

CR Unit
6-9-88

109504

UPDATE

Department of Legislative Reference

90 State Circle . Annapolis, Maryland 21401

F. Carvel Payne, Director

Vol.:

87-4

Subject:

WHISTLEBLOWER LAW

Date:

October 6, 1987

Seven years ago, the Maryland General Assembly enacted a "whistleblower protection law" designed to encourage State employees to report illegal or wasteful government activities without fear of reprisal. Based on a 1978 federal act, the Maryland Whistleblower's Law was one of the first to be enacted at the state level. Since that time, over 20 states have joined Maryland in establishing programs to protect whistleblowers.

This UPDATE reviews the implementation of the Maryland Whistleblower's Law, summarizing the law and examining its effect on the disclosure of waste and abuse in State government. In addition, this UPDATE examines the effect of whistleblower laws at the federal level and in other states.

HCERS

MAR 5 1988

1 20 78 10/6 1987

109504

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Maryland Department of Legislative
Reference

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

TABLE OF CONTENTS

	<u>Page</u>
Background.....	2
Legislative History in Maryland.....	3
Activity in Other States.....	7
Overview of Federal Whistleblower Protection Law.....	8
Conclusion.....	9
Appendices.....	10

BACKGROUND

During the 1970s, news stories uncovered numerous examples of governmental mismanagement and fiscal abuse at the federal level. Many of these revelations were made possible because governmental employees stepped forward to talk about the improper conduct going on within their agencies. When several of these "whistleblowers" were punished by their governmental employers, Congress stepped in to enact protections from this sort of reprisal. The Civil Service Reform Act of 1978 protects federal employees who disclose illegal or wasteful activities.

In the wake of the passage of the federal statute, over 20 states have also enacted anti-reprisal laws. Depending on the state, these laws are designed to protect public and, in many cases, private employees from being disciplined or fired for reporting violations of state or federal laws or regulations. In addition, national hotlines for reporting government fraud and abuse have been set up, and informal networks of whistleblowing support groups have begun to multiply.

LEGISLATIVE HISTORY IN MARYLAND

A. Summary of the Maryland Whistleblower's Law

In 1980, the General Assembly passed the Employee Disclosure and Confidentiality Protection Act, commonly referred to as the "Whistleblower's Law". Patterned after the federal Civil Service Reform Act passed two years earlier, the Maryland Whistleblower's Law prohibits reprisals against State classified employees and applicants for employment who disclose certain information. Protected under the statute is information concerning a violation of any law or rules, gross mismanagement or waste of funds, or evidence of damage to health or safety. The law applies if an adverse employment action is taken as retaliation for a disclosure that the employee or applicant "reasonably believes" fits one or more of those categories.

The Whistleblower's Law requires the Secretary of Personnel to develop regulations and procedures for processing and resolving alleged violations of the law. All complaints are required to be investigated. In the course of an investigation, if the Secretary finds that there are reasonable grounds to believe that a criminal offense has been committed, then the matter must be referred to the appropriate prosecuting authority. If the Secretary determines that a violation has not occurred, the complaint is dismissed.

If the Secretary of Personnel determines that a violation of the Whistleblower's Law has occurred, the following corrective action may be taken:

- (1) the elimination of any detrimental material from the complainant's personnel file that was inserted as a retaliatory action;
- (2) hiring, reinstating, promoting, or terminating the suspension of a complainant;
- (3) awarding back pay to the date of the violation; and
- (4) making appropriate recommendations that disciplinary action be taken against an employee found to have caused the violation.

If a whistleblowing disclosure is specifically prohibited under confidentiality laws, the same protection from retaliation is provided as long as the employee or applicant discloses the information exclusively to the Attorney General. This is intended to provide an outlet for sensitive disclosures in cases where disclosure to the news media would be a violation of State law.

Any challenge to the findings of the investigation of a complaint by the Secretary are subject to a hearing in accordance with the Administrative Procedures Act, and the findings at the hearing may be appealed to the appropriate circuit court.

B. Amendments to the Maryland Whistleblower's Law

In 1986, the General Assembly amended the Whistleblower's Law to require an employee or applicant for employment to file a complaint with the Secretary of Personnel within one year after the date the employee knew or should have known of the violation. In addition, in 1986, amid some question as to whether there was a conflict of interest when the Department of Personnel investigated complaints filed against itself, an amendment was enacted to resolve the question. The amendment provides that when a complaint is filed against the Department of Personnel, a designee appointed by the Governor shall investigate the complaint.

C. Implementation of the Whistleblower's Protection Program in Maryland

Since the passage of the Whistleblower's Act in 1980, the Department of Personnel has undertaken its statutory responsibility to implement the program. The Department adopted regulations establishing procedures for the handling and resolution of allegations of violations of the Whistleblower's Law (Appendix B), and has developed a format for the receipt of complaints. Additionally, the Department has developed and distributed a brochure and poster which are intended to make State employees aware of their rights under the Act. (Appendices C, D, and E).

