



NEW HAMPSHIRE

Department of Justice

Office of the Attorney General

Biennial Report July 1, 2007 - June 30, 2009



Department
of Justice

33 Capitol Street

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

Michael A. Delaney
Attorney General

BIENNIAL REPORT

for the period
July 1, 2007 through June 30, 2009

John H. Lynch
Governor

Executive Councilors

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District One

John D. Shea
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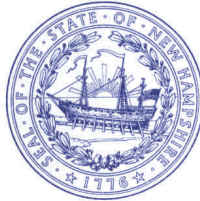
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**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

December 31, 2009

To Governor John H. Lynch, Members of the Executive Council, Members of the General Court and the Citizens of New Hampshire:

I am honored to present the biennial report detailing the work and accomplishments of the Attorney General's Office during the 2008-2009 biennium.

The mission of the Attorney General's Office is:

To serve the people of New Hampshire with diligence, independence and integrity by performing the constitutional, statutory and common law duties of the Attorney General as the State's chief legal officer and chief law enforcement officer;
To seek to do justice in all prosecutions;
To provide the State with legal representation and counsel of the highest quality;
To protect the State's environment and the rights of its consumers; and
To provide supervision and leadership of New Hampshire law enforcement.

The pages of this report detail extraordinary efforts by the attorneys and staff of the Attorney General's Office to protect the people of New Hampshire and their environment through criminal and civil prosecutions, defense of civil claims, legal advice to departments, oversight of charities, and public education on subjects ranging from consumer protection to the Right-to-Know law. The members of this Office are dedicated, hardworking and always mindful of the enormous responsibility they carry on their shoulders on a daily basis. I would like to publicly recognize them and thank them for their efforts.

During the next biennium I look forward to continuing on with our mission and I am confident this Office will again be successful in meeting the legal needs of the State while ensuring that people of New Hampshire enjoy the rights and privileges guaranteed by our Constitution and laws.

A handwritten signature in blue ink, appearing to read "Michael A. Delaney".

Michael A. Delaney
Attorney General

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Leadership

Michael A. Delaney.....Attorney General

Orville B. Fitch, II.....Deputy Attorney General

M. Kristin Spath.....Associate Attorney General
Chief of Staff

Rosemary Faretra.....Director of Administration

Dr. Thomas A. Andrew.....Chief Medical Examiner

James T. Boffetti.....Senior Assistant Attorney General
Chief, Consumer Protection and Antitrust Bureau

Timothy Brackett.....Supervisor, Grants Unit

Paul E. Brodeur.....Chief Investigator

K. Allen Brooks.....Senior Assistant Attorney General
Chief, Environmental Protection Bureau

Michael K. Brown.....Senior Assistant Attorney General
Chief, Client Counseling

Jeffrey S. Cahill.....Senior Assistant Attorney General
Chief, Medicaid Fraud Unit

Michael S. DeLucia.....Senior Assistant Attorney General
Director, Charitable Trusts Unit

Dr. Jennie V. Duval.....Deputy Chief Medical Examiner

Leadership (continued)

Anne M. Edwards.....Associate Attorney General
Chief, Litigation Unit

Stephen D. Fuller.....Senior Assistant Attorney General
Chief, Criminal Appellate Unit

Suzanne M. Gorman.....Senior Assistant Attorney General
Chief, Civil Appellate Unit

Richard W. Head.....Associate Attorney General
Director, Division of Legal Counsel

Mark P. Hodgdon.....Senior Assistant Attorney General
Chief, Transportation and Construction Bureau

Terry M. Knowles.....Assistant Director, Charitable Trusts Unit

Sandra Matheson.....Director, Office of Victim/Witness Assistance

James R. Norris.....Commander, Drug Task Force

Ann M. Rice.....Associate Attorney General
Director, Division of Public Protection

Bette Jane Riordan.....Director, Victims Compensation Unit

Nancy J. Smith.....Senior Assistant Attorney General
Deputy Chief, Litigation Unit

Jeffery A. Strelzin.....Senior Assistant Attorney General
Chief, Homicide Unit

Jane E. Young.....Senior Assistant Attorney General
Chief, Criminal Justice Bureau

Criminal Justice Bureau

The duties of the Criminal Justice Bureau (CJB) include the investigation and prosecution of various criminal cases throughout the State. The CJB is statutorily mandated to prosecute crimes punishable by death or imprisonment for life, and to represent the State on all criminal appeals in the New Hampshire Supreme Court and the federal courts. In addition to its mandated functions, the CJB conducts investigations and initiates prosecutions in cases involving drug trafficking, financial crime, cybercrime, public integrity crime, and Medicaid fraud. The CJB attorneys also assist in investigations involving the use of deadly force by police officers in the line of duty. Attorneys in the CJB teach the recruits at the New Hampshire Police Academy. There is also an attorney who is devoted exclusively to providing training and litigation support in matters involving traffic safety, with a particular emphasis on issues surrounding driving while intoxicated.

While the last biennium posed unprecedented challenges for the CJB staff, each of the attorneys, investigators, financial analysts, paralegals, victim witness advocates, and secretaries assigned to the CJB conquered the challenges with unparalleled effort and dedication. Between August and December 2008, the CJB simultaneously and successfully prosecuted two capital murder cases. Each of the trial teams comprised four attorneys, a paralegal,

and a victim-witness advocate. The capital murder trials lasted approximately four months and included a guilt phase and a penalty phase.

In addition to the capital murder prosecutions, during the last biennium members of the CJB successfully went to trial in a variety of other cases, including numerous first and second degree murder cases, a charge of harm or threat to a superior court judge, a charge of solicitation of witness tampering, a charge of assault by a correctional officer on an inmate, a charge of theft of town funds by a town treasurer, and a Medicaid fraud case.

The CJB also continued its longstanding mission of providing training to prosecutors and law enforcement officers across the state. The Traffic Safety Resource Prosecutor conducted trainings on forensic blood draws, trial advocacy, sobriety checkpoints, and updates on DWI laws. In addition, she conducted a two-day seminar on motor vehicle fatality investigations and a week-long training on prosecuting the drugged driver, a rising problem in this state. Members of the Medicaid Fraud Unit provided training to healthcare groups and local law enforcement officials on recognizing and reporting suspected elder abuse. The Attorney General's Office of Victim-Witness Assistance hosted conferences on Domestic Violence and Child Abuse and Neglect. Attorneys from the CJB were

among the dozens of instructors who taught various classes at each of the conferences. Members of the bureau coordinated an ethics training that was held for local, state, and county prosecutors. The cyber-crime prosecutor, whose focus is on combating the increasing use of the Internet for criminal activity, continued her outreach efforts to educate the public about the dangers that lurk on the Internet.

Finally, an updated version of the Attorney General's Law Enforcement

Manual was completed and distributed statewide. Each law enforcement agency received a hard copy of the manual and every law enforcement officer received a copy of the manual on compact disc. The manual is also accessible by law enforcement personnel through the Police Standards and Training Council website.

Each of the units within the CJB describe their specialized function and accomplishments during the biennium as follows.

The Homicide Prosecution Unit

The attorneys of the Homicide Prosecution Unit are involved in murder cases from the first call of a suspicious death through the trial of the case in the superior court and the appeal of the conviction in the supreme court. The attorneys work closely with state and local police and oversee all investigations in cases of murder. The Homicide Prosecution Unit is staffed by five lawyers, whose primary duty is the prosecution of murder cases. Other CJB attorneys serve as co-counsel on these investigations and prosecutions.

At the beginning of the biennium, the unit had prosecutions pending in cases involving sixteen murder victims. Of the twenty defendants charged in connection with those homicides, nine defendants were tried for their crimes. Eight defendants were convicted, and

one defendant was acquitted. Ten defendants pled guilty and one defendant pled not guilty by reason of insanity.

During the biennium, the unit supervised the investigation of thirty-one declared homicides and dozens of other suspicious death cases which were later determined to be non-homicides, such as natural deaths and suicides. Charges were brought against twenty-five defendants. Of those twenty-five, eleven pled guilty and fourteen are awaiting trial. As to the remaining defendants whose cases did not result in criminal charges, three committed suicide after the murder, one case was transferred to Maine, four cases were transferred to the counties for prosecution on less serious charges, two cases were ruled justified as self-defense, and five are

The Homicide Prosecution Unit continued

still under investigation.

A summary of some of the more significant cases litigated by the unit over the last two years follows: In *State v. Kenneth Carpenter*, the defendant was charged with first-degree murder for the brutal killing of Edith Pen Meyer. During the course of the eight-week trial, the State presented numerous forensic experts, a DNA expert, and a handwriting expert. These experts were needed because of the steps the defendant took to conceal his crime, including burning the victim's body. Additionally, there was testimony regarding physical matches of items such as typewritten print, glove impressions, and accelerants. The jury convicted the defendant of first-degree murder and he was sentenced to life without parole.

In *State v. Sheila LaBarre*, the defendant admitted that she murdered two men

at her Epping home, but argued that she was insane at the time of each murder. During the seven-week trial, the defendant presented numerous expert and lay witnesses in her attempt to demonstrate that she was not guilty by reason of insanity. In its challenge to the defendant's claim of insanity, the State likewise presented the testimony of several experts, including a forensic psychiatrist, a forensic anthropologist, a forensic odontologist, and an expert on blood spatter. The jury found that the defendant was not insane and therefore guilty of two counts of first-degree murder.

During the biennium, the unit undertook two capital murder prosecutions. The first was *State v. John Brooks*, a murder-for-hire case. It involved five defendants and the investigation spanned several states. After a four-month trial, the jury convicted Brooks of capital murder, and found that he should be sentenced to life without parole. Two of the codefendants pled guilty for their roles in the murder. Another codefendant was tried and convicted of being an accomplice to first-degree murder and was sentenced to life without parole. The fifth codefendant is awaiting trial. The second capital murder prosecution was *State v. Michael Addison*. The defendant was charged with the killing of a Manchester police officer who was acting in the line of duty. The trial lasted more than three months, during which the State called dozens of witnesses in both the guilt and penalty phases of the trial. The jury found the defendant guilty of capital murder and sentenced him to death.



Senior Assistant Attorney General Jeffery Strelzin questions a witness at the *State v. Addison* trial.

The Public Integrity and Economic Crime Unit

The investigators and prosecutors of the CJB oversee prosecutions of complex theft cases and criminal wrongdoing by public officials. The theft cases typically involve the theft of more than \$100,000 or span multiple counties. The unit also prosecutes cases of crimes committed by state, county, and local government officials, including law enforcement officers. The cases involve a variety of criminal conduct, including misuse of one's official position, sexual assault by a law enforcement officer, and theft of taxpayer funds. Both the public integrity and economic crime cases involve extensive investigations, including the preparation of search warrants, and the review of financial documents such as bank records and town ledgers. The investigators interview numerous witnesses, and the attorneys present a large amount of documentary and testimonial evidence to grand juries across the state.

A summary of some of the more significant cases litigated by the unit over the last two years follows:

In *State v. Douglas Gray*, the defendant was an attorney who stole \$389,000 in client funds. The defendant pled guilty, and was sentenced to serve five to fifteen years in prison, with two and a half years deferred for ten years. He was also ordered to make full restitution.

In *State v. Horace Seymour III*, the defendant was the Litchfield town

treasurer. He was prosecuted for multiple counts of theft stemming from his transfer of over \$135,000 of town funds to his personal bank account. He was also prosecuted for stealing over \$2,000 from Masstech, Inc. After a trial, the jury convicted Seymour of the theft charges, and he was sentenced to serve five to ten years in prison.

In *State v. Deborah Woods*, the defendant was a paralegal who stole approximately \$100,000 from the Gage and Woods Law Office trust account. She then replaced the money stolen from the trust account by stealing approximately \$100,000 from another attorney for whom she worked. She pled guilty, and was sentenced to serve two and a half to ten years in prison.

In *State v. Michael Rezk*, the defendant was charged with harm or threats to certain government officials stemming from his threatening to kill a superior court judge. After trial, the jury found the defendant guilty and the court sentenced him to ten to thirty years in prison, consecutive to the sentence he was serving at the time he made the charged threat.

In *State v. Douglas Tower*, the defendant, a correctional officer, was charged with assaulting an inmate. After a trial, he was found guilty and sentenced to serve one to two years in prison, consecutive to the sentence he was already serving.

The Drug Unit

The Drug Unit prosecutes significant drug trafficking crimes and forfeiture actions against items seized as implements of, or ill-gotten gains from, drug trafficking. The attorneys review drug overdose deaths to determine whether any criminal charges should be pursued. The attorneys in the Drug Unit work closely with the Attorney General's Drug Task Force (DTF), and provide daily assistance to the State Police, the Drug Enforcement Administration (DEA), and local police departments. The attorneys are available around the clock to respond to requests for legal guidance and for authorization to intercept telephone calls or other communications as allowed by statute.

The unit prosecutes all forfeiture actions so that drug traffickers are divested of their ill-gotten gains. The forfeiture actions are also targeted at stripping the drug dealers of the implements of their crimes—cars, cash, and weapons. The proceeds from the sale of any forfeited item are divided between the seizing agency (45%), the drug forfeiture fund (45%), and an account established to fund drug treatment programs (10%). During the biennium, the unit initiated forfeiture actions that resulted in the forfeiture of approximately \$97,000. Approximately \$19,000 was collected from the sale of four forfeited cars.

A summary of some of the more significant cases investigated or litigated by the unit over the last two years follows:

In *State v. Francisco Velez-Vega* and *State v. Jose Flores-Rivera*, the

defendants were arrested in Manchester for conspiracy to sell heroin and the sale of heroin to a DTF agent. During the course of a three-month investigation, Flores-Rivera sold approximately 120 grams of heroin, the equivalent of more than 2000 individual street bags. Both defendants pled guilty and were sentenced to serve ten to thirty years in prison, with two and a half years suspended from the minimum sentences. In addition, both defendants were ordered to pay restitution totaling \$8,890 to the DEA and the DTF.

In 2008, the unit participated in a multi-agency investigation of a New England-based cocaine trafficking organization with ties to Mexico. The investigation resulted in the seizure of multiple kilograms of cocaine. This joint investigation included the DTF, New Hampshire State Police, the Manchester Police Department, the Nashua Police Department, the DEA, the United States Immigrations and Customs Enforcement (ICE), and the FBI. Several arrests were made. One defendant has pled guilty, and the others are under indictment and awaiting trial.

In *State v. Luis Figueroa*, a case investigated by the DEA, the Portsmouth Police Department, and the Manchester Police Department, the defendant was arrested in Manchester for selling cocaine and heroin to a DEA agent on multiple occasions. In total, the defendant sold approximately five ounces of cocaine and sixty grams of heroin. The defendant pled guilty and was sentenced to serve four to fifteen

The Drug Unit continued

years in prison. In addition, the defendant was ordered to pay \$5,430 in restitution to the DEA, and \$4,000 in restitution to the Manchester Police Department.

In *State v. Eric Mansfield*, the Newmarket Police Department investigated the circumstances surrounding the overdose death of a

UNH student. The defendant was charged with dispensing morphine with death resulting and the sale of morphine. In 2008, the defendant pled guilty to the charges and was sentenced to serve five to fifteen years in prison. He also was sentenced to consecutive suspended prison sentences for selling morphine to two other students.



Associate Attorney General Ann Rice making a closing argument to a petit jury in Rockingham County Superior Court.

The Drug Task Force

The New Hampshire Attorney General's Drug Task Force (DTF) enforces the state's drug laws by conducting undercover drug investigations throughout the State. The DTF includes two supervisory investigators from the Attorney General's Office who work in conjunction with officers who are loaned to the task force from state, county and local police agencies. In addition to conducting undercover drug investigations, the DTF also provides support to local, county, state, and federal law enforcement

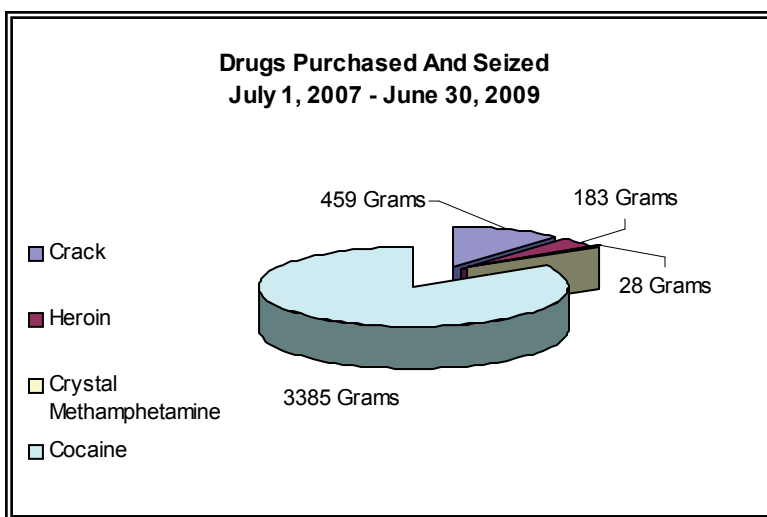
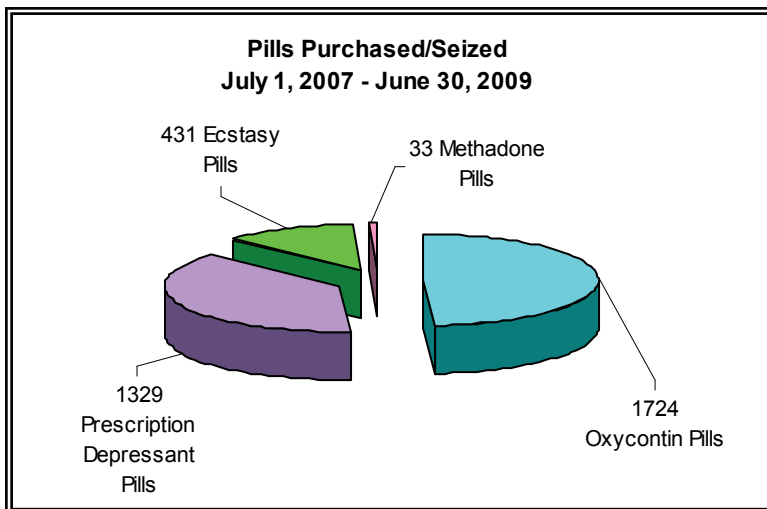
agencies in their efforts to combat drug trafficking in New Hampshire. A long-standing mission of the DTF is to provide the officers assigned to the DTF with the skills necessary to conduct drug investigations, such as cultivating confidential informants, preparing search warrants, drafting comprehensive police reports, and testifying at trial. After their tenure with the DTF, the officers return to their respective departments and use those skills to improve their own agency's investigations. The DTF maintains regional offices, which serve

The Drug Task Force continued

the seacoast, central, western, and northern regions of New Hampshire.

During the biennium, the DTF was involved in approximately 1,900 criminal cases (a 20% increase from the previous biennium), which resulted in 302 arrests. DTF investigators seized \$173,723 in cash, which was the proceeds of drug trafficking, along with an automobile and 69 weapons.

The DTF seized or purchased approximately 240 pounds of marijuana, making it the most prevalent drug purchased through undercover operations and seized during investigations. In addition, DTF investigations also led to the undercover purchase of and seizure of approximately 7½ pounds of cocaine, a pound of crack cocaine, 6½ ounces of heroin, 1,724 OxyContin pills, 1,329 prescription depressant pills, 431 ecstasy pills, 33 methadone pills, and 28 grams of crystal methamphetamine.



The DTF also provides undercover assistance to various law enforcement agencies. For example, undercover officers assisted the New Hampshire State Police and the New Hampshire Department of Corrections with investigations into the smuggling of contraband into the Northern New Hampshire Correctional Facility in Berlin. Undercover officers also assisted the Manchester Police Department with a murder investigation, which led to the arrest and prosecution of five men.

The Appeals Unit

The Appeals Unit fulfills the statutory mandate that the Criminal Justice Bureau represent the State of New Hampshire in all appeals in criminal cases in the New Hampshire Supreme Court and the federal courts. At the beginning of the biennium, the unit comprised three full-time attorneys. Because of an increasing caseload, by the end of the biennium, the unit had grown to five attorneys. Currently, one of those attorneys is assigned almost exclusively to handle the office's increasing number of habeas corpus cases in federal court. Further, although four attorneys are assigned exclusively to appeals in the state supreme court, the volume of the appellate caseload requires that all the other attorneys in the CJB carry a small appellate caseload as well.

The appellate attorneys file legal briefs, memorandums of law, and other pleadings in the state supreme court, and appear at oral argument in both that court and federal court. During the biennium, the attorneys filed 211 briefs and 61 memorandums of law in lieu of briefs in the New Hampshire Supreme Court, and two briefs in opposition to petitions for certiorari in the Supreme Court of the United States. In nine of those cases, the State was appealing a court order. In the remaining cases, the State was responding to an appeal filed by a convicted defendant. During the biennium, the appellate attorneys also opposed petitions for writs of habeas corpus in 41 cases in the United States District Court.

The legal issues that the appellate attorneys were called to address

ranged from whether a defendant violated a provision of the Motor Vehicle Code to whether all the facets of a first-degree murder conviction can withstand scrutiny by the supreme court. Constitutional issues that commonly arise are the legality of warrantless searches and seizures, the voluntariness of a defendant's waiver of his *Miranda* rights, and whether a defendant's right to confrontation at trial was violated. The decisions issued by the state supreme court in these areas provide the legal framework for the courts, the prosecutors, and law enforcement officers in all subsequent criminal cases.

A summary of some of the more significant cases briefed and argued by the unit over the last two years follows:

In *State v. Walter Hutchinson*, the defendant had been convicted of attempted murder in 1991. Fourteen years later, his victim died from her injuries, and the State brought new charges alleging first-degree murder. The defendant moved to dismiss the charges on grounds of double jeopardy. The lower court denied his motion, and the supreme court granted an interlocutory appeal. The court concluded that "under the circumstances of this case, ... the societal interest in prosecuting the defendant for an alleged homicide completed after his initial trial outweigh[ed] the defendant's interest in finality, and [did] not offend the New Hampshire Double Jeopardy Clause."

The Appeals Unit continued

In *State v. Joseph Panarello*, the State appealed from an order suppressing all evidence derived from a police officer's entry into the defendant's home during a "welfare check," including the fact that the defendant pointed a gun at the officer inside the home. The supreme court reversed the lower court, and established a limited "new crime" exception to the exclusionary rule. The court recognized that it "would produce intolerable results" to suppress evidence of a crime committed against a police officer after an unlawful entry.

In *State v. Nilson De La Cruz*, a police officer stopped the defendant's car for violation of a municipal ordinance because his radio was very loud. The defendant argued that the seizure was unlawful because the ordinance was unconstitutionally overbroad and vague, and therefore the officer did not have a reasonable suspicion justifying an investigatory stop. The supreme court adopted an "exception to the exclusionary rule in the context of an officer's objectively reasonable reliance upon a statute or ordinance in forming reasonable suspicion that a crime has been, is being, or is about to be

committed." The court recognized that the "[p]olice are charged to enforce laws until and unless they are declared unconstitutional."

In *State v. Michelle Chrisicos*, the defendant had been convicted of driving after being certified as a habitual offender. The lower court ruled that the lack of a home confinement program in Hillsborough County, where the other counties had such programs available, violated the defendant's right to equal protection. The lower court also ruled, however, that the defendant was ineligible for the program because she had been convicted of two separate charges. The defendant appealed her conviction, and the State cross-appealed on the equal protection issue. The supreme court reversed the lower court's constitutional ruling, and held that there was no equal protection violation. The court concluded that it was "not inconceivable that the legislature could have intended to allow each county to undertake a separate cost-benefit analysis with respect to a home confinement program," and that such a purpose was not irrational.



Assistant Attorney General Thomas Bocian presents oral argument to the New Hampshire Supreme Court "on the road" at Souhegan High School.

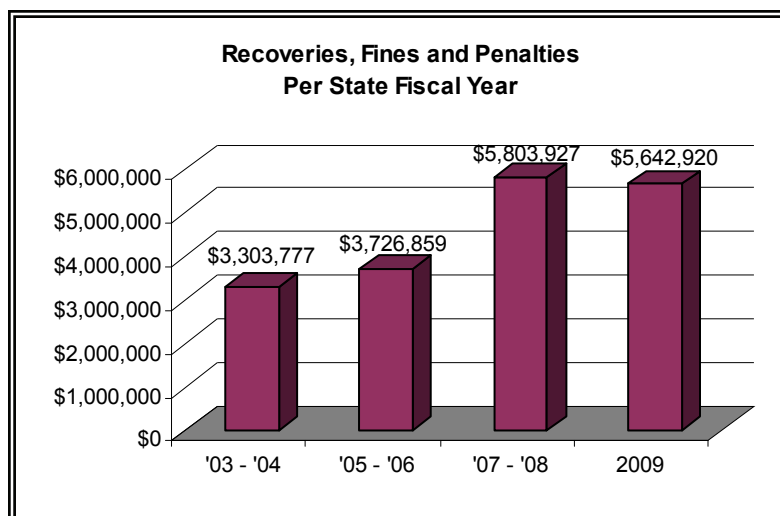
The Medicaid Fraud Unit

The Medicaid Fraud Unit, which comprises attorneys, financial auditors, an investigator and a legal assistant, investigates and prosecutes several types of crimes associated with Medicaid recipients in this state. These offenses include fraudulent or abusive billing practices on the part of health care providers while serving the state's Medicaid recipients, and physical abuse, neglect, or financial exploitation of residents of nursing homes and assisted living facilities. The unit has several statutory remedies available to prosecute fraudulent and abusive provider billing practices, ranging from criminal sanctions to administrative sanctions.

