

State of Alaska FY2008 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 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. The Attorney General works closely with the Governor and immediate staff providing legal counsel and advice as the Governor addresses priorities and conducts state affairs. The Attorney General serves as a trustee on both the Permanent Fund Board and the Exxon Valdez Trustee Council and represents the Department of Law on a number of interdepartmental efforts.

The Criminal Division seeks to assure safe and healthy communities by prosecuting and convicting criminal offenders in urban and rural Alaska, by upholding those convictions on appeal, and by providing legal services that support the efforts of criminal justice agencies. The Criminal Division prosecutes all violations of state criminal law committed by both adults and juveniles, and by placing them under appropriate controls. The Criminal Division also provides focused and specialized prosecution in a number of areas. The Criminal Division provides assistance to victims and witnesses of crimes and ensures that victims are kept informed of important events in their cases and that their constitutional and statutory rights are protected. The Criminal Division supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial, and conviction, by litigating all criminal appellate proceedings and state and federal post-conviction and habeas corpus proceedings. In addition, the Criminal Division also handles civil litigation challenging statutes related to criminal justice, such as sex offender registration, DNA databank, victims' rights. The Criminal Division also provides general legal services to criminal justice agencies and efforts.

The Civil Division protects the human, financial, and natural resources of the state. 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; reviews regulations prepared by executive agencies; drafts legislation for introduction by the Governor; and reviews all legislation before it is acted upon by the Governor.

Activities of the Civil Division help protect the financial and natural resources of the state, defend Alaskans' access to the state's land and natural resources, and ensure that the laws and regulations that govern businesses, individuals, and government agencies are constitutional. The division takes action to protect children from abuse and neglect, enforce child support obligations, guarantee that state programs are administered fairly and that money owed to the state is collected, defend the state's interests relative to the federal government, and defend the state from unreasonable demands for payment of costs of lawsuits, personnel actions, and personal injuries. It protects the state's financial resources by advising agencies on decisions that might lead to financial claims, defending against unreasonable claims, and facilitating reasonable settlements or other appropriate resolution of issues.

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. These include budgeting, procurement, accounting, computer and network services, database administration, timekeeping and billing, and monitoring and forecasting departmental expenses.

End Results	Strategies to Achieve Results
<p>A: Improve Public Protection and Effectiveness of Legal Services</p> <p>Target #1: Increase to 75% the number of cases on which</p>	<p>A1: Improving Public Safety Against Serious Assault</p> <p>Target #1: Reduce the rate of violent crime reported in Alaska by 1% per year.</p>

<p>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><u>Measure #1:</u> Percent violent crimes per 100,000 population reported</p> <p>A2: 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 CSSD by 1% each year</p> <p><u>Measure #2:</u> Percent change in total dollar amount of child support received by families through CSSD each year</p> <p><u>Target #3:</u> Reduce the number of child sexual abuse cases by 5%</p> <p><u>Measure #3:</u> Percent change in the number of child sexual abuse cases reported each year</p> <p>A3: Enhance the protection of victims of crimes and delinquent acts</p> <p><u>Target #1:</u> Reduce to zero the number of valid complaints from victims</p> <p><u>Measure #1:</u> The number of valid complaints from victims</p> <p>A4: Enhance Consumer Protection in Alaska</p> <p><u>Target #1:</u> Increase effective consumer protection enforcement through successful resolution of consumer complaints, enforcement actions and consumer education</p> <p><u>Measure #1:</u> Increase in the number of consumer complaints resolved, enforcement actions taken, and consumer education initiatives completed</p> <p>A5: Improve Agency Decision Making</p> <p><u>Target #1:</u> 5% reduction per year in legal challenges to final agency decisions in which the state does not prevail</p> <p><u>Measure #1:</u> % reduction in legal challenges to agency decisions per year in which the state does not prevail</p>
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FY2008 Resources Allocated to Achieve Results							
<p>FY2008 Department Budget: \$73,890,200</p>	<p>Personnel:</p> <table> <tr> <td>Full time</td> <td>540</td> </tr> <tr> <td>Part time</td> <td>12</td> </tr> <tr> <td>Total</td> <td>552</td> </tr> </table>	Full time	540	Part time	12	Total	552
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Part time	12						
Total	552						

Performance Measure Detail**A: Result - Improve Public Protection and 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

A1: Strategy - 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 - 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

Analysis of results and challenges: Neither the Department of Law nor the Office of Children's Services really have control over the number of children in foster care. In fact, recent statistics from the Office of Children's Services show that the number of children in foster care increased by 12.58% from 1,876 in October 2005 to 2,112 in October 2006. However, the Department of Law established this as a mission because attorneys in the department are responsible for filing petitions to terminate parental rights or petitions for guardianship. If a child is adopted or placed in a guardianship, they are released from state custody, thereby reducing the number of children in foster care. To accomplish this, we set a goal of increasing the numbers of petitions for termination or guardianship that are finalized.

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

Analysis of results and challenges: Waiting for a response from CSSD; AGO does not collect support.

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 - Enhance the protection of victims of crimes and delinquent acts

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

Analysis of results and challenges: Received one valid, written complaint.

