

State of Arkansas
91st General Assembly
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A Bill

SENATE BILL 492

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO ESTABLISH THE OFFICE OF THE INSPECTOR GENERAL FOR THE DEPARTMENT OF HUMAN SERVICES; TO INCREASE CRIMINAL PENALTIES FOR THEFT OF PUBLIC BENEFITS; TO CREATE THE OFFENSE OF MISUSE OF STATE PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE OFFICE OF THE INSPECTOR GENERAL FOR THE DEPARTMENT OF HUMAN SERVICES; TO INCREASE CRIMINAL PENALTIES FOR THEFT OF PUBLIC BENEFITS; AND TO CREATE THE OFFENSE OF MISUSE OF STATE PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-36-202(d) and (e), concerning the theft of public benefits, is amended to read as follows:

(d) In addition to an extended term of imprisonment provided by § 5-4-501 for a habitual offender, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be imprisoned:

(1) For no less than ~~seven (7) days~~ thirty (30) days for a second offense occurring within five (5) years of a prior offense;

(2) For no less than ~~ninety (90) days~~ one hundred eighty (180) days for a third offense occurring within five (5) years of a prior offense; and

(3) For at least ~~one (1) year~~ two (2) years for a fourth or



subsequent offense occurring within five (5) years of a prior offense.

(e) In addition to restitution, any person who pleads guilty or nolo contendere to or is found guilty of violating this section shall be fined no less than:

(1) ~~One hundred fifty dollars (\$150)~~ Five hundred dollars (\$500) for the first offense;

(2) ~~Four hundred dollars (\$400)~~ One thousand dollars (\$1,000) for a second offense occurring within five (5) years of a prior offense; and

(3) ~~Nine hundred dollars (\$900)~~ Two thousand five hundred dollars (\$2,500) for a third or subsequent offense occurring within five (5) years of a prior offense.

SECTION 2. Arkansas Code § 5-36-202, concerning the theft of public benefits, is amended to add an additional subsection to read as follows:

(f) When the department finds a violation of this section, the Director of the Department of Human Services or an appropriate director of an appropriate division of the department shall refer the matter for appropriate action to the Office of the Inspector General for the Department of Human Services.

SECTION 3. Arkansas Code Title 5, Chapter 52, Subchapter 1, is amended to add an additional section to read as follows:

5-52-109. Misuse of state property.

(a) A person commits the offense of misuse of state property if the person:

(1) Is an elected or appointed state official, a state employee, or an independent contractor who contracts with the state to provide anything of value; and

(2) Uses state property, through any means, for a private purpose to obtain a pecuniary benefit of five hundred dollars (\$500) or more for himself, herself, or another person.

(b) Misuse of state property is a Class B felony.

SECTION 4. Arkansas Code Title 25, Chapter 10, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Office of the Inspector General for the Department of Human

Services25-10-501. Purpose.

The purpose of this subchapter is to:

- (1) Consolidate staff and other detection, prevention, and recovery functions for fraud, waste, abuse, corruption, or violations within the Department of Human Services from the relevant governmental entities into a single office;
- (2) Create a more efficient and accountable structure;
- (3) Reorganize and streamline the process the Department of Human Services uses for detecting and combating fraud, waste, abuse, corruption, or criminal and policy violations; and
- (4) Maximize prosecution of illegal behavior and recovery of moneys and services lost through criminal violations.

25-10-502. Definitions.

As used in this subchapter:

- (1)(A) "Abuse" means provider practices that are inconsistent with sound fiscal or business practices and result in an unnecessary cost to a state or federal program or improper reimbursement for services.
 - (B) "Abuse" includes recipient practices that result in unnecessary cost to a state or federal program or improper reimbursement for services;
- (2)(A) "Fraud" means a purposeful deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to the person or another person.
 - (B) "Fraud" includes any act that constitutes fraud under applicable federal or state law;
- (3) "Investigation" means an investigation of fraud, waste, abuse, corruption, or criminal or policy violations; and
- (4) "Waste" means that taxpayers are not receiving reasonable value for money in connection with a government-funded activity due to an inappropriate act or omission involving mismanagement, inappropriate actions, and inadequate oversight by the person with control over or access to government resources.

25-10-503. Office of the Inspector General for the Department of Human Services – Creation.

The Office of the Inspector General for the Department of Human Services is created within the office of the Governor and is independent from the Department of Human Services.

25-10-504. Inspector General – Appointment – Removal – Qualifications.

(a)(1) The Inspector General of the Office of the Inspector General for the Department of Human Services shall be appointed by the Governor, with the advice and consent of the Senate.

(2) The Governor shall appoint the Inspector General for an renewable term of eight (8) years.

(3) The Inspector General shall be the Director of the Office of the Inspector General for the Department of Human Services.

