



**Department of Commerce**

# **Financial Fraud and Identity Theft Investigation and Prosecution Program**

*Progress Report on Task Force and Recommendations per RCW 43.330.300*

December 2017  
Report to the Legislature  
Brian Bonlender, Director

## **Acknowledgements**

### **Washington State Department of Commerce**

Diane Klontz, Assistant Director, Community Services and Housing Division  
Richard Torrance, Managing Director, Office of Crime Victims Advocacy  
J. Harvey Queen, Financial Fraud and Identity Theft Program Manager

### **Greater Puget Sound Financial Fraud and Identity Theft Task Force**

Melinda J. Young, King County Prosecutor's Office, Task Force Chair

### **Spokane County Financial Fraud and Identity Theft Task Force**

Inspector John Nowels, Spokane County Sheriff's Office, Task Force Chair

Richard Torrance, 360-725-2905  
Washington State Department of Commerce  
Office of Crime Victim Advocacy  
1011 Plum St. SE  
P.O. Box 42525  
Olympia, WA 98504-2525  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

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# Executive Summary

## Overview

The Legislature created the Financial Fraud and Identity Theft Crime Investigation and Prosecution Program (FFIT) in 2008 at the Department of Commerce (Commerce). The program strengthens cooperation between law enforcement and financial industry investigators to increase the capacity to respond to financial fraud and identity theft crimes. This report meets the statutory requirements for an annual progress report to the Legislature.

Financial fraud and identity theft crimes are defined in RCW 43.330.300<sup>1</sup> as check fraud, chronic unlawful issuance of bank checks, embezzlement, credit and debit card fraud, identity theft, forgery, counterfeit instruments (such as checks or documents), organized counterfeit check rings, and organized identification theft rings.

In 2008, Commerce established two regional FFIT task forces consisting of the three largest counties in the state: the Greater Puget Sound (GPS) Task Force, which includes King and Pierce counties, and the Spokane County Task Force. At the end of the State Fiscal Year (SFY) 2015, Snohomish County joined the Greater Puget Sound Task Force, and began working as part of that group in January 2016. Each task force includes representatives from:

- Local law enforcement.
- County prosecutors.
- The state Office of the Attorney General.
- Financial institutions.
- Other state, local, and federal law enforcement and investigative agencies.

Both task forces direct grant funds to law enforcement investigation and forensic analysis, as well as to prosecutorial staff dedicated to financial fraud and identity theft cases generated by the investigations.

The FFIT program is funded entirely through the collection of fees, which were supported by the business community, on Uniform Commercial Code (UCC) filings statewide. UCC fees are collected and deposited into a dedicated FFIT account by the state Department of Licensing. In 2015, the Legislature passed SB 1090,<sup>2</sup> increasing the three categories of fees to \$10 each per filing. The increased fees support a program-wide expansion of FFIT investigation and prosecution, and the inclusion of a new partner in the GPS Task Force. The fees that fund the FFIT program were extended from the original expiration date of July 1, 2015 to July 1, 2020.

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<sup>1</sup> <http://apps.leg.wa.gov/rcw/default.aspx?cite=43.330.300>

<sup>2</sup> Washington State Legislature, HB 1090, (2015), <http://app.leg.wa.gov/billsummary?BillNumber=1090&Year=2015>