A system for investigating complaints and managing cases has been instituted in the Office of the State Coordinator for Equal Opportunity. Following the receipt of a complaint, the Office investigates the complaint. Based on this investigation, the Secretary of Personnel is responsible for making a determination. If either party is dissatisfied with the determination of the Secretary, a formal due process hearing may be requested before a hearing officer in the Employee Relations Division of the Department of Personnel. Following the conclusion of that hearing, the party against whom the hearing officer rules has a right to file an appeal to the circuit court for an additional review of the entire complaint.

As the Maryland law is patterned after the federal Civil Service Reform Act, the handling of complaints by the Department of Personnel is similar to the system employed by the federal Merit Systems Protection Board. Furthermore, the Department of Personnel relies on the decisions in cases before the federal Board for precedents in making its own determinations.

D. Recent Activity and Effectiveness of the Act

As Appendix F suggests, activity under the Whistleblower's Act was never intensive and has diminished over time. A peak was reached in Fiscal Year 1983, when a total of 22 complaints were filed. In contrast, in Fiscal Year 1987, only six complaints were filed. Since the inception of the Act, there have been a total of 64 complaints filed.

Employees who have filed complaints alleging a violation of the Act stated that they have been subjected to the following types of retaliation: harassment, suspension, demotion, failure to promote, and termination. Over the last 12 months, there have been over 45 inquiries pertaining to the Act.

Of the nine complaints that were resolved in FY 1987, only one resulted in a finding that there was a violation of the Whistleblower Act. Of the other eight actions, five were dismissed, one was withdrawn, one was settled, and one reached a finding that there was no violation of the Act.

There may be several reasons why fewer employees are filing complaints alleging reprisals for disclosing information concerning abuses in State government. In 1985, in an article in The Daily Record, a representative of the Maryland Classified Employees Association (MCEA) stated that State employees have only a limited awareness of the Act. In response, the Department expressed its intention to step up its efforts to educate State employees regarding this law. In addition, the Department responded that the low number of complaints may reflect the lack of abuse or gross mismanagement in Maryland government. Furthermore, it has been suggested that the law itself acts as a deterrent for supervisors who might otherwise take reprisals against whistleblowers. Recently, when asked, MCEA and its legal counsel did not express any complaints about the implementation of the Act, and did not offer any suggestions for revising the Whistleblower's program.

Although no figures are available to assess the cost savings to the State resulting from disclosures of abuses in State government, a complaint illustrating the cost containment potential of the Whistleblower's Act is summarized in the Confidential Disclosure Activity Report - 1980 - 1982, prepared by the Department of Personnel. Several State employees filed a complaint alleging mismanagement of the payment system of a State agency. They disclosed this information to their supervisors and later became victims of adverse personnel actions. An investigation by the Department of Personnel supported their allegations, and the Department ordered that corrective action be taken. This action included: reinstatement of complainants to their former positions, the award of back pay, the removal of detrimental memoranda from their personnel files, and the promotion of

the employees. In evaluating this case, the Department concluded that the disclosure of mismanagement improved the overall program of that agency because it resulted in a subsequent change in the executive management of the program, an increase in productivity, and the elimination of waste in the program.

Some examples of alleged violations of the Whistleblower's Act do not involve disclosures of monetary waste or inefficiency. These include:

- . an employee who spoke out against poor patient care and was subject to unfair action by a supervisor;
- . an employee who believed that he was penalized for revealing that workers were being exposed to dangerously high levels of formaldehyde; and
- . an employee who stated that he was suspended after disclosing to management that "food substances being served were spoiled".

Although a dollar amount cannot be placed on the benefits of these disclosures, they serve the public welfare, and the employees who make the disclosures are protected under the Law.

Beyond the specific case examples illustrating some of the positive effect the Whistleblower's Law has had on protecting some of the employees who decide to speak out against waste and abuse in state government, it is difficult to assess accurately the overall effectiveness of the Program. This difficulty stems from the fact that only incidents in which reprisals are taken are brought to the attention of the Department of Personnel. The "whistleblowing" is scattered throughout all of the departments of state government, and is not filtered through one specific channel.

ACTIVITY IN OTHER STATES

Although Maryland was one of the first states to enact a law protecting whistleblowers, over 20 states have subsequently enacted similar statutes. (See Appendix G) Experience with the state laws varies widely. Illinois officials say that not a single case has been filed under its law, while Washington State gets four to five complaints per month involving activities ranging from theft of tools from a State garage to using State time and supplies to run a restaurant. In California, where workers in both the public and private sectors are covered, about 100 whistleblowers complained about mistreatment each year.

