

New Hampshire

Department of Justice

Office of the Attorney General

Biennial Report July 1, 2009 - June 30, 2011



The mission of the Department 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.

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

Michael A. Delaney

Attorney General

BIENNIAL REPORT

for the period
July 1, 2009 through June 30, 2011

John H. Lynch

Governor

Executive Councilors

Raymond S. Burton

District One

Daniel St. Hilaire

District Two

Christopher T. Sununu

District Three

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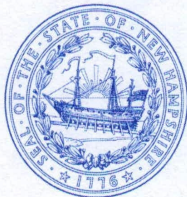
David K. Wheeler

District Five

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

December 28, 2011

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 2010-2011 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 elections, 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 black ink that reads "Michael A. Delaney".

Michael A. Delaney
Attorney General



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Leadership

Michael A. Delaney Attorney General

Ann M. Rice Deputy Attorney General

Anne M. Edwards Associate Attorney General
Chief of Staff

Rosemary Faretra Director of Administration

Dr. Thomas A. Andrew Chief Medical Examiner

Anthony Blenkinsop Senior Assistant Attorney General
Director, Charitable Trusts Unit

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 Unit

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

Mary Ann Dempsey Senior Assistant Attorney General
Chief, Civil Law Bureau

Leadership (continued)

| | |
|---------------------|--|
| Dr. Jennie V. Duval | Deputy Chief Medical Examiner |
| 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 |
| Terry M. Knowles | Assistant Director, Charitable Trusts Unit |
| Sandra Matheson | Director, Office of Victim/Witness Assistance |
| James R. Norris | Commander, Drug Task Force |
| Karen A. Schlitzer | Senior Assistant Attorney General Chief, Transportation and Construction Bureau |
| Nancy J. Smith | Senior Assistant Attorney General Deputy Chief, Litigation Unit |
| Jeffery A. Strelzin | Senior Assistant Attorney General Chief, Homicide Unit |
| Jane E. Young | Associate 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 in all criminal appeals in the New Hampshire Supreme Court and the federal courts. In addition to its statutorily mandated functions, the CJB conducts investigations and initiates prosecutions in cases involving drug trafficking, financial crime, cybercrime, public integrity, 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 full and part-time New Hampshire Police Academy. An attorney provides training and litigation support in matters involving traffic safety, with a particular emphasis on issues surrounding the crime of driving while intoxicated.

In this biennium, all of the attorneys, investigators,

paralegals, victim/witness advocates, and legal assistants assigned to the CJB faced the mounting challenges with unparalleled effort and dedication. As an example, in a six-month period, CJB attorneys handled six officer-involved use of deadly force investigations and eight homicide investigations. In addition, during that same six-month time frame, four murder cases, and one public integrity case were tried. Eight attorneys constituted the homicide teams, with one attorney leading two of the homicide trials. Moreover, during the last biennium, members of the CJB successfully went to trial in a variety of other cases, including several first and second-degree murder trials, witness tampering trials, and a theft by a police officer trial.

Members of the CJB assisted the State Police and various federal agencies in a multi-agency investigation involving a bribery conspiracy involving a Division of Motor Vehicles (DMV) employee. This intense investigation, which involved hundreds of hours of manpower,

During a six-month time frame, Criminal Justice Bureau attorneys handled six officer-involved use of deadly force investigations and eight homicide investigations; in addition, four murder cases and one public integrity case were tried. Eight attorneys constituted the homicide teams, with one attorney leading two of the homicide trials.

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included surveillance and court authorized wiretaps. The investigation revealed that Donna Rockholt, a DMV clerk, was receiving money in return for issuing fraudulent driver's licenses. Rockholt pled guilty and is awaiting sentencing. Angie Paola Patrone was identified as a co-conspirator who sent individuals to the DMV to secure the fraudulent licenses from Rockholt. Patron pled guilty for her role in the conspiracy and was sentenced to the New Hampshire State Prison for 8–16 years. Adalberto Medina, another co-conspirator who was the facilitator between Patrone and Rockholt, is awaiting trial. In addition, numerous individuals who obtained fraudulent licenses were identified and charged, and have pled guilty for their roles in the bribery scheme. The license recipients were each sentenced to twelve months in the Rockingham County House of Corrections.

During the course of the DMV investigation, it was discovered that a New Hampshire State Police Trooper, Fred Stamatatos, was providing salvage inspection stickers to Medina without completing the proper inspection of the vehicles. It was further discovered that Stamatatos received car repairs from Medina in return for the salvage stickers. Stamatatos pled guilty to bribery and was sentenced to the Rockingham County House of Corrections for six months with three months suspended.

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 felony blood draws, trial advocacy, sobriety checkpoints, and updates on DWI laws. In addition, she conducted an annual two-day seminar on motor vehicle fatality investigations and a multi-day training on prosecuting the drugged driver.

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. In the last biennium, there was a cybercrime prosecutor whose focus was on combating the increasing use of the Internet for criminal activity. The cybercrime prosecutor continued outreach efforts to educate the public about the dangers that lurk on the Internet and assisted the Internet Crimes Against Children (ICAC) Task Force with legal guidance.

The functions and accomplishments of the units within the CJB during the biennium are set forth below.

The Public Integrity and Economic Crime Unit

The investigators and prosecutors of the CJB oversaw the prosecutions of complex theft cases and criminal wrongdoing by public officials. The theft cases typically involved the theft of

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more than \$100,000 or thefts that spanned multiple counties. The unit also prosecuted cases of crimes committed by state, county, and local government officials, including law enforcement officers. The public integrity cases involved a variety of criminal conduct, including theft of funds from police evidence, theft from the state and tampering with public records. Both the public integrity and economic crime cases involved extensive investigations, including the preparation of search warrants and the review of financial documents such as bank records. The investigators interviewed numerous witnesses, and the attorneys presented 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. Elizabeth Kishbough*, the defendant was a bookkeeper for St. Joseph's Regional School in Salem who stole between \$83,000 and \$98,000 in school funds. The defendant pled guilty, and was sentenced to serve two and a half to eight years in prison, with one and a half years suspended. She was also ordered to make full restitution.

In *State v. James Murphy*, the defendant was the New Castle Chief of Police who stole \$8,675 from a food drive fund. The defendant pled guilty, and was sentenced to serve twelve months at the Rockingham County House of

Corrections with eight months suspended. He was also ordered to make full restitution.

In *State v. John Russo*, the defendant stole approximately \$35,000 from an elderly victim. After a trial, a jury convicted Russo on the charges, and he was sentenced to serve eight to twenty years in prison. He was also ordered to make full restitution.

In *State v. Holly Wheatley*, the defendant was a Department of Resource and Economic Development employee who stole \$23,485 from the State of New Hampshire. She was prosecuted for eight counts of forgery and fourteen counts of theft. The defendant pled guilty, and was sentenced to serve six to thirty years in prison. She was also ordered to make full restitution.

In *State v. Lawrence Fredette*, the defendant was a New Hampshire State Trooper. He was prosecuted for multiple counts of forging driver-vehicle examination reports. The defendant pled guilty, and was given a suspended House of Corrections sentence, was ordered to perform 20 hours of community service, and was ordered to pay restitution.

In *State v. Brendan June*, the defendant was a Farmington Police detective who stole \$3,790 from the Farmington Police evidence locker over several months. The defendant pled guilty, and was sentenced to serve twelve months at the Strafford House of Corrections with nine months suspended. He was also ordered to make full restitution.

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Former Rockingham County Sheriff James Daniel Linehan and former Major Mark Peirce were investigated for their roles in the release of an annulled record. During the course of the investigation, sufficient evidence was ascertained to establish that Linehan and Peirce unlawfully disclosed or communicated the existence of a person's annulled record of arrest or conviction. Linehan and Peirce resigned their positions and relinquished their police certifications, and Linehan further agreed that he would not seek the position of sheriff in any county in New Hampshire in the future. In return for their resignations and relinquishments of their police certifications, criminal charges were not brought.

Off-duty Manchester police officers were investigated following an incident at the Strange Brew Tavern. After a multi-month investigation, which included reviewing the underlying criminal file and statements of the officers who were involved, and interviewing witnesses who had not been contacted as part of the initial police investigation, it was determined that criminal charges were not warranted because the officers' contacts with the bar patron were justified as self-defense or defense of another. Further, the investigation did not support allegations that there was a cover-up by the Manchester Police Department.

The Homicide Prosecution Unit

The attorneys assigned to the Homicide Prosecution Unit are involved with murder cases from the first call reporting the death, during the investigation and arrest phase, through the pre-trial and trial phase, and then often into the post-conviction stages at the New Hampshire Supreme Court and the federal courts. The attorneys, who provide 24-hour coverage throughout the state, work closely with state and local law enforcement officers in all homicide investigations. In addition, the attorneys assist with suspicious death and missing persons investigations. Finally, the attorneys also assist with investigations involving a police officer's use of deadly force.

During the biennium, attorneys supervised the investigation of forty-one new homicide cases and dozens of other suspicious death cases, which were later determined to be natural deaths or suicides. Thirteen homicide cases went to trial; all resulted in convictions. Thirteen other defendants resolved their cases with guilty pleas. An arrest was also made on a cold case on June 30, 2010, which is awaiting trial. As to the remaining defendants whose cases did not result in criminal charges, seven were murder-suicides, eight were ruled justified as self-defense, one was deemed non-prosecutable, and the balance are still pending as either unsolved, under investigation, or in pretrial litigation.

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

The last of the five defendants in the murder-for-hire capital murder case of *State v. John Brooks* was convicted. In *State v. Jesse Brooks*, the defendant was convicted of conspiracy to commit murder, bringing a multi-year investigation and prosecution to a successful conclusion. He was sentenced to serve fifteen to thirty years in prison.

In *State v. Roscoe White*, the defendant was charged with first-degree murder for the shooting death of Aaron Kar. After a trial, a jury convicted White on the charge, and he was sentenced to life in prison without the possibility of parole. White was the last of seven defendants and his conviction culminated years of investigation and prosecution, which resulted in the defendants all being convicted for their respective roles in the murder of Aaron Kar.

In November 2010 and March 2011, the trials in *State v. Steven Spader* and *State v. Christopher Gribble* took place. After a jury trial, Spader was convicted of several crimes, including first-degree murder and attempted murder for the brutal killing of Kimberly Cates and the attempted murder of her daughter, Jamie Cates, during a home invasion. Gribble pled not guilty by reason of insanity, but a jury found him sane, and therefore guilty of the charged crimes. Both defendants were sentenced to life in

prison without the possibility of parole. These convictions were in addition to the guilty pleas secured against three other men who were involved in the home invasion.

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 24 hours a day 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 the proceeds of their crimes. 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

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approximately \$131,800. Approximately \$1,700 was collected from the sale of two forfeited cars.

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

In *State v. Julieta O'Donnell* and *State v. Agim Banushi*, the defendants were arrested upon arrival at the Manchester-Boston Regional Airport for conspiracy to sell oxycodone and possession with intent to sell oxycodone to a DTF agent. During the course of the investigation, O'Donnell, who lived in Florida, agreed to transport more than 900 oxycodone pills from Fort Lauderdale, Florida, to sell to a DTF agent. Both defendants pled guilty, and were sentenced to serve prison sentences.

In *State v. Joseph Hurley*, the defendant was arrested for selling cocaine to a DTF agent on numerous occasions. The defendant pled guilty, and was sentenced to serve eight to thirty years in prison, with two years of the minimum sentence suspended. He was also ordered to pay restitution.

In *State v. Wilson Amaury Reyes*, the defendant was arrested in Salem when he attempted to sell heroin to a DTF undercover detective. The defendant agreed to sell the detective approximately fifty grams of heroin in exchange for \$4,500. The defendant pled guilty, and was sentenced to serve four to fifteen years in prison.

In *State v. Benjamin Stanek*, the Manchester Police Department investigated the circumstances surrounding the heroin overdose death of a Manchester man. The defendant was charged with sale of a controlled drug which resulted in the death of Russell Medor. The defendant pled guilty, and was sentenced to serve ten to thirty years in prison, with two and a half years suspended.

A long term, multi-agency investigation resulted in the seizure of several kilograms of cocaine in Arizona and New York, and led to the convictions of numerous people in New Hampshire. Carlos Rodriguez, Carlos Rivera Burgueno, Wilman Daniel Pierri, and Jose Ramos all received significant state prison sentences. This investigation also resulted in prosecutions in Arizona and New York.

In *State v. Kenneth Marchacos*, the defendant was charged with possession with intent to sell more than seven pounds of marijuana, more than four ounces of cocaine, and 600 oxycodone pills. The defendant pled guilty, and was sentenced to serve ten to twenty years in prison with four years suspended.

An attorney in the Unit was a presenter at the New Hampshire Gang Summit and Information Sharing Initiative held in Concord and sponsored by the United States Attorney's Office. The attorney was also a presenter at a DTF-sponsored regional training for North Country narcotics investigators.

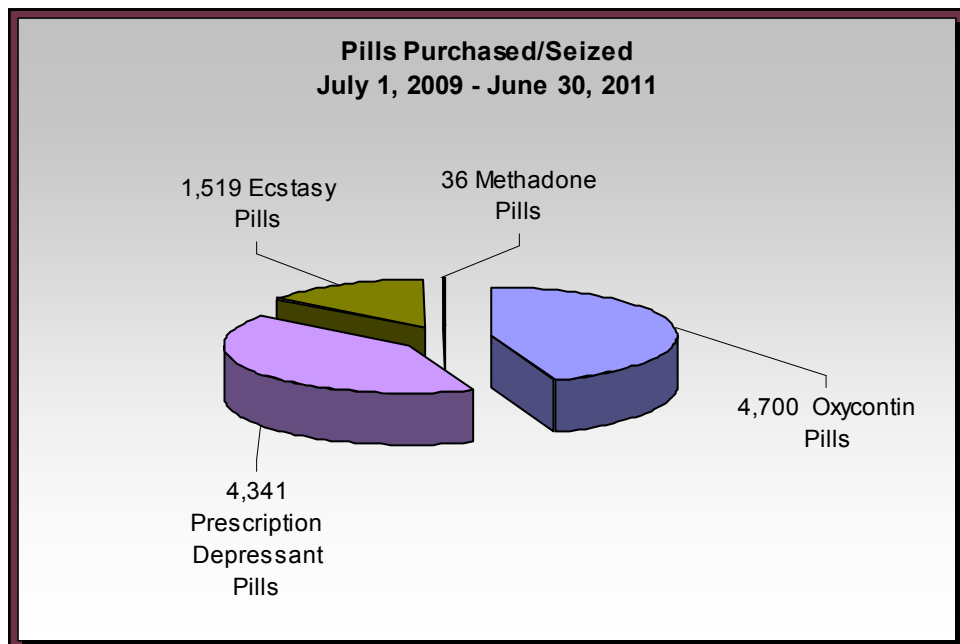
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The Drug Task Force

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 seconded 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,

writing comprehensive police reports, and testifying in court. After their tenure with the DTF, the officers return to their respective departments and use their honed skills to improve their agencies' investigations. The DTF maintains regional offices, which serve the seacoast, central, western, and northern regions of New Hampshire.

