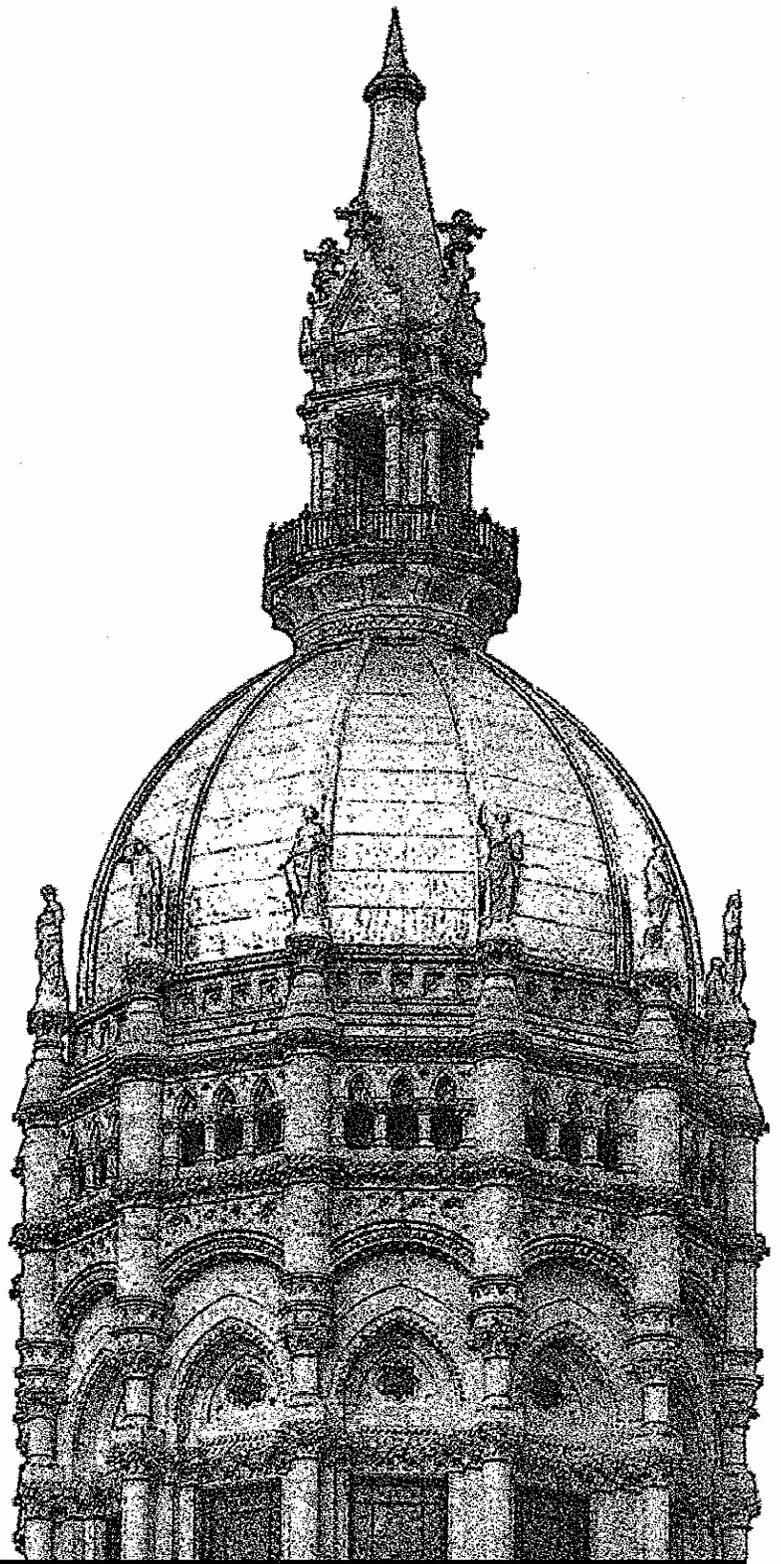


Connecticut's Whistleblower Law

DECEMBER 2009



PRI

**Legislative Program Review and
Investigations Committee**

Connecticut General Assembly

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a bipartisan statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

Connecticut's Whistleblower Law

DECEMBER 2009

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Executive Summary

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.

The Legislative Program Review and Investigations Committee voted to undertake a study of *Connecticut's Whistleblower Law* in May 2009. The focus was on the process and structure currently in place to handle whistleblower complaints within state government. In particular, the study evaluated the approach taken by the appointed agencies to review whistleblower complaints including their statutory authority, timeframes, and reporting of outcomes.

The committee'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 current whistleblower process contains inefficiencies and several deficiencies in its structure, role, 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 jeopardize the state's ability to achieve the law's policy intent.

As part of the study, the committee reviewed the activities of the Offices of Auditors of Public Accounts and the Attorney General, to determine how each is implementing its responsibilities to whistleblower matters. The committee found that each agency can make several improvements to better manage its whistleblower functions. In particular, operations can be improved by:

- Establishing a system to ensure more timely processing of whistleblower complaints;
- Raising public awareness of the appropriate type of reportable incidents;
- Instituting follow-up procedures to ensure that agencies take prompt, corrective action in substantiated cases; and
- Improving consistency and transparency of the system.

The committee recommends several management improvements that may be made immediately and others that may be considered at a later time. Once made, these improvements will allow the state to better achieve its policy objectives regarding the whistleblower matters including establishing its credibility as a channel for bringing forth government wrongdoing and protecting whistleblowers from reprisals.

COMMITTEE RECOMMENDATIONS

- 1. 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.**
 - 2. 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.**
 - 3. The whistleblower statute should 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.**
 - 4. The whistleblower statute should 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.**
 - 5. After the initial intake phase, a status update on all whistleblower matters must be conducted by the Joint Team at 90-day intervals until the investigation is complete and the case is closed.**
 - 6. 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.**
 - 7. A statutory provision should require the Joint Team to report to the complainant, upon request, the outcome of a whistleblower investigation.**
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- 8. 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.**
 - 9. 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.**
 - 10. The Joint Team should place a high priority on improving its electronic case tracking/monitoring system.**
 - 11. 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).**
 - 12. Staff assigned to whistleblower matters should be given the opportunity to pursue relevant investigative training within available resources.**
 - 13. An articulated whistleblower policy statement should be adopted.**
 - 14. 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.**
 - 15. 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.**
 - 16. 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.**
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- 17. The list of entities subject to §4-61dd whistleblower statutes should be amended to clearly articulate any exceptions to the scope of review.**
 - 18. An annual list of large state contractors should be prepared by the State Comptroller's Office.**
 - 19. The 30-day filing requirement for whistleblower retaliation claims pursuant to §4-61dd(b)(3) should be extended to 90 days.**
 - 20. The statutory one year rebuttable presumption period for retaliation complaints established in §4-61dd(b)(5) should be extended to two years.**
 - 21. 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.**
 - 22. 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.**
 - 23. C.G.S. §4-61dd(b)(2) should be repealed in its entirety.**
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Introduction

Connecticut's Whistleblower Law

In May 2009, the Legislative Program Review and Investigations Committee voted to undertake a study of *Connecticut's Whistleblower Law*. The focus of the study was on the process and structure currently in place to handle whistleblower complaints within state government. In particular, the study evaluated the approach taken by the appointed agencies to review whistleblower complaints including their statutory authority, timeframes, and reporting of outcomes.

The term “whistleblower” generally refers to someone who calls attention to wrongdoing that is occurring within an organization. Societal opinions about whistleblowers vary considerably. Whistleblowers are often viewed by some as ‘saviors’ or ‘heroes’ who ultimately help bring about important changes in organizations but sometimes they are seen as ‘traitors’ who are not team players. Depending on the allegations, whistleblowers can also be perceived as ‘crazy’ or simply seeking attention. These potential labels often make individuals reluctant when making the decision whether to come forward with information. While some whistleblowers are praised for their courage or ideals, others are ostracized, marginalized, or even forced out of an organization by those who feel threatened by the revelations.

The literature on the subject is filled with anecdotes of organizations finding many ways of dealing with disfavored employees. While some may get fired, there is also the possibility or threat that whistleblowers may suddenly find themselves transferred to undesirable locations, deprived of their regular responsibilities or promotions, segregated from their colleagues, or subjected to hostile or unacceptable work conditions. In some cases, where a disclosure may embarrass or hurt the organization's image or ability to continue to operate, the organization's management, instead of focusing on the alleged irregularities, may concentrate its attention on the whistleblower in an effort to silence or discredit him or her.

On the other hand, it is also important to acknowledge that some whistleblowers have less than honorable motives. In some situations a whistleblower disclosure may be a genuine detriment to the organization since the information may be false. In other circumstances, individuals may be motivated by personal agendas or creating a smokescreen to thwart an adverse personnel action that may be taken against them. Therefore, an organization may have a legitimate concern that an individual may try to use available whistleblower protections to avoid justified charges of incompetence or inadequate job performance.

Connecticut's whistleblower law regarding state government (C.G.S. § 4-61dd, referred to as the Whistleblower Act) allows anyone, including state employees, to report specific kinds of agency misconduct to the state Auditors of Public Accounts and the

Attorney General for investigations.¹ By law, the identity of the whistleblower cannot generally be disclosed and employers are prohibited from taking or threatening to take any personnel action against an employee who discloses information pursuant to the whistleblower statute. Recent public hearing testimony and legislative proposals raised issues regarding the implementation of the whistleblower law and the statutory protections afforded to whistleblowers. In particular, changes have been proposed to: expand the roles of the State Auditors and Attorney General in whistleblower retaliation claims; extend the filing period for retaliation complaints from 30 to 90 days; increase the rebuttable presumption time period from one year to three within which adverse personnel action taken after a whistleblower disclosure is retaliation; and allow temporary relief to complainants while retaliation complaints are pending.²

In their 2008 annual report, the Auditors of Public Accounts stated that they received 151 whistleblower complaints during FY 2008 on matters such as misuse of state funds, harassment, conflicts of interest, and improper investigations. The Auditors specifically noted a substantial increase in the number of claims filed regarding agency retaliation against whistleblowers during this same time period.

Methodology

A variety of research methods were used to conduct this 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.

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) were examined. 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, the 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 was developed. The cases were not reviewed to determine whether the investigation conclusions were correct or to question the approach

¹ Another state law protects private employees and prevents retaliation against any employee who reports his employer's illegal conduct to the proper authorities or who participates in an investigation of illegal conduct (C.G.S. § 31-51m). C.G.S. §31-51q bars employer retaliation against employees for exercising their constitutional rights.

² The Government Administration and Elections Committee raised legislative proposals in 2009 (Senate Bill 768) and 2008 (Senate Bill 335) concerning the protection of whistleblowers.

taken. The case file review did provide some examples of situations that illustrate particular issues.

Report Organization

This report is divided into six chapters. Chapter I provides background information on Connecticut's whistleblower law and presents an overview of the current organizational and staffing resources dedicated to its implementation. Chapter II explains the whistleblower process including the specific roles, responsibilities, and activities of the Auditors of Public Accounts and the Office of the Attorney General. The chapter also provides trend analysis on the number, types, and processing times of whistleblower complaints. Chapter III reviews current statutory protections against retaliation for whistleblowers.

Chapter IV sets out committee findings about how the two agencies responsible for handling whistleblower complaints implement their statutory obligations, through the results of the committee's case file review. Chapter V presents the committee findings and recommendations for the current structure, process, and policy in general as well as an example of how the new recommended structure could work. Chapter VI 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.

Background on Whistleblower Law

During the 1970s, public confidence in both the legislative and executive arms of the federal government dropped considerably. Significant media attention to numerous events including Watergate, defense cost overruns, unsafe nuclear power plant conditions, questionable drugs approved for marketing, contract illegalities, and other regulatory corruption contributed to this decline.³ In partial response to such reports, Congress passed the Civil Service Reform Act in 1978 (CSRA) to protect the rights of government employees who reported wrongdoing.

A fundamental principle of the CSRA was the idea that whistleblowers can play a legitimate role in ensuring the integrity and efficiency of government, and that the protection of whistleblowers was essential to the improvement of public service. The intent of these provisions was to foster government efficiency by creating a climate where employees felt secure in bringing problems to the attention of officials who could solve them.

This federal law served as a model for Connecticut's original whistleblower law. Although ultimately successful, the chamber discussions ranged from unequivocal support for the concept as a way to solve many problems on matters involving unethical practices and corruption to a view that the law was wholly unnecessary. The remarks in the Senate chamber revealed some of the hesitation on the part of a few members:

“...A bill of this nature though supposedly well-founded, I feel that this bill is very dangerous and undemocratic. What we're saying here, Members of the Circle, for those that are listening, we're saying that the department heads and supervisors are unable to do their jobs, but we're further saying is that state employees are not doing their work. If we pass a bill like this, what is the next step? Are we saying that we should set up some electronic surveyance [sic] when these employees aren't super-sleuthing watching one another?..” (Senator Anthony Ciarlone)⁴

“...I'm concerned about the kind of climate this is going to create in our state agencies where we're going to have employees looking over their shoulders, going to have other employees looking into the affairs of their colleagues. I think it's going to create an unhealthy atmosphere, Mr. President, and I don't believe that there's been a demonstrated need for

³ *The Whistleblowers: A Report on Federal Employees Who Disclose Acts of Governmental Waste, Abuse, and Corruption*, prepared for the Senate Committee on Governmental Affairs, 95th Cong. 2nd sess. 1 (Comm. Print, Feb. 1978)

⁴ Transcripts of Senate Proceedings, June 4, 1979, p. 5645

this. This is the kind of symbolic legislation that we seem to be in love with..." (Senator Eugene Skowronski)⁵

In response, Senator Clifton Leonhardt stated:

"...I rise to support this legislation which on one hand will protect civil liberties and state employees at the same time as it promotes efficiency in state government. I think it's very important that state employees who come across malfeasance or inefficiencies or incompetence be encouraged to report these wrong-doings to their superiors and so that they won't have the threat of losing their jobs as a result of bringing to light wastes of the taxpayer's money and in that respect I think this legislation will increase efficiency in state government... (a)ll this legislation and bill has been adopted at the federal level."⁶

Connecticut's evolving policy on whistleblower matters is illustrated in the legislative history of C.G.S. §4-61dd, the state's Whistleblower Act. Connecticut's whistleblower law was first established with the passage of Public Act 79-599. Over the years, the statutory authority, responsibilities, roles, and duties of the entities involved in handling whistleblower information have changed, at times dramatically. The following provides a brief overview of these changes and sets out the state's current structure to examine whistleblower complaints within state government.

Legislative history. Figure I-1 outlines the major milestones in the development of Connecticut's whistleblower statute. (A complete legislative history is provided in Appendix A.) As the figure shows, the state's initial approach placed the responsibility for whistleblower matters solely within the Office of the Attorney General. The Attorney General was authorized to investigate information submitted to him by state employees alleging misconduct in any state department or agency. Upon conclusion of an investigation, the Attorney General used his discretion whether to report his investigative findings to the Governor, or to the Chief State's Attorney in matters involving criminal activity.

In the early 80's, the law was revised to allow former state employees or state employees' bargaining representatives to bring allegations to the Attorney General. Whistleblower protection against retaliation by any agency employee was enacted and the Attorney General was required to report to the complainant, upon request, the outcome of the investigation. In addition, agencies were allowed to take disciplinary action, including dismissal, against employees who knowingly and maliciously made false allegations.

In 1985, Connecticut changed its approach to handling whistleblower complaints. The legislature created the Office of Inspector General and transferred all responsibilities

⁵ Ibid, p.5647

⁶ Ibid, p. 5648

to conduct whistleblower investigations from the Attorney General to the new Inspector General. Given significantly broad authority, the Inspector General's other powers and duties included:

- detecting and preventing fraud, waste, and abuse in state personnel and property, and state and federal funds;
- evaluating the economy, efficiency, and effectiveness of state agencies;
- investigating the administration of public funds and state-owned or leased property, and state agency performance;
- having access to all agency records; and
- reporting findings and recommendations to the Governor, General Assembly, the legislative program review committee, Chief State's Attorney, State Ethics Commission, Attorney General, U.S. Attorney, and appropriate municipal authorities.

Another change at this time was the statutory requirement that any records and information used in investigations must remain confidential until such investigations were concluded. (A full description of Connecticut's former Office of the Inspector General is provided in Appendix B.)

Two years after its creation, the legislature eliminated the Office of the Inspector General in 1987 and returned all whistleblower functions to the Office of the Attorney General but added the state Auditors of Public Accounts to the process. In addition, the whistleblower law was amended to allow anyone, not just former and current state employees, to submit complaints of misconduct by state entities. However, the provision requiring that investigative results be reported to the complainant upon request was eliminated. The Auditors were required to submit an annual summary report of instances of wrongdoing to the legislature.

This configuration for managing whistleblower complaints remained in place without significant change until the late 1990s. At that time, the whistleblower law was extended to apply to quasi-public entities (1997) and large state contractors (1998) (defined as having state contracts valued at \$5 million or more).⁷ Employees of quasi-public agencies and large state contractors were afforded the same whistleblower protection against retaliation as state employees. In addition, any large state contractor who retaliates against whistleblowers faces a civil penalty of up to \$5,000 for each offense, up to a maximum of 20 percent of the contract's value, for each threatened or actual retaliatory action against a whistleblower.

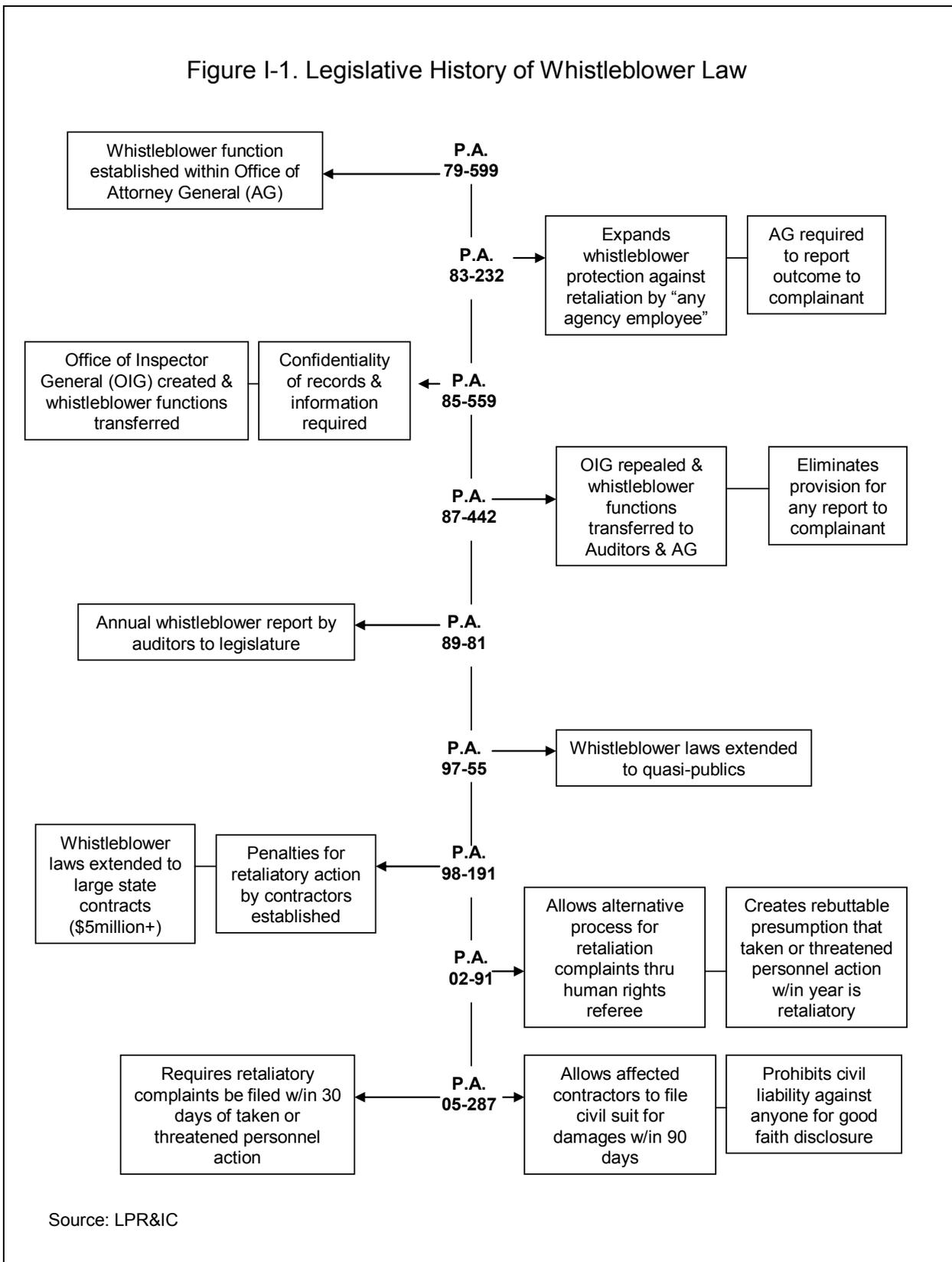
Since 2000, the major changes to the whistleblower law include expansion and amendments to the provisions providing protection against retaliation including the use of the Chief Human Rights Referee for retaliation complaints. (Discussion on this topic is

⁷ State contracts to construct, alter, or repair public buildings or public works were excluded from the definition of large state contracts.

provided in further detail in Chapter III.) Another significant change made to the whistleblower statute in 2005 was the elimination of exempting large state contracts involving public works from whistleblower matters.

Appendix C provides a complete copy of the current statutory provisions of Connecticut General Statutes §4-61dd.

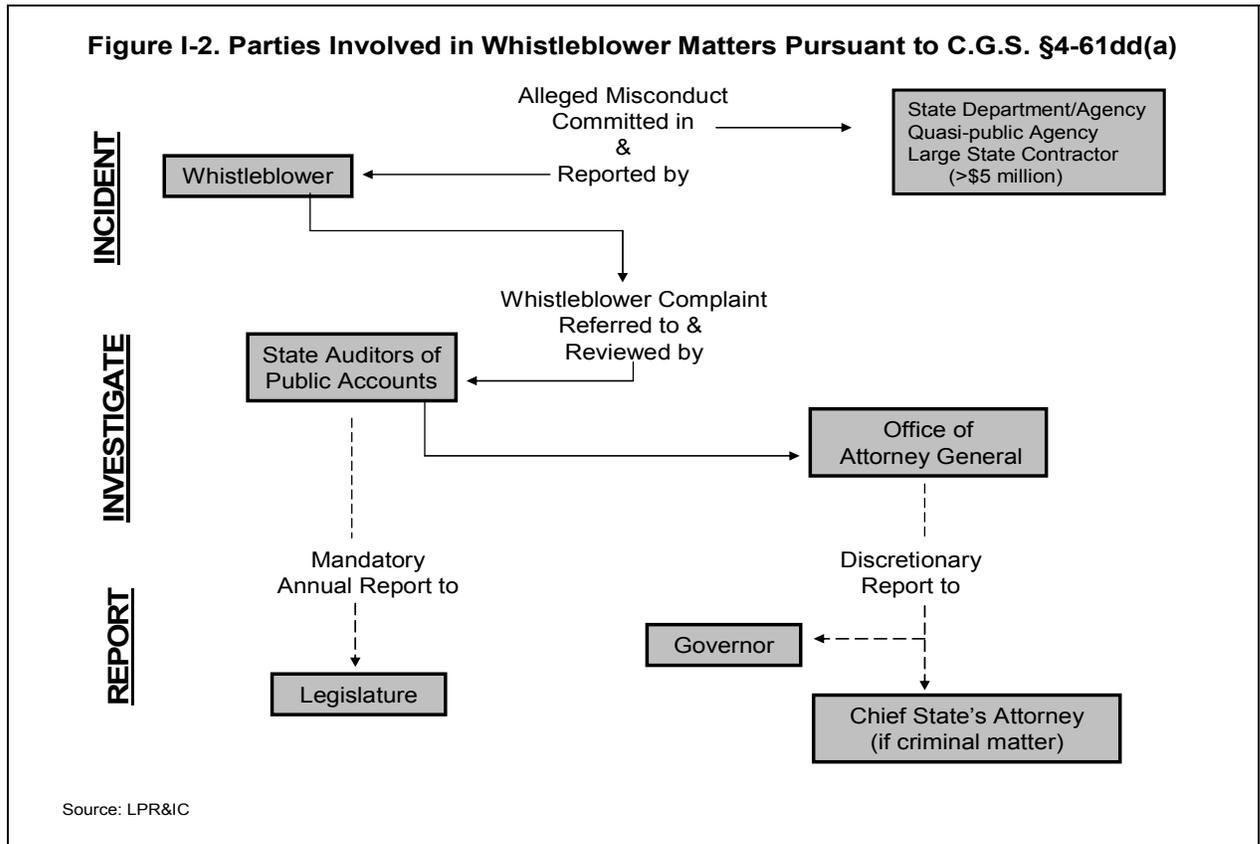
Figure I-1. Legislative History of Whistleblower Law



Connecticut's Current Approach to Whistleblower Matters

As noted earlier, Connecticut's approach to where responsibility for handling whistleblower matters resides has varied since the law's initial passage. Currently, the statutory authority, powers, and duties are charged to the Auditors of Public Accounts and the Office of the Attorney General. In addition, other public entities/officials may be involved depending on the type of whistleblower matter. Figure I-2 provides a broad schematic of the potential interested parties in a whistleblower complaint.

