

OFFICE OF THE  
**CONTRA COSTA COUNTY**  
**DISTRICT ATTORNEY**  
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**TO:** Public Protection Committee of the Board of Supervisors

**FROM:** District Attorney Mark Peterson

**DATE:** May 11, 2015

**SUBJECT:** Report on Public Assistance Fraud Investigations and Prosecutions

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The Public Protection Committee (PPC) of the Board of Supervisors has requested a yearly status report from the Employment and Human Services Department (EHSD) and the District Attorney (DA) that demonstrates their combined efforts to reduce public assistance fraud through early investigation, quality assurance, and prosecution. This report is the DA portion of the response to that request. This report provides a summary on staffing, referral and investigative processes, prosecutions, and statistical summaries for fiscal year 2013/2014 as well as insight into the barriers facing prosecution of public assistance fraud within our county.

## **1. PUBLIC ASSISTANCE FRAUD**

### **DA Staffing**

Throughout the 13/14 Fiscal Year, the Public Assistance Fraud Unit was housed in the Office of the District Attorney Special Operations Division, where insurance fraud, environmental crimes, and both major and consumer fraud are prosecuted both criminally and civilly.

Transferring into the Public Assistance Fraud Unit in March 2014, **Deputy District Attorney Sophea Nop** has been with the office for 5 years and was a Deputy District Attorney in San Joaquin County for 2.5 years prior. She was actively involved in the evaluation and investigation of cases during FY 13/14.

**Senior Inspector Todd Almason** has been in the unit since December 2012 and brings to the position over thirty-three years of experience as a law enforcement officer and an investigator in criminal cases. Notably, his previous experience includes eight years with the Santa Clara County Department of Social Services, assigned to the Special Investigations Unit; and seventeen years with the Santa Clara County District Attorney's Office, over ten of which were in the Public Assistance Fraud Unit. He is able to bring his experience and knowledge of Federal, State, and local public assistance laws and regulations to bear on any case he is assigned. As the Senior Inspector, he regularly coordinates his investigations

with attorneys in the Office of the Deputy District and communicates regularly with EHSD investigative and non-investigative staff. He meets with and assists EHSD staff, as requested, with issues related to the prevention, detection, investigation, and prosecution of public assistance fraud. He also initially screens all fraud referrals received from EHSD.

### **Fraud Referrals**

In addition to public assistance fraud hotlines at the California Department of Social Services (CDSS) and EHSD, the public is encouraged to report public assistance fraud directly to the DA. Citizens can report suspected public assistance fraud by calling the following numbers or by emailing the Deputy District Attorney or Senior Inspector:

Contra Costa County Public Assistance Fraud Hotline: (888) 646-2507  
Contra Costa County District Attorney's Office: (925) 957-2200 or (925) 521-5080  
Contra Costa County Senior Inspector: [talmason@contracostada.org](mailto:talmason@contracostada.org)

In appropriate cases, the EHSD Fraud Prevention Division Manager forwards fraud complaints to the Eligibility Workers (EW) and the Eligibility Worker Supervisors (EWS) of record for review and potential Early Fraud Investigation referrals. Completed Early Fraud Investigations are reviewed by the EHSD Fraud Prevention Division Manager and returned to the EW for necessary action. Completed investigations that identify potential long term fraud are referred to the District Attorney's Office for further investigation.

### **DA Investigation and Prosecution**

The cases selected for DA investigation, and cases referred from other sources, are prioritized based on a number of factors that may include the amount of the suspected loss or fraud, the number of suspects involved, the nature of the scheme involved, and whether the suspect has been previously suspected of fraud or has other criminal activities on their record. In 2011, the threshold for filing potential public assistance fraud cases was reduced from \$5,000 to \$3,000. While the threshold for filing potential public assistance fraud cases generally remains at \$3,000, it can be lower if the suspect has a history of public assistance fraud or a significant criminal history. As recently as September of 2014, the DA attempted to lower the general filing threshold to \$950 but was informed by EHSD's fraud prevention manager that EHSD was not in agreement with the lowering of the threshold. Ms. Cox indicated that EHSD intended to handle cases under \$3000 via the Administrative Disqualification Hearing Process because it was more a more cost-effective route for the county.

