

# **State of Alaska FY2004 Governor's Operating Budget**

**Department of Law**

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**Department Mission**

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

**Department Goals and Strategies**

CRIMINAL DIVISION:

PROTECT THE PUBLIC THROUGH EFFECTIVE PROSECUTION SERVICES.

- Assist law enforcement agencies with criminal investigations by providing legal and tactical advice.
- Serve as legal advisor to grand juries and represent the state in all phases of criminal trial and appellate proceedings.
- Effectively prosecute domestic violence and crimes against children.
- Effectively prosecute those who drive while under the influence of alcohol or drugs.
- Reduce the number of alcohol-related offenses through the prosecution of those who import alcohol into dry communities.
- Reduce fraud in benefit programs.

CIVIL DIVISION:

PROVIDE EFFECTIVE LEGAL ADVICE AND REPRESENTATION OF THE STATE.

- Protect Alaska's children and youth by handling child abuse, neglect, and delinquency cases expeditiously.
- Ensure the state receives its correct share of oil and gas taxes and royalties; clarify and improve the rules governing taxpayers to reduce disputes and litigation.
- Resolve questions of state versus federal control and management of natural resources, lands, and waters.
- Increase collections of money owed the state by businesses and individuals for child support, fines, loans, and other unpaid obligations.
- Collect judgments for victim restitution and make payments to victims of crimes.
- Ensure that the department's legal review of regulations projects continues to be efficient, timely, and responsive to the needs of agencies and the public.

**Key Department Issues for FY2003 – 2004**

CRIMINAL DIVISION:

MAINTAIN FOCUS ON PROSECUTION OF FAMILY VIOLENCE

The way domestic violence and child abuse are handled by the police, the courts, and the agencies that are responsible for the welfare of children has changed. Studies and experience have shown that children in homes where there is domestic violence by an adult are often victims of abuse and neglect. Studies have also shown that the children suffer emotionally by witnessing the domestic violence. These cases are often difficult to prosecute because pressure is brought to bear on victims to recant. Moreover, testifying in court can be traumatic for child victims of abuse and neglect. Because prosecution of these offenses is important for the safety of victims, the Criminal Division policy is to prosecute if there is sufficient evidence to convict, even when the victim is unable to testify or does not want the offender prosecuted.

#### INCREASED DRUG AND ALCOHOL PROSECUTION

The Criminal Division has participated in planning projects for drug courts, therapeutic courts, mental health courts, and other special programs with the court system, law enforcement, the Public Defender Agency, and the Department of Corrections.

Everyone recognizes that alcohol is at the root of a number of serious social problems in Alaska. The correlation between alcohol and crime is significant, and alcohol is implicated in an extremely high percentage of criminal and accidental deaths and injuries. In addition, many children are born with FAS or FAE because their mothers consumed alcohol during pregnancy. Experience has shown that the rate of crime can be decreased if alcohol availability is decreased. State law gives municipalities the option of banning or limiting alcohol in their communities, and many villages have voted for that local option. In areas that go completely dry (by banning possession of alcohol), the level of crime falls immediately and significantly, until bootleggers start to return alcohol to the region. Enforcement of local option laws is difficult, but the Criminal Division is actively working with the Alaska State Troopers and federal authorities to deal more aggressively with bootlegging, by increasing our alcohol interdiction efforts through the addition of prosecutors specifically assigned to those cases. An RSA with the Department of Public Safety funds an increased level of federal funding for heightened efforts in the area of alcohol interdiction.

#### CIVIL DIVISION:

##### CHILD PROTECTION

Child protection workloads continue to be of 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 and when certain actions must occur, and they define parental responsibility more concretely. These changes move cases to conclusion faster to ensure that when reunification with the family is not in the child's best interest, the child can be made legally eligible for placement in a permanent home more quickly. The accelerated schedules severely impact attorney workloads. Maintenance of our existing resources for child protection is absolutely critical in order for us to effectively manage this important responsibility. In FY 2002, for example, we had to cut half of an attorney position in the Human Services component due to a reduction in the Balloon Project funding received by DHSS. This cut has had a direct impact on the Anchorage Human Services section, resulting in an increase in the per attorney caseload.

