

11451 HOUSE JUDICIARY



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House Judiciary

January 12, 2005

THE DEPARTMENT OF PUBLIC SAFETY IS COMPRISED OF:

- Alcoholic Beverage Control Board (ABC)
- Council on Domestic Violence and Sexual Assault (CDVSA)
- Alaska Police Standards Council (APSC)
- State Crime Lab
- Statewide Information Services
- Records and Identification
- Sex Offender Registration
- Concealed Carry Permits
- Security Guard and Process Server Licensing
- State Fire Marshal
- Alaska State Troopers
- Alaska Bureau of Wildlife Enforcement (ABWE)
- Alaska Bureau of Alcohol and Drug Enforcement (ABADE)
- Alaska Bureau of Investigation (ABI)



Division of Fire Prevention

**Our Mission: Prevent Loss of Life
& Property from Fire & Explosion**

Core Services:

- Public Fire Safety & Prevention Education**
- Building Plan Review**
- Building & Fire Code Management**
- Fire & Life Safety Inspections**
- Fire Service Training**
- Fire Investigations of Major Fire Incidents**

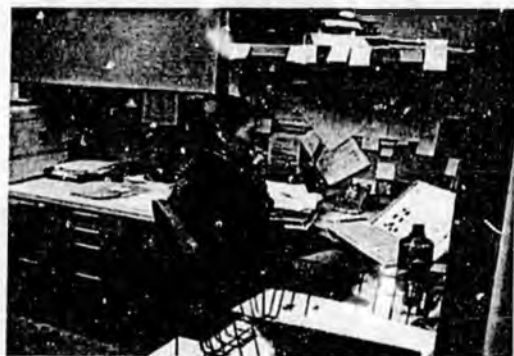
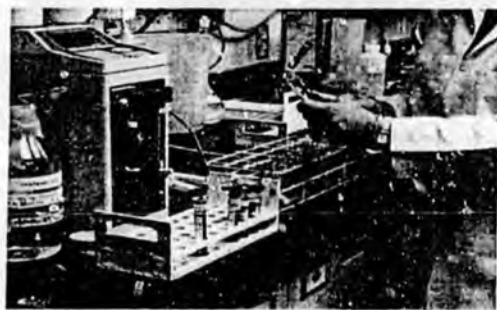
Significant Accomplishments:

- **First Time in the History of the State:**
 - No Child Fire Deaths in 2004
 - Overall Fire Deaths below the National Average in 2003
- **Project Code Red:**
 - Provided Basic Fire Protection/Prevention Training to 30 Rural Alaskan Communities in 2004
 - 56 Rural Communities Completed since Program Inception in 2002
- **FEMA Special Fire Prevention Grant:**
 - Equipped 850 Alaskan Homes in 16 Targeted Communities with Fire Safety Devices.
 - Devices include: Smoke & CO Alarms, Surge Protectors, Fire Extinguishers & Much More

Celebrating the Division's 50th Anniversary



Statewide Services



- Statewide Information Services (APSIN)
 - APSIN is available to 2,909 users in 21 federal, 242 state, and 37 municipal agencies.
- Scientific Crime Detection Laboratory
- Criminal Records and Identification Bureau
 - Alaska Automated Fingerprint Information System (AAFIS)
 - Sex Offender Registration
 - Permits & Licensing



DSS Activity 2004

- 4630 New Convicted Offender DNA Samples Received in calendar year 2004.
 - 3500 Convicted offender samples sent to a contract lab for analysis
 - 958 Convicted offender samples returned from the contract lab
 - State crime lab reports 7 “hits” from this batch of 958 samples aiding eight different investigations (4 burglaries and 3 sexual assaults)



DSS Activity 2004

- Laboratory linked 4 sexual assault cases together using DNA and helped to identify and convict a serial rapist.
- Human torso was identified through Parent DNA - 1st in the Nation - Multi jurisdictional hit in the National Missing Persons Database
- UAA sexual assault case - DNA cleared a suspect, and through a convicted offender sample, helped to convict the real criminal



DSS Activity 2004

- 55,061 Fingerprint Cards Submitted to Records and Identification (Civil and Criminal)
- 287 New Sex Offenders Registered

CORE MISSIONS

• STATEWIDE DRUG AND ALCOHOL ENFORCEMENT

- Re-emphasis on bootlegging enforcement
 - 2004, 4065 bottles seized (street value \$246,579)
- Cocaine case- Port of Anchorage- inside a vehicle
 - 12 kilos of cocaine 1/2 Kilo of Crack cocaine (street value \$1.25 million)
 - \$344,275 in cash seized
 - 3 Defendants charged federally
- 2004 61 Meth Labs, 59 Marijuana grows

• STATEWIDE MAJOR CRIMES INVESTIGATIONS

- Homicide- Tenakee Springs- March 2003
 - Long term investigation involving an undercover Trooper - James Harmon arrested May 2004
- Homicide - Nome - Aug. 2003
 - ABI investigators from Anchorage, Palmer, Soldotna sent to Nome
 - Conducted a long term investigation - Police Officer Matthew Owens arrested Oct. 2003
- Cold Case Unit (38 total cases)
 - 9 solved, 13 resolved, 16 active cases



CORE MISSIONS

• WILDLIFE ENFORCEMENT



- 2004 Contacts, Warnings and Citations - statistics (per trooper) remained consistent with 2003.
- ABWE troopers successfully augmented patrol with an increase in Warrant Arrests, Sex Offenders Registered and Civil Process Served with no impact to ABWE mission
- F/V Hunter Investigation
 - 58 criminal counts on multiple defendants
 - \$145,000 in fines, loss of fishing privileges for one year, required to install vessel monitoring system for life.

• STATEWIDE TRAINING

- Overall increase in quality of Graduates
 - Higher GPA's upon graduation
 - 90% of graduates meeting Fit for Duty pin physical requirements
 - Additional Corporal on staff to better facilitate training needs for municipal police departments, VPSO, and troopers
- Statewide DV and Sexual Assault investigation training (FY03 and FY04)
 - 1358 Law Enforcement professionals trained, 40 Police Departments, 675 other professionals representing support agencies (advocacy groups, Tribal Courts etc.)



CORE MISSIONS

• HIGHWAY TRAFFIC ENFORCEMENT

- Federally Funded DUI Team
- Alcohol related Vehicle Fatalities down from 50% (2001) to 37% (2003)
- Federally Funded Visual Information Specialist added to PIO with a focus on the highway safety media component
 - 2003 IACP Runner-up in the Law Enforcement Challenge
 - 2004 IACP Winner of the Law Enforcement Challenge



• RURAL LAW ENFORCEMENT

- Increased PCNs in rural Alaska by 9.
- Restructured Administrative VPSO contracts reducing admin costs and increasing VPSO benefits
- Search and Rescues (2004)
 - 43 % of the statewide SARs were in rural Alaska (102)
 - 44% of the statewide SAR saves occurred in rural Alaska (154 people found)



State of Alaska

DEPARTMENT OF ADMINISTRATION OFFICE OF PUBLIC ADVOCACY

Frank Murkowski, Governor

900 W. 5th Ave., Suite 525
Anchorage, Alaska 99501
(907) 269-3500 Telephone
(907) 269-3535 Facsimile

Office of Public Advocacy: Agency Overview

Mission: To provide legal advocacy and guardian services to vulnerable Alaskans.

Core Functions: Advocate for abused and neglected children in Child-In-Need-of-Aid cases.

Provide guardian and conservator services to Alaskans who are mentally incapable of managing their own affairs.

Represent Public Defender clients where the Public Defender has a conflict – children in juvenile delinquency proceedings; parents in CINA cases, and criminal defendants

Detail Narrative:

The Office of Public Advocacy (OPA) provides legal advocacy and guardianship services to vulnerable Alaskans. Within this general mission, OPA has three distinct and separate core functions: child advocacy in Child in Need of Aid (CINA) proceedings; guardian and conservatorship services for incapacitated adults; and representation of Public Defender clients where the agency has a conflict -- parents in Child-in-need-of-aid cases, juveniles in delinquency proceedings, and criminal defendants. (In addition, OPA statutorily inherits a number of other responsibilities that are corollary to these functions). OPA has a professional staff of 64 and support staff of 17.¹

The Child Advocacy divisions contain the largest allocation of OPA staff. Guardian ad Litem (GAL) are appointed in all Child in Need of Aid cases. This is required by court rule, and federal and state law. The GAL is charged with providing a neutral voice to the court in advocating for the best interests of children in state custody. A full time GAL carries a caseload of approximately 85-90 children. OPA has twenty-one professional staff advocating for children – 17 in Anchorage, 3 in Fairbanks, and 1 in Juneau. OPA also contracts with independent GALs for geographical areas not served by OPA staff and in cases where OPA staff has a conflict of interest. OPA also utilizes a federally sponsored volunteer program named Court Appointed Special Advocates, or CASAs. CASAs work with the GALs on a volunteer basis to expand OPA's resources. They, like GALs, meet with the children they represent, parents, family

¹ OPA also contracts with numerous vendors to provide services in geographical areas not covered by staff or where OPA staff have a conflict. Approximately sixty percent of OPA's budget is for contractual services, though efforts are being made to reduce these costs by transferring coverage to staff, where costs are lower per case.

members, teachers, treatment providers, and others involved in the child's life to better formulate recommendations to the court on what's best for the child. In 2004, OPA had 214 CASAs who volunteered on behalf of 459 abused and neglected children.

In addition, attorneys on the child advocacy staff also represent children in juvenile delinquency proceedings where the public defender agency has a conflict.² Finally, GALs get appointed in particularly difficult custody battles where a court-appointed custody investigator is insufficient. In difficult or nasty custody battles, the court appoints a GAL to represent the child's best interests in determining the custody arrangement.

OPA's next largest commitment of staff is within the public guardian divisions. OPA is appointed to provide guardianship and conservatorship services to incapacitated adults – those with mental illnesses, dementia, brain injuries, and developmental disabilities. As Guardians and Conservators, OPA staff manage their finances by applying for the benefits they are entitled to, receiving the benefits for them and paying their rent, utility, food, medical, and other bills. As guardians, these staff members face the heavy responsibility of making housing, legal, and medical decisions for their clients. Most petitions for guardianships are filed by family members, friends, Adult Protective Services, and sometimes hospitals. OPA is an appointment of last resort. The court is instructed to first look to spouses, family, and private organizations. Twenty percent of guardianships and conservatorships created by the probate court are assigned to OPA. The average caseload for an OPA public guardian is approximately 65 cases. OPA has 14 public guardians; 10 in Anchorage, 2 in Fairbanks, and 2 in Juneau.

The Public Guardian division of the Office of Public Advocacy is also mandated to provide information and referrals to the public regarding guardianship and conservators to assist family members dealing with such issues. We also assist them in preparing guardianship and conservatorship plans and reports. This function is fulfilled by offering monthly classes in the Anchorage office, and by providing information (including court forms) on OPA's website, as well as by sending materials to all court locations and librarians on what guardianship and conservatorships entail, and how to petition for one.

Finally, OPA is also statutorily obligated to provide representation to the subjects of petitions for guardianships (respondent representation), and visitor services in each case.³ Most respondent representation services are contracted out, though cases are kept in-house if it is clear OPA will not be appointed guardian, thus precluding any conflict of interest. All visitor services are contracted out.

OPA is statutorily responsible for providing representation for parents in Child-in-need-of-aid cases where the Public Defender Agency has a conflict. (That is where the public defender represents a parent, OPA gets the remaining parents). In the past, parental

² The civil section is also statutorily responsible to provide representation in custody proceedings where one party is represented by a public attorney, interpreted by the Alaska Supreme Court to include cases in which Alaska Legal Services represents a parent.

³ Court Visitors are charged with providing a neutral voice to the court regarding the circumstances requiring the guardianship, whether a guardianship should be approved, and who should be appointed guardian. They conduct interviews and file a written report containing recommendations with the court.

representation has primarily been contracted out, as OPA could not represent the children and parents interests in a CINA proceeding at the same time. Recently, OPA created a new section – the Anchorage Adult and Juvenile Representation Section -- to provide parental representation at a lower cost than the utilization of contractors. Each attorney will have approximately 65 cases. While this section will primarily provide parental representation to parents in Child-in-Need-of-Aid cases, it will also provide representation to minors in juvenile delinquency matters and representation to some criminal defendants. The creation of this section is a further effort to provide service OPA is statutorily obligated to provide at a lower cost. OPA has 4 attorneys in this section in Anchorage.

Finally, OPA provides representation to criminal defendants where the Public Defender Agency has a conflict. This is OPA's smallest section. OPA has 5 criminal attorneys in Anchorage, 3 in Palmer (including a traveling unclassified and class A felony attorney), 3 in Fairbanks and 2 in Bethel. The attorneys in Bethel, Fairbanks, and Palmer office also provide representation in civil matters (CINA and Guardianship proceedings). Where OPA staff have a conflict, criminal cases are contracted out.

OPA has recently established each office as a separate law firm, as well as instituted an ethical wall between the Anchorage criminal and civil sections, so as to keep more cases in house. As separate "law firms", conflicts of interest are not imputed to all attorneys at OPA, thus lessening OPA's reliance on contract attorneys. The implementation of the "separate firm" concept has resulted in significant savings: In FY '04 OPA spent almost \$400,000 less than it did in FY '03.

Accomplishments

Opened Palmer, Bethel, and Anchorage Adult & Juvenile Representation Offices, enabling OPA to retain more cases in-house where cost per case is less expensive than contracting cases out;

Established offices as separate law firms, including Anchorage Civil and Criminal, to reduce conflicts, allowing OPA to keep more cases in-house;

Establish procedures to re-evaluate conflicts post trial to see if the Public Defender Agency can take the case back;

Closely scrutinize contractors monthly invoices to ensure billings is appropriate;

Established pre-authorization procedures for any staff or contractor travel, and investigation or expert requests;

Audited fees charged in public guardian section to more fairly and consistently collect fees (fees collected in FY '03 were \$260,947; fees in FY '04 were \$479,125;

Helped achieve passage of legislation to regulate private guardians/conservators which should help encourage use of private organizations and development of industry;

Ongoing Projects:

Evaluate case loads in Fairbanks, Kenai, Nome, and Juneau to see if new office would be more cost-effective than continued level of use of contractors;
Implement new case management system that will enable more accurate case statistics for case assignment and individual workload monitoring, and allow OPA to determine average costs for case types to more closely monitor contractors;

Ensure adequate support staffing levels for professional staff to allow better time utilization for front line client advocacy.