## Key Findings

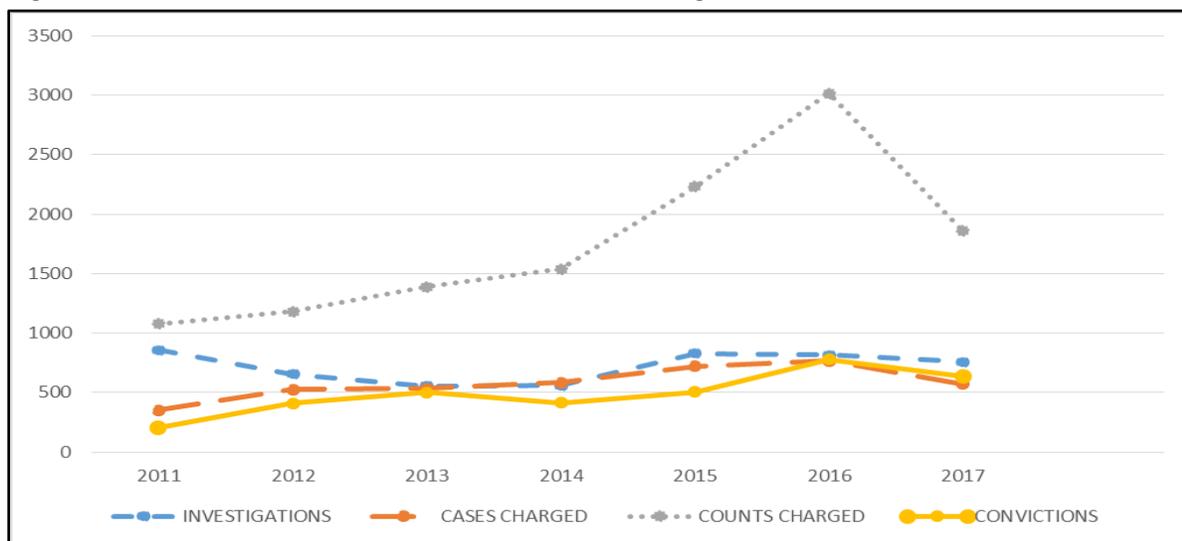
### State Fiscal Year 2017 Findings

- There were 759 investigations conducted between July 1, 2016, and June 30, 2017, 55 fewer than in the previous state fiscal year.
- The task forces charged 569 cases involving 1,859 counts, 38 percent fewer than the previous year. This reduction reflects a change in reporting, discussed on page 5.
- There were 632 convictions, 147 fewer than the previous year and a 19 percent decrease.
- Task forces are identifying and prosecuting significantly more sophisticated multi-person criminal organizations spanning multiple jurisdictions.

### Cumulative Findings

The task forces report performance quarterly to Commerce. In the seven years of active investigatory work (SFY 2011 through SFY 2017), the task forces conducted 5,027 investigations, prosecuted 4,051 cases involving 12,292 charges, and received 3,437 convictions (Figure 1).

**Figure 1: Statewide FFIT Performance for SFY 2011 Through SFY 2017**



Source: FFIT Task Force Quarterly Reports

## Recommendations

Commerce recommends a stakeholder group including legislators, Commerce staff, financial industry representatives, and task force members meet to determine if the program should be extended or made permanent.

The task forces have recommendations for strengthening penalties for certain relevant crimes. Recommendations made by Commerce and the task forces are on page 7.

## Task Force Outcomes

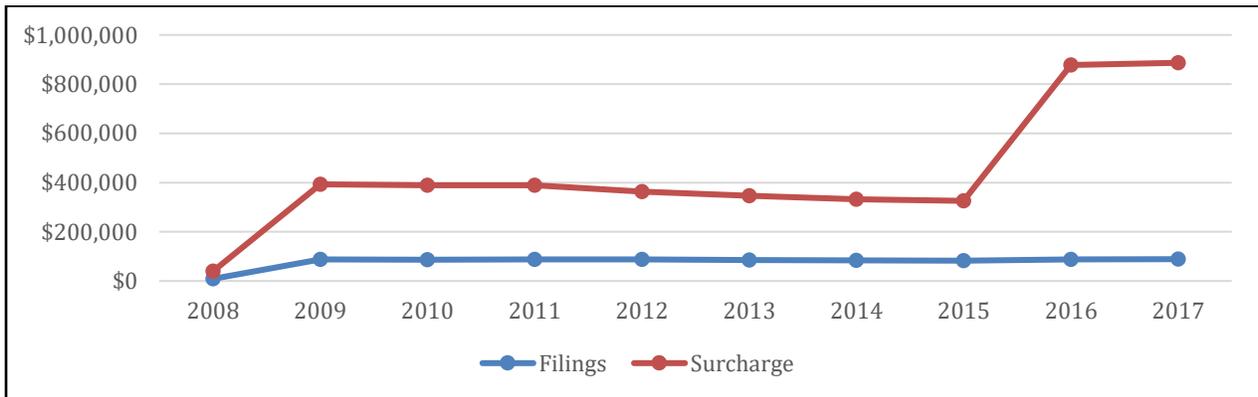
### Financial Fraud and Identity Theft Program Surcharge Transfers

