisions. Furthermore, the Department of Administrative Services provides advice and guidance to state agencies about human resource issues and problems, which are a frequent type of "whistleblower" allegation received. Of course, part of this discretionary consideration must be whether the complaint involves or implicates the enforcement entity itself.

The committee staff's review of other states found that *the State of Nebraska may serve as model for allowing discretion in the intake and screening of whistleblower complaints.* Pursuant to Nebraska law, the Nebraska Office of Public Counsel must review all whistleblower complaints received unless the office determines:

(1) The complainant has another available remedy which the individual could reasonably be expected to use;

(2) The grievance pertains to a matter outside its power;

(3) The complainant's interest is insufficiently related to the subject matter;

(4) The complaint is trivial, frivolous, vexatious, or not made in good faith;

(5) Other complaints are more worthy of attention;

(6) Office resources are insufficient for adequate investigation; or

(7) The complaint has been too long delayed to justify present examination of its merit.

The program review committee staff believes similar discretion would benefit the Connecticut whistleblower complaint process by ensuring that limited whistleblower staff resources are used in the most efficient and effective manner possible. Therefore, the program review committee staff recommends that **the whistleblower statute be amended to allow discretion in the acceptance of whistleblower complaints. At a minimum, the discretion should be granted if: the complainant has another available remedy which the individual could reasonably be expected to use; the complaint is trivial, frivolous, or not made in good faith; other complaints are more worthy of attention; office resources are insufficient for adequate investigation; or the complaint has been too long delayed to justify present examination of its merit.**

Ability to refer complaints. The need for specialized expertise and experience in many of the whistleblower complaints is also evident by the type of investigative activities conducted by the whistleblower staff. The committee staff's examination of case files found *whistleblower staff, who are primarily financial accountants, may review a broad range of specialized issues and documentation* including: incident reports regarding patient care at public health facilities such as nursing homes or substance abuse facilities; case handling by social workers regarding children or mental health clients; or environmental issues regarding danger to public safety.

Many of these types of allegations submitted as whistleblower complaints may be better suited for review by other existing state enforcement agencies. As discussed earlier, these enforcement entities have the expertise and experience in dealing with their relevant subject. They have been given resources and often enforcement authority or procedures to handle non-compliance with state laws or policies. To better leverage existing resources and avoid overlapping jurisdictional issues, the Joint Team should have the discretion to refer relevant matters to an agency with existing enforcement authority. However, the team should also have the option to retain any matters that it believes would be better handled independent of the enforcement entity.

In 17 percent of the case files reviewed by the committee staff, another entity was already or subsequently involved in investigating the complaint or a related issue. Often, the whistleblower complaint process would either be delayed or put on monitoring status while the other investigation was ongoing. However, the case file would not always indicate what the outcome of the other investigation was.

Therefore, the committee staff recommends that **the whistleblower statute be amended to allow the Joint Team to develop and use additional criteria for screening and referring**

whistleblower matters to avoid overlapping jurisdiction with other entities, leverage existing state resources, and encourage timely resolution.

Absence of Statutory Timeframes

The statutory provisions governing the whistleblower process within the State Auditors' and Attorney General's offices do not establish any timeframes for case processing. The briefing report noted that over 60 percent of the complaints in the State Auditors' office are handled in less than a year while close to 40 percent of the cases have a median processing time of almost a year and half. It is important to remember that these processing times are also impacted by staff availability.

Determining the case processing time for whistleblower complaints reviewed by the Attorney General's office is more difficult. As discussed in the briefing report, the Attorney General's office rarely closes a case and has a policy of placing complaints on a monitoring status, which means they remain active with the possibility that additional information may materialize or further complaints may come forth. The file review conducted by committee staff used the last action date indicated in the case file to calculate length of case processing time within the Attorney General's office. The results of the case file analysis comparing the case processing time of each whistleblower unit are provided in Table II-2.

Table II-2. Processing Times Within the State Auditors' and Attorney General's Offices.

(N=70)*	Range	Median	Average
PHASE ONE: State Auditors Total time from when Complaint Submitted to Referred to Attorney General	2 days to 2.1 years	5 months	8.1 months
PHASE TWO: Attorney General Total Time from when Complaint Referred from State Auditors to Last Action Date	2 days to 2.8 years	0.4 months	3.8 months
- If State Auditors' report is sufficient		0.2 months	1.8 months
-If more info is needed or further investigation required		5.2 months	6.5 months
TOTAL PROCESS Total Time from when Complaint Submitted to Last Action Date	36 days to 4 years	9.1 months	1 year

*Does not include pending cases which were still open
Source: LPR&IC analysis

As the table shows, the range of case processing time for each office is about the same. The overall median and average process time for the Attorney General's office is shorter. As noted earlier, in 44 percent of the case files reviewed by committee staff the Attorney General determined that the State Auditors' report was sufficient and required no further investigation. For those cases, the median and average time was a week and 1.8 months respectively. In situations where additional information is required or further investigation is needed the median time is 5.2 months with an average of 6.5 months. Keeping in mind that the current structure requires the State Auditors' process to be completed before the Attorney General reviews the complaint, the total case processing time ranges from slightly more than a month to four years. The median process time for whistleblower complaint is 9.1 months with a one year average.

The case file review, interviews with agency staff, and testimony provided at public hearings indicate that delays in the complaint process may occur for different reasons. These include but are not limited to whistleblower staff assignment postponement due to other responsibilities, the nature and number of allegations involved, and the complexity of the case in obtaining documentation or scheduling interviews.

Better working definitions, additional intake and screening criteria, and referral authority should reduce the complaint workload and allow for more efficient case management within the whistleblower units. Given the nature and complexity of some whistleblower complaints, the program review staff acknowledges that the processing times to adequately investigate a whistleblower complaint may vary. A mandated timeframe or deadline for completing a whistleblower complaint may be counterproductive and may create potential situations where cases may be rushed to meet arbitrary deadlines. *More important than an arbitrary deadline is a requirement for a periodic status review that will ensure the complaint progress is documented and kept on track so cases do not fall through administrative cracks.*

Therefore, the program review committee staff recommends that, **after the initial intake phase, a status update on all whistleblower matters must be conducted by the Joint Team at 90 days intervals until the investigation is complete and the case is closed.**

Timeframes are critical to efficient case processing. Without timeframes it is easy for cases to linger unnoticed or fall through the cracks. Committee staff believes that continuous and regular monitoring will allow for better progress and help to keep case resolution moving.

Lack of Enforcement Authority and Follow Up

As discussed previously, a significant component lacking in the whistleblower complaint process is enforcement and compliance authority. The existing statutory provisions only provide the State Auditors' and the Attorney General's offices the authority to review and report on the complaints submitted to them. Neither office has any enforcement powers or requirement to follow up on the whistleblower matters they investigate. In addition, there is no statutory requirement for the entity that is the subject of the whistleblower investigation or the executive branch to acknowledge, respond, or report on substantiated whistleblower allegations.

The committee staff tried to determine from the random case file review whether the subject agency was aware of the allegations or issue before the whistleblower submitted a

complaint. In 75 percent of the cases reviewed, the committee staff noted that the agency was in fact aware of the issue. The committee staff also tried to determine whether the subject agency indicated that any corrective action involving substantiated allegations was or would be taken. In 68 percent of the substantiated cases, the committee staff found *there was limited evidence that the agency subject to the whistleblower investigation followed up with any corrective action.* It was also not clear from the files whether either the State Auditors or the Attorney General asked or requested follow-up information. Again, it is important to note that it is unlikely that case files contain any such documented information since enforcement and follow-up compliance is not required.

The case file review revealed one case that exemplifies the lack of enforcement authority within the whistleblower process. In May of 2007 the Attorney General released a whistleblower report that found that a Department of Public Safety (DPS) employee had been retaliated against. The report included several recommendations to DPS management in order to allow the individual to continue employment. The recommendations were not followed and the department publicly stated that it disagreed with the Attorney General's findings that the employee was retaliated against. The employee subsequently filed court action.

Without enforcement authority and compliance follow-up, it is difficult to justify the resources, time and effort expended on carrying out the state's whistleblower policy. For the policy to have effect and credibility, it is necessary for the results of any investigations to be taken seriously and to elevate the importance of compliance with recommended corrective action. Therefore, the program review committee staff recommends that **each investigation report containing substantiated whistleblower allegations or identified areas of concern must include recommended corrective action and implementation dates by the enforcement entity or the subject entity. Within a reasonable and appropriate time but no longer than a year, the Joint Team is required to follow up on enforcement action and to immediately report any non-compliance to the governor and annually to the legislature.**

Under the committee staff's proposal, when the Joint Team receives an investigative report from an enforcement entity to which a whistleblower complaint was referred, it should determine if the investigative methods used were appropriate, whether reports are accurate, if corrective measures reported by the agencies are expected to be implemented in a timely manner, or even if the corrective measures are implemented at all.

Limited Reporting Requirements

A common concern raised at legislative public hearings on the topic of whistleblowers is the lack of transparency of the process. Some of the specific concerns were about not knowing what happened to complaints once they are submitted to either the State Auditors' or Attorney General's office. As mentioned earlier, the only current reporting requirements are the following:

- The State Auditors must annually report to the legislature the number of matters for which facts and information were submitted to the Auditors during the preceding fiscal year and the disposition of each such matter.

- The Attorney General determines when it is necessary to report any findings to the Governor or in matters involving criminal activity to the Chief State's Attorney.

In 1983, the legislature amended the whistleblower statute to require the Attorney General to report to the complainant, upon request, the outcome of the investigation. However, in 1987, when the Office of the Inspector General was repealed and whistleblower responsibilities were transferred back to the Attorney General with the State Auditors added to the process, the provision regarding any report to the complainant was eliminated. The legislative history on this issue suggests that because any Attorney General's published report on the matter would be public and that the annual State Auditors' report would be available, it would no longer be necessary to provide individual complainant reports.

Communications with whistleblowers. As discussed in the briefing report, each whistleblower unit has a policy regarding disclosures to the complainant. The State Auditors' policy is to only state if and when the whistleblower matter has been referred to the Office of the Attorney General and direct any follow-up with that office. The Attorney General's office policy for whistleblower complaints is to theoretically approach them in the same manner as an active potential criminal case where information is not disclosed until investigation is complete or the case is closed. However, it is also the office policy to rarely close a case but rather put the majority of cases on monitoring status. In addition, relatively few whistleblower complaints actually result in a formal published report. Since 2006, the Attorney General has issued eleven formal whistleblower reports.

The committee staff's case file review tried to capture whether there appeared to be any communication between the office(s) and the whistleblower after the investigation was concluded. As noted in Section I, the case file review provided little evidence that there was communication with the whistleblower after the submission of the complaint. It is important to note again that this case file review was forensic in nature meaning committee staff was piecing together events from information available in the case file. It is possible that communications such as telephone conversations or emails may have occurred with complainants that were not documented in the case file. When communications were evident, it frequently was initiated by the complainant seeking further information. The unit staff would answer any specific questions, if possible. Otherwise, the staff resorts to a restatement of the office policy.

The lack of communication between whistleblowers and the whistleblower unit(s) may create problems of distrust and disillusionment and could compromise the policy's credibility. It is important for complainants to feel that their allegations are heard and taken seriously. Trust and credibility must be built and maintained. This is not possible if information going into the complaint system never gets processed out. Therefore, the program review committee recommends **a statutory provision to require the Joint Team to report to the complainant, upon request, the outcome of a whistleblower investigation.**

Public transparency. The communication issue goes beyond the individual whistleblower that may or may not be affected by state agency management but also to the public at large who should have confidence in state government and a belief that there is integrity in public operations. The committee staff believes *the combination of the individual office*

policies on communications with whistleblowers and the limited reporting requirements allow for little insight to the process. To promote transparency and keep interested parties informed, the results of all complaints should be provided in different formats available to the public including each office website and regularly published reports.

There are different methods of informing the public. For example, the California State Auditor has responsibilities for handling whistleblower functions similar to Connecticut. At least twice a year, the California State Auditor Office issues a public report summarizing the results of the investigations that have been conducted during the previous months. The report provides updates on the actions that have been taken by state agencies in response to previously reported investigations including what the agencies have done to implement the State Auditor's recommendations. Each report also contains statistical information regarding the number of complaints received and the number of investigations performed by the State Auditor. The California State Auditor may also issue a special report detailing the results of an individual investigation when the findings of the investigation are particularly significant. All reports are made available on the State Auditor's website. An excerpt from the California report is provided in Appendix B.