A4: Strategy - Enhance Consumer Protection in Alaska

Target #1: Increase effective consumer protection enforcement through successful resolution of consumer complaints, enforcement actions and consumer education
Measure #1: Increase in the number of consumer complaints resolved, enforcement actions taken, and consumer education initiatives completed

A5: Strategy - Improve Agency Decision Making

Target #1: 5% reduction per year in legal challenges to final agency decisions in which the state does not prevail
Measure #1: % reduction in legal challenges to agency decisions per year in which the state does not prevail

Key Department Challenges

STATEWIDE

RECRUITMENT AND RETENTION

Attracting attorneys willing to serve the public as state prosecutors and assistant attorneys general in both urban and rural Alaska is a continuing challenge. The high caseload is only one of the factors that contributes to high attorney turnover and makes private practice more attractive to both entry-level and especially, experienced attorneys. Attracting qualified attorneys to rural locations such as Bethel, Kotzebue and Barrow has long been a challenge; but we are also experiencing difficulties with recruiting and retaining attorneys in our urban locations. The primary reason for this serious problem is that the state's salaries for attorneys are not competitive with similar jobs in both the private and public sector. Law school graduates often have large student loans and cannot afford to take state legal positions when other public and private sector employers pay higher entry salaries. We are also losing experienced attorneys with many years of state service to jobs with higher pay in other public and private offices. These attorneys also leave because of the division's heavy caseloads. They can find more attractive, less stressful, jobs at higher pay in the private sector. The division needs to address this problem. We are working toward a solution that would involve increasing salaries but at this point, do not have enough information to propose a new salary scheme and request funding for it. The hiring and retention of qualified, skilled attorneys directly impacts the state's ability to achieve results in court.

TECHNOLOGY UPGRADE

The Department has embarked upon a several-tiered project to enhance the organization and efficiency of legal work through the use of technology. In the spring of 2005, a consultant was hired to review off-the-shelf applications that are available to the legal community to improve timekeeping and billing, provide full-blown case management and document management as well as potentially replace and unify the beleaguered collections and restitution databases. The consultant recommended the implementation of ProLaw to provide a unified solution. The project is well underway at this point but will create challenges as we go forward with implementation. At the same time, we are facing challenges from other branches of technology as we consider migrating to the state's selected provider for network operating systems, file and print, and email. This migration will be a significant undertaking for Law and will need to be well planned in order to be executed without disruption.

ANCHORAGE PARKING

The Department of Law is the only State agency that does not pay for parking for its Anchorage employees. Parking costs continue to increase and are a burden on lower paid staff members and a drain on morale. Currently, office leases in downtown Anchorage only provide a parking space for each 1,000 square feet of leased space. At present, office leases include 75 parking spaces while there are 307 employees working in those offices. Employees are dissatisfied with the unfairness of paying for parking while other state employees park for free.

CRIMINAL DIVISION

Increased Litigation Costs and Demands.

Law is requesting \$345,800 in general funds to pay for increased costs in the areas of travel and leased space. With the support of the Governor and the Legislature, the criminal division has added positions in order to respond to the increased demand for prosecution services. These new positions have been both general funded positions and grant or reimbursable services agreement (RSA) funded positions. The expansion of the criminal division, coupled with the increase in costs generally, has led to gaps in our budget. Specifically, travel expenses have sky rocketed due to fuel increases. At the same time, we are prosecuting "cold cases" which often involve numerous out of state witnesses, so our witness travel needs are also increasing. We have a \$195,800 shortfall in our travel budget which if it is not filled, will

require that more cases be settled since we will not be able to afford to litigate them. The division's expansion has also led to the need for additional lease space; we currently have a \$150,000 shortfall in that area.

Law is also requesting \$160,000 in general funds to address wildlife enforcement prosecution needs identified by the former Governor's work group gathered to look at that issue.

CIVIL DIVISION

OIL, GAS, & MINING

Gas pipeline-related issues

Expediting the arrangements to construct a gas pipeline to transport Alaska North Slope gas to market sits at the top of the FY2007 Department of Law "to do" list. The known gas resource on Alaska's North Slope is huge. The potential gas resource on unexplored lands of the North Slope is much larger. Developing these resources is one of the most promising opportunities to strengthen and support Alaska's economic future. When the Department developed its FY2007 budget, it estimated that a gas pipeline contract would be completed in late January or early February, 2006. Those projections turned out to be wrong. Intensive gas pipeline negotiations continued through May, 2006, directed by the Governor's Office. Additionally, the Governor's Office required substantial involvement of outside counsel during two special legislative sessions and through the fall in drafting both a limited liability contract (LLC) and a fiscal interest finding. There have been continuing and significant expenditures through November, 2006. Thus during the first half of FY2007, gas pipeline expenditures were significantly greater than the Department's original projections. This has substantially reduced funds for ongoing litigation and other matters related to tariffs, taxes and royalty collection, and gas pipeline work, for the second half of FY2007. In addition, an unusual number of important matters are scheduled to occur during FY2008 that will require a much higher budget for outside counsel than has been necessary in recent years. As a result, it is anticipated that a supplemental of \$8 - \$10 million will be needed for FY2007, and an increment of as much as \$13.5 million will be needed for FY2008.

The section must also provide legal support to the Alaska Natural Gas Development Authority created by citizen's initiative in the November 2002 statewide election.