During the biennium, the DTF was involved in 2,116 criminal cases (an 18% increase from the previous biennium), which resulted in 321 arrests. DTF investigators seized \$217,656, which represented proceeds of drug trafficking, along with three automobiles, one house and 94 weapons. The DTF seized or purchased approximately 129 pounds of marijuana, 12½ pounds of cocaine, 6 ounces of crack cocaine, 5¼ ounces of heroin, 4,700 Oxycontin pills, 4,341 prescription depressant pills, 1,519



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ecstasy pills, 36 methadone pills, and 7½ grams of crystal methamphetamine.

The DTF also provided undercover assistance to various law enforcement agencies. For example, undercover officers assisted the Drug Enforcement Administration Clandestine Laboratory Team in dismantling illegal methamphetamine labs.

The Appeals Unit

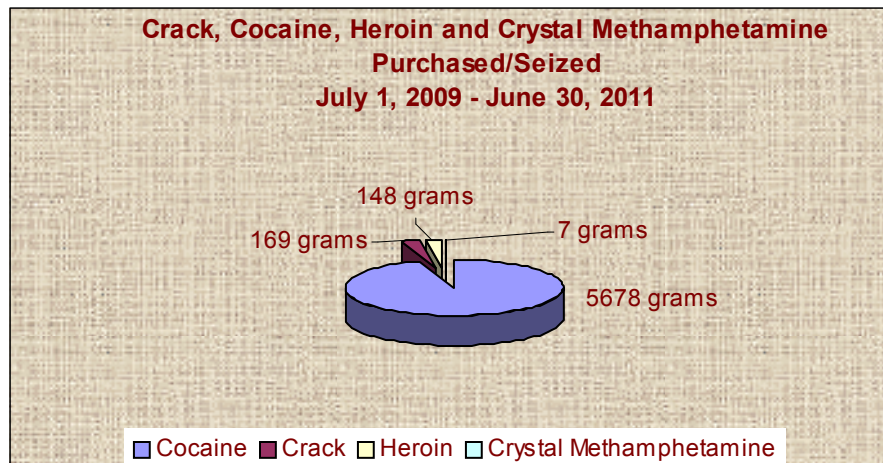
The Appeals Unit fulfills the statutory mandate that the CJB represent the State of New Hampshire in all appeals in criminal cases in the New Hampshire Supreme Court and the federal courts. The Unit comprises four attorneys who work almost exclusively on criminal appeals in the New Hampshire Supreme Court and one attorney who handles the Bureau’s habeas corpus litigation in the federal courts as well as state appellate cases. During the last biennium, attorneys in the Unit have also been called upon to prosecute two cases in the

trial courts, and will be prosecuting another case in the superior court early in the next biennium. Because the caseload of the unit remains high, other attorneys in the Bureau, and other Bureaus in the Office, have also been assigned to handle appeals.

The appellate attorneys file briefs, memorandums of law, and other pleadings in the New Hampshire Supreme Court, and appear at oral argument in both that court and federal court. During the biennium, the attorneys filed 249 briefs and 30 memorandums of law in lieu of briefs in the New Hampshire Supreme Court, one brief in the United States Court of Appeals for the First Circuit, and two briefs in opposition to petitions for certiorari in the Supreme Court of the United States. In nine of those cases, the State filed an appeal or a petition to review an order of the lower court. In the remaining cases, the State was responding to an appeal filed by a convicted defendant. During the

biennium, the attorneys also opposed petitions for writs of habeas corpus in 24 cases in the United States District Court. The court has granted summary judgment in favor of the State in 22 of those cases.

The wide range of legal issues that the appellate attorneys addressed during the biennium included such issues as the sufficiency of



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the evidence to prove a defendant's guilt beyond a reasonable doubt, the admissibility of evidence under the Confrontation Clause and the Rules of Evidence, and the constitutionality of various statutes in the Criminal Code. The decisions issued by the state supreme court and federal courts in these areas provide the legal framework for the courts, prosecutors, and law enforcement officers in all subsequent criminal cases.

In one of the Unit's cases, *State v. Perry*, the New Hampshire Supreme Court held that the test set out in *Neil v. Biggers* for reliability of an out-of-court identification "does not apply to a potentially suggestive out-of-court identification where there is a

complete absence of improper state action." Perry appealed to the Supreme Court of the United States for review on certiorari. The United States Supreme Court granted the writ in *Perry*. Briefs in the case were filed just after the close of the biennium, and oral argument was held in November with Attorney General Michael Delaney arguing on behalf of the State. A decision is expected in early 2012.

A summary of a few of the more significant cases litigated by the Unit over the last two years follows:

In *State v. Addison*, 160 N.H. 792 (2010), the New Hampshire Supreme Court held that the test set out in *Neil v. Biggers* for reliability of an out-of-court identification "does not apply to a potentially suggestive out-of-court identification where there is a complete absence of improper state action."

Addison, like Perry, appealed to the Supreme Court of the United States for review on certiorari. The Court denied the writ in *Addison*, but has asked for a memorandum in response to Addison's motion for reconsideration; therefore, *Addison* also is



The United States Supreme Court team in *State v. Perry*. From left: Senior Assistant Attorney General Susan McGinnis, Attorney General Michael Delaney, Assistant Attorney General Thomas Bocian and Deputy Attorney General Ann Rice. Missing from photo: Senior Assistant Attorney General Stephen Fuller.

pending in the United States Supreme Court. Addison was also the subject of four other cases—involving convictions for three other crimes—published by the New Hampshire Supreme Court in the biennium. In two of the cases, the court rejected Addison's challenge to the impartiality of the jury and the jury selection process.

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In *State v. Mello*, the issue was whether a court in the State of New Hampshire had the authority to issue a search warrant for subscriber information associated with an IP address where the corporation possessing the information was in another state. The New Hampshire Supreme Court held that New Hampshire courts do not have jurisdiction to issue warrants authorizing searches outside of New Hampshire. The court also held, however, that because there was no reasonable expectation of privacy in the gathered information, there was no constitutional violation in the State's obtaining it.

In *Petition of State of New Hampshire (State of New Hampshire v. Richard MacDonald)*, the New Hampshire Supreme Court held that the lower court erred by releasing a victim's medical and psychiatric records to the attorneys for the limited purpose of reviewing the records to determine which records were relevant. The court held that defendants seeking to obtain medical and mental health records for victims of crime must show an "essential need" for the information—"that the information is unavailable from another source and that there is a compelling need for disclosure"—and that there is "a reasonable probability the records contain information that is material and relevant to the party's defense or claim." If they do so, it is the court that must review the records *in camera* before piercing the privilege.

In *State v. Hutchinson*, the defendant was convicted of first degree murder. The defendant had strangled his victim, who then remained comatose for fourteen years before her death. Just before her death, the victim showed symptoms of illness. The defendant argued that although he caused the victim's brain injury, which rendered her comatose and thus more susceptible to illness, the evidence was insufficient to prove that he caused her death. The New Hampshire Supreme Court reiterated that "[t]o establish causation, the State needed to prove not only that the prohibited result would not have occurred but for the conduct of the defendant, but also that the defendant's conduct was the legal (or proximate) cause of the prohibited result." The court then held that the medical evidence presented at trial proved that the defendant's actions caused the victim's death.

In *In re Search Warrant for Medical Records of C.T.*, the New Hampshire Supreme Court set out the procedure for the State's obtaining medical records through a search warrant. The court found that given "[t]he immediacy and intrusiveness of searches, combined with the potential for irreparable injury to privilege-holders, ... when privileged medical records are sought by search warrant, at least a minimal level of procedural protection is required." The court then exercised its supervisory power to set out a procedure for the production of medical records, including notice to the patient and an opportunity for the patient and the medical provider to object.

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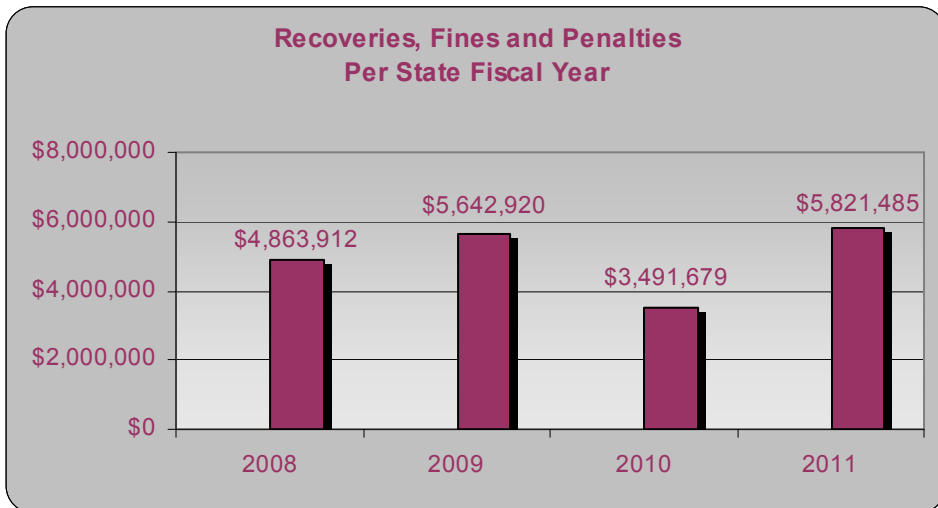
The Medicaid Fraud Unit

The Medicaid Fraud Unit investigates and prosecutes several types of crimes associated with the Medicaid program. These offenses include fraudulent or abusive billing practices by 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 administrative to criminal sanctions.

The Medicaid program covers medical and other related services for primarily three 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 in New Hampshire. Of the more than 7,000 individuals residing in the state’s nursing facilities, approximately 62% are covered by Medicaid.

Investigations are typically initiated based on reports received directly from agency personnel charged with oversight responsibility at the New Hampshire Department of Health and Human Services (DHHS), as well as other state agencies, law enforcement, and private citizens. The state agency that reviews Medicaid applications for long-term care coverage also makes referrals. Every applicant (or an authorized representative) must provide financial disclosures in order to meet the eligibility requirement for 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-seven criminal charges against eleven defendants. Eight defendants were convicted during the same period and prosecutions were pending against four defendants. Monetary recoveries, fines, and penalties from all cases totaled \$9,313,164. Of that amount, \$9,138,512 was recovered for the Medicaid Program. Patient

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funds restitution in financial exploitation cases (civil and criminal) totaled \$114,596.

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

In *State v. Anton Heins III*, the defendant, a licensed physician, was convicted of unsworn falsification for submitting false claims to the Medicaid program. Heins specialized in treating patients with drug addiction. He collected fees from patients for initial consultations but also billed Medicaid. Heins was sentenced to serve one month in the House of Corrections. As part of a related civil settlement, Heins was required to repay \$15,000 to Medicaid patients for charging them privately for initial consultations, and he repaid the Medicaid program \$25,000 for improperly billing time-based office visits.

In *State v. Frederick Salvatoriello*, the provider, an orthodontist, paid \$225,000 to resolve allegations that he submitted improper claims to the Medicaid program. Salvatoriello billed Medicaid for services related to pre-orthodontic visits, palliative treatment, and periodic oral evaluations when those services were already reimbursed under other codes. The settlement also resolved allegations that the provider failed to maintain proper documentation for claims related to limited orthodontic treatment, and that he improperly billed for certain evaluation fees.

In *State v. Jacqueline MacDonald*, the defendant was found civilly liable for financially exploiting an elderly woman in her care. MacDonald paid \$43,000 to the Medicaid program to reimburse the state for its costs in paying the elderly woman's medical bills. In a related criminal matter, MacDonald pled guilty to filing a fraudulent Medicaid application, and improperly obtaining government benefits for her own family.

In *State v. Dartmouth Hitchcock Medical Center*, the provider agreed to pay \$123,000 to settle a dispute concerning claims submitted to the Medicaid program. It was alleged that the provider's anesthesiology and radiology departments billed for services performed by medical residents without sufficient supervision by physicians.

In *State v. Forest Laboratories*, the defendant pharmaceutical company entered a settlement agreement, which resulted in the state being paid \$564,000. The settlement resolved allegations that the company improperly marketed the drugs Celexa and Lexapro, and improperly distributed an unapproved version of the drug Levothroid after it no longer qualified for coverage by government health care programs.

In *State v. Alesha Neault*, the defendant was a licensed nursing assistant, who diverted Fentanyl patches from two nursing home residents. Neault pled guilty, and was sentenced to serve eight months in the House of Corrections.

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In *State v. Cynthia Glover*, the defendant was a licensed nursing assistant, who stole more than \$4,000 by taking and forging personal checks from a nursing home resident's room. Glover pled guilty, and was sentenced to serve one month in the House of Corrections. She was also ordered to pay restitution. In *State v. Seacoast Chair Car Services*, the defendant wheelchair transportation company and its owner are currently charged with theft by deception for allegedly falsely billing more than \$300,000 to the Medicaid program for transports that never took place, and for inflating the mileage on trips that were made. The pending indictments allege that the defendants submitted claims for more than 1,300 fictitious trips and more than 60,000 fraudulent miles. Trial is scheduled for November 2011.

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 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. 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.

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 in which all homicides, with the exception of negligent homicides, are prosecuted by the Attorney General's Office, rather than the County Attorneys' Offices.