The committee staff believes that the California State Auditor's approach for reporting whistleblower outcomes should be adopted in Connecticut. It provides regular periodic information on whistleblower activities while keeping confidential the identities of the individuals involved. Therefore, the program review staff recommends **a summary of all whistleblower complaints results must be posted at regular six months intervals on the whistleblower unit(s)'s website. At a minimum, the results shall include a listing of whistleblower complaints by state agency or entity subject to the whistleblower statute; a brief description of the type of allegation made and date referred; current status of the complaint investigation including whether it is pending or complete; whether or not the allegation(s) have been substantiated wholly, partially, or not all; and if any corrective action has been taken.**

Trend analysis. As noted above, the State Auditors' annual report contains limited general information on whistleblower matters. The mandated annual report is only required to include the number and disposition of whistleblower matters submitted to the State Auditors. *Neither the State Auditors' nor the Attorney General's office compiles or reports any trend analysis on the complaints received and investigated.*

Trend analysis can help tailor efforts where changes may be needed. Any identified trends could assist state agencies or the executive branch to evaluate whether problems or areas of concern may be developing. At a minimum, it may help identify whether state policies may need review or if further training for state employees or managers is necessary. Therefore, the program review committee staff recommends that **the Joint Team shall prepare an annual aggregate accounting of all whistleblower matters that includes the information required in the preceding recommendation. Such report shall be provided in an annual report to the legislature.**

Improvements Related to Administrative and Staff Resources

The program review staff also noted a few administrative weaknesses that should be addressed to assist staff resources and administrative case processing.

Electronic case monitoring system. Each office currently has an electronic database that contains certain complaint information. However, the information captured is limited, provides only a rudimentary tracking system, and is not used for any general trend analysis. The information is used primarily to give a quick reference of a case. *The whistleblower complaint process would benefit from a more effective case-tracking and case monitoring system.*

In all likelihood, the Joint Team may receive more whistleblower complaints as its responsibilities become better known with more public awareness. The need for an effective case tracking/monitoring system will become even more critical with the implementation of the previous recommendations (i.e., referrals to an existing enforcement agency and established 90 day monitoring time targets). Therefore, the program review committee recommends **the Joint Team should place a high priority on improving its electronic case tracking/monitoring system.**

Report guidelines. The committee staff's review of case files at both the State Auditors' and Attorney General's office indicates whistleblower matters appear to be adequately investigated despite the inefficiencies of the current structure and process. The case file review did point out that *there is variation in the level of detail provided in the case files as well as in developing internal reports.* It should be noted that these case files are currently only used internally within each whistleblower unit for their own purposes. Nevertheless, minimum guidelines on case file management will help with consistency in handling cases, ease a transition if another staff member should need to take over a case, and assist in collecting information for any general trend analysis that may be useful.

In addition to the internal reports prepared by the whistleblower staff, the format and content consistency will be important for any report regarding enforcement and compliance follow-up to ensure the information that is conveyed provides a systematic approach for review and evaluation. Therefore, the program review committee staff recommends that **the Joint Team shall develop minimum requirement guidelines for any investigative reports and follow-up enforcement reports. At a minimum, each investigative report should contain: the investigative methods used, documentation of supporting evidence, conclusions regarding the validity of each allegation, and any recommended corrective action with implementation dates (if applicable).**

Staff training. One important issue regarding staff resources is the background and training necessary for handling a whistleblower complaint. Auditors are primarily financial accountants and do not have legal or investigator training. Similarly, the legal staff at the Attorney General's office does not have financial accounting expertise. Each office relies upon the other to provide advice and guidance on complaints when necessary. As noted previously, the types of complaints received over the years have become more complex. Many times a complaint will contain a mix of financial, legal and policy issues.

Training in complaint handling and investigation methods and techniques should become an integral part of staff development, with an emphasis on the positive benefits for both users and operators of the system. Training arrangements should meet the different needs of supervisors and direct staff who will investigate complaints. Therefore, the program review committee recommends that **staff assigned to whistleblower matters should be given the opportunity to pursue relevant investigative training within available resources.**

General Improvements Related to the Whistleblower Law

In addition to the findings and recommendations proposed about the structure and process for handling whistleblower matters, the program review committee staff also makes a number of conclusions regarding a few particular aspects of the state's whistleblower law in general. These include: public awareness efforts, who should be allowed to report whistleblower complaints, entities covered by the whistleblower statute, and confidentiality provisions.

Public Awareness Efforts

The starting point for any good complaint system is commitment to the principle. Responsive organizations want the users of their services to complain. The best organizations use information from complaints and the investigations they trigger to root out problems and improve services.

The intent of Connecticut's whistleblower policy may be inferred from the legislative history. However, *the whistleblower policy purpose or goals are not clearly stated.* A committee staff examination of whistleblower provisions in other states (discussed in more detail in Appendix B) identified six states that have adopted explicit whistleblower policy statements. One example is found in the statutory whistleblower provisions in Nebraska which states:

> "The Legislature finds and declares that it is in the vital interest of the people of this state that their government operates in accordance with the law and without fraud, waste, or mismanagement. If this interest is to be protected, public officials and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal." (Nebraska Revised Statute §81-2702)

The program review committee staff believes a clear policy statement shows the state's commitment to the whistleblower principle including retaliation prohibition. It also indicates that the state wants transparency in government operations; it cares about providing good government service; and that it values and encourages feedback on whether there are any problems that need attention. For these reasons, the program review committee staff recommends **an articulated whistleblower policy statement should be adopted.**

Awareness by state managers. Another area where commitment and awareness of the whistleblower policy statement may be increased is with the internal management of state agencies. The state manager's guide issued by the Department of Administrative Services (DAS) as well as the statewide policies available on the DAS website covers many employment topics including affirmative action and the handling of discrimination complaints. However, *the*

handling of whistleblower matters is not among the state policies published or addressed in either forum. The program review committee staff recommends that, **at a minimum, the policies regarding whistleblower provisions and protections should be added to the DAS guide for state managers and a description, along with the newly adopted policy statement, be made available on the DAS website.**

Interviews with various agency personnel also indicate that *there is no statewide policy regarding the internal handling of whistleblower complaints at state agencies.* Some state agencies such as the University of Connecticut (UCONN) have taken initiatives to establish its own internal whistleblower unit and develop related policy. Since January 2005, the University's Office of Audit, Compliance, and Ethics has been responsible for the investigations of compliance with university policies and relevant laws. It operates a report line that allows employees an opportunity to report unethical or illegal activity. It also provides a case number and personal identification number after submitting a complaint that allows the employee to follow-up on existing reports.

Committee staff recognizes that developing internal whistleblower systems at state agencies may be resource laden. Recognizing the associated costs of public awareness and educational materials such as printed brochures, committee staff recommends that **the state should place greater emphasis on encouraging state employees to disclose wrongful activities by more clearly informing agencies and employees of the state's whistleblower policy on the various state agency websites.**

Awareness by complainants. As described in the briefing report, the annual number of whistleblower complaints has substantially increased over the years. From FY 02 to FY 08, the Auditors of Public Accounts experienced a 116 percent growth in the number of whistleblower complaints submitted (from 70 to 151 complaints). This suggests there is general awareness with the availability of the process. However, the committee staff finds that *a public understanding of how the whistleblower process works and what it can provide seems to be lacking.*

The review of the whistleblower case files found that 41 percent of complaints are initially filed with the Attorney General's office before it is received by the State Auditors for its mandated first review. At least 24 percent of the complaints were also sent to other officials or offices prior to being sent to the State Auditors. It is unclear whether the multiple submissions are an indication that whistleblowers are not sure where to file or a reflection of the individual's wish to inform as many oversight entities as possible.

Another indicator for the need for further public education is the type of questions and statements made by whistleblowers in their communications and correspondence with the staff of the State Auditors' and Attorney General's offices. Frequently, whistleblowers comment on their expectation that a personnel issue will be resolved or that specific agency personnel complained about should be disciplined or dismissed. Comments and questions are also frequently made about the length of the complaint processing time. These concerns have been raised in public testimony at various legislative public hearings.

Additional education and public awareness efforts are needed to ensure individuals know where to file whistleblower complaints, the appropriate types of reportable information, and an accurate expectation of the process (e.g., the potential length of time, confidentiality provisions, and remedies that are not available such as individual relief for employee grievances). An examination of the approach used by other states suggests that this can be accomplished through various means such as posting notices, informational pamphlets, and additional information published on agency websites.

The statutory requirement for posting notices is another discrepancy noted by committee staff in Connecticut's whistleblower law. Currently, state law requires large state contractors to post a notice of whistleblower provisions in a conspicuous place which is readily available for viewing by employees of the contractor (§ 4-61dd (b)(6)(f)). However, *state agencies and quasi-public agencies do not have a posting requirement for their employees.* Therefore, the program review committee staff recommends that **the State should increase efforts for public awareness and understanding of whistleblower laws. At a minimum, a statutory requirement should be made that each entity subject to the provisions of §4-61dd must post a notice of whistleblower provisions in a conspicuous place which is readily available for viewing by their employees.**

Source of Whistleblower Complaints

Committee staff also considered the broad scope of potential whistleblowers allowed by statute. State law allows anyone including sources external to the entity or who are anonymous to submit a whistleblower complaint. This scope is significantly wider than that used in other states or in the federal government. Most provisions in other states only apply to current employees. The federal government accepts complaints from any source but require whistleblowers to have first hand knowledge of incidents and treats anonymous complaints differently.

As discussed in Section I, the case file review found that many allegations are made by anonymous source with an equal number of allegations coming from internal and external sources. There was an almost even ratio of substantiated and unsubstantiated allegations made by anonymous sources. Fewer allegations by external sources were ultimately substantiated.

The committee staff believes to continue a strong commitment to whistleblower principles requires the consideration of complaints from all sources including individuals who may be external to the subject agency or anonymous. Therefore, the program review committee staff finds that *the state policy should continue to allow anyone to submit a whistleblower complaint including anonymous sources.*

Entities Subject to Whistleblower Policy

State law allows whistleblower disclosures regarding misconduct occurring in state agencies, quasi-public agencies, or in large state contracts. The list of quasi-public agencies subject to §41-61dd are identified in C.G.S. § 1-120. The statutory definition of "large state contract" is a contract between an entity and a state or quasi-public agency having a value of $5 million or more.

Interviews with various agency personnel and an examination of whistleblower case files indicate *a few ambiguities exist which may not have been anticipated, intended, or considered when the various groups subject to the statute were originally or subsequently added to the law.* For example, the statute defines a large state contract as valued at $5 million or more. However, the policy does not consider misconduct by large state contractors who may have multiple state contracts with an aggregate value of $5 million. Interviews with whistleblower staff indicates that contractors frequently have multiple contracts with various state agencies which may total $5 million but individually may not.

Another ambiguity regarding entities subject to the whistleblower law was found in the random case file review. One case file raised the question regarding the State Auditor's scope of authority with respect to probate courts. In the particular complaint file reviewed, the Auditors did question and obtain the willing cooperation of the State Probate Court Administrator; however, the Auditors determined they could not review allegations involving employees of an individual probate judge because they are not state employees.[2] While this is a valid statutory interpretation of state law, this type of exclusion may not have been an anticipated result.

Another possible unintended exclusion involves the Connecticut housing authorities. While the Connecticut Housing Authority is listed as a quasi-public entity subject to the whistleblower law, individual housing authorities which receive substantial state assistance are actually considered municipal entities. As such, their actions are not subject to purview by the law. To ensure the scope of the law's jurisdiction is as the legislature intended, the program review committee staff recommends **the list of entities subject to §4-61dd whistleblower statutes should be amended to clearly articulate any exceptions to the scope of review.**

As a supplemental recommendation, the program review committee staff recommends **an annual list of large state contractors should be prepared by the State Comptroller's Office.** *Presently, a list of large state contractors does not exist.* The State Auditors must do additional research to determine whether the term applies to an entity who is subject of a whistleblower complaint. In addition, individuals seeking individual relief through the grievance process of the Chief Human Rights Referee must determine on their own whether the employer is a large state contractor. Currently, the Chief Human Rights Referee will recommend to the complainant to submit a request to the State Auditors to verify this status. Although some complainants do request this information from the State Auditors, others will frequently indicate on the CHRR complaint form that the employer is a large state contractor without verification. This results in a waste of time and resources in the CHRR process. If the employer entity is not a large state contractor, the entity is still required to engage in the CHRR process to deny the large state contractor status thus wasting legal resources and time for all parties involved in the CHRR process. The extent of this issue is evidenced by the fact that approximately 40 percent of all CHRR dismissals are because the entities are mistaken or misidentified as state agencies, quasi-public agencies, or large state contractors.

[2] Probate employees are hired by elected probate judges but paid through a State Probate Administration Fund.