As the figure illustrates, the primary functions of the State Auditors and the Attorney General regarding whistleblower matters are to investigate and report. Neither the State Auditors nor the Attorney General has the authority to issue any binding orders to agencies, quasi-public agencies or state contractors, or officials or employees of such entities. Nor can they provide relief in the form of damages, compensation, or any other restitution to individual whistleblowers. Whistleblowers alleging retaliation may submit their complaints to the State Auditors and/or the Attorney General for investigation; however, any individual relief for personnel issues (e.g., hiring, firing, promotion, back pay) must be sought through alternative routes such as employee complaint proceedings, the Chief Human Rights Referee, or court action. These alternatives as they relate to whistleblower retaliation complaints are explored further in Chapter III.



Generally, the state's Whistleblower Act allows anyone who knows of any misconduct occurring in any state agency, quasi-public agency, or large state contract to submit a whistleblower complaint. Statutorily, quasi-public agencies include the Connecticut Development Authority; Connecticut Innovations, Incorporated; Connecticut Health and Educational Facilities Authority; Connecticut Higher Education Supplemental Loan Authority; Connecticut Housing Finance Authority; Connecticut Housing Authority; Connecticut Resources Recovery Authority; Capital City Economic Development Authority; and Connecticut Lottery Corporation.

In addition, a large state contractor is statutorily defined as an entity that enters into at least a \$5 million contract with a state or quasi-public agency. Each state contract over \$5 million must include a provision informing the contractor that there is a civil penalty of up to \$5,000 for each offense, up to a maximum of 20 percent of the contract's value, for each threatened or actual retaliatory action against a whistleblower by an officer, employee, or appointing authority within his company.

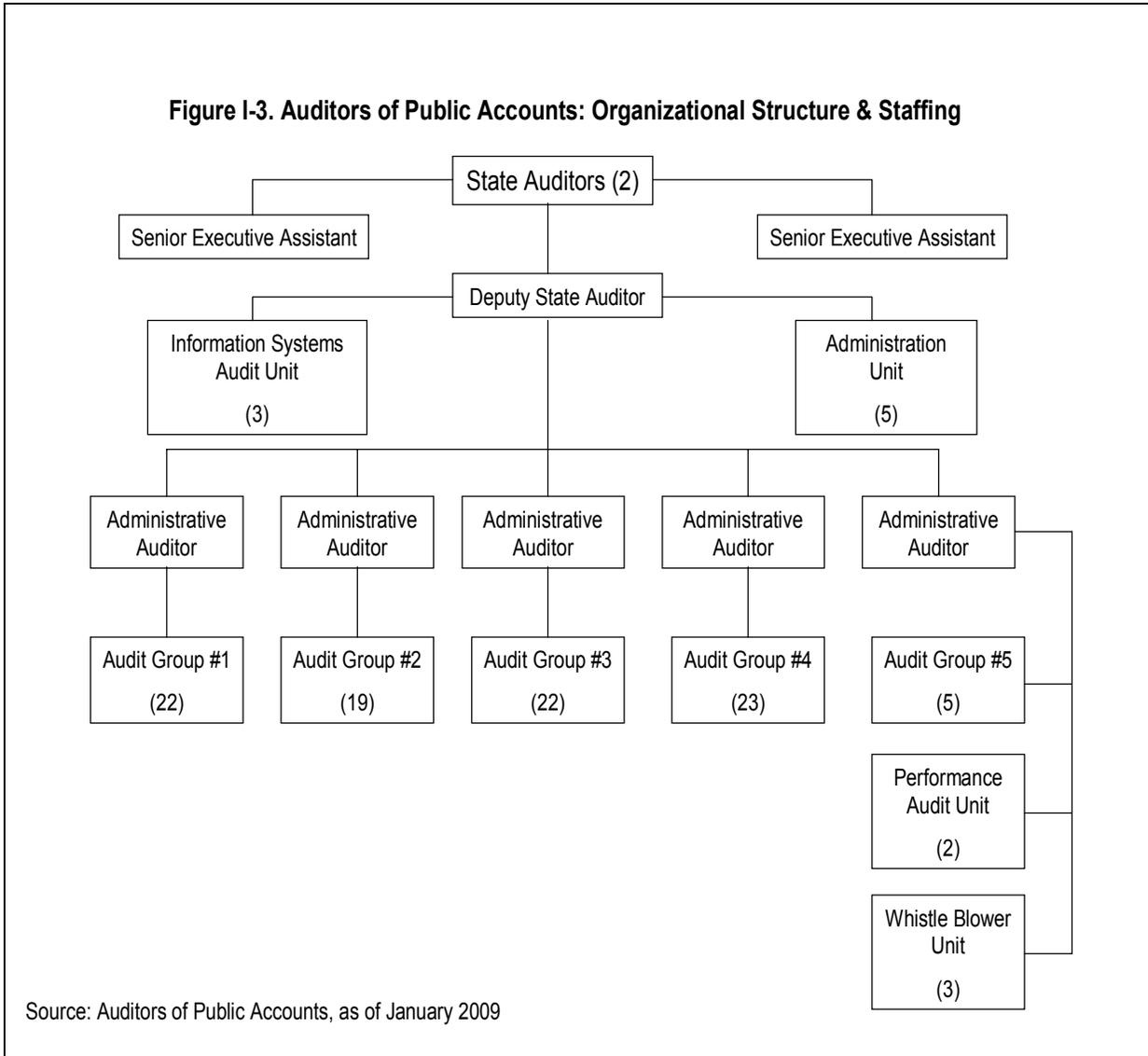
As Figure I-2 shows, the Auditors of Public Accounts have the first mandated review of all whistleblower matters. The State Auditors must report their findings to the Attorney General, who has the discretion to conduct such further investigation as he deems proper. In his discretion, the Attorney General reports his findings to the Governor and to the Chief State's Attorney, if the matter involves a crime. The State Auditors are statutorily required to annually report to the legislature the numbers and disposition of matters submitted pursuant to the whistleblower statute.

Auditors of Public Accounts (APA)

The primary responsibility of the Auditors of Public Accounts is to audit the books and accounts of each state government officer, department, commission, board, and court, as well as all state-aided institutions and certain quasi-public agencies created by the legislature (C.G.S. § 2-90). The auditors also perform a Statewide Single Audit of federal programs to ensure federal funds provided to the state are used in compliance with applicable laws, rules and regulations. Other statutory responsibilities include to review all whistleblower complaints filed against the state and report the results to the Attorney General. The Auditors are expected to provide independent, unbiased, and objective opinion and recommendations on the operation of the state government and the state's effectiveness in safeguarding resources.

Organization and staffing. Figure I-3 shows the organizational structure and staffing levels of the Office of the Auditors of Public Accounts. The office is directed by two legislatively appointed State Auditors, one from each political party, and currently has a total of 113 employees. The audit operations staff is overseen by a deputy state auditor and is organized into five audit groups. Until recently, there was only one full-time auditor assigned to whistleblower matters. According to the State Auditors, the office has needed to shift staff resources and assignments in order to manage the increasing number and complexity of the whistleblower matters submitted. The

Whistleblower Unit currently consists of three auditors and is under the general direction of one of the five administrative auditors. When necessary or practical, auditors from the various audit groups may be asked to assist in reviewing whistleblower complaints.



Office of the Attorney General

As the chief civil legal officer of the state, the Attorney General serves as legal counsel to all state agencies. The state constitution and state law authorize him to represent and protect the public interest of the state's citizens. Among the various responsibilities of the Attorney General is to maintain general supervision over all legal matters in which the state is an interested party. The office represents all state officials in

all suits and other civil proceedings in which the state is a party, or has an interest, or in which the official actions of state officers are called into question, except in criminal matters.

In addition to representing state officials and agencies, the Attorney General is also charged with the responsibility to investigate alleged misconduct by state entities/officials pursuant to the Whistleblower Act. The dual responsibilities of investigating and then potentially representing a state entity/official for the alleged wrongdoing may create an appearance of a conflict of interest. In practice, however, these investigatory and representation functions are segregated. Further discussion on the “firewalls”⁸ used to avoid conflict of interest problems is provided later.

Organization of the Office of the Attorney General. Figure I-4 outlines the organizational structure for the Office of the Attorney General. The Attorney General is a constitutional officer elected by Connecticut voters. With a staff of more than 300, the Office of the Attorney General consists of 14 designated departments including:

- Antitrust
- Child Protection
- Environment
- Finance and Public Utilities
- Employment Rights
- Public Safety and Special Revenue
- Transportation
- Special Litigation
- Collections and Child Support
- Health and Education
- Workers’ Compensation and Labor Relations
- Consumer Protection
- Health Care Fraud/Whistleblower/Health Care Advocacy
- Civil Rights and Torts

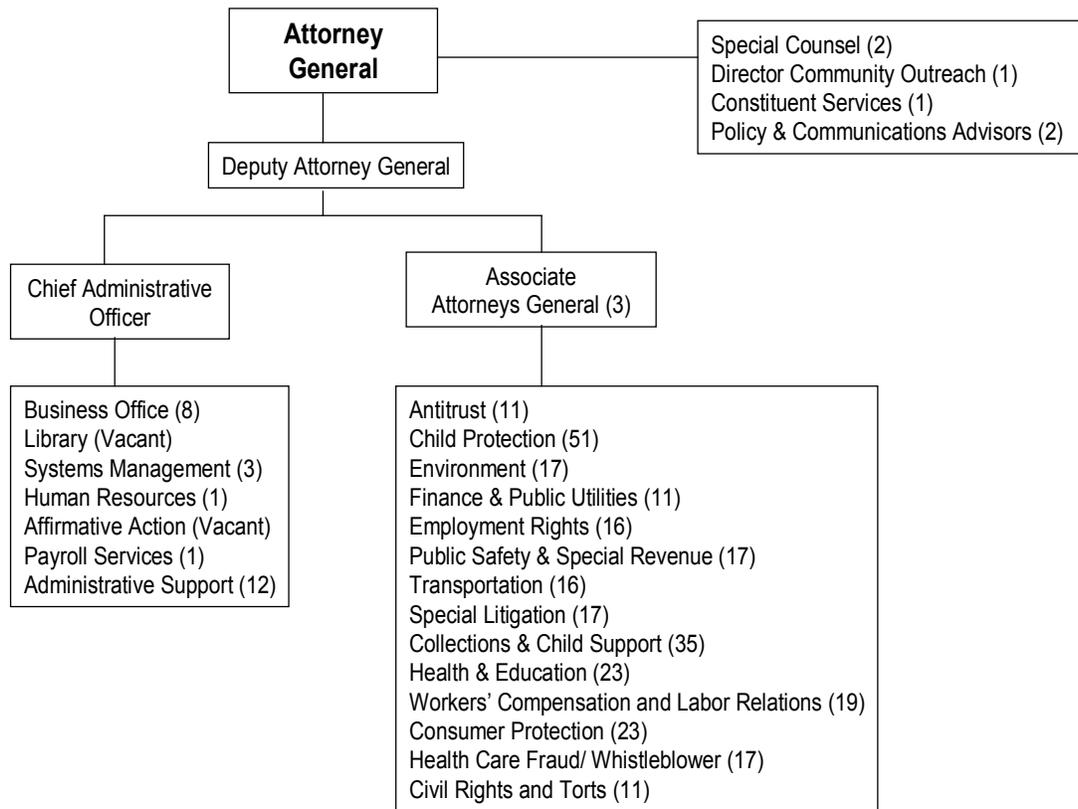
Whistleblower Unit within the Office of the Attorney General. The Whistleblower Unit is a distinct unit located within the Health Care/Whistleblower/Health Care Advocacy department. As Figure I-4 shows, the department has 17 assigned staff including administrative support. There is one staff attorney designated as whistleblower coordinator who works with the department head on reviewing all whistleblower complaints.

The Attorney General’s Whistleblower Unit reviews and investigates matters referred to it by the State Auditors or others. Although state law authorizes the Attorney

⁸ The term “firewalls” refers to an information barrier implemented within an organization to separate and isolate persons who make decisions from persons who are privy to undisclosed material information which may influence those decisions.

General to investigate whistleblower complaints, including claims of retaliation, he cannot provide legal advice or counsel to the employee. As discussed earlier, whistleblowers must seek individual relief for personnel issues through alternative complaint proceedings. It should be noted that staff from other departments within the Office of the Attorney General may also be involved in those alternative complaint proceedings or related litigation.

Figure I-4. Office of the Attorney General: Organizational Structure and Staffing



Source: Office of Attorney General, as of August 2009

Connecticut's Whistleblower Law, Process, and Trends

This chapter provides an overview of Connecticut's whistleblower law and a detailed description of the whistleblower process within the Offices of the Auditors of Public Accounts (APA) and the Attorney General. Information on the whistleblower retaliation protection provisions is set out in Chapter III.

Whistleblower Statute (C.G.S. § 4-61dd (a))

State law allows anyone with knowledge of any matter occurring in any state or quasi-public agency involving: 1) corruption, 2) unethical practices, 3) violation of state laws or regulations, 4) mismanagement, 5) gross waste of funds, 6) abuse of authority, or 7) danger to the public safety to report all facts and information to the Auditors of Public Accounts.

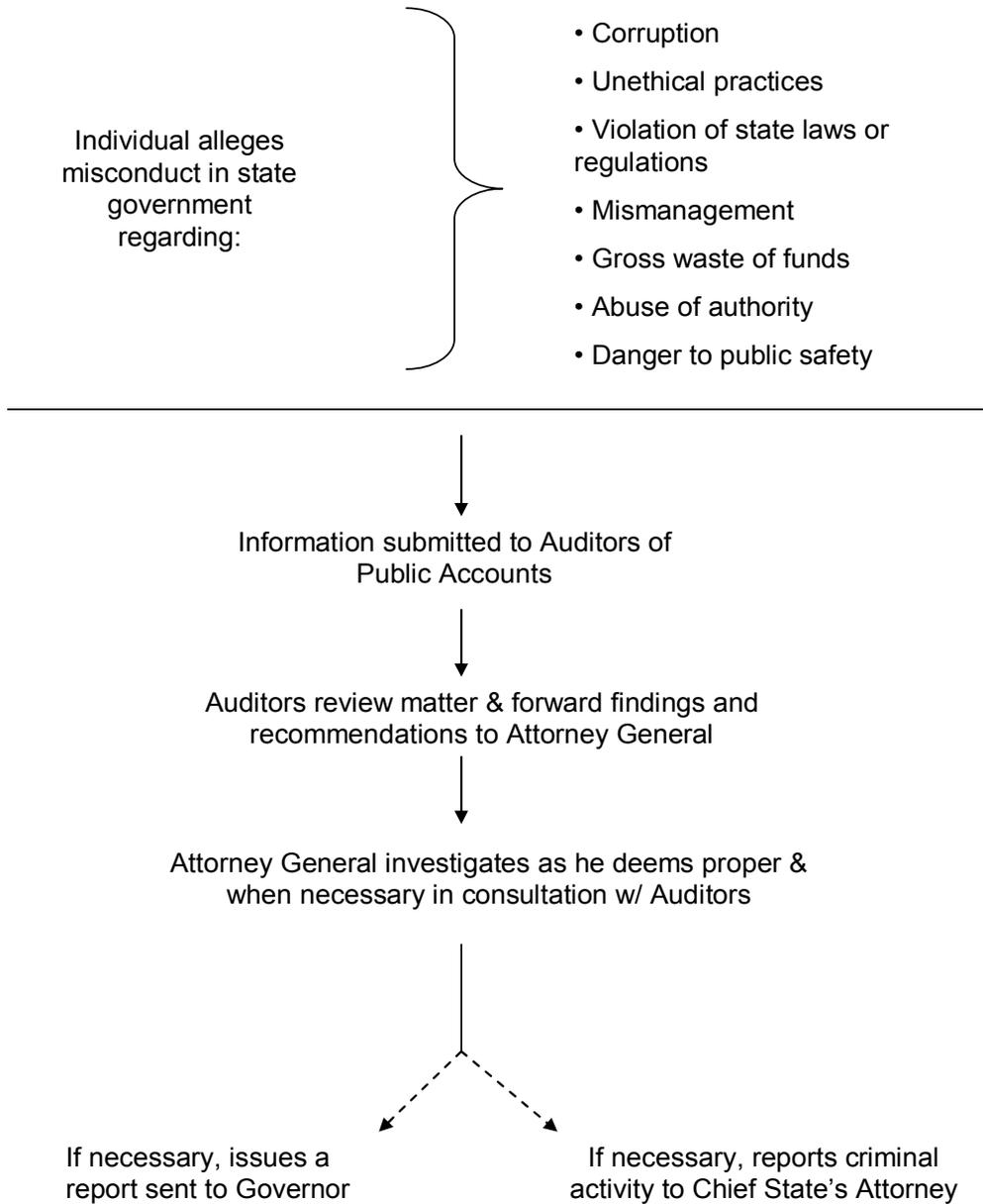
Any person with knowledge of any matter occurring in any large state contract of \$5 million or more involving: 1) corruption, 2) violation of state laws or regulations, 3) gross waste of funds, 4) abuse of authority, or 5) danger to the public safety, may also submit all facts and information possessed by the person about the matter to the State Auditors.

The Auditors must review the matter and report their findings and any recommendations to the Attorney General. An overview of this statutory scheme is shown in Figure II-1 while a breakdown of each agency's whistleblower process is outlined in subsequent flowcharts. As Figure II-1 shows, after receiving the Auditors' report, the Attorney General "shall make such investigation as he deems proper regarding the report and any other information that may be reasonably inferred from such report." The Attorney General may conduct any subsequent investigation he deems appropriate, and, if the information is derived from the Auditors' report, with the concurrence and assistance of the Auditors.

The Auditors may on their own initiative, or at the request of the Attorney General, assist in the investigation. If necessary, the Attorney General has the power to summon witnesses, require the production of any necessary books, papers or other documents, and administer oaths to witnesses. When the investigation is complete, the Attorney General may report any findings to the Governor or to the Chief State's Attorney in matters of criminal activity. The statutory provisions for the Auditors' and Attorney General's whistleblower processes do not impose any timeframes or deadlines.

Neither the State Auditors nor the Attorney General may disclose the whistleblower's identity without the person's consent unless the Auditors or the Attorney General determines disclosure is unavoidable. In addition, each office may withhold records of the investigation while the investigation is pending. The state Freedom of Information law also exempts whistleblower records and the name of an employee providing information from mandatory disclosure (C.G.S. § 1-210(b)(13)).

Figure II-1. Statutory Process for Whistleblower Complaints



Source: LPR&IC

Auditors of Public Accounts Whistleblower Complaint Process

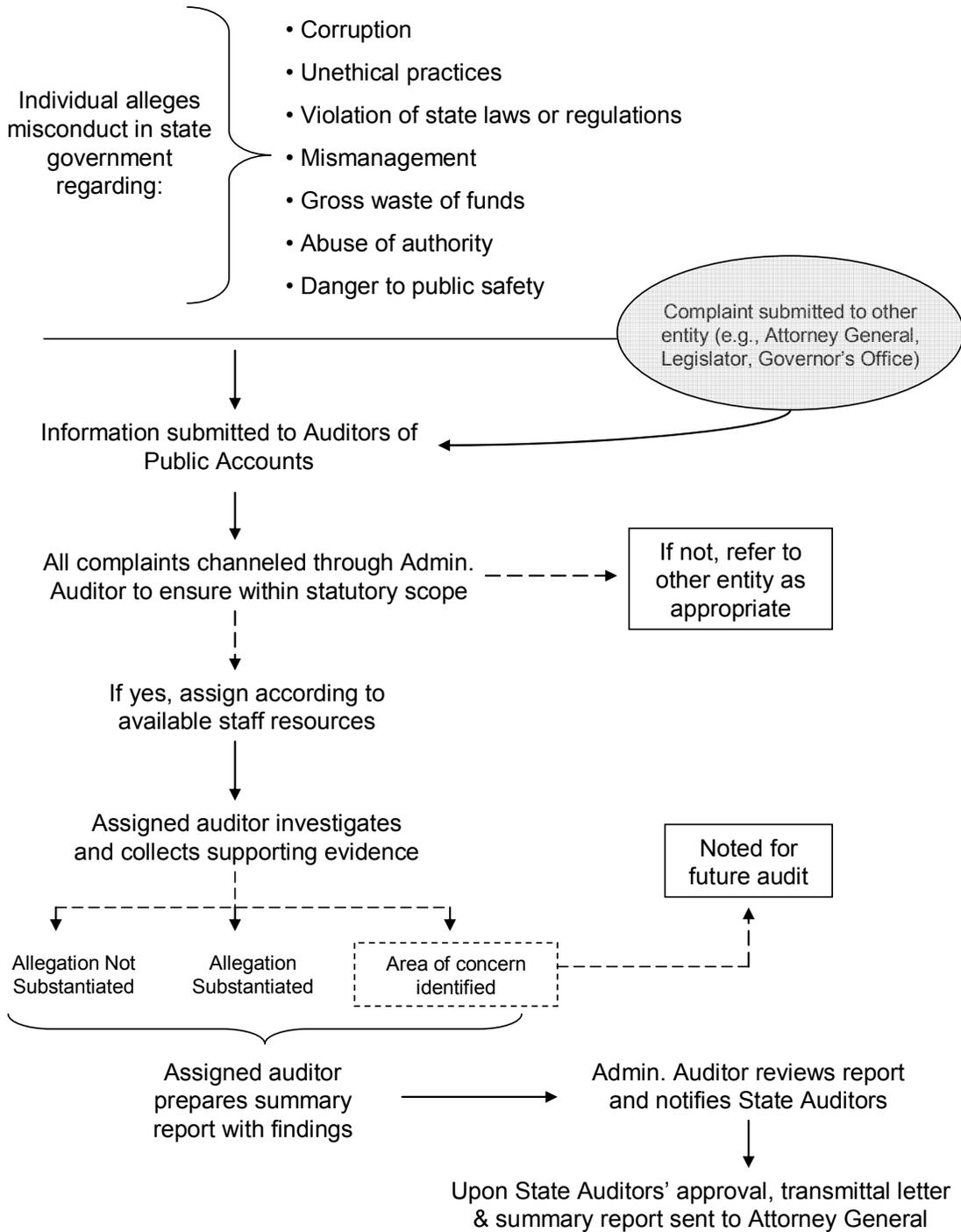
Statutorily, the whistleblower process begins when anyone with information concerning matters involving alleged misconduct at a state or quasi-public agency or by a large state contractor submits a complaint with the Auditors of Public Accounts. In practice, however, the Office of the Attorney General frequently receives whistleblower complaints first. In these instances, the Attorney General's office will re-route the whistleblower information to the Auditors for the mandated first review. At times, whistleblowers also may initially submit complaints to other officials, such as the Governor or legislators, who may refer the complaint or complainant to the State Auditors.