The Medicaid program covers medical and other related services for three main low-income groups: parents and children, the elderly, and the disabled. Medicaid is a joint venture between the states and the federal government. While the federal government must approve each state's Medicaid

program, the states are responsible for day-to-day administration. There are 86 licensed nursing facilities and 148 assisted living facilities, where almost one out of every one hundred people in New Hampshire lives. Of the more than 7,100 individuals residing in the state's nursing facilities, approximately 62% are covered by Medicaid. The unit investigates and prosecutes cases of abuse, neglect, and financial exploitation against persons living in these facilities.

Investigations are typically initiated based on reports received directly from the New Hampshire Division of Elderly and Adult Services (DEAS), as well as other state agencies, law enforcement, and private citizens. The twelve state district offices, which review Medicaid applications for long-term care coverage, also make referrals. Every applicant (or an authorized representative) must provide financial disclosures in order to meet the eligibility requirement for



The Medicaid Fraud Unit continued

Medicaid coverage. If the eligibility review reveals that the applicant was possibly exploited as the result of assets diverted before seeking Medicaid, then the information is referred to the unit for investigation.

During the biennium, the unit brought twenty-six criminal charges against eighteen defendants. Fourteen defendants were convicted during the same period and prosecutions are pending against the remaining four defendants. Monetary recoveries, fines, and penalties from all cases totaled \$10,506,839. Of that amount, \$8,940,813 was recovered for the Medicaid Program. The substantial increase in Medicaid Program recoveries during the biennium compared to prior years can be attributed to the conclusion of several significant national cases and to the states' increased role in coordinating and leading multi-state investigations. Patient funds restitution in financial exploitation cases (civil and criminal) totaled \$349,244.

A summary of some of the more significant cases litigated by the unit over the last two years follows:

In *State v. Lee Bird*, the defendant, a licensed clinical social worker, was convicted for theft by deception for falsely billing the State's Medicaid program for counseling sessions that were never provided. He was sentenced to serve six months in jail with an additional six months suspended and was required to make restitution of \$21,700.

In *State v. Living at Home Senior Care*,

the provider agreed to pay \$31,953 to settle a dispute concerning claims submitted to the Medicaid program. It was alleged that the provider failed to maintain proper documentation for certain homemaker services and also submitted claims for home health aide services when the caregiver was not properly licensed.

In *State v. Purdue Pharma*, the defendant pharmaceutical company entered a settlement agreement, which resulted in the state being paid \$1,053,000. Purdue manufactured, marketed, and distributed OxyContin, a time-release formulation of oxycodone. The settlement resolved allegations that Purdue engaged in misbranding violations by falsely claiming that OxyContin was less addictive, less subject to abuse and diversion, and less likely to cause tolerance and withdrawal problems than other pain medications.

In *State v. Total Body Therapy*, the provider, an occupational and physical therapy service, agreed to pay \$211,277 to resolve allegations that it submitted improper claims to the Medicare and Medicaid programs. It was alleged that the provider submitted claims without possessing the required supporting documentation to demonstrate that the services were rendered. It was also alleged that the provider submitted claims for services purportedly rendered by a specified professional when the services were performed by unsupervised assistants or aides.

In *State v. Katelyn Cynewski*, the defendant was a licensed nursing

The Medicaid Fraud Unit continued

assistant, who diverted Fentanyl patches—a powerful narcotic that is prescribed for pain relief—from a 91-year-old nursing home resident. Cynewski pled guilty, and was sentenced to serve three months in the house of correction and was ordered to serve two years of probation upon her release.

In *State v. Candy Latour*, the defendant stole \$75,000 of her mother's money while the mother resided in a nursing home. The defendant took control over proceeds from the sale of her mother's house and bank account, and diverted the funds to her own use. The defendant pled guilty and was sentenced to serve nine months in the

house of corrections and ordered to pay full restitution.

In *State v. Louri Boilard*, the defendant had applied for Medicaid coverage for both of her parents, who were receiving nursing home care. The defendant intentionally failed to disclose her parents' changed financial circumstances resulting from the sale of their home. The defendant's concealment resulted in her parents' continued receipt of Medicaid coverage to which they were not entitled. After a trial, the jury found the defendant guilty of Medicaid fraud, and she was sentenced to a twelve-month suspended sentence that was subsequently imposed.

Office of Victim/Witness Assistance

The criminal justice system can be confusing and intimidating to people who are drawn into the system as a result of having been a victim of, or witness to, a crime. In 1987 the New Hampshire Legislature created the Office of Victim/Witness Assistance (OVWA), within the Attorney General's Office. The mission of the OVWA is to ensure that victims are treated with dignity and respect and provided with the services and support they need throughout their involvement in the criminal justice process. The OVWA aims to meet the emotional, mental and physical needs of victims and witnesses; to minimize the trauma and the impact of the crime; and to prevent further

victimization by the criminal justice system.

The OVWA is responsible for providing 24-hour services and support in all of the state's homicide cases. New Hampshire is one of four states, where all of the homicides, with the exception of negligent homicides, are prosecuted out of the Attorney General's Office, not out of the County Attorney's Offices.

The OVWA is staffed by the Director, an administrative assistant, a criminal justice specialist, three victim/witness advocates and one AmeriCorps victim advocate. Whenever a homicide occurs within the state, one of the advocates,

Office of Victim/Witness Assistance continued

who are on-call 24 hours a day, is responsible for responding to the scene to notify the victim's family of the death of their loved one and to provide immediate crisis intervention and support to both family members and witnesses to the crime. The advocate continues to work closely with the family during the extremely painful and difficult aftermath, providing a wide range of services which may include arranging for the cleanup of the homicide scene, informing the family on the results of the autopsy, retrieving necessary items from the home if it is the crime scene, assisting them with funeral arrangements, and explaining in general terms the process of a death investigation.

The family will continue to receive support and services from the advocate as the case progresses through the criminal justice system. Those services include educating the family about the court process, providing case status reports, notifying the family of upcoming court hearings, accompanying family members to court and, if necessary, intervening with an employer, school or creditor. The advocate's involvement with a family does not end with the disposition of the criminal case, but may continue for years, throughout the post-conviction, sentence suspension, sentence review, and parole hearings.

In addition to working with family members, the advocates, as part of the prosecution team, also work with the witnesses involved in each case. They schedule court appearances so as to minimize any inconvenience to the witness, provide an orientation to the

courtroom, explain the court process and assist the witness in obtaining their statutory witness fee. In the past biennium the advocates worked with 837 witnesses. The advocates also respond to numerous calls, complaints and requests from New Hampshire citizens by providing intervention and referral services.

From its inception in 1987 through June 30, 2009, the OVWA has been involved in 501 homicides. During the 2008-2009 biennium, advocates responded to 30 homicides with a total of 39 defendants. They also provided services in 14 non-homicide cases involving domestic violence and sexual assault cases, white-collar crimes and other death investigations.

The Attorney General's OVWA has recently been recognized as one of three-model homicide services programs. The US Department of Justice Office for Victims of Crime (OVC) chose New Hampshire as one of three states in the country, to receive a three year *Intensive Case Management for Family Members of Homicide Victims Project Grant*. The OVWA received \$185,000 for the first year of the three-year grant cycle. In collaboration with UNH Prevention Innovations, the OVWA will evaluate the existing homicide program and identify gaps in services or areas to be enhanced or improved. A special focus will be on meeting the special needs of children, teenagers, and survivors with disabilities or special needs. The OVWA will also implement strategies to enhance the existing program and formalize protocols and procedures, training and

Office of Victim/Witness Assistance continued

referral networks.

In addition to the direct service responsibilities, the OVWA represents the Attorney General on numerous committees and commissions and coordinates a variety of statewide initiatives aimed at standardizing the services and support to victims of crime and enhancing the systemic response to the issues, through training and protocol and policy development.

Some of these initiatives include:

The OVWA recently received a grant to implement the **Lethality Assessment Program (LAP)** throughout the state, starting with a model in Merrimack County. The goal of the LAP is to prevent domestic violence homicides, serious injury and re-assault by encouraging more victims to use the shelter, counseling, advocacy and support services of domestic violence crisis centers. Law enforcement and crisis center advocates are trained to use a research-based lethality assessment tool, along with an accompanying response and referral protocol to identify high-risk domestic violence victims and to get them into crisis center services. The OVWA has contracted with a retired Police Chief to serve as the LAP Coordinator, responsible for implementing the program statewide.

The Attorney General's Task Force on Child Abuse and Neglect, dedicated to improving the investigation and prosecution of child abuse and neglect cases in New Hampshire, recently held its 17th annual multidisciplinary

conference for over 420 professionals. The Task Force has been very involved in the Attorney General's effort to establish Child Advocacy Centers (CACs) in each county to ensure that every abused child has access to the high quality, comprehensive, specialized and culturally competent services of a CAC. In part through start up funding from the Attorney General's Office, by the end of 2009, there will be a CAC in every county. The Task Force continues to sponsor an Annual CAC Summit, as well as specialized forensic interview trainings for CAC team members. During the past biennium the Task Force also finalized and distributed a new Child Abuse Protocol based upon the CAC model.

The Governor's Commission on Domestic and Sexual Violence, which is chaired by the Attorney General, continues to develop and implement programs to reduce the level and seriousness of domestic and sexual violence and stalking, and to increase public awareness of the issues. During the past biennium, the Commission updated the Sexual Assault Medical Forensic Protocol and evidence collection kits and the Domestic Violence Medical Protocol and completed and distributed a new Stalking Protocol for Law Enforcement. The Commission also developed a Supervised Visitation Brochure for providers. In May, the 15th Statewide Domestic and Sexual Violence and Stalking Conference was held, with 403 professionals attending.

The OVWA is responsible for

Office of Victim/Witness Assistance continued

coordinating the efforts of the **New Hampshire Child Fatality, the Domestic Violence Fatality and the Elder and Incapacitated Adult Fatality Review Committees**. These Committees review cases of child deaths, all domestic violence related homicides and fatalities of elder or incapacitated adults in New Hampshire and make recommendations for systemic improvements to prevent future deaths. These recommendations are published in annual reports to the Governor.

The New Hampshire SANE (Sexual Assault Nurse Examiner) Program, a joint project of the Attorney General's Office and the New Hampshire Coalition Against Domestic and Sexual Violence, trains and certifies medical professionals to provide statewide consistent care that respects the emotional and physical needs of the sexual assault/abuse victim, while collecting the best possible forensic evidence to promote the effective prosecution of the offender. In the past 2 years, 80 nurses were trained to serve as SANE nurses. The OVWA is responsible for the distribution and tracking of the sexual assault forensic evidence collection kits.

During the past two years, in addition to the annual two-day conferences, the OVWA training unit coordinated 14 trainings, including 6 regional trainings to introduce the Child Abuse Protocol, some of which were held in

the northern part of the state. Other trainings included two day-long Mental Illness and the Criminal and Juvenile Justice System trainings for over 400, a two day Stalking Conference for 128 professionals, a Tri State Advanced Victim Assistance Academy for over 100 advocates and a First Responder to Homicide training for over 50. A total of 2,541 professionals statewide were trained through OVWA training programs during the past two years.

The OVWA is also responsible for administering the **New Hampshire Address Confidentiality Program (ACP)**, which was created in 2001 to enable people escaping from violent situations to hide their location from their assailant. The ACP sets up a substitute address that participants can use to receive services such as obtaining a driver's license, registering a car or applying to vote as an absentee voter. Mail sent to this substitute address, is then forwarded to the participants by the Office, thus keeping their location confidential. Since its inception, 174 people have registered with the program. In the last biennium, 23 new participants were enrolled and a total of 5,787 pieces of mail were forwarded to program participants.

All protocols, reports, policies and other publications developed by the OVWA are available at www.doj.nh.gov/victim/index.html

The value of the advocates' services is reflected in the following excerpts from letters that the advocates have received from families of homicide victims:

"Your extraordinary care of the family members, each with a broken heart stands out."

"You truly are a unique professional. I don't know how you do your difficult job."

"Your genuine care, concern and support are amazing."

Office of the Chief Medical Examiner

RSA 611-B gives the New Hampshire Office of Chief Medical Examiner (“OCME”) the legal authority to investigate certain deaths. Any death in New Hampshire that is not a natural death is automatically considered a medical examiner case. OCME also investigates some natural deaths, including deaths that could be a threat to public health, or when the decedent does not have a doctor, or when it is a sudden unexpected death and the person was thought to be in good health.

The staff at OCME consists of 2 board certified forensic pathologists, a forensic investigator, an administrative assistant and a part-time, federally grant-funded evidence technician.

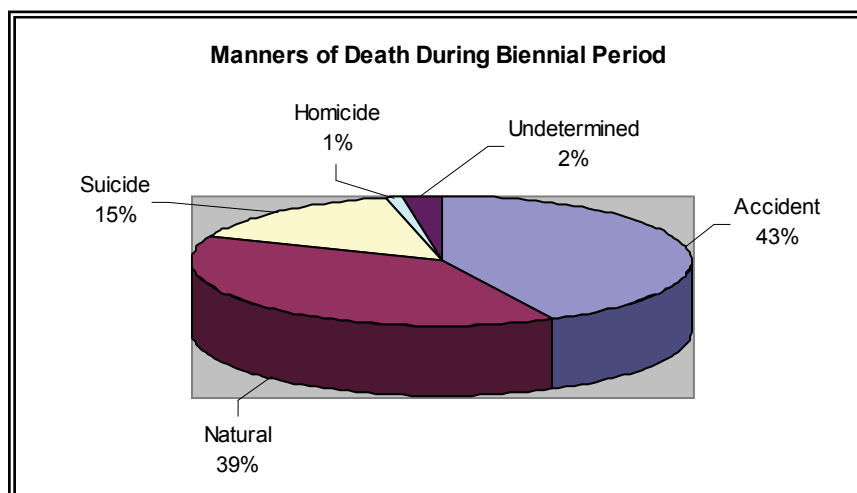
The scene investigators for OCME are assistant deputy medical examiners (ADME) who are independent contractors and have been trained in death investigation.

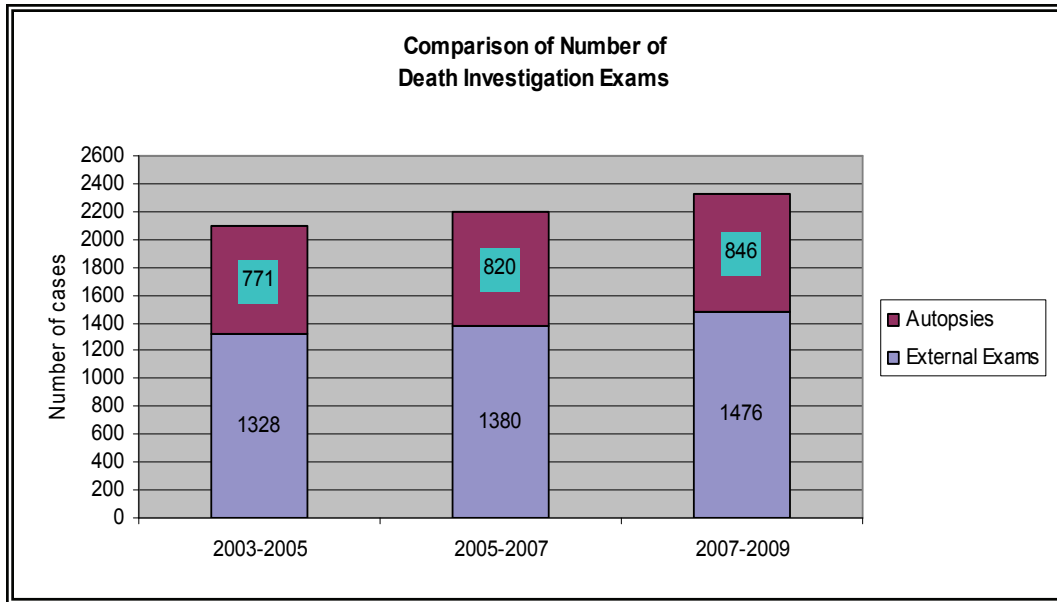
During the biennial period, a total of 20,187 deaths occurred in New

Hampshire. OCME actively investigated 2,322 of these deaths and of these deaths; the manners of death were classified as:

- 894 natural deaths
- 991 accidental deaths
- 350 suicides
- 28 homicides
- 56 manner was undetermined
- 3 manner was pending at the time of this report.

Of the 2,322 deaths that OCME investigated in this past biennium, 912 were autopsied. The remaining 1,410 cases had thorough external exams and the vast majority of these had toxicologic analyses. ADMEs were also consulted on over 3,000 deaths, referred to them by local police departments and hospitals, in which jurisdiction was declined. The 2,322 cases that OCME investigated represent a slight increase (5%) over the previous biennium, which also had a small increase over the preceding biennial period.

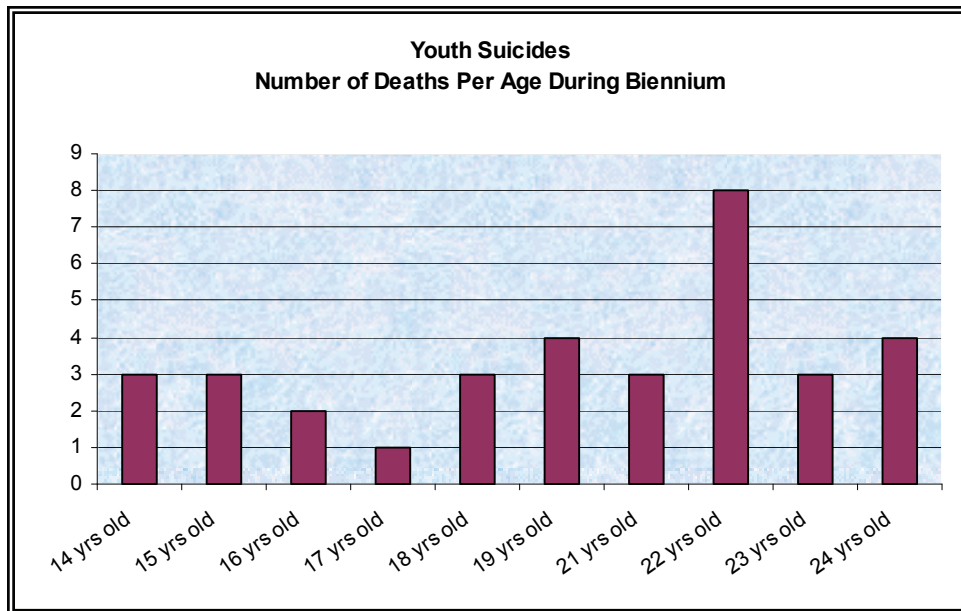




Suicide in New Hampshire

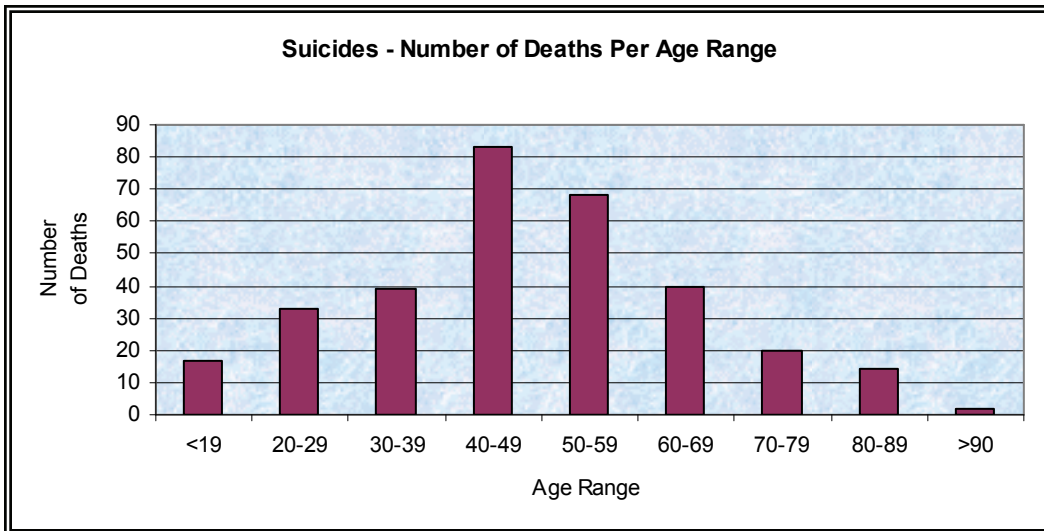
350 deaths that occurred in this biennium were due to suicide. That number constitutes an increase of 14%

compared to the previous biennium. Thirty-two of these deaths were considered “youth” suicides (24 years old or younger).

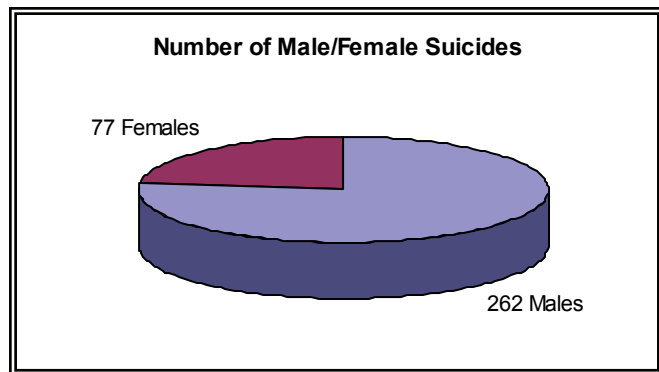


Over 33,000 Americans commit suicide in the United States each year. In an effort to understand and reduce the number of suicides in NH, OCME works with several agencies, including the Youth Suicide Prevention Assembly (YSPA), National Alliance on Mental Illness, (NAMI) and the New Hampshire State Suicide Prevention Council. OCME staff members attend meetings, provide data, and contribute to suicide

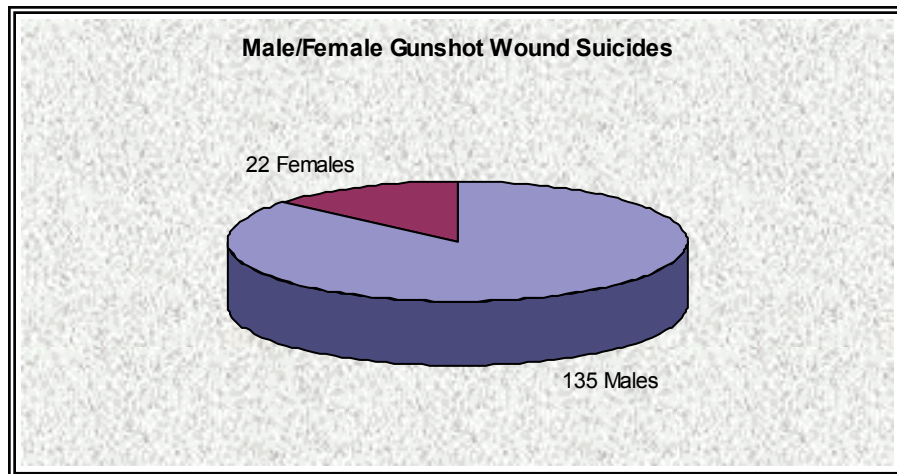
prevention plans. In order to address the needs of those affected by suicide, OCME, in collaboration with the Bureau of Behavioral Health and NAMI, sends families of all NH suicide victims a packet containing information on grief, how to help children grieve, financial planning, contact information for support groups, and a CD of music to promote healing following a suicide death.



According to the Centers for Disease Control and Prevention (CDC), males take their own lives at nearly four times the rate of females and represent 79.0% of all U.S. suicides. In New Hampshire in this biennium, 77% of suicides were males as opposed to 23% females.



Death by firearm is the most prevalent form of suicide in New Hampshire. Over 5 times as many males killed themselves with firearms as females. Over half of all males who committed suicide used a firearm.



Consumer Protection and Antitrust Bureau

The Consumer Protection and Antitrust Bureau (“Bureau”) is responsible for enforcing the consumer protection and antitrust laws of New Hampshire and ensuring that trades and businesses operating within the state comply with governing statutes. In addition to the investigation, regulation and enforcement of the Consumer Protection Act and the antitrust laws, more than thirty other statutes dictate responsibilities and requirements for the Bureau. The other statutes include laws such as Fair Debt Collection, Automated Telemarketing Calls, Security Breach Notification and the Condominium and Land Sales Full Disclosure Acts. In addition, the Administrative Prosecutions Unit (“APU”), the Insurance Fraud Prosecutor and the Elder Abuse and Exploitation Unit are attached to the Bureau.

The Bureau was first established in 1970. At the present time, there are 15 volunteers and 17 staff members, including lawyers, paralegals and support staff currently assigned to consumer protection work, antitrust matters, the Administrative Prosecution Unit, Insurance Fraud prosecution, and the Elder Abuse and Exploitation Unit.

Direct Citizen Services

One of the Bureau’s primary responsibilities is directly assisting consumers with their questions and problems. The Bureau accomplishes this with a toll free Consumer Hotline,

a voluntary mediation program, public education and outreach programs, informative brochures, a consumer guide called the *NH Consumer’s Sourcebook*, on-line complaint filing, an informative website and direct intervention.

Telephone Hotline

The Bureau supports a Consumer Hotline dedicated to receiving telephone inquiries from consumers. The Bureau’s paralegals, secretaries, attorneys and volunteers responded to approximately 7,000 telephone calls during the biennium. The Consumer Hotline is staffed between 9:00 a.m. and 3:00 p.m. Monday through Friday and can be reached at (603) 271-3641 or toll free at 1-888-468-4454.

