

House Bill 95

An Act relating to elections and election investigations.

HOUSE STATE AFFAIRS COMMITTEE, JANUARY 25, 2022

DEPARTMENT OF LAW

HB 95's Purpose



To authorize the Attorney General to conduct civil investigations into election law violations and to bring civil enforcement actions if a violation is found.

Current Statutory Scheme



Division of Elections
identifies suspicious
behavior

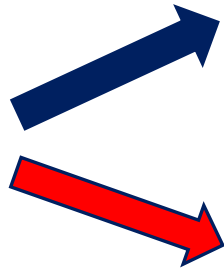


Only option: Criminal referral

HB 95 Adds Tools



Division of Elections
identifies suspicious
behavior



Criminal Investigation Referral

Civil Investigation Referral



Advantages to Civil Investigation

- Can react efficiently to halt unlawful behavior
- Evidentiary standard is appropriate to the alleged violation
- Empower the Division of Elections to ensure adherence to proper elections process

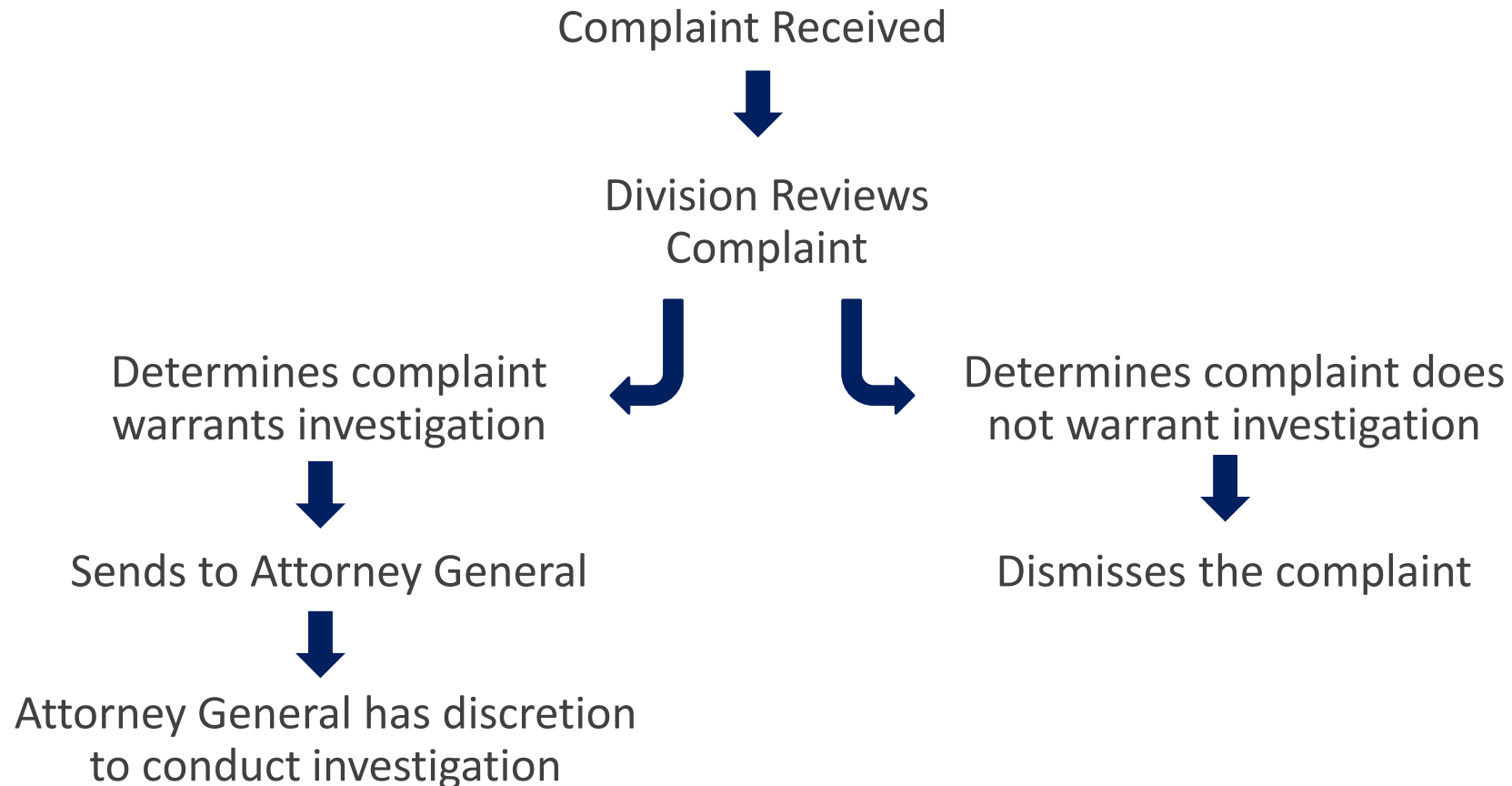
Examples where parallel civil action & criminal prosecution may occur