As Figure II-2 reveals, all whistleblower information submitted to the Auditors is initially channeled through the administrative auditor managing the APA's Whistleblower Unit. A complaint may be submitted by mail, by phone, electronically, or in person. The administrative auditor conducts the first review of the whistleblower complaint. If possible, the administrative auditor determines the name and title of the person or persons involved in the misconduct, the identity of the state entity the subject of the complaint involves, and as much information regarding the alleged misconduct as possible including names of witnesses. A written statement from the complainant is not required. Complainants may submit information anonymously, if they prefer. Because some complainants may not wish to be identified, they may decide not to provide any contact information, which may limit the auditor's ability to follow up on allegations. In those cases, the auditor must proceed with the information as submitted.

Intake. The administrative auditor first determines whether the submitted whistleblower information falls within the statutory realm of C.G.S §4-61dd. Specifically, the administrative auditor checks that the information submitted concerns a matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety. In addition, the allegation must involve a state department or agency, quasi-public agency, or a large state contract valued at least \$5 million. If the information received is deemed not to fall within the scope of the whistleblower statute but in the administrative auditor's opinion merits further review, the office may review the matter as part of a general audit of the implicated agency. At times, the individual may be referred to another entity if the matter involves parties (e.g., municipal employees) not subject to the state's Whistleblower Act.

Once the administrative auditor decides that the information provided should be handled as a whistleblower complaint, it is logged, given a file number, and assigned to a staff member. Assignments are made based on available staff resources and not always immediately made. Until recently, the unit had one full-time auditor assigned to whistleblower complaints. Currently, there are three auditors specifically assigned to handle whistleblower matters. However, depending on the nature of the complaint and/or other workload issues, the complaint may be given to an auditor who is either conducting or about to conduct a routine audit in the implicated agency or has knowledge or experience in the particular agency topic. According to the State Auditors, this resource allocation can delay whistleblower assignments.

Figure II-2. Whistleblower Process within Auditors of Public Accounts



Source: LPR&IC

Investigations. The administrative auditor informs the deputy state auditor and the State Auditors of whistleblower matters assigned for further investigation. Generally, complaints are investigated in the order they are received, subject to staff availability. On occasion, a complaint may be found to merit immediate attention if, for example, it involves danger to public safety.

The administrative auditor prepares an initial complaint folder supplying the assigned auditor with the details provided by the complainant including any submitted documentation. Given the varying characteristics of each reported incident, there is no single approach to whistleblower investigations. Each complaint is considered and handled on a case-by-case basis. Typically, the assigned auditor will develop an approach outlining the action steps to be taken for each allegation. Guidance is also given by the administrative auditor throughout the review.

Occasionally, an APA staff member is approached during a routine audit by a potential whistleblower. The APA policy requires the audit staff member to refer that individual to the whistleblower statute and encourage the individual to submit a written complaint or telephone the Auditors' office. If the individual does not wish to formally contact the office, the staff member may inform the administrative auditor through a written memo describing the situation. Prior to submitting a memo, the staff auditor may try to determine whether the complaint has any merit.

In all cases, the assigned auditor will do some preliminary background work by gathering as much information as possible without revealing the whistleblower investigation unless it is necessary to obtain the information. However, the identity of the whistleblower is maintained confidential. In fact, most contact with the whistleblower is primarily handled by the administrative auditor to further protect confidentiality.

APA guidelines stress the importance of documentation of all information gathered during the whistleblower review. All interviews must be documented as to date, time, and persons who attended. Interviews expected to produce critical or sensitive information should be conducted in the presence of a second auditor. In addition, conversations with complainants and other parties must be documented as to the date, time, and issues discussed. Work paper documentation also includes any information received from another staff auditor or from a supervisor.

Confidentiality is an essential aspect of the APA guidelines for handling whistleblower complaints. While conducting an investigation, the assigned auditor can only disclose to the agency what is necessary to obtain the information needed for the review. All materials collected during any review must be safeguarded and the identities of the whistleblower complainant and other confidential informants are protected at all times. Information pertaining to a whistleblower case file is exempt from disclosure under the Freedom of Information statutes. The State Auditors have discretionary authority over what information, if any, may be released to the whistleblower complainant, the agency, or any third party such as a union representative or the media. If an investigating auditor believes that a review may directly or indirectly disclose a complainant's identity, the situation must be discussed with the State Auditors before proceeding further.

As part of the investigation, the assigned auditor may use a variety of available resources, including but not limited to:

- records and data from the state entity being investigated;
- employee earnings and vendor payments from the Office of the Comptroller;
- information regarding purchasing, fleet operations, agency billings, and telecommunications services from the Department of Administrative Services;
- registrations, licenses, and complaints against businesses from the Department of Consumer Protection;
- corporate status and listing of corporate officers and directors from the Office of Secretary of State;
- information on state leased properties and capital projects from the Department of Public Works; and
- various information available from town/city clerks of municipal offices, such as land ownership, property values and assessments.

Summary reports. Upon completing the investigation, the assigned auditor prepares a summary report of findings related to each allegation of the complaint. The findings may include the auditor's conclusion whether there was evidence substantiating the complaint or, if not substantiated, whether areas of concern were raised that may be noted for review during future general audits. All supporting documentation is maintained as part of the case file. The summary report is submitted to the auditor's managing administrative auditor for review. All summary reports and supporting documentation is also reviewed by the Whistleblower Unit's administrative auditor. The unit administrator determines if further review is needed, makes any editorial changes, and forwards the report to the State Auditors. With the State Auditors' approval, a transmittal letter is prepared and the summary report forwarded to the Attorney General. Regardless of the report's substantiated or un-substantiated findings, all whistleblower matters reviewed by the Auditors are referred to the Office of the Attorney General.

According to the State Auditors, formal updates to the complainant regarding the status of the whistleblower matter are not provided unless the complainant contacts the office. In all cases, the APA policy is to state only if and when the whistleblower matter has been referred to the Office of the Attorney General and direct any follow-up to that office.

Office of the Attorney General Whistleblower Complaint Process

Upon receiving the Auditors' report, the Attorney General is statutorily responsible for reviewing all whistleblower information regarding alleged misconduct within state government. The statutory language, however, provides the Attorney General discretion to pursue whistleblower investigations as he "deems proper" (C.G.S. § 4-61dd(a)). Serving as the state's chief civil legal officer, the Attorney General is a widely recognized and visible position within state government. As such, the office generates much public interest and communication. This may be why frequently the office will receive whistleblower complaints before the Auditors of

Public Accounts, who are statutorily charged with reviewing whistleblower matters first. Figure II-3 illustrates the process in the Attorney General's office upon receipt of whistleblower information.

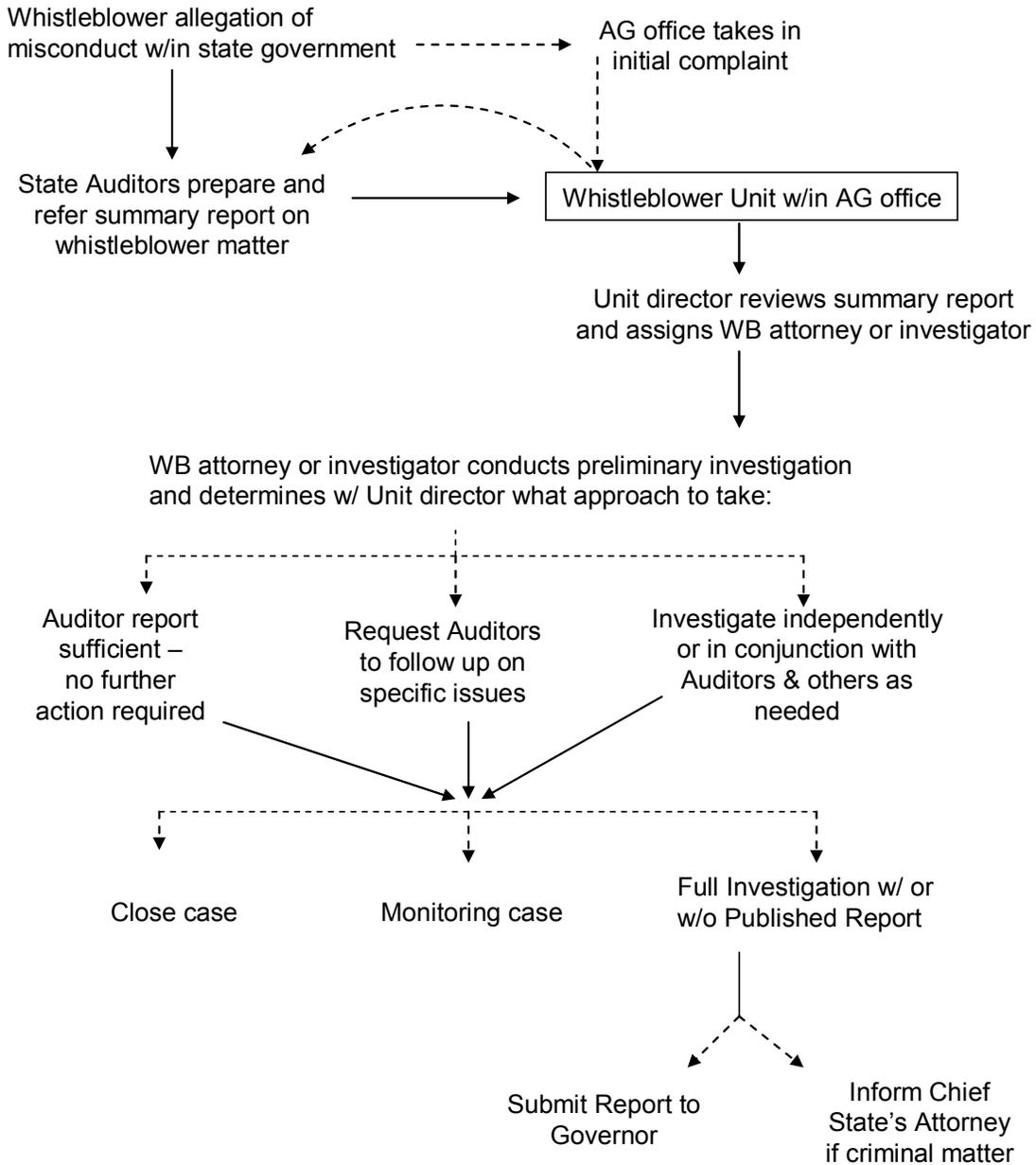
Receipt of complaints. According to the Attorney General's staff, the office receives allegations of misconduct within state government in a variety of ways, including by mail, telephone, e-mail, or in-person. Often, letters are addressed to the Attorney General containing such allegations. If the outside of the letter contains a reference to a whistleblower complaint, the letter will be forwarded, unopened, to the Whistleblower Unit. Other letters are opened by the public inquiry staff of the Attorney General's office and, if determined by staff to be a whistleblower complaint, are forwarded to the Whistleblower Unit, and are not added to the Office of Public Inquiry database, which is accessible to many AG staff.

The unit's administrative assistant will document receipt of the correspondence, assign a case file number, and forward the information to the unit director. If the whistleblower contacts the office by telephone, the call is transferred directly to the unit's director or whistleblower investigator. Similar to the State Auditors' process, the unit staff will determine whether the complaint is within the scope of the state's Whistleblower Act. If the complaint does not fall within the act, the unit staff will refer the complainant or the complaint to the appropriate or relevant oversight entity. If the complaint is within the scope of the statute, the unit director or the investigator will prepare a file memo or other writing with a description of the complaint based on the communication from the whistleblower.

The information is then re-directed to the Auditors of Public Accounts as required by law. According to the Attorney General's staff, the office policy is to err on the side of caution and refer all whistleblower complaints to the Auditors. As noted above, after the Auditors have completed their review, a summary report containing the Auditors' findings is submitted to the Attorney General.

All of the Auditors' summary reports are forwarded to the Whistleblower Unit within the Office of the Attorney General. The unit's administrative assistant documents receipt of the summary report, assigns a case file number if not already done, and gives the report to the unit director. The unit director reviews and shares the summary report with the unit's whistleblower lead attorney. Based on workload availability, either the unit director or other unit staff may prepare some preliminary background information on the request to determine the necessary investigative approach. The unit director, in consultation with the whistleblower lead attorney, decides whether the Auditor's summary report has sufficiently examined the allegations and requires no further action by the Office of the Attorney General. If the summary report indicates that the situation might merit further review, the unit director, in consultation with the lead attorney and the Associate Attorney General, determines whether the subsequent follow-up can be done by the Auditors or the findings call for additional investigation. According to the unit director, the summary reports with potential serious implications involving issues such as danger to the public, significant financial impact, or substantial public importance are brought to the attention of the Attorney General.

Figure II-3. Whistleblower Process Within Office of the Attorney General



Source: LPRI&C

Investigations. Cases requiring additional investigation are handled by the whistleblower lead attorney or possibly another attorney from the unit assigned on an as-needed basis. The complexity of the whistleblower allegations may also necessitate a joint investigation with the State Auditors or, in special circumstances, outside assistance.⁹ The Chief State's Attorney is made aware of any allegations that may involve criminal activity and agreements are worked out among the offices as to which parts of the case each office will continue to work. If the allegations involve health care issues, the whistleblower unit may also use resources from other Attorney General staff within the Health Care Fraud unit.

Due to the confidentiality requirements of the state's whistleblower statute and the possibility that the office may have to provide legal representation for state entities accused of misconduct, staff from other departments within the Office of the Attorney General are not involved in these investigations. Firewalls have been constructed to avoid conflict of interest problems and any perception of impropriety. The firewalls include dedicated and secured computer terminals for the exclusive use of the Whistleblower Unit staff. In addition, all whistleblower information is maintained in a separate database and is not part of the agency's overall inventory of public information. Finally, the Whistleblower Unit is kept physically separate from the other Attorney General departments and restricted card key use is required to limit access to authorized personnel.

The whistleblower lead attorney uses the Auditors' summary report as a starting reference point. The supporting documentation for a report is maintained with the Auditors' case file but is available to the Attorney General's whistleblower staff as needed. The unit's approach to whistleblower investigations is to prepare questions and request information and documents in a subpoena draft format without actually serving a subpoena, particularly from state agencies.¹⁰ Although the unit attempts to obtain voluntary compliance, subpoenas are served when necessary.

Interviews conducted by the whistleblower staff may be formal or informal. Formal interviews require sworn statements and are recorded. The Whistleblower Unit has computer software equipment that records interview sessions. The equipment is a permanent fixture stationed in the Whistleblower Unit's conference room and there is also a portable version available that allows for off-site interview sessions.

Complaint disposition. There are three general case dispositions for whistleblower matters within the Attorney General's office. These include closing a case with no further follow-up, keeping the case open on a monitoring status, or conducting an investigation which may or may not result in a published report.

According to the unit director, a whistleblower case is rarely closed and most cases are placed on a monitoring status, which means they remain active with the possibility that additional information may materialize or further complaints may come forth. Cases placed on a

⁹ In late 2005, the Attorney General's office worked together with the New York State Police in an evaluation of Connecticut's Department of Public Safety Internal Affairs Program stemming from whistleblower information.

¹⁰ A subpoena is a formal legal document that orders a named individual to appear before a duly authorized body at a fixed time to give testimony and/or produce documents in control of the individual.

monitoring status may have issues that have been pursued as far as possible by the investigative staff but cannot proceed forward without more available evidence or witnesses.

Although significantly fewer in number, the majority of the work conducted by the whistleblower staff is on case investigations that have been identified as having potentially serious implications. As noted earlier, these cases involve matters such as danger to public safety, significant financial impact, or substantial public importance. These investigations typically result in a formal written report. These reports are prepared by the attorney(s) working on the investigation and reviewed by the unit director before they are submitted to the Associate Attorney General and, ultimately, the Attorney General for final approval. The report is then sent to the Governor and referred to the Chief State's Attorney if there is criminal involvement. Once the report is published, it is available to the public. Between January 1, 2006 and June 6, 2009, ten formal reports have been issued on various whistleblower complaints. A listing of the ten reports is provided in Appendix D.

Similar to the Auditors' policy, the Attorney General's office does not provide formal updates to whistleblower complainants unless requested. The 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 the investigation is complete or the case is closed.

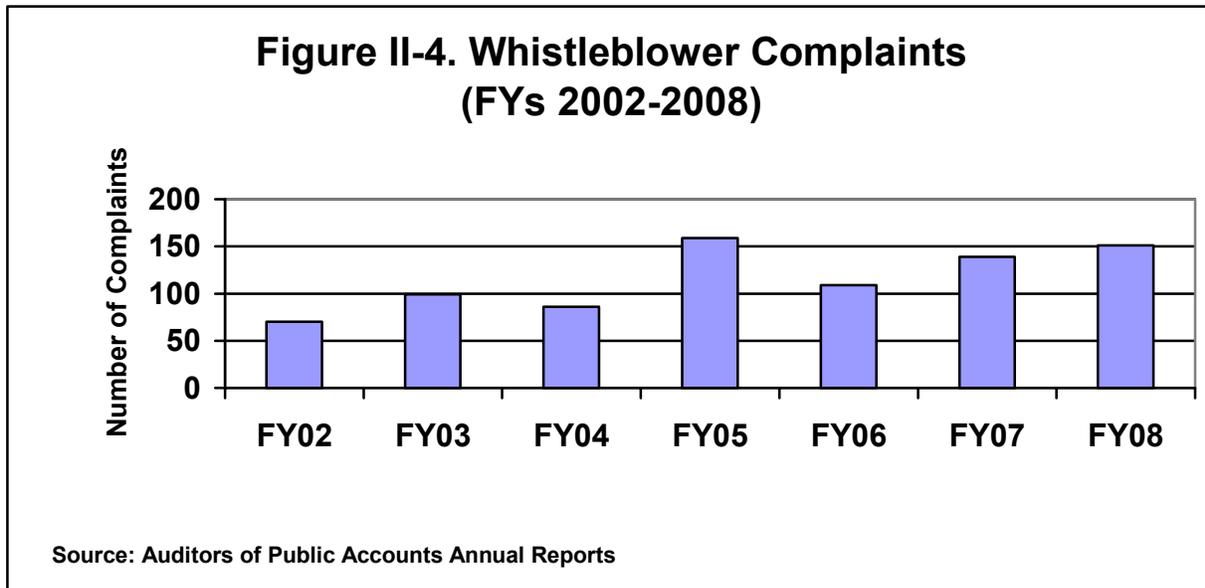
As mentioned previously, the Attorney General can only investigate and report findings and recommendations. Enforcement of any corrective action is done by the executive branch. Unlike other states, Connecticut does not have a False Claims Act to allow the state to recover penalties for corrupt practices by large state contractors. The Attorney General may follow up on particular issues if questions or concerns re-emerge. Although the Attorney General is authorized to investigate whistleblower retaliation claims, any individual relief sought by whistleblowers is provided by other entities. (Chapter III discusses retaliation complaints in further detail.)

General Whistleblower Trends & Statistics

The following provides general trends and statistics on whistleblower matters in Connecticut. All of the information presented here focuses on the first part of the whistleblower process, during which the Auditors of Public Accounts receive and review complaints and are required to submit findings and any recommendations to the Attorney General. This information was primarily developed from data contained in the Auditors' annual reports and their internal database used mainly for complaint tracking purposes. As such, some of the analysis is limited in scope. While the Attorney General's office also maintains an internal tracking database, similar information (e.g., final disposition timeframes) was not readily available in its computer system. Further analysis on whistleblower information gathered from both the Auditors and Attorney General's case files is provided in Chapters VI, V, and VI.

Number of whistleblower complaints over time. Figure II-4 shows the annual number of whistleblower complaints filed with the Auditors of Public Accounts has increased substantially over the last six fiscal years. From FY 02 to FY 08, the Auditors of Public Accounts experienced 116 percent growth in the number of whistleblower complaints submitted. In FY 02, the State Auditors received 70 whistleblowers complaints. The number of

whistleblower matters peaked in FY 05 when the office received 159 complaints. The following year the number of complaints decreased somewhat but has since continued to steadily grow. By FY 08, the number of complaints submitted rose to 151, close to the high seen in FY 05 and more than double the number received in FY 02.



In their 2007 annual report, the State Auditors commented on an “increased sensitivity by state officials towards detecting irregularities within state government”.¹¹ They attributed the growing number of whistleblower complaints to a similar sensitivity within the public at large. The number of whistleblower complaints seems to reflect public awareness and concern with state government issues resulting after publicized proceedings and government scandals. For example, the FY 05 peak in whistleblower complaints coincides with the events involving former Governor John G. Rowland.