ENVIRONMENTAL AND COMMERCIAL AND FAIR BUSINESS

Cruise Ship Initiative

The division's workload will substantially increase as a result of Ballot Measure 2 (commonly referred to as the "**Cruise Ship Initiative**") that passed in the August 2006 primary election. The initiative enacted sweeping new rules, taxes and fees that impact the cruise and tourism industry. As a result of the initiative's passage, the division is requesting two new attorneys plus \$75,000 for experts to perform work funded from the taxes and fees generated by the initiative. As part of the initiative, the Department of Environmental Conservation (DEC), with Law's assistance, must develop an environmental permitting, compliance, and enforcement program. This program will include, as major components, development of a permitting system, a significant regulations project, and training and certification of "Ocean Rangers" who will act as compliance and enforcement officers under the new program. The Ocean Rangers will provide on-board environmental monitoring of cruise ship smokestack and wastewater discharges. Entities subject to regulation under this new program will include large cruise ships and commercial passenger vessels accommodating more than 250 passengers.

Additionally, the division will need to provide legal assistance to the Department of Revenue (DOR) corporation income tax and excise tax programs and charitable gaming unit. The initiative will increase the case load for the DOR's tax division by creating a new excise or head tax and making cruise ship income subject to the state's corporate income tax. DOR, with Law's assistance, will have to develop new regulations to establish the method for collecting the head and income tax. Law will also have to assist DOR with audits and administrative hearings concerning the head tax and corporate income tax bills generated as a result of the initiative. The initiative also makes certain cruise ship gambling revenues taxable. Because of the international nature of cruise ship companies, it is possible that their tax appeals will be complex. The tax on gambling proceeds may also lead to additional audits and tax appeals.

Attorneys in the division's Legislation and Regulation section will also be called upon to assist with drafting and review of the regulations and to work on matters related to the initiative that may require legislative action. Finally, in the even

event of any legal challenge to the initiative, the division will represent the State in the litigation and appeal.

In order to undertake this increased workload, the FY2008 operating budget includes a request for \$470,600 in general funds and two new attorneys. \$75,000 of this request will be used to pay for the cost of experts.

ENVIRONMENTAL

The division will investigate and pursue legal actions to hold British Petroleum (BP) and others accountable for oil spills from pipeline corrosion and the resulting partial shutdown of the Prudhoe Bay field. A reimbursable services agreement in the amount of \$8.8 million is currently being negotiated with the Department of Environmental Conservation, from the Spill Prevention and Response Fund.

The State of Alaska and the United States have asserted a re-opener claim arising out of the EXXON Valdez oil spill in the amount of \$92 million. The division will continue to pursue this matter.

LABOR & STATE AFFAIRS

The division is representing the state in two education cases with potentially significant budget impacts. 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 education case is a challenge under the Alaska Constitution alleging that public education is inadequately funded and seeks significant additional funds for education. This second case recently completed a one month trial and a decision from the trial court is expected in FY2007.

The division will continue to assist with implementation of the significant changes to public employee benefits systems that were adopted by the legislature in FY2005 and that were required by the Alaska Supreme Court's decision in *ACLU v. State*, which requires the state to provide benefits to its employees for their same sex domestic partners. It will continue to address the increase in workload from the changes to public employee benefits claims procedures, requiring that those claims be heard on shorter notice and with greater formality.

OPINIONS APPEALS AND ETHICS

Ethics is another key challenge for the division. The division handles scores of ethics issues, investigations, opinions, and oral and written advice. These issues come up literally every day from all over state government. It is important that ethics advice be rendered promptly and in a consistent manner. Opinions and advice often require significant factual and legal research. The section also provides ethics training for state agencies. Better and more frequent training should reduce the number of ethics problems that arise and improve agency action and decision making on these issues.

OTHER KEY CHALLENGES FOR THE CIVIL DIVISION:

COLLECTIONS AND CHILD SUPPORT

The primary challenge for the child support unit will be to accommodate a growing number of requests from the Child Support Services Division (CSSD) for assistance in more complex enforcement actions and a growing caseload of time consuming support modification requests.

For the collections unit, the primary challenge will be to implement a new database to efficiently increase money collected for the state and victims of crimes as well as expand the types of judgments the unit can collect. The 2006 capital budget included an appropriation for this purpose. The unit has selected a new database program. The new database program will help improve collections efforts. Currently, the unit is unable to collect certain criminal surcharges due to limited staff and the limited database. In addition to collecting other types of judgments, the new database will expand the restitution collection work. Since January 2002 when the unit began collecting restitution, the unit has developed and, over time, improved a streamlined system for processing restitution judgments and collecting and disbursing restitution on behalf of victims. To date, because of limited personnel and the time spent developing the program and training staff, the unit's work has been limited primarily to processing judgments, handling voluntary payments, and attaching permanent fund dividends. The unit will now begin to move forward with more aggressive collection action, particularly in cases where the defendant's failure to pay is particularly egregious.

Additionally this section will be moving to new space in the adjacent Whale Building as early as January, 2007. To undertake this move, an additional \$143,000 in general fund program receipts collected by this section is requested in the FY2008 budget needed to pay for annual lease costs associated with the new space.

CHILD PROTECTION

Statutory changes at the state and federal level have necessitated changes in how long children may remain in the child protection legal system. These changes bring 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 changes also mandate additional 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 mean that each attorney has a significant caseload. Maintaining our existing resources for child protection is necessary in order for us to effectively manage this important responsibility. Adequate attorney resources are also necessary in order to help the Office of Children's Services meet certain goals for purposes of federal funding of foster care and administrative expenses involved in child protection. We anticipate with the additional positions created from FY2005 through FY2007, we should be able to assist the Office of Children's Services to maximize federal reimbursement. However, this budget includes a request for \$250,800 for paralegals and law office assistants in our Palmer and Kenai offices as the caseloads continue to grow in those offices and support is needed to allow attorneys to focus on preparing child protection cases for court.