Funds are collected by the Department of Licensing from surcharge fees on personal and corporate Uniform Commercial Code-1 (UCC) filings. Licensing transfers collected funds monthly to Commerce for exclusive support of Financial Fraud and Identity Theft (FFIT) program activities.

UCC-1 collections began in August 2008. The FFIT program had three UCC surcharge fees: \$8 for paper filings; \$3 for individual web-based filings; and \$3 for batch web-based filings. The program saved collected fees for a year in order to fund the task forces. During the first two years, the task forces organized, hired, and trained staff before becoming operational, which is why investigation and prosecution data begins in 2011.

Beginning July 1, 2015, fees were raised to \$10 for each type of filing, which is why the collected surcharges increased significantly from 2015 to 2016 (Figure 2).

**Figure 2: Uniform Commercial Code-1 Collections From SFY 2008 Through SFY 2017**



Source: Washington State Department of Licensing Monthly UCC-1 Surcharge Reports

### Task Forces Performance

The FFIT program is required to report on task force activity performance and new methods of cooperation. The task forces submit quarterly performance reports to Commerce and then follow up with two semi-annual narrative reports of ongoing operational successes and accomplishments. These reports describe the planning and staffing of investigations, apprehension and prosecution of financial fraud and identity theft crimes, and new and best practices.

The FFIT program continues to make improvements in identifying, arresting, and prosecuting individuals and groups engaged in the criminal enterprise of financial fraud and identity theft.

Each year, both task forces have incrementally increased the scope of their investigations, going after larger and more complex criminal enterprises.

In the criminal justice system, law enforcement investigations are half of the process of bringing criminal enterprises to justice. Prosecution and sentencing are the culmination of that process and constitute a measurable outcome for the program.

**Statewide Performance Goals**

Statewide, the performance goal for the task forces is 92 convictions per quarter. Since establishing this performance measure in 2011, the task forces achieved an average of 167.6 convictions each quarter over a period of 30 quarters for 5,027 convictions. The data shows the task forces are far exceeding their original goal. Commerce program managers and the task forces will review the performance measure goals to see if increased performance goals for convictions per quarter for SFY 2018 is warranted.

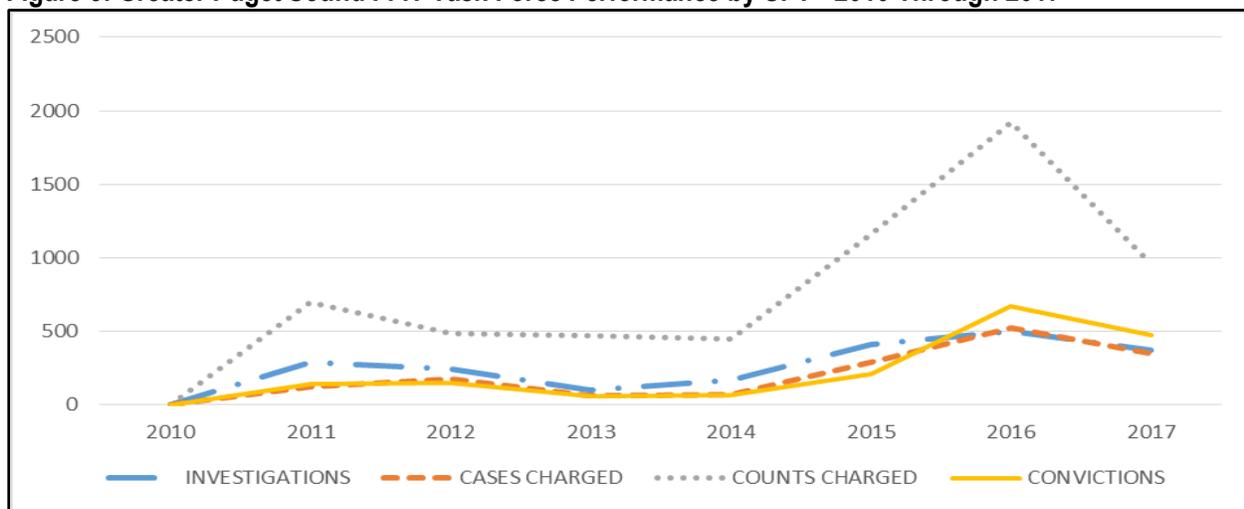
**Change in Data Collection for Counts Charged**