To date, the DA is unaware of any action taken by EHSD to staff and train a unit to handle the administrative hearings and develop any protocols to put the process in place. (Per CDSS Welfare Fraud Prevention Coordinator, Scott Nielsen at a training held at EHSD's Pleasant Hill Office on July 24, 2014, CDSS is putting pressure on counties to begin implementing ADH unless the county's DA can commit to filing cases at the \$950 threshold.)

If criminal charges for Public Assistance Fraud are filed, the charges generally filed by the DA include:

- Welfare & Institutions Code § 10980 – Unlawfully Obtaining Public Aid
- Welfare and Institutions Code § 14107– False Claims to a Medicare Program (for IHSS cases)
- Penal Code § 487 – Grand Theft (for IHSS cases)

- Penal Code § 118 – Perjury
- Penal Code § 72 – Fraudulent Claims

Depending upon the nature of the case, the sophistication of the alleged fraud, and the criminal history of the individual, the DA generally requests that charged defendants be sent a Notice to Appear in Court or requests that the Court issue a warrant for their arrest. Defendants who have been convicted have received sentences including the following:

- Time in prison or jail, ranging from a few days to several years (not all defendants receive custodial time as this is generally dependent on the amount of the loss and prior criminal record.)
- Probation (for jail sentences) up to five years, or parole (for State prison sentences)
- Community Service hours ranging from 20 to 360 hours
- Restitution and fines
- Work programs

In fiscal year 2013/2014 and up to the present, the DA and the Income Employment Verification System Unit (IEVS) of EHSD have continued their positive working relationship. The DA supplies prosecution and follow up investigation for public assistance fraud cases referred primarily by EHSD. Additionally, the DA provides complete investigation for more complex cases of suspected fraud and then refers those cases back to EHSD for an overpayment calculation prior to prosecution.

#### **Public Assistance Fraud Filing and Prosecution Statistics Fiscal 2013/2014:**

##### **DISTRICT ATTORNEY WELFARE FRAUD INVESTIGATIONS**

<b>INVESTIGATIONS</b>	<b>CASH</b>	<b>FOOD STAMPS</b>	<b>TOTAL</b>
Referrals Received	17	20	37*
Investigations Completed	21	23	44*
<b>PROSECUTIONS</b>			
Cases Filed for Prosecution	16	19	35*
Convictions	8	10	18*
	<b>Public Assistance</b>		
Court Ordered Restitution	\$93,862.00		

\*It should be noted that the numbers in the “total” column reflect cases being double counted. Most cases involve both cash and food stamps so they are counted twice, once for each category.

#### **Looking Forward: Barriers to Prosecution**

Despite the Office of the District Attorney’s proactive efforts to secure case referrals from non-traditional sources, public assistance fraud referrals for prosecution continue to be alarmingly low. Unfortunately, the scarcity of referrals is not reflective of a lack of fraud itself within our county’s public assistance programs. Instead, it is attributable to problems in finding and proving the fraud. The problems with finding and proving the fraud appear to be a result of insufficient staffing of the program integrity arm of our Employment and Human Services Department as well as process and statutory changes on both the state and local level.

## A. Dearth of Referrals from EHSD

Referrals from EHSD have been on the decline for the past several years. One obvious reason for the decline is the fact that EHSD is no longer referring IHSS cases to us. This issue was discussed at length in the Public Protection Committee report submitted by the District Attorney's Office for fiscal year 2012-2013. (For an update on the status of that issue, see below.) Aside from the IHSS fraud issue, however, the DA is particularly troubled by the paltry number of Income and Eligibility Verification System ("IEVS") referrals we have received in the past few years. Once the "bread-and-butter" of public assistance fraud prosecutions, these IEVS referrals continued to be low in fiscal 2013/2014 and are poised to be non-existent for fiscal 2014/2015. In fiscal 2011-2012, 11 IEVS cases were referred while fiscal 2012-2013 saw 14 cases and fiscal 2013-2014 saw 13 cases.

**We are now ten months into fiscal 2014-2015 and the District Attorney's Office has not received a single IEVS referral this fiscal year.** The situation is clearly at a crisis point and calls for immediate attention. From the DA's perspective, there seems to be 3 main reasons IEVS cases are not being referred.

