

Financial Fraud and Identity Theft Investigation and Prosecution Program



PROGRESS REPORT ON TASK FORCE AND RECOMMENDATIONS PURSUANT TO RCW 43.330.300(1)(C)

OFFICE OF CRIME VICTIM ADVOCACY

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REPORT TO THE LEGISLATURE

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Executive Summary

Overview

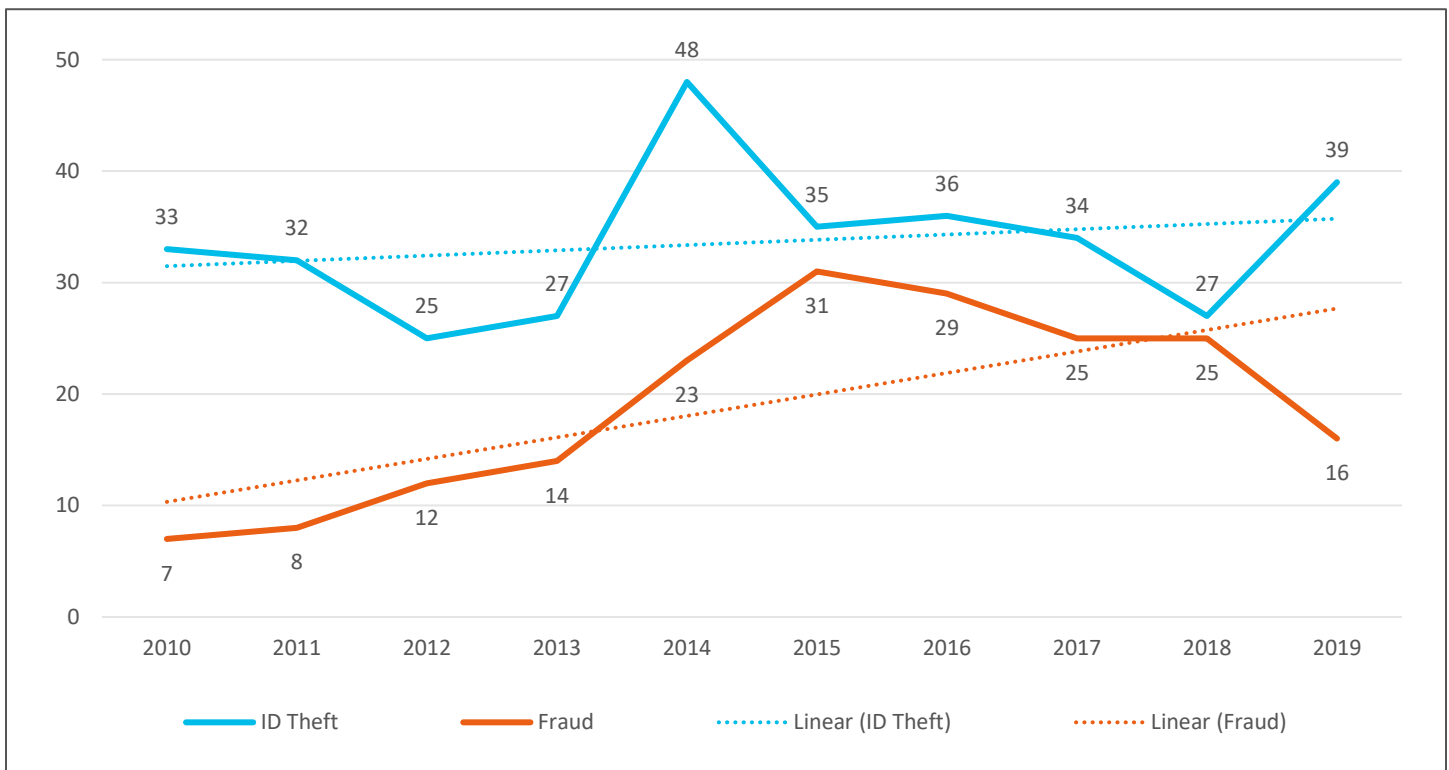
The Legislature created the Financial Fraud and Identity Theft Crime Investigation and Prosecution Program (FFIT) in 2008 at the Department of Commerce (Commerce). The program strengthens cooperation between law enforcement and financial industry investigators to increase the capacity to respond to financial fraud and identity theft crimes. This report meets the statutory requirements in [RCW 43.330.300\(1\)\(c\)](#):

