



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

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March 19, 2021

The Honorable Andy Josephson, Chair
House Finance Subcommittee, Law
House District 17
Alaska State Capitol, Room 502
Juneau, AK 99801-1182

Dear Representative Josephson:

Thank you for the opportunity to have the Department of Law provide a written response to the questions from the department's House Finance Subcommittee. We received a list of numerous questions and requests for information from your office on Wednesday, March 10th following our meeting, and are happy to provide the responses below. We have compiled information in the response below, and accompanying attachments, to reflect the order of your request. Additional responses or detail from ad-hoc questions from other members are addressed after those questions.

Position Vacancy

1. Provide spreadsheet of Department positions that were vacant on March 1, 2021, organized by appropriation and allocation/component, including job title, PCN, the number of days the position has been vacant and whether the vacancy has been posted on WorkplaceAlaska.

Please refer to the attached spreadsheet titled *LAW_Vacant PCNs as of PPE 2-21-21_IRIS-HRM* for this information.

2. Explain why 10 new positions must be budgeted to prosecute sexual assault crimes if the Criminal Division has longstanding recruitment and retention difficulties that result in multiple prosecutor vacancies. Why cannot existing vacant positions be reallocated to sexual assault prosecution?

The request for new positions is premised on caseload numbers for prosecutors assuming all positions are filled. Thus, attempting to "reallocate" PCNs that are currently vacant does not achieve the goal of lower caseloads. In fact, it would have zero impact on caseloads. The only way to use current PCNs to reduce caseloads for sex crimes is to stop prosecuting other crimes that the Criminal Division currently handles.

3. Provide for each Department appropriation, the budgeted vacancy percentage rate and the corresponding unfunded dollar amount and the appropriated Personal Services by source (UGF, DGF, Fed, Other) in the Governor's Amended FY22 budget, as well as the



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budgeted vacancy rates and numbers in the FY19-21 budgets and actual Personal Services expenditures for those appropriations.

Please refer to the attached budget book details provided for fiscal years FY2019 through FY2022, respectively titled:

FY2019Gov_Law_Personal Services Budgeted Position Detail_BudgetBook

FY2020GovAmend_Law_Personal Services Budgeted Position Detail_BudgetBook

FY2021Gov_Law_Personal Services Budgeted Position Detail_BudgetBook

FY2022GovAmend_Law_Personal Services Budgeted Position Detail_BudgetBook

4. Provide responses to subcommittee member requests made during the March 3 & 5 meetings:
 - a. Comparison of Child Protection caseload per attorney in Alaska to comparable states.
 - b. Attorney and support staff turnover rates in the Child Protection unit, ideally as compared to other units of the Civil Division.

Answer (a):

Unfortunately, the department is unable to compare Child Protection attorney case load numbers with other states. This information is not tracked nationally in any way that the department has access to or is aware of. Additionally, the methodology of child protection casework across the country is incredibly varied in a number of ways, such as county-based representation, Medicaid/child welfare mixes, etc. Even if this information were available, the department would not be able to provide an apples-to-apples comparison.

Answer (b):

Average turnover of attorneys in the Child Protection unit since 2017 was 16% yearly. The remainder of the Civil Division had an average yearly turnover rate of 18%.

Average turnover of support staff in the Child Protection unit since 2017 was 39% yearly. The remainder of the Civil Division had an average yearly turnover rate of 24%.

Inter-agency Receipts

5. Hourly rates charged to state agencies for legal work by Department of Law staff in FY14-21, and Actual I/A (inter-agency receipts) received by the each of the three Department appropriations in FY14-20.

Please refer to the following attachments:



FY14-FY21_Law_Civil Legal Services Rate_Memos for the historical Civil Division legal services rate information.

FY14-17Actuals_I-A Rcpts_RDU Detail_Compare and *FY18-20Actuals_FY21MP-FY22GA_I-A Rcpts_RDU Detail_Compare* for the actual I/A received, as available, or the current authorized I/A funding levels for current and future fiscal years.

It should be expressly noted that the Civil Division is the only division in the department with an established rate for legal services and the rate only applies to the Civil Division. The Criminal and Administrative Services Divisions do not have legal services rates or other established rates that correspond to the I/A funded activity in those divisions.

Misdemeanor Prosecutions

6. Explain the Governor's proposed method of calculating the proposed charge for misdemeanor prosecution in municipalities. Also explain whether a single, annual bill will be sent to municipalities by September of each fiscal year based on the actual number of prosecutions and actual Department personnel costs the previous fiscal year. By what date each year will municipalities have certainty about their total cost for state prosecution for that year?

The proposed fund source change is based on the personnel service costs of the lowest paid prosecutor(s) in the office serving the particular home rule community. Approximately 500 misdemeanor cases will equate to one full-time attorney position. When there is more than one home rule community served by a specific office, costs are divided amongst the various home rule communities based on the percentage of the total cases referred from home rule communities over the last 3 years.

The number of prosecutors required is rounded down to the nearest 500 case increment of all referrals from home rule communities handle by a particular office, unless the number of cases is less than 500. If the referred cases from all home rule communities for a particular office are less than 500 and greater than 250, then the number is rounded down to 250. If the referred cases from all home rule communities for a particular office are less than 250 and greater than 100, then the number is rounded down to the nearest 100th case increment. No office receives less than 100 referrals from home rule communities if there are home communities within that office's jurisdiction.

If this fund source change is approved and the methodology adopted, the home rule communities will know the costs by January 15th for the fiscal year beginning on July 1.

7. Explain whether the charge to municipalities will apply to all prosecution for misdemeanor crimes that occur within their boundaries, regardless of whether the



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misdemeanor was created by state statute or municipal ordinance, or if the charge will apply to a subset of misdemeanors.