A grayscale map of Alaska serves as the background for the text. The map shows major geographical features and cities. The text is overlaid on the map in a large, bold, black font. The text is arranged in four lines, with the first two lines being the largest and most prominent. The third line is also large but slightly smaller than the first two. The fourth line is smaller and ends with a colon. The text is centered horizontally across the map.

How OPA

Public Guardians

Child Advocates

Indigent Defense

Changes Lives:



Maria Moves from Despair to Hope

OPA Public Guardian Bill Herman never gave up on Maria, even when it seemed that she was giving up on herself. Maria, a 41-year old woman, was both developmentally disabled and mentally ill. For the past 25 years, she had been in and out of mental institutions. Maria had turned to alcohol and to drugs to ease her own pain, and had added addiction to her list of troubles. She had been in two bad marriages. She had been the victim of physical and sexual violence.

OPA was appointed to handle all financial affairs for Maria in 1993. This task included receiving her income (public assistance, disability payments, and dividends from Native Corporations), creating a budget, paying her bills, and working out day-to-day problems (which sometimes meant daily requests for money by a person with addiction problems). It seemed that Maria was bent on self-destruction. Her public guardian's efforts to help her were disregarded and resisted. There was conflict between them. Maria moved several times between Anchorage and Juneau, and was assigned to different guardians at OPA. Eventually, she was assigned to Bill Herman.

In 1998, Maria hit the bottom of her orbit. She and her husband were drinking and using drugs. They were evicted from their apartment, and became homeless. Maria tried to kill herself. She was committed to the Juneau psychiatric unit.

Bill Herman stuck by Maria. He recognized that she might be ready to change, and he supported her increasingly positive decisions to be sober, to work part-time, and to take classes towards a GED. Maria started to stabilize. She moved from the homeless shelter into subsidized housing. What had once been a bitter and confrontational relationship between Maria and her guardian became a trusting and pleasant relationship for both. Maria sees Herman as a friend who has always been there to act in her best interest, and who remains ready to help her as she moves forward in her life.



LESLIE HIEBERT, ATTORNEY

False Witness Exposed

Through the fast and skillful investigation done by a lawyer in the criminal section of OPA, an innocent young man and his innocent brother were saved from long jail sentences and a lifetime of harm from unjust felony convictions. The fabricated charges made by a drug dealer were proven false, and the boys were acquitted.

Jamie, 17 years old, occasionally bought small quantities of marijuana from Sharon, a woman who lived near his girlfriend. Jamie took his friend, Sam, over to Sharon's house one day. Jamie went in to make a purchase, while Sam sat in Jamie's car. When Jamie returned, Sam said he wanted to go in, too, and went into Sharon's house, alone. After a few minutes, Sam came rushing back to the car, telling Jamie to "Go, go, go!" He told Jamie that he had stolen pot from Sharon. Jamie was upset and angry at Sam. He knew that Sharon would think that he had set her up to be robbed by Sam.

Sharon called the police. She told them that Jamie and another man had taken \$300 at gunpoint. Jamie was arrested and put in jail. He was desperately afraid. He knew nothing about any gun or any money. The police also arrested Jamie's brother, Jerold, and charged him with the same crime. It was Jerold's bad fortune to look almost identical to Sam (although they were not related in any way). The Public Defender Agency was appointed to represent Jerold. OPA was appointed to represent Jamie.

OPA attorney, Leslie Hiebert began investigating immediately. Jamie told her that it had been Sam who had been with him that day, not Jerold. She went to interview Sam. Sam admitted that he had stolen pot from the drug dealer, and said that he had done it on

his own, without help from Jamie. He said that some of what he had taken had been in a little plastic cosmetic bag when he took it, and that he took the bag when he took the pot.

Hiebert studied Sam's face, and saw that there was, indeed, an uncanny similarity between Sam and poor Jerold. She convinced Sam to tell the police what he had done (a real feat since Sam knew that it might mean he would face a jail sentence himself). She had Sam taken to police headquarters, where he was interviewed by the police on videotape.

Sharon denied ever having possessed or sold marijuana. She said she was an innocent victim of a robbery. Sharon said that Jamie had known that she always kept her money to pay her monthly bills on the shelf, that it was part of her routine, and that he had come to her apartment expressly to steal the money, bringing with him an accomplice with a gun to threaten her.

At trial, Hiebert was able to produce testimony from the gas company, the power company, and the telephone company that Sharon had never paid *any* of her bills while she lived at that apartment, let alone paid in cash. Hiebert showed the jury the videotape of Sam's confession, so that the jury could see how much Sam looked like Jerold, and how Sam had already admitted that *he* was the one who had been with Jamie on that day. Hiebert also showed the jury the cosmetic bag that Sharon had admitted was hers. This was the same cosmetic bag that Sam had admitted to taking from Sharon, the bag that held her pot.

Hiebert also proved that Sharon was a drug dealer, and was selling pot on the same day as the robbery, by calling Tommy Shelton to testify: Shelton said he had bought marijuana from Sharon himself on that very day. Tommy was not a friend of either of the defendants, and was worried that he would get in trouble himself for what he was saying. He only came because he was subpoenaed by Hiebert.

The investigation done by OPA proved that the charges against Jamie and Jerold were based on the word of a lying drug dealer. The jury agreed, and acquitted both brothers of all of the felony charges. Jamie was released from jail, where he had been imprisoned for six months, and went home, where he was reunited with his mother and brother.



MARCIA HONEA, GAL

Mom Comes Home

Two year-old Chris Shriver* and his four year-old sister Jenny rocked from side to side in their mother's car as it swerved from left to right down the highway. Their mother, Becky, was drunk again. Becky's erratic driving caught the eye of a patrolling state trooper, who pulled her over. Becky's blood alcohol was more than twice the legal limit permitted a driver.

Becky was arrested, and Chris and Jenny were placed in emergency foster care. The Division of Family and Youth Services filed for legal custody of the children. Marcia Honea, a *guardian ad litem* at OPA, was appointed by the court to serve as an advocate for the best interests of the two young children.

Under court order, Becky began an outpatient alcohol treatment program. She did everything she was supposed to do, according to her case plan. To all appearances, Becky had turned a corner. Jenny and Chris were sent back home. Becky said that she had quit drinking. She went back to college.

* The names of OPA clients throughout are fictitious.

The Court was about to release legal custody of the two children back to Becky. On behalf of the two Shriver children, Honea kept an eye on the family. Honea was troubled by a nagging doubt about whether or not Becky was really committed to change, a doubt that was confirmed when Honea got a call from Becky's neighbor, who said that Becky was drinking again.

Honea confronted Becky with what she knew, and with the fact that the children's only hope of happiness lay in Becky's sobriety. She laid out in plain, powerful, and direct terms what would happen if Becky didn't change. Honea also informed Becky's treatment program of the relapse. Further pretense on Becky's part was not possible.

Becky went back into treatment, and this time she committed herself to sobriety. That was four years ago. Becky completed college, and is working full-time as a technical writer in a private company.

Chris and Jenny Shriver got back the mother they love, a mother on whom they could truly rely. Becky loves her children, and has made them a safe and happy home. Becky says she owes her success to her own desire to change and to the determined intervention made by Honea. Through Honea's commitment, the Shriver children are growing up with a hopeful future, and the inter-generational chain of loss that could have been set into motion by Becky's alcoholism has been avoided.



PROTECTING ALASKA'S FUTURE

2003 ANNUAL REPORT

ALASKA DEPARTMENT OF LAW

GREGG RENKES, ATTORNEY GENERAL

PROTECTING ALASKA'S FUTURE

**2003 ANNUAL REPORT
ALASKA DEPARTMENT OF LAW**

**GREGG RENKES
ATTORNEY GENERAL**

Letter from the Attorney General

Alaskans:

As the state's chief law enforcement officer, as a trustee for the state's sovereignty and as the public's attorney, I am proud to present the 2003 Annual Report for the Alaska Department of Law titled "Protecting Alaska's Future". I have adopted the theme "Protecting Alaska's Future" for my tenure as attorney general, focusing my efforts on protecting Alaska's most vulnerable seniors, women and children; protecting communities; protecting consumers; protecting natural resources and the environment; protecting our State's sovereignty; and protecting our nearly \$50 billion in financial assets. The Attorney General's Office has not previously prepared an annual report to the public. We have published this report and will publish future reports at the close of each fiscal year to better inform and be more accountable to the public.

In our efforts to protect children, during the last year I focused the Department on the problems of child abuse and the often-related problems of substance abuse. In the last year we challenged the law that protects personal marijuana use in the home in *Noy v. State*; helped initiate a statewide criminal task force to interdict drugs and stop bootlegging of alcohol to dry villages; put the safety of children first in child-in-need-of-aid proceedings where tribal transfers are requested; and initiated a review of confidentiality policies in cases involving the death of a child. In my view, we can not be tough enough on sexual predators. That is why we worked to uphold the state's sex offender registration law in the U.S. Supreme Court, I appointed a statewide special prosecutor for sexual assault cases, and we initiated a review of our policies when it comes to plea agreements. I have become a staunch advocate for the work of the Child Advocacy Centers and Sexual Assault Response Teams because of their important role in obtaining convictions in cases involving sexual abuse of children. We need to work to extend their reach throughout the state.

Improved public safety is a top priority for Alaska's communities. I want to increase local control over basic public safety issues in rural Alaska, and at the end of 2003 I was named co-chair of the newly formed Federal-State Rural Justice Commission. Important criminal trials need to be held in small communities to reinforce community involvement in safety and justice, even if at greater expense to the state. In urban areas, cooperative efforts with the U.S. Department of Justice have made gang activity and gun violence a top target of law enforcement. This year we successfully pushed for historic crime legislation closing loopholes that hampered prosecution, and provided new tools to attack gang and drug activity that involves guns. In one year we have added more criminal prosecutors and child protection attorneys to protect communities, families and children than was done in the last ten years combined.

The department aggressively pursued the rights of consumers over the last year. To give utility consumers a meaningful voice, I worked with Governor Murkowski and the Alaska Legislature to transfer the responsibilities of the public advocacy section at the Regulatory Commission of Alaska to the Department of Law. This allows me to participate directly as a party in utility rate proceedings. In addition, we challenged corporate practices that are unfair to consumers

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**DEPARTMENT
VIEW**

Conference of Western Attorneys General Report

The incoming Murkowski administration encouraged agency audits to identify problem areas, with the goal of obtaining greater operational efficiency for state government. At the suggestion of the outgoing Attorney General and with the encouragement of the Governor, Attorney General Gregg Renkes invited the Conference of Western Attorneys General (CWAG) to conduct an independent review of the operations of the Alaska Department of Law. CWAG last reviewed the Department of Law in 1996.

The 2003 CWAG Review Team's goal was to identify strengths and weaknesses of the Department and to recom-

mend improvements. Some of this review included analyzing more subjective factors affecting the department's operations. The team accomplished their goal by interviewing departmental staff, including support staff, line attorneys and supervising and managing attorneys, and people outside the office, including client agencies, legislators, and administrative, trial, and appellate judges. The team conducted approximately 100 open-ended interviews to elicit general impressions of the department, as well as the existence of any problems. No restrictions were placed on the team at any time.

The team conducted approximately 100 open-ended interviews to elicit general impressions of the department, as well as the existence of any problems. No restrictions were placed on the team at any time.

STRUCTURING

The Review Team's first and most important recommendation was to develop a clean, clear, and lean reporting structure for the Civil Division. Attorney General Renkes implemented the CWAG suggestion by reducing the number of substantive sections from eleven down to nine. At the same time, the geographic reporting structure was changed to create one section supervisor for each of the nine sections, eliminating the need for regional section supervisors. This was followed by

creating a single Statewide Office Chief to handle significant administrative duties.

In evaluating the department's reporting structure for key issues, the AG created two substantive section chiefs to report directly to the Attorney General: one for Appeals, Opinions, and Ethics, and one for Legislation and Regulations, each headed by a Chief AAG. This restructuring centralized crucial policy roles to create more efficient reporting.

EXECUTIVE OFFICE

Another of the Review Team's recommendations was to create an Executive Office. They noted that with a limited immediate staff, the Attorney General is deprived of flexibility; "he is unable to focus on legal advice on his own, [or] the Governor's or the Legislature's emerging priorities because he has no immediate staff to do so."

The Review Team recommended coordinating ethics advice, appellate work, counsel on initiatives, advice on particularly sensitive issues and cases, and regulations review. The Attorney General accomplished this by placing the two new section supervisors physically within the AG's Executive Office. The Review Team also suggested that the Attorney General's

ATTORNEYS

The CWAG report strongly recommended removing the forced bush-Alaska assignment system for new attorneys. Not only did forcing attorneys to work in the bush create a morale problem, but frequently new attorneys temporarily assigned to urban areas would resign when notified of their upcoming bush service date. Attorney General Renkes dropped this forced assignment system. Instead of requiring attorneys to serve in bush Alaska, the Review

Team advocated creating a centralized and active office-wide recruitment program. The Attorney General sent Department of Law representatives to law schools in the Pacific Northwest not only to interview candidates, but also to establish what will hopefully become long-term relationships with some of these schools. The department is also expanding their law student clerkship program in an effort to attract potential candidates to the state.

Alaska is fortunate to have so many good people in its service. For the team members conducting the review, it was a rare and exceptional privilege.

JUVENILE PROSECUTION TRANSFER

The Review Team recommended that juvenile criminal prosecutions be moved to the Criminal Division, where District

Attorneys are familiar with prosecutorial procedure. The two divisions are working together to accomplish this transfer.

CONCLUSION

The CWAG Review Team spent a short time interviewing people about the Department of Law, but made some important observations during their short review. The Attorney General took these suggestions seriously, and the department is taking measures to implement some necessary changes. Even though many recommendations are still being discussed and/or implemented, the CWAG Report

is bringing visible improvements in the department's operations. The Review Team was particularly impressed with the quality of the individuals working for the Alaska Department of Law, and ended their introduction by saying "Alaska is fortunate to have so many good people in its service. For the team members conducting the review, it was a rare and exceptional privilege."

The CWAG Report can be found online at:

<http://www.law.state.ak.us/pdf/admin/FINALCWAGReport.pdf>

PROTECTING CONSUMERS

Commercial and Fair Business Practice Section

SUMMARY OF RESPONSIBILITY

The Commercial and Fair Business Section exercises the Attorney General's authority to enforce consumer protection and antitrust laws and to advocate for the public interest in state regulation of utilities. The section also

represents, defends, and advises fifteen different divisions, commissions, and corporations within the Departments of Revenue, Public Safety, and Community and Economic Development.