"By December 31 of each year submit a report to the appropriate committees of the legislature and the governor regarding the progress of the program and task forces. The report must include recommendations on changes to the program, including expansion."

Financial Fraud and Identity Theft Crimes are defined in [RCW 43.330.300\(4\)](#) 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 identity theft rings.

Identity theft and related fraud has decreased overall per 100,000 population since calendar year 2010. This trend also applies to the state's national ranking in identity theft and related crime. Figure 1 below charts Washington's ranking year over year among states by reported identity theft and fraud crimes, with a higher ranking indicating lower rates of reported crimes. Both identity theft and fraud crime rankings were higher in 2019 than in 2010, indicating lower rates of reporting identity theft and fraud crimes.

Figure 1: Identity Theft Crime Trend in Washington - 2010 to 2019



Source: Federal Trade Commission, Consumer Sentinel Network Data Books, 2010-2019

In 2008, Commerce established two regional FFIT task forces consisting of the state's three largest counties. Those task forces are the Greater Puget Sound (GPS) Task Force, including King and Pierce counties, and the Spokane County Task Force. At the end of the state fiscal year 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 the following stakeholder groups:

- 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 investigations and forensic analysis and prosecutorial staff dedicated to financial fraud and identity theft cases generated by the investigations.

Fees on Uniform Commercial Code (UCC) filing funds the FFIT program. The Department of Licensing collects and deposits the UCC fees into a dedicated FFIT account. More details on program funding are in the Task Funding section.

Key Findings

State Fiscal Year 2020

- Between July 1, 2019, and June 30, 2020, there were 2,635 investigations conducted, 1,694 more than in the previous state fiscal year period.
- The task forces charged 305 cases involving 770 counts, 45% fewer counts than the previous year. This reduction reflects an increase in the complexity of cases and the number of offenders per case (see the Task Force Performance section).
- There were 329 convictions, a 52% decrease, or 359 fewer convictions than achieved in the previous year. Task forces are identifying and prosecuting significantly more sophisticated multi-person criminal organizations spanning multiple jurisdictions.

Cumulative Findings Since Program Inception

The task forces report performance quarterly to Commerce. In the eight state fiscal years of active investigatory work (2011 through 2020), the task forces have:

- Conducted 9,575 investigations
- Charged 5,346 cases
- Charged 16,230 counts
- Achieved 5,062 convictions

Summary of Recommendations

The task forces recommend the Legislature amend RCW 9.35.020 to:

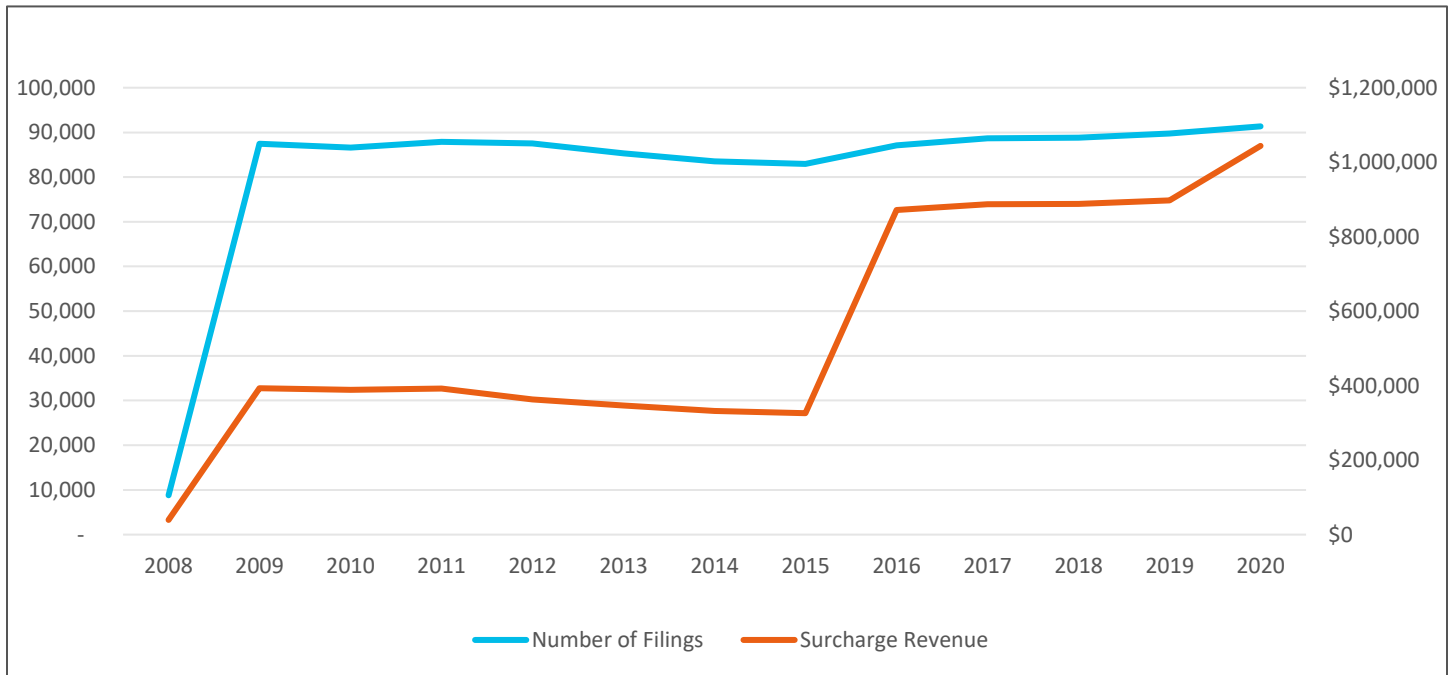
- Elevate non-financially motivated identity theft to a first-degree charge
- Make possession of a skimming device a felony offense
- Base the penalty on the Amount the Defendant Attempted to obtain, and
- Enhance penalties for FFIT crimes where a victim is a vulnerable person.

Program Revenue and Funding Allocation

Task Force Funding Program Surcharge Transfers

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

Figure 2: Uniform Commercial Code-1 Collections, SFY 2008 - 2020



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

Background on Program Revenue

UCC Surcharges at Program Inception

UCC-1 collections began in August 2008. The FFIT program originally had three UCC surcharges fees:

1. \$8 for paper filings
2. \$3 for individual web-based filings
3. \$3 for batch web-based filings

The program saved collected fees for a year to fund the task forces. During the next two years, the task forces organized, hired and trained staff before becoming operational. The three-year ramp-up period explains why investigation and prosecution data began in 2011, while revenue collection began in 2008.

