

**3/2/04**

**OVERVIEW:**

**LAW, HESS,**

**LABOR &**

**WORKFORCE**

**DEV.**

**HFIN**

**FILE**

## **Department of Labor and Workforce Development**

### **Mission**

To provide safe and legal working conditions and to advance opportunities for employment

### **Core Services**

- Workforce and Economic Development
- Employment Assistance
- Training and Education
- Statutory and Regulatory Assistance and Enforcement
- Injured Worker and Unemployment Compensation

### **We Create Public Value By...**

- Full employment of the Alaska workforce
- Ensuring a prepared workforce
- Eliminating accidental injuries, fatalities and occupational illnesses within departmental jurisdiction

4. Employment Services	Dollar	Fund
	Amount(s):	Source(s):
<u>Senior Community Service Employment Program</u>	<u>(\$229,800)</u>	<u>GF Match</u>

The House Finance Subcommittee substituted GF Match with Interagency Receipts from the State Employment and Training Program (STEP).

5. Employment Services	Dollar	Fund
	Amount(s):	Source(s):
<u>AVTEC</u>	<u>(\$100,000)</u>	<u>GF</u>

The House Finance Subcommittee substituted GF with Technical Vocational Education Program receipts restored to the TVEP account as a result of the reverse sweep.

## **HOUSE FINANCE COMMITTEE 3/2/04 Overview HESS budget**

COMMISSIONER GILBERTSON: "...In the governor's budget submission proposal was a decrement to the Alcohol Safety Action Program (ASAP) for adults with the desire of moving toward an offender-financed system. As an administration, we believe that individuals should have responsibility for their actions. For that reason we believe that we must move the Alcohol Safety Action Program towards an offender-financed system. These are individuals largely who commit a DUI or have some other reason why they come into the court system for a substance abuse problem. They're referred to counseling. The ASAP programs have acted as intermediaries between the offender and the courts and the treatment facility. We believe that we can work with the court system to insure that individuals are accountable to the courts and that we are not additionally using general fund dollars that can go towards supporting programs for individuals who have not chosen to engage in illegal activities, and go towards a system that is offender-financed. ASAP would continue under the governor's proposal through a self-financed system. This proposal acknowledges that it will take some time to get that offender-financed system up and running and for that reason the subcommittee reinstated six months of funding, I believe, as we do the transition to an offender-financed system."

REPRESENTATIVE CROFT: "...On the adult ASAP, what do we do with somebody who offends that cannot pay for the alcohol treatment. It seems to me in the public interest that they have some alcohol treatment because they might do a lot more damage than if we didn't treat them. So, shouldn't there be some GF component left to fund those who can't pay for it?"

COMMISSIONER GILBERTSON: "It's certainly in our interest to make sure that whatever reimbursement structure we have that its able to finance the system, to finance ASAP so it's available for offenders. And I certainly, we're going to have to make some accounting for individuals who do not have the ability to pay, certainly, like how you would calculate for uncompensated care if you were in a hospital ....but within that we believe that there's throw-aways, that we can work with the court system in particular, to insure that the courts are holding individuals accountable. Individuals must attend the treatment if they're court ordered and they must report back to the court that they successfully completed that treatment."

REPRESENTATIVE CROFT: "We'd overcharge those that could pay to pay for those that couldn't."

COMMISSIONER GILBERTSON: "We would develop an offender-financed structure that would represent the true costs of the Adult Safety Action Program and collect that from recipients of the program services. With that said, we still believe in accountability by individuals who choose involuntary behaviors to engage in activities that cause them to create costs for society. We believe that we should not detrimentally impact other individuals in this state who have chosen to lead, or live, much more healthy lifestyles that we invest our dollars in programs to support them. We believe an offender-financed system can be successful. It can survive. It can work. But ultimately it is a transaction between the court system and the offender, in which the offender must be accountable to that court system and there must be consequences for that individual if they choose to disobey a direct order from the court."

JANET CLARKE: "This does not pay for the treatment component, this is the monitoring service."

# Department of Law



FY 2005 Operating Budget



# Department Profile

- The Department of Law seeks to assure the safety and health of Alaskans by prosecuting and convicting criminal offenders in Alaska and by seeking to protect vulnerable Alaskan children from neglect and abuse.
- The Department of Law provides legal advice and represents the state in all actions in which it is a party
- The Department of Law works to resolve questions of state versus federal control and management of natural resources and lands
- The Department of Law seeks to ensure the state receives its correct share of oil and gas taxes and royalties.
- Provide oversight of the public advocacy function in the regulation of utilities and pipelines in Alaska

# Core Services

- Criminal Prosecution
- Juvenile Crime Prosecution
- Victim Restitution/Victim Witness Assistance
- Child Protection
- Consumer Protection and Antitrust Enforcement
- Oil & Gas: tax, royalty, tariffs and resource development
- Statehood Defense and State Sovereignty
- Office of the Governor
- Executive Branch Ethics Act
- Elections
- Legislation and Regulations
- Agents of Change

## Summary FY 2005 Operating Budget Request

### Office of the Attorney General

- One new Legislation and Regulations Attorney

### Criminal Division

- Six new prosecutors

### Civil Division

- Four CINA attorneys, One CINA Paralegal
- Two Labor and State Affairs Attorneys
- One Ethics Act Attorney
- One Juvenile Delinquency Attorney

# Conference of Western Attorneys General 2003

## Review of the Department of Law

The 2003 CWAG Review Team's goal was to identify strengths and weaknesses of the Department and recommend improvements. Such a review had not been conducted since 1996. The following key recommendations were made and implemented:

- Development of a clean, clear, leaner reporting structure in the Civil Division. Eleven previously existing sections were consolidated into nine with statewide supervisors and a single statewide office chief replaced the previous geographic specific scheme for office chiefs and supervising attorneys
- Adoption of policies for closely evaluating and limiting the use of outside counsel
- Active recruitment for new attorneys
- Institution of a department-wide summer law clerk program
- Revised procedures for settlement
- Creation of a new Opinions, Appeals and Ethics section to provide centralization and standardization in these three areas

Recommendations yet to be implemented:

- Handling of the juvenile delinquency caseload is being transferred from the Civil Division to the Criminal Division effective March, 2004

# Criminal Division

Six new GF Criminal Division attorneys:

Kenai DA's Office - one

Anchorage Sexual Crimes Unit - one

Anchorage Violent Crimes Unit - one

Anchorage Property Crimes Unit - one

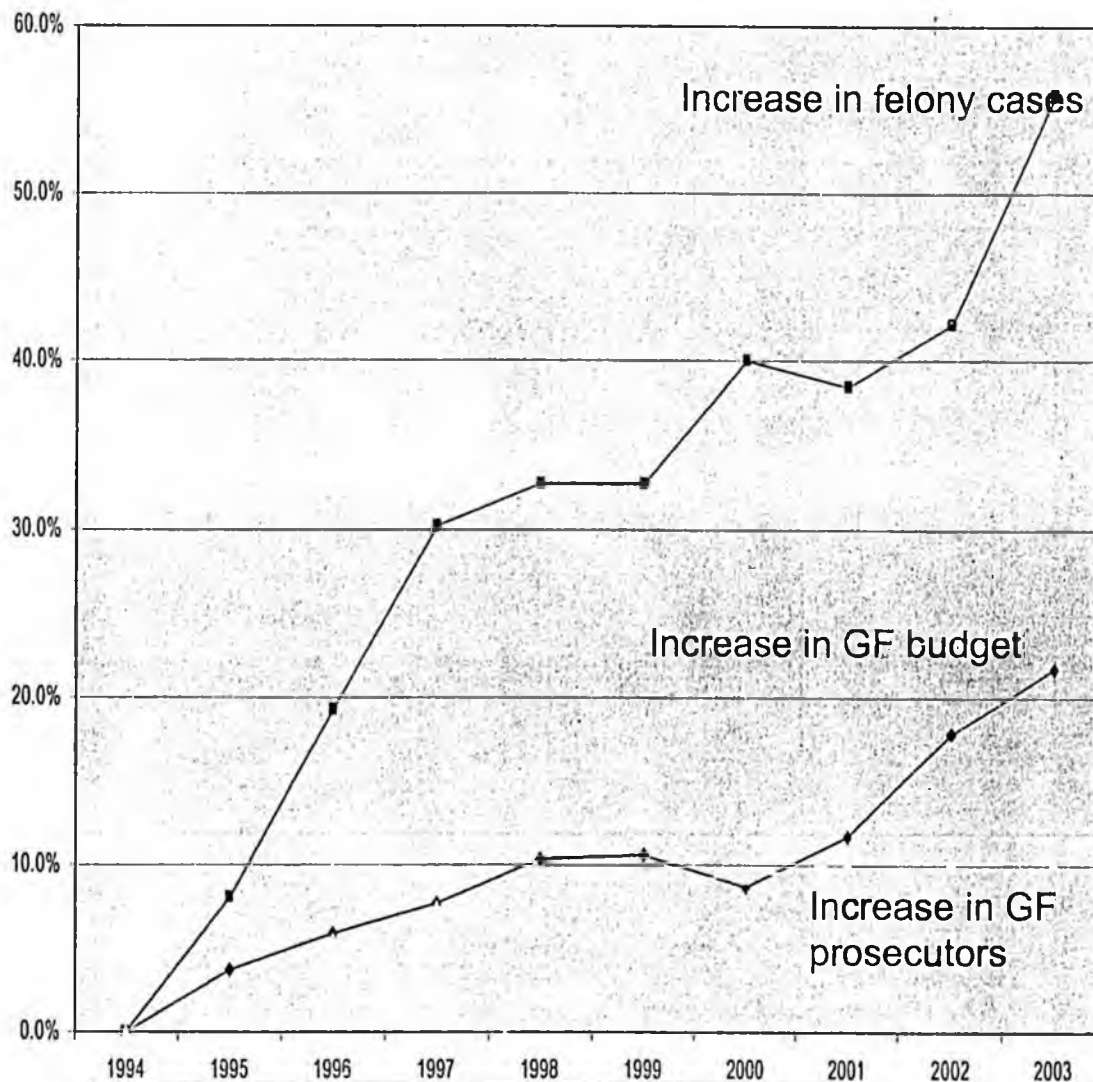
Anchorage Appeals Unit - two (misdemeanor appeals and post-conviction relief)

Two new attorney positions under federal grants

Anchorage (gun violence)

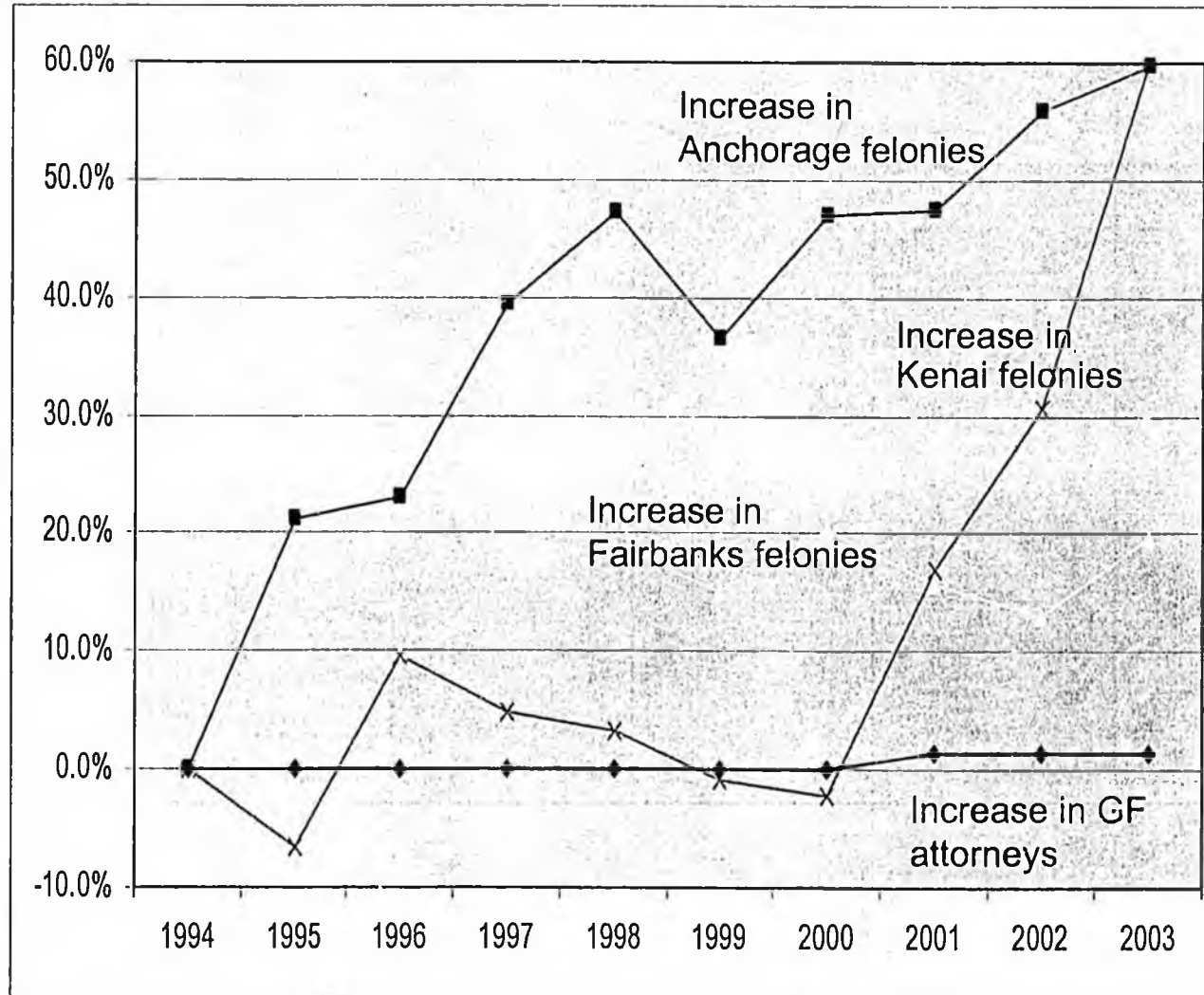
Fairbanks (drug cases)