OVWA is staffed by the Director, an administrative assistant, a criminal justice specialist, three victim/witness advocates, one AmeriCorps victim advocate, a Sexual Assault Resource Team Coordinator (SART), and a Lethality Assessment Program (LAP) Coordinator. Whenever a homicide occurs within the State, one of the advocates, 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 with funeral arrangements, and explaining in general terms the process of a death investigation.

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The family continues 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 also work with the witnesses involved in each case as part of the prosecution team. They schedule court appearances so as to minimize any inconvenience to the witness, provide courtroom orientation, explain the court process and assist the witness in obtaining his/her statutory witness fee. In the past biennium, the advocates worked with 336 witnesses. The advocates also respond to numerous calls, complaints and requests from New Hampshire citizens by providing intervention and referral services.

During the 2009-2011 biennium, OVWA advocates responded to 32 homicides, coming into contact with a total of 228 new family members and 40 defendants. They provided a total of 9,221 services to a total of 845 family members. The advocates also provided services in 9 non-homicide cases, including cases

involving domestic violence, sexual assault, white-collar crimes, and other death investigations.

In 2009, the Attorney General's OVWA was recognized as one of three model homicide services programs. The United States 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, \$483,000 Intensive Case Management for Family Members of Homicide Victims Project Grant. During this biennium, OVWA in collaboration with UNH researchers conducted an evaluation of the existing homicide program to identify gaps in services or areas to be enhanced or improved. Interviews were conducted with professionals involved in homicide cases as well as with surviving family members.

One of the major gaps identified was the lack of mental health providers, particularly in the rural counties, who are willing and able to provide trauma informed services to family members. As a result, OVWA has worked to establish the New Hampshire Network of Trauma Informed Mental Health Providers (the Network), made up of 25 providers, half from the rural counties. In exchange for on-going free continuing education training, the Network providers signed a memorandum of understanding committing to being on the OVWA referral list to provide services to homicide survivors for a minimum of two years; attend the full core curriculum training; and agree to

Criminal Justice Bureau

accept payment for their services through the New Hampshire Victims' Compensation program in cases where the victim does not have insurance. Homicide victims' family members will now be able to access trauma informed mental health services no matter where in the State they live.

Through the grant, OVWA is working to institutionalize its homicide service program through the development of formalized protocols, procedures, policies, outreach and training materials and technical assistance and resources that will be used to assist other states in replicating the program.

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 a participant 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 OVWA, thus keeping their location confidential. Since its inception, 200 people have registered with the program. In the last biennium, 35 new participants were enrolled and a total of 7,462 pieces of mail were forwarded to program participants.

During the past biennium, the OVWA training unit coordinated 25 trainings and

trained over 3,140 professionals. Trainings included two Annual Statewide Domestic and Sexual Violence and two Child Abuse Conferences, two Child Advocacy Center (CAC) Summits, two Stalking Protocol trainings, a Drug Summit, two Sexual Assault Response Team (SART) trainings, two SART Summits, five mental health provider trainings, four system based victim advocate trainings and one 5-day forensic interview trainings.

In 2009, OVWA received a grant to implement a statewide Lethality Assessment Program (LAP), a research based program designed to prevent domestic violence homicides, serious injury and re-assault by encouraging more victims to seek domestic violence crisis center services. LAP involves a 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. During the last biennium, the LAP Coordinator conducted over 20 trainings for more than 300 professionals and continues to provide statewide LAP follow-up and technical assistance. Trainings included LAP Train The Trainer programs for approximately 102 law enforcement agencies and all 14 crisis centers, and LAP training for Sexual Assault Nurse Examiner (SANE) nurses, Elderly and Adult Services and County Department of Correction staff.

In 2009, OVWA also received a grant to implement SART (Sexual Assault

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Resource Teams) statewide. The SART model strategy is an effective, collaborative, coordinated multidisciplinary approach to improve the response to and successful prosecution of adult sexual assault cases. The SART Coordinator is currently providing technical assistance and support to SART teams in seven counties. During the past two years, SART initiatives included a day-long law enforcement training, a two-day prosecutor training, and two SART Summits for team members, with a total of 326 professionals trained.

OVWA also represents the Attorney General on numerous committees and commissions aimed at standardizing the services and support provided to victims of crime and enhancing the systemic response to the issues. Some of these initiatives include:

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. The Task Force was 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, there are CACs in every county. The Task Force continues to sponsor an Annual statewide conference and CAC Summit,

as well as advanced forensic interview trainings for CAC team members.

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, the evidence collection kits, and Supervised Visitation Protocol. It also sponsored two annual Statewide Domestic and Sexual Violence and Stalking Conferences.

The OVWA is responsible for 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 providers to provide consistent care that respects the

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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, 190 nurses attended SANE sponsored training. OVWA is also responsible for the distribution and tracking of the sexual assault forensic evidence collection kits.

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 victim/witness advocate's services is reflected in the following excerpts from letters that the advocates have received from families of homicide victims:

"There are rare occasions in life when we meet people who somehow touch and enrich our lives in such a way as to leave a lasting impression on us."

"We know there will be a lot of rough times ahead...but knowing we have caring people like yourself and everyone else on this case, helps us to accept our son's death and go on."

"I will never forget the support and patience demonstrated through those tough times when I felt I couldn't come to court another day."



Office of the Chief Medical Examiner

The Office of Chief Medical Examiner (OCME) has the legal authority to investigate certain deaths under RSA 611-B. Accidents, suicides and homicides are investigated as well as apparent natural deaths occurring under specific circumstances, including deaths that could be a threat to public health.

The staff at OCME consists of 2 Board certified forensic pathologists, the chief forensic investigator, an administrative assistant and a part-time, federally grant-funded evidence technician. The scene investigators for OCME bear the title “assistant deputy medical examiner” (ADME), and are

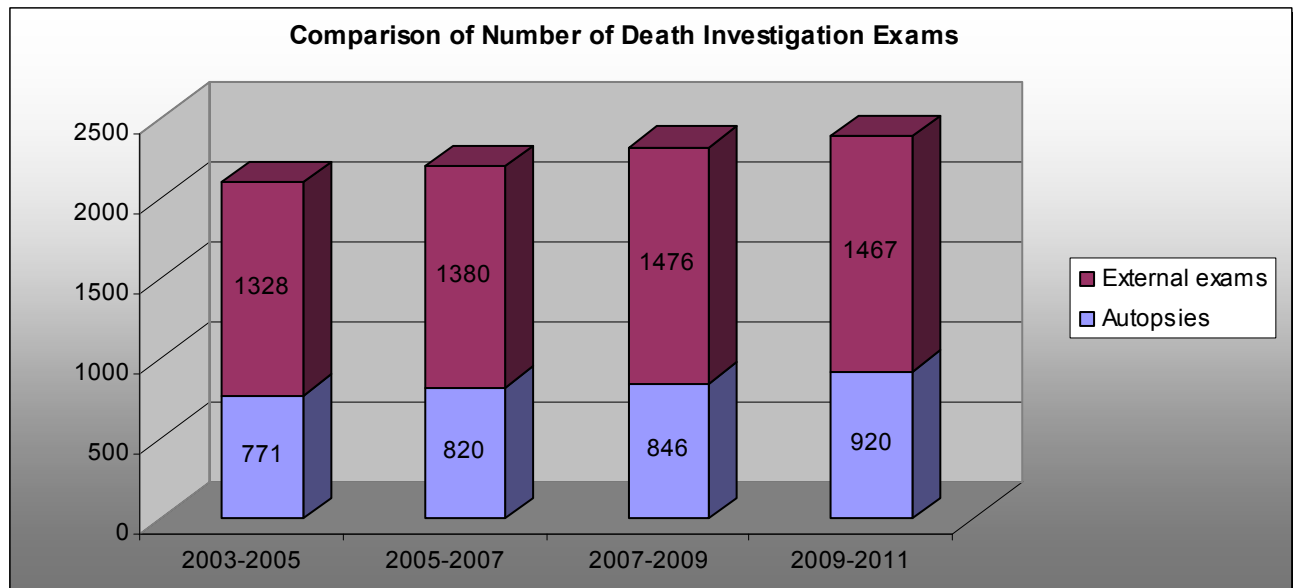
independent contractors who have been trained in death investigation.

In the last biennial period, there were 20,436 deaths in New Hampshire and the OCME actively investigated 2,387 of these deaths. The manners of death for the OCME cases were classified as:

- 1,033 accidents
- 390 suicides
- 43 homicides
- 64 undetermined
- Over 800 natural deaths

920 of the OCME cases were autopsied and 2,387 had external exams. Additionally,

In the last biennial period, there were 20,436 deaths in New Hampshire and the Office of the Chief Medical Examiner actively investigated 2,387 of these deaths. 920 of the Office of the Chief Medical Examiner cases were autopsied and 2,387 had external exams.



Office of the Chief Medical Examiner

ADMES were notified and consulted on over 3,100 deaths by hospital staff and police departments, and declined jurisdiction.

The OCME is actively involved in efforts to reduce infant and child deaths in the State with OCME staff members serving on the New Hampshire Child Fatality Review Committee (CFRC). The CFRC was created by Executive Order in 1991. The mission of the CFRC is to reduce preventable child deaths by a review of child fatalities in New Hampshire, through training and community based prevention education, and through data-driven recommendations for legislation and public policy. The OCME provides scene investigation and circumstance information, as well as injury description and the cause and manner of death, to the CFRC.

The CFRC membership is comprised of representation from the medical, law enforcement, judicial, legal, victim services, public health, mental health, child protection and education communities. After each review of a child's death, the Committee identifies risk factors related to the death and makes recommendations aimed at improving systematic responses in an effort to prevent similar deaths in the future. The CFRC provides the recommendations to the participating agencies and asks them to take actions consistent with their own mandates. The CFRC publishes the recommendation and the participating agencies' responses

to those recommendations in an Annual Report.

In 2007, the Centers for Disease Control and Prevention (CDC) provided training to agencies that investigate infant deaths. The OCME took part in this training. A key component of the curriculum included looking for hazards in an infant's sleep environment. Hazards include bed sharing, a soft mattress, fluffy bedding, and an overly bundled infant and/or overly warm room. The CDC encouraged a doll reenactment, by the caregivers, of the position in which the infant was put to sleep and the position in which the then-unresponsive infant was discovered. Until this training, ADMES had not been doing doll reenactments. The OCME and an increasing number of medical examiner offices around the country have since added this procedure to their death scene investigations. Grant money was used to buy dolls for the ADMES and, in several cases, the doll reenactment showed a situation that was different than the investigator's interpretation of the story told by the caregivers. This new information has aided the forensic pathologist in the determination of cause and manner of death.

In 2009, the OCME received grant funding from the CDC to participate in the Sudden Unexpected Infant Death Case Registry. The goal of the Registry is to provide more comprehensive data to characterize Sudden Unexpected Infant Death (SUID) cases and to determine which factors in the sleep environment

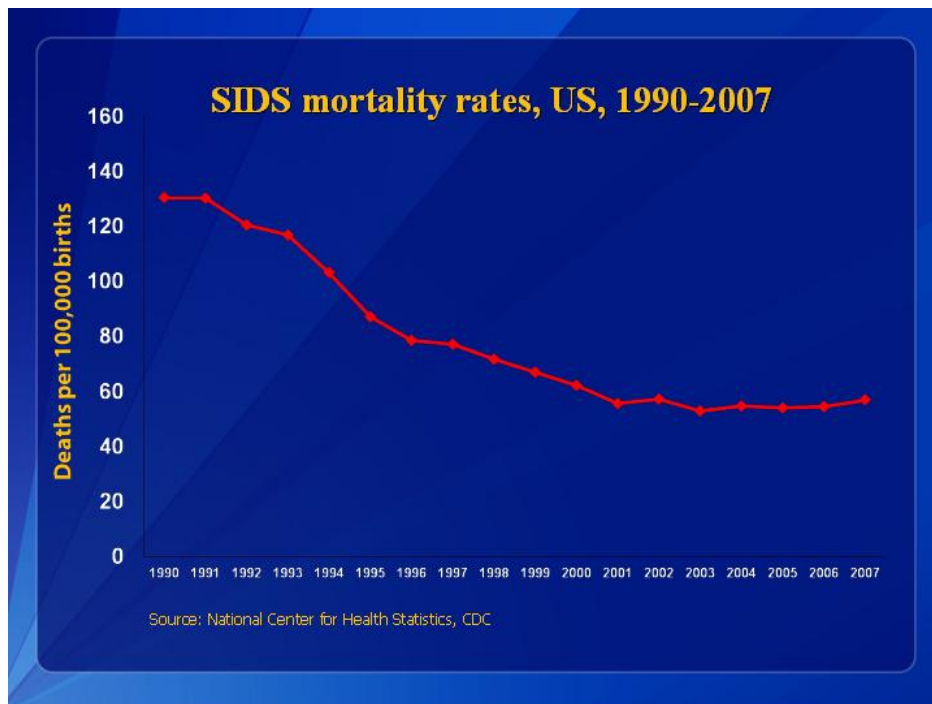
Office of the Chief Medical Examiner

contribute to SUID cases. In the past, many infant deaths that occurred in the sleep setting were attributed to Sudden Infant Death Syndrome (SIDS). SIDS is defined as the sudden death of an infant less than 1 year of age that cannot be explained after a thorough investigation is conducted, including a complete autopsy, examination of the death scene, and review of the clinical history. Many of these deaths are now thought to have been due to unsafe sleep situations. The grant enabled the OCME to hire a part-time, data entry clerk who pulls information from medical records, investigation reports and autopsy reports and enters it into the National Center for Child Death Review (NCCDR) Web-Based Case Reporting System for data analysis. One of the grant requirements is that all SUID cases must be reviewed resulting in extra meetings to review SUID cases. The review group consists

of the members of the CFRC with several supplemental guests who have been involved with a specific case. Additional information needed for the case reporting system is collected at these meetings.

In order to try to prevent SUID cases, specific and detailed information regarding the circumstances and scene of death are crucial. This information is provided to researchers and program planners who use this data to improve knowledge about SUID characteristics and risk factors, evaluate case investigation practices, and identify high risk groups to target interventions.

