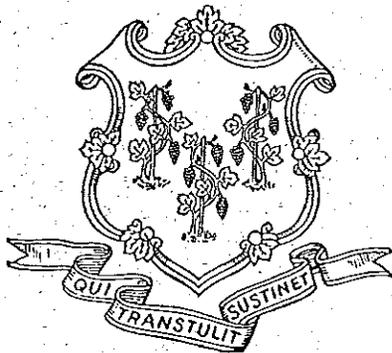


COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES: ENFORCEMENT

Connecticut

General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

December 1999

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

The Legislative Program Review and Investigations Committee is a joint, 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.

The program review committee is composed of 12 members. The president pro tempore of the senate, the senate minority leader, the speaker of the house, and the house minority leader each appoint three members.

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Staff for this Project

Michelle Castillo
Carrie Vibert

LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

**Commission on Human
Rights and Opportunities:
Enforcement**

DECEMBER 1999



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Commission on Human Rights and Opportunities: Enforcement

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Key Points

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES (CHRO)

- Tremendous management change has occurred at CHRO in the last 18 months with five out of nine new commissioners and a new executive director.
 - The challenge for legislative oversight purposes is to determine, *at this time*, whether the solutions to CHRO problems call for further statutory change or whether the focus should be on giving the new management a chance to work within the current statutory framework.
 - Over the years, the role of the commissioners in CHRO's original function -- enforcement -- has grown smaller.
 - Commission authority was strengthened, or at least clarified, regarding its authority over the executive director.
 - Overall, CHRO's commission structure is similar to other Connecticut commission structures except appointed members are not approved by the legislature.
 - The early merit assessment review (MAR) enacted in 1994 was a considerable change to the complaint process, with significant implications for intake and the standards used for MAR decisions.
 - CHRO statutes have always contemplated both investigation and voluntary resolution of complaints. Specifically, conciliation has long been a required step by the investigator *after* a reasonable cause finding. The concept of active investigator involvement in settlement attempts *prior* to a cause finding has evolved at CHRO.
 - The combination of mediation and investigation functions performed by one CHRO investigator at minimum can create a perception of conflict for the parties. Also, different skills and training are needed because the two activities are so different.
 - Policies and regulations related to several aspects of the complaint enforcement process are unclear, outdated, or nonexistent, and need further development.
 - The use of a quantitative production standard for enforcement staff carries some risks. In light of time frame standards, production standards may be irrelevant.
 - CHRO must seek ways to increase production, including but not limited to, appropriate employee training, proper oversight on the part of managers, and if necessary, shifting of resources in case processing.
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Key Points

- CHRO does not have a formally structured training program or a cohesive training manual for its enforcement workers.
 - Training opportunities have varied for existing employees suggesting variable levels of skills and knowledge. The agency has not conducted a formal training needs assessment for its staff.
 - The existing case tracking system has a number of deficiencies, including poor documentation and insufficient checks on data entry.
 - The agency needs to take full advantage of its current information system and re-examine its information system to better utilize its ability to monitor agency operations, assure quality, and report its activities to the legislature.
 - It is too soon to measure effectiveness of recent legislative changes along with significant management changes. It is imperative the legislature be kept fully informed about CHRO activities.
 - The current CHRO administration has begun many initiatives to address agency problems in the areas of technology, equipment, and staff resources.
 - The internal CHRO staff discrimination complaint process is reasonable.
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Executive Summary

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

In March 1999, the Legislative Program Review and Investigations Committee authorized a study of the Commission on Human Rights and Opportunities. The scope of the study approved by the committee called for an examination of the mission, policies, structure, and management of the commission related to the handling of illegal discrimination complaints. The scope excluded the contract compliance and state agency affirmative action plan responsibilities of the commission.

The study was prompted in part by turmoil at the commission in recent years, evidenced by: several discrimination lawsuits filed by CHRO employees against other CHRO employees and managers; controversial actions on the part of the former executive director, who held the position from 1991 to July 1998; and high turnover among CHRO commission members.

In the last few years, significant statutory amendments to the CHRO enforcement process have been made. These include: the creation of the merit assessment review (MAR) system; the addition of mandatory mediation; and the tightening of the time frame within which investigators have to do their work. Other significant changes have only recently gone into effect, for example, giving the complainant the unilateral right to seek a release of jurisdiction after a MAR dismissal and the addition of full time hearing officers.

In addition, considerable internal agency administrative change has taken place. In considering the most useful direction for this study at this time, the program review committee balanced the fact of tremendous management change at the agency in the last 18 months with the concerns prompting the study, many of which predated the management changes. Recent activities include the following:

- In July 1998, the previous executive director left office after eight years upon the expiration of his second four-year term, with a pending state ethics complaint resolved in December 1998 with his payment of a \$3,000 fine¹;
- A new executive director, hired by the commission on an interim basis beginning on March 15, 1999, was permanently appointed on July 22, 1999, for a four-year term;
- Five new commissioners (out of a total of nine) have been appointed, three during the summer of 1999 and two in November 1999. As of December 1999, there are no vacancies on the commission. A new chairperson was also recently appointed;

¹ The matter was settled between the State Ethics Commission and the director. A stipulation and order found the director violated state law. The director did not admit the allegation, but chose to not contest the findings "by pursuing costly litigation" and paid a \$3,000 civil penalty.

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- Two deputy directors – one responsible for enforcement, the other for education, diversity, and compliance – who directly reported to and served at the pleasure of the director, were let go in September 1999 by the current director in a reorganization, and the positions eliminated; and
 - The long unfilled position of Chief of Field Operations was filled, with the directive to be a presence in the regional offices and a link between the regions and the executive director.

During the course of the study, the committee made the following findings related to the discrimination enforcement operations:

- Over the years, the role of the commissioners in CHRO's original function -- enforcement -- has grown smaller.
- Commission authority was strengthened, or at least clarified, regarding its authority over the executive director.
- Overall, CHRO's commission structure is similar to other CT commission structures except appointed members are not approved by the legislature.
- The early merit assessment review (MAR) enacted in 1994 was a considerable change to the complaint process, with significant implications for intake and the standards used for MAR decisions.
- CHRO statutes have always contemplated both investigation and voluntary resolution of complaints. Specifically, conciliation has long been a required step by the investigator *after* a reasonable cause finding. The concept of active investigator involvement in settlement attempts *prior* to a cause finding has evolved at CHRO.
- The combination of mediation and investigation functions in one CHRO investigator at minimum can create a perception of conflict for the parties. Also, different skills and training are needed because the two activities are so different.
- Policies and regulations related to several aspects of the complaint enforcement process are unclear, outdated, or nonexistent, and need further development.
- The use of a quantitative production standard for enforcement staff carries some risks. In light of time frame standards, production standards may be irrelevant.
- CHRO must seek ways to increase production, including but not limited to, appropriate employee training, proper oversight on the part of managers, and if necessary, shifting of resources in case processing.
- CHRO does not have a formally structured training program or a cohesive training manual for its enforcement workers.

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- Training opportunities have varied for existing employees suggesting variable levels of skills and knowledge. The agency has not conducted a formal training needs assessment for its staff.
 - The existing case tracking system has a number of deficiencies, including poor documentation and insufficient checks on data entry.
 - The agency needs to take full advantage of its current information system and re-examine its information system to better utilize its ability to monitor agency operations, assure quality, and report its activities to the legislature.
 - The current CHRO administration has begun many initiatives to address agency problems in the areas of technology, equipment, and staff resources.
 - The internal CHRO staff discrimination complaint process is reasonable.

The challenge for legislative oversight purposes is to determine, *at this time*, whether the solutions to CHRO problems call for further statutory change or whether the focus should now be to give the new management a chance to work within the current statutory framework. In either case, the enforcement of Connecticut's civil rights laws is a critical function of state government, which cannot be allowed to flounder if only in perception. At the committee's October 19, 1999, public hearing, the new CHRO executive director showed an awareness of CHRO problems:

My personal observations and those of the consultants [retained by the commission] indicated that, among other things, employee morale was low, there was an erosion of trust between front-line staff and management, the agency is crippled by inadequate resources, there existed inadequate communication between staff and management, inadequate training opportunities, little opportunity for upward career mobility, and inconsistent policies and procedures among regional offices.

The recommendations contained in this report take into account the promise of new leadership, but also suggest ways to promote consistency and objectivity in the execution of the complaint enforcement process, along with increased focus on maintaining accurate data for management purposes. The program review committee findings and recommendations fall into three main areas: 1) commission structure; 2) the discrimination enforcement process; and 3) management.

RECOMMENDATIONS

1. The appointment of CHRO commissioners shall be subject to the advice and consent of either house of the General Assembly.
2. CHRO should re-evaluate its guidance documentation for investigators and maintain well-trained staff at the intake and MAR stages to ensure all cases receive full and consistent assessments in all regions. MAR activities should be closely monitored to detect unintentional over- or underscreening of complaints and to identify any problems in regional application of standards. The agency must also ensure commission members are kept informed of MAR activities on a periodic basis as prescribed by C.G.S §46a-83(b).
3. CHRO should separate the mediation and investigations components, and establish clear and consistent policies on mediation activities. The commission should incorporate these policies into the agency's training curriculum.
4. CHRO should make sure that respondents are informed when complainants are represented by counsel when the respondent is notified of the complaint.
5. The Chief Human Rights Referee shall establish uniform operating policies, procedures, and guidelines clearly defining the role and function of the Public Hearing Office. Adoption of any changes to the policies and procedures shall be duly communicated to the full Commission on Human Rights and Opportunities. It shall be the responsibility of the Chief Human Rights Referee to ensure all human rights referees are adequately trained in the uniform implementation of the policies and procedures.
6. CHRO should institute a follow-up evaluation form for parties involved in the complaint process to provide feedback on their experience with the agency's handling of discrimination complaints. The process should offer the parties to the complaint a confidential forum to submit observations, suggestions, concerns, and comments directly to central office management. The information should be reviewed and summarized on a periodic basis and results shared with the regions and the commissioners.
7. CHRO should establish performance standards reflecting the quality of the work and/or the difficulty of cases as well as effective caseload management, such as regular and timely activity.
8. CHRO should conduct a formal evaluation of the current training curriculum and an assessment of training needs of the agency. Based on the evaluation, CHRO should develop and institute a comprehensive training and professional development program. This program should be designed to provide extensive training in civil rights law,

investigative techniques, mediation, analytical methods, communication skills, and other necessary areas. It should be tailored to fit the needs of enforcement staff at each level of the process including, but not limited to, intake, merit assessment review, and investigation. Training should also be provided to staff involved in the public hearing process including, but not limited to, commission counsel and human rights referees. In addition, CHRO should conduct ongoing assessments of training needs of the agency's enforcement staff. The assessment results should be monitored and used to adjust the training curriculum and to identify areas for staff improvement whenever necessary.

9. CHRO should review both its Investi-GATOR manual and the Field Operations Interpretive Guidelines for ease of use by investigators in the regional offices, and ensure they represent current agency practice.

10. CHRO should re-examine its coding system. Specific codes should be developed with input from system users. Written definitions for each code should be provided to agency staff and training given to implement a uniform coding system to facilitate tracking of complaint trends and outcomes.

11. Clear accountability should be assigned for assuring consistent, uniform, and accurate data recording.

12. CHRO should establish a uniform, automated management information system for the regions that captures essential enforcement case information and results in the production of valid, reliable data. The system, at a minimum, should include, but not be limited to, the following:

- critical case processing milestones, such as MAR dismissal and retention dates, cause determination dates, and reconsideration and closed dates;
- case information, such as attempts at mediation and whether parties have legal counsel;
- case outcomes information, such as type of resolutions;
- the ability to generate standard management reports on the timeliness and performance of individual personnel as well as regions in completing investigations; and
- the ability to generate customized reports when necessary.

13. CHRO should develop a set of performance measures to be used in evaluating the agency's overall performance as well as all key components and phases of the process. At a minimum those standards shall address:

- specific time frames for complaint handling, public hearings and outcomes; and
- the components of settlements, such as job reinstatement, backpay, and other remedies.

14. CHRO should continue to assess its technological resources and equipment needs for its enforcement operations and develop a plan for addressing those needs as determined. The plan should aim to enhance accurate information sharing between field operations, the legal services unit, and the public hearing office.

15. CHRO should proceed with its plan to request additional staff resources.

Introduction

Commission on Human Rights and Opportunities

With origins dating back to 1943, the Commission on Human Rights and Opportunities (CHRO) is the state agency authorized to enforce civil rights laws in Connecticut. Its primary function is to enforce state laws prohibiting discrimination in employment, housing, credit, and public accommodations. The agency investigates discrimination complaints and attempts to correct any violation it finds through conciliation, public hearing, or court action, if necessary. It also enforces laws regarding state agency affirmative action and contract compliance.

In March 1999, the Legislative Program Review and Investigations Committee authorized a study of the Commission on Human Rights and Opportunities. The scope of the study approved by the committee called for an examination of the mission, policies, structure, and management of the commission related to the handling of illegal discrimination complaints. The scope excluded the contract compliance and state agency affirmative action plan responsibilities of the commission.

The study was prompted in part by turmoil at the commission in recent years, evidenced by: several discrimination lawsuits filed by CHRO employees against other CHRO employees and managers; controversial actions on the part of the former executive director, who held the position from 1991 to July 1998; and turnover among CHRO commission members.

In preparing this report, the committee reviewed applicable statutes, agency policy, procedures, and general literature dealing with CHRO. The committee also interviewed agency staff and several individuals associated or having contact with the agency, including representatives of interest groups, current and former commissioners, and former CHRO employees. The committee conducted a focus group of attorneys representing both complainants and respondents to elicit opinions and comments about their experience with the agency. CHRO automated case tracking file data were used to analyze complaint timeframes and outcomes. A random sample of case records based on the agency automated tracking system was also examined in more depth.

The committee held a public hearing regarding CHRO on October 19, 1999. In addition, the committee reviewed a 1999 consultant report commissioned by CHRO to assess the agency's organizational structure and suggest ways to improve operations. Commission staff assigned to the field enforcement units were surveyed and offered a chance to relate in confidence their views in issues affecting the agency's operation. Aggregate responses to the survey are presented in Appendix A and material pertinent to areas under review

are used throughout the report. Finally, the committee gathered information on how human rights agencies are organized and operate around the country.

This report is divided into five chapters. Chapter I provides historical background on the policy and development of civil rights law and gives a brief summary of existing federal and state laws related to discrimination. An overview of CHRO's organizational structure and changes in expenditures and staffing over time is described in Chapter II. Chapter III discusses significant selected events affecting the commission's operation over the last eleven years. Chapter IV gives a detailed description of the CHRO discrimination complaint process and other activities related to complaint resolution. Chapter V presents the committee's findings and recommendations regarding the commission structure, the enforcement process, and agency management.

Agency Response

It is the policy of the Legislative Program Review and Investigations Committee to provide state agencies subject to a study with an opportunity to review and comment on the recommendations prior to the publication of the final report. A response from the Commission on Human Rights and Opportunities is contained in Appendix E.

Overview of Discrimination Laws

In its everyday sense, to “discriminate” suggests noticing differences between things or people that are otherwise alike and making decisions based on those differences. In a legal context, “discrimination” means to treat someone unfavorably in comparison to others because of his/her protected status. “Protected status” refers to certain personal characteristics that public policy has determined should not be the basis for discrimination. Every U.S. citizen is a member of some protected class because of race, color, religion, sex, national origin, age, or handicap condition. The scope of protection is specifically outlined by state and federal law.

Treating a person unfavorably in comparison to others may be a violation of anti-discrimination laws only when that person’s protected status is a factor in the treatment. Thus, unfair treatment alone is not equivalent to illegal discrimination.

There are many forms of discriminatory actions. Typically, they are explained under three legal theories of discrimination: overt; disparate treatment; and disparate impact.

Overt discrimination is a specific, observable act to discriminate against a person or class of persons because of protected status. This treatment is also referred to as intentional discrimination. An example would be failing to interview job applicants based solely on their race (race discrimination).

Disparate treatment is the inconsistent application of rules, policies, or practices to one group of people in comparison to another. For example, male employees being reprimanded for arriving late to work while female employees who are also late are not reprimanded could constitute sex discrimination.

Disparate impact is the uniform application of a rule or policy to all individuals that has the effect of distinguishing or differentiating members of protected classes. This treatment also is referred to as adverse impact. An example would be having a height requirement for employment. Unless it is an essential part of the job, this requirement may have a discriminatory impact on females.

Overview of Civil Rights Laws

The purpose of civil rights laws is to guarantee individuals equal opportunity in political, economic, and social activities. Historically, civil rights laws have been enacted in response to evidence of discrimination against groups and categories of people. Initial federal civil rights laws were passed in the

1960s. The scope of protection and areas covered by anti-discrimination laws continued to grow throughout the 70s, 80s, and well into the 90s. As a result, there are several federal and state anti-discrimination laws.

Connecticut and federal anti-discrimination laws are very similar in nature, but some distinctions exist. State law is generally broader than federal provisions. The first part of this chapter contains a discussion of the major anti-discrimination laws relating to employment, housing, credit, public accommodations and facilities.¹ A synopsis of the types and bases of prohibited discrimination in Connecticut is provided in Table I-1.

Authority to enforce these laws falls upon both federal and state agencies. However, the federal agencies are authorized by statute to defer resolution of complaints to the state entity affording discrimination protection. In Connecticut, the Commission on Human Rights and Opportunities is the agency charged with enforcing these laws in conjunction with the federal agencies. (The enforcement structure is explained in more detail at the end of this chapter.)

EMPLOYMENT

Federal law. Various federal laws protect individuals from employment discrimination on the basis of race, color, sex, religion, national origin, age, or disability. The federal Equal Employment Opportunity Commission (EEOC) has jurisdiction over all these laws, but will defer administrative enforcement to designated state agencies, like CHRO. Also, complainants generally have the right to sue in federal court if the complaint is not resolved administratively. Among the federal laws are:

Equal Pay Act of 1963 - The act prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions. It applies to both public and private employers having two or more employees.

Civil Rights Act of 1964, Title VII - The act forbids employment discrimination on the basis of race, religion, sex, or national origin. It applies to both public and private employers with at least 15 employees as well as unions and employment agencies.

Age Discrimination in Employment Act (ADEA) of 1967 - The act makes it unlawful to discriminate against employees or job applicants on account of age when they are 40 years of age or older. ADEA applies to both public and private employers employing 20 or more workers for at least 20 weeks a year. It also applies to employment agencies and labor unions with at least 25 members. The act prohibits employers from forcing retirement at a certain age. ADEA also requires employers to offer older employees and their spouses the same health care benefits as they provide for younger employees and spouses. However, employment decisions based on age do not violate ADEA if physical degeneration could cause a public safety threat.

¹ Several federal anti-discrimination laws also exist in matters relating to education, voting, law enforcement, and federally assisted programs. These issues are not under the jurisdiction of CHRO. Therefore, they are not included as part of this discussion.

Table I-1. Bases and Types of Prohibited Discrimination in Connecticut.

<i>On the Basis of:</i>	Employment	Housing & Public Accommodations	Credit Transactions
<i>Age</i>	•	•	•
<i>Ancestry</i>	•	•	•
<i>Color</i>	•	•	•
<i>Learning Disability</i>	•	•	•
<i>Marital Status</i>	•	•	•
<i>Mental Retardation</i>	•	•	•
<i>National Origin</i>	•	•	•
<i>Physical Disability</i>	•	•	•
<i>Race</i>	•	•	•
<i>Religious Creed</i>	•	•	•
<i>Sex</i>	•	•	•
<i>Sexual Orientation</i>	•	•	•
<i>Criminal Record*</i>	•		
<i>Mental Disorder</i>	•		
<i>Familial Status</i>		•	
<i>Lawful Source of Income</i>		•	
<i>Mental Disability</i>		•	
<i>Use of Guide Dog</i>		•	
<i>*Only for state employment and licensing</i>			
<i>Source: CHRO</i>			

Rehabilitation Act of 1973 – The act protects handicapped individuals against employment discrimination by federal departments and agencies and federal contractors and subcontractors.

Americans with Disabilities Act (ADA) of 1990 - The act prohibits discrimination against qualified individuals with disabilities with regard to job application, hiring, discharge, promotion, training, wages, or other terms, privileges, or conditions of employment. The law applies to private sector employers having 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. ADA also covers government employees.

A “qualified individual” is defined as one who can perform the essential functions of the job, with or without any accommodation by the employer. However, employers are required to make any reasonable accommodation for an employee’s disability that does not inflict undue hardship on the business operation. Under ADA, alcoholics and drug addicts are not qualified as disabled.

State law. Connecticut employment discrimination law is similar, but not identical, to federal provisions, and is enforced administratively by CHRO. In general, state law provides broader protection. Connecticut prohibits employment discrimination, except in the case of a bona fide occupational qualification or need, based on race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation, learning disability or physical disability (C.G.S. § 46a-60). Similar to the federal statute, this applies to public and private employers as well as employment agencies and labor organizations. However, state law is broader than federal law in that it applies to employers with three or more employees. Connecticut’s age discrimination law is also broader than federal law because it is not limited to people 40 years of age or older. Furthermore, state law extends protection on the basis of sexual orientation (C.G.S. § 46a-81c).

Connecticut also prohibits employers from discriminating in the amount of compensation paid to employees solely on the basis of sex (C.G.S. § 31-75). The federal Equal Pay Act coverage appears slightly broader in that it covers employers with two or more employees while Connecticut law covers those with three or more. In addition, Connecticut law prohibits public employers from discriminating against state job or licensure applicants solely because of a prior criminal conviction. State law is also more explicit than federal statutes with respect to discrimination against pregnant employees and sexual harassment.

Connecticut considers an employer engaged in a discriminatory practice if it terminates a woman’s employment because of pregnancy or refuses to grant her a reasonable leave of absence for maternity. Employers must also assure pregnant women a reasonable disability leave and the full maintenance of her employee benefit rights. The woman’s right to her job is protected except in case of a private employer whose circumstances have changed in her absence, making reinstatement unreasonable or impossible.

State law also addresses sexual harassment directly in statute. It is an unlawful discriminatory practice for an employer to harass any employee or person seeking employment

on the basis of sex. The statutes define “sexual harassment” as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when: 1) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting him or her; or 3) the conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Finally, it is illegal in Connecticut for an employer to request or require employees or potential employees to provide genetic information or other information related to the individual’s child bearing age or plans, pregnancy, reproductive system, use of birth control methods, or family responsibilities.

HOUSING

Federal law. Discrimination in the sale or rental of housing on the basis of race, color, national origin, religion, sex, disability, or family status is illegal. Federal housing law is enforced by the U.S. Department of Housing and Urban Development (HUD) by means of investigation, conciliation, and administrative hearing. Complainants may file a private suit in federal court at any time. As with employment, HUD can defer case enforcement to designated state agencies, like CHRO. The major federal housing discrimination law is the *Civil Rights Act of 1968, Title VIII and IX (as amended by the Fair Housing Amendments Act of 1988)*. The act prohibits discrimination in the sale or rental of housing on account of race, color, religion, sex, national origin, handicap, or familial status (having children). The law exempts: 1) single family houses which are sold or rented without brokerage services or advertising, provided the sales or rentals are bona fide private transactions and not part of larger businesses; and 2) owner-occupied houses with up to four resident families. Retirement communities are exempt from the prohibition against selling or renting to families with children.

Landlords are required to allow tenants with disabilities to make reasonable alterations to render housing accessible (at their own expense). Landlords are also required to make reasonable adjustments to rules or services for such tenants. The law further requires any new multifamily housing to be designed to accommodate persons with disabilities.

State law. Connecticut prohibits discrimination in housing based on race, color, national origin, ancestry, creed, sex, familial status, disability, marital status, age, lawful source of income, and sexual orientation (C.G.S. §§ 46a-64c, 46a-81e). CHRO administratively enforces violations of these laws. One significant distinction between federal and state statutes is that federal laws do not cover marital status, age, sexual orientation, or lawful source of income. Otherwise, state law is substantially equivalent to the federal provisions with respect to prohibited practices. Prohibited activities covered by the law include:

- refusing to rent or sell housing;
- falsely denying housing is available for inspection, sale, or rental;
- steering individuals only to certain neighborhoods;

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- setting different terms, conditions, or privileges for sale or rental of a dwelling;
 - providing different housing services or facilities; and
 - persuading owners to sell or rent by telling them that certain groups are moving into a neighborhood.

State discriminatory practices also include refusing to allow disabled individuals to make reasonable modifications at their own expense to accommodate their disability (C.G.S. § 46a-64c). Connecticut provides exemptions to these laws to owner-occupied buildings with up to four units. Exceptions are also made in housing designed for and occupied by older persons.

CREDIT

Federal law. Federal laws prohibit discrimination in providing credit or credit-related services. These laws are administered by various regulatory agencies under the direction of the Federal Reserve Board. Complainants may also file private civil suits in federal court. As mentioned previously, the federal housing provisions cover discrimination in financial or credit transactions related to housing.

In addition, the *Equal Credit Opportunity Act of 1974* forbids discrimination in the granting of credit on account of sex, marital status, race, color, religion, national origin, age, or receipt of public assistance benefits. This law applies to institutions granting consumer, business, or commercial loans. In credit transactions related to housing, individuals are also protected from discrimination because of family status or disability.

State law. Under Connecticut law, it is illegal for a creditor to discriminate against any person eighteen years of age or older on the basis of sex, age, race, color, religious creed, national origin, ancestry, marital status, mental retardation, sexual orientation, learning disability, blindness, or physical disability (C.G.S. §§ 46a-66, 46a-81f). Enforcement of these laws is done by CHRO in cooperation with the state Department of Banking.

PUBLIC ACCOMMODATIONS AND FACILITIES

Federal law. Federal law prohibits privately owned facilities that offer food, lodging, entertainment, or other services to the public from discriminating on the basis of race, color, religion, or national origin. The federal statutes related to nondiscrimination in public accommodations and facilities include:

Civil Rights Act of 1964, Title II – The act forbids discrimination on account of race, color, religion, or national origin in privately owned places of accommodation offered to the public, such as hotels, restaurants, and theaters. Victims of such discrimination may submit a complaint with the Civil Rights Division of the U.S. Department of Justice or file a civil action in federal court. However, if there is a state law prohibiting such discrimination state remedies must be exhausted before bringing suit in federal court.

Civil Rights Act of 1964, Title III – The act authorizes the U.S. Attorney General to file suit in federal court to prevent discrimination against any individual who has been denied equal use of any public facility owned, operated or managed by a state or local government on account of race, color, religion or national origin.

Americans with Disabilities Act, Titles II and III – The act prohibits discrimination on the basis of disability in public services, public accommodation, and services operated by private companies. The act defines disability as “a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such impairment.”

State law. Connecticut law also addresses discrimination in places of public accommodation, resort, or amusement defined as any establishment that caters or offers its services, facilities, or goods to the general public. C.G.S. § 46a-64 makes it unlawful to discriminate on the basis of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, mental retardation, or mental or physical disability. These laws are administratively enforced by CHRO. In addition, public accommodation discrimination on the basis of sexual orientation is covered by C.G.S. § 46a-81d. Among the prohibited practices are to:

- deny full and equal access to all covered facilities;
- to segregate or separate because of any of the bases; and
- to restrict or limit breast-feeding of child.

Exemptions are made for the rental of sleeping accommodations for the exclusive use of persons of the same sex and separate bathrooms or lockers rooms based on sex. The law also allows age exceptions for minors or special discounts for persons 60 years of age or older. Nursing homes owned, operated, and affiliated with a religious organization are allowed to discriminate on the basis of creed. Further, denial of accommodations or services on account of insufficient income does not constitute discrimination on the basis of lawful source of income.

In addition, places of public accommodations are required to post notice, in a conspicuous place, that guide dogs may enter such premises. The statute sets a fine of not more than \$100 or less than \$25 for public accommodation violations; imprisonment for not more than 30 days is also possible.

Enforcement Structure

The overlap of state and federal law allows individuals alleging discrimination to seek recourse through either state or federally established administrative or judicial procedures. Individuals may sue in court for discrimination claims generally if administrative remedies have been exhausted.

An administrative charge of discrimination is a prerequisite for a lawsuit under: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Title I of

the Americans with Disabilities Act of 1990; and the Rehabilitation Act of 1973. Under these laws, a complainant must first exhaust administrative procedures before pursuing court action. Otherwise, the court has discretion as to whether an aggrieved party must seek administrative adjudication before filing a lawsuit.

Federal Role in Enforcement

On the federal level, there are several government agencies that handle discrimination issues. Among them are: the U.S. Equal Employment Opportunity Commission (EEOC); the Department of Justice (DOJ); the Department of Labor (DOL); and the Department of Housing and Urban Development (HUD).

The EEOC is the lead federal agency responsible for enforcing equal employment opportunity laws and regulations. After EEOC has processed a case and failed in conciliation efforts, the Department of Justice may file suit in federal district court against employers charged with discrimination under Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act (ADA). The Department of Labor's Office of Federal Contract Compliance Programs enforces laws against discrimination by federal government contractors and subcontractors. Discrimination issues relating to housing are primarily overseen by the U.S. Department of Housing and Urban Development.

Equal Employment Opportunity Commission (EEOC). Originally created by Congress in 1964 as part of the Civil Rights Act, EEOC enforces key federal statutes prohibiting discrimination in the workplace through investigation, conciliation, litigation, coordination, education, and technical assistance. The agency's jurisdiction covers all government employers, private employers, employment agencies, and labor unions. The EEOC is also responsible for the federal sector employment discrimination program and provides funding and support to state and local fair employment practices agencies known as FEPAs. FEPAs, such as Connecticut's CHRO, enter into workshare agreements to assist EEOC with its enforcement responsibilities.

EEOC is composed of five commissioners and a general counsel appointed by the President and confirmed by the Senate. The five-member commission makes equal employment opportunity policy and approves most litigation. The general counsel is responsible for conducting EEOC enforcement litigation. In federal fiscal year 1998, EEOC's appropriated budget was \$242 million and the agency had 2,544 full-time employees. The EEOC carries out its work through its Washington headquarters and in 50 field offices throughout the United States.

EEOC process. Individuals alleging employment discrimination may begin the EEOC process by filing administrative charges. Individual commissioners may also initiate discrimination charges. If EEOC determines through investigation that there is "reasonable cause" to believe discrimination has occurred, it must seek to conciliate the charge to reach a voluntary resolution between the charging party and the respondent. If conciliation does not occur, EEOC may bring suit in federal court. Whenever EEOC concludes its processing of a case, or earlier upon the request of a charging party, it issues a "notice of right to sue", which enables the charging party to bring an individual action in court.

To manage the approximately 80,000 charges filed annually, EEOC has developed a system of categorization. Charges are prioritized into three categories for the purposes of investigation and resource allocation. "Category A" charges are designated high priority and are assigned principal investigative and settlement efforts. "Category B" charges are believed to have some merit but more investigation is needed before a decision is made on handling. "Category C" charges include non-jurisdictional or unsupported charges that are immediately closed.

Settlements are encouraged at all stages of the process. In federal fiscal year 1998, EEOC obtained \$169.2 million in monetary benefits for charging parties through settlement and conciliation. EEOC also recovered close to \$90 million through litigation.

In addition, EEOC has initiated a mediation-based alternative dispute resolution (ADR) program. The program is voluntary, includes confidential deliberation by all parties, and uses neutral mediators.

State and local program. The EEOC contracts with approximately 90 fair employment practices agencies (FEPAs) throughout the country to help process discrimination claims. Through the use of workshare agreements, FEPAs oversee charges raising claims under both state and local laws prohibiting employment discrimination as well as the federal laws enforced by EEOC. The Connecticut Commission on Human Rights and Opportunities is the EEOC-designated FEPA for the state.

U.S. Department of Housing and Urban Development (HUD). Established in 1965, the Office of Fair Housing and Equal Opportunity within HUD exercises a broad range of authority in matters related to fair housing. The majority of the agency's civil rights responsibilities lies in its authority to enforce Title VIII of the Civil Rights Act of 1968. The agency's enforcement responsibilities dramatically expanded with the passage of the Fair Housing Amendments Act of 1988, which increased the coverage of Title VIII.