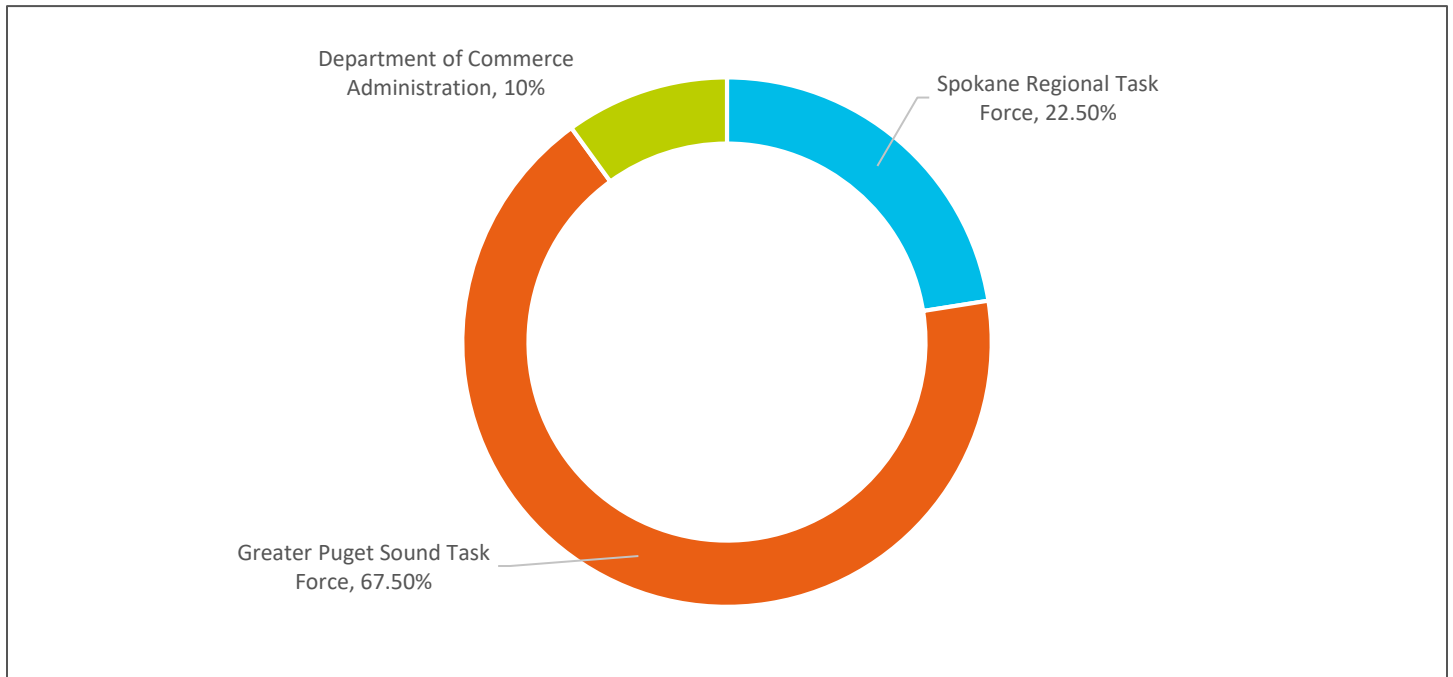
Changes to UCC Surcharges

When the Legislature reauthorized the FFIT Program in the 2015 legislative session, the Legislature raised all UCC fees to \$10 beginning July 1, 2015. When the Legislature reauthorized the program again during the 2020 legislative session, the Legislature increased all UCC fees to \$15 beginning July 1, 2020.

Program Revenue Allocation

The Department of Commerce retains 10% of program revenue for administration. The remaining 90% of funding is split evenly among the counties, as agreed upon by the program partners and Commerce. The Greater Puget Sound Task Force includes three counties, and the Spokane Regional Task Force includes only Spokane County, resulting in a 3-to-1 ratio between the two task forces. After the 10% for administration, 67.5% of program funding goes to the Greater Puget Sound Task Force, and 22.5% goes to the Spokane Regional Task Force. Figure 3 shows the allocation of the total funding.

Figure 3: Program Revenue Allocation



Source: Department of Commerce

Task Force Goals and 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 financial fraud and identity theft crimes, and new and best practices.

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 of the task forces is 92 convictions per quarter. Since establishing this performance measure in 2011, the task forces achieved an average of 131 convictions each quarter over 36 quarters for 4,733 individuals convicted.