HUMAN SERVICES

Attorneys who handle cases and issues relating to Medicaid have had a large increase in work due to changes in the regulations related to Medicaid waivers. Additionally, provider appeals have increased, which requires additional audits of Medicaid providers. This increase has resulted in an increase in both administrative appeals and appeals to the superior court. The division has also assumed responsibility over the legal work associated with Medicaid liens and subrogation, which has resulted in close to 400 new open litigation files. Additionally, changes to the licensing structure in the Department of Health and Social Services as a result of SB 125 has resulted in work load increases as the department implements regulations in support of this bill. Finally, the implementation of the new public health law has resulted in an increase in the agency advice to the Division of Public Health.

LEGISLATION AND REGULATIONS

The Legislation and Regulations section will be facing an increased demand for its services. The implementation of most major program and policy changes, including cost containment and increasing efficiency and effectiveness in the provision of state services, requires timely changes to statutes, regulations, or a combination of both. To defend any legal challenges successfully and to implement those program and policy changes in a timely manner, precise and clear regulations and statutes are essential. This section plays a crucial role in ensuring that regulations and proposed legislation meet those strict legal standards. The section sees a significant increase in regulations projects and proposed legislation and an increased burden to meet the requests of state agencies with timeliness and accuracy.

NATURAL RESOURCES

The division will continue to be involved in litigation concerning Alaska's right to charge nonresidents higher annual fees to participate in the state's commercial fisheries. Plaintiffs in the case are seeking millions of dollars in refunds and interest. The state argues that the differential charged nonresidents was permissible and that no refund is due. The division also continues to advise the Department of Natural Resources (DNR) on permitting and access issues for large mines, including the Red Dog, Pogo, Fort Knox, Pebble and Kensington projects. There has also been an increase in requests for assistance in clearing clouds on title to state lands as DNR tries to increase the amount of state land it offers for sale.

OIL, GAS, & MINING

Oil and gas pipeline related matters

The division's Oil, Gas, and Mining section expends substantial resources to monitor the Trans-Alaska Pipeline System (TAPS) owners' compliance with the 1985 TAPS settlement agreement, and to monitor and participate where appropriate in state and federal regulatory oversight of the tariffs of all oil and gas pipelines operating in the state. This vigilance can earn the state millions of dollars in royalties and production taxes each year. Further, as production of oil and gas from current developments declines in Alaska, the state's participation in tariff regulation is becoming more and more important in encouraging additional producers to invest in exploration of new areas in the state, by ensuring fair transportation rates and access to existing pipeline infrastructure for production from new fields.

During FY2008 the Oil, Gas and Mining section will be participating in briefing and other post-hearing proceedings stemming from the state's discrimination challenge to the TAPS' 2005 -2006 interstate tariffs. The State will also examine the TAPS carriers' proposed 2008 tariffs and consider whether they are justified. The State must also determine whether to open negotiations on the TAPS Interstate and Intrastate Settlement Agreements that were executed in 1985 and expire by their terms in 2011. If so, those negotiations will take place in FY2007 and FY2008. Finally, the State's protest of expenditures by the TAPS' carriers on the Strategic Reconfiguration project will proceed through discovery and hearing processes at the Federal Energy Regulatory Commission (FERC) through FY2008. A scheduling hearing on the Strategic Reconfiguration protests is scheduled before the FERC in March 2007.

Tax Cases

The division is pursuing millions of dollars in past-due taxes and interest that are owed by oil and gas producers to the state. In some cases, thousands of documents have to be examined and many potential witnesses must be interviewed or deposed in order to prepare for hearing. These hearings can last for weeks. At this time, two major tax cases are before the Office of Administrative Hearings. Another major case at the informal conference stage is an appeal of the Department of Revenue's decision to aggregate properties within the Prudhoe Bay Unit for purposes of determining the Economic Limit Factor.

Royalty

Royalty disputes regularly arise between the oil and gas producers and the state. Although the division handles most of these disputes in-house, assistance from outside counsel and experts is sometimes necessary. In FY2008, either the state or its lessees may reopen negotiations over the previously settled Alaska North Slope royalty disputes based on changes in marketplace value and transportation costs. The division may require assistance from specialized outside trial counsel and experts originally involved in the royalty dispute to resolve these re-openers.

To address all these critical areas of law associated with oil and gas, the section estimates it will need \$23,350,000 in FY2007 and FY2008 in addition to what is already budgeted for the section.

OPINIONS APPEALS AND ETHICS

The division's Opinions, Appeals and Ethics section currently oversees the work of the civil division on over 100 active appeals pending in state and federal court. At any given time, the civil division has between 90 and 110 civil appeals pending, about 25 of which are "Child-in-Need-of-Aid" (CINA) cases, involving child abuse and neglect. The section handles appeals in cases that concern constitutional and legal issues of particular legal or policy import. A key challenge for the section is to be involved in the briefing and preparation of all civil appeals.

The section also prepares or reviews Attorney General opinions. A key challenge in this area has been to develop protocols to ensure the section is involved early in the opinion process so that the department can render timely and high quality advice to state agencies, which improves agency decision making. Recently, the division has developed and adopted a new department policy on opinions that will help the department issue higher quality opinions in a timelier manner.