The Division of Equal Employment Opportunity of the Maryland Department of Personnel recently conducted a survey of the experiences of other states that have statutes providing some sort of protection to whistleblowers. According to this survey, many of the states do not maintain any record of the number of complaints received. It is difficult, therefore, to draw any conclusion as to whether these statutes are fulfilling their intended purpose - that is, encouraging employees to disclose information without fear of reprisal.

In comparing the programs of other states with the program implemented in Maryland, one striking difference is that in Maryland, a separate administrative procedure has been set up in which an employee can file a complaint. In many states (for example, Delaware, Maine, Michigan, and New York), there is no administrative recourse. Instead, employees are left to pursue judicial remedies exclusively. In addition, many states have enacted laws that protect private as well as state employees (for example, California, Connecticut, Maine, Michigan, New York, Oregon, and Pennsylvania).

As one of the major concerns of employees who have knowledge of waste and abuse in government is fear of retaliation for disclosing this knowledge, a number of states have established anonymous hotlines for receiving this information. In 1985, the state of Delaware established such a hotline program. According to the "Study of Federal, State, and Private Whistleblower Programs" prepared by the Maryland Department of Personnel, this Delaware program has been used as a model for other states, and in fiscal year 1986, saved the State of Delaware over a million dollars. Other states have set up or are considering setting up hotlines, including California, Oklahoma, Pennsylvania, and South Carolina.

OVERVIEW OF FEDERAL WHISTLEBLOWER PROTECTION LAW

The passage of the Civil Service Reform Act, the law that acted as a springboard for state whistleblower laws, has been the subject of a continuing controversy between the Administration and individuals who believe that the intent of the law is not being fulfilled. Legislation has been introduced in each of last several sessions of Congress to revise the system for hearing, investigating, and resolving whistleblower complaints.

According to the "1978 Senate Report on the Whistleblowing and Civil Service Reform Legislation", the general intent of Congress in enacting the whistleblower protection provisions of the Civil Service Reform Act was to encourage the disclosure of illegality, waste, and corruption in government by protecting those employees who "blow the whistle" on such activity. It was felt that in protecting and encouraging these disclosures, ultimately the efficiency and effectiveness of the federal service would be increased.

An Office of Special Counsel was created to receive allegations of prohibited personnel practices and to investigate these allegations. In addition, the Office has the authority to conduct an investigation on its own absent any allegation. If the investigation of the Special Counsel results in reasonable grounds to believe that a prohibited personnel practice exists or has occurred, the Special Counsel is required to report findings and recommendations, including recommendations for corrective action, to the Merit Systems Protection Board, the agency involved, the Office of Personnel Management (OPM), and optionally, to the President. If an agency fails to take the recommended corrective action, the Special Counsel may request the Merit Systems Protection Board to consider the matter. The Board, after allowing comment by the agency and OPM, may order corrective action.

In addition, the Special Counsel may institute proceedings for disciplinary action against an officer or an employee who commits a prohibited personnel action against a whistleblower by filing a written complaint with the Merit Systems Protection Board. If violations are found, the Board may impose various sanctions including: removal, reduction in grade, suspension, reprimand, and civil fines up to \$1,000.

In all of these matters and proceedings, the role of the Special Counsel has been characterized as being similar to that of a prosecutor "designed to vindicate the public interest", rather than that of a public defender or "employee's advocate" representing individual employee interests. The Special Counsel may refuse to take a case from an employee, and the employee is not afforded an opportunity to seek judicial review of that decision.

At hearings on proposed Whistleblower Protection Acts in 1986 and 1987, the role of the Special Counsel as a protector of the merit system, rather than as a defender of individual employees, has been subject to criticism and suggestions for statutory change. The proposal currently before Congress, H.R. 25, the Whistleblower Protection Act of 1987, would expand the function of the Office of Special Counsel and require the Special Counsel to take an advocacy role on behalf of whistleblowers. There has been some question whether the Special Counsel, who is appointed by the President, has been sufficiently vigorous in pursuing corrective actions for whistleblowers. The testimony of a number of whistleblowers and of representatives of the Government Accountability Project at the hearing on this proposal highlights many of the difficulties experienced by whistleblowers under the current federal system of protections.

As has been established in several states, an alternative means of uncovering abuse in the federal system has been achieved through the establishment of a toll-free hotline by the General Accounting Office that any employee could use to anonymously reveal evidence of waste or fraud. The Defense Department has a similar hotline.

CONCLUSION

Although there has not been much recent activity under Maryland's Whistleblower Law, a significant number of employees make inquiry each year concerning the protections against retaliation that the law provides to State employees. The office charged with administering the Whistleblower's Program is studying the Law and may soon recommend changes.

One of the recommendations of the Maryland Department of Personnel in its recent study of whistleblower programs is to establish in Maryland a toll free telephone hotline to receive and respond to allegations of fraud, waste, and abuse in State government.

ARTICLE 64A.
MERIT SYSTEM.