HUD process. An individual alleging housing discrimination may file a complaint at any one of HUD's 10 regional offices. Upon receipt of the complaint, HUD will notify the alleged violator of the complaint and permit the violator to submit an answer. HUD will then investigate the complaint and determine whether there is reasonable cause to believe a statutory violation has occurred. An administrative hearing is held if reasonable cause is found.

At the hearing, each party's legal counsel presents its case before an administrative law judge. HUD will attempt to conciliate all complaints. Judicial action may be taken if conciliation efforts fail or are breached. Parties may file suit even after filing a complaint provided they have not entered a conciliation agreement and an administrative law judge has not started a hearing.

Multiple agency involvement. When state law substantially parallels federal anti-discrimination laws, federal law requires complaints to be deferred from the respective federal authorities, EEOC and HUD, to the state agency for processing. The details of this deferral process are specified in federal regulations and in worksharing agreements between CHRO and these federal agencies.

The workshare agreement stipulates which agency retains the charge. If a charge is filed with CHRO and is also covered by federal law, it is considered to be "dual filed." The charge usually will be retained by CHRO for handling. If the charge is *initially* filed with the federal agency and is also covered by state law, the federal agency will "dual file" the charge but may retain it for handling. In addition, EEOC will usually retain charges: 1) alleging a violation of the Equal Pay Act; 2) filed against the FEPA; 3) alleging retaliation for previously filing a charge with EEOC; and 4) referring to federally funded or administered agencies.

Based on its contracts with EEOC and HUD, CHRO must submit a randomly selected portion of its cases for federal review and approval. During these reviews, the federal agencies determine whether CHRO conducted a proper investigation and drew appropriate conclusions regarding the evidence. If EEOC or HUD agrees with the action taken by the agency, it also closes the case. If either federal agency finds a flaw in either in the work or in the decision rendered, it may send the case back to the CHRO for further investigation.

Enforcement of Civil Rights in Connecticut

The first Connecticut agency established to investigate the possibility of affording equal opportunity was the Inter-racial Commission created in 1943. The commission comprised ten members appointed by the governor. Its mission was to compile facts concerning discrimination in employment. By 1947, employment discrimination based on race, color, religion, national origin, or ancestry was outlawed with the adoption of the Fair Employment Practices Act. The act was designed to provide legal protection in all phases of employment and made the commission an enforcement agency.

The commission name was changed to the Commission on Civil Rights in 1951 and in 1967 it was again renamed to the Connecticut Commission on Human Rights and Opportunities. Over time several laws were passed adding more “protected classes”, categories of people sharing certain characteristics that public policy determines may not be the basis of discrimination. (A more detailed chronology of the agency’s legislative history can be found in Appendix B.)

CHRO Roles and Responsibilities

The Commission on Human Rights and Opportunities (CHRO) is the state’s lead agency established to enforce discrimination laws. It is responsible for monitoring and enforcing the state’s equal opportunity, affirmative action, and contract compliance laws. The agency’s stated mission is “to eliminate discrimination through civil and human rights law enforcement and to establish equal opportunity and justice for all within the state through advocacy and education.”

To accomplish this, the commission has several statutorily established powers and duties. Among its statutory responsibilities the commission:

- receives, initiates, investigates and mediates discrimination complaints;
- by itself, or its hearing officers or human rights referees, holds hearings, subpoenas witnesses and compels attendance, administers oaths, takes testimony of any person under oath, and requires the production for examination of any books and papers relating to any matter under investigation or in question;
- receives, reviews, and monitors the affirmative action plans

of state agencies and certain public works contractors;

- investigates the possibilities of affording equal opportunity of profitable employment to all persons, with particular reference to job training and placement;
- utilizes voluntary and uncompensated services of private individuals, agencies, and organizations to study the problems of discrimination in all or specific fields of human relationships and to foster through education and community efforts or otherwise good will among the groups and elements of the state's population;
- establishes and maintains such offices and employs such commission counsel, investigators, and employees as the commission may deem necessary; and
- reports at least annually to the governor recommendations for removal of injustices that exist.

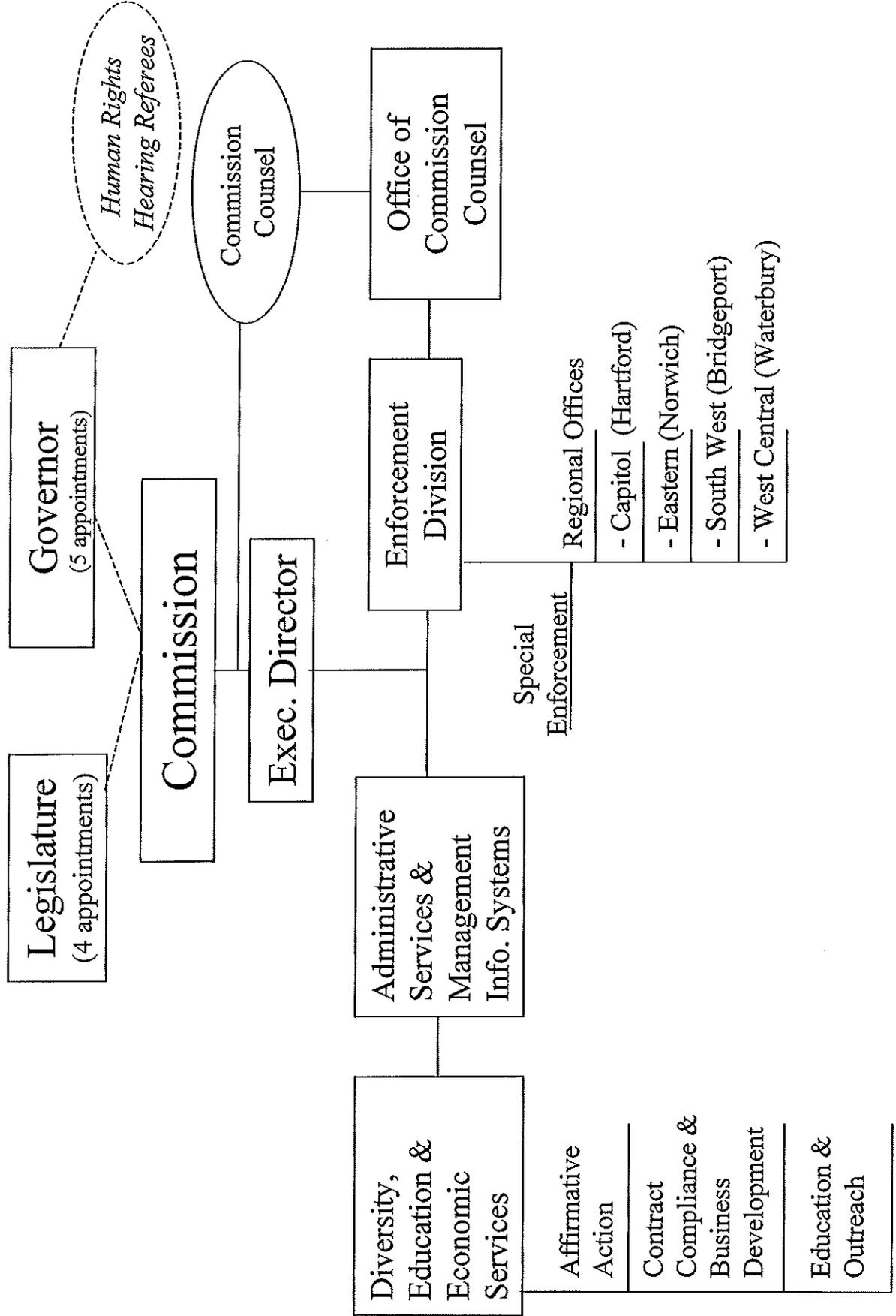
CHRO also has workshare agreements with the federal Equal Employment Opportunities Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) to process discrimination complaints brought under both state and federal law.

Organizational Structure and Staff Resources

As shown in Figure II-1, CHRO is governed by a nine-member policy making body. Five commission members are appointed by the governor and four by the legislature. The commission is served by commission counsel and appoints the agency's executive director to manage day-to-day operations. The agency's central administrative headquarters consists of four divisions including: Diversity, Education, and Economic Services; Enforcement/Field Operations; Administrative Services; and Legal Services. The agency also maintains four regional offices in Hartford, Waterbury, Bridgeport, and Norwich, which make up the bulk of the enforcement division.

Commission. The commission is composed of nine volunteers appointed by the governor and legislature. Of the five gubernatorial appointments, three serve five-year terms and two serve three-year terms. The president pro tempore of the Senate, the minority leader of the Senate, the speaker of the House of Representatives, and the minority leader of the House of Representatives each appoints one commissioner who serves for a term of three years. The commission generally meets on a monthly basis. The primary focus of commission meetings is to give final approval to state affirmative action plans and discuss any policy or administrative matters brought by the executive staff or commission counsel.

Fig.II-1. Commission on Human Rights and Opportunities



The commissioners may serve on various CHRO standing committees through either appointment or by volunteering. The standing committees are: Administration and Personnel; Office of Diversity Programs; Office of Economic Services; Legislation; Office of Education Programs; and Systemic Enforcement. However, these committees are now inactive. A list of current commissioners is provided in Appendix C.

Office of Commission Counsel. The Office of Commission Counsel provides guidance and assistance to the commission, director, and executive staff in legal matters and the legal implications of policy and management decisions. Commission counsel is also authorized by law to represent the commission at public hearings and in state and federal court. The office also drafts legislation, regulations, and other legal documents. In addition, the office provides legal support to the enforcement field operations division.

Division of Diversity, Education, and Economic Services. The Division of Diversity, Education, and Economic Services manages three primary agency functions: reviewing state agency affirmation action plans; monitoring state contract compliance; and promoting education and outreach activities. It provides training and technical assistance to state agencies regarding their affirmative action plans as well as evaluates their implementation.

Staff of this division also examine employment practices and procedures of state contractors and monitor state agencies' efforts to solicit the participation of minority business enterprises in state contracts. Another division function is to educate the public regarding human rights issues and organize community outreach activities.

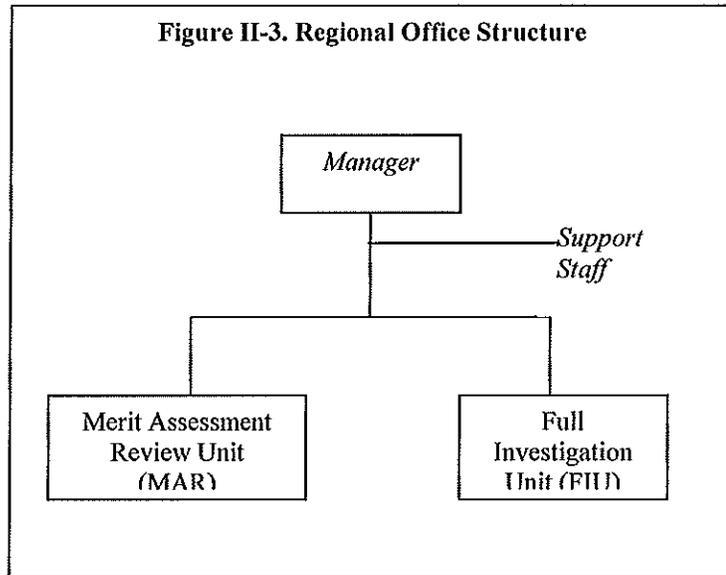
Administrative Services. The Administrative Services Division is composed of the Business Office and Management Information System. The division's primary duty is to prepare and administer the agency's budget. It is also responsible for the collection, storage, and retrieval of data. It produces regular statistical reports to aid in the internal management of the agency, and provides the commission and executive director with other regular and special reports whenever necessary.

Enforcement/Field Operations. The Enforcement/Field Operations division is responsible for receiving, investigating, and mediating complaints of alleged discrimination filed with the commission. Throughout most of this study, the overall operation of the division was overseen by the commission's deputy director of enforcement. As of December 1999, after the deputy director position was eliminated, a Chief of Field Operations is responsible. The division includes four regional offices, in Hartford, Bridgeport, Waterbury, and Norwich. Figure II-2 provides a map of the towns in each CHRO region.

The regional offices process all discrimination complaints (except housing), from intake through investigative disposition. (The full CHRO complaint process is discussed further in Chapter IV). Each regional office is organized into two units: a Merit Assessment Review Unit (MAR) and a Full Investigation Unit (FIU) as depicted in Figure II-3. The MAR unit typically consists of three CHRO investigators who conduct intake interviews, assist in complaint drafting, and initially assess the merits of each filed complaint. If the complaint is retained after MAR, it is sent to FIU where it is assigned for further action. Each regional office has five FIU staff who conduct investigations. This staff includes persons working under two different job titles, one

requiring the employees to be lawyers, the other not. The day-to-day operations of each regional office is supervised by a regional manager who reports directly to the Chief of Field Operations (formerly the deputy director of enforcement).

The Enforcement Division also maintains a Special Enforcement Unit in the central office. This unit is charged with investigating housing complaints and evaluating reconsiderations of initial determinations made by the regional offices.



Human Rights Referees. Another entity associated with CHRO but not part of its administrative structure is the Public Hearing Office. This office houses seven human rights referees established by P.A. 98-245. The referees must be attorneys and are appointed by the governor for staggered two and three year terms. They serve full time and conduct administrative hearings of all complaints determined to have reasonable cause. Until 1998, this work was done by part-time hearing officers. The CHRO executive director designates one human rights referee to serve as the chief human rights referee on an annual basis. The chief supervises and assigns cases to the other referees.

Budget Resources

The agency’s primary source of funding is the state General Fund. Figure II-4 illustrates CHRO’s total General Fund appropriations and expenditures for the last 10 fiscal years. As the graph illustrates, CHRO appropriations and expenditures have gradually increased since FY90. The agency’s FY99 operating budget was approximately \$6 million, up from about \$4 million in FY90, an increase of 46 percent. The majority of the commission’s expenditures consists of personal services.

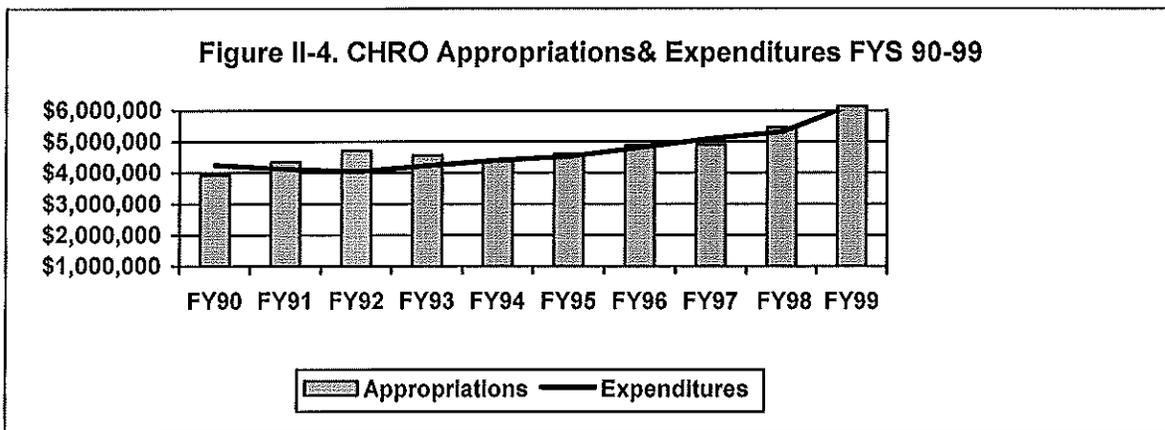
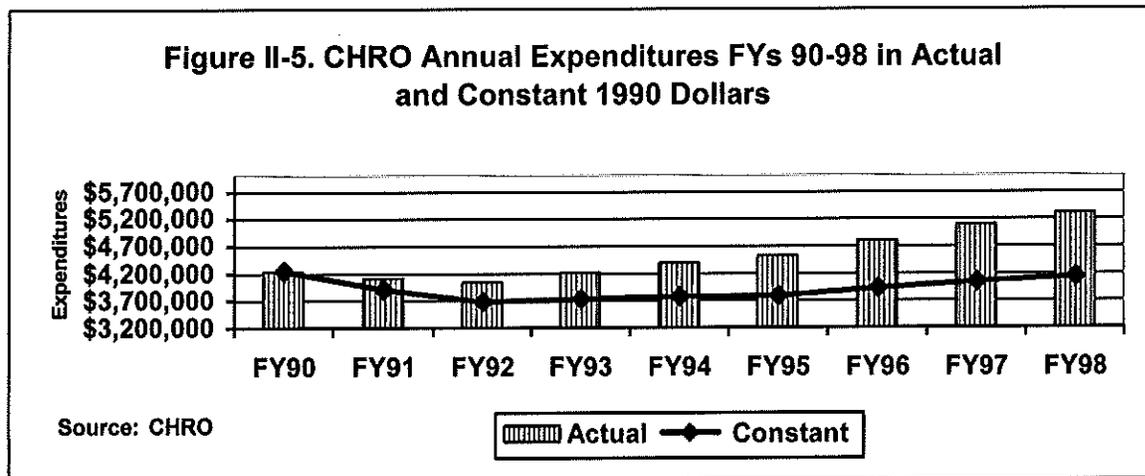


Figure II-5 tracks the commission's operating budget over the past nine fiscal years in both actual and constant 1990 dollars. As shown in the figure, expenditures in actual terms have gradually increased to \$5,313,014 in FY 98 from \$4,243,942 in FY 90, an increase of about 25 percent. However, an analysis of the commission's expenditures in constant 1990 dollars suggests that the agency's expenditures have not increased in spending power. The graph shows the agency's spending power actually declined when adjusted for inflation and remains below its 1990 level.

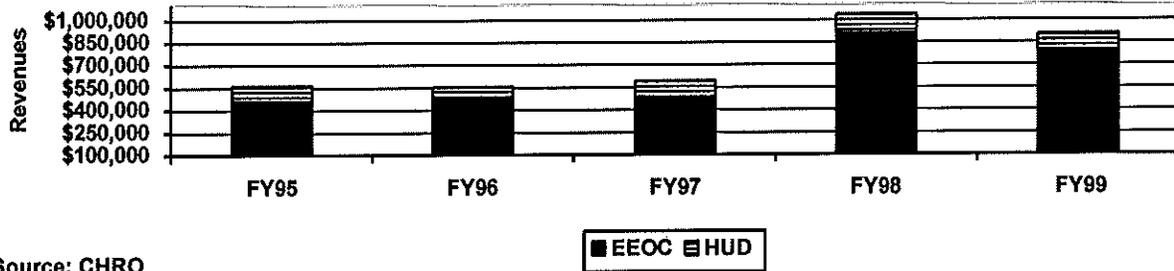


Federal contributions. CHRO also receives federal contributions from EEOC and HUD. These contributions are outlined under workshare agreements with the federal agencies. The amount of federal funds received each year depends on the number of employment and housing discrimination complaints CHRO processes. In its contract with EEOC, CHRO and EEOC determine the number of employment complaints the federal government will pay the state for processing. Currently, EEOC pays the state a fixed fee of \$500 per complaint resolved. The total amount available for reimbursement to CHRO is capped by the contract. The contract also includes a small amount of funding for line items such as training. In FY 99, the workshare agreement stipulated CHRO would process and resolve 1,547 charges for a total of \$773,500.

CHRO has a similar workshare agreement with HUD, which pays CHRO a fixed fee of \$1,700 per case resolved. The FY99 HUD contract was for 74 charges for a total of \$125,800. All federal revenues from both employment and housing cases are deposited directly into the state's General Fund. Figure II-6 charts the federal revenues generated by CHRO federal charge processing for the last five state fiscal years.

As the graph shows, federal revenues increased significantly in the last two fiscal years. Until FY 98, federal revenues for case processing averaged about \$550,000. In FY98, federal revenues increased 75 percent from the previous year. CHRO reports this significant increase is due to a change in the contracted number of EEOC cases to be resolved which almost doubled from 938 charges in FY 97 to 1,810 in FY 98. The number of EEOC charges was decreased to 1,547 in the FY 99 contract. There has been little change in the number of HUD contracted number, which averages about 75 a year.

Figure II-6. Federal Revenues for Complaint Handling FYs 95-99



Source: CHRO

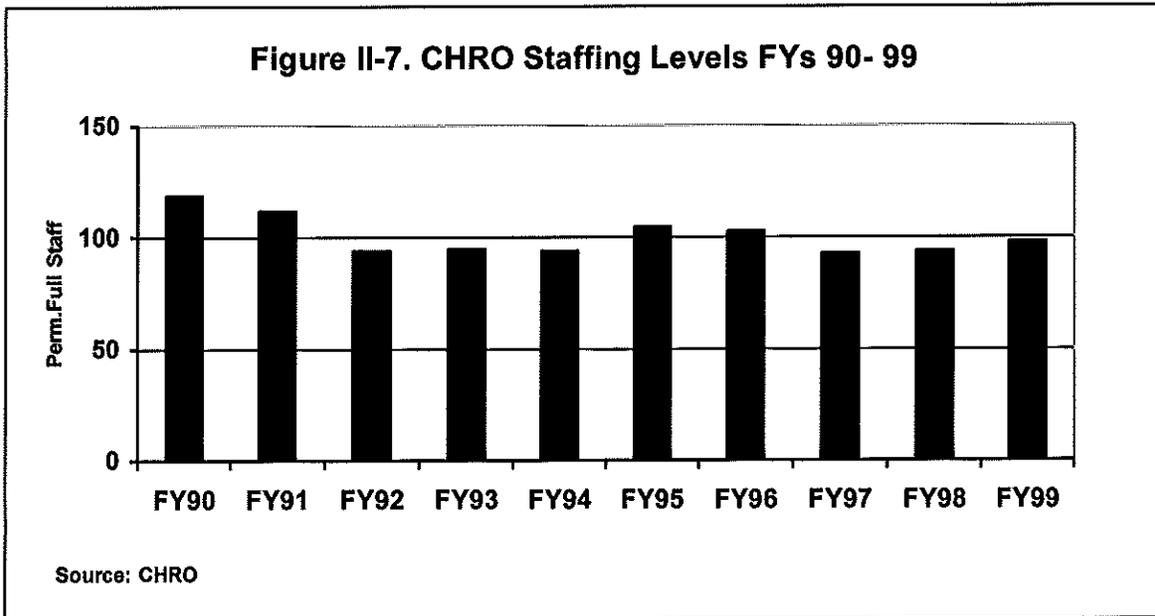
Staff Resources

As of June 30, 1999, the commission employed 98 full-time staff. The distribution of staff by division is presented in Table II-1. As the table shows, the enforcement division has the largest percentage of employees consisting of 55 percent of the agency's total workforce.

Table II-1. Distribution of CHRO Staff by Division (as of June 30, 1999).

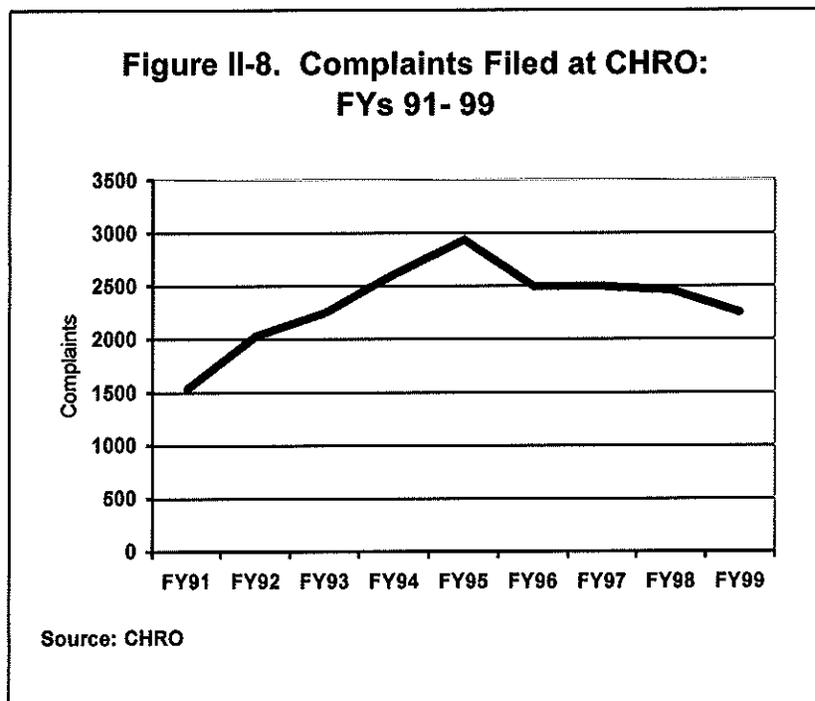
Agency Division	Number of Staff	% of Total
Office of Executive Director	2	2%
Diversity, Education and Economic Services	13	13%
Administrative Services	9	9%
Commission Counsel	19	19%
Enforcement/Field Operations		
- <i>Central Office</i>	5	55%
- <i>Special Enforcement Unit</i>	3	
- <i>Capital Regional Office</i>	11	
- <i>Eastern Regional Office</i>	12	
- <i>South West Regional Office</i>	13	
- <i>West Central Regional Office</i>	11	
TOTAL STAFF AGENCYWIDE	98	

Staffing trends. Figure II-7 presents CHRO staffing since FY 90. The figure shows staffing levels have fluctuated slightly over time. In FY 90, CHRO had 119 permanent full-time employees. By FY 94, the staffing level decreased to 96 and currently stands at 98. A closer examination of staff resources over this time period indicates the loss of staff was mostly clerical support and data processing. Enforcement staff has remained about the same.



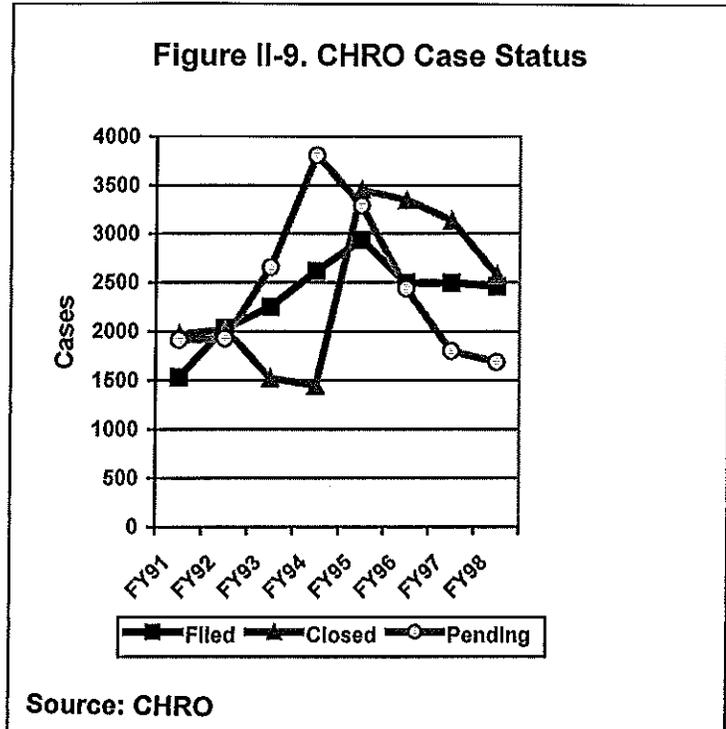
Case Activities

To get an idea of the volume of business CHRO handles, Figure II-8 shows how many complaints were filed at CHRO each year over the last nine state fiscal years. From 1991 to 1995, the number of yearly complaints increased from 1533 to 2932, a 91 percent rise. The biggest yearly jump was between 1991 and 1992, when the caseload increased by a third. In the subsequent three years during the overall rise, the yearly increases were 11, 16, and 12 percent respectively.

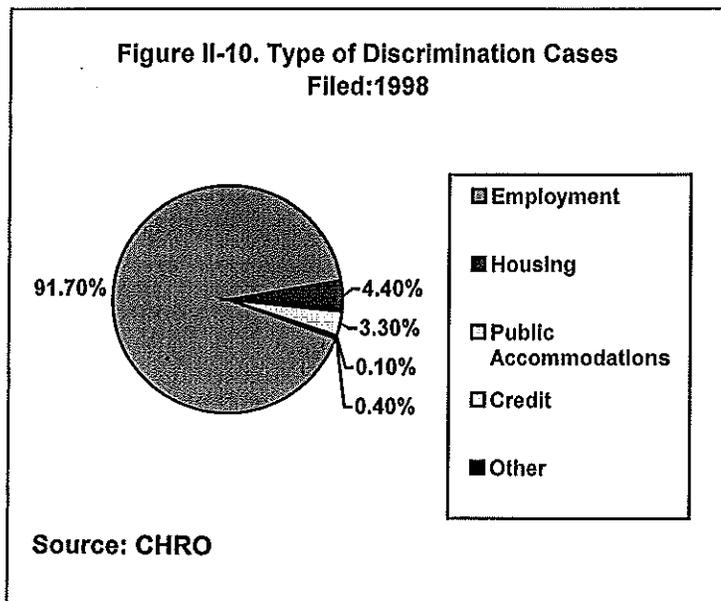


As the figure shows, the number of incoming complaints dropped in 1996 to 2493, a 15 percent drop. Complaints stayed at that same level through 1998 and fell by eight percent in 1999. As previously indicated, enforcement staff levels stayed the same through the increase in caseload.

As mentioned earlier, CHRO has experienced problems with case backlogs. Along with the trend in case filings, Figure II-9 shows the number of cases closed per year along with the cases that were pending action every year. As the figure indicates, from 1992 until 1995, the case closure numbers clearly were not keeping pace with the increasing caseload coming into the agency. As there was already a pending caseload, this gap increased that amount and, as cases aged, added to a case backlog problem. The significant increase in case closures between 1994 and 1995 may be attributed to the introduction of the MAR process discussed earlier, which is an early merit review allowing dismissals of cases deemed meritless under statutory standards.



Types of cases. Most complaints filed at CHRO pertain to employment. Figure II-10 shows the breakdown by type for 1998, a typical year. Employment cases accounted for about 92 percent of all the cases filed, with housing second at four percent and public accommodations cases third at three percent. The top five factors or bases cited in complaint cases for 1998 were: 1) Race (19.7%); 2) Sex (17.7%); 3) Color (13.9%); 4) Age (12.8%); and 5) Physical disability (12.1%). A caveat: More than one basis can be involved in any given case.



Selected Events Affecting Enforcement

While CHRO's origins date back to 1943, the last 11 years have seen significant attention to and change within the agency's discrimination complaint enforcement operations. Also, commission leadership at both the commission level and the executive director position experienced significant shifts over the last two years, with several new commissioners and a new permanent executive director recently appointed. It is important to place this 1999 review of CHRO in the context of these changes that have taken place over time.

In July 1988, Governor William A. O'Neill appointed an independent task force to review the management, operations and standards of CHRO. This action was taken in response to public criticism of the commission. Particular attention was given to the agency's management and operations, legal standards for assessing discrimination, and timeliness of investigations. In brief, the task force identified problems of timeliness and fairness in the complaint processing system as well as deficiencies in organizational and management structure. A summary of the task force's findings and recommendations are provided in Figure III-1.

Public Act 89-332 was passed to address the task force's findings and made several significant changes to CHRO's procedures for handling discrimination cases. In particular, the act imposed time frames for conducting investigations, completing conciliation efforts, and scheduling a hearing once a reasonable cause finding had been made. Investigators were required to make written findings of reasonable cause or no reasonable cause, including the factual findings on which it is based, within nine months of the date the complaint was filed. One three-month extension was permissible for good cause. If the complainant requested a reconsideration of a finding of no reasonable cause, it was to be filed within 15 days after the finding was issued and the agency had to reconsider it within 90 days of issuance.

The act also codified the reasonable cause definition similar to that established by the courts. "Reasonable cause" is defined as a bona fide belief that the material issues of fact are such that a person of ordinary caution, prudence, and judgement could believe the facts alleged in the complaint.

P.A. 89-332 also authorized CHRO to conduct fact-finding conferences during the investigatory stage to promote settlements. Each party and his or her representative were given the right to inspect and copy all documents, statements of witnesses, and other evidence unless disclosure was otherwise prohibited by federal or state law. In addition, the complainant was given the

right to be represented by his or her own counsel at any hearing.