Indian law issues continue to impact virtually every area of state government's responsibilities. The section is working to provide advice on a wide variety of issues including civil and criminal jurisdiction and authority, Indian gaming, waivers of sovereign immunity, Indian country, tribal status, the Indian Child Welfare Act, Public Law 280, and many more. We anticipate this area of law and legal services to be a continuing challenge for the division.

STATEHOOD DEFENSE

During FY2008, the Statehood Defense unit will work to protect and ensure access to state and private lands and on public waters across Alaska through assertions of RS 2477 rights-of-way, Alaska National Interest Lands Conservation Act (ANILCA) access rights, and ownership of navigable waters. Statehood Defense attorneys will work with the Department of Natural Resources (DNR) and the Department of Fish and Game (ADF&G) to file with the Bureau of Land Management (BLM) additional applications for recordable disclaimers of interest to navigable waters, and provide information to BLM that convince it to declare waterways navigable within the survey windows it is completing. The unit will continue work to secure the state's land entitlement from the federal government is fulfilled.

The Statehood Defense unit will participate in and monitor the ongoing federal actions relating to application to Alaska's Tongass and Chugach National Forests of a national Roadless Rule. The unit will participate in the Endangered Species Act (ESA) process as it relates to Pacific salmon and ensure adherence to the Pacific Salmon Treaty. The unit will continue to closely monitor the federal subsistence program, assist ADF&G in preparation of state comments, and challenge actions by the Federal Subsistence Board when necessary. Attorneys will review and comment on proposed federal legislation to complete conveyances under the Alaska Native Claims Settlement Act (ANCSA), ANILCA and the Alaska Native Allotment Act by 2009, and will review proposed federal public use management plans for federal lands. The unit will also continue to work on issues relating to assertions of tribal sovereignty that impact state interests.

TORTS AND WORKERS' COMPENSATION

The division is facing challenges caused by retirement of senior attorneys in its torts section and frequent turnover of staff providing support to the attorneys in the section. The frequent turnover in staff decreases the section's efficiency in meeting ever present pretrial deadlines. Additional challenges to the section are caused by the disproportionate amount of the section's resources that must be channeled to defending lawsuits filed by unrepresented plaintiffs. Over the last several years, changes in Alaska case law have resulted in lengthier and more complex motion and trial practice to defend these "pro per" lawsuits.

TRANSPORTATION

The division will continue assisting with implementation of the State's transportation agenda. In the coming year, this may include activities related to the development of access to Juneau, a Knik Arm Bridge, and infrastructure to support a possible gas line. The section will also help the state assume National Environmental Policy Act (NEPA) review responsibilities from the Federal Highway Administration (FHWA) in a pilot program authorized by Congress.

Significant Changes in Results to be Delivered in FY2008

CRIMINAL DIVISION

The addition of the new Rural Prosecution Unit and Statewide Sexual Assault and Domestic Violence units will continue to be felt in FY2008. We are currently fully staffed and making an impact with these two efforts. The intent of the Rural Prosecution Unit is to allow us to aggressively prosecute crime in rural Alaska, particularly alcohol fueled crime. We hope that with the increased prosecution efforts, we will ultimately reduce the level of crime in our rural communities. The second appropriation will allow us to place specialized teams of sexual assault/domestic violence prosecutors and paralegals in several offices across the state.

We hope that recent budget increases and the addition of new prosecutors in various locations around the state can keep pace with law enforcement and court system expansions. The Criminal Division will continue to track our prosecutorial progress in the performance measurement area of the budget.

CIVIL DIVISION

COLLECTIONS

The division goal is to acquire and implement the new collections database by summer 2007 and begin collecting other

judgments, fines and costs, specifically the Correctional Facility Surcharge and Police Training Surcharge, owed to the State of Alaska that are not currently collected by the unit due to the limited database and limited staff. The division also hopes that the new collection database will allow for more efficient processing of restitution cases to collect restitution owed to victims.

CHILD PROTECTION

Palmer office: During last year's legislative session, two additional judges were added to the Palmer court. As a result, the division requested an additional attorney for its civil office in Palmer. This request was made for a number of reasons: The Palmer attorney had 160 cases, far exceeding the department's goal of 100 active cases per attorney. Statistics also showed a dramatic increase in the case filings in the Palmer court as a result of population increases, and a high proportion of serious cases, i.e. those involving methamphetamines. Additionally, for whatever reason, cases in the Palmer court have been especially contentious, with far more litigation than in other parts of the state. The legislature funded the second Palmer attorney position, which will help manage the increasing caseload. However, the two Palmer attorneys are very much in need of a paralegal assistant and additional secretarial support staff.

Paralegals are generally responsible for obtaining often voluminous case files from the Office of Children's Services, purging those files of confidential information, and providing copies of discovery to the other parties to the case; reviewing OCS files to prepare exhibit lists and motions for records; arranging for subpoenas to be served upon witnesses; preparing pre-trial notebooks; contacting and interviewing witnesses; scheduling witnesses for trial; preparing routine motions and responses to motions; and trial support.

Much of the work above is currently done by the division's attorneys, taking valuable time away from the attorney's trial preparation. The attorney often works overtime hours to get the job done. Having attorneys perform paralegal work is not a good use of resources and it impacts the division's ability to be prepared for trials. In order to keep up with the Palmer caseload, the division needs a paralegal assistant to help prepare cases for trial so the attorneys can use their time for trial preparation.