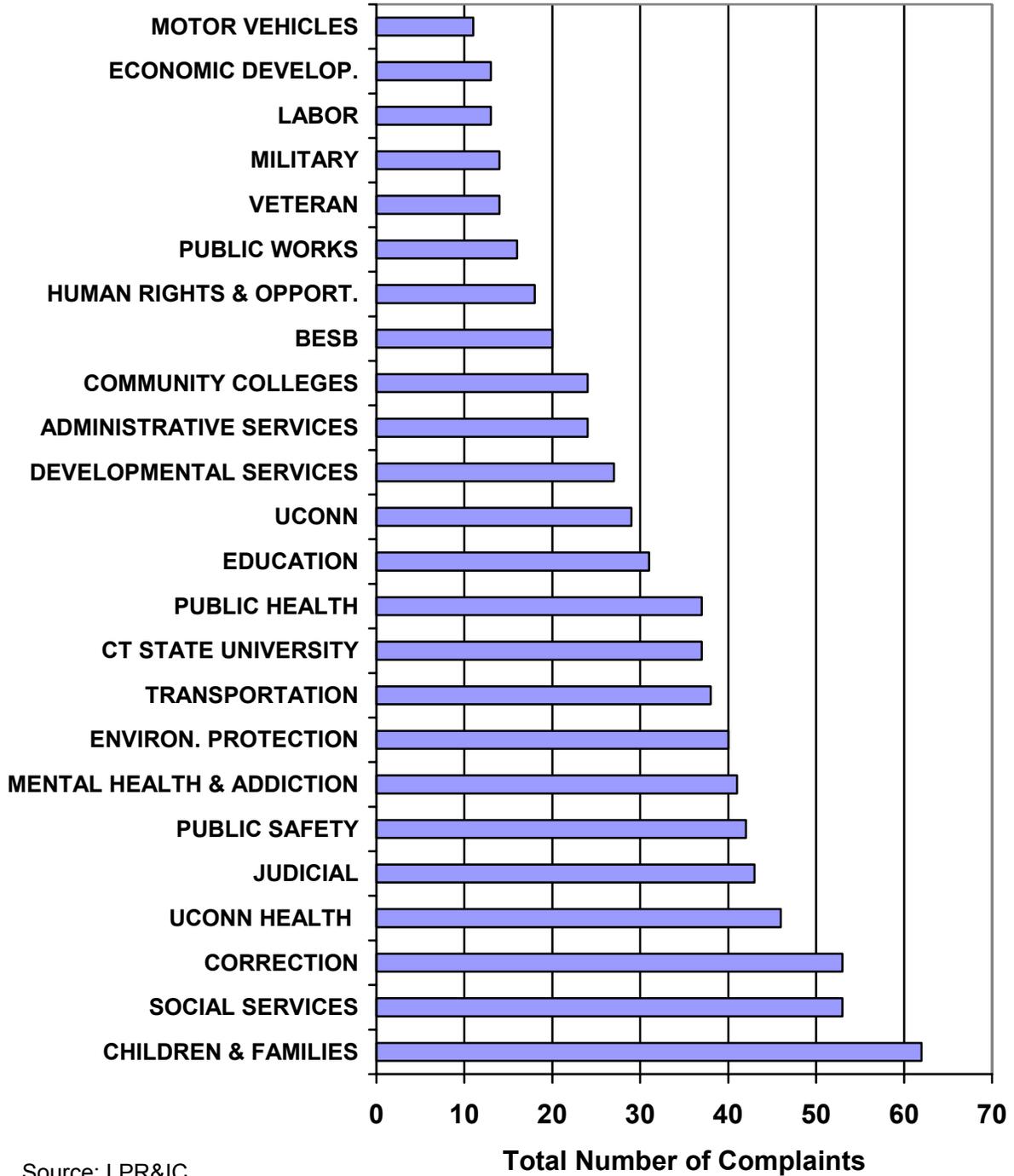
Number of whistleblower complaints against state agencies. The program review committee examined the number of whistleblower complaints filed against state agencies since FY 02. Figure II-5 lists the state agencies having a total of ten or more whistleblower complaints filed against each between July 1, 2001 and June 2, 2009. These 24 agencies received a range of 11 to 62 whistleblower complaints during this eight-year time period. Of these:

- Eight of the 24 state agencies received between 11 and 20 complaints;
- Eight more organizations had between 21 and 40 complaints filed; and
- Another eight agencies had more than 40 whistleblower complaints submitted against them.

(Appendix E provides the annual number of complaints for each of the 24 agencies.)

¹¹ 2007 Annual Report to the General Assembly, Auditors of Public Accounts, p.17

Figure II-5. State Agencies with 10 or More Whistleblower Complaints (FY 02-June 2009)



Number of whistleblower complaints by agency size. Table II-1 lists the three state agencies with the most whistleblower complaints during July 1, 2001 and June 2, 2009 ranked by the size of the agency as measured by the number of full-time employees. The three largest state agencies (over 2,000 full-time employees) with the most whistleblower complaints overall during this eight-year time period are: the Departments of Children and Families (62), Social Services (53), and Correction (53).

The mid-sized agencies (500 to 2,000 employees) with the most whistleblower complaints include: the Departments of Public Safety, Environmental Protection, and Public Health. The agencies with the most whistleblower complaints with less than 500 employees are: the Department of Administrative Services, the Board of Education and Services for the Blind (BESB), and the Commission on Human Rights and Opportunities (CHRO).

The table also presents the complaint rate per 100 employees for each agency. As the table shows, the small and mid-sized agencies generally have a larger complaint rate per 100 employees than the large state agencies, which have more total number of complaints. It should be noted that different factors may impact the complaint rate, including the time period examined. A longer or shorter examined time period would change the total number of complaints as well as the number of full-time employees, resulting in possibly different complaint rate per agency.

Table II-1. Most Whistleblower Complaints (July 1, 2001- June 2, 2009) by Size of Agency			
Agency	Permanent Full-Time Employees*	Total Complaints	Rate per 100 Employees
Less than 500 Employees			
Administrative Services	348	24	6.8
BESB	120	20	16.6
Human Rights & Opport.	92	18	**
500 to 2,000 Employees			
Public Safety	1,790	42	2.3
Environ. Protection	1,008	41	4.0
Public Health	806	37	4.5
More than 2,000 Employees			
Children & Families	3,436	62	1.8
Social Services	2,042	53	2.5
Correction	6,581	53	0.8
*As reported in State Personnel Status Report (May 30, 2009)			
** Less than 100 employees			
Source: LPR&IC Analysis of Auditors' database			

Anonymous whistleblower complaints. As mentioned earlier, current state law allows anyone to file a whistleblower complaint. The whistleblower may possess the information as an internal source (e.g., agency employee) or as an external source (e.g., agency client), or the whistleblower may prefer to remain anonymous and not disclose how they came into possession of the information. Neither the State Auditors’ or Attorney General’s database distinguishes whether the source of the complaint is internal or external; however, each does indicate if a complaint was submitted by an anonymous source. Figure II-6 shows the anonymous complaint trends over time compared to the total number of complaints.

The number of anonymous complaints has been somewhat consistent during FYs 02-08. The number of anonymous complaints was slightly higher in FY 05, though, coinciding with the overall increase in whistleblower complaints. However, the percentage of anonymous complaints in general has decreased from FY 02 when approximately one-third (33%) of all whistleblower complaints were anonymous to FY 08 when about a quarter of all complaints are anonymous (26%).

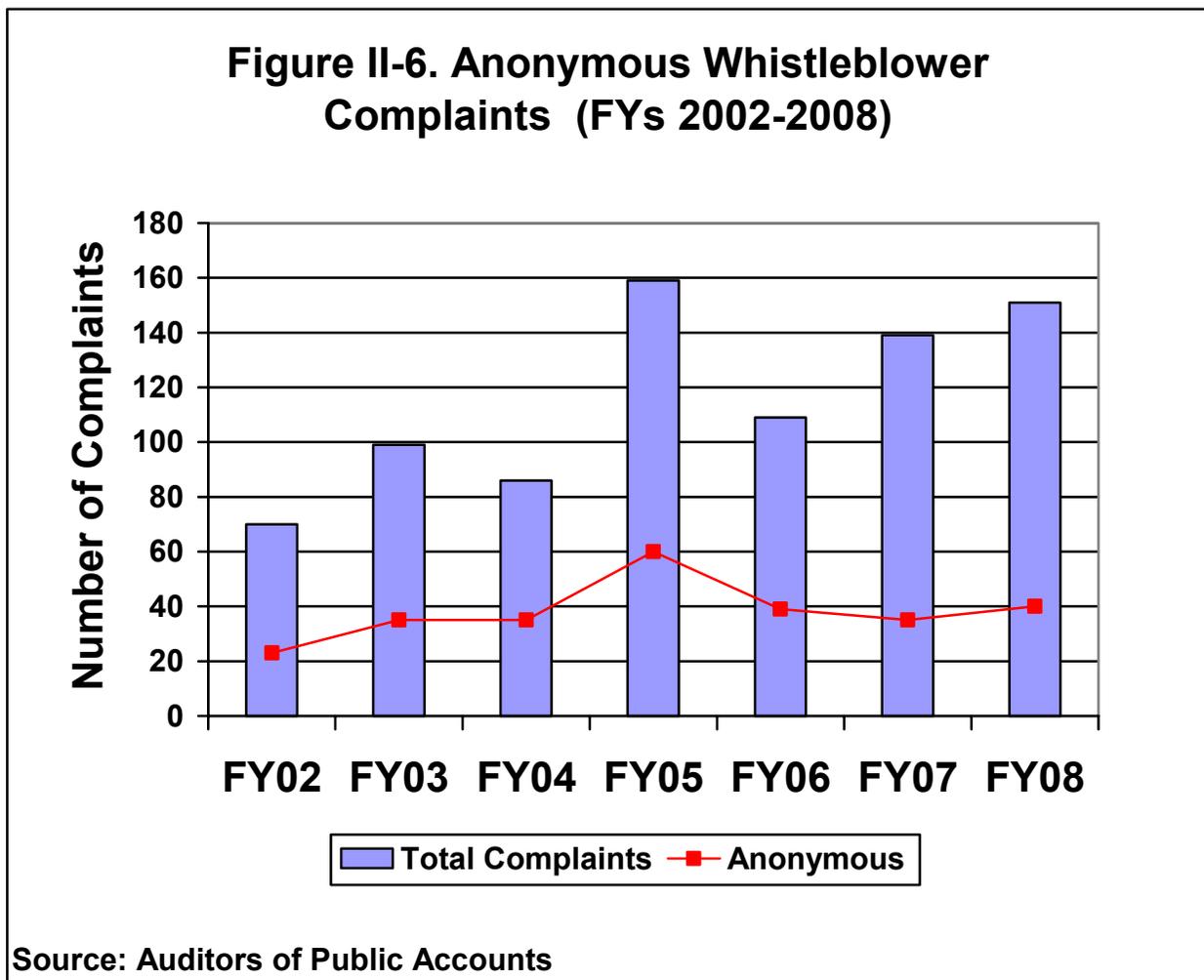


Table II-2 shows the agencies with more than 50 percent of anonymous whistleblower complaints between July 1, 2001 and June 2, 2009. During this time period, there were four agencies with over 50 percent of anonymous complaints. Three of the four agencies had fewer than 500 employees. Two agencies (Military and Public Works) had close to 70 percent of their whistleblower complaints submitted anonymously. Given the size of these agencies, it is possible that these individuals may have filed anonymously to avoid revealing their identities in a small environment.

Table II-2. Agencies with More than 50 Percent of Anonymous Whistleblower Complaints (July 1, 2001-June 2, 2009)				
AGENCY	Permanent Full-Time Employees*	Total Complaints	Anonymous Complaints	Percent
Military	105	13	9	69%
Public Works	184	15	10	67%
Veteran Affairs	288	14	8	57%
Labor	834	13	7	54%

* As reported in the State Personnel Status Report (May 30, 2009)
Source: LPR&IC Analysis of Auditors' database

Number of complaints against large state contractors. As discussed in Chapter I, the whistleblower statute was amended in 1998 to allow whistleblower complaints in situations occurring in a large state contract. The statutory provisions define a large state contract as valued at \$5 million or more. Table II-3 provides the annual number of complaints against large state contractors. Between 2002 and June 2009, there were a total of 81 complaints filed with the State Auditors against large state contractors. As the table shows, beginning in FY 2005, the annual number of complaints has increased.

Table II-3. Number of Complaints Filed Against Large State Contractors (2002- June 2009)	
Year	Number of Complaints
2002	3
2003	8
2004	5
2005	13
2006	12
2007	10
2008	18
2009	12
TOTAL	81

Source: Auditors of Public Accounts

Number of complaints against quasi-public agencies. State law defines the quasi-public entities subject to the state’s whistleblower provisions as: Connecticut Development Authority (CDA); Connecticut Innovations, Incorporated; Connecticut Health and Educational Facilities Authority (CHEFA); Connecticut Higher Education Supplemental Loan Authority (CHESLA); Connecticut Housing Finance Authority (CHFA); Connecticut Housing Authority; Connecticut Resources Recovery Authority (CRRA); Capital City Economic Development Authority (CCEDA), and Connecticut Lottery Corporation. Table II-4 lists the total number of whistleblower complaints received by the State Auditors for these entities between 2002 and June 2009. As the table shows, there have been a total of 11 complaints filed against this group over the eight-year period, with four quasi-public agencies receiving no whistleblower complaints.

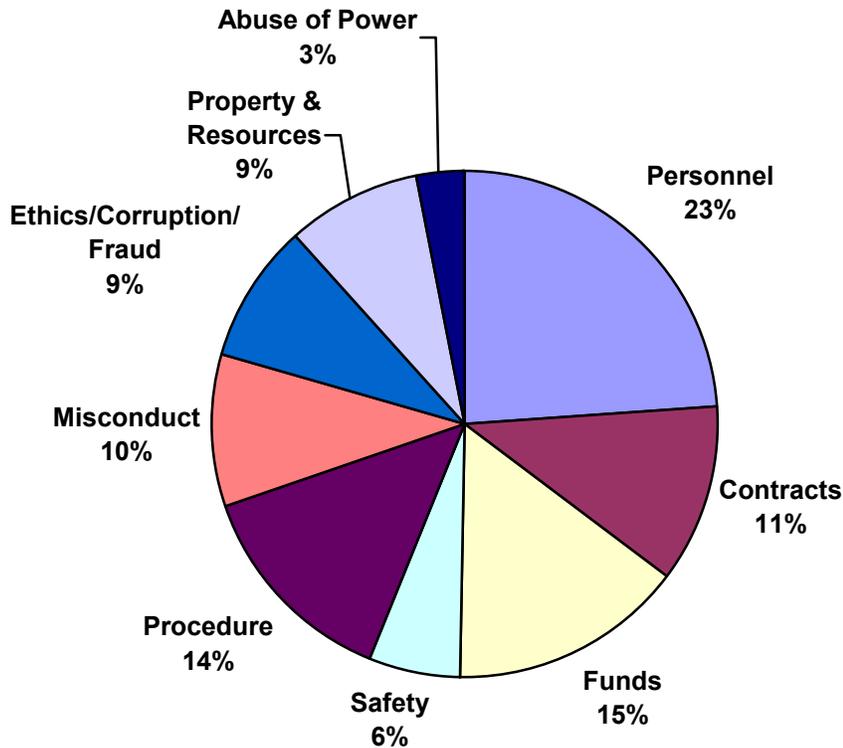
Table II-4. Number of Complaints Filed Against Quasi-publics (2002- June 2009)	
Name	Complaints
CT Development Authority	-
CT Innovations	3
CHEFA	-
CHESLA	1
CHFA	2
CT Housing Authority	-
CRRA	3
CCEDA	-
CT Lottery Corp.	2
TOTAL	11
Source: Auditors of Public Accounts	

Type of whistleblower allegation. The committee staff also examined the State Auditors’ whistleblower database to gauge the type of allegations submitted. As mentioned earlier, the database is primarily used for internal office tracking. However, the database does have a general description of the type of allegation made. The committee staff used this description as a broad measure of the subject areas involved in whistleblower claims. Because a generic description was used in many cases, the committee was not able to categorize 33 percent (306) of the 928 whistleblower complaints made between 2002 and June 2009. The results for the remaining 622 complaints are depicted in Figure II-7.

A few caveats should be noted in this analysis. Complaints may involve more than one allegation. The analysis provided below is based upon the description given by the administrative auditor at complaint intake. Further complaint details are contained in the individual case file. In order to categorize the database allegations, the committee grouped certain topics into broader subject areas.

As the figure shows, personnel issues make up 23 percent of the whistleblower allegations. This includes the most common type of allegation, which is use of time such as employee attendance, work hours, use of compensation time, or sick leave. Employees conducting personal business on state time are also a common personnel issue. Other personnel issues include complaints about hiring/promotion practices, health insurance or retirement benefits, worker’s compensation, and payroll.

**Figure II-7. Whistleblower Complaints Allegations
(2002 - June 2009) N=622**



Source: LPR&IC

Allegations regarding the use of funds or grants are the second largest category (15%), followed by failure to adhere to agency policy or procedures (14%), including the breach of confidential information, an inadequate agency response to a complaint, or failure to conduct an investigation. Eleven percent of the allegations involve state contracts, in particular the bidding process, contract awards/terms/amendments, and leases. Misconduct (10%) covers a variety of allegations, from specific incidents (e.g., employees sleeping at their desks) to political activity, harassment, favoritism, and other general mismanagement.

Nine percent of the complaints allege misuse of state property and resources such as computers, telephones, or state vehicles. Another nine percent of allegations claim unethical practices, conflict of interest, fraud, or corruption. Issues surrounding general public safety, client care, and unsafe work conditions are mentioned in six percent of the claims, while abuse of power, authority, or position is represented in three percent.

Process times for complaints filed with the State Auditors. The State Auditors provide the first mandated review of whistleblower complaints before referring the matter to the Office of the Attorney General. There are no statutory timeframes or deadlines associated with this process. Table II-5 gives an overview of the Auditors' processing time from complaint intake to completion. As noted earlier, there are limitations with the database information used for this analysis. Due to inputting inconsistencies, data was not available for all cases. The program review committee staff was able to identify 469 cases with complete information, meaning they had identifiable intake and completion dates.

Based on the information for the 469 cases, the Auditors' median processing time from complaint intake to completion was approximately nine and a half months. Over 60 percent of the complaints were handled in less than a year with a median of 5.5 months while close to 40 percent of the cases had a median processing time of almost a year and half. It is important to remember that these processing times are impacted by staff availability. As noted earlier, whistleblower assignments may be delayed if the staff is also conducting audits.

Table II-5. State Auditors' Whistleblower Process Time from Intake to Complete.			
Process Time	Number of Cases with Completion Dates	Average Time	Median Time
One Year or less	293	5.7 months	5.5 months
More than One Year	176	1.7 years	1.5 years
Total	469	11.3 months	9.5 months
Source: LPR&IC Analysis of Auditors' database			

Table II-6 provides a closer examination of the Auditors' processing time in recent years. Overall, the process times range from one day to four years. In 2005, the median time to process a whistleblower complaint was 11.6 months. Since then, the median time to process a complaint has decreased to approximately ten months. On average, it appears the Auditors are completing about 80 to 90 whistleblower cases a year since 2006. Currently, there are 197 cases pending with at least 29 cases opened more than two years ago.

Table II-6. State Auditors' Whistleblower Process Time from Intake to Complete.					
Year	Number of Cases w/ Completion Date	Time Range	Average Time	Median Time	Number of Open Cases*
2005	147	1 day to 4 years	1.1 years	11.6 months	12
2006	91	18 days to 3.7 years	11.4 months	10 months	17
2007	107	12 days to 3 years	11.7 months	9.2 months	32
2008	83	21 days to 2 years	10 months	9.8 months	68
2009	41	2 days to 11 months	3.5 months	2.8 months	68
Total	469	1 day to 4 years	11.3 months	9.5 months	197
* As of September 21, 2009					
Source: LPR&IC Analysis of Auditors' database					

Whistleblower Retaliation Protections

A significant aspect of Connecticut's whistleblower policy is to provide statutory protections against retaliation to individuals coming forth with whistleblower information. A description of these protections as mandated by state law is given below.

Statutory Protections (C.G.S. § 4-61dd (b))

Since its 1979 enactment, Connecticut's whistleblower law has prohibited retaliation against employees who disclose whistleblower information. Over the years, the retaliation prohibition has been applied to an expanding list of people. Originally, the retaliation prohibition only applied to the employee's appointing authority. This was subsequently expanded to prohibit retaliation by any agency officer or employee. As the groups protected by the whistleblower law increased (i.e., employees of quasi-public agencies and of large state contractors) so did the retaliation prohibition.

Before 2002, employees who alleged that a retaliatory personnel action had been threatened or taken because of the employee's whistleblower disclosure to the Auditors or the Attorney General had the following options:

- If the employee was covered by a collective bargaining agreement, the procedures set out in that contract could be used.
- If the employee was not covered by such an agreement, the employee could file an appeal with the Employees' Review Board.¹²
- Employees of a large state contractor could pursue any administrative remedies available to them within their organization.

In 2002, two significant changes to the whistleblower statute were made related to employee retaliation protection and relief. First, the employee could now notify the Attorney General about the retaliation charge. The Attorney General was to "investigate pursuant to subsection (a)" of C.G.S. § 4-61dd, which refers to the Auditors' and the Attorney General's responsibilities about handling whistleblower complaints. Further, "after the conclusion of the [Attorney General] investigation", the Attorney General or the employee could file a complaint about the personnel action with the Chief Human Rights Referee for a hearing on the matter. If retaliation was found, the employee could be awarded job reinstatement, back pay, reestablishment of any benefits, reasonable attorneys' fees, and any other damages. Going to the

¹² The Employees Review Board is a seven-member board appointed by the Governor to hear appeals by state employees not included in collective bargaining units. Such employees may appeal demotions, suspensions, dismissals, or violations of personnel statutes or regulations.

Employees' Review Board or utilizing labor contract procedures were now termed as alternatives to these new provisions.

The second change was the establishment of a rebuttable presumption¹³ that any personnel action taken or threatened against an employee who makes a whistleblower complaint is deemed retaliatory if it occurs within one year of the complaint.

In 2005, other significant changes were made to the retaliation provisions. Per the 2005 legislation, in addition to covering the whistleblower reports made to the Auditors or the Attorney General, whistleblower retaliation protection now covered an employee disclosing whistleblower information to:

- an employee of the state or quasi-public agency where such individual is employed;
- an employee of a state agency pursuant to a mandated reporter statute; or
- an employee of the contracting state agency if the information is related to a large state contract.

A change was also made to the whistleblower retaliation process. The requirement that an Attorney General retaliation investigation occur and be concluded before a hearing could be used was eliminated. Currently, the Attorney General reporting option and the hearing option both still remain, but are no longer connected.

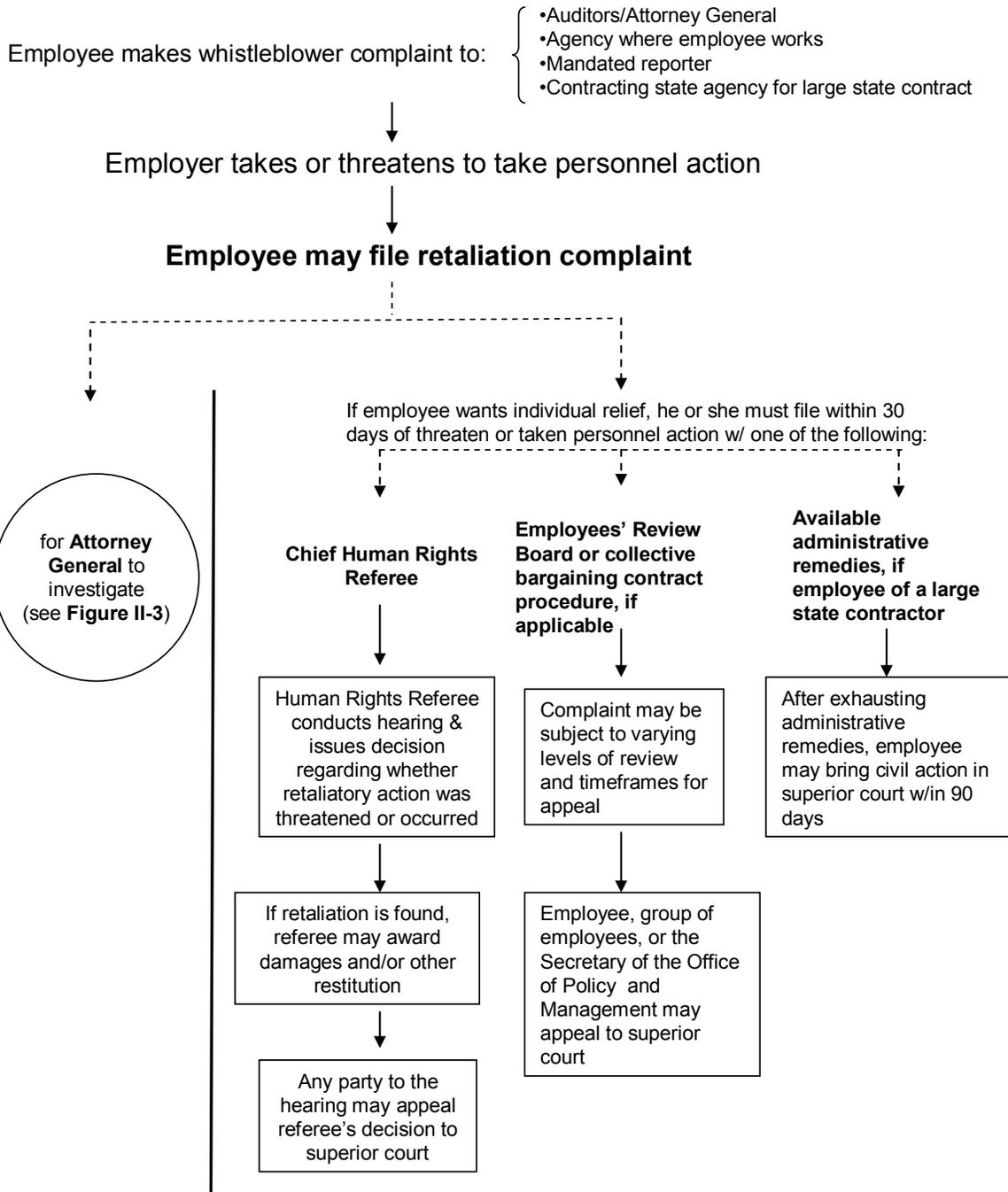
Current Processes for Retaliation Complaints

Figure III-1 depicts the current venues available to individuals who allege they have been subjected to or threatened with whistleblower retaliation. As noted above, employees may go to the Attorney General for an investigation, but as shown, that option, unlike the others, does not provide for individual relief (e.g., job reinstatement or restoration of benefits). State and quasi-public agency employees may still file retaliation claims with either the Employees' Review Board or in accordance with their collective bargaining agreements, depending on their employee status. Also, employees of large state contractors may pursue administrative remedies available to them within their organization and, if still aggrieved, bring a civil cause of action.