### 1. Lack of sufficient personnel

The IEVS/Overpayment Unit: Every quarter, the State Social Services computer communicates with the state EDD computer to cross-reference information about who is working and who is on aid. When there is a match, an Integrated Fraud Detection report (IFD 440) is generated and sent to the local EHSD. Federal rules and State regulations require that the IFDs be acted upon within 45 days. In Contra Costa, these IFDs are received by the IEVS unit of EHSD. Contra Costa EHSD interprets the regulations to require them, within 45 days of receipt of the IFD 440 to review the information and determine whether: 1) the IFD was generated in error (for example, the social security number was transposed, etc.), 2) the IFD should be referred back to the worker to resolve a discrepancy, 3) the case should be investigated for unreported income, resulting in an overpayment of aid, or 4) the IFD was generated as a result of an administrative error.

Many years ago, the IEVS unit was separate and apart from the "Overpayment" unit, which investigated unreported income to calculate overpayments. At that time, there were 20 full time people who would do this work, with 10 exclusively handling general case reviews and 10 exclusively handling the overpayment computations required to file a criminal case. At some point, presumably due to budget cuts, etc., these units were consolidated into the current IEVS Unit. At this point, the IEVS Unit consists of six full-time specialists and one part-time specialist. Every quarter, the unit performs the general case reviews based on the IFDs and only when they are finished do they begin calculating the amount of any overpayment, the information required for a criminal prosecution. Our estimate, based on historic caseloads, is that there are approximately 2,400 cases awaiting overpayment calculations. The IEVS specialists cannot complete these overpayment cases because the general case reviews take most, if not all, of the quarter. Without the overpayment calculations, the District Attorney's Office cannot file criminal cases based on Public Assistance Fraud.

The last IEVS referral the District Attorney's Office received from EHSD was at the end of June 2014. At that time, we were told that the earliest we would see another IEVS case from EHSD was September of 2014. When September came and went with no referrals, we were told the next IEVS referrals would come in early January. January came and went, again with no referrals. It is now May of 2015 and we still have not seen an IEVS case in FY 14/15. Based upon the estimated backlog of 2,400 overpayment cases, and taking into account the issues with administrative error, discussed below, we estimate that there are between 250 and 400 cases that are likely to be identified as involving fraud and which meet the current referral threshold. Unfortunately, these cases continue to sit, waiting for action, while the statute of limitations continues to run.

To put this situation in perspective, Sacramento County (with a population 34% bigger than Contra Costa) has 9 overpayment specialists who work just on calculating overpayments and 20 specialists who do the reviews. This enables the DA in Sacramento County to file an average of 140 cases a year despite having a relatively high filing threshold of \$10,000 (these numbers do not include IHSS cases which are separate). In Alameda County (with a population 41% bigger than Contra Costa), the IEVS unit consists of 18 workers with 3 devoted solely to overpayment computations. The filing threshold in Alameda County is \$3000 and in 2014, they filed 59 cases, not including IHSS cases. On the other hand, in Ventura County (with a population 23% smaller than Contra Costa), the IEVS staff consists of just 1.5 people and not surprisingly, they are experiencing the same difficulty that we are in terms of dearth of referrals. So far this year, Ventura's social services department has not referred ANY IEVS cases to the DA because the 1.5 people in the unit have been exclusively dealing with healthcare enrollment. The Ventura DA filed about 6 welfare fraud cases in 2014. As in our county, they are not contracted to prosecute IHSS cases. Clearly, one key indicator of a strong anti-fraud program is a commitment to sufficient EHSD staffing to conduct timely overpayment calculations in all appropriate cases.

Investigations: District Attorney Senior Inspector Todd Almason is the lone sworn investigator tasked with following up on referrals that we get from EHSD. In Sacramento County, they have 16 sworn investigators and 35 unsworn investigators in total. This enables them to investigate absent parent in the home cases as well as self-generate cases (aside from the IEVS cases) by conducting various sting operations, particularly in the area of food stamp trafficking. Alameda County has 6 sworn investigators plus 1 for Section 8 only cases. These investigators are separate from the early fraud investigators housed at the social services agency which number 11 full time positions. In Ventura County, there are 5 sworn investigators who handle everything from early fraud to ongoing fraud. To their credit, they were able to get 30-40 misdemeanor cases filed in 2013 (in addition to the previously mentioned 6 felony cases) as a result of their EBT Trafficking operations.