Kenai office: One assistant attorney general handles all Child in Need of Aid cases on the Kenai Peninsula, including those heard in courts in Kenai, Seward and Homer. This attorney currently has a caseload of 196 cases, far exceeding the department's goal of 100 cases per attorney. This attorney often has to handle what would typically be considered paralegal work on top of this heavy caseload. She does this by working substantial amounts of overtime hours. The attorney occasionally gets assistance from paralegals in Anchorage, but logistical difficulties make this cumbersome and time-consuming. Until mid-December, this attorney will have a law student intern working with her on a full-time basis. This intern has been able to assist the attorney in doing what would typically be paralegal work. When this intern leaves in December, the attorney will once again be left to handle a huge number of cases without paralegal assistance.

To further compound the issue, the Kenai court will soon be adding another judge. That will mean this attorney must prepare to appear before three superior court judges and one master. Because of the increase in judicial officers, it is anticipated that cases will be handled more quickly. In order for this attorney to be able to handle 196 cases before four judges, it is essential that the Kenai have paralegal support.

The Kenai, Nome and Palmer communities are very pleased to have attorneys located within their communities. Recruitment and retention of attorneys for CINA positions continues to be a major challenge and it is hoped that this problem will improve as caseload pressure on existing staff is relieved by the addition of attorneys in these communities.

HUMAN SERVICES

In 2005, the state took over the private contract with PCG consulting to handle all third party recovery/subrogation matters for the state. As a part of taking on that work, the Human Services section received funding for one full time attorney and one full time paralegal in the 2006 budget. This two person-team currently has 636 open files. They have resolved 490 matters since January 2005, with recoveries to the state exceeding \$2.6 million. Each month they send out 750 -1,200 letters seeking leads for new matters. On average, they open 30 cases a month and close approximately 23 cases a month. In addition, as part of taking on this work, the section was also tasked with working with the Department of Health and Social Services (DHSS) related to Medicaid audit recoveries under AS 47.05.200. Over the past two years, we have had 15 appeals (administrative or superior court) and have advised DHSS on all 75 audits issued each year.

DHSS would like to have the section establish an estate recovery process, which is required by state and federal law. It

is anticipated that the recovery efforts by the division on behalf of the Department of Health and Human Services could double with the establishment of an estate recovery program and the staff to implement it. Also, during the 2006 legislative session, the legislature passed HB 426 which expands Medical Assistance's ability to recover medical benefits it has paid on behalf of someone who was otherwise insured. Department of Health and Social Services will fund this from a fiscal note they submitted that was passed along with the legislation.

OIL AND GAS PIPELINE-RELATED ISSUES

The key to unlocking the North Slope gas resource is the construction of a pipeline to transport this gas to markets both inside and outside of Alaska. To expedite the construction of the needed gas transportation system, the state has expressed interest to enter into a contractual arrangement with potential gas line developers. It is unknown whether final contractual arrangements will take place within or outside the scope of the Stranded Gas Development Act. Moreover, it is unknown whether contractual arrangements will be made for both midstream and upstream elements, or just one of these, or will include state ownership of the project.

In preparing this budget the division has assumed the state will enter into or continue complex and lengthy negotiations with one or more parties. Moreover, the division is anticipating that complex issues involving state ownership of a gas line, financing, federal regulation, and fiscal certainty will likely arise.

Assuming a gas line contract is agreed to and approved by the Legislature, during FY2008 the division anticipates there will be at least one legal challenge to the legality of the contract. In addition, the division will be required to draft legislative or regulatory language necessary to implement any changes to the state's fiscal regime or other state laws that will improve the viability of the project, and assist other agencies with their various permitting responsibilities related to the project.

Moreover, if the successful applicant or applicants files an application for a certificate of public convenience and necessity with the FERC, the Oil, Gas and Mining section will be responsible for representing the state's interests in the project. Both in-house and outside counsel will be used in this endeavor.

To address all these critical areas of law associated with oil and gas, the section estimates it will need \$23,350,000 in FY2007 and 2008 in addition to what is already budgeted for the section.

TORTS

Effective June 2004, AS 09.50.253 affords a certification process for common law claims against individually sued state employees for lawsuits brought pursuant to AS 09.50.250. The certification process allows an individually sued state employee to be dismissed from a lawsuit (and the state substituted as defendant) if the Attorney General certifies that the employee was acting within the scope of the employee's office or employment at the time of the incident out of which the claim arose. The certification process will play a larger role in the section's tort defense in FY2007 because of the June 2004 effective date and the two-year statute of limitations for tort claims. The Division of Risk Management within the Department of Administration has provided \$118,900 in additional funds beginning in FY2006 to pay for a paralegal position for the section.

Major Department Accomplishments in 2006

CRIMINAL DIVISION:

Passage of Significant Criminal Legislation

The Criminal Division worked closely with the Governor's office and the legislature to pass significant criminal legislation in 2005. Chief among these was the legislation passed in response to the case of Blakely v. Washington. This was a United States Supreme Court Case issued in June of 2004 which struck down the State of Washington's presumptive sentencing scheme. Because Alaska's sentencing scheme mirrored Washington's in all significant aspects, the criminal justice system was in turmoil while operating without a constitutional sentencing law. Across the state, prosecutors were flooded with motions and appeals requesting sentence modifications pursuant to the Blakely case. Additionally, judges were making conflicting rulings on how the Blakely case affected Alaska. Working closely with the legislature and the Governor's office, SB 56, which rewrote Alaska's presumptive sentencing scheme to bring it in

compliance with Blakely, was introduced on January 14, 2005, it had passed both houses by March 2 and was signed into law by the Governor on March 22, 2005.