In all cases seeking individual relief, the complaints must be filed no later than 30 days of the employee becoming aware of the incident giving rise to the retaliation claim. In all venues for individual relief, aggrieved parties to the proceedings may appeal decisions to superior court. As noted earlier, state law creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint. State law dictates that complainants seeking individual relief may only pursue action in one forum.

¹³ A rebuttable presumption is an assumption that will stand as legal fact unless someone comes forward to contest it and prove otherwise.

Figure III-1. Proceedings Regarding Retaliatory Personnel Actions



Source: LPR&IC

Chief Human Rights Referee Complaint Process

As Figure III-1 illustrates, a complaint to the Chief Human Rights Referee must be filed no later than 30 days after the employee learns of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of the whistleblower statute. Whistleblower retaliation complaints filed with the Chief Human Rights Referee must be submitted on a complaint form and sent to the Office of Public Hearings (OPH) within the state Commission on Human Rights and Opportunities (CHRO) in Hartford. The Chief Human Rights Referee assigns the complaint to one of the five referees who also preside over CHRO discrimination cases. However, whistleblower retaliation cases are independent of CHRO jurisdiction and are not investigated by CHRO.

After the Chief Human Rights Referee assigns the complaint, the assigned referee will meet with all of the parties at an initial conference within 30 days after the complaint was filed. Attendance at the initial conference is mandatory for all parties and/or their legal representatives. Parties are not required to have legal representation, but are responsible for retaining it themselves if they wish to do so. At the meeting, the referee explains the overall process and sets deadlines for the parties' responsibilities. These include deadlines for the production of documents, the filing of witness and exhibit lists, and any objections. Any complainant failing to attend the conference may face dismissal of the complaint. Respondents who fail to appear, including those who believe they are not subject to the state whistleblower law, face possible default.

A hearing to determine whether the respondent violated the anti-retaliation provisions of the whistleblower statute is scheduled approximately seven to nine months after the complaint is filed to allow time for preparation and other pre-hearing activities. At the hearing, all parties are given the opportunity to present their legal arguments by offering evidence and testimony and the ability to examine witnesses under oath. After the hearing, the parties may file post-hearing briefs that are written arguments based on the evidence and the applicable law.

Within 90 days after the hearing ends or the due date for the filing of briefs (whichever is later), the referee must issue a decision whether a violation of the statute occurred and, if so, what relief will be provided to the complainant. If there is a finding that the action or threatened action was retaliatory, the referee may order the aggrieved employee to:

- be reinstated to his or her former position;
- receive back pay; or
- have employee benefits reestablished to the level for which the employee would have been eligible but for the violation, and receive reasonable attorney fees and any other damages.¹⁴

Any party may appeal the referee's decision to superior court. Prior to filing an appeal, the aggrieved party may ask the presiding referee to reconsider the decision under certain

¹⁴ According to OPH, the phrase "any other damages" may be construed to include damages for emotional distress.

situations.¹⁵ Unlike the confidentiality provisions governing the State Auditors and the Attorney General, any papers filed with OPH are subject to the Freedom of Information Act.

According to OPH, settlements are encouraged. Parties may request a meeting with another human rights referee in an attempt to facilitate a settlement. The settlement referee does not convey any of the parties' discussion to the presiding referee.

Analytical basis for retaliation complaints. Whistleblower retaliation cases filed with OPH are analyzed under a three-step burden-shifting analytical framework.¹⁶ First, the complainant/employee has the burden of presenting a prima facie case of whistleblower retaliation, meaning the complaint satisfies all of the legal elements of the statutory provision.¹⁷ Next, the respondent/employer's burden is to show its non-retaliatory explanation for the adverse personnel action, followed by the complainant/employee's final burden of proving that the respondent/employer retaliated because of the disclosure of the whistleblower protected information. This analytical framework is outlined in Figure III-3.

The first step, the prima facie case analysis, has three prongs. The first prong is for the complainant to demonstrate that he or she engaged in a statutorily protected activity. As noted earlier, the statutory elements for whistleblower retaliation complaints are:

- The respondent must be a:
 - state department or agency,
 - quasi-public agency, or
 - large state contractor.
- The complainant must be an employee of the respondent.
- The complainant must have knowledge of either:
 1. corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in a state department or agency or quasi-public agency; or
 2. corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority, or danger to public safety occurring in a large state contract.

¹⁵ Pursuant to whistleblower regulations and C.G.S. §4-181a, there may be reconsideration of a final decision on the grounds that: a) an error of fact or law should be corrected; b) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the proceedings; or c) other good cause has been shown.

¹⁶ Michael Asante v. University of Connecticut, OPH/WBR No. 2006-031 (June 4, 2007) p. 4

¹⁷ Prima facie means "on its face" the complaint contains all the necessary legal elements of a recognized cause of action and will suffice until rebutted.

Figure III-2. Analytical Framework for Whistleblower Retaliation Cases

STEP 1

Complainant/Employee presents prima facie case that:

Prong 1

Complainant/Employee satisfies the statutory elements because:

- a) Respondent is a state department or agency, a quasi-public agency, or large state contractor
- b) Complainant is employee of Respondent
- c) Complainant has knowledge of misconduct by Respondent
- d) Complainant disclosed information to an employee of:
 - Auditors of Public Accounts
 - Attorney General
 - State agency/quasi-public where employed
 - State agency pursuant to mandatory reporter law
 - Contracting state agency of large state contractor

Prong 2

Complainant/Employee was threatened with or subjected to an adverse personnel action by Respondent/Employer after whistleblower disclosure

Prong 3

Complainant/Employee establishes an inference of a causal connection between threatened or taken personnel action and the protected disclosure either:

- *Directly* (e.g. Clear evidence of Respondent/Employer retaliation against Complainant/Employee)
- *Indirectly* (e.g. Circumstantial evidence of disparate treatment of Complainant/Employee shortly after whistleblower disclosure)
- *Statutory rebuttable presumption*

STEP 2

Respondent/Employer provides its non-retaliatory explanation for the adverse personnel action

STEP 3

Complainant/Employee proves that Respondent/Employer retaliated because of the disclosure of whistleblower protected information.

Source: LPR&IC

- The complainant must have disclosed the protected information to an employee of:
 1. Office of the Auditors of Public Accounts;
 2. Office of the Attorney General;
 3. the state agency or quasi-public agency where he or she is employed;
 4. a state agency pursuant to a mandatory reporter statute; or
 5. a contracting state agency concerning a large state contractor.

The second prong of the prima facie case is that the complainant must show that he or she was threatened with or subjected to an adverse personnel action by the respondent after the whistleblower disclosure. Under the third prong, the complainant must present sufficient evidence to establish an inference of a causal connection between the threatened or taken personnel action and the protected disclosure. The inference of causation can be established:

- directly (e.g., evidence of the respondent's intentional retaliation against the complainant),
- indirectly (e.g., circumstantial evidence of disparate treatment of similarly situated co-workers shortly after the whistleblower disclosure), or
- by the statutory rebuttable presumption.

General Trends and Statistics for Whistleblower Retaliation Claims

As noted in Chapter II, state law requires the Auditors of Public Accounts to conduct the first review of whistleblower complaints before referring the matter to the Attorney General. Interviews with the State Auditors' and Attorney General's staff indicate a difference of opinion regarding the statutory interpretation of the Auditors' involvement in retaliation complaints. The Auditors view the Attorney General as having primary investigation responsibility for retaliation complaints while the Attorney General's staff maintains that the Auditors must provide the first review for all whistleblower complaints including retaliation claims.

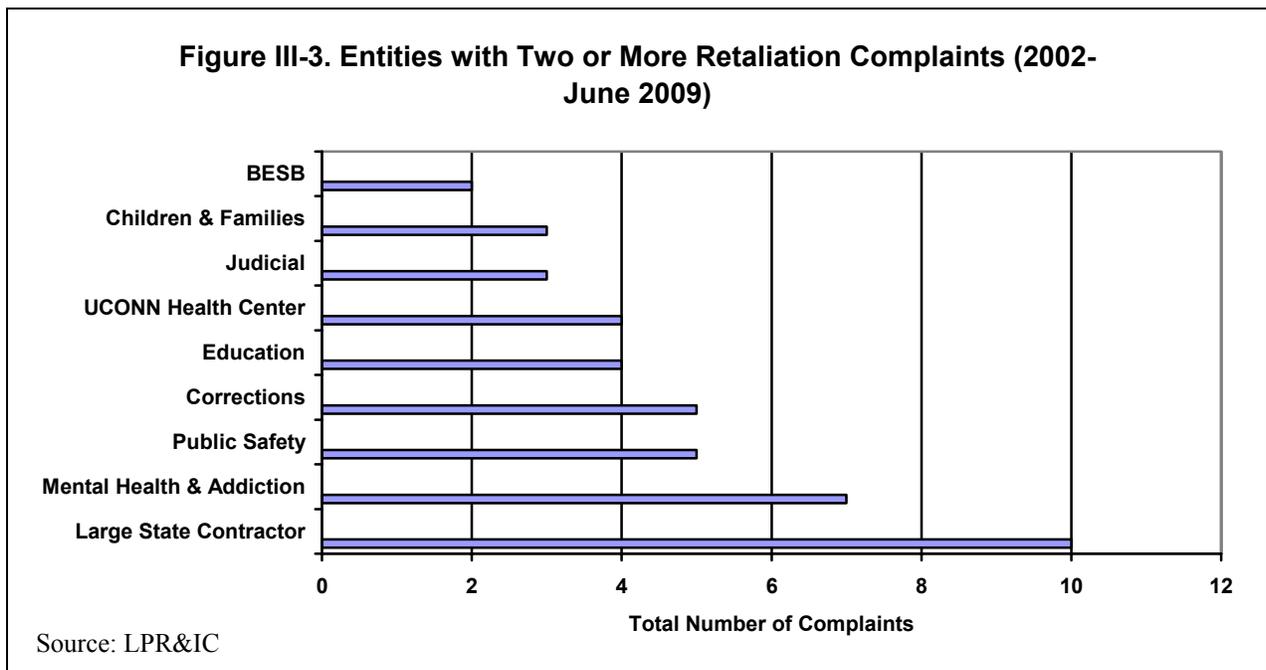
The committee staff examined the State Auditors' whistleblower database to determine the number of whistleblower retaliation complaints reported to the Attorney General. It should be noted that the database's description of the whistleblower matter has not been inputted in a uniform format over the years. Therefore, the committee analysis only included the whistleblower cases clearly identified by the Auditors' electronic database as a retaliation claim. The results are presented in Table III-1.

Annual number of retaliation complaints reported to Auditors. As the Table III-1 shows, the number of retaliation claims filed with the State Auditors has increased over time. In 2002, the database indicates that no retaliation claims were filed but in 2003 five retaliation complaints were submitted. This was followed by another year of no whistleblower retaliation complaints. The number of retaliation complaints grew significantly in 2005 when the total number of complaints (13) more than doubled from the previous two years. Between 2006 and 2008, there were 19 more retaliation claims reported to the State Auditors and referred to the Attorney General. By June 2009, 16 additional retaliation complaints were filed in less than a full year. It should be noted that at times if more than one similar retaliation claim is submitted, the Auditors will incorporate any new complaints into an already existing case. Therefore, the total number of retaliation complaints may be higher than the database indicates.

Year	Total Number Of Retaliation Complaints
2002	0
2003	5
2004	0
2005	13
2006	8
2007	3
2008	8
2009	16
TOTAL	53

Source: Auditors of Public Accounts

Figure III-3 lists the entities named in two or more retaliation complaints during the examined time period. As the chart illustrates, the largest number of whistleblower retaliation complaints have been reported against large state contractors. Large state contractors, as a group, account for 19 percent of all whistleblower retaliation complaints.



In addition, eight state agencies had two or more retaliation complaints filed with the State Auditors and referred to the Attorney General. (A listing of retaliation complaints reported to the State Auditors is provided in Appendix F.) Among the state agencies, the Department of Mental Health and Addiction Services had the most retaliation complaints (7) followed by the Departments of Public Safety and Correction with five complaints each. No retaliation complaints have been made to the State Auditors involving a quasi-public agency.

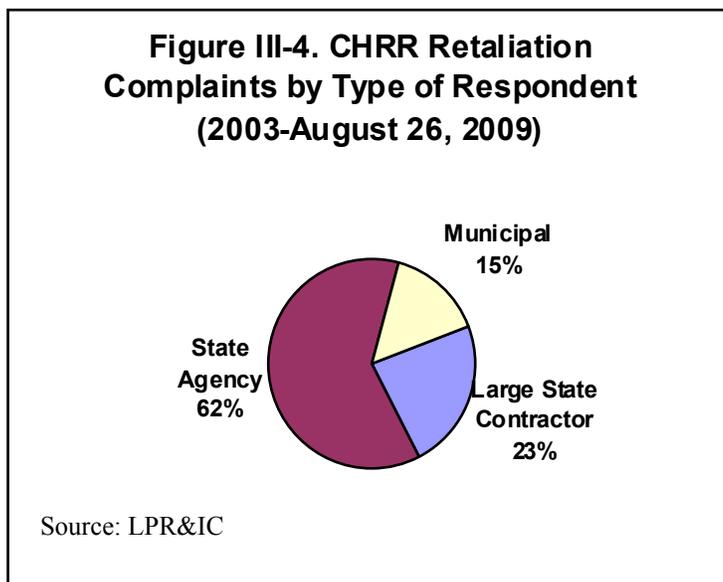
Annual number of retaliation complaints reported to the Chief Human Rights Referee. As noted earlier, the Chief Human Rights Referee complaint process is for employees seeking individual relief and is separate from the Attorney General’s whistleblower process. The following provides some general trend and statistical information derived from a listing of the human rights referees’ whistleblower retaliation decisions supplied by the Chief Human Rights Referee.

Year	Total Number	
	Complaints	Complainants
2003	5	5
2004	3	3
2005	6	6
2006	23	19
2007	16	14
2008	33	26
2009*	13	13
Total	99	86

Source: LPR&IC Analysis of Referees’ Decisions

Table III-2 shows the annual number of complaints and complainants filing retaliation complaints with the Chief Human Rights Referee since 2003. Between 2003 and August 26, 2009, a total of 99 retaliation complaints were received from 86 complainants. Between 2006 and 2008, eight complainants filed more than one retaliation claim in the same year. Four complainants filed retaliation claims in more than one year. One complainant submitted multiple complaints in different years. As the table shows, the number of complaints and complainants has gradually increased over time.

Retaliation complaints by respondent type. Figure III-4 provides the respondent type breakdown for whistleblower retaliation complaints submitted to the Chief Human Rights Referee between 2003 and August 26, 2009. As the figure illustrates, most of the whistleblower retaliation claims (62%) were filed against state agencies, while 23 percent were filed against organizations named as large state contractors. Fifteen percent were submitted against entities initially categorized as quasi-public agencies but subsequently determined to be municipal agencies.

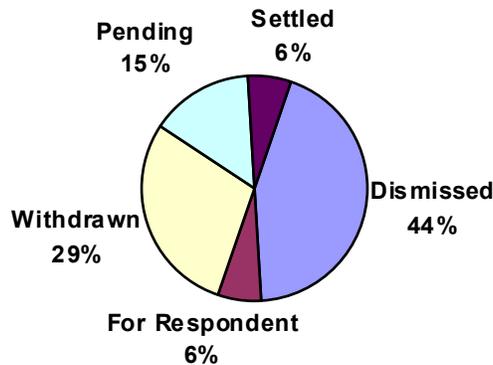


Retaliation complaints by agency. Table III-3 names the entities involved in these retaliation claims and the total number of complaints filed against them with the Chief Human Rights Referee between 2003 and August 26, 2009. During this time period, four state agencies had more than five complaints filed against them: the Department of Correction (9), Judicial (7); the Department of Public Safety (6), and the Department of Mental Health and Addiction Services (6). These four agencies are involved in 45 percent (28 complaints) of the 62 complaints filed against state agencies. As discussed previously, there were numerous complaints filed against municipal entities that were mistaken for quasi-public agencies and employers who were not actually large state contractors. Appendix G provides the annual breakdown of complaints filed against each entity.

Table III-3. Number of Complaints and Entities Involved in Retaliation Cases Filed with Chief Human Rights Referee (2003 through August 26, 2009)	
Total Number of Complaints Filed	Name of Entity Involved (Number of Complaints Filed)
One Complaint	Comptroller; Developmental Services; Military; Administrative Services; Social Services; Transportation; Latino Commission
Two to Four Complaints	CHRO (2); Labor (2); Public Health (2); Environmental Protection (2); BESB (2); UCONN (3); UCONN Health Center (4); Motor Vehicles (4); CT State University System (4)
More than Four Complaints	Public Safety (6); Mental Health & Addiction Services (6); Judicial (7); Correction (9); Municipal Entity* (15); Large State Contractor* (23)
* Complaints filed are against separate entities Source: LPR&IC Analysis of Human Rights Referees' Whistleblower Retaliation Decisions	

Retaliation complaints by final disposition. The committee staff also reviewed the final status of the 99 complaints handled by the human rights referees as of August 26, 2009. The results are presented in Figure III-5. As the chart shows, a majority of the complaints filed with the human rights referees were dismissed (44%) or withdrawn (29%). Six percent were ultimately decided in favor of the respondent. It is important to note that a decision in favor of the respondent is essentially a dismissal of the retaliation claim. To date, none of the complaints have been decided in favor of the complainants. However, six percent have been settled and fifteen complaints (15%) are pending.

Figure III-5. Final Disposition of CHRR Retaliation Complaints (2003 to Aug. 26, 2009)



Source: LPR&IC

Dismissals. The grounds for complaint dismissal can vary and may include procedural defects (e.g., complaints not filed in timely fashion, party’s failure to appear) or lack of jurisdiction (i.e., complainant or respondent not covered by whistleblower statutory provision). An examination of the dismissed complaints (seen in Table III-4) indicates that frequently (47%) the basis for dismissal is that the respondent is not a state agency, quasi-public agency, or a large state contractor. The referee decisions reveal that complaints are often filed against respondents who are actually municipal entities that are misidentified by the complainant as quasi-public agencies. Similarly, complainants mistakenly list respondents who are not large state contractors.

Procedural defects are another common ground for dismissal. These defects include not filing within the statutory 30-day deadline, a party failing to appear at scheduled proceedings or not responding to motions, or simultaneously pursuing the whistleblower matter in other forums.

Table III-4. Number and Basis of Retaliation Complaint Dismissals (2003- August 26, 2009*)

	2003	2004	2005	2006	2007	2008	2009*	Total
Total Number of Complaints Filed	5	3	6	23	16	33	13	99
<i>Number of Total Dismissed:</i>	1	2	3	11	7	16	3	43
• Not a state or quasi-public agency or large state contractor	-	1	3	5	2	6	3	20
• Not an employee of state/quasi-public agency or large state contractor	-	-	-	-	1	2	-	3
• Untimely Filing	-	1	-	1	3	3	-	8
• Failure to Appear/Respond	1	-	-	4	1	5	-	11
• Sought Other Forum	-	-	-	1	-	-		1

Source: LPR&IC Analysis of Referees’ decisions

Final complaint determinations over time. Table III-5 presents a breakdown of the final outcomes for the retaliation complaints filed each year. As the table shows, six complaints had a final determination in favor of the respondent. In two cases, a reconsideration of the decision was requested. One was denied reconsideration and another affirmed the final decision.

	2003	2004	2005	2006	2007	2008	2009	Total
Total Filed	5	3	6	23	16	33	13	99
Dismissed	1	2	3	11	7	16	3	43
Withdrawn	-	1	2	11	6	8	1	29
In Favor of Respondent	1	-	1	1	3	-	-	6
Settled	3	-	-	-	-	3	-	6
Pending	-	-	-	-	-	6	9	15

Source: LPR&IC Analysis of Referees' decisions

Final decision status by state agency. Committee staff examined the final decision status of the 13 state agencies with two or more retaliation complaints filed against them. As seen in Table III-6, six of the 13 agencies had all retaliation claims filed against them dismissed or withdrawn. Three state departments have had five or more retaliation complaints: Correction (9), Judicial (7), and Mental Health and Addiction Services (6). At least half of the retaliation complaints filed against the Department of Correction and Judicial have been dismissed or withdrawn. The Department of Correction has also had three decisions in its favor, which is in effect a dismissal of the complaints. Half of the six whistleblower retaliation complaints against the Department of Mental Health and Addiction Services have been settled and two were dismissed or withdrawn. Each of the three departments still has complaints pending.

Agency	Total Filed	Dismiss	Withdrawn	In Favor of Respondent	Settled	Pending
BESB	2	2	-	-	-	-
Public Health	2	-	2	-	-	-
Human Rights & Opportunity	2	-	2	-	-	-
Labor	2	1	1	-	-	-
Motor Vehicles	4	-	4	-	-	-
Public Safety	6	3	3	-	-	-
Environmental Protection	2	-	-	1	-	1
UCONN	3	-	1	1	-	1
UCONN Health Center	4	1	1	-	1	1
CT State University System	4	2	-	1	-	1
Mental Health & Addiction	6	1	1	-	3	1
Judicial	7	1	4	-	-	2
Correction	9	3	1	3	-	2

Source: LPR&IC Analysis of Referees' decisions

Process times for retaliation complaints filed with Chief Human Right Referee. Table III-7 provides the process times for the whistleblower retaliation complaints filed with the Chief Human Rights Referee. The process time for whistleblower retaliation complaints from intake to final disposition varies. The time ranges from cases being open and closed on the same day to 2.3 years. Overall, the median processing time for all retaliation complaints is 3.4 months. The vast majority (89%) of the 84 retaliation complaints with a final disposition are resolved within a year or less with a median process time of 2.7 months. Nine retaliation complaints have taken more than a year to complete. The median time for these cases is 1.1 year.