A graph showing how SIDS rates fell substantially after pediatricians started advising parents to put their babies to sleep on their backs, as opposed to their stomachs, is below.





Consumer Protection and Antitrust Bureau

The Consumer Protection and Antitrust Bureau (the 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 established in 1970. There are currently 18 volunteers and 18 staff members, including lawyers, paralegals and support staff, assigned to consumer protection work, antitrust matters, the Administrative Prosecution Unit, Insurance Fraud

prosecution, and Banking prosecution.

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 7,656 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.

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Consumer Protection and Antitrust Bureau

Consumer Complaints

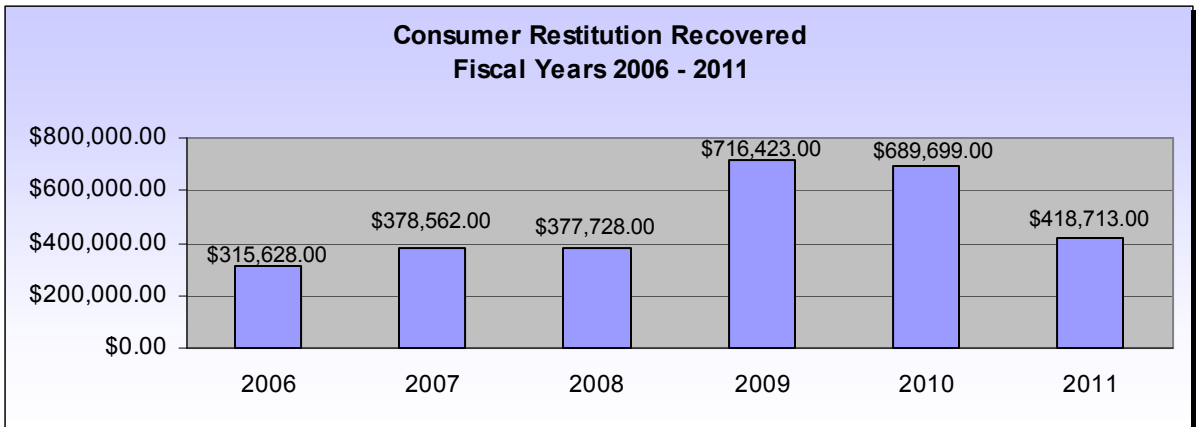
The Bureau receives and responds to thousands of written complaints from consumers in New Hampshire and other states. Complaints can be filed electronically or on paper. During the biennium, over 8,562 written complaints, including emails, were processed by the Bureau. Each complaint is reviewed and a decision is made on how best to handle the complaint given the particular facts and circumstances. Approximately 800 of those complaints were referred to other New Hampshire or out-of-state agencies. 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 New Hampshire Banking Department, Federal Trade Commission, or Attorney General Offices in other states.

The top 10 complaint categories in the last biennium were:

1. Internet purchases of goods and services
2. Contractors
3. Debt collection
4. Credit cards
5. Motor vehicle sales/services
6. Energy sales
7. Mortgages
8. Telecommunications/slamming/cramming
9. Dental services
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



Consumer Protection and Antitrust Bureau

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.

The total restitution recovered for consumers in the form of money, goods or services for Fiscal Year 2010 was \$689,699.72 and \$418,713.14 in Fiscal Year 2011, for a total of \$1,108,412.86 in the last biennium.

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 a number of 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.

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 includes a business look-up database that allows consumers to check for prior complaints against a specific company. The website also contains a listing of the security breach notifications received by the Attorney General's Office and other noteworthy information for the public. The Attorney General was notified of 227 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

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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.

Right to Know Requests

The Bureau receives a large number of right-to-know requests under RSA 91-A. Each request is responded to in a timely fashion, under the guidelines established by statute. During the last biennium, the Bureau responded to 200 such requests.

Enforcement

Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, documents and witnesses whenever he believes a violation of the Consumer Protection Act has occurred. During the biennium, the Bureau issued 46 subpoenas to investigate and resolve consumer protection cases. The Bureau also opened approximately 300 investigations into alleged misconduct. Some of those investigations led to the filing of civil or criminal charges. Many were resolved by agreement with the parties.

Civil/Equity Actions

During the biennium, the Bureau filed 6 new consumer protection civil/equity suits and resolved a number of other cases involving a wide variety of unfair

and/or deceptive trade practices.

The Bureau filed a Petition for Injunctive Relief and Petition to Attach against Munce's Superior Petroleum Products, Inc. Munce's was in the business of selling home heating oil. It entered into prepaid contracts for the sale and delivery of home heating oil which required prepayment from consumers, but failed to include contract language setting forth the manner by which the prepaid oil was secured, as required by RSA 339:79. Knowing that Munce's had significant debt, the Bureau obtained from Munce's a letter of credit in the amount of \$78,000 in order to secure the future delivery of heating oil to those consumers who had prepaid for their oil. By acting early and proactively, the Bureau was able to prevent any loss of prepaid home heating oil money for Munce's customers.

The Bureau also reached a settlement agreement with Tracy Atwater to settle all claims not resolved by a prior criminal case. The defendant, a contractor, had previously been convicted by a jury of five felony thefts, served a state prison sentence, and was placed on parole. The civil settlement requires the defendant to repay approximately \$60,000.00 to victims in monthly installments.

Criminal Prosecutions/Enforcement

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. During the

Consumer Protection and Antitrust Bureau

biennium, the Bureau filed 17 criminal charges involving a wide variety of unfair and/or deceptive trade practices or theft.

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

In *State v. Michael and Darlene Perrotta, d/b/a Forever In Time Photography*, the Bureau charged Michael and Darlene Perrotta, the owners of Forever in Time, a wedding photography business, with misdemeanor violations of the Consumer Protection Act. The Bureau received 233 complaints from consumers who alleged that although Forever in Time had photographed their weddings, they had not received any of the albums and photographs for which they had prepaid. Some consumers had been married for 10 years and had yet to receive any of their wedding photographs. The Perrottas pled guilty to the charges and the court ordered restitution in an amount over \$400,000. As a direct result of the criminal prosecution, most consumers who filed complaints with the Bureau have now received a CD of their wedding photographs.

In *State v. Flynn's Oil Company*, the Bureau charged Flynn's Oil Company, LLC with a felony level violation of the Consumer Protection Act as a result of receiving 445 complaints from customers. Flynn's Oil Company entered into prepaid contracts for the sale and delivery of home heating oil which

required prepayment from consumers, but failed to obtain and maintain a futures contract, surety bond or letter of credit as required by RSA 339:79.

Flynn's Oil pled guilty to the felony and was ordered to pay \$578,000 in restitution to consumers. In addition, Michael P. Flynn and John W. Flynn, III executed a personal guarantee with the state for the full amount of restitution to consumers.

In *State v. Steven Borghi and Downtown Fitness*, Steven Borghi and Downtown Fitness, a/k/a Work Out World Laconia pled guilty to misdemeanor and felony violations of the Consumer Protection Act for taking membership fees from consumers but failing to open the health club. Defendant Borghi was sentenced to a suspended term at the house of corrections. Defendant Downtown Fitness was fined \$15,000.00.

In *State v. Shane Senter*, the defendant pled guilty to two felony charges of theft and two misdemeanor charges of unfair or deceptive acts under the Consumer Protection Act related to his operation of a business that purported to organize science fiction conventions throughout the country. The defendant routinely cancelled events and failed to refund consumers. The defendant was sentenced to three consecutive, suspended sentences at the house of corrections, placed on probation for 10 years and ordered not to own, operate, manage or control a business where he takes payment prior to providing the promised goods or services.

Consumer Protection and Antitrust Bureau**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.

Consumer Protection and Antitrust Bureau**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 currently being arbitrated. The arbitration is expected to proceed in stages, including one “common case” in which all states will present a rebuttal to the claim by the participating manufacturers that states failed to diligently enforce their NPM laws, and then individual states will rebut the manufacturers’ claims against them. The tobacco companies are seeking recovery of up to the entire payment made to the State under the MSA. It is anticipated that the arbitration will conclude sometime in 2012.

Other Tobacco-Related Litigation

The Bureau filed suit against three tobacco retailers alleging that they were manufacturing and selling cigarettes without complying with New Hampshire’s NPM Acts. The retailers had purchased and installed machines that were capable of making a carton of cigarettes in less than 10 minutes using cigarette tubes and loose tobacco. The retailers were encouraging their customers to use pipe tobacco in the machines, because the federal

government taxes pipe tobacco at a rate that is a fraction of the rate at which cigarette tobacco is taxed. The Merrimack County Superior Court ruled that this constituted manufacturing of cigarettes, which ruling was upheld unanimously by the New Hampshire Supreme Court. The cigarette-making machines have been shut down.

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 state 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

Consumer Protection and Antitrust Bureau

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 was suspended pending the parties' decision regarding how they intend to respond to the Director of Charitable Trusts' conclusion that New Hampshire law does not permit the proposed affiliation. The investigation was undertaken in collaboration with the Federal Trade Commission, and focused

on the likely effect of the proposal on the competitive market for health-related services in the Manchester area.

The Bureau has also engaged in reviews of mergers and acquisitions, again in a multistate capacity. In the current biennium, the Bureau has participated in the joint state-federal review of the proposed merger of AT&T and T-Mobile.

Finally, the Bureau has joined with several other states and the United States Department of Justice in litigation against American Express, charging that it conspired with other credit card servicers Visa, MasterCard and Discover to set the fees charged to merchants for each card transaction at a level higher than competition would permit.

Other Multistate Investigations

The Bureau contributed to a number of Attorneys General multi-state investigations, including the investigation into the banking and mortgage industry, the closing of Allcare Dental, Dannon, DIRECTTV and Dish Network. Many of those investigations started with a large number of consumer complaints to the Bureau, including 186 complaints against DIRECTTV, 80 complaints against Dish Network and 179 complaints against Allcare Dental. Some of the multistate investigations resulted in settlement agreements with payments to the State.

Consumer Protection and Antitrust Bureau**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.

Over the last biennium, the EAU consisted of one prosecutor, a part-time investigator, a grants administrator 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 attorney and investigator positions were eliminated in 2011. The Attorney General's Office will continue to respond to and investigate complaints of elder abuse and financial exploitation, while also making appropriate referrals to other local and county law enforcement agencies.

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 2009 and June 2011, the EAU received over 338 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 Attorney General's Office from victims, their friends, or their relatives.

The EAU vigorously sought 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 prosecuted by the EAU for taking money from an elderly person and not completing the agreed-upon work and not returning the money.

In addition to prosecuting cases of elder abuse, neglect, and financial exploitation, the EAU was charged with improving the state's ability to respond to and investigate cases of suspected elder abuse, neglect and exploitation. During the biennium, the EAU 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.

Consumer Protection and Antitrust Bureau

Included in the list of cases prosecuted during the biennium are:

State v. Eugene Morrisette stemmed from a joint investigation between the Department of Justice and the State Bureau of Securities Regulation. The allegations arose from a woman who was concerned with her elderly mother's involvement in the defendant's "investment" scheme, which contained all of the characteristics of an illegal pyramid scheme. The defendant was charged securities fraud for organizing, promoting and selling a multilevel marketing program or pyramid scheme. The defendant received a suspended state prison sentence, was placed on probation and ordered to pay a \$5,000.00 fine.

In *State v. Dale Robinson*, the defendant was charged with multiple counts of theft for stealing money that belonged to an elderly man following the sale of the victim's home. The defendant, through a series of financial transactions, took money from the victim and transferred them first to a joint account and then to accounts over which the defendant had sole control. The defendant received a suspended state prison sentence, was placed on probation and ordered to pay restitution in the amount of \$166,500.00.

In *State v. Gary Mensinger*, the defendant pled to misdemeanor violations of the Consumer Protection Act for failing to provide home improvement services and/or goods to two elderly Nashua residents. The defendant took the victims' deposits and

used the money for other unrelated personal and business expenses. The defendant was sentenced to suspended house of corrections sentences, fined \$2,000.00, ordered to complete a business management course, ordered to participate in a Habitat for Humanity building project and was prohibited from owning or operating any home improvement business for 10 years. The victims received full restitution in the amount of \$4,700.00.

In *State v. Joseph Stanley*, the defendant pled guilty to multiple felony charges related to a paving scam that the defendant perpetrated throughout Nashua during the summer months of 2008 and 2009. The defendant approached a dozen homeowners and businesses in the Nashua area claiming that his paving crew was working in the area and had leftover asphalt. The defendant would provide a quote for the work but demand additional thousands of dollars once the inferior work was completed. Most of the victims were elderly homeowners intentionally targeted by the defendant. The defendant was sentenced to serve 5 to 10 years at the state prison.

In *State v. Shawn Talbot*, the defendant pled guilty to several felony-level offenses involving his fraudulent work as a home improvement contractor. The defendant received a suspended house of corrections sentence and was ordered to pay \$18,092.00 in restitution.

Consumer Protection and Antitrust Bureau**The Insurance Prosecutor**

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 a 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.

During the biennium, the Insurance Department Insurance Fraud Unit, and Insurance Fraud Prosecutor reviewed approximately 500 cases of potential insurance fraud or related criminal cases. Investigation of some of the referrals included allegations of theft by misapplication of premium by a licensed insurance producer, insurance fraud by false statement or omission made by consumers in the process of obtaining insurance or in the process of making an insurance claim, forgery of certificates of insurance by consumers, perjured testimony made during a hearing related

to payment of workers' compensation benefits, misclassification of employees by employers, theft by fake or unlicensed insurance companies, and theft of money by unlicensed insurance producers. The joint efforts of the New Hampshire Department of Insurance's Insurance Fraud Unit and the Attorney General's Office resulted in successful prosecution of eleven cases, court orders for payment of \$32,082.14 in restitution and \$12,000.00 in fines during the biennium. Approximately twenty cases were referred for prosecution by other state or federal law enforcement agencies.

Some examples of cases prosecuted by the Insurance Fraud prosecutor are listed below.