##### GOVERNMENTAL AFFAIRS

The Governmental Affairs section is representing the state in two cases that may have a significant impact on both budget and policy direction. The first case involves a claim that the state discriminated against rural school districts in the manner used to fund school facilities. This case also involves claims that the state breached fiduciary obligations when it changed the public school trust from a land-based trust to a money-based trust. The second case involves a claim by tribal organizations that the state has discriminated against 165 isolated Native villages in the way in which it provides police protection through the Alaska State Troopers and village public safety officer program. The latter case was decided favorably to the state in the trial court and it is expected that an appeal to the Alaska Supreme Court will be briefed, argued, and decided during the upcoming fiscal year.

##### CONSUMER PROTECTION AND ANTITRUST ENFORCEMENT

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. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, we are unable to take action on many legitimate complaints about consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough

resources for even those cases. We continue to increase enforcement activity as we can, making use of additional statutorily designated program receipts appropriated beginning in FY2000. In addition, the department continues to refine and expand its consumer protection web page that assists consumers to help themselves in identifying and protecting against fraud. The web page also continues to increase the number of consumer complaints received and handled by the division.

#### OIL AND GAS LITIGATION

Appropriations for Oil and Gas Litigation have steadily declined from \$32.9 million in FY 1994, to \$11.9 million in FY 1997, \$4.7 million in FY2002, and to \$4.5 million in FY2003. The amount requested for this function over the last few years reflects a sharp reduction in the use of outside counsel and a major shift of responsibility for major oil and gas litigation from outside counsel to staff attorneys. The department attorneys litigate most tax cases with little or no assistance from outside counsel and consultants. However, the department will continue to require substantial amounts to cover the cost of experts and document handling for these cases, and will use outside counsel for large cases that proceed to hearing. Although the amounts requested to pursue the state's oil and gas litigation efforts are significant, they will return substantial revenues to the state treasury.

### Major Department Accomplishments in 2002

#### CRIMINAL DIVISION:

- The Criminal Division continues to participate in the interdepartmental, federally funded alcohol interdiction project. The intent of the project is to significantly reduce violent crime, accidental deaths, and the incidence of FAS and FAE by cutting off the easy availability of alcohol through aggressive investigation and prosecution of bootlegging offenses.
- The Criminal Division continues in the effort to assist victims and witnesses by better informing and preparing them to testify, especially in cases involving sex crimes and domestic violence, and by providing them with important safety plans and informing them of their rights. This project also involves training for attorneys and paralegals to assist them in their efforts to reduce the incidence of these types of crimes. At the grassroots level, the Volunteer Legal Advocacy program trains volunteers in Alaskan communities and villages to coordinate with domestic violence prosecution efforts. Both aspects of this heightened effort are funded by federal funds RSA'd to the Criminal Division by the Department of Public Safety, Council on Domestic Violence and Sexual Assault.
- Additional accomplishments for the Criminal Division are shown in the Performance Measures section of the budget, at the BRU level.

#### CIVIL DIVISION:

- Child Protection: The Civil Division continued its participation in the interagency Balloon Project to reduce the backlog of children in foster care longer than new state and federal laws permit. As of September 15, 2001, 89 percent of the 662 children in foster care the longest were in a permanent placement, and in another 8 percent of the cases, the legal work to free these children for adoption is complete. The project now has five phases including more than 1,600 children, of whom 72 percent now have permanent homes, and another 14 percent are legally free for adoption.
- Commercial: The division successfully settled a major charitable gaming case. Under the settlement, the manager of a charitable gaming operation and her husband were required to pay \$400,000 in cash for distribution by the attorney general to charity. The suit was brought to make the defendants disgorge the money they received through violation of Alaska's charitable gaming laws.
- Collections: The division collected over \$3.5 million in FY 2002 in criminal fines, cost of appointed counsel, cost of imprisonment, civil judgments owed the state, and victim restitution.
- Governmental Affairs: Successfully defended the state at trial in AITC v. State, the case challenging the constitutionality of the state's system for providing rural police protection.