Beginning in SFY 2017, prosecutors began reporting all counts-charged data. Previously, some of the counts-charged data was reported by law enforcement. Since prosecutors do not always prosecute every charge identified by law enforcement, this change results in more accurate data for SFY 2017. It also accounts for the reduced number of counts charged for both task forces in 2017 (Figures 3 and 4).

**Greater Puget Sound Task Force Performance**

During SFY 2017, the Greater Puget Sound Task Force conducted 376 investigations, prosecuted 348 cases involving 964 counts, and received 474 convictions on cases prosecuted (Figure 4).

**Figure 3: Greater Puget Sound FFIT Task Force Performance by SFY - 2010 Through 2017**

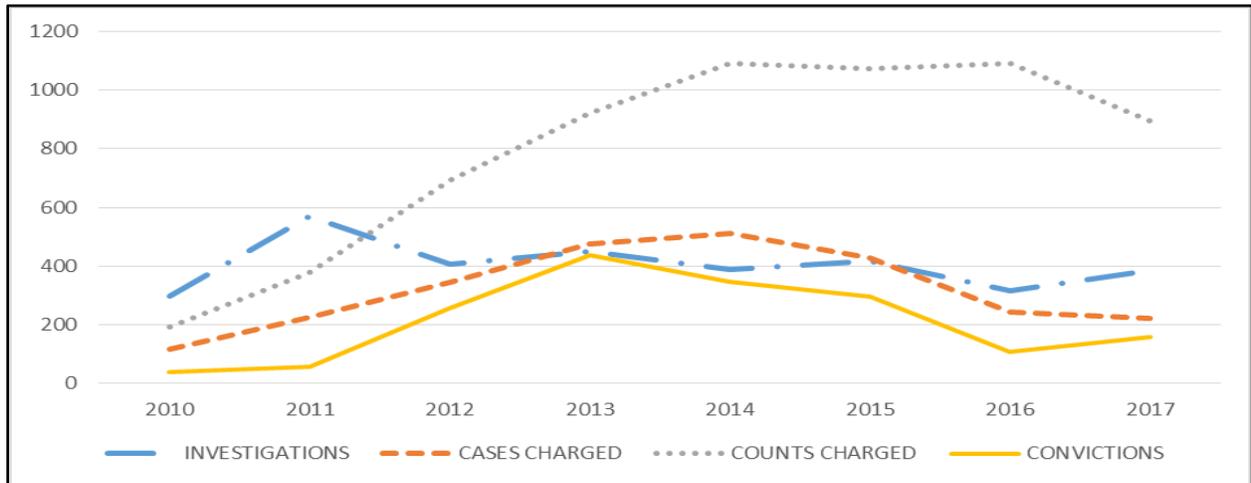


Source: Greater Puget Sound FFIT Task Force Quarterly Reports

### Spokane Area FFIT Task Force Performance

In SFY 2017, the Spokane County Task Force conducted 316 investigations, prosecuted 236 cases involving 1,021 counts, and received 107 convictions (Figure 4).