In *State v. Robert DiStefano*, the defendant, in January 2010, pleaded guilty to six Class B felony indictments for identity theft. The defendant used an assumed identity to obtain medical treatment from two medical doctors. As part of his sentence, the defendant served three months at the house of corrections. He also received a suspended fine, a consecutive suspended sentence at the state prison and was ordered to pay restitution in the amount of \$2,190.19.

In *State v. Wayne Holler*, the defendant, in December 2010, pleaded guilty to one Class B felony for insurance fraud. The defendant suffered a shoulder injury while working as a welder. He was treated for this condition and awarded benefits. While collecting workers' compensation benefits, the defendant

Consumer Protection and Antitrust Bureau

signed a form certifying that he had not worked or earned any money during a three-month period. The defendant was videotaped while working in a capacity outside the scope of his reported physical ability. Financial documentation showed that the defendant earned in excess of \$1,000 while he claimed to be unable to work and was collecting workers' compensation benefits. As part of his sentence, the defendant repaid Acadia Insurance Company \$2,891.95 in benefits and received a suspended sentence at the state prison of 1½ to 3 years. He was fined \$500.00 and ordered to write a letter of apology to Acadia.

In *State v. Audrey Dion*, in March 2011, the defendant pleaded guilty to two Class B misdemeanor complaints for forgery for creating and signing an insurance producer's name to two false insurance certificates. The defendant created the false certificates to show proof that her construction company had liability insurance when it attempted to win a construction contract. The contracting company discovered the false signatures before the contract was awarded. As part of her sentence, the defendant paid a fine of \$4,000.00.

In *State v. Josephine Rich*, in May 2011, the defendant, an insurance producer for the Everett B. Rich Agency in Lyme Center, NH, was convicted of a Class A felony of theft by misapplication for accepting a one year insurance premium of \$31,224 in full, which was owed to a Worcester Insurance Company. The

defendant accepted the premium and then violated her position of trust when she did not pay the premium and used the money for her own purposes. The defendant repaid the amount of the premium and the policy holder's policy was reinstated without interruption. As part of her sentence, the defendant received a suspended state prison sentence of 1½ to 3 years and a fine of \$4,000.

The Banking Prosecutor

In late 2009, the Banking Department and the Department of Justice entered into a memorandum of agreement for a new banking prosecutor's position to work collaboratively and cooperatively between the two departments. The banking prosecutor reviewed complaints received at both agencies, determined whether the complaint should best be handled by a state or federal agency and initiated investigations, some which led to civil and criminal enforcement actions.

Legal Counsel to Boards and Commissions

During the biennium, attorneys within the Bureau served as legal counsel to the Manufactured Housing Board, the Ballot Law Commission and the Office of the Consumer Advocate at the Public Utilities Commission.

Consumer Protection and Antitrust Bureau**Assistance to Criminal Bureau**

During the biennium, attorneys assigned to the Consumer Protection Bureau provided assistance to the Criminal Bureau in four separate homicide prosecutions, one criminal investigation and one criminal appeal.

Registration/Regulation**Condominium and Land Sales**

During the biennium, the Bureau issued 67 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act (subdivisions) and 91 certificates of registration or exemption for condominiums under the Condominium Act. The State derived \$169,100 in revenues from the application fees collected by the Bureau in connection with these regulatory activities.

Health Clubs and Martial Arts Schools

The Bureau issued 324 registrations to health clubs and 178 registrations to martial arts schools during the biennium. Fees from registration of health clubs totaled \$50,200. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement.

Other Registrations

Eighteen automatic telephone dialers registered with the Bureau during the biennium. Those telemarketers using

pre-recorded messages must file and pay a \$20 filing fee.

Eighty-seven independent living retirement communities registered with the Bureau 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 professional 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 Nursing; 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; the Barbering, Cosmetology & Esthetics Board, and the Midwifery Council.

Consumer Protection and Antitrust Bureau

Three attorneys, an investigator and a paralegal staff the Administrative Prosecutions Unit. During the biennium, contract attorneys handled cases for the Accountancy Board, Board of Nursing, and Barbering, Cosmetology and Esthetics Board. Below is a summary of cases handled by the APU during the last biennium.

The APU opened 581 cases from July 1, 2009 through June 30, 2011. The cases opened were for the Board of Medicine (81), the Board of Dental Examiners (33), the Board of Mental Health Practice (45), the Board of Pharmacy (41), the Licensed Allied Health Professionals (25), Joint Board of Licensure and Certification (14), the NH Board of Veterinary Medicine (12), Board of Chiropractic Examiners (3), Board of Accountancy (11), Board of Nursing (291), and the Barbering, Cosmetology & Esthetics Board (24).

The APU closed 478 cases during the biennium, including cases carried forward from the previous biennium. Of those, 333 resulted in some form of disciplinary action.

In those cases that were heard by an administrative board at which an APU attorney acted as hearing counsel, 15 resulted in a reprimand or required the licensee to take remedial measures and 31 resulted in license denial, suspension or revocation. In some cases, multiple hearings were necessary to reach a final disposition.

Settlements after investigation resulted in 67 license suspensions, surrenders or revocations; 134 confidential letters of concern; and 145 findings of no discipline warranted. In addition, the boards assessed \$201,310 in fines in the biennium in cases involving APU lawyers and investigators. \$24,080 of the assessed fines were conditionally stayed or suspended.

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

The Midwifery Council

APU assisted the New Hampshire Midwifery Council with its investigation and prosecution of a certified midwife who failed to follow established protocols by attempting to deliver high risk pregnancies, in one case leading to severe brain injury to an infant and in another case leading to permanent injury to a mother due to untreated post-partum infection. After a lengthy investigation and protracted negotiations, the Council approved a permanent voluntary surrender of licensure.

Joint Board of Licensure and Certification

During the biennium, the Joint Board of Licensure and Certification added the home inspectors and court reporters to the list of professions the board oversees.

NH Board of Licensed Land Surveyors :
APU assisted the Board with the

Consumer Protection and Antitrust Bureau

investigation and negotiation of a settlement with a land surveyor who failed to complete a contract for service despite having received payment from his client. Settlement resulted in a fine of \$1,000. When the licensee failed to make the required payments in a timely manner, APU assisted the Board in collecting the fine.

NH Board of Licensed Architects:
APU assisted the Board with an investigation and negotiation of a settlement agreement with a licensee who submitted inaccurate information on a renewal application by failing to report discipline in another jurisdiction. The settlement included a reprimand and a fine of \$2,500.

NH Board of Professional Engineers:
APU assisted the Board with an investigation and negotiation of a settlement agreement with a licensee who submitted inaccurate information with his renewal application by failing to report that he was disciplined in another jurisdiction for practicing without a license. The settlement included a reprimand and a fine of \$3,500.

Board of Pharmacy

During the biennium, APU assisted the Board with its investigation and prosecution of fourteen cases involving pharmacists who dispensed the wrong medication or dispensed medication in the wrong dose, in some cases leading to a patient's injury or death. APU also prosecuted eight cases of pharmacists or

pharmacy technicians who either diverted controlled drugs from their pharmacy employers or who had substance abuse problems affecting their job performance and endangering clients.

In addition to these cases, APU assisted the Board with the prosecution of a pharmacist who dispensed controlled drugs without valid prescriptions and fraudulently mislabeled prescriptions. After a hearing, the Board revoked the pharmacist's license. The pharmacist has since been indicted by a federal grand jury on six counts of conspiracy, nineteen counts of corruptly soliciting and receiving kickbacks as an agent of an organization that received federal funds, and two counts of filing false federal income tax returns.

Licensed Allied Health Professionals

Speech-Language Pathologists Governing Board:

The Board received a report that a speech-language pathologist who practiced in a New Hampshire school district was arrested by federal agents on child pornography charges to which the practitioner eventually pleaded guilty. APU negotiated a Preliminary Agreement for Practice Restrictions, to prevent the licensee from practicing during the course of the investigation. APU assisted with the Board's investigation and negotiated a settlement whereby the practitioner agreed to a five-year revocation of his license.

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Occupational Therapist Governing Board:

APU assisted the Board with the investigation and prosecution of an Occupational Therapist who fraudulently billed for services not rendered to resident of the nursing home where the practitioner was employed. APU eventually negotiated a settlement that included a reprimand and a fine of \$1,000.

Physical Therapy Governing Board:

The Board asked APU to assist with the investigation of a licensee alleged to have lied about his disciplinary history in other jurisdictions. The investigation revealed that the practitioner had been disciplined in another state for engaging in an inappropriate personal relationship with a patient. APU negotiated a settlement agreement that included a reprimand and a requirement that the practitioner complete 24 hours of continuing education in the area of professional boundaries and ethics.

Board of Dental Examiners

The Board received information from a dentist's employee alleging unsanitary conditions and practices in the dentist's practice. APU assisted the Board with an unannounced inspection which led to a settlement agreement that included a reprimand; 24 hours of continuing education; and weekly proof of biological testing. The settlement also allowed for future unannounced inspections and subsequent inspections revealed that the practice was in

compliance with recognized standards of hygiene and infection control.

The Board requested APU assistance with an investigation when it learned that a dental hygienist had been arrested for assault on her daughter. The licensee signed a preliminary agreement for practice restrictions whereby she agreed not to practice until further order of the Board. The hygienist's license has since expired and she has not attempted to renew it.

After receiving numerous complaints against a dentist, the Board asked for APU's assistance in investigating and prosecuting the allegations of substandard care, unprofessional demeanor, and over billing. At the conclusion of its investigation, APU negotiated a settlement agreement that included a reprimand and a fine of \$7,500.

When Allcare Dental and Dentures abruptly closed its two New Hampshire offices with no notice to patients or employees, APU and Department of Justice employees, along with members of the Board, arranged for the offices to be opened for patients to retrieve their records. The Department of Justice has received more than 140 complaints against Allcare for problems ranging from improper billing to misdiagnosis to shoddy dentures. APU is currently involved in the investigation and prosecution of Allcare's owner for abandoning Allcare's patients and engaging in questionable business

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tactics, as well as the substandard care issues presented by the numerous consumer complaints.

The Board asked APU to investigate and determine whether medical day spas at which technicians offer teeth whitening services were engaging in the unauthorized practice of dentistry. APU's investigation led to an expanded definition of the practice of dentistry (RSA 317-A:20 (h)).

Board of Medicine

APU assisted the Board with its investigation of a physician who gave up hospital privileges in the face of an ongoing investigation by the hospital of the physician's clinical competence. APU negotiated a Preliminary Agreement for Practice Restrictions to prevent the licensee from practicing during the course of the investigation. APU's investigation revealed numerous incidents of substandard care on the part of the physician and resulted in a settlement agreement that suspended the doctor's license for 12 months and required the doctor to undergo a global medical skills assessment. That assessment highlighted significant deficiencies in the doctor's skill and knowledge. The doctor's license remains suspended until further order of the Board.

A nurse at a New Hampshire hospital alleged that a physician physically assaulted her and acted mentally unstable. APU assisted the Board with

its investigation to determine the licensee's fitness to practice. Based on APU's investigation, the Board issued an emergency suspension of the physician's license. At the conclusion of the investigation, the physician signed a permanent voluntary surrender of license.

A physician who had been convicted of voluntary manslaughter for shooting a man in a Massachusetts hospital where the doctor had privileges, applied to reinstate his New Hampshire medical license. APU assisted with the investigation and hearing before the Board, after which the Board denied the physician's application.

APU assisted the Board with its investigation and prosecution of a physician who negligently prescribed controlled drugs to numerous patients. As a result of that investigation, the physician signed a settlement agreement that, among other things, suspended the physician's license for five years. It subsequently came to light that the physician had continued to practice after the suspension. During APU's investigation of that allegation, the physician abruptly closed the practice without notice to patients and failed to honor patients' requests for their records. APU assisted with the further prosecution of the physician for these additional allegations and continues to assist the Board with monitoring the physician's compliance with Board orders.

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After receiving a complaint, the Board requested APU's assistance with the investigation and prosecution of a physician who operated a suboxone clinic and allegedly over prescribed and treated patients in an intimidating, unprofessional manner by employing punitive prescribing practices when patient's payments were late or checks bounced. At the conclusion of the investigation, the physician signed a settlement agreement that included a five-year suspension and a fine of \$10,000.

The Board initiated an investigation when it received information that a physician had been arrested for DWI. APU's investigation revealed that the physician had a long history of police contacts due to substance abuse and that his ability to practice medicine effectively was compromised by his substance abuse. As a result of this information, the Board ordered an emergency suspension of the doctor's license, which remains suspended pending further order of the Board.

Board of Mental Health Practice

The Board received a complaint from a father who alleged that he was unable to get information from a licensed clinical social worker about the practitioner's treatment of the complainant's daughter. During APU's investigation, serious questions arose as to the licensee's mental status and ability to practice safely. After a hearing at which the licensee failed to appear, the board suspended the social worker's license for

a minimum of 3 years and ordered that the practitioner submit to a fitness for practice assessment to be considered for reinstatement.

The Board received two complaints from clients of a licensed clinical mental health counselor. When the Board received no response from the licensee regarding the complaints, it asked APU to investigate not only the complaints, but the licensee's failure to respond to the Board's requests for information. APU's investigation was thwarted by the licensee's inability or unwillingness to respond to requests for information or provide adequate, complete records for the two clients. As a result, a hearing was conducted and the practitioner's license was indefinitely suspended pending further order of the Board. Reinstatement was conditioned on the licensee submitting to a fitness to practice assessment. The practitioner has not met that condition.

A counseling center alerted the Board that one of its counselors was exhibiting mental instability including paranoid tendencies that were affecting the counselor's job performance and professionalism. APU's investigation revealed that the counselor was abusing prescription medications by arbitrarily increasing the doses without his physician's knowledge, resulting in a drug-induced psychosis. A hearing was scheduled to determine whether the counselor should continue practicing but before the hearing the practitioner entered into a consent agreement. The

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agreement required the practitioner to undergo regular drug screening and undergo a fitness to practice assessment and addiction assessment.

Board of Veterinary Medicine

The Board received information that a licensed veterinarian had knowingly allowed an unlicensed individual to perform veterinary medical procedures at the veterinarian's practice. APU assisted with the subsequent investigation and negotiated a settlement that included a reprimand and a fine of \$2,000.