Consumer Complaints

The Bureau receives and responds to thousands of written complaints from consumers in New Hampshire and other states. Complaints can be filed electronically or on paper. During the biennium, over 7,939 written complaints were processed by the Bureau. Each complaint is reviewed and a decision is made on how best to handle the complaint given the particular facts and circumstances. In the first instance, if appropriate, the complaint will be referred to the Bureau’s Mediation Program. Cases are also investigated for civil or criminal prosecution. If the Bureau is unable to assist a consumer, the complaint may be referred to other state or federal agencies, such as the

Federal Trade Commission, Attorney General Offices in other states, or referred to private attorneys.

The top 10 complaint categories in the last biennium were:

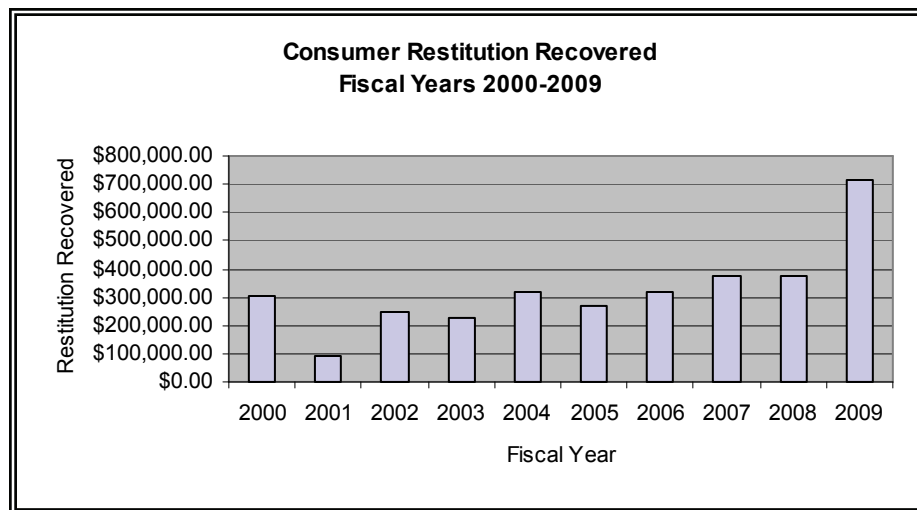
1. Internet goods and services
2. Debt collection
3. Automobile sales
4. Fuel and energy purchases
5. Health clubs
6. Predatory lending practices
7. Building contractors and home repair
8. Credit cards
9. Telecommunications/
slamming/cramming
10. Identity theft

Mediation Program

The Bureau has utilized a voluntary Mediation Program since 1992. The Bureau recruits and trains qualified non-lawyer volunteers as Consumer Affairs Specialists who help fellow citizens and businesses resolve a wide array of consumer complaints by informal mediation. The Bureau’s paralegals work with the Consumer

Affairs Specialists to handle the bulk of the cases in the Mediation Program. This program allows the Bureau to reach out to and assist thousands more consumers and businesses than it would otherwise be able to help. While the Mediation Program is voluntary on the part of the businesses, it is generally well received. The Consumer Affairs Specialists each work approximately six hours per week, answering telephone calls and mediating individual cases.

In the biennium, approximately 5,589 cases were referred to the Mediation Program. The total restitution recovered for consumers in the form of money, goods or services for Fiscal Year 2008 was \$377,728, and \$716,423 in Fiscal Year 2009, for a total of \$1,094,152 in the last biennium. This represents an increase of nearly \$400,000 over the last biennium. This includes several unusually large settlements, including restitution of over \$133,000 to 56 consumers who were victims of Harvard Auto Sales. Six other cases resulted in consumer restitution of almost \$200,000.



The work of the Bureau's volunteers is invaluable. Many consumers would not have received help but for the dedication, commitment and outstanding success rate demonstrated by the volunteers. Their work represents the equivalent of at least two additional full-time employees and has allowed the Bureau to positively impact the lives of many more individuals than would otherwise be possible.

Public Education and Outreach

The Bureau has continued to conduct outreach programs offered to New Hampshire citizens throughout the State. Oftentimes, the Bureau partners with local law enforcement and other agencies for its presentations. Bureau staff, with the help of trained volunteers, presented 45 outreach programs in this biennium. The Bureau's outreach includes specially tailored seminars for high school students, senior citizen groups, civic organizations and business leaders. With the increase in identity theft concerns, many of the Bureau's outreach programs focus on preventing identity theft and minimizing the harm done to victims. Bureau attorneys and staff have partnered with print, radio and television media in an effort to reach wider audiences on an array of consumer issues as well.

Consumer Protection Website

The Bureau maintains an informative website for consumers, <http://doj.nh.gov/consumer>. Not only does it contain the complete *New*

Hampshire Consumer Sourcebook, but it also includes all of the press releases and consumer alerts issued by the Attorney General's Office. These press releases and alerts notify the public about prevalent scams and contain practical advice for consumers. The Bureau's website lists the security breach notifications received by the Attorney General's office and other noteworthy information for the public. The Attorney General was notified of 242 security breaches affecting New Hampshire consumers during the biennium. Copies of the notifications are available on the Bureau's website. Consumers may also download complaint forms and telephone log sheets to help them monitor telemarketing calls. All registration forms for condominium and land sales can be downloaded as well. Consumers may also reach the FTC's Do Not Call Registry from this site.

Enforcement

Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, documents and witnesses whenever it believes a violation of the Consumer Protection Act has occurred. During the biennium, the Bureau issued 30 subpoenas in an effort to investigate and resolve consumer protection cases.

Civil/Equity Actions

During the biennium, the Bureau filed 9 new consumer protection civil/equity suits and resolved a number of

other cases involving a wide variety of unfair and/or deceptive trade practices.

In a case involving Harvard Auto Sales (a/k/a Hitcars.com), a salvage car business operating a sales lot in Kingston, New Hampshire, and conducting a world-wide internet business, was locked and barred overnight when its chief lender repossessed 167 vehicles, including 26 cars that had already been sold but not delivered. The Bureau stepped in on behalf of many bona fide purchasers whose unshipped vehicles were in jeopardy of being repossessed and/or resold by Harvard Auto's lender. After multiple court hearings, negotiations between the business and its lenders, and signed court agreements involving numerous vehicles, the Bureau was able to assist fifty-six consumers retrieve the vehicles and titles of the vehicles for which they had paid. The Bureau worked with Kingston Police, NH Department of Safety - Highway Patrol & Enforcement, Bureau of Titles, the business owner and the lender to locate many of the purchasers who reside outside the United States as well as local consumers. Over \$133,000 worth of cars were ultimately recovered for consumers.

Criminal Prosecutions/Enforcement

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. The following are a sampling of the criminal matters pursued by the Bureau:

State v. Christopher Brown

The defendant was convicted of two Class A misdemeanors of Unfair and Deceptive Business Practices, in violation of New Hampshire's Consumer Protection Act, RSA 358-A. The defendant contracted with numerous couples in 2006 and 2007 to provide wedding photographs and photo albums, but failed to provide the photographs after the weddings. The defendant was sentenced to 12 months in the House of Correction, deferred for a year, 250 hours of community service and restitution to his victims.

State v. Sean Corriveau

The defendant was convicted of violations of New Hampshire's Consumer Protection Act, RSA 358-A. The defendant used an individual's credit card without his authorization to charge \$14,000 worth of carpeting to outfit a health club, Elite Fitness, Inc., d/b/a Powerhouse Gym at that location. The health club was not registered with the Office of the Attorney General's Consumer Protection Bureau as required by statute. In spite of this, Corriveau entered into contracts and took prepaid memberships, ignoring the requests of the Consumer Protection Bureau, to cease and comply with the Health Club Registration law. The defendant was sentenced to one year in the House of Corrections with all but one month suspended. He was also ordered to pay \$14,000 in restitution and to spend two years on Probation. In addition, Corriveau was sentenced to two consecutive six-month suspended sentences of

incarceration on the misdemeanors and ordered not to engage in any business for the next 10 years where monies or deposits are paid prior to goods or services being provided.

State v. Michael Kyriannis

Beginning in the fall of 2007, the Consumer Protection Bureau started receiving complaints about the on-line shoe store My Shoe Store, Inc. d/b/a My Shoe Store.com and a/k/a Lord John's Footwear. A total of over 300 complaints were ultimately filed with the Bureau from consumers all over the country.

The owner of the business, Michael Kyriannis, a resident of New York State, would charge consumers immediately once an order was placed, send them a confirming email that their credit card had been charged and that their order would be delivered within 7-10 business days. Consumers typically were subsequently notified that the shoes they ordered were back ordered or no longer available and their credit card would be "credited" by the end of 30 days.

The State filed an action against Mr. Kyriannis, and on August 20, 2008, the Court issued an order granting the State's request for an Injunction stating, in part:

[F]ollowing hearing on the State's request for preliminary injunction, the Court orders Michael Kyriannis personally, and My Shoe Store, Inc.. and My Shoe Store, Inc., d/b/a My Shoe Store.com/Lord John Footwear

and all successors or assigns or any other internet, telephone or mail order store in which Michael Kyriannis has any ownership interest, management authority or decision-making role, shall immediately cease and desist from accepting payment for ordered items prior to the shipping of said items pending a hearing on the merits."

Kyriannis closed his storefront in Hampton, New Hampshire and took his website down. He was subsequently charged with and pled guilty to Unfair and Deceptive Business Acts and ordered to pay restitution in the amount of \$26,000 to consumers.

Tobacco Activities

In 1998, New Hampshire, along with 46 other states and 4 territories joined in the Master Settlement Agreement (the "MSA") to end litigation against the four major tobacco companies. The best-known provision of the MSA is where the participating manufacturers ("OPMs") agreed to reimburse the settling states for their costs in the treatment of tobacco-related illnesses. This results in payments of approximately \$45 million to New Hampshire every year. These payments, however, are not automatic. A complex formula is used every year to determine the amount that the State will receive. Among the factors that have an effect on the final payment are nationwide sales of tobacco products, the percentage of sales by OPMs compared to the sales by non-participating manufacturers ("NPMs"),

or those small tobacco producers who did not join in the MSA, the rate of inflation and other factors.

The MSA requires each settling state to enact a statute which requires NPMs to establish an escrow account in favor of each state and to pay into the escrow account a certain amount, a little over two cents, for each cigarette sold in the state. New Hampshire has enacted such a statute. Also, pursuant to legislation that was designed to help enforce the escrow statute, the Bureau must approve all tobacco manufacturers and brands of cigarettes before they can be legally sold in New Hampshire. The approved manufacturers and brands are included on the state's tobacco directory.

Currently, over 225 different brands and over 1700 brand styles of cigarettes, including roll-your-own, are sold in New Hampshire, by 50 different manufacturers, and through 58 different wholesalers.

Approximately 15 of these manufacturers are NPMs, and the Bureau receives applications for approval of new companies and new brands on a weekly basis.

Master Settlement Agreement Compliance

Each quarter, all NPMs are required to report their sales in New Hampshire to the Bureau. Wholesalers who sell in New Hampshire are likewise required to report NPM product sales in New Hampshire to the Bureau. The NPM and wholesalers' numbers are compared, and, if these numbers are not reasonably close, further inquiries

are made to determine the cause of the discrepancy. Once the actual sales volume of each NPM is verified, the escrow funds are evaluated to ensure that adequate funds have been placed into escrow. If an NPM has failed to abide by its escrow obligations, a warning letter is issued. If the NPM does not respond adequately, the Bureau will file suit to enforce the escrow statute, or will remove the NPM's products from the directory, thereby barring further sales into New Hampshire until such time as the NPM comes into compliance.

The NPM Adjustment and Diligent Enforcement

In late 2005, it was determined that a NPM Adjustment for the year 2003 may be applicable. This pattern has repeated itself every year since. As a result, the settling tobacco companies have reduced their annual payments to New Hampshire since 2006 by approximately \$5.0 million below the required amount.

The dispute is proceeding to arbitration. The arbitrations for all states are expected to begin in 2010. The tobacco companies are seeking recovery of up to the entire payment made to the State under the MSA.

Antitrust Activities

The Bureau's antitrust enforcement activities have generally been undertaken in concert with other state antitrust bureaus. Most antitrust actions are undertaken through authority granted the states in federal antitrust laws as well as native

jurisdiction under state antitrust statutes. The scope of an antitrust enforcement action is nearly uniformly multistate, as most violations and violators exist across state borders. By pooling resources, states have found that they can prevail against large, even multinational, corporations when they violate antitrust statutes.

Actions Against Pharmaceutical Manufacturers

Much antitrust activity has recently taken place in the pharmaceutical field. The pharmaceutical industry consists of two types of manufacturers - those who are research-based and the generic manufacturers. The research-based manufacturers conduct research with the hopes of developing new and profitable drugs. The generic manufacturers wait for the patents to expire on new drugs and then make low-priced copies of those drugs.

Therefore, the research-based manufacturers' ability to earn a profit on their discoveries diminishes when their patent protection ends. As a result, attempts to extend patent protection beyond the patent's

statutory time limit are increasing. Research-based pharmaceutical manufacturers have also paid generic manufacturers not to produce drugs when the patent expires. These activities are attempts to maintain a monopoly after the legal protection afforded by a patent expires. The resulting violations of antitrust laws have been vigilantly prosecuted by the states, along with the federal government. The Bureau has participated in investigations involving the following drugs and manufacturers in the last biennium: Cardizem Antitrust, Purdue Pharma Antitrust, and Bu-Spar Bristol Myers-Squibb.

Non-Pharmaceutical Antitrust Matters

The primary non-pharmaceutical antitrust activity is the ongoing investigation into the proposed affiliation of Dartmouth-Hitchcock Health and Catholic Medical Center. This investigation is being conducted jointly with the Federal Trade Commission and is focused on the likely effect of the proposal on the competitive market for health-related services in the Manchester area.

The Elder Abuse and Financial Exploitation Unit

The Elder Abuse and Financial Exploitation Unit (EAU) was created by the Attorney General in 2006 to raise awareness about elder abuse, train law enforcement officials in the identification and response to cases of suspected abuse or neglect, and to prosecute offenders state-wide on a consistent basis.

Currently, the EAU consists of one prosecutor, a part-time investigator and support from the Bureau's paralegals, all of whom seek to accomplish the Attorney General's goals of increased awareness, prevention, and prosecution.

The term "elder abuse" encompasses both physical abuse and financial exploitation of persons 60 years of age or older. Physical abuse includes assaults, sexual abuse, neglect and

psychological abuse typically in the form of physical threats of harm. Financial exploitation includes theft of personal effects (money, jewelry, or other valuable assets) typically committed by a perpetrator who has gained and then violated the victim's trust. Common examples of financial exploitation include telemarketing fraud such as bogus charities, investment scams, or the all-too-common fraudulent lotteries.

Between July 2007 and June 2009, the EAU received over 250 referrals of elder abuse, neglect, self-neglect and financial exploitation. Referrals come from a variety of sources to include law enforcement, the Bureau of Elderly and Adult Services at the New Hampshire Department of Health and Human Services, attorneys, phone calls from victims, or letters sent to the



This picture was taken after the conviction in State v. Sideris, a roofer who took \$4,000 from a senior citizen and never did the work. Pictured are (left to right) Assistant Attorney General Tracy Culberson, victim David Prescott, Paralegal Catherine Lord, and Investigator Joseph Byron.

The Elder Abuse and Financial Exploitation Unit continued

Attorney General's Office from victims, their friends, or their relatives.

During fiscal year 2008, 59% of the referrals received involved some form of financial exploitation. By 2009, approximately 70% of all referrals involved financial crimes, with the most common crime being breach of a fiduciary duty by someone holding power of attorney over the elder's finances.

The EAU vigorously seeks prosecutions of those individuals who have historically not been prosecuted because the offense occurred within a civil contractual setting. Building contractors, pavers and roofers are just several examples of individuals who have been (and are currently being) prosecuted by the EAU for taking money from an elderly person and not completing the agreed-upon work and not returning the money. In 2007, the EAU successfully prosecuted Manchester roofer George Sideris for violating the New Hampshire Consumer Protection Act. Sideris received a significant fine, paid restitution, and was sentenced to one year in jail.

In 2009, the EAU successfully recovered approximately \$30,000 that was taken from an elderly blind man by his caregiver. The caregiver used the power of attorney that was given to her by the victim and treated his money as her own, making personal purchases and renovating her home.

Also in 2009, the EAU indicted Gary Mensinger for theft by misapplication

of property and for violating the Consumer Protection Act. As a salesman for a window business, Mensinger took deposits from elderly customers and never installed the windows and never returned their deposits. The matter is currently pending in the Hillsborough County Superior Court.

In 2009, the EAU convicted a Manchester man for physically assaulting his terminally ill mother. The defendant, Aaron Snyder, was also convicted of three counts of theft after it was discovered that he had been stealing and pawning his mother's jewelry without her knowledge.

In addition to prosecuting cases of elder abuse, neglect, and financial exploitation, the EAU is charged with improving the state's ability to respond to, and investigate cases of suspected elder abuse, neglect and exploitation. During the biennium, the Unit has conducted trainings at the New Hampshire Police Academy, police and fire departments throughout the state, as well as public gatherings of seniors who were educated about current scams specifically targeting seniors.

The EAU has also been actively involved with the Incapacitated Adult Fatality Review Committee. The purpose of the committee is to study fatalities of incapacitated adults in NH to determine what, if any, systemic changes need to be made to prevent such deaths and to improve the state's ability to respond to the needs of incapacitated adults.

The Insurance Prosecution Unit

At the end of Fiscal Year 2005, the Legislature approved funding for a specialized Insurance Fraud Prosecutor. In February 2006, the Insurance Prosecution Unit was formed with the hiring of this Prosecutor by the Insurance Department who works under the Attorney General's Office pursuant to RSA 7:13. The Prosecutor handles both Insurance Fraud and insurance related criminal activity. Insurance Fraud is defined by statute as a false material statement to an insurance company by a claimant. Insurance related criminal activity includes crimes such as theft of premiums, forgery by insurance agents, perjury at workers' compensation hearings, theft of money by fake insurance companies, unlicensed producers, and forged workers' compensation insurance certificates. Many of these crimes have a more direct impact on consumers than claims fraud.

As a result of joint investigations conducted by the Attorney General's Office and the Insurance Department Fraud Investigation Unit, Fraud Prosecution Unit successfully prosecuted a number of cases of insurance fraud. The Insurance Prosecution Unit obtained eleven convictions during the biennium. The following are a sampling of the criminal matters prosecuted by the Insurance Prosecution Unit:

State v. Michelle Cote and State v. Catherine Zdon:

Both of these cases arose out of insurance claims for stolen diamond rings. In both cases, the defendants

admitted to investigators from the Insurance Department's Fraud Investigation Unit that they never owned the diamond rings. Both defendants were sentenced to 6 months in the House of Corrections, suspended for 3 years and were ordered to pay fines, and to write apology letters.

State v. Donald Rankin and State v. Phillip Rice

Both of these defendants were charged with theft by deception arising out of claims for workers compensation payments. Rankin filed a workers compensation claim and represented he could not work as a truck driver. Rice collected workers compensation benefits while working for another business. Both defendants were sentenced to 6 months in the House of Corrections, suspended for a period of years, and ordered to pay restitution and write letters of apology.

State v. Travis Powell and State v. Terri Chase

Both of these defendants were charged with insurance fraud for submitting claims for automobile insurance benefits for accidents that occurred before they purchased insurance. Both were sentenced to 6 months in the House of Corrections, suspended for a period of years, and payment of a fine and restitution, and were ordered to write letters of apology.

State v. Wellington H. Potter

The defendant was charged with insurance fraud stemming from a

The Insurance Prosecution Unit continued

homeowner's insurance claim made following a house fire. The defendant submitted fraudulent receipts to his insurance company, resulting in an overpayment of \$21,000 by the insurance company. The defendant

was sentenced to six months in the House of Corrections, suspended for three years, and fined \$42,000. He was also ordered to pay \$21,039.52 in restitution and write a letter of apology.

Registration/Regulation

Condominium and Land Sales

During the biennium, the Bureau issued 82 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act (subdivisions) and 106 certificates of registration or exemption under the Condominium Act. This represents a 50% decline in registrations from the last biennium. The State derived \$126,410 in revenues from the application fees collected by the Bureau in connection with these regulatory activities, a decline of 44% over application fees from the last biennium.

Health Clubs

The Bureau issued 311 registrations to health clubs and 159 registrations to martial arts schools during the biennium. Fees from registration of health clubs totaled \$47,000. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement. The Bureau issued five administrative

subpoenas to health clubs to investigate, and entered into three assurances of discontinuance to stop unfair or deceptive trade practices.

Other Registrations

Five automatic telephone dialers registered with the Bureau during the biennium. Those telemarketers using pre-recorded messages must file and pay a \$20 filing fee. No distributorships were registered during the biennium.

RSA 151:31 requires all hospitals in the State of New Hampshire to file an annual report with the Bureau detailing the relationship between the hospitals and Physician Hospital Organizations. It also requires the Bureau to report a summary of the results annually to the legislature. Twenty-four New Hampshire hospital and health care provider institutions have filed reports. The Bureau submits an annual report to the legislature based on the information received from the hospitals.

Administrative Prosecutions Unit

The Bureau's Administrative Prosecutions Unit (APU) regularly investigates and prosecutes professional misconduct cases before the following New Hampshire licensing bodies: The Board of Allied Health Professions; the Board of Chiropractic Examiners; the Board of Dental Examiners; the Joint Board of Licensure and Certification; the Board of Medicine; the Board of Mental Health Practice; the Board of Pharmacy; and the Board of Veterinary Medicine. During the biennium, the APU also investigated and/or prosecuted cases for the Board of Accountancy.

Two attorneys, an investigator and a paralegal staff the Administrative Prosecutions Unit. Below is a summary of cases handled by the APU during the last biennium.

The APU opened 263 cases in fiscal years from July 1, 2007 through June 30, 2009. The cases opened were for the Board of Medicine (90), the Board of Dental Examiners (35), the Board of Mental Health Practice (32), the Board of Pharmacy (44), the Licensed Allied Health Professionals (24), Joint Board of Licensure and Certification (19), the NH Board of Veterinary Medicine (10), Board of Chiropractic Examiners (1), and Board of Accountancy (1).

The APU closed 202 cases during the biennium, including cases carried forward from the previous biennium.

In those cases that were heard by an administrative board at which an APU attorney acted as hearing counsel, 7 resulted in a reprimand or required the

licensee to take remedial measures and 6 resulted in license denial, suspension or revocation. In some cases, multiple hearings were necessary to reach a final disposition.

Settlements after investigation resulted in 29 license suspensions, surrenders or revocations; 62 confidential letters of concern; and 64 findings of no discipline warranted. In addition, the boards assessed \$959,020 in fines in the biennium in cases involving APU lawyers and investigators. \$634,000 of the assessed fines were conditionally stayed or suspended.

A sample of the matters handled during the biennium by APU for various boards follows.

Joint Board of Licensure and Certification

NH Board of Licensed Land Surveyors

APU assisted the Board with an investigation and negotiation of a settlement agreement of a land surveyor who failed to provide services requested by a client. The Board issued a reprimand and a fine of \$500.00.

NH Board of Licensed Architects

APU assisted the Board with an investigation and the negotiation of a settlement agreement with licensed architect who failed to accurately report discipline imposed in another state on his renewal application in New Hampshire as required. The licensee was placed on probation and fined \$2,500.

Administrative Prosecutions Unit continued

Board of Pharmacy

APU assisted with the investigation and prosecution of three pharmacy technicians and four pharmacists for taking controlled substances from the pharmacy without authorization. One pharmacist was found to have inaccurately billed a patient's insurance company for prescriptions written by a physician who was not an approved provider with the company. The pharmacist was reprimanded and fined \$15,000 with a portion of the fine stayed pending no further violations. One pharmacist failed to assure adequate reporting requirements relating to the operation of the pharmacy security system. This pharmacist was reprimanded and fined \$7,000 with a portion of the fine suspended. One pharmacist was failed to accurately compound a controlled substance suspension for a minor child. The pharmacist's system for checking controlled drug measurements failed and equipment used in measuring the substance was inadequate. This pharmacist was reprimanded, fined \$5,000 and required to take remedial continuing education.

Licensed Allied Health Professionals

Respiratory Care Practitioners Governing Board

A respiratory care practitioner was found to be practicing while impaired. The practitioner was practicing under the terms of a Settlement Agreement negotiated by APU and issued by the Board. The licensee had two hearings to determine whether or not the

licensee was in compliance with the terms of the Settlement Agreement. The licensee was found to have violated the terms of the settlement and the license was suspended pending compliance with the Board's orders.

Occupational Therapist Governing Board

APU assisted the Board with an investigation and prosecution of an occupational therapist who was convicted of driving while intoxicated and other offenses involving abuse of alcohol. A settlement agreement was negotiated and issued by the Board whereby the license was suspended and imposed conditions for completion of substance abuse treatment and mental health counseling as deemed necessary prior to relicensure.

Board of Dental Examiners

APU assisted the Board with the investigation and prosecution of four dentists and one dental hygienist.

APU investigated a registered dental hygienist who was convicted of multiple misdemeanor crimes involving fraud and or deception and who failed to keep the Board informed of her current address as required by the Board's rules. APU drafted a Notice of Hearing and made multiple attempts to locate the licensee. The hearing was held in absentia and the board revoked the hygienist's license.

In addition, APU assisted the Board investigate an orthodontist who failed to adhere to CDC guidelines and

Administrative Prosecutions Unit continued

infection control measures and allowed unlicensed individuals to assist in patient care. APU negotiated a settlement agreement issued by the Board whereby the licensee took remedial measures and paid a fine of \$4,000.

