



Instructor

Roger Harris, J.D., CCEP, CFI
Assistant Legislative Auditor /
Director of Investigative Audit

Course 201 Introduction to Fraud

Description

This course is designed to provide the participant with an introduction to fraud, including the difference between civil and criminal fraud and an understanding of what constitutes malfeasance in office.

Objectives

After this class participants will be able to:

- Define what fraud is
- Understand the differences between criminal fraud, civil fraud, and malfeasance in office, as well as the potential consequences of each of these.

Who Will Benefit

- Elected Officials
- Appointed Officials
- Local Government Employees
- Local Government Auditors

About the Instructor

Roger W. Harris is Assistant Legislative Auditor and Director of Investigative Audit for the Louisiana Legislative Auditor, where he supervises a 17-person investigative audit unit. Roger has over 30 years of experience handling fraud cases as a law enforcement officer, a commercial banker, an attorney and as an investigative auditor. During the course of his career, Roger has successfully pursued and defended alleged fraudsters.

Roger is a Martindale-Hubbell AV Preeminent Rated attorney who previously served as a partner in a regional law firm, general counsel for two state agencies, legal counsel for a legislative committee, faculty member at Louisiana State University, and chairman of a state board that awards benefits to survivors of law enforcement officers and firemen who die in the line of duty. He frequently testifies before legislative committees on proposed legislation and on fraud reports published by the Louisiana Legislative Auditor.

Roger is a Certified Compliance and Ethics Professional, a Certified Forensic Interviewer and holds degrees in finance and law from Louisiana State University.

Center for Local Government Excellence



INTRODUCTION TO FRAUD

Presented by:

Roger W. Harris, J.D., CCEP, CFI
Assistant Legislative Auditor and
Director of Investigative Audit

Three Learning Objectives:

1. Define **fraud**
2. Never trust **liars and thieves**
3. Be a **professional skeptic**

FRAUD:

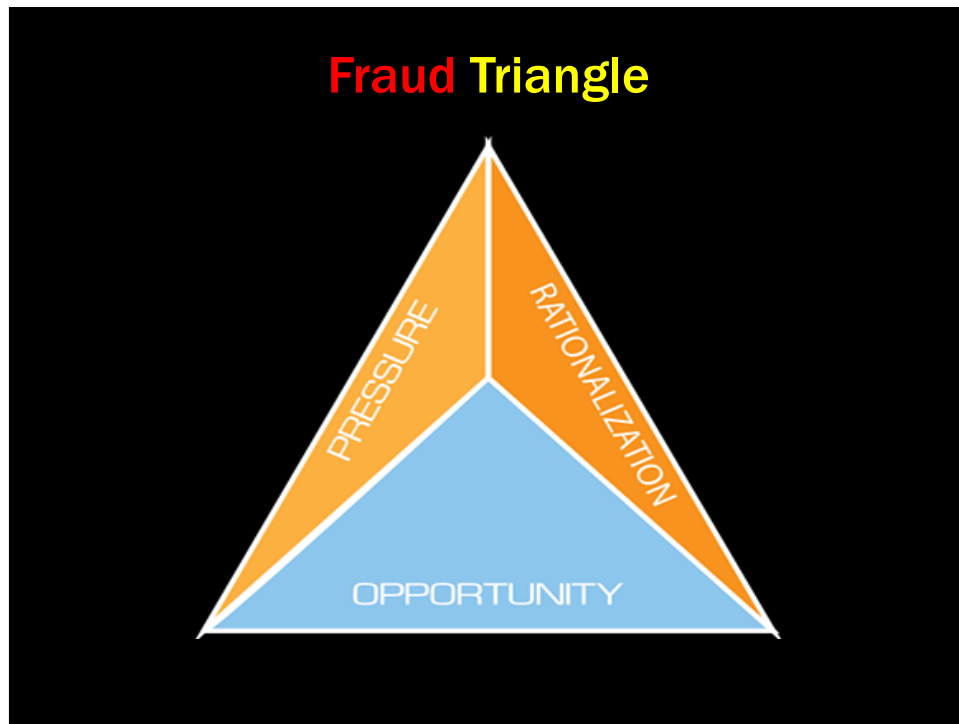


A **knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her **detriment**.**

Black's Law Dictionary, 8th Ed. (2004).

Fraud

- **Breach of trust, not an accident!**
- **An intentional act** often involving detailed planning and concealment.
- **Crooks anticipate routine procedures and exploit weaknesses in routine procedures or internal controls.**



Opportunity

Circumstances that allow the fraud to occur.

