



Department of Commerce

Financial Fraud and Identity Theft Investigation and Prosecution Program

*Progress Report on Task Force and Recommendations
Pursuant to RCW 43.330.300*

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Report to the Legislature
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Acknowledgements

Washington State Department of Commerce

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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) with passage of Financial Fraud (Chapter 290, Laws of 2008). The program, originally slated to expire in 2015, strengthens cooperation between law enforcement and financial industry investigators to increase their capacity to respond to financial fraud and identity theft crimes. RCW 43.330.300 requires Commerce to submit an annual report to the Legislature regarding the progress of the program and task force, including any recommendations on changes to the program.

Financial fraud and identity theft crimes, for purposes of the FFIT program, are defined by statute as those involving 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.

Pursuant to the 2008 law, Commerce established two regional FFIT task forces involving the state's three largest counties. The Greater Puget Sound (GPS) Task Force included King and Pierce, and the Spokane County Task Force included Spokane. In 2015, the Legislature extended the program's expiration date to 2020 and amended RCW 43.330.300 to add Snohomish County to the GPS Task Force (Chapter 65, Laws of 2015).

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 on Uniform Commercial Code-1 (UCC-1) filings statewide, a move supported by the business community. The state Department of Licensing collects and deposits UCC-1 fees into a dedicated FFIT account. The 2015 amendment raised UCC-1 filing fees to \$10 per filing. The increased fees support a program-wide expansion of FFIT investigation and prosecution and the inclusion of Snohomish County in the GPS Task Force.

Key Findings

State Fiscal Year 2018 Findings

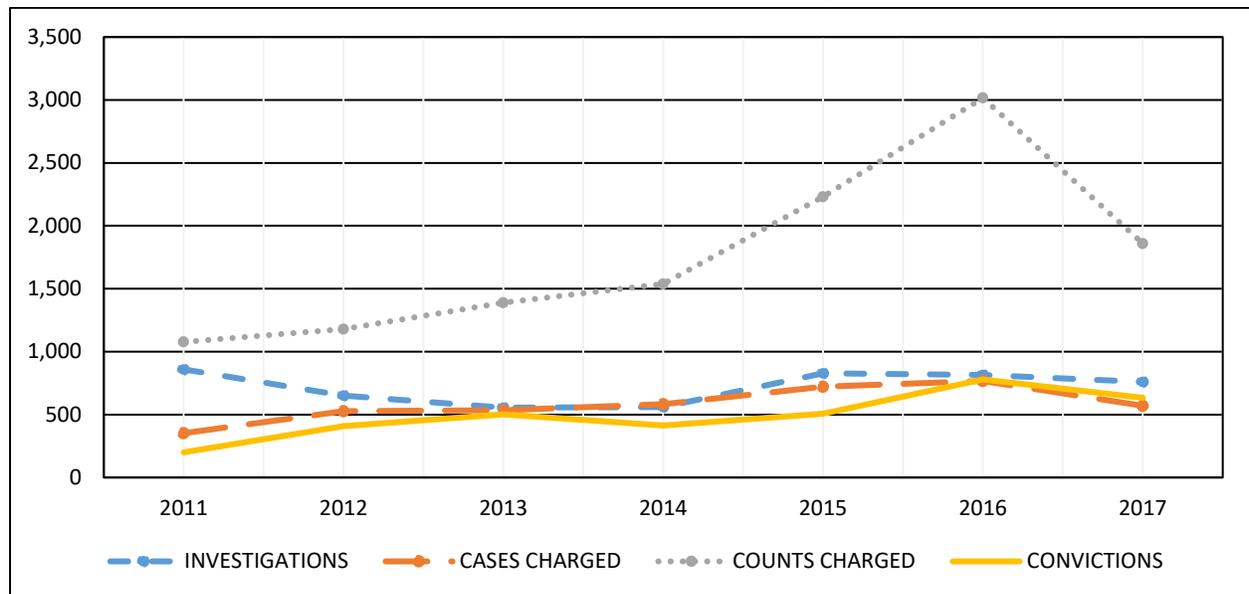
Task force efforts led to:

- 1,000 investigations between July 1, 2017, and June 30, 2018, 241 more than in the previous 12 months
- The charging of 549 cases involving 1,775 counts, 3.5 percent less than the previous year (this reduction reflects a change in reporting, discussed on page 5)
- 608 convictions, a 3.8 percent decrease, or 24 fewer convictions, over the previous year
- The identification and prosecution of significantly more sophisticated multi-person criminal organizations spanning multiple jurisdictions

Cumulative Findings Since Program Inception

The task forces report performance quarterly to Commerce. From state fiscal years 2011 through 2018, the task forces have conducted 6,027 investigations. Those probes have resulted in 4,601 cases (14,067 counts) being charged, culminating in 4,045 convictions. Figure 1 shows trends in investigations, cases charged, counts charged and convictions from 2011 through 2018.