Finally, based on APU's investigation and Notice of Hearing, the Board held a hearing relating to a practitioner who was found to have provided inadequate care and failed to document treatment of a patient. The Board held a second hearing when it appeared that the licensee had failed to abide by the conditions of the Board's first order. After the second hearing the Board found that the dentist had failed to comply with the Board's orders in full and suspended his license until he complied.

Board of Medicine

APU assisted the Board to investigate and prosecute several cases involving violations of the physician/patient relationship and/or confidentiality. One case involved violation of confidentiality when the physician reviewed confidential information in the medical file of an acquaintance who was not a patient. Two cases involved allegations of sexual misconduct with a patient. In one of the cases, the Board issued a Temporary Agreement Not to Practice, ordering that the licensee not practice until resolution of pending criminal charges and further order of the Board. In two of the cases, the licensee entered into a settlement agreement. In one case the licensee's license to practice was suspended for five years. In the second case, the licensee was convicted

of misdemeanor crimes with a former patient from Maine. The APU negotiated a reciprocal settlement agreement imposing chaperone conditions and other measures to insure the safety of patients.

Additionally, APU assisted the Board in negotiating a physician's Agreement Not to Practice until resolution of allegations in another jurisdiction that the licensee sold oxycodone prescriptions to undercover drug agents posing as patients. The licensee agreed not to practice until resolution of the pending criminal charges and until further order of the Board.

APU also assisted the Board in negotiating two Agreements for Practice Restrictions for impaired physicians who agreed not to practice until completion of appropriate mental health and substance abuse treatment and until further order of the Board.

Board of Mental Health Practice

APU negotiated two Stipulated Fact Hearings issued by the Board. One practitioner had engaged in boundary violations involving a patient who provided the practitioner with financial and emotion support while in a treating relationship. That practitioner's license was suspended for a period of one year with conditions of continuing education, supervision and counseling. The second practitioner was found, after a hearing, to have failed to provide treatment records to the parent of a minor child in therapy. This practitioner was required to engage in remedial supervision.

Administrative Prosecutions Unit continued

APU also assisted in the investigation and negotiation of two settlement agreements. One practitioner failed to obtain adequate informed consent and engaged in a dual role with the patients in family counseling. The second practitioner failed to adequately supervise a candidate for licensure.

Board of Veterinary Medicine

APU assisted the Board with an investigation and negotiation resulting in the voluntary surrender of a veterinarian who was impaired and suspected of taking medication from the animal clinic for personal use. APU assisted the Board investigate and negotiate an Agreement Not to Practice with a second veterinarian who was found to have used controlled substances from the animal hospital for his personal use.

Additionally, the Board investigated and negotiated three settlement agreements with the assistance of the APU, involving failure to provide adequate care to animals. Two practitioners were reprimanded, ordered to engage in new protocols for treating certain type animals and to

engage in continuing education; the third was issued a reprimand and assessed a \$1,000 fine.

Board of Chiropractic Examiners

APU assisted the Board investigate and prosecute a chiropractor who engaged in improper coding and excessive billing and taking of unnecessary x-rays. APU negotiated a settlement agreement issued by the Board by which the licensee was reprimanded, required to engage in remedial continuing education and fined \$2,000.

Board of Accountancy

APU assisted the Board with an investigation of an accountant seeking re-issuance of his certificate to practice accountancy in New Hampshire. The investigation revealed that the accountant's certificate had been relinquished in New Hampshire as a result of a settlement agreement in 2001 relating to institution of charges of embezzlement in the State of Maine. The Board issued an order requiring the accountant to seek relicensure prior to being certified as a result of the criminal convictions in Maine.

Environmental Protection Bureau

The Environmental Protection Bureau (“EPB”) is comprised of seven attorneys, two paralegals, and a secretary. Among its many roles in State government, the EPB enforces environmental laws and rules through administrative, civil, and criminal actions. It also provides legal counsel and representation to State agencies for the protection, control, and preservation of the State’s environment as well as the protection of human health with respect to hazardous environmental conditions. As described in more detail below, the EPB represents various environmental agencies such as the New Hampshire Department of Environmental Services (“DES”), the New Hampshire Fish and Game Department, the Land and

Community Heritage Investment Program, and the Conservation Land Stewardship housed within the Office of Energy and Planning. The EPB also represents numerous environmental councils and similar bodies such as the Council on Resources and Development (“CORD”), the Lakes Management Advisory Committee, the Rivers Management Advisory Committee, the Oil Fund Disbursement Board which administers four different State funds, and the State Conservation Committee as well as some non-environmental agencies such as the Second Injury Fund, the Liquor Commission, and the Department of Labor. The EPB also makes significant contributions to the State’s welfare through its well-



Falls Pond in the White Mountains of New Hampshire.

established bankruptcy program and the more recently developed debt collection program. The cases cited in this report represent only a small sampling of the work performed by the EPB on a daily basis.

Environmental Enforcement in New Hampshire

The General Court created the Environmental Protection Bureau within the Office of the Attorney General to enforce statutes pertaining to environmental protection and preservation, to counsel State agencies on environmental issues, to exercise the common law powers of the Attorney General to protect the environment, and to bring public nuisance and other actions in order to enhance environmental protection. The EPB also brings actions to enforce administrative rules promulgated by environmental agencies. During the last biennium, the EPB continued its active role in many multi-state enforcement initiatives and began participation in many more multi-state actions in order to protect air and water quality in New Hampshire. In coordination with the environmental agencies as well as federal partners such as the U.S. Environmental Protection Agency, (“EPA”), the EPB pursues violations of federal and State laws regarding air pollution, water pollution, disposal of septage, solid waste and hazardous waste, oil discharges, ground and surface water quality rules, and other laws designed to protect human health and the environment.

Environmental Crimes

With the assistance of DES, State, county, and local law enforcement, as well as the EPA, the EPB has prosecuted or is in the process of prosecuting numerous environmental crimes. Over the last biennium, the EPB also sought to revitalize its criminal enforcement program and now once again possesses the expertise to bring indictments and prosecute criminal actions. Through discussions and meetings the EPB strengthened its relationship with the EPA Criminal Investigations Division which augments the State’s scarce enforcement resources by providing highly trained and experienced investigators to assist the EPB in its criminal actions. The EPB also began developing a criminal enforcement training to be implemented in the next biennium that will assist agency staff in identifying and dealing with possible criminal misconduct.

Successful prosecution of environmental crimes provides a vital element of overall environmental enforcement. Not only do criminal penalties provide for incarceration, fines, or both, but generally the sentence will also provide for remediation or restoration of affected areas. A guilty verdict in an environmental case sends a strong message to the public that violation of environmental laws will result in significant penalties and even incarceration. The case below provides just one example of environmental criminal enforcement.

State v. Paul Davis

In May of 2009, through a plea, the State secured three felony convictions against Paul Davis for violations related to the removal of asbestos. The defendant conducted what amounted to a major asbestos abatement project but did not follow the rules related to asbestos removal and did not possess an asbestos removal license. As part of this same case, the State also alleged that after the removal, the homeowner unlawfully disposed of approximately 13 bags of the asbestos in a dumpster at Keene State College. The State recently obtained an indictment against the homeowner for this activity. This case is still ongoing.

Civil Enforcement and Defense

During the biennium, the EPB opened approximately 234 new civil environmental enforcement cases. These cases coincide generally with the different programs of the EPB's client agencies although some relate to the State's common law duties and responsibilities. The EPB collected \$1,342,837.49 in civil penalties and funds for designated environmental projects during the biennium. During the same period, the EPB obtained approximately \$896,743 related to cost recovery and fees and received an additional \$372,308.46 in debt recovery. The EPB also successfully defended numerous cases wherein plaintiffs sought millions of dollars worth of recovery from the State.

Water

The EPB expends considerable resources in enforcing the State's numerous water-related statutes. Water cases cover a wide range of programs and essential areas of environmental protection. Within the DES water division exist a multitude of individualized programs represented by the EPB. The wetlands program involves the filling or dredging of wetlands or surface waters. Water quality cases involve the introduction of contaminants to the waters of the State including drinking water supplies. The alteration of terrain program (formerly described as the site specific program) protects the watershed from disturbances that may cause or contribute to the degradation of water quality. The drinking water quality program protects public water systems. The groundwater protection program specializes in protection of water resources beneath the surface. The Shoreland program preserves the integrity of the areas surrounding designated surface waters from despoliation and haphazard, uncoordinated development. The dam bureau monitors the State's 2,615 dams including lake level management of State-owned impoundments. The Subsurface bureau regulates septic systems. Finally, the N.H. Coastal program protects the coast through a federally-approved and enforceable coastal management program. Each of these programs possess unique characteristics that require expertise and specialized knowledge on the part of the EPB attorneys representing these

interests. The EPB actively represented each of these programs during the last biennium.

Wetlands

Roughly 10% of the State is covered in wetlands and the DES wetlands bureau receives approximately 500 complaints per year and processes approximately 2,000 applications. This necessitates coordination, training, and enforcement assistance from the EPB on many different levels. In addition to programmatic level assistance, legislative initiatives, and other roles as counsel, the EPB also pursues numerous wetlands enforcement actions.

State v. Sthua and Colleen Sliva

The defendants removed an existing ten-foot wide crossing of Bee Hole brook in Loudon, New Hampshire, and replaced it with a fifty-foot long, 10-foot diameter corrugated metal culvert. The unauthorized placement

of this culvert directly in the stream channel, along with the associated fill, dramatically changed the stream dynamics and ecosystem. The Fish and Game Department also identified this area as one inhabited by the now endangered Blanding's Turtles, a species whose migration could suffer from the type of crossing installed. The case went to trial where the State won summarily on all issues of injunctive relief. The court ordered all unauthorized fill to be removed, granted a \$200,000 attachment on all property in the State owned by the defendants, required that \$86,000 related to a recent property sale be placed into escrow for restoration, and recently required that the unauthorized crossing be fenced off to prevent access. The court deferred a finding of civil penalties until it could review the defendants' efforts at compliance with the court's orders.

Terrain Alteration

State v. LWR, Peerless

While constructing a golf course, the defendants filled thousands of square feet of wetlands and destabilized many acres of land resulting in water quality violations from runoff. The case has yet to go to trial but has already set a significant precedent in New Hampshire law when, on interlocutory appeal,



10-foot diameter culvert and destabilized soils in Bee Hole Brook, Loudon, NH.

the N.H. Supreme Court ruled that a general statute of limitations did not apply to the specific penalty provision at issue. This position was supported by numerous older cases but was contrary to a previous, relatively recent, N.H. Supreme Court decision that held that the doctrine enshrining the State's immunity from limitations, called *nullum tempus*, was not part of New Hampshire law. The N.H. Supreme Court not only ruled in favor of the State, but recognized that the holding in the recent case was in error and overruled its prior decision. This new decision will not only impact the ability of the State to bring future enforcement actions in the environmental field but in any area involving similar actions.

Shoreland Protection

In the case of *State v. Joseph and Rose Marino* that began in the previous biennium, where the defendants built a structure too close to Back Lake in Pittsburg and were required to pay \$65,000 in fines, the State was successful in requiring the defendants to complete relocation of their unauthorized residence approximately fifty feet further from the shoreline. The EPB also pursued several other enforcement actions related to shoreland violations, several of which resulted in the alteration or removal of unauthorized structures.

Water Quality

State v. Kevin Guay

The State alleged that in late 2007 and early 2008, the defendant significantly altered property he owned on Villanova Drive in Concord causing large plumes of turbid, or muddy, water to enter Penacook Lake, the city's drinking water supply. Turbid water reduces water quality not just through the immediate impact of impurities but also by the introduction of nutrients that can cause bacteria and algal blooms. These blooms harm wildlife and can seriously impact human health through the production of neurotoxins. The State immediately filed suit against the defendant and obtained a temporary restraining order, followed by a preliminary and finally permanent injunction requiring stabilization of the site. During the case, the defendant filed for bankruptcy but the State is still in the process of pursuing civil penalties which are non-dischargeable.



Turbid, or muddy, water leaving the Guay property and entering Penacook Lake.

State v. Daniel Laliberte a/k/a Dan's Septic LLC

The State filed suit against a septage hauler for improper disposal of human waste in a field in Deerfield, New Hampshire. The defendant emptied his septage truck onto a private hayfield in violation of State rules and without any consideration for public safety. The case went to trial and the State prevailed securing a judgment of \$30,000 against the defendant. The court suspended some of this penalty based on the defendant's dire financial circumstances.

Dam Bureau*Rebecca Coan, et al. v. State, et al.*

In 2005, two boys drowned in Silver Lake near the outfall of the Lochmere Dam in Belmont, New Hampshire. Surviving family members brought a wrongful death action against the State and Algonquin Power Inc. claiming, in part, that the State failed to warn the public of unsafe conditions caused by operation of the dam. The proposed damages totaled approximately one million dollars per decedent. The State believed that it operated the dam properly and that any danger was obvious to members of the public. The State also claimed sovereign immunity. In June of 2009, after approximately eighteen months of litigation, the Belknap County Superior Court finally dismissed the claims against the State based on its claim of sovereign immunity. On reconsideration, the Court also precluded the plaintiffs from amending their action simply to do an end run around the decision on

immunity previously granted in favor of the State.

State v. PSNH and Freudenberg NOK (Bristol Upper Dam)

The Mother's Day Flood of 2006 heavily damaged the disused dam in disrepair on the river between Bristol and Newfound Lake. EPB initiated suit in the previous biennium. A long series of difficult multiparty negotiations ensued which resulted in an innovative agreement whereby F-NOK would remove the dam and restore the river, PSNH would pay for the bulk of the cost, and the State would provide guidance, necessary permits, and releases. The dam was removed and the river was restored in the spring of 2009.

Garnwood, LLC v. State

A developer along Goose Pond in Canaan, New Hampshire sued the State claiming ownership of a 2.5-acre island within Goose Pond. The State purchased Goose Pond, and the land beneath it, in fee in the early 1900's. The plaintiff, and the plaintiff's expert, claimed that the transfer did not include the large, and relatively pristine island. The State believed that ownership of the island was critical to preserving the natural characteristics of the area and, more importantly, to safe and effective operation of the State impoundment that forms Goose Pond. After deposing the plaintiff's expert, conducting a site visit with dam bureau personnel, and reviewing the property documents at issue, the State filed for summary judgment on all issues. The State prevailed when the

Grafton Superior Court granted the State's motion in its entirety on February 21, 2008. The plaintiff appealed to the N.H. Supreme Court which upheld the lower court's decision and, thereby, ruled that the State owned all of Goose Pond, including the disputed island.

The EPB also represented or assisted the Dam Bureau in the defense of several lake level determinations appealed by members of the public and in two cases where the public has alleged neglect or mismanagement of State owned or regulated dams.

Coastal Program

On behalf of the New Hampshire Coastal Program, the EPB assisted in writing an amicus brief to the U.S. Supreme Court, filed by the Coastal States Organization in which New Hampshire is a member, regarding the legitimacy of Florida's beach replenishment program. All coastal states, including New Hampshire, engage in some kind of shoreline protection or beach replenishment activities. A negative outcome at the U.S. Supreme Court could significantly impact New Hampshire's management of its beaches. As part of this same case, New Hampshire signed onto an amicus brief prepared by California on behalf of the National Association of Attorneys General, that addresses a discrete legal issue raised in the case, that of so-called "judicial takings." This unprecedented concept could also greatly affect State and local land use management.

Waste

The EPB performs several functions for the Waste Management Division at DES including enforcement of waste statutes and rules, performance of background investigations for all solid waste facility applicants, and review and assistance with the division's Brownfield's program. The EPB's waste management enforcement cases were brought under the Hazardous Waste Management Act, RSA chapter 147-A, the Hazardous Waste Cleanup Fund statute, RSA chapter 147-B, the Solid Waste Management Act, RSA chapter 149-M, the Oil Discharge or Spillage Act, RSA chapter 146-A and the Underground Storage Facilities Act, RSA chapter 146-C.

U.S. and State of N.H. v. Exxon et al (Beede Waste Oil Superfund Site)

The State settled the Beede Waste Oil case with defendants resulting in a consent decree and an agreement by the defendants to pay the federal government approximately \$10 million in fines, to spend approximately \$20 million to clean up the site, and to pay the State over \$800,000 for cost recovery. The State received the cost recovery payment in October of 2008.

State v. George Brooks

The defendant allowed hazardous substances to leak from his automobile repair yard resulting in contamination of groundwater. The EPB took the case to trial where it prevailed resulting in a \$100,000 civil penalty (which, due to the defendant's financial condition will be paid in installments) and a

permanent injunction against the defendant to prevent future contamination.

Gerald Bell v. State

The plaintiff argued that the State’s setbacks for sewage lagoons were unconstitutional. The EPB defended this case which eventually ended up at the N.H. Supreme Court. The court ruled in favor of the State, effectively requiring the plaintiff to abide by State law.

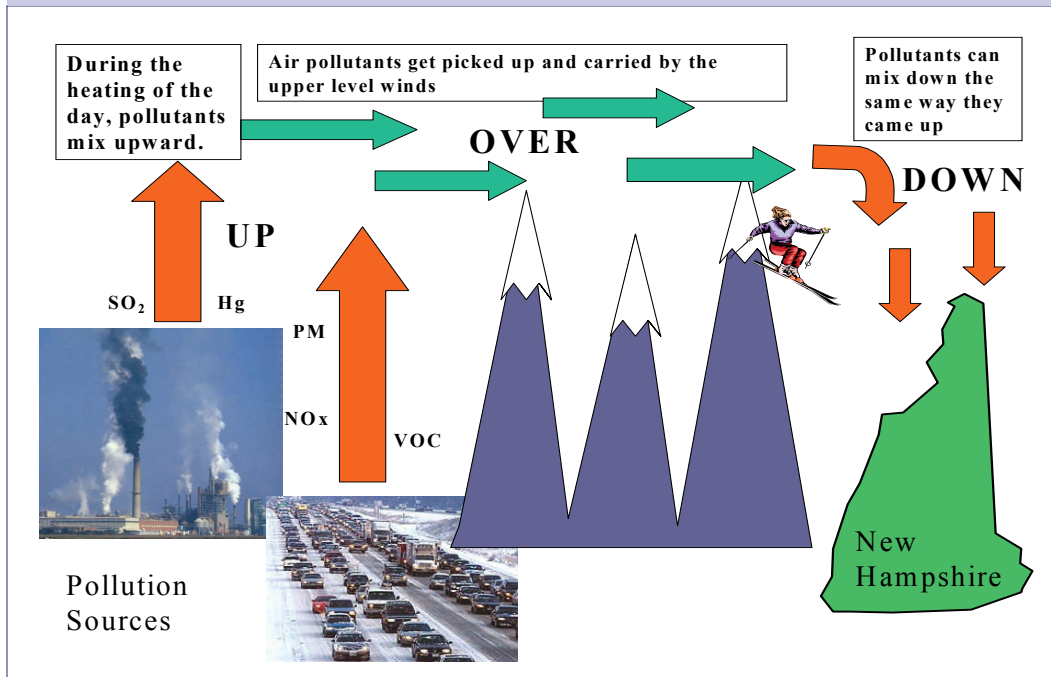
Air

U.S., et al. v. AEP et al.

In the previous biennial report, the

EPB reported that the case against American Electric Power (“AEP”), the nation’s largest utility, would be settled for approximately \$4.5 billion in emission reduction devices, also known as controls, \$15 million in penalties to the U.S. Treasury, and \$60 million towards environmental mitigation projects. At the time of the last report, the share of money due to New Hampshire remained unknown. Since that time, the EPB negotiated with the seven other plaintiff states to determine how much of the mitigation money allotted to the states would be given to New Hampshire. In past multi-state settlements, allocations were based on relative population size which would have resulted in a payment to New Hampshire of under

Some of the EPB’s most important environmental cases involve pollution sources located outside of the State. In the AEP case, the State and others sought emission reductions and penalties from coal-fired power plants located in West Virginia, Indiana, and Ohio. Tall smokestacks and warm air carry emissions from these plants high into the atmosphere. The emissions eventually impact downwind states where they can reduce air quality and cause acid rain.



\$600,000. The EPB, however, was able to negotiate a total payment to New Hampshire of \$1.2 million payable over a five-year period at \$240,000 per year. The first two payments totaling \$480,000 have been received and will be used in part towards funding a position at DES.

State v. Timken Aerospace

The EPB brought suit against Timken Aerospace (“Timken”) alleging that Timken violated air pollution rules and permit conditions beginning as early as 2003. The list of alleged violations included operating a waste oil boiler for six months without a permit, burning waste oil that did not meet certain permit specifications, and failing to submit emission reports or pay emission fees in a timely manner.

Timken settled with the EPB, paying a civil penalty of \$154,000 to the State’s general fund. In addition, Timken committed to implementing an environmental management system and to surrendering its air permit to DES. Timken cannot reapply for an air permit until 2009.

State v. Gary O’Neal and Paper Services

The State filed suit against the defendant for violations of asbestos abatement

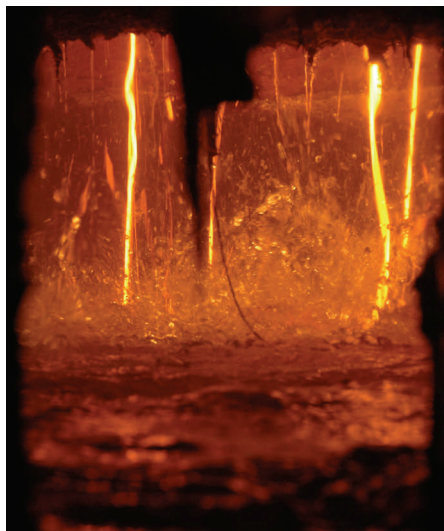
and open burning laws. The State obtained a default judgment against the defendant for \$100,000 in penalties and for asbestos abatement. The defendant filed bankruptcy but the EPB continues to pursue the non-dischargeable penalty and abatement responsibilities in bankruptcy court.

Air Division Counseling

The EPB spent significant time assisting in the establishment of the Regional Greenhouse Gas Initiative (“RGGI”). EPB worked with the DES Air Division and Commissioner and assisted with the formation of RGGI Inc., helped in the design phase of the model auction platform, participated in the auction working group and agency heads meetings, and assisted in the drafting of the approximately

ninety pages of administrative rules needed to allow RGGI to function. The EPB also analyzes all critical legal issues associated with RGGI implementation.

The EPB also assisted the DES Air Division in its analysis and award of so-called “bonus allowances” to PSNH. By statute, the Air Division must award these allowances for energy efficiency projects. This task



Superheated “liquid coal” being quenched in a water tank at PSNH’s Merrimack Station. PSNH is in the process of installing an FGD, or “scrubber” at the plant to control sulfur and mercury emissions.

required EPB assistance with respect to methodology, the examination of other allowance markets such as the Chicago Climate Exchange and the European Union Trading Program, and negotiations with PSNH. The allowances at issue in these negotiations are valued at as much as \$36 million.

In addition, the EPB defended a PUC decision that installation of an environmental control called flue gas desulfurization, commonly called a scrubber, at PSNH's Merrimack Station did not require prior PUC approval. The EPB filed an amicus brief and helped argue this issue before the N.H. Supreme Court. The State prevailed in its argument that installation of the scrubber did not require pre-approval from the PUC and that, therefore, installation could proceed.

Multi-State Litigation

In this biennium, the EPB continued its active involvement in multi-state litigation to enforce the critical provisions of the federal Clean Air Act ("CAA") and other environmental laws. Recently, the State signed onto an amicus brief in *North Carolina v. TVA* in which North Carolina sued pollution sources in a neighboring State alleging nuisance. This case will greatly impact a State's ability to abate and recover for nuisances in other source states. The State also became a party in a suit that seeks to require EPA to treat petroleum refineries as a source category under the CAA thereby requiring new source performance standards or NSPS. In *NY v. Johnson*, a case involving the

toxic release inventory where the EPA attempted to relax the level at which toxic releases must be reported, the State and others succeeded in convincing EPA to reintroduce the previous standard thus avoiding arguments before the U.S. Supreme Court. In *American Farm Bureau Federation v. U.S. EPA*, the State and other petitioners prevailed before the U.S. Circuit Court for the District of Columbia when it ruled that the EPA's fine particulate rules were arbitrary and capricious. The State was also involved in the case that resulted in the *vacatur* of the Clean Air Interstate Rule or CAIR, a sweeping emission rule promulgated by EPA that did not adequately provide for the protection of public health. The State further participated in *Mississippi et al. v. EPA* which deals with EPA's failure to properly promulgate a national ambient air quality standard ("NAAQS") for ozone. The EPB, in coordination with other states and DES, also continues to monitor federal climate change legislation.

N.H. Fish and Game Department

The EPB also spends considerable resources assisting the N.H. Fish and Game Department. The following are some limited examples of EPB assistance.

Granite Reliable Power

The EPB, separate and distinct from its duties as counsel for the public described below, represented the Fish and Game Department in hearings

before the State Site Evaluation Committee and in negotiations with Granite Reliable Power (“GRP”) regarding GRP’s plans to build thirty-three wind turbines in Coos County. Over GRP’s objection, the EPB intervened in the proceedings on behalf of the Fish and Game Department and established a strong environmental presence. Eventually, EPB on behalf of Fish and Game, reached a settlement agreement in which GRP agreed to donate approximately 1500 acres of land and \$750,000 for future land acquisitions to the State for the protection of the pine marten and other rare species. The Fish and Game Department will also receive \$200,000 to study the effects of the turbines on certain rare species.

Sierra Club v. U.S. Forest Service, et al.