Confidentiality

Another issue mentioned in staff interviews with state employee representatives and at various legislative public hearings involves confidentiality. Particular concerns were raised regarding whistleblowers that are easily identifiable or put under a cloud of suspicion by management because they are small agency employees or involved in a matter only a few others would be privy to knowing. Current statutory confidentiality provisions state that the State Auditors and the Attorney General will not disclose the identity of complainants without such person's consent unless the disclosure is unavoidable. As such, the statute does not provide any guarantee of absolute anonymity. This coverage is as extensive as possible. Committee staff finds that *although the issue regarding whistleblowers at small agencies being easily identifiable or subject to suspicion may be valid there is no clear legislative remedy this concern.*

Recommendation Summary & Process Flowchart

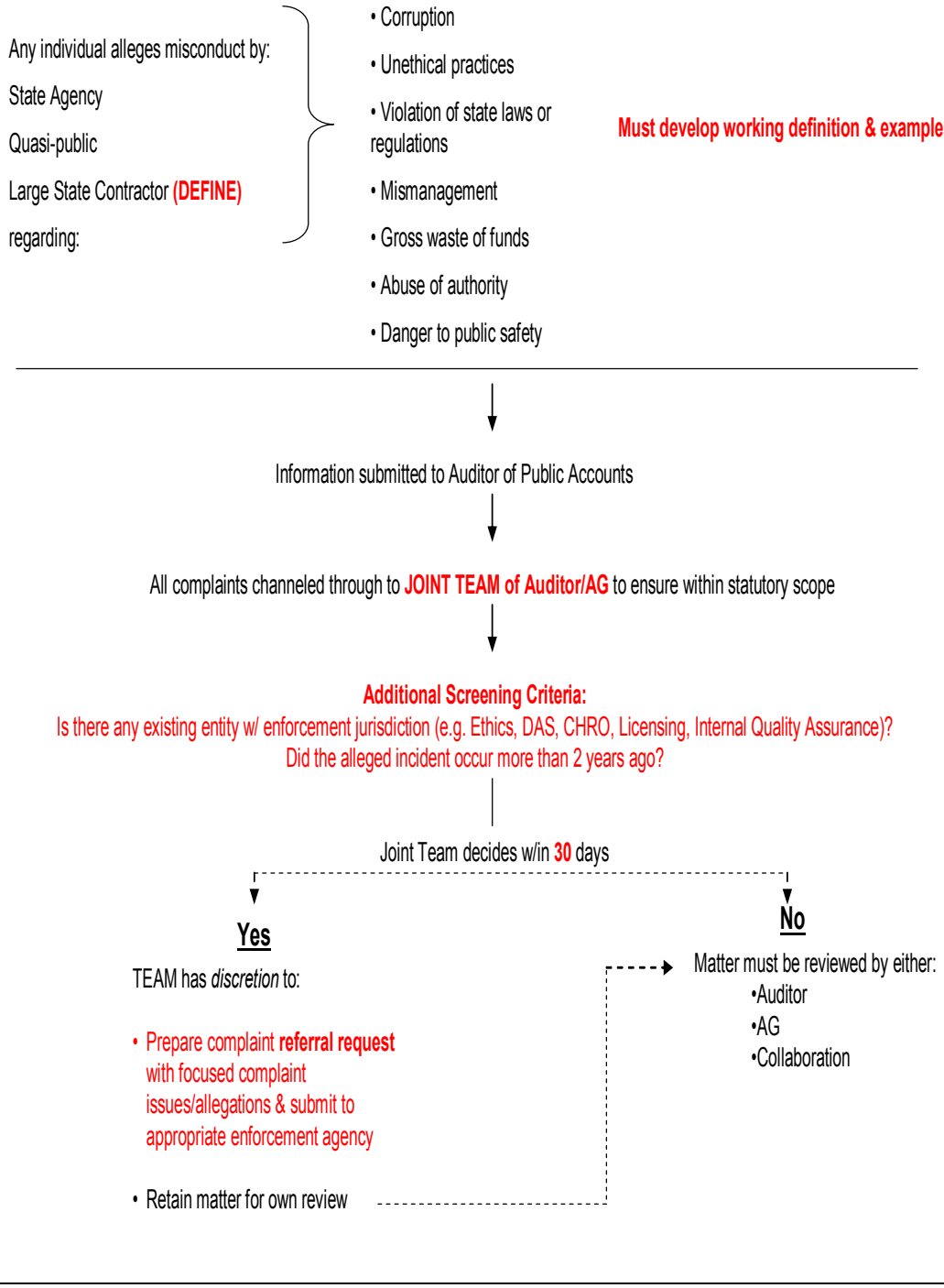
This section proposes a number of recommendations aimed at streamlining the current process, leveraging existing resources, and strengthening various statutory provisions. This is accomplished through better public awareness with working definitions and examples of reportable incidents; additional screening criteria; establishing periodic evaluation of case status; requiring follow-up on compliance; and creating transparency in the results. Figure II-2 provides an example of how such a process would work under the co-direction of the Joint Team as envisioned by the program review committee staff. This chart serves solely as an example and could be modified as needed by the Joint Team through a working memorandum of agreement.

Intake. As the figure illustrates, the process begins with the submission of a complaint by anyone alleging misconduct by a state agency, quasi-public or large state contractors. These entities would be clearly defined in the statute. Working definitions and examples for the seven categories of reportable incidents will be developed and published on the offices' websites to preempt the filing of complaints unsuitable for this process.

Once received, all complaints are channeled through the Joint Team of the State Auditors and Attorney General to ensure they fall within the statutory scope of the law. The Joint Team shall have the discretion to apply additional screening criteria to promote the most efficient use of existing staff resources, avoid any jurisdictional overlaps with other agencies, and timely resolution of complaints.

Referral. Within 30 days of receiving the complaint, the Joint Team will decide whether to prepare and forward a complaint referral request to an appropriate existing enforcement agency or retain the matter for its own review. If the complaint is to be referred to another agency for review, the Joint Team must prepare a referral request that focuses the complaint issues and allegations under review and to the extent possible protect the identity of the whistleblower. If there is no other existing enforcement agency available or the Joint Team determines for other reasons that it should retain the complaint for independent review, the Joint Team shall assign the complaint review accordingly to either the State Auditors (financial), the Attorney General (legal), or collaboratively, if necessary.

Figure II-1. Proposed Statutory Process for General Whistleblower Complaints



Investigation and case monitoring. Every 90 days the Joint Team will receive a status report from the agency reviewing the complaint. If the investigation of the complaint is not complete, the status report must include: what investigation activities have been conducted, the reasons why the investigation is not yet complete, and an indication of how much more time is needed to complete the investigation. If the investigation is complete, the status report must include: the investigations activities conducted, a summary of the findings and conclusions based on the investigation; recommended action steps with implementation dates if allegations are substantiated. This case monitoring cycle will continue every 90 days until the investigation is complete.

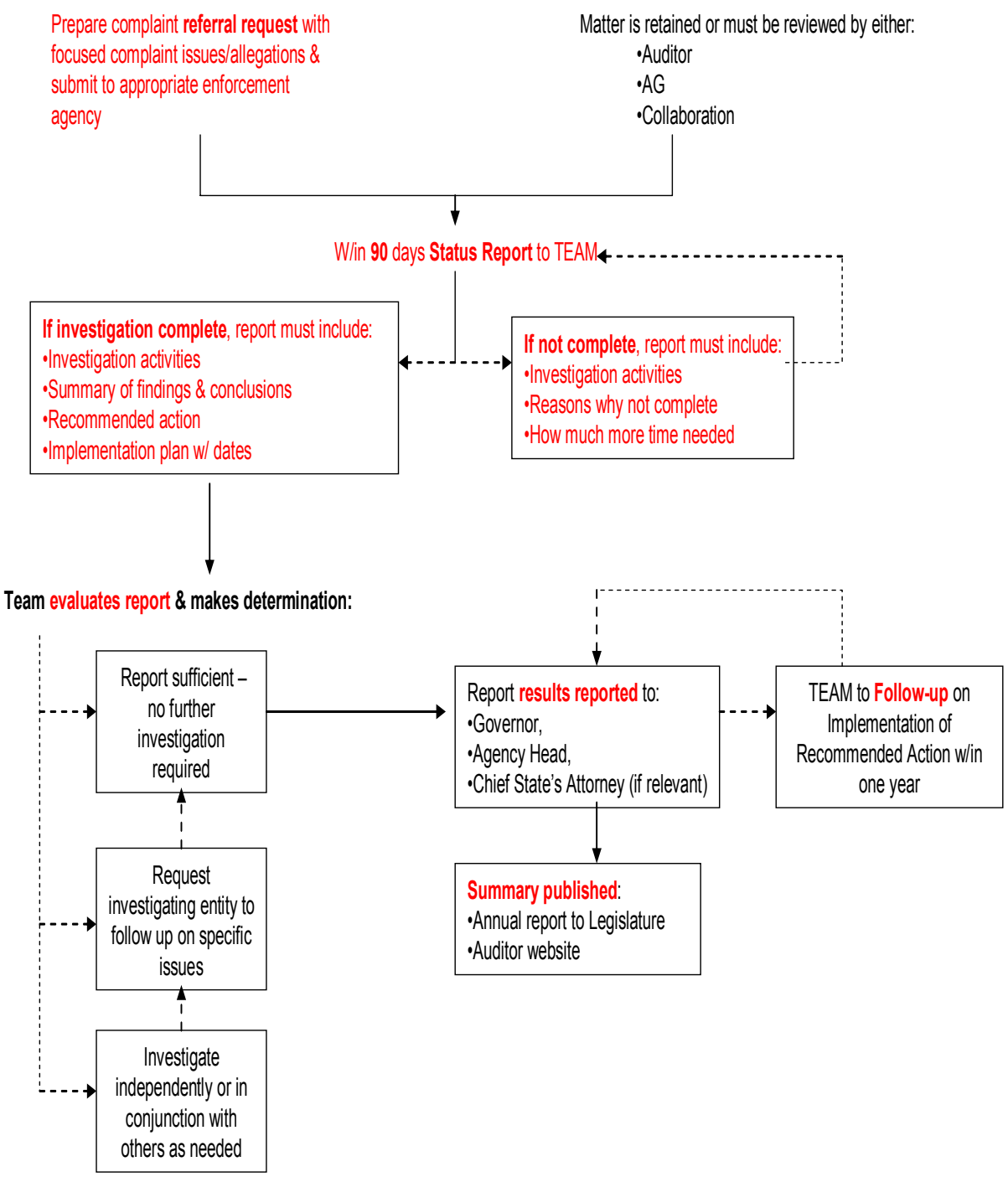
Evaluation. Once the investigation is complete, the Joint Team will evaluate the report and determine if: 1) the report is sufficient and no further investigation is required; 2) additional information on specific issues is required from the investigating agency; or 3) the Joint Team should investigate independently or in conjunction with others as needed. This evaluation process continues until the Joint Team concludes that the investigative report is sufficient and no further investigation is necessary.

Follow-up and compliance. All results of the investigative reports must be reported to the agency head, the Governor, and the Chief State's Attorney, if criminal matters are involved. Within a reasonable and appropriate time (but no longer than a year later), the Joint Team shall follow-up on the implementation of any recommended action. All non-compliance shall be immediately reported to the agency head and the Governor.

Transparency. At least every six months, a summary report will be made available on the offices' websites that contains: a listing of whistleblower complaints by state agency or entity subject to the whistleblower statute; a brief description of the type of allegation made and date referred; current status of the complaint investigation including whether it is pending or complete; whether or not the allegation(s) have been substantiated wholly, partially, or not at all; and if any corrective action has been taken. In addition, the Joint Team may issue a special report detailing the results of an individual investigation when the findings of the investigation are particularly significant.

Finally, the Joint Team will prepare an annual aggregate accounting of all whistleblower matters that includes all the fore-mentioned information. This information shall be provided in an annual report to the legislature.

Figure II-1. Statutory Process for General Whistleblower Complaints (Continued)



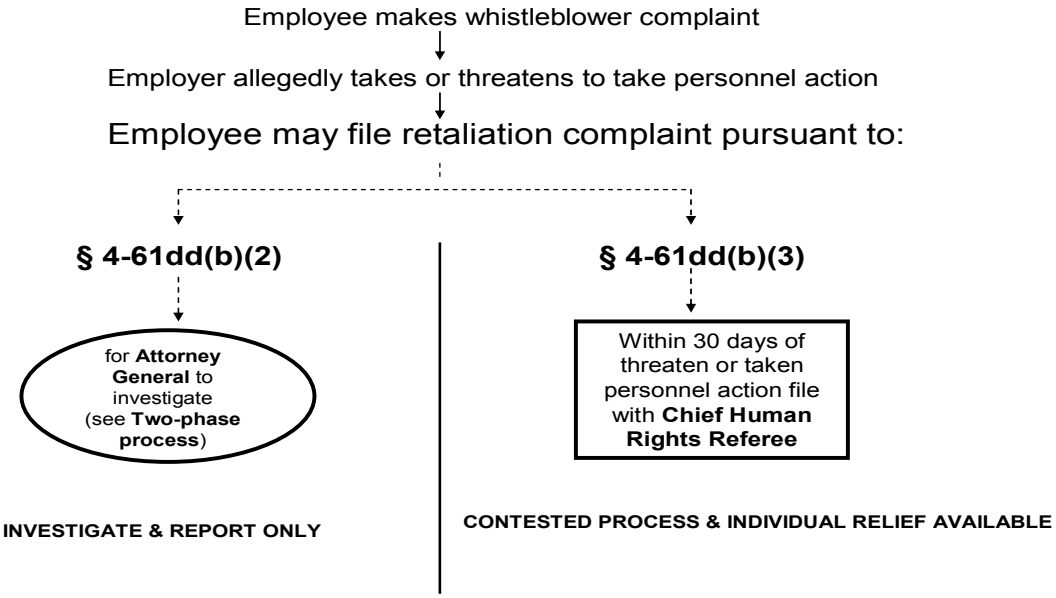
Section III

Findings and Recommendations: Whistleblower Retaliation

A key aspect of Connecticut's whistleblower statute is to protect employees from retaliation because of their whistleblower disclosure. State law sets out different specific choices for employees alleging retaliation. One choice refers retaliation claims reported to the Attorney General to the whistleblower complaint process operated through the two-phase system described in Section I [C.G.S.§4-61dd(b)(2)]. Another provision establishes a retaliation grievance process available through the Chief Human Rights Referee (CHRR) [C.G.S.§4-61dd(b)(3)]. Figure III-1 illustrates the options for whistleblower retaliation complaints.