Figure 1: Statewide FFIT Performance, State Fiscal Years 2011 through 2018



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 whether the program should be extended, made permanent or allowed to expire on July 1, 2020, under Section 1, Chapter 65, Laws of 2015.

The task forces recommend strengthening penalties for certain relevant crimes. More detail on task force and Commerce recommendations is in the Recommendations section.

Financial Fraud and Identity Theft Program Surcharge Transfers

The Department of Licensing (DOL) collects funds from surcharges on personal and corporate Uniform Commercial Code-1 (UCC-1) filings. DOL transfers collected funds monthly to Commerce for exclusive support of the Financial Fraud and Identity Theft (FFIT) Program activities.

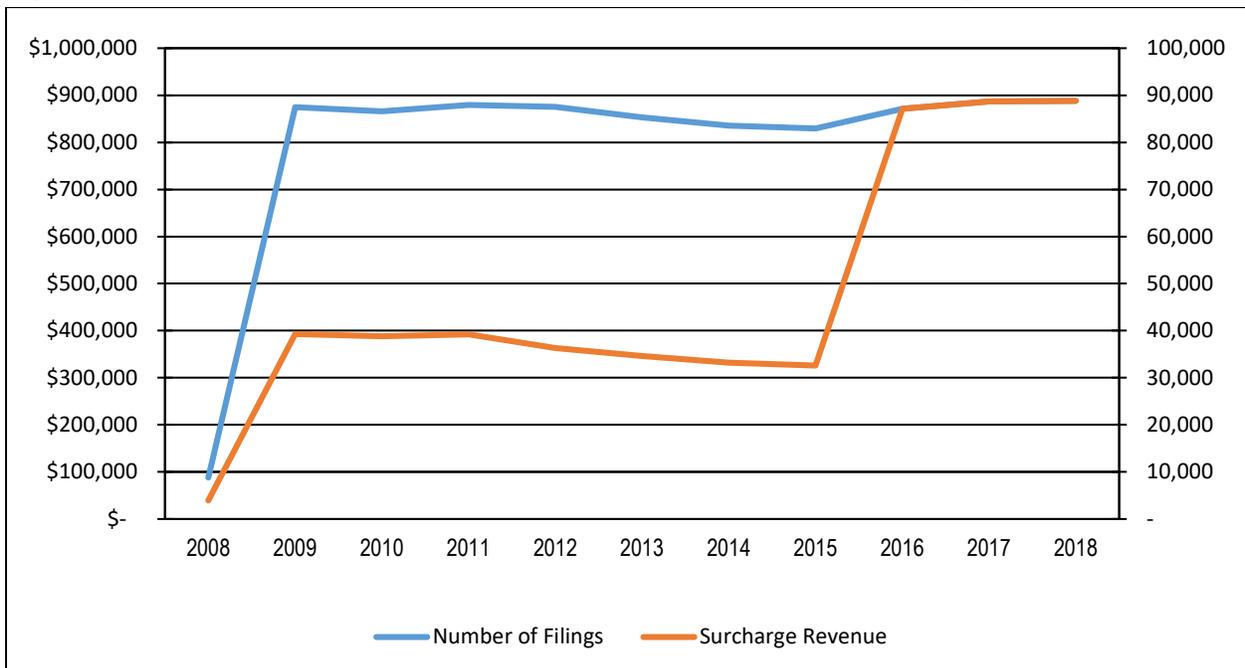
UCC-1 collections began in August 2008. The FFIT Program has three UCC-1 surcharge fees, which were originally set by statute as:

- \$8 for paper filings
- \$3 for individual web-based filings
- \$3 for batch web-based filings

The program saved collected fees during 2008 to fund the task forces. During 2009 and 2010, the task forces organized, hired and trained staff before becoming operational in 2011, the first year for which investigation and conviction data are available.

Beginning July 1, 2015, all fees were raised to \$10 for each type of filing, more than doubling surcharge revenues, as presented in Figure 2.

Figure 2: Uniform Commercial Code-1 Collections, State Fiscal Years 2008 through 2018



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

Task Force Performance

Overview

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 individuals and criminal organizations for financial fraud 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. Over time, the task forces have gained experience, established working relationships with more city law enforcement agencies, and hired more investigators and analysts. Each year, both task forces have incrementally increased the scope of their investigations, targeting larger and more complex criminal enterprises.