## For over a decade, resources have not kept pace with criminal caseloads



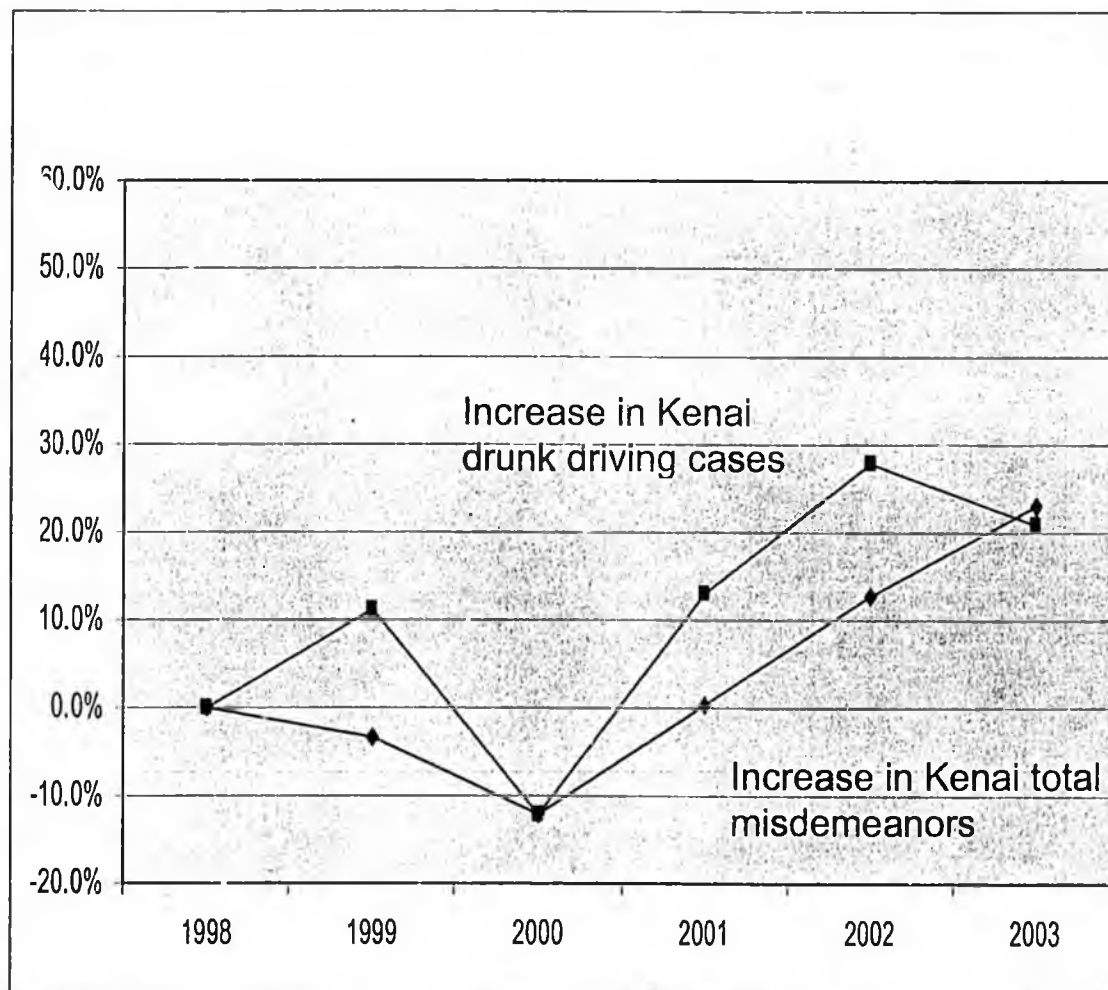
- 56% statewide increase in felony cases: 6400 new felonies and 2300 probation revocations  
**(Three quarters of Criminal Division resources are devoted to felony cases)**
- Only 22% increase in general funds for prosecution offices
- Only 10% increase in general fund prosecutor positions

## The greatest need is in Kenai, Anchorage and Fairbanks District Attorney Offices



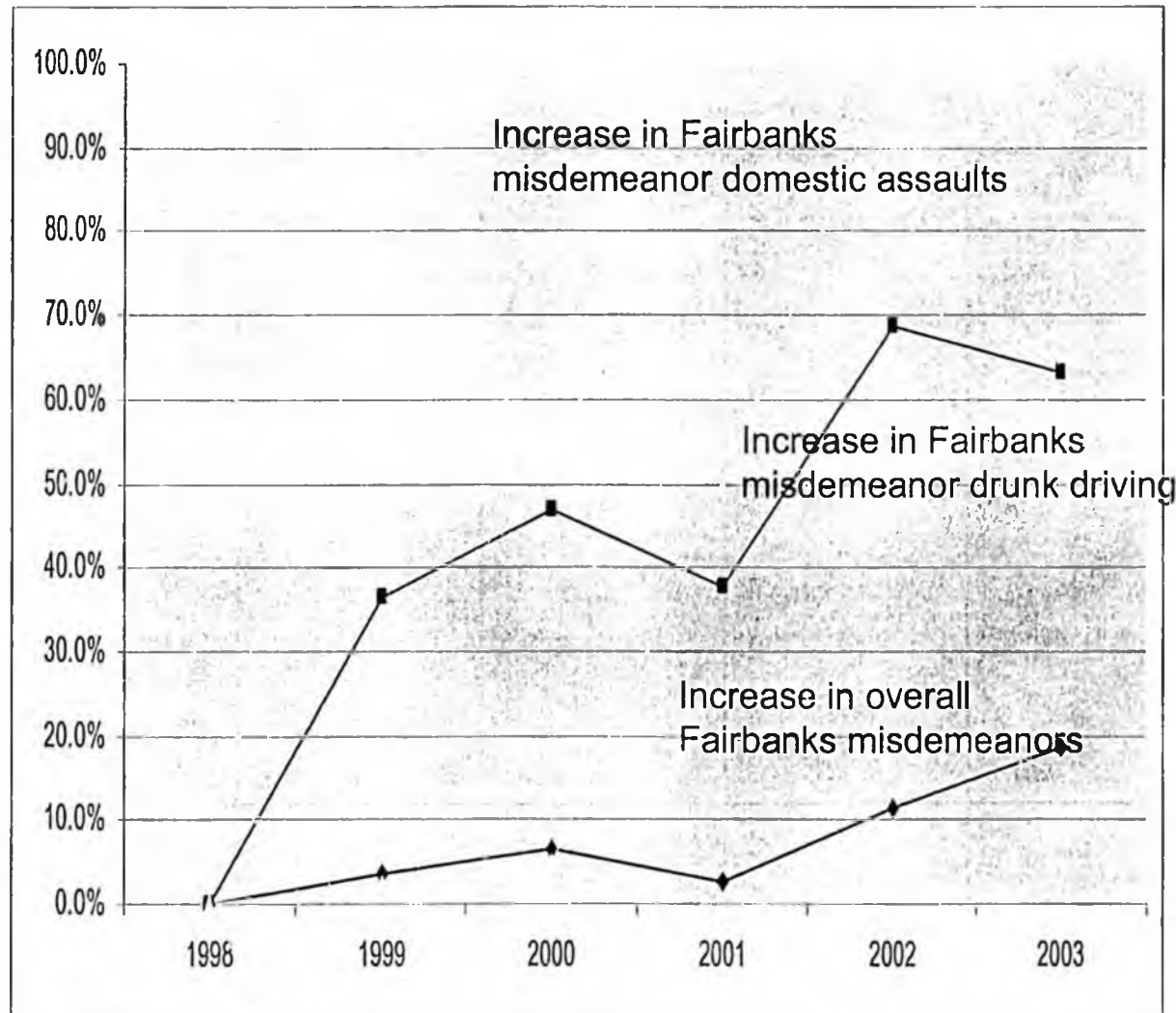
- 60% increase in Anchorage and Kenai felonies
- 20% increase in Fairbanks felonies
- These three locations have received a total increase of only one-half attorney position in the last decade from the general fund

## The Kenai District Attorney's Office handles all misdemeanors on the Kenai Peninsula



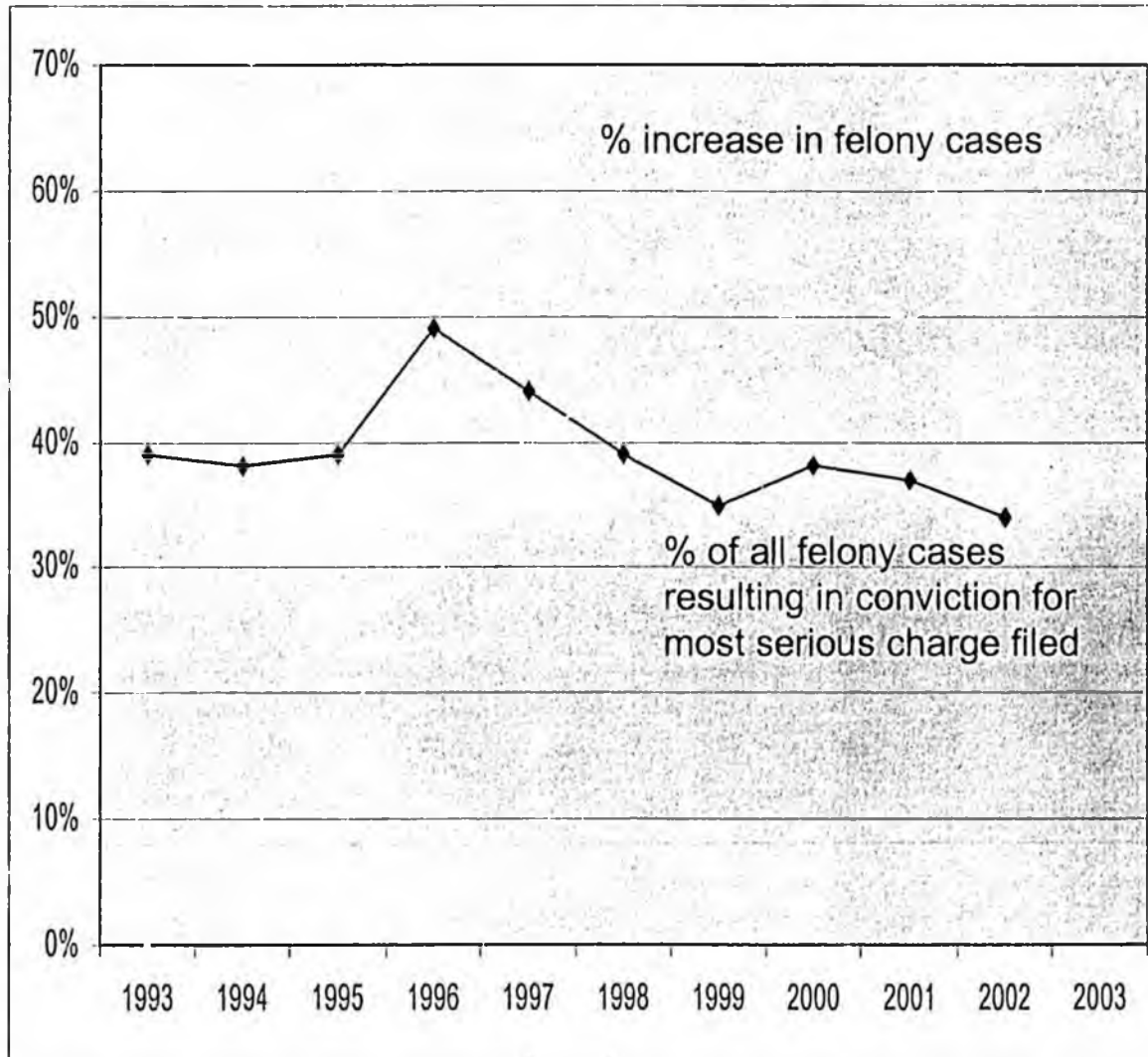
- In addition to more than 700 felony cases, the four-attorney Kenai office gets over 600 misdemeanor drunk driving cases and 3000 total misdemeanors, and thus the highest caseload per attorney

## Fairbanks District Attorney's Office handles all misdemeanor cases in central Alaska



- Domestic assault cases doubled to over 600 when the city repealed its ordinances
- More than 1000 drunk driving cases are handled annually by the Fairbanks office
- **Overall, the Fairbanks office handles over 4500 misdemeanor cases each year in central Alaska, in addition to 1200 felonies**

## The consequence of higher caseloads and static resources: Fewer convictions and convictions for lesser charges



- As caseloads increase, more felony cases are plea-bargained to lesser felonies or misdemeanor charges.
- From a high of 49% in 1996, only 34% of felony offenders are now convicted of the most serious charge filed

## **Anchorage DA's Office: Sexual Crimes Unit**

57% increase from 106 cases in 2000 of sexual assault and child sexual abuse to 166 cases in 2003. The unit also handles dozens of sex-related felonies such as child pornography and sex offenders who fail to register.

One new attorney is needed.

## **Anchorage DA's Office: Violent Crimes Unit**

46% increase from 414 violent felonies in 1993 to 605 cases in 2003. This includes murder, manslaughter, attempted murder, kidnapping, shootings, stabbings and armed robbery.

One new attorney is needed.

## **Anchorage DA's Office: Felony Property Crimes Unit**

Three attorneys were assigned to handle over 800 new felony property crimes in Anchorage in 2003 (burglary, theft and malicious destruction) plus over 100 miscellaneous felonies, such as escapes from prison and felons possessing handguns. This is an increase of over 200 cases in just two years.

One new attorney is needed.

## **Anchorage Appeals Unit: Misdemeanor appeals and Post-conviction relief**

Misdemeanor appeals and post-conviction relief (in other words, a second chance for an appeal) are matters that take valuable time away from busy district attorney offices. By handling those cases in the Criminal Division's appellate office in Anchorage, all DA offices across the state will benefit.

Two new attorneys are needed.