The Board received a complaint alleging that a veterinarian misdiagnosed the complainant's dog and might have euthanized the dog if complainant hadn't obtained a second opinion. APU assisted with the investigation and negotiated a settlement agreement that included a reprimand and six hours of continuing education.

Board of Chiropractic Examiners

A chiropractic patient alleged that her chiropractor engaged her in a sexual relationship during their treating relationship. APU's investigation revealed that the licensee had sexual relations with numerous patients. APU was able to negotiate a settlement agreement whereby the licensee agreed to a permanent, voluntary surrender of license and a fine of \$1,000.

A former patient alleged that her chiropractor made unwelcome advances

and came to her home uninvited. APU's investigation concluded that the practitioner inappropriately touched the female client and also made an unwelcome, unsolicited proposition to that client on another occasion. As a result, the licensee signed a settlement agreement that included a reprimand; 12 hours of continuing education in the area of professional boundaries; and a fine of \$1,000.

Board of Accountancy

The Board received information that a certified public accountant was exhibiting mental instability and threatening violence and suicide. In addition, numerous clients complained about their inability to obtain records from the accountant. The Board initiated proceedings for an emergency suspension of the accountant's license but before the hearing, the licensee agreed to voluntarily surrender his license.

Barbering, Cosmetology and Esthetics Board

When a manicurist was convicted of misdemeanor sexual assault the Board requested APU's assistance with its investigation and prosecution. After a hearing, the board suspended the licensee for two years and ordered that he undergo psychological counseling. It further ordered that in the future, the licensee may not own or manage a shop and may not supervise other board licensees.

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The Board requested APU's assistance with the investigation and prosecution of a manicurist/salon owner whose salon had repeatedly failed inspections and violated Board administrative rules. After a hearing, the salon owner was fined \$500 and her manicurist license was suspended pending completion of continuing education in shop sanitation. In addition, her shop license was revoked. In the future, she may not own or manage another shop.



Environmental Protection Bureau

The Environmental Protection Bureau (EPB) is comprised of six attorneys, two paralegals, and a secretary. Among its many roles in state government, 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, EPB represents various

environmental agencies such as the Department of Environmental Services (DES), the New Hampshire Fish and Game Department (F&G), and the Office of Energy and Planning. 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. EPB

The Environmental Protection Bureau 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. The Bureau also represents various environmental agencies.



The view looking across the Androskoggin River at the field on Philbrook Farm in Shelburne—one of the many conservation projects reviewed by the Environmental Protection Bureau during the biennium.

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also provides advice to some non-environmental entities such as the Second Injury Fund. Additionally, EPB makes significant contributions to the State's welfare through its well-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 EPB on a daily basis.

Environmental Enforcement in New Hampshire

The General Court created EPB to enforce statutes pertaining to environmental protection and preservation, counsel state agencies on environmental issues, exercise the common law powers of the Attorney General to protect the environment, and bring public nuisance and other actions in order to enhance environmental protection. EPB also brings actions to enforce administrative rules promulgated by environmental agencies. During the last biennium, 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 United States Environmental Protection Agency (EPA), 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 EPA, EPB has prosecuted or is in the process of prosecuting numerous environmental crimes. Over the biennium, EPB successfully revitalized its criminal enforcement program and now once again possesses the expertise to bring indictments and prosecute criminal actions. 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 EPB in its criminal actions. EPB also provided criminal enforcement training to assist agency staff in identifying and dealing with possible criminal misconduct. These measures resulted in ten criminal convictions for environmental crimes during the biennium. The cases below provide just two examples of environmental criminal enforcement.

State v. Ramirez-Cruselles

In January of 2010, the State entered into a plea agreement with Lourdes Ramirez-Cruselles related to the unlawful disposal of asbestos. Although told that she could not dispose of asbestos in anything other than a state-approved facility, Ramirez-Cruselles dumped fourteen bags of

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asbestos from an asbestos abatement project at her home in a dumpster at Keene State College where she worked as a professor. This action endangered the welfare of students and of any waste management workers who may have unknowingly handled the asbestos. Ramirez-Cruselles pled guilty to two misdemeanors and was required to spend three weekends in a county correctional facility.

State v. Kevin Guay

The State alleged that Kevin Guay unlawfully disposed of solid waste by burying it in the front yard of his residential property near Penacook Lake in Concord, New Hampshire. At trial, Guay attempted to place the blame on all of those around him including a septic installer, subcontractors, and even state and local officials. Nevertheless, the state prevailed and demonstrated that

Guay knowingly and unlawfully disposed of a significant amount of material. The seeming disregard on the part of Guay led the court to order him incarcerated for a minimum of one year. Guay is currently serving this sentence.

Civil Enforcement and Defense

During the biennium, EPB opened 365 new civil environmental enforcement cases. These cases coincide generally with the different programs of EPB's client agencies although some relate to the State's common law duties and responsibilities. EPB collected over \$11,000,000 in civil penalties, cost recovery, mitigation, and other funds during the biennium. During the same period, EPB obtained more than an additional \$900,000 in debt recovery. EPB also successfully defended numerous cases where plaintiffs sought recovery from the State and protected the



A combination of criminal and civil enforcement actions brought by EPB were effective in preventing the pristine waters of Concord's drinking water supply (above left) from becoming subject to eutrophication (example, above right). Eutrophication is caused by excessive nutrients, sometimes carried by fine sediment, and results in algae blooms that stifle other plant growth and reduce dissolved oxygen through their decay. These blooms can even produce potent neurotoxins.

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State and its citizens in numerous bankruptcy proceedings.

Water Division

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 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 New Hampshire Coastal Program protects the coast through a federally-approved and enforceable coastal management program. Each program

possesses unique characteristics that require expertise and specialized knowledge on the part of EPB attorneys representing these interests. EPB actively represented each of these programs during the last biennium.

Wetlands

Roughly 10% of the State is covered in wetlands. The DES Wetlands Bureau receives approximately 500 complaints per year and processes approximately 2,000 applications. This necessitates coordination, training, and enforcement assistance from EPB on many different levels. In addition to programmatic level assistance, legislative initiatives, and other responsibilities as legal counsel, the EPB also initiated numerous wetlands enforcement actions - an example of one is described below.

State v. Torromeo Industries Inc.

In 2010, the State began investigating the Torromeo Industries, Inc. ("Torromeo") quarry site in Kingston. The State believes that Torromeo filled several acres of wetlands to a depth of many feet in order to make room for tailings and other residual material. Fine silt and clay particles from runoff also impacted neighboring water bodies. The State has taken the lead on all wetlands issues and has agreed that the EPA will take the lead with respect to water quality. The State has not yet filed suit; however, the parties have already reached agreement with respect to restoration of many acres of fill. The photo on the next page shows the wetlands.

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State v. Ellen Druan

Small changes to wetlands needed for flood storage or runoff can have significant negative consequences. In 2010, Ellen Druan, a resident of Massachusetts, diverted a small stream on her property in Antrim by installing a culvert without authorization. As a result, town roads were washed out to a depth of many feet – so much so that even half-track vehicles could not pass to make repairs (see picture to the right below). When Antrim experienced trouble getting Druan to remove the culvert, the State acted quickly, obtaining a court order that allowed Antrim and the State to enter onto the

property and immediately remove the culvert. The court later assessed penalties against Druan and Antrim is seeking recovery of its costs and damages.

State v. Dennis Proulx

Dennis Proulx constructed approximately ninety linear feet of retaining wall several feet lakeward into Lake Winnepesaukee. In the aggregate, such encroachments impact wave action and erosion, impinge on habitat, and take land held in trust by the State for the public. Because the State determined that Proulx knew or should have known that his project was unlawful, Proulx was



The Torrormeo Industries, Inc. wetlands restoration project in Kingston. Significant fill has been removed in the wetlands areas (left) down to the level of organic wetlands soils which will soon feature native wetlands vegetation. For years, the wetlands area had looked like the operational portion of the quarry (right), sitting under up to fifteen feet of fill. A white silt barrier divides the two areas to prevent unwanted runoff.



A photograph of what had been a town road, nearly obliterated by diverted runoff from the Druan property.

Environmental Protection Bureau

assessed a \$50,000 penalty, half of which was suspended contingent on future compliance.

Terrain Alteration

State v. Marco Gagnon

The State remedied long-standing enforcement issues with Marco Gagnon in 2011 related to his construction and operation of a motocross raceway. Gagnon committed several wetlands violations and did not obtain required Alteration of Terrain permits for his site work. Gagnon now has a wetlands restoration plan and wetlands permit for his proposed work on the property. In addition, Gagnon was assessed a \$100,000 penalty due to the length of non-compliance. Half of the total penalty will be suspended if Gagnon complies with the court order the State obtained from the Cheshire County Superior Court. Of the remaining \$50,000, Gagnon will pay \$25,000 in cash and has donated a 57-acre parcel of conservation land valued at over \$47,000 to the State in lieu of an additional \$25,000 cash payment.

Shoreland Protection

State v. Michael Pantaleo

Michael Pantaleo reconstructed a retaining wall along Arlington Pond in Salem without authorization and built numerous unpermitted structures within the protected shoreland, including a stone patio, fire-pit, perched-beach, and

stairway. Pantaleo not only had to restore the area, but was required to pay \$25,000 in civil penalties with another \$15,000 suspended provided he committed no future violations.

Water Quality

State v. The Middlesex Corp.

The widening of I-93 constitutes a huge undertaking within the State and one in which EPB participates in many ways. Having successfully defended the issuance of the Section 401 Certification for the widening, EPB also maintains enforcement authority to ensure all activities occur according to state law. In 2009, local residents noticed muddy water entering Cobbetts Pond from the Exit 3 reconstruction undertaken by The Middlesex Corp. Both EPB and the Department of Transportation, through the Attorney General's Transportation and Construction Bureau, worked together to identify the source of the problem, fix the cause of the issues, and assess a civil penalty against The Middlesex Corp. for its failure to adequately maintain water quality. In order to benefit local residents, the Attorney General allowed The Middlesex Corp. to perform an environmental project, valued at approximately \$60,000, to help prevent sediment runoff into Cobbetts Pond. This requirement was in addition to the strict mandate to ensure that all runoff from the construction project itself was contained. All requirements were memorialized in a consent decree entered

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as a court order by the Rockingham County Superior Court.

State v. Paul Hayward

EPB has attempted to strengthen its enforcement efforts with respect to drinking water systems. Paul Hayward failed numerous times to adequately test the drinking water provided at his commercial establishment called the Sugar Hill Inn. Eventually, the State not only obtained a judgment against Hayward of \$55,000, but also sought an order requiring that the inn be shut down entirely if water quality tests are not performed on time and in the proper manner.

Waste Division

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. EPB brings enforcement cases 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.

State v. Holgate LLC, et al.

In 2010, EPB filed suit against both the buyer and seller of property located on Stark Avenue in Dover. The State also filed suit against the contractor working on the project. The suit alleges that all parties were aware that an environmental report disclosed the presence of asbestos in the building. The buyer and seller of the property acknowledged the presence of asbestos and included provisions in the sale for its removal prior to demolition. Nevertheless, the contractor demolished the building without performing any asbestos removal. The suit claims that, as a matter of waste disposal, the asbestos was not properly packaged, labeled, transported or disposed. This action is a joint action of both the DES Air Division and the DES Waste Division.

Air Division*State v. Plourde Sand and Gravel, Inc.*

The State filed suit against Plourde Sand and Gravel, Inc. ("Plourde") for air emissions violations at two facilities – one in Hooksett and one in Allentown. Plourde failed to cooperate and so, in addition to the outstanding issue of trial and civil penalties, the State secured an order from the Merrimack County Superior Court finding Plourde in contempt and penalizing it \$1,000 per day for every day of non-compliance. Trial has not yet been scheduled.

Environmental Protection Bureau*State v. Walter Jensen and Summer and Winter Construction, LLC*

In 2010, the State filed suit against Walter Jensen and his company Summer and Winter Construction, LLC, for performing two unauthorized asbestos abatement projects and failing to provide documents pursuant to an administrative order. At trial, the State demonstrated that Jensen knew that he should not perform these projects, he knew what asbestos was, he knew it was present, and he failed to use any protective measures required for asbestos removal. A statement by Jensen that he properly disposed of the asbestos was also contradicted by testimony of an engineer from the Turnkey Waste Management Facility who testified that Turnkey had no record of any such disposal. The State is currently awaiting the trial court's decision.

Air Division Counseling

EPB provides extensive counseling services to the DES Air Division in order to ensure that decisions comport with applicable state and federal laws. Recently, EPB assisted in the promulgation of two similar but distinct determinations with respect to the PSNH Merrimack Station – one related to “baseline mercury input” and one related to “baseline mercury emissions.” These decisions determine compliance reduction requirements of PSNH as well as the amount of credits PSNH will obtain after installation of its Flue Gas Desulfurization (“Scrubber”) technology.

Nuclear Relicensing

EPB spearheaded the review of the relicensing application for Unit 1 of the NextEra nuclear facility in Seabrook. After garnering information from all state sources as well as outside experts, EPB negotiated a settlement with NextEra that requires NextEra to perform testing and monitoring beyond the scope of federal requirements. For instance, NextEra must complete more rigorous testing of coatings within the containment vessel than would have otherwise been required.

Multi-State Litigation

Over the biennium, 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. The State continued its participation in *Mississippi et al. v. EPA* which deals with EPA's failure to properly promulgate a national ambient air quality standard (“NAAQS”) for ozone. In various federal consolidated cases, EPB has sought to uphold EPA's “endangerment finding” that CO₂ is a gas that contributes to climate change but is also fighting to support EPA's “tailoring rule,” which is designed to reduce the burden on states when dealing with CO₂ as it pertains to regulated sources, state plans, and permits. The State also signed on as *amicus curiae* in *Oregon, et al. v. FERC* to ensure that states like New Hampshire retain a voice during proposed federal siting of Liquid Natural Gas facilities.

Environmental Protection Bureau

New Hampshire Fish and Game Department

Facilities Construction and Lands Division

EPB provides legal counsel and review of real estate documents to the F&G Land Division. During the biennium, EPB reviewed twenty-one fee agreements and ten conservation easement agreements for F&G, which in total placed 7,389 acres of land in conservation. Intensive counseling was provided with respect to many projects including the refurbishment of the Pulpit Rock Tower, a fortified observation tower in Rye, similar to a lighthouse, constructed to look for enemy ships during World War II.