APPENDIX A

EMPLOYEE DISCLOSURE AND CONFIDENTIALITY PROTECTION

§ 12F. Defamation or privacy actions not affected.

Nothing in this subtitle shall abridge any action for defamation or invasion of privacy. (1980, ch. 850.)

§ 12G. Protection of certain disclosures.

(a) *In general.* — (1) Unless a disclosure is specifically prohibited by law, an appointing authority may not take or refuse to take a personnel action with respect to an employee or applicant for employment as a reprisal for any disclosure of information, or for seeking of any remedy provided by this subtitle, by the employee or applicant for classified employment which disclosure the employee or applicant reasonably believes evidences:

- (i) A violation of any law, rule, or regulation;
- (ii) Gross mismanagement, gross waste of funds, or abuse of authority; or
- (iii) A substantial and specific danger to public health or safety.

(2) This subtitle provides remedies which are supplemental to ordinary State employee grievance procedures prescribed by this article and rules and regulations promulgated thereto.

(3) This section does not prohibit any personnel action which otherwise would have been taken regardless of any disclosure of information.

(b) *Disclosure prohibited by law.* — An employee or applicant for employment shall have the same protections provided in subsection (a) of this section regarding any disclosure which is specifically prohibited by law if the disclosure is made exclusively to the Attorney General as provided in § 12J of this subtitle. (1980, ch. 850; 1982, ch. 590.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, inserted "or for seeking of any remedy provided by this sub-

title" and "disclosure" preceding "the employee" in the introductory language of paragraph (1) of subsection (a).

§ 12H. Rules and procedures for handling and resolving allegations of violations.

(a) *Development.* — The Secretary of Personnel shall develop rules and procedures for the handling and resolution of allegations of violations of this subtitle.

(b) *Filing of complaints.* — An employee or applicant for employment may charge an appointing authority with a violation of § 12G of this subtitle in a complaint filed with the Secretary of Personnel. The Secretary shall notify the appointing authority of the complaint and shall provide an opportunity for the authority to respond to the complaint in writing. A complaint alleging a violation of this subtitle shall be filed with the Secretary within 1 year after the date the employee first knew, or should have known, of the violation.

(c) *Investigation of complaints.* — (1) Except when the complaint is filed against the Department of Personnel, the Secretary shall investigate all complaints filed pursuant to subsection (b) of this section. When the complaint is filed against the Department of Personnel, a designee appointed by the Governor shall investigate complaints filed under subsection (b) of this section. The Secretary shall promptly send a copy of a complaint to any person named in the complaint as having violated this subtitle.

(2) If the Secretary, or Governor's designee, in the course of investigating a complaint, finds that there are reasonable grounds to believe that a criminal offense has been committed, the matter shall be referred promptly to an appropriate prosecuting authority. The Secretary, or Governor's designee shall make available to the prosecuting authority all pertinent evidence under his control.

(3) Whenever the Secretary, or Governor's designee, refers any evidence of criminal conduct, he shall notify the individual alleged to have engaged in the conduct. This notice shall contain:

- (i) A statement of the allegation;
- (ii) Notice of the right to obtain legal representation;
- (iii) Notice of the right to refuse to respond if a response might tend to be incriminating; and

(iv) Notice that the matter has been referred to a prosecutorial agency.

(d) *Determination whether violation occurred.* — (1) Upon completion of the investigation, the Secretary, or Governor's designee, shall determine whether a violation of § 12G has occurred.

(2) If the Secretary, or Governor's designee, determines that a violation has not occurred, the complaint shall be dismissed.

(3) If the Secretary, or Governor's designee, determines that a violation has occurred, the Secretary shall take remedial action consistent with the purposes of this article, including but not limited to:

(i) Eliminating from the complainant's State personnel record any detrimental insertion resulting from the violation;

(ii) Hiring, reinstating, promoting, or terminating the suspension of the complainant;

(iii) Awarding back pay to the date of the violation; or

(iv) Making appropriate recommendations to the appointing authority with respect to disciplinary action against the employee found to have caused the violation. (1980, ch. 850; 1986, chs. 430, 431.)

Effect of amendments. — Chapter 430, Acts 1986, effective July 1, 1986, added the third sentence in subsection (b).

Chapter 431, Acts 1986, effective July 1, 1986, in subsection (c), added the exception at the beginning of paragraph (1) and inserted the present second sentence of that paragraph, inserted "or Governor's designee" in the first and second sentences of paragraph (2), in paragraph (3) and in paragraphs (1) and (2) of sub-

section (d), and, in paragraph (3) of subsection (d), substituted "if the Secretary, or Governor's designee, determines that a violation has occurred" for "upon determining that a violation has occurred" at the beginning of the introductory language.

Cited in *Maryland-National Park & Planning Comm'n v. Crawford*, 307 Md. 1, 511 A.2d 1079 (1986).