# Civil Division

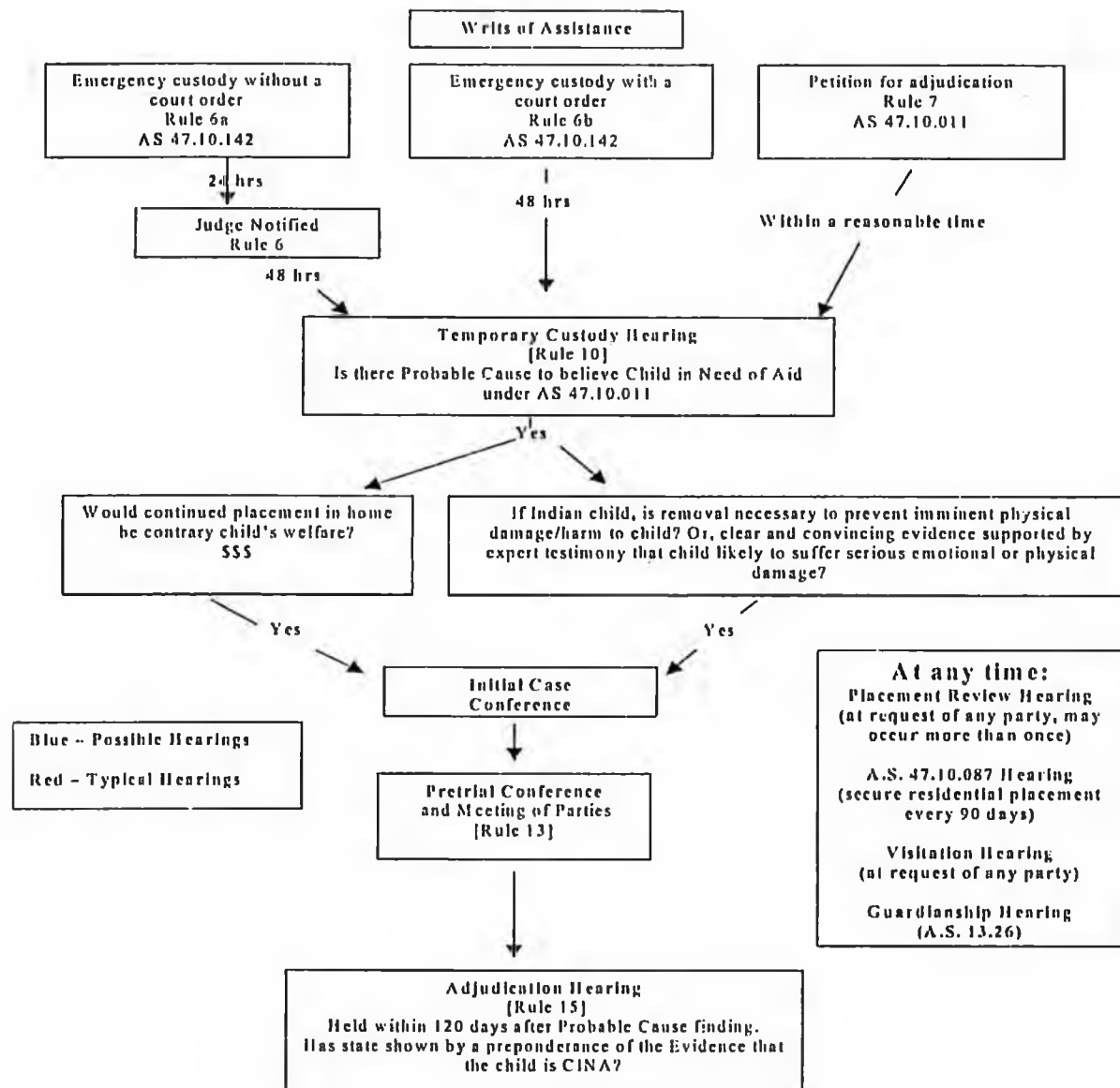
- Child Protection
  - Three child protection attorneys
  - One child protection appellate attorney
  - One child protection paralegal for Fairbanks
- One attorney for juvenile delinquency
- One attorney for labor relations
- One attorney for Ethics Act
- One attorney for state affairs

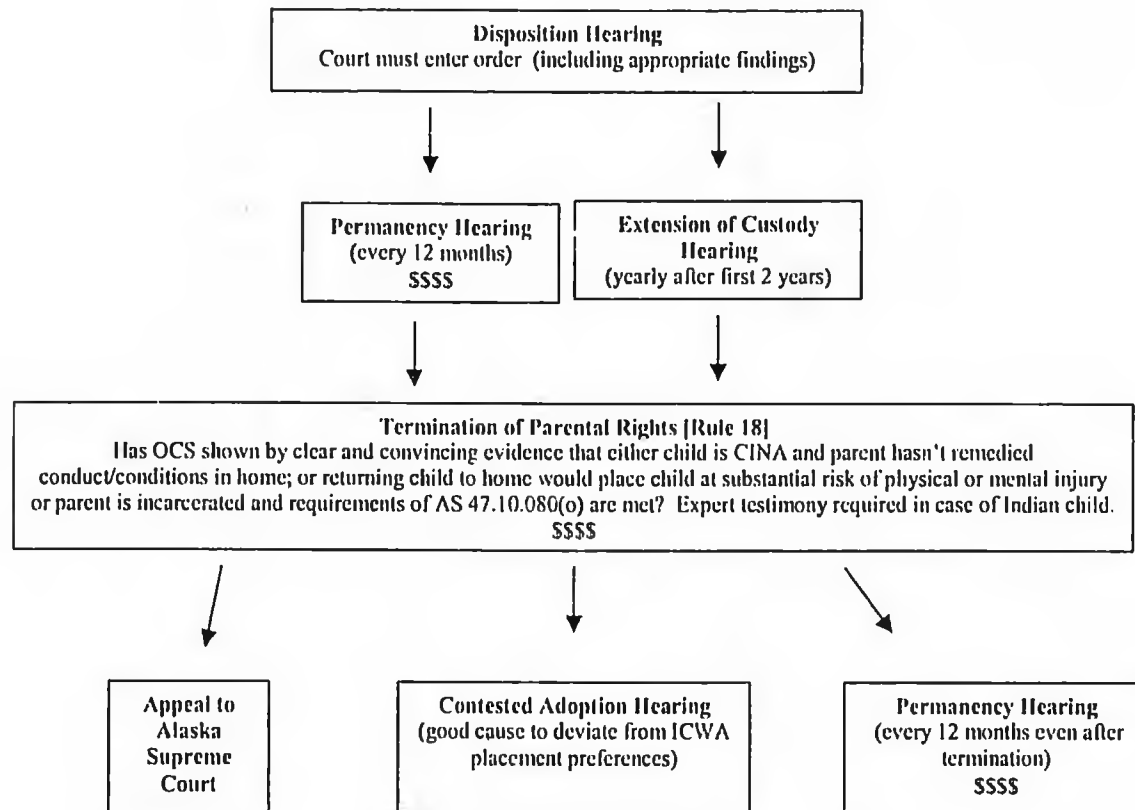
# Comparison of CINA Caseload per Attorney



Maximum caseload of 100 per attorney was determined by the US DHHS, Administration for Children and Families, 2002

## Child in Need of Aid Proceedings





Blue – Possible Hearings  
 Red – Typical Hearings

## Child Protection Challenges

- Cases are constantly changing in terms of facts, circumstances, and the needs of children and family
- Numerous parties and participants with competing interests
- Expert testimony required
- Child testimony often required
- Additional hearings required by Adoption and Safe Families Act in order for DHSS to obtain federal funding
- Stress factor

## Physical Abuse Cases

- Shaken babies – subdural hematomas, retinal damage, permanent injuries, death
- Broken bones – usually infants and toddlers; not consistent with accidental trauma
- Beaten children – bruised and swollen faces and bodies, cuts and scrapes; child stoned by her parent
- Unnecessary medical procedures – parent insisted on unnecessary and unwarranted feeding tube
- Siblings killed by a parent or partner of a parent
- Starved, emaciated children, failure to thrive
- Children restrained, locked up or held in captivity within portions of a home for lengthy periods of time

## Substance Abuse Cases

- Children found in home containing methamphetamine labs or in close proximity to drugs, medicine, drug paraphernalia, dangerous items or substances while the parent is incapacitated
- Mother smothered infant while intoxicated, siblings removed
- Parents driving intoxicated with children in the car
- Parents leaving children, including infants, unattended while they use alcohol/drugs
- Domestic violence witnessed by children
- Abandoned children, sometimes at the hospital after birth, sometimes with relatives who seek OCS assistance
- Children testing positive for cocaine at birth, numerous cases of cocaine positive children born to same mother
- Children required to care for younger children as a result of incapacitated parents
- “Dirty house” cases – feces, exposed wires, chaotic living environment
- Habitual criminals, incarcerated parents

## Sexual Abuse Cases

- Sexual abuse by parents, relatives, or friends of parents
- Sexual abuse of children too young to testify
- Sexually abused children with unsupportive parents who chose the perpetrator over the child
- Sexual abuse by a sibling, unsupportive parents
- Parent who coaches or encourages child to make untrue allegations of sexual abuse for the parent's own purposes

## ***S.H. v. State, 42 P.3d 1119 (Alaska 2002)***

S.H. v. State

10 years of suspected child abuse were finally substantiated in 1997 in an incident involving a meat cleaver during which intoxicated male parent, R.H. assaulted his wife, S.H, and two of the five children in the home. Less than three weeks later, DFYS received a report that the couple's 7 year old daughter was sexually molested and another child was assaulted when S.H., the female parent, invited a couple she had met on a dating chat line to her house to engage in sexual activities. In spite of these events the children were allowed to stay in the home until 1999 until it became clear that domestic violence and substance abuse were still taking place in the home. S.H. did not comply with treatment and R.H. did not stay away from the home, as was required under the case plan. It was soon learned that R.H. and S.H. were using crack cocaine and smoking cigarettes in the home, something that was prohibited because two of the children had asthma. Finally the children were removed from the home. A trial was needed because the parents refused to voluntarily relinquish parental rights. Parental rights were terminated. The decision was appealed, and upheld on appeal.

The couple's five children were 13, 9, 7, 6, and 5 years of age at the time of termination. All of them exhibited serious signs of trauma and behavioral disorders as a result of their lives in an abusive home. The lone female child exhibited signs of sexual abuse.

***Ruby A. V. DFYS, 2003 WL 23018276 (Alaska  
2003) MO&J***

Ruby already had three children, Mona, Shari, and Jim when she met Lloyd in 1996. Mona reported that Lloyd sexually abused her. Lloyd was jailed on a DWI charge and after his release, went to Texas. DFYS took temporary custody of the children, but that lapsed after three months and the children returned to Ruby's custody. Soon after, Mona reported a family friend, who was ultimately convicted of that charge, had sexually abused her. DFYS took custody of Mona but she was returned to Ruby in 1999. Two years later, Lloyd returned to Alaska and moved in the Ruby and her children. By then Ruby had another child. In a long and drawn out process, the children were removed from the home because of Lloyd's sexually abusive conduct and Ruby's unwillingness to protect her children from Lloyd. Another child was born in 2002, but because Ruby and Lloyd were still together, this child was also taken into custody – requiring another lengthy trial and appeal process.

## ***J.H. v. DFYS, 30 P.3d 79 (Alaska 2001)***

Jenny was born prematurely and tested positive for cocaine in July 1996. Jenny's mother, Jane, had a long history of abusing drugs, becoming involved with abusive men, and neglecting her children. By age 18, Jane was addicted to cocaine. She had repeatedly participated in drug treatment, but continued to relapse. By the time Jenny was born, Jane had already had 4 sons, all born cocaine-exposed, none of whom were in her care. DFYS sought custody of Jenny, which was granted. Jane was arrested a month after Jenny's birth and convicted for felony possession of cocaine. As in the past, DFYS attempted to get Jane to participate in substance abuse treatment and counseling related to past victimization and sexual abuse.

Shortly thereafter, Jane became pregnant by Denver, a man she met while in jail. Denver had a criminal record and abused alcohol. Jane gave birth to another child, Carrie, in April 1998 and shortly thereafter completed residential treatment and actively participated in other treatment.

Because experts believed that Jane was high risk for relapse, and the fact Jenny had spent more than 22 months in continuous foster care, DFYS changed its permanent goal in for Jenny to adoption. The trial to terminate parental rights took place over the course of 28 days ending in the fall of 1999. During the course of the trial, Jane did relapse, and so custody was assumed of Carrie. The court terminated parental rights, finding that Jane had a long-standing history of substance abuse, a pattern of treatment followed by relapse, and continued relationships with violent men who participated in criminal activity related to drugs. The court also found that she was at high risk of relapse and that she was unable to recognize how her behaviors affected her children or the impact on Jenny if she were removed from her long-term foster home. An appeal followed, and the decision was upheld by the Alaska Supreme Court.

**Frank E. v. DFYS, 77 P.3d 715**  
**(Alaska 2003)**

In November 2000, police raided a home, on a report that F.E. and A.E. were operating a meth lab. They found methamphetamine cooking on the stove, filling the apartment with toxic vapors. F.E. was sitting in a chair with the toddler Br.E. on his lap, and a syringe containing methamphetamine in the cushion. The apartment was filthy, with knives and razor blades accessible to the children. Dirty clothes, dishes and dog food were strewn throughout the home. The dog food was apparently fed to the children, as the family had no dog.

OCS assumed custody of the four children in the home. After both parents stipulated that the children were children in need of aid, they were placed with their paternal grandmother. The mother abandoned the children, and the father began serving a four-year sentence. OCS pursued termination of parental rights. Shortly before the termination trial, and during father's incarceration, two of the minor children disclosed that the father sexually abused them.

A one week contested termination trial was held in June 2001. At the conclusion of the hearing, the court postponed the trial for seven months, so that it could determine if father could complete a substance abuse treatment program and remedy his conduct. When the trial reconvened in February 2002, the father was still being held pending trial on the sex abuse charges. The court took testimony concerning the programs and classes that father was participating in, and again continued the termination hearing, this time to await the results of the criminal trial. Shortly thereafter, father was convicted of sexually abusing his daughters.

In July 2002, the court terminated father's parental rights based on continued incarceration, his failure to remedy either substance abuse problem, and his violent tendencies. Father appealed the termination order and criminal conviction. In 2003, the Alaska Supreme Court affirmed the termination of parental rights.