In the criminal justice system, law enforcement investigations are half the process of bringing criminal enterprises to justice. Prosecution and sentencing, the other half, 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 120 convictions each quarter over a period of 32 quarters for a total of 3,845 convictions (individuals, not counts). The data show the task forces are far exceeding their original goal.

Commerce program managers and the task forces review the performance measure goals to determine whether increased performance goals for convictions per quarter is warranted.

Change in Data Collection for Counts Charged

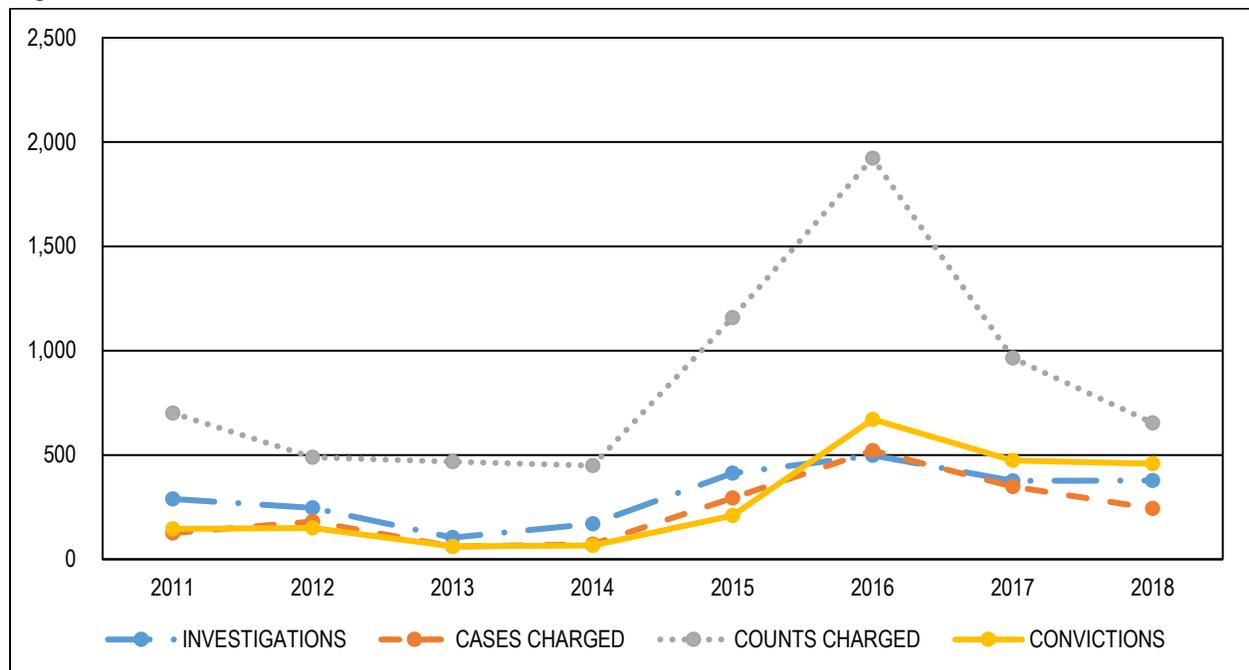
Beginning in state fiscal year 2017, prosecutors began reporting all counts-charged data. Previously, law enforcement reported some counts-charged data. Since prosecutors do not always prosecute every charge law enforcement identifies, this change results in more accurate data for 2017. It also accounts for the reduced number of counts charged for both task forces in 2017, which can be seen in Figures 3 and 4.

Greater Puget Sound FFIT Task Force Performance

During state fiscal year 2018, the Greater Puget Sound (GPS) Task Force conducted 378 investigations, prosecuted 243 cases involving 654 counts and received 458 convictions on cases prosecuted. Each investigation can lead to criminal cases against multiple individuals. Each case prosecuted can involve multiple counts, which result in multiple convictions for each individual charged in a criminal case.

Figure 3 shows trends in GPS FFIT Task Force investigations, cases charged, counts charged and convictions.