LEGAL SERVICES PROVIDED

The section has one of the more diverse law practices within the Department of Law. In addition to the consumer protection/antitrust and public advocacy

work, the section's seventeen attorneys and four paraprofessionals provide a wide range of legal services to their client agencies. Those agencies include:

Department of Revenue

- Tax Division (except oil and gas taxes)
- Treasury Division
- Permanent Fund Dividend Division
- Permanent Fund Corporation
- Alaska State Pension Investment Board
- Alaska Housing Finance Corporation

Department of Public Safety

- Alcoholic Beverage Control Board

Department of Community and Economic Development

- Division of Insurance
- Division of Occupational Licensing
- Division of Investments
- Division of Banking, Securities and Corporations
- Regulatory Commission of Alaska

Department of Education and Early Development

- Alaska Student Loan Corporation
- Alaska Commission on Post-secondary Education
- Professional Teaching Practices Commission

SIGNIFICANT CASES AND EVENTS

- **State v. Alaska Dial-A-Car, Inc. d/b/a Payless Car Rental and State v. City Mortgage.** Negotiated settlements in two consumer protection enforcement matters that will result in approximately \$120,000 statutory designated program receipts in the next two years.
- **State v. Worthington Ford of Alaska.** Collected final \$50,000 payment in settlement of a consumer protection action against a local car dealer for various advertising, warranty, and federal Truth in Lending Act violations.

Consumer Protection Unit

SUMMARY OF RESPONSIBILITY

The Consumer Protection Unit (the "CPU") within the Commercial and Fair Business Section of the Department of Law is responsible for enforcing Alaska's consumer protection and antitrust laws to strive for a marketplace in Alaska that is free of deceptive, unfair, and anti-competitive practices. The state statutes enforced by the CPU include the Unfair Trade Practices and Consumer Protection Act (AS 45.50.471), Monopolies and Restraint of Trade Act (AS 45.50.562), Telephonic Solicitation Act (AS 45.63.010), Charitable Solicitations Act (AS 45.68.010), Business Opportunities Act (AS 45.60.050), Auto Repair Act (AS 45.45.130), and Motor

Vehicles Warranties Act, (AS 45.45.300, known as the "lemon law").

In addition to these statutes, the CPU also investigates and enforces violations of other laws involving consumer fraud that are not addressed by another agency's statute or regulation. This includes some occupational licensing complaints; Food, Drug, and Cosmetic Act issues; door to door sales and unordered merchandise provisions; warranty issues; and complaints raising federal Truth in Lending Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and Federal Telemarketing Laws.

The state statutes enforced by the CPU:

- *Unfair Trade Practices and Consumer Protection Act (AS 45.50.471)*
- *Monopolies and Restraint of Trade Act (AS 45.50.562)*
- *Telephonic Solicitation Act (AS 45.63.010)*
- *Charitable Solicitations Act (AS 45.68.010)*
- *Business Opportunities Act (AS 45.60.050)*
- *Auto Repair Act (AS 45.45.130)*
- *Motor Vehicles Warranties Act, (AS 45.45.300, known as the "lemon law")*

CONSUMER COMPLAINTS

To carry out these responsibilities, the CPU has developed a consumer complaint form that can be submitted by anyone who believes they have been a victim of an unfair or deceptive trade practice. When received, these complaints are generally sent to the specified business for a response. The CPU mediates many disputes by facilitating communication between the consumer and the business

to resolve the complaint. When resolution cannot be reached, further investigation, and occasional litigation, is pursued to obtain injunctive relief and recover restitution, civil penalties, and attorney's fees. This year the unit dealt with consumer complaints on issues including telephone marketing, travel companies, mortgage brokers, and auto dealers.

CHARITABLE SOLICITATION

The CPU is responsible for the annual registration of all charitable organizations that engage in the solicitation of money or services in the state, and for the regis-

tration of all paid solicitors who fundraise for these charities. The CPU also registers telephonic sellers (telemarketers) pursuant to the Telephone Solicitations Act.

ANTI-TRUST

The CPU is responsible for enforcing state and federal antitrust laws to protect consumers and businesses from illegal anti-competitive practices. The CPU has been involved in several multi-state antitrust actions aimed at stopping illegal behavior with nation-wide impacts. The CPU monitors local business activity, such as

proposed mergers and acquisitions, to protect against price fixing, bid rigging, monopolization, and other conduct that reduces or interferes with fair competition. Anti-trust investigations this year included cable company issues, CD music issues, and generic drug manufacturers.

- **Buspar.** This is the third "generic drug" case settled this year. As with Taxol and Cardizem, the states alleged the maker of Buspar, an anti-anxiety drug, engaged in illegal behavior to keep generic versions of Buspar off the market. A settlement of \$100 million was reached with BMS, \$42 million of which is available for direct consumer restitution. The remaining amounts will be paid to state agencies which sold Buspar, and used for attorney fees, costs, and penalties.
- **CD Music.** This case was brought against several companies who sell and distribute music CDs. The states claimed that the companies illegally conspired to keep the price of CDs at a supra competitive level. A settlement for about \$70 million was reached that includes both a process for consumers to submit claims for refunds and for distribution of over 1 million CDs to schools and libraries in all states. The settlement also included terms for payment to the states for attorney fees and costs, and future antitrust enforcement.
- **H&R Block.** Following a multistate investigation, the tax preparation company H&R Block agreed to establish a \$1 million reimbursement fund for consumers who paid for a service called the "Peace of Mind" guarantee. Through this service, the company guaranteed payment of up to \$5,000 of any additional income tax owed as a result of the tax preparer's error. The states alleged that in the 2001 tax season H&R Block added a \$22 fee to invoices for the service without first obtaining the consumer's acceptance. H&R Block also paid \$50,000 to the state for costs and fees.

Alaska Cases

- **Payless Car Rental.** The state filed litigation against Payless car rental in 2002, and settled the case before trial in 2003. The state claimed that Payless overcharged consumers for damage repairs to rental vehicles. Payless paid the state \$20,000, and agreed to pay an additional \$80,000 in the next two years.
- **ACS Wireless.** The state sued ACS wireless in August over the way it marketed its "Voice Connect" product. ACS used an "opt out" strategy that required consumers to take affirmative action to not receive the service. The case settled shortly after the complaint was filed, and ACS agreed to make refunds to consumers, and refrain for this marketing tactic in the future.
- **Ask Alaska Travel and Tours.** The state sued a local travel service company, Ask Alaska Travel and Tours, and its owner, Jennifer Christensen, in August and September 2003, and obtained a temporary restraining order and preliminary injunction, preventing the company or its owner from engaging in further business with the public or using consumer credit cards. The state's complaints allege that Ask Alaska and Jennifer Christensen charged client's credit cards without authorization, failed to provide services paid for by clients, and made fraudulent misrepresentations regarding credit cards and payments to vendors. The state is seeking in its lawsuit permanent injunctive relief, restitution for consumers and vendors, and civil penalties or punitive damages.
- **Alaska Glass Service.** AGS is a Washington corporation which telemarketed its glass repair and replacement services in Anchorage, Juneau, and Fairbanks. The state alleged that AGS failed to register as a telemarketer as required by the Telephone Solicitation Act and failed to abide by Alaska's do not call law (commonly called the "Black Dot" law). Through an Assurance of Voluntary Compliance, Alaska Glass agreed to stop doing business in Alaska and to pay \$5000 to the state for consumer protection, education, and enforcement.

ments to different ratepayer customer classes. After investigation, the only issue in dispute is ASTAC's request to charge customers an hourly fee to investigate toll charge complaints from consumers.

- **Enstar/NorthStar Natural Gas Contract.** Enstar Natural Gas Co. requested RCA approval of a gas supply contract with NorthStar Energy Group to supply natural gas service to Homer. Enstar's gas costs are passed directly through to ratepayers as a result of Enstar's fuel adjustment clause. One aspect of the contract involves the use of the Henry Hub Index to price gas under the contract. This pricing mechanism is based on the Outside gas market and the Public Advocate has questioned the appropriateness of the proposed use of the Henry Hub Index to steeply price Alaska Cook Inlet gas. The Public Advocate has also questioned the proposed 20-year term of the contract, absent any downward pricing flexibility in the contract.
- **Interior Telephone Co., Mukluk Telephone Company.** A Stipulation between the Public Advocate and the utilities was accepted by the RCA in August 2003. In the Stipulation, Interior Telephone Co. agreed to reduce its operating expense claims by \$61,000, and its claimed depreciation expense by \$21,000. Mukluk Telephone Co. agreed to reduce its operating expense claims by \$30,000, and its claimed depreciation expense by \$7,000. Both companies agreed to reduce their requested rate of return from 12.51 percent – based on a 17.36 percent return on equity, to 11.06 percent – based on a 14.5 percent return on equity.
- **TDX Sand Point.** This rate case arose as a condition of the RCA's approval of the transfer of the utility certificate from Sand Point Electric, Inc. to TDX Sand Point Generating, Inc. The RCA requested the Attorney General's participation as the Public Advocate to examine the utility's revenue requirement and transactions between the utility and its affiliated fuel supplier.
- **United Utilities, Inc. (UUI), United-KUC.** On November 18, 2003, the Public Advocate and the utilities agreed to resolve inconsistencies found in the utilities depreciation studies by the Public Advocate in his investigation. Specifically, revisions were agreed upon to reduce depreciation rates for certain accounts resulting in a \$224,000 reduction in the utilities' depreciation expense. The parties also agreed upon an acceptable accounting methodology to be used for the treatment of a negative depreciation reserve for digital switching equipment inherited from GTE.
- **Waste Management of Alaska (WMA).** This general rate case encompasses WMA's four service territories for refuse collection in Alaska: Anchorage (including Whittier), Mat-Su (including Wasilla), Fairbanks, and Kenai. The first phase of the proceedings involved WMA's requested revenue requirement, as well as a request that its return on equity be calculated using an "Operating Ratio" methodology rather than a traditional return on rate base methodology. In September 2003, an agreement was reached to resolve all issues in this phase of the case. The settlement, which the Commission accepted on November 6, 2003, included: (1) adoption of the Public Advocate's demand for frequent review of WMA's revenue requirement given WMA use of the Operating Ratio to determine return; (2) adoption of the Public Advocate's request for WMA to change its capitalization policy for repairs exceeding a certain threshold; (3) adoption of the Public Advocate's recommendation to exclude increases in year 2003 payroll from rates; and (4) exclusion of utility employee bonuses from rates.



**PROTECTING
SENIORS AND
CHILDREN**

HUMAN SERVICES SECTION

MARY OF RESPONSIBILITY

The Human Services Section provides advice and representation to the Department of Health and Social Services to assist that agency in the performance of its functions. DHSS programs include the Office of Children's Services, Division of Juvenile Justice, Division of Health Care Services, Division of Public Health, Division of Alaska Longevity Programs, Division of Senior and Disabilities Services, Division of Public Assistance, and Division of Behavioral Health. The services provided by DHSS include income and medical assistance, child and adult

protection, home and community care licensing, services to persons with developmental disabilities and mental health issues, and other community social services program activities.

The majority of the legal support involves child protection litigation and juvenile delinquency litigation. In addition to representing DHSS, the Human Services section also provides advice and representation to the Long-Term Care Ombudsman in the Alaska Mental Health Trust Authority.

LEGAL SERVICES PROVIDED

Child Protection

The majority of legal services are in litigation-related activities. There are 15 attorneys in the section statewide who specialize in child protection cases. Attorneys in this section pursue Child in Need of Aid cases after children have been taken into custody by DHSS social workers as a consequence of abuse or neglect. Attorneys are responsible for the litigation involved in adjudicating a child to be a Child in Need of Aid, in coming to a proper disposition, and, if the parents are unable to timely remedy their behavior, pursuing termination of parental rights in order that the child may have a permanent placement. Attorneys are also responsible for ensuring federal mandates are met requiring timely pursuit of a permanent plan.

Attorneys in the section are also responsible for taking actions relating to the licensing of foster homes, daycare facilities, and child placement agencies. Oral advice is also provided to regional and statewide personnel in the Office of Children's Services. One additional position is assigned to representing OCS in a lawsuit filed by four Native villages alleging violations of the Indian Child Welfare Act, the Adoption Assistance Act, and the Multi-Ethnic Placement Act.

Juvenile Delinquency

The section has three attorney positions assigned to represent the Division of Juvenile Justice in actions pertaining to juvenile delinquents. Attorneys participate in approximately 17 percent of the cases handled by DJJ, those cases involving the most serious offenses. Attorney representation ranges from participation in arraignments, detention reviews, adjudication trials, to proceedings to move a child into adult court.

DHSS programs

- *Office of Children's Services*
- *Division of Juvenile Justice*
- *Division of Health Care Services*
- *Division of Public Health*
- *Division of Alaska Longevity Programs*
- *Division of Senior and Disabilities Services*
- *Division of Public Assistance, and*
- *Division of Behavioral Health*
- *Long-Term Care Ombudsman in the Alaska Mental Health Trust Authority*

Child protection workloads continue to be of the highest concern to the department. Statutory changes at the state and federal level have necessitated changes in how long children may remain in the child protection legal system. The Adoption and Safe Families Act and state legislation, which was enacted as a result of it, are intended to move cases to conclusion faster in order to ensure that a child can be made legally eligible for placement in a permanent home more quickly when reunification with the family is not in the child's best interest.

The changes also require additional and earlier court proceedings in order to ensure that the department is quickly moving to achieve a permanent plan for the child. The accelerated schedules, additional hearings, and appropriate document preparation severely impact attorney workloads. Additionally, OCS is only eligible for reimbursement for a portion of the cost of foster care and administrative expenses, including social worker salaries, if these actions have been taken in a timely manner.