## Child Protection Appellate Attorney

- The department has 25 child protection appeals at any given time. A manageable child protection appeals caseload is half that amount.
- An additional appellate attorney in this area will further consolidate appeals and achieve significant improvement in the state's performance in the appellate arena because cases are better briefed and argued, and the implications of appellate decisions are clearly and quickly communicated statewide - to attorneys, and OCS.

## **The consequence of static resource in Child Protection**

- Heavy caseloads result in missed deadlines and risk loss of federal funds
- Fewer social workers and child protection attorneys to protect Alaska's children from neglect and abuse
- Child protection attorneys burn out and quit - high vacancy and heavier caseloads result
- Potential fiscal sanctions

## Juvenile Delinquency

- Federal Juvenile Accountability Block Grant funds available through an RSA with H&SS were eliminated, resulting in the loss of one JD attorney.
- Services to DJJ were seriously reduced in Kenai and Anchorage. Personnel in the DJJ are very concerned about this reduction, claiming that they need more attorneys to represent them, not fewer.

## Ethics Act Attorney

- The Executive Branch Ethics Act requires the AG to carry out a wide variety of functions including all boards and commissions and post-state employment issues of all former state employees for a two-year period after they leave state service.
- Legal Functions Include:
  - Investigating and acting on complaints filed under the Ethics Act
  - Rendering of written and oral advice on ethics issues
  - Preparing written opinions on ethics issues
  - Analysis and recommendations on gift disclosure and outside employment disclosure
- Currently an unfunded mandatory body of work assigned to an attorney with other responsibilities

## Labor and State Affairs Attorney

- Steady increases in the frequency and complexity of lawsuits and other disputes involving labor and employment issues increase demand on current staff
- State's budget issues are likely to lead to further increase demand on the section
- Changes and reorganization of government will further necessitate legal assistance and response to challenges to budget decisions made that impact employees and recipients of state services
- Two attorneys are needed to provide the timely advice that other state agencies need to make sound labor and employment decisions, and to represent state agencies effectively in court.

## Legislation and Regulations Attorney

- Located in the Office of the Attorney General
- Staff of 2 attorneys and three other staff positions compared to Legislative Affairs Agency with 7.5 attorneys and 15 other staff positions
- Deadlines set by statute or uniform rules
- Section is critical achieving the Governor's goals
- Better and faster legal review and drafting of regulations as well as legislation

# Summation

- Department has been underfunded over a long period of time
- Difficulty meeting statutory responsibilities
- Thorough review by Department and CWAG has identified some cost efficiencies which were implemented, but has been unable to eliminate any significant body of work without jeopardizing core responsibilities

# Department of Law Contacts

- Gregg Renkes, Attorney General 465-2133
- Scott Nordstrand, Deputy Attorney General Civil Division  
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- Susan Parkes, Deputy Attorney General Criminal Division  
269-6379
- David Marquez, Legislative Liaison 465-2132
- Kathryn Daughhete, Director, Administrative Services  
465-3673



GREGG D. RENKES  
ATTORNEY GENERAL OF ALASKA

February 26, 2004

The Honorable John Harris, Co-Chair  
House Finance Committee  
Alaska State Legislature  
State Capitol, Rm. 505  
Juneau, AK 99801-1182

The Honorable Bill Williams, Co-Chair  
House Finance Committee  
Alaska State Legislature  
State Capitol, Rm. 515  
Juneau, AK 99801-1182

Re: Department of Law Fiscal Year '05 Budget

Dear Chairman Harris and Williams:

Thank you for the upcoming opportunity to meet with the House Finance Committee. As we approach fiscal year 2005, I'd like to share my concerns about the challenges and opportunities facing the Department of Law, while acknowledging that these are difficult times to ask for additional resources.

One of the core responsibilities of our state government is to protect the safety of the public. Sadly, we are currently not meeting this responsibility. During his campaign for election, Governor Murkowski recognized that a lack of commitment by the past administration had left Alaskans more vulnerable to crime, particularly women and children. At the Governor's direction I have proposed a budget that will allow us to address the most severe and urgent public safety needs. Overall, the effect of the House Finance Subcommittee reduction leaves the Department in the position where it cannot fund the Governor's priorities to increase criminal prosecution and protect children in Alaska. In fact, the overall impact of the subcommittee's action reduces Law's general funds below the FY 2004 level. This is of paramount concern to me because the same House Subcommittee fully funded the Department of Public Safety's request for 20 new state troopers, supplying public safety protection tools to a portion of the state's criminal justice team while at the same time effectively reducing our ability to protect the public from the worst offenders. It is the women, children and neighborhoods of our state that will suffer should this budget decision stand.

As you prepare the Finance Committee's version of the operating budget, I wanted to review key requests for funding reflected in the Governor's FY 2005 budget and compare them to the changes the House Subcommittee made in developing the Department of Law's budget.

### CRIMINAL DIVISION

In the last 10 years, felony caseloads for our prosecutors increased 56% statewide. In that same period, General Funds to the Criminal Division increased only 22%. Due to increased benefit costs and other fixed increases, the 22% increase resulted in only a 10% increase in the number of actual General Fund prosecutor positions. To deal with the overwhelming caseloads, while still aggressively prosecuting high priority crimes, more lower priority cases are being plea-bargained to lesser felonies or misdemeanor charges. In 1996, 49% of all felony offenders were convicted of the most serious charge filed. In 2003, that number dropped to 34%. Additionally, the increased stress on our prosecutors leads to a high turnover rate, putting additional pressure on the offices to find ways to manage the caseloads, and that often means dismissing or reducing charges.

To reverse the statewide trend toward higher caseloads, we are requesting two new attorney positions in the Office of Special Prosecutions and Appeals to take over misdemeanor appellate and civil litigation duties that currently burden all local district attorney offices. These cases are better handled by attorneys trained in appellate procedure, thereby leaving front-line prosecutors available for court proceedings.

FY 2005 Governor's Request - \$236,400 GF  
FY 2005 House Finance Subcommittee Funding - None

The House Subcommittee also eliminated the funding for Victims for Justice and adopted the Governor's budget reversal of a number of one-time special appropriations not in the Department's base budget.

There are two other areas where the situation is particularly critical: Kenai and Anchorage.

#### A. Kenai District Attorney's Office

The Kenai District Attorney's office has the highest caseload per attorney in the state. In the last 10 years, the Kenai felony caseload increased 60%, most of that coming in just the last four years. The misdemeanor caseload is also on the rise. This four-attorney office handles 700 felonies and 3000 misdemeanors per year, 600 of which are drunk-driving cases.

To begin to address the serious need in the Kenai District Attorney's Office, we are requesting one additional General Fund attorney position in Kenai.

FY 2005 Governor's Request - \$125,200 GF  
FY 2005 House Finance Subcommittee Funding - None

B. Anchorage District Attorney's Office

In Anchorage, the felony caseload has increased 60% since 1993. Particularly disturbing is the Sexual Crimes Unit's caseload increase: since 2000, these cases have increased by 57%. Sexual assault cases are some of the most difficult and resource-intensive. The Violent Crimes Unit also saw a sharp caseload increase from 414 violent felonies in 1993 to 605 cases in 2003; a 46% increase. The Property Crimes unit is extremely overburdened; the unit currently has three attorneys handling a felony caseload of 900 new cases per year. The only way for prosecutors to manage such difficult work loads is to dispose of cases the most expeditious way possible. It is the victims of crime that suffer.

To adequately address the Anchorage community's public safety needs, we are requesting three new General Fund attorney positions, one for each of the above named units. Additionally, we are requesting one federally funded gun prosecutor, freeing General Fund resources to be directed to other high priority cases.

FY 2005 Governor's Request - \$383,600 GF, \$120,000 Federal Funds  
FY 2005 House Finance Subcommittee Funding - No General Funds,  
\$120,000 Federal Funds

CIVIL DIVISION

A. Protecting Children

Child-in-Need-of-Aid (CINA) cases are among the most stressful and difficult cases undertaken by the Department of Law. The caseload facing CINA lawyers, particularly in Anchorage and Bethel, is far in excess of the national standard of 100 children per attorney. The paralegal and appellate support provided to those attorneys is inadequate. Specifically, Fairbanks has no paralegal support for three CINA attorneys. Only Anchorage has the benefit of a dedicated attorney to handle CINA appeals. These pressures, combined with relatively low attorney pay, result in high turnover and vacancy rates of attorneys doing CINA cases.

In response to this crisis, we propose three additional CINA attorneys to relieve the Anchorage and Bethel caseloads, one attorney to cover statewide CINA appeals, and one paralegal to support the Fairbanks CINA attorneys.

FY 2005 Governor's Request - \$644,200 GF

FY 2005 House Finance Subcommittee Funding - \$467,700 GF

B. Juvenile Justice

Delinquency cases involve representation of the Division of Juvenile Justice (DJJ) in prosecuting juvenile delinquents.<sup>1</sup> Generally, the number of cases our office handles is commensurate with the number of attorneys available. Given current staffing levels, DJJ receives legal assistance in only about 17% of cases.

In FY 2003, the Department of Law had two full time and one half time attorney positions handling juvenile delinquency cases in Anchorage and Kenai. One of those attorneys was financed by an RSA with DHSS using funds from the federal Juvenile Accountability Incentive Block Grant (JAIBG). The JAIBG money was cut for FY 2004, resulting in the loss of one position. Services to DJJ were seriously reduced in Kenai and Anchorage.

We are requesting one new delinquency attorney position in Anchorage. This will restore a delinquency position lost in FY 2004 and give us the ability to restore attorney representation in the most serious juvenile delinquency cases in the Anchorage and Kenai area.

FY 2005 Governor's Request - \$112,200 GF

FY 2005 House Finance Subcommittee Funding - None

C. Ethics Attorney

The Executive Branch Ethics Act requires the Attorney General to carry out a wide variety of functions for the implementation and enforcement of the Ethics Act for

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<sup>1</sup> The Civil Division handles delinquency cases in some parts of the state but not in others. The Anchorage office handles delinquency cases in Anchorage, Kenai, and Dillingham. The Fairbanks office handles Fairbanks and Barrow delinquency cases. The Bethel office handles delinquency cases in that region. In all other areas of the state, the Criminal Division is responsible for handling juvenile delinquency cases. In order to unify administration, in March, 2004 the Civil Division will transfer its delinquency caseload to the Criminal Division, along with all the resources it presently utilizes in that regard.

the executive branch of state government, including all boards and commissions and post-state employment issues of all former state employees for a two-year period after they leave state service. Ethics Act advice, investigations, follow-up, and training must be provided in a timely manner to facilitate agency decision making, to prevent potential problems, and to ensure sound enforcement of the law.

In the past administration, only a fraction of one attorney's time was dedicated to this important responsibility. The remaining ethics work was parceled out to other attorneys. While the ethics attorney's tasks may occasionally exceed a single attorney's capabilities, the Department of Law does not presently have even that capacity. The attorney presently assigned to handle Ethics Act functions is also assigned to work on Indian Law issues. Given the volume of work in both areas, we are unable to give either the attention they require.

We are requesting the addition of one attorney position dedicated entirely to Ethics Act responsibilities.

FY 2005 Governor's Request - \$112,200 GF  
FY 2005 House Finance Subcommittee Funding - None

D. Labor Relations and State Affairs

Steady increases in the frequency and complexity of lawsuits and other disputes involving labor and employment issues has increased attorney demands in the Civil Division's Labor and State Affairs Section. The state's current budget challenges will likely lead to further increases in labor and employment disputes requiring legal assistance.

Presently, all the contracts with the state's employee unions are under negotiation. In recent years, the Department of Law provided little direct advice regarding labor negotiations and administrative proceedings related to those contracts. We view that approach as unwise and are undertaking to provide legal support to the negotiating teams in the Department of Administration through a short-term RSA. To maintain that support, we must add an attorney position to the FY 2005 budget.

The Labor and State Affairs Section also suffers from the sheer enormity of the legal advice required to support the administration's initiatives. The Department of Law is the "agent of change" in government; recent state governmental changes require our attorneys' active participation. We simply need more help to support the process.

Two additional attorneys are necessary to provide labor relations and government reform advice to the Governor and Executive Branch agencies.

**FY 2005 Governor's Request - \$164,800 GF**  
**FY 2005 House Finance Subcommittee Funding – None**

**E. Legislation and Regulations (Executive Office of the Attorney General)**

The Legislation and Regulations Section reviews and edits all legislation and executive orders for the Office of the Governor, edits amendments to bills during the session, reviews and edits bill reviews for the Governor's consideration for action on passed legislation, prepares veto messages, edits administrative orders, and reviews and edits regulations for legal sufficiency. In addition, this section responds to a myriad of requests for legal assistance and advice surrounding the governor's legislation, regulation drafting, and public records and the Open Meetings Act requests.

The Legislation and Regulation Section's work requires professional research, drafting, and editing under high stress within tight timelines. Many of the section's deadlines are set by statute or uniform rules of the Alaska State Legislature. Also, many requests from the Office of the Governor have strict deadlines requiring immediate legal services for preparing amendments to discuss with legislators and stakeholders.

The Alaska Supreme Court requires that virtually all major policy decisions by state agencies not already in statute be established by regulation. Timely and thorough regulation reviews are necessary to avoid successful legal challenges to major policy reforms. Because of the volume of work during the legislative session to address requests of the Office of the Governor and coordinate legislative responses, the entire burden of regulation attorney work falls on one Assistant Attorney General during the session. The Legislation and Regulations Section needs an additional attorney position to fulfill its responsibilities for professional and statutorily required standards.

**FY 2005 Governor's Request - \$147,400 GF**  
**FY 2005 House Finance Subcommittee Funding – None**

**DEPARTMENT WIDE**

**A. Rising Costs of Personal Services**

The cost of benefits for existing personnel is expected to increase sharply in FY 2005. In order to minimize the cost impact, the Department of Law deleted a number of long-standing vacancies. The House Subcommittee 20% reduction amounts to \$266,700.