Figure 3: GPS FFIT Task Force Performance, State Fiscal Years 2011 to 2018



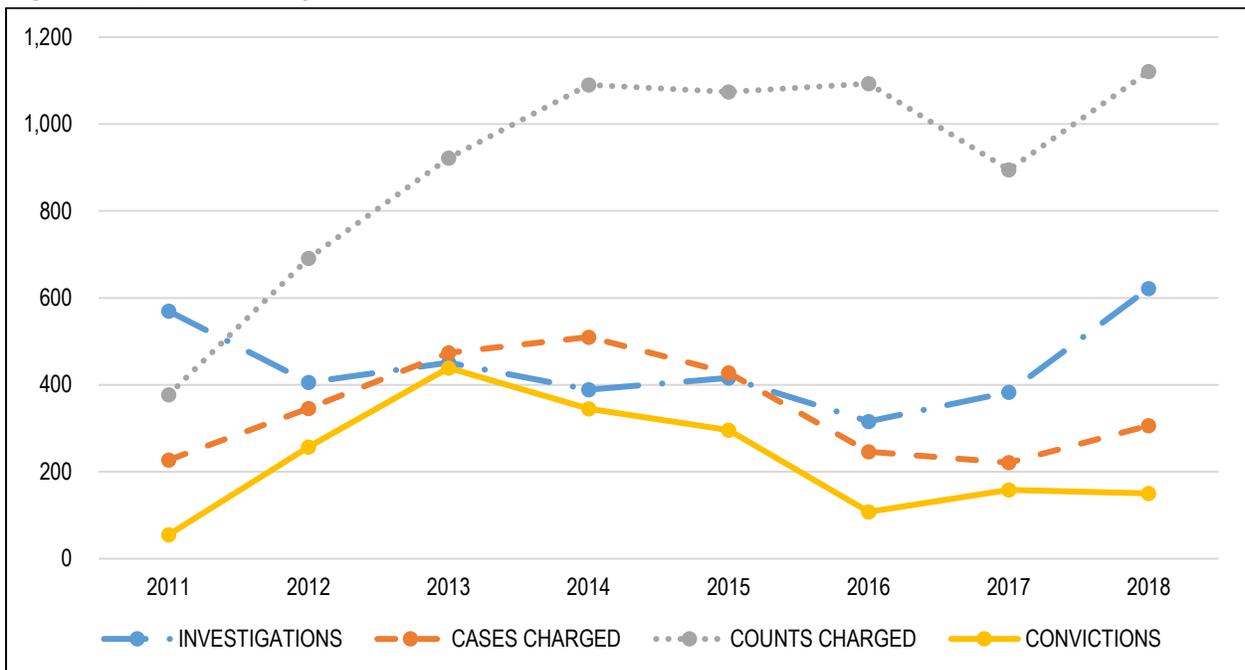
Source: Greater Puget Sound FFIT Task Force Quarterly Reports

Spokane County FFIT Task Force Performance

In state fiscal year 2018, the Spokane County Task Force conducted 622 investigations, prosecuted 306 cases involving 1,121 counts and received 150 convictions.

Figure 4 shows trends in Spokane County FFIT Task Force investigations, cases charged, counts charged and convictions.

Figure 4: Spokane County FFIT Task Force Performance, State Fiscal Years 2011 to 2018



Source: Spokane Area FFIT Task Force Quarterly Reports.

Note: The 2017 FFIT report reflected calendar year rather than state fiscal year data.

Recommendations

RCW 43,330.300 directs Commerce to make recommendations on changes to the program. It is Commerce's practice to make recommendations related to the overall function and performance of the program and to submit recommendations from each task force related to improving the capacity and ability of the task force 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, every year Washington residents fall victim to identity theft and businesses are impacted by fraud. 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 covers only four of the 39 counties in the state.

The FFIT Program is set to expire July 1, 2020 (Section 1, Chapter 65, Laws of 2015). Commerce recommends a stakeholder group that includes legislators, Commerce staff, financial industry representatives and task force members meet to determine whether the program should be extended, made permanent or allowed to expire July 1, 2020.

Task Forces

GPS FFIT: Make Nonfinancially Motivated Identity Theft a First-Degree Charge

The GPS Task Force recommends elevating identity theft that is not financially motivated (less than \$1,500) to a first-degree charge rather than the current charge of identity theft in the second-degree (under RCW 9.35.020). The increased penalty for this charge could deter individuals from using stolen identities to avoid arrest for other, currently more serious crimes.

A suspect will sometimes give an identity theft victim's name to police upon apprehension to avoid arrest. Unless the suspect is booked into jail where fingerprints correctly identify the person, a victim could receive a criminal citation that could result in an arrest warrant, both of which would create a criminal history for a victim of identity theft. However, because the "loss" is less than \$1,500, only a charge of identity theft in the second degree is currently allowed.

GPS 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 under RCW 9.35.020. This would strengthen prosecutorial tools in all jurisdictions in Washington state.

The task forces report that skimming has increasingly become a problem in identity theft cases. Skimming devices allow a person to obtain information from credit and debit card magnetic strips.

Legitimate reasons to use skimmers exist, such as when small businesses use skimmers on mobile devices to sell goods and services. However, identity thieves also use skimming devices to retrieve individuals' financial information 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.