§ 12-I. Hearing.

(a) *When held.* — The Secretary, or Governor's designee other than the designee who has conducted the investigation under § 12H of this article, shall hold a hearing consistent with the procedural standards of the Administrative Procedure Act, Title 10, Subtitle 2 of the State Government Article, when:

(1) The complainant or the appointing authority challenges the findings of the initial investigation of a complaint;

(2) The complainant challenges the adequacy of the corrective action taken by the Secretary; or

(3) The Secretary, or Governor's designee, fails to issue findings within 90 days of the filing of a complaint and the complainant requests a hearing.

(b) *Testimony; representation by counsel; decision and reasons therefor; relief granted.* — (1) Testimony taken at the hearing shall be under oath and recorded, and any party may be represented by counsel.

(2) At the earliest practicable date, a written decision and reasons therefor shall be issued.

(3) A prevailing complainant may be awarded back pay, seniority, leave, promotion, reasonable attorney's fees, litigation costs, or other appropriate relief.

(c) *Review of decision.* — A complainant or appointing authority may secure review of a decision under this section in the circuit court for the jurisdiction in which the violation allegedly occurred. The court in hearing this case shall be governed by the judicial review standards of the Administrative Procedure Act, §§ 10-215 and 10-216 of the State Government Article of the Annotated Code. In addition to other relief, the court may award a prevailing complainant reasonable attorney's fees and costs of litigation.

(d) *Confidentiality of record or information.* — In any hearing held pursuant to this section, confidentiality shall be maintained regarding any record or information the privacy or confidentiality of which is protected pursuant to Title 10, Subtitle 6 of the State Government Article. If any record so protected is deemed essential to the conduct of a hearing, names and other identifying information shall be deleted as necessary to maintain confidentiality. (1980, ch. 850; 1982, ch. 820, § 1; 1986, ch. 5, § 4; ch. 431; 1987, ch. 11, §§ 1, 2.)

Effect of amendments.

The 1986 amendment, effective July 1, 1986, in subsection (a), inserted "or Governor's designee other than the designee who has conducted the investigation under § 12H of this article" in the introductory language, deleted "Secretary's" preceding "initial" in paragraph (1), and inserted "or Governor's designee" in paragraph (3).

Section 1, ch. 11, Acts 1987, approved Apr. 2, 1987, and effective from date of passage, substituted "Title 10, Subtitle 6 of the State Government Article" for "Article 76-A — Public Information" in subsection (d).

Editor's note. — Section 4, ch. 5, Acts 1986, provides that "the publishers of the Annotated Code of Maryland are directed to propose a plan for the renumbering of the sections of Article 41 of the Annotated Code prior to the republication of the replacement volume containing that article. The proposal should correct numerical and similar nonnumerical cross ref-

erences throughout the Annotated Code that refer to provisions found in Article 41." Pursuant to § 4 of ch. 5, "Title 10, Subtitle 2 of the State Government Article" was substituted for "Article 41, §§ 252 through 254" in subsection (a), and "§§ 10-215 and 10-216 of the State Government Article" was substituted for "§§ 255 and 256 of Article 41" in subsection (c).

Section 2, ch. 11, Acts 1987, approved Apr. 2, 1987, and effective from date of passage, provides, in part, that "the General Assembly of Maryland ratifies and enacts the plan for the renumbering of Article 41 undertaken by the publishers of the Annotated Code pursuant to § 4 of ch. 5 of the Acts of the General Assembly of 1986, as shown in the 1986 Replacement Volume for Volume 4 of the Annotated Code of Maryland."

Cited in *Maryland-National Park & Planning Comm'n v. Crawford*, 307 Md. 1, 511 A.2d 1079 (1986).

§ 12J. Duties of Attorney General.

The Attorney General shall:

- (1) Designate an assistant to receive from employees any disclosure of information the privacy or confidentiality of which is protected pursuant to Article 76A — Public Information;
- (2) Investigate any allegation of illegality or impropriety made by an employee pursuant to a disclosure of information the privacy or confidentiality of which is protected pursuant to Article 76A — Public Information;
- (3) Take appropriate legal action based on the information disclosed; and
- (4) Following an investigation, submit a confidential report to the Governor describing the content of each disclosure received pursuant to this section. (1980, ch. 850.)

§ 12K. Annual report.

The Secretary shall report at least annually to the Governor concerning all proceedings undertaken under this subtitle. (1980, ch. 850.)

Title 06 DEPARTMENT OF PERSONNEL

Subtitle 01 DEPARTMENT OF PERSONNEL

Chapter 05 Employee Disclosure and Confidentiality Protection

Authority: Article 41, §§251—255; Article 64A, §§11 and 12F—12I;
Annotated Code of Maryland

.01 General.