- Environmental cleanup: Recovered almost \$1.8 million for state costs and penalties related to violations of state environmental laws and obtained cleanup agreements with polluters with an estimated value of over \$3.3 million for a total benefit to the state of over \$5 million.
- Oil and Gas: Continued our work on litigation involving oil and gas bringing into the state treasury approximately \$94 million in back taxes and royalties owed by oil and gas companies.
- Consumer Protection and Antitrust Enforcement: Collected \$441,000 in seven consumer protection and antitrust cases (Publishers Clearinghouse, Wade Cook Financial Corp., and Triad Discount Buying Club consumer protection cases; Vitamins, Contact Lens, Nine West, and Mylan antitrust cases). Under the settlements, the money is to be used for consumer protection and antitrust enforcement (\$200,000); distribution to state agencies and charitable organizations (\$105,000); restitution to state Medicaid/CAMA agency (\$80,000); and deposit into the general fund (\$57,000). In addition, injunctive relief remains in effect against the entities reforming their business practices and thousands of dollars were distributed to Alaska consumers for restitution. We also collected \$50,000 in settlement of a consumer action against a local car dealer for advertising, warranty, and Truth in Lending Act violations.
- Submerged Lands: Continued litigation in original action filed in the United States Supreme Court to quiet title to all lands underlying marine waters in Southeast Alaska, including those within Glacier Bay National Park and the Tongass National Forest; filed a major motion for summary judgment with the Special Master appointed by the Court.
- Transportation: Successfully settled the claim brought by Alaska Ship and Drydock for \$6 million in additional compensation for refurbishment of the M/V Columbia; the claim settled for \$1.5 million; successfully settled the claim brought by shipbuilder for \$53 million for construction of the M/V Kennicott; the claim settled for \$500,000 from the state and \$750,000 from a bonding company.
- Special Litigation: Won Alaska Supreme Court case in which the court upheld the constitutionality of the 1997 Tort Reform Act.

## Governor's Key Department-wide Performance Measures for FY2004

### Measure:

**Percentage of other child abuse and neglect cases that are resolved within the statutory deadline of no more than 21 months of out-of-home placement;**

Sec 96 (b) (7) Ch 90 SLA 2002(HB 250)

### Alaska's Target & Progress:

New statutory deadlines for legal action in child abuse and neglect cases became effective on September 14, 1998; thus the department looked at 164 children's cases opened in October and November of that year as the benchmark. Of 164, 91 percent had the required legal action taken in their cases within 21 months, and 9 percent, the required legal action took 21 months or longer to complete. This year the department looked at 129 children's cases opened in December 1999 and January 2000. Of those cases, 86 percent had the required legal action taken within 21 months of the child's entry into foster care. In 14 percent of the cases, the required legal action took more than 21 months.

### Background and Strategies:

With the passage of Ch. 99, SLA 98, the new state child protection law and the new federal Adoption and Safe Families Act, important changes were made as to how long children may remain in the child protection legal system, and when certain actions must occur. These new statutory changes at the state and federal level more concretely define parental responsibility and the changes move cases to conclusion faster to ensure that when reunification with the family is not in the child's best interest, the child can be made legally eligible for placement in a permanent home more quickly. The large number of cases placed on the accelerated schedules when the legislation became effective severely impacted attorney workloads.

