

**OFFICE OF INVESTIGATIVE SERVICES  
POLICY AND PROCEDURE #740**

**CRIMINAL PROSECUTION**

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**CRITERIA FOR REFERRAL:**

Generally, the Agent will follow the procedures established by the local prosecutor. The Agent must consider any case with a combined Food Stamp, TANF, and/or Child Care overpayment of \$5,000 or more for referral for prosecution provided the following conditions have been met:

- The client record has a signed falsified application or at least one other signed document that supports the allegation that a willful and intentional program violation has been committed.
- All documentary evidence and witnesses that are needed to support the allegations are available. Note: IPV claims should not be established unless all supporting evidence used to establish the claim are available. All IPV claims should be established based on available evidence that can be presented in a legal or administrative hearing.
- No mitigating circumstances such as age, physical, or mental handicap exists that might preclude the case from being referred for prosecution.

NOTE: These guidelines do not preclude the prosecution of any case. All claims exceeding \$500 should be evaluated for prosecution. The Agent should consider the number of signed false statements, available evidence, prior offenses, and the resolution of any prior offenses. All combined claims exceeding \$10,000 **must** be referred to the prosecutor for criminal prosecution. The Agent should review the case with the SAC before preparing a **Summary of Investigation** for prosecution.

The Agent will send a **Notice of Investigation** in an effort to meet with the client prior to deciding to refer the case for criminal prosecution. The Agent should prepare for the meeting by becoming familiar with all information reported by the client and the evidence supporting the fraud. During the meeting, the Agent will review the information obtained during the investigation and provide the client with an opportunity to respond to the allegations. The Agent should conduct an in-depth, probe interview soliciting information that will support the fraudulent allegations. If possible, a signed, written statement witnessed by an impartial third party should be obtained from the client, if the client admits to committing fraud.

During the meeting, if the Agent determines that the evidence supports suspected IPV and the case continues to meet the criteria for prosecution, the client should be advised the case is being referred to the prosecutor for further evaluation and action. The Agent should discuss the difference between negotiating a settlement as opposed to criminal prosecution, and explain to the client that prosecution is being recommended by OIS. The Agent will document the contents of the meeting and the client's response on the **Case Review Checklist**.

**REFERRAL PROCEDURES:**

A case selected for criminal prosecution requires a **Summary of Investigation** outlining the facts of the case and the review and approval of the supervisor. The written summary should include information reported to the agency by the client, a summary of false documents, the evidence supporting the fraudulent actions, and an explanation of the regulations related to the offense. The local prosecutor sometimes requests specific information needed on the summary or copies of evidence prior to accepting the referral.

Once a referral for prosecution is mailed or delivered to the prosecutor, the Agent updates the OIS database with a TR code 9 (FS or CAPS) or TR code 29 (TANF) indicating the date of the disposition. The date of the disposition should correspond to the date the referral for prosecution is mailed or delivered.

## CRIMINAL PROSECUTION (continued)

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Within five working days of referring the case to the prosecutor, the Agent will document the disposition in the narrative on SUCCESS and provide a **Disposition Letter** to the county DFCS indicating the disposition. The Agent will enclose the following documents in the disposition packet to the county DFCS:

- ✓ Copy of **Summary of Investigation**
- ✓ Copies of all appointment letters
- ✓ Copy of **Case Review Checklist** with attached documentation
- ✓ Copy of verification and evidence
- ✓ Copy of **Report(s) of Claim Determination**
- ✓ Copy of Form 5667, **Request for Investigation**

### STEPS OF LEGAL PROCESS:

The following sequence of events may occur as part of the prosecution process, but local standards and the preference of the local prosecutor is determinative:

- **Warrant Issued:** Some judicial circuits require that a warrant be secured by the Agent or county DFCS to initiate the legal process, while others prefer to take the investigation directly to the Grand Jury as a special presentment. Arrest warrants are obtained by going before a Magistrate or Judge of a State, Municipal, or other court of proper jurisdiction and swearing to the warrant.
- **Preliminary Hearing:** The warrant will be turned over to the sheriff of the county. The sheriff will arrest the suspect for appearance at a preliminary hearing (sometime referenced as a Committal Hearing). The suspect is entitled to post bond and a preliminary hearing will be held as soon as possible to determine whether there is probable cause to continue to hold the suspect for trial at a later date. The Agent and possibly the caseworker will be needed as witnesses at the preliminary hearing. Bond is then required to insure that the accused will be present when the case is called for trial at the next term of court.
- **Grand Jury:** Some District Attorneys prefer to handle these cases by direct submission of evidence to the next Grand Jury in the county. In these cases, no arrest is made. However, upon the convening of the Grand Jury, the Agent and/or other witnesses will be subpoenaed to give information concerning the commission of the alleged offense.
- **Indictment:** If the Grand Jury believes that there is sufficient evidence to warrant a trial, a true bill will be issued and the presiding judge will sign an arrest order causing the accused to be brought before the court for arraignment.
- **Arraignment:** The accused will be allowed to enter a plea after hearing the charges.
  - **Not Guilty Plea:** If the accused pleads not guilty, the case is placed on the trial docket by the prosecutor and called at the next criminal term of court.
  - **Guilty Plea:** If the accused enters a plea of guilty, the case goes to the judge, without trial, for sentencing. However, a pre-sentence investigation may be ordered before imposing the sentence.
  - **Nolo Contendere Plea:** This is a “no contest” plea by the accused, and as such, the accused neither admits guilt to the charges nor pleads not guilty. In essence, the accused admits that the State has sufficient evidence for conviction and as such is at the mercy of the court.
- **Trial:** The prosecutor will inform the Agent and other witnesses by subpoena of the date of the trial. The Agent should appear at the time stated on the subpoena together with the county records to assist the prosecutor in presenting evidence before the court.
  - **Not Guilty:** If the court returns a verdict of not guilty, the court case is closed.
  - **Guilty:** If the court returns a verdict of guilty, the judge shall sentence the accused in accordance with the statute under which the prosecution is brought.