Table III-7. Human Rights Referees' Process Time for Retaliation Claims from Intake to Final Determination.				
Year	Number of Cases	Time Range	Average Time	Median Time
One Year or less	75	Same day to 11.2 months	3.8 months	2.7 months
More than a year	9	1 year to 2.3 years	1.3 years	1.1 year
Total	84	Same day to 2.3 years	5.2 months	3.4 months
Source: LPR&IC Analysis of Referees' decisions				

Whistleblower Investigations: Best Practices and Case File Review

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 a good complaint system¹⁸ indicates that it 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.

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

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 complaints alleged a broad spectrum of whistleblower matters while 44 of the case files were retaliation complaints. The whistleblower complaint

¹⁸ United States National Performance Review, "Serving the American People. Best Practices in Resolving Customer Complaints," Federal Benchmarking Consortium Study Report, March 1996

investigation results for non-retaliation cases are discussed here. (Results of the retaliation complaint case file review are presented in Chapter VI.)

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 earlier, the complaints cover a broad range of allegations from employee attendance, misuse of state resources, and a variety of mismanagement and misconduct. Appendix H 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 IV-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 committee staff, the State Auditors’ and Attorney General’s staff were in general agreement with 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 had no evidence of communication with the whistleblower after its investigation.

Appendix H provides additional tables and graphs on the committee’s case file analysis.

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 chapter provides the committee'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 report on its activities to the legislature while the Attorney General has discretion to investigate complaints “as he deems proper” and to report 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, two-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 the 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 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 and 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 that 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, show this function can be done with a fairly small number of skilled staff. (Appendix I provides a description of the Nebraska and Georgia approaches.)

Following a single agency model 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, the committee 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 recommends **the 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 the program review committee. 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 H-1 in Appendix H).

The Connecticut provisions were based on federal law 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 law 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 V-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 recommends **the Joint Team should develop working definitions and examples of reportable incidents subject to the 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 V-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.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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 any 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 believes that *the whistleblower process would also benefit from providing more discretion to the Joint Team responsible for 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’s review of other states found that *the State of Nebraska may serve as a 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 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 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 that 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's examination of case files found *auditors' 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, 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 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. As noted above, 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 previously, 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 the committee 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 V-2.

Table V-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 information is needed or further investigation required		5.2 months	6.5 months
TOTAL PROCESS Total Time from when Complaint Submitted to Auditors to Last Action Date of Attorney General	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 times for each office is about the same. The overall median and average process times for the Attorney General’s office are shorter. As noted earlier, in 44 percent of the case files reviewed by the committee the Attorney General determined that the State Auditors’ report was sufficient and required no further investigation. For those cases, the median and average times were a week and 1.8 months respectively. In situations where additional information was required or further investigation was needed, the median time was 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 committee 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 recommends that, **after the initial intake phase, a status update on each whistleblower matter must be conducted by the Joint Team at 90-day 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. The committee 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 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 noted that the agency was in fact aware of the issue. The committee 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 found *there was limited evidence that the agency subject to the whistleblower investigation followed up with any corrective action.* It was 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 it is unlikely 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 law. For the law 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 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'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, and 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 earlier, 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'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 Chapter IV, 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 the committee 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 files. When communications was 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 law'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 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.

The committee believes that the California State Auditor's approach for reporting whistleblower outcomes should be adopted in Connecticut. It provides periodic information on whistleblower activities while keeping confidential the identities of the individuals involved. Therefore, the program review committee recommends **a summary of all whistleblower complaint 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 required only 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 to 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 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 committee 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 and 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 and monitoring system.

Report guidelines. The committee's review of case files at both the State Auditors' and Attorney General's offices indicates whistleblower matters appear to be adequately investigated despite 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 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 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 examination of whistleblower provisions in other states (discussed in more detail in Appendix I) identified six states that have adopted explicit whistleblower policy statements. One example is found in the statutory whistleblower provisions in Nebraska, which state:

“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 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 it values and encourages feedback on whether there are any problems that need attention. For these reasons, the program review committee 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) and the statewide policies available on the DAS website cover 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 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 an 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, which allow the employee to follow up on existing reports.

The committee 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, the committee 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 previously, 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 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 being received by the State Auditors for the 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 of the need for further public education is the type of questions asked and statements made by whistleblowers in their communications 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 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 the committee in Connecticut's whistleblower law. Currently, state law requires large state contractors to post a notice of whistleblower provisions in a conspicuous place that 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 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 its employees.

Source of Whistleblower Complaints

The committee 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 Chapter IV, the case file review found that many allegations are made by anonymous sources 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 believes to continue a strong commitment to the whistleblower principle 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 finds that *the state policy should continue to allow anyone to submit a whistleblower complaint including anonymous sources.*

Entities Subject to Whistleblower Law

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 that 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 law 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 indicate that contractors frequently have multiple contracts with various state agencies that 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.¹⁹ While this is a valid statutory interpretation of state law, this type of exclusion may not have been intended.

Another possible unintended exclusion involves housing authorities in Connecticut. While the Connecticut Housing Authority is listed as a quasi-public entity subject to the whistleblower law, individual housing authorities that 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 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 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 complaint 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.

Confidentiality

Another issue mentioned in 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 a complainant 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. The committee 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.*

¹⁹ Probate employees are hired by elected probate judges but paid through a State Probate Administration Fund.

Recommendation Summary & Process Flowchart

This chapter 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 V-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. This chart serves solely as an example and could be modified as needed by the Joint Team through a working memorandum of agreement.

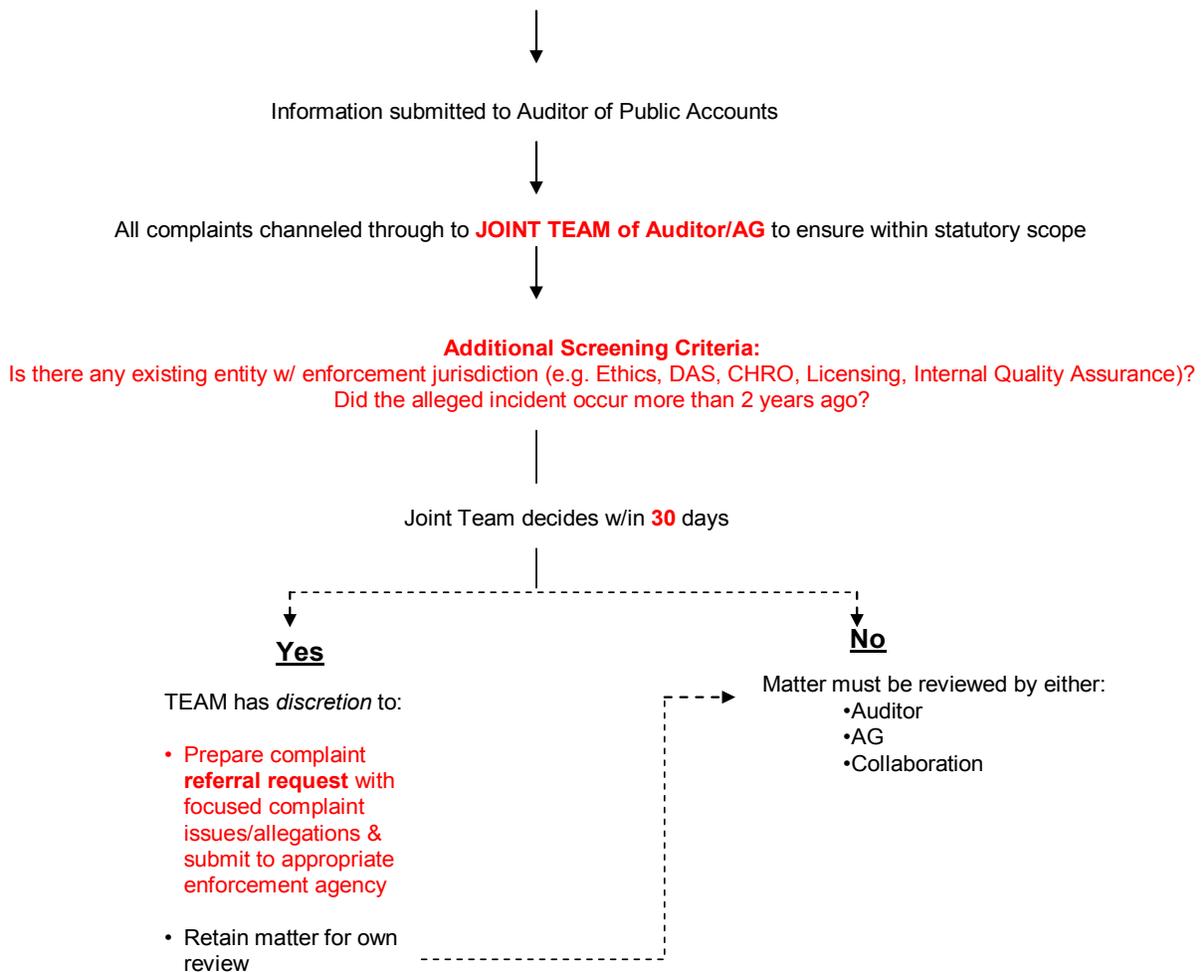
Intake. As the figure illustrates, the process begins with the submission of a complaint by anyone alleging misconduct in a state agency, quasi-public, or large state contractors. These entities would be clearly defined in the statute. Working definitions and examples for the seven categories of reportable 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 ensure 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 V-1. Proposed Statutory Process for General Whistleblower Complaints

- Any individual alleges misconduct by:
 State Agency
 Quasi-public
 Large State Contractor (**DEFINE**)
 regarding:
- Corruption
 - Unethical practices
 - Violation of state laws or regulations
 - Mismanagement
 - Gross waste of funds
 - Abuse of authority
 - Danger to public safety
- Must develop working definition & examples for each**



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 investigation activities conducted, a summary of the findings and conclusions based on the investigation; and 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 V-1. Statutory Process for General Whistleblower Complaints (Continued)

Prepare complaint **referral request** with focused complaint issues/allegations & submit to appropriate enforcement agency

Matter is retained or must be reviewed by either:

- Auditor
- AG
- Collaboration

W/in 90 days **Status Report to TEAM**

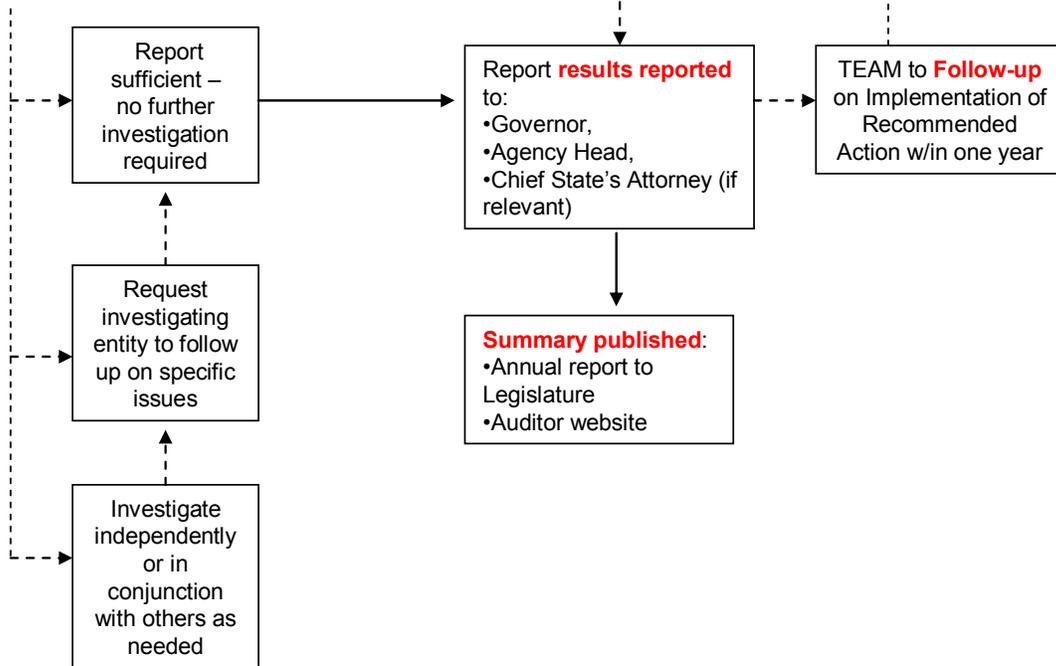
If investigation complete, report must include:

- Investigation activities
- Summary of findings & conclusions
- Recommended action
- Implementation plan w/ dates

If not complete, report must include:

- Investigation activities
- Reasons why not complete
- How much more time needed

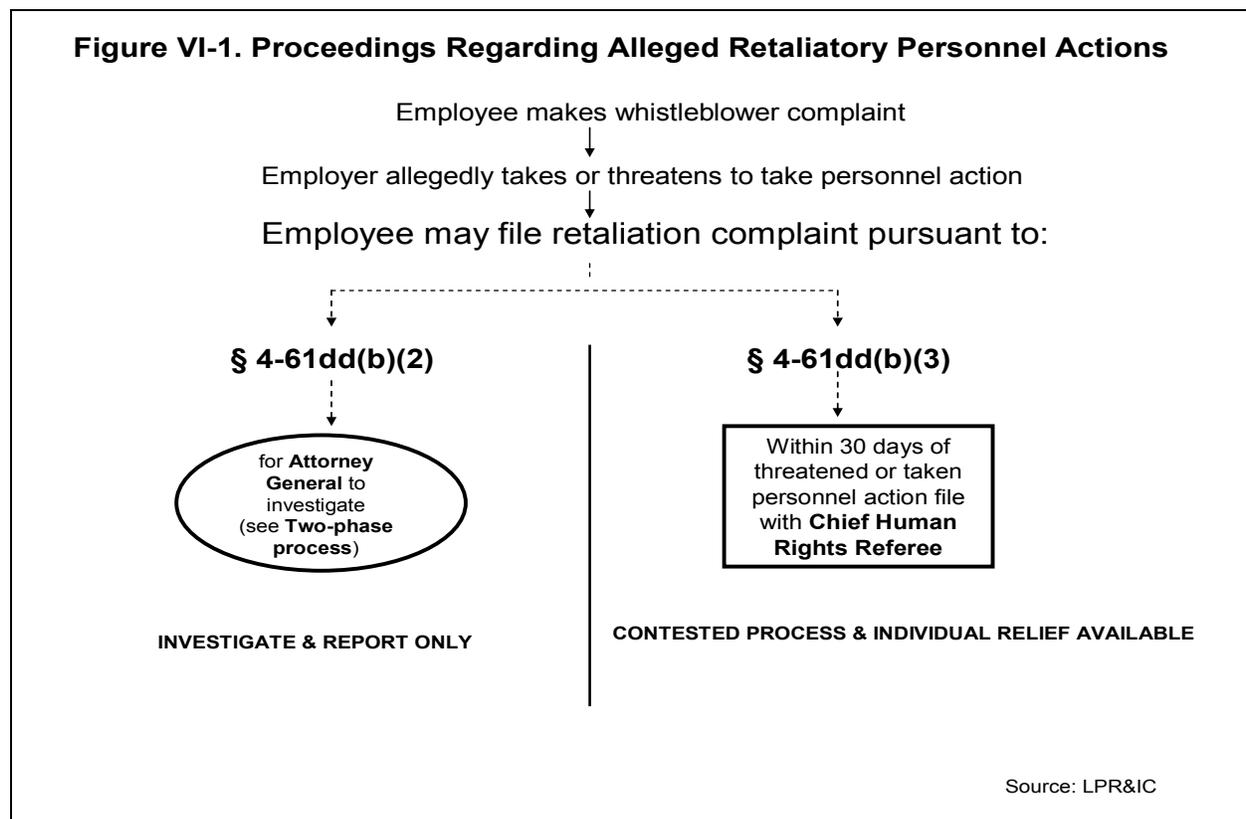
Team evaluates report & makes determination:



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 Chapter I (C.G.S. §4-61dd(b)(2)). Another choice is the retaliation complaint process available through the Chief Human Rights Referee (CHRR) (C.G.S. §4-61dd(b)(3)). Figure VI-1 illustrates the options for whistleblower retaliation complaints.

A major difference between these statutory venues is that one (CHRR) provides an adversarial proceeding²⁰ where individual relief or remedies are available and the other process (the two-phase process involving the Attorney General) does not. This chapter describes some of the issues involved in each venue and summarizes a range of available policy options.



²⁰ 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 complaint 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 an Attorney General investigation 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 examined 44 retaliation complaints handled through the two-phase complaint process. In addition, the committee also reviewed 12 retaliation claims filed with the Chief Human Rights Referee that each 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 H. 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, Equal Employment Opportunity Commission, or other complaint 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 complaint 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 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 complaint proceeding.

Involvement of the State Auditors. As noted earlier, 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, the committee tried to determine what impact, if any, this issue has made on complaint handling. The committee 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. The committee 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 the committee 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 considered recommending the statutory language contained in §4-61dd (b)(2) clarify the State Auditors' involvement or non-involvement in reviewing whistleblower retaliation claims. As discussed later in this chapter, the committee recommends eliminating the alternative altogether (see page 82).

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

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 complaint 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 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 complaints. 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.

The committee 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 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 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 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 the committee 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 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 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 the committee 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 previously, a similar provision is allowed in the federal government's whistleblower system (see Appendix J). To offset the possibility of further harm, the committee 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 complaint process, as additional time may be needed for the filing of answers and disclosure of documents.

Therefore, the program review committee 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 the committee, only three complainants had legal representation. One of the three did not 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 complaint 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 for 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 the 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 the committee 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 committee 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 complaint proceedings involving employee matters in other forums, 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's examination of the Connecticut's whistleblower retaliation processes identified two policy issues commonly mentioned by interested parties that merit further evaluation. These issues are:

- 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 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 altogether.

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

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

ISSUE	STATUS QUO	OPTION 1	OPTION 2	OPTION 3	OPTION 4	OPTION 5
Attorney General Conflict of Interest						
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		<ul style="list-style-type: none"> Part of AG conflict gone More assistance & incentive to obtain legal counsel 	<ul style="list-style-type: none"> Part of conflict gone AG investigating & prosecuting allows case continuity Elevates enforcement AG has supported this in the past 	<ul style="list-style-type: none"> One entity investigating & prosecuting claim allows case continuity Elevates enforcement of investigation 	<ul style="list-style-type: none"> Existing system with protocols already in place 	<ul style="list-style-type: none"> No conflict of interest More assistance to obtain legal counsel
Option Disadvantages	<ul style="list-style-type: none"> No individual relief available Potential conflict of interest exists WB overwhelmed without legal counsel at CHRR hearing 	<ul style="list-style-type: none"> Resource cost for Auditors' legal staff Potential significant cost if punitive damages awarded 	<ul style="list-style-type: none"> Resource cost in another entity representing Agency 	<ul style="list-style-type: none"> Significant resource cost in creating new entity 	<ul style="list-style-type: none"> 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 cannot 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 from adverse personnel action has been mentioned in various committee 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 from 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 Chapter V. Better understanding of what the whistleblower complaint process can and cannot provide should help manage a complainant's expectations and misconceptions. Nevertheless, the program review committee believes there are weaknesses in the current whistleblower retaliation process managed by the Attorney General.

While the recommended changes proposed by the committee in Chapter V should be beneficial to the handling of general (non-retaliation) whistleblower complaints, there are still substantial disadvantages to using this process (even with the 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 that 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 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 personnel 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. The program review committee 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 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 complaint 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 Chapter V, the program review committee 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 do not 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 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.**

APPENDICES

APPENDIX A
Legislative History of C.G.S. § 4-61dd

P.A. 79-599

This act allowed the Attorney General to investigate information transmitted to him by state employees concerning alleged corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state department or agency. Appointing authorities are prohibited from taking, or threatening to take, retaliatory action against a state employee who transmits such information.

The Attorney General is prohibited from disclosing the records of an investigation or the identity of an employee who gives him information, unless the employee consents to disclosure or unless the Attorney General determines during the investigation that disclosure is unavoidable.

The act gives the Attorney General the power to summon witnesses, require the production of necessary books, papers, or other documents and administer oaths for an investigation. Upon the conclusion of an investigation, the Attorney General must, if he deems it necessary, report his findings to the Governor, or to the Chief State's Attorney in matters involving criminal activity.

P.A. 83-232

The state employees' "whistle blowing" law authorizes a state employee to transmit to the Attorney General, who is to conduct such investigation as he deems proper, any knowledge he has of corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety in any state department or agency.

This act revises the law by:

- Allowing a former state employee or state employees' bargaining representative acting on behalf of himself, a current employee, or a former employee to bring allegations to the Attorney General's attention (formerly only a current state employee was allowed to make allegations to the Attorney General);
- Requiring the Attorney General to report to a complainant, upon request, the actions taken of his investigation;
- Prohibiting any state officer or employee from taking any retaliatory action against a state employee who discloses information to the Attorney General (formerly only an employee's appointing authority was prohibited from taking retaliatory action) and allowing an employee to appeal any such action; and

- Authorizing an appointing authority to take disciplinary action, including dismissal, against an employee who knowingly and maliciously made false charges to the Attorney General, and allowing an employee to appeal such actions.

P.A. 85-559

Among various other things, this act:

- establishes an Office of the Inspector General,
- transfers the responsibility to conduct “whistle blowing” investigations from the Attorney General to the Inspector General,
- modifies the reporting procedures and follow-up activities of the auditors of public accounts, and
- provides for confidentiality of records and public employees’ information.

P.A. 87-442

This act repeals the law establishing the Office of the Inspector General and transfers the office’s employees and records to the Attorney General. The inspector general’s powers relating to whistleblowers are transferred to the auditors and the attorney general. All permanent employees of the inspector general and all records, including those pending investigations, are to be transferred to Attorney general.

This act allows any person instead of any present or former employee to report improper conduct. The act established the current whistleblower process of having disclosure first to auditors who after review forward to the attorney general. The act eliminates the provision for any report to complainant.

P.A. 89-81

This act puts a five year limit on the time that the auditors of public accounts must retain their reports in their office, but requires them to file copies of all reports with the state librarian. It requires the auditors to report instances of wrongdoing to the house and senate clerks, both individually and in annual summary form. It also made several minor substantive and technical changes to the auditors’ authority.

P.A. 97-55

This act applies the whistleblower protection law to misfeasance alleged to have occurred in a quasi-public agency. It extends to employees of quasi-public agencies the same whistleblower protections state employees have and prohibits quasi-public agency officers and employees from retaliating against a state of quasi-public agency employee from making such a disclosure.

P.A. 98-191

This act extends the whistleblower law that applies to state and quasi-public agencies to entities that enter large state contracts with such agencies. Specifically, it authorizes:

- Anyone who knows of corruption, state or federal law or regulation violations, gross waste of funds, abuse of authority, or public endangerment by a large state contractor to contact the state auditors and
- Whistleblowers threatened with personnel action in retaliation for disclosing such information to bring a civil action in superior court after exhausting administrative remedies.

Large state contracts are defined as one valued at \$5 million or more between any entity and a state or quasi-public agency. Contracts to construct, alter, or repair public buildings or public works are excluded.

The act establishes a penalty for large state contractors who retaliate against whistleblowers. Penalties must be included in the contract and contractors are required to post a notice of the whistleblower provisions in a conspicuous place that is readily available for employee viewing.

The act also requires employers, before disciplining employees for making false complaints, to show that the employee did so knowingly and maliciously rather than just to know the allegations were false.