SIGNIFICANT CASES AND EVENTS

- **Curyung v. OCS.** This case seeks declaration that OCS has been violating the rights of the plaintiff tribes under the Indian Child Welfare Act, the Adoption Assistance Act, the Multi-Ethnic Placement Act, Section 1983, federal and state due process clauses, and state Child in Need of Aid and foster care laws. The complaint alleges that OCS fails to timely notify Indian tribes of CINA actions as required by the Indian Child Welfare Act; fails to locate Alaska Native placements; fails to recruit and train Alaska Native foster parents; and fails to notify tribes of changes of placement of its children. A finding that OCS violated the terms of its State Plan (which requires compliance with the above laws) is likely to impact federal funding to the agency.
- **Myers v. DHSS.** This is an appeal from a superior court order challenging as unconstitutional the statutory scheme under which a court may authorize a mental health treatment facility to administer psychotropic medication to an involuntarily committed patient. The state's position is that the legislature validly entrusted the state's medical professionals, not the courts, with the responsibility of determining appropriate medical treatment for incompetent patients. A decision may be expected late in 2004.

COLLECTIONS AND SUPPORT SECTION

Collections Unit

SUMMARY OF RESPONSIBILITY

The collections unit of the Collections and Support Section is responsible for collecting criminal and civil judgments owed to the State of Alaska, including criminal fines, costs of appointed counsel, costs of incarceration, forfeited bonds, attorneys fee awards in civil litigation, and administrative penalties. The unit also collects restitution owed to victims of crimes and delinquent acts.

GENERAL SERVICES PROVIDED

The collections unit consists of a collections coordinator and two litigation assistants, all of whom are senior-level paralegals (referred to as associate attorneys). In addition, the unit is staffed with five employees at administrative clerk level. The staff is responsible for entering all judgment data received from the courts and other agencies, completing all tasks necessary for the annual garnishment of permanent fund dividends, obtaining civil judgments for administrative penalties, processing payments, negotiating payment agreements, and responding to inquiries from defendants, courts, and other state agencies. With respect to restitution, the staff also prepares demand letters to defendants and notices to victims, obtains writs of execution to attach bank accounts and garnish wages. The staff works closely with victims, the District Attorney's Offices, the Department of Corrections, and the Division of Juvenile Justice, to assure that victims receive the restitution to which they are entitled.

NUMBERS AND TRENDS

The collections unit receives thousands of judgments each year for collection. The unit currently has more than 90,000 active judgments for which it is pursuing collection action. With respect to restitution alone, the unit is receiving an average of 140 to 150 new judgments each month for collection. During Fiscal Year 2003, the unit collected over \$3,800,000 for all judgment types. In the first three quarters of calendar year 2003, the unit has collected over \$2,900,000.

SIGNIFICANT CASES AND EVENTS

- **Permanent Fund Dividend Attachment.** The work of the collections unit revolves primarily around the annual attachment of permanent fund dividends. Between 80 and 90 percent of the unit's collections come from this attachment, which occurs electronically. These tasks are completed in June and July of each year to assure that the Permanent Fund Division's filing deadline is met.

In October of each year, when the dividends are paid out, the unit receives detailed information on the dividends received from individual debtors for specific

may also touch on whether there is Indian country in Alaska. A ruling on the Indian country question could have far-reaching implications in areas unrelated to child support.

- **State, CSED v. DeLeon.** The unit has appealed, on behalf of CSED, a superior court's refusal to order a delinquent parent to apply for his permanent fund dividend so that the dividend could be attached and applied to the parent's child support obligation. The critical issue in this appeal concerns the court's inherent authority to use injunctive relief to enforce a court order in the absence of a more specific grant of authority in a state statute or court rule.
- **William Abbott.** The superior court issued a Qualified Domestic Relations Order allowing the custodial parent to recover \$20,000 from the obligor's share of the custodial parent's deferred savings plan, which had previously been transferred to the obligor as part of the parties' property settlement.
- **Terry Johnson.** The unit obtained an order from the superior court, finding that a father's support obligation under a divorce decree did not end when the children's mother died. The court held that CSED acted properly when it continued to collect support from the father and paid that money to the woman who was appointed as guardian and conservator of the children.
- **Kenneth Caldwell.** The superior court in this case granted the unit's motion to set an obligor's child support obligation based on proceeds from the sale of a business. The obligor received over \$500,000 from the sale of the business but was subject to a five-year non-competition clause. Because the obligor decided to live off of the sale proceeds rather than working for five years, the unit argued that the court should divide the sale proceeds by the five years and calculate support on that basis. The court agreed and based support on an income of \$112,000 per year.
- **Graybar.** The unit obtained compliance by employer Graybar with National Medical Support Notices issued by CSED. Under federal law, employers must honor these notices by enrolling the employee's children in employer-provided health insurance. When Graybar refused to honor the notices, the unit sent a letter explaining the federal requirements. The letter was referred to Graybar's corporate counsel, who called to say that Graybar would comply immediately.
- **Cutbirth.** In this modification proceeding, the unit obtained an important ruling from the superior court concerning the offset of losses from self-employment against a parent's wages from unrelated employment. The obligor was employed by the federal government but also had a charter fishing operation on the side. The obligor claimed losses of nearly \$20,000 from the charter fishing business. Citing *Gallant v. Gallant*, the unit objected to offsetting these losses against the obligor's federal wages. The superior court agreed and disallowed offsets for the self-employment losses.
- **Medlin.** The Alaska Supreme Court affirmed a superior court decision dismissing an action filed against CSED for damages resulting from an error by a credit agency in reporting a child support debt owed by the plaintiff. On appeal, the court held that the CSED and its employees owe parents no actionable duty of care which would support an action for damages in connection with actions to establish a child support obligation under the Uniform Reciprocal Enforcement of Support Act.



DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT



**ROTECTING
MMUNITIES**

CRIMINAL DIVISION

Mission of the Criminal Division is to assure safe and sound communities by prosecuting and convicting criminal offenders in urban and rural Alaska.

SUMMARY OF RESPONSIBILITY

The Criminal Division prosecutes violations of state criminal law committed by adults, and serious crimes committed by juveniles.

The Criminal Division has special prosecution units to handle the following cases:

- Environmental Crimes
- Alcohol Interdiction
- Welfare Fraud
- Medicaid Provider Fraud
- Child Support Enforcement
- Special Fish & Game Cases
- White Collar Crime

The Criminal Division provides assistance to victims and witnesses, such as travel and hotel expenses, court-mandated witness fees, and information about

court procedures, domestic violence and stalking restraining orders and victim compensation.

The Criminal Division represents the state in all criminal appellate proceedings and state and federal post-conviction and habeas corpus proceedings. The Criminal Division also handles civil litigation challenging statutes related to criminal justice, such as sex offender registration, victims' rights, and DNA databank.

The Criminal Division provides basic legal services to the Departments of Corrections and Public Safety, consisting of verbal and written advice, representation in civil litigation and administrative proceedings, and assistance with drafting legislation, regulations, policies, and procedures. The division also provides advice to the legislature on criminal justice matters.

DISTRICT ATTORNEY OFFICES

The Criminal Division has fifteen offices across the state. Thirteen district attorney offices are spread among the four judicial districts in Alaska, and provide day-to-day criminal prosecution. An office in Anchorage handles special prosecutions and appellate. Another office in Anchorage is responsible for representing criminal justice system agencies and providing legislative advice and with general administration.

- **First Judicial District** (Southeast Alaska). There are eight attorneys in
- **Second Judicial District** (North Slope and Northwestern Alaska),

three offices in Juneau, Ketchikan, and Sitka. In the fiscal year ending June 30, 2003, over 3,500 criminal cases (800 felonies and 3,000 misdemeanors) were referred for prosecution or probation revocation. The caseload has held relatively steady since the previous year. Supervision and oversight of the one-attorney Sitka office is done by the Juneau District Attorney.

Criminal Division Prosecution Units

- **Environmental Crimes**
- **Alcohol Interdiction**
- **Welfare Fraud**
- **Medicaid Provider Fraud**
- **Child Support Enforcement**
- **Special Fish & Game Cases**
- **White Collar Crime**

Medicaid system, and are prosecuted in cooperation with the Department of Health and Social Services. The unit can also bring civil actions for over-payments, and is responsible for investigating and prosecuting abuse of patients in Medicaid-funded facilities.

5) **Child Support.** These cases are prosecuted in cooperation with the Department of Revenue.

6) **Fish and Game.** Selected fish and game cases are prosecuted, usually involving commercial fishing or guiding.

7) **White Collar Crime.** Economic and other "white collar" crimes are prosecuted to protect private investors, businesses, and government agencies from fraud.

SPECIALIZED ANCHORAGE PROSECUTION UNITS

Because the Anchorage District Attorney's Office is the state's largest, its separate units deserve mention.

The **Special Assault Unit** handles felony sex offenses, primarily rape and child sexual abuse. In addition, the unit also handles other felony sexual crimes such as possession of child pornography, indecent exposure, and failure to register as a sex offender. The number of felony sex cases coming to this unit has increased over 50 percent in just the last three years.

The **Violent Crimes Unit** in Anchorage handles all felony crimes against persons, except sex offenses. This unit handles all murders, attempted murders, kidnappings, armed robberies and felony assaults such as shootings and stabbings. In addition, the unit also handles escapes from prison and felony-level weapons

offenses, such as felons in possession of weapons and drive-by shootings. The number of violent felonies coming to this unit has increase 80 percent in the last decade and 25 percent within the last two years.

The **Anchorage Property Crimes Unit** was created to handle increased enforcement of felony thefts and burglaries by the Anchorage Police Department. This unit carries the highest felony caseload in the office.

The **Drug Unit** handles most of the state's major narcotics cases, and participates in specialized therapeutic courts for selected drug offenders and repeat drunk drivers.

The **Misdemeanor Unit** handles misdemeanor cases not prosecuted by the Municipality of Anchorage, and also handles all cases from the Aleutian Chain and St. Paul Island.

In fiscal year 2003, over 31,000 cases (8,000 felony, 22,000 misdemeanor, and 1,000 other cases) were sent to the Criminal Division by police or probation agencies.

NUMBERS AND TRENDS

In fiscal year 2003, over 31,000 cases (8,000 felony, 22,000 misdemeanor, and 1,000 other cases) were sent to the Criminal Division by police or probation

agencies. This is a 60 percent increase in felonies in the last ten years, and 10 percent in just one year. It is an eight percent increase in misdemeanors in just one year.

SIGNIFICANT CASES AND EVENTS

- **Doe v. Tandeske.** This is a class action case filed immediately after a 9th Circuit opinion struck down a federal DNA collection statute on 4th Amendment grounds. The class is all convicted sex offenders who are not on probation or parole. The federal district court issued a temporary restraining order, and then a preliminary injunction, which prevents the state from collecting DNA samples from members of the class. The Department of Justice will be taking the 9th Circuit opinion to the U.S. Supreme Court, which will ultimately resolve the issue.

**PROTECTING
NATURAL RESOURCES,
STATE SOVEREIGNTY
AND THE
ENVIRONMENT**

ENVIRONMENTAL SECTION

SUMMARY OF RESPONSIBILITY

The Environmental Section, which now includes the attorney assigned to Alaska Coastal Zone Management matters, primarily provides advice and representation to the Department of Environmental Conservation (DEC). Section lawyers also assist their client agencies in the performance of their duties related to environ-

mental matters. The section's representation includes instances where the state is seeking to enforce cleanup or secure cost recovery as well as those cases where the state is sued with respect to its role in a contaminated site or in carrying out its regulatory function.

Environmental Section attorneys pursue appropriate enforcement actions to ensure cleanup at contaminated sites or recommend to DEC that the state initiate a state led cleanup.

LEGAL SERVICES PROVIDED

The Environmental Section has nine full time attorney positions and two paralegal positions. These positions are located in Anchorage, Fairbanks and Juneau.

- **Contaminated sites.** In consultation with DEC, Environmental Section attorneys pursue appropriate enforcement actions to ensure cleanup at contaminated sites or recommend to DEC that the state initiate a state led cleanup. In either case, the section pursues appropriate reimbursement of any state cleanup expenditures. The section consults with DEC in decisions to release a potentially responsible party from liability when available evidence indicates that the party is not, in fact, liable. Environmental Section attorneys work with DEC to negotiate prospective purchaser agreements for contaminated sites when appropriate.
- **Oil spill prevention and response.** Lawyers provide advice to DEC on oil spill contingency plan approvals as well as representation in litigation brought against the state by third parties. Advice is provided with respect to the prevention and amelioration of fuel oil spills from above and under ground storage tanks.
- **Air and water quality.** The section provides legal advice to DEC regarding air permits and brings enforcement actions against entities who violate clean air laws. The section also provides advice on water quality issues including permitting for large mines, NPDES primacy, marine vessel wastewater discharges, domestic wastewater, and drinking water. In addition section lawyers provide advice to the Village Safe Water program on a variety of issues related to that program.
- **Coastal Management Program.** The section provides legal advice to DNR on the re-establishment of the ACMP under recent statutory changes and the performance of its duties under that program.
- **Public health.** The section provides legal advice to DEC's Division of Environmental Health on public health issues, such as food safety, animal health, and pesticides.
- **Homeland security.** Section lawyers provide legal advice to various state officials regarding efforts to improve security of critical facilities, such as the Trans Alaska Pipeline and drinking water supplies.

- **Executive Branch Reorganization.** The Environmental Section provided legal counsel to a detailed review of potential department mergers and other realignments among the resource agencies. As an outgrowth of this review, the section prepared Executive Order 107 to reassign certain functions of the Department of Fish and Game's Habitat Division functions.
- **Trailside General Store Cleanup.** This multi-forum cost recovery case for cleanup of the former Homer Trailside General Store gasoline convenience store came to a successful resolution in 2003. As a result of the State's efforts in Homer Superior Court, Federal Bankruptcy Court in Salt Lake City, and in Wyoming Probate Court, the State has recovered over \$1.4 million in past and future cleanup costs.
- **Alaska Railroad Gold Creek Derailment.** The Department of Law reached a settlement with the Alaska Railroad Corporation concerning the State's claims for oil spill penalties and damages to Denali State Park from the December 1999 railroad fuel spill near Gold Creek.

Under the settlement, the State of Alaska received \$125,054 to resolve the state's claims for civil assessments and oil spill penalties arising out of the fuel spill and cleanup. The Railroad paid an additional \$52,041 to reimburse state oversight costs incurred over the last year. The Railroad will reimburse future cleanup and restoration oversight costs incurred by DEC, State Parks, Fish & Game and the Department of Law and will complete necessary cleanup and monitoring as required by law. In addition, the Railroad will complete site restoration work requested by Alaska State Parks by October 2004. The restoration work involves the removal of structures, gravel pads and preparing the site for natural re-vegetation.