**Measure:**

**Monetary value of the criminal and civil judgments collected, including indigent defense costs, costs of incarceration for offenders convicted of driving while intoxicated, and other fines and costs owed to the state and the number of civil and criminal judgments satisfied in full;**

Sec 96 (b) (3) Ch 90 SLA 2002(HB 250)

**Alaska's Target & Progress:**

|         | <b>Amount Collected</b> | <b>Judgments Satisfied</b> |
|---------|-------------------------|----------------------------|
| FY 1997 | \$2,278,500             | Not Available              |
| FY 1998 | \$2,469,900             | 8,569                      |
| FY 1999 | \$3,111,000             | 10,125                     |
| FY 2000 | \$2,769,600             | 8,805                      |
| FY 2001 | \$3,993,590             | 15,981                     |
| FY 2002 | \$3,574,907             | 13,526                     |

In the FY 2002 Governor's budget, it was anticipated that FY 2001 collections would be unusually high. As predicted, one of the reasons for the high dollar amount and number of collections related to catching up on a backlog that had built up due to staffing vacancy. Additionally, implementation of the unit's new EXCEL database allowed the capturing of two years of minor offense fines and related court and collection costs that had previously been uncollectable because there was no way to track and match them for the PFD attachment. The unit had projected that FY 2002 collections would be about \$3.5 million. The unit oversees 87,439 unpaid judgments at this time.

**Background and Strategies:**

The function of the collections unit is to collect money owed to the state in criminal, civil, and some administrative cases. The criminal cases include the cost of imprisonment in driving while intoxicated or refusal cases, cost of appointed counsel in cases where a public defender or public advocate appointment is made to represent a defendant, and outstanding fines and bond forfeitures. While the courts can collect on fines and bond forfeitures (these cases are only transferred to the collections unit if they are overdue to the court) the cost of appointed counsel cases are automatically transferred to the unit. Civil case collections must have a judgment in excess of \$250 entered with the court and the money collected must be free for deposit into the general fund.

There are a number of factors that affect the amount collected. The most important factor is the amount and number of judgments transferred by the courts. If a judgment is not transferred, it is unlikely the unit will receive voluntary payments and cannot seize money from a permanent fund dividend. The second factor is the number and dollar value of voluntary payments made by defendants. The only recourse the department has for nonpayment is the potential to seize the obligor's permanent fund dividend. Additional factors include the actual amount of the permanent fund dividend, the number of defendants applying for dividends; the number of defendants determined to be eligible for dividends; and other agencies or cases with statutory priority to seize dividends before our seizures are possible.

**Measure:**

**The legislature intends to measure the success of the department in achieving its mission by considering, for each Criminal Division budget component the number of violent felony prosecutions;**

Sec 94 (b) (1) Ch 90 SLA 2002(HB 515)

**Alaska's Target & Progress:**

FY 2000 - 1,218      FY 2001 - 1,127      FY 2002 - 1,237

**Background and Strategies:**

The workload for the Criminal Division is driven by factors largely beyond its control, such as the staffing levels and policies of local police agencies, staffing levels of defense attorneys, whether municipalities control alcohol, and the policies and practices of local courts and local defense attorneys. As such, the division is able to exercise very little control over attorney caseload ratios and no control whatsoever over the volume of work coming in at any given time. Thus available quantitative information often does not show the effectiveness and competency of the work. For example, it is very difficult to draw meaningful conclusions based on conviction rates. More convictions don't

necessarily mean that attorneys are doing a better job. Instead it may mean any or a combination of the following: (1) crime is up, (2) the police are conducting better investigations, (3) new laws are more effective, (4) the division is understaffed and therefore plea-bargaining more, (5) the public defender agency is understaffed and they are pleading out more of their clients.