There was additional criminal justice legislation that was passed during the 2005 legislative session in which the criminal division provided testimony and assistance. Included was legislation which addressed violence on school grounds and victim's rights regarding jury trials and bail review hearings. Other bills increased penalties for identity theft crimes and indecent exposure to minors. Finally, an important loophole was closed in our juvenile delinquency system so that crimes committed by a juvenile that are not discovered or reported until he or she has become an adult can still be prosecuted.

Receipt of Federal Appropriations to Enhance Prosecution Efforts

Both the Governor and the Attorney General have made priorities of enhancing our prosecution efforts in rural Alaska and in domestic violence and sexual assault. In support of these priorities, the Department of Law requested, and was awarded two special federal appropriations from the Department of Justice to fund these efforts. The programs will be implemented in FY2006. One will support a "Rural Prosecution Unit" which will be located in the Office of Special Prosecutions and Appeals (OSPA). The intent of the unit is to allow us to aggressively prosecute crime in rural Alaska, particularly alcohol fueled crime. We hope that with the increased prosecution efforts, we will ultimately reduce the level of crime in our rural communities. The second appropriation will allow us to place specialized teams of sexual assault/domestic violence prosecutors and paralegals in several offices across the state. These cases will then receive the prosecutorial expertise and resource commitment that is necessary to insure consistent vigorous prosecution and appropriate attention to victim's rights and needs.

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 \$4.7 million in FY2005, an increase of over \$500,000 from FY2004. These collections included 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 \$1.5 million in restitution.

Commercial and Fair Business: The division successfully litigated on behalf of the Division of Investments eight cases involving defaulted loans and obtained judgments totaling \$1,212,009. It also successfully prosecuted and negotiated settlements in a longstanding corporate income tax case that resulted in payment of \$7 million in taxes to the state.

Consumer Protection and Antitrust Enforcement: Processed 369 consumer complaints, of those, 53 were successfully mediated resulting in either direct or indirect assistance to consumers or referral to other appropriate state and federal agencies. Participated in five multistate antitrust matters involving pharmaceutical companies that resulted in favorable settlements for Alaska including \$280,000 in receipts for consumer protection/antitrust enforcement efforts as well as restitution to affected consumers or state agencies.

Environmental cleanup: In FY2005, the component recovered over \$1,100,000 for state costs and penalties related to violations of state environmental laws and obtained cleanup agreements with polluters with an estimated value of over \$81,235,000 for a total benefit to the state of over \$82,000,000. To accomplish this, the component expended only \$1,344,000.

Natural Resources: The division represented the Commercial Fisheries Entry Commission (CFEC) and ADF&G in the Alaska Supreme Court and superior court regarding the state's nonresident commercial fishing fees.

Oil and Gas: The division participated in complex and intensive negotiations with the TransCanada Corporation and the major North Slope producers under the Stranded Gas Development Act. The section engaged in drafting detailed contract provisions and analyzing constitutional and other state law issues relevant to the contracts. The division resolved a Loss reopener against a North Slope producer for approximately \$4 million, and also negotiated with the same producer a partial resolution to a Destination Value reopener worth approximately \$30 million.

Opinions, Appeals and Ethics: The division provided legal advice on over 100 ethics issues, rendered several Ethics opinions and memoranda of advise on topics such as outside employment, post-state employment, gifts, and contracts, investigated and resolved several ethics complaints, and is continuing work on several pending investigations and issues.

Regulatory Affairs Public Advocacy: During FY2005, the division, on behalf of the Attorney General filed comments or briefs in three dockets and prefiled direct testimony in sixteen dockets: seven electric utility rate cases, a statewide refuse utility rate case, a statewide natural gas utility case, a statewide natural gas pipeline utility rate case seven local exchange carrier telecommunications rate cases, including depreciation study testimony, and one each water and sewer utility rate cases.

Statehood Defense: State's attorneys completed briefing and oral argument before the United States Supreme Court on the issue of title to the submerged lands in Glacier Bay National Park. The state also filed a new lawsuit against the United States challenging the manner in which the federal agencies applied the Federal Reserved Water Rights doctrine in federal subsistence regulations. Additionally, the state continued to file new applications with the Bureau of Land Management (BLM) for recordable disclaimers of interest (RDI) for lands underlying navigable waters and has received a number of RDIs from BLM. The state has now filed a total of 13 applications to BLM for 31 waterbodies.

Statehood Defense: The state filed a new quiet title action against the United States to quiet title to two RS 2477 rights-of-way in northern Alaska.

ADMINISTRATION AND SUPPORT

Fiscal

Created an Excel spreadsheet macro program that electronically interfaces with victim restitution data provided by the Civil Division Collections and Support unit. The macro means that data between restitution on deposit and restitution owed can be matched more quickly and victims of crime who are owed restitution can be paid more quickly. A recognition award was presented to the employee responsible for creating the macro by the Attorney General.