P.A. 02-91

This act establishes a new, alternative process for disposing of allegations of retaliation filed by employees of the state, quasi-public agencies, and large state contractors who have made whistleblower complaints against their employers. It requires the chief human rights referee to adopt regulations that establish the procedure for filing complaints and noticing and conducting hearing under the new process. Finally, it creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint.

P.A. 04-58

This act made minor and technical corrections.

P.A. 05-287

Among various changes affecting state contracts, this act:

- Requires the attorney general consult with the auditors prior conducting a whistleblower investigation and requires him to get the concurrence and assistance of the auditors before proceeding;
- Allows the auditor and the attorney general to withhold the investigation records while the investigation is pending;
- Extends whistleblower protection to disclosures by a contractor;
- Protects disclosures to (1) the agency where the state officer or employee works, (2) a state agency pursuant to a mandated reporter statute; or (3) in the case of a large state contractor, an employee of the contracting state agency concerning information about the large state contract;
- Extends the whistleblower law to contracts for at least \$5 million with a state or quasi-public agency to construct, alter, or repair a public building or public work;
- Requires an employee or his attorney to file a retaliatory complaint with a chief referee within 30 days after learning of the specific incident giving rise to a claim that a personnel action has occurred or been threatened;
- Allows the affected agency, contractor, or subcontractor to recover damages, attorney's fees, and costs resulting from retaliatory action taken or threaten that impedes, cancels, or fails to renew a contract between a state agency and a large state contractor or a large state contractor and its subcontractor in a civil action filed within 90 days of learning of the action, threat, or failure to renew;
- Extends monetary penalties to retaliations against the contractor's employees for disclosing information to the contracting state or quasi-public agency's employees; and
- Prohibits anyone from being held liable for civil damages as a result of his good faith disclosure of information to the auditors or the attorney general.

P.A. 06-196

This act made a number of technical and conforming changes.

Source: OLR Public Act Summaries

APPENDIX B

Description of Connecticut's Former Office of the Inspector General

Enacted with the passage of Public Act 85-559, the Office of the Inspector General was established under the Joint Committee on Legislative Management and was created to prevent and detect fraud, waste, and abuse in the management and use of state personnel, property, and state and federal funds. The office was authorized to evaluate the performance of state agencies.

Organization. The Auditors of Public Accounts appointed the Inspector General from a list of three candidates submitted by a 10-member committee composed of the:

- President Pro tempore of the Senate and Speaker of the House;
- minority leaders of the Senate and House;
- co-chairmen and ranking members of the executive and legislative nominations committee; and
- chairmen of the legislative program review committee.

The auditors had 90 days to make a selection, after which time the committee made the appointment by majority vote. The appointment was to be made with the advice and consent of the general assembly. The appointment was to be based on integrity and competence in appropriate fields. The Inspector General would serve a five year term, until a successor takes office, unless removed for just cause by the auditors. The inspector general would be able to hire necessary staff within the office budget. The budget submitted by the Inspector General would be forwarded unaltered by the Governor to the General Assembly for approval.

Powers. The Inspector General had access to all records, data, and material maintained by or available to any governmental agency or to any person or organization administering public funds, property, or personnel. He could apply to a panel of three superior court judges to have a subpoena issued to obtain necessary information not otherwise available. Anyone subpoenaed by the Inspector General could appeal to the superior court. The Inspector General was authorized to adopt rules and regulations necessary for the administration of the office or for the implementation of provisions.

Duties. The Inspector General was required to conduct "preemptive" inspections or investigations of programs related to the collection, administration, or disposition of public funds, owned or leased property, or of the delegation or performance of a state agency's duties. He was also required to report to the Governor, legislative program review committee, and the appropriations committee on the activities of the office on or before October 31, 1986 and by October 31 of each year thereafter.

The efforts of all state officials and staff charged with similar evaluation duties must be coordinated with the Inspector General's office. The internal audit staff which operated within state agencies remained assigned to their respective agencies, but the Inspector General approved each annual internal audit program.

The Inspector General was required to report findings and recommendations to the Chief State's Attorney or State Ethics Commission, the Attorney General, the U.S. Attorney, or an appropriate municipal authority, depending on the nature of the possible violation or civil action. The Inspector General was permitted to:

- make recommendations concerning detection and prevention of waste, fraud, and abuse to the Governor, the General Assembly, and Program Review;
- assist any state agency or employee collecting, spending, or controlling public funds or property;
- request assistance from any such agency or employee; and
- issue any necessary reports in addition to those required.

The Inspector General's powers and duties included:

- detecting and preventing fraud, waste, and abuse in state personnel and property, and state and federal funds;
- evaluating the economy, efficiency, and effectiveness of state agencies;
- investigating the administration of public funds and state-owned or leased property, and state agency performance;
- having access to all agency records; and
- reporting findings and recommendations to the Governor, General Assembly, Program Review, Chief State's Attorney, State Ethics Commission, Attorney General, U.S. Attorney, and appropriate municipal authorities.

Source: OLR Public Act Summary of Public Act 85-559

APPENDIX C
Statutory Provisions of C.G.S. § 4-61dd

Sec. 4-61dd. Whistleblowing. Disclosure of information to Auditors of Public Accounts. Investigation by Attorney General. Proceedings re alleged retaliatory personnel actions. Report to General Assembly. Large state contractors. (a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.

(b) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) 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.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency

and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

(P.A. 79-599, S. 1, 2; P.A. 83-232; P.A. 85-559, S. 5; P.A. 87-442, S. 1, 8; P.A. 89-81, S. 3; P.A. 97-55; P.A. 98-191, S. 1, 2; P.A. 02-91, S. 1; P.A. 04-58, S. 1, 2; P.A. 05-287, S. 47; P.A. 06-196, S. 26.)

History: P.A. 83-232 amended Subsec. (a) to authorize a former state employee or state employee bargaining representative to disclose information and to require the attorney general to report to the complainant his findings and any actions taken, amended Subsec. (b) to prohibit retaliatory action by "any state officer or employee" and to provide that an employee may file an appeal if retaliatory action is threatened or taken, and added Subsec. (c) re sanctions for an employee who makes false charges; P.A. 85-559 required that state employees report to inspector general rather than to attorney general and that findings be reported in accordance with Sec. 2-104(b) rather than to governor or chief state's attorney as was previously the case; P.A. 87-442, in Subsec. (a), substituted "person" for "state employee, former state employee or state employee bargaining representative acting on behalf of any state employee or former state employee or on his own behalf", authorized any such person to transmit facts and information to auditors of public accounts, instead of to inspector general, required auditors to review matter and report to attorney general, required attorney general to make investigation and auditors to assist at his request, required attorney general, instead of inspector general, to report findings to governor or chief state's attorney, instead of to complainant, and applied provisions re nondisclosure of identity of person to auditors and attorney general instead of to inspector general and limited applicability of such provisions to receipt of information under this section, instead of this section or Sec. 1-19(b) and, in Subsec. (b), substituted "auditors of public accounts or attorney general" for "inspector general" and limited applicability of provisions of Subsec. to disclosure of information under provisions of this section instead of this section and Sec. 1-19(b); P.A. 89-81 added Subsec. (d) requiring annual report by auditors to general assembly on matters transmitted to them under this section; P.A. 97-55 applied section to quasi-public agencies; P.A. 98-191 applied section to large state contractors, effective July 1, 1998 (Revisor's note: P.A. 88-230, 90-98, 93-142 and 95-220 authorized substitution of "judicial district of Hartford" for "judicial district of Hartford-New Britain" in public and special acts of the 1998 session of the General Assembly, effective September 1, 1998); P.A. 02-91 substantially revised Subsec. (b) procedures re alleged retaliatory personnel actions by designating existing provisions as Subdivs. (1) and (4), adding Subdivs. (2) and (3) re investigation by Attorney General and complaints to Chief Human Rights Referee, adding provision in Subdiv. (4) re existing procedure for employee appeals and civil actions as alternative to provisions of Subdivs. (2) and (3), adding Subdiv. (5) providing, in proceedings under Subdivs. (2), (3) and (4), for a rebuttable presumption that certain personnel actions are retaliatory and making conforming and technical changes, and made technical change in Subsec. (e), effective June 3, 2002; P.A. 04-58 made technical changes in Subsecs. (a) and (c); P.A. 05-287 made technical and conforming changes throughout the section, amended Subsec. (a) to authorize the Attorney General to conduct any investigation deemed proper based on any other information that may be reasonably derived from the report, require the Attorney General to consult with the Auditors of Public Accounts re the relationship of such other information to the report and authorize the withholding of records from such investigation during the pendency of such investigation, amended Subsec. (b) to insert

clause designators, include contractors in the list of protected persons and provide protection for disclosure to state agencies in Subdiv. (1), designate new Subdiv. (3)(A) re complaints by state or quasi-public agency employees and employees of large state contractors, redesignate existing Subdiv. (3) as Subdiv. (3)(B) and add Subdiv. (6) re action by a state officer or employee, quasi-public agency officer or employee, or employee or officer of a large state construction contractor to impede, fail to renew or cancel a contract, amended Subsec. (e) re disclosure to any employee of the contracting state or quasi-public agency, added new Subsec. (g) re good faith disclosures to the Auditors of Public Accounts or the Attorney General, redesignated existing Subsec. (g) as Subsec. (h) and amended same by redefining "large state contract" in Subdiv. (1), effective July 13, 2005; P.A. 06-196 made technical changes in Subsec. (b), effective June 7, 2006.

APPENDIX D

Listing of Attorney General Formal Reports Issued Between January 1, 2006 and June 6, 2009

Date Issued		Report Name
2008	October	Report on the Investigation of Lake Grove at Durham
	September	Alleged Political Activity Using State Time and Resources by Employees of the Office of the Governor
	January	Loss Portfolio Arrangement
2007	May	Report on the Allegations of Retaliation against Sgt. Andrew Matthews of the Connecticut State Police
	March	Allegations of Financial Irregularities, Misuse of State Funds and Mismanagement at the Highville Mustard Seed Charter School
	March	Report on the State Department of Education Technical High School System Disclosure of Teachers' Social Security Numbers
	February	Report on the Allegations of Misconduct at Bridgeport Probate Court
2006	December	Report on the Evaluation of the Connecticut Department of Public Safety Internal Affairs Program
	December	Report on the Evaluation of the Connecticut Department of Public Safety Internal Affairs Program: Case Evaluations on Whistleblower Complaints
	May	Central Connecticut State University Allowing Its Vice President for Student Affairs to Reside in an On-Campus Residence Hall
Source: Office of the Attorney General		

APPENDIX E

State Agencies with 10 or More Whistleblower Complaints Filed with State Auditors (2002- June 2009)

AGENCY	2002	2003	2004	2005	2006	2007	2008	2009	TOTAL
Motor Vehicles	-	-	1	1	2	3	4	-	11
Economic Development	2	1	3	3	-	2	-	2	13
Labor	1	4	1	3	1	-	1	2	13
Military	2	4	1	1	1	3	2	-	14
Veteran	2	3	1	3	1	-	3	1	14
Public Works	1	2	1	3	2	4	2	1	16
Human Rights & Opportunities	3	1	-	-	-	9	5	-	18
BESB	4	4	1	3	1	4	1	2	20
Community Colleges	2	2	-	2	6	5	4	3	24
Administrative Services	3	1	2	11	-	1	4	2	24
Developmental Services	2	2	3	4	6	2	4	4	27
UCONN	2	3	2	5	7	6	3	1	29
Education	3	3	2	11	6	2	3	1	31
Public Health	2	1	11	2	2	8	7	4	37
CT State University System	3	4	3	10	4	6	3	4	37
Transportation	1	4	4	10	6	7	4	2	38
Environmental Protection	4	6	11	4	3	6	3	3	40
Mental Health & Addiction Services	5	10	3	5	4	3	7	4	41
Public Safety	-	1	2	4	4	11	11	9	42
Judicial	3	4	1	5	3	9	12	6	43
UCONN Health Center	3	6	3	9	1	7	5	12	46
Correction	2	5	2	10	9	7	9	9	53
Social Services	6	4	6	10	9	7	5	6	53
Children & Families	4	11	6	10	9	5	9	8	62
Source: State Auditors Whistleblower Database									

APPENDIX F
Retaliation Complaints Filed with State Auditors (2002- June 2009)

AGENCY	2002	2003	2004	2005	2006	2007	2008	2009	TOTAL
Environmental Protection	-	1	-	-	-	-	-	-	1
Human Rights & Opportunities	-	-	-	-	-	1	-	-	1
CT State University System	-	-	-	1	-	-	-	-	1
Transportation	-	-	-	1	-	-	-	-	1
Policy & Management	-	-	-	-	1	-	-	-	1
Community Colleges	-	-	-	-	1	-	-	-	1
UCONN	-	-	-	-	-	-	1	-	1
Public Health	-	-	-	-	-	-	1	-	1
Developmental Services	-	-	-	-	-	-	-	1	1
Labor	-	-	-	-	-	-	-	1	1
BESB	-	1	-	-	-	-	-	1	2
Children & Families	-	-	-	1	1	-	-	1	3
Judicial	-	-	-	-	1	-	-	2	3
Education	-	-	-	3	-	-	1	-	4
UCONN Health Center	-	-	-	2	-	-	-	2	4
Public Safety	-	-	-	-	-	-	1	4	5
Correction	-	-	-	3	1	-	1	-	5
Mental Health & Addiction Services	-	3	-	2	-	-	1	1	7
Large State Contractor	-	-	-	-	3	2	2	3	10
TOTAL	-	5	-	13	8	3	8	16	53
Source: State Auditors Whistleblower Database									

APPENDIX G

Retaliation Complaints Filed with the Chief Human Rights Referee (2003- August 26, 2009)

Named Entity	2003	2004	2005	2006	2007	2008	2009	TOTAL
Comptroller	-	1	-	-	-	-	-	1
Developmental Services	-	-	1	-	-	-	-	1
Military	-	-	-	-	-	1	-	1
Administrative Services	-	-	-	-	-	1	-	1
Social Services	-	-	-	-	-	1	-	1
Transportation	-	-	-	-	-	1	-	1
Latino Commission	-	-	-	-	-	-	1	1
Public Health	-	-	-	-	-	2	-	2
BESB	-	-	-	-	1	1	-	2
Environmental Protection	-	-	-	-	1	1	-	2
Human Rights & Opportunities	-	-	-	1	1	-	-	2
Labor	-	-	-	-	1	1	-	2
UCONN	-	-	-	2	-	1	-	3
UCONN Health Center	-	-	-	-	-	3	1	4
CT State University System	1	-	1	1	-	-	1	4
Motor Vehicles	-	-	-	4	-	-	-	4
Mental Health & Addiction Services	3	-	-	1	-	2	-	6
Public Safety	-	-	-	2	4	-	-	6
Judicial	-	1	-	1	1	4	-	7
Correction	1	-	1	-	3	2	2	9
Municipal Entity*	-	1	1	6	-	5	2	15
Large State Contractor*	-	-	2	4	4	7	6	23

*Complaints filed are against separate entities

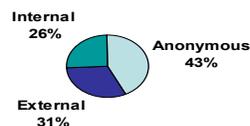
Source: LPR&IC Analysis of Human Rights Referees' Whistleblower Retaliation Decisions

APPENDIX H: Case File Analysis

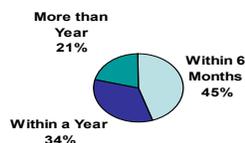
General (Non-Retaliation) Whistleblower Complaints (N=35)

- 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.

Source of Whistleblower Complaints



Occurred & Reported



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

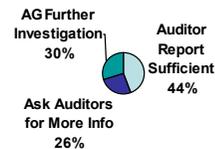
- Case files at both the State Auditors' and the Attorney General's offices showed there is frequently no communication with whistleblowers after investigation.
- Approximately 75% of the cases had no evidence of communication with whistleblowers after the investigation.
- Verbal communications were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

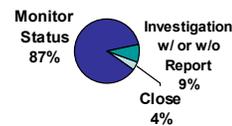
Results of Attorney General Review

- 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.

Attorney General Decision (N=70)



Attorney General Outcome (N=70)



Final Outcome of Allegations by Source

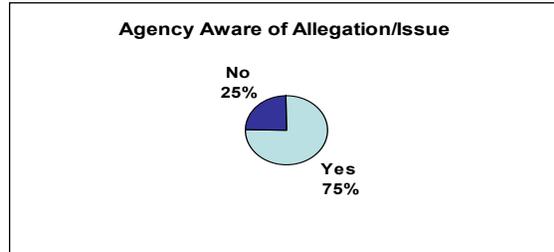
- Most allegations were made by anonymous source.
- Slightly more than a third of allegations were substantiated.
- 45% were unsubstantiated but in 10% an area of concern was identified.
- In close to 20 percent, a decision could not be made.

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)

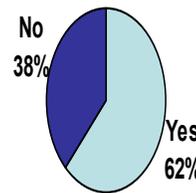
- Employees alleging retaliation frequently (52%) made the initial whistleblower disclosure internally to employer agency.
- In 3 cases of the internal employer disclosure, the initial complaint was made to large state contractor which is not subject to statutory whistleblower protection.
- Many retaliation 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.

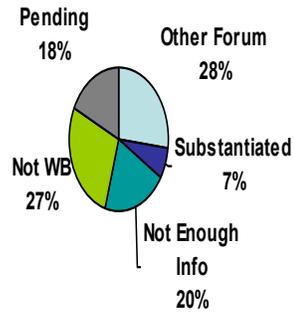
Employee First Sought to Resolve Retaliation Internally



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

Final Outcome for Retaliation Complaint



CHRR Retaliation Complaints (N=12)

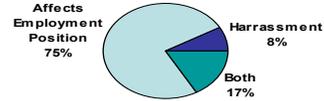
- An equal percentage of employees made their initial whistleblower disclosure internally to the Employer Agency or to the State Auditors/Attorney General.
- None of the cases involved a disclosure to a mandated reporter or contracting state agency.

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

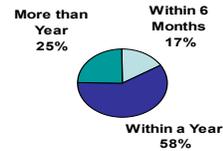
CHRR Retaliation Complaints (N=12)

- 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.

Type of Retaliation Alleged



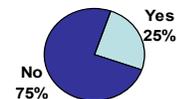
Occurred & Reported



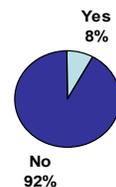
CHRR Retaliation Complaints (N=12)

- 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.

Employee With Legal Representation



Use of Rebuttable Presumption



	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 I: Other States

Other States Summary

The program review committee 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, the committee 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 activities.

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 the approach to whistleblower matters that committee 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, gross mismanagement or gross waste of funds, or 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 types 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.²¹ Table I-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.

²¹ 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 I-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 J: Federal Law

Federal Whistleblower Law and Process

For comparative purposes, this appendix provides a description of how the federal government handles whistleblower matters. Some similarities exist among both the federal and Connecticut processes; however, certain distinct features and key differences are apparent. In particular, the federal government has one agency, the U.S. Office of Special Counsel, to administratively manage and oversee all whistleblower complaints, however, the investigation of such matters is typically conducted by the various Office of Inspectors General designated to the agencies in question. In addition, the federal government:

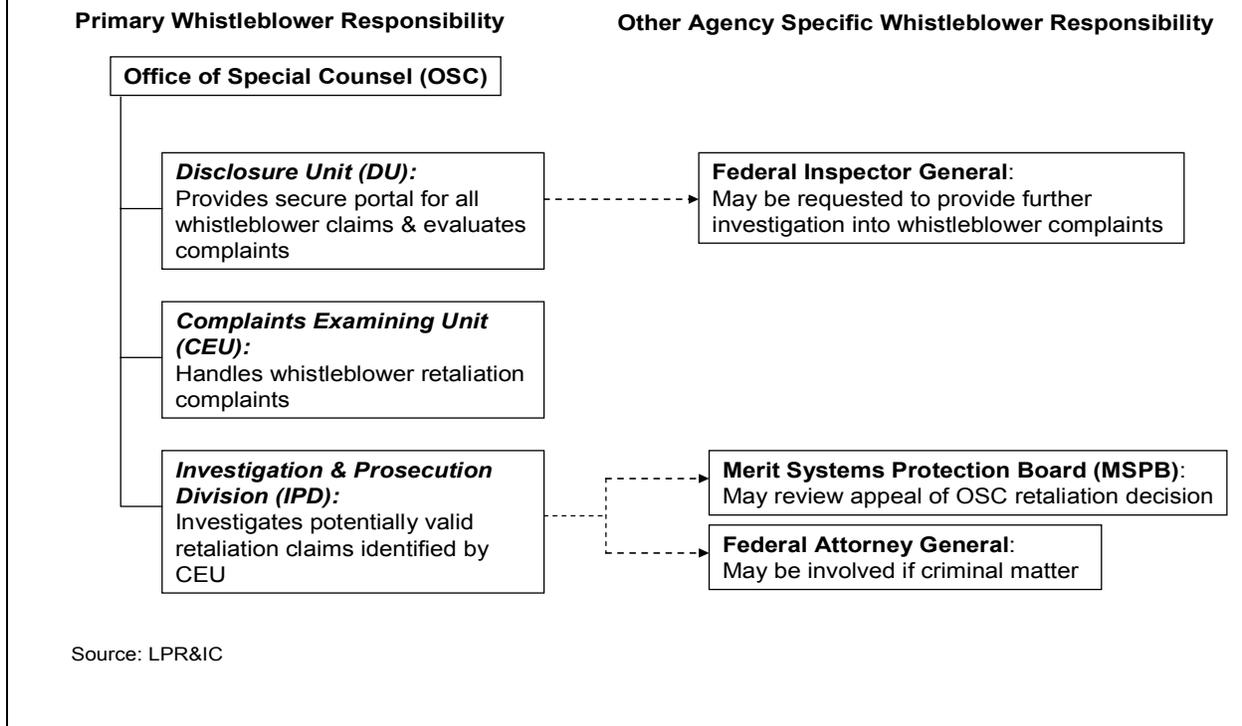
- has set timeframes for specific parts of its process;
- requires automatic notification to complainants;
- only accepts first-hand knowledge from complainants;
- treats anonymous complaints differently;
- uses a team approach (investigator and attorney) for retaliation cases; and
- may request a stay of personnel action until an investigation is complete.

Federal Entities Involved in Whistleblower Matters

On the federal level, the U.S. Office of Special Counsel (OSC) is responsible for handling disclosures of wrongdoing in the federal government. OSC receives and investigates allegations of prohibited personnel practices under federal law, which includes reprisals for whistleblowing. The basic OSC authority comes from three federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act. The OSC is headed by Special Counsel, who is appointed by the President, and confirmed by the Senate. Headquartered in Washington, D.C., OSC serves as an independent federal investigative and prosecutorial agency. It employs primarily attorneys, investigators, and personnel management specialists.

Figure J-1 shows the involvement of OSC and other federal agencies in handling whistleblower claims. As the figure illustrates, three units within OSC are involved with whistleblower matters. The Disclosure Unit (DU) provides a secure portal for whistleblower disclosures of alleged misconduct occurring within federal agencies. The Complaint Examining Unit (CEU) handles all whistleblower retaliation complaints referred by DU. Any retaliation complaint found to merit further investigation and legal review is referred to the Investigation and Prosecution Division (IPD). The OSC may also collaborate with other federal agencies in handling whistleblower matters. These may include the U.S. Attorney General for matters involving criminal activity or the Inspector General for anonymous complaints. In addition, appeals of OSC retaliation decisions may be reviewed by the Merit Systems Protection Board (MSPB). The following discusses the role and functions of the various OSC units involved in handling whistleblower complaints.