**Department Budget Summary by BRU**

*All dollars in thousands*

|                                 | FY2002 Actuals  |               |                 |                 | FY2003 Authorized |               |                 |                 | FY2004 Governor |               |                 |                 |
|---------------------------------|-----------------|---------------|-----------------|-----------------|-------------------|---------------|-----------------|-----------------|-----------------|---------------|-----------------|-----------------|
|                                 | General Funds   | Federal Funds | Other Funds     | Total Funds     | General Funds     | Federal Funds | Other Funds     | Total Funds     | General Funds   | Federal Funds | Other Funds     | Total Funds     |
| <b>Formula Expenditures</b>     |                 |               |                 |                 |                   |               |                 |                 |                 |               |                 |                 |
| None.                           |                 |               |                 |                 |                   |               |                 |                 |                 |               |                 |                 |
| <b>Non-Formula Expenditures</b> |                 |               |                 |                 |                   |               |                 |                 |                 |               |                 |                 |
| Office of the Attorney General  | 0.0             | 0.0           | 0.0             | 0.0             | 344.8             | 0.0           | 0.0             | 344.8           | 0.0             | 0.0           | 0.0             | 0.0             |
| Criminal Division               | 13,456.4        | 338.3         | 1,295.9         | 15,090.6        | 13,979.6          | 488.4         | 1,667.2         | 16,135.2        | 14,139.8        | 495.5         | 1,737.6         | 16,372.9        |
| Civil Division                  | 8,915.8         | 0.0           | 16,600.2        | 25,516.0        | 7,752.1           | 0.0           | 17,358.2        | 25,110.3        | 11,625.9        | 0.0           | 16,119.0        | 27,744.9        |
| Statehood Defense               | 1,015.6         | 0.0           | 0.0             | 1,015.6         | 1,114.5           | 0.0           | 0.0             | 1,114.5         | 0.0             | 0.0           | 0.0             | 0.0             |
| Oil and Gas Litigation & Legal  | 2,527.1         | 0.0           | 1,477.0         | 4,004.1         | 3,014.2           | 0.0           | 1,477.0         | 4,491.2         | 0.0             | 0.0           | 0.0             | 0.0             |
| Administration and Support      | 894.9           | 0.0           | 561.1           | 1,456.0         | 590.0             | 0.0           | 691.7           | 1,281.7         | 1,259.1         | 0.0           | 699.8           | 1,958.9         |
| Dept. Unallocated Reduction     | 0.0             | 0.0           | 0.0             | 0.0             | 0.0               | 0.0           | 0.0             | 0.0             | -700.0          | 0.0           | 0.0             | -700.0          |
| <b>Totals</b>                   | <b>26,809.8</b> | <b>338.3</b>  | <b>19,934.2</b> | <b>47,082.3</b> | <b>26,795.2</b>   | <b>488.4</b>  | <b>21,194.1</b> | <b>48,477.7</b> | <b>26,324.8</b> | <b>495.5</b>  | <b>18,556.4</b> | <b>45,376.7</b> |

### Funding Source Summary

*All dollars in thousands*

| <b>Funding Sources</b>                          | <b>FY2002 Actuals</b> | <b>FY2003<br/>Authorized</b> | <b>FY2004<br/>Governor</b> |
|---|-----------------------|------------------------------|----------------------------|
| 1002 Federal Receipts                           | 338.3                 | 488.4                        | 495.5                      |
| 1003 General Fund Match                         | 112.8                 | 158.6                        | 158.8                      |
| 1004 General Fund Receipts                      | 26,290.0              | 26,180.6                     | 25,708.1                   |
| 1005 General Fund/Program Receipts              | 343.2                 | 392.2                        | 393.5                      |
| 1007 Inter-Agency Receipts                      | 17,236.6              | 18,300.8                     | 15,656.6                   |
| 1029 Public Employees Retirement Fund           | 260.0                 |                              |                            |
| 1037 General Fund / Mental Health               | 63.8                  | 63.8                         | 64.4                       |
| 1055 Inter-agency/Oil & Hazardous Waste         | 470.8                 | 481.1                        | 484.2                      |
| 1066 Public School Fund                         | 24.6                  |                              |                            |
| 1105 Alaska Permanent Fund Corporation Receipts | 1,477.0               | 1,477.0                      | 1,477.0                    |
| 1108 Statutory Designated Program Receipts      | 338.2                 | 806.0                        | 808.5                      |
| 1134 Fish and Game Criminal Fines and Penalties | 127.0                 | 129.2                        | 130.1                      |
| <b>Totals</b>                                   | <b>47,082.3</b>       | <b>48,477.7</b>              | <b>45,376.7</b>            |