A major difference between these statutory venues is that one (CHHR) provides an adversarial proceeding[3] where individual relief or remedies are available and the other process (the two phase process involving the Attorney General) does not. This section describes some of the issues involved in each venue and summarizes a range of available policy options.

Figure III-1. Proceedings Regarding Retaliatory Personnel Actions



Source: LPR&IC

[3] Any action, hearing, investigation, inquest, or inquiry brought by one party against another in which the party seeking relief has given legal notice to and provided the other party with an opportunity to contest the claims that have been made against him or her. A court trial is a typical example of an adversary proceeding.

As the chart shows, an employee may submit a retaliation complaint to the Attorney General to review and report through the two-phase process explained earlier; however, if the employee is seeking individual relief he or she may submit his or her retaliation grievance to the hearing procedures available through the Chief Human Rights Referee. State law creates a rebuttable presumption that any personnel action taken or threatened against an employee is retaliatory if it occurs within one year of the whistleblower disclosure. If after the CHRR process the complainant is still aggrieved, he or she may appeal a decision to superior court.

From 2002 to 2005, the state law required that the Attorney General retaliation process occur and be concluded before the contested case hearing process could be used. The legislature eliminated this requirement in 2005 essentially disconnecting the processes. The legislative debate shows the disconnection was made to allow an employee to request immediate individual relief rather than wait for the conclusion of the Attorney General's investigation. Since that time a number of proposals have been raised to make changes to different aspects of the individual relief processes. Several inefficiencies and deficiencies of these processes are detailed below.

Case File Review

As part of its case file review, the committee staff examined 44 retaliation complaints handled through the two-phase complaint process. In addition, the committee staff also reviewed 12 retaliation claims filed with the Chief Human Rights Referee that had a hearing where the final determination was for the employer or was settled. (To date, none of the CHRR complaints have been decided in favor of the complainants.)

Tables and graphs detailing the results of the case file review are provided in Appendix A. Overall, the analysis of the retaliation case file review reveals:

- In more than half of the retaliation claims the initial underlying whistleblower complaint was first disclosed internally to the employer. Fourteen percent of the retaliation cases had the initial whistleblower complaint submitted to the Attorney General/State Auditors.

- In 36 percent of the retaliation cases reviewed through the two-phase process, the employee was not a whistleblower protected by the statute (e.g., did not disclose to statutory entity).

- Twenty-eight percent of the retaliation complaints submitted to the Attorney General's process went on to another forum such as CHRO, EEOC, or other grievance proceeding.

- The retaliation investigation in 20 percent of the cases within the two-phase system could not proceed because there was not enough information available or the complainant was no longer cooperating or interested.

- Three retaliation cases (7%) within the two-phase process were substantiated.

- Many (45%) of the retaliation complaints involved terminations, denials of promotion, or changes in assignment made by agency management. Some (25%) also alleged harassment with 23 percent alleging both harassment and impact on employment position.

- Most (75%) of the individuals filing a grievance with the Chief Human Rights Referee did not have legal representation.

- Only one case file reviewed used the statutory rebuttable presumption in proceedings before the Chief Human Rights Referee.

Retaliation Claims Handled Through Attorney General (§4-61dd(b)(2))

Pursuant to §4-61dd(b)(2), state law allows an employee of a state agency, quasi-public agency, or a large state contractor to report a violation of the whistleblower retaliation prohibition to the Attorney General as part of the general whistleblower process. As discussed earlier, the process does not include enforcement powers for the Attorney General and does not provide for a remedy or individual relief for the whistleblower. The case file review found three substantiated retaliation claims that went on to other forums. In the 28 percent of the cases where a retaliation determination was not made in the two-phase process, the complainants went to another forum such as CHRR, EEOC, or another grievance proceeding.

Involvement of the State Auditors. The committee staff briefing report noted that interviews with the State Auditors' and the Attorney General's staff indicate a difference of opinion regarding the statutory interpretation of the Auditors' involvement in retaliation complaints. The disagreement revolves around the following statutory language:

> "If a state or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, *the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section*." (Emphasis added)

The reference to subsection (a) is the statutory provision that establishes the two-phase process for whistleblower complaints. The State Auditors view the Attorney General, since he was specifically mentioned in the statutory language, as having primary investigation responsibility for retaliation complaints while the Attorney General's staff maintains that the Auditors, because they are included in subsection (a) of the statute, must provide the first review for all whistleblower complaints including retaliation claims.

In its examination of 44 retaliation complaints submitted for review under this process, committee staff tried to determine what impact, if any, this issue has made on complaint handling. Committee staff found that *there has been a minimal impact on the complaint process because of the difference of opinion regarding the statutory interpretation of the whistleblower provisions.*

The State Auditors have continued to review all retaliation complaints submitted to them, but with a reduction in the previous level of detail and review. In earlier retaliation complaints, the Auditors' staff would compile some additional factual background on the retaliation claims before referring the complaint to the Attorney General. More recently, the State Auditors will summarize the retaliation allegations with little to no further information provided and refer the complaint back to the Attorney General for investigation. Committee staff considers this a minimal impact because the prior (i.e., pre- difference of opinion) review of retaliation claims by the Auditors' staff frequently made no conclusion or determination regarding the allegation before referring it to the Attorney General for investigation. This has not changed even though the preliminary work previously conducted by the Auditors' staff is no longer provided.

Based on the random case file review of the retaliation complaints received since 2005, the State Auditor did not provide a conclusion or decision regarding the allegation of retaliation in more than half (55%) of the complaints received. In all of those cases, the Auditors' report would include a summary of the complaint, verification of certain factual accounts, and additional supporting documentation when necessary. However, the report typically would not state a conclusion.

A greater impact is the time-consuming two-phase process that requires separate reviews but contributes little to no benefit to the case. Although committee staff finds that the statutory interpretation issue has not impacted the handling of the retaliation cases, clarification would help to insure more timely investigation by the entity with the responsibility of investigating the claim. Therefore, the program review committee staff recommends **the statutory language contained in §4-61dd (b)(2) must clarify the State Auditors involvement or non-involvement in reviewing whistleblower retaliation claims.**

Further discussion of this retaliation complaint process, the involvement of each office, and potential alternatives is provided later in this section.

Retaliation Claims Handled Through Chief Human Rights Referee (§4-61dd(b)(3))

State law provides remedies to and individual relief from retaliation to whistleblowers through the grievance process made available by filing a retaliation complaint with the Chief Human Rights Referee. The CHRR process is a contested case proceeding under the Uniform Administrative Procedures Act where evidence and testimony is submitted under cross-examination. Below is a discussion of some of the issues raised in the committee staff interviews conducted throughout the course of this study and in legislative public hearings on the topic, along with findings and proposed recommendations.

CHRR filing period. One concern that has been frequently discussed in reference to this process is the filing period for retaliation grievances. State law provides individuals who claim whistleblower retaliation a 30-day period after learning of the specific incident giving raise to the claim that retaliation occurred (or was threatened) to file a complaint with the Chief Human Rights Referee.

Public hearing testimony from various interested parties suggests that more than 30 days should be allowed for individuals to consider their options and to find and consult with attorneys.

Some have testified that dealing with the aftermath of an adverse personnel action such as termination or a cut or change in hours may impact other aspects of family life (e.g., finances or availability of child care) and additional time should be allowed for individuals to weigh the best course of action.

Committee staff examination of retaliation complaints submitted to the Chief Human Right Referee found at least four cases were dismissed because they were not filed within the statutory 30-day period. The random case file review also identified one case where an individual submitted his complaint to the Attorney General's office because the 30-day CHRR filing period had lapsed.

Legislative proposals increasing the filing period to 90 days have been proposed in recent legislative sessions. Both the Chief Human Rights Referee and the Attorney General submitted testimony supporting an increase of the filing period. As a point of reference, other types of complaints (i.e., discrimination complaints) must be filed within 180 days from the date of the alleged act of discrimination or from the time that the individual reasonably became aware of the discrimination.

The program review committee staff agrees that *individuals claiming whistleblower retaliation should be granted more time to weigh their options and find legal representation prior to submitting a complaint.* Therefore, the committee staff recommends **the 30-day filing requirement for whistleblower retaliation claims pursuant to §4-61dd(b)(3) should be extended to 90 days.**

Statutory rebuttable presumption. Another issue frequently discussed in the whistleblower retaliation policy is the statutory rebuttable presumption. In 2002 when the CHRR process was established, the legislature created a statutory rebuttable presumption that any taken or threatened personnel action within a year of disclosing whistleblower information is deemed retaliation by the employer. It is important to note that this does not mean that the individual automatically wins the grievance. It simply allows the individual to use the statutory rebuttable presumption to establish an inference of a causal connection between the threatened or taken personnel action and the protected whistleblower disclosure as part of meeting his or her burden of proof. The employer's burden is to show it had a non-retaliatory explanation for the adverse personnel action. The human rights referee must consider all of these in making a decision.

Only one of the 12 CHRR retaliation cases reviewed by committee staff used the statutory one year rebuttable presumption. Public hearing testimony from whistleblowers, the Attorney General, and the Chief Human Rights Referee have indicated that the one year rebuttable presumption period is too short. *One year does not allow enough time for the statutory presumption to be useful or available to complainants.* Most personnel actions (e.g., promotions or performance evaluations) occur on an annual basis. The one year presumption period may expire before the opportunity arises for the employer's retaliation to occur. Some employees could fall victim to bad timing if the opportunity for retaliation/adverse personnel action occurs after the presumption period ends.

In each of the last two legislative sessions, proposals have been made to extend the statutory rebuttable presumption from one to three years. Both the Chief Human Rights Referee and the Attorney General have testified in support of this change. However, business associations such as the Connecticut Business and Industry Association (CBIA) and the state Department of Public Safety have testified that extending the statutory presumption period to three years is too long and becomes costly and burdensome to employers.

The program review committee staff believes a compromise to the concerns raised by each interested party is to split the time difference to a two-year rebuttable presumption. Therefore, the committee staff recommends that **the statutory one year rebuttable presumption period for retaliation complaints established in §4-61dd(b)(5) should be extended to two years.**

Temporary relief. A proposal that has also been contemplated in various legislative sessions is the availability of temporary relief for whistleblowers. According to the testimony provided at public hearings, the human rights referees presiding over retaliation complaints should be authorized to grant temporary relief to prevent a retaliatory action from going into effect during the pendency of a hearing. The temporary relief would include an order reinstating the person filing the complaint to the same position held before the personnel action was taken.

The decisions made in the CHRR case files reviewed by committee staff were all either made in favor of the employer (i.e. allegation was unsubstantiated) or the case was settled. Therefore, it was difficult to determine if temporary relief could have been granted. As noted in the briefing report, a similar provision is allowed in the federal government's whistleblower system. To offset the possibility of further harm, the committee staff recommends that **the human rights referees should be granted the authority to order temporary relief during the pendency of a hearing if the referee has reasonable cause to believe that a violation of the retaliation provision had occurred.**

Amending original complaints. Another provision discussed among recent legislative proposals is allowing individuals to amend their original retaliation complaint when subsequent incidents of retaliation occur. Currently, CHRR regulations allow for reasonable amendments to complaints and for the consolidation of complaints. According to the Chief Human Rights Referee, some complainants move to amend their complaints and other complainants file new complaints that may be consolidated into a single hearing. This may depend on the type of new adverse action alleged. Both amendments and consolidating separate complaints can delay the retaliation grievance process, as additional time may be needed for the filing of answers and disclosure of documents.

Therefore, the program review committee staff recommends that **the human rights referee should have the discretion to allow reasonable amendments to a complaint alleging additional incidents. The amendment shall be filed not later than thirty days after the employee learns of the incident taken or threatened against the employee.** If the presiding human rights referee denies a motion to amend, an employee may file a new complaint alleging the incidents recited in the amendment.

Lack of legal representation for whistleblowers. The issue of legal representation for whistleblowers has also been raised throughout this study. In the twelve CHRR cases reviewed by committee staff, only three complainants had legal representation. One of three didn't have counsel at the start of the proceeding but subsequently obtained representation. Another began the process with counsel but ended the proceedings without one. *It is not clear why some whistleblowers do not obtain legal representation for CHRR proceedings.* It may be the cost associated with retaining legal counsel or individual complainants may feel they are capable of handling the CHRR process themselves. There is also the possibility that the recovery of reasonable costs does not provide enough incentive for private counsel to take a retaliation case against the state.