(b) The Inspector General shall:

(1) Report directly to the Governor; and

(2) Provide quarterly reports to the President Pro Tempore of the Senate and the Speaker of the House of Representatives regarding efforts to prevent, detect, investigate, and prosecute fraud, waste, abuse, corruption, or criminal and policy violations.

(c) Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty (30) days after the next session of the General Assembly and, if confirmed, thereafter for the remainder of the term.

(d)(1) The Governor may remove the Inspector General from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, or failure to carry out the laws of the state as established by the General Assembly.

(2) The Governor shall set forth in a written public statement the reasons for removing the Inspector General at the time the removal occurs.

(e)(1) Subject to subdivision (e)(2) of this section, only an individual who meets one (1) or more of the following qualifications is eligible to be appointed Inspector General:

(A) At least five (5) years experience as a law enforcement officer in this state or any other state;

(B) An attorney in good-standing licensed in this state or any other state;

(C) Certification as a certified public accountant in this state or any other state;

(D) At least five (5) years service as the comptroller or similar officer of a public or private entity in this state or any other state.

(2) A person who pleads guilty or nolo contendere to or is found guilty of a felony or any crime involving fraud, dishonesty, or moral turpitude is not eligible to be appointed Inspector General.

25-10-505. Office of the Inspector General for the Department of Human Services – Powers and duties.

The Office of the Inspector General for the Department of Human Services shall:

(1) Operate and manage the office and employ personnel as required to carry out the provisions of this subchapter;

(2) Enter into contracts and agreements as necessary and incidental to carry out the provisions of this subchapter;

(3) Apply for and accept grants from the federal government and agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this subchapter;

(4) Receive complaints from all sources that allege fraud, waste abuse, corruption, or violation by any officer or employee of the Department of Human Services, including without limitation task or program duplication, and determine whether the complaints give reasonable cause to investigate;

(5) Investigate and audit to determine whether acts of fraud, waste, abuse, corruption, or violations have been committed or are being committed by:

(A) The administration, divisions, officers, and employees of the department; and

(B) Providers, recipients, and independent contractors of the department;

(6) Prepare a detailed report of each investigation;

(7)(A) Provide timely notification to the appropriate state law enforcement agency whenever the Inspector General has reasonable grounds to

believe there has been a violation of state criminal law.

(B) If the appropriate state law enforcement agency declines to prosecute a violation, the Inspector General may do so through special attorneys of the office;

(8)(A) Provide timely notification to the appropriate state law enforcement agency for monetary recovery of funds whenever the Inspector General has reasonable grounds to believe recovery is appropriate.

(B) If the appropriate state law enforcement agency declines to pursue monetary recovery, the Inspector General may do so through special attorneys of the office;

(9) When appropriate, report fraud or criminal violations to the federal agency having jurisdiction over the matter;

(10) Oversee any hotline and web-reporting portal relating to fraud, waste, and abuse;

(11) Draft a manual of standard procedures for investigations and investigation reports;

(12) Coordinate and require uniform standards and procedures for internal audit programs of the department;

(13) As deemed necessary by the Inspector General, assess the condition of the accounting, financial, and administrative controls of the department and make recommendations to the Governor and to Arkansas Legislative Audit;

(14) Ensure that citizens:

(A) Have access to the services provided by the Inspector General; and

(B) Receive timely responses to inquiries from the Inspector General or his or her representatives; and

(15) Do all acts necessary to carry out the purposes of this subchapter.

25-10-506. Enforcement of laws by the Inspector General or investigators – Police power of the Office of the Inspector General for the Department of Human Services – Training.

(a)(1) The prosecuting attorney may deputize the Inspector General of the Office of the Inspector General for the Department of Human Services and up to eight (8) attorneys of the Office of the Inspector General for the

Department of Human Services to prosecute an offense involving fraud, waste, abuse, corruption, or criminal and policy violations.

(2) An attorney described in subdivision (a)(1) of this section is subject to minimum training standards established by the office before exercising any law-enforcement power under this section.

(b)(1) The Inspector General and the Director of the Arkansas State Police shall enter into a memorandum of understanding setting forth the respective roles and responsibilities of their agencies, including without limitation:

(A) The categories of investigations that will be overseen by each agency; and

(B) How to avoid redundancy or operation conflicts.

(2) The memorandum described in subdivision (b)(1) of this section shall be:

(A) Approved by the Governor's Chief of Staff;

(B) Reviewed periodically at the request of either agency, but not less than every four (4) years; and

(C) Revised as agreed to by the agencies and endorsed by the Governor's Chief of Staff.

(c)(1) The Inspector General and an investigator may issue summons for violations of the statutes that the Inspector General is required to enforce.

(2) In the event that a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before an appropriate judicial official having jurisdiction to obtain a criminal warrant.