### Position Summary

| <b>Funding Sources</b> | <b>FY2003<br/>Authorized</b> | <b>FY2004<br/>Governor</b> |
|------------------------|------------------------------|----------------------------|
| Permanent Full Time    | 474                          | 476                        |
| Permanent Part Time    | 18                           | 13                         |
| Non Permanent          | 0                            | 0                          |
| <b>Totals</b>          | <b>492</b>                   | <b>489</b>                 |

**FY2004 Capital Budget Request**

| <b>Project Title</b>                     | <b>General Funds</b> | <b>Federal Funds</b> | <b>Other Funds</b> | <b>Total Funds</b> |
|--|----------------------|----------------------|--------------------|--------------------|
| Dimond Courthouse - Recarpet 5th Floor   | 44,000               | 0                    | 0                  | 44,000             |
| Oil and Gas Royalty Settlement Reopeners | 1,000,000            | 0                    | 0                  | 1,000,000          |
| <b>Department Total</b>                  | <b>1,044,000</b>     | <b>0</b>             | <b>0</b>           | <b>1,044,000</b>   |

*This is an appropriation level summary only. For allocations and the full project details see the capital budget.*

## Overview of Departmental Budget Changes

### CRIMINAL DIVISION

The FY 2004 budget includes \$134,000 in general funds transferred from DOTPF as part of the lease cost funding for the Fairbanks District Attorney's Office newly leased space.

### CIVIL DIVISION

This budget includes a new consumer protection position in the Fair Business Practices component to enhance consumer protection work on behalf of Alaskans.

The separate BRU's for Oil & Gas Litigation and Legal Services and its related components are eliminated and the funds are transferred to the Oil, Gas, and Mining component of the Civil Division to reduce budget structure redundancy. A portion of the funds is transferred to the Attorney General component in the Administration and Support BRU to enhance statewide oversight over oil and gas litigation.

The stand-alone BRU for Statehood Defense is eliminated and the component is transferred to the Civil Division with a part of the funding transferred to the Attorney General component in the Administration and Support BRU to enhance statewide oversight over Statehood Defense litigation, Indian Law, and to create a chief-of-staff.

**Summary of Department Budget Changes by BRU**  
**From FY2003 Authorized to FY2004 Governor**

*All dollars shown in thousands*

|  | <u>General Funds</u> | <u>Federal Funds</u> | <u>Other Funds</u> | <u>Total Funds</u> |
|--|----------------------|----------------------|--------------------|--------------------|
| <b>FY2003 Authorized</b>   | <b>26,795.2</b>      | <b>488.4</b>         | <b>21,194.1</b>    | <b>48,477.7</b>    |
| <b>Adjustments which will continue current level of service:</b> |                      |                      |                    |                    |
| -Criminal Division   | 160.2                | 7.1                  | 13.4               | 180.7              |
| -Civil Division  | 2,759.3              | 0.0                  | 1,589.1            | 4,348.4            |
| -Oil and Gas Litigation & Legal                                  | -3,014.2             | 0.0                  | -1,477.0           | -4,491.2           |
| -Administration and Support                                      | 324.3                | 0.0                  | 8.1                | 332.4              |
| <b>Proposed budget decreases:</b>                                |                      |                      |                    |                    |
| -Civil Division  | 0.0                  | 0.0                  | -2,828.3           | -2,828.3           |
| -Dept. Unallocated Reduction                                     | -700.0               | 0.0                  | 0.0                | -700.0             |
| <b>Proposed budget increases:</b>                                |                      |                      |                    |                    |
| -Criminal Division   | 0.0                  | 0.0                  | 57.0               | 57.0               |
| <b>FY2004 Governor</b>   | <b>26,324.8</b>      | <b>495.5</b>         | <b>18,556.4</b>    | <b>45,376.7</b>    |