The EPB, together with the office’s civil bureau, filed an amicus brief before the U.S. District Court opposing a challenge to the implementation of the White Mountain National Forest Management Plan. The plan, which represented a compromise among the U.S. Fish and Wildlife Service, the N.H. Fish and Game Department, the N.H. Dept. of Resources and Development (“DRED”), environmental groups, and logging interests, protected much of the land within the White Mountain National Forest but allowed limited logging on other lands in part to help the New Hampshire economy. Environmental groups that originally supported the plan challenged the sufficiency of the environmental documents at the implementation stage. The implementation of the plan was successfully defended.

New Hampshire and Massachusetts v. Carlos M. Gutierrez (Framework 42)

New Hampshire and Massachusetts jointly brought suit against then U.S. Secretary of Commerce Gutierrez for implementing a suite of marine fisheries regulations known as Framework 42. The regulations were predicted to have a devastating effect on New Hampshire’s groundfish fishing industry. Although ultimately the deference given to the Secretary of Commerce allowed the U.S. Government to implement burdensome rules, the EPB fought hard on behalf of New Hampshire’s fishing industry by filing summary judgment motions that claimed that the National Marine Fisheries Service acted arbitrarily and capriciously when it failed to consider the mixed stock exception. In an unprecedented decision, Judge Harrington in Boston stayed implementation of the rules for several months and ruled that NMFS, Secretary Gutierrez and the New England Fisheries Management Council were required to analyze and consider the mixed stock exception.

Land Protection

The EPB assists the Fish and Game Department, Lands Division, with various land conservation issues and transfers. For instance, the EPB assisted in the disposition of the historic Pulpit Rock Tower in Rye, New Hampshire. The EPB also assists various other land conservation entities. For instance, the EPB provides all legal services required by LCHIP, an entity that provides grants

for both land conservation and the conservation of historic and cultural resources. In addition, the EPB provides legal assistance to the Conservation Land Stewardship (“CLS”) and CORD in coordination with the Office of Energy and Planning. Recently, several issues regarding former conservation easements managed by CORD and inspected by CLS have arisen. The State, in coordination with local officials, filed suit in *State et al. v. McKee et al.* to void an unlawful transfer of conservation land in Canaan, New Hampshire. The State and Town of Rye also defended an action to quiet title to conservation land in Rye, New Hampshire. Other conservation use issues currently require EPB assistance and the need for this assistance is sure to grow in the future as development and economic pressures increase.



EPB clients, such as LCHIP, provide grants for protection of not only open space but important cultural and historic resources in New Hampshire. The picture to the left is LCHIP's Alumni Hall project in the Town of Haverhill.

MTBE

In 2003, the State filed a lawsuit against major oil companies for contamination of the State's ground and surface waters caused by the gasoline additive Methyl Tertiary Butyl Ether (“MTBE”). In 2008, the State prevailed in its objection to the defendants' motions to dismiss. The defendants argued that the State could not bring a claim for nuisance, products liability (defective product and failure to warn), trespass, consumer protection, oil spillage and negligence. The Merrimack County Superior Court ruled in the State's favor with respect to every claim other than nuisance removing major obstacles to a favorable State result. The Court also ruled that the State could proceed under a commingled product theory. The Court also granted the State's motion to dismiss the defendants' counterclaims that requested setoff for millions of dollars that the defendants had paid into the State's ODD fund and GREE fund.

Bankruptcy and Receivership

Most bankruptcy matters affecting State interests are handled by an attorney in the EPB. Following is a list of some of the matters handled in this biennium.

Collins and Aikman

In the last biennial report, the EPB bankruptcy section noted that the State had secured \$3.6 million in cash and real estate assessed at \$6.5 million in the Collins and Aikman bankruptcy matter. After the close of the last

biennium, the EPB continued to spend considerable resources negotiating and completing transactions to actually receive the cash and deeds, both of which were delivered in October of 2007. Since that time, EPB attorneys assisted DES and the trustee to maintain the 280,000 square foot plant and warehouse in Farmington. This included the liquidation of machinery, equipment, and furnishings, providing utilities, security, grounds upkeep, building repairs, insurance, legal and accounting, brokerage, and leasing as well as continuing environmental efforts to investigate the nature and extent of contamination. Efforts have been made with several interested parties including Thompson Center Arms (Smith & Wesson), Turbocam, GT Solar, and New England Wood Pellets to sell the property so that it could be reused, resume employing workers and pay taxes.

In re Kevin Guay

EPB attorneys sought and obtained relief from the automatic stay so that EPB could continue to pursue injunctive relief, contempt sanctions and civil penalties due to extensive violations of State law that resulted in contamination of the City of Concord's primary drinking water reservoir. The EPB subsequently successfully fought Guay's attempts to use the bankruptcy process to stay in business and also successfully fought for the appointment of a bankruptcy trustee. EPB filed a proof of claim against Mr. Guay for civil penalties in the amount of \$3.2 million.

Liquidation of Noble Trust Co.

EPB attorneys assisted the Banking Department in the seizure of a non-depository bank that had been engaged in Ponzi-scheme fraud. NTC defrauded clients of amounts totaling over \$15 million. At the time the bank was seized pursuant to orders obtained from the Superior Court by EPB attorneys, the banking department recovered liquid assets in excess of \$5 million, plus other instruments with a "book value" of in excess of \$15 million. Since that time EPB attorneys assisted the Banking Department in a settlement that secured \$1.1 million towards liquidation.

Customized Structures

A prefab housing manufacturer from Claremont closed its doors without notice a few days before Christmas in 2007 leaving over 100 employees without jobs and health insurance. EPB filed suit against the company and worked closely with the Governor's Office and Labor to secure \$400,000 in severance benefits for the unemployed workers.

Chrysler and General Motors

EPB attorneys worked in close conjunction with those of many other States and NAAG to negotiate and advocate for better treatment in these cases for consumers and dealers. Because of this work, consumers with defective vehicles will have recourse against the new owners of the reorganized companies.

Fieldstone Mortgage

This major subprime mortgage lender in Maryland went bankrupt and began liquidation. It sought to destroy 40,000 boxes of customer records in violation of State and federal laws. EPB attorneys objected on behalf of New Hampshire and seven other states. We successfully reached an order requiring the liquidators to create and maintain for statutory periods properly imaged digital copies of the records before any could be destroyed.

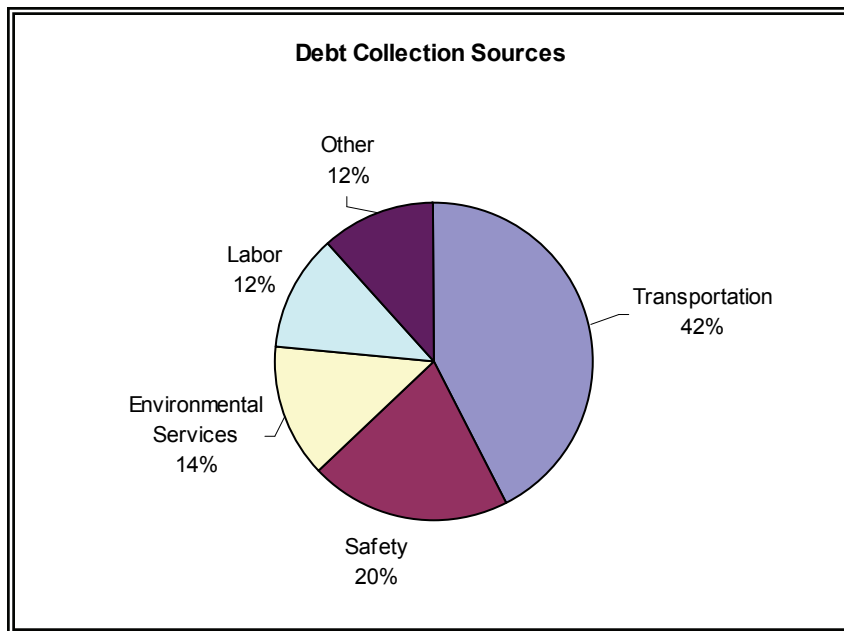
In Re Hugh McAdam

EPB attorneys successfully obtained dismissal of a lawsuit against the State brought by Mr. McAdam for violating his bankruptcy discharge. The dismissal affirmed that Mr. McAdam was personally liable for a non-dischargeable tax obligation stemming from his ownership of the

International Paper Box Machine Co., which he closed suddenly in 2002 without paying his workers.

Debt Collection

The Legislature created the DOJ's debt recovery program in 2007 in order to collect debt owed to State agencies and departments. Agencies and departments refer outstanding debts to the EPB, and, pursuant to RSA 7-15-a, a portion of each collection is retained by the State to continually fund the collection program. In the last biennium, the debt recovery program collected a total of \$372,308.46. Given the variety of State agencies and departments, the EPB has pursued an assortment of debts, including administrative fines owed to the Department of Environmental Services, civil penalties owed to the Department of Labor, unpaid road



tolls owed to the Department of Safety, lottery agents' un-remitted ticket sales proceeds owed to the Lottery Commission, amounts owed to the Department of Transportation for guardrail damage, Medicaid liens, New Hampshire Hospital bills, inmate cost of care, and property payable under New Hampshire's unclaimed property law.

Counsel for the Public – Site Evaluation Committee

Tennessee Gas Pipeline – Concord Lateral/Pelham Compressor Station

Tennessee Gas Pipeline proposed to expand the volume of its current natural gas pipeline between the Massachusetts border and Concord. To do this required the construction of a compressor station in Pelham. Counsel for the Public investigated the application and persuaded company officials to use the best soundproofing technology available and reduce the expected noise output of the compressor to below FERC mandated limits. A hearing was held on the compressor and the SEC approved the application.

Granite Reliable Power – Coos County Wind Power plant

Granite Reliable Power (“GRP”), a subsidiary of Noble Env'tl. Power, proposed to construct a 99-mw wind-generating power plant on a high elevation ridgeline in northern Coos County. The plant will consist of 33 3-mw turbines each reaching nearly 400 feet in height. The project will also

involve construction of miles of new road and cleared areas in unique and sensitive wildlife habitat that is home to several rare and threatened species of wildlife. The project developer had never done a project of this scale in this type of environment and due to the financial crisis of the fall of 2008 lacked cash or credit to begin construction. As counsel for the public we carefully examined tens of thousands of pages of submissions by the developer and other parties, interviewed witnesses, and hired experts to review the wetlands and wildlife impacts of the project as well as the financial capability of the applicant. Due to evidence provided by Counsel for the Public, the project was significantly modified and improved and extensive reservations of mitigation land were made a condition to the permit, providing much greater protection for the species that will suffer the impacts of the project than what was originally proposed by the developer.

Contracts

During the last biennium, the EPB reviewed 885 contracts prior to submittal to the Governor and Executive Council.

Other

The EPB represents the State Second Injury Fund and was specifically involved in eleven cases over the biennium. The EPB has also actively represented the Oil Fund Disbursement Board pursuant to RSA 146-D:4 .

Charitable Trusts Unit

In 1943, New Hampshire became the first state in the nation with a Charitable Trust Unit and the Unit has served as a model for other states. The statute creating the Charitable Trust Unit (RSA 7:19) provides the Attorney General's Office with all the common law and statutory authority to enforce charitable trust laws.

The mission of the Charitable Trusts Unit (the Unit) is to protect the public's interest in the property and assets committed to charitable purposes in the State of New Hampshire through effective registration, education and enforcement. During the biennium, the Unit registered the highest number of charities in its history; and the value of the charitable assets held by 501(c)(3) public charities in New Hampshire was in excess of \$18.8 billion. Despite the economic hard times, the charitable sector in New Hampshire remains strong, diverse and responsive to the growing demands placed upon the sector.

To carry out its core missions, the Unit is staffed with one attorney (the Director of Charitable Trusts), one Assistant Director, two investigative paralegals, one records control clerk, and two part-time staff to carry out its statutory mandates.

Recent Developments

During the biennium, the Unit dealt with cases involving museums, religious entities, colleges and

universities, land trusts, healthcare entities, and public libraries, among others. In addition, the Unit handled matters involving (a) revisions to the Uniform Management of Institutional Funds Act (NH RSA 292-B); (b) cooperation with the Legislature and the Racing and Charitable Gaming Commission on the nonprofit gambling statutes; (c) revision and simplification of New Hampshire's community benefits filings, and (d) involvement in mergers, consolidations, dissolutions, affiliations and bankruptcies involving nonprofit charitable entities.

The Unit devoted significant time and effort in cooperating with the IRS in the revision and expansion of the Form 990, which must be filed with the Unit in New Hampshire. The restructuring of the Form 990 was the first major revision in approximately 30 years, creating 16 new schedules and requiring extensive additional disclosures about governance, financial and related party issues.

Finally, the number of requests made to the Unit under NH RSA 91-A, the Right-to-Know statute, remained among the highest in the Attorney General's Office, with 337 requests for materials in Fiscal Year Ending June 30, 2008 and 236 requests in Fiscal Year Ending June 30, 2009, indicating strong public interest in financial, governance and other information regarding charities publicly available at the Unit.

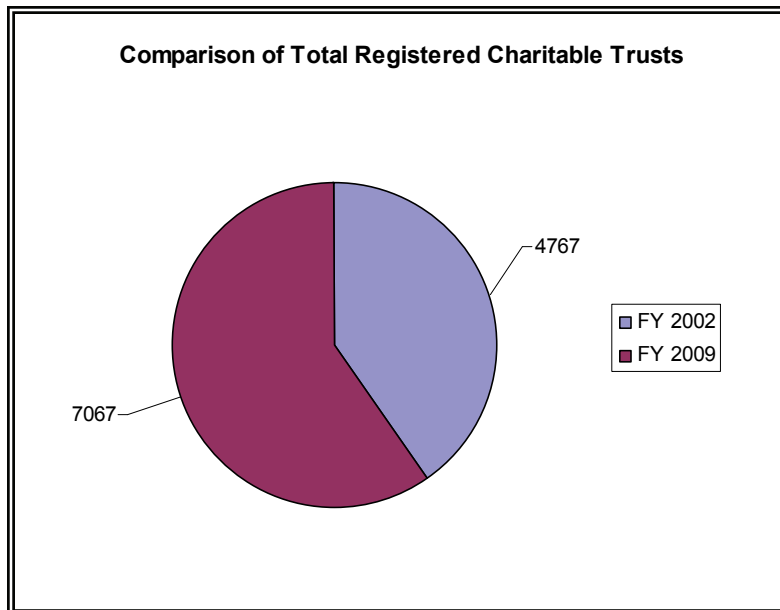
Continued Proliferation of the Nonprofit Sector

During the biennium, the number of charities registering with the Unit reached the highest levels since the creation of the Unit in 1943. As of June 30, 2009, the total number of charitable trusts registered in New Hampshire was 7,067, a figure that does not include testamentary trusts (e.g. those trusts created by means of a will). If the testamentary trusts (of which there were approximately 470 registered) are added, the total number of registered charities was approximately 7,537. This figure does not include the hundreds of individual trust funds given to towns and cities and held by the 234 municipally elected Trustees of Trust Funds. The proliferation of charities that began in the mid-1990's and accelerated rapidly after 2001

continued uninterrupted during this biennium.

During the biennium, there were approximately 1,271 *additional* charitable trusts and 18 testamentary trusts registered with the Unit – or approximately 650 *additional* charitable trusts per year. This proliferation underscores two important trends. First, a healthy, diverse, mature and dynamic sector now exists in this state, ranging from the smallest youth sport leagues to the largest private universities and most sophisticated nonprofit hospitals. Second, from a regulatory perspective, the demands on the Unit for its expertise, time and skills have increased proportionally.

Each 501(c)(3) charitable entity must file a copy of its Federal IRS Form 990 or Form 990 PF with the Unit, as well



as the required New Hampshire forms. In addition, charities with revenue in excess of \$1,000,000 per year must file audited financial returns. These documents are publicly available.

The value of the registered charities native to New Hampshire is estimated by the National Center for Charitable Statistics to be \$18.8 billion. This figure understates the real value of the nonprofit sector in New Hampshire. It does not include the value of assets held by (i) religious organizations, (ii) municipal trusts, and (iii) the smallest charities in this state, all of which would significantly increase the valuation of charitable assets well beyond \$18.8 billion.

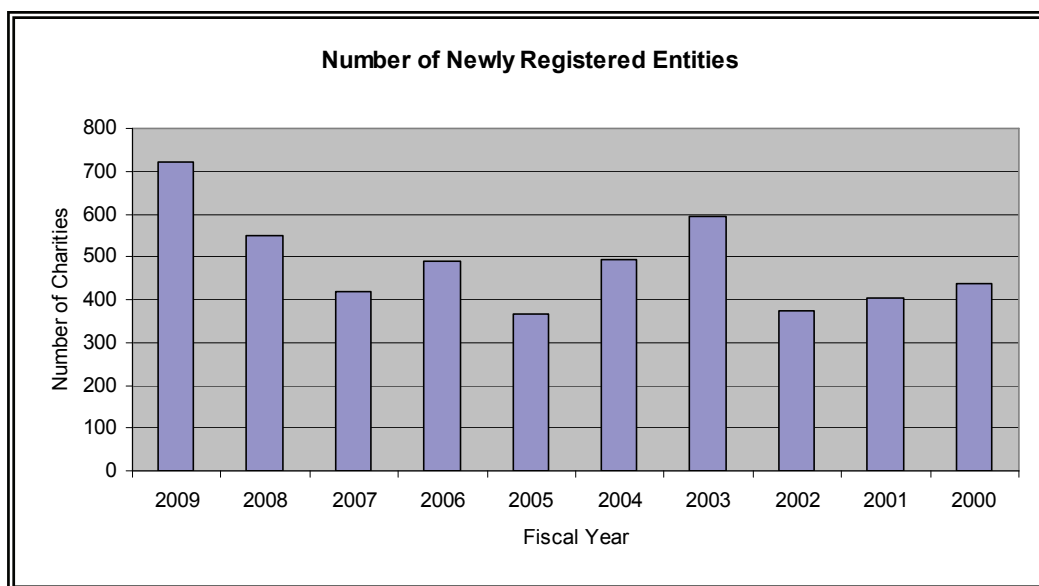
Outreach

In this biennium, the Unit continued its commitment to educating boards of directors on their fiduciary duties, ethical behavior, internal controls, and

other major issues.

The Unit has engaged the public in a variety of ways, including: (i) educational forums for the trustees of cities and towns, (ii) educational forums on charitable exemptions from the real estate tax; (iii) sessions sponsored by the NH Bar Association or the National Association of Attorneys General (NAAG) on the Uniform Trust Code, the Federal IRS Form 990, preventing charitable fraud, and charitable regulation generally; and (iv) workshops offered with the New Hampshire Center for Nonprofits, the Governor's Annual Conference on Volunteerism, and the United Way. In addition, the Unit has published articles in the "NH Bar Journal," the "Nonprofit Quarterly," and "NH Town and City."

Members of the Unit have met with the CEOs, governing boards, audit committees and staff members of



nonprofit entities to discuss fiduciary responsibilities, community benefits, governance, best practices, mergers, and other issues.

This year, to continue the Unit's mission to educate the general public, the Unit had volunteer law interns with expertise in filming create four videos dealing with charitable fraud, charitable registration, fiduciary duties and cy pres. The videos are intended to supplement the website of the Unit, which provides materials relating to all aspects of charitable trusts.

The Charitable Trusts Unit has presented workshops to New Hampshire's municipal trustees for over 20 years. More than 400 cemetery trustees, library trustees, and trustees of trust funds were in attendance at the 2009 sessions held in Gorham and Concord. This is the only training available for municipal cemetery trustees and trustees of trust funds. In addition, the Unit presents workshops for municipal library trustees on its own and together with the New Hampshire Library Trustees Association.

The Legal Structure

The laws governing charitable trusts in New Hampshire are complex and the Director of Charitable Trusts (the Director) is responsible for the supervision and enforcement of charitable trusts and charitable solicitations. The Director is a necessary party to all judicial proceedings that affect the purposes of a charitable organization, whether in Probate Court or Superior Court.

In terms of statutory mandates, the principal functions of the Unit include:

- Enforcement of charitable trusts in New Hampshire (RSA 7:19-32 and the common law), including the review of all applications for registration and reports filed by charitable trusts;
- Review of all nonprofit healthcare mergers, affiliations, and consolidations (RSA 7:19-b);
- Receiving the community benefits plans filed by the healthcare charitable trusts and nonprofit nursing homes in New Hampshire.
- Licensing of professional fundraisers soliciting charitable donations from New Hampshire citizens (RSA 7:28-b and -c);
- Monitoring of commercial co-venturers and charitable sales promotions (RSA 7:28-d);
- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Cooperating with the Racing and Charitable Gaming Commission in enforcing gaming laws relating to games of chance, Bingo and Lucky 7's;
- Cooperating with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts; and
- Receiving the community benefit plans that healthcare charitable trusts file with the Unit (RSA 7:32-c et seq.).

Major Transactions

The Unit is mandated to appear as a necessary party in the ten Probate Courts in New Hampshire on charitable trust issues. During the reporting period, a number of these cases involved novel or significant issues, including the following:

Sales, Terminations and Consolidations of Nonprofit Organizations

The Unit devoted significant resources to the terminations or consolidations of long-established charitable trusts in this state. The first was the sale of Daniel Webster College in Nashua, a New Hampshire 501(c)(3), to an out-of-state for-profit organization, ITT Educational Services, Inc. and the conveyance of the net proceeds to the NH Charitable Foundation to be used as scholarships for students in New Hampshire. The second was the sale of the Villa Augustina school in Goffstown by a religious order to a new charitable trust organized by parents and alumni of the school. The third was the termination of the Sargent Museum in Manchester, the sale of its property to another charitable entity, and the appointment of a receiver to assist in the termination and sale. Others included (i) the merger of the Seacoast VNA with and into a Massachusetts nonprofit organization and (ii) the merger of the Seacoast United Way with and into a Massachusetts nonprofit organization.

Removal of Trustees/Special Trustees

The Unit was involved in several Petitions for the Removal of Trustees

or the Appointment of Special Trustees. The first was a Petition to Remove the Trustee of the Simpson-Ashcroft Trust for failure to fulfill his fiduciary duties; the second was a Petition to Remove Trustees of the Spartan Junior Drum and Bugle Corps, for breach of their fiduciary duties, and the filing of a bankruptcy petition by the Spartans. The third was the appointment of a Special Trustee to oversee the Madeleine Von Weber Trust; and the fourth was the investigation into the Carolyn Jenkins Trust, with a Petition to Remove the Trustees and the appointment of new trustees.

Petitions for Cy Pres/Other Court Matters

The Unit's work included a cross-section of issues, including (i) cooperation with the Town of Center Harbor in quieting title to a public park and in transferring the park to a different site in connection with the building of a police station; (2) litigation relating to the Last Will and Testament of Richard Kemp, the auction of his collection of Mack Trucks, and the conveyance of land to the Town of Hillsborough; (3) a Petition for Cy Pres relating to the sale of the Helen Delano Estate by Strawberry Banke; and (4) a Petition for Cy Pres involving the Sugar Hill Improvement Association, selling property to the Town of Sugar Hill; (5) a Petition to close the Rolfe & Rumford Home in Concord, with the transfer of its net assets to a donor-advised fund to benefit young adults; and (6) the resolution of cases involving youth sports leagues, including breaches of fiduciary duties.

Mediation and Non-Judicial Settlements

The Probate Court continues to encourage parties to litigation involving charitable trusts to attempt to mediate their differences prior to litigation. The mediation program is voluntary, not mandatory. The Unit has actively engaged in the mediation process and has entered into a number of successful resolutions, including the Elizabeth Jones Trust, the Chandler Library, and the Sargent Museum.

The Unit has reviewed 80 non-judicial settlements under the provisions of the Uniform Trust Code that was enacted in 2004, including settlements involving Dartmouth College and Philips Exeter Academy. These non-judicial settlements are intended to bring efficiency to the Court system when trusts with assets of less than \$25,000 and more than 25 years of existence are involved.

Interagency Collaboration

As indicated above, the Unit has collaborated with the Department of Revenue Administration (DRA) and the Local Government Center to present educational sessions on the critical property tax exemption issue. The Unit also continues to collaborate with the Department of Health and Human Services in identifying emerging trends in public health care in the state. The Unit has also collaborated with the Secretary of State's Office to alert those citizens creating charitable nonprofit organizations to the requirement to register with the Unit.

Civil Enforcement

The Unit has the authority under RSA 7:24 and 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a charity. The use of this tool was increased during the biennium, with the Unit issuing 87 Notices and conducting 37 hearings, for a variety of reasons, including failure to register or failure to report or failure to comply with RSA 31:28.

The Unit's work includes enforcement of the charitable solicitation law.

During fiscal year 2008, the Unit reviewed 395 solicitation notices and registered 212 professional fundraisers (both fund raising counsel and paid solicitors). During fiscal year 2009, the Unit reviewed 399 solicitation notices and registered 219 professional fundraisers. These registrations and solicitation notices have a ten-business-day deadline from date of receipt by the Unit for review, or they are approved by default. The Unit considers this review a priority to prevent fraudulent solicitation in the State.

In addition, in 2009, the Unit participated in a national campaign ("Operation False Charity") regarding fraudulent solicitation organized by the Federal Trade Commission and the Attorneys General of 46 states. The Unit brought an action against Autos for Animals LLC, a for-profit entity, in Superior Court alleging unlicensed solicitation. The parties entered into a Settlement Agreement wherein the for-

profit entity will file reports with the Unit and take additional steps to ensure compliance with state laws.