**FY 2005 Governor's Request - \$1,360,100 GF**  
**FY 2005 House Finance Subcommittee Funding – \$1,093,400 GF**

**B. Other Actions Taken by the House Subcommittee**

In addition to denying certain increments and partially funding others, the House subcommittee adopted a number of other budget cuts:

1. A 25% reduction to the travel line item – a reduction of this magnitude is not sustainable. The bulk of the department's travel is mandatory for witnesses, depositions, court appearances and proceedings. The Criminal Division would be hardest hit by this reduction.

**FY 2005 Governor's Request – No reduction**

**FY 2005 House Finance Subcommittee Funding – \$292,700 GF reduction**

2. Elimination or reduction of personal services costs in three areas:
  - a. In accordance with recommendations made by the Conference of Western Attorneys General, supervision of Civil Division sections was consolidated. New statewide supervising attorneys were moved up one salary range in order to reflect their significantly increased supervisory responsibilities. The House Subcommittee cut the funds for the one range increase.
  - b. The Attorney General reclassified a special assistant position downward to an Associate Attorney and tasked that individual with media and communications responsibilities. Most state agencies have at least one position doing this type of work. The House Subcommittee cut the funds for the salary and benefits associated with the position.
  - c. The subcommittee inexplicably cut all funding for the salary and benefits for the Deputy Attorney General component in the Civil Division, effectively zeroing out the personal services line item.

Net effect:

**FY 2005 Governor's Request – No reduction**

**FY 2005 House Finance Subcommittee Funding – \$268,300 GF reduction**

**CONCLUSION**

My review of the Department of Law over the course of this last year has revealed an agency that does not have sufficient funding to meet its basic statutory responsibilities. We carefully evaluated the Department's resources over the last year and concluded that no amount of reorganization or prioritization can address the funding shortfalls. The House Subcommittee's budget if enacted will leave us even further from the Governor's goals of improving public safety and protecting children from harm. Further, we will not be able to meet our basic statutory responsibilities in the areas of ethics, labor relations, regulatory and legislative review.

Again, thank you for carefully considering these requests. If you have any questions prior to our upcoming meeting, do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Renkes", written in a cursive style.

Gregg D. Renkes  
Attorney General

# Department of Law



FY 2005 Operating Budget



# Department Profile

- The Department of Law seeks to assure the safety and health of Alaskans by prosecuting and convicting criminal offenders in Alaska and by seeking to protect vulnerable Alaskan children from neglect and abuse.
- The Department of Law provides legal advice and represents the state in all actions in which it is a party
- The Department of Law works to resolve questions of state versus federal control and management of natural resources and lands
- The Department of Law seeks to ensure the state receives its correct share of oil and gas taxes and royalties.
- Provide oversight of the public advocacy function in the regulation of utilities and pipelines in Alaska

# Core Services

- Criminal Prosecution
- Juvenile Crime Prosecution
- Victim Restitution/Victim Witness Assistance
- Child Protection
- Consumer Protection and Antitrust Enforcement
- Oil & Gas: tax, royalty, tariffs and resource development
- Statehood Defense and State Sovereignty
- Office of the Governor
- Executive Branch Ethics Act
- Elections
- Legislation and Regulations
- Agents of Change

## Summary FY 2005 Operating Budget Request

### Office of the Attorney General

- One new Legislation and Regulations Attorney

### Criminal Division

- Six new prosecutors

### Civil Division

- Four CINA attorneys, One CINA Paralegal
- Two Labor and State Affairs Attorneys
- One Ethics Act Attorney
- One Juvenile Delinquency Attorney

# Conference of Western Attorneys General 2003

## Review of the Department of Law

The 2003 CWAG Review Team's goal was to identify strengths and weaknesses of the Department and recommend improvements. Such a review had not been conducted since 1996. The following key recommendations were made and implemented:

- Development of a clean, clear, leaner reporting structure in the Civil Division. Eleven previously existing sections were consolidated into nine with statewide supervisors and a single statewide office chief replaced the previous geographic specific scheme for office chiefs and supervising attorneys
- Adoption of policies for closely evaluating and limiting the use of outside counsel
- Active recruitment for new attorneys
- Institution of a department-wide summer law clerk program
- Revised procedures for settlement
- Creation of a new Opinions, Appeals and Ethics section to provide centralization and standardization in these three areas

Recommendations yet to be implemented:

- Handling of the juvenile delinquency caseload is being transferred from the Civil Division to the Criminal Division effective March, 2004

# Criminal Division

Six new GF Criminal Division attorneys:

Kenai DA's Office - one

Anchorage Sexual Crimes Unit - one

Anchorage Violent Crimes Unit - one

Anchorage Property Crimes Unit - one

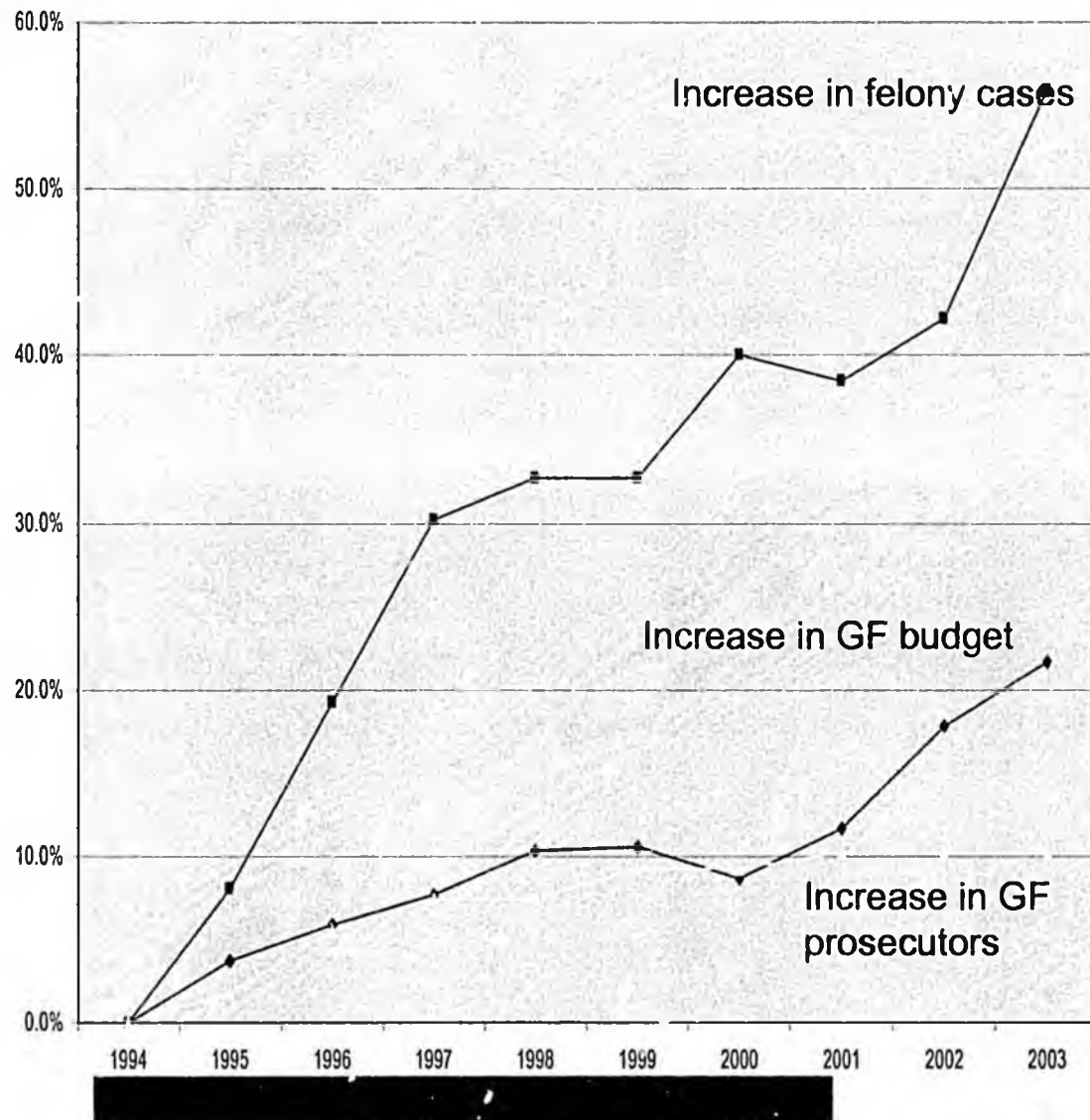
Anchorage Appeals Unit - two (misdemeanor appeals and post-conviction relief)

Two new attorney positions under federal grants

Anchorage (gun violence)

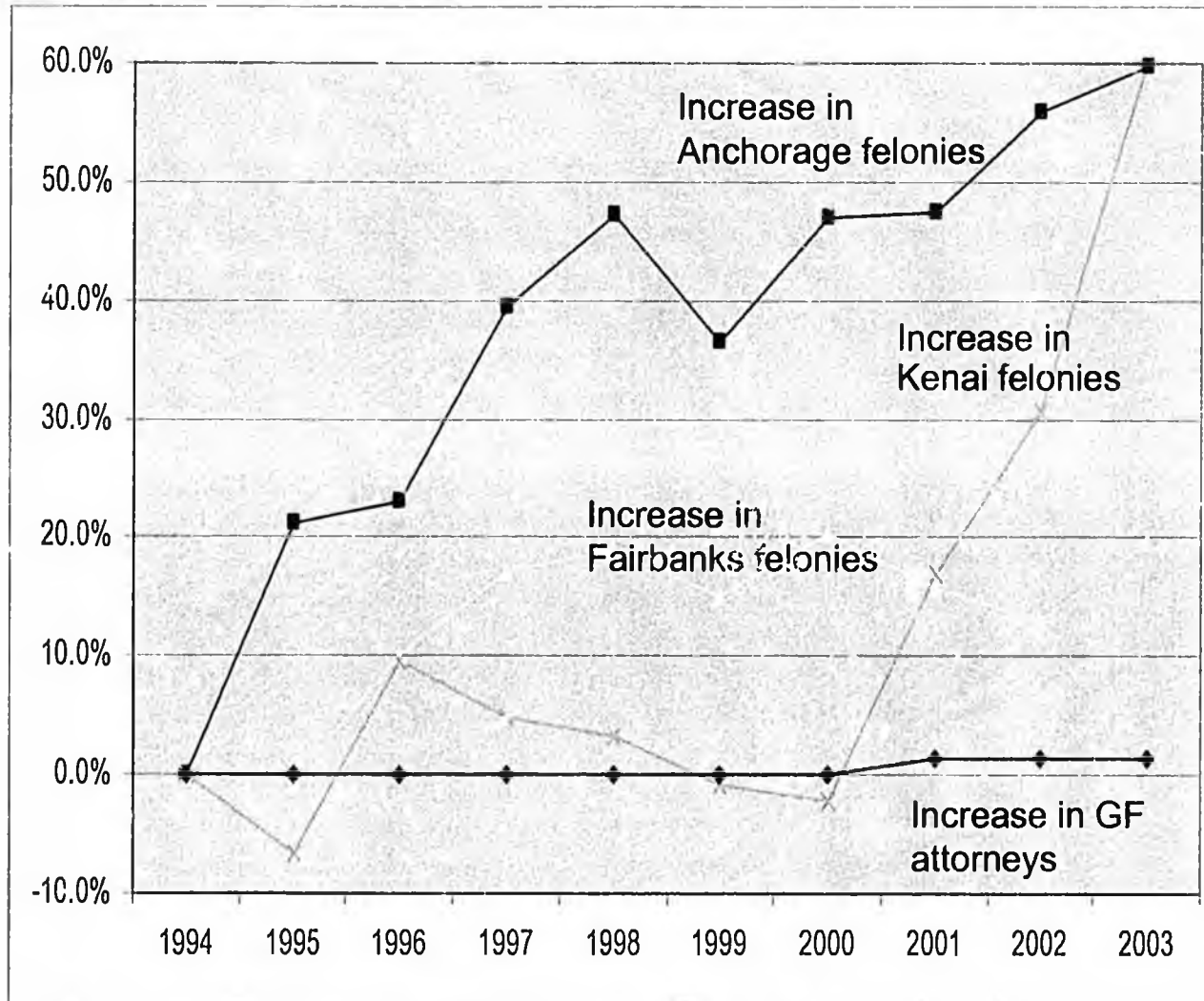
Fairbanks (drug cases)