The majority of EPB time spent representing the Facilities Construction and Lands Division pertained to the

controversial boat ramp proposal for Lake Sunapee. Construction of the boat ramp would provide increased access to citizens of New Hampshire to Lake Sunapee. The State purchased the land specifically to build such a boat ramp, although the specific design and operation of the proposed ramp and parking area has been hotly disputed by local residents. EPB successfully defeated claims related to unfunded mandates and violations of deed restrictions. EPB will address remaining issues in coordination with CORD.

Wildlife Division and Marine Division

EPB worked closely with the F&G Marine Division on a new program to use federal grant money to purchase commercial fishery permits for distribution to small businesses. EPB also represented F&G in a suit regarding allegations of improper disbursement of funds intended to mitigate the impact of new federal regulations on the lobster and groundfish fisheries. EPB further provided valuable assistance to the F&G Wildlife Division regarding species such as the cottontail rabbit and those species that are considered “non-game,” as well as other issues such as falconry.

CORD

In addition to representation in the Lake Sunapee Boat Ramp issue discussed above, EPB provided assistance to CORD on numerous



Pulpit Rock Tower in Rye.

Environmental Protection Bureau

issues involving grant structures, the weatherization program, emergency preparedness, and land use issues. In the case of *State et al. v. H&H Land Holdings, Inc. et al.*, EPB sued both the buyer and seller of land on behalf of CORD for their failure to abide by numerous conservation easement restrictions. Among other things, the buyer purchased only a portion of the conservation property even though the easement expressly prohibited a sale of less than the full property. The Grafton County Superior Court interpreted the deed in the State's favor and both the buyer and seller, through a subsequent settlement, rescinded the sale.

MTBE

In 2011, the court issued several important decisions in the State's 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"). These decisions set the stage for trial to begin in March of 2012 in the Merrimack County Superior Court. In the first ruling, the superior court denied Defendants' motion for partial summary judgment in which Defendants were asking the court to rule that the State, in its *parens patriae* capacity, could not seek damages for testing and treating private wells. The court issued this ruling after the New Hampshire Supreme Court provided guidance by way of an interlocutory decision. The State also prevailed on an attempt by Defendants to exclude the State's experts on grounds of

relevance. In this ruling, the superior court ordered that the State would be permitted to call expert witnesses who could offer opinion testimony as to statewide MTBE contamination in a single trial. Defendants were seeking to try the case on a site-by-site basis. With over 1,400 known MTBE remediation sites, a ruling in the Defendants' favor would have resulted in litigation that could have taken decades. The Defendants are now attempting to appeal that ruling the New Hampshire Supreme Court.

Bankruptcy and Insolvency

An attorney in EPB handles most bankruptcy matters affecting state interests. Over the biennium, EPB attorneys continued successful work in bankruptcy matters. Of particular note, EPB and Civil attorneys appeared in the FairPoint Communications bankruptcy in the Southern District of New York and before the New Hampshire Public Utilities Commission. In that matter, the Attorney General's Office successfully negotiated an agreement with the company that made certain modifications to an existing regulatory agreement, which was approved by the Bankruptcy Court and the PUC. Under the agreement the debtor paid all of the State's considerable costs.

EPB attorneys also participated in the sale out of bankruptcy in Toronto, Canada, of the Gorham paper mill to an investor from New York. The reopening of the mill occurred and is expected to reemploy many North Country residents.

Environmental Protection Bureau

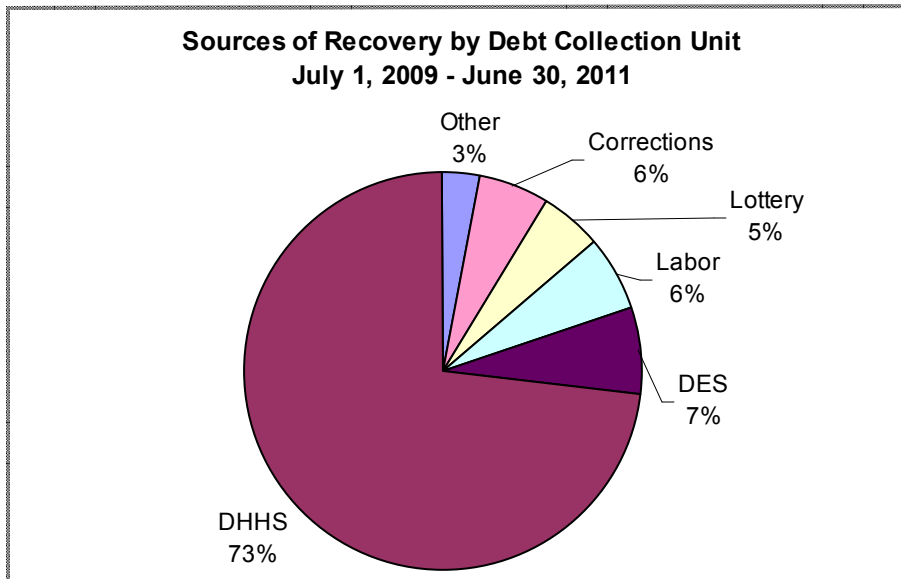
EPB attorneys litigated to a successful conclusion a dispute with a bankruptcy trustee over the return of over \$100,000 in bond money to the New Hampshire Charitable Gaming and Racing Commission that was occasioned by the bankruptcy of Hinsdale Greyhound Racing Association. EPB attorneys also liquidated Precision technologies, Inc. after it closed without notice leaving over 100 employees without work and pay. EPB successfully negotiated for the payment of the workers wages and a significant portion of their accrued vacation pay.

Finally, EPB successfully completed the collection of \$200,000 in accrued vacation pay, owed by Car Components Technologies, as part of a Delaware bankruptcy case that began a few days before Thanksgiving in 2006.

Debt Collection

The Legislature created the Attorney General’s debt recovery program in 2007 in order to collect debt owed to state agencies and departments. Agencies and departments refer outstanding debts to 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 over \$900,000 for the State. Given the variety of state agencies and departments, EPB has pursued an assortment of debts, including administrative fines owed to DES, 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.



Environmental Protection Bureau**Counsel for the Public – Site Evaluation Committee**

Laidlaw Berlin Biopower, LLC (Berlin Station, LLC)

During the biennium, EPB served as counsel for the public before the New Hampshire Site Evaluation Committee (SEC) on the proposed biopower facility in Berlin. When operational, the facility will be able to generate more than 70 megawatts. The facility will use infrastructure from the former Fraser Pulp Mill in order to turn wood into electricity. EPB reached agreement with the applicant on several conditions of the SEC certificate, including conditions related to protection of the fuel resource, resource management, assurances regarding the use of local and regional labor, a provision that fuel will not be switched without SEC review, and even a forestry scholarship to encourage the next generation of responsible management. EPB was also instrumental in reviewing the financial condition and structure of the applicant.

Wind Projects

EPB attorneys served as Counsel for the Public in matters relating to three wind energy facilities in New Hampshire. The first of these, Groton Wind, was approved for the construction of 24 wind turbines on Tenney Mountain and Fletcher Mountain in Groton. This facility will be constructed with a nameplate capacity of 48 megawatts. With support from Counsel for the

Public, the Site Evaluation Committee included a significant new protective condition for avian species that may be impacted by the construction and operation of the turbines. EPB attorneys also served as Counsel for the Public in a renewed proceeding to transfer ownership of the Granite Reliable Coos County project to Brookfield Power of Canada, who brings a great deal of expertise, financing and credibility to the operation. Construction of the facility began in August and September of 2011. Most recently, EPB attorneys began participating in review of the proposed Antrim Wind Facility – a project that has elicited strong reactions from many local residents.

Contracts

During the biennium, EPB reviewed 885 contracts for its agency clients prior to submittal to the Governor and Executive Council.

EPB also represented the State in a major contract dispute with respect to reconstruction of the Winnicutt Dam in Greenland. EPB represented both DES and F&G in their efforts to terminate a contract with a construction contractor who had failed to perform and left the dam partially deconstructed beneath Route 33. Among other things, the contractor failed to construct a fish passage in accordance with the terms of the contract. EPB attorneys invoked the surety, who in the fall of 2010 agreed to complete the project.

Environmental Protection Bureau**Other**

EPB continued to represent the New Hampshire Second Injury Fund within the Department of Labor and was specifically involved in thirty-eight cases over the biennium. EPB has also actively represented the Oil Fund Disbursement Board pursuant to RSA 146-D:4.



Charitable Trusts Unit

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 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 \$19.9 billion, based on figures from the Internal Revenue Service and The Urban Institute. Despite the difficult economic times, the charitable sector in New Hampshire remains strong, diverse, and responsive to the growing demands placed upon it.

Developments Over The Biennium

During the biennium, the Unit dealt with complex cases and issues involving hospitals, religious entities, colleges and universities, land trusts, endowment management, board governance issues, and municipal trusts, among others. In addition, the Unit handled matters involving: (a) changes to laws regulating trusts and

trust companies (RSA 243 and 564-B); (b) non-judicial modification of old, small trusts under RSA 292-B; (c) joint investigations with the Criminal Bureau of alleged theft, fraud, and embezzlement by officers and trustees of charitable entities, (d) litigation involving professional fundraisers; and (e) involvement in mergers, consolidations, dissolutions, affiliations and bankruptcies involving nonprofit charitable entities.

The Unit worked with the State of Nevada in investigating the Estate of Arthur Jobin and successfully obtained the funds Mr. Jobin bequeathed to the Bethlehem Public Library. During the biennium the Unit began its participation in a multi-state investigation of a national charity and its questionable fundraising practices.

The Unit also worked in partnership with the New Hampshire Center for Nonprofits in developing and implementing workshops, training videos, and a comprehensive electronic governance tool for nonprofit boards called "NonprofitNext."

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Charitable Trusts Unit

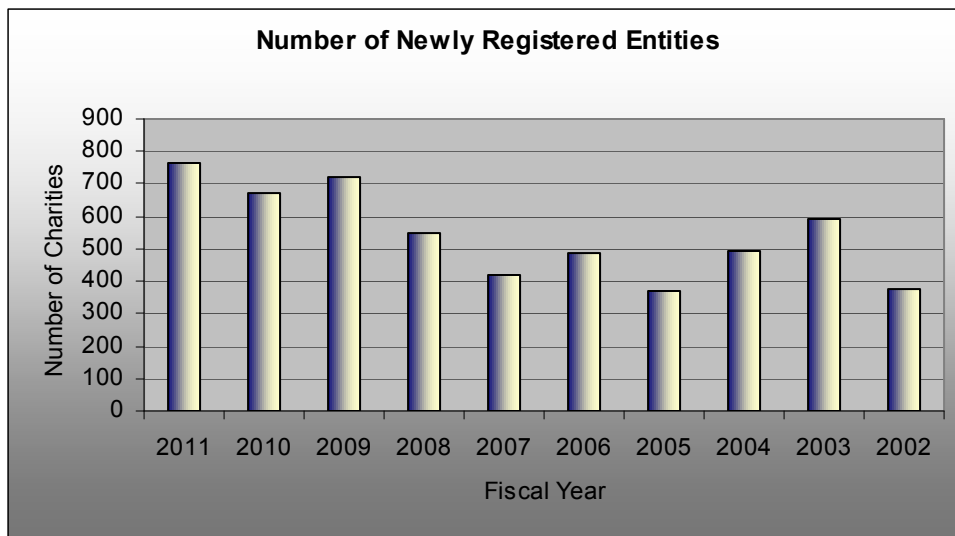
Finally, the number of requests made to the Unit under RSA 91-A, the Right-to-Know law, remained among the highest in the Attorney General’s Office, with 186 requests for materials in Fiscal Year Ending June 30, 2010, and 155 requests in Fiscal Year Ending June 30, 2011, indicating strong public interest in financial, governance, and other information regarding charities, which is publicly available at the Unit.

Continued Growth of the Nonprofit Sector

The proliferation of charities that began in the mid-1990s and accelerated rapidly after 2001, continued during this biennium. As of June 30, 2010, the total number of charitable trusts registered in New Hampshire was 7,507, a figure that does not include testamentary trusts, *e.g.* those trusts created by means of a will. As of June 30, 2011, the total number of charitable trusts registered in New

Hampshire was 8,237. If the testamentary trusts, of which there were approximately 470 registered, were added, the total number of registered charities would be approximately 8,707. This figure does not include the thousands of individual trust funds given to towns and cities and held by the municipally elected Trustees of Trust Funds in our 234 municipalities.

During the biennium, there were approximately 1,436 *additional* charitable trusts registered with the Unit – or approximately 718 *additional* charitable trusts per year. This increase 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

Charitable Trusts Unit

audited financial returns. Once filed, these documents are available to the public.

The value of the registered charities native to New Hampshire is estimated by the National Center for Charitable Statistics to be \$19.9 billion. This figure understates the real value of the nonprofit sector in New Hampshire as 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 \$19.9 billion.

Transparency and Accountability

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

A major objective of the Unit is providing accurate and timely information to donors to help them make informed decisions about the charities to which they contribute. In this era of transparency and accountability, New Hampshire donors are entitled to have as much information as possible before supporting a charity. Consequently, the Unit provides links and other resources on its website to assist donors in making

informed giving decisions (<http://www.doj.nh.gov/site-map/charities.htm>). The Unit also provides Guidebooks and other publications that assist donors in understanding the laws that govern charitable trusts.

To carry out its core missions, the Unit is staffed with one attorney who serves as the Director of Charitable Trusts, an Assistant Director, a financial analyst, two investigative paralegals, a records control clerk, and two part-time staff to carry out its statutory mandates.

Outreach

Given the continued growth of charities in New Hampshire, the Unit has maintained its commitment to educating boards of directors on their fiduciary duties, ethical behavior, internal controls, and other major issues.