- **Grounding of the F/V Genei Maru.** The Environmental Section represented DEC and DNR in a wreck removal/oil spill case involving a Japanese fishing vessel. This vessel, the Genei Maru caught fire in the North Pacific Ocean and, after many months adrift, grounded on Afognak Island near Kodiak. As a result of the state's efforts, the vessel owners and underwriters removed the wreck and paid the state \$41,000 in cost recovery and oil spill civil assessments.
- **Prudhoe Bay Contingency Plans.** The Environmental Section assisted DEC in settling a challenge by the Sierra Club to DEC's approval of the Greater Prudhoe Bay Oil Discharge Prevention and Contingency Plan. The parties settled based on BP Exploration (Alaska), Inc.'s compliance with the crude oil transmission pipeline system leak detection requirements in 18 AAC 75.055(a) and 18 AAC 75.425(e)(4)(A)(iv) through a compliance order by consent, and an amendment to the Contingency Plan that includes a complete list of oil discharge response equipment pursuant to 18 AAC 75.425(e)(3)(F).
- **Greenpeace, Inc. v. State and BP.** Greenpeace appealed the state's consistency determination for BP's Northstar project, arguing that it failed to conduct an analysis of cumulative impacts and because it improperly "phased" the project. BP intervened. The superior court affirmed the state's consistency determination, and Greenpeace appealed. In October 2003, the Alaska Supreme Court rejected Greenpeace's arguments, holding that Alaska



NATURAL RESOURCES SECTION

SUMMARY OF RESPONSIBILITY

The Natural Resources Section, which includes the Statehood Defense unit, primarily represents and advises the Department of Natural Resources (DNR)

and the Department of Fish and Game in matters relating to Alaska's lands, waters, fish, game, and other renewable natural resources.

LEGAL SERVICES PROVIDED

The section provides a broad spectrum of litigation services and client advice. Attorneys provide advice to ensure that Alaska's natural resources are managed and allocated by the state agencies in a manner consistent with the state constitution and state law. The section handles a variety of complex cases arising out of state/federal jurisdictional conflicts that will have a profound and lasting impact on management of Alaska's natural resources. Issues include ownership and management of uplands, tidelands and submerged lands; transfer, leasing and other uses of state lands; public access; RS

2477; parks; subsistence; commercial and sport fishing; hunting; Native land transfers; mental health trust lands; and agricultural lands.

The section has ten full time attorney and two paralegal positions in Anchorage and Juneau. In addition, two attorneys in Fairbanks assigned to other sections provide assistance on natural resources issues in the northern region of the state.

ISSUES AND TRENDS

The Natural Resources Section has been cut over the last several years due to budget reductions and has significantly less staff than it did ten years ago. At the same time the needs of the client agencies have not decreased. Disputes over public access and ownership of submerged land have increased, as has litigation to recover fire suppression costs. DNR is seeking assistance more often with clouds on title to state land to enable the state to increase the amount of state land offered for disposal.

Work with the Board of Fisheries and the Board of Game continues to require a large investment of attorney time to review and advise on proposals, assist with legal issues during deliberations, review regulations, and defend board actions in court. The section is also called on frequently for comments on, and to draft amendments for, bills before Congress on a wide range of resource related topics. In addition, Natural Resources attorneys are assigned to draft or review a large number of state legislative bills on natural resource matters.

SIGNIFICANT CASES AND EVENTS

- **Alaska v. United States, U.S. Supreme Court, No. 128, Original (Southeast Alaska tide and marine submerged lands).** The State filed an original action in the Supreme Court against the United States, claiming title to the lands underlying marine waters in southeast Alaska. A special master was appointed



DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

Chignik Area commercial salmon fishermen to form a co-operative and receive an allocation, based on the percentage of fishermen joining. The case is now on appeal to the Alaska Supreme Court.

- **Subsistence:** The section successfully requested the Federal Subsistence Board to reconsider a regulatory proposal restricting non-subsistence fishing. The section continues to attend federal board meetings and monitor its activities. In *Manning v. State*, the superior court granted the State summary judgement on two issues, but ruled that one of the challenged regulatory measures governing the Tier II hunting permit application scoring process is unconstitutional. Both sides have appealed to the Alaska Supreme Court.

OIL, GAS AND MINING SECTION

SUMMARY OF RESPONSIBILITY

Eighty percent of the state's general fund revenue is attributable to oil and gas royalties from state-owned land and taxes imposed on the oil and gas industry in Alaska.

The Oil, Gas and Mining Section provides legal representation and advice to: (1) the Division of Oil and Gas in the Department of Natural Resources; (2) the Tax Division in the Department of Revenue (with respect to taxes imposed on the oil and

gas industry in the State of Alaska); (3) the Alaska Oil and Gas Conservation Commission; (4) the Division of Mining, Land and Water in the Department of Natural Resources (with respect to mining matters); and (5) the State Pipeline Coordinator. In addition, the section is responsible for representing the state's interests in the economic regulation of oil and gas pipelines in the state.

Eighty percent of the state's general fund revenue is attributable to oil and gas royalties from state-owned land and taxes imposed on the oil and gas industry in Alaska.

LEGAL SERVICES PROVIDED

The section includes 13 attorneys (five in Juneau and eight in Anchorage) and nine professional support staff.

The Division of Oil and Gas in the Department of Natural Resources is responsible for leasing state-owned land for oil and gas development and for administering the state's oil and gas leases. Legal support for the Division includes: (1) drafting legislative proposals and administrative regulations pertinent to the state's oil and leasing program; (2) advising the Division on legal issues with respect to its leasing program; and (3) representing the Division in disputes that arise with respect to royalty payments for oil and gas production from state-owned land.

The Tax Division in the Department of Revenue administers the state's taxes. The Oil, Gas and Mining Section provides legal support to the Tax Division with respect to the taxes the state imposes on the oil and gas industry. These taxes include the oil and gas production tax, a corporate income tax and a statewide 20 mill ad valorem oil and gas property tax. Representational responsibilities for the oil, gas and mining section include leg-

islative drafting and advocacy, regulation drafting and revisions, and representation of the Tax Division in hearings and in court with respect to disputed oil and gas taxes.

The Oil, Gas and Mining Section also represents the state in negotiating and, if required, litigating oil and gas tariff disputes. Tariffs charged by oil and gas pipelines directly affect the state's revenue from oil and gas production. Both royalties on oil and gas production from state-owned land and production taxes imposed on all oil and gas production in the state are based on the value of the oil and gas at the well. Lower tariffs result in higher values at the well, and consequently, higher state revenues.

The Oil and Gas Conservation Commission is responsible for regulating oil and gas production operations in the state to ensure maximum resource recovery, accurate measurement of amounts of oil and gas production, safety, and protection of correlative rights. The Oil, Gas and Mining Section provides legal support to the Commission with respect to all of these responsibilities.

tractually bound to defend the settlements while it also is responsible for protecting the state's major revenue sources. Proceedings relating to TAPS tariffs are presently pending before the Regulatory Commission of Alaska, the Federal Energy Regulatory Commission and the Alaska Superior Court in Anchorage.

- **Oil Royalties.** In the early 1990's, after fifteen years of litigation concerning how to value ANS crude oil for the purpose of calculating the state's royalty share, the state entered settlement agreements with the North Slope producers that provided for detailed agreed-upon formulae for calculating ANS oil royalty values. These settlement agreements also provided for periodic reopeners for modification of the variables in the formulae and a baseball arbitration process for resolving disputes. One or more of these reopeners occurs annually and the Oil, Gas and Mining Section devotes substantial time and effort to assist the Division of Oil and Gas in resolving them.
- **TAPS Quality Bank.** The Trans Alaska Pipeline System ("TAPS") carries a mixture of crude oils from different fields on the North Slope, as well as the "left-overs" from several refineries located along the pipeline that extract portions of the crude stream to make products like gasoline and jet fuel. The Quality Bank is a mechanism to account and compensate for the different values of the various input streams that are commingled within TAPS. The Quality Bank methodology has been the subject of a major dispute among North Slope producers and in-state refiners, and has been in litigation before the Federal Energy Regulatory Commission and the Regulatory Commission of Alaska (or its predecessor, the Alaska Public Utilities Commission) since 1989.

The state is a party to this litigation, and is represented by the Oil, Gas and Mining Section. The state's interest in the case has been to ensure that the methodology for estimating the relative values of the different petroleum streams is reasonably accurate. An inaccurate methodology would artificially penalize some production while artificially subsidizing other production (or refining), and such distorted economic incentives could adversely affect future North Slope oil development. In addition, the choice of Quality Bank methodology directly affects state royalty and production tax revenues, because it changes the netback values of oil produced from the different properties. In 2003, the Oil, Gas and Mining Section participated in 96 days of hearings before the two Commissions on all outstanding issues in the case. The parties have filed voluminous post-hearing briefs, and proposed decisions by the administrative law judges are anticipated in the spring of 2004.

- **Royalty in Kind Oil Contract.** Under state oil and gas leases, the state has the right to take its royalty share of ANS oil production in value or in-kind. Since 1979 the state has supplied the oil refinery in North Pole, Alaska with in-kind royalty oil. The contracts for selling state royalty oil to the refinery expire at the end of 2003. The current owner of the refinery, Williams Alaska Petroleum Company, is negotiating to sell the refinery shortly after the end of the year. The section is advising and working with the Division of Oil and Gas to negotiate a new contract with the proposed purchases of the refinery. (Negotiated 2004)



DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT



RENGTHENING ALASKA

LABOR AND STATE AFFAIRS SECTION

SUMMARY OF RESPONSIBILITY

The Labor and State Affairs section provides legal assistance with three aspects of the state's functions: internal operations, interactions between governmental branches and subdivisions, and public services. To support the state's internal operations, the section provides legal assistance on budget, employment, funds investment, labor relations, procurement, public employee retirement systems, public finance, and public records disclosure matters. The section's legal assistance

with governmental interactions includes matters involving the separation of powers among the three branches of government and legal relationships between the state and local governments. To support public-service functions, the section provides legal assistance for civil rights protection, disaster management, education, elections, homeland security, initiatives, Medicaid rate-setting, occupational safety, unemployment benefits, and wage and hour requirements.

LEGAL SERVICES PROVIDED

The section provides legal services to departments and divisions throughout state government.

CLIENTS INCLUDE

- Department of Administration
- Department of Community & Economic Development
- Department of Education & Early Development
- Department of Health & Social Services
- Department of Labor & Workforce Development
- Department of Military & Veterans Affairs
- Department of Revenue
- Offices of the Governor & Lieutenant Governor
- Governor's Office of Management & Budget
- Division of Elections
- Alaska State Commission for Human Rights
- Alaska Public Offices Commission
- Alaska Court System
- Quasi-governmental entities such as the Alaska Permanent Fund Corporation and AIDEA.

As needed, the section provides legal services to nearly every state department and agency on employment and personnel matters.

The section includes 16 attorney positions, one and one-half associate attorney positions, and five and one-half law office assistant positions. The section represents its clients—state departments, agencies, employees, and officials—in litigation and appeals in state district and superior courts, the Alaska

Supreme Court, the United States District Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court. The section also represents its clients in administrative proceedings before various boards and commissions and hearing officers for the commissioners of the Departments of Administration, Health and Social Services, and Labor and Workforce Development. The issues involved in these judicial and administrative proceedings span the broad spectrum of the section's responsibilities.

LABOR AND STATE AFFAIRS CLIENTS

- *Dept. of Administration*
- *Dept. of Community & Economic Development*
- *Dept. of Education & Early Development*
- *Dept. of Health & Social Services*
- *Dept. of Labor & Workforce Development*
- *Dept. of Military & Veterans Affairs*
- *Dept. of Revenue.*
- *Offices of the Governor & Lieutenant Governor*
- *Governor's Office of Management & Budget*
- *Division of Elections*
- *Alaska State Commission for Human Rights*
- *Alaska Public Offices Commission*
- *Alaska Court System*
- *Quasi-governmental entities such as the Alaska Permanent Fund Corporation and AIDEA.*

TORTS AND WORKERS' COMPENSATION SECTION

SUMMARY OF RESPONSIBILITY

The section handles the state's defense in worker compensation claims, tort civil litigation, and personal injury maritime claims. It defends both tort (except employment torts) and maritime claims for damages and workers compensation claims against state agencies (including all three branches of government). The section also defends state employees when they are individually named as defendants in lawsuits for torts within the course and scope of their jobs.

The attorneys in the section provide oral advice to the primary client, the Division of Risk Management, Department of Administration, and to other state agencies on tort, liability, and workers compensation issues. They assist as instructors on risk management, liability, and workers compensation issues. They also provide assistance to the civil and criminal divisions on matters of civil litigation.

LEGAL SERVICES PROVIDED

There are fourteen attorneys in the section statewide (two of whom work part-time) and six paralegal professionals. Three of the attorneys handle workers compensation cases exclusively; the other eleven attorneys handle the tort and maritime cases.

Attorneys in the section defend a wide variety of lawsuits against the state, such

as inmate claims for tort damages; injuries on state property (including the state highway system and marine highway); claims brought against the state arising out of the criminal misconduct of third parties such as parolees; claims brought against the Office of Children's Services and the Division of Juvenile Justice; and damages for constitutional civil rights violations.

ACTIVITIES AND TRENDS

The Torts and Workers Compensation Section is currently handling approximately 2300 cases statewide. Of these, approximately 270 are matters in litigation either in court or before the Alaska Workers Compensation Board. The remaining files represent aid-to-agency for items that are not currently in litigation but on which the section is advising a state agency. In calendar year 2003, 1040 new files were opened.

Statewide, the section handled two jury trials, with both trials resulting in verdicts in favor of the state. Six workers

compensation hearings were held, with four resulting in rulings in favor of the state. In addition, fifteen cases were wholly resolved in favor of the state on motion practice. Cases which were scheduled for a hearing or trial during calendar year 2003 were settled in consultation with the Division of Risk Management.

The section wrote nine appellate briefs, the majority of which are still pending. Of the four cases briefed by the section and resolved by the Supreme Court during calendar year 2003, three out of the four were decided favorably for the state.

LEGISLATION AND REGULATIONS SECTION

SUMMARY OF RESPONSIBILITY AND SERVICES PROVIDED

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. The section assists the Governor's Office in seeking passage of legislation introduced at the Governor's request. The section coordinates and reviews all responses to questions and requests for information directed to the Department of Law by legislators. The section provides training on regulations and legislation matters to all state agencies and to Assistant Attorneys General. The section also prepares the Drafting Manual for Administrative Regulations (AS 44.62.050), and frequently provides advice to agencies regarding legal requirements on regulations, public records, and the Open Meetings Act.