Testimony provided by whistleblowers at various legislative hearings state that whistleblowers may not have the expertise or knowledge to present their allegations in a format that would substantiate the charges. Some have testified that the grievance process may be too much for someone who is not a legal scholar, college-educated, or has access to great sources of information. Pro se complainants have to learn the process, including how to file motions or properly cite legal precedence in objections and responses, and to organize a large portion of time and energy around preparing and defending their cases. This may include taking time off from a new job or from searching or maintaining one. Some have equated the process to taking a graduate course or a second job with late nights of writing and research in support of their case. All of this can take a toll on an already stressed individual and family.

Some of the past legislative proposals have been to allow the Attorney General to intervene on behalf of whistleblowers in CHRR proceedings. (Further explanation of this proposal is provided below.) Another possible solution is for the state to ask the Connecticut Bar Association if it would consider providing legal assistance or referrals for whistleblowers. Another could be to amend the whistleblower provisions to allow punitive damages as a remedy. This may provide further incentive over possible reasonable costs for lawyers interested in taking cases against state. The involvement of the Connecticut Bar Association and availability of punitive damages may help whistleblowers to get legal assistance. However, there may be significant cost to the State in allowing punitive damages if retaliation claims are substantiated.

One proposal suggested to committee staff would be to amend the statute giving the CHRR authority to appoint pro bono counsel, with an award of attorney fees if the complainant prevails. This would be similar to a provision for federal Title VII claims (42 U.S.C. § 2000e-5(f)(1)) where a federal court has the discretion to appoint an attorney for the complainant in consideration of the complainant's inability to pay for an attorney, having a meritorious claim, and an unsuccessful attempt to obtain counsel.

The program review staff believes that all of these possible solutions should be further explored if a policy decision is made that whistleblowers should be afforded legal counsel. This policy question is debatable. Individuals involved in other administrative hearings must obtain their own legal representation. This is not uncommon in grievance proceedings involving employee matters such as before the Employees Review Board or involving the Office of Labor Relations. It is also what is required of whistleblowers in the private sector pursuant to C.G.S. §31-51m. One exception is found in employment discrimination cases where complaints are

submitted to CHRO. The agency investigates the complaint and if the commission staff believes there is reasonable cause that the claim can be substantiated then CHRO attorneys present the case to Office of Public Hearings. The various policy considerations involved in this issue are discussed further in the alternative options presented below.

Alternative Options to Handling Retaliation Complaints

The program review committee staff's examination of the Connecticut's whistleblower retaliation processes identified two policy issues commonly mentioned by interested parties that merit further evaluation. These issues include:

- the potential conflict of interest raised by having the Attorney General involved in investigating retaliation complaints through the whistleblower complaint process outlined in §4-61dd(a) and the Attorney General representing the state agencies that are the subject of these complaints before the Chief Human Rights Referee; and

- the whistleblower having to obtain his/her own legal representation or represent his/herself in §4-61dd(b)(3) proceedings before the Chief Human Rights Referee.

The program review committee staff examined various scenarios whereby the potential conflict of interest could be reduced. In order to eliminate the potential conflict of interest issue, one of three things must occur:

- Repeal §4-61dd(b)(2), which requires the Attorney General to investigate retaliation complaints,

- Prohibit the Attorney General from representing state agencies in CHRR retaliation proceedings pursuant to §4-61dd(b)(3), or

- Remove the Attorney General from retaliation proceedings all together.

A fourth possibility is to allow the Attorney General to remain involved in both investigating and representing retaliation complaints but strengthen certain provisions to minimize the potential conflict of interest. All of these options would necessitate changes in other aspects of the retaliation processes including who should provide legal representation to the whistleblower.

Table III-2, shown on the next page, is a description of a variation of approaches, including the status quo, which could be considered along with a discussion of the strengths and weaknesses of each.

Table III-2. Comparison of Options for Handling Conflict of Interest & Legal Representation in Retaliation Complaints

ISSUE Attorney General Conflict of Interest	STATUS QUO	OPTION 1	OPTION 2	OPTION 3	OPTION 4	OPTION 5
Who Investigates Retaliation Claim	AG & Auditors investigate without available relief or remedy to WB	Remove AG from investigation; Auditors review with own legal staff	**STATUS QUO**	New independent unit to investigate	Add retaliation to CHRO discrimination responsibilities	Remove AG & Auditors from investigating retaliation Repeal §4-61dd(b)(2)
Who Represents Agency	AG represents Agency at CHRR hearing	**STATUS QUO**	Other entity (e.g. Office of Labor Relations) represents Agency at CHRR hearing	**STATUS QUO**	**STATUS QUO**	**STATUS QUO**
Legal Representation for Whistleblower	Pro Se or Obtain own counsel w/ reasonable fees	**STATUS QUO** plus Ask CT Bar to assist & allow punitive damages	Allow AG to represent whistleblower claim at CHRR hearing	New unit represents whistleblower claim at CHRR hearing	CHRO represents whistleblower claim at CHRR hearing	**STATUS QUO** plus Ask CT Bar to assist
Option Advantages		• Part of conflict gone • More assistance & incentive to obtain legal counsel	• Part of conflict gone • AG investigating & prosecuting allows case continuity • Elevates enforcement • AG has supported this in the past	• One entity investigating & prosecuting claim allows case continuity • Elevates enforcement of investigation	• Existing system with protocols already in place	• No conflict of interest • More assistance to obtain legal counsel
Option Disadvantages	• No individual relief available • Potential conflict of interest exists • WB overwhelm without legal counsel at CHRR hearing	• Resource cost for Auditors' legal staff • Potential significant cost if punitive damages awarded	• Resource cost in another entity representing Agency	• Significant resource cost in creating new entity	• Resource cost in added workload to CHRO	

Source: LPR&IC

The table presents five different options in comparison to the status quo approach. As discussed earlier, there are several disadvantages to maintaining the status quo. Options 1 and 2 eliminate part of the conflict of interest by removing the Attorney General from either investigating a retaliation complaint or representing the state agency subject to the investigation. Option 2 also allows legal representation by the Attorney General for the prosecution of the retaliation claim at a CHRR proceeding.

Options 3 and 4 allow for a single entity to investigate and prosecute a retaliation complaint through either a newly created or existing agency (CHRO). All of these options carry a potential resource cost in the transfer of responsibilities from one entity to another.

A fifth option would be to repeal the retaliation process outlined within §4-61dd(b)(2) entirely. Under Option 5, the Attorney General and State Auditors' staff would not be required to review retaliation claims. This would eliminate the potential conflict of interest because the Attorney General would only be involved in representing the state agency in CHRR proceedings.

Interviews with various agency personnel, whistleblowers, and state employee representatives indicate there is minimal benefit to having retaliation complaints submitted through the existing two-phase whistleblower complaint process. This review and report process does not provide any individual relief or remedy to complainants. The information produced from the process is not used in connection with any other proceeding. It is not clear why any employee would file a retaliation complaint in this venue.

Despite this lack of available damages and limited usefulness, the growing number of retaliation complaints filed within this system suggests that employees either do not understand what the process can or can not provide or employees want to register their grievance in all available forums. One possible reason for filing with the Attorney General is that the complainant realizes the CHRR filing period has lapsed and feels this is the only other option to be heard besides going to court. It may also be possible that individuals are encouraged to "register" their complaints with the Attorney General and the State Auditors to have the opportunity to raise future claims before other employment grievance procedures. This issue of using the system as a shield to adverse personnel action has been mentioned in various committee staff interviews.

The case file review did not find documented evidence or cases that employees were, encouraged by unions or on their own initiative, filing whistleblower claims to use as a shield for adverse personnel actions. However, the case file review did find at least one case of an agency claiming the employee was abusing the whistleblower process to shield from an adverse personnel action. The file review also found two instances where the employees were asking to be registered or recognized as whistleblowers in anticipation of retaliation.

This range of possibilities supports the need for greater awareness and education about the process discussed in Section II. Better understanding of what the whistleblower complaint process can and can not provide should help manage a complainant's expectations and misconceptions. Nevertheless, the program review committee staff believes there are weaknesses in the current whistleblower retaliation process managed by the Attorney General.

While the recommended changes proposed by the committee staff in Sections II should be beneficial to the handling of general (non-retaliation) whistleblower complaints, there are still substantial disadvantages to using this process (even with he recommended changes) for retaliation complaints. Among these weaknesses:

- The process is not a contested proceeding. Many retaliation complaints come down to a determination of he said/she said which is best suited for testimony presented in an adversarial proceeding such as a hearing.

- The process does not provide any individual relief or remedy to complainants. At the end of its review, the process can only report its findings.

- The process does not produce any information that is used in another forum. The length of time typically needed to complete an investigation report would diminish any usefulness for a complainant seeking immediate relief.

- The process contributes to a potential conflict of interest. As noted earlier, there is at least the appearance of a conflict of interest by having the Attorney General investigating as well as representing the state agency involved in whistleblower complaint.

Another reason to reconsider the usefulness of this process for retaliation complaints is the nature of the allegations received. A review of the retaliation case files found that in more than half (52%) of the retaliation complaints the initial underlying whistleblower disclosure was made internally to the employer. However, frequently what the employee was claiming as a "whistleblower disclosure" was essentially the employee voicing his or her disagreement with a policy or administrative decision or in some instances involving personal issues. For example, an employee may allege retaliation because she told her supervisor that a co-worker was not doing his job and now the supervisor did not promote her because he is friendly with the co-worker. Program review staff found many of the retaliation allegations made involve what could typically be viewed as personnel matters or straightforward administrative decisions. These types of complaints would be better suited to other available administrative proceedings.

Together, these reasons (e.g., inadequately designed process to determine retaliation, produces minimal benefit to the individual, and contributes to a potential conflict of interest) support an argument to eliminate the submission of retaliation complaints to the Attorney General through the whistleblower process established in §4-61dd(a). By repealing §4-61dd(b)(2), a whistleblower alleging retaliation would still have the ability to file a grievance with CHRR to obtain individual relief albeit with or without legal representation. This would treat state employees the same as whistleblowers in the private sector. It would reduce the whistleblower workload for both the State Auditors and the Attorney General as well as eliminate the potential conflict of interest involving the Attorney General.

Conclusions. Similar to the discussion in Section II, the program review committee staff believes an approach that would allow for an independent entity with a single focus, adequate resources, and enforcement authority would be the best model for handling whistleblower

retaliation complaints. This entity would provide case continuity by serving both investigative and prosecuting roles.

However, as noted previously, the cost of such a model whether creating a new entity (Option 3) or transferring additional responsibilities with a resource cost to an existing single focused agency such as CHRO (Option 4) is not practical in this fiscal climate. Resource cost continues to be an issue in Option 1, which requires the State Auditors to hire legal staff for a function they don't believe their office should perform. This leaves Option 2 and Option 5 as alternative approaches.

The approach in Option 2 would achieve the goal of having one entity (Attorney General) involved in both investigating and prosecuting retaliation complaints. It is an option that has been proposed and supported by the Attorney General. There is a possible resource cost in having another entity (e.g., Office of Labor Relations) representing state agencies instead of the Attorney General.

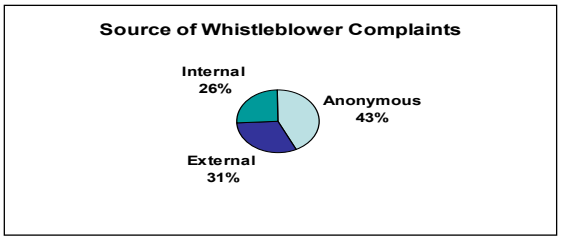
Option 5 closes one venue for reporting whistleblower retaliation. However, given the venue's limited usefulness to retaliation complainants, it would be more of a gain of available staff resources within the offices now charged with investigating retaliation complaints than a loss of benefit to whistleblowers alleging retaliation. The state cost in this approach would only occur if proposals are adopted regarding the whistleblower's ability to obtain legal counsel through means such as punitive damages or allowing the human rights referees to appoint counsel who may receive attorney's fees if they prevail. Finally, Option 5 treats all Connecticut whistleblowers whether in the private or public sector the same. For these reasons, the program review committee staff believes Option 5 is the best approach for whistleblower retaliation claims and recommends that **C.G.S.§4-61dd(b)(2) should be repealed in its entirety.**

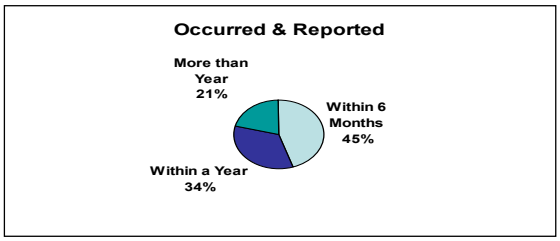
(If this recommendation is adopted, the recommendation on page 28 related to the State Auditors and retaliation complaints is unnecessary.)

APPENDICES

General (Non-Retaliation) Whistleblower Complaints (N=35)

- A mix of sources provide general (non-retaliation) whistleblower complaints.
- The largest percentage (43%) come from anonymous sources.
- Complaints from external sources make up 31 percent.
- In 79% of the cases, the allegation/incident complained about occurred within a year or less. In 45%, it occurred within six months of the individual reporting the complaint.
- For many complaints (21%), the time between when the whistleblower incident/allegation occurred and when the complaint was reported is more than a year.