## CRIMINAL PROSECUTION (continued)

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- **Pretrial Diversion:** In some judicial circuits, the prosecutor and the accused may agree to a pretrial diversion. This consists of the following: the accused waives the right to an indictment and arraignment, the accused makes a substantial down payment and executes a formal written agreement for payment of the balance of the claim, and if payments are not made in accordance with the agreement the case is docketed and goes directly to trial.

### REPORTING INTERIM AND CONCLUDING DISPOSITIONS:

The prosecution case remains in an interim status until a conclusion is reached by the court. After the case is referred to the prosecutor for disposition, the Agent will not obtain any type of repayment agreement or agree to a settlement unless requested by the prosecutor. The Agent will periodically monitor the status of the prosecution case and promptly update the OIS database with the interim claim disposition. The Agent will also document the narrative on SUCCESS and the **Case Review Checklist** with the interim actions taken during the prosecution process.

Normally, cases referred for criminal prosecution should be presented to the Grand Jury or have a warrant sworn within two months in urban counties or six months in rural counties. When the case is not pursued by the prosecutor within these timeframes, the Agent should contact the prosecutor to determine the status of the case.

Upon indictment or swearing of the warrant, the Agent will update the OIS database and the narrative in SUCCESS with the action. All cases in this status should be monitored on a regular basis (semi-annually at a minimum) to insure that law enforcement is provided with an updated address for serving of the warrants.

If the prosecutor declines prosecution, the Agent will code the TR with a Court Dismissal code reflecting the date of response from the prosecutor. A Court Dismissal is not a final disposition, therefore the Agent must consult with the supervisor and evaluate the case for further action, such as Consent Agreement, Administrative Disqualification Hearing, hearing waiver, or return to DFCS as non-fraud. In some situations, the claim may be nullified and the referral disposition of a claim may need to be changed to a screen-out.

Upon formal sentencing by the court, the Agent will obtain a copy of the Court Order within fifteen days of the action and update the OIS database with the final disposition within five working days of receiving the order. At the same point, the Agent will also update the claim schedule to an active status with the appropriate claim type in SUCCESS and will also record the results of the prosecution case on the narrative in SUCCESS.

At the point the Agent reports the results of the criminal prosecution in SUCCESS, the Agent will also provide the county DFCS with a disposition packet that includes the original verification/evidence and original Form 5667, **Request for Investigation**. The Agent will retain copies of all information provided to the county DFCS in the OIS file. A copy of the original court order should be provided to the county DFCS upon receipt.

### CERTIFIED PROGRAM MANUALS:

TANF and Food Stamps are public assistance programs for which the Department of Human Resources has established rules and regulations. Effective August, 1992 these regulations were combined and published in the Economic Support Services Policy Manual. Eligibility for public assistance as well as the amount of public assistance a person is entitled to receive is determined in accordance with these regulations.

Prior to July 1998, Child Care regulations were a part of the Social Services Manual. Effective 7/18/98, Family Support Chapter 300 was removed from the Social Services Manual and became identified as the Childcare and Parent Services (CAPS) Manual. Eligibility for Child Care assistance as well as the amount of assistance a family unit is entitled to receive is determined in accordance with these regulations.

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In order for these regulations to be admitted into evidence at the trial, certified copies of these regulations are usually offered in evidence. Providing certified program manuals to the prosecutor is the responsibility of the Agent.

The leading case in Georgia on admissibility of public assistance regulations as evidence is *Dix vs. State* (154 GA App 869) which held that the State fell short of the required proof by failing to offer into evidence a certified copy of the public assistance manual.

The following procedures will be utilized when requesting certified manuals for court trial purposes:

The Agent notifies the Special Agent in Charge that certified manuals are needed and what time periods are involved.

The SAC then submits a written request for certified manuals to the Chief of Investigations with a copy of the request sent to the SAC of the Policy and Enforcement Unit and Assistant Director.

The request should be made a minimum of 30 days in advance of the scheduled trial date and must include the following information:

- Program Type (Food Stamp, TANF, or Child Care)
- Time periods of offense
- Scheduled trial date

If the manuals are not retained by the court, it is the Agent's responsibility to insure that all manuals are returned to the OIS Administration within 30 days of the final disposition.