These regulations are promulgated pursuant to Article 41, §§251—255, and Article 64A, §§11, 12F—12I, Annotated Code of Maryland, to protect classified employees from an appointing authority taking action in retaliation for a disclosure of illegality or impropriety. The interests of the citizens of Maryland demand a government which operates in accordance with the law and in avoidance of mismanagement, monetary waste, abuse of authority, and danger to public health and safety. In furtherance of these goals, it is essential that classified employees be free to disclose impropriety in exercise of their constitutional right of free speech.

.02 Definition of "Secretary".

In these regulations, "Secretary" means the Secretary of Personnel.

.03 Complaints.

A. An employee or applicant for employment may file a complaint with the Secretary alleging that a personnel action was taken against him or her in violation of Article 64A, §12G, Annotated Code of Maryland, in reprisal for his or her disclosure of impropriety in government.

B. Complaints shall be filed in writing and may include the following information:

- (1) Name and address of complainant;
- (2) Name (and address if known) of the person against whom the complaint is made;
- (3) Date or dates of alleged unlawful personnel actions;
- (4) A statement of the facts which are the basis for the complaint;
- (5) Signature of the complainant; and
- (6) Date the complaint is filed.

C. The Secretary shall send a copy of a complaint to the appointing authority and to any other person about whom an employee or applicant has complained.

D. An appointing authority shall have 15 working days from receipt of the complaint to respond in writing.

E. A complaint may be withdrawn only by the complainant. The Secretary shall inform all parties of the withdrawal of the complaint as soon as practicable.

.04 Investigation, Findings, and Determination.

A. The Secretary shall conduct an investigation of a complaint filed under Regulation .03. The Secretary may subpoena witnesses and records in connection with an investigation.

B. Determination.

(1) Upon completion of the investigation, the Secretary shall issue a determination.

(2) The determination shall be sent to the complainant and to those persons who were sent copies of the complaint pursuant to Regulation .03.

(3) The determination shall set forth findings of fact and conclusions of law.

(4) If the determination finds a violation of Article 64A, §12G, Annotated Code of Maryland, the relief to be afforded a complainant shall be set forth.

(5) If the determination finds no violation of Article 64A, §12G, Annotated Code of Maryland, the complaint shall be dismissed. No record of that complaint may be placed in anyone's personnel file.

(6) The determination shall be final except as provided in Regulation .05.

.05 Hearings.

A. A hearing shall be held when:

(1) Any party excepts to the determination issued under Regulation .04 within 30 days of the date of the determination and requests a hearing; or

(2) Ninety days have elapsed since the filing of the complaint and the complainant requests a hearing.

B. A request for hearing shall be submitted in writing and signed by the person requesting the hearing.

C. If a party excepts to part of a determination and requests a hearing, any other party shall have an additional 15 days to request a hearing.

D. The hearing shall be held by a hearing officer in the Employee Relations Division of the Department of Personnel who shall render the final administrative decision.

E. The hearing shall be held in accordance with the Administrative Procedure Act, Article 41, Subtitle 24, Annotated Code of Maryland, and COMAR 06.01.03.

F. The hearing shall be de novo.

G. Testimony taken at any hearing shall be under oath.

H. Any party may be represented by an attorney.

I. The party requesting the hearing shall bear the burden of proof.

J. Any record or information which is considered private or confidential under Article 76A, Annotated Code of Maryland, may not be disclosed except in accordance with Article 64A, §12I, Annotated Code of Maryland.

K. A written decision shall be issued, and copies shall be sent to all parties at the earliest practicable date.

.06 Remedial Action.

A. In a determination rendered under Regulation .04, a prevailing complainant may be awarded back pay, service credits, leave, promotion, appointment, re-instatement, termination of suspension, or other appropriate relief. Detrimental information in the complainant's personnel file may be removed.

B. In a decision rendered under Regulation .05, a prevailing complainant may be awarded relief in the categories under §A, above. If the relief awarded under Regulation .05 is greater than the relief awarded under Regulation .04, the complainant may also be awarded reasonable attorney's fees and litigation costs. Detrimental information in the complainant's personnel file may be removed.

C. The Secretary shall recommend to an appointing authority that disciplinary action be taken against any employee who has violated Article 64A, §12G, Annotated Code of Maryland.

Administrative History

Effective date: September 28, 1981 (R:19 Md. R. 1553)

CLASSIFIED EMPLOYEES' DISCLOSURE AND CONFIDENTIALITY PROTECTION ACT

COMPLAINANT INFORMATION

Name of Complainant: _____

Complainant's Address: _____

City _____ State _____ Zip Code _____

Home Phone: _____ Business Phone: _____

RESPONDENT INFORMATION

Name of Respondent: _____
(Department, Agency, Facility, Employing Agency)

Respondent's Address: _____

Date of Alleged Unlawful Personnel Action: _____

WHAT DID THE ALLEGED UNLAWFUL PERSONNEL ACTION INVOLVE?