Entities Receiving Complaint Prior to State Auditors (N=79)

- Frequently whistleblower complaints are made to other agencies or officials before the State Auditors.
- The State Auditors received complaints first only 21% of the time.
- The Attorney General received the complaint first in at least 41% of the cases.
- In 47% of the cases, the complaint was made internally to the subject agency.
- Others such as the Governor or individual legislators were notified in 18% of the cases reviewed.

Complaint First Made to:	Number (Percent)
State Auditors only	16 (21%)
Attorney General only	18 (23%)
Internally to Subject Agency	17 (22%)
Others (e.g. Governor/ legislator)	3 (3%)
Internal Agency & Others	10 (13%)
Attorney General & Others	5 (6%)
Attorney General & Internal Agency	8 (10%)
All Three	2 (2%)

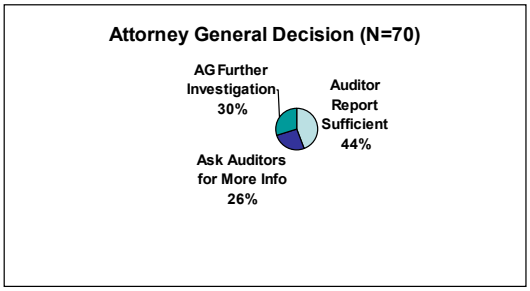
Communication with Whistleblower After Investigation

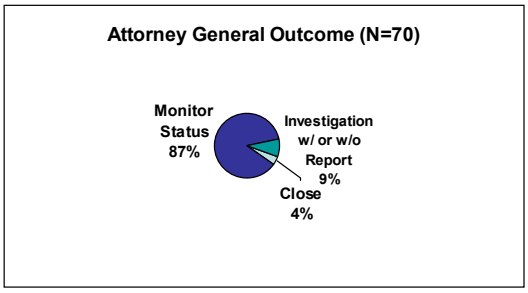
- Case files at both the State Auditors' and the Attorney General's offices showed there is frequently no communication with whistleblowers after investigation.
- Approximately 75% of the cases had no evidence of communication with whistleblowers after the investigation.
- Verbal communications were most common when it did occur.

Type of Communication	State Auditors (N=70)	Attorney General (N=70)
No Communication	54 (77%)	51 (73%)
Communication:	16 (23%)	19 (27%)
Written	1 (2%)	0 (0%)
Verbal	9 (13%)	7 (10%)
Both Written & Verbal	6 (9%)	12 (17%)

Results of Attorney General Review

- Attorney General determined that State Auditors report sufficient in 44 percent of the cases.
- In slightly more than a quarter of cases, the Attorney General asked the Auditors for more information.
- The Attorney General investigated further in about 30 percent of the cases reviewed.
- The Attorney General closed few cases (4%) and put a vast majority (87%) on monitoring status.
- Only a small percentage of cases (9%) has a full Attorney General investigation with or without a published report.





Final Outcome of Allegations by Source

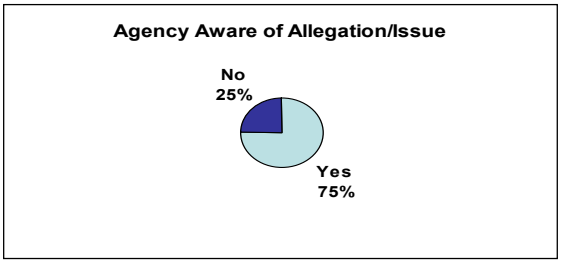
- Most allegations were made by anonymous source.
- Slightly more than a third of allegations were substantiated.
- 45% were unsubstantiated but in 10% an area of concern was identified.
- In close to 20 percent, a decision could not be made.

Final Outcome of Allegation by Type of Source (N=35)*				
Final Outcome	**SOURCE**			**TOTAL**
	Anonymous	**External**	**Internal**	
Substantiated	10 (38%)	2 (18%)	5 (45%)	17 (35%)
Unsubstantiated	9 (35%)	5 (45%)	3 (27%)	17 (35%)
Unsubstantiated but Area of Concern	3 (12%)	1 (9%)	1 (9%)	5 (10%)
No decision could be made	4 (15%)	3 (27%)	2 (18%)	9 (19%)
Total Number of Allegations	26	11	11	48

*Cases may have more than one allegation.
Source: LPR&IC Analysis

Agency Response to Complaints (N=79)

- In most cases (75%), the agency is aware of the allegation or issue involved in the complaint.
- The subject agency addressed all of the substantiated issues in 45 percent of the cases reviewed.
- In 23 percent of the complaints, the subject agency provided some corrective action.
- In 32 percent of the substantiated complaints, the agency response was not evident in case file.



Agency Response to Substantiated Allegations or Area of Concern	Percent (N=22)
Substantiated/Area of Concern	22
Address All Issues	10 (45%)
Address Some Issues	5 (23%)
Unknown	7 (32%)

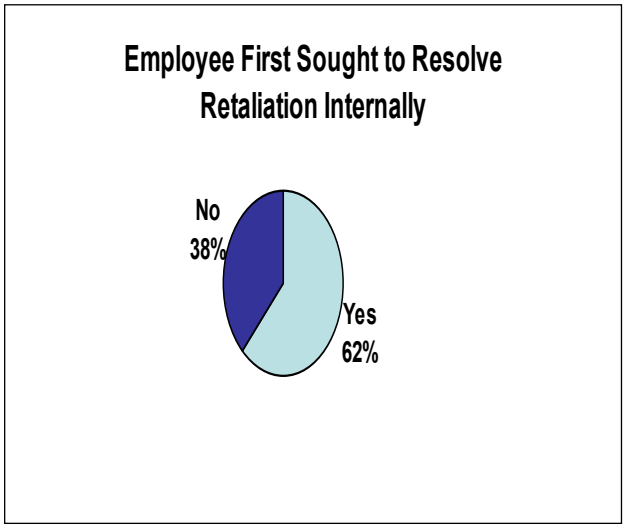
AG Retaliation Complaints (N=44)

- Employees alleging retaliation frequently (52%) made the initial whistleblower disclosure internally to employer agency.
- In 3 cases of the internal employer disclosure, the initial complaint was made to large state contractor which is not subject to statutory whistleblower protection.
- Many retaliation cases (36%) involved employees complaining about employer to an outside source (e.g. union, town, public hearings/meetings). None are protected under C.G.S.§4-61dd.
- Only a few retaliation cases involve an original complaint filed with the Attorney General or State Auditors.

Initial Whistleblower Disclosure Made to:	Number (Percent)
External Source	16 (36%)
Internally to Employer Agency	23 (52%)
Attorney General/State Auditors	2 (5%)
Contracting State Agency	3 (7%)

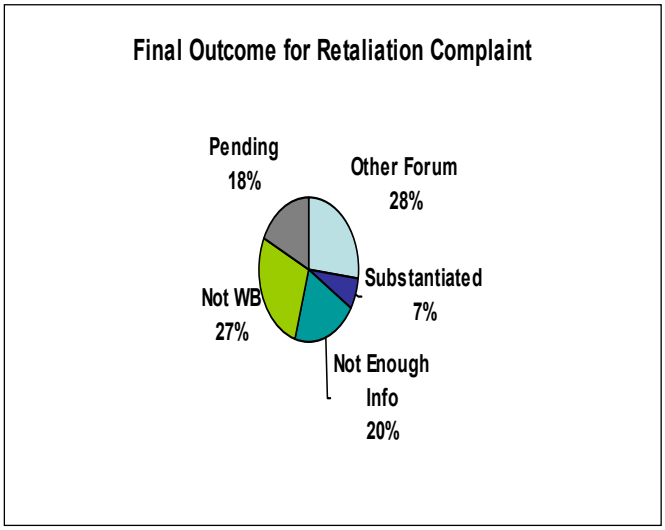
AG Retaliation Complaints (N=44)

- In 62% of cases, the employees first sought to resolve the retaliation issue internally with the employer agency.
- Most employees (67%) did not seek to resolve the retaliation issue in another forum (e.g. CHRO, contractual grievance process) **before** submitting complaint to State Auditors or Attorney General.
- However, some individuals did pursue other forums **after** submitting a claim to the State Auditors or Attorney General.



AG Retaliation Complaints (N=44)

- In 28%, the retaliation complaint went to another forum such as CHRO, EEOC, or other grievance proceeding.
- In 27%, the employee was not a whistleblower protected by the statute (e.g. did not disclose to statutory entity)
- In 20%, the investigation could not proceed because there was not enough information or the complainant not cooperating or interested.
- Three cases (7%) were substantiated



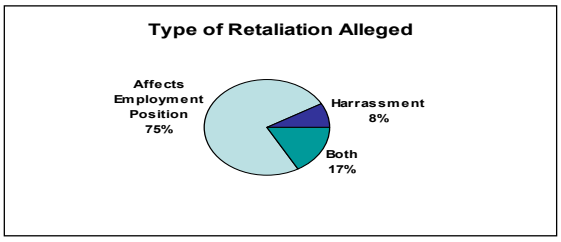
CHRR Retaliation Complaints (N=12)

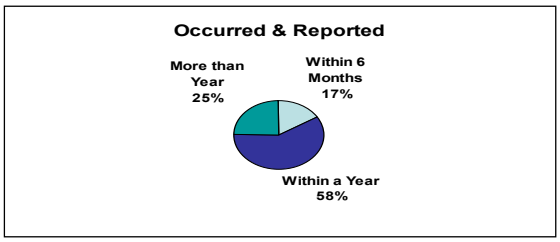
- An equal percentage of employees made their initial whistleblower disclosure internally to the Employer Agency or to the State Auditors/Attorney General.
- None of the cases involved a disclosure to a mandated reporter or contracting state agency.

Initial Whistleblower Disclosure Made to:	Number (Percent)
State Auditors/Attorney General	6 (50%)
Internally to Employer Agency	6 (50%)
Mandated Reporter	-
Contracting State Agency	-

CHRR Retaliation Complaints (N=12)

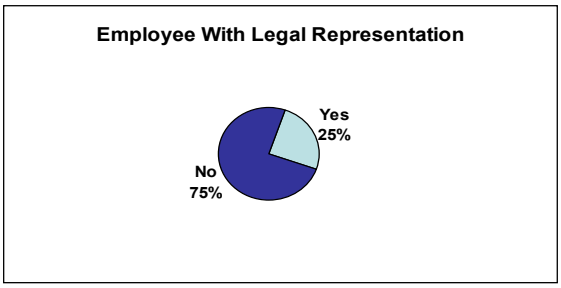
- Most common type of retaliation allegation (75%) is terminations, promotions, or change in assignments.
- 8% of the retaliation cases the employee alleged harassment.
- In 17% of the cases the employee alleged both harassment and retaliation affecting his or her position.
- Generally, the alleged retaliation is committed by agency management.
- Several (25%) of the initial underlying whistleblower incidents occurred more than a year before the alleged retaliation occurred.

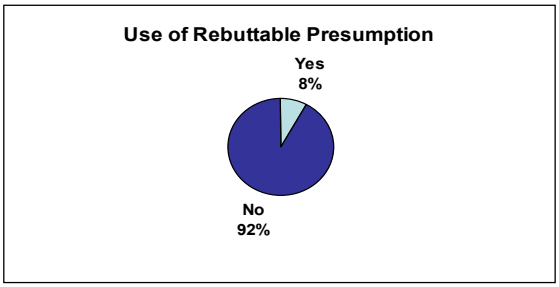




CHRR Retaliation Complaints (N=12)

- The majority of complainants in the case sample did not have legal representation at CHRR proceedings.
- The statutory rebuttable presumption is rarely used. Only one case in the file review was able to use the rebuttable presumption in the CHRR proceedings.