## For over a decade, resources have not kept pace with criminal caseloads



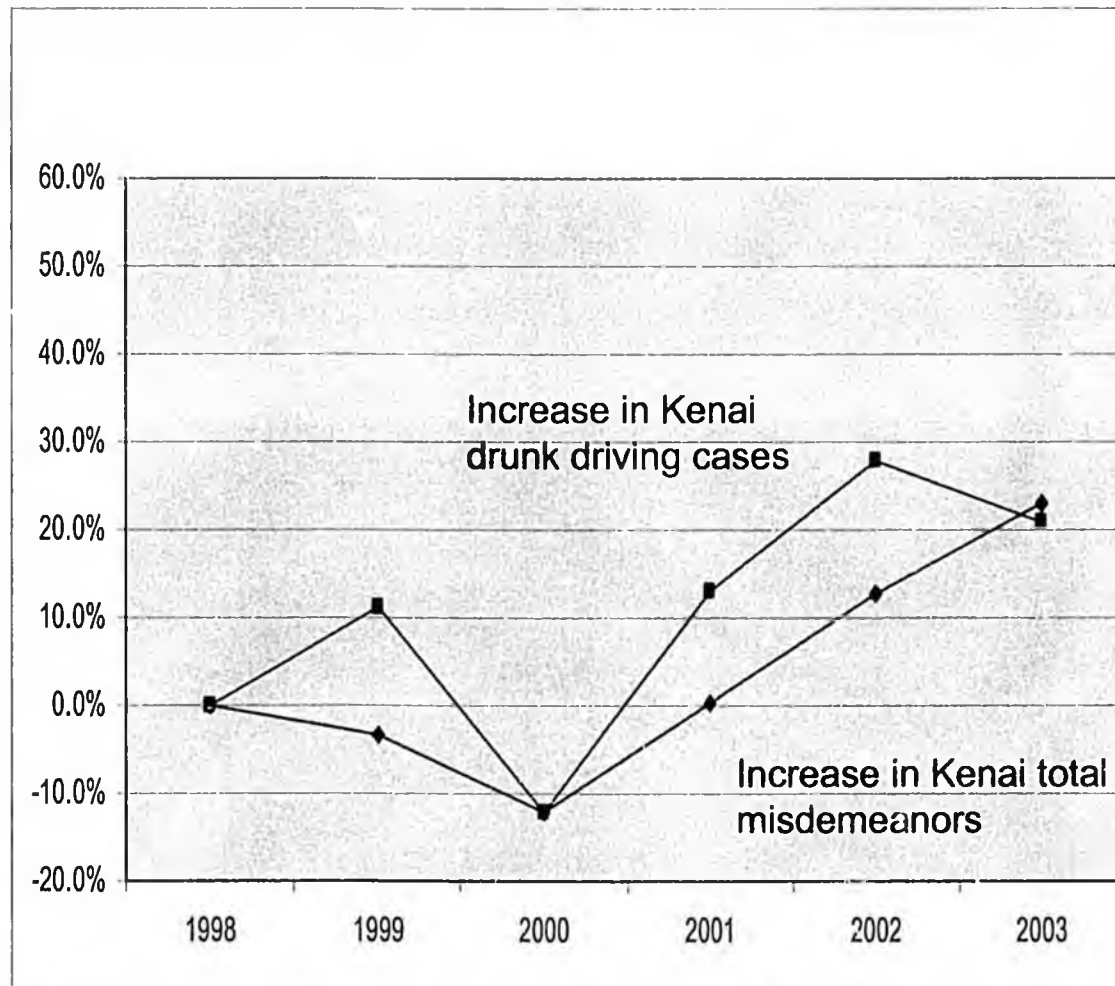
- 56% statewide increase in felony cases: 6400 new felonies and 2300 probation revocations  
**(Three quarters of Criminal Division resources are devoted to felony cases)**
- Only 22% increase in general funds for prosecution offices
- Only 10% increase in general fund prosecutor positions

## The greatest need is in Kenai, Anchorage and Fairbanks District Attorney Offices



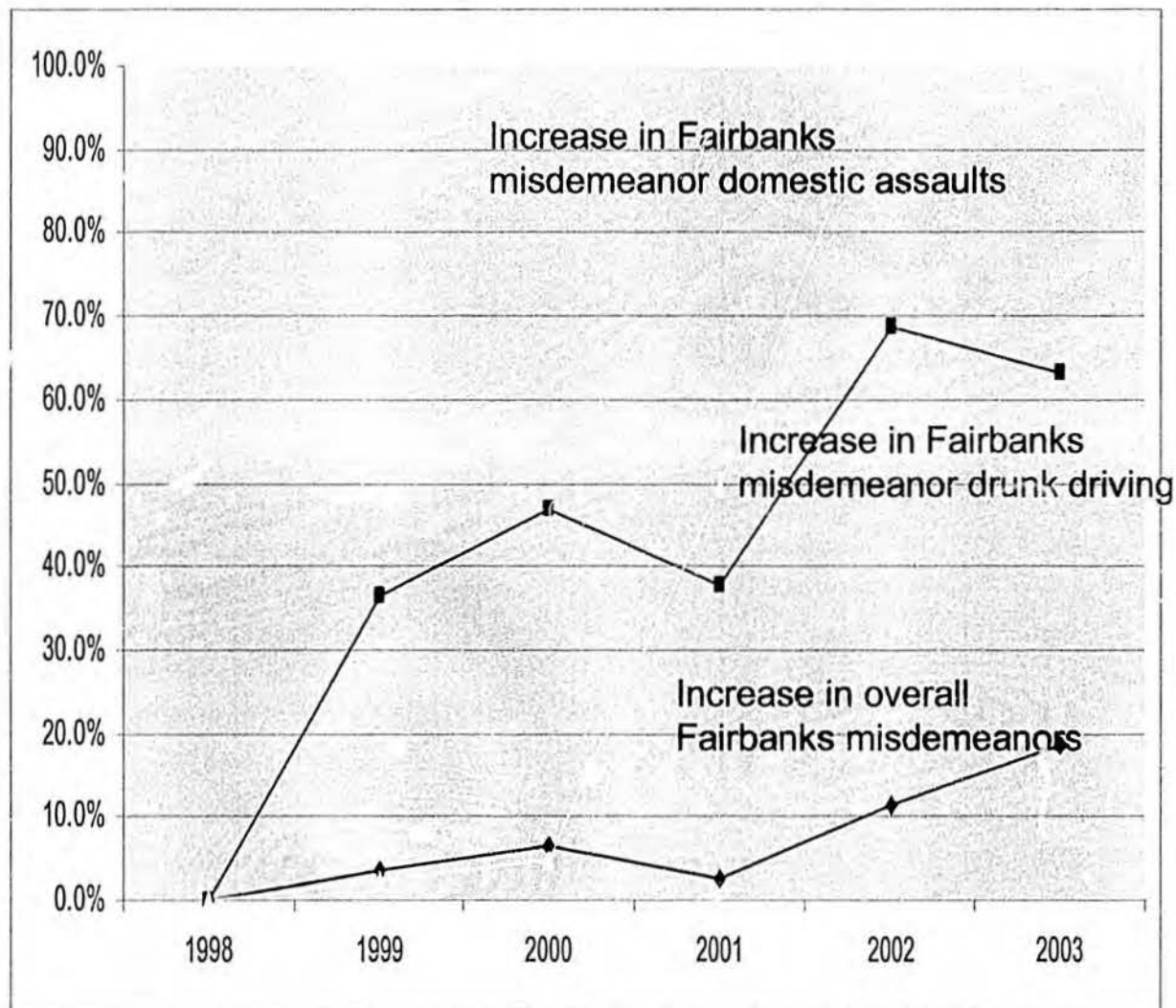
- 60% increase in Anchorage and Kenai felonies
- 20% increase in Fairbanks felonies
- These three locations have received a total increase of only one-half attorney position in the last decade from the general fund

## The Kenai District Attorney's Office handles all misdemeanors on the Kenai Peninsula



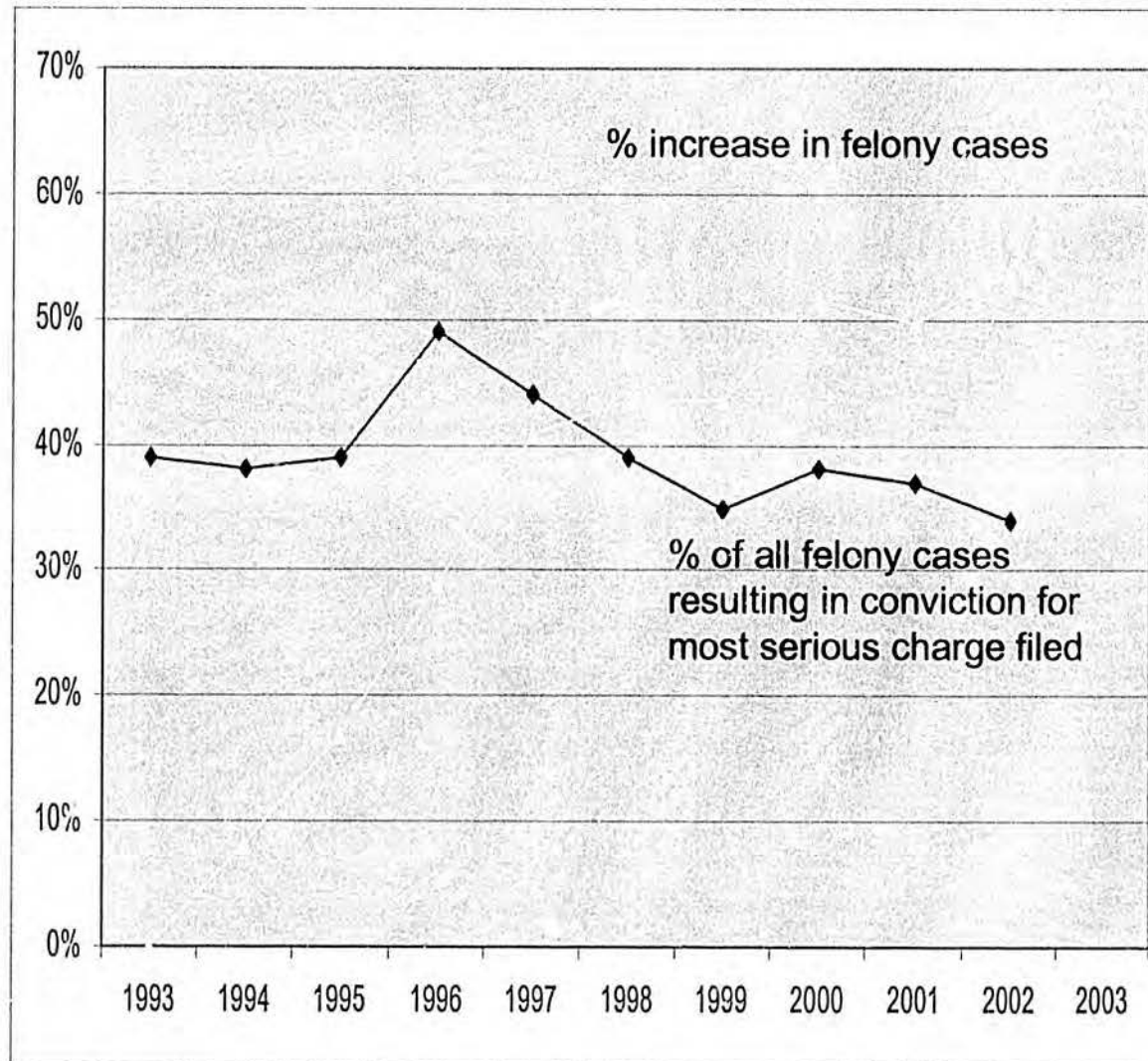
- In addition to more than 700 felony cases, the four-attorney Kenai office gets over 600 misdemeanor drunk driving cases and 3000 total misdemeanors, and thus the highest caseload per attorney

## Fairbanks District Attorney's Office handles all misdemeanor cases in central Alaska



- Domestic assault cases doubled to over 600 when the city repealed its ordinances
- More than 1000 drunk driving cases are handled annually by the Fairbanks office
- **Overall, the Fairbanks office handles over 4500 misdemeanor cases each year in central Alaska, in addition to 1200 felonies**

## The consequence of higher caseloads and static resources: Fewer convictions and convictions for lesser charges



- As caseloads increase, more felony cases are plea-bargained to lesser felonies or misdemeanor charges.
- From a high of 49% in 1996, only 34% of felony offenders are now convicted of the most serious charge filed

## **Anchorage DA's Office: Sexual Crimes Unit**

57% increase from 106 cases in 2000 of sexual assault and child sexual abuse to 166 cases in 2003. The unit also handles dozens of sex-related felonies such as child pornography and sex offenders who fail to register.

One new attorney is needed.

## **Anchorage DA's Office: Violent Crimes Unit**

46% increase from 414 violent felonies in 1993 to 605 cases in 2003. This includes murder, manslaughter, attempted murder, kidnapping, shootings, stabbings and armed robbery.

One new attorney is needed.

## **Anchorage DA's Office: Felony Property Crimes Unit**

Three attorneys were assigned to handle over 800 new felony property crimes in Anchorage in 2003 (burglary, theft and malicious destruction) plus over 100 miscellaneous felonies, such as escapes from prison and felons possessing handguns. This is an increase of over 200 cases in just two years.

One new attorney is needed.

## **Anchorage Appeals Unit: Misdemeanor appeals and Post-conviction relief**

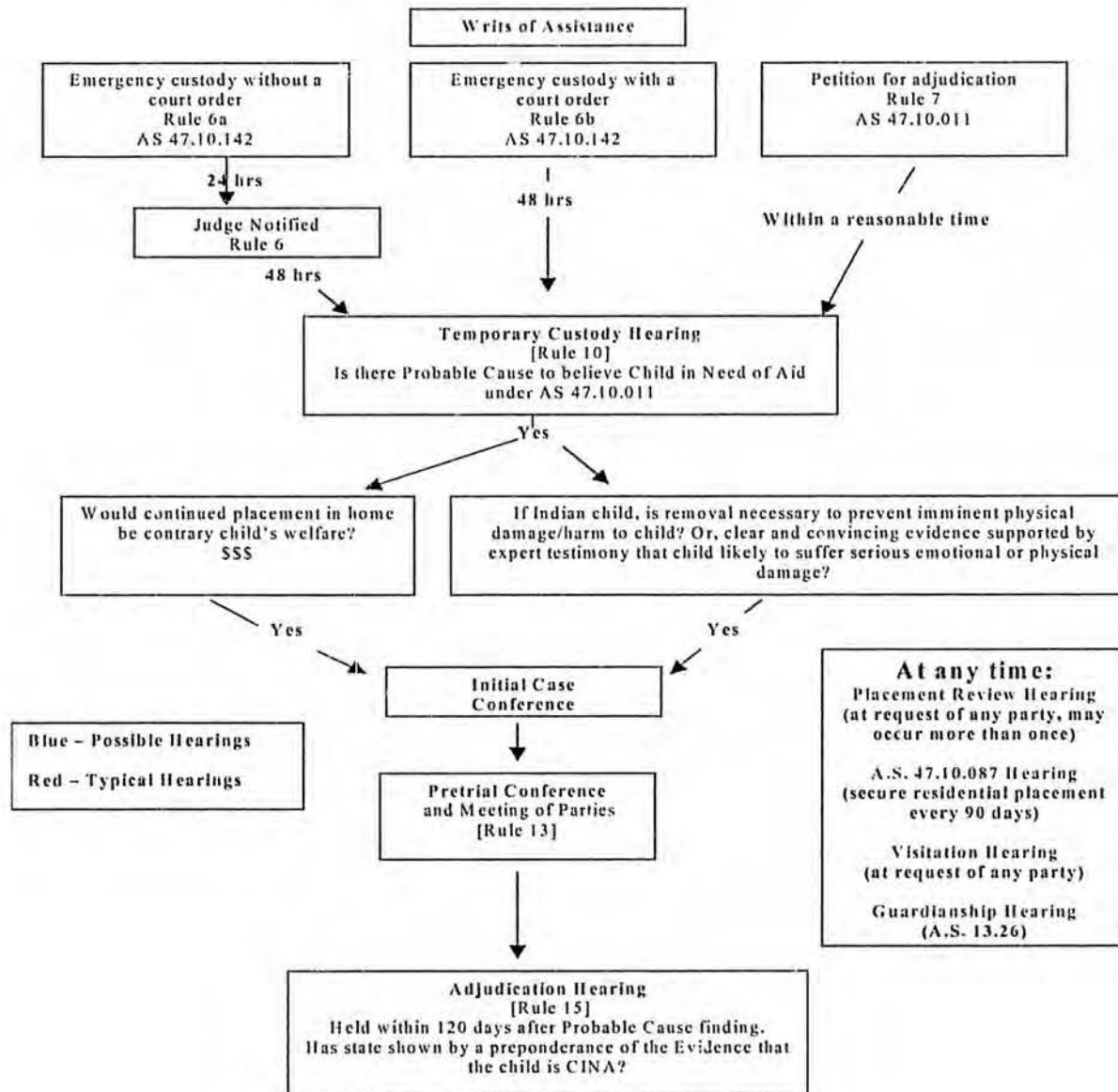
Misdemeanor appeals and post-conviction relief (in other words, a second chance for an appeal) are matters that take valuable time away from busy district attorney offices. By handling those cases in the Criminal Division's appellate office in Anchorage, all DA offices across the state will benefit.