2. **Administrative Error:** In researching the issue of declining referrals, we have found that the vast majority of cases (approximately 85%) that are processed for overpayment are ultimately deemed non-referable to the DA due to administrative error. Administrative error generally falls into 2 categories: a situation where the client reported information that would materially affect their grant of aid and the worker failed to take any action or a situation where the documents necessary for prosecution cannot be located (copies of id, signed reporting docs, etc). Our understanding is that about 1/3 of the administrative error cases fall

into the first category and when this type of error is caught, there is no concrete protocol in place to make sure the caseworker is: 1) held accountable and 2) that it doesn't happen again.

a. Task Based system

Public assistance cases used to be assigned to a particular case worker. Presently, EHSD uses a task based system where any number of workers can have their hands on a case. The lack of continuity makes it more likely for errors to occur and for no one to be held accountable when errors do come to light. The general consensus seems to be that there is much more worker based error since the system became task based.

b. Computer System: Compass Pilot

The county moved to the Compass Pilot computer data system which required all case documents to be scanned and housed electronically. The system, though, is purportedly very difficult to navigate and accordingly, it can be very labor intensive to track down the necessary scanned documents. Additionally, when the documents were first scanned in mass numbers, temps were doing the work and it was subsequently found that a significant number of documents were missing and /or scanned into the wrong case files. As mentioned previously, the inability to locate these lost/improperly scanned documents has prevented the IEVS unit from referring a significant number of cases to the District Attorney for prosecution. Interestingly, Ventura County and Alameda County, while on different systems, report having a similar problem.

c. Lack of training

There also appears to be a lack of reinforcement training which contributes to high worker error. CDSS regulations are difficult to understand and changes occur often yet there is not adequate on-going training to ensure that workers remain abreast of the requirements.

3. Switch from Quarterly reporting to Semi-annual reporting

Reporting requirements are statutory and are not subject to change by the counties. Recipients of CALWORKS and CALFRESH used to be required to report income information on a monthly basis. In June of 2004, quarterly reporting took over. Now, as of October 2013, recipients are only required to report semi-annually. This will impact the number of referrals we get because it will be more difficult to show their fraudulent intent.

### **UPDATE ON IHSS FRAUD INVESTIGATION AND PROSECUTION**

In July of 2013, EHSD began referring IHSS cases of suspected fraud (involving more than \$500 worth of loss) to the CA Department of Health Care Services (DHCS), rather than the office of the District Attorney, for investigations. In support of EHSD's decision to refer cases to DHCS, EHSD noted that "[w]ith the adoption of the protocols, the DHCS has added investigators and the effectiveness of the State's efforts are expected to increase." Unfortunately, these expectations have not been met.

As we reported last year, Contra Costa County's IHSS program is served by a single DHCS investigator,

Lottie Bloxom, who is also responsible for Medi-Cal Provider Fraud, General Benefits Fraud, including Early Fraud Detection, Drug Diversion, Social Security Income (SSI) Fraud, fraud in the Women, Infants, and Children program (WIC), the Alcohol Drug Program (Medi-Cal assisted drug and alcohol treatment counseling facilities), and on occasion, Income Employment Verification System cases. According to Investigator Bloxom, it is common for DHCS investigators to be pulled into DHCS priority projects which go on for months, at the exclusion of all other cases, including IHSS. In fact, on several occasions, Investigator Bloxom has been assigned to priority projects while she has been assigned as Contra Costa's sole investigator. Furthermore, Investigator Bloxom indicates that there are many DHCS investigator vacancies which have not been filled and their resources are stretched so thin that it is simply impossible to give IHSS cases adequate attention. Aside from the paltry number of referrals Investigator Bloxom has received from Contra Costa County IHSS, she has a queue of 19 cases which come from the State's "Stop Medi-Cal Fraud" hotline that she has not been able to investigate. Referring to those tips she stated they are cases "I absolutely wish I could tap into the DA's office to work some [of those cases]."

The gravity of the situation is reflected in the numbers. In fiscal year 2013-2014, the DHCS investigator responsible for Contra Costa County accepted only 7 referrals for investigation from our county. Out of those 7, none have been referred to the District Attorney for prosecution. The cases were not referred for prosecution due to the fact that key documents (such as provider and recipient enrollment forms) could not be located in the county's electronic database. (This is the same issue which plagues the traditional public assistance fraud cases as previously discussed.) For informational and comparative purposes, the chart below shows Contra Costa's IHSS fraud figures for the last three years in which EHSD funded a part-time DA Inspector to handle IHSS fraud investigations.