The data shows the task forces are far exceeding their original goal. Commerce and the task forces will review the performance measure goals to determine if increasing the performance goals for convictions per quarter for state fiscal year 2020 is warranted.

Task Force Performance

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 their investigations' scope, going after larger and more complex criminal enterprises.

In fiscal year 2020, the FFIT task forces produced a combined:

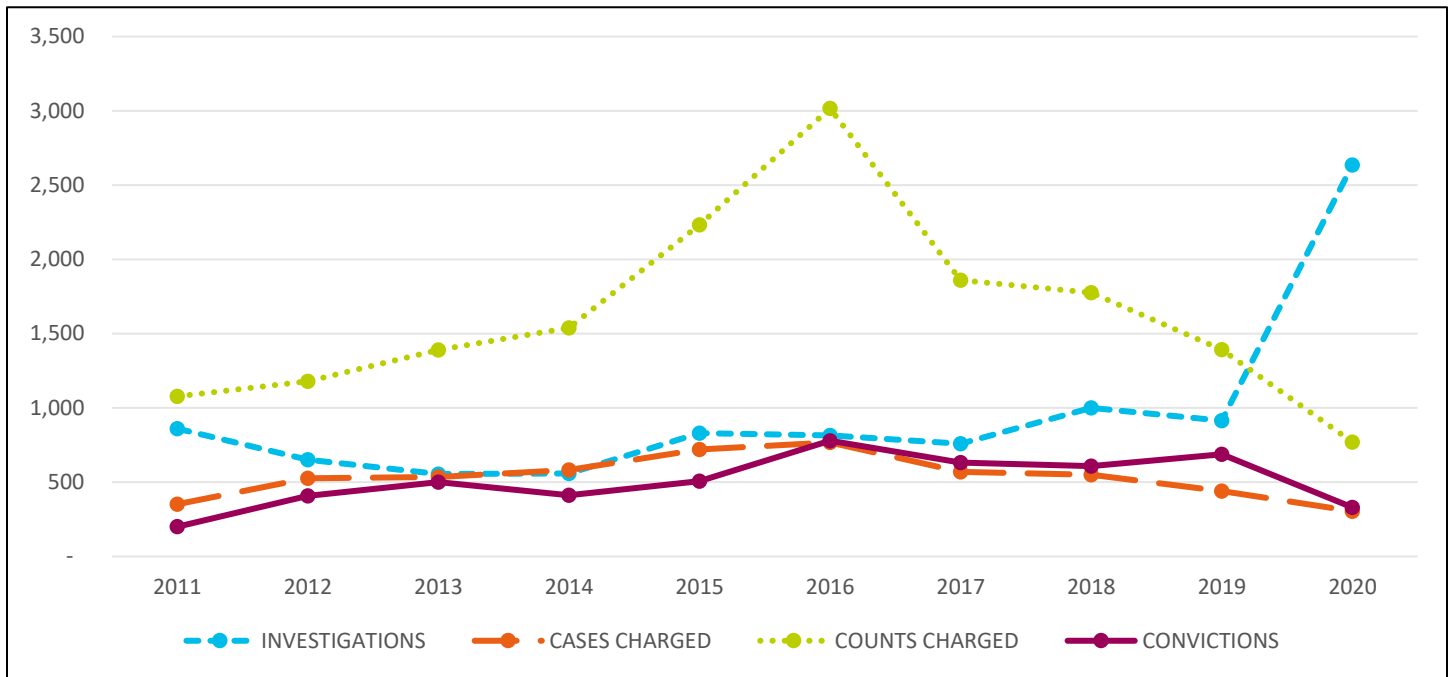
- 2,635 investigations
- 305 cases charged
- 770 criminal counts charged
- 329 convictions

Combined task force performance from state fiscal year 2011 through 2020 is presented in Figure 3.

Data for the two task forces are presented separately in Figure 4 and Figure 5.