The Unit engages the public and nonprofit community in a variety of ways, including: (i) educational forums for the trustees of cities and towns, (ii) presentations at the New Hampshire Library Trustees Association and the New Hampshire Cemetery Association; (iii) educational forums on endowment investment and management; (iv) sessions sponsored by the New Hampshire 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 (v) workshops offered with the New

Charitable Trusts Unit

Hampshire Center for Nonprofits, the Governor's Annual Conference on Volunteerism, and the United Way. In addition, the Unit published articles in the "New Hampshire Bar Journal," the "Nonprofit Quarterly," and "New Hampshire Town and City."

Members of the Unit 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 and have provided numerous individual training sessions to boards of directors. The Charitable Trusts Unit presented workshops to New Hampshire's municipal trustees for over 20 years. More than 450 cemetery trustees, library trustees, and trustees of trust funds attended the 2011 sessions held in Gorham and Concord. This is the only publicly available training available for municipal cemetery trustees and trustees of trust funds. In addition, the Unit meets with individual towns and cities to discuss issues pertaining to the trust funds held by a particular municipality.

The Legal Structure

The laws governing charitable trusts in New Hampshire are complex and the Director of Charitable Trusts 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:

- Enforcing laws relating to charitable trusts in New Hampshire (RSA 7:19-32 and the common law), including reviewing all applications for registration and reports filed by charitable trusts;
- Reviewing 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 professional fundraisers soliciting charitable donations from New Hampshire citizens (RSA 7:28-b and -c);
- Monitoring commercial co-venturers and charitable sales promotions (RSA 7:28-d);
- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Working with the Racing and Charitable Gaming Commission in enforcing gaming laws relating to games of chance, Bingo and Lucky 7's;
- Working with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts; and

Charitable Trusts Unit

- Receiving the community benefit plans that healthcare charitable trusts file with the Unit (RSA 7:32-c et seq.).

Major Transactions

The Director is mandated to appear as a party in the Superior and Probate Courts in New Hampshire on charitable trust issues. During the reporting period many cases involved novel or significant issues, including the following:

Sales, Terminations and Consolidations of Nonprofit Organizations

The Unit devoted significant resources to the termination, consolidation, or sale of assets of a number of charities in this State. These include:

- The sale of the assets of CouchSurfing, Inc., a New Hampshire nonprofit organization; the proceeds from the sale were transferred to the New Hampshire Charitable Foundation to be used to foster appreciation and understanding between different cultures, with an emphasis on youth and young adults, through such means as international travel, international cultural exchange programs or projects that support or promote: cultural exchange between refugee groups and the communities in which they live, classroom-based international information exchange and relationship building programs that may use technologies such as “Skype”, and cultural understanding between ethnically or racially disparate communities.

- The merger of three United Way chapters to form the new Granite United Way. The merger is anticipated to result in greater efficiency and cost saving in the administration of funds held and distributed for the benefit of charities in the geographic areas formerly served by the individual chapters.

- The bankruptcy and subsequent liquidation sale of the Hopkinton Independent School in Hopkinton. The proceeds from the sale were used to pay the debts of Hopkinton Independent School.

- The sale of the assets of Seacoast United Soccer Club and the transfer of the proceeds to the Seacoast United Foundation to be used for scholarships and grants to promote youth soccer.

- The merger of Family Strength and Goodwill Industries of Northern New England.

- The affiliation of Franklin Pierce Law Center and the University of New Hampshire to form the new UNH School of Law.

- The Asset Purchase sale Seacoast Hospice, Inc. and Beacon Hospice, Inc.

Removal of Trustees/Special Trustees

The Unit was involved in several petitions for the removal of trustees or

Charitable Trusts Unit

the appointment of special trustees. These included:

- The Petition to Remove the Trustee of the Abner Merrill Trust for failure to fulfill his fiduciary duties;
- The Petition to Remove the Trustees of the Florence Tarr Trust, for alleged breach of their fiduciary duties; and
- The Fogg Rollins Trust involving the appointment of a Special Trustee for purposes of disposing of the assets of the trust in preparation for termination of the trust and distribution of its assets to other historic museums in New Hampshire.

Petitions for Cy Pres/Other Court Matters

The Unit's work included a cross-section of other issues, including:

- The judicial reclassification of the assets of the Virginia Lessard Trust for purposes of assisting the beneficiary, Tilton School, in fulfilling its bond covenants relating to a long-term construction bond;
- Litigation relating to the City of Portsmouth and the potential sale or lease of the Connie Bean Center building;
- Litigation relating to the pecuniary benefit law involving the purchase of property by the Avis Goodwin Community Health Center;

- Litigation involving the American Lung Association and Breathe New Hampshire relating to a bequest from the Phyllis Patenaude Estate;
- A Petition to close the Eventide Home in Exeter with the transfer of its net assets to another nonprofit entity; and
- Several petitions for *cy pres* and deviation filed for purposes of will interpretation or the modification of trust provisions in those cases where the original purpose is impossible or impractical to carry out.

Mediation and Non-Judicial Settlements

The Probate Court continues to encourage parties who are in litigation involving charitable trusts to mediate their differences prior to trial. The mediation program is voluntary, not mandatory. The Unit actively engaged in the mediation process and entered into a number of mediated settlements, including the Grace Children's Home, the Florence Tarr Trust, the Grace Butnam Foundation, and the Chandler Memorial Library in Nashua.

The Unit received and reviewed 65 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

Charitable Trusts Unit

trusts with assets of less than \$25,000 and more than 25 years of existence are involved.

Interagency Collaboration

The Unit collaborated with the Consumer Protection Bureau in investigating complaints received regarding the billing practices of the Caitlin Raymond International Registry organization. The Unit continues to collaborate with the Department of Health and Human Services in identifying emerging trends in public health care and community benefits in the state. The Unit also collaborated with the Secretary of State's Office in alerting New Hampshire nonprofit corporations of the requirement to renew their corporate charters in 2010. The Unit worked with the Internal Revenue Service in producing press releases and other public information announcements relative to the Pension Protection Act of 2006 requiring small nonprofit charitable organizations to file documentation with the IRS or risk losing their 501(c)(3) status for failure to file.

Civil Enforcement

The Unit is authorized 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 77 Notices and conducting 24 hearings, for a variety of reasons, including failure to register, to report, or to comply with RSA 31:28.

The Unit's work includes enforcement of the charitable solicitation law. During fiscal year 2010, the Unit reviewed 420 solicitation notices and registered 216 professional fund-raisers, both fundraising counsel and paid solicitors. During fiscal year 2011, the Unit reviewed 531 solicitation notices and registered 246 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 fiscal year 2011, the Unit filed five petitions to compel in superior court against two paid solicitors – Civic Development Group, LLC and Outreach Associates, Inc. The petitions against Civic Development involved six campaigns conducted by the paid solicitor, who was based in New Jersey, on behalf of four charitable organizations. Civic Development failed to file the statutorily required joint financial report for those campaigns. The cases were settled with their insurance bondholder making payment of civil penalties. No officer of Civic Development was available to file a joint financial report, but some financial information was obtained from the charities in question. The petition against Outreach Associates, Inc. involved a campaign conducted in New Hampshire on behalf of The Sierra Club in which the required solicitation notice was not filed. The lawsuit against

Charitable Trusts Unit

Outreach Associates was settled by payment of civil penalties by two insurance bondholders. A joint financial report had been filed for the campaign.

Registration and Licensing

In fiscal year 2010, the Unit collected \$544,455 in registration and filing fees from charitable trusts and \$138,250 in filing fees from professional fundraisers. In fiscal year 2011, the Unit collected \$577,200 in registration and filing fees from charitable trusts and \$167,300 in filing fees from professional fundraisers.

During fiscal year 2010, the Unit reviewed 4,874 annual reports filed by charities and 291 probate accounts filed by testamentary trusts. During fiscal year 2011, the Unit reviewed 5,525 annual reports and 275 probate accounts filed by testamentary trusts. During both years of the biennium, reports were received from the 234 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 continues to explore the possibility of electronic filing of the Form 990s, a practice that other states have begun to implement.

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 2010, the Unit opened 100 cases and 84 investigations. In fiscal year 2011, 72 new cases and 26 new investigations (see comment regarding Notices to Attend Investigations above) were opened. 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. As a result, the Director frequently appears in court proceedings throughout New Hampshire.

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

Charitable Trusts Unit

fiscal year 2010, the Unit tracked 226 wills through the probate process and recorded \$49,941,615 in charitable bequests. In fiscal year 2011, the Unit tracked 223 wills and recorded \$21,286,139 in charitable bequests.



Civil Law Bureau

The Civil Bureau (Civil) is responsible for providing legal advice and representation in superior court, federal court, and appellate court civil matters for 125 executive branch agencies, boards, commissions and councils. Civil provides legal advice and representation in civil lawsuits to 50 state agencies, many of which have multiple divisions with varied duties and functions. Civil advises and represents 46 licensing and regulatory boards and 29 councils and commissions. Civil also represents all three branches of state government when they are sued. During this biennium Civil was staffed by 15 attorneys, some of whom worked part-time. There are also 2 paralegals and 4 secretaries currently assigned to Civil.

Civil is organized into a Client Counseling Unit and a Litigation Unit, both being overseen by a Bureau 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 litigation in both state and federal court.

Civil does both trial and appellate court litigation for all of its clients and provides legal advice through formal written opinions, informal memoranda, email, telephone, and of course, in-person. Civil continues to see a marked increase in both the number and complexity of cases and legal issues presented to it. Civil is a very dynamic bureau that addresses a wide variety of challenging legal issues. In any given week, a Civil attorney may be conducting an evidentiary preliminary injunction hearing on a major state program, litigating a class action 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

The Civil Bureau continues to see a marked increase in both the number and complexity of cases and legal issues presented to it. Civil is a very dynamic bureau that addresses a wide variety of challenging legal issues.

Civil Law Bureau

board. Civil is also actively involved in various legislative matters either by providing a legal opinion to legislative leaders, testifying before one of the many substantive or finance committees, or advising a state agency on an issue affecting its legislative initiatives.

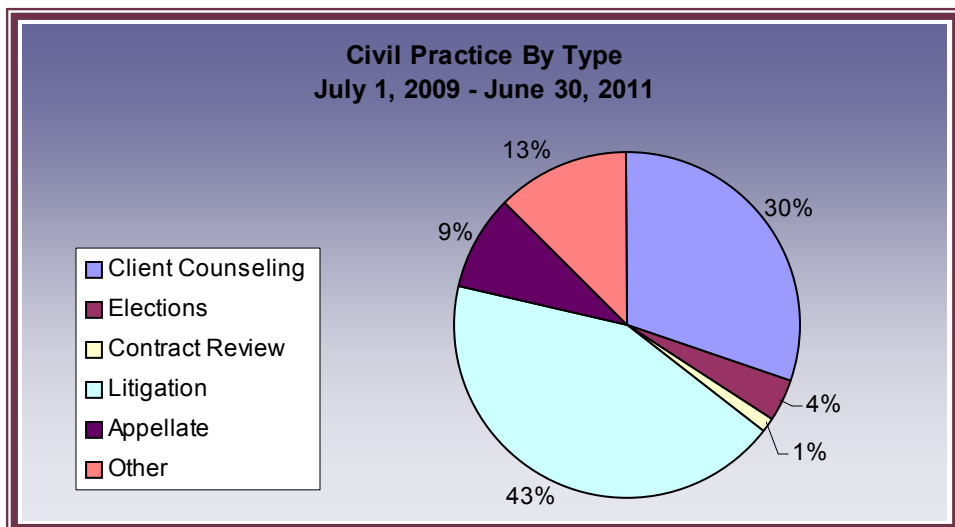
Litigation

Approximately forty-six percent (46%) of Civil’s legal practice time is now devoted to litigation, compared to twenty-nine percent (29%) for client counseling. Sixty-three percent (63%) of the litigation is in trial courts, twenty-eight percent (28%) is appellate litigation, and the remainder is practice before administrative or other forums.

During this biennium, 293 new non-federal trial court litigation or administrative proceeding cases and 39 new federal trial court litigation matters were opened. Civil attorneys also worked on hundreds of other litigation

matters still active from prior years. During the biennium, approximately 52 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 takes a number of years to resolve and some will span the biennium and beyond, including both the trial and an appeal.

One of the more unique litigation cases Civil handled during this biennium involved a historical artifact. In *Gary Eldon Lea v. Heritage Auctions, Inc. and State of New Hampshire*, the Office sought to have a colonial era copper printing plate used to create provincial currency notes returned to the State. The plate was created to fund the colony, and then state, pre and post revolutionary war. The plate was created by John Ward Gilman, a contemporary of Paul Revere, and resident of Exeter. The



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plate was crafted at the request of Governor and Council around June 1775. It is a one of kind colonial antiquity and record of the State. In the summer of 2010, the Attorney General's Office became aware that a Minnesota resident had the plate up for auction in Boston. Working in conjunction with our Environmental Protection Bureau, Civil requested the plate be withdrawn from the auction to allow time to negotiate its return New Hampshire. Before negotiations even began, the supposed owner filed suit against New Hampshire in a Minnesota court. Since that time, the matter has been litigated at the trial level. And, at the close of the biennium, was on appeal in a Minnesota appeals court awaiting a decision.

Class Action Lawsuits

During the last biennium, Civil attorneys were involved in a number of complex class action and multiple party lawsuits in federal and state courts. They also handled several class action matters that remained pending from the prior biennium. Prior class action suits that were resolved by consent decrees, such as *Cassandra Hawkins v. Department of Health and Human Services* (DHHS) (dental care for children) and *Thomas Holliday v. Department of Corrections* (DOC) (inmate mental health and medication delivery), continue to be monitored by Civil, or resulted in renewed litigation. These matters require substantial attorney involvement in meeting reporting requirements and

compliance meetings with class counsel. For example, the *Cassandra Hawkins v. DHHS* case, involving dental care for Medicaid eligible children, reached the conclusion of the consent decree period during this biennium and returned to litigation in federal court on whether the plaintiffs could prove that the State was not in compliance with the decree, therefore entitling them to an extension of several more years on the consent decree. After a ruling in the State's favor on a final contempt motion, the plaintiffs' appealed the order denying the contempt motion and terminating the consent decree to the First Circuit, where it remains awaiting a decision after briefing and oral argument.

Several lawsuits from the prior biennium continued into this reporting period