Figure J-1. Federal Agencies Involved in Whistleblower Claims



Disclosure Unit (DU). The OSC’s Disclosure Unit’s (DU) statutory authority allows current and former federal workers and applicants for federal employment to disclose information about various improprieties at federal agencies, including:

- violation of federal law, rule, or regulation;
- gross mismanagement;
- gross waste of funds;
- abuse of authority; or
- substantial and specific danger to public health or safety.

The DU does not have jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and Postal Rate Commission;
- members of the armed forces of the United States;
- state employees operating under federal grants; or
- employees of federal contractors.

Figure J-2 outlines the OSC process for whistleblower disclosures. Whistleblowers must make disclosures to OSC's Disclosure Unit in writing. Federal law prohibits the whistleblower's identity to be revealed without his or her consent. However, if the Special Counsel determines there is an imminent danger to public health or safety or imminent violation of any criminal law, he has discretionary authority to reveal the whistleblower's identity.

DU attorneys review disclosures in the order they are received with disclosures of dangers to public health and safety considered a high priority. The unit will generally not consider anonymous disclosures. If a disclosure is submitted anonymously, the matter will be referred to the Office of the Inspector General (OIG) in the appropriate agency with no further action by OSC. (The role of the federal Inspector General is discussed later in this chapter.)

DU attorneys evaluate each disclosure to determine if there is sufficient information to conclude that a substantial likelihood exists that one of the listed improprieties has occurred. The OSC does not have authority to directly investigate the disclosures it receives. In order to make a "substantial likelihood" finding, OSC considers various factors, including whether the disclosure is based on reliable, first-hand information. The OSC generally does not pursue matters based on the whistleblower's indirect knowledge of agency wrongdoing or speculation about the existence of misconduct.

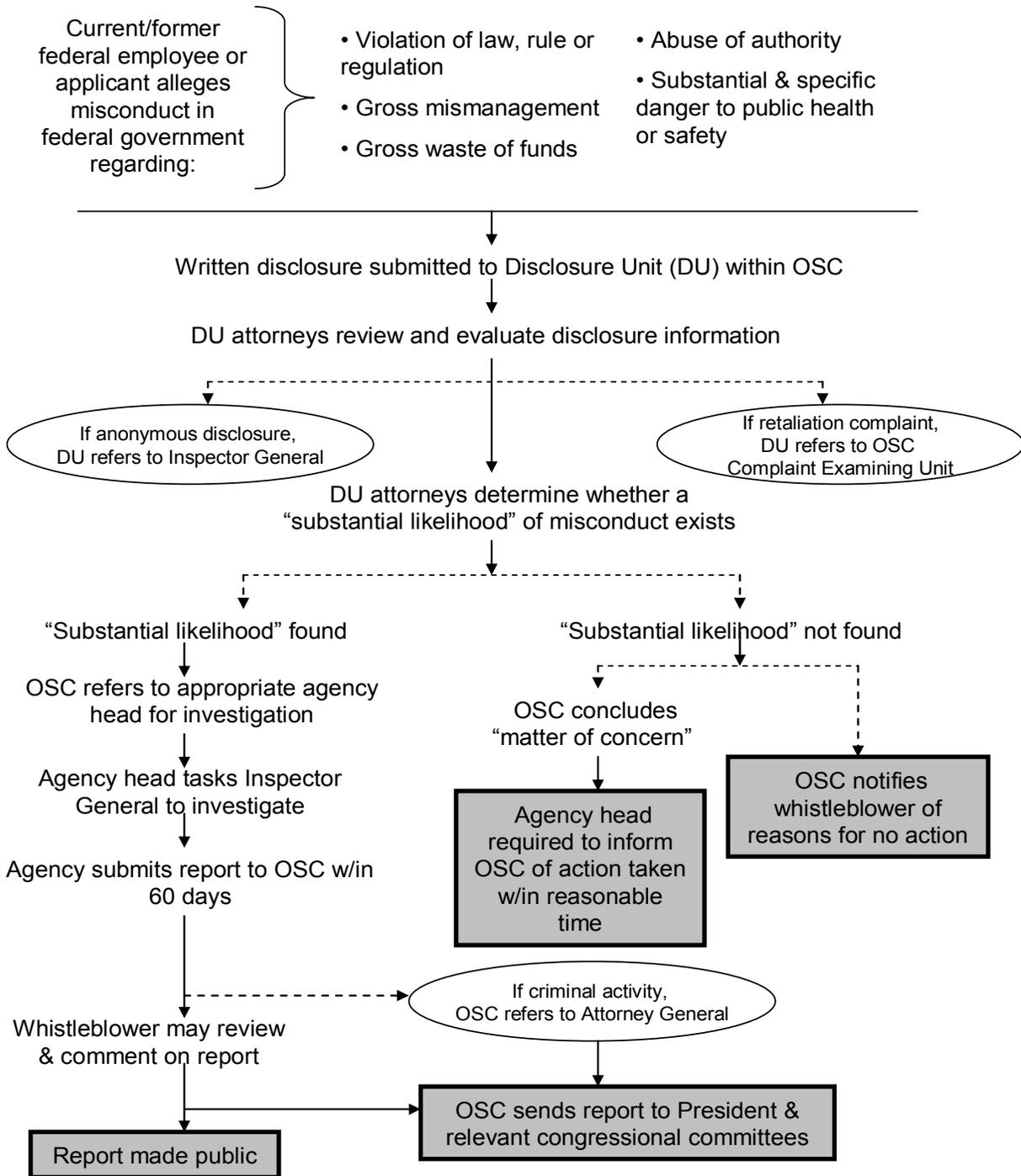
If the DU finds no substantial likelihood that the information disclosed wrongdoing, the whistleblower is notified of the reasons the disclosure may not be acted on further. However, the Special Counsel has the discretion, in cases where substantial likelihood is not found, to determine that a matter of concern has been raised. In these cases, the Special Counsel may transmit the whistleblower information to the agency head identified in the disclosure. The agency head is then required to respond to OSC in writing, within a reasonable time, what action has or will be taken, and when such action will be completed.

If there is a finding that a substantial likelihood exists, the DU will refer the disclosure to the appropriate agency head. The agency head is required to conduct an investigation and submit a written report on the findings to OSC. The OSC does not decide who within the agency will conduct the investigation. However, agency heads usually task their Office of Inspectors General with the responsibility for investigating OSC referrals.

The investigation must be completed and the findings reported back to OSC within 60 days. Federal law mandates that the agency head reviews and signs the report, which must include the basis for the investigation, the investigation method used, and a summary of the evidence gathered. The report must also outline any violations found and a description of any action to be taken.

The OSC reviews the report to determine whether it contains the statutorily mandated information and whether the report's findings appear to be reasonable. The whistleblower is also provided an opportunity to review and comment on the agency report. The Special Counsel then submits the report (with the whistleblower's comments) and the OSC recommendations to the President and the congressional committees with oversight responsibility for the agency involved. The OSC is also required make the report available to the public.

Figure J-2. OSC's Disclosure Unit Whistleblower Process



Source: LPR&IC

If the report indicates evidence of criminal violation, it is not made available to the whistleblower or the public. Rather, the information is directed to the U.S. Attorney General and the President, and the relevant federal oversight entities are notified.

Complaint Examining Unit (CEU). As noted earlier, federal law includes reprisal for whistleblowing as a prohibited personnel practice. Whistleblower retaliation complaints are handled by the Complaint Examining Unit within the OSC. The flowchart in Figure J-3 illustrates the basic process for handling a federal whistleblower retaliation complaint.

Once a complaint has been referred to CEU, the assigned examiner makes a preliminary determination as to whether the complaint contains evidence of any prohibited retaliation activity warranting further inquiry by OSC. The examiner makes that determination by reviewing the information obtained through telephone or written communications with the complainant, any witnesses, and/or appropriate officials from the employing agency.

The examiner will then either recommend: 1) the case be referred to the OSC's Investigations and Prosecution Division (IPD) for further investigation and legal review, or 2) that the case be closed. If further inquiry is warranted, CEU provides written notification to the complainant. Otherwise, the complainant is provided a written explanation of the specific reasons for closing the case.

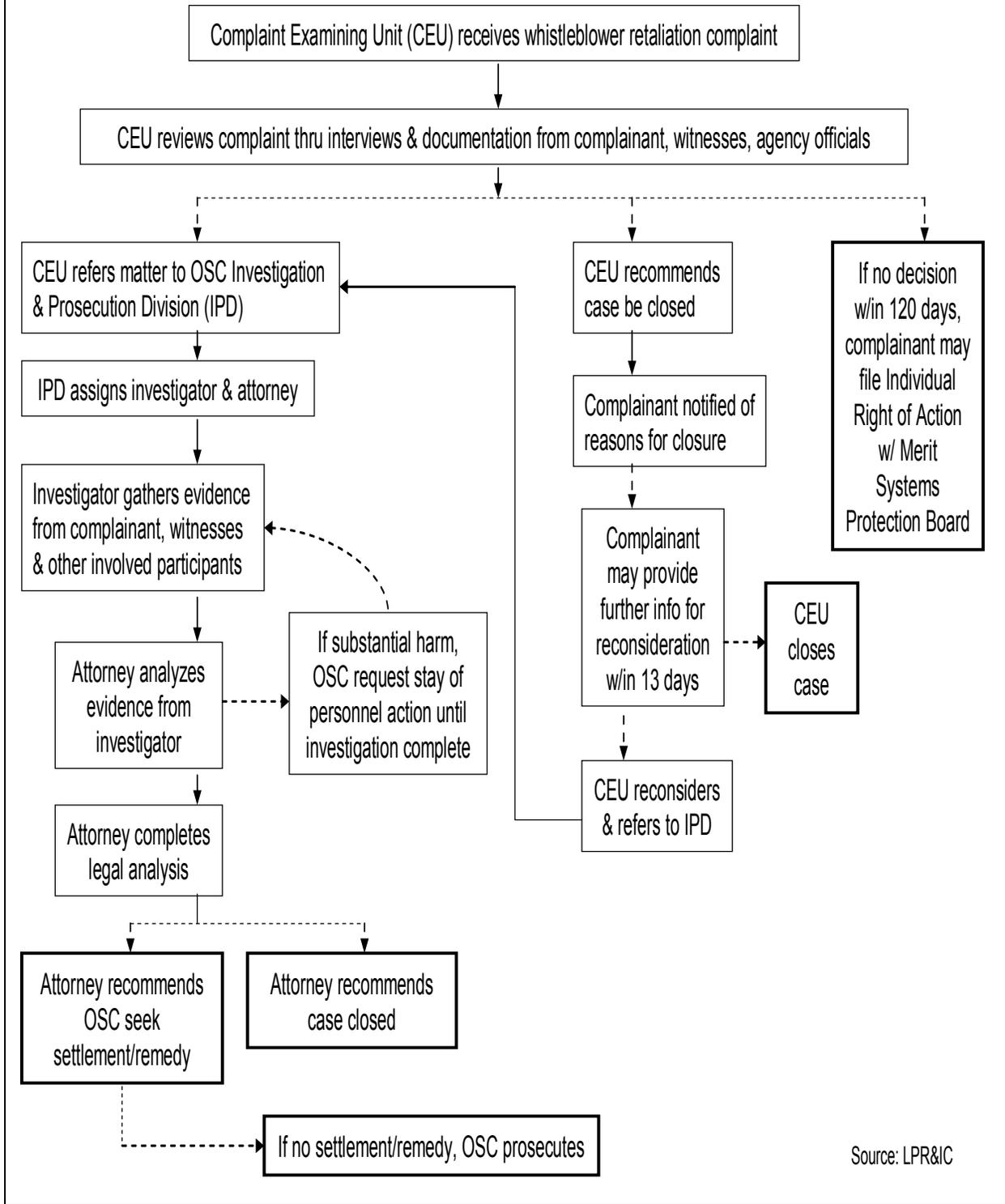
If a determination is not made within 90 days after CEU receives the retaliation complaint, the unit must provide the complainant with written complaint status, and every 60 days thereafter until a final determination is made. If OSC has not yet made a decision after 120 days, the complainant may file an Individual Right of Action (IRA) directly with the Merit Systems Protection Board (MSPB). (This process is discussed later.)

If the complainant disagrees with the CEU's preliminary determination to close the case, he or she may submit additional information for reconsideration within 13 days. After reviewing the response, the examiner determines whether the case merits further investigation, or whether it should be closed. In either case, OSC provides the complainant with written notification of the final determination.

Investigation and Prosecution Unit (IPD). As shown in Figure J-3, if CEU decides to refer a retaliation complaint to IPD, an investigator and an attorney are assigned as a case team for further investigation and legal review. The investigator gathers and verifies evidence of the alleged retaliation while the attorney analyzes the evidence to see if OSC can prove that a violation of law or regulation occurred. All complainants must agree to the disclosure of their name and the information provided to OSC.

While the IPD process is pending, the case investigator or attorney must notify the complainant at least every 60 days of the complaint status. In certain circumstances, if IPD determines upon reasonable grounds that a prohibited personnel practice occurred or would cause substantial harm, it may seek a stay of the personnel action involved until the investigation is done or a final determination is made.

Figure J-3. CEU Process for Whistleblower Retaliation Complaints



Source: LPR&IC

As part of the IPD review, the investigator conducts interviews in person or by telephone of any potential witnesses who have information relevant to the allegations. This includes individuals who have first hand knowledge of the issues and events, participated in the decisions, observed interactions, or have other knowledge necessary to a full understanding of the alleged violations of law being investigated. After the investigation is complete, the attorney will conduct a legal review of the collected information.

The attorney makes a recommendation after a review of the evidence and applicable law. The attorney will either recommend case closure because no further action is warranted; or recommend the Special Counsel pursue corrective action and/or disciplinary action; or negotiate a settlement. The IPD notifies the complainant of its decision and the underlying reasons. If the complainant disagrees with the decision, he or she has 13 days to provide additional information. If the complainant does not respond within the 13 day timeframe or does not provide a basis for OSC to change its determination, the case is closed.

If IPD finds there is evidence to support the allegations, OSC attempts to settle the complaint with the agency involved. The complainant is kept informed of the negotiation progress and OSC will not settle the complaint with the agency without the complainant's consent. However, if the complainant does not accept an offer of complete corrective action (that is, action that provides the complainant all the relief he or she is entitled to), OSC will end its efforts and close the case. If the agency does not take corrective action within a reasonable period of time, usually 45-60 days, OSC will initiate litigation.

U.S. Merit Systems Protection Board (MSPB)

Under the Civil Service Reform Act of 1978, most federal employees may appeal various personnel actions affecting them to the U.S. Merit Systems Protection Board (MSPB).²² The MSPB is an independent agency within the federal government that adjudicates individual federal employee appeals and conducts merit system studies. The board is composed of three presidential appointments that are confirmed by the Senate. No more than two board members can be from the same political party. The board has eight regional and field offices across the country to manage appeals.

The federal Whistleblower Protection Act allows current or former federal employees and applicants for employment who claim they were subjected to any adverse personnel action because of disclosure of whistleblower information to seek corrective action by appealing to MSPB. Such an appeal is known as an "individual right of action" (IRA) noted above in Figure IV-3. Individuals alleging whistleblower retaliation must first file a complaint with the Office of Special Counsel and exhaust OSC procedures before appealing to MSPB. The IRA may be filed either after OSC closes a matter in which reprisal for whistleblowing has been alleged; or if OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower retaliation that it will seek corrective action.

²² The board does not review cases from certain classes of employees (e.g., political appointments) and employees of specific agencies (e.g., Federal Bureau of Investigations).

A written appeal must be submitted to the administrative judge of the MSPB regional or field office serving the area where the employee was located when the action was taken. The appeal must be filed within 65 calendar days of the OSC notice date stating that it would not seek further action on the complaint. Legal representation is not required to file appeals with the board and appellants may represent themselves.

The filing of an appeal results in an acknowledgement order issued by the administrative judge. The order provides the parties with a copy of the appeal and directs the agency in question to submit a statement as to its reason for taking the personnel action or decision being challenged, along with all pertinent documents. An agency has 20 calendar days to respond.

The agency has the burden of proving that it is justified in taking the personnel action. If the burden of proof is met, the board must decide in favor of the agency, unless the appellant can show that either: 1) there was harmful error in the agency's procedures; 2) a prohibited personnel practice was the basis for the decision; or 3) the decision was not in accordance with the law.

After considering all of the relevant evidence, the administrative judge may affirm the agency's action, reverse the action, or in certain cases, mitigate or modify the penalty imposed by the agency. The administrative judge must issue a decision that identifies all material issues of fact and law, summarizes the evidence, resolves issues of credibility, and includes the administrative judge's conclusions of law and legal reasoning. The appellant may waive the right to a hearing and choose instead to have the case decided on the basis of the written record, which includes all pleadings, documents, and other materials filed in the proceedings.

The administrative judge's decision is final unless a party requests a review with the three-member MSPB board in Washington within 35 calendar days of the initial decision. The board will review only if: 1) there is new significant evidence not available when the record was closed; or 2) the administrative judge's decision is based on an erroneous interpretation of law or regulation. The board's decision on a petition for review constitutes final administrative action.

While the case is pending either before the administrative judge or under review by the MSPB, the administrative judge has the discretion to order interim relief until a final decision is made. Appeals may be settled voluntarily by the parties prior to an administrative judge's final decision. However, the parties must ask the administrative judge to enter the agreement into the record if they wish to have the settlement agreement enforced by the board.

The board may dismiss a petition if it determines that the matter is not within the board's jurisdiction or the petition was not filed within the required time limit and good cause for the untimely filing is not shown. The board may deny a petition if it does not meet the criteria for review. If the board grants a petition, its final decision may affirm or reverse the initial decision of the administrative judge, in whole or part. If the appellant is dissatisfied with the final decision of the board, he or she may request a review of the final decision by the U.S. Court of Appeals. The court must receive the request within 60 days of the board's final decision.

Bargaining units. Employees who are members of a bargaining unit that is represented by a union or an association must file grievances in accordance with their negotiated grievance

procedure. If the employee's complaint is covered by a grievance procedure, then the employee has a choice between filing with the bargaining unit's grievance process or filing an appeal with the board, but not both.

Federal Office of Inspectors General (OIGs)

In 1978, the federal government established and authorized the Office of Inspectors General (OIGs) to detect and prevent fraud, waste, abuse and violations of law and to promote economy, efficiency and effectiveness in the operations of the federal government. A federal inspector general is an appointed investigator charged with examining the actions of a government agency as a general auditor to ensure agency operations are functioning in compliance with general established government policies. They also may discover possible misconduct or wrongdoing by individuals or groups related to the agency's operation. As noted earlier, the IGs are often given the job to investigate whistleblower complaints.

The President nominates IGs at cabinet-level departments and major agencies with Senate confirmation. These IGs can only be removed by the President. In certain designated agencies, the agency head may appoint and remove IGs. Congress must be notified of any IG removed by the President or an agency head. The appointments are based on demonstrated ability in accounting, auditing, financial analysis, law, management, public administration or investigations and not political affiliation. Currently, there are 67 statutory OIGs.

While IGs serve under the general supervision of an agency head or deputy, the agency cannot prevent or prohibit an IG from conducting an audit or investigation. OIG investigations may be internal (e.g. targeting government employees) or external (e.g. targeting grant recipients, contractors). To fulfill their responsibilities, IGs are authorized to:

- have direct access to all agency records and information;
- conduct independent and objectives audits and issue related reports as deemed appropriate (with limited national security and law enforcement exceptions);
- perform independent investigations as requested by the agency head;
- issue subpoenas for documents outside the agency (with same limited exceptions); and
- hire and direct their own staff and contract resources.

IGs must dually report their activities to the agency head or deputy and to Congress. The IGs also must report any unreasonable refusal within the agency to provide information, as well as any suspected violation of federal criminal law to the U.S. Attorney General. Although all of the federal OIGs operate separately, they share information and some coordination and training through the Council of the Inspector General on Integrity and Efficiency (CIGIE).²³

²³ CIGIE was created in 2008 pursuant to the Inspector General Reform Act of 2008, which combined the former President's Council on Integrity and Efficiency with the Executive Council on Integrity and Efficiency.

APPENDIX K: Legislative Proposals

Summary of Legislative Proposals

The committee 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 K-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 K-1. Summary Comparison of Legislative Proposals on Whistleblowers (2007-2009)

LEGISLATIVE PROPOSAL	2009				2008	2007	
	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.
<p>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).</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Finally, the bill makes technical changes.</p>	
ACTION TAKEN:	<ul style="list-style-type: none"> • Introduced by GAE – Public Hearing • Refer to JUD
FISCAL NOTE:	<p>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).</p> <p>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.</p>

2009 SB 805	AN ACT CONCERNING WHISTLEBLOWER PROTECTION
SUMMARY: This bill:	
<ul style="list-style-type: none"> • 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 SB 527	AN ACT ESTABLISHING THE OFFICE OF INSPECTOR GENERAL
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.
<p>SUMMARY:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Lastly, the bill makes technical and conforming changes.</p>	
ACTION:	<ul style="list-style-type: none"> • Introduced by GAE; Public Hearing • Refer to JUD – Joint Favorable • Refer to APPROPS
FISCAL NOTE:	<p>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.</p> <p>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.</p>

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:	<ul style="list-style-type: none"> • 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.
<p>SUMMARY:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
ACTION:	<ul style="list-style-type: none"> • Introduced by GAE – Public Hearing • Refer to JUD
FISCAL NOTE:	Adding municipal whistleblowers significantly increasing potential cost to agencies resources.

APPENDIX L: Agency Response

STATE OF CONNECTICUT



AUDITORS OF PUBLIC ACCOUNTS

STATE CAPITOL
210 CAPITOL AVENUE

HARTFORD, CONNECTICUT 06106-1559

KEVIN P. JOHNSTON

ROBERT G. JAEKLE

Legislative Program Review and Investigations Committee
Room 506, Capitol Building
Hartford, CT 06106

February 1, 2010

Attention: Senator John Kissel, Co-Chair
Representative Mary Mushinsky, Co-Chair

Dear Senator Kissel and Representative Mushinsky:

We have reviewed the Committee's report on the results of its recently completed study of Connecticut's Whistleblower Law and felt it was a very comprehensive review of the various issues associated with this law. We were particularly pleased to see that this report addressed two areas of concern that have proven problematic for our Office as it has struggled to deal with the increasing volume and complexity of the whistleblower complaints it has received in recent years.

The first area of concern involves the broad statutory definition of a whistleblower complaint which results in virtually any complaint filed with our Office being classified as a whistleblower complaint requiring investigation, even when there are other statutory or administrative mechanisms that have been established within State government to address a particular type of complaint. The other area of concern is that the statutory requirement that our Office review all whistleblower complaints filed with our agency, affords our agency little flexibility in deciding which complaints are worthy of spending limited State resources to review and investigate.

A more general concern is the fact that the current system, which involves various State agencies, does not seem to serve or adequately protect whistleblower complainants. Although the best alternative towards streamlining the entire whistleblower process may be by establishing an independent agency to receive and investigate complaints and to protect complainants from retaliation, this may not be feasible given the State's current fiscal situation.

Despite this fact, there are a number of improvements outlined in this report that can be made to the existing whistleblower review process that will better serve whistleblower complainants and help ensure that complaints are investigated in an expedited manner and that statutory protections offered whistleblower complainants can actually be enforced.

Please feel free to contact us if you have any questions or need additional information on this matter.

Sincerely,



Kevin P. Johnston
Auditor of Public Accounts



Robert G. Jaekle
Auditor of Public Accounts