Statewide Task Force Performance

Figure 3: Statewide Task Force Performance

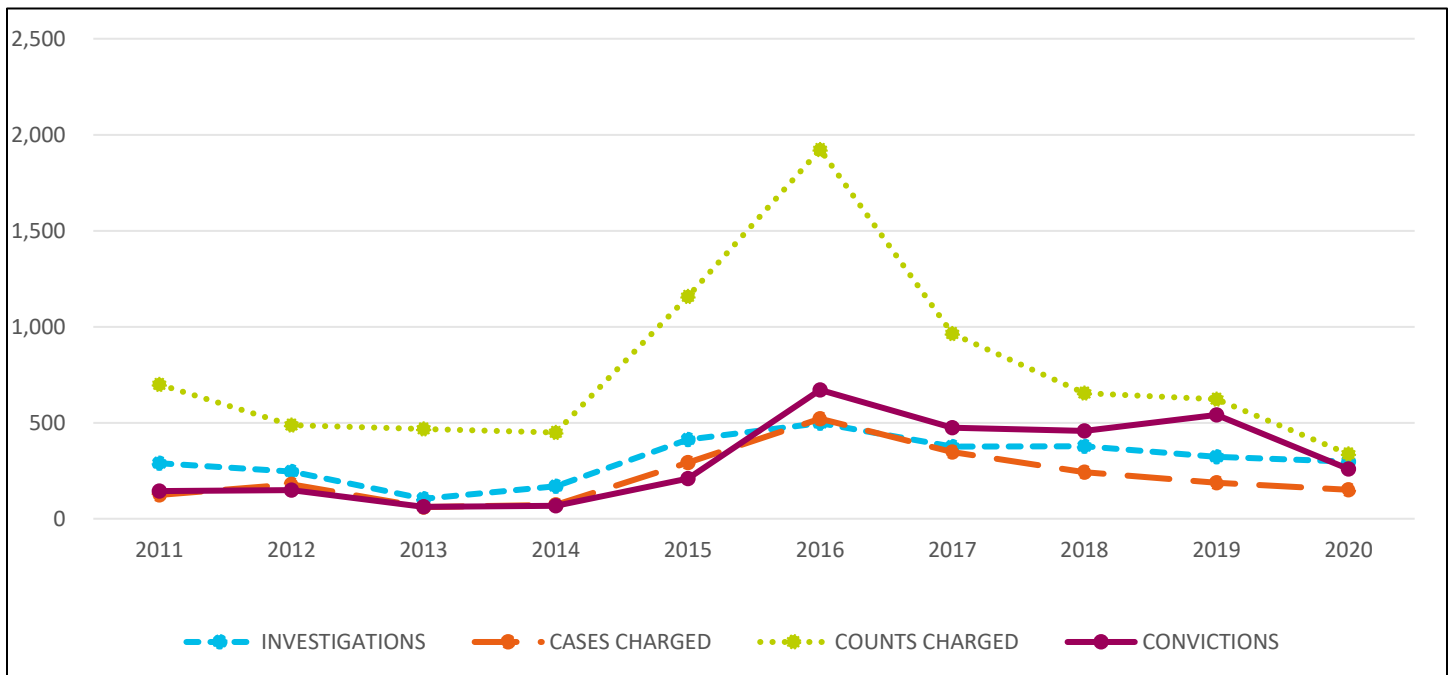


Source: FFIT Task Force Quarterly Reports

Greater Puget Sound FFIT Task Force Performance

During state fiscal year 2020, the Greater Puget Sound Task Force conducted 219 investigations, prosecuted 116 cases involving 257 counts and received 239 convictions on cases prosecuted.