The **only factor** completely controlled by the organization. **Who has access to your assets and records?**

Opportunity (continued)

Examples:

- Can I **set up vendors** and **write checks**? Makes it easy to have a **ghost vendor**.
- Do I **make bank deposits** and **reconcile bank account**? Makes it **easy to steal cash**.

Pressure (Incentive)

The reason a person commits fraud. The **greater the pressure or incentive**, the easier it is to justify

Examples:

- **Financial problems**
- **Personal problems**
- **Addiction**

Rationalization

How the fraudster justifies the fraud. Gives one the ability to follow through and commit the fraud.

Fraudster has to make it “**okay**” **internally** to perform the fraudulent act.

Rationalization

Hardest to prove because it requires you to get into the mind of the fraudster.

Common rationalizations:

- **Take money now** and pay it back later.
- **Think no one will notice.**
- **Feel entitled** because of years of service.
- **Reframe definition** of **wrongdoing.**

An **increase in any element** in the Fraud Triangle **increases the risks of fraud.**

Anti-fraud controls are **built to deter or prevent** access and incentive for fraud.

There are **many types of fraud:**

Examples:

- Identity Theft
- **Bank Fraud**
- Credit Card Fraud
- **Pyramid or Ponzi Scheme**
- Wire Fraud
- **Mail Fraud**

Most of the **fraud** we
encounter is
occupational fraud.

Occupational Fraud

- **Internal** to an organization
- Using one's occupation for personal enrichment through the **deliberate misuse or misapplication of the organization's resources or assets**.

Three Types of **Occupational Fraud**

1. Asset Misappropriation

Examples:

- Payment to fictitious employees
- **Cash skimming**
- Embezzling cash collections
- **Issuing payroll checks to employees who are no longer employees**
- Travel/expense reimbursement fraud

2. Corruption

Examples:

- **Kickbacks and bribes**
- Employees and Board members accepting gifts from vendors
- **Awarding contracts to parties related to individuals involved in the decision making process**
- Forgery or falsification of documents

- Failure to Hold Competitive Bidding
- **Purchasing in smaller increments to avoid the bidding process**
- Competitive Bid Rigging
- **Limiting advertisement of bid to preferred vendors**
- Related party transactions or dealing for personal benefit

3. Financial Statement Fraud

Examples:

- **Inflating Balance Sheet/Fund Balance**
- **Manipulating fund balances**
- **Public Information provides unsubstantiated favorable results**
- **Internal memos give misleading information**

- **Inflating Income Statement**
- **Hiding losses/expenses**
- **Falsifying revenue**
- **Improper recording of the period expenses occur**
- **Recording pending transactions as completed transactions**
- **Misrepresentation of facts and falsifying records**

Fraud may be **civil** or **criminal**.

In **civil fraud**, people who were defrauded (“plaintiffs”) **can sue** you. If you lose, you **may be required to pay them money** to compensate them for their losses.