The section currently has one supervisory attorney (who is also the Department of

Law's legislative liaison), two Assistant Attorneys General, two legal text editors, and one law office assistant. The regulations attorney serves as the representative of the executive branch to the National Conference of Commissioners on Uniform State Laws, which proposes model legislation on issues of concern throughout all of the 50 states.

The section, responding to critiques by participants, took steps to improve the training it provides. It conducted training on regulation drafting in Fairbanks and Anchorage for the first time in several years. Feedback from agency personnel and Assistant Attorneys General in those cities, regarding past training that had been done by teleconference, indicated that in-person training would be more effective. Feedback from this year's training was very positive. Further, to improve timeliness and consistency, the section consolidated the function of Legislative Liaison to coordinate and review responses by Assistant Attorneys General to inquiries from legislators.

LEGISLATION

The Governor enjoyed great success with his legislative package for 2003. The Governor passed 40 out of 47 bills during the 2003 legislative session. The Governor also introduced seven Executive Orders, including orders that streamlined natural resources permitting. The Department of Law sponsored seven of the Governor's bills. Five were enacted.

- **House Bill (HB) 195** changed the judicially created doctrine regarding the award of attorney fees and costs for or against public interest litigants to provide for a more equal footing for parties in civil actions and appeals by abrogating the special status given to public interest litigants with respect to the award of attorney fees and costs.
- **Senate Bill 120** addressed the costly circumstance where Alaska Marine Highway System (AMHS) crew and a small number of other ship-based personnel were the only state employees authorized to file a direct civil (negligence) action against their employer for on-the-job injury or illness. The cost to the state for the claims of these employees was nearly 75 percent higher than the cost related to claims of other state employees covered by workers' compensation. For over eight years during the 1980s, AMHS union labor agreements provided for Workers' Comp benefits, and many employees preferred the Alaska Workers' Compensation Act (AWCA). An Alaska

OPINIONS, APPEALS AND ETHICS SECTION

SUMMARY OF RESPONSIBILITY

The Opinions, Appeals & Ethics Section was established within the Attorney General's Office in June 2003. The section provides the following services:

- Coordinates civil cases at the appellate levels in both state and federal courts
- Makes recommendations to the Attorney General on whether to appeal cases
- Handles appeals which present significant constitutional issues or which implicate important matters of public policy
- Briefs and argues over half of the state's appellate cases concerning child abuse and neglect and juvenile delinquency, and provides advice to Assistant Attorneys General responsible for children's cases at the trial court level
- Reviews and coordinates the department's involvement with amicus curiae ("friend of the court") briefs in federal and state appellate courts
- Reviews all attorney general opinions, and prepares and reviews opinions and legal advice on issues of statewide significance
- Serves as State Ethics Attorney for responsibilities under the Executive Branch Ethics Act
- Serves as the department's primary resource on matters of professional responsibility and issues concerning professional conflicts of interest
- Coordinates and provides legal advice on Indian law

The Opinions, Appeals & Ethics Section advises and assists attorneys throughout the Civil Division concerning appellate practice, and coordinates the Department's legal advice on issues of statewide significance.

LEGAL SERVICES PROVIDED

The Opinions, Appeals & Ethics Section advises and assists attorneys throughout the Civil Division concerning appellate practice, and coordinates the Department's legal advice on issues of statewide significance. The section has primary or exclusive responsibility for certain appeals and legal issues, and a secondary role in many others. The section also works with the Office of Special Prosecutions and Appeals in the Criminal Division to ensure coordination on issues that impact both civil and criminal law. The section provides legal advice through the preparation of opinions and memoranda and its consultation with other sections, as well as directly to agencies. The

section provides legal services under the Executive Branch Ethics Act for all of state government.

There are six attorneys assigned to the Opinions, Appeals & Ethics Section. The section supervisor and one attorney are located in Juneau, two attorneys in Anchorage, and two attorneys in Fairbanks. The attorneys share Law Office Assistants in each location with other sections. Two of the attorneys in the section are also assigned work in the Natural Resources Section focusing on Statehood Defense issues and large-mine and other development projects and regulations.

by federal law does not create a prohibited dedication of revenues by initiative. The purpose of the dedicated fund prohibition is to preserve control of state spending in the legislature and governor and prevent the earmarking of funds that future legislatures could otherwise appropriate. Since there is no possibility that the funds could be otherwise appropriated (because of the application of federal law), the initiative does not create the harm that the dedicated fund provision was intended to prevent.

- **Formal opinion issued on methodology used to account for unrealized gains and losses of Alaska Permanent Fund.** A member of the section worked under the direction of the Attorney General to prepare a formal opinion for the Alaska Permanent Fund Corporation Board of Trustees. The opinion addressed the method used to account for gains and losses of the Alaska Permanent Fund. The opinion was requested because changes in government accounting rules appeared to conflict with the statutory requirements for determining income available for distribution for dividends and other purposes. The Attorney General concluded that, under traditional trust law principles, unrealized losses must be allocated to assets attributed to the principal of the permanent fund. The opinion will be important for determining the amount of distributions under existing law from fund earnings when financial markets result in substantial unrealized losses on investments.
- **Opinion issued on Senate vacancy initiative application; appeal now pending in the Alaska Supreme Court.** The section prepared an Attorney General's opinion advising the Lieutenant Governor on an initiative application concerning the process by which a vacancy in the office of United States Senator is filled. The opinion recommended that the Lieutenant Governor not certify the application because it contained subject matter that is restricted from enactment through the initiative process.

The Seventeenth Amendment to the United States Constitution governs the process for filling a vacancy in the United States Senate. The opinion concludes that the plain meaning of the text of the Seventeenth Amendment, and available guidance from decisions of the United States Supreme Court, commit the process of filling a vacancy in the Senate to the sole discretion of the state legislature. The proposed initiative would attempt to exercise authority vested solely in the Alaska Legislature in its representative capacity (as compared to its law-making capacity), directly by the people through the initiative, and it would disable the legislature from exercising those powers. For these reasons, we concluded that the initiative was not in the "proper form" and should not be certified.

The sponsors of the initiative filed a lawsuit. The superior court reviewed the case on an expedited schedule and ruled that the Lieutenant Governor should certify the initiative application. The court did not decide the Seventeenth Amendment issue and instead concluded that the constitutional questions concerning the initiative should be decided post-election. We filed an appeal to the Alaska Supreme Court and requested expedited consideration so that there can be a decision rendered before the deadline for printing the November 2004 general election ballots.

- **Appeal concerning rural police protection pending in the Alaska Supreme Court.** A member of the section led a team of attorneys from the Criminal Division and the Labor and State Affairs Section in defending a challenge to the Department of Public Safety's allocation of law enforcement services to areas of the state that are not accessible by the interconnected road system. This case has

because the parent had never harmed the child in the past. The court held that the proper focus under the statutes is the potential risk of harm, not past incidents. *Martin N. v. State, DFYS, 79 P.3d 50 (Alaska 2003)*. A trial court may, however, look to a parent's past conduct, as well as the situation presented at the time of the termination hearing, in determining whether termination is appropriate. *A.J. v. State, DFYS, 62 P.3d 609 (Alaska 2003)*. A trial court may also look to the history of efforts to prevent the breakup of an entire family, and is not confined to evaluating only the efforts made in connection with a particular child, in assessing whether the department's efforts were sufficient with respect to the particular child. *Erica A. v. State, DFYS, 66 P.3d 1 (Alaska 2003)*.

Several other appeals handled by the section also involved the state's duty to provide reunification efforts to families before seeking termination of parental rights. The court held that a trial court may terminate a parent's rights, without requiring reunification efforts, if the parent substantially endangered the child's health or safety. *Vivian P. v. State, DFYS, 78 P.3d 703 (Alaska 2003)*. The court clarified that the department's statutory responsibility to "actively offer" reunification services to a parent is fulfilled by notifying the parent of the types of services in which the parent should participate, in a manner allowing the parent to utilize the services. *Frank E. v. State, DFYS, 77 P.3d 715 (Alaska 2003)*.

The court issued several decisions defining the state's duty to offer services to incarcerated parents, including *Martin N. v. State, DFYS, 79 P.3d 50 (Alaska 2003)*, holding that the Department of Corrections is primarily responsible for providing services to incarcerated parents, and *G.C. v. State, DFYS, 67 P.3d 648 (Alaska 2003)*, holding that as long as services are offered by the correctional institution the department need not seek out additional community-based programs. Finally, the court held that a parent's placement in administrative segregation due to his conduct while incarcerated, and his consequent inability to participate in services, does not excuse the parent's failure to fulfill the requirements of his case plan. *Martin N. v. State, DFYS, 79 P.3d 50 (Alaska 2003)*.

TRANSPORTATION SECTION

SUMMARY OF RESPONSIBILITIES

The transportation section provides advice and legal representation to state agencies on all aspects of the construction and operation of the state's public facilities, including highways, airports, fer-

ries, buildings, harbors, and other public works. The Department of Transportation and Public Facilities generate a high percentage of the section's work.

The transportation section:

- Helps agencies with project development, including compliance with project planning and environmental laws
- Helps agencies with project execution, including land acquisition, procurement of contractors, and resolution of claims by contractors
- Helps agencies with management and operation of completed facilities
- Provides advice and representation on the myriad of issues daily confronting agencies related to development and operation of public infrastructure

LEGAL SERVICES PROVIDED

There are ten attorneys in the section statewide and one paralegal professional. One of the ten attorneys exclusively represents the Alaska International Airports System. The attorneys provide legal advice and represent the client agencies in administrative and judicial proceedings.

MEMBERS AND TRENDS

The Governor is actively developing the state's transportation network. In the coming year, the transportation section will assist with the development of bridges to Gravina Island, access to Juneau, a Knik Arm Bridge, an extension of Abbott Loop Road in Anchorage, an extension of C Street in Anchorage, improvement of the Sterling Highway through Cooper Landing, a road to Nondalton, and resource development roads. The sec-

tion will provide assistance should negotiations with Alaska Marine Highway System employees result in a strike. The section also expects significant effort on a construction claim relating to the reconstruction of passenger terminals at the Ted Stevens Anchorage International Airport.



SIGNIFICANT ISSUES AND EVENTS

In 2003, the transportation section assisted with:

- planning and environmental review of infrastructure projects such as Gravina Island bridges, Juneau access, Abbott Loop Extension, and resource development roads



**PROFESSIONAL
SERVICES**

ADMINISTRATION DIVISION

SUMMARY OF RESPONSIBILITY

Administrative Services provides budgeting, accounting, procurement, and computing services to the Department of Law.

KEY SERVICES PROVIDED

- **Financial management and forecasting.** Regular review, monitoring, and reporting of expenditures and revenues with additional emphasis on forecasting authorization balances through the end of the fiscal year.
- **Budgeting.** Annual preparation of the operating and capital budget request for the entire department. Periodic and final reconciliation of the annual budget authorization with actual expenditures and revenues. Budget analysis and forecasting.
- **Fiscal and Accounting.** Perform all accounting functions for the department through centralized accounts payable/receivable, review and payment of professional services contracts; and federal grant reporting. Complete annual fiscal year closeout involving reconciliation of expenditures and revenues and ensure all fiscal year obligations are encumbered or satisfied before the end of the reappropriation period.
- **Procurement.** Manage the procurement process for outside legal counsel and expert contracts. Provide property control and centralized supply and equipment purchasing. Develop guidelines for leased space needs.
- **Cost Allocation.** Calculate and revise the federally approved cost allocation plan.
- **Timekeeping & Billing.** Calculate the department's attorney and paraprofessional timekeeping rate structure; manage the Civil Division's full-time attorney and paraprofessional time reporting and case management system; generate and monitor client billings; and respond to routine inquiries regarding individual matter, client, or project time and charges.
- **Information Services.** Provide computer hardware and software support to each of over 470 computer end-users located in Anchorage, Juneau, Fairbanks, Palmer, Kenai, Bethel, Ketchikan, Kodiak, Nome, Barrow, Dillingham, Kotzebue and Sitka. This support includes: network support, application maintenance and support, and hardware and software installation. In addition the Section provides individual assistance when necessary and presents occasional formal training. Other services provided by the section include web development, technical liaison on projects involving other public agencies, special projects, and service on state-wide technical committees that establish the foundations for state government digital communication.
- **Mail Services.** Provide central mail pickup and delivery services for Juneau offices of the department as well as centralized mail services for certain legal and library supplies for the entire agency. Provide off-site security screening and

Administrative Services provides budgeting, accounting, procurement, and computing services to the Department of Law.

the use of new or existing computer applications as well as other subject matter. Regardless of the method of delivery, our intention is to continue to provide a consistent curriculum delivered on a regular basis in the hope that it will increase understanding of and adherence to the rules and guidelines that govern many of our business processes.

Human Resources

- The Administrative Services Director will work with the Division of Personnel to try to build some quantitative and qualitative methodology for measuring the efficient and effective delivery of human resources services in the wake of the transfer and consolidation of this function to the Department of Administration's Division of Personnel.

Office Lease Procurement

- The Department of Law will pay close attention to the development of successful lessor respondent requirements in requests for proposals for leased office space. With the new emphasis on costs in the award of bids, this will become a critical factor.

Contracting & Supply Procurement

- Administrative Services continues to look at ways for the Department of Law to reduce the cost of operations in terms of the procurement of supplies and equipment.

Timekeeping

- We are currently undertaking a review of our network in the hope that we can improve the performance of our timekeeping system. We are also considering whether a replacement system would be in the best interests of the Department.

Information Services

- The long-range goal is to distribute the CRIMES system to all District Attorney offices in the state, a plan that would involve as many as 12 more servers. As a possible alternative for some sites, we are evaluating an option which would allow several small, remote offices not yet utilizing CRIMES to share a single, centrally located server. The current architecture includes replication among all sites, so that all sites have the complete database. This is essential for quickly researching criminal history, a necessary part of deciding what charges should be filed. We anticipate completing the CRIMES rollout within the next fiscal year. We will then begin identifying areas where we can streamline or reorganize our support process. The long-term goal is to rely more on Department IS staff and less on third party vendors for troubleshooting, support and performance tuning.
- A new Help Desk system has been purchased and installed to help manage IT workload. The system is web-based to allow for rapid deployment and easy use by all Department staff. It will allow users to review the status of their trouble ticket and provide an easy and consistent means of communication or problems and solutions between the Department's computer users and IS staff. We are beginning the testing and implementation process and plan to have it in use within the coming months if no other enterprise-wide help desk software becomes available to State agencies.
- We will continue to look at ways to enhance the backbone bandwidth of our Local Area Networks located in the larger offices. "Backbone bandwidth" refers

ing were achieved at the expense of operational efficiencies and employee morale at this location.