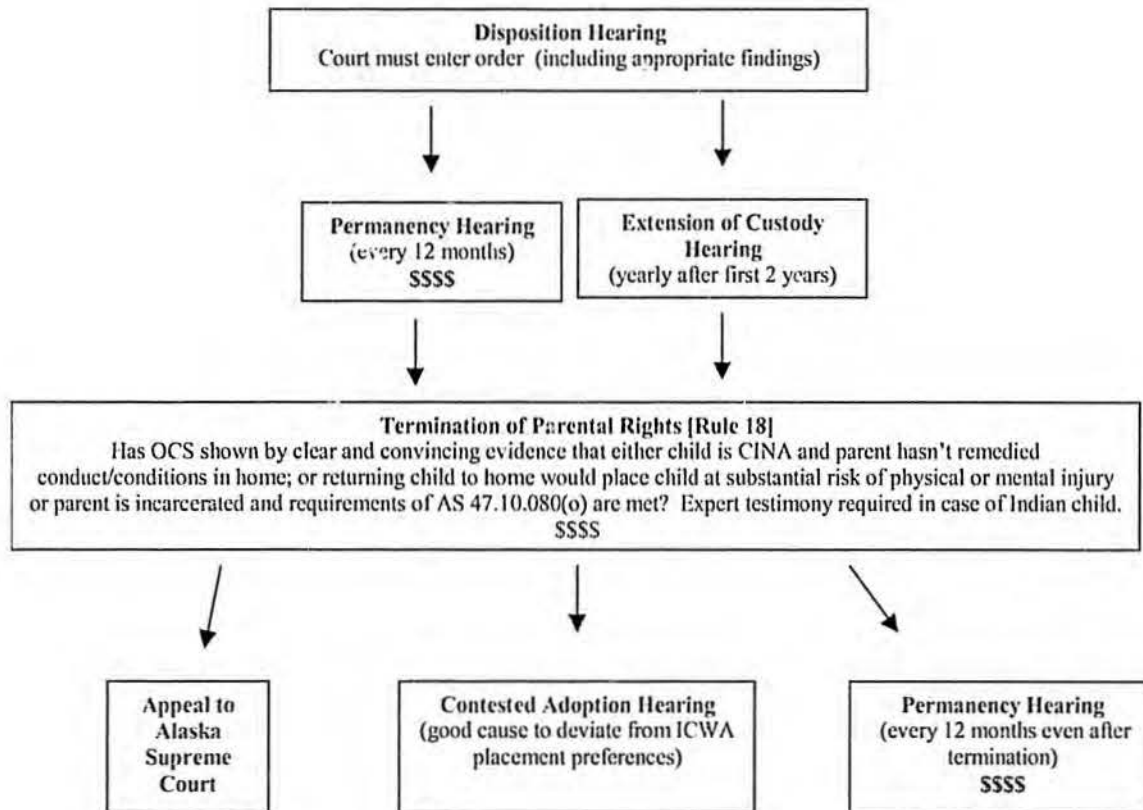
Two new attorneys are needed.

# Civil Division

- Child Protection
  - Three child protection attorneys
  - One child protection appellate attorney
  - One child protection paralegal for Fairbanks
- One attorney for juvenile delinquency
- One attorney for labor relations
- One attorney for Ethics Act
- One attorney for state affairs

## Child in Need of Aid Proceedings





Blue – Possible Hearings  
Red – Typical Hearings

## Child Protection Challenges

- Cases are constantly changing in terms of facts, circumstances, and the needs of children and family
- Numerous parties and participants with competing interests
- Expert testimony required
- Child testimony often required
- Additional hearings required by Adoption and Safe Families Act in order for DHSS to obtain federal funding
- Stress factor

## Physical Abuse Cases

- Shaken babies – subdural hematomas, retinal damage, permanent injuries, death
- Broken bones – usually infants and toddlers; not consistent with accidental trauma
- Beaten children – bruised and swollen faces and bodies, cuts and scrapes; child stoned by her parent
- Unnecessary medical procedures – parent insisted on unnecessary and unwarranted feeding tube
- Siblings killed by a parent or partner of a parent
- Starved, emaciated children, failure to thrive
- Children restrained, locked up or held in captivity within portions of a home for lengthy periods of time

## Substance Abuse Cases

- Children found in home containing methamphetamine labs or in close proximity to drugs, medicine, drug paraphernalia, dangerous items or substances while the parent is incapacitated
- Mother smothered infant while intoxicated, siblings removed
- Parents driving intoxicated with children in the car
- Parents leaving children, including infants, unattended while they use alcohol/drugs
- Domestic violence witnessed by children
- Abandoned children, sometimes at the hospital after birth, sometimes with relatives who seek OCS assistance
- Children testing positive for cocaine at birth, numerous cases of cocaine positive children born to same mother
- Children required to care for younger children as a result of incapacitated parents
- “Dirty house” cases – feces, exposed wires, chaotic living environment
- Habitual criminals, incarcerated parents

## Sexual Abuse Cases

- Sexual abuse by parents, relatives, or friends of parents
- Sexual abuse of children too young to testify
- Sexually abused children with unsupportive parents who chose the perpetrator over the child
- Sexual abuse by a sibling, unsupportive parents
- Parent who coaches or encourages child to make untrue allegations of sexual abuse for the parent's own purposes

## *S.H. v. State*, 42 P.3d 1119 (Alaska 2002)—

### S.H. v. State

10 years of suspected child abuse were finally substantiated in 1997 in an incident involving a meat cleaver during which intoxicated male parent, R.H. assaulted his wife, S.H, and two of the five children in the home. Less than three weeks later, DFYS received a report that the couple's 7 year old daughter was sexually molested and another child was assaulted when S.H., the female parent, invited a couple she had met on a dating chat line to her house to engage in sexual activities. In spite of these events the children were allowed to stay in the home until 1999 until it became clear that domestic violence and substance abuse were still taking place in the home. S.H. did not comply with treatment and R.H. did not stay away from the home, as was required under the case plan. It was soon learned that R.H. and S.H. were using crack cocaine and smoking cigarettes in the home, something that was prohibited because two of the children had asthma. Finally the children were removed from the home. A trial was needed because the parents refused to voluntarily relinquish parental rights. Parental rights were terminated. The decision was appealed, and upheld on appeal.

The couple's five children were 13, 9, 7, 6, and 5 years of age at the time of termination. All of them exhibited serious signs of trauma and behavioral disorders as a result of their lives in an abusive home. The lone female child exhibited signs of sexual abuse.

***Ruby A. V. DFYS, 2003 WL 23018276 (Alaska  
2003) MO&J***

Ruby already had three children, Mona, Shari, and Jim when she met Lloyd in 1996. Mona reported that Lloyd sexually abused her. Lloyd was jailed on a DWI charge and after his release, went to Texas. DFYS took temporary custody of the children, but that lapsed after three months and the children returned to Ruby's custody. Soon after, Mona reported a family friend, who was ultimately convicted of that charge, had sexually abused her. DFYS took custody of Mona but she was returned to Ruby in 1999. Two years later, Lloyd returned to Alaska and moved in with Ruby and her children. By then Ruby had another child. In a long and drawn out process, the children were removed from the home because of Lloyd's sexually abusive conduct and Ruby's unwillingness to protect her children from Lloyd. Another child was born in 2002, but because Ruby and Lloyd were still together, this child was also taken into custody – requiring another lengthy trial and appeal process.

## ***J.H. v. DFYS, 30 P.3d 79 (Alaska 2001)***

Jenny was born prematurely and tested positive for cocaine in July 1996. Jenny's mother, Jane, had a long history of abusing drugs, becoming involved with abusive men, and neglecting her children. By age 18, Jane was addicted to cocaine. She had repeatedly participated in drug treatment, but continued to relapse. By the time Jenny was born, Jane had already had 4 sons, all born cocaine-exposed, none of whom were in her care. DFYS sought custody of Jenny, which was granted. Jane was arrested a month after Jenny's birth and convicted for felony possession of cocaine. As in the past, DFYS attempted to get Jane to participate in substance abuse treatment and counseling related to past victimization and sexual abuse.

Shortly thereafter, Jane became pregnant by Denver, a man she met while in jail. Denver had a criminal record and abused alcohol. Jane gave birth to another child, Carrie, in April 1998 and shortly thereafter completed residential treatment and actively participated in other treatment.

Because experts believed that Jane was high risk for relapse, and the fact Jenny had spent more than 22 months in continuous foster care, DFYS changed its permanent goal in for Jenny to adoption. The trial to terminate parental rights took place over the course of 28 days ending in the fall of 1999. During the course of the trial, Jane did relapse, and so custody was assumed of Carrie. The court terminated parental rights, finding that Jane had a long-standing history of substance abuse, a pattern of treatment followed by relapse, and continued relationships with violent men who participated in criminal activity related to drugs. The court also found that she was at high risk of relapse and that she was unable to recognize how her behaviors affected her children or the impact on Jenny if she were removed from her long-term foster home. An appeal followed, and the decision was upheld by the Alaska Supreme Court.

**Frank E. v. DFYS, 77 P.3d 715  
(Alaska 2003)**

In November 2000, police raided a home, on a report that F.E. and A.E. were operating a meth lab. They found methamphetamine cooking on the stove, filling the apartment with toxic vapors. F.E. was sitting in a chair with the toddler Br.E. on his lap, and a syringe containing methamphetamine in the cushion. The apartment was filthy, with knives and razor blades accessible to the children. Dirty clothes, dishes and dog food were strewn throughout the home. The dog food was apparently fed to the children, as the family had no dog.

OCS assumed custody of the four children in the home. After both parents stipulated that the children were children in need of aid, they were placed with their paternal grandmother. The mother abandoned the children, and the father began serving a four-year sentence. OCS pursued termination of parental rights. Shortly before the termination trial, and during father's incarceration, two of the minor children disclosed that the father sexually abused them.

A one week contested termination trial was held in June 2001. At the conclusion of the hearing, the court postponed the trial for seven months, so that it could determine if father could complete a substance abuse treatment program and remedy his conduct. When the trial reconvened in February 2002, the father was still being held pending trial on the sex abuse charges. The court took testimony concerning the programs and classes that father was participating in, and again continued the termination hearing, this time to await the results of the criminal trial. Shortly thereafter, father was convicted of sexually abusing his daughters.

In July 2002, the court terminated father's parental rights based on continued incarceration, his failure to remedy either substance abuse problem, and his violent tendencies. Father appealed the termination order and criminal conviction. In 2003, the Alaska Supreme Court affirmed the termination of parental rights.<sup>27</sup>



## Child Protection Appellate Attorney

- The department has 25 child protection appeals at any given time. A manageable child protection appeals caseload is half that amount.
- An additional appellate attorney in this area will further consolidate appeals and achieve significant improvement in the state's performance in the appellate arena because cases are better briefed and argued, and the implications of appellate decisions are clearly and quickly communicated statewide - to attorneys, and OCS.

## The consequence of static resource in Child Protection

- Heavy caseloads result in missed deadlines and risk loss of federal funds
- Fewer social workers and child protection attorneys to protect Alaska's children from neglect and abuse
- Child protection attorneys burn out and quit - high vacancy and heavier caseloads result
- Potential fiscal sanctions

## Juvenile Delinquency

- Federal Juvenile Accountability Block Grant funds available through an RSA with H&SS were eliminated, resulting in the loss of one JD attorney.
- Services to DJJ were seriously reduced in Kenai and Anchorage. Personnel in the DJJ are very concerned about this reduction, claiming that they need more attorneys to represent them, not fewer.

## Ethics Act Attorney

- The Executive Branch Ethics Act requires the AG to carry out a wide variety of functions including all boards and commissions and post-state employment issues of all former state employees for a two-year period after they leave state service.
- Legal Functions Include:
  - Investigating and acting on complaints filed under the Ethics Act
  - Rendering of written and oral advice on ethics issues
  - Preparing written opinions on ethics issues
  - Analysis and recommendations on gift disclosure and outside employment disclosure
- Currently an unfunded mandatory body of work assigned to an attorney with other responsibilities

## Labor and State Affairs Attorney

- Steady increases in the frequency and complexity of lawsuits and other disputes involving labor and employment issues increase demand on current staff
- State's budget issues are likely to lead to further increase demand on the section
- Changes and reorganization of government will further necessitate legal assistance and response to challenges to budget decisions made that impact employees and recipients of state services
- Two attorneys are needed to provide the timely advice that other state agencies need to make sound labor and employment decisions, and to represent state agencies effectively in court.