- | | | |
|--------------------------------------|--|--|
| <input type="checkbox"/> Hiring | <input type="checkbox"/> On-the-job | <input type="checkbox"/> Segregated Facilities |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Segregation | |
| <input type="checkbox"/> Downgrading | <input type="checkbox"/> Employee Benefits | <input type="checkbox"/> Termination |
| <input type="checkbox"/> Layoff | <input type="checkbox"/> Wages | <input type="checkbox"/> Other (Explain Below) |
| <input type="checkbox"/> Transfer | | |

Explanation (Other alleged unlawful personnel action):

HAVE YOU FILED AN EEO COMPLAINT OR GRIEVANCE? ☐ Yes ☐ No

IF YES, INDICATE: _____

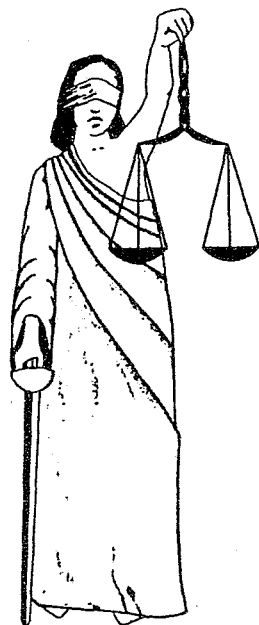
THE COMPLAINT: (Describe alleged unlawful personnel action)

AUTHORIZATION: _____
Department of Personnel _____ Date _____

NO CIVIL OR CRIMINAL ACTION BASED ON THE ALLEGATIONS SET FORTH IN THIS COMPLAINT HAVE BEEN INSTITUTED BY THE COMPLAINANT IN ANY COURT. I DO HEREBY ATTEST THAT I HAVE READ THE FOREGOING COMPLAINT, KNOW THE CONTENTS THEREOF, IN THAT THE COMPLAINT IS BASED UPON MY OWN PERSONAL KNOWLEDGE EXCEPT AS TO MATTERS STATED ON INFORMATION AND BELIEF, AND THAT, AS TO THOSE MATTERS, I BELIEVE THE SAME TO BE TRUE.

SIGNATURE OF COMPLAINANT

DATE



MARYLAND STATE
DEPARTMENT OF PERSONNEL
301 West Preston Street
Baltimore, Maryland 21201

BACKGROUND

TITLE: CLASSIFIED EMPLOYEES'
DISCLOSURE AND CON-
FIDENTIALITY PROTECTION
ACT

LAW: Article 64A, Sections 12G-12K
Article 76A, Section 5(e)
Annotated Code of Maryland

PROVISIONS: Prohibits reprisals by super-
visors and managers for cer-
tain disclosures made by
employees.

TYPES OF DISCLOSURES:

1. A violation of any law, rule, or regulation.
2. Gross mismanagement, gross waste of funds, or abuse of authority.
3. A substantial and specific danger to public health or safety.

WHO IS PROTECTED?

Classified State Employees and applicants
for State classified employment.

WHO ARE WHISTLEBLOWERS?

You are a "Whistleblower" if you provide in-
formation to the Attorney General, an agency
official, or outsider, which you reasonably
believe evidences:

- A violation of any law, rule, or regulation.
- or
- Mismanagement, a waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

WHEN DOES THE "WHISTLEBLOWER" FILE WITH THE SECRETARY OF PERSONNEL?

When an adverse personnel action is
taken after an employee discloses in-
formation concerning certain types
of wrongdoing.

HOW TO FILE

- * You may send a letter outlining your allegations to:

Equal Opportunity Division
Room 607
State Department of Personnel
301 W. Preston Street
Baltimore, Maryland 21201

- * Complete the Complaint Form on the reverse side of this pamphlet and mail to the above address.

- * Visit the Department of Personnel in person and file your complaint directly.

NOTE: All Whistleblowers matters shall be
strictly confidential

* * * *

For further information call
(301) 225-4793

STATE OF MARYLAND CLASSIFIED EMPLOYEES DISCLOSURE AND CONFIDENTIALITY PROTECTION ACT

DO YOU KNOW WHAT IT IS?
(WHISTLEBLOWERS LAW)

LAW
ARTICLE 64A, SECTIONS 12G - 12K
ARTICLE 76A, SECTION 5(e)
ANNOTATED CODE OF MARYLAND

Provisions:

Prohibits reprisals by supervisors and managers for certain disclosures made by employees.

Types of Disclosures:

1. A violation of any law, rule, or regulation.
 2. Gross mismanagement, gross waste of funds, or abuse of authority.
 3. A substantial and specific danger to public health or safety.
-

WHO ARE WHISTLEBLOWERS

You are a "*whistleblower*" if you provide information to the Attorney General, an agency official, or outsider, which you reasonably believe evidences:

- A violation of any law, rule or regulation
 - Mismanagement, a waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.
-

WHEN DOES THE 'WHISTLEBLOWER' FILE WITH THE SECRETARY OF PERSONNEL?