- Completed remodeling and security upgrades to the Kodiak DA's office as part of Section 83, lease extension.
- In cooperation with the Division of General Services, negotiated the Section 83, lease extension for our Anchorage offices and completed remodeling project associated with the reconfiguration of the Anchorage Criminal Division offices.

Contracting & Supply Procurement

- With Legislative approval of several special appropriations, initiated the carpet replacement project on the fifth floor of the Dimond Courthouse and the procurement and installation of a high capacity records storage system for the Fairbanks DAO.
- Undertook the procurement of outside legal and expert witnesses to assist the State in new and ongoing litigation and administrative disputes.
- In the wake of the Enron, WorldCom, and other corporate governance scandals, the section continues to facilitate the expedited procurement of securities litigation counsel on behalf of the Alaska Permanent Fund Corporation and its Board of Directors.

Timekeeping

- Performed a limited deployment and trial/evaluation of "Javelan In-time" the web-based time-entry module for Javelan, the department's existing timekeeping and billing system. It was determined that the potential benefits of this module did not provide sufficient justification for the initial cash outlay required.
- Completed operating system and database upgrade on Javelan server.

Information Technology

- Continued to improve power systems at critical locations to protect servers from power interruptions.
- Continued installation of a new Help Desk system and began its configuration. When fully implemented, it will improve response time to user issues, help identify trends and/or weak spots in our support structure and ensure no problems "fall through the cracks".
- Recruited and filled open IS positions in Anchorage and Juneau. Both locations are now fully staffed.
- Upgraded server hardware in two central locations (Anchorage and Juneau) as well as remote offices (Fairbanks and Ketchikan). The upgraded hardware will increase storage capacity and improve response time to network-based activities such as email and file/print services. Using it to replace older and/or slower components will recycle the replaced hardware.
- Upgraded network backbone in several locations to increase bandwidth and network reliability.
- Performed on-site assessments of all department offices to determine IS needs and begin planning to further incorporate all department offices into the department's network services.

State of Alaska FY2006 Governor's Operating Budget

Department of Law

Department of Law

Mission

The mission of the Department of Law is to provide legal services to state government and to prosecute crime.

Core Services

The Department of Law's core services are reflected in its three divisions also known as results delivery units (RDUs):

The Criminal Division RDU protects the public by prosecuting all violations of state criminal law committed by adults, and a large portion of the serious crimes committed by juveniles, and by placing them under appropriate controls. The Criminal Division provides assistance to victims and witnesses of crimes and supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial, and conviction; it also provides general legal services to the Departments of Corrections and Public Safety relating to their criminal justice activities. The Criminal Division has District Attorney offices in thirteen Alaskan communities.

The Civil Division RDU supports the Civil Division of the Department of Law. The Civil Division serves the interests of Alaska's citizens by providing legal counsel to the executive branch in all civil actions. The division defends and prosecutes all civil litigation to which the state is a party, and handles legal matters for and provides legal advice to the governor, executive branch agencies, and – upon request – the legislative and judicial branches. The Civil Division BRU includes components supporting 14 sections: (1) the Deputy Attorney General's Office; (2) Collections and Support; (3) Commercial and Fair Business Practices; (4) Environmental Law; (5) Human Services; (6) Labor and State Affairs; (7) Natural Resources; (8) Oil, Gas and Mining; (9) Opinions, Appeals and Ethics; (10) Regulatory Affairs and Public Advocacy; (11) Statehood Defense; (12) Torts and Workers' Compensation; (13) Transportation; and (14) Timekeeping and Support.

The Administration and Support Division RDU includes the Office of the Attorney General, the Legislation and Regulations Section and the Administrative Services Division. The Office of the Attorney General provides overall management of the Department of Law. The Attorney General, as the principal executive officer of the department, is responsible for both the legal and the administrative aspects of the department's operations. Within the Office of the Attorney General, the Legislation and Regulations Section drafts and edits legislation on behalf of the governor for introduction in the legislature, tracks and reviews all legislation for legal issues before the governor acts on it, and reviews virtually all regulations adopted by the executive branch for compliance with legal requirements. The Administrative Services Division provides the core administrative services that are essential to the day-to-day operation of the Department of Law and to managing the resources of the department.

End Results	Strategies to Achieve Results
<p>A: Improve Public Protection</p> <p><u>Target #1:</u> Increase to 75% the number of cases on which the State prevailed on the merits at final resolution</p> <p><u>Measure #1:</u> Percentage of cases on which the State prevailed on the merits at final resolution</p>	<p>A1: One: Improving Public Safety Against Serious Assault</p> <p><u>Target #1:</u> Reduce the rate of violent crime reported in Alaska by 1% per year.</p> <p><u>Measure #1:</u> Percent violent crimes per 100,000 population reported</p> <p>A2: Two: Enhance the welfare of children</p> <p><u>Target #1:</u> Reducing the number of children in foster care in Alaska by 5%</p> <p><u>Measure #1:</u> Percent change in the number of children in foster care in Alaska</p>

	<p><u>Target #2:</u> Increase the amount of support received by families through CSED by 1% each year <u>Measure #2:</u> Percent change in total dollar amount of child support received by families through CSED each year</p> <p><u>Target #3:</u> Reduce the number of child sexual abuse cases by 5% <u>Measure #3:</u> Percent change in the number of child sexual abuse cases reported each year</p> <p>A3: Three: Enhance the protection of victims of crimes and delinquent acts</p> <p><u>Target #1:</u> Reduce to zero the number of submitted complaints from victims <u>Measure #1:</u> The number of submitted complaints from victims</p>
End Results	Strategies to Achieve Results
<p>B: Increase Effectiveness of Legal Services</p> <p><u>Target #1:</u> Increase to 75% the number of cases on which the State prevailed on the merits at final resolution <u>Measure #1:</u> Percentage of cases on which the State prevailed on the merits at final resolution</p>	<p>B1: Four: Increase Consumer Protection in Alaska</p> <p><u>Target #1:</u> 5% increase per year in successful resolution of consumer complaints and enforcement action <u>Measure #1:</u> Percent change in number of consumer complaints resolved and enforcement actions taken</p> <p>B2: One: Improve Agency Decision Making</p> <p><u>Target #1:</u> 5% per year reduction in legal challenges to final agency decisions through. <u>Measure #1:</u> Percent change in number of challenges to agency decisions per year</p> <p><u>Target #2:</u> Increase to 100% the number of requests for advice and regulation review delivered on time <u>Measure #2:</u> Percent change in the number of responses to requests for advice and request for regulation review delivered on time</p>
End Results	Strategies to Achieve Results
<p>C: Efficiently Provide Highest Quality Legal Services to the State</p> <p><u>Target #1:</u> Increase to 75% the percentage of state agencies responding that rank the quality of legal services provided as good to excellent <u>Measure #1:</u> Percentage of state agencies responding that rank the quality of legal services provided as good to excellent</p>	<p>C1: Two: Improve Prosecution and Defense of Civil Claims</p> <p><u>Target #1:</u> 5% improvement per year in percentage of cases in which the state obtains a fair resolution through: <u>Measure #1:</u> Percent change in number of cases resolved in which the state obtains a fair outcome</p> <p>C2: One: Improve Civil Division Structure and Organization</p> <p><u>Target #1:</u> Implement all Conference of Western Attorneys General recommendations approved by the Attorney General. <u>Measure #1:</u> Number of CWAG Recommendations Approved Implemented.</p>

FY2006 Resources Allocated to Achieve Results

FY2006 Department Budget: \$55,634,800

Personnel:

Full time	508
Part time	10
Total	518

Performance Measure Detail

A: Result - Improve Public Protection

Target #1: Increase to 75% the number of cases on which the State prevailed on the merits at final resolution
Measure #1: Percentage of cases on which the State prevailed on the merits at final resolution

A1: Strategy - One: Improving Public Safety Against Serious Assault

Target #1: Reduce the rate of violent crime reported in Alaska by 1% per year.
Measure #1: Percent violent crimes per 100,000 population reported

A2: Strategy - Two: Enhance the welfare of children

Target #1: Reducing the number of children in foster care in Alaska by 5%
Measure #1: Percent change in the number of children in foster care in Alaska

Target #2: Increase the amount of support received by families through CSED by 1% each year
Measure #2: Percent change in total dollar amount of child support received by families through CSED each year

Target #3: Reduce the number of child sexual abuse cases by 5%
Measure #3: Percent change in the number of child sexual abuse cases reported each year

A3: Strategy - Three: Enhance the protection of victims of crimes and delinquent acts

Target #1: Reduce to zero the number of submitted complaints from victims
Measure #1: The number of submitted complaints from victims

B: Result - Increase Effectiveness of Legal Services

Target #1: Increase to 75% the number of cases on which the State prevailed on the merits at final resolution
Measure #1: Percentage of cases on which the State prevailed on the merits at final resolution

B1: Strategy - Four: Increase Consumer Protection in Alaska

Target #1: 5% increase per year in successful resolution of consumer complaints and enforcement action

Measure #1: Percent change in number of consumer complaints resolved and enforcement actions taken

B2: Strategy - One: Improve Agency Decision Making

Target #1: 5% per year reduction in legal challenges to final agency decisions through:

Measure #1: Percent change in number of challenges to agency decisions per year

Target #2: Increase to 100% the number of requests for advice and regulation review delivered on time

Measure #2: Percent change in the number of responses to requests for advice and request for regulation review delivered on time

C: Result - Efficiently Provide Highest Quality Legal Services to the State

Target #1: Increase to 75% the percentage of state agencies responding that rank the quality of legal services provided as good to excellent

Measure #1: Percentage of state agencies responding that rank the quality of legal services provided as good to excellent

C1: Strategy - Two: Improve Prosecution and Defense of Civil Claims

Target #1: 5% improvement per year in percentage of cases in which the state obtains a fair resolution through:

Measure #1: Percent change in number of cases resolved in which the state obtains a fair outcome

C2: Strategy - One: Improve Civil Division Structure and Organization

Target #1: Implement all Conference of Western Attorneys General recommendations approved by the Attorney General.

Measure #1: Number of CWAG Recommendations Approved Implemented.

Key Department Challenges

CRIMINAL DIVISION

INCREASING FELONY CASELOAD

There has been an increase of 60% in felonies and 10% in misdemeanors in the last decade sent to the Criminal Division for prosecution. Appellate cases saw an increase of 45%. In FY2005, the governor requested, and the legislature appropriated funds for 6 new attorneys in Kenai, Palmer and Anchorage. Recognizing that new positions cannot be filled on July 1 of the fiscal year in which they are authorized, the request was scaled back. To complete the funding and allow the positions to be filled year round, increments totaling \$272,400 are needed.

PROVIDING PROSECUTORS WITH THE TOOLS THEY NEED

The Criminal Division is requesting an increase of \$228,100 in FY2006 in order to add 2 Victim-Witness Paralegal positions in Palmer and Kenai. Victim-Witness paralegals play a critical role in the District Attorney's offices. They provide litigation support to the attorneys, but they are also the office's primary contact with victims and the person primarily responsible for ensuring that victim rights are properly fulfilled. As caseloads increase, the responsibility on the paralegals to meet all these responsibilities increase. The creation of the Office of Victim's Rights, as well as other legislation, which enhances and increases the rights of victims, continues to be passed without any specific increase in

resources to the Department of Law. Four additional positions are necessary in order to properly meet these responsibilities.

\$80,000 is requested to pay the annual maintenance fee on our nearly fully deployed criminal management information system known as CRIMES. Annual maintenance and operation of this system is an operating budget expense and this increment is needed to prevent the loss of a prosecutor and victim witness paralegal that would otherwise be eliminated in order to pay this bill.

INCREASING CYBER AND WHITE COLLAR CRIME

There is an abundance of crime being committed through the use of computers and high technology. However, there is a shortage of law enforcement assets to address these crimes. As a result, computer related crimes are being under investigated and under prosecuted. A determined online predator stands a good chance of eventually victimizing a child. Reactive law enforcement means that we often do not get involved until a tragedy has already occurred. Alaska needs a proactive approach so troopers can go online and intercept would-be sex offenders before they can offend, and the offenders can be prosecuted.

Internet related fraud, and specifically identity theft, is also an area that is under investigated and prosecuted; it is an area where proactive efforts could be useful. Alaska specific frauds are being committed online constantly. Some cases involve Alaskans as the victims, while in other cases the Alaska nexus may be the fraudulent sale of Alaska real estate or the use of a stolen credit card which leaves the Alaskan business without payment. Due to lack of enforcement tools, these crimes are often only addressed with civil action (if at all), leaving the perpetrators to continue their criminal activities. Dedicated resources are needed to combat these insidious crimes.

The Department of Law proposes a budget increment of \$353,200 to add a dedicated prosecutor, a half time paralegal, funding for training and expert witnesses so that legal support can be provided through every step of a cybercrime investigation as well as the ultimate prosecution of the case. The anticipated increase of caseload by adding a prosecutor will require the support of a half-time paralegal. \$100,000 of this request will fund expert witnesses, needed because high technology crimes are getting more complex, while at the same time courts are placing greater obstacles in the way of law enforcement. For instance, recently child pornography case law in some jurisdictions not only requires that prosecutors prove that the person depicted in a picture is a child, but now must *preemptively rebut* the notion that the picture is faked, even if the defense never makes a bona fide challenge to authenticity. A simple possession of child pornography case might now require both a forensic pediatrician who can testify as to age and computer image expert who can analyze the image and testify about authenticity. In this highly complex and changing arena, dedicating \$25,000 of this request toward training will ensure that the skills necessary for a number of prosecutors, on a statewide level, are continually refreshed and sharpened.