Because of a reported case backlog, the legislature also mandated in this act that all discrimination complaints pending on January 1, 1990, had to be resolved by July 1, 1991. In 1990, the legislature granted an extension of one year to July 1, 1992.

Figure III-I. Summary of 1988 Task Force Findings and Recommendations
(recommendations are italicized)

The Task Force found:

Repetitive steps in the process impede timely processing of discrimination complaints.

- *Complaint processing procedure should be streamlined, and in cases where lengthy delays exist, a private right of action made available.*

Refusal to provide access to documents contained in the CHRO investigative files to the involved parties offends fundamental principles of fairness.

- *Statutory access to investigative files should be provided.*

Prioritizing of discrimination complaints according to basis is not justified.

- *CHRO should adopt a formal policy to treat all discrimination cases equally.*

The CHRO "reasonable cause" standard is unclearly defined.

- *Define in statute and expand the pool of hearing officers.*

Numerical performance standard applied to investigators negatively impacts reasonable cause determinations.

- *Performance standard should be redesigned for differences in quality and case difficulty.*

The standard for administrative complaint dismissal following a reasonable cause finding is ambiguous.

- *Statutory clarification of the right to dismiss administratively and assignment of someone other than the investigator to conciliation efforts.*

The advocacy role of CHRO throughout the discrimination complaint process is unclear.

- *Complainants should be entitled to their own legal representation at a CHRO hearing and the attorney's fees should be available to prevailing complainants.*

A morale problem exists within the agency.

- *An independent study of staff morale should be undertaken.*

CHRO's scope and mission are too limited, and do not address the community education component mandated by statute.

- *CHRO commissioners need to develop a better understanding of their role and responsibilities.*

In 1991, another legislative amendment allowed employment discrimination complaints still pending with the commission after 210 days to be filed in court, if the complainant desired. If both parties agree, a complaint may be filed in court prior to the 210 days.

The legislature again addressed the CHRO complaint process in 1994. Public Act 94-238 authorized CHRO to dismiss some cases without full investigation under certain circumstances. This process became known as the Merit Assessment Review. Within 90 days of the filing of the complaint, the commission had to review: the complaint; the respondent's answer and response to CHRO's request for information, if any; and the complainant's comments about the answer and response, if any. If the commission determined the complaint did not state a claim for relief or was frivolous on its face, or there was no reasonable possibility that investigating it would result in a finding of reasonable cause, CHRO must dismiss the complaint. This new provision was intended to speed up case resolution.

In April 1996, the Connecticut Supreme Court issued a decision in *Angelsea Productions Inc. v. CHRO* 236 Conn. 681 (1996), which ruled that the statutory time limits set for the investigation of a complaint and for the holding of a public hearing after a finding of reasonable cause were mandatory. The court held that failure to meet those time frames meant CHRO lost jurisdiction over the affected cases and must dismiss them.

Concerned over the possible dismissal of hundreds of cases, the General Assembly again responded with legislation passed in Public Act 96-241. The act granted the commission jurisdiction over any pending discrimination complaint filed with it before January 1, 1996, even if it had failed to meet statutory time limits for handling them. Under the act, if CHRO did not issue a determination on these complaints by January 1, 1997, its executive director must immediately issue a release to sue.

The act also provided more time and flexibility in processing by permitting two additional three-month extensions. The final provision of the act required the Connecticut Law Revision Commission, with the assistance of an advisory committee, to study and recommend a revision of the CHRO complaint process to the General Assembly by January 15, 1997.

Pursuant to the act, the Law Revision Commission (with the advice of the advisory committee) developed a set of recommendations that again revised time frames to reflect the realities of the complaint process and to facilitate efficient case flow while taking into account the need to appropriately balance the interests of complainants and respondents. A summary of the Law Revision Commission study recommendations is provided in Figure III-2.

Finally, in 1998, legislation was passed adopting several of the Law Revision Commission's recommendations. Specifically, P.A. 98-245 required CHRO to annually report the number of cases where statutory time frames are not met and the reasons for it. The act also specified that CHRO maintains jurisdiction to resolve complaints even if it fails to meet deadlines for completing investigations and initiating administrative hearings. The law also required the agency's panel of part time hearing officers be replaced with seven full time human rights referees and expanded the right to file a discrimination lawsuit. Finally, CHRO may for good cause grant a 15-day extension beyond the 30-day period within which an answer must be filed to the complaint.

Figure III-2. Summary of the 1996 Law Revision Commission Recommendations

The recommendations of the Law Revision Commission are as follows:

- Extend the time within which notice must be served on a respondent after a complaint is filed.
- Allow CHRO to grant one 15-day extension within which an answer must be filed.
- Begin the 90-day period for the merit assessment review (MAR) from the date of the filing of a respondent's answer rather than from the filing of the complaint.
- Require reasonable cause findings be made within 190 days of the completion of the MAR, rather than within 12 months after the filing of the complaint.
- Specify a 50-day rather than a 60-day post-reasonable cause conciliation period.
- Require certification of complaints within ten days after failure of conciliation attempts.
- Require the pre-hearing conference be held within 45 days after certification, rather than within 90 days after the reasonable cause finding.
- Revise forms to more specifically elicit information and documentation relevant to the complaint under investigation.
- Reduce volume and complexity of paperwork and improve public education efforts.
- Revise the complaint process to reduce the need for parties to retain counsel.
- Develop a uniform policy to clarify the effect of a respondent's failure to respond to a request for information in a timely manner.
- Give an automatic right to sue in Superior Court for all complaints dismissed because of CHRO failure to make timely reasonable cause findings and give notice of that right.
- Require CHRO to annually document and explain the number of cases dismissed due to CHRO failure to act in a timely manner.
- Require an early dispute resolution session, after the filing of the respondent's answer, if requested by a party. The session should be conducted by a skilled arbitrator who is precluded from acting as investigator later in the case.
- Review the management structure and case management practices of CHRO no later than January 1, 1999 (by the Program Review and Investigations Committee).
- Grant complainants the right to request a release to sue in all CHRO cases still pending after 210 days.
- Where parties are in agreement, cases that have passed the MAR process should be afforded the right to request a release to sue.
- When a case is returned to an investigator after reconsideration, the investigator is given up to 90 additional days to conduct further investigation even if that period extends beyond the usual statutory deadline.

Discrimination Complaint Process

This chapter describes the current process for discrimination complaint handling. As described earlier, before 1989, the CHRO complaint process had few statutory deadlines. According to CHRO staff, cases filed would be assigned to investigators who would work on them on a first come, first serve basis. In response to concerns about significant delays in case resolution, over the last 10 years numerous changes have been made to the statutes, including: setting specific deadlines; expanding the right to sue; and establishing a initial merit assessment review soon after the filing of a complaint.

If a complaint proceeds through the entire investigation and public hearing process, it goes through three distinct phases. A complaint case can actually be resolved or closed at any time during the process, through voluntary settlements, dismissal after the initial merit assessment review, withdrawal, or CHRO administrative dismissal. The three phases and the possible outcomes are described in this chapter.

All discrimination complaints¹ start out in the four regional offices. Depending on what path the complaint takes, various other units within the agency can become involved also. The majority of complaints, however, are resolved at the regional office level.

Timeline example. Before detailing the process, it might be useful at the outset to put the complaint timelines in perspective. If a discrimination complaint was filed at CHRO on *September 15, 1999*, and was within CHRO's jurisdiction, the case would proceed as follows if the maximum allowable statutory timeframes were met and no conciliation agreement was reached:

- *By February 17, 2000*, five months after the complaint was filed, the initial merit assessment decision would be made. If the case was retained for investigation, rather than dismissed, the investigation phase would start.
- *By either August 25, 2000*, almost a year after the complaint was filed (the initial investigation completion deadline), or *February 21, 2001*, 17 months after the complaint was filed (the extended deadline), the investigator would issue a finding of reasonable cause or no reasonable cause that a violation of law occurred. If

¹ The process described in this section pertains to all different types of discrimination charges files at CHRO, except for housing cases. Housing complaints are handled differently, in a separate unit and under shorter deadlines.

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- the finding was reasonable cause, the public hearing phase would start (after 50 days of attempting conciliation.)
- *By June 6, 2001*, 21 months after the complaint was filed, the parties and the human rights referee presiding over the public hearing would meet for a pre-hearing conference.
 - There are no timeframes controlling the public hearing process, except that once the evidence-gathering portion is completed, the presiding officer must issue a decision with 90 days.

Complaint Processing - Phase One

Complaint intake and filing. Figure IV-1 sets out the main steps in the first phase of the process. To formally start the CHRO process, a complaint must be a written sworn statement that identifies the entity or person complained about and describes the alleged discriminatory act. The statement must be filed with CHRO within 6 months (180 days) of the alleged act. A person may first contact CHRO by phone, letter, or by actually going to a CHRO regional office. Sometimes, complainants through their attorneys will send in written sworn affidavits.

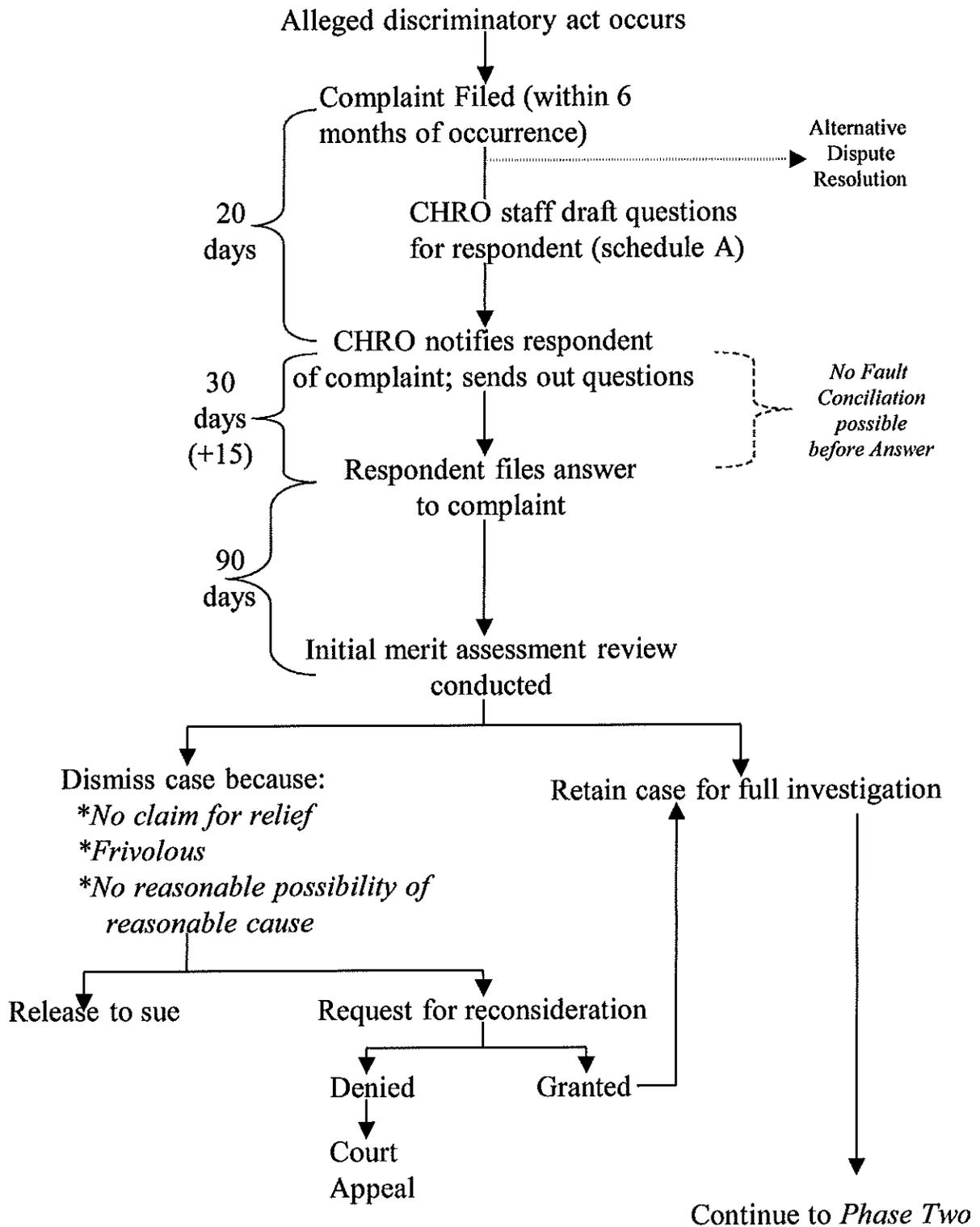
At intake, CHRO staff will go over certain questions with the complainant about: the timeliness of the complaint; the nature of the activity complained about; and, if pertinent, the size of the employer. These questions relate to whether CHRO has jurisdiction over the case. As a matter of policy, CHRO instructs its staff to advise a complainant he or she has the right to file a complaint regardless of what the intake person thinks about the case. In fact, there is a form a complainant signs showing he or she has been so advised.

Sometimes the written complaint will be produced by CHRO staff at the time of intake, and signed by the complainant. Sometimes, after a telephone interview or a face-to-face meeting, CHRO staff will prepare a complaint and mail it to the complainant for review and signature. Alternatively, the complainant can draft his or her own complaint after discussion with staff and mail or deliver it. CHRO policy dictates that complaints are to be filed in the region where the alleged discriminatory act occurred. If some conflict arises, the deputy director may waive the policy and direct the complaint to another region.

At the time of intake, the complainant must also sign a "Notice to Complainant of Duty to Cooperate." If at any time CHRO believes the complainant is not cooperating, for example, not providing names of witnesses or failing to attend a mandatory mediation session, the case can be dismissed after notice. Also at intake, the CHRO investigator will inform the complainant what type of remedies might be available if the allegation is ultimately proved, such as backpay. As will be discussed later, the available remedies under the CHRO process vary by type of discrimination alleged.

Respondent notification and information request. After the complaint is filed, it is again reviewed for legal sufficiency, to determine if the complaint falls under CHRO jurisdiction. If sufficient, CHRO staff will prepare informational questions for the person or business against whom the complaint is made (the respondent) to answer, which are sent along

Figure IV-1. Discrimination Complaint Process
Phase One



[Handwritten signature]

with the initial notice of the complaint to the respondent. The questions are referred to as “Schedule A” questions. In the past, these inquiries would come in the form of “pre-packaged” questions deemed applicable based on the nature of the complaint, which could require the employer to answer the same or similar questions more than once. Recently, CHRO has changed its approach and sends out more consolidated, tailored questions, requiring less repetitive information from respondents.

A general notice outlining the complainant’s and respondent’s rights and responsibilities is also sent in the initial CHRO mailings. Since 1998, state law requires that the respondent receive notice of the complaint within 20 days after it is filed (the previous deadline was 10 days).

Respondent answer. A respondent has 30 days after receiving the complaint and questions to “file an answer”. According to CHRO, the answer can be as basic as an admission or denial of the charge; failure to answer all Schedule A questions is not deemed a failure to answer. Since July 1, 1998, CHRO has had the authority to grant respondents a 15-day extension to the 30-day response period. If the respondent doesn’t submit his or her answer within the deadline, the CHRO investigator can request a default dismissal. The executive director approves default requests.

If CHRO finds at an early stage—either at intake or after the complaint is filed—that it does not have jurisdiction, staff will notify the respondent that a complaint has been filed, but will not require the respondent to file an answer. The case will then be dismissed based on a finding of no reasonable cause for lack of jurisdiction.

No fault conciliation. CHRO regulations set out a process called no fault conciliation at a very early stage of the process. This option is described in information sent out to both parties when the respondent is served with notice of the complaint. The respondent must initiate the process before the answer deadline, by making an offer to the complainant. If the complainant accepts the offer and CHRO deems it a fair offer, a written agreement must be entered into by the parties before the answer deadline. According to the regulations, the respondent makes no statement about fault. In practice, while not specified in regulation, virtually all the other conciliation agreements and settlements that occur at other stages in the process likewise specifically indicate the agreements carry no admission of wrongdoing.

Merit assessment review (MAR). Once the respondent’s answer has been received by CHRO, the “executive director or his designee” must review any non-housing case within 90 days² to determine if the case should be retained for further investigation or dismissed, based on criteria in statute. CHRO regional investigative staff assigned to the MAR unit actually does the review. Specifically, a case may be dismissed if:

- the complaint states no claim for relief;
- the complaint is frivolous on its face; or

² Until July 1, 1998, per P.A. 98-245, the 90 day MAR period began when the complaint was filed. As at least 40 days of that period could be taken with respondent notification and waiting for the respondent’s answer, the time for the merit assessment was considerably less until last year.

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- there is no reasonable possibility that reasonable cause will be found that a violation of law occurred.

The CHRO investigator must fill out a standard merit assessment form, which leads the investigator through the three criteria with a series of questions designed to analytically bring the investigator to conclusions about the case. At this point in a case, the documentation available to the investigator is the original complaint, the respondent's answer to the complaint, and any rebuttal of that answer by the complainant. The third criteria, no reasonable possibility, is by far the factor most often cited to dismiss a case.

Until last July, MAR staff were encouraged to attempt to mediate cases retained after the MAR process. When the deadline for investigations changed, the decision was made to get the cases to the full investigations unit investigators as quickly as possible.

Each regional manager reviews the completed merit assessment forms. Whether and to what extent they review case file documentation appears to vary by manager and his or her assessment of the MAR review staff's experience.

Reconsideration. If the complaint is dismissed after the MAR review, the complainant has two options if he or she does not accept CHRO's decision. He or she may file a request for reconsideration with CHRO within 15 days of its decision. This essentially means asking the agency to review its own work. The request along with the case file is sent to a unit in the CHRO Central Office called the Special Enforcement Unit (SEU), which is responsible for reviewing requests for reconsideration of non-housing cases.

Under the statute, SEU has 90 days after the decision date to make its determination. If SEU upholds the MAR decision, the only recourse left to the complainant is to appeal the administrative decision to court. If SEU agrees that the MAR decision should have been different because some error was made by the investigator, the case will automatically be retained for investigation.

Release to sue. Until July 1, 1998, a complainant's only recourse after a MAR dismissal was to request a reconsideration. Per P.A. 98-245, CHRO was given the authority to authorize a complainant whose case was dismissed after MAR, and who did NOT request a reconsideration, to file a complaint in court—giving the complainant a release of jurisdiction enabling the complainant to sue. The complainant must file any suit within 90 days of the release. The general subject of release to sue is addressed later in this chapter.

Alternative dispute resolution. Since 1994, the statutes have provided an alternative dispute resolution (ADR) process, which is available by agreement of both parties (e.g., binding arbitration or voluntary mediation). Under ADR, the parties go outside CHRO for assistance, but must first inform CHRO of the type and provider of ADR sought and get CHRO's approval to use the process. ADR use suspends normal CHRO case processing. To date, it has hardly been used.

Complaint Processing - Phase Two

Figure IV-2 displays the main steps in the second phase of the complaint process. Once a complaint has been merit-reviewed and retained, it is assigned to an investigator in the Full Investigations Unit. The stated purpose of this phase is threefold: 1) to find facts; 2) to promote the voluntary resolution of complaints; or 3) to determine if there is reasonable cause for believing that a discriminatory practice has been committed. Currently, the statutory deadline gives the investigator 190 days (a little over 6 months) from the MAR decision to make the reasonable cause determination, or otherwise resolve the case. With good cause, the executive director can extend that period for two three-month periods, for an overall available time of 370 days (just over a year) for the reasonable cause finding.

Since 1989, CHRO has had the authority to conduct factfinding conferences during investigations. The law now provides that for cases retained after MAR, the “executive director or designee is to determine the most appropriate method for processing the complaint.” The statutory possibilities are:

- mandatory mediation sessions;
- expedited or extended fact-finding conferences;
- complete investigations; or
- any combination of the above.

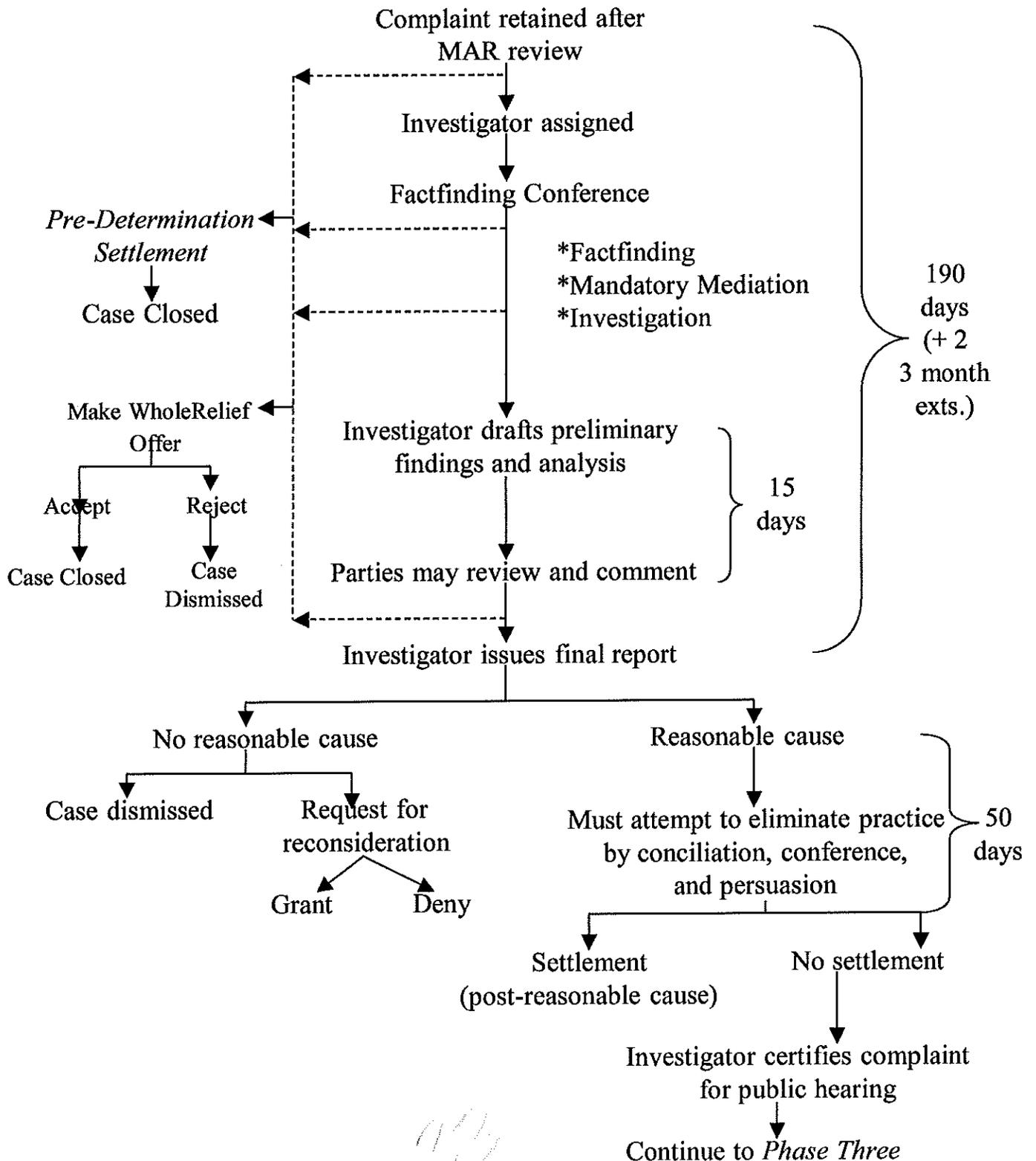
Legislative action in 1989 established the first deadlines for the CHRO process. In 1989, five years before the MAR process was created, CHRO had **nine months** from when the complaint was filed to complete the reasonable cause review. One three-month extension could be granted for good cause. In 1996, the timetable for making a reasonable cause determination was extended to **12 months** from the date the complaint was filed., and two three-month extensions were authorized. This was after the MAR process was instituted in 1994, which at the time was to be completed 3 months after the complaint was filed. Thus the “new” deadline essentially maintained nine months for investigation. The 1998 change, which set the reasonable cause deadline **190 days (6 months, 10 days)** out from the date of the MAR decision, in a sense reduced the amount of time available to CHRO to conduct the complaint investigation by just over 2 months (although the extensions are still available.)

In practice, usually a regional investigator will schedule a fact-finding conference with all the parties soon after a case is assigned to him or her. Even though the statute appears to contemplate a choice of approaches, CHRO management has adopted a policy that fact-finding conferences are the most efficient method for complaint processing.

Prior to the conference, the investigator reviews the case file. A form notice sent to all the parties explains what will happen at the fact-finding conference. Some investigators will request additional information from the parties prior to the conference. The parties are encouraged to bring people with direct knowledge of the issues, as well as those with authority to enter into conciliation (settlement) agreements. Documentary evidence, as well as witness testimony, may be presented at this conference.

Both sides may be represented by counsel. Only the CHRO investigator is supposed to ask questions; the parties may pose questions through the investigator if the investigator agrees. By CHRO policy, all testimony is under oath and the conferences are taped, unless anyone

Figure IV-2. Discrimination Complaint Process
Phase Two



objects. If a participant does object, he/she must sign a statement agreeing to CHRO staff's rendition of the proceedings.

Often, the investigator will schedule a mandatory mediation at the same time as the fact-finding conference (the decision is made by the investigator). All the parties must attend. If either the respondent or complainant do not, the investigator can seek a default in the case of the respondent, or dismissal in the case of the complainant.

Pre-determination conciliation. A possible result from a fact-finding conference, where both parties have a chance to communicate, is that the parties might agree to settle, or enter into what CHRO calls a pre-determination conciliation. According to CHRO regulations, such a settlement can occur anytime from the MAR decision up until a reasonable cause decision is made. Any such agreement has to be acceptable to the investigator, and the agreement is reduced to writing and signed by the parties and the commission. CHRO explains in a form notice sent to the parties reasons why they might want to participate in pre-determination conciliation. The form states, in part:

Both Parties will:

- *Limit their exposure to an adverse determination, and cut short the 9-12 month time frame traditionally required to investigate the complaint*

Complainant will avoid:

- *The risk of having the complaint dismissed for lack of merit (no reasonable cause)*
- *The risk of having to appeal a no reasonable cause decision through the appellate courts and the substantial legal cost attendant thereto*
- *The risk of receiving an adverse decision at public hearing and the substantial cost required to appeal through the state appellate courts*
- *The 12 to 36 months timeframe required for an appeal to work its way through the state appellate courts*
- *The mental and emotional distress associated with being engaged in litigation*

Respondent will avoid:

- *Loss of managerial and other staff production time as a result of their being required to participate in the commission's investigatory processes, which at a minimum, entail conducting internal investigations, record searches, preparation of responses to interrogatories, preparing affidavits, giving interview statements and assisting the needs of respondent attorneys (these costs are substantial)*
- *The risk of incurring substantial attorney fees during the investigation*
- *The risk of having to defend a reasonable cause determination at public hearing, the loss of staff production time, and the attorney's fee costs that are associated with the defense*
- *The risk of having to appeal from an adverse public hearing decision*
- *The risk of having to pay the complainant's attorney fees arising out of the appellate process*

Make whole relief. In 1994, the legislature enacted what is known as the “make whole relief” provision. If a respondent agrees to a settlement that would make the complainant “whole”, *in the view of the CHRO investigator*, but the complainant does not accept the offer, the complaint can be dismissed. Such an offer can be made at any time after the complaint is filed. The idea behind the provision, according to CHRO, is to give “the respondent the right to control ... cost and limit ... exposure to liability by settling the complaint despite opposition by the complainant.” Make whole relief, according to statute, consists of: 1) elimination by respondent of the discriminatory act complained of; 2) taking steps to prevent a like occurrence in the future; and 3) an offer of full relief to complainant (e.g., job reinstatement and backpay). A 1998 statutory change allows the complainant who doesn’t accept a make whole relief offer a release to sue.

Preliminary draft findings. If no settlement is reached and the investigation deadline draws near, the statute requires that the investigator produce draft findings of fact and analysis that the parties may review and comment on – either finding reasonable cause or not. The parties are also allowed to review material contained in the case file. The investigator is supposed to consider any timely filed comments in making his or her final determination.

The investigator is also required to send a copy of his or her draft reasonable cause findings to the CHRO central office for a review of the draft decision. At one time, CHRO management planned to review all reasonable cause and no reasonable cause findings to monitor the quality of the decisions, staff development, and the effectiveness of written guidelines intended to assist the investigators. The task proved to be too burdensome, so the review focuses now just on reasonable cause draft findings. One staff person is currently responsible for the reviews. The intent is to complete the review during the 15 days available to the parties. CHRO management may take an additional 10 days, but if no comments have been received at the end of the ten days, the final decision can be issued.

Final reasonable cause finding. Unlike other decisions at different points in the discrimination complaint process that state “the executive director or designee” makes the determination, the statute refers specifically to the “investigator” as the individual who makes the final reasonable cause determination at the regional level. The regional managers who supervise the investigators believe this to mean that they cannot change a decision of an investigator if they do not agree with it. While they note they may talk to an investigator about areas where a decision is weak, they maintain the decision is ultimately the investigator’s.

If the investigator finds no reasonable cause, the complainant may request a reconsideration of the decision within 15 days of the decision. The executive director or designees (SEU) handles the reconsiderations, within 90 days. They can conduct additional proceedings if needed to decide on the request. If the reconsideration is granted, the case returns to the regional office.

If reasonable cause is found, the investigator must by statute attempt to eliminate the practice by “conference, conciliation and persuasion within 50 days of the reasonable cause finding.” If this attempt is unsuccessful, within 10 days the investigator files a certification form

to that effect, and the case moves to the public hearing process, transferring the case out of the regional office to the central office.

Complaint Processing - Phase Three

Figure IV-3 sets out the main steps in the third phase of the complaint process. If there is a finding of reasonable cause, and the investigator certifies that attempts at conciliation failed, the case enters the public hearing stage. The entire case gets transferred from the region to the central office, and falls under the jurisdiction of the Public Hearing Office. A recent 1998 change from part-time hearing officers, receiving per diem payments to preside over certified discrimination complaints, to full-time human rights referees should significantly change the way this third phase is carried out, at least in terms of timeframes.

Decertification. While the investigator in the regional office has the final word on the reasonable cause finding, there is one avenue of review. If either the attorney general or the Commission Counsel, after receiving a case for public hearing, determines a material mistake of law or fact has been made in the finding of reasonable cause, he may withdraw certification of the complaint and remand the file to the regional investigator for further action.