### **DISTRICT ATTORNEY IHSS INVESTIGATIONS**

	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>
<b>IHSS INVESTIGATIONS</b>				
Referrals Received	93	312	170	0
Referrals Closed <sup>1</sup>			83	0
Investigations Completed <sup>2</sup>	18	28	9	0
<b>IHSS PROSECUTIONS</b>				
Cases Filed for Prosecution	4	6	9 <sup>3</sup>	0
Convictions	4	1	8	0
Court Ordered Restitution	\$88,775	\$24,245.19	\$115,012.88	\$0

<sup>1</sup>"Referrals Closed" refers to IHSS referrals reviewed by the DA Investigator for feasibility of prosecution. Depending on the referral, some investigation may be done including running criminal histories, DMV records, appropriately conferring with other agencies and departments, and even site visits, but a full investigation was not conducted.

<sup>2</sup>"Investigations Completed" refers to full investigations of referrals likely to become criminal prosecutions and include record collection, search warrants, and interviews.

<sup>3</sup>Approximately five IHSS cases filed for prosecution in FY 2012-2013 were based on investigations completed in FY 2011-2012.

In Sacramento County where IHSS fraud is now also being investigated solely by DHCS, the situation is similar. The assigned investigator for that county, James Sigl, echoes the same sentiments as Investigator Bloxom regarding inadequacy of resources and indicates that IHSS fraud is, for all intents and purposes, no longer being referred for prosecution in Sacramento County.

In stark contrast to Contra Costa and Sacramento counties is Alameda County, where IHSS fraud investigations have not been turned over to the state. In calendar year 2013, the Alameda County District Attorney's Office filed 53 IHSS fraud cases and in calendar year 2014, it filed 24 IHSS fraud cases (the disparity between 2013 and 2014 is based on the fact that many 2013 cases were filed at the very end of 2013). Given these numbers from Alameda County, the obvious conclusion must be that IHSS fraud is alive and well in Contra Costa County and quite simply, not enough is being done to stop it.

### **Impact**

As a result of the lack of cases being referred to the Public Assistance Fraud Unit of the District Attorney's Office, and in an effort to save public funds, in March 2015, the dedicated Deputy District Attorney assigned to the Public Assistance Fraud Unit was transferred out of the unit. The remaining cases and any new cases, if any are received, will be given to our Felony Trial Team for prosecution. Those attorneys will submit Functional Timesheets for hours worked on Public Assistance Fraud Unit cases. While it is unfortunate that these cases will no longer be handled by a Deputy District Attorney who is intimately familiar with the Public Assistance rules, it does not make financial sense to the taxpayer for EHSD to pay for a dedicated attorney to handle the paltry number of cases remaining in the Public Assistance Fraud Unit. Senior Inspector Almason's hours in the unit were also significantly reduced. Senior Inspector Almason will continue to be available, as his first priority, to meet with and assist EHSD staff, as requested, with issues related to the prevention, detection, investigation, and prosecution of public assistance fraud.

The District Attorney's Office remains committed to fighting fraud in public assistance programs. The District Attorney's Office pledges to re-staff the Public Assistance Fraud Unit at FY 13/14 levels if and when EHSD begins referring cases at a level that warrants a dedicated prosecutor and investigator.

### **Conclusion**

The Office of the District Attorney is highly concerned about the integrity of the public assistance program in our county. The lack of actual public assistance fraud prosecutions could lead one to believe that there is no fraud occurring in the public assistance program. The truth, however, is that criminal fraud in our public assistance program exists and is probably increasing. Unfortunately, because of the factors outlined in this report, our office is unable to prosecute the existing fraud.

The Office of the District Attorney remains committed to raising awareness about the barriers that our office and the system are facing in fighting fraud. If we do not fight fraud, the very limited resources available to our eligible, indigent citizens will not reach them. The commitment of the District Attorney's Office, by itself, however, is not enough. Without adequate funding and, more importantly, buy-in from all stakeholders, we simply cannot fulfill our mission, to the detriment of the citizens of Contra Costa County.