Contracting & Supply Procurement

Undertook the procurement of outside legal counsel and expert witnesses to assist the state in new and ongoing litigation and administrative disputes including: the gas line negotiations; oil and gas royalty reopeners; the Gravina Island Access Project; the Knik Arm Bridge & Toll Authority; and the reserved waters dispute with the federal government. In addition, formal Request for Proposals (RFP's) to secure bond counsel for both the Alaska Student Loan Corporation and the Alaska Housing Finance Corporation were issued.

Technology Initiative

Over the last decade private law firms, corporate general counsel, and many government law departments have taken advantage of a myriad of law office automation tools to increase efficiency and productivity within their respective organizations. While the Department of Law has availed itself of several such tools in the past, we have found our agency falling further and further behind the curve in terms of the technical resources we can bring to bear in meeting our basic mission and supplying the Legislature and others with meaningful productivity measurements and analysis.

In FY2005 several such areas were identified as needing immediate attention:

- 1.) Replacement of our out-dated and poorly performing timekeeping and billing system.
- 2.) Installation of a full-featured case management system with a case-based calendaring module and case-diary feature as well as conflict checking and contact management functions.
- 3.) Installation of a document management system.
- 4.) Replacement of our existing collections databases with a single collections "system" that addresses both the needs of our legal staff as well as those accounting functions inherent in this business process.

With the assistance of CTG, the department completed a strategic planning effort to develop a realistic time table and approach to addressing each of the areas listed above taking into account critical mission priorities, existing infrastructure and support resources, major business processes and funding availability. We identified and recommended needed changes to existing infrastructure including: current desktop PC configuration, network design and

operating systems and the number/expertise of support personnel. Priority has been given to implementing currently available off-the-shelf solutions in FY2006.

Information Technology

Received a recognition award from the Conference of Western Attorneys General for the most Americans with Disabilities Act (ADA) compliant website. The award was presented to the employee responsible for website design and development by the Attorney General.

Deployed BlackBerry Enterprise Server to provide wireless connectivity to the department email and calendaring system. This solution has proved to be extremely valuable to upper management personnel by extending the functionality of the email/calendaring/contacts systems to their mobile hand-held devices.

Deployed WestKM, which is now available department wide, and ProLaw to a limited number of users. WestKM is more sophisticated legal research tool than was available previously by Thomson Elite, electronic legal research is available to all users on the web, rather than through dial-up.

Prioritization of Agency Programs

(Statutory Reference AS 37.07.050(a)(13))

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Department Budget Summary by RDU

All dollars shown in thousands

	FY2006 Actuals				FY2007 Management Plan				FY2008 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
<u>Formula Expenditures</u>												
None.												
<u>Non-Formula Expenditures</u>												
Criminal Division	19,062.4	1,147.4	2,005.4	22,215.2	20,393.6	2,633.7	1,975.0	25,002.3	23,663.3	2,891.5	1,976.8	28,531.6
Civil Division	34,600.8	0.0	18,085.7	52,686.5	18,515.2	0.0	20,812.2	39,327.4	21,078.0	0.0	21,019.3	42,097.3
Administration and Support	2,056.5	0.0	1,089.3	3,145.8	1,469.9	110.7	896.7	2,477.3	2,242.2	122.4	896.7	3,261.3
Totals	55,719.7	1,147.4	21,180.4	78,047.5	40,378.7	2,744.4	23,683.9	66,807.0	46,983.5	3,013.9	23,892.8	73,890.2

Funding Source Summary

All dollars in thousands

Funding Sources	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
1002 Federal Receipts	1,147.4	2,744.4	3,013.9
1003 General Fund Match	148.8	162.9	181.2
1004 General Fund Receipts	55,106.7	39,678.8	46,064.4
1005 General Fund/Program Receipts	391.0	460.1	650.5
1007 Inter-Agency Receipts	18,866.0	19,338.0	19,354.2
1018 Exxon Valdez Oil Spill Settlement	222.8		
1037 General Fund / Mental Health	73.2	76.9	87.4
1055 Inter-agency/Oil & Hazardous Waste	532.3	532.3	532.3
1066 Public School Fund	2.7		
1105 Alaska Permanent Fund Corporation Receipts		1,477.0	1,477.0
1108 Statutory Designated Program Receipts	304.9	909.8	964.5
1114 Exxon Valdez Oil Spill Restoration Fund	118.6		
1134 Fish and Game Criminal Fines and Penalties	127.7		
1141 RCA Receipts	1,005.4	1,426.8	1,564.8
Totals	78,047.5	66,807.0	73,890.2

Position Summary

Funding Sources	FY2007 Management Plan	FY2008 Governor
Permanent Full Time	535	540
Permanent Part Time	11	12
Non Permanent	0	0
Totals	546	552

Summary of Department Budget Changes by RDU

From FY2007 Management Plan to FY2008 Governor

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2007 Management Plan	40,378.7	2,744.4	23,683.9	66,807.0
Adjustments which will continue current level of service:				
-Criminal Division	190.0	1.7	-182.4	9.3
-Civil Division	-270.4	0.0	-1,856.9	-2,127.3
-Administration and Support	401.2	0.0	-116.6	284.6
Proposed budget increases:				
-Criminal Division	3,079.7	256.1	184.2	3,520.0
-Civil Division	2,833.2	0.0	2,064.0	4,897.2
-Administration and Support	371.1	11.7	116.6	499.4
FY2008 Governor	46,983.5	3,013.9	23,892.8	73,890.2