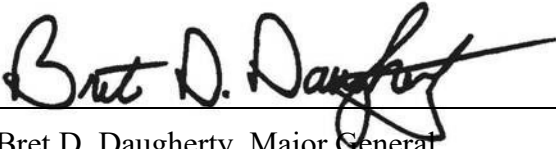




Department Policy No. DIR-010-11

Title:	State Employee Whistleblower Program
Former Number:	New
Authorizing Source:	Chapter 42.40 Revised Code of Washington (RCW)
References:	Whistleblower Form
Information Contact:	Whistleblower Designee, Intergovernmental Affairs & Policy Director, Building 1 (253) 512-7712
Effective Date:	May 2, 2011
Mandatory Review Date:	March 30, 2026
Revised:	March 30, 2022
Approved By:	 Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

Purpose

This policy describes roles, responsibilities, and expectations for Washington Military Department (WMD) state employee whistleblower policy pursuant to the State Employee Whistleblower Protection Act, chapter 42.40 RCW.

Scope

This policy applies to WMD state employees and to members of the Washington National Guard while in state active duty status.

Definitions

Auditor: The office of the state auditor.

Employee: Any individual employed or holding office in any department or agency of state government.

Good Faith: The individual providing the information or report of improper governmental activity has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, or who knowingly omits relevant information is not acting in good faith.

Gross Mismanagement: The exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

Gross Waste of Funds: Spend, use funds, or allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

Improper Governmental Action:

- (a) Any action by an employee undertaken in the performance of the employee's official duties:
- i. Which is a gross waste of public funds or resources as defined in this section;
 - ii. Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
 - iii. Which is of substantial and specific danger to the public health or safety;
 - iv. Which is gross mismanagement; or
 - v. Which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinions or technical findings. Nothing in this subsection prevents or impairs a state agency's or public official's ability to manage its public resources or its employees in the performance of their official job duties. This subsection does not apply to de minimis, technical disagreements that are not relevant for otherwise improper governmental activity. Nothing in this provision requires the auditor to contract or consult with external experts regarding the scientific validity, invalidity, or justification of a finding or opinion.
- (b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

Public Official: The attorney general's designee or designees; the director, or equivalent thereof in the agency where the employee works; an appropriate number of individuals designated to receive whistleblower reports by the head of each agency; or the executive ethics board.

Substantial and Specific Danger: A risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation.

Use of Official Authority or Influence: Includes threatening, taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment including but not limited to duties and office location, reassignment, reinstatement, restoration, reemployment, performance evaluation, determining any material changes in pay, provision of training or benefits, tolerance of a hostile work environment, or any adverse action under chapter 41.06 RCW, or other disciplinary action.

Whistleblower Means: RCW 42.40.020(10)

- (a) "Whistleblower" means:
- (i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section; or
 - (ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section.
- (b) For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means:
- (i) An employee who in good faith provides information to the auditor or other public official, as defined in subsection (7) of this section, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, or to have provided information to the auditor or other public official, as defined in subsection (7) of this section, but who, in fact, has not reported such action or provided such information; or
 - (ii) An employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so.

Policy and Procedures

1. The WMD believes in, and will comply with and support the Whistleblower Program as described in RCW 42.40:
It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures.
2. Employees may submit Whistleblower assertions on the designated Whistleblower WMD Form 0001-11, by two methods described below:
 - a. To the department Whistleblower Designee, Intergovernmental Affairs and Policy Director, who will forward the assertions to the State Auditor's Office within 15 calendar days at whistleblower@mil.wa.gov
 - b. Directly to the State Auditor's Office at:
 - i. Fax (360) 586-3519

- ii. Email: whistleblower@sao.wa.gov
- iii. Web: [Whistleblower Program - Office of the Washington State Auditor](#)
- iv. Mail: Washington State Auditor's Office
Attn: State Employee Whistleblower Program
P.O. Box 40031
Olympia, WA 98504-0031

Department Whistleblower Designee contact information and Whistleblower WMD Form 0001-11 can be found at [IGAP - Whistleblower \(sharepoint.com\)](#)

3. Employees who report improper governmental action to the Office of the State Auditor or the department Whistleblower Designee are protected from retaliatory action by the provisions of Whistleblower Act, RCW 42.40.050. This includes the actual or perceived Whistleblower and any witness who provides information during the investigation.
4. Employees who file an ethics complaint with the appropriate ethics board shall also be afforded the protection afforded to a whistle blower under RCW 42.40.050 and RCW 42.40.910. Retaliation may not be made against a state employee who, after making a reasonable attempt to ascertain the correctness of the information, files a complaint with the appropriate ethics board and may not be denied the protections in RCW 42.40 even if the ethics board denies the investigation of the complaint. If a determination is made that a reprisal or retaliatory action has been taken against the state employee, the retaliator may be subject to a civil penalty of up to five thousand dollars.
5. Employees may not use, or attempt to use, their official authority or influence to interfere with the right of an individual to disclose information to the State Auditor or department Whistleblower Designee by the provisions of the Whistleblower Act, RCW 42.40.030.
6. The identity or identifying characteristics of a whistleblower and an individual filing ethics complaint is confidential at all times unless the whistleblower consents to disclosure by written waiver or by acknowledging his or her identity in a claim against the state for retaliation. In addition, the identity or identifying characteristics of any person who in good faith provides information in an investigation under this section is confidential at all times, unless the person consents to disclosure by written waiver or by acknowledging his or her identity as a witness who provides information in an investigation.
7. The agency and all employees will fully cooperate in any whistleblower assertion investigation to include the proper safeguarding of any potential evidence.
8. Whistleblower assertions may be made anonymously.

9. Employees who feel they are being retaliated against may contact the Human Rights Commission as described at: <http://www.hum.wa.gov>
10. The WMD will provide Whistleblower Act information to new employees at New Employee Orientation sessions and annually to all employees.
11. The following appendices are hereby incorporated as part of this policy.
 - Appendix A: State Auditor Office Whistleblower Program Frequently Asked Questions (FAQ)
 - Appendix B: Whistleblower Reporting Form: WMD Form 0001-11