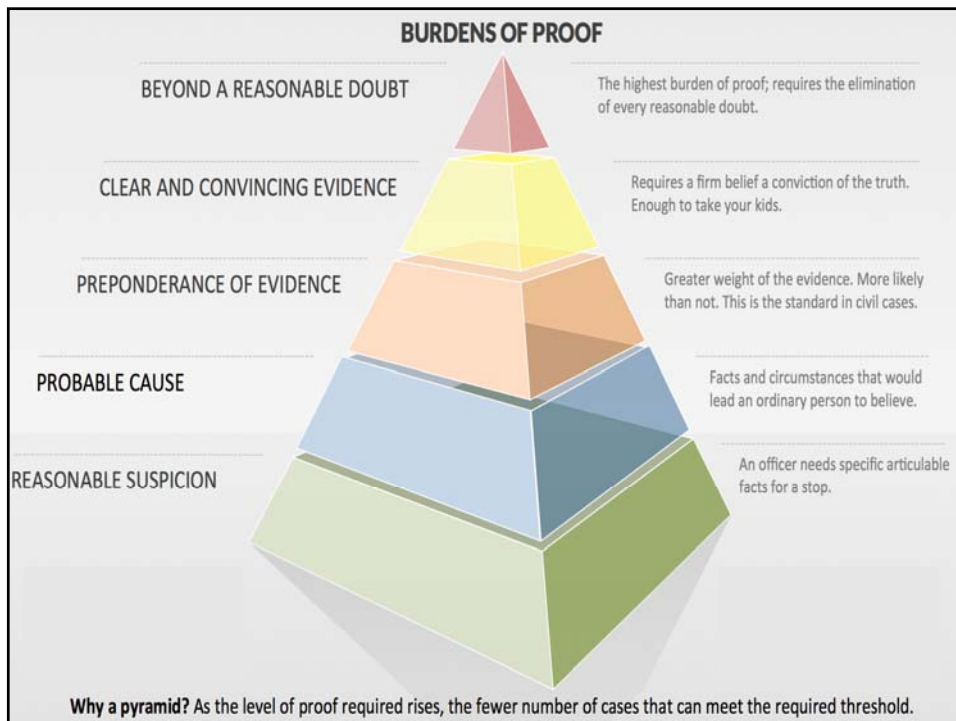


In **criminal fraud**, the state or federal government (the “**prosecution**”) charges you with a **crime**. If you lose, you can go to jail.



Civil fraud must be proven by **clear and convincing evidence**.

Criminal fraud
must be proven
beyond a reasonable doubt.



For purposes our of discussion,
we are concerned with
criminal fraud.

Criminal fraud requires a crime
to be committed.

A **crime** is “conduct which is **defined as criminal** in this Code, or in other acts of the legislature, or in the constitution of this state.”

Source: La. R.S. 14:7

A person who commits fraud can be charged with a number of crimes in both federal and state court.

Today, we are going to touch upon the **two most common ones: Theft and malfeasance in office.**

Theft

The misappropriation or **taking** of **anything of value** which belongs to **another**, either **without** the **consent** of the other to the misappropriation or taking, **or by means of fraudulent conduct, practices, or representations.**

First sentence of La. R.S. 14:67(A)

Criminal statutes are **strictly construed.**

This means the prosecution **must prove every element** of an offense. In this case, it must prove:

- There was a **“taking.”**
- The thing taken had **“value.”**
- It belonged to **“another.”**
- **“Fraudulent conduct”** was involved.

If the prosecution **fails to prove even one element**, no conviction.

Theft requires one other thing...

An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is **essential**.

Second sentence of La. R.S. 14:67(A)

The Penalty for Theft

Depends on the **aggregate** amount taken:

Amount taken:

\$25,000 and up
\$5,000 – 24,999.99
\$1,000-4,999.99
\$0-999.99

Possible Sentence:

0-20 years, plus up to \$50,000 fine
0-10 years, plus up to \$15,000 fine
0-5 years, plus up to \$3,000 fine
0-6 months, plus up to \$1,000 fine

Summary of La. R.S. 14:67(B)

What if I take something, but **don't**
intend to keep it **permanently**?

Is that a **crime**?

Yes. It's called
Unauthorized Use of a Movable.

Unauthorized Use of a Movable

The **intentional taking** or use of a **movable** which belongs to another, either without the other's consent, or **by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently.**

First sentence of La. R.S. 14:68(A)

The Penalty for Unauthorized Use

Depends on the **value** of the movable taken or used:

Amount taken:

\$1,000.01 and up
\$0-1,000

Possible Sentence:

0-2 years, plus up to \$5,000 fine
0-6 months, plus up to \$500 fine

Summary of La. R.S. 14:68(B)

Malfeasance in office is committed when any **public officer/employee**:

(1) **Intentionally refuses or fails to perform any duty** lawfully required of him; or

La. R.S. 14:134(A)(1)

(2) **Intentionally** performs **any such duty** in an **unlawful** manner; or

La. R.S. 14:134(A)(2)

(3) **Knowingly** permits any other public officer or public employee, **under his authority**, **to intentionally** refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

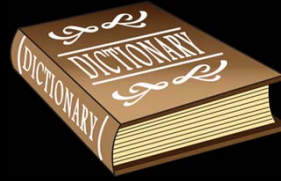
La. R.S. 14:134(A)(3)

“Duty” is very **broadly** construed.

In *State v. Petitto*,¹ a Tangipahoa Parish Councilman was **convicted of 2 counts of malfeasance in office** and sentenced to **consecutive terms of 5 year at hard labor for violating the Code of Governmental Ethics.**

¹116 So.3d 761 (La. App. 1 Cir. 4/26/13), writ denied 126 So. 3d 477 (La. 11/22/13)

Definition:



Fraud is a **knowing**
misrepresentation of the truth
or concealment of a material fact
to induce another to act to
his or her **detriment**.

Black's Law Dictionary (9th Ed. 2013)