	ALLEGATION	OUTCOME	Agency Response
ANONYMOUS SOURCE	MISUSE OF STATE TIME	Substantiated	Address All
	CONFLICT OF INTEREST	Substantiated	Other Forum
	THEFT OF STATE RESOURCES	Substantiated	Policy Review
	MISUSE OF STATE RESOURCES	Substantiated	Address All
	EMPLOYEE FAVORITISM	Substantiated	Address All
	AGENCY HANDLING OF CASE	Substantiated	Address All
	EMPLOYEE FAVORITISM	Substantiated	Address All
	FILES DESTROYED	Substantiated	Other Forum
	INAPPROPRIATE FUND DEPOSIT	Substantiated	Other Forum
	MISUSE OF STATE RESOURCES	Substantiated	Address All
	MISUSE OF STATE TIME	Unsubstantiated	-
	GIFTS FROM CONSULTANT	Unsubstantiated	-
	MISUSE OF STATE FUNDS	Unsubstantiated	-
	OUT OF STATE TRAVEL	Unsubstantiated	-
	MISUSE OF STATE TIME	Unsubstantiated	Policy Review
	NOT QUALIFIED FOR POSITION	Unsubstantiated	-
	MISUSE OF STATE EQUIPMENT	Unsubstantiated	-
	MISUSE OF STATE TIME	Unsubstantiated	-
	EMPLOYEE TREATMENT	Unsubstantiated	-
	MISUSE OF STATE RESOURCES	Area of Concern	Policy Review
	FALSE TIMESHEET	Area of Concern	Address All
	LEASE MISCONDUCT	Area of Concern	Policy Review
	EMPLOYEE TREATMENT	No Decision	Other Forum
	MISUSE OF STATE EQUIPMENT	No Decision	Policy Review
	EMPLOYEE FAVORITISM	No Decision	Other Forum
	MISREPRESENTATION OF FUNDS	No Decision	Other Forum
EXTERNAL SOURCE	ACCOUNT IRREGULARITIES	Substantiated	Address All
	POLITICAL ACTIVITY	Substantiated	Address All
	VIOLATION OF STATE CONTRACT	Unsubstantiated	-
	STEERING CLIENTS TO CONTRACTOR	Unsubstantiated	-
	NO CONTRACT BID	Unsubstantiated	-
	GENERAL MISMANAGEMENT	Unsubstantiated	-
	NO CONTRACT BID	Unsubstantiated	-
	RELEASE OF CONFIDENTIAL INFO	Area of Concern	-
	STEERING CLIENTS TO CONTRACTOR	No Decision	Address Some
	CONFLICT OF INTEREST	No Decision	-
	AGENCY HANDLING OF CASE	No Decision	Other Forum
INTERNAL SOURCE	CHANGE AGENCY RECORDS	Substantiated	Address Some
	NON-COLLECTION OF OVERPAYMENT	Substantiated	Address Some
	FISCAL IRREGULARITIES	Substantiated	Address Some
	RELEASE OF CONFIDENTIAL INFO	Substantiated	Address All
	FAILURE TO FOLLOW AGENCYPROCEDURE	Substantiated	Address Some
	FOI NOT FOLLOWED	Unsubstantiated	-
	OVERCHARGE OF FEES	Unsubstantiated	-
	MISUSE OF STUDENT FEE	Unsubstantiated	-
	CLIENT/PATIENT CARE	Area of Concern	Other Forum
	FALSIFYING RECORDS	No Decision	Other Forum
	EXCESSIVE FEES	No Decision	Address Some

APPENDIX B: Other States

Other States Summary

The program review committee staff used a number of methods to compile information on other states' whistleblower policies including: an email survey of various agencies in every state; an examination of other states' websites; phone interviews with selected states; and a review of information compiled by the Connecticut Office of Legislative Research as well as national organizations dedicated to whistleblower matters.

Overall, committee staff found that the whistleblower policy approach and specific scope of whistleblower laws varies by state. States differ in the nature of complaints that may be reported; who may report complaints; and who may receive complaints.

Although the vast majority of states encourage the reporting of misuse or waste of funds through its State Auditor, Comptroller, or other budgetary office, many states do not designate one agency to receive whistleblower complaints regarding state government. Rather, individuals are allowed to submit whistleblower complaints to a variety of officials. At least 22 states have posting requirements for public awareness. Some states operate tip- or hotlines or provide on-line complaint forms to submit complaints on a variety of issues including alleged wrongdoing by state government. These reporting mechanisms are operated by different groups including the state's Attorney General, State Auditor, Legislative Auditors, budget offices, or Governor's Office. A few states have an Office Inspector General to examine a variety of state government activity.

Agencies designated to handle whistleblower complaints rarely handle retaliation complaints as well. Most of the whistleblower agencies in other states have general review and report authority but no enforcement powers. A few states are allowed to make recommendations for corrective action. Typically, the whistleblower agencies report their findings of violations to other state officials.

Most states have laws prohibiting reprisals against whistleblowers. Several states permit individuals to submit retaliation grievances with a state personnel or labor board. At least four states allow a human rights agency to receive allegations of retaliation. In a large number of states, individuals claiming retaliation do not file complaints with a public agency; instead, they may bring a civil court action.

Below is a brief description of four states (California, Georgia, Nebraska, and Washington) that had certain interesting aspects or provisions in its approach to whistleblower matters that committee staff used in its proposed recommendations.

California. The California Whistleblower Protection Act authorizes the Bureau of State Audits, headed by the State Auditor, to investigate allegations of improper governmental activities by agencies and employees of the State of California. The act defines an improper governmental activity as any action by a state agency or employee during the performance of

official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the bureau maintains a toll-free whistleblower hotline and accepts reports by mail and on its website. The Auditor may determine whether allegations are outside its jurisdiction. Whenever possible, those complaints are referred to the appropriate federal, state, or local agencies. The Whistleblower Act specifies that the State Auditor can request the assistance of any state entity or employee in conducting an investigation.

Although the bureau conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the bureau reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The agency or appointing authority is required to notify the Auditor of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

After a state agency completes its investigation and reports its results to the bureau, the State Auditor analyzes the agency's investigative report and supporting evidence and determines whether he agrees with the agency's conclusions or whether additional work must take place. He may also make recommendations to state departments about preventing reported improper activities from recurring.

At least twice per year, the State Auditor issues a public report summarizing the results of the investigations that have been conducted during the previous months, and provides updates on the actions that have been taken by state departments in response to previously reported investigations, including what the departments have done to implement the State Auditor's recommendations. The State Auditor may also issue a special report detailing the results of an individual investigation when the findings of the investigation are particularly significant. Each report must also contain statistical information regarding the number of complaints received and the number of investigations performed by the State Auditor.

Georgia. The Georgia Office of the Inspector General (OIG) has the authority to investigate complaints of fraud, waste, abuse and corruption in all executive branch agencies, departments, commissions, authorities and any entity of state government that is headed by an appointee of the Governor. The Georgia General Assembly and court system is excluded from the Inspector General's jurisdiction.

The OIG is a small independent objective investigatory agency. Currently, the office is supported by a full-time staff of four people. It does not investigate on behalf of any individual or agency and does not represent any party or agency in a case.

Incoming complaints are logged into an electronic database tracking system, which automatically assigns a numeric file number. The complaint is brought before an Intake Screening Committee to be analyzed for appropriate disposition. The Inspector General has the authority to decline to investigate a complaint received if it is determined that the complaint is trivial, frivolous, moot, insufficient for adequate investigation, or not made in good faith. All

non-anonymous complaints are acknowledged with a written response. After the Intake Screening Committee consultation, the Inspector General proceeds with an investigation.

The office has the authority to enter the premises of any state agency at any time without prior announcement, to inspect the premises or to investigate any complaint. The office also has the authority to question any state employee serving in, and any other person transacting business with, the state agency. In addition, the office has the authority to inspect and copy any books, records, or papers in the possession of the state agency, except where otherwise prohibited by law.

Upon completion of an investigation, a report of investigation is prepared which includes a summary of the case, actions taken, and any findings and conclusions. The report also contains a determination as to whether there is reasonable cause to believe that a wrongful act, an omission or an act of impropriety occurred. Reports may include administrative recommendations to improve agency policy and procedures in order to avoid recurrence of fraud, waste, abuse or corruption.

Reports of investigation are provided to the Governor and the department head of the agency under investigation. When appropriate, reports of investigation are forwarded for prosecutor review to determine if the underlying facts give rise to criminal prosecution. A report of an investigation is made available to the public on the OIG website at the conclusion of the investigation.

Nebraska. The Nebraska whistleblower provisions are part of the State Government Effectiveness Act. Any state employee who believes that he or she has information about any violation of law, or gross mismanagement or gross waste of funds, or about any situation that creates a substantial and specific danger to public health or safety, may report that information to the Office of the Public Counsel (also known as the State Ombudsman's Office).

The office is an independent complaint-handling entity with a staff of eight full-time and three part-time employees. Three of the professional staff have law degrees and some have advanced degrees in other areas. The office has broad investigatory powers including access to agency records and facilities, and the ability to address questions to agency officials. All reports made to the office are confidential.

The Effectiveness Act allows the office broad discretion in accepting complaints. The office must conduct a complaint investigation unless it believes that:

- The complainant has another available remedy which he or she could reasonably be expected to use;
- The grievance pertains to a matter outside the office’s power;
- The complainant's interest is insufficiently related to the subject matter;
- The complaint is trivial, frivolous, vexatious, or not made in good faith;
- Other complaints are deemed more worthy of attention;

- Office resources are insufficient for adequate investigation; or

- The complaint has been too long delayed to justify present examination of its merit.

Whether or not a complaint is accepted for investigation, the office informs the complainant and the agency involved of the receipt of the complaint. Even if the office declines to investigate a particular complaint, it may inquire into other related problems. The office also has the authority to initiate or participate in general studies that may provide knowledge about, or lead to improvements in, the way in which state governmental administrative agencies function.

Any state employee who has grounds to believe that retaliation has happened or is imminent may take their retaliation complaint to the office for investigation. To receive whistleblower protection, the wrongdoing must be reported by the employee either to the Ombudsman's Office, or to any elected state official (i.e., legislator, State Auditor, Attorney General). Any reports made to other individuals are not covered by the act.

If the office believes that a preponderance of evidence shows that retaliation occurred or is about to occur, then it prepares a written finding that the employee may use to challenge the employer's personnel action through other available grievance channels and through the courts. Once an employee has a finding from the office supporting the retaliation claim, the employee then has the right to petition the State Personnel Board, or other relevant administrative authority, for a hearing within 90 days. In cases where the retaliation happened within two years of the whistle-blowing, the Board has the authority to temporarily stay or reverse the employer's alleged retaliatory action against the employee pending the holding of the hearing. The employee has a right to bring legal counsel at this hearing. If the employee is dissatisfied with the outcome of the administrative hearing, then he or she may appeal to the courts.

Washington. The Washington Whistleblower Act provides an avenue for state employees to report suspected improper governmental action. Improper governmental action is defined as any action by an employee undertaken in the performance of the employee's official duties which:

- is a gross waste of public funds or resources,

- is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature,

- is of substantial and specific danger to the public health or safety,

- is gross mismanagement, or

- prevents dissemination of scientific opinion or alters technical findings.

The Washington State Auditor's Office investigates and reports on complaints made by current state employees about improper governmental action by any state agency. State contractors and their employees are not covered by the whistleblower law. However, employees of state contractors may report concerns about the handling of public funds to the Auditor. The

office is precluded by state law from investigating complaints involving personnel matters or matters for which other remedies exist. These include: grievances, appointments, promotions, reprimands, suspensions, dismissals, harassment, and discrimination. In addition, any improper action reported must have occurred within the past year.

The Auditor's website provides examples of the type of reportable whistleblower matters. It also provides detailed instructions of the specific type of information that should be included in the complaint. Any anonymous complaints are reviewed by a panel of various Auditor's and Attorney General's staff. The panel completes a preliminary investigation and determines whether a full investigation is warranted.

Any investigation of reasonable cause findings is reported electronically to the Governor, Secretary of the Senate and Chief Clerk of the House of Representatives. Any relevant enforcement agency is also provided a report. Once an investigation is complete, the whistleblower receives a copy of the final report. The final report is a public record and is available to anyone who requests it.

State law prohibits retaliation against people who file whistleblower assertions. However, the retaliation remedies do not apply if an investigation is not initiated by the State Auditor's Office. The Washington Human Rights Commission has sole responsibility for investigating retaliation cases.

Employees filing a retaliation complaint must do so within two years from the last date of harm. After conducting an investigation, the commission will issue a finding of reasonable cause to believe that retaliation occurred or did not occur. If the commission finds that retaliation occurred, the commission staff will try to resolve the case with the employer and negotiate a resolution in writing. Types of relief may include back pay, reinstatement of title, a letter of recommendation for future employment, and monetary damages. If the commission cannot conciliate the case, it will enforce the finding through the Washington Attorney General's Office using an administrative law process. The administrative law judge can require restoration of benefits, back pay, and any increases in compensation that would have occurred. The judge can also impose a civil penalty upon the retaliator of up to $5,000.

Ranking of states' whistleblower provisions. Since 2006, a non-profit national organization known as Public Employees for Environmental Responsibility (PEER) has rated state whistleblower laws protecting state employees. These ranking are based on a 100-point scale developed by PEER and each state is ranked based upon its assigned weighted score.[4] Table B-1 provides the 2009 PEER state rankings of whistleblower laws. Based on these measures, California, the District of Columbia, and Tennessee have the strongest whistleblower laws while Virginia, Vermont, and New Mexico have the weakest. In 2009, Peer ranked Connecticut 5th overall.

[4] Each state is ranked on 32 factors of three components: scope of statutory coverage, usability, and available remedies against retaliation. Specifically, what disclosure topics are covered or excluded in state law; to whom must employee make disclosure for protections to apply; and what remedies are available to aggrieved whistleblowers.