Figure 4: Greater Puget Sound Task Force Performance, SFY 2001 - 2020

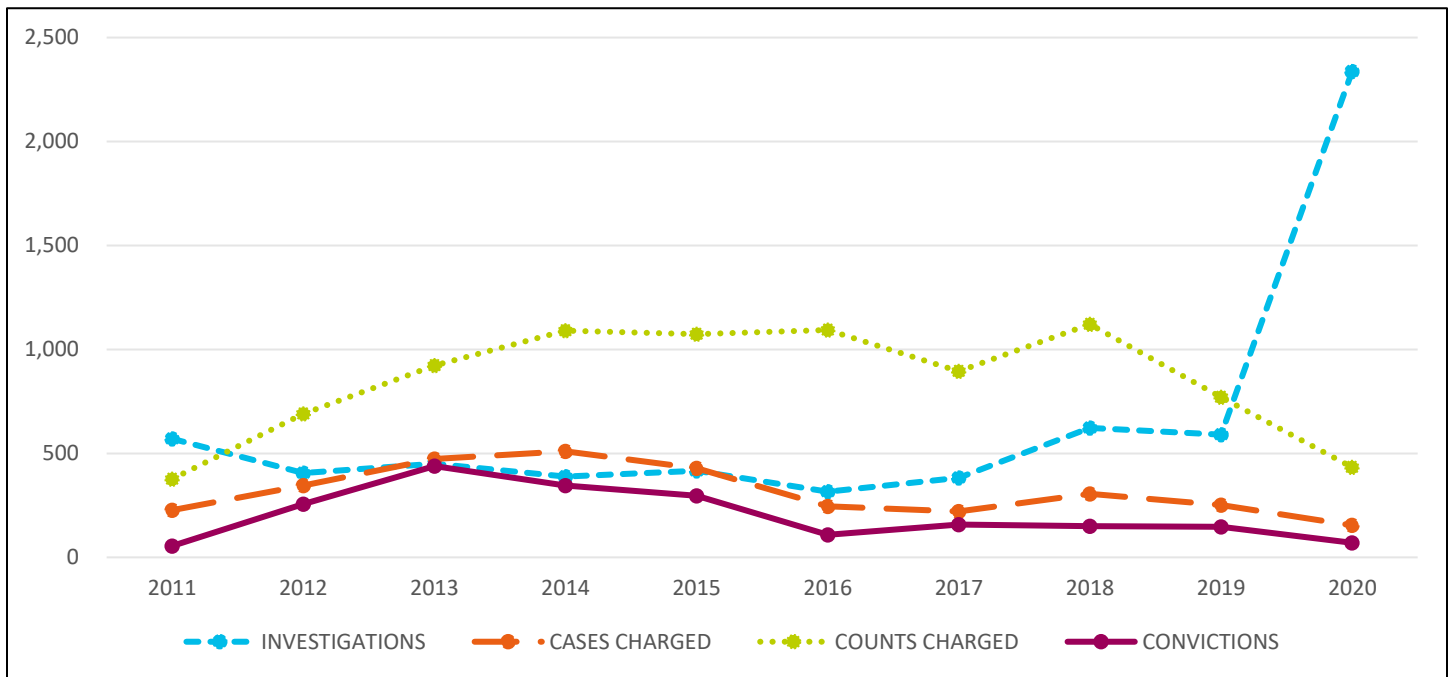


Source: Greater Puget Sound Task Force Quarterly Reports

Spokane Regional FFIT Task Force Performance

During state fiscal year 2020, the Spokane County Task Force conducted 895 investigations, prosecuted 121 cases involving 344 counts and received 64 convictions.

Figure 5: Spokane Area FFIT Task Force Performance by SFY 2011 - 2020



Source: Spokane Area FFIT Task Force Quarterly Reports

Note on Change in Data Collection for Courts Changed

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

Recommendations

Commerce worked with both task forces to develop the following recommendations to strengthen law enforcement and criminal justice response to financial fraud and identity theft crimes.