State prosecutors *only* prosecute violations of state criminal law. These crimes include conduct such as,

- 1.) theft in the fourth degree (theft of property or services valued at \$250 or less) AS 11.46.150;
- 2.) criminal mischief in the fourth degree (causing \$250 or more but less than \$750 worth of damage to property) AS 11.46.484;
- 3.) operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance (DUI) AS 28.35.030; or
- 4.) assault in the fourth degree (recklessly causing physical injury to another person or placing a person in fear of imminent physical injury) AS 11.41.230.

The cases referred do not include violations of municipal code or minor offenses for which no jail time is authorized. Minor offenses include traffic tickets, parking tickets, and other violations for which no jail is authorized as a penalty.

8. Provide statistics on the number of misdemeanors the state has prosecuted in home rule municipalities and the rate of dismissal over the past ten years.

The Criminal Division does not currently have numbers broken down by type of case and percentage declined specifically for home rule communities. The division can provide averaged percentages of types of misdemeanors referred to the offices impacted by this proposed fund source change over a seven-year time span of FY2015 – FY2020. This includes both home rule and non-home rule communities.

Type of misdemeanor referred	Averaged percentage of total misdemeanors referred to a specific office
Crimes against a person *	17% - 25%
Property crimes **	14% - 22%
Drug crimes	0.5% - 6%
Driving Under the Influence	8% - 18%



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Driving While License Suspended	1% - 11%
Misc.	25% - 44%

*Crimes against a person includes assault in the fourth degree.

**Property crimes include theft under \$750 and criminal mischief under \$750 (property damage).

The offices averaged a misdemeanor acceptance rate of 76% - 87% during this seven-year time frame.

Other questions related to misdemeanor prosecutions and Criminal Division staffing levels have been answered verbally during the committee hearings on March 5 and March 12, 2021.

Judgments and Settlements

9. Provide a spreadsheet similar to the attached example, listing FY20 judgments and settlements and FY21 to-date judgments and settlements. Include settlement and judgment obligations regardless of whether the funds have been appropriated or the payments made.

Please refer to the attachment titled *FY20-21Current_SOA_Judgments-Settlements_3-17-21* for this information.

Expenditure on Statehood Defense

10. Describe Statehood Defense appropriations over the past 20 years, including the fiscal years appropriations were made, whether they were single or multi-year operating budget appropriations or capital budget appropriations, and the actual expenditures from those appropriations.

Cori Mills, Deputy Attorney General for the Civil Division, provided a presentation to the subcommittee on Friday, March 19th, 2021 that covered this topic from a FY2010 to FY2020 comparative perspective. A copy of that presentation has been included here as an attachment titled *LAW FY22 House Subcom - Civil Presentation_3-19-21*.

For additional detail related to the funding of statehood defense that presentation, please refer to the attached item titled *FY10-21MgmtPlan_StateDef-NatRes-OilGas_Component Detail Comparison* to see component-level detail of the budgets for the relevant components.



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In addition to this information, the department has included information that is specific to the BP Corrosion issue, as the department had a separate appropriation (RDU) and allocation (component) dedicated to that work from FY2009 through FY2013. Please refer to the attachment titled *FY09-13MgmtPlan_BP Corrosion RDU-Component Detail_Compare* for this information.

Outside Counsel Contracts

11. Provide a chart similar to the attached example, showing total expenditures each fiscal year FY11-FY21 YTD on outside counsel contracts managed by the Department of Law, excluding contracts for work for state corporate entities. In other words, exclude the expenditures when the client was AHFC, AIDEA/AEA, AGDC/AKLNG, AHFC, or Other Bond).

This graph was incorporated into the presentation provided to the committee on March 19th, 2021. Please refer back to the copy of the presentation that was noted under question #15 – Expenditure on Statehood Defense.

12. In distinct graph lines and in corresponding dollar figures, categorize the expenditures as OGM, ESA, R&B, and further break down Special Litigation and Other/Assorted into subject areas matching Civil Division budget allocations/components that would have been responsible for performing the work in-house (for example Human Services, Child Protection, Labor and State Affairs, Natural Resources, Commercial and Fair Business, etc.) Note whether outside counsel contracts funded through the capital budget or multi-year appropriations are included.

This graph was incorporated into the presentation provided to the committee on March 19th, 2021. Please refer back to the copy of the presentation that was noted under question #15 – Expenditure on Statehood Defense.

13. Excluding contracts on behalf of state corporate entities, provide a spreadsheet listing all outside counsel contracts in effect for any portion of FY21, and all solicitations or RFP's for contracts that have not yet been awarded. Please include:
 - Case name or topic if there is no case
 - Contractor name
 - Contract number
 - Civil Division component
 - Expenditures in FY20
 - Expenditures in FY21 to date
 - Financial obligations incurred but not included above because billing or payment processing has not been completed
 - Other information the Department decides is relevant
 - Copies of the contracts and solicitations included in the spreadsheet



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Please refer to the attached spreadsheet titled *FY20-21_Law_OS Counsel Contracts* for the current list of outside counsel contracts excepting those for state corporate entities, as well as the attached document containing the associated procurement documents for those contracts titled *FY20-21_Law_Active Contract Award Copies*.

Other

14. Representative Eastman requested information related to the Criminal Division's policy on the review of arrest warrants by prosecutors and the retention of said warrants. Please refer to the attached document titled *Criminal Division Policy - Review and Retention of Arrest Warrants* for that information.

The Department of Law thanks the subcommittee for their interest in these matters and for the opportunity to respond. Please let us know if there are additional questions.