Table B-1. 2009 PEER Ranking of States' Whistleblower Provisions*		
Rank	**State**	**PEER Score (out of 100)**
1	**DC**	**79**
2	**CA**	**75**
3	**TN**	**74**
4	**MA**	**63**
5	**CT**	**62**
6 (tie)	**CO/MD**	**61**
8	**OR**	**60**
9 (tie)	**DE/FL/OK/WV**	**59**
12	**AZ/NJ**	**58**
15	**ID**	**57**
16	**KY**	**55**
17 (tie)	**MN/MT/NE/NC/WI**	**54**
22 (tie)	**HI/NV/PA/RI**	**53**
26 (tie)	**LA/MO/WA**	**51**
29	**MS**	**50**
30 (tie)	**IL/NH**	**49**
32 (tie)	**KS/ME/ND/SC**	**48**
36 (tie)	**IA/MI**	**47**
38	**AK**	**46**
39	**WY**	**44**
40	**NY**	**43**
41	**UT**	**42**
42 (tie)	**AR/TX**	**41**
44	**OH**	**38**
45	**IN**	**37**
46	**GA**	**34**
47	**AL**	**31**
48	**SD**	**23**
49	**VA**	**16**
50	**VT**	**10**
51	**NM**	**2**

*Ranking is based solely upon statutory provisions, not case law, agency rules or administrative interpretations.

Source: PEER website

APPENDIX C: Legislative Proposals

Summary of Legislative Proposals

Committee staff examined the legislative proposals offered during the last three sessions of the Connecticut General Assembly. Since 2007, a number of bills have been raised on the topic of whistleblowers. With some modifications, each year a proposal is made addressing certain aspects of the whistleblower law. In particular, there has been legislation raised to change who should receive and handle whistleblower complaints. Among these proposals are to:

- eliminate the Attorney General from the process and expand the authority of the State Auditors,
- establish an independent Office of Inspector General,
- create a new Retaliation Adjudication Board to hear whistleblower retaliation complaints, and
- establish a new Office of Administrative Hearings to manage a collection of a wide range of issues including whistleblower matters.

There have also been proposed changes to the Attorney General's responsibilities including:

- Attorney General must prepare office policy to assure information received by its Whistleblower Unit is not shared with any respondent agency or any assistant attorney general who represents state agency, and
- Attorney General must submit an annual report to various groups regarding trends and handling of whistleblower complaints.

Proposals have also been offered regarding the retaliation complaint process including:

- Extending the deadline for filing retaliation complaints,
- Increasing the rebuttable presumption time period,
- Allowing original complaints to be amended upon the occurrence of subsequent incidents of retaliation,
- Authorizing the Attorney General to intervene in retaliation hearing before human rights referees,
- Authorizing human rights referee to order temporary interim relief during the pendency of a hearing,

- Transferring the responsibility for legal representation for state agencies in retaliation matters to the Office of Labor Relations,

- Requiring reporting of hearing findings to agency heads and supervisors,

- Expanding the list of entities to whom protected whistleblower matters may be disclosed to include employees of large state contractor, and

- If retaliation is found to be egregious or malicious may double damages.

Table C-1 provides a comparison of the proposals made between the 2007 and 2009 legislative sessions. Immediately following the table is a summary of each legislative proposal, legislative action taken, and any fiscal note prepared during the session.

Table C-1. Summary Comparison of Legislative Proposals on Whistleblowers (2007-2009)							
		2009			2008	2007	
LEGISLATIVE PROPOSAL	**SB 805**	**SB 768**	**SB 527**	**SB 1117**	**SB 335**	**SB 244**	**HB 5298**
Eliminate AG from process & expand Auditors' role		x					
Create Office of Inspector General			♦		x	♦	
Create Retaliation Adjudication Board	♦						
Create Office of Administrative Hearings				♦			♦
Extend retaliation filing deadline	♦	♦			♦		
Expand rebuttable presumption period	♦	♦			♦		
Allow amendments to original retaliation complaint	♦	♦			♦		
Allow AG to intervene for complainant on CHRR retaliation		♦			♦		
Authorize CHRR to order temporary relief during hearing	♦	♦			♦		
Transfer legal representation for agencies to Labor Relations	♦						
Require reporting of hearing findings to agency head	♦	♦					
Expand disclosure requirements to large state contractors	♦	♦			♦		
Double damages if retaliation is egregious	♦						
Require AG to prepare policy for information sharing		x					
Require AG to prepare annual report with complaint trends		x					
LEGISLATIVE HISTORY							
Introduced By	LAB	GAE	GAE	GAE	GAE	GAE	GAE
Public Hearing Held	YES	YES		YES	YES		YES
Other Committee Action				JUD	LAB		
Final Action	LAB	Ref JUD	Intro	Ref APP	Pass Senate	Intro	Ref JUD

X = offered as amendment
Source: LPR&IC analysis

2009 SB 768 **AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS.**

SUMMARY:
This bill expands current protections for whistleblowers and establishes new ones. Generally, it (1) extends, from 30 to 90 days, the time whistleblowers have to file complaints of retaliation; (2) extends, from one to three years, the period during which there is a rebuttable presumption that negative personnel actions against whistleblowers are retaliatory; (3) expands the rebuttable presumption to protect individuals retaliated against for making internal disclosures; and (4) authorizes the attorney general to join certain retaliation proceedings before the Commission on Human Rights and Opportunities (CHRO).

The bill extends whistleblower protection to employees of large state contractors who report violations to the contractor, rather than just to the state contracting agency.

During the course of a CHRO proceeding, the bill allows (1) whistleblowers to amend their complaints in light of subsequent retaliatory incidents and (2) hearing officers to grant temporary equitable relief for the same reason.

The bill requires hearing officers to send findings of retaliation to the agency head and supervisor of the person who committed the offense. It also protects individuals from civil liability for all good faith disclosures.

Finally, the bill makes technical changes.

ACTION TAKEN:
- Introduced by GAE – Public Hearing
- Refer to JUD

FISCAL NOTE:
Depending on how many whistleblower retaliation complaints the Auditors have to review and the staff hours needed to complete the review and report, the Auditors may require one new Associate Auditor position, with a salary of $79,000 (plus fringe benefits).

The Office of the Attorney General and the Commission on Human Rights and Opportunities can handle the provisions of the bill with existing resources. The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

2009 AN ACT CONCERNING WHISTLEBLOWER PROTECTION
SB 805

SUMMARY:
This bill:

- Establishes a Retaliation Adjudication Board within CHRO (APO) to conduct hearings regarding WB retaliation complaints. Board consists of human rights referees and other hearings officers as Governor designates.
- Allows disclosure to complaints to large state contractors not just contracting state agency of large state contract
- Include auditors as receiving retaliation complaints
- Allows Attorney General to request Board to issue interim or temporary orders of equitable relief as Board deems appropriate
- Allows Board during hearing to order temporary equitable relief
- Increase from 30 to 90 days for filing of CHRR complaint
- Has subject agency represented by the Office of Labor Relations
- Allows amending to original retaliation complaint if additional incidents occur
- If retaliation found egregious or conducted with malice Board may double damages
- Violation found at hearing are forwarded to agency head & supervisor who must take appropriate action
- Board w/ CHRR to adopt regulations
- Increases from 1 to 3 years rebuttable presumption

ACTION: • Introduced by Labor – Public Hearing
FISCAL NOTE: N/A

2009 AN ACT ESTABLISHING THE OFFICE OF INSPECTOR GENERAL
SB 527

SUMMARY:
This bill establishes the Office of Inspector General who shall be responsible for the detection, prevention and investigation of fraud, waste and abuse in the management of state government, state employees and the use of state property in addition to the investigation of whistleblower complaints and representation of whistleblowers in any action against the state

ACTION: • Introduced by Sen. McKinney to GAE
FISCAL NOTE: N/A

2009 SB 1117	AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.

SUMMARY:

This bill establishes an Office of Administrative Hearings (OAH) within the Commission on Human Rights and Opportunities (CHRO) until July 1, 2014 unless it is reestablished. The bill requires OAH to impartially conduct contested case hearings for CHRO and the departments of Children and Families and Transportation. The bill transfers certain personnel, including hearing officers, from these agencies to OAH.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedure Act (UAPA), including the time limits under the UAPA unless otherwise provided by law. After the hearings, the bill requires OAH to issue a proposed final decision or final decision, if allowed or required by law. Any proposed final decision may be rejected, modified, or accepted by the referring agency. It becomes final if the agencies fail to act within a specified period.

The bill makes several changes to the UAPA. Most of the changes are conforming ones made necessary by the new office's role in contested cases.

The bill reduces the number of human rights referees from seven to six beginning October 1, 2009. Each referee serving on that date must complete his or her term. Thereafter, just as under current law, the governor appoints the referees with the advice and consent of the General Assembly, to serve three-year terms.

Lastly, the bill makes technical and conforming changes.

ACTION:	• Introduced by GAE; Public Hearing • Refer to JUD – Joint Favorable • Refer to APPROPS
FISCAL NOTE:	The bill establishes a new Office of Administrative Hearings within the CHRO and transfers existing personnel to OAH. It is anticipated that a state cost would be incurred to raise the salaries of hearing officers once they are designated as administrative law adjudicators under the bill and subject to the bill's stricter credentials. These costs would be offset by the bill's elimination of one vacant, funded position within CHRO, resulting in a net savings of $12,500 in FY 10 and $13,500 in FY 11. It is anticipated that no additional office space would be required. Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will result in budgetary savings to offset the certain costs indicated above.

2008 SB 335 AN ACT CONCERNING THE PROTECTION OF WHISTLEBLOWERS

SUMMARY:

The bill expands current protections for whistleblowers and establishes new ones. Generally, it (1) extends the time whistleblowers have to file complaints of retaliation; (2) extends, from one to three years, the period during which there is a rebuttable presumption that negative personnel actions against whistleblowers are retaliatory; (3) expands the rebuttable presumption to protect individuals who are retaliated against for making internal disclosures; and (4) authorizes the Attorney General to join certain retaliation proceedings before the Commission on Human Rights and Opportunities (CHRO).

The bill extends whistleblower protection to employees of large state contractors who report violations to the contractor, rather than just to the state contracting agency.

During the course of a CHRO proceeding, the bill allows (1) whistleblowers to amend their complaints in light of subsequent retaliatory incidents and (2) hearing officers to grant temporary equitable relief for the same reason.

The bill requires hearing officers to send findings of retaliation to the agency head and supervisor of the person who committed the offense.

The bill protects individuals from civil liability for all good faith disclosures.

ACTION:	• Introduced by GAE – Public Hearing • Senate Calendar to LABOR Joint Favorable to Senate • Senate Passes • House Calendar
FISCAL NOTE:	The bill results in a potential cost the Office of the Attorney General (AG) for personnel. However, the bill provides discretion to the AG as to whether to intervene in an action brought by a whistleblower for retaliation before the human rights hearing officer which would minimize any such costs. The ongoing fiscal impact identified above would continue into the future.

2007 SB 244 AN ACT ESTABLISHING AN OFFICE OF THE INSPECTOR GENERAL

SUMMARY:

This bill proposes to establish an Office of the Inspector General that shall (1) be responsible for the detection and prevention of fraud, waste and abuse in the management of state personnel and in the use and disposition of state property, (2) review whistleblower complaints, instead of having such complaints reviewed by the Auditors of Public Accounts, and (3) be authorized to conduct preemptive investigations.

ACTION:	• Introduced by Sen. McKinney to GAE
FISCAL NOTE:	N/A

2007 HB 5298	AN ACT CONCERNING THE IDENTITY OF WHISTLEBLOWERS, EXTENDING WHISTLEBLOWER PROTECTIONS TO MUNICIPAL WHISTLEBLOWERS AND ESTABLISHING AN OFFICE OF ADMINISTRATIVE HEARINGS.

SUMMARY:
This bill establishes an Office of Administrative Hearings (OAH) that conducts contested case hearings for the Commission on Human Rights and Opportunities and the departments of children and families, education, transportation, and motor vehicles. With respect to the Department of Motor Vehicles, the OAH does not hear per se cases. With respect to the Department of Education, the OAH only hears from local boards of education regarding special education and school transportation and accommodations. The bill transfers personnel from these agencies to OAH. The office's central office is in Hartford County. The office terminates on July 1, 2012 unless it is reestablished.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedures Act (UAPA). However, the bill specifies that provisions in the UAPA allowing for action by a majority of the members of a multi-member agency do not apply to hearings conducted by OAH. Actions to (1) enforce an order of dismissal, stipulation, settlement agreement, consent order, or (2) require a proposed or final decision in a contested case may be brought in the New Britain, rather than Hartford, Superior Court.

The bill makes several changes to the UAPA, including allowing an agency or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court and eliminating the authority of a presiding officer in a contested case to allow people who are not parties or intervenors in the case to present statements.

The bill extends to municipal whistleblowers protections currently enjoyed by state employees who report corruption, unethical practices, violations of state law or regulation, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state or quasi-public agency or large state contract. It bans the state auditors and attorney general from disclosing a whistleblower's identity at any time. Under current law they may disclose the identity of state, quasi-public agency, and large state contract whistleblowers (1) at any time with consent and (2) without consent whenever disclosure is unavoidable during the course of the investigation.
Lastly, the bill makes technical and conforming changes.

ACTION:	• Introduced by GAE – Public Hearing • Refer to JUD
FISCAL NOTE:	Adding municipal whistleblowers significantly increasing potential cost to agencies resources.