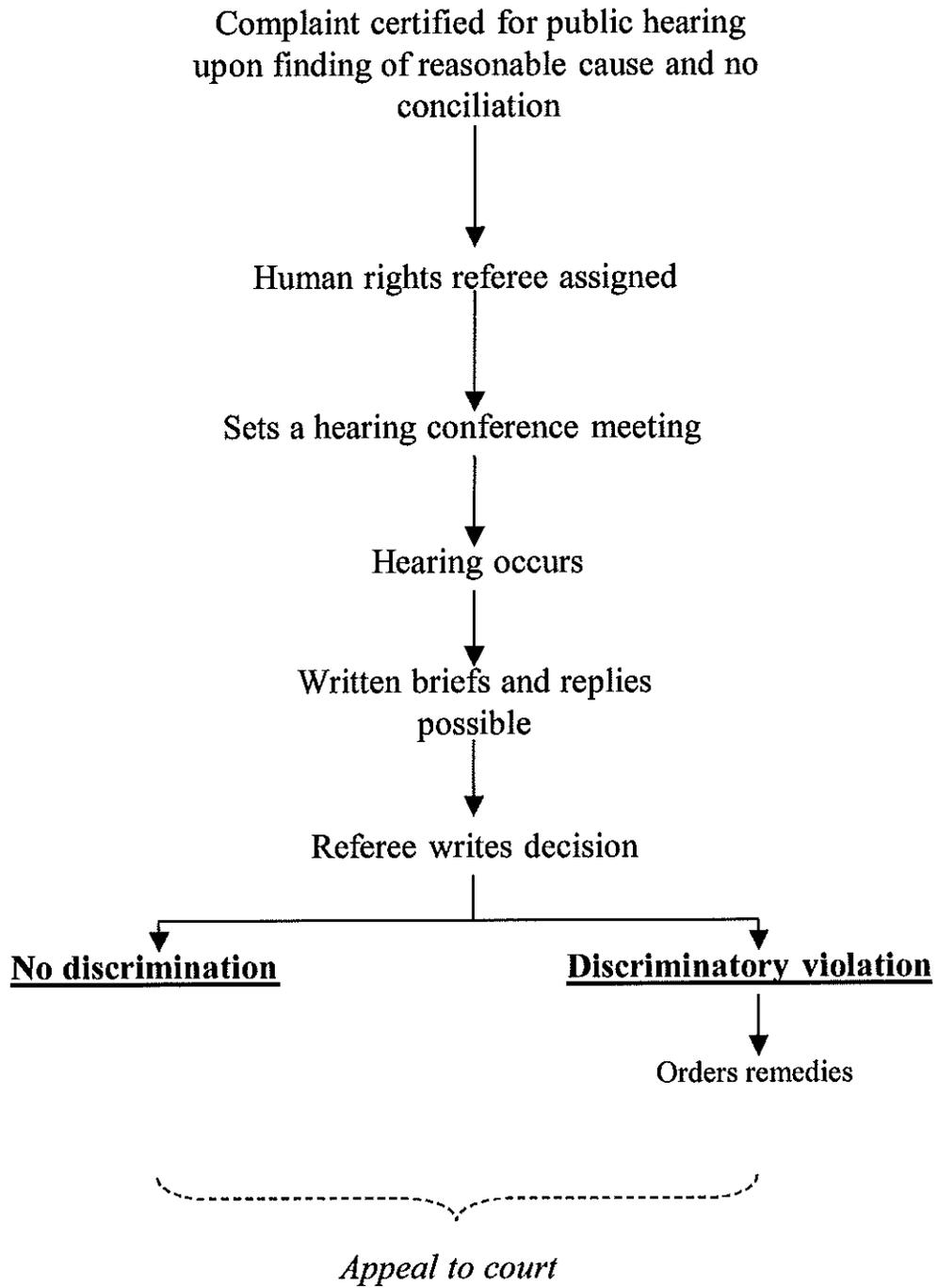
Once the case has been transferred to the central office, the chief human rights referee assigns the case to a human rights referee, who must schedule a hearing conference meeting within 45 days after the case was certified. Among other activities at the hearing conference, a hearing schedule may be established.

Attorneys in the CHRO commission counsel's office (or attorneys from the Office of Attorney General in housing and other cases) represent CHRO during the public hearing phase. While the attorneys will familiarize themselves with the case through the investigative files, the hearing is considered a totally new proceeding. The respondent gets a formal notice of the public hearing and is required to file an answer to the complaint, even if it is the same used during the investigation stage. Additional information may be sought from the parties, and evidentiary hearings where witnesses are examined and cross-examined can be held.

Since the advent of the full time human rights referees, the policy is if the parties seem interested in mediation, the human rights referee will direct the parties to consult with another referee. If a referee is involved in mediation discussions, he or she will not be the referee presiding over any evidentiary hearings, to avoid concerns about inappropriate use of information learned by the referee or other bias in mediation attempts.

Deadlines. Once the pre-hearing conference is held, the hearing process falls under the auspices of the Uniform Administrative Procedures Act (UAPA). The UAPA imposes no specific statutory time frame on the hearing process. Instead, it calls for "reasonable dispatch". However, once the hearing is *considered closed*, after any written briefs and reply briefs have been submitted, the referee must issue his or her decision within 90 days.

Figure IV-3. Discrimination Complaint Process
Phase Three



Upon the close of the hearing process, if the referee determines a violation has occurred, the referee issues an order for appropriate remedies available under the statutes. Either party may appeal the decision to court, but the court is limited to a review of the administrative proceedings for “arbitrariness and capriciousness”. It cannot consider the case anew.

If the referee determines no violation occurred, the complainant may appeal the administrative decision to court.

Remedies. Under current law, if a referee determines a discriminatory practice occurred, the referee can order a respondent to:

- cease and desist from the discriminatory practice;
- take “affirmative action as in the judgement of the referee” will carry out the purpose of the anti-discrimination laws;
- in employment cases, hire or reinstate employees, pay back pay³, or restore union membership, as applicable;
- in housing, public accommodations, and licensing-based cases, pay damages suffered by the complainant (e.g., cost of obtaining alternate housing, moving expenses) and reasonable attorney’s fees; and
- in credit cases, pay damages resulting from the discriminatory practice.

In 1995, the Connecticut Supreme Court ruled the 12-year practice by CHRO hearing officers of awarding compensatory damages and attorneys fees in *employment* cases was not authorized by statute, and must stop. Legislation was introduced in 1996 to provide this remedy in employment cases, but was not successful.

Release of Jurisdiction to Sue

A person who believes he or she has been illegally discriminated against in violation of state law *must* first seek redress through CHRO, as opposed to filing suit in court against the respondent. Prior court decisions establish the courts lack subject matter jurisdiction in a matter if an adequate administrative remedy exists but has not been exhausted. CHRO provides an administrative remedy to civil rights violations. By statute, however, there are certain circumstances when a person may seek a release to sue.

³ The liability for back pay is limited to no more than two years before the complaint was filed. Also, any interim earnings, or amounts that could have been earned with reasonable diligence on the part of the complainant, are to be deducted from the back pay that a person might reasonably be entitled (including unemployment compensation and welfare assistance).

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- The complainant and respondent may jointly request the complainant get a release to sue *at any time from the filing of a complaint to 210 days* after a complaint has been filed.
 - The complainant may request a release if the complaint is about employment or other certain matters and the complaint is *still pending after 210 days* from the complaint filing;
 - If a complaint is dismissed after the MAR review, and the complainant does not request reconsideration, he or she may request a release to sue (since 1998).
 - If a case is dismissed because the complainant fails to accept a make whole relief offer, he or she may request a release to sue (since 1998).
 - Housing discrimination allegations may be brought to court within one year of the allegation unless CHRO has obtained a conciliation agreement or has begun an administrative hearing.
 - Credit discrimination complainants may either file a complaint with CHRO, or a suit against the respondent within one year of the allegation.

A complainant *cannot* get a release to sue when there is a finding of no reasonable cause, in cases where the complaint was dismissed because the complainant failed to appear at a mandatory mediation session, or where the cases are otherwise dismissed.

The executive director must grant the release within 10 business days of receiving the request. If the case is scheduled for public hearing, though, the director may decline to issue the release. Also, the director may defer acting on a release request for 30 days if the he or she certifies there is reason to believe the case may be resolved in that time period.

If a release is granted, CHRO dismisses the complaint without cost or penalty to either party. The complainant must file suit within 90 days from the date of the release.

Complaints Pending Over 21 Months

In 1998, the legislature instituted a new provision regarding CHRO case processing. Now, if a complaint has been pending at CHRO for more than 21 months, the executive director must send a notice informing the complainant of his or her right to request a release from CHRO in order to bring the case “directly” to court. Per the law, the director is to investigate the cause for the delay, and may schedule a deadline for CHRO to issue a finding.

If a complaint has been pending at CHRO for more than two years, and the CHRO investigator does not issue a reasonable cause or no reasonable cause finding by the date set by CHRO, the complainant may petition the Hartford/New Britain Superior Court for an order requiring CHRO to issue a finding by a certain deadline.

The court clerk fixes a date for the hearing and notifies the parties. If CHRO and the parties agree on a date certain for a CHRO case decision, the court will make an order to that effect. The court can award court costs and attorney's fees to the petitioner (not to exceed \$500) unless CHRO can show good cause for not issuing the finding of reasonable cause or no reasonable cause within two years of the filing date or the date the executive director ordered

This provision does not apply to complaints initiated by the commission or to pattern or practice or systemic cases.

Findings and Recommendations

Context of Committee Proposals

In the last few years, significant statutory amendments to the CHRO enforcement process have been made. These include: the creation of the merit assessment review (MAR) system; the addition of mandatory mediation; and the tightening of the time frame within which investigators have to do their work. Other significant changes have only recently gone into effect, for example, giving the complainant the unilateral right to seek a release of jurisdiction after a MAR dismissal and the addition of full time hearing officers.

In addition, considerable internal agency administrative change has taken place. In considering the most useful direction for this study at this time, the program review committee balanced the fact of tremendous management change at the agency in the last 18 months with the concerns prompting the study, many of which predated the management changes. Recent activities include the following:

- In July 1998, the previous executive director left office after eight years upon the expiration of his second four-year term, with a pending state ethics complaint resolved in December 1998 with his payment of a \$3,000 fine¹;
- A new executive director, hired by the commission on an interim basis beginning on March 15, 1999, was permanently appointed on July 22, 1999, for a four-year term;
- Five new commissioners (out of a total of nine) have been appointed, three during the summer of 1999 and two in November 1999. As of December 1999, there are no vacancies on the commission. A new chairperson was also recently appointed;
- Two deputy directors – one responsible for enforcement, the other for education, diversity, and compliance – who directly reported to and served at the pleasure of the director, were let go in September 1999 by the current director in a reorganization, and the positions eliminated; and
- The long unfilled position of Chief of Field Operations was filled, with the directive to be a presence in the regional offices and a link between the regions and the executive director.

¹ The matter was settled between the State Ethics Commission and the director. A stipulation and order found the director violated state law. The director did not admit the allegation, but chose to not contest the findings “by pursuing costly litigation” and paid a \$3,000 civil penalty.

The challenge for legislative oversight purposes is to determine, *at this time*, whether the solutions to CHRO problems call for further statutory change or whether the focus should now be to give the new management a chance to work within the current statutory framework. In either case, the enforcement of Connecticut's civil rights laws is a critical function of state government, which cannot be allowed to flounder if only in perception. At the committee's October 19, 1999, public hearing, the new CHRO executive director showed an awareness of CHRO problems:

My personal observations and those of the consultants [retained by the commission] indicated that, among other things, employee morale was low, there was an erosion of trust between front-line staff and management, the agency is crippled by inadequate resources, there existed inadequate communication between staff and management, inadequate training opportunities, little opportunity for upward career mobility, and inconsistent policies and procedures among regional offices.

The recommendations contained in this report take into account the promise of new leadership, but also suggest ways to promote consistency and objectivity in the execution of the complaint enforcement process, along with increased focus on maintaining accurate data for management purposes. The agency has already begun to work on some areas; where pertinent, agency initiatives and plans are pointed out.

This chapter sets out the program review committee findings and recommendations in three main areas: 1) commission structure; 2) the discrimination enforcement process; and 3) management.

COMMISSION STRUCTURE

One of the areas under review in the study is the structure of the Commission on Human Rights and Opportunities (CHRO). A central question is who ultimately is accountable for CHRO. Its structure as a state entity charged with enforcing laws, headed by a multi-member volunteer commission that appoints its executive director, is not unique in Connecticut or elsewhere. It is different, of course, from the more typical state agency model where the governor appoints a single commissioner to head a department. In analyzing CHRO's management structure, the committee examined the changing role of the commission over the years, compared CHRO and other similarly structured entities in Connecticut, and reviewed the experience in other states.

Changing Role of Commission

In 1947, when the commission first acquired enforcement authority, the commissioners themselves were charged with investigating complaints. From the beginning, there have always been separate hearing officers appointed to adjudicate cases where reasonable cause was found. Over the years, a staff structure grew to handle investigations and adjudications as well as to assist the commission in its duties.

Since that time, the commission has acquired additional authority and responsibility in the areas of state agency affirmative action, contract compliance, and education and outreach. The commissioners as a group are required to vote their approval or disapproval of state agency affirmative action plans. In contrast, the role of the commissioners in CHRO's original function -- enforcement -- has grown smaller.

Up through the 1970s, the commission members as a group voted on findings of reasonable cause and no reasonable cause, giving final approval to staff-recommended investigative dispositions; the commission no longer performs that function. Legislative changes in the last 10 years have continued to shift responsibility from the commissioners (as a group and individually) to CHRO staff, particularly the executive director.

In 1989, although there had been an executive director for years, legislation codified the position, and reconstituted the commission. The executive director was given specific duties, previously held by the commission, including: 1) conducting comprehensive planning with respect to the function of the commission; 2) coordinating the activities of the commission; and 3) causing the administrative organization of the commission to be examined with a view to promoting economy and efficiency

One year later, in 1991, the statutory involvement of the commission in enforcement matters began shifting to its staff. Per P.A. 91-302:

- commissioners were removed from responsibility to investigate or conciliate;
- the executive director replaced the commission chairperson in assigning complaints for investigation and appointing hearing officers;
- the executive director replaced the commission in granting extensions of investigations; and
- the executive director was authorized to enter defaults against respondents failing to answer complaints under oath or answer interrogatories or respond to subpoenas.

Finally, in 1998, the legislature removed the responsibility for handling reconsiderations from the commission, giving it to the executive director or his or her designee.

Commission authority that has been strengthened, or at least clarified, that impacts enforcement involves authority over the executive director. As discussed earlier, 1998 legislation clearly establishes that the executive director serves at the pleasure of the commission.

Thus, what remains of the commission authority with respect to enforcement is:

- appointing and evaluating the executive director;
- issuing declaratory rulings upon petition under the Uniform Administrative Procedure Act;

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- handling appeals from decisions of local human rights boards;
 - establishing policy;
 - initiating complaints on its own;
 - holding hearings, subpoenaing witnesses, and taking testimony, in addition to the human rights referees (no commissioner is allowed to participate in the deliberations of the presiding officer in a case);
 - petitioning the court for enforcement of any order of relief (along with complainant);
 - adopting regulations for the alternative dispute resolution process (required in 1994, but not done to date); and
 - petitioning the superior court, upon review and recommendation of an investigator, that an injunction is needed to prevent irreparable harm to a complainant pending final disposition of the complaint (for businesses with 50 employees and more).

All of the above functions could, of course, be handled by a single commissioner-headed agency. The question could be posed why civil rights enforcement shouldn't be handled the same way as enforcement of consumer protection laws, environmental laws, or insurance laws, all administered in departments headed by single commissioners appointed by the governor. In contrast, the commissioner of education, the chief executive of the education department, is appointed by the State Board of Education.

The conventional wisdom for the use of a board or commission that appoints its own administrative head is to diffuse political influence from the work of the agency involved. There are other enforcement agencies that are similarly structured as CHRO. Specifically, the Freedom of Information Commission (FOIC), the State Ethics Commission (Ethics), and the State Elections Enforcement Commission (EEC) all have multi-member policy boards that appoint their executive directors. Table V-1 compares selected characteristics of these commissions to CHRO.

As the table shows, all these commissions are about the same size and the commissioners serve terms of approximately the same length. Their common directive is to investigate and make determinations of violations of state laws. All four employ staff as deemed necessary to perform their duties.

Differences are seen in the appointment of the commissions' chairpersons. Both Ethics and EEC chairpersons are elected by their fellow commissioners while the CHRO and FOIC chairpersons are selected by the governor. In terms of compensation, only the CHRO commissioners do not receive per diem pay for performing their duties. Only CHRO commissioners are not subject to political qualification requirements for member diversity.

Table V-I: Selected Characteristics of Multi-Member Connecticut Commissions with Enforcement Responsibilities

	CHRO	FOI	Ethics	EEC
Size	9	5	7	5
How appointed	Gov. (5) and legislative leaders (4) (No advice and consent)	Gov. with advice and consent of <i>either</i> house	Gov.(3) and legislative leaders (4) with advice and consent of the general assembly	Gov.(1) and legislative leaders (4) with advice and consent of <i>both</i> houses.
Terms	3 years	4 years	4 years	5 years
Chair	Gov. selects	Gov. selects	Elected by commission	Elected by commission
Duties	Investigate and mediate discriminatory practice complaints. Hold hearings. Meet at least every two months. Sunset provision of 3 mtgs. and out in statute	Review alleged violations of FOIA; investigate; issue orders	Investigate violations of the code of ethics; issue advisory opinions	Investigate violations of state election laws; may levy civil penalties.; to attempt to secure voluntary compliance
Compensation	None (except reasonable expenses)	\$50 per day	\$50 per day	\$50 per day
Staff	Appoints an executive director for four-year term, and serves at pleasure of commission. Employs a commission counsel not in classified service; Appoint investigators and other employees as deemed necessary	No mention in statute; hires executive director and chief counsel	May employ executive director, general counsel, and necessary staff	Employ such staff as necessary
Commission Qualifications*	None	No more than 3 members of same political party	Electors of state; no more than 4 members of same political party; hold or be a candidate for public office currently or three years back	No more than 2 of same political party, and at least 1 shall be unaffiliated

** Pursuant to C.G.S. §4-9b, all appointing authorities must make good faith efforts to ensure, to the extent possible, the membership of commissions and boards have members who are qualified and more closely reflect the gender and racial diversity of the state.*

Source: LPR&IC

Finally, only CHRO commissioners are not required to be ratified by the legislature. This last difference is particularly interesting because the gubernatorially appointed CHRO human rights referees, who act like judges in the agency's adjudications process, must receive the advice and consent of the General Assembly. As the responsibilities of CHRO are as important as those of any of these other agencies, this discrepancy does not make sense. The fact that there is a mixture of gubernatorial and legislative appointments for CHRO commissioners does not distinguish CHRO; other commissions have similarly mixed appointments.

Overall, there are similarities and differences among the characteristics of these four Connecticut enforcement agencies. For purposes of this study, the focus is on how the commissioners are appointed and who appoints and removes the administrative head of the agency. In those respects, other than the advice and consent issue, there is great similarity.

Other State Civil Rights Agencies

The committee collected information on civil rights agencies in other states. Whenever possible, information was compiled on all states, but some information was gathered only for a select number of states with certain characteristics, including similarities to Connecticut.

Forty-seven of the 50 states have an entity within state government that investigates claims of illegal discrimination. In 35 of those 47 states, civil rights enforcement is governed by human rights commissions or boards. Boards vary in size, ranging from as few as three commissioners (Massachusetts) to as many as 20 (North Carolina). Commission members are typically appointed by the governor and confirmed by the senate and serve staggered terms of anywhere between three to six years. In some states, statutes mandate the geographical, political, or community group composition of the commission. Commission members are generally paid a per diem allowance for the time they devote to commission affairs rather than receive an annual salary. Typically, a full time executive director who supervises staff and administers the day-to-day affairs of the agency is appointed by the commission.

Detailed information on 12 states in addition to Connecticut was collected by the committee and is provided in Appendix D. The 12 states include: California, Florida, Illinois, Iowa, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Rhode Island, and Texas. These states were chosen for one or more of the following reasons: geographic proximity to Connecticut, similar average number of charges filed, similar organizational structure, and/or representing a different geographical region of the country. Table V-2 compares Connecticut to the 12 selected states with respect to organizational structure and role in enforcement.

For the 12 states reviewed, the program review committee found that most commission members play some role in the enforcement process. (Information on each state's enforcement process is provided in Appendix D). In some states, the commission or board bears the responsibility of making final determinations of reasonable or probable cause. Commission staff investigates cases filed by the charging parties and presents their findings and recommendations to either the full commission or a subcommittee. The commission then serves as a quasi-judicial panel that renders a determination in the case. In other states, commission staff issues determinations without the review of the commission. In cases where the staff find probable cause but are unable to forge a conciliation agreement between the two parties, the commission

Table V-2. Selected Characteristics of Civil Rights Agencies in Other States.

STATE	Commission Board	Number of Members	Appointed by	Role in Enforcement	Compensation	Administrative Official Appointed by
CA	Y	7	Gov. w/ Senate consent	Y	\$100 per diem	Gov. w/ Senate consent
FL	Y	12	Gov. w/ Senate consent	Y	\$50 per diem	Governor
IL	Y	13	Gov. w/ Senate consent	Y	N/A	Gov. w/ Senate consent
IA	Y	7	Gov. w/ Senate consent	Y	Per diem	Gov. w/ Senate consent
MA	Y	3	Governor	Y	N/A	Commission
MI	Y	8	Governor	Y	N/A	Commission
MN	N	-	-	-	-	Gov. w/ Senate consent
NJ	Y	7	Gov. w/ Senate consent		Reimburse	Atty General w/consent
NY	N	-	-	-	-	Governor
OH	Y	5	Gov. w/ Senate consent	Y	N/A	Commission
RI	Y	7	Gov. w/ Senate consent	Y	Per diem w/limits	Commission
TX	Y	6	Governor	Y	Reimburse	Commission
CT	Y	9	Gov and Leg. Leaders	Limited	Reimburse	Commission

Source: LPR&IC

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members will hold a hearing to decide the case and award damages if applicable. Staff decisions can also usually be appealed by either charging party to the commission.

Overall, the structure of Connecticut's Commission on Human Rights and Opportunities is organizationally consistent with civil rights agencies in other states, although some distinctions surface with respect to the role in the enforcement process.

Conclusion

The direct line of accountability from a commissioner to the governor is appealing in its simplicity. However, given CHRO's role in approving state agency affirmative action plans, including the office of the governor's plan, an argument could be made that the governor should not be appointing a single commissioner to run CHRO with its current duties. This study did not encompass the affirmative action plan work of the commission. Thus, the committee does not recommend such structural changes.

However, the committee believes the current commission with five new and four experienced members, along with a new executive director, are in a position to work together to promote the effective and credible enforcement of civil rights law in Connecticut. The 1998 legislative changes clarifying the status of the executive director provides the commissioners with a clearer statement of their role over the director. With improved data gathering and reporting, as recommended in a following chapter, the commission should receive relevant and up-to-date information upon which to assess the performance of the executive director and the agency.

The committee proposes one change with respect to structure. To strengthen accountability and make CHRO more in line with other similar Connecticut commissions, the program review committee recommends **the appointment of CHRO commissioners be subject to the advice and consent of either house of the General Assembly.**

CHRO DISCRIMINATION ENFORCEMENT PROCESS

Because of all the recent statutory changes mentioned earlier, the program review committee focused on how CHRO was *implementing* the enforcement process. The current CHRO enforcement process, described in detail in Chapter IV, has several basic components: complaint intake; an answer to the complaint from the respondent; an early merit assessment review (MAR); investigation to determine whether or not there is reasonable cause to believe discrimination occurred; and, if necessary, a public hearing at which the alleged violation is administratively adjudicated. Many of these steps have statutory deadlines. At any point in the process, the parties can settle the complaint.

In reviewing the operations of the enforcement process, the program review committee found improvements could be made to the implementation of certain aspects of the process, particularly in the steps prior to the public hearing. The areas discussed below include: intake and merit assessment review (MAR); post-MAR investigation, especially the intermingling of mediation and investigation; the human rights referees policies; and assessing user satisfaction. Where useful, additional descriptive information is provided, along with recommendations.

Intake and Merit Assessment Review (MAR)

Perhaps the most significant recent change in the enforcement process has been the institution of MAR. The purpose of MAR is to allow CHRO to dismiss some cases without full investigation under certain circumstances. This change was intended to speed up case resolution and provide effective early case disposition. MAR standards and their implementation are important as MAR dismissals are the most common type of complaint disposition making up approximately 40 percent of all case closures.

Thus, the early stages of the complaint process are critical. The committee examined two aspects: 1) the importance of intake with the advent of the MAR step and its standards, and 2) the timeliness of the MAR process.

Importance of intake. To begin the complaint process, an individual may contact CHRO either by phone, mail, in person, or through a legal representative. An investigator handling intake will elicit the individual's story and go over certain jurisdictional questions to ensure proper filing. However, as a matter of policy, CHRO instructs its staff to advise a complainant he or she has the right to file a complaint regardless of what the intake investigator thinks about the case.

At this point, a formal complaint is drafted. Depending on the complainant's circumstances and/or preference, the complaint may be drafted by the intake investigator, the complainant's attorney (if he or she has one), or the complainant. These varied ways in which formal CHRO complaints are drafted obviously can affect the clarity and comprehensiveness of any given complaint.

As it is currently administered, MAR evaluates complaints on the substance of the written materials collected at the start of a complaint. These include the formal complaint, the respondent's answer (often prepared by legal counsel), and any rebuttal to the answer by the complainant. While the complainant has 15 days to respond in writing to the respondent's answer to the complaint, the original complaint is the primary statement of the complainant's allegation. There is no provision in the MAR process for the MAR investigator to talk to the complainant. Before the MAR process was instituted, any deficiencies in the complaint could be addressed as part of the investigatory process. However, the creation of the MAR process elevated the importance of the original complaint.

With this documentation, the enforcement staff determines whether the case should be retained for further investigation or dismissed for one of the following reasons:

- 1) the complaint states no claim for relief;
- 2) the complaint is frivolous on its face; or
- 3) there is no reasonable possibility that reasonable cause will be found that a violation of law has occurred (C.G.S. §46a-83).

In reviewing the application of these standards, the committee found the agency has provided investigators limited guidance documentation. In the CHRO investigator policy manual, there is a merit assessment form to be prepared for each complaint to explain why a case was retained or dismissed. Based on the commission form that must be filled out for each MAR decision, the MAR investigator is to²:

- *“Assess the likelihood of each party being able to prove the allegations asserted”;*
- *“Assess the value of the alleged proof upon the reasonable cause determination. Principally, this is achieved by the investigator assessing the sufficiency of the alleged proof to establish each of the material issues of dispute.” “Unsupported assertions, speculations, and conjectures should not be credited. Each assertion must be supported by the alleged facts upon which it is based.”*

To the extent the standards are understandable, they demonstrate the importance of a complete and well-drafted complaint. The guidance that “unsupported assertions” should not be credited could potentially lead to a legitimate, but incomplete complaint, being dismissed.

The committee was troubled this summer when after asking the then-deputy director for enforcement what additional guidance CHRO staff was given to apply the MAR standard, he sent to the committee a one page policy statement he acknowledged had never been included in the policy manual. It was entitled “Policy: Merit Assessment Review Reasons for Retention”. That policy statement was subsequently revoked by the new executive director.

Furthermore, although the MAR process has been in statute since 1994, no regulations have been developed to inform the public about how the process works. In addition, current CHRO regulations that in effect have been superseded by MAR have not been updated.

An example of an intake-related problem created by MAR involves the complainant rebuttal step. A key respondent defense to a discrimination charge is to show there was a non-discriminatory reason for the action taken. Evidence of “pretext”, that the non-discriminatory reason was just a cover for a discriminatory action, counters that defense. Before MAR, the regulations called for a CHRO investigator to actually review the respondent's answer to the complaint with the complainant, in part to identify any pretext possibilities. Although this regulation is still on the books, the MAR process as currently administered does not allow for that kind of communication. Any rebuttal to the respondent's answer, which must occur within 15 days, is left solely up to the complainant.

Given the MAR process and standards, the committee concludes CHRO needs to ensure the intake phase is as strong as possible. The program review committee believes clearer agency policies, staff training, and closer management oversight is needed to promote confidence in this process. Recommendations in these areas are discussed later in this chapter.

² CHRO Form 406 (Revised 1/1/96)

MAR timeliness. As of July 1, 1998, CHRO is required to make a determination on a complaint within 90 days of receiving the respondent's answer. Previously, however, the 90-day MAR period began when the complaint was filed. This standard was in effect in FY 96 and FY 98, the years the committee selected to review complaints filed to examine the timeliness of this first phase.

Table V-3 summarizes and breaks out MAR dismissals by when they occurred. As the table shows, a large portion of MAR dismissals occurred within the statutorily required 90 days. The percentage of complaints being dismissed within the 90-day period increased from 43 percent in 1996 to 51 percent in 1998.

MAR Dismissals	1996	1998
1 to 90 days	449 (43%)	489 (51%)
91 to 100 days	465 (45%)	200 (21%)
More than 100 days	125 (12%)	265 (28%)
Total MAR Closures	1,039	954
Source: LPR&IC		

The table also presents MAR closures between 91 to 100 days for both years. A comparison of time frames reveals that many determinations were made in the 10 days just following the 90-day deadline. As noted in the table, in 1996 there were 449 (43%) MAR dismissals during the 90-day period. There were slightly more MAR closures, 465 (45%), in the following 10 days. In 1998, the number of MAR dismissals made between 91 to 100 days was significantly reduced, to 21 percent of MAR closures. This suggests the agency has made improvements in meeting the statutory time frame. However, the number of MAR closures after 100 days indicates improvements are still needed.

Regional differences. The committee also examined the data by regional office and found variations in the number of determinations in the two time frames. Table V-4 illustrates these differences for the MAR dismissals in 1996. As the table shows, each region issued approximately the same total number of MAR dismissals. However, regional differences appeared between the Bridgeport and Norwich offices compared to Hartford and Waterbury in terms of time frames. The data suggest both Bridgeport and Norwich had a disproportionate number of MAR dismissals in the 10 days following the 90-day time frame. In particular, Bridgeport made the vast majority of its MAR dismissals after the 90-day deadline.

MAR Dismissal	Agencywide	Hartford	Bridgeport	Waterbury	Norwich
		Region 1	Region 2	Region 3	Region 4
1 to 90 days	449 (43%)	160 (59%)	23 (8%)	172 (72%)	94 (36%)
91 to 100 days	465 (45%)	77 (29%)	213 (78%)	38 (16%)	137 (53%)
More than 100 days	125 (12%)	32 (12%)	36 (13%)	30 (12%)	27 (10%)
Total MAR Closures	1039	269	272	240	258
Source: LPR&IC					

Committee examination of case processing time information for 1998 (Table V-5) revealed a marked improvement in timely MAR closures in Region 4 from 1996. Bridgeport also improved but continued to make more MAR dismissals in the 10 days following the MAR deadline. Without closer examination of the case files in those regions, it is difficult to determine the causes for regional differences. It may be a staff resource issue, experience or training, or the difficulty of cases. Nevertheless, regional differences were still evident.

MAR Dismissal	Agencywide	Hartford	Bridgeport	Waterbury	Norwich
		Region 1	Region 2	Region 3	Region 4
1 to 90 days	489 (51%)	129 (47%)	65 (28%)	115 (50%)	180 (84%)
91 to 100 days	200 (21%)	47 (17%)	101 (43%)	28 (12%)	24 (11%)
More than 100 days	265 (28%)	101 (36%)	68(29%)	85 (37%)	11 (5%)
Total MAR Closures	954	277	234	228	215
Source: LPR&IC					

Enforcement staff views. The importance of intake and MAR is also appreciated by CHRO enforcement staff. Sixty percent of the enforcement staff responding to the program review survey stated the MAR process provides effective early case disposition. Forty percent said the MAR process helps control the case inventory. Twenty percent, though, felt MAR was unfair to those without legal representation.

Much of the supplemental written commentary supplied by enforcement staff in the program review survey also involved the intake and MAR phase. Many of the comments focused on MAR staff and competency:

"Raise the bar on [staff] qualifications - especially for those individuals in the MAR unit...The MAR unit needs workers with legal analytical skills"

"We must have a competent MAR staff"

"More can be done at the intake phase to clearly establish the reasons a complainant believes illegal discrimination has occurred. In order for this to occur, the MAR unit must be comprised of competent individuals with strong interviewing, writing, and analytical skills"

"More emphasis needs to be placed on the intake process - better quality staff - better trained staff - this affects the investigatory process"

"The quality of the complaints taken at the intake stage needs to be improved, starting with the staff which is hired to work in this position. The same is true with respect to the MAR staff"

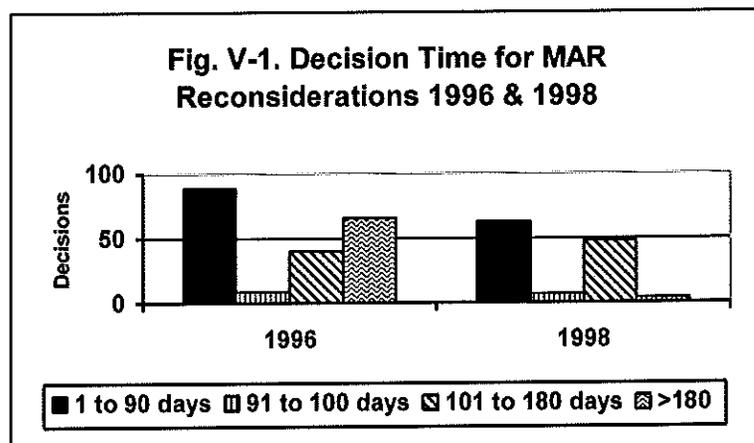
The intake and MAR steps were also discussed at length at the program review focus group. One concern mentioned to the committee by both complainant and respondent attorneys who attended was the inconsistency of MAR decisions—both sides noted there was no predictability about the conclusion CHRO would reach in any given case.