CIVIL DIVISION

CHILD PROTECTION

The Division continues to be extremely concerned about child protection workloads. Statutory changes at the state and federal level have reduced the amount of time that children may remain in the child protection legal system. These statutory changes have accelerated the pace of these cases so that if reunification with the family is not in the child's best interest, the child can more quickly be legally eligible for placement in a permanent home. The changes also mandate additional court proceedings to ensure a more timely permanent plan for the child. The accelerated schedules, additional hearings, and accompanying document preparation have greatly expanded attorney workloads. To meet this increasing demand, additional resources were added in FY2005 but were not fully funded for the entire fiscal year. In FY2006, maintaining and fully funding of current attorney positions is necessary in order for us to effectively manage this important responsibility. To complete the funding and allow the positions to be filled year round, an additional increment of \$63,200 is needed in FY2006. Adequate attorney resources are also necessary in order to help the Office of Children's Services meet certain goals for the purpose of receiving federal funding of foster care and administrative expenses involved in child protection and helping to maximize federal reimbursement.

INCREASING STATE REVENUE COLLECTION

One of the primary challenges facing the division is the ability to efficiently increase monies collected for the state and victims of crime. The collections unit handles thousands of collection matters for the state and also collects restitution

on behalf of victims of crimes and delinquent acts. The unit is presently constrained by its limited and outdated computer system. The division cannot electronically download the vast majority of the information it receives from the court system and must re-type the information manually into its own collection system database. Additionally, the current collections database is at maximum capacity and cannot add more data fields for collection. The unit estimated revenues of up to \$750,000 per year could be collected from the correctional facility surcharge enacted by the legislature in FY2004. In addition, over the past several years, there have been an increasing number of new types of judgments and surcharges available for the unit to collect, such as the Police Standards surcharge assessed in all criminal convictions. New computer hardware and software is critical for the efficient, highly automated computerized system to process and collect all civil and criminal judgments, interest, surcharges and restitution owing to the state. The new system would permit electronic downloading of judgments directly from the court system as well as automated systems allowing personnel to focus on collecting fines and restitution instead of manual data entry. The new system would allow the department to more completely meet its responsibilities for both obligors, the State, and victims owed restitution. The division estimates the combined hardware and software costs in the range of \$250,000. With a relatively small investment in a new computer database application, it should be possible to capture additional revenues owed the state in a highly cost effective manner.

PROTECTING CONSUMERS - MAINTAINING OUR EFFORTS

Alaska is a target state for many types of consumer fraud. Under the Consumer Protection Act, the Attorney General is authorized to investigate and bring enforcement action against businesses that engage in unfair or deceptive trade practices. Enforcement activities are directed at fraud affecting a large number of consumers or involving large dollar amounts, and often we do not have sufficient resources even for those cases. Nevertheless, we continue to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY 2000 and increased again for FY 2004. To help ensure the receipt of these revenues, the division must maintain the section's participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers. These multi-state cases often take years to litigate and the timing of the litigation is not within the division's control since other states are also involved. The division is attempting to undertake all appropriate steps to ensure receipt of statutory designated program receipts (SDPR) on a regular basis. However, for FY 2006, a shortfall in SDPR is anticipated and we need to convert \$300,000 in SDPR authority funding back to GF funding to effectively manage and maintain the consumer protection program.

PROTECTING CONSUMERS: SENIOR FRAUD

Alaska led the nation in fraud complaints per capita filed with the FTC for the most recent year statistics are available (1,165 fraud complaints made to the FTC in 2003). Fraud on seniors is on the rise and often goes unreported because they are too embarrassed, fearful, or confused to report what has happened to them. Seniors are hit hard by fraud, in terms of personal dignity and financial security. Because of their age, trust, and good intentions, seniors are often targeted by professional scam artists, sweepstakes rip-offs, and telemarketers and paid solicitors. In some scams, 80% or more of the victims are 65 or older. In addition, identity theft of seniors nationwide has increased by 218 percent between 2000 and 2001. Internet related fraud also is increasing. The high number of Alaska seniors who use or have access to the Internet means they will be exposed to increasing numbers and types of Internet scams.

The division has identified fraud against Alaska's senior citizens as an area where additional resources should be targeted. With a rapidly aging population in Alaska, we can expect senior fraud, abuse, and exploitation to be a continuing and growing problem. The division proposes to create and implement such a program or initiative statewide. The proposal will have two components: education and enforcement. The education component will involve senior education and community outreach addressing a range of issues affecting seniors including fraud, abuse, and financial exploitation. The enforcement component will put priority on consumer fraud and deception cases where Alaska seniors are victims. We anticipate a substantial increase in the section's workload arising out of this proposal. The addition of two attorneys and one investigator is needed to implement the proposal and to accommodate the resulting increased workload. The Governor's FY2006 budget request includes an increment for \$430,300 to fund such a proposal.

COMPLETING FUNDING FOR FY 2005 POSITIONS

Steady increases in the frequency and complexity of lawsuits and other disputes involving labor relations and employment issues have increased demands on the attorneys in the Labor & State Affairs section. To meet this increasing demand, additional resources were added in FY2005 but were not fully funded for the entire fiscal year. In

FY2006, full funding of current attorney positions is necessary to provide the timely advice other state agencies need to make sound labor and employment decisions and to represent state agencies effectively in court. To complete the funding and allow the positions to be filled year round, an additional increment of \$144,000 is needed in FY2006.

The Opinions, Appeals and Ethics section is currently overseeing the work of the civil division on over 100 active appeals pending in state and federal court. At any given time, the section has between 90 and 110 civil appeals pending in the courts, about 25 of those being in the area of child abuse and neglect (CINA). Ethics is another key challenge for the section. The section handles scores of ethics issues, investigations, opinions, and oral and written advice. These issues come up literally every day from all over state government. We anticipate this area of law and legal services to be a continuing challenge for the section. In the FY2005 budget, the governor requested and the legislature authorized \$247,800 for the addition of 2 attorney positions. Recognizing that new positions cannot be filled on July 1 of the fiscal year in which they are authorized, the request reflects some positions funded for 10 or 11 months rather than 12. To complete the funding and allow the positions to be filled year round, an additional increment of \$75,000 is needed in FY2006.

GAS PIPELINE

The division has as a top priority for FY2006, the legal work involved in expediting the arrangements to construct a gasline to transport Alaska North Slope gas to market. The known gas resource on Alaska's North Slope is huge. The potential gas resource on unexplored lands on the North Slope is much larger. Developing these resources is one of the most promising opportunities to strengthen and support Alaska's economic future.

The key to unlocking the North Slope gas resource is the construction of a pipeline to transport this gas to market. To expedite the construction of the needed gas transportation system, the state legislature enacted the Stranded Gas Development Act in its current form in 2003. The Stranded Gas Development Act provides an opportunity for the negotiation of Fiscal Contracts to tailor the state's fiscal terms (taxes and royalties) pertinent to North Slope gas development to enhance the likelihood of the construction of the needed transportation system.

Three potential project sponsors—(1) TransCanada Corporation, (2) the major North Slope producers (ConocoPhillips, BP, and ExxonMobil), and (3) Enbridge Inc.—have applied for fiscal contracts under the Stranded Gas Development Act. In preparing this budget the division has assumed the state will successfully negotiate a fiscal contract with at least one of the applicants. Further, the division believes the contract will provide for state ownership of some portion of the project.

During FY2006 we anticipate there will be one or more legal challenges to the constitutionality of the Stranded Gas Development Act and the legality of the contract. In addition, there will be a very large amount of on-going legal work relating to the state's participation in financing the project and to the many commercial and technical matters that the state must deal with in such a huge enterprise.

Assuming the state successfully negotiates a Stranded Gas contract and takes an ownership interest in the project, the division estimates the amount required for FY2005 and FY2006 for outside counsel gasline related legal work will total \$9.0 million. The division intends to request a capital appropriation to pay for this work.

STATEHOOD DEFENSE

During FY2006, the Statehood Defense unit will continue working to secure and protect access to state and private lands for Alaskans. We expect to be in litigation against the United States to quiet title to several RS 2477 rights-of-way. We intend to devote additional attorney resources to RS 2477 cases from money previously appropriated for this purpose. We will also continue working with federal land managers to ensure that the access provisions of ANILCA are interpreted and implemented fairly.

The Statehood Defense unit will continue to work with the Department of Natural Resources and the Department of Fish and Game to file additional applications for recordable disclaimers of interest for submerged lands with the Bureau of Land Management. We also hope to be working to implement new federal legislation, referred to as "BLM 2009", to complete conveyances from the United States to the State and to Alaska's Native corporations by 2009. Attorneys in the Statehood Defense unit will continue to closely monitor the federal subsistence program and challenge actions by the Federal Subsistence Board when necessary.

The Statehood Defense unit will continue to represent the state in Alaska v. United States, Original No. 128, before the United States Supreme Court. The state filed this action to quiet title to the submerged lands underlying the marine waters of the Tongass National Park and Glacier Bay National Park. While the Court will likely hear oral argument and issue a decision in FY2005, state attorneys will continue follow-up work on issues involving a final judgment and possibly boundary determinations.

Significant Changes in Results to be Delivered in FY2006

CRIMINAL DIVISION

If funds are approved to add the resources sought by the Attorney General and the Criminal Division in the FY 2006 budget request, the following targeted results could be achieved:

55% of violent felony referrals accepted for prosecution will be resolved with a felony conviction (rather than a misdemeanor conviction)

25% of violent felony crimes accepted for prosecution will be resolved with a felony conviction that has not been reduced

67% of misdemeanor DV assaults accepted for prosecution will be convicted of a class A misdemeanor, rather than a lesser offense

It is premature to anticipate how many additional convictions will result from funding and staffing the cybercrime/white collar crime request. An additional attorney dedicated to this area of crime is likely to double the number of convictions we currently experience. We anticipate we will generate additional cases through proactive rather than merely reactive efforts.

CIVIL DIVISION

CONSUMER PROTECTION: Replacing declining Statutory Designated Program Receipts as well as approval to add two attorneys and an investigator for consumer protection will allow the section to implement a statewide program aimed at better protecting all Alaskans, with a new special emphasis on seniors, from fraud, abuse and financial exploitation. With the advent of the new senior fraud program, the division will conduct education programs and community outreach throughout the state that will train seniors to recognize and avoid the common forms of consumer fraud and encourage them to report scams to the Attorney General. The division will prioritize for investigation cases involving consumer fraud with senior victims and will vigorously pursue prosecution of fraud perpetrators. The division anticipates that the results from this program will reduce fraud against seniors.

HUMAN SERVICES: In FY2005, the Human Services section obtained additional attorney resources to handle child protection cases statewide. With the addition of new attorneys, CINA caseloads should be reduced to a more manageable and reasonable caseload. More importantly, as a result of the additional resources, Alaska's children will benefit from moving to permanent home placements more quickly because the legal work necessary in order to make them available for adoption will be able to be completed more quickly. The reduction of cases per attorney will enhance the section's ability to increase compliance with federal requirements, thus increasing federal reimbursement to the Department of Health and Social Services, which in turn helps to fund CINA attorneys. The division is hopeful that recruitment and retention of CINA attorneys will improve as caseload pressures on existing staff is lessened.

LABOR & STATE AFFAIRS: The addition of attorney resources to assist in providing the advice and representation needed with employment, labor, constitutional, and related issues will directly improve the section's ability to assist other state agencies in improving their decision making and thereby positively affect the number of cases in which the state prevails at the outcome. The additional staffing also supports the goal of avoiding costly employment litigation by increasing our responsiveness to agencies' requests for legal advice and guidance to resolve labor and employment disputes when they arise.

OPINIONS, APPEALS AND ETHICS: One of the new attorney positions added as a result of new funding in FY 2005 was assigned to CINA appeals. This additional staffing will result in significant improvements in the areas of civil appeals

in CINA cases. Two attorneys in the section are now taking on all new appeals in child abuse and neglect cases. The consolidation and expertise will bring the state better results and it will allow our over-loaded CINA trial attorneys to focus on trial work. The second new attorney position has been assigned to both Indian law and Executive Branch Ethics. Previously, both of these important functions were short-changed because of inadequate staffing. The new attorney will enable us to focus on timely ethics advice, investigations and training. The additional staff will also enable an attorney with expertise in the area to devote more time to Indian law issues in FY2006.

STATEHOOD DEFENSE: In FY2006, continued funding of a new attorney position will result in the ability to provide legal assistance in protecting the state's interests in access rights, especially RS 2477 rights-of-way and ANILCA-guaranteed access. We also intend to increase the number of applications for recordable disclaimers of interest for submerged lands, and to assert state ownership and management of its navigable waters.

Major Department Accomplishments in 2004

CRIMINAL DIVISION:

- Completed the transition of all juvenile delinquency prosecutions from the Civil Division to the Criminal Division. Transfer to the criminal division was initiated in order to enhance criminal law expertise of the assigned attorneys and therefore increase public safety and responsiveness to victims.
- Worked with the Legislature to successfully pass new crime legislation.
- Handled 6,611 felony referrals with 4,416 accepted. Handled 22,028 misdemeanor referrals with 19,598 accepted.

CIVIL DIVISION:

- **Child Protection:** The division prosecuted approximately 2,000 ongoing Child In Need of Aid cases, moving toward the goal of achieving permanency for children, whether it be reunification with their family or other permanent placement, such as adoption or guardianship.
- **Collections and Support:** The division collected over \$4.1 million in FY 2004 in criminal fines, cost of appointed counsel, cost of imprisonment, civil judgments owed to the State of Alaska, and victim restitution. Of this amount, the division collected and disbursed to victims over \$1.1 million in restitution.
- **Commercial:** The division advised and represented the Director for the Alaska Division of Insurance and the division staff in review, analysis, and hearing on the Premera Blue Cross Blue Shield proposal to convert from non-profit to a for-profit entity. The two year review process culminated in a week long hearing in FY2004, which resulted in a decision to disapprove the proposal as not being in the best interest of the public and Premera's Alaska insureds in absence of further amendments and conditions to the proposal.
- **Consumer Protection and Antitrust Enforcement:** The division collected \$153,000 from five consumer protection cases. \$75,000 came from Alaska's participation in two multistate enforcement cases. The remaining \$78,000 came from state cases and includes \$48,000 of consumer and vendor restitution from fraud actions against a local travel operator.
- **Environmental:** In a case before the United States Supreme Court, the division defended against the federal EPA, the right of the state to make decisions on the technology that a company must use to control emissions at the Red Dog Mine.
- **Natural Resources:** The division successfully defended in the Alaska Supreme Court the state's decision not to add Cook Inlet beluga whales to the state's endangered species list.
- **Oil and Gas:** The division continued negotiations with the TAPS carriers on a methodology to replace the TSM for determining TAPS tariff rates.
- **Oil and Gas:** The division provided legal support for the implementation of the Stranded Gas Act including drafting a proposed fiscal contract for the proposed North Slope gas project.