**Figure 4: Spokane Area FFIT Task Force Performance by SFY 2011 Through SFY 2016**



Source: Spokane Area FFIT Task Force Quarterly Reports

## Recommendations

Commerce makes recommendations related to the overall function and performance of the program, while the task forces make recommendations related to improving the capacity and ability of the task forces to investigate and prosecute financial fraud and identity theft crimes.

### Department of Commerce

#### Determine Future of the FFIT Program

Despite the accomplishments of the task forces in investigating and prosecuting financial fraud and identity theft crimes, Washington ranks among the top states for the number of victims of identity theft.<sup>3</sup> The number of investigations shown in Figure 1 is evidence of the prevalence of financial fraud and identity theft in Washington, especially considering the program only covers four of the 39 counties in the state.

However, the program will expire July 1, 2020.<sup>4</sup> Commerce recommends a stakeholder group including legislators, Commerce staff, financial industry representatives, and task force members meet to determine if the program should be extended or made permanent.

### Task Forces

#### Greater Puget Sound: Make Non-Financially Motivated Identity Theft a First Degree Charge

The Greater Puget Sound task force recommends elevating identity theft that is not financially motivated (under \$1,500) to a first-degree charge rather than the current charge of Identity Theft in the Second Degree under RCW 9.35.020.<sup>5</sup> The increased penalty for this charge may deter individuals from using stolen identities to avoid arrest for other, currently more serious crimes.

A suspect will sometimes give a false name – an identity theft victim’s name – to police upon apprehension to avoid arrest. Unless the defendant is booked into jail where fingerprints correctly identify him/her, the identity theft victim could receive a criminal citation, which could result in an arrest warrant, both of which would create a criminal history for the victim of identity theft. However, because the “loss” is under \$1,500, only a charge of Identity Theft in the Second Degree under RCW 9.35.020<sup>6</sup> is allowable.

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<sup>3</sup> USA Today, *States with the most identity theft complaints*, (2015), <https://www.usatoday.com/story/money/personalfinance/2015/04/28/24-7-wall-st-identity-theft-complaints/26498265/>

<sup>4</sup> Washington State Legislature, RCW 43.330.300, (2008, 2009, 2015), <http://app.leg.wa.gov/RCW/default.aspx?cite=43.330.300>

<sup>5</sup> Washington State Legislature, RCW 9.35.020, (1999, 2001, 2003, 2004, 2008, 2017), <http://apps.leg.wa.gov/Rcw/default.aspx?cite=9.35.020>

<sup>6</sup> Washington State Legislature, RCW 9.35.020, (1999, 2001, 2003, 2004, 2008, 2017), <http://apps.leg.wa.gov/Rcw/default.aspx?cite=9.35.020>

### **Greater Puget Sound and Spokane: Make Possession of a Skimming Device a Felony**

Both task forces recommend making possession of a skimming device with criminal intent to commit identity theft a felony – either Class B or C, depending on the case specifics – under RCW 9.35.020.<sup>7</sup> This will strengthen prosecutorial tools to all jurisdictions in the state.

The task forces report that skimming has increasingly become a problem in identity theft cases. Skimming devices allow a person to get information from credit and debit card magnetic stripes. There are legitimate reasons to use skimmers, such as when small businesses use skimmers on mobile devices to sell goods and services. However, identity thieves also use skimming devices to retrieve an individual's financial information in order to make counterfeit credit cards. The only charge available for possessing a skimmer with intent to commit a crime is attempted identity theft in the second degree, a gross misdemeanor. The task forces believe this is an inadequate charge for a sophisticated crime.

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<sup>7</sup> Washington State Legislature, RCW 9.35.020, (1999, 2001, 2003, 2004, 2008, 2017), <http://apps.leg.wa.gov/Rcw/default.aspx?cite=9.35.020>