Registration and Licensing

In fiscal year 2008, the Unit collected \$490,935 in registration and filing fees from charitable trusts and \$126,625 in filing fees from professional fundraisers. In fiscal year 2009, the Unit collected \$517,115 in registration and filing fees from charitable trusts and \$132,325 in filing fees from professional fundraisers.

By the end of the reporting period, there were 7,067 charities and 470 testamentary trusts registered with the Unit. During fiscal year 2008, the Unit reviewed 4,777 annual reports filed by charities and 337 probate accounts filed by testamentary trusts. During fiscal year 2009, the Unit reviewed 4,676 annual reports and 292 probate accounts filed by testamentary trusts. During both years of the biennium, reports were received from the 243 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

The Unit has installed the FileNet Optical Character Recognition system and is now in the process of scanning financial reports into the Unit's database and capturing selected data elements. The ultimate goal of the FileNet system is to make scanned images of the financial reports, community benefits reports, and other

information relating to charitable organizations available to the public on the Internet. The Unit continues to explore the possibility of electronic filing of the Form 990s.

The Unit works with the Racing and Charitable Gaming Commission to enforce the Games of Chance, Bingo, and Lucky 7 statutes. As part of its application review, the Commission ensures the charities involved are registered with the Unit. This involves monthly reports from the Unit to the Commission and frequent telephone contact between the two state entities.

Litigation and Estates

The Director is a necessary party in any litigation involving charitable trusts. During fiscal year 2008, the Unit opened 55 cases and 7 investigations. In fiscal year 2009, 156 new cases and 89 new investigations (see comment regarding Notices to Attend Investigations above) were opened. The higher number for fiscal year 2009 resulted from the change in the Uniform Trust Code allowing the filing of non-judicial settlement agreements. These cases range from extensive involvement by the Unit to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, petitions for cy pres, and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers.

Pursuant to statutes and court rules, the ten Probate Courts send the Unit a

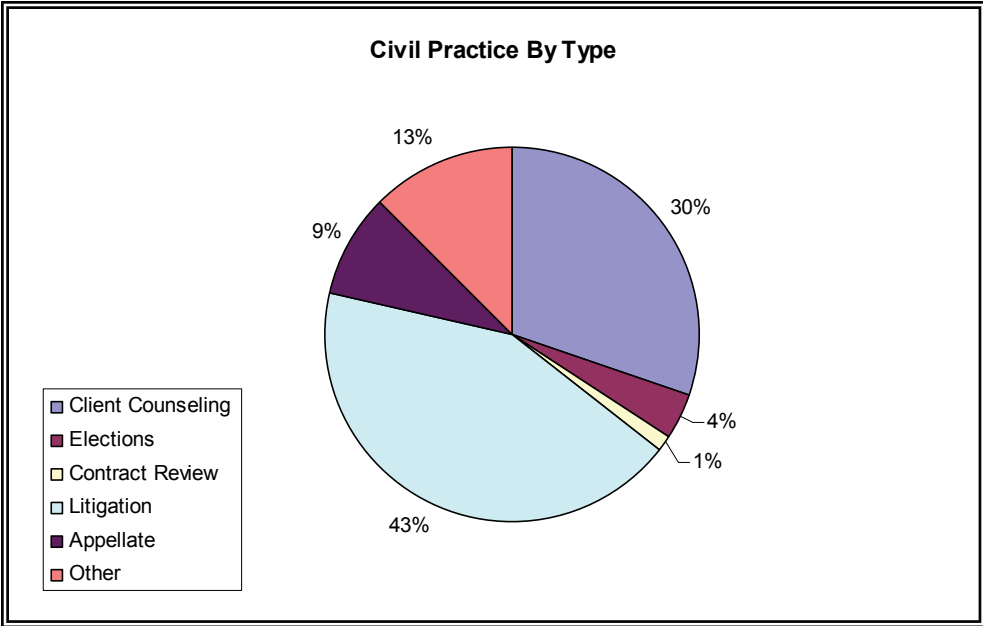
copy of any will that mentions a charity or trust. These wills are reviewed and information is entered into the Unit's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In fiscal year 2008, the Unit tracked 313 wills through the probate process and recorded \$23,361,255.98 in bequests to charity, in fiscal year 2009 the Unit tracked 371 wills and recorded \$33,861,752.65 in bequests to charity.

The Civil Bureau (“Civil”) is responsible for providing legal advice and representation in superior court, federal court and appellate court civil matters for 115 executive branch agencies, boards, commissions and councils. Civil provides legal advice and representation in civil lawsuits to 38 State agencies, many of which have multiple divisions with varied duties and functions. Civil also provides legal advice and representation to 53 licensing and regulatory boards and 24 councils and commissions. Civil also represents the legislative and judicial branches when they are sued. During this biennium, Civil was staffed by 14 to 16 attorneys, some of whom worked part-time. There are also 1½ paralegals and 4 secretaries currently assigned to Civil.

Civil is organized into a Client

Counseling Unit and a Litigation Unit, each led by a separate chief. A Civil Appellate Chief oversees all civil appellate briefs including those written by the Transportation and Environmental Protection Bureaus. Civil also has a sub-unit known as the Federal Litigation Unit that specializes in federal court litigation. Most attorneys, however, also provide client counseling and handle State court litigation.

Civil does both trial and appellate court litigation for all of its clients and provides legal advice through formal written opinions, informal memoranda, email and by telephone. Civil continues to see a marked increase in both the number and complexity of cases and legal issues presented to it. Civil continues to be a very dynamic bureau that addresses a



wide variety of challenging legal issues. In any given week, a Civil attorney may be arguing a First Amendment case in federal court, defending an agency and its employees in State court, briefing and arguing a case in the New Hampshire Supreme Court or at the First Circuit Court of Appeals, reviewing or assisting in negotiations of State agency contracts, researching a question of statutory authority for an agency, investigating an elections complaint, or advising an administrative licensing board. Civil is also actively involved in various legislative matters either by providing a legal opinion to legislative leaders or testifying before one of the many substantive or finance committees.

Litigation

Civil spends more time in litigation than in client counseling. Approximately fifty-one and nine tenths percent (51.9%) of Civil's legal practice time is now devoted to litigation, compared to thirty and three tenths percent (30.3%) for client counseling. Forty-three and one tenth percent (43.1%) of the litigation is in trial courts, eight and eight tenths percent (8.8%) is appellate and the remainder is administrative.

During this biennium, 292 new non-federal trial court litigation or administrative proceeding cases were opened. Civil attorneys also worked on hundreds of other litigation matters still active from prior years. During the biennium, approximately 55 cases were settled and many cases were

resolved judicially. The nature and complexity of the litigation varied significantly. Some cases were resolved in a few months through written motions to the court or a single court hearing. Other more complex litigation will take a number of years to resolve and some will span the biennium and beyond, including both a trial and an appeal.

School Funding

There have been far fewer lawsuits related to school funding issues during this biennium than in the past. Eight cases, encompassing more than 20 properties in Rye and Portsmouth, were consolidated as one challenge to the constitutionality of the statewide education property tax. They alleged that the assessing practices throughout the State are not uniform enough to ensure the constitutionally required proportionality necessary for allocating the Statewide property tax between individual taxpayers in different communities. The State was prepared to vigorously defend the property tax system and demonstrate the substantial improvements made to the system since the last constitutional challenge in 2000. However, the Superior court, on the first day of trial, granted the State's motion to dismiss the lawsuit based on Petitioners' failure to provide any expert testimony supporting their claims that the assessment and equalization systems resulted in inequities. Petitioners have filed a timely appeal with the New Hampshire Supreme Court that will be heard within the next twelve months.

2008 N.H. Laws Chapter 384 was enacted requiring all school districts to provide for at least a half-day kindergarten program as part of an adequate education. In 2008, there were 12 school districts that did not provide public kindergarten. Hudson, one of the 12 school districts, brought a declaratory judgment action seeking to have Chapter 384 declared unconstitutional as an unfunded mandate by the State. During the pendency of the action, the voters of Hudson again voted down public kindergarten. The State actively defended against a preliminary judgment request and was ultimately successful in reaching a settlement agreement that included special assistance from the Department of Education to Hudson in implementing public kindergarten so that Hudson could comply with the law and offer public kindergarten beginning in September 2009.

Class Action Lawsuits

During the last biennium, Civil attorneys have been involved in approximately four new complex class action or multiple party lawsuits in federal and State courts. They have also continued to handle several class action matters that remained pending from the prior biennium. Prior class action suits that have been resolved by consent decrees, such as *Cassandra Hawkins v. DHHS* (dental care for children) and *Thomas Holliday v. DOC* (inmate mental health and medication delivery), continue to be monitored by Civil. These matters require substantial attorney involvement in meeting reporting requirements and

compliance meetings with class counsel. The *Carter* class action suit, served in early 2007, regarding injunctive relief against the State for failure to make Aid to the Permanently and Totally Disabled determinations with the 90 day time limit set by federal regulations and failure to provide a required notification that the applicant has the right to appeal the delay was resolved by a stipulated judgment that gave the State time to come into compliance. Civil continued to work with DHHS during the biennium to document compliance, provide reports and successfully reduced that amount of attorneys fees awarded.

Several lawsuits from the prior biennium continued into this reporting period and include challenges to the Medicaid rates for nursing homes, the *Bel-Air v. DHHS* cases; two cases involving county reimbursement for Old Age Assistance or Aid to the Permanently and Totally Disabled recipients who are “in nursing homes,” *New Hampshire Association of Counties v. DHHS*; and rates paid to residential childcare facilities, *Chase Home, et al. v. DHHS*.

In *New Hampshire Health Care Association, et al. v. Governor and Commissioner of DHHS*, a group of private nursing homes and an industry association sued the Governor and DHHS, challenging the Governor's Executive Order eliminating certain funds from DHHS' 2009 appropriation. The petitioners originally filed their lawsuit in the Supreme Court, but the Court dismissed the case without prejudice to their re-filing in the trial

court. The petitioners then re-filed in the Superior court. They claimed that 2007 N.H. Laws Chapter 129 required DHHS to pay any funds remaining in the nursing home appropriation of the State budget at the end of fiscal year 2007 to the nursing homes as supplemental Medicaid reimbursements. They asserted that the Governor and Legislative Fiscal Committee's elimination of these funds infringed on the power of the Legislature in violation of the New Hampshire Constitution. They also challenged a general reduction of State funds in the fiscal year 2009 appropriation. The Superior court issued a preliminary order enjoining the lapse of the Chapter 129 funds pending the outcome of the litigation. The case is scheduled for trial in 2010. Although the petitioners have indicated that they may amend their petition to bring a class action, they have not yet done so.

In *Mark Tyrrell, et al. v. DHHS*, three petitioners brought a class action lawsuit challenging the State's statutory minimum duration of disability to qualify for Aid to the Permanently and Totally Disabled. After filing the lawsuit and before the court certified the case as a class action, all three named petitioners were found by DHHS to be medically qualified to receive APTD, so DHHS has filed a motion to dismiss on grounds of mootness.

Steven Roy, et al. v. William Wrenn, et al. is a potential class action suit filed in federal district court in March 2009 by seven inmates challenging dental services provided by the Department

of Corrections. The inmates are alleging delays or lack of accessibility for routine dental care and refusal to provide some types of treatment. Civil's attorneys are currently litigating whether class certification is appropriate.

Tax Litigation

Civil attorneys regularly defend the State's financial interests through litigating tax cases. *General Electric Company, Inc. v. Commissioner, NH Dept. of Revenue*, General Electric ("GE") challenged a provision of the business profits tax statute (RSA 77-A:4, IV). In 2002, GE appealed a decision from the Commissioner of the Department of Revenue Administration ("DRA") to the superior court claiming that the dividends received deduction allowed under RSA 77-A:4, IV should be invalidated because the statute discriminates against foreign commerce in violation of the Commerce Clause of the United States Constitution and results in unfair taxation out of proportion to GE's activities in New Hampshire in violation of the Due Process and Commerce Clauses of the United States Constitution. In 2005, DRA prevailed at the trial court. The superior court granted the State's motion to dismiss the case because the Court found that GE did not have standing to bring the lawsuit. The court also granted the State's motion for summary judgment, ruling on the merits in favor of the State, finding that even if GE had standing, GE failed to demonstrate how the statute is unconstitutional. GE then appealed to the New

Hampshire Supreme Court.

In 2006, the New Hampshire Supreme Court reversed the trial court's order granting the State's motion to dismiss because the court found that GE had standing to challenge the constitutionality of the statute. Nevertheless, DRA prevailed in that appeal because the Supreme Court affirmed the trial court's grant of summary judgment, thereby upholding the constitutionality of the statute and finding that RSA 77-A:4, IV does not facially discriminate against a dividend-paying foreign subsidiary that does not conduct business in New Hampshire. In 2007, GE sought review of the New Hampshire Supreme Court's decision in the United States Supreme Court. The parties filed their briefs regarding certiorari, and the Solicitor General filed a brief expressing the views of the United States supporting the State's position. On October 29, 2007, the Court denied GE's Petition. GE paid the State \$639,836 as it was obligated to do under the Settlement Agreements.

Right-to-Know Litigation

In 2008, KingCast.net brought an action in Superior court against Representative Martha McLeod and Speaker of the House of Representatives Teri Norelli alleging that they violated New Hampshire's Right-to-Know law in not providing certain emails from their legislative email accounts after a Right-to-Know law request was made to each legislator for such emails.

After many pleadings and hearings,

the Court denied the Petitioner's request for relief in this case on the basis that Representative McLeod and Speaker Norelli are not public bodies under the law; therefore, their individual legislative emails were not subject to disclosure. The Court further found that, in the event that any public body in New Hampshire possesses individual's emails, those emails would be subject to disclosure under the Right-to-Know law subject to any exemptions to disclosure that may apply. Kingcast.net did not appeal this decision.

ATV Watch was another entity that brought action under the Right-to-Know law, this time against the Department of Resources and Economic Development ("DRED") in the case of *ATV Watch v. DRED*. ATV Watch challenged DRED's decision to withhold certain documents pertaining to its negotiations for the purchase and/or transfer of Jericho Mountain State Park from Berlin. DRED, based on advice from Civil, denied ATV Watch's request to release appraisals of the property and other negotiation documents until the request had been submitted to Governor and Council for approval. On appeal, the Supreme Court held that DRED must release all documents subject to disclosure within the 5-day statutory timeframe or provide an alternative reasonable date. The Supreme Court remanded the matter to the Superior court to determine if DRED appropriately withheld the documents relating to the negotiation. After an evidentiary hearing on the matter, the Superior court found that DRED had appropriately withheld documents

relating to the negotiations but that it had been overly broad in some of the information it withheld. Neither party appealed this decision.

Insurance

In In re: Liquidation of Patriot Health Insurance Company, Inc., Civil, on behalf of the Commissioner of the New Hampshire Insurance Department, on December 11, 2007, filed a petition for rehabilitation of Patriot, an accident and health insurance company that operated exclusively in New Hampshire, based on the company's financial condition. The Insurance Commissioner ("Commissioner") as Rehabilitator appointed a Special Deputy Commissioner and negotiated an assumption agreement by which another insurance company assumed all of Patriot's responsibilities under health insurance policies in effect on January 1, 2008. Liabilities incurred before that date remained with Patriot, although the assuming insurer agreed to pay the cost of administering the pre-January 1, 2008 claims. The Court approved the assumption agreement.

The Commissioner subsequently determined that Patriot was insolvent, and that further attempts to rehabilitate it would be futile, and filed a petition to liquidate the company. On January 18, 2008, the Court ordered the liquidation of Patriot. The Commissioner as Liquidator then negotiated a claim administration and funding agreement with the assuming insurer, the third party claim administrator, and the New Hampshire Life and Health Insurance Guaranty Association. Under that

agreement, the assuming insurer will continue its contract with the claim administrator to provide for administration of pre-January 1, 2008 Patriot claims until they are run-off, and the guaranty association will fund payment of claims subject to the limitations of its enabling act. The Court approved the agreement. Later, the Liquidator moved for and obtained approval of a liquidation closure plan. The process of determining claims is ongoing. This rehabilitation and liquidation seek to provide coverage for medical claims to the fullest extent possible and to resolve all claims in an orderly fashion.

In In the Matter of the Rehabilitation of ACA Assurance, on October 11, 2006, Civil, on behalf of the Commissioner of the New Hampshire Insurance Department, filed a Verified Petition for Rehabilitation of ACA Assurance, a fraternal benefit society domiciled in Manchester, which provides a variety of insurance products to its members. The Petition, filed pursuant to RSA 402-C, was based on the failure of ACA to timely file certain financial disclosures, and on the Commissioner's belief that accounting and management irregularities were jeopardizing the financial stability of the Association.

A Special Deputy Commissioner was appointed to assume temporary day-to-day management of the Association, with the help of a rehabilitation team. The team reviewed the Association's financial and operational records, analyzed its strengths and weaknesses, and recommended a variety of measures designed to ensure the Association's

long-term financial stability. The Commissioner, the Special Deputy, Insurance Department personnel and Civil attorneys worked cooperatively with the Association's Board of Directors to implement these measures. Excess real property and capital equipment was liquidated; severance agreements were revised; underperforming product lines were eliminated or modified; and a one-time assessment against certain policies was instituted in order to achieve an appropriate operating surplus.

On July 6, 2007, the superior court granted the Commissioner's motion to terminate the rehabilitation, because the Association had been returned to a position reasonably certain to result in long-term financial stability. The Insurance Department continued to monitor the Association closely, however, and in 2008, with the approval of the Court, reopened the rehabilitation due to new financial difficulties. This ongoing rehabilitation has prevented the serious financial impact on thousands of Association members, as well as creditors, that almost certainly would have resulted had the State not acted.

In re: Liquidation of The Home Insurance Company is a multi-billion dollar insurance liquidation proceeding commenced in State superior court in 2003. The Home Insurance Company specialized in complex liability insurance for large, international corporations. By statute, the Insurance Commissioner acts as the Liquidator and is charged with marshalling assets, processing claims and administering the estate. With estimated assets of

\$1.9 billion, gross undiscounted liabilities of \$4.4 billion and 20,000 proofs of claim, many of which deal with several thousand claimants and involve asbestos, environmental and mass tort liabilities, The Home is one of the largest and most complex insurance liquidations ever filed. Because the liquidation required the attention of at least one full-time attorney, in 2005 Insurance requested and received authority to hire a temporary attorney to work exclusively on The Home matter, the expense of which is paid for by The Home estate.

In addition to the ongoing litigation of disputed claims in the superior court, the Liquidator has pursued or defended cases in the New Hampshire Supreme Court, the United States District Court, the First Circuit Court of Appeals, State and federal courts in various other States, and the High Court of Justice in England. Ancillary receiverships for The Home are pending in Idaho, Oregon, New York, Massachusetts, and New Mexico in addition to a Scheme of Arrangement in the United Kingdom and separate liquidation of The Home's Canadian branch.

In May of 2006, the Supreme Court upheld the Liquidator's defense of a challenge to the constitutionality of a provision in the liquidation statute that allows third party claimants to file direct claims against an insolvent insurer but requires claimants to release the policy holder. In December of 2006, after a difficult 3-year contest that involved two previous appeals to the Supreme Court

and extensive proceedings in England, the Supreme Court upheld an agreement that the Liquidator had entered into with certain United Kingdom-based insurers. The agreement is a novel application of the insurance liquidation statute and stands to significantly add to the assets of the estate.

In 2008 and 2009, the New Hampshire Supreme Court decided appeals on the classification of pre-liquidation attorney fees, set-off of assigned reinsurance claims, a significant preference issue, and denial of a motion to lift the stay to allow arbitration. Through 2009, the Supreme Court has decided eight appeals.

It is estimated that by the end of 2009, the Liquidator will have determined approximately \$1 billion of claims.

The liquidation of The Home has become a model in the industry for its successes in collecting assets, providing early distributions to State guaranty funds, establishing a website to provide parties and the public with access to pleadings, reports and other information and providing detailed and frequent reporting to the Court, creditors and the public.

When the Commissioner of Insurance determined that significant excess surplus funds had accumulated in the New Hampshire Medical Malpractice Joint Underwriting Association (JUA) fund, and would continue to do so because the funds could not lawfully be distributed, he asked Civil for a legal opinion regarding whether the

funds could be re-purposed by the Legislature to promote greater access to health care for the medically underserved. Civil attorneys determined that the Legislature had the power to do so. Civil's written opinion was made available to the public, in addition to the Commissioner's report detailing how the excess surplus was calculated.

In June 2009, facing a significant budget shortfall, the Legislature passed House Bill 2, which in relevant part ordered the transfer of a total of \$110 million, in three annual installments, from the JUA excess surplus fund into the general fund. Three JUA policyholders immediately sued the State to block the transfers, arguing that under the applicable New Hampshire administrative rules and the terms of their insurance contracts, the policyholders had a vested right to the excess surplus funds, which rendered HB 2 unconstitutional.

In August 2009, the superior court ruled that the policyholders have a vested right in the excess surplus, and that HB 2 was therefore unconstitutional. The Court did not order that the funds be distributed to the policyholders, however, because the JUA Board had not sought approval from the Commissioner to make such a distribution, and the Commissioner has the ultimate discretion to approve or deny any such request. Civil appealed the decision to the New Hampshire Supreme Court, which heard the appeal on an expedited basis. Briefs were filed and oral argument was held but a decision had not been rendered as of the date of

publication of this Report.

Inmate Litigation

The Department of Corrections accounts for a significant portion of both Civil's client counseling and litigation time. In addition to the lawsuits filed in federal and State courts, inmates also regularly file petitions for writs of habeas corpus in State court claiming that they are being held in prison unlawfully due to some trial related cause or due to the conditions of their incarceration.

Forty-one petitions were filed during the biennium asserting a conditions of confinement claim. The State prevailed in the overwhelming majority of these cases. Habeas corpus petitions are usually resolved within a month after submission of a written pleading and a hearing in superior court.

Much more time consuming and lengthy are the inmate civil rights actions that are increasingly filed in federal court. Although the federal magistrate dismisses a small percentage of the cases prior to service, at least 35 federal cases were filed in the last biennium by inmates against State agencies, primarily Corrections, alleging civil rights violations or complaining of prison conditions. Many of these cases have multiple claims and are filed against as many as forty individual State employees as defendants. Additionally, in approximately 30-40% of these cases the inmates make requests for preliminary injunctive relief, either in the complaint or in motions filed prior to service. The federal court sets

evidentiary hearing on these requests often on only a few days notice. The hearings are equivalent to trials and range from one to two full days presenting witnesses.

Civil is also representing Corrections in connection with a series of cases involving two former corrections officers, both of whom were accused of sexually abusing multiple inmates and patients of the Secure Psychiatric Unit. Civil is not representing the former corrections officers in these matters.

The first set of cases involves former Corrections Officer Douglas Tower, who was a 20-year employee of Corrections, and, as a sergeant, used his position of authority to engage in unwanted and unsolicited sexual contact with 27 female inmates. The allegations against Tower came to light when his conduct was reported to prison officials. Criminal investigations and prosecutions by the Department of Justice ensued resulting in Tower being found guilty and sentenced to the New Hampshire State Prison. The allegations against Tower also resulted in 27 civil suits being brought against Corrections alleging torts and civil rights claims. The allegations against Tower ranged from unprofessional comments and simple assault to rape. After a year of litigation and significant discovery, all of the civil cases against Corrections settled. Each of the plaintiffs received settlements in varying amounts depending on the severity of their claims. Cumulatively the plaintiffs received \$1.85 million.

The second set of these cases was

brought by three female inmates against Corrections and former Corrections Officer Daryl Brinkley alleging sexual assault and failure to protect respectively. The assaults range from inappropriate touching to rape. Two of these cases were settled prior to the Tower cases being settled with one being settled afterwards. Again, voluminous discovery documents were produced for the Plaintiffs and mediations were held in each case. The total settlement for these three cases was \$155,000.

Tort Litigation

Civil defends State agencies and employees that are sued in negligence and civil rights suits, unless the Attorney General's Office determines that the employees' conduct was outside the scope of their duties and/or wanton or reckless. This litigation ranges from simple slip and fall accidents to wrongful death cases involving discharges from New Hampshire Hospital.

In the case of *Timothy Hallam and Joseph Laramie v. Shawn Stone, et al.*, Civil attorneys achieved the dismissal of Corrections from this lawsuit based on a failure to prove that Corrections retaliated against the Plaintiffs, two Corrections Officers, in an employment matter. Civil attorneys went to a jury trial defending the two Defendant Corrections Officers who were being sued for damaging the reputations of the two Plaintiffs. The jury awarded \$1.3 million to Hallam and \$650,000 to Laramie as damages. This matter is currently on appeal to the Supreme Court.

Two sets of parents and their children along with the Freedom from Religion Foundation filed a lawsuit against two school districts and the United States Congress challenging the federal Pledge of Allegiance statute and the State statute that requires school districts to have a daily time that students can recite the pledge. The State intervened to protect the constitutionality of RSA 194:15-c, the New Hampshire School Patriot Act. Several other interested parties also intervened. The case was extensively briefed and submitted on a motion to dismiss. The court ruled in favor of the State.

Appellate Litigation

Pursuant to RSA 7:6, the Attorney General must act as attorney for the State in all civil cases in the New Hampshire Supreme Court when the State has an interest. During this biennium, Civil handled approximately one hundred thirty (130) appeals. Ninety-five briefs and memoranda of law were filed in the New Hampshire Supreme Court, sixteen were filed in the United States Court of Appeals for the First Circuit or the United States Supreme Court, and one was filed in the Supreme Judicial Court of Massachusetts. Of these briefs, the overwhelming majority were in defense of State action. The others were State appeals and *amicus* briefs in cases in which the State was not a party. Many of the *amicus* briefs involved State or federal constitutional challenges to State statutes or rules. Abuse and neglect, termination of parental rights, and civil

commitment cases accounted for approximately 45% of the New Hampshire Supreme Court appeals. These are the most common types of appeals handled by Civil.