The critical nature of the MAR process was also recently examined in a Connecticut Superior Court case in the summer of 1999. In Gilberto Torres v. Connecticut Commission on Human Rights and Opportunities, the court was asked to rule on the constitutionality of the MAR process. Among the issues before the court in Torres was whether the MAR dismissal provisions of §46a-83 were unconstitutionally vague. The court held the MAR process was constitutional.

Although the decision affirmed the agency's authority and practice, the program review committee believes the lawsuit highlights the significance of MAR to individual civil rights. As such, the committee concludes CHRO should place more emphasis on this phase and ensure determinations being made at this level are completely sound and consistent.

Given that most of the MAR process relies heavily upon filed documents, it is imperative that the quality of the paperwork and the substance of the underlying complaint are solid. Therefore, the program review committee recommends **CHRO re-evaluate its guidance documentation for investigators and maintain well-trained staff at the intake and MAR stages to ensure all cases receive full and consistent assessments in all regions. MAR activities should be closely monitored to detect unintentional over- or underscreening of complaints and to identify any problems in regional application of standards. The agency must also ensure commission members are kept informed of MAR activities on a periodic basis as prescribed by C.G.S §46a-83(b).** (Additional recommendations affecting this area are presented later.)

MAR reconsiderations. If a complainant does not accept the agency's decision for a MAR dismissal, he or she may file a request for reconsideration with CHRO within 15 days of the decision. The request along with the case file is sent to the Special Enforcement Unit (SEU) at CHRO. State law requires the agency to complete its reconsideration decision 90 days after the MAR decision is made. If SEU upholds the MAR dismissal, the complainant's only recourse is to appeal the administrative decision to court.³ If SEU agrees that the MAR decision should have been different, the case will automatically be retained for investigation. Requests for reconsiderations may also be filed after a full investigation.



³ As of July 1, 1998, state law allows individuals not seeking reconsideration to request a release to sue. (P.A. 98-245)

The committee examined reconsideration decisions from data taken from the agency's automated information system. In 1996, there were 303 reconsiderations filed; 205 were MAR reconsiderations. Eighty-four percent were denied. In 1998, the total number of reconsideration requests filed decreased to 177, including 111 MAR reconsiderations. Seventy percent were denied.

Figure V-1 presents the agency's compliance with the 90-day reconsideration requirement for MAR dismissals. As the figure illustrates, CHRO completes a large number of reconsiderations within the 90-day period with a small number of decisions following in the next ten days. However, there are a significant number of MAR reconsiderations being made well after the 90 day statutory timeframe. This seems to have somewhat improved in 1998 where there are considerably fewer MAR reconsiderations decided after 180 days.

Other early closures. In addition to MAR dismissals, complaints are closed in other ways early in the process. This means the number of complaints that actually get to the "full investigation" stage of CHRO's enforcement process is significantly less than the number of complaints filed. In FY 1996, 48 percent (1,191 out of 2,493) of the cases filed were closed within 100 days of filing; in FY 1998, 37 percent (902 out of 2,457) of the cases filed were closed during in that same time frame. Table V-6 shows the incidence of early non-MAR closures for two years. While about 70 percent of these early closures were MAR dismissals, the other types of early case closures include the following:

No reasonable cause (NRC): At this early stage, this closure type means the case was not within CHRO's jurisdiction. This fact was known either at intake or soon thereafter, but the case was still filed. Typically, the respondent in this situation will receive notice of the complaint but also will be advised by CHRO that no answer is required as the case will soon be closed;

Withdrawn with settlement (WDWS): This closure type means the complainant has withdrawn the complaint, but there is a settlement between the two parties;

Withdrawn: This closure means the complainant has withdrawn the complaint;

Pre-determination conciliation (PDC): This is an agreement reached between the parties any time before the investigation completion deadline. The agreement must be acceptable to the CHRO investigator; and

No fault agreement (NFA): This case disposition must occur before the respondent's answer, and involves a written settlement agreement between the parties.

Closure Type	1996	1998
No Reasonable Cause	130 (11%)	78 (9%)
Withdrawn w/ Settlement	59 (5%)	60 (7%)
Withdrawn	32 (3%)	22 (2%)
Pre-Determination Conciliation	16 (1%)	24 (3%)
Administrative Dismissal	26 (2%)	14 (1.5%)
No Fault Agreement	14 (1%)	14 (1.5%)
Total Non-MAR Closures	277 (23%)	212 (24%)
Total Closed w/in 100 days	1,191	902
Source: LPR&IC		

In 1998, nine percent (78) of the cases resolved within the first 100 days were closed due to a *no reasonable cause* finding, compared to 11 percent in 1996. The closures that indicate some kind of settlement was made within the first 100 days consist of *withdrawn with settlement*, *predetermination conciliation*, and *no fault agreement*. In 1998, combining these closures results in 98 cases being closed by settling, 11 percent of all case closures in the first 100 days. For 1996, the settled case portion was seven percent. Finally, four and five percent of the cases resolved in the first 100 days of 1998 and 1996 respectively were either withdrawn by the complainant or administratively dismissed.

Complaint Investigations

The committee focused on two areas with respect to post-MAR investigations: case processing timeliness and the use of mediation during the investigations phase.

Timeliness. Once a complaint has been merit-reviewed and retained, it is assigned to an investigator in the Full Investigations Unit. Since 1994, for cases retained after MAR, the “executive director or his designee shall determine the most appropriate method for processing any complaint pending [after MAR]...” C.G.S. Sec. 46a-83(c). The statutory possibilities are:

- 1) mandatory mediation sessions;
- 2) expedited or extended fact-finding conferences;
- 3) complete investigations; or
- 4) any combination of the above.

The stated purpose of these methods is to: 1) find facts; 2) promote the voluntary resolution of complaints; or 3) determine if there is reasonable cause for believing that a discriminatory practice has been committed. Currently, the statutory deadline gives an investigator 190 days from the MAR decision to make the reasonable cause determination, or otherwise resolve the case. For the two years in which the committee analyzed case outcomes and timeframes, FYs 1996 and 1998, the investigation deadlines were different. In FY 1996, the cause deadline was 270 days after complaint filing, with a possible 90 day extension. In FY 1998, the deadline was lengthened to 365 days, with a possible 180 day extension.

Table V-7 shows the program review analysis of the investigatory closures occurring after 100 days from the complaint's filing, using the applicable deadlines. The table shows:

- In 1996, 62 percent of all case closures occurred before the extended deadline; the remaining 38 percent were closed after the deadline.
- In 1998, 98 percent of all case closures so far have occurred before the extended deadline, with only two percent after the deadline.
- In 1996, 56 percent of *all* no reasonable cause findings were made after the extended deadline, compared to 5 percent in 1998 (the 1998 figure may rise somewhat for complaints filed later in that fiscal year).
- Regarding closure type, 40 and 44 percent of all the complaints closed in 1996 and 1998 respectively were closed through settlement.
- If the number of reasonable cause findings were added to the case closures as a case "disposition type", they would represent 11 percent of case dispositions in 1996 and 15 percent in 1998.

Type of Closure	1996			1998		
	Investigation Deadline 100-270 days	Extension	Post-extension	Investigation Deadline 100-365 days	Extension	Post-extension
No reasonable cause	65 (8%)	87 (10%)	190 (22%)	193 (24%)	84 (11%)	14 (2%)
Settlement (PDC, WDWS, NFA)	165 (19%)	92 (11%)	90 (40%)	305 (39%)	40 (5%)	1 (<1%)
Administrative dismissal	36 (4%)	20 (2%)	26 (3%)	72 (9%)	16 (2%)	2 (<1%)
Withdrawn	46 (5%)	25 (3%)	24 (3%)	55 (7%)	59 (<1%)	1 (<1%)
Total Closures	312 (36%)	224 (26%)	330 (38%)	625 (79%)	145 (18%)	18 (2%)
Reasonable cause*	108*			134*		

**No time frame data for findings of reasonable cause*

Note: Table percentages noted are based on total closures in the pertinent year.
Total of 1996 Closures: 866
Total of 1998 Closures: 788

Source: LPR&IC

Investigation and mediation. As noted earlier, since 1994, CHRO statutes have authorized the executive director or his designee to determine the most appropriate method for processing any complaint retained after MAR. The statutory possibilities include: mandatory mediation sessions; fact-finding conferences; and complete investigations.

The CHRO statutes have always contemplated both investigation and voluntary resolutions of complaints. Specifically, conciliation has long been a required step by the investigator *after* a reasonable cause finding. The concept of active investigator involvement in settlement attempts *prior* to a cause finding has evolved at CHRO.

For example, beginning in 1989, CHRO statutes have authorized fact-finding conferences. One benefit of fact-finding conferences is getting the parties in the same room, which can be a first step toward settlement. The options of no fault and predetermination conciliation, described in regulation, also acknowledge the possibility of settlement.

It wasn't until 1994, though, that the term "mandatory mediation" was added to CHRO statutory authority during the investigative stage. The term "mediation" can refer to a spectrum of activities ranging from simply getting the two sides into one room to meeting with each side separately and confidentially, and proposing solutions. The "mandatory" in mandatory mediation refers to the requirement to attend the session; parties are not required to voluntarily settle. (It may be that mandatory mediation is used by some investigators as a procedural device to ensure the parties attend the fact-finding conferences. The statutes provide a penalty for respondents not attending mandatory mediation, unlike fact-finding conferences.)

The program review committee tried to determine how often the mandatory mediation provision was used as opposed to a regular fact-finding conference. However, this was not possible given the inconsistent recording of activities in the automated case tracking system. Through interviews, the committee is aware that its use is varied among investigators.

Mediation has been defined as the "intervention of an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlements of issues in dispute".⁴ At CHRO, the investigator who is also the mediator clearly has "authoritative decision-making power"—he or she might ultimately be making a finding of reasonable cause. In fact, the statutes explicitly authorize the investigator to make such cause determinations. (C.G.S. §46a-83 (d))

As most CHRO investigations now consist of fact-finding conferences where all relevant parties are supposed to be in attendance, and the parties theoretically can hear what the respective positions are, it is easy to understand why, depending on the circumstances, the stage is set for CHRO staff to attempt assisting the parties to settle the case. Problems arises in two ways. First, mediation requires the parties to trust the mediator; in particular, the parties must trust that whatever they tell him or her will only be used to aid in mediation and will not be used against them elsewhere. Under current circumstances, if the mediation doesn't work, the parties will have a CHRO investigator determining reasonable cause who was told things as a mediator

⁴ Christopher Moore, *The Mediation Process, Practical Strategies for Resolving Conflict*, (San Francisco: Jossey-Bass Publishers, 1989), p. 6.

that an investigator would not have been told or that the parties would not have conceded. Alternatively, the possibility exists for an investigator, acting in a mediation role, to convey to either of the parties even unwittingly the message that if a particular settlement isn't reached, they may have regrets if a reasonable cause decision is made.

The program review committee finds the use of mediation during the investigative, pre-reasonable cause stage is not well-defined in CHRO policy manuals or training and allows the same person with responsibility to determine cause to mediate. At minimum, mixing of investigator and mediator roles can create a perception of conflict for the parties. Conflict aside, because the two activities are so different (mediation and investigation), different skills and training are required.

In other CHRO arenas, the processes are kept separate. At the public hearing level, mediation is separated from adjudication. If the parties express a desire to mediate to the presiding human rights referee, they work with a different hearing referee. CHRO's legal office has a settlement unit, where specifically designated attorneys work on cases that are identified as possible candidates for settlement. If those efforts fail, other lawyers are appointed to represent CHRO at public hearing.

Similarly, EEOC in the past few years has developed and offers as part of its complaint process a mediation track. A very important component of that program is that mediation is kept separate from any investigation procedures—the same EEOC staff assisting in mediation cannot be involved in any investigative activity.

Finally, the use of mediation among the regions is different. Until 1998, the regions had MAR staff attempting mediation after MAR retention. Two regions told the committee they stopped doing this last year because the time spent by the MAR person to mediate cut into the investigator deadline. However, another regional office indicated it still makes those attempts, with the MAR person having no more than 30 days to try to settle.

The option of mediation clearly makes sense in any conflict resolution process. Early mediation efforts can be useful in certain kinds of CHRO cases, such as employment terminations where reinstatement is sought. Settlements aided by mediation avoid the escalating costs of continuing through the CHRO process. After a CHRO complaint is filed, the respondent's answer preparation incurs a cost to the respondent, especially if it involves legal counsel. Assuming the case is retained after MAR, the fact-finding hearing can be costly when respondent personnel might have to appear, documentation is produced, and legal counsel is used. Finally, the next risk is whether a finding of probable cause will be made, which will trigger a public hearing consuming more time and resources for both sides. Therefore, early attempts at settlement can cut down on the costs to the parties.

To the extent investigators are under pressure to resolve cases, that pressure alone could challenge their neutrality, regardless of their good faith. When discussing the idea of separating the two functions with CHRO staff, the response was that it wouldn't be fair to give all the "easy" cases to some (cases to settle) and all the "hard" ones to others (cases that don't settle). There is less of a concern when caseload and case closure numbers are not such a significant part of staff evaluations (discussed later in the chapter). If the cases were separated by difficulty, the

cases that could get done would be completed early, the cases needing attention would receive it, and both the process and outcomes would be enhanced. Taking these points into consideration, **program review recommends that CHRO separate the mediation and investigations components, and establish clear and consistent policies on mediation activities. The commission should incorporate these policies into the agency's training curriculum.**

The new executive director reported to the program review committee that she had planned to request additional investigator positions for the regional offices, but was thwarted for the moment due to the Office of Policy and Management hiring freeze. She wanted two new investigators per office, with one person doing strictly mediation and conciliation work. On promoting early mediation efforts, many forms used by CHRO reference opportunities for settlement. One of the initiatives CHRO management told the program review committee about is the formation of a forms revision committee that is working on these forms to make the option of early mediation more noticeable.

The attorney roundtable conducted by the program review committee identified a seemingly small and easily remedied problem that could impede early settlement. The respondent lawyers often cannot tell if complainants are represented by counsel. CHRO regulations indicate the sending of the notice of appearance form that each complainant's lawyer fills out is the complainant's responsibility, and this does not always happen. The respondent lawyers reported it is helpful to be able to talk to a complainant's lawyer as soon as possible. **The program review committee recommends CHRO make sure that respondents are informed when complainants are represented by counsel when the respondent is notified of the complaint.**

Reconsiderations after full investigation. As noted previously, state law allows a complainant to request reconsideration after a finding of no reasonable cause. CHRO has 90 days from the date of the cause finding to make its decision. If the reconsideration is granted, the case returns to the regional office. Otherwise, the case is closed.

The program review committee examined the number of "no reasonable cause" reconsiderations granted and denied in 1996 and 1998 from the agency's automated system. Table V-8 compares "no reasonable cause" reconsideration timeframes for 1996 and 1998. CHRO does complete a significant percentage of reconsiderations within the 90-day statutory timeframe. However, the agency appeared to decide a larger percentage in 1996 than in 1998.

It is also interesting to note that in 1996 the agency denied 84 percent of reconsideration requests while in 1998 the percentage has leaned slightly to granting reconsideration requests. It is unclear if this is because more errors are detected or the reconsideration review standard changed.

CHRO has reported to the program review committee that reconsiderations have been an issue. As described previously, all reconsiderations are handled by the Special Enforcement Unit in Central Office. This unit has recently undergone staffing changes and the function of reconsiderations will be moved to the commission counsel office.

NRC Reconsiderations	1996			1998		
	Grant	Deny	Total	Grant	Deny	Total
1 to 90 days	5	31	36 (73%)	11	3	14 (50%)
91 to 100 days	-	5	5 (10%)	1	1	2 (7%)
101 to 180 days	2	3	5 (10%)	4	5	9 (32%)
More than 180 days	1	2	3 (6%)	0	3	3 (11%)
Subtotal	8 (16%)	41(84%)	49	16 (57%)	12 (43%)	28

Source: LPR&IC

Human Rights Referees

The addition of permanent full-time human rights referees is a recent change for the enforcement process. Created by P.A. 98-245, the seven referees are separate from the CHRO administrative structure. However, their role in the system significantly impacts the CHRO enforcement process.

The enabling legislation outlined the terms and conditions for the referees' qualifications and compensation. The referees have the powers granted to hearing officers by statute. There is no mention in the statutes regarding operating policies and procedures for the referees.

One of the underlying purposes in the creation of the Public Hearing Office was to control and eliminate the case backlog. Currently, the public hearing phase, unlike the other phases of the enforcement process, operates without statutorily imposed deadlines. Interviews with parties having experienced the public hearing process since the inception of the referees indicate that more structure is needed.

In order for any organization to operate efficiently and effectively, there must be clear operating guidelines, procedures, and practices. This ensures that all parties fully understand the process and know what is expected of them. To be successful, any adopted policies and procedures must be well communicated and those implementing them must be uniformly trained. Therefore, the program review committee recommends **the Chief Human Rights Referee establish uniform operating policies, procedures, and guidelines clearly defining the role and function of the Public Hearing Office. Adoption of any changes to the policies and procedures shall be duly communicated to the full Commission on Human Rights and Opportunities. It shall be the responsibility of the Chief Human Rights Referee to ensure all human rights referees are adequately trained in the uniform implementation of the policies and procedures.**

The CHRO administration and the Chief Human Rights Referee both acknowledge the need for clarification of roles and standardization. The agency has reported to the committee that it intends to address this issue in its legislative proposals for the upcoming General Assembly session.

User Satisfaction Survey

One way to measure a system's use and effectiveness is to obtain input from the people who have experience with it. Currently, the only formal method for public opinion input regarding CHRO operations is through the commission meetings. The commission, at its discretion, may allow members of the public to voice their concerns. However, ongoing formal evaluation of the process by the parties actually using the system is not done.

The committee believes routine assessment of the system by those who participate in and navigate through it is a good method of performance evaluation. An example of this type of assessment is the judicial evaluation process conducted by the Judicial Department, in which judges are evaluated by attorneys who practice before them and jurors who serve in trials they preside over. This idea was well received by the program review focus group of attorneys for both complainants and respondents. It was viewed as a good first step to ensuring parties' concerns about the process are heard. An evaluation process would also help management identify potential problems and/or inconsistencies found in the process agencywide as well as by region.

Therefore, the program review committee recommends **CHRO institute a follow-up evaluation form for parties involved in the complaint process to provide feedback on their experience with the agency's handling of discrimination complaints. The process should offer the parties to the complaint a confidential forum to submit observations, suggestions, concerns, and comments directly to central office management. The information should be reviewed and summarized on a periodic basis and results shared with the regions and the commissioners.**

CHRO MANAGEMENT

Many management functions support the discrimination complaint process. Among them are: staff performance standard setting and evaluation; staff development and training; agency policies and procedures documentation; regulation making; and management information system development. The committee believes internal supports in these areas are lacking. There appear to have been laudable efforts in the early to mid-1990s to try to establish consistent written policy and guidance materials, along with efforts to train staff. However, the drive behind these initiatives seemed to disappear, and implementation dwindled.

As a result, the agency at the moment is left with unfinished guidance documents, out-of-date regulations, an overwhelming number of policy statements and forms (some used, some not), an inadequately implemented management information system, and haphazard professional development. In this section, the committee discusses these areas, as well as the internal discrimination complaint process for CHRO current and former employees, and makes recommendations where appropriate.

Staff Performance Standards and Evaluations

The productivity of each enforcement worker impacts the agency's overall effectiveness. An increase in worker productivity may allow the agency to handle more cases and, conversely,

a decrease in individual employee production may result in a reduction in the agency's ability to close cases. Production standards are commonly used by civil rights enforcement agencies around the country, including Connecticut. In response to program review staff queries, California, Illinois, and New Jersey reported the use of staff production standards but would not release what they were. New Hampshire, Missouri, Alaska, Oklahoma, South Carolina, and Texas each have production standards of four or five case closures per month. Higher standards exist in Wisconsin and Nevada, which required 12 and 15 closures per month respectively.

In contrast, Minnesota has recently abolished its production standards, previously requiring six closures per month or 75 annually. Michigan also reported recently abolishing production standards while Iowa, Ohio, and Michigan each reported not using them. The experiences in other states are offered for background purposes. Comparisons between production standards in other jurisdictions are difficult because of differences in intake procedures, requirements for closures, methods of counting cases, and other variations.

The Connecticut Commission on Human Rights and Opportunities first instituted numerical standards for case production in 1977. It required six case closures per month for a total of 72 closures per year. This was reduced several years later to five case closures per month due to an increase in intake duties. This standard has been used as part of an employee's performance evaluation.

The use of production standards has been recognized as an issue for some time. A 1988 Governor's Task Force Report on CHRO⁵ found the numerical performance standard affected the services provided by the agency. The task force concluded the numerical standard provided no incentive to an investigator to find cause, but rather the temptation to reduce the caseload by finding no cause, on the theory the latter was a faster disposition. The task force recommended CHRO examine the numerical performance standard and develop new guidelines for performance evaluations. Until recently, the use of production standards was still in effect.

The issue of quotas was again listed as a CHRO staff concern in a 1999 independent consultant's report⁶ on the agency's operations. In that report, 15 percent of the staff interviewed identified the impact of the quota system on the quality of work as a concern.

In the program review survey of the 32 field enforcement staff, 60 percent of those responding believed the use of the staff production standards is unrealistic and unfair. Although the committee does not have empirical evidence suggesting the production requirement influences the complaint disposition, it is reasonable to assume, as did the previous 1988 task force, that individuals being evaluated on the basis of such standards would feel pressure to meet them.

The committee believes the use of a quantitative production standard for enforcement staff carries some risks. A numerical standard may encourage investigators to first focus on cases they can close quickly or easily. For example, in order to meet the monthly production standard, an investigator might select several simple cases rather than concentrating efforts on one

⁵ Governor's Task Force Commission on Human Rights and Opportunities Final Report, December 1988.

⁶ Howenstine & Nelson, *Final Report Organizational Assessment and Recommendations*, March 11, 1999.

complex case. Although all cases would eventually get investigated, the more difficult ones may be left to languish and deteriorate. Another possible unintended consequence of the production standard could be an adverse effect on the quality of case investigation.

Of course, the production standard predated the statutory deadlines built into the complaint process. In light of time frame standards, production standards may be irrelevant as a case management tool.

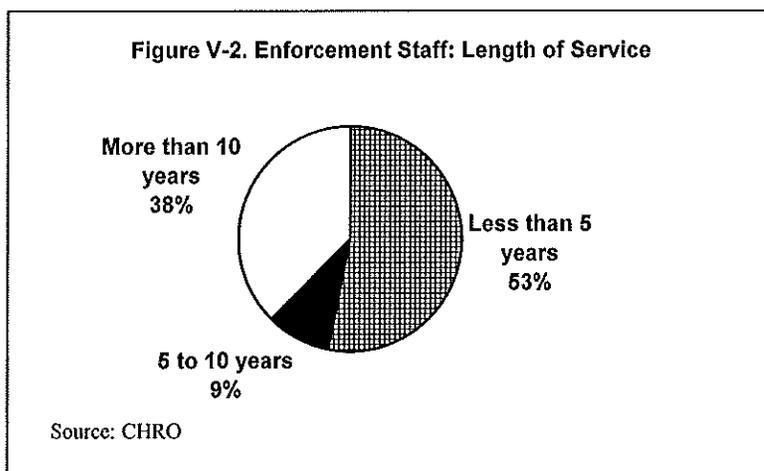
The current CHRO administration has told the committee that production standards are no longer in use. At the committee's public hearing, the CHRO executive director informed the committee that she had recently "spearheaded a committee comprised only of investigators to develop appropriate, non-numeric, performance criteria." **The committee supports the discontinuation of evaluating staff performance on numerical standards. CHRO should establish performance standards reflecting the quality of the work and/or the difficulty of cases as well as effective caseload management, such as regular and timely activity.**

A production standard can focus an enforcement worker's attention on one of the agency's primary goals -- closing cases in a timely manner -- and provide important incentives for enforcement staff to work as efficiently as possible. However, given its possible negative effect, the committee believes the agency needs to look for other ways to increase production, including but not limited to, appropriate employee training, proper oversight on the part of managers, and, if necessary, shifting of resources in case processing.

Staff Development and Training

Another area the committee explored was training and development opportunities for enforcement staff. At every stage of the complaint process, enforcement workers must deal with many difficult legal and technical issues with significant potential impact on an individual's civil rights. Successful case resolution is dependent to a large extent on the ability and resources of the worker.

CHRO enforcement staff is almost evenly divided by background and years of experience. As Figure V-2 shows, 12 of the current 32 enforcement workers (38 percent) have been with the agency more than 10 years. However, 17 (53 percent) have less than five years at CHRO, with nine hired within the last three years. Of the 32 enforcement investigators, 12 are attorneys.



The most recent group of hires spent 2-3 weeks in orientation sessions taught by the former deputy director of enforcement. The sessions were based mainly on the agency policy manual. Workers then joined a regional office and commenced casework.

Interviews and examination of agency materials indicate CHRO does not have a formal training curriculum for its enforcement workers. The program review committee requested information on the types of training either provided or paid for by the agency for current CHRO employees since 1995. Other than DAS training, which largely involves computers and general topics, the agency was not able to produce a comprehensive report about enforcement-related training. Instead, each staff person was asked to self-report on training received. The information received revealed staff attendance at different types and levels of training suggesting variable levels of skills and knowledge.

The program review committee found training opportunities have varied for existing employees. The agency does not provide a formally structured training program or a cohesive training manual to its enforcement staff. In addition, CHRO has not conducted a formal training needs assessment for its staff. The committee believes that a lack of comprehensive core training and ongoing skills development may be one factor impeding the agency's effectiveness. All these factors point to a need for employee training and development, for both new and experienced staff.

This is further evidenced by the results of the 1999 consultant report. Twenty percent of the staff mentioned a need for consistency across sites and training in new policies, procedures, and relevant laws. Twenty-nine percent desired clearer pathways for career and professional development. Furthermore, they indicated there are few incentives to pursue professional development and few opportunities to enhance performance on the job.

The program review survey results amplify these findings. In the committee's questionnaire, investigative employees were asked to what extent they agreed or disagreed with various statements. Table V-9 presents the results of responses relating to training.

Statement	Strongly Agree	Agree	Disagree	Strongly Disagree
CHRO provides relevant training to its enforcement staff.	7%	27%	53%	13%

As the table indicates, two-thirds (66%) of those responding to the question disagreed that CHRO provides relevant training to its enforcement staff. Almost all of the workers disagreeing with the statement had more than five years of experience.

It should be noted, however, 60 percent of the enforcement staff agreed their co-workers had the skills and abilities to their jobs (Table V-10). Forty percent disagreed, with half strongly disagreeing.

Statement	Strongly Agree	Agree	Disagree	Strongly Disagree
My co-workers have the necessary skills and abilities to do their jobs.	7%	53%	20%	20%

The committee compiled information about training opportunities and requirements for enforcement staff in other states. Of the 12 states surveyed in detail, four had training administrators or staff assigned to training and staff development. Almost all had core curricula developed internally and taught by in-house staff. However, the states offering formal mediation by agency staff sought training by outside specialists. Initial training for new enforcement staff ranged between one week to eight months with an average of two to three weeks.

Investigation of discrimination charges is a difficult job requiring many skills. In addition, the field of civil rights law changes continually through both legislative and judicial activity. The agency also needs to be efficient, effective, and uniformly implement its policies and procedures to ensure every similarly situated person entering the system is treated the same. To accomplish this, CHRO must develop a formally structured training process to ensure enforcement staff uniformly understand and apply policies and procedures.

It is important that both the amount of training as well as the types expand. In addition to basic CHRO policy and procedures, all levels of staff should be kept informed of new state and federal case law. Training should be relevant and tailored to the staff function. As such, training for intake and MAR workers would require a different focus than investigators or commission counsel staff, although all should have a basic level of knowledge of the overall process.

Therefore, the committee recommends **CHRO conduct a formal evaluation of the current training curriculum and an assessment of training needs of the agency. Based on the evaluation, CHRO should develop and institute a comprehensive training and professional development program. This program should be designed to provide extensive training in civil rights law, investigative techniques, mediation, analytical methods, communication skills, and other necessary areas. It should be tailored to fit the needs of enforcement staff at each level of the process including, but not limited to, intake, merit assessment review, and investigation. Training should also be provided to staff involved in the public hearing process including, but not limited to, commission counsel and human rights referees. In addition, CHRO should conduct ongoing assessments of training needs of the agency's enforcement staff. The assessment results should be monitored and used to adjust the training curriculum and to identify areas for staff improvement whenever necessary.**

Policies, Procedures, and Regulations

While state statute spells out many of CHRO's authorities and responsibilities, like any agency, its regulations and internal policies and procedures are important to filling in the detail of CHRO practice.

Policies and procedures. In the early 1990s, CHRO management created two internal policy and procedure manuals for use by staff. One is called the "Investi-GATOR Policies, Practices & Forms Manual" (Investi-Gator) and the other is called the "Field Operations Interpretive Guidelines" (FOIG). It appears the original intent was to keep both manuals up to date. Some of the Investi-GATOR forms have been revised, but the FOIG manual updates are lacking.

In part, the "Investi-GATOR" manual reflected the new mode of investigation the then-new executive director brought to CHRO in 1991. The manual combines policy directives, form letters for various participants in CHRO cases, and pre-formatted blank report forms CHRO staff was supposed to use to arrive at their conclusions about cases. The manual is a significant effort to accomplish the four objectives identified in the manual:

1. *"The policy directives are intended to unify the interpretation of statutes and regulations."*
2. *"By reducing the policies and instructions to writing, CHRO employees will have continued guidance and support while processing complaints. There will be no debate with respect to instructions which have been provided to staff in the event an issue arises regarding the propriety of the instructions."*
3. *"By creating standard procedures and documents, the time expended on processing and completing cases will be shortened."*
4. *"The documents contained in the manual will assist the agency in meeting the statutory nine (9) and twelve (12) month time frames."*

The committee observes the manual is quite voluminous and the combination of party form letters and other form material to be sent to parties blurs the impact of the staff guidance materials. The committee also finds there is very little guidance on mandatory mediation, how CHRO staff should handle the potential conflict of acting as both mediator and investigator, or on ways CHRO staff can encourage early settlement.

Field Operations Interpretive Guidelines. The committee understands these guidelines are to be used by field staff as aids to understanding legal interpretations. First, many of the written interpretive guidelines are still in draft status even though they appear to have been developed years earlier. Second, the guidelines are quite formally written, with numerous legal citations, raising the question whether the style of presentation hinders their usefulness for investigators in the field.

The program review committee is aware some forms are currently being revised for a variety of reasons. The committee recommends **CHRO review both its Investi-GATOR manual and the Field Operations Interpretive Guidelines for ease of use by investigators in the regional offices, and ensure they represent current agency practice.**

Regulations. CHRO's existing regulations were adopted in 1993. However, significant statutory change in 1994 established the early merit assessment review process, which results in almost half of CHRO complaints being dismissed. This change alone calls for regulation amendment. The agency acknowledges its regulations are out of date. CHRO management told the committee the position of legislative liaison/regulations specialist was vacant until recently filled. The individual is scheduled to begin in January 2000 and the first task will be to update the agency regulations. The committee supports this action.

Management Information System

Another important aspect in the effectiveness of CHRO is the ability of its information systems to adequately support its operations. Every year CHRO handles hundreds of cases, most of which pass through a multi-step process involving different commission staff. In addition, both statutes and administrative policy impose restrictions on the amount of time the agency can take at various stages of the process. Therefore, it is critical that CHRO staff have a reliable way to track the progress of each case.