Elevate Non-Financially Motivated Identity Theft to a First-Degree Charge

The task forces recommend elevating identity theft that is motivated by the intent to avoid apprehension by law enforcement to a first-degree charge. Currently, it is charged as Identity Theft in the Second Degree under RCW 9.35.020. 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 an identity theft victim's name to police in an attempt to avoid arrest. Unless law enforcement books the defendant into jail where jail booking staff use fingerprints to identify them, the victim – rather than the defendant – may receive a criminal citation. This deception could result in an arrest warrant, 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 is currently allowable.

Create Penalty Enhancements when a Victim is a Vulnerable Person

The task forces recommend the Legislature create penalty enhancements that may be added for financial fraud and identity theft crimes when a victim is a vulnerable person (including minors, elderly and dependents).

Base the Financial Threshold for First-Degree Identity Theft on the Amount the Defendant Attempted to Obtain

The task forces recommend the Legislature change the financial threshold for Identity Theft in the First Degree. The threshold is currently \$1,500 obtained from identity theft. The task forces recommend basing the first-degree charge on what the defendant attempted to obtain by misusing the victim's identity rather than what they obtained. Currently, a defendant who uses a stolen identity to attempt a high-dollar value crime but is unsuccessful may only be charged with Identity Theft in the Second Degree. Basing the level of identity theft on the amount the defendant attempted to obtain, rather than on the amount the defendant obtained, avoids rewarding suspects who use stolen identities to attempt to commit the most serious crimes and are unsuccessful only because they are caught or because their plans otherwise fail.

Make Possession of a Skimming Device a Felony

The task forces recommend making possession of a skimming device with criminal intent to commit identity theft a felony under [RCW 9.35.020](#). This statutory change will strengthen prosecutorial tools in all jurisdictions in Washington. Skimming has increasingly become a problem in identity theft cases. Skimming devices allow a person to obtain financial and personal information directly from credit and debit card magnetic stripes. There are legitimate reasons to use skimmers, such as when small businesses use such devices on mobile phones to sell goods and services. However, identity thieves also use skimming devices in conjunction with card re-encoders to retrieve an individual's financial information to make counterfeit credit cards. Currently, 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 such a sophisticated crime.

Appendix A: Task Force Members

Table 1: Greater Puget Sound FFIT Task Force Members

Entity	Representative
King County Prosecuting Attorney's Office	Patrick Hinds, senior deputy prosecuting attorney GPS-FFIT Executive Board Co-Chair, Grantee Representative
Boeing Employees Credit Union	Mitch Mondala, BECU Security - Financial Crimes Unit GPS-FFIT Executive Board Co-Chair
Redmond Police Department	Lieutenant Tim Gately GPS-FFIT Executive Board Secretary
Pierce County Sheriff's Office	Teresa Burg, sergeant
Pierce County Prosecuting Attorney's Office	Brook Burbank, deputy prosecuting attorney/assistant chief criminal deputy
Columbia Bank	John Fick, vice president/fraud investigations unit manager
Snohomish County Prosecutor's Office	Michael Held, deputy prosecuting attorney/chief of staff
SeaTac Police Department	Jon Mattsen, chief of police
Sound Credit Union	Angie May, senior fraud investigator
Washington State Attorney General's Office	Michael Stanley, assistant attorney general
JP Morgan Chase	Barbara Tainter, JPMC Security - National Vulnerable Adult Investigations
Bank of America	Tim Whitesitt, vice president/senior investigator
United States Attorney's Office	Vacant (TBD)
Local law enforcement	Vacant (TBD)
Federal law enforcement	Vacant (TBD)

Table 2: Spokane Regional FFIT Task Force Members

Entity	Representative
Spokane County Sheriff's Office	Rob Sherar, inspector
Spokane County Prosecutor's Office	Steve Garvin, senior prosecutor
Spokane Police Department	Brad Arleth, captain
Spokane Teachers Credit Union	Jim Fuher, fraud prevention manager
Washington State Attorney General's Office	Mark Porter, investigator
Small Towns and Cities Representative	Vacant (TBD)