In addition to the appeals in which the Attorney General takes an active role by filing pleadings or participating in oral argument, Civil reviews and monitors hundreds of appeals in both State and federal courts every year, including child support enforcement cases, cases involving constitutional claims, and all workers compensation cases filed in the New Hampshire Supreme Court. When the New Hampshire Supreme Court instituted the mandatory appeal system in 2004, Civil's appellate caseload increased dramatically in the following biennium. Since that time, through more streamlined procedures and increased focus on appellate litigation, Civil has been able to resolve more appeals through summary procedures, thereby reducing the number of briefs that must be filed.

Election Law

Part I, Article 11 of the New Hampshire Constitution provides, in part, that "[a]ll elections are to be free, and every inhabitant of the State of 18 years of age and upwards shall have an equal right to vote in any election." To safeguard this constitutional provision, and pursuant to RSA 7:6-c, the Legislature designates the Attorney General to enforce all election laws in New Hampshire. Civil fulfills this responsibility and provides legal counsel to the Secretary of State, who

administers elections throughout the State. Civil attorneys defend the State or the Secretary of State in actions before the Ballot Law Commission, Superior court and the Supreme Court. Approximately seven percent of the Civil Bureau's efforts address election law related legal issues and litigation.

Election Day Activities

During the January, 2008 Presidential Primary, the State faced a record turnout of voters wanting to vote in the historic first in the nation primary. In the Democratic primary, there were 288,672 ballots cast and in the Republican primary there were 241,039 ballots cast.

In the 2008 General Election, there were 719,403 ballots cast. This was a record turnout for NH with 75% of its registered voters casting a ballot in the election.

Following the 2008 General Election, Civil completed an election fraud report, pursuant to RSA 654:12, V, which specifically requires the Secretary of State and the Attorney General to examine voters who registered to vote for the first time in an election and without proper identification. The report provided that in New Hampshire, 76,755 persons registered to vote for the first time on November 4, 2008, General Election day. Of those 76,755 persons, according to the local election officials who entered voter registration information into the Statewide Voter Registration System ("SVRS"), 201 persons registered to vote by proving their qualifications without using

photo identification as defined by RSA 654:12, II. As a result, pursuant to RSA 654:12, V (b), the Secretary of State's Office sent out identification verification letters to those 201 persons who allegedly registered to vote for the first time at the 2008 General Election without photo identification.

The purpose of the identification verification letter was to determine whether any election fraud had been committed, *i.e.*, whether the person whose name was used to register and vote, actually registered and voted. Of the 201 identification verification letters that were sent, ten letters were returned by the United States Post Office as not deliverable. The Secretary of State's Office requested that the Attorney General's Office investigate these ten people.

After an investigation, Civil found that the identified ten New Hampshire people registered and voted in New Hampshire's 2008 General Election in conformance with New Hampshire law. Accordingly, based on the investigation, the Attorney General concluded that no fraudulent registration or voting occurred regarding the subject-registered voters. Thousands of voters proudly displayed their "I Voted" stickers after casting their votes during the



Presidential Primary and General Election.

Enforcement Activities

Civil receives and investigates election law complaints regarding State and local elections, town, school and village district meetings, and other alleged election law violations. Election law complaints include a wide range of issues including but not

limited to: (1) the citizen right to petition for warrant articles; (2) election day voter registration and absentee ballot registration; (3) political advertising and automated pre-recorded political calls associated with State, municipal elections and town meetings; (4) electioneering; (5) preparation of the polling place - accessibility; and (6) counting votes.

The election law attorneys within Civil work closely with local election officials to assist in preventing election law violations and to provide guidance in interpreting New Hampshire's election laws to deter election law violations. While many election law complaints may be answered without conducting an official investigation, during the past biennium, Civil opened 53 election enforcement matters.

Help America Vote Act

The Help America Vote Act of 2002 (“HAVA”) has imposed significant legal demands upon Civil. Generally, HAVA requires the State to:

- Provide at least one voting machine in each polling place to enable most voters with disabilities to vote privately and independently;
- Create a new uniform centralized Statewide database of registered voters that shall be the source for the official checklist for each town and city;
- Assist towns and cities in ensuring their polling places are accessible for people with disabilities and the elderly;
- Ensure each qualified individual has an equal right to register and vote through Statewide uniform election procedures and standards;
- Provide voter and election official education; and
- Maintain a Statewide complaint system for the uniform, nondiscriminatory investigation and resolution of complaints.

Civil continues to work closely with the Secretary of State, providing legal advice throughout the acquisition and development of the Statewide voter database of registered voters, the ongoing acquisition of technology to assist voters with disabilities and in developing and presenting the required election law training.

HAVA will continue to demand significant Civil attorney work hours while the HAVA programs are implemented and maintained in the State. Civil attorneys will continue to provide local election officials with election law training and continue enforcement efforts to ensure local compliance with HAVA.

Polling Place Accessibility

In fulfillment of the obligations imposed by HAVA and as part of an ongoing effort to enforce Part 1, Article 11 of the New Hampshire Constitution, which requires that polling places be accessible to person with disabilities, during the biennium, Civil has conducted inspections of over 300 polling places in the State. To help facilitate this inspection process, deputy sheriffs from every county in the State conducted an initial survey of all polling places. Where deficiencies were identified, attorneys worked with accessibility specialists who conducted extensive inspections and worked with local officials to identify practical solutions to accessibility deficiencies. As a result of this process, currently, all New Hampshire polling places are accessible.

Educational Activities

Pursuant to RSA 652:22, Civil attorneys and the Secretary of State’s Office published the 2008-2009 edition of New Hampshire’s Election Procedure Manual (EPM) for New Hampshire’s local election officials. The EPM provides an easy-to-read interpretation of New Hampshire’s election laws. In September 2008, and prior to the

November 2008 General Election, the EPM was sent to every town/city clerk, moderator and supervisor of the checklist in the State.

In addition to publishing the EPM for New Hampshire's local election officials, in cooperation with the Secretary of State, Civil attorneys routinely conduct or support election law training for local government officials and the public at large. During this biennium, the Civil Bureau election law attorneys presented election law training to over 1500 local election officials throughout the State.

In October 2008, the Department of Justice, the Secretary of State Secretary, and the University of New Hampshire launched an on-line election law training web site that is available to voters, advocates, and election officials. This web site was developed with a grant awarded by the PEW Charitable Trust and the JEHT Foundation, as part of the PEW Make Voting Work project, and with thousands of hours of work by Civil attorneys in providing the content for the training modules. It provides an on-line course for election officials training them in all areas of the election process. Election officials who successfully complete the course receive a certificate. Voters, advocates, and members of the public may also view the election official courses and/or take a course designed for voters. This is an easy to use, interactive training tool about voting rights and procedures in New Hampshire that is available 24 hours a day, 7 days a week. New voters and those with questions about their rights

or procedures for registering or voting can be directed to this web site.

Election Law Litigation

The New Hampshire Supreme Court rendered one decision involving New Hampshire's election laws during this past biennium. In *Town of Canann, et al. v. William Gardner*, Petitioners challenged New Hampshire's current House of Representative redistricting plan under RSA 662:5. Petitioners sought a declaratory judgment that RSA 662:5 was unconstitutional because the voters of New Hampshire passed CACR 41 (new redistricting rules for the New Hampshire House) in 2006, which required the New Hampshire Legislature to undergo a legislative redistricting of the New Hampshire House districts. Petitioners maintained that the Legislature was required to undergo redistricting in 2006 and by not doing so, rendered RSA 662:5 unconstitutional. The State disagreed. On October 29, 2008, the Supreme Court denied Petitioners relief holding that under the plain language of CACR 41, the Legislature is not required to undergo redistricting until after the 2010 census.

Following the 2007 legislative session, RSA 654:46 made certain voter information available to qualifying political parties under RSA 652:11 and not to other persons or entities. As a result, because the Libertarian Party is not a recognized party under RSA 652:11 and therefore, not entitled to certain voter information that the Democratic and Republican Parties were entitled, the Libertarian Party

requested that the Superior court find that RSA 654:46 was unconstitutional under the Equal Protection clause. In *Libertarian Party of New Hampshire v. William M. Gardner*, the Libertarian Party also sought a permanent injunction against the Secretary of State from enforcing RSA 654:46. On February 6, 2008, the Superior court found RSA 654:46 unconstitutional. There was no appeal.

In a second case this biennium by the Libertarian Party, *Libertarian Party of New Hampshire v. William Gardner*, which is currently pending in Federal District Court of New Hampshire, the Libertarian Party is challenging the Secretary of State's refusal to remove Libertarian presidential candidate George Phillies from the 2008 General Election ballot and replace him with Bob Barr, another Libertarian presidential candidate. The Libertarian Party argued that it is entitled to have Bob Barr as the only Libertarian candidate on the 2008 ballot because Mr. Barr was allegedly nominated at the Libertarian National Convention. The State maintains that because both George Phillies and Bob Barr completed the RSA 655:40 process to have their names on the 2008 ballot and because New Hampshire does not recognize the Libertarian Party as a "party" under RSA 652:11, there was no basis to remove George Phillies from the ballot. This matter is currently pending on cross motions for summary judgment.

In January 2009, Christopher Doyle pled guilty to a class B felony for his assault upon Windham Supervisor of the Checklist, Gail Webster, at the

March 8, 2005 Windham Town Election. Doyle was sentenced to 12 months at the Rockingham County House of Corrections, with all but one day deferred for one year upon Doyle's good behavior. Doyle was given credit for one day of pretrial confinement. Additionally, he was placed on probation and was ordered to complete 100 hours community service, complete an anger management evaluation, write a letter of apology to Ms. Webster, and his voting privileges in local or state elections in New Hampshire were revoked in accordance with Part I, article 11 of the New Hampshire Constitution.

In June 2009, the Grand Jury returned two indictments against Christopher Fithian of Jackson, New Hampshire. The first indictment alleges that on November 4, 2008, Fithian voted for the office of president in the general election in Gorham, New Hampshire using the unincorporated township of Pinkham's Grant General Election ballot and voted for the office of president in Jackson, New Hampshire using the town of Jackson General Election ballot, in violation of RSA 659:34, I(b). The second indictment alleges that on November 4, 2008, Fithian applied for a ballot in his own name in Jackson, New Hampshire, after having voted in Gorham, in violation of RSA 659:34, I(d). A violation of RSA 659:34, I (b) is a class B felony and violation of RSA 659:34, I (d) is a misdemeanor. This matter is pending.

Campaign Contributions and Expenditures, Gift Reports, Lobbyist Reports, Ethics Reports

The Civil Bureau also fulfills the Attorney General's statutory duties to monitor public disclosures related to campaign finance, gifts to public officials or employees, lobbyist income and expense reports, and ethics reports. During this biennium, Civil has reviewed all reports and spent many hours contacting individuals who did not file timely reports to remind them of deadlines and to ensure compliance with the reporting requirements.

Client Counseling

Providing legal advice to State agencies, boards and commissions is a core function of the Civil Bureau and represents approximately 30% of attorney legal practice time for the biennium. Agencies require legal assistance interpreting and implementing the laws that define their obligations under the law. The type of legal assistance varies depending on the nature of the issue. Some questions have broad applicability throughout State government, involve significant legal research and require a written analysis by the assigned attorney; other questions can be answered by a brief memorandum to the agency. Still other questions can be answered informally and frequently through telephone contact or e-mail. The goal is to be accessible to the client agencies and provide them with the legal tools they need to carry out their missions.

Each of the 115 State agencies or boards has a miscellaneous matter, where the day-to-day questions and answers are documented. However, if substantial research or multiple meetings are required, a client counseling matter is opened. During the biennium Civil opened 204 significant agency advice matters.

Examples of some of the significant client counseling topics in which Civil was involved during the biennium include advice concerning federal audit findings, effects of the marriage law, agency reorganizations, personnel issues, layoff, collective bargaining issues, contract review and approval, assistance with legislation, real property issues including land conservation, implementation of the Sexual Predator Act, as well as, various teaching and training activities.

During this biennium there were an unprecedented number of disasters in the state, including three back to back floods and a tornado in spring and summer 2008, the record breaking ice storm in December 2008 that took out power to much of the state for up to two weeks and the spring 2009 emergence of the H1N1 threat. Civil works closely with Homeland Security and Emergency Management and Public Health to respond to legal issues as they arise during these events, including staffing the Emergency Operations Center. Additionally, Civil participates on the Advisory Council on Emergency Preparedness, the state Critical Infrastructure Identification project and the Public Health Ethics Advisory Committee, as well as ongoing

planning efforts to address volunteer liability at the state and local levels.

The Civil Law Bureau has and continues to provide legal support and assistance to the Office of Economic Stimulus and state agencies in their efforts to successfully implement the American Recovery and Reinvestment Act (ARRA) in New Hampshire. This includes interpreting the ARRA and the myriad of federal laws and regulations delineated in ARRA, and communicating the requirements of ARRA and related regulations to state agencies.

Audits of Federally Funded Programs

Civil often provides advice and representation to State agencies regarding inquiries and audits by the federal government with respect to federally financed programs. During the biennium, Civil assisted State agencies in responding to audit inquiries and findings in such diverse program areas as training costs for foster care and adoption assistance, bio-terrorism and emergency preparedness funds, Medicaid payments for skilled professional medical personnel, the State's nursing facility quality assessment, financial aid funds for the State's community college system, and disproportionate share hospital payments. Although several of these audits were satisfactorily resolved prior to litigation, at least one of the audits progressed to the administrative appeal level within the federal government. Following briefing by the State and federal agencies, the administrative appeals board reversed the disallowance of federal funds in full.

Land Conservation/Property Transactions

The Legislature charged the State to protect land, through purchases of conservation easements or fee interests, in order to sustain traditional forest uses, such as logging, ensure multiple use conservation purposes, such as limiting development but allowing public access for recreational uses; and to protect and to sustain traditional agricultural uses. During the past biennium, Civil attorneys assisted their state agency clients in conserving thousands of acres of land in the State. Examples of these projects include: a 1,667-acre conservation easement over the Robb Reservoir property in Stoddard; the addition of an almost 11-acre parcel of land to the Strawberry Hill State Forest in Bethlehem; the purchase of a 50-acre parcel of forest land in Columbia for annexation to the Nash Stream Forest; and the addition of almost 13-acres of forestland to the Paugus Bay State Forest in Laconia.

Additionally, Civil attorneys were involved in extensive negotiations with Dartmouth College and DRED resulting in the purchase of the final 8.2-acre parcel of land owned by Dartmouth College on the summit of Mount Washington. Following the closing on July 2, 2008, the State holds title to the entire summit parcel. The purchase price of \$1.64 million will be financed over 10-years by telecommunication leases on the summit. Regarding Mount Washington State Park on the summit of Mount Washington, Civil attorneys assisted DRED in the negotiations of a

new 5-year lease, with renewal options, with the Mount Washington Observatory, which will result in the payment of significant lease fees and commissions to the state park system over the coming years.

The past biennium was also notable for the land swap between the State and the US Forest Service resulting in the State's acquisition of the old Mittersill Ski Area adjacent to Cannon Mountain in March 2009. Long discussed, the swap of the 244-acre Sentinel Mountain State Forest for the 100-acre Mittersill parcel in Franconia was a win-win situation for both the State and the federal government. Acquisition of the Mittersill Ski Area will preserve this valuable parcel, while providing the opportunity for genuine backcountry skiing at Cannon.

The city of Berlin gifted fee title to a 293-acre parcel of land surrounding Jericho Lake to the State. This property is now part of the new Jericho Mountain State Park, and a destination

point for many traveling to the north country. Civil attorneys were actively involved in the acquisition process.

The north country, however, was not the only part of the State to benefit from the land acquisition efforts of Civil attorneys. In the southwestern part of the State, the State purchased the 344-acre parcel formerly known as the Temple Mountain Ski Area located off of Route 101 in Temple, Peterborough, and Sharon. The property has seen extensive public use since its acquisition in December 2007. Civil attorneys continue to assist DRED on the management of the Connecticut Lakes Headwaters property. Toward that end, attorneys worked with the landowner to finalize the easement baseline documentation and have assisted on easement enforcement issues that have arisen. Our attorneys have also been actively involved in property management issues at the State's historic sites, such as the Wentworth Coolidge Mansion property in Portsmouth.



Temple Mountain State Reservation, acquired in December 2007, consists of 344 acres located in Temple, Peterborough and Sharon.

Civil attorneys have also worked closely over the last biennium with other agencies on land conservation and transfer issues that have arisen. For example, attorneys have assisted the Adjutant General with armory transfers to various municipalities, the Department of Agriculture, Markets, and Foods with the creation and enforcement of agricultural preservation easements, and the Department of Administrative Services with other State land transfers, such as the Sanel Block in Concord, on which workforce housing is proposed to be constructed.

The work that has been done regarding these properties will be a benefit to the State for generations to come. Civil attorneys continue to work with their State agency partners on a variety of land conservation and acquisition projects to ensure that continued progress is made on these important land management issues.

Representation of Occupational and Professional Licensing Boards and Other Regulatory Agencies

Civil represents and provides legal advice to occupational and professional licensing boards and other agencies whose statutory duties include adjudicative, prosecutorial and investigative functions. These boards and commissions are primarily comprised of volunteers from the licensed professions and the general public. Other members may be appointed to meet statutory designations of particular background or expertise. These agencies meet on a regularly scheduled basis ranging from

bi-weekly to 90-day cycles. The role of Civil attorneys is to assist each board to effectively and lawfully carry out its statutory duties. Civil attorneys respond to appeals of board decisions and have defended commission members in lawsuits.

In an effort to provide broad advice and instruction to these agencies, the Civil Bureau presents an annual training seminar for board members, staff, and investigators. In 2008, over 150 people attended the 11th Annual Office of the Attorney General Training Program: The Wynn E. Arnold Administrative Law Workshop. Training topics included: a panel presentation by Supreme Court Justice Gary Hicks and Superior Court Justices Carol Ann Conboy and John Lewis; ethical standards and financial reporting; the Right-to-Know Law; investigations, negotiations and settlements; the process and procedures of administrative hearings; and writing orders. The goals of Civil's work with the occupational and professional licensing boards and other regulatory boards are to ensure due process, counsel on best practices through the licensing procedures, prevent problems from occurring during daily operations, and minimize the potential for appeals by assisting in all stages of the proceedings.

Administrative proceedings, which are a less formal process than judicial proceedings, have become increasingly complex and litigious. Parties to contested cases are now more likely to be represented by counsel, file more sophisticated motions and/or introduce more combative behavior

into the process. Civil has been fortunate in having the services of two part-time contract attorneys that have been dedicated to assisting these agencies.

A recent trend is the increased complexity and litigious nature of the proceedings before the boards. Parties to contested cases are now more likely to be represented by counsel, file more sophisticated motions and demand more extensive discovery – resulting in longer hearings. Civil has been fortunate in having the services of two part-time contract attorneys that have been dedicated to assisting the boards.

Contract Review

Review of contracts and leases is an important aspect of providing legal assistance to State agencies. Every contract for services for more than \$5,000 must be approved by the Attorney General's Office. Over the last two-year period, Civil reviewed and approved more than 3,815 contracts and leases. Most of these contracts are reviewed and returned to the agencies within one week. All executive branch agencies submit contracts and leases to their assigned attorney for review to ensure legal sufficiency prior to submission to Governor and Council. In addition to reviewing final contract documents, attorneys also frequently consult with agency staff regarding contract and bid related questions. Civil attorneys also assist State agencies with Information Technology procurement projects and review numerous Information Technology contracts. The complexities of these contracts have

required substantial legal resources.

Civil convened a contract reform group consisting of members of other Bureaus in the Department of Justice and representatives from the Department of Administrative Services. The purpose of the contract reform group was to identify means to improve the State's contracting processes and documentation by drawing on the diverse background and expertise of the contract reform group's members. This information was then used by the Department of Justice to recommend to leadership in State government improvements to the State's contracting processes and documentation, and to develop a revised standard State contract and contracting checklist for use by State agencies.

During November 2008, the Civil Law Bureau, in partnership with the Department of Administrative Services, presented the "State of New Hampshire Contracts Training: N.H. Department of Justice and N.H. Department of Administrative Services Contract Review and Approval Requirements" to more than 200 State employees. This training was designed to provide State agency procurement professionals with information on changes to the State contracting forms and processes, and instruction on Department of Justice and Department of Administrative Services contract review and approval requirements including: (1) revisions to the State's standard services contract, Form P-37, General Provisions; (2) use of the new State's Contract Checklist; (3) standards for

the Contractor Certificate of Good Standing, Certificate of Authority and Vote, and Certificate of Insurance Requirements; and (4) contract review requirements by both the Departments of Justice and Administrative Services.

Beginning on January 1, 2009, State agencies were required to use the State's Contract Checklist and the revised Form P-37 (v. 1/09). This Contract Checklist implemented as part of this process has resulted in far fewer contracts being returned due to missing components than at any time in the past.

Transportation Law Bureau

The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (NHDOT) and the Bureau of Public Works of the Department of Administrative Services in a broad array of legal matters. These matters include eminent domain, real estate, contract, construction, administrative, personnel and personal injury cases related to the State's transportation systems and public works projects. The Bureau's role encompasses a wide range of trial and appellate advocacy in both state and federal courts, as well as hearings before a variety of administrative boards. General legal advice and client counseling is also provided on a daily basis.

The legal workload generated by the breadth of the NHDOT's and Public Works' responsibilities resulted in 375 new files being opened by the Bureau during the two-year period. This represents a slight decline of 34 fewer than the high number set in the previous biennium. 419 matters were also resolved during this biennium. The Bureau performed critical legal roles in major projects, including the Conway Bypass, Manchester Airport Access Road, the Granite Street Extension, the continued implementation of E-ZPass, and the I-93 Expansion Project. A multitude of smaller projects throughout the State were also assisted. Public Works' improvements included new courthouses, DOT and Department of Safety buildings, public transit

facilities and expansion of the Alan Sheppard Memorial/Christa McAuliffe Planetarium. In addition, severe weather continued to bring new legal challenges for emergency operations, disaster response and property damage claims.

Eminent Domain

Land acquisitions continue to be one of the central functions of the Bureau. Prior to condemnation, the Bureau routinely advises the NHDOT on land title issues, document preparation and legal issues effecting the proper valuation for the acquisition of property necessary for transportation or public works improvements. After the initiation of eminent domain proceedings, the Bureau represents the State during the litigation striving to reach a fair and equitable resolution for the public. The eminent domain process remains an essential tool in completing the public projects necessary to improve the safety and efficiency of the State's infrastructure network. During the last biennium, 41 new eminent domain cases were opened and 86 were resolved. The number of new cases decreased by 100 in the previous two-year period in part due to unusually large projects such as the I-93 Expansion and Airport Access Road having reached maturity in their land acquisition phases.

While the number of new cases has declined, the major highway improvements in the southern part of New Hampshire have resulted in

eminent domain actions with extraordinarily high commercial valuations and complex land development analysis affecting the properties being acquired. These factors have required the Bureau's involvement earlier in the acquisition process than normal for several high value properties. The I-93 and Manchester Airport Access Road acquisitions, in particular, encountered unprecedented property values and costs despite the recent economic conditions.

Environmental Challenges to Major Projects

The State's transportation improvement projects have encountered diverse legal challenges which threaten their completion. Legal challenges to transportation improvement projects continued throughout the biennium. The Conservation Law Foundation (CLF) previously filed an action against the federal environmental approvals for the I-93 improvements. CLF's challenge to the project under the National Environmental Policy Act (NEPA) was filed in federal district court. The suit raised more than 22 alleged deficiencies with process and involved analysis of some 29,000 pages of documents.

The biennium began with the District Court dismissing all but one of CLF's allegations in its federal suit. On the remaining count, the District Court ordered further analysis be completed regarding traffic and growth projections. Bureau attorneys spent a

considerable portion of this biennium assisting in the preparation and completion of the Supplemental Environmental Impact Statement required by this order. A draft of that document was completed and published shortly prior to the close of fiscal year 2009. The process of incorporating and addressing the public comments into the final environmental documents is ongoing.

The Bureau has also expended considerable resources assisting the Department of Transportation as it addresses water quality concerns arising from the I-93 project. In particular, the use of chloride from road salt has resulted in significant regulatory and management challenges for the Department of Transportation. In addition, a heightened awareness of temporary water quality impacts from nitrates caused by blasting activities has raised new contractual and legal challenges. The resulting significant construction delays and additional costs from the nitrate concerns continue to have a major impact on the project.