As part of its review, the program review committee examined the CHRO management information system used for enforcement. The committee looked at statistical reports generated by the agency's case tracking system, and interviewed CHRO personnel familiar with the program and involved with planning for future changes. In addition, through the process of analyzing CHRO case tracking data and extracting information from the system for the committee's own random case file review, the program review committee also learned about the system's capabilities and limitations.

The current management information system for enforcement has been in existence since 1993. It archives the agency's entire case inventory and is used to produce statistical monitoring reports and, when necessary, customized inquiries.

The program review committee concludes the current information system could be a very useful management tool. It seems to have the ability to produce useful progress and analytical reports. However, the committee finds the existing case tracking system has a number of deficiencies, including poor documentation and insufficient checks on data entry.

The program review committee asked the agency to provide written documentation for the system users and was told no such documentation was available. CHRO produced a list of the database tables contained in the system and the information fields that make up each table, but it could not locate further written descriptions of the fields' contents or explanations for code definitions.

The absence of documentation standardizing data input and methods for ensuring consistent code application became apparent in the program review committee's examination of

the automated information. The committee's case file review revealed the system's codes are not mutually exclusive and do not always aptly describe the status of complaint outcomes. In addition, there is a fair amount of discretion in handling and coding the complaints by the regions. There appears to be no uniform policy on coding complaints. In many instances, the automated information does not make sense unless the paper file is examined.

Given that the case tracking system is used in all the regions, the committee finds the lack of documentation and uniform application hinders the agency from understanding the system's internal operations. Therefore, the program review committee recommends **CHRO re-examine its coding system. Specific codes should be developed with input from system users. Written definitions for each code should be provided to agency staff and training given to implement a uniform coding system to facilitate tracking of complaint trends and outcomes.** Periodic analysis of these codes will allow the agency to identify problem areas. It should also help the agency evaluate its enforcement actions in response to complaints.

Another identified deficiency was the accuracy of stored data. In reviewing the data extracted from the system for the committee's random case file review, the program review committee detected examples of data entry errors such as implausible dates and incomplete or missing information.

When asked about this issue, CHRO management stated that in the past maintaining the automated information system had become a lower priority as the regions were given more responsibilities and staff resources became assigned to other duties. In addition, managers were required by the former deputy director of enforcement to maintain manual tracking records of their inventory despite the existence of an automated system.

The program review committee also looked at a number of the routine statistical reports produced by the automated system and found they provide somewhat limited information. Although the existing computer system does allow for some analysis, the deficiencies of the coding method limit its usefulness. Currently, the department does limited tracking of trends and presumably adherence to mandatory timeframes. However, given the lack of uniformity in present coding and inputting, the program review committee concludes accurate tracking based on the automated system would be difficult. Therefore, the program review committee recommends **clear accountability should be assigned for assuring consistent, uniform, and accurate data recording.**

The purpose of a management information system is to produce essential information about organizational accomplishments in a readily useable format. MIS reports allow management to monitor the performance of the organization, evaluate any deviations from expected or desired results, identify necessary improvements, and implement corrective actions in a timely manner.

The consequence of an ineffective MIS is that decision makers, at all levels, fail to receive an accurate understanding of program operations and the degree to which a program is meeting its intended goal. Specifically, ensuring timeliness of enforcement actions would be difficult.

The committee believes CHRO could make better use of the data in its information system. The agency readily admits that its information system is somewhat problematic. The program review committee found that although the information system needs improvement, it contains the basic data needed to assess the performance of the department's case processing. As such, the agency needs to take full advantage of its current information system and re-examine it to better utilize its ability to monitor agency operations and quality assurance. Therefore, the committee recommends **CHRO establish a uniform, automated management information system for the regions that captures essential enforcement case information and results in the production of valid, reliable data. The system, at a minimum, should include, but not be limited to, the following:**

- **critical case processing milestones, such as MAR dismissal and retention dates, cause determination dates, and reconsideration and closed dates;**
- **case information, such as attempts at mediation and whether parties have legal counsel;**
- **case outcomes information, such as type of resolutions;**
- **the ability to generate standard management reports on the timeliness and performance of individual personnel as well as regions in completing investigations; and**
- **the ability to generate customized reports when necessary.**

Legislative reporting. An improved management information system will enhance the information the legislature obtains about CHRO activities. At the outset of this report, the committee noted the significant management changes that have recently occurred at CHRO. With these, the committee expects past turmoil preventing CHRO from paying attention to its core business of handling discrimination complaints will cease. The timing of this study is such that information about the impact of recent legislative changes (e.g., full-time human rights referees and complainant's right to seek release of jurisdiction after MAR dismissal), along with significant management changes, is impossible to measure. Because of past controversies, though, it is imperative that the legislature be kept fully informed about CHRO activities.

In its annual report, CHRO reports on case closure types and numbers of complaints filed, but never reports on the time frames for casework. As of 1998, the legislature is requiring CHRO to annually report to it about the number of cases not meeting the statutory deadlines, and the reasons for those failures. There are other performance indicators that would allow the legislature to review the impact of CHRO. These include: the number of cases where there are job reinstatements; the number of cases in which backpay was awarded; and other types of "affirmative action" allowable under the enforcement remedy statutes. In addition, even though much of the public hearing process is not subject to statutory deadlines, it is important for the legislature to know the length of time cases are pending at the public hearing stage.

CHRO should develop a set of performance measures to be used in evaluating the agency's overall performance as well as all key components and phases of the process. At a minimum those standards shall address:

- **specific time frames for complaint handling, public hearings and outcomes; and**
- **the components of settlements, such as job reinstatement, backpay, and other remedies.**

Technological Resources

The need for technological improvements was reiterated in the 1999 consultant report where 19 percent of the staff cited inadequate equipment (computers) as a staff concern. The consultant report also indicated staff desire for updating, standardization, and equitable distribution of computer hardware and software.

The current administration has stated technology is one of its top priorities. Plans for technological improvements have been forestalled due to problems with wiring in some regional office locations. Nevertheless, the agency plans to resolve these issues and eventually provide each enforcement worker access to more computerized technology and research tools such as Westlaw and the Internet. The program review committee supports these plans and recommends **CHRO continue to assess its technological resources and equipment needs for its enforcement operations and develop a plan for addressing those needs as determined. The plan should aim to enhance accurate information sharing between field operations, the legal services unit, and the public hearing office.**

The agency's limited technological resources can have a negative impact. The daily operation of the organization can be compromised by insufficient and outdated technology. Enforcement staff need a method to track their caseloads. It is also helpful to have information readily available when parties call regarding the status of a case. Perhaps most important, managers need reliable statistics about a region's inventory of cases and its productivity in order to detect problems and make necessary changes. Finally, the commission's administration should have access to this information to support quality assurance.

Management and Regional Operations

Before any new policies can be successfully implemented, a strong communications network needs to be in place. Both the consultant's report and the program review committee survey found that CHRO employees have a somewhat unfavorable view of how information is communicated to staff.

One program review survey question asked enforcement workers to rate communication in the agency. The results are presented in Table V-11. As the results show, the staff generally view communications somewhat unfavorably.

Table V-11. CHRO Enforcement Staff Response to LPR&IC Survey: Communications				
Statement	Excellent	Good	Fair	Poor
Quality of Communication - between the central office and your regional office	-%	13%	40%	47%
- among the regional offices	-%	20%	27%	53%
- <u>within</u> your regional office	13%	47%	20%	20%
- between the Office of Commission Counsel and your regional office	-%	7%	27%	67%

The consultant report also suggested this finding. The number one concern regarding management identified by staff was inadequate communication, few staff meetings, and not being informed by management. It is important to note that the report was prepared at the beginning of the current administration and reflected the previous management. It does, however, suggest the need for enhanced communications. Improved communication was also the number one desired change by staff for the new management in the consultant's report.

The consultant's report made a number of recommendations aimed at developing an effective infrastructure for organizational communication and dialogue including regular staff meetings for all work groups and quarterly meetings for the entire organization. The new administration has begun to institute these recommendations including the agencywide staff meetings. In addition, the newly appointed Chief of Field Operations, who works out of the central office in Hartford, has been directed by the executive director to visit each regional office once a month (one regional office a week). Also, the chief is to hold regional manager meetings once a month, which will rotate among the regional offices.

The program review committee believes these are positive steps to improve communications among all staff. The executive director should continue to aggressively establish an effective communication network between and among all levels within the commission.

Staff Complaint Process

One issue raised during the study relates to employment discrimination complaints made by CHRO employees. In part, the existence of any charges of employment discrimination at CHRO, due to the anti-discrimination purpose of the agency, seems incongruous to some. Another issue is whether CHRO employees have a reasonable process by which to exercise their rights to bring discrimination complaints if they feel they have been wronged.

The program review committee obtained information about how many complaints have actually been filed by CHRO employees (current or former) since 1990. Twelve former or

current CHRO employees filed CHRO complaints against the agency in that time period. Table V-12 shows the years in which complaints were made.

Table V-12. Discrimination Complaints Filed by Former or Current CHRO Employees Against CHRO: 1990 to Present

Calendar Year	#	Calendar Year	#	Calendar Year	#
1990	2	1994	2	1998	2
1991	0	1995	0	1999	1
1992	3	1996	0	Total	12
1993	1	1997	1		

Five complaints were closed with a finding of *no reasonable cause*. One was closed after the MAR review with a finding of *no claim*. Two were closed through *administrative dismissal*. Three were closed with a *right to sue* determination. One was *withdrawn with a settlement*.

Five of the CHRO complaints became the subject of federal lawsuits, with the earliest filed in 1997 and the most recent in January 1999. Four of these suits are pending. One was settled for the amount of \$105,000.

At minimum, the existence of discrimination charges at CHRO, as at any workplace, is evidence of conflict that for some reason could not be resolved through less formal methods. As such, it denotes a problem for management, if not of management. The fact that at least one of these complaints, filed originally in 1993, resulted in the state paying a significant settlement amount, is noteworthy. Also, the circumstance surrounding one of the complaints is notable. The complaint, now pending in federal court, was brought by an individual who supervised at least one of the people named as respondents in the complaint. The fact that former CHRO management allowed this conflict to continue is remarkable.

Eleven of the twelve complaints mentioned above occurred under previous CHRO management and there is no reason to attribute any past missteps to the new management at CHRO. It is instructive that the one CHRO complaint filed by a CHRO employee just days after the new director started in her acting capacity in March 1999 has already been withdrawn and settled.

CHRO employees have a process available to make discrimination complaints. In May 1997, a policy directive was issued setting out that process. It provided that, to comply with the CHRO/EEOC workshare agreement, any complaint filed by a CHRO employee would be deferred to EEOC for initial processing. As the directive stated, the purpose of the policy was to "eliminate or at least minimize any possibility of a conflict of interest, real or perceived, when a complaint...is filed...alleging employment discrimination by the Commissioners, Executive

Staff or employees of the commission.” Current CHRO management has told the committee that the policy has changed and been communicated to staff that the employee now has the option to have EEOC or CHRO investigate the complaint.

The committee contacted other states’ civil rights agencies to find out how they handle complaints filed by their own staff against them. In some states, the complaints are handled like any other complaint; in others, they are deferred to EEOC; and in others still, an outside party handles them.

In 1976, CHRO asked the Office of Attorney General for an opinion on whether CHRO could process a complaint filed against it by a CHRO employee charging a violation of state law. The OAG said that because CHRO was the only agency with authority to handle such complaints, under the necessity of law concept, it had to handle the complaint.

With respect to the procedure, the OAG thought there was a way to proceed impartially. First, it noted that the commission members or its executive staff would not have any dealings with the substance of the claim because “investigation of the complaint, determination of probable cause and conciliation endeavors are within the exclusive province of the investigator.” The investigator assigned should have no connection to the complaint.

If the matter proceeded on to the public hearing stage, the OAG said the commission chair “should exercise his ministerial duty of appointing a hearing examiner to hear and decide the case.” Because the hearing officer was a gubernatorial appointment, there was no concern about commission interference, because he had sole authority to decide the issues and order relief.

Finally, the attorney general would assign an assistant attorney general who had never represented the commission or the Department of Administrative Services before to “present the case in support of the complaint.” Assistant attorneys general who normally represent the commission will defend the commission. “The representation of state officials or agencies on opposite sides of a case by the Attorney General is not without precedent.”

It is not clear to the program review committee that the current CHRO complaint process for CHRO employees filing complaints is a genuine problem. It is true, as the 1976 attorney general opinion points out, that CHRO investigators have significant autonomy, and as long as the investigator has no connection to the complaint, or complainant, there should be no overwhelming conflict. Any employee who files a discrimination complaint against his or her employer is in an automatic position of conflict at the workplace, so CHRO employees are not unique in that regard. Theoretically, CHRO management should know better than any employer the consequences for retaliating against someone for filing a complaint, itself a violation of law. The commission might consider giving employees the option of the right of first refusal for the investigator selected.

Employee morale. An issue related to the internal CHRO discrimination complaint process is general employee morale. In the program review survey of enforcement workers, conducted in October 1999, respondents were asked to rate their level of satisfaction with various aspects of employment at the commission. The results are shown in Table V-13.

Table V-13. CHRO Enforcement Staff Response to LPR&IC Survey: Job Satisfaction				
Statement	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
How <i>satisfied</i> or <i>dissatisfied</i> are you with: - General work environment	7%	60%	7%	27%
- Your job overall	14%	50%	21%	14%

A majority of those responding were satisfied with both the general work environment and their job overall, though one-fifth to a quarter of those responding counted themselves as dissatisfied. This is slightly less than the 31 percent of persons interviewed by the consultants who conducted the 1999 organizational assessment for CHRO, who noted concern about decreasing morale at the agency. Those interviews were done in December 1998.

The agency has begun some initiatives to improve the overall work environment such as holding regular agencywide meetings and instituting monthly labor-management meetings. Although it is too soon to tell whether particular initiatives will succeed, the program review committee gives the current administration credit for recognizing some deficiencies and refocusing attention on them.

Resources

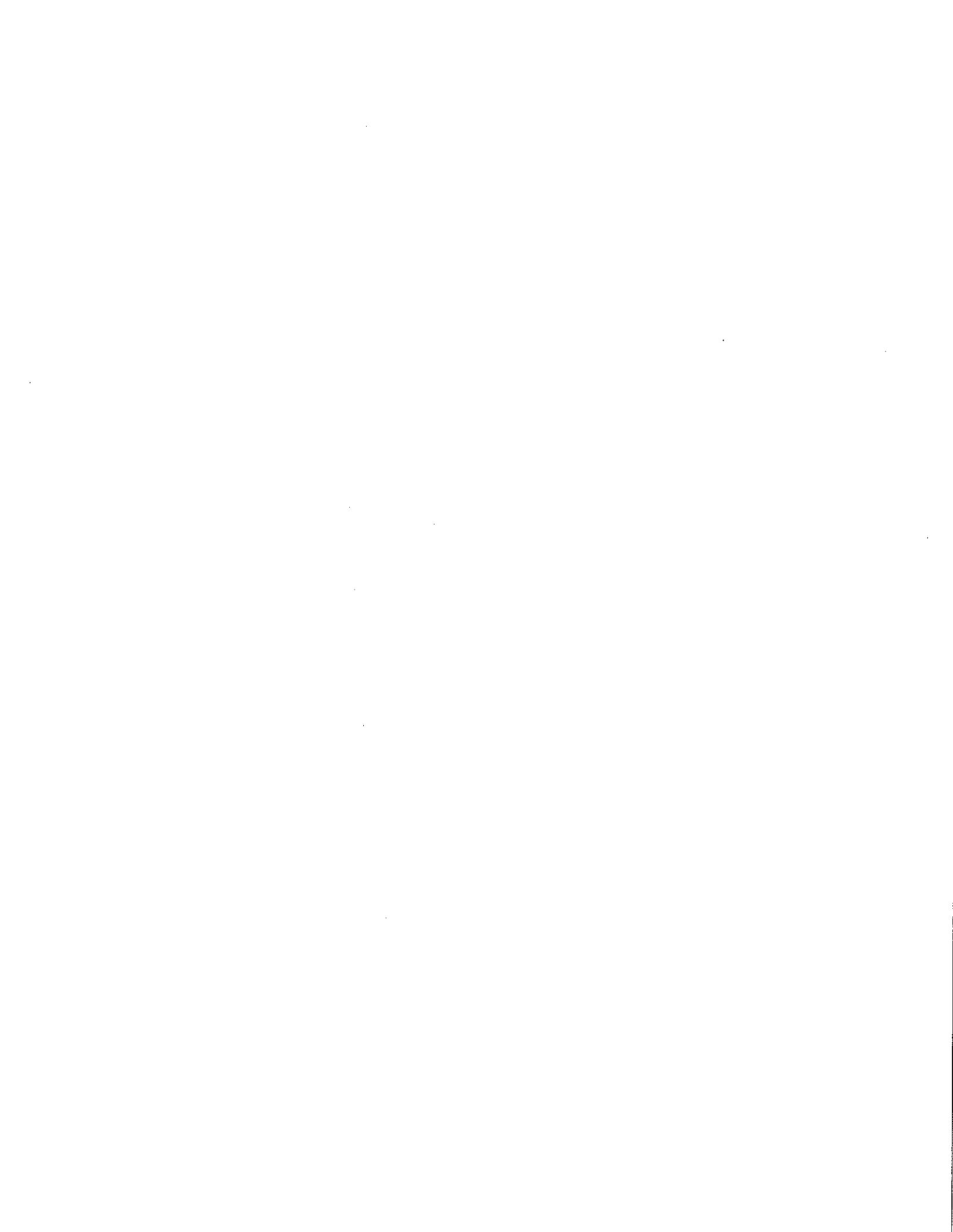
Earlier in the report, the committee provided information regarding staffing trends at CHRO since FY90. The committee analysis found the level of enforcement staff has remained essentially the same although the volume of complaints coming into the agency during this same time period grew significantly.

In her public hearing testimony before the program review committee, the current executive director stated her intention to seek additional investigators within each region to better manage the growing case inventory and ensure that statutory case processing time frames would not be exceeded. However, she could not proceed with the plan because of a hiring freeze imposed by the Office of Policy and Management.

The agency is currently working on a projected needs assessment of enforcement staff resources. The agency's assessment is based on information in the automated tracking system, subjective data, and the assumption the MAR process remains unchanged. The executive director reported to the committee that she would like to add two new investigators per regional office, with one person assigned strictly to mediation and conciliation. In addition, she stated her desire to augment intake.

These plans coincide with many of the program review conclusions and recommendations. The committee would add that re-examination and revamping of the automated tracking system may change the projections of staffing needs and reiterate the importance of enhancing the intake and MAR stages as well as expedited handling of reconsiderations. Therefore, the program review committee defers to the agency's management on how to best allocate its resources and recommends **CHRO proceed with its plan to request additional staff resources.**

APPENDICES



APPENDIX A
LPRI&C Questionnaire of CHRO Enforcement Investigative Staff

The Legislative Program Review and Investigations Committee is conducting a study of the Commission on Human Rights and Opportunities. As part of this study, we are sending this questionnaire to CHRO employees involved in the enforcement investigation process.

RESPONSES WILL BE HELD CONFIDENTIALLY AND WILL ONLY BE USED IN STATISTICAL SUMMARIES. YOUR INDIVIDUAL RESPONSE WILL NOT BE REVEALED IN OUR REPORT AND WILL NOT BE SHARED WITH THE AGENCY MANAGEMENT OR ANYONE ELSE. THANK YOU FOR YOUR COOPERATION.

Please indicate your length of service with CHRO: 21% < 5 yrs 29% 5-10 yrs 50% 10+ yrs

Your current position is: 60% HRO representative 40% Asst. Comm Counsel 1 --% Other

How **satisfied** or **dissatisfied** are you with each area below? (Please circle.)

	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied
Computer and data systems	-	33%	33%	33%
Clerical assistance or support	13%	20%	53%	13%
General work environment	7%	60%	7%	26%
Your job overall	14%	50%	21%	14%

Please tell us to what extent do you **agree** or **disagree** with the following statements:

	Strongly Agree	Agree	Disagree	Strongly Disagree
CHRO provides relevant training to its enforcement staff.	7%	27%	53%	13%
CHRO investigators should always be neutral factfinders rather than complainants' advocates.	57%	36%	7%	-
The implementation of CHRO policies and procedures varies <u>by</u> region.	40%	47%	7%	7%
The implementation of CHRO policies and procedures varies <u>within</u> region.	20%	27%	47%	7%
My co-workers have the necessary skills and abilities to do their jobs.	7%	53%	20%	20%
Assignment of workload is fair.	7%	50%	21%	21%

A I

	Strongly Agree	Agree	Disagree	Strongly Disagree
Enforcement policy manuals and directives are clear and well communicated.	-	47%	33%	20%
Investigators should <u>not</u> function as mediators in their own cases.	7%	13%	47%	33%
Complaints at the investigation stage are handled in a fair, professional, and timely manner.	13%	53%	53%	-
Handling the case backlog has had a negative impact on the quality of complaint processing.	20%	40%	20%	20%

How would you rate the overall **quality of communication**:

- between the central office and your regional office? --% Excellent 13% Good 40% Fair 47% Poor
- among the regional offices? --% Excellent 20% Good 27% Fair 53% Poor
- within your regional office? 13% Excellent 47% Good 20% Fair 20% Poor
- between the Office of Commission Counsel and your regional office? --% Excellent 7% Good 27% Fair 67% Poor

Please read and complete the following statements: (Check all that apply)

The MAR process: 60% provides effective early case disposition 40% is unfair to inarticulate complainants 20% is unfair to those without legal representation 40% helps control the case inventory

OTHER: _____

The use of staff production standards: 60% is unrealistic and unfair 13% is a good evaluation measure 40% compromises the quality of work 20% is not a problem

OTHER: _____

The CHRO complaint process: 7% favors the complainant --% favors the respondent 80% is fair to both parties 7% is unfair to both parties

OTHER: _____

What suggestions would you make to improve the work of CHRO? Is there anything else you would like to add? If so, please attach any comments. Feel free to call **Carrie Vibert** or **Michelle Castillo** at (860)240-0300 to ask any questions about our work. Thank you again for your cooperation.

A J

Appendix B

Legislative History of the Commission on Human Rights and Opportunities

1943 Inter-Racial Commission founded by law becomes the nation's first official civil rights agency. Ten Commissioners appointed by the Governor were empowered to investigate equal employment opportunities, and to compile facts on discrimination in employment, violations of civil liberties and other related matters. P.A. 381

1947 Fair Employment Practices Act adopted, making it illegal for employers of five or more persons, employment agencies, unions or individuals to discriminate in terms, conditions or privileges of employment, because of race, color, religious creed, national origin or ancestry. Ten hearing examiners appointed by Governor, three of who would constitute a hearing tribunal (at \$25.00 per day) with cease and desist powers. P.A. 171

1949 Public housing projects were specifically included in the Public Accommodation Law. The Inter-Racial Commission was authorized to investigate and adjust complaints under this statute. P.A. 291

1951 The Inter-Racial Commission is renamed Commission on Civil Rights P.A. 21

1953 Definition of public place was broadened to include publicly assisted housing, and all establishments which offer the public goods, services, and facilities. Discrimination, separation, and segregation were prohibited. P.A. 326

1955 Commission authorized to initiate housing discrimination complaints. P.A. 410

Discriminatory "help wanted" advertising declared an unfair employment practice. P.A. 550

1959 Job discrimination on account of age (40-65 inclusive) prohibited. Period for filing complaints reduced to 90 days after the alleged discriminatory act. P.A.145 and P.A. 334

Discrimination in the sale or rent of private housing prohibited where five or more contiguous units are under the same ownership or control. P.A. 410

1961 Discrimination in the sale or rent of private housing was prohibited when three or more contiguous units are under the same ownership or control, or have been within one year prior to a discriminatory act. Building lots were also included. P.A. 472

1963 Age provisions were exempted from "unfair employment practices" when part of bona fide apprenticeship programs, group insurance or retirement and pension plans. P.A. 261

Complainants in job discrimination cases received the right of court appeal from decisions by the Commission or a hearing tribunal. P.A. 472

Discrimination in rental property was prohibited except for (1) an apartment in an owner-occupied two family house, or (2) rooms for rent within a private home or apartment. P.A. 594

1965 Equal access in public accommodations was extended to national origin or ancestry. P.A. 141

Non-discriminatory membership practices were required of associations, boards or other organizations for professions, trades or occupations that require a state license. P.A. 433

Commission received the power to petition for injunctions in discrimination cases about housing. P.A. 543

Commission received subpoena powers for employment records at the investigation stage. P.A. 576

1967 All state agencies mandated to include anti-discrimination activities in their annual reports; to comply with Commission requests for information; and to consider Commission recommendations for implementing state anti-discrimination policies. (Executive Orders, February and September, 1967)

National origin and sex added to discriminatory membership practices by professional associations whose members are licensed by the state. P.A. 39

Discrimination in the sale or rent of commercial property was prohibited. P.A. 177

The Commission requires the posting of notices about fair employment and public accommodation statutes, with non-compliance subject to maximum fine of \$250. P.A. 210

Definition of employers broadened to cover those with three or more employees. P.A. 253

Commission was authorized to require contractors to honor Commission requests for information on employment practices and procedures. P.A. 284

Sex discrimination was added to protections covered by the Fair Employment Practices Act. P.A. 426

Commission's name changed to Commission on Human Rights and Opportunities and enlarged to twelve members. P.A. 636

Commission received authorization to establish regional offices and to employ a member of the state bar as its own council. P.A. 715

Commission was authorized to seek such awards, not to exceed \$500, based on findings of a Public Hearing Tribunal in housing or commercial property cases. P.A. 756

1969 The number of Hearing Examiners was increased to 15 and raised to \$35, plus reasonable expenses. P.A. 656

1972 Mobile home parks were defined as places of public accommodation P.A. 186

1973 Sex discrimination was added to the prohibitions in the Public Accommodations Statute. Exception granted in rental of segregated sleeping quarters. P.A. 119

Blind and otherwise physically disabled persons were included in the laws. P.A. 279

Hearing Examiners must be lawyers; their total number was increased to 25; and their daily compensation was raised to \$75 plus reasonable expenses. P.A. 444

Sex and marital status discrimination in credit transactions was prohibited. Pregnancy leave benefits and job rights were specified for inclusion in the Fair Employment Practices Law. P.A. 647

1974 CHRO was granted subpoena power to allow investigators access to records and other documents relating to the complaint. P.A. 74-43

The period for filing complaints was increased from 90 to 180 days after the alleged act of discrimination. P.A. 74-54

Sex discrimination was added to the prohibitions in the State Contract Compliance Law. P.A. 74-68

Discrimination because of marital status in public accommodations and housing was prohibited. However, denial of housing to a man and a woman unrelated by blood or marriage was specifically exempted from this prohibition. P.A. 74-205

The Commission was authorized to receive complaints under the law prohibiting discrimination against persons with criminal records by the state in employment and licensing, within 30 days of the alleged violation. P.A. 74-265

"Physically disabled" was defined in the state's anti-discrimination laws. 74-346

1975 Back pay as a remedy for unfair employment practices limited to two years prior to complaint filing with interim earnings, including unemployment compensation and welfare payments, and amounts which could have been earned with reasonable diligence, deducted. P.A. 75-27

Arbitration process was declared no bar to persons filing discrimination complaints. P.A. 75-214

CHRO authorized to use interrogatories requiring written answers as part of its investigation. P.A. 75-216

Age (18 and over) was added to the classes protected by the Credit Transactions Law. P.A. 75-281

Age discrimination in public accommodations was prohibited. Exempted from the law's provisions are: minors, federal, state aided or municipal housing for the elderly and private housing developed and maintained for specified age groups. P.A. 75-323

"Physically disabled" was clarified. The definition adds the terms, "infirmity or impairment" and includes, but is not limited to, "epilepsy, deafness, or hearing impairment or reliance on a wheelchair or other remedial appliance or device." P.A. 75-346

Age discrimination in employment extended to persons below 40 and beyond age 65. P.A. 75-350

Marital status discrimination added to the employment prohibitions. P.A. 75-446

Affirmative Action Plans required of all state agencies, departments, boards, and commissions. CHRO was authorized to review, approve, and monitor each plan. P.A. 75-536

CHRO was empowered to enter into contracts for and accept grants of federal funds. P.A. 75-597

1976 Age and Marital Status were added to the law prohibiting discrimination in the performance of state contracts. P.A. 76-8

Discrimination on account of deafness was specifically prohibited in public accommodations, and deaf owners of guide dogs were extended the same rights as blind owners of guide dogs. P.A. 76-49

CHRO's statutory procedures for processing complaints were conformed to the State Administrative Procedure Act. P.A. 76-141

Credit Transaction Law was broadened to forbid discrimination based on race, creed, color, national origin, ancestry, and physical disability. Complaints may either be filed with CHRO or be brought to the Court of Common Pleas, which may award punitive and actual damage. P.A. 76-75 and P.A. 76-171

1977 The law prohibiting deprivation of legal or constitutional rights on account of alienage, color, race, or sex was expanded to cover blindness and physical disability. P.A. 77-278

CHRO was authorized to receive and initiate complaints for violation of the State Code of Fair Practices. P.A. 77-551

Commissioners were granted the authority to petition the Court of Common Pleas for injunctive relief in employment discrimination cases to prevent irreparable harm to complainants in cases involving employers of more than 50 employees. P.A. 77-531

Maximum period for appeal of Hearing Tribunal's final orders or decisions to dismiss complaints by the commission was changed from two weeks to 30 days. Court costs may be taxed in favor of the prevailing party, but may be waived for persons unable to pay. P.A. 77-603

The Executive Reorganization Act placed CHRO in the Department of Administrative Services, for administrative purposes only, and required that a majority of Commission members serve terms coterminous with the Governor. P.A. 77-614

1978 Statute establishing the Legislative Commission on Human Rights and Opportunities was repealed. P.A. 78-3

CHRO was required to review state agency annual reports to the Governor in order to monitor compliance with the State Code of Fair Practices. P.A. 78-14

Mentally retarded persons were included under the state's anti-discrimination laws. P.A. 78-148

Employers required to make a reasonable effort to transfer pregnant workers engaged in occupations which either believe may cause injury to employee or fetus, to a temporary, suitable position. P.A. 78-152

Five year staggered terms were reinstated for CHRO Commissioners. P.A. 78-315

Mandatory retirement based on age was eliminated for private sector employees. State and municipal employees may not be forced to retire until age 70. Exemptions for persons in occupations such as police work and fire fighting in which age is a bona fide occupational qualification. P.A. 78-350.