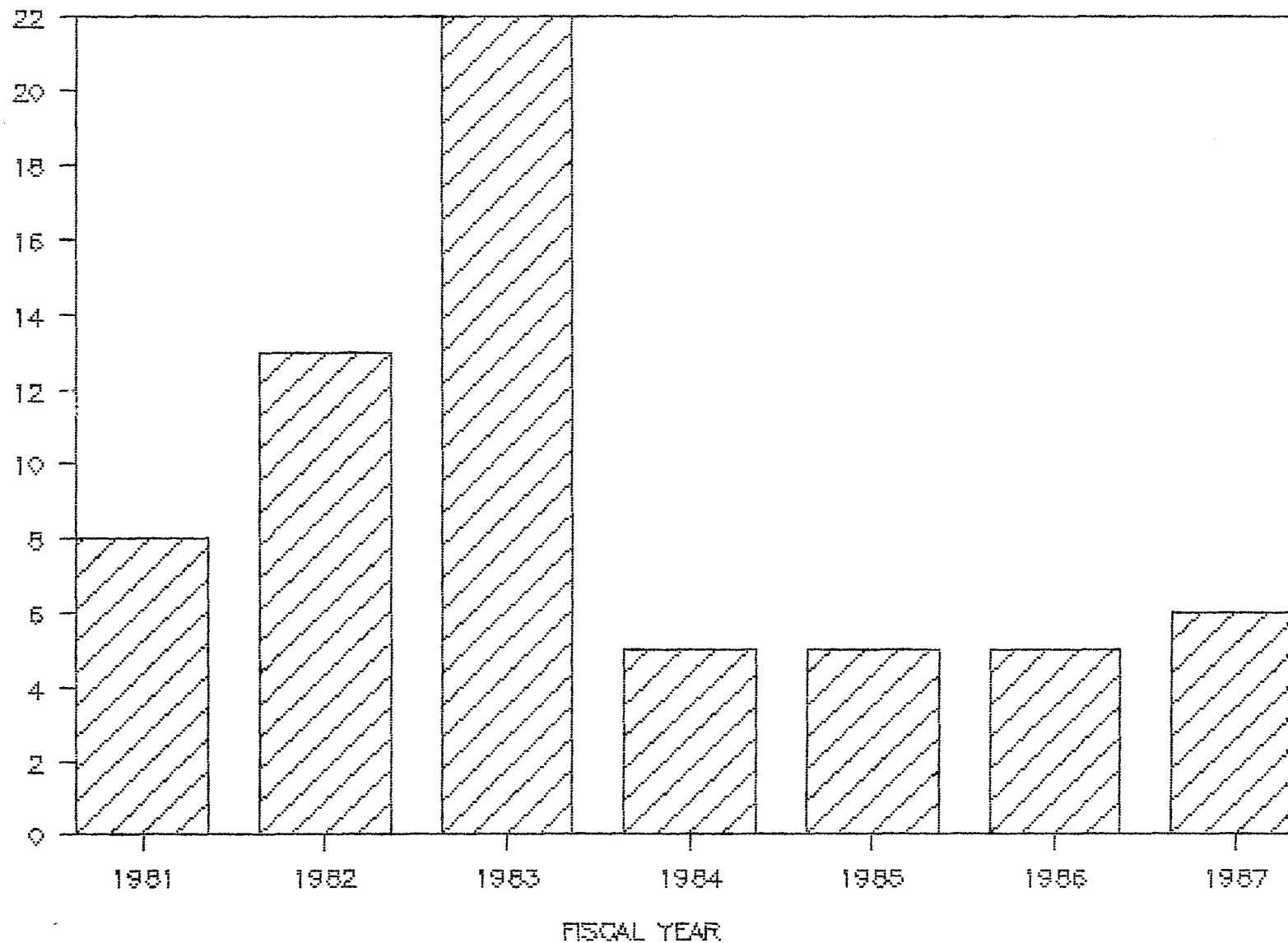
When an adverse personnel action is taken after an employee discloses information concerning certain types of wrong doing

FOR FURTHER INFORMATION CALL
THE DEPARTMENT OF PERSONNEL

EMPLOYEES' DISCLOSURE PROTECTION ACT

COMPLAINTS FILED

COMPLAINTS



APPENDIX F

APPENDIX G

States with Whistleblower Protection Statutes

Arizona	Maryland
California	Michigan
Connecticut	New Hampshire
Delaware	New York
Hawaii	Oklahoma
Illinois	Oregon
Indiana	Pennsylvania
Iowa	Rhode Island
Kansas	Texas
Louisiana	Washington
Maine	Wisconsin