Personal Injury And Property Damage Claims

Tort claims handled by the Bureau encompass a variety of claims of death, personal injury and property damage allegedly caused by the negligent design, construction or maintenance of the State's transportation system. In the biennium, the Bureau confronted 105 tort claims, a slight increase over the previous biennium's 94. A total of \$28,458.55 was awarded against the

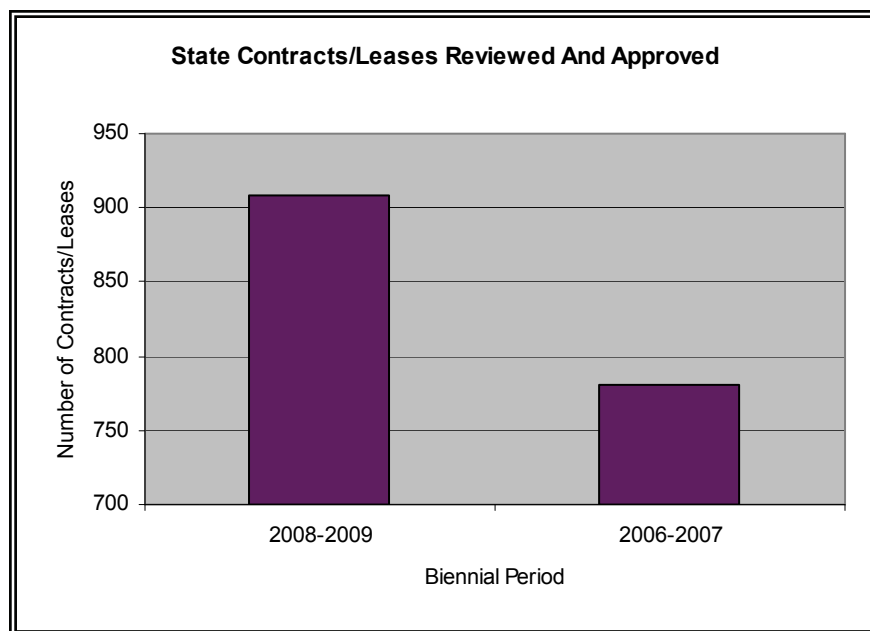
NHDOT and settlements totaling \$69,060. were paid out from State funds during the two-year period. Despite the slight increase in total claims, the resulting sum of \$97,527.55 in payments to claimants represents a significant decrease from the total of \$203,968.79 paid during the previous biennium. It should be noted that several large claims remain pending at this time. A recent legislative increase in the State’s liability cap has resulted in a rise in both claims and potential liabilities.

Weather related events continue to provide a significant source of claims for property damage and personal injury through this biennium. Several lawsuits related to flooding damages caused by major rainfall events were filed. Although most major claims were successfully defended, one jury did return a verdict in favor of a

plaintiff in a case with modest damages. Winter weather has recently provided a source of several lawsuits involving plaintiffs injured in highway accidents. These lawsuits remain pending at the close of the biennium but have required considerable time and resources from the Bureau in defending them.

Contract Law And Construction Issues

The Bureau reviewed and approved 908 State contracts and leases during the recent two-year period. This was a significant increase from the previous two-year periods total of 781. Moreover, many of these contracts were unique or highly complex in nature. Implementation of E-ZPass, for instance, continues to require legal oversight for its implementation,



customer service program and enforcement. Privacy issues relating to E-ZPass records resulting from requests from a variety of sources remain a recurring issue.

Increased emphasis on rail and transit options has led to new and creative public/private partnerships. Early and frequent Bureau participation in these arrangements has become increasingly important in avoiding legal pitfalls while still moving forward.

The surge in federal funding from the economic stimulus program, AARA, accounts for much of the increase in contracts. The Bureau actively participated in the statewide effort to streamline and expedite the construction project contract approval process. This effort allowed New Hampshire to become a national leader by maximizing its use of this unique program.

Human Resources

The Bureau has provided risk management advice regarding

disciplinary actions including warnings and terminations and participated in investigations associated not only with potential criminal activity but administrative actions as well. In an effort to control risk, the Bureau has also conducted training for senior management on issues ranging from sexual harassment to the new Conflict of Interest law enacted by the Legislature. The Bureau has also expanded its outreach to inform DOT personnel of the recent impact of changes in the Right-to-Know law.

While the number of hostile work environment claims has declined in the last biennium from 16 to 13, the number of disciplinary reviews has increased to 281 separate cases. In the biennium the Bureau defended 9 actions at the Personnel Appeals Board including claims regarding non-selection for promotion, suspensions without pay, and terminations. The Bureau also represented the DOT in two actions before the New Hampshire Human Rights Commission and one before the U.S. Equal Employment Opportunity Commission.

Program Administration

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state and dedicated funds and are administered by the following units:

Witness Payment Unit

Since 1992, this agency has had the responsibility for paying all law enforcement and civilian witnesses who are subpoenaed by the state in criminal cases. In State Fiscal Years (SFY) 2008 and 2009, the office processed witness payments totaling \$1,614,878 for nearly 63,000 witnesses. The Business Office processes the Witness Payments.

Victim's Compensation Unit

The Victim's Compensation Program was established in 1990 to financially assist innocent victims of violent crime by providing compensation to them and to their immediate family members for losses incurred due to personal injury or death of the victim. The economic losses must be directly related to an eligible misdemeanor or felony violent crime.

The Office of the Attorney General was designated to administer the program, which is funded from monies collected through penalty assessment on criminal fines and by the federal

Victims of Crime Act. The fund is also replenished through restitution paid by the offenders and enforcement of our statutory lien against any monies paid out if any other financial resources become available to the victims. The program also benefited from the American Recovery and Reinvestment Act of 2009 by receiving a \$60,000 award through the Federal Victims of Crime Act. The Victims' Compensation Program is the payer of last resort after all free care, health insurance, workers compensation, unemployment compensation, proceeds from settlements or other available resources have been exhausted.

In conjunction with establishing the program, the Victims' Assistance Commission was established to review applications and award claims. The Commission consists of five dedicated individuals nominated by the Attorney General and confirmed by Governor and Council to oversee the awards. They meet monthly. The Commission volunteers their time and currently consists of a victim of a home invasion, a dentist, a sexual assault nurse examiner, a licensed mental health professional and an attorney. Together with 2.5 staff members from the Attorney General's Office, applications are reviewed, claims are awarded or denied, and payments are made to victims whose lives are benefited in significant ways.

The Victims' Compensation Unit (the "Unit") paid \$1,357,056.00 in total

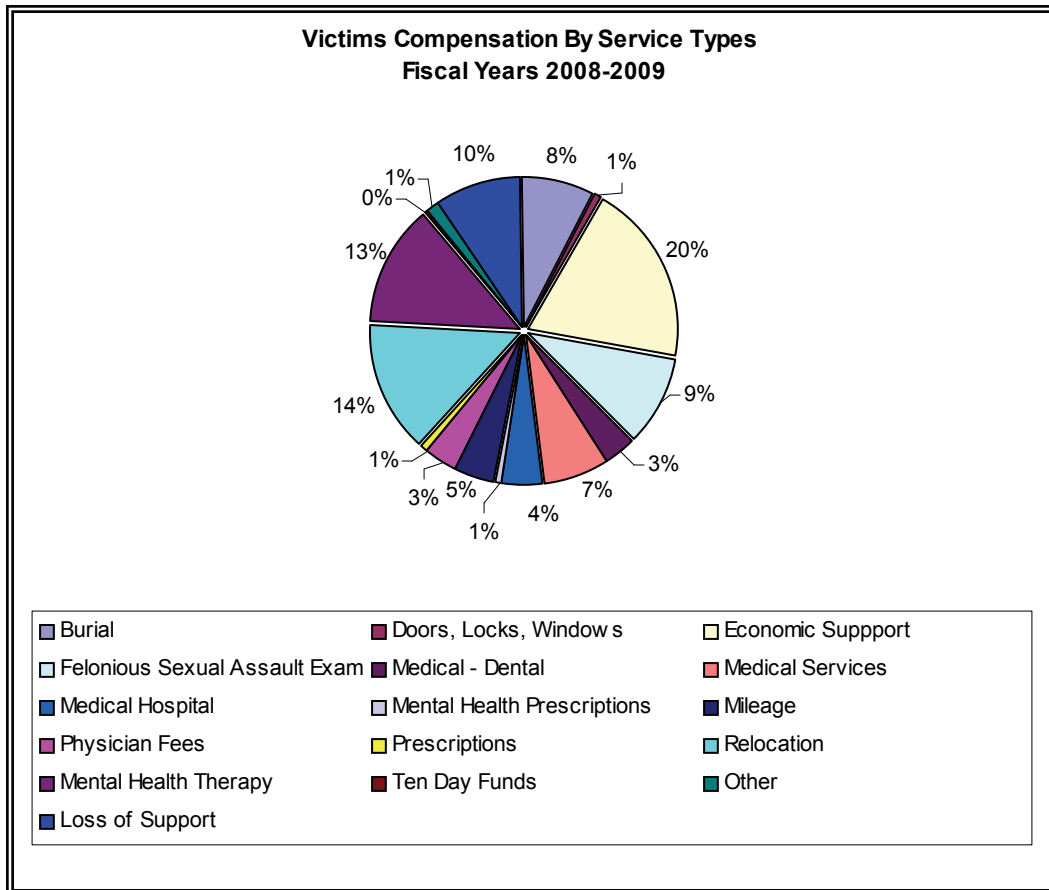
compensation to crime victims for Fiscal Years 2008/2009. This amount represents awards to 1,015 claimants.

The awards included the relocation of 92 families in life-threatening, domestic violence situations, paying a total of \$193,504.00. This benefit allows victims to have their security deposit, two months rent, start up utilities expenses and moving and storage costs paid when they are forced to flee from the offender due to direct credible threats to the victim's safety. In addition to relocation expenses in this biennium, compensation funds benefited many other victims in the areas of lost wages,

medical, dental, mental health and therapy as well as funeral expenses.

Economic support in the form of reimbursement of lost wages for non-homicide victims and for loss of support for dependents of homicide victims was a large portion of the Unit's payments. A total of \$393,717.00 was paid to victims unable to work due to the nature of their crime-related injuries, and to survivors of homicide victims who depended on economic support from the deceased victim.

Cyber crime has continued to impact underage victims of sexual assault who

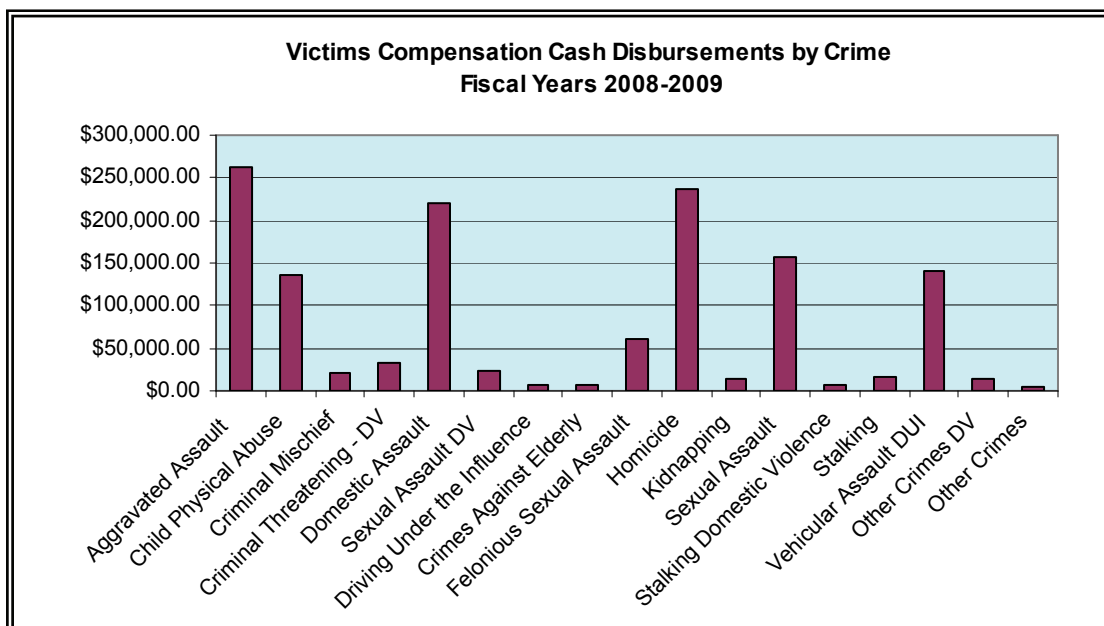


are lured via the Internet into contact with their offenders. Financial awards have been made to families whose needs included mental health counseling; reimbursement of the parents' lost wages for time missed to court appearances, attending counseling and bringing their child to therapy appointments. The Attorney General's Office continued its efforts to combat such victimization through statewide educational outreach to parents, children, and the law enforcement community on how to better monitor predatory practices on the Internet.

In the last year of the biennium, the Victims' Compensation Unit and Commission finalized a review and re-adoption of its Administrative Rules, as well as a review of its practices and procedures with the goal of reassessing and implementing program efficiencies to assure timely and quality services to victims of crime.

Grants Management Unit

The Grants Management Unit ("Unit") exists to make a difference in the lives of the citizens of New Hampshire by ensuring the proper use of federal funds allocated for criminal justice purposes. The Unit began in 1985 with the Crime Control Act of 1984 and has a staff of four grant administrators. The Unit currently administers approximately twenty-seven different grant programs. Over the last biennium, the Grants Management Unit brought in over \$15 million in revenue from open, previously awarded, grants. Approximately \$10 million in new grant awards were received during the biennium. The grants have four main purpose areas focusing on Crime Prevention and Justice; Victim Services, the Multi-Jurisdictional Drug Task Force, Other Criminal Justice Areas and Corrections. The following graph



shows the allocation of grant dollars by purpose areas.

There were a total of 236 separate grants awarded during the biennium. These awards went to city/towns (82), non-profit agencies (67), county agencies (48) and state agencies (39). These figures reflect the recipient of each of those grants, although some organizations may have received multiple grants during this period.

Because of these grant dollars, New Hampshire's citizens receive many services that would not otherwise be available. An example of some of the programs benefiting from grants include:

Programs for Victim Services

- Support for Child Advocacy Centers (CAC) for victims of child sexual assault and child abuse. These centers are designed to minimize the trauma inflicted on child victims through multidisciplinary teams who

assist in the investigation of child abuse and recommend and ensure follow through with the best course of treatment for the child.

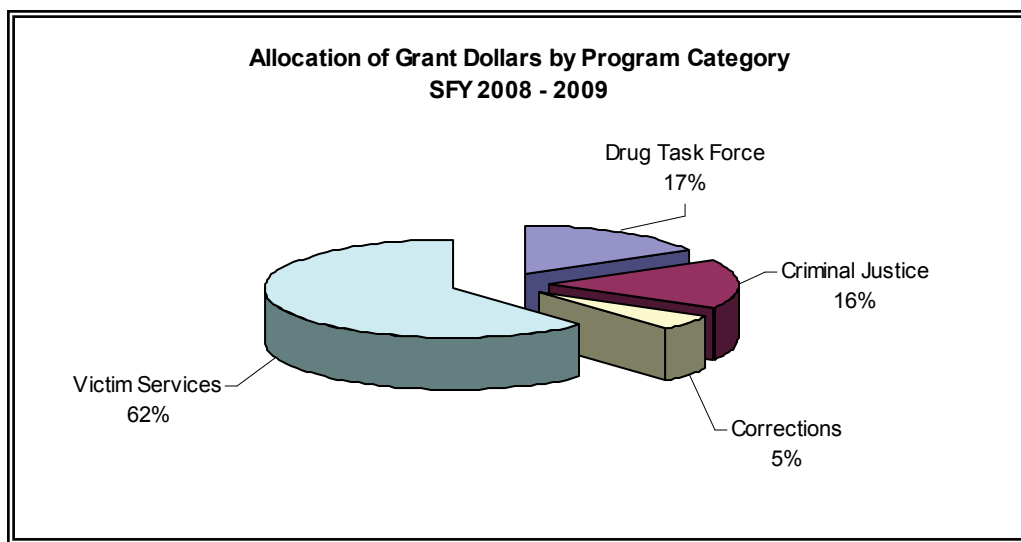
Sexual Assault Nurse Examiners (SANE) are located in numerous hospitals to ensure the appropriate collection of evidence and provide victim support/referrals.

- Funding to the NH Coalition Against Domestic and Sexual Violence and other victim services organizations in New Hampshire responsible for providing sexual assault, domestic violence, stalking, and other victim services as well as operating crisis centers and shelters.

- Support for the AmeriCorps Victim Assistance Program.

- Three Domestic Violence Specialists who work in our most rural counties in conjunction with DCYF to identify and assist families with a co-occurrence of domestic violence and child abuse or neglect.

- Five Supervised Visitation Centers across the state. Studies have shown



that the risk of violence is often greater for victims of domestic violence and their children after separation from an abusive situation. These centers provide a safe environment for supervised visitation and safe exchange of children between parents with a history of family violence.

- Two DV/SA Culturally Specific Advocates working in immigrant/ethnic populated communities.
- Victim/Witness Advocate positions in seven County Attorney offices and two police departments.
- Six specifically trained domestic and sexual violence prosecutors located in the counties of Belknap, Cheshire, Coos, Grafton, Hillsborough, and Rockingham.
- Support for police department Domestic Violence Units in the communities of Manchester and Nashua and a DV/SA Investigator at the Plymouth State University.
- Emergency legal services for victims seeking protective orders.
- Support to the courts for judicial training and statewide technical improvements.
- Funding for crisis centers and shelters to provide service to victims.
- Court appointed special advocacy (CASA) programs to provide advocates for abused and neglected children in the New Hampshire court system.
- Support to the New Hampshire Department of Corrections for Victim-offender mediation programs, and victim notification services.
- Mental Health services in New Hampshire's north country for crime victims.

- Support for several Youth Safe Havens programs, designed to provide a safe and supportive environment for youth in high crime areas.

Drug Task Force Programs

- Multi-jurisdictional drug task force of approximately 20 individuals from state, county and local law enforcement agencies across the state tasked with the investigation of drug crimes and the support of local law enforcement agencies.

Other Criminal Justice Programs

- Ongoing efforts with J-One – a comprehensive criminal justice information system involving the courts, law enforcement, and corrections.
- Funding to combat underage drinking through aggressive enforcement of underage drinking laws and statewide media by local police departments, county sheriffs, campus police, and the Bureau of Liquor Enforcement.
- Funding for a Traffic Safety Resource Prosecutor to conduct regional trainings and provide technical assistance to law enforcement and prosecutors in the area of impaired driving and alcohol-related motor vehicles crimes.
- The development and distribution of Internet Guides for youth and parents to help teach on-line safety.
- Support to the NH State Police in an effort to make National Incident Based Reporting System (NIBRS) data available to the public via the Internet.

- HAVA funding to assist with the Help America Vote Act requirements through the streamlining of the elections process.
- A special prosecutor and investigator tasked with the investigation and prosecution of gun and gang related crimes statewide administered in collaboration with the State of New Hampshire, the Hillsborough County Attorney's Office and Sheriff's Department and the United States Attorney's Office for the District of New Hampshire.

Programs in the Correctional Arena

- The maintenance of an offender re-entry program in the city of Manchester designed to help those Department of Corrections offenders already scheduled for return to Manchester better integrate back into the community, thus reducing recidivism and making the City of Manchester a safer place for her residents.
- Substance abuse treatment services for male and female offenders at four county correctional facilities and at the Sununu Youth Services Center.

More details as to the level of funding and grant type are as follows:

Grants Received By Program Category	FY08	FY09	Total
<i>Criminal Justice</i>			
Byrne Justice Assistance Grant Program Drug Task Force	\$1,224,070	\$1,436,725	\$2,660,795
Byrne Justice Assistance Grant Program General Criminal Justice Activities	641,378	86,769	
Enforcing Underage Drinking Laws	236,987	347,705	
Help America Vote Act	129,640	73,279	
PEW Charitable Foundation	66,200	143,060	
National Criminal History Improvement	157,702	61,502	
National Forensic Science Improvement	66,437	48,424	
Project Safe Neighborhoods	114,260	109,298	
PSN Anti Gang	46,474	28,878	
Statistical Analysis Center	74,970	13,694	
Other Criminal Justice	17,042	145,933	
Total:	1,551,089	1,058,542	2,609,631
<i>Corrections</i>			
Residential Substance Abuse and Treatment	41,812	71,630	
Prisoner Reentry Initiative (Going Home Program)	225,266	501,747	
Total:	267,078	573,377	840,455
<i>Victim Services</i>			
Children's Justice Act	76,278	57,252	
Rural Domestic Violence & Child Victimization	207,244	199,486	
Safe Havens Visitation Centers	342,470	255,224	
State Victim Fund – Victim Comp Portion	405,081	633,434	
State Victim Fund Grants to Victim Programs	690,353	561,985	
Victims Compensation – Federal	137,782	197,000	
Victims of Crime Act	2,128,475	2,144,016	
Violence Against Women Act	910,947	913,424	
Total:	4,898,630	4,931,821	9,830,450
<i>Totals</i>			
Drug Task Force – Byrne	1,224,070	1,436,725	
Other Criminal Justice	1,551,089	1,058,542	
Corrections	267,078	573,377	
Victims	4,898,630	4,931,821	
Total:	\$7,940,867	\$8,000,465	\$15,941,331

Federal Grant Awards Received By Grant Program	FY08	FY09	Total
Byrne Justice Assistance Grant Program (JAG)	\$680,298	\$1,751,474	
COPS Methamphetamine Program	748,240		
Paul Coverdell National Forensic Science Improvement	143,177	99,337	
Natl. Criminal History Improvement Program (NCHIP)	70,395		
Children's Justice Act	110,151	108,812	
Victims of Crime Act (VOCA) Assistance Program	1,721,000	1,936,302	
Victims of Crime Act (VOCA) Compensation Program	197,000	231,000	
Traffic Safety Resource Prosecutor (TSRP)	102,510	106,347	
Help America Vote Act (HAVA)	138,820	91,500	
PEW Charitable Foundation (Making Voting Work)	189,000		
Violence Against Women Act (VAWA)	949,678	987,015	
Project Safe Neighborhoods (PSN)	94,452	78,212	
PSN Anti Gang Program	135,697		
Enforcing Underage Drinking Laws (EUDL) Program	350,000	360,000	
Statistical Analysis Center (SAC)	55,496	49,999	
Total:	5,280,418	5,389,999	
Total Biennium Amount:			\$10,670,417

An additional resource made available to the State of New Hampshire has been the American Recovery and Reinvestment Act of 2009. Those funds were awarded to the State at the end of the State 2008-2009 biennium and are expected to benefit New Hampshire's citizens well into the next biennium.

American Recovery and Reinvestment Act of 2009	Total
Byrne Justice Assistance Grant (JAG) Program	\$6,253,755
Victims of Crime Act (VOCA) Assistance Program	587,000
Victims of Crime Act (VOCA) Compensation Program	60,301
Violence Against Women Act (VAWA) Program	\$1,058,641
Total Stimulus Funding:	\$7,959,697

Appendix A

Reports Required Under RSA 570-A:10, III and 570-B:7 (Authorized Recordings)

During the biennium, the Attorney General filed seven petitions for authorization to intercept telecommunications under RSA 570-A:7, all of which were granted. In addition, the court granted ten petitions for an extension of the orders authorizing intercepts. The Attorney General applied for and received three orders to install and use pen register devices under RSA 570-B:4. In addition, the court granted two petitions for an extension of the orders authorizing pen registers. The Attorney General, or designated Assistant Attorneys General, authorized 396 interceptions pursuant to RSA 570-A:2.

Appendix B

Personnel Data

Current Number of Positions Authorized	6/30/08	6/30/09
1. Unclassified	79	79
2. Classified	65	64
3. Temporary	3	3
TOTAL	147	146

Physical Plant and Property Appraisal

	6/30/08	6/30/09
1. Equipment	\$2,294,210	\$2,443,623
2. Physical Plant	0	0
3. Farm	0	0
4. Highway	0	0
TOTAL	\$2,294,210	\$2,443,623

Appendix C

RECEIPTS AND EXPENDITURES

	SFY 08	SFY 09
<i>Receipts</i>		
Federal Funds	\$8,621,309	\$8,833,815
Fees, Registrations, Fines, Forfeitures - restricted	1,723,951	2,125,116
Transfers from Other Agencies	2,178,460	2,173,034
Health Club Registrations - unrestricted	22,590	25,470
Consumer Land/Condo Registrations - unrestricted	85,660	54,470
Judgments and Recoveries - unrestricted	435,106	185,079
Tobacco Settlement	48,404,011	52,820,795
All Other Sources	10,875,006	10,633,634
Total	\$72,346,093	\$76,851,413
<i>Expenditures</i>		
Permanent Personnel	\$8,071,061	\$8,450,418
Current Expense incl Rent and Trfr General Services	442,359	446,990
Equipment	76,503	22,312
Benefits incl Retirees Benefits	2,914,229	3,091,516
In State Travel	67,015	74,433
Out of State Travel	34,588	12,924
Litigation	1,057,896	932,353
Witness Fees	826,521	788,357
Autopsy Expense	557,975	477,850
New Hampshire Multi-jurisdictional Drug Task Force	591,599	507,738
Office Information Technology (OIT)	464,590	358,725
Division of Alcohol and Drug Abuse Prevention	3,682	6,250
Grants/ Activities	6,241,631	6,262,002
Miscellaneous	794,643	930,890
Total	\$22,144,292	\$22,362,758
<i>Disbursements On Behalf of Victims</i>		
Victim's Compensation Pmts/ Victim's Assistance Grants	1,254,433	1,402,841
Total of all Expenditures	\$23,398,726	\$23,765,598
<i>Receipts Deposited Directly into the General Fund</i>	\$48,947,367	\$53,085,814

Appendix D

OPINIONS

July 1, 2007 - June 30, 2009

There were no opinions issued during this biennium.

Appendix E

Expenditures Pursuant to RSA 7:12

SFY 2008

February 22, 2008 Fiscal Committee Meeting

RSA 7:12 request for \$482,833 for litigation funds in the case of State v. Michael Addison

RSA 7:12 request for an additional \$200,000 in litigation funds

SFY 2009

October 22, 2008 Fiscal Committee Meeting

RSA 7:12 request for \$504,000 of additional litigation funds in the case of State v. Michael Addison

RSA 7:12 request for \$450,000 of additional litigation funds