1979 Places of public accommodations were ordered to post notices stating that a deaf or blind person accompanied by a harnessed guide dog may enter the premises. P.A. 79-186

State agencies were required to develop their affirmative action plans pursuant to CHRO regulations and may be permitted to file approved plans annually instead of semi-annually. P.A. 79-255

Mandatory retirement at age 70 permitted for employees from private institutions of higher education. Certain high-salaried executive or policy makers in private or public sectors may be retired at age 65. Employers were permitted to consider age in a seniority system or benefit plan, as long as the plan was not to evade the law's age discrimination provisions. P.A. 79-303 and P.A. 79-304

Fair Employment Practices Law extended to persons with a present or past history of a mental disorder. P.A. 79-480

1980 The law prohibiting deprivation of legal or constitutional rights was amended to cover religion and national origin. Intentional desecration of public or private property as a demonstration of irreverence or contempt or cross burning is a Class A Misdemeanor. CHRO is authorized to process such complaints. P.A. 80-54

Sexual harassment by an employer, employment agency, labor organization or their agents against an employee, applicant or member was explicitly included as a discriminatory employment practice. P.A. 80-285

The statutes administered by CHRO were technically revised and consolidated into one chapter of the General Statutes in Title 46a. P.A. 80-422

1981 CHRO to process complaints under the Families with Children Law, which prohibit refusal to rent and rental discrimination because of minor children. Exemptions continue for one and two family housing and all owner occupied three and four family dwelling units, as well as those situations where the rental would violate any local, state, or federal law or regulation or condominium by law. P.A. 81-81

"Discrimination on the basis of sex" to include discrimination related to pregnancy, child bearing capacity, sterilization, fertility, or related medical conditions. Workers were provided protections in jobs that may endanger reproductive health. P.A. 81-382

1982 Group health insurance plans may not reduce coverage for employees who are age 65 and eligible for Medicare benefits as long as coverage is the same as that provided by the insurance plan. P.A. 82-196

1983 General contractors bidding on state public works projects were required to make a good faith effort to employ minority businesses as subcontractors and suppliers of materials. P.A. 83-496

CHRO was authorized to appeal an order of a Hearing Officer. P.A. 83-496

CHRO was reestablished following Sunset review. Commission members was reduced from 12 to 9: 5 appointed by the Governor and 4 by legislative leaders for four-year staggered terms. Commission to review and formally approve affirmative action plans by a majority of its members within 75 days of each plan's submission. Commission to issue certificate of noncompliance if an AAP is disapproved twice consecutively. CHRO to monitor state contracts to determine compliance with statutes prohibiting discrimination. Noncompliance as determined by CHRO will prohibit contractor from award of further contracts. P.A. 83-569

1984 The time period for CHRO to formally approve or disapprove state agency affirmative action plans was extended from 75 to 90 days. The required majority vote for approval or disapproval was clarified to be a majority of commissioners present and voting. P.A. 84-41

The Commission's interrogatory authority extended to any complaint alleging any discriminatory practice, and answers were required to be under oath. CHRO was authorized to adopt regulations. P.A. 84-88

Religious creed was defined so as to require an employer to make reasonable accommodation to an employee's religious observances, practice or beliefs, unless an employer demonstrates that he is unable to reasonably accommodate without undue hardship in the conduct of his business. P.A. 84-202

The requirements of § 4-114a were extended to political subdivisions of the state other than a municipality. Minority business enterprise was defined. P.A. 84-412

Commission to adopt regulations of § 4-114a. Good faith efforts for the employment of minority businesses as subcontractors and suppliers in public works projects were defined. P.A. 84-418

By Executive Order, Governor O'Neill required the Commission to be the central coordinating agency of state government responsible for assuring that equal opportunity through affirmative action exists within state service. Executive Order No. 14, Jan. 3, 1984

1985 The amount of any deduction for interim unemployment compensation or welfare assistance deducted from back pay awarded by a respondent must be paid by the respondent to the Commission, which will transfer it to the appropriate state or local agency. P.A. 85-179

Mobility impaired owners of guide dogs were given the same protections under the Public Accommodations Law as those afforded to blind or deaf guide dog owners. P.A. 85-289

Mobile manufactured home parks developed and maintained for specified age groups were exempted from the prohibitions against age discrimination in the Public Accommodations Law. P.A. 85-512

1986 Maximum double damages which a court may award in housing discrimination cases was increased from \$500 to \$3,000. P.A. 86-193

Notice of a court hearing for an injunction in a housing discrimination case must be served on the respondent not more than 10 days instead of 5 days before the hearing. P.A. 86-206

Amount of pension or retirement benefit for the termination of executives or high policy makers at age 65 was raised from \$27,000 to \$44,000 to conform to the federal law. P.A. 86-381

By Executive Order, Governor O'Neill created the Dr. Martin Luther King, Jr. Holiday Commission and required CHRO to act as secretariat and consultant. Executive Order No. 15, Jan. 10, 1986.

1987 The head of each state agency required to be directly responsible for the development, filing, and implementation of the affirmative action plan. P.A. 87-255

CHRO was authorized to issue a certificate of noncompliance if a state agency affirmative action plan is disapproved, rather than if twice consecutively disapproved. P.A. 87-303

To meet an affirmative action goal, an appointing authority may request and the Administrative Services Commissioner may certify names of qualified protected class members for appointment or promotion who may not be reachable under existing certification procedures. Requests must also be furnished to CHRO who may send written comments to the appointing authority and the DAS Commissioner. P.A. 87-322

The Commission director was designated by a member of the AIDS Task Force to review, research, and recommend state policy on acquired immune deficiency syndrome. P.A. 87-527

1988 Nursing homes permitted to grant preference in admissions on the basis of creed if owned by, operated by, or affiliated with a religious organization, the organization is tax exempt, and the class of people given preference is consistent with the religious mission of the nursing home. P.A. 88-114

The procedures for appeal and enforcement of decisions of CHRO Hearing Officers were separated, clarified, and simplified. Injunctive relief provisions for discriminatory employment practices and discriminatory housing practices were consolidated and uniform standards were established. P.A. 88-241

Discrimination on the basis of mental disability was prohibited in public accommodations and housing. P.A. 88-288

Violation of contract compliance law was made a discriminatory practice. Commission to assess civil penalties after hearing against contractors who fraudulently qualified for state contracts as minority business enterprises or who knowingly do business with such contractors. Connecticut age discrimination statutes were conformed to the federal law with respect to mandatory retirement, pension accrual, and group health insurance. Tenured faculty of public colleges may not be mandatorially retired. P.A. 88-303

Effective April 1, 1988, public works contractors with 50 or more employees and individual contracts between \$50,000 and \$250,000 required to submit affirmative action plans for CHRO review and approval. Successful bidder must have their affirmative action plans approved or conditionally approved by CHRO within 60 days of submittal in order to be awarded the contract. CHRO to investigate and proceed against any instances of noncompliance with the act's affirmative action provisions. It is also required to compile data on state contracts with female or other minority businesses and report annually to the General Assembly on the employment of these businesses as contractors and subcontractors. P.A. 88-351

1989 In response to the recommendations of the 1988 Governor's Task Force, significant changes made to CHRO's procedures for handling complaints and to the terms, duties, and power of the commissioners and its executive director. Specifically, time frames were imposed for conducting an investigation, completing conciliation efforts, and scheduling a hearing once a reasonable cause finding has been made.

Investigators required to make a written finding of reasonable cause, including factual findings, within nine months of the date the complaint was filed. One three-month extension is permitted for good cause. If complainant requests a reconsideration, it must be filed within 15 days after the finding is issued and the commission must reconsider it within 90 days of issuance. Investigator must attempt conference, conciliation, and persuasion within 60 days after a reasonable cause finding. If discrimination has not been eliminated within 45 days after the reasonable cause finding the investigator must certify the complaint and the investigation results to the attorney general and the commission chairman for a public hearing. The hearing must be held not later than 90 days. Also, the term "reasonable cause" was defined.

CHRO to serve a copy of the complaint on the respondent and authorizes the respondent to file a written answer under oath within 15 days after receiving the complaint. CHRO authorized to conduct fact-finding conferences to promote settlements. Investigators required to let each party provide written or oral comments on all evidence in CHRO's file and to consider those comments. Each party is afforded the right to inspect and copy all documents, statements of witnesses, and other evidence unless federal or state law otherwise prohibits disclosure. The investigator or commissioner is authorized to disclose to the complainant, respondent, and their counsel what has occurred during attempts to eliminate the discrimination. The complainant is afforded the right to be represented by his own counsel at the hearing.

Discrimination complaints pending on January 1, 1990 must be resolved by July 1, 1991.

Existing nine commissioners terms were to expire on July 14, 1990 and new appointees to be made by the governor and legislative leaders. Governor, instead of the commission, to select the chairman for a term of one year. Commission to appoint an executive director by July 15, 1989 and supervise him. Executive director's term expires July 14, 1990 and thereafter the term is for four years. Executive director's duties and salary determination are specified. Terms and conditions of hearing examiner appointments are altered. P.A. 89-332

1990 A separate fair housing law distinct is created that is substantially equivalent to the federal law. Specifically prohibited are steering, blockbusting, and other forms of housing discrimination. CHRO to have responsibility for enforcement, but the complainant may go to court to enforce its provisions. A person is allowed to file a housing suit in court, but if the complaint has been filed with CHRO and has held a hearing or entered an agreement, court is no longer an option, except to enforce the agreement or hearing officer's decision. CHRO is given the express right to join a lawsuit.

New construction housing with four or more units is required to comply with specific handicap accessibility laws.

The maximum damages a person who is discriminated against in housing can receive from a court is increased from \$3,000 to \$50,000.

The prohibition on discrimination against families with children is extended to condominiums regardless of any by-laws barring families with children. Discrimination against families with children is allowed in elderly housing but age discrimination among the elderly in elderly housing is prohibited.

Procedural changes are made in the way complaints to CHRO are handled. After receiving a complaint, CHRO to notify the complainant of the statutory time frames and of his right to sue in court. Within 10 days of receiving the complaint, CHRO must serve it on the respondent together with a notice that identifies the discriminatory practice and informs him of his procedural rights and obligations. The number of days a respondent has to file an answer in housing discrimination cases is reduced from 15 to 10. P.A. 90-246

CHRO's deadline for resolving all discrimination complaints pending on January 1, 1990, is extended for one year (July 1, 1991 to July 1, 1992). The commission's procedures and timeframes passed in P.A. 89-332 will not apply to these pending complaints. The term "learning disability" is placed in the list of protected classes, authorizing CHRO to use its authority to investigate and enforce the law for these types of discrimination. P.A. 90-330

1991 Discrimination on the basis of sexual orientation in employment, housing, public accommodations, credit, and in the provision of state services and benefits is prohibited. Generally, the same duties, requirements, enforcement mechanisms, and penalties as already apply to other classes of people who have anti-discrimination protection are imposed. Exempt from these provisions are any religious corporation, entity, association, educational institution, or society. "Sexual orientation" is defined as a preference, or history of a preference, for heterosexuality, homosexuality, or bisexuality. P.A. 91-58

A person accused of discrimination is required to file a written answer under oath to the complaint. The time for filing an answer with CHRO is extended from 15 to 30 days after the respondent is served with the complaint. The answer to a complaint alleging housing discrimination must still be filed within 10 days.

The executive director of CHRO, or his designee, to issue a default order against respondent who fails to (1) file a sworn answer, after notice; (2) answer interrogatories issued by CHRO; (3) respond to a subpoena issued by CHRO. CHRO hearing officers to enter a default order against a respondent who fails to (1) file a written answer prior to the hearing within time limits or (2) appear at the hearing after notice. CHRO to petition the Superior Court to enforce such default or relief orders. Executive director to appoint up to two deputy directors with the approval a majority of the commission. Executive director to assign complaints to investigators and appoint hearing officers. Hearing officers to allow reasonable amendments to any complaint or answer. CHRO is permitted to accept private funds, bequests, gifts, and donations, including the services of attorneys. P.A. 91-302

Effective October 1, 1991, a complainant is permitted to bring an action in Superior Court for violation of the discriminatory employment law if his/her complaint is still pending after 210 days. P.A. 91-331

1992 A person accused of housing discrimination is permitted to have CHRO bring an action in Superior Court rather than hold an administrative hearing. This right arises if investigator finds reasonable cause to believe there has been an incident of discrimination. The degree to which sex discrimination is allowed in single-sex rooming houses and the degree to which landlords can discriminate against someone with a guide dog visiting a tenant is limited. P.A. 92-257

1993 The daily compensation for hearing officers was increased from \$75 to \$125. P. A. 93-313

The appointment of hearing officers is altered to give the governor more authority and eliminate the CHRO executive director from the process. A five-year term is established for all present and future hearing officers, and five instead of two years as an attorney is required as a condition of employment

Hearing officers to set a reasonable fee for expert witness testimony under certain circumstances.

CHRO executive director to appoint two hearing adjudicators to help settle cases or handle preliminary matters prior to a hearing.

The hearing of a contested case before a hearing officer must be a new hearing on the merits of the case and not an appeal of CHRO's processing of the complaint prior to its certification for public hearing. The attorney general or CHRO counsel to allow the complainant's attorney to present some or all of the complainant's case at hearing, if he determines that it will not adversely affect the state's interests. Hearing officers, hearing adjudicators, or attorneys who volunteer their services are authorized to supervise settlement efforts in contested cases.

Alternative dispute resolution efforts for up to three months is authorized in employment discrimination cases. The cost must be paid by either or both parties and not by CHRO. Negotiations in connection with settlement or alternative dispute resolution measures are not permitted to be received in evidence.

A complainant is authorized to petition the court to enforce any order issued by the hearing officer and for other appropriate temporary relief or a restraining order.

Hearing officers are required to state his/her findings of fact and issue an order dismissing the complaint only after there has been a "complete hearing." P.A. 93-362

1994 Procedures and deadlines established for employment cases filed with the CHRO when the parties choose to resolve the complaints through alternative dispute resolution. Commission to inform the parties of the availability of voluntary mediation and binding arbitration. CHRO to dismiss complaints submitted to binding arbitration, after arbitration is completed, and to suspend for up to three months the processing of complaints submitted to voluntary mediation, unless public policy reasons exists for pursuing them.

Commission to adopt implementing regulations, including standards and procedures for alternate dispute resolution of employment discrimination complaints. Either or both of the parties to an employment discrimination complaint are responsible for the costs of alternate dispute resolution. P.A. 94-113

The powers of local civil rights agencies are expanded to issue orders and petition the court for relief with respect to violations of local discriminatory practices codes that CHRO has with respect to state anti-discrimination laws. By law, CHRO's actions supersede a local agency's actions on the same matter but CHRO may consider evidence from a local investigation and the local agency's decision. P.A. 94-163

CHRO executive director, or his designee, to decide the most appropriate method for handling a case and use mandatory mediation as a method of fact-finding, resolution, or determining whether there is a reason to believe a violation has occurred. CHRO executive director, or his designee, to review the file within 90 days after the complaint, other than a housing complaint, is filed. Review must include the complaint; the respondent's answer and response to CHRO's requests for information, if any; and the complainant's comments about the answer and response, if any. If he/she determines the complaint does not state a claim for relief or is frivolous on its face, or that there is no reasonable possibility that investigating it will result in a finding of reasonable cause, CHRO must dismiss the complaint. CHRO to dismiss a complaint if the respondent has eliminated the practice complained of, taken steps to prevent a similar violation, and offered full relief to the complainant, even if the complainant has refused the relief. A complainant to ask CHRO to reconsider its decision within 15 days of the dismissal whenever a complaint has been dismissed because it fails to state a claim for relief, is frivolous, or there is no possibility that investigating it will result in a finding of reasonable cause. The commission must consider or reject the request within 90 days.

The attorney general or CHRO counsel may withdraw certification of a complaint for public hearing and remand it for additional investigation under certain circumstances. A confidentiality requirement that applies to CHRO investigators is extended to all CHRO commissioners and employees. Sex discrimination in places of public accommodation, resort, or amusement does not apply to separate bathrooms.

The commission is required to inform a complainant by mail of ant finding, closure, dismissal, or other determination or proceeding concerning the complaint. P.A. 94-238

1996 CHRO to retain jurisdiction until January 1, 1997, over any pending discrimination complaint filed before January 1, 1996, that it would have had jurisdiction if it had complied with statutory time frames. This law, passed to overrule the Supreme Court decision in *Angelsea Productions Inc. v. CHRO* 236 which ruled that the statutory time frames are mandatory, prevented the immediate dismissal of cases. CHRO must issue a determination on these complaints by January 1, 1997, or its executive director must immediately issue a release allowing complainants to bring their case to court. They must do so within 90 days from the date they receive the release, in accordance with existing standards for taking employment discrimination cases to court, regardless of the two-year statute of limitations.

CHRO is given jurisdiction over any complaint filed with it after January 1, 1996, that it would have had if it complied with statutory time frames, as long as it takes action to comply with these time requirements by June 30, 1996. The 90-day time frame for administrative review and dismissal of complaints when the respondent fails to answer in a timely fashion is suspended from the end of the 30-day response period until CHRO receives the answer.

Cases filed by January 1, 1996, that are on appeal to the court from a hearing officer's decision, on appeal from the dismissal of the complaint, involve a court petition to enforce a hearing officer's order, or involve a court appeal from the final CHRO decision of CHRO are validated and require court reinstatement.

CHRO is granted 12 instead of 9 months to make a finding of reasonable cause or no reasonable cause. Executive director is allowed to grant two, instead of one, three-month extensions for good cause.

CHRO hearings are required to be commenced by convening a hearing conference no later than 90 days after a finding of reasonable cause. CHRO hearings are further required to proceed with reasonable dispatch and in accordance with requirements of the UAPA.

Law Revision Commission, with a 13-member advisory committee, to study and recommend a revision of the CHRO complaint process to the General Assembly by January 15, 1997. P.A. 96-241

1997 An authorized trainer working with a guide dog for a blind person or for a deaf or mobility-impaired person is permitted to bring the dog on public transportation or into public accommodation. Denying access to them in any place of public accommodation, or amusement is a discriminatory practice. The penalty is a fine of between \$25 and \$100, imprisonment for up to 30 days, or both. P.A. 97-141

It is a discriminatory practice for a place of public accommodation, resort, or amusement to restrict or limit the right of a mother to breast feed her child. P.A. 97-210

1998 Employment discrimination based on genetic information is prohibited. Employers are prohibited from requiring employees or people seeking employment to provide genetic information. By law, CHRO is authorized to investigate employment complaints of this nature. P.A. 98-180

CHRO will monitor Affirmative Action Plans of state agencies for hiring and retention of persons with disabilities. P.A. 98-205

A licensed first- and second-mortgage broker or lender to notify the banking commissioner by written affidavit if, he reasonably believes the lending practices of a financial institution or federal bank violate any anti-discrimination statute. The commissioner to notify CHRO when he finds there is a reasonable basis for doing so and inform CHRO of the action he plans to take. The commissioner is permitted to suspend, revoke, or refuse to renew the license of any broker or lender who violates these requirements. P.A. 98-221

CHRO's panel of at least 25 part-time hearing officers replaced with seven full-time human rights referees appointed by the governor. The full-time referees have the powers and duties granted to hearing officers and presiding officers under the Uniform Administrative Procedures Act (UAPA). Part-time hearing officers serving on October 1, 1998, continue to serve until all their cases are complete.

CHRO is granted jurisdiction to investigate and resolve discrimination complaints even though it fails to meet deadlines for conducting and completing investigations and initiating administrative hearings. CHRO is required to report annually to the governor and the Judiciary Committee on the number of cases for which statutory time frames for investigating complaints are not met and the reasons for it.

The right to file a discrimination lawsuit is expanded. CHRO must issue authorization for the complainant to sue if the complainant and respondent jointly request it. Complainants whose cases are dismissed by CHRO based on a merit assessment review or for failure to accept full relief from a respondent are given

the right to sue the respondent in court within 90 days of the dismissal. If complainants ask for reconsideration and it is denied, their only remedy is an appeal. Further, complainants who charge discrimination based on sexual orientation can receive a release to sue if the complaint is not resolved within 210 days.

The time CHRO has to serve a copy of the complaint on a respondent is increased from 10 to within 20 days after the complaint is filed. CHRO, for good cause, may grant a respondent a 15-day extension beyond the 30-day period within which they must file an answer to the complaint with CHRO. CHRO must administratively review a case file within 90 days after it receives the answer, instead of within 90 days after it receives the complaint. Thus, CHRO is given up to an additional 65 days to conduct its merit assessment review.

The time for investigating complaints is reduced from within 12 months of the filing date to within 190 days after the merit assessment review. The CHRO executive director may grant the investigator two three-month extensions for good cause.

A CHRO investigator who finds reasonable cause to believe that discrimination did occur must attempt to eliminate it by conference, conciliation, or persuasion within 50 instead of 60 days after the finding. The complaint must be certified within 10 days of the end of the 50-day period if the investigator fails to eliminate the discriminatory practice. An administrative hearing conference must be held within 45 days after the investigator certifies the complaint rather than within 90 days after a reasonable cause finding. The executive director, rather than the commissioners, determines reconsiderations of agency decisions. The executive director works at the pleasure of the nine commissioners and will receive annual reviews. P.A. 98-245

1999 CHRO must require state agencies, within available appropriations, to give their existing employees at least three hours of diversity training and education by January 1, 2001 and to give new employees such training within six months of their hiring. Agencies must give priority to training existing and new supervisory employees. An agency only has to train new employees if it trained its existing employees before October 1, 1999. CHRO must assist the Department of Administrative Services commissioner in developing a diversity training program for state agency use. CHRO is authorized to investigate complaints about agencies not complying with the mandated training and must provide annual reports on the status of state agency diversity training programs to the General Assembly. P.A. 99-180

Appendix C Commission Roster

Chairperson

Richard Allen Robinson
Term expires 7/14/03
Appointed by Governor

Deputy Chairperson

Jane Glover
Term expires 7/15/02
Appointed by Speaker of House

Secretary

Benjamin F. Rhodes, Jr.
Term expires 7/15/00
Appointed by Governor

Members

Vivian Blackford
Term expires 7/14/03
Appointed by Governor

Julia Powell O'Brien
Term expires 7/14/02
Appointed by Senate Min. Leader

Edith Pestana
Term expires 7/14/00
Appointed by Governor

Amalia Vazquez Bzdyra
Term expires 7/15/00
Appointed by Governor

Roger Vann
Term expires 7/14/02
Appointed by President Pro Tempore

Andrew M. Norton
Term expires 7/15/02
Appointed by Minority Leader

APPENDIX D

Other States Civil Rights Enforcement

Nearly all states have fair employment practices laws, sometimes designated as human rights laws. Most of these jurisdictions have established agencies to investigate charges of discrimination and to enforce the fair employment practices (FEP) laws. State agencies with enforcement standards comparable to EEOC are deferred to by the federal agency for initial processing of all charges within their jurisdiction.

State laws frequently extend farther than federal civil rights statutes. Consequently, employers can find themselves bound by the more comprehensive requirements of state and local laws as well as by the broad ban against discrimination on the basis of race, color, religion, sex, age, national origin, citizenship status, and handicap required by federal provisions. In addition, to being more comprehensive, state laws often extend to smaller employers. While federal law applies mainly to employers with 15 or more employees, some state statutes cover employees with only one. Other states make no provision for minimum number of employees needed to determine coverage. The following is a synopsis of the 12 states.

CALIFORNIA

FEP Law. The California Fair Employment and Housing Act prohibits employment discrimination on the basis of race, religion, color, age, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex.

Coverage. The act applies to employers with five or more workers, their agents, the state, or any of its political or civil subdivisions and cities. Employment agencies and labor organizations are also covered. An exception is made to the protection afforded to individuals with mental disabilities which only applies to employers with 15 or more employees.

Structure. Violations of the employment antidiscrimination law is handled by the Department of Fair Employment and Housing within the State and Consumer Services Agency. The department is administratively handled by an executive director appointed by governor subject to confirmation by the senate. The agency also works with a commission of seven members appointed by governor with advice and consent of senate. Commission members serve terms of four years. The commission chairperson is chosen by governor. The commission members receive \$100 per diem and are entitled to expenses actually and necessarily incurred in performance of their duties.

Process. Complainants have one year from the date of the alleged unlawful practice in which to file a complaint with the commission. The filing time can be extended up to 90 days if the complainant did not become aware of the discrimination until after the year expired. The department investigates the complaint and endeavors to eliminate discrimination by conciliation. If a complaint is not conciliated, the department

must issue a written accusation within one year of the filing of the complaint and within two years of the filing of a complaint claiming unlawful practices against a class of persons.

The department must issue an accusation or notify the complainant within 150 days of the filing of the complaint of the right to request a right to sue notice and must issue such notice no later than one year after the filing of the complaint. If the accusation includes a request for a remedy for emotional injuries, or for administrative fines or both, the respondent may elect to transfer the proceedings to a court by serving a written notice on the department, which must, within 30 days dismiss the accusation and file an action in court on behalf of the complainant.

The commission shall hold hearings on accusations issued and determines the issues raised therein. Hearings take place not more than 90 days after issuance of accusation upon which they are based.

The case is presented before commission by an attorney of department. A hearing officer appointed by commission presides unless a quorum of commission decides to hear. Within 60 days after case is submitted the hearing officer prepares a decision served on commission and all other parties. The proposed decision is deemed adopted by commission 100 days after service to commission by hearing officer unless within that time the commission rejects or amends it.

Reconsideration by any party is allowed within 20 days of the date a decision is mailed. Reconsideration may be assigned back to hearing officer for further evidence.

The commission may order the respondent to stop the discriminatory practice and order other appropriate relief such as: hiring or reinstatement with or without back pay; payment for actual damages sustained proven by a preponderance of the evidence, including for emotional pain and suffering, but such nonpecuniary damages together with any administrative fines assessed against a respondent must not exceed \$50,000 per complainant; prospective relief to prevent the reoccurrence of unlawful practice; or reporting of the manner of compliance. The commission has no authority to award punitive damages. In addition, if the respondent is guilty of fraud or malice, the commission may order the payment of administrative fines which are deposited into the general fund.

Within one year of effective date of every final order or decision issued, the department shall conduct compliance review to determine whether order or decision has been fully obeyed and implemented.

FLORIDA

FEP Law. The Florida Civil Human Rights Act prohibits employment discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or martial status.

Coverage. The law covers employers of 15 or more employees, employment agencies, and labor organizations.

Structure. The Florida Commission on Human Relations is comprised of 12 members appointed by the governor subject to confirmation by the senate. The commission selects its own chairperson. Appointments to the commission must be broad representation of various racial, religious, ethnic, social, economic, political, and professional groups within the state. At least one member of the commission must be 60 years of age or older. Members serve four year terms and are compensated \$50 per day. The commission appoints and removes the executive director.

Process. A complaint may be filed at any time within 180 days of the occurrence of the alleged unlawful employment practice. When it is determined that a complaint has been timely filed, the executive director shall provide notice and copy of complaint to the respondent within 15 days of the complaint filing. Unless complaint is settled or withdrawn, the complaint is assigned to the investigation unit.

During the course of the investigation, the unit may request of any person information concerning the facts and circumstances of the complaint. In the event any person fails to provide requested information, the executive director may issue and sign a subpoena on behalf of the commission. During the investigation, the investigator shall encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the complaint is not settled nor withdrawn at the end of the investigation, the investigator shall prepare an investigation report and recommendation for the Office of General Counsel.

The Office of General Counsel reviews the report and makes a recommendation to the executive director as to whether there is reasonable cause to believe that an unlawful employment practice has occurred. The executive director makes a determination and serve notice of such determination to complainant and respondent. Redetermination is available within 20 days. After a notice of determination of reasonable cause is found, the parties are invited to participate in conciliation. If a conciliation agreement is not made within 30 days, the complainant may file a Petition for Relief.

Each respondent must file an answer with the commission within 20 days of service of the petition. The answer must include a specific, detailed statement of any affirmative defenses. Failure to plead an affirmative defense constitutes a waiver of that defense. If the respondent fails to file a timely answer, such failure shall be deemed to constitute an admission of the material facts alleged in the petition.

A copy of the petition is served upon all commissioners. Upon consideration of a recommended order, the commission may order that the petition and complaint be dismissed or may determine that an unlawful employment practice has occurred. The commission may issue an order prohibiting the practice and provide relief from the effects of the practice. The order of the commission shall constitute final agency action.

ILLINOIS

FEP Law. The Illinois Human Rights Law prohibits employment discrimination on the basis of race, color, religion, national origin, citizenship status, ancestry, age, sex (including sexual harassment), marital status, a determinable physical or mental handicap, military status, and unfavorable discharge from military service.

It is also violation for employers, employment agencies, or labor organizations to inquire into or use an expunged, sealed, or impounded arrest or criminal record as basis to refuse to hire, segregate, or act with respect to recruitment, hiring, promotion, renewal or employment, discharge, discipline, terms, privileges, or conditions of employment.

Coverage. The law applies to private employers of 15 or more employees. However, antidiscrimination laws relating to handicap or sexual harassment applies to employers with one or more employees. The state, its subdivisions, employment agencies, labor organizations, and apprenticeship and training programs are also covered. The law also applies to an employer that is a party to public contract without regard to number of employees.

Structure. The Human Rights Commission consists of 13 members and appointed by the governor with advice and consent of senate. No more than 7 members shall be of the same political party. The governor designates the chairperson. The members serve staggered terms of four years. The executive director is also appointed by the governor with the advice and consent of the senate.

Process. A charge should be filed with the Department of Human Rights as soon as possible after the act of discrimination occurs. A charge must be filed within 180 days of the date the discrimination took place. A charge may be initiated by writing, phoning, or visiting the department office. An intake investigator will interview the complainant and draft a charge which must be signed and notarized. A copy of the charge is sent to the respondent within 10 days. A verified response must be filed with the department within 60 days by the respondent. Failure to do so may result in default findings in favor of the complainant.

An investigator will be assigned to investigate the charge. A fact-finding conference will be held to gather pertinent data from the parties. Following investigation staff will make a recommendation as to whether there is substantial evidence of discrimination. If the department does not find substantial evidence of discrimination, it will dismiss the charge. The complainant may appeal the department's dismissal to the chief legal counsel. The appeal must be filed within 30 days of the date of the dismissal of the charge.

If a settlement agreement is not reached, the department will file a complaint of civil rights violation the Human Rights Commission. If the department does not issue a complaint or a notice of dismissal with 365 days after the filed date of charge, the complainant has 30 days to file a complaint at the Human Rights Commission. After a

complaint is filed with the commission, it is assigned to an administrative law judge who sets a date for a public hearing. At this stage, the parties are encouraged to retain attorneys to represent them.

Following the public hearing the administrative law judge recommends a finding to a three-member panel of commissioners. If the recommended findings favor the respondent, the commission will decide whether to dismiss the complaint. If the decision favors the complainant, specific relief may be recommended. The commission may order the respondent to cease and desist, to pay actual damages, to hire, reinstate, promote, to back pay, attorney fees and costs, in order to remedy the discriminatory action. Appeals of the commission's order must be made within 35 days of the order. Appeals are made to Illinois Appellate Court.

IOWA

FEP Law. The Iowa Civil Rights Act prohibits employment discrimination on the basis of age, race, creed, color, sex, national origin, religion, or disability.

Coverage. The law applies to all employers employing workers in the state of Iowa, including the state, its political subdivisions, employment agencies, and labor organizations.

Structure. The Iowa State Civil Rights Commission consists of seven members appointed by the governor subject to confirmation by the senate. Appointments to the commission must provide geographical area representation insofar as practical. The commission is paid on a per diem basis. The governor, subject to senate confirmation, appoints the agency director.

Process. Complaints must be filed within 180 days of the last alleged discriminatory incident. When a signed and notarized complaint is received, it is reviewed by agency staff to determine whether it meets the statutory requirements. The complaint does not meet the statutory requirements if it is not timely filed or the commission does not have jurisdiction. If these criteria are not met, the complainant is notified and the complaint closed. If the complaint does meet the statutory requirements, a copy is mailed to complainant and served on the respondent.

Both complainant and respondent are required to answer a questionnaire and submit relevant documents within 30 days. When the commission receives both parties' responses to the questionnaires, all the collected information is reviewed to determine whether further investigation is warranted.

If the further investigation is not warranted, the complaint is administratively closed. The complainant has appeal rights. If further investigation is warranted, the complaint will be assigned to an investigator. After the complaint has been on file with the commission for sixty days, the complainant may request a right to sue letter which, if granted, would allow the complainant to file a lawsuit in district court alleging a violation

of Illinois law. At any time during the process, the parties may decide to settle the complaint through a voluntary, no fault mediation process.

During investigation, each party is usually interviewed and additional records are collected. Witnesses are contacted and interviewed. When the investigation is complete, the investigator will analyze all of the collected information and recommend to the administrative law judge whether probable cause or no probable cause exists to believe that discrimination occurred.

If the administrative law judge finds no probable cause, the complaint is closed. A no probable cause finding cuts off the complainant's right to sue. If the judge finds probable cause, the complaint is assigned to a conciliator who will contact the parties and attempt to conciliate or settle the complaint. If conciliation fails, the complaint will be reviewed to determine whether it should proceed to public hearing. If selected for hearing, a hearing is held in accordance to Iowa APA rules. If not selected for hearing, the complaint will be administratively closed and the complainant may request a right of sue letter.

MASSACHUSETTS

FEP Law. The Massachusetts Fair Employment Practice Act prohibits employment discrimination on the basis of race, color, religious creed, national origin, age, sex including sexual harassment, sexual orientation, ancestry, or physical or mental handicap.

Coverage. FEPA applies to employers of 6 or more employees, the state and all of its political subdivision employment agencies and labor organizations.

Structure. The Massachusetts Commission Against Discrimination consists of three full-time commissioners appointed by the governor serving three-year overlapping terms. The governor appoints the chairperson. The commission may appoint such attorney, clerks, and other employees and agents as it may deem necessary to fulfill their duties.