## Legislation and Regulations Attorney

- Located in the Office of the Attorney General
- Staff of 2 attorneys and three other staff positions compared to Legislative Affairs Agency with 7.5 attorneys and 15 other staff positions
- Deadlines set by statute or uniform rules
- Section is critical achieving the Governor's goals
- Better and faster legal review and drafting of regulations as well as legislation

# Summation

- Department has been underfunded over a long period of time
- Difficulty meeting statutory responsibilities
- Thorough review by Department and CWAG has identified some cost efficiencies which were implemented, but has been unable to eliminate any significant body of work without jeopardizing core responsibilities

# Department of Law Contacts

- Gregg Renkes, Attorney General 465-2133
- Scott Nordstrand, Deputy Attorney General Civil Division  
465-6179, 269-5100
- Susan Parkes, Deputy Attorney General Criminal Division  
269-6379
- David Marquez, Legislative Liaison 465-2132
- Kathryn Daughhete, Director, Administrative Services  
465-3673



GREGG D. RENKES  
ATTORNEY GENERAL OF ALASKA

February 26, 2004

The Honorable John Harris, Co-Chair  
House Finance Committee  
Alaska State Legislature  
State Capitol, Rm. 505  
Juneau, AK 99801-1182

The Honorable Bill Williams, Co-Chair  
House Finance Committee  
Alaska State Legislature  
State Capitol, Rm. 515  
Juneau, AK 99801-1182

Re: Department of Law Fiscal Year '05 Budget

Dear Chairman Harris and Williams:

Thank you for the upcoming opportunity to meet with the House Finance Committee. As we approach fiscal year 2005, I'd like to share my concerns about the challenges and opportunities facing the Department of Law, while acknowledging that these are difficult times to ask for additional resources.

One of the core responsibilities of our state government is to protect the safety of the public. Sadly, we are currently not meeting this responsibility. During his campaign for election, Governor Murkowski recognized that a lack of commitment by the past administration had left Alaskans more vulnerable to crime, particularly women and children. At the Governor's direction I have proposed a budget that will allow us to address the most severe and urgent public safety needs. Overall, the effect of the House Finance Subcommittee reduction leaves the Department in the position where it cannot fund the Governor's priorities to increase criminal prosecution and protect children in Alaska. In fact, the overall impact of the subcommittee's action reduces Law's general funds below the FY 2004 level. This is of paramount concern to me because the same House Subcommittee fully funded the Department of Public Safety's request for 20 new state troopers, supplying public safety protection tools to a portion of the state's criminal justice team while at the same time effectively reducing our ability to protect the public from the worst offenders. It is the women, children and neighborhoods of our state that will suffer should this budget decision stand.

As you prepare the Finance Committee's version of the operating budget, I wanted to review key requests for funding reflected in the Governor's FY 2005 budget and compare them to the changes the House Subcommittee made in developing the Department of Law's budget.

### CRIMINAL DIVISION

In the last 10 years, felony caseloads for our prosecutors increased 56% statewide. In that same period, General Funds to the Criminal Division increased only 22%. Due to increased benefit costs and other fixed increases, the 22% increase resulted in only a 10% increase in the number of actual General Fund prosecutor positions. To deal with the overwhelming caseloads, while still aggressively prosecuting high priority crimes, more lower priority cases are being plea-bargained to lesser felonies or misdemeanor charges. In 1996, 49% of all felony offenders were convicted of the most serious charge filed. In 2003, that number dropped to 34%. Additionally, the increased stress on our prosecutors leads to a high turnover rate, putting additional pressure on the offices to find ways to manage the caseloads, and that often means dismissing or reducing charges.

To reverse the statewide trend toward higher caseloads, we are requesting two new attorney positions in the Office of Special Prosecutions and Appeals to take over misdemeanor appellate and civil litigation duties that currently burden all local district attorney offices. These cases are better handled by attorneys trained in appellate procedure, thereby leaving front-line prosecutors available for court proceedings.

FY 2005 Governor's Request - \$236,400 GF  
FY 2005 House Finance Subcommittee Funding - None

The House Subcommittee also eliminated the funding for Victims for Justice and adopted the Governor's budget reversal of a number of one-time special appropriations not in the Department's base budget.

There are two other areas where the situation is particularly critical: Kenai and Anchorage.

#### A. Kenai District Attorney's Office

The Kenai District Attorney's office has the highest caseload per attorney in the state. In the last 10 years, the Kenai felony caseload increased 60%, most of that coming in just the last four years. The misdemeanor caseload is also on the rise. This four-attorney office handles 700 felonies and 3000 misdemeanors per year, 600 of which are drunk-driving cases.

To begin to address the serious need in the Kenai District Attorney's Office, we are requesting one additional General Fund attorney position in Kenai.

FY 2005 Governor's Request - \$125,200 GF  
FY 2005 House Finance Subcommittee Funding - None

B. Anchorage District Attorney's Office

In Anchorage, the felony caseload has increased 60% since 1993. Particularly disturbing is the Sexual Crimes Unit's caseload increase: since 2000, these cases have increased by 57%. Sexual assault cases are some of the most difficult and resource-intensive. The Violent Crimes Unit also saw a sharp caseload increase from 414 violent felonies in 1993 to 605 cases in 2003; a 46% increase. The Property Crimes unit is extremely overburdened; the unit currently has three attorneys handling a felony caseload of 900 new cases per year. The only way for prosecutors to manage such difficult work loads is to dispose of cases the most expeditious way possible. It is the victims of crime that suffer.

To adequately address the Anchorage community's public safety needs, we are requesting three new General Fund attorney positions, one for each of the above named units. Additionally, we are requesting one federally funded gun prosecutor, freeing General Fund resources to be directed to other high priority cases.

FY 2005 Governor's Request - \$383,600 GF, \$120,000 Federal Funds  
FY 2005 House Finance Subcommittee Funding - No General Funds,  
\$120,000 Federal Funds

CIVIL DIVISION

A. Protecting Children

Child-in-Need-of-Aid (CINA) cases are among the most stressful and difficult cases undertaken by the Department of Law. The caseload facing CINA lawyers, particularly in Anchorage and Bethel, is far in excess of the national standard of 100 children per attorney. The paralegal and appellate support provided to those attorneys is inadequate. Specifically, Fairbanks has no paralegal support for three CINA attorneys. Only Anchorage has the benefit of a dedicated attorney to handle CINA appeals. These pressures, combined with relatively low attorney pay, result in high turnover and vacancy rates of attorneys doing CINA cases.

In response to this crisis, we propose three additional CINA attorneys to relieve the Anchorage and Bethel caseloads, one attorney to cover statewide CINA appeals, and one paralegal to support the Fairbanks CINA attorneys.

FY 2005 Governor's Request - \$644,200 GF

FY 2005 House Finance Subcommittee Funding - \$467,700 GF

B. Juvenile Justice

Delinquency cases involve representation of the Division of Juvenile Justice (DJJ) in prosecuting juvenile delinquents.<sup>1</sup> Generally, the number of cases our office handles is commensurate with the number of attorneys available. Given current staffing levels, DJJ receives legal assistance in only about 17% of cases.

In FY 2003, the Department of Law had two full time and one half time attorney positions handling juvenile delinquency cases in Anchorage and Kenai. One of those attorneys was financed by an RSA with DHSS using funds from the federal Juvenile Accountability Incentive Block Grant (JAIBG). The JAIBG money was cut for FY 2004, resulting in the loss of one position. Services to DJJ were seriously reduced in Kenai and Anchorage.

We are requesting one new delinquency attorney position in Anchorage. This will restore a delinquency position lost in FY 2004 and give us the ability to restore attorney representation in the most serious juvenile delinquency cases in the Anchorage and Kenai area.

FY 2005 Governor's Request - \$112,200 GF

FY 2005 House Finance Subcommittee Funding - None

C. Ethics Attorney

The Executive Branch Ethics Act requires the Attorney General to carry out a wide variety of functions for the implementation and enforcement of the Ethics Act for

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<sup>1</sup> The Civil Division handles delinquency cases in some parts of the state but not in others. The Anchorage office handles delinquency cases in Anchorage, Kenai, and Dillingham. The Fairbanks office handles Fairbanks and Barrow delinquency cases. The Bethel office handles delinquency cases in that region. In all other areas of the state, the Criminal Division is responsible for handling juvenile delinquency cases. In order to unify administration, in March, 2004 the Civil Division will transfer its delinquency caseload to the Criminal Division, along with all the resources it presently utilizes in that regard.

the executive branch of state government, including all boards and commissions and post-state employment issues of all former state employees for a two-year period after they leave state service. Ethics Act advice, investigations, follow-up, and training must be provided in a timely manner to facilitate agency decision making, to prevent potential problems, and to ensure sound enforcement of the law.

In the past administration, only a fraction of one attorney's time was dedicated to this important responsibility. The remaining ethics work was parceled out to other attorneys. While the ethics attorney's tasks may occasionally exceed a single attorney's capabilities, the Department of Law does not presently have even that capacity. The attorney presently assigned to handle Ethics Act functions is also assigned to work on Indian Law issues. Given the volume of work in both areas, we are unable to give either the attention they require.

**We are requesting the addition of one attorney position dedicated entirely to Ethics Act responsibilities.**

**FY 2005 Governor's Request - \$112,200 GF  
FY 2005 House Finance Subcommittee Funding - None**

**D. Labor Relations and State Affairs**

Steady increases in the frequency and complexity of lawsuits and other disputes involving labor and employment issues has increased attorney demands in the Civil Division's Labor and State Affairs Section. The state's current budget challenges will likely lead to further increases in labor and employment disputes requiring legal assistance.

Presently, all the contracts with the state's employee unions are under negotiation. In recent years, the Department of Law provided little direct advice regarding labor negotiations and administrative proceedings related to those contracts. We view that approach as unwise and are undertaking to provide legal support to the negotiating teams in the Department of Administration through a short-term RSA. To maintain that support, we must add an attorney position to the FY 2005 budget.

The Labor and State Affairs Section also suffers from the sheer enormity of the legal advice required to support the administration's initiatives. The Department of Law is the "agent of change" in government; recent state governmental changes require our attorneys' active participation. We simply need more help to support the process.

**Two additional attorneys are necessary to provide labor relations and government reform advice to the Governor and Executive Branch agencies.**

**FY 2005 Governor's Request - \$164,800 GF**  
**FY 2005 House Finance Subcommittee Funding – None**

**E. Legislation and Regulations (Executive Office of the Attorney General)**

The Legislation and Regulations Section reviews and edits all legislation and executive orders for the Office of the Governor, edits amendments to bills during the session, reviews and edits bill reviews for the Governor's consideration for action on passed legislation, prepares veto messages, edits administrative orders, and reviews and edits regulations for legal sufficiency. In addition, this section responds to a myriad of requests for legal assistance and advice surrounding the governor's legislation, regulation drafting, and public records and the Open Meetings Act requests.

The Legislation and Regulation Section's work requires professional research, drafting, and editing under high stress within tight timelines. Many of the section's deadlines are set by statute or uniform rules of the Alaska State Legislature. Also, many requests from the Office of the Governor have strict deadlines requiring immediate legal services for preparing amendments to discuss with legislators and stakeholders.

The Alaska Supreme Court requires that virtually all major policy decisions by state agencies not already in statute be established by regulation. Timely and thorough regulation reviews are necessary to avoid successful legal challenges to major policy reforms. Because of the volume of work during the legislative session to address requests of the Office of the Governor and coordinate legislative responses, the entire burden of regulation attorney work falls on one Assistant Attorney General during the session. The Legislation and Regulations Section needs an additional attorney position to fulfill its responsibilities for professional and statutorily required standards.

**FY 2005 Governor's Request - \$147,400 GF**  
**FY 2005 House Finance Subcommittee Funding – None**

**DEPARTMENT WIDE**

**A. Rising Costs of Personal Services**

The cost of benefits for existing personnel is expected to increase sharply in FY 2005. In order to minimize the cost impact, the Department of Law deleted a number of long-standing vacancies. The House Subcommittee 20% reduction amounts to \$266,700.

**FY 2005 Governor's Request - \$1,360,100 GF**  
**FY 2005 House Finance Subcommittee Funding – \$1,093,400 GF**

**B. Other Actions Taken by the House Subcommittee**

In addition to denying certain increments and partially funding others, the House subcommittee adopted a number of other budget cuts:

1. A 25% reduction to the travel line item – a reduction of this magnitude is not sustainable. The bulk of the department's travel is mandatory for witnesses, depositions, court appearances and proceedings. The Criminal Division would be hardest hit by this reduction.

**FY 2005 Governor's Request – No reduction**

**FY 2005 House Finance Subcommittee Funding – \$292,700 GF reduction**

2. Elimination or reduction of personal services costs in three areas:
  - a. In accordance with recommendations made by the Conference of Western Attorneys General, supervision of Civil Division sections was consolidated. New statewide supervising attorneys were moved up one salary range in order to reflect their significantly increased supervisory responsibilities. The House Subcommittee cut the funds for the one range increase.
  - b. The Attorney General reclassified a special assistant position downward to an Associate Attorney and tasked that individual with media and communications responsibilities. Most state agencies have at least one position doing this type of work. The House Subcommittee cut the funds for the salary and benefits associated with the position.
  - c. The subcommittee inexplicably cut all funding for the salary and benefits for the Deputy Attorney General component in the Civil Division, effectively zeroing out the personal services line item.

Net effect:

**FY 2005 Governor's Request – No reduction**

**FY 2005 House Finance Subcommittee Funding – \$268,300 GF reduction**

**CONCLUSION**

My review of the Department of Law over the course of this last year has revealed an agency that does not have sufficient funding to meet its basic statutory responsibilities. We carefully evaluated the Department's resources over the last year and concluded that no amount of reorganization or prioritization can address the funding shortfalls. The House Subcommittee's budget if enacted will leave us even further from the Governor's goals of improving public safety and protecting children from harm. Further, we will not be able to meet our basic statutory responsibilities in the areas of ethics, labor relations, regulatory and legislative review.

Again, thank you for carefully considering these requests. If you have any questions prior to our upcoming meeting, do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg D. Renkes", written in a cursive style.

Gregg D. Renkes  
Attorney General