- Audits of Medicaid providers may lead to civil recoveries of overpayment or injunctions; and may be prosecuted under criminal laws.
- Civil licensing actions and criminal prosecutions concerning allegations of abuse or neglect at assisted living facilities
- Civil Child In Need of Aid (CINA) investigations of neglect or abuse that may be prosecuted criminally

Proposed Complaint Referral Process

under HB 95





Sectional Analysis

HB 95, “An Act relating to elections and election investigations,” adds one new section to AS 15.56:

- Subsection (a) allows anyone to file a written complaint alleging a violation of election laws or regulations. The complaint would be due to the Division of Elections 30 days after the election, or 30 days after the alleged violation, whichever is later.



Sectional Analysis

- Subsection (b) directs the Division to refer alleged violations of campaign finance laws or regulations to the Alaska Public Offices Commission. The Division has the discretion to refer all other complaints to the Attorney General. If the complaint is incomplete, frivolous, or does not allege a violation, the Division could ask for more information or dismiss the complaint.
- Subsection (c) allows the Attorney General to investigate an alleged violation identified by a complaint, by the Division, or by the Attorney General.



Sectional Analysis

- Subsection (d) authorizes the Attorney General to conduct the investigation by subpoenaing witnesses or documents, holding hearings under oath, sending interrogatories, and examining records.
- Section (e) provides that the records and intelligence resulting from the investigation are not public records, except the Attorney General may issue public statements that describe activities that violate elections laws.



Sectional Analysis

- Section (f) directs the Attorney General to inform the Division of the results of the investigation, with the option to submit a report. If a complaint against a state agency or state employee has merit, the Division will make reasonable efforts to take corrective action. The records and intelligence resulting from the investigation remain confidential unless they are submitted to a court or used by the Division.



Sectional Analysis

- Subsection (g) allows the Attorney General to sue for injunctive relief after the investigation, provided the alleged violation is not a violation of campaign finance laws.
- Subsection (h) allows the Attorney General to seek a civil penalty of no more than \$25,000 per violation, along with reasonable fees and costs, including the costs of the investigation.



Sectional Analysis

- Subsections (i) and (j) allow the Division and the Attorney General to adopt regulations to implement this section.
- Subsection (k) clarifies that the person filing the complaint may also file a civil action in superior court.
- Subsection (l) defines frivolous, state agency, and state employee.



Proposed clarifications

- Extends the amount of time that a person can file a complaint from 30 days to 60 days following the incident or the election;
- Clarifies that “election” is not the election day but rather the date of certification of the election.
- At the court’s suggestion, corrects the reference to “penalties” to instead properly read “fines.”
- Requires state agencies to provide the AG documents needed for investigation while permitting the documents to remain confidential if they are confidential.
- Describes a process for the AGs investigative subpoena power and a process for a subpoena recipient to challenge (request to “quash”) a subpoena.

Questions?

DEPUTY ATTORNEY GENERAL CORI MILLS

Please contact Civil Division Legislative Liaison with any additional questions: Sharla.Mylar@alaska.gov