Process. Complaints of employment bias must be filed with the Massachusetts Commission Against Discrimination within six months of the alleged act of discrimination. After the filing of any complaint the chairman of the commission shall designate one of the commissioners to make with the assistance of the commissions staff prompt investigation. Commission staff members initially review all complaints to decide whether to dismiss or process them. If processing is authorized, the investigating commissioner must begin a formal investigation of the complaint within 30 days after the authorization and complete the investigation within 18 months.

After the authorization of a formal investigation, if both parties are represented by counsel, the investigating commissioner may order the parties to conduct discovery into

the allegation of the complaint and the respondent defenses to determine whether probable cause exists.

If no probable cause exists, the commissioner will within 10 days provide written notice. Within 10 days of service, the complainant may submit written request of preliminary hearing before commission to determine probable cause. The commission must allow this as matter of right.

If probable cause is found, immediate notice to parties to elect judicial determination. Parties must give written notice to agency within 20 days. If notice is received, the commission dismisses the complaint and it is given to the attorney general to commence civil action on behalf of the complainant.

If probable cause is found but the parties do not elect to judicial review, the commission endeavors to eliminate by conference, conciliation, persuasion. If this fails then a hearing is held. The case is presented before the commission by agency attorney. The investigating commissioner is not involved in hearing or else it is held by hearing officer appointed by commission. Any party aggrieved by final decision of hearing commissioner or officer may, within 10 days of receipt of decision, submit written request of review to the commission.

Within the first 90 days after the filing of a complaint, a complainant may make a written request to the investigating commissioner for permission to transfer the complaint to state court. But if the complaint has been pending before the commission for more than 90 days, the complainant can file a state court complaint without permission after filing a notice with the investigating commissioner and requesting that the commission not initiate its own complaint in the matter. The commission must make written findings of its investigation and if it finds that discrimination has occurred it must try to eliminate the unlawful practices through conference, conciliation, and persuasion. If conciliation fails, the commission conducts a public hearing and issues a written order. The order may be appealed to the full commission. The parties may obtain judicial review of a final commission order or seek enforcement of such an order.

Commission may issue an order to the respondent to stop the discriminatory conduct; order other affirmative relief such as hiring reinstatement, or upgrading of employees, with or without back pay, and order the payment of reasonable costs and attorney's fees.

MICHIGAN

FEP Law. The Michigan Civil Rights Act prohibits employment discrimination on the basis of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.

Coverage. The law applies to employers of one or more employees, employment agencies, labor organizations, and apprenticeship and training programs. However, it does not apply to employment of individuals by their parents, spouses, or child.

Structure. In Michigan, the Civil Rights Commission was created by the state constitution. The commission establishes policy and appoints the director for the Department of Civil Rights. The commission also acts as the final arbiter in contested cases filed with the department. There are eight commissioners, no more than four from the same political party, appointed by the governor for four-year terms.

Process. Complaints must be filed with the Michigan Department of Civil Rights within 180 days following the alleged act of discrimination. Complaints may be filed in state court without first filing with the Michigan Department of Civil Rights.

When a complaint is filed, a right specialist conducts a detailed interview with the complainant to decide whether the situation meets the jurisdictional requirements defined by law. If the complaint falls within the department's jurisdiction, a formal complaint is drafted. A copy of the complaint is sent to the party against whom the complaint is made. The complaint is assigned to a field representative for investigation. The respondent and the claimant may be invited to an investigative/resolution conference. This meeting provides an opportunity to explore the possibility of an early settlement agreeable to both parties and if unresolved a forum to clarify issues and receive evidence from the parties. If the matter is not resolved at this conference, additional investigation may occur including the examination of witnesses and documents that were not available prior to or during the conference.

A staff determination is made, on the basis of the investigation, whether there is sufficient evidence to credit the claimant's allegations. If there is not sufficient, the complaint is dismissed. Following such a dismissal, a claimant may petition for reconsideration of the decision and may be granted a hearing to offer proofs why the decision should be changed.

If sufficient grounds have been found, after investigation, to credit the claimant's allegations, the respondent is invited to a conciliation conference, where an attempt is made in private discussion to adjust the matter. If the efforts in conciliation are successful, the case is closed as adjusted, and the claimant and respondent are so notified.

If conciliation efforts are not successful, the department may issue a formal charge, requiring an answer from the respondent, and set a date for a formal public hearing. The hearing is conducted by one or more civil rights commissioners, or a referee. All witnesses testify under oath, the rules of evidence apply, and all parties have the right to examine and cross examine the witnesses. The burden of proof is on the department and the claimant.

Following the hearing and receipt of the referee's report, an appropriate order is issued by the commission either dismissing the complaint or directing that remedial

action be taken by the respondent. A claimant or respondent who does not agree with any final order of the commission may appeal to courts for review of the case.

MINNESOTA

FEP Law. The Minnesota Human Rights Act prohibits employment discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

Coverage. The law applies to employers of one or more employees including the state, its subdivisions, and employment agencies and labor organizations.

Structure. The Department of Human Rights is under the direction and supervision of a commissioner who is appointed by the governor. The commissioner may appoint an advisory task force if so desired.

Process. A charge must be filed within one year of an alleged unfair discriminatory practice. A copy of the charge and initial information request is served upon the respondent within ten days of complaint filing. The respondent has 20 days within which to answer the charge in writing. The agency may investigate the complaint by interviewing the witnesses, reviewing documents, requesting further information, and statistical analysis. The enforcement officer may also call a fact finding conference to obtain information needed to investigate an allegation. At the conference, the parties may attempt to resolve the proceedings before a determination is made. Once investigation is completed, the enforcement officer makes a recommended determination which is reviewed by a supervisor.

The decision is sent to both parties whom can each request reconsideration with ten days. If probable cause is found, the department attempts conciliation. If conciliation attempts fail, the agency issues a formal complaint. The attorney general prepares the case for litigation and a hearing is conducted before an administrative law judge. The administrative law judge decides the case by issuing an order supported by written findings of fact and conclusion law. The order shall be final decision of department and may be appealed in court.

NEW JERSEY

FEP Law. The New Jersey Law Against Discrimination prohibits employment discrimination on the basis of race, creed, color, national origin, ancestry, age, marital status, affectual or sexual orientation, sex, atypical hereditary cellular or blood trait, genetic information, refusal to submit to a genetic test or to make available the results to employer, or liability for service in the Armed Forces. Handicap discrimination is also prohibited unless the handicap reasonably precludes performance of a particular job. The law also prohibits discrimination on familial status which is defined broadly to include many types of parental relationship.

Affectional or sexual orientation is defined as "male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression. Atypical hereditary or blood trait means traits for sickle cell, hemoglobin C, thalassemia, Tay-Sachs, or cystic fibrosis.

Coverage. The law applies to private employers, the state, its political subdivision, all public officers, agencies and boards as well as employment agencies and labor organizations.

Structure. The Division of Civil Rights is housed within the New Jersey Department of Law and Public Safety. The division consists of the Attorney General and a commission of seven members appointed by the governor with the advice and consent of the senate. The commission members serve five year terms and are eligible for reimbursement for their expenses. The Attorney General appoints the division director subject to the approval of the commission and the governor.

Process. Once a complaint is accepted at the regional office, the division will conduct an investigation. Following the completion of the investigation, the director will determine whether or not probable cause exists to believe that unlawful discrimination has occurred. If a finding of probable cause is issued, the case will be transmitted to the Office of Administrative Law where a full hearing will take place before an administrative law judge. The case may be litigated by a state deputy attorney general on behalf of the division, or the complainant may choose to litigate personally or through private counsel. If a finding of no probable cause is issued, the case is closed without further proceedings by the division. If the director has not made a probable cause determination within 180 days of the filing of the complaint, the complainant may request to litigate the case at the Office of Administrative Law either personally or through private counsel (but not through a deputy attorney general)

If, after investigation and an administrative hearing of a complaint, the director determines that unlawful discrimination occurred, the director can order the respondent to take affirmative action to remedy the discrimination. The director is authorized to order relief such as reinstatement, hiring, or upgrading of the employee, and may also award back pay and damages for pain and humiliation. Further, after the hearing, the director may also award attorney's fees to prevailing complainants and may assess a statutory penalty against the responding party. Alternatively, an aggrieved party may file a complaint in New Jersey Superior Court within two years of the alleged violation.

NEW YORK

FEP Law. The New York Human Rights Law prohibits employment discrimination on the basis of age, race, creed, color, national origin, sex, disability, genetic predisposition or carrier status, or marital status.

Coverage. The law applies to employers of four or more employees, employment agencies, labor organizations, licensing agencies, and apprenticeship programs.

Structure. The Division of Human Rights is located within the executive department. It is headed by a commissioner appointed by the governor with the advice and consent of the senate. The commissioner holds office at the pleasure of the governor.

Process. If an individual feels he or she has been the victim of an illegal act of discrimination, he or she may file a complaint within one year of the date of the violation at any regional office. After contacting the regional office, and the Division's jurisdiction is established over the particulars of a given situation, the complaint can be taken either in person at the office or by telephone. In some cases, complaints may be taken by mail. In any event, the complainant will communicate with the investigator to give a summary of the specific acts of alleged unlawful discrimination. If the complaint falls within the division's jurisdiction, the investigator assists an individual in filing a formal complaint based on the information provided. The complaint is then mailed to the individual or organization charged with committing the discriminatory act, who is then asked to respond to the allegations.

Depending upon the respondent's answer, the investigator may advise whether there is reasonable basis for conciliation. The conciliation process is negotiated by the investigator, who identifies the main issues of the complaint, determines where the complainant and respondent agree and disagree, identifies what may be offered and what may be accepted, and develops an appropriate strategy for resolving the dispute.

If the complaint is not resolved at the conciliation level, or if one or both of the parties are not interested in attempting conciliation, the investigator begins a further investigation of the facts which may include, but are not limited to two party conferences, witness interviews, site visits, interrogatories and document requests. As the investigation proceeds, the investigator continues to attempt to settle the case through conciliation efforts.

Depending upon the information gathered during the investigation, the regional director reviews the investigator's work, and a determination of probable cause or no probable cause to believe that illegal discrimination has taken place is issued. If the determination is no probable cause, the complaint is dismissed, but the complainant has the right to appeal the determination to the state supreme court within 60 days.

If probable cause determination is issued, the complainant and the respondent meet with an administrative law judge in a pre-hearing conference to once again attempt to conciliate the complaint. If this effort fails, the complaint is scheduled for a formal public hearing before an administrative law judge, other than the one with whom the prehearing conference was held.

If further attempts at conciliation fail, the division convene a public hearing presided over by an administrative law judge. The complainant and the respondent or

their representatives present their respective cases at hearing. When appropriate, witnesses are called upon to give testimony. If conciliation agreement is not reached before a hearing concludes, the administrative law judge will prepare a recommended order either supporting the allegations or dismissing them. The order will identify what remedy is required for the complainant to be "made whole", as if the act of discrimination had not occurred. This may include employment, promotion, raise, back pay, letter of reference, a change in the respondent's policies, and or cash award in compensation for humiliation, suffering and mental anguish. The commissioner reviews the recommended order together with the record of the hearing and makes a final approval or dismissal. Both the complainant or the respondent can appeal the commissioner's order within 60 days to the state supreme court.

The compliance review officer conducts an investigation to see if the respondent has complied with the conciliation agreement or the commissioner's order no later than one year from the date of the decision.

OHIO

FEP Law. The Ohio Fair Practices Law prohibits employment discrimination on the basis of race, color, religion, national origin, handicap, age, ancestry, and sex including pregnancy and any illness arising out of and occurring during the course of pregnancy, childbirth, or related medical condition.

Coverage. The law applies to state and local government agencies, to private employers with four or more employees within the state, employment agencies, personnel placement services, and labor organizations. However, the law does not apply to domestic servants.

Structure. The five members of the Ohio Civil Rights Commission are appointed to staggered five-year terms by the governor, and confirmed by the Ohio senate. The governor designates the member to serve as chair. The members of the commission serve as the sole decision making body for case related matters brought before the commission, and sets policies of a general nature for the agency.

The commission appoints an executive director who serves as the chief executive officer, overseeing the day to day operations of the agency, and implementing the policies of the commission.

Process. A charge of discrimination must be filed with the commission within six months of the alleged date of harm. In employment, the commission has jurisdiction over all employers with four or more employees, and all governmental entities. Charges are received and investigated by any of the commission's regional offices.

After conducting a preliminary investigation, the regional office makes a recommendation to the commission, who then reviews and confirms those recommendations. It is only at this point that a letter of determination is issued. Any party

aggrieved by a determination can file a request for reconsideration, which is reviewed and decided by the commissioners. Where the commission issues a finding of probable cause, the regional office must attempt conciliation. If conciliation fails or reaches an impasse, the commission will issue a formal complaint and notice of public hearing. The commission must complete its preliminary investigation and issue the formal complaint within one year from the date of filing.

The attorney general will then present the case for the commission before a hearing examiner. At the conclusion of the hearing process, the hearing examiner will issue findings of fact, conclusions of law, and a recommendation to the commission. After reviewing this report, and any objections which may be filed in response to the report, the commission may adopt, modify, or reject the report, and issue an order of dismissal, or a cease and desist order. Any party aggrieved by a final order of the commission may file for judicial review of that order in state court.

RHODE ISLAND

FEP Law. The Rhode Island Fair Employment Practice Act prohibits employment discrimination based on an individual's race, color, religion, sex, sexual orientation, disability, age, or country of ancestral origin. Under the act, women affected by pregnancy, childbirth, or related medical conditions must be treated the same as any other employee who has similar job skills.

Coverage. The act applies to the state and all political subdivisions of the state, as well as labor organizations, employment agencies, and any person employing four or more workers. Domestic workers, spouses, parents, or children of an employer are not covered by the law.

Structure. The Rhode Island Commission for Human Rights consists of seven members appointed by the governor with the advice and consent of the senate. The chairperson is appointed by the governor. The commission should reflect the diversity of the state's population. At least one of the seven must have a background in law, business, and/or real estate. The commission members serve five year terms. They are compensated at no more than \$50 a day with a maximum of \$3,000 in one year. The commission appoints attorney, clerks, and any other employees as it deems necessary.

Process. A person who believes they have been discriminated against have one year from the date of alleged harm to bring their complaint to the commission. After the intake phase is completed and a formal charge of discrimination is filed, each case is assigned to an investigator. In an attempt to reach quick and easy resolution to the complaint, investigators may hold preliminary hearings with all parties present. More often, the investigators hold fact-finding conferences where both complainant and respondent can present facts which confirm or deny the allegations.

The commission attempts to settle every case, and only after all settlements possibilities are exhausted will the investigator make a recommendation to a preliminary

investigating commissioner. When the commissioner rules on the investigator's recommendation, the investigation process is completed.

An administrative hearing begins after the preliminary investigating commissioner finds probable cause and the parties fail to agree to a settlements during the conciliation process. One commissioner conducts the hearing with the assistance of legal counsel. The commission encourages both parties to subpoena witnesses, who present sworn testimony. A certified stenographer records the entire proceeding. After the parties present all their evidence, three commissioners (a quorum) reach a decision and issue an order.

TEXAS

FEP Law. The Texas Employment Discrimination Law prohibits employment discrimination on the basis of race, color, disability, religion, sex, national origin, or age. It is also prohibited based on the use of genetic test results or an employee's refusal to submit to such testing.

Coverage. The law applies to employers of 15 or more employees, the state, any individual elected to public office in the state or political subdivisions of the state. It also covers employment agencies, labor organizations, and labor management committees controlling apprenticeship-training programs.

Structure. The Texas Commission on Human Rights is governed by a six member commission, appointed by the governor to serve staggered, six year terms. The commission must be composed of one representative each from industry and labor, while the other four are public members. In addition, appointments to commission must provide for representation with respect to disability, religion, age, economic status, sex, race, and ethnicity. The governor designates the chairperson. The commission sets policy for agency operations, hires the executive director, and adopts rules governing the administration of the agency's programs. While the commission members do not receive compensation, they are entitled to reimbursement for their expenses.

Process. The complaint process begins when a complainant alleges a discriminatory practice. An agency investigator reviews the complaint to ensure that it is within the commission's authority and contains the basic elements of a discrimination complaint. Within ten days of receiving the complaint, the commission must notify the employer that a charge has been filed. By statute, the commission has 180 days after the filing date to process complaints before it must give employees notice of the right to take action in state court. After receiving this notice, the complainant has 60 days in which to take legal action, but may not take action after two years from the original filing date with the commission.

Throughout the process, the commission tries to get the parties to reach an agreed settlement. This may be formal or informal procedure. Additionally, the executive director may refer a case to the agency's mediation process within ten days of receiving a

complaint. The commission employs two full time mediators to impartially conduct mediation conferences. The parties have 30 days from the date of referral to mediate. If mediation or initial settlement efforts fail, the commission begins the full-scale investigation stage to determine whether reasonable cause exists to believe an employer has discriminated. The agency generally conducts in house investigations of employment complaints. Most information is collected by telephone or by sending information requests.

The commission dismisses a complaint if the investigation reveals that no reasonable cause exists to believe discrimination occurred. If reasonable cause is found, a panel of three commission members review the evidence and determine reasonable cause. After a finding of reasonable cause, conciliation efforts resume. If conciliation terms are acceptable to all parties, the case is closed. Otherwise, the complaint may proceed to court.



Appendix E

Agency Response





February 29, 2000

Mr. Michael L. Nauer, Director
Legislative Program Review and Investigations Committee
State Capitol
Room 506
Hartford, Connecticut 06106

Dear Michael:

On February 14th you asked the agency, if it so desired, to submit a formal agency response to your final report. I apologize for not submitting the agency's response in a more timely manner.

The agency appreciates the thorough and comprehensive study conducted by your staff; namely, Carrie Vibert and Michele Castillo, and wishes to applaud them and the committee for its hard work.

As I testified on October 19th before the Program Review Committee (written testimony attached), during my short tenure with the agency, I have made some of the same observations as the program review staff. In short, the agency concurs with all of the staff recommendations and has already begun to implement many of them.

Enclosed please find a brief response to each of the staff's recommendation that will more fully serve as the agency's response to your report.

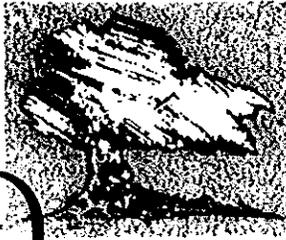
Thank you again for the opportunity to comment. Please pass on to Carrie and Michelle my heartfelt appreciation for all of their hard work.

Sincerely,

Cynthia Watts Elder
Executive Director

Enclosures





TESTIMONY
CYNTHIA WATTS ELDER
EXECUTIVE DIRECTOR
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
("CHRO")
BEFORE THE
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
OCTOBER 19, 1999

Good afternoon, Chairman Fonfara and Chairwoman Wasserman and other members of the Legislative Program Review and Investigations Committee:

My name is Cynthia Watts Elder, the newly appointed Executive Director of the Commission on Human Rights and Opportunities ("CHRO"). My tenure at the agency commenced on an interim basis on March 15, 1999, and I was appointed the permanent Executive Director on July 22, 1999.

By way of background, CHRO currently has 104 employees located in the central office on Grand Street and its four regional offices located in Hartford, Bridgeport, Norwich, and Waterbury. The agency has four divisions: Enforcement; Diversity, Education, and Economic Services; Legal; and Administrative Services.

I recognize and appreciate the scope of this committee's review is focused on the "mission, policies, structure, and management of the commission related to the handling of illegal discrimination complaints." In the seven months that I have led the agency, however, I am delighted to report that I have witnessed significant improvements in many areas within the agency, not just those related to complaint processing.

I was pleased when I learned during my first week at CHRO that program review was undertaking a study of the agency. I was pleased because I knew the more than capable program review staff would in all likelihood recommend changes that would enable CHRO to more effectively fulfill its mission. I was also pleased because I suspected that the program review staff would probably make similar observations to those I had observed upon my arrival. Several months prior to my arrival, consultants retained by the Commission undertook a study and recently had submitted a report to the agency containing an assessment of the agency's organizational structure and recommended ways to improve the agency. My personal observations and those of the consultants indicated that, among other things, employee morale was low, there was an erosion of trust between front-line staff and management, the agency is crippled by inadequate



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resources¹, there existed inadequate communication between staff and management, inadequate training opportunities, little opportunity for upward, career mobility, and inconsistent policies and procedures among regional offices.

The committee's "areas of analysis" essentially involve four principal topics that I will comment on: (1) the organizational structure of the agency (including the nine-member policy board), management and staff; (2) the effect of recent statutory changes to the complaint process including revised timetables and the use of full-time hearing referees; (3) management policies, procedures and practices, including allocation of resources, staff training, personnel performance evaluation and staff complaint handling; and (4) efforts to ensure quality performance and evaluation criteria.

Discussing pertinent organizational changes first, I have recently filled a previously vacant position entitled "Chief of Field Operations (CFO)." This position had been vacant for several years, but a long-time state and career CHRO employee, Donald Newton, has now filled it. With over fifteen years experience as a Regional Manager, he is highly qualified for this position and is well respected within the agency. The CFO's primary duties include serving as the chief liaison between the regional investigative offices and my office. Greater consistency among the regions will be developed as the result of refilling this position. Quality assurance and control will also be enhanced as a result of having someone whom is reporting directly to the Executive Director, supervising the regional managers.

As you may know, the Governor recently appointed a new chair to the commission, Attorney Richard Robinson who has faithfully served the commission for a few years. There have also been three other recent, noteworthy, appointments to the commission: Roger Vann, President of the Connecticut State Conference of NAACP Branches; long-time government employee, Attorney Amalia Vazquez Bzdyra; and former legislator, Andrew Norton. This new, more unified, commission with greater access to management, will aid in the development of more effective, sound, policy-making and will improve communications with staff and with the agency's external stakeholders.

Second, I will discuss the effect of recent statutory changes providing for seven full-time referees in lieu of part-time (per diem) hearing officers. The employment of full-time, in-house, adjudicators has resulted in a dramatic reduction in the agency's backlog of pending hearing cases. Cases of alleged discrimination are now processed in a more timely manner. Upon their arrival in January of this year, the referees were faced with over 150 pending contested cases. As of this month, the Office of Public Hearings has disposed of over 100 cases (through settlement, withdrawal, dismissal or final decision on the merits). While the agency is delighted to have cases resolved more expeditiously, the addition of the new referees has underscored the need for additional resources in other

¹ On page 16 of the "Staff Briefing" dated September 15, 1999, staff note and graphically depict (Fig. II-3) that ". . . an analysis of the commission's expenditures in constant 1990 dollars suggests that the agency's operating costs have not increased. The graph shows the agency's spending power actually declined when adjusted for inflation and remains below its 1990 level." (Emphasis added.)

areas of the agency. For example, the Legal unit is struggling to keep pace with seven new administrative law judges.

Third, I have attempted to allocate and reallocate the agency's limited staff resources in a manner that would maximize its impact and value to the agency. Automated research tools have been provided to the field--investigative staff--the legal unit and the referees. Many computers have been upgraded, e-mail and Internet access have also been provided to staff. (I desire one-year from now to have many of the agencies forms available on the Internet.) Prior to the announcement of the hiring freeze, I had intended to hire additional investigators within each region to better manage the growing case inventory, and to ensure that statutory case processing time frames would not be exceeded. Obviously, the hiring freeze has hindered my ability to add staff.

With respect to staff training, efforts are being made to increase training opportunities for staff. Shortly after my arrival, I retained a consultant to provide mediation and settlement training for all case processing staff, the legal unit and the referees. I have emphasized the need with the regional managers for a more heightened focus on early mediation (or conciliation) efforts shortly after the complaint is filed. Many times the parties are more willing to settle at this early stage, and the costs to the parties are minimal. In addition, sexual harassment and diversity training (required for all state employees) and "team building" training will also be provided to all staff and commissioners in November and December of this year.

With respect to personnel performance evaluations, I have instituted measures to ensure employee "surprise" will be minimized. Training has been provided to the managerial staff (conducted by the Office of Labor Relations) to ensure proper measures are followed in completing employee evaluations. I have also spearheaded a committee comprised only of investigators to develop appropriate, non-numeric, performance criteria. Previously, a numeric "production standard" had been imposed upon the investigative staff that was both unworkable and impractical, further straining union and management relations. I have also instituted monthly labor/management meetings. These ongoing meetings are designed to provide a more harmonious working relationship and to provide an informal forum to discuss labor/management issues. I have also invited both labor and management to participate in a committee that is charged with reviewing the agency's forms to make them more streamlined, "user-friendly," readable, and available in other languages.

In conclusion, what I have attempted to do within the last seven months is to prepare the nation's oldest civil rights agency for the new millennium. I have provided new direction for this previously troubled agency by renewing its focus on its statutory mission; namely, the elimination of illegal discrimination and the establishment of equal opportunity and justice for all persons.

Thank you for the opportunity to comment today. I would be happy to entertain any questions.

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CHRO RESPONSE

STAFF FINDINGS AND RECOMMENDATIONS LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE DECEMBER 16, 1999

1. *The appointment of CHRO commissioners be subject to the advice and consent of either house of the General Assembly.*

Response: The CHRO supports Program Review and Investigations Raised Bill 5285, "An Act Concerning the Commission on Human Rights and Opportunities." CHRO recommended in its testimony that the language be amended to clearly grandfather the current Commission and require appointments with the advice and consent as vacancies occur and the appointing authority makes an appointment.

2. *CHRO re-evaluate its guidance documentation for investigators and maintain well-trained staff at the intake and MAR stage to ensure each case receives full and consistent assessment among all regions. MAR activities should be closely monitored to detect unintentional over- or underscreening of complaints and identify any problems in regional application of standards. The agency must also ensure commission members are kept informed of MAR activities on a periodic basis as prescribed by C.G.S. §46a-83(b).*

Response: The CHRO plans to respond to this recommendation as part of its comprehensive review of training needs for the entire agency. In addition, the agency will comply with C.G.S. §46a-83(b) regarding quarterly notification to commission members regarding MAR activity.

3. *Program Review staff recommends that CHRO separate the mediation and investigations components, and establish clear and consistent policies on meditation activities. The commission should incorporate these policies into the agency's training curriculum.*

Response: CHRO recognizes the inherent potential conflict of having investigators play a dual role. However, the agency also recognizes its limited resources to fully implement this recommendation.

4. *Program Review staff recommends CHRO make sure that respondents are informed when complainants are represented by counsel when the respondent is notified of the complaint.*

Response: The agency has begun to implement procedures to respond to this recommendation.

5. *The Chief Human Rights Referee establish uniform operating policies, procedures, and guidelines clearly defining the role and function of the Public Hearing Office. Adoption or any changes to the policies and procedures shall be duly communicated to the full Commission on Human Rights and Opportunities. It shall be the responsibility of the Chief Human Rights Referee to ensure all human rights referees are adequately trained in the uniform implementation of the policies and procedures.*

Response: The CHRO testified in support of Program Review's Raised Bill 5285, which would require such uniformity within the Office of Public Hearing. However, CHRO asked the Judiciary Committee to consider a proposal that would (1) mandate the use of consistent practices and procedures through the promulgation of regulations; (2) mandate settlement conferences; and, (3) allow the Referees to impose non-monetary sanctions for noncompliance with their orders. (The Judiciary Committee did not raise the agency's proposal.)

6. ***CHRO institute a follow-up evaluation form for parties involved in the complaint process to provide feedback on their experience with the agency's handling of discrimination complaints. The process should offer the parties to the complaint a confidential forum to submit observations, suggestions, concerns and comments directly to central office management. The information should be reviewed and summarized on a periodic basis and results shared with the regions and the commissioners.***

Response: The CHRO developed and implemented a *User Satisfaction Survey* (attached) for parties who have participated in a CHRO administrative hearing. The survey was modeled after one printed in the Spring 1999 Journal of the National Association of Administrative Law Judges. The agency is in the process of developing a similar survey for the complaint processing aspect of the agency.

7. ***Committee staff supports the discontinuation of evaluating staff performance on numerical standards. CHRO should establish performance standards reflecting the quality of the work and/or the difficulty of case as well as the effective management of caseloads such as regular and timely activity.***

Response: The CHRO Executive Director chairs a committee to develop appropriate, non-numeric performance criteria. Ongoing training will be provided to managerial staff to ensure proper measures are followed in completing employee evaluations.

8. ***CHRO conduct a formal evaluation of the current training curriculum and an assessment of training needs of the agency. Based on the evaluation, CHRO should develop and institute a comprehensive training and professional development program. This program should be designed to provide extensive training in civil rights law, investigative techniques, mediation, analytical methods, communication skills, and other necessary areas. It should be tailored to fit the needs of enforcement staff at each level of the process including, but not limited to, intake, merit assessment review, and investigation. Training should also be provided to staff involved in the public hearing process including, but not limited to, commission counsel and human rights referees. In addition, CHRO should conduct ongoing assessment of training needs of the agency's enforcement staff. The assessment results should be monitored and used to adjust the training curriculum and to identify areas for staff improvement whenever necessary.***

Response: Efforts are being made to increase staff training opportunities. The CHRO retained a consultant to provide mediation and settlement training for all case processing staff, the legal unit and the referees. CHRO provided diversity training to all staff and Commissioners in November and December 1999. At the March 2000 agency-wide staff meeting, the staff will be asked to complete a staff assessment survey regarding training needs.

9. ***CHRO review its Investi-GATOR manual and the Field Operations Interpretive Guidelines for ease of use by investigators in the regional offices, and ensure they represent current agency practice.***

Response: The Executive Director has suspended further modifications to these documents pending an opportunity to fully evaluate their effectiveness to the agency to ensure they represent current agency practice.

10. ***CHRO re-examine its coding system. Specific codes should be developed with input from system users. Written definitions for each code should be provided to agency staff and training given to implement a uniform coding system to facilitate tracking of complaint trends and outcomes.***

Clear accountability should be assigned for assuring consistent, uniform, and accurate data recording.

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CHRO establish a uniform, automated management information system for the regions that captures essential enforcement case information and results in the production of valid, reliable data. The system, at a minimum, should include, but not be limited to, the following:

- critical case processing milestones, such as MAR dismissal and retention dates, cause determination dates, and reconsideration and closed dates;
- case information, such as attempts at mediation and whether parties have legal counsel;
- case outcomes information, such as type of resolutions;
- the ability to generate standard management reports on the timeliness and performance of individual personnel as well as regions in completing investigations; and
- the ability to generate customized reports when necessary.

Response: CHRO has begun to address these and other larger information technology issues in order to fully respond to this recommendation. Complete implementation of this recommendation may require additional resources to the agency.

11. CHRO should develop a set of performance measures to be used in evaluating the agency's overall performance as well as all key components and phases of the process. At a minimum those standards shall address:

- specific time frames for complaint handling, public hearings and outcomes; and
- the components of settlements, such as job reinstatement, backpay, and other remedies.

Response: Implementation of this recommendation depends on the agency's ability to track these measures. As information technology needs are fulfilled, the CHRO will be better poised to fully comply with this recommendation.

12. CHRO continue to assess its technological resources and equipment needs for its enforcement operations and develop a plan for addressing those needs as determined. The plan should aim to enhance accurate information sharing between field operations, the legal services unit, and the public hearing office.

Response: The CHRO may need additional information technology hardware (e.g. networking regional offices) to fully respond to this recommendation. Automated research tools have been provided to the investigative staff, the legal unit and the referees. Many computers have been upgraded, e-mail and Internet access have been provided to staff. The CHRO would like to have as many of the agency's forms available on the Internet and to more fully utilize this technology to better communicate with regional staff.

13. CHRO proceed with its plan to request additional staff resources.

Response: The hiring freeze has hindered the CHRO's ability to hire more staff. Additional staff is needed within each region to better manage the case inventory, and to ensure that statutory case processing time frames would not be exceeded. Additional resources are needed to fully comply with Program Review and Investigation's recommendation requiring the separation of mediation from investigation. The Executive Director would like to hire additional staff to serve as mediators.

The agency has reached its position count. Any additional resources would require an increase in the agency's position count.