(d)(1) An investigator designated by the Inspector General may administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of the statutes, regulations, and policies that the Inspector General is required to enforce.

(2) An investigator designated by the Inspector General may obtain, serve, and execute any warrant, paper, or process issued by any court or under the authority of the Inspector General, and request and receive criminal history information.

(e) The Inspector General may designate himself or herself, if a licensed attorney in Arkansas in good standing, and no more than four (4)

office attorneys as special attorneys that may independently prosecute any violation within the jurisdiction of the Inspector General and institute a civil action for recovery of moneys if the appropriate state law enforcement agency declines to prosecute.

25-10-507. Subpoenas.

(a)(1) The Inspector General or a designated subordinate may issue a subpoena for the appearance of an individual before any hearing conducted by the office.

(2) The subpoena shall be served by the Inspector General or a designated subordinate and enforced by the appropriate court.

(b)(1) The Inspector General may make an ex parte application to the district or circuit court for the county or city wherein evidence sought is kept for the issuance of a subpoena duces tecum in furtherance of an investigation or to request production of any relevant records, documents, and physical or other evidence of any person, partnership, association, or corporation located in the state.

(2)(A) The court may issue and compel compliance with such a subpoena upon a showing of reasonable cause.

(B) Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

25-10-508. Cooperation of agency officials and employees.

(a) The officers and employees of the Department of Human Services shall:

(1) Promptly report any allegations of criminal acts or acts of fraud, waste, abuse, corruption, or violations that take place within the Department of Human Services; and

(2) Cooperate with, and provide assistance to, the Inspector General in the performance of any investigation.

(b) The Department of Human Services shall make its premises, equipment, personnel, books, records, and papers readily available to the Inspector General upon request.

(c) When the Chief Financial Officer of the Department of Human Services or a director of a division of the Department of Human Services

discovers any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or if any situation is known to him or her that any unauthorized, illegal, or unsafe handling or expenditure of state funds is contemplated but not consummated, the Chief Financial Officer of the Department of Human Services or a director of a division of the department shall be promptly reported to the Inspector General.

(d)(1) The Inspector General or his or her staff may enter upon the premises of the department, at any time, without prior announcement, if necessary to the successful completion of an investigation.

(2) In the course of an investigation, the Inspector General or his or her staff may:

(A) Question any officer or employee serving in, and any person receiving moneys or services from or transacting business with, the department; and

(B) Inspect and copy any books, records, or papers in the possession of the state agency.

(3) The Inspector General shall preserve the confidentiality of any information obtained from a state agency during the course of an investigation in accordance with applicable state and federal law.

25-10-509. Reports required of the Office of the Inspector General for the Department of Human Services.

(a)(1) The Inspector General shall submit a quarterly report summarizing the activities of the Office of the Inspector General for the Department of Human Services during the preceding quarter to:

(A) The Governor;

(B) The President Pro Tempore of the Senate;

(C) The Speaker of the House of Representatives; and

(D) Arkansas Legislative Audit.

(2) A quarterly report submitted under subdivision (a)(1) of this section shall be submitted no later than the following dates of each year:

(A) April 1;

(B) July 1;

(C) October 1; and

(D) January 1.

(b) The report required under subsection (a) of this section shall include without limitation:

(1) The number, subject, and other relevant characteristics of:

(A) Investigations initiated and completed, including without limitation outcome, region, and source of complaint;

(B) Audits initiated and completed, including without limitation outcome, region, the reason for the audit, the total state and federal dollar value identified for recovery, and the actual state and federal recovery from the audits;

(C) Referrals for prosecution to the Attorney General and to federal or state law enforcement agencies;

(D) Prosecutions initiated and completed, including without limitation outcome, region, and type; and

(E) Civil actions initiated by the office related to improper payments, the resulting civil settlements entered, overpayments identified, and the total dollar value identified and collected.

(c)(1) In making the report required under subsection (a) of this section, the Inspector General shall not disclose information that jeopardizes an ongoing investigation or proceeding.

(2) The Inspector General may disclose information in the report required under subsection (a) of this section if the information does not jeopardize an ongoing investigation or proceeding and the inspector fully apprises the designated recipients of the scope and quality of the activities.

25-10-501. Transfer of duties and resources.

(a) The duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Department of Human Services necessary to the operations of the Office of the Inspector General for the Department of Human Services under this subchapter are transferred to the office.

(b) The office shall assume the duties enumerated in this subchapter that are now performed by any division, office, or person in the department.

25-10-511. Noninterference with the duties and functions of the Office of Medicaid Inspector General.

This subchapter does not:

(1) Interfere with the duties and functions of the Office of Medicaid Inspector General; or

(2) Duplicate such functions or jurisdiction within the Office of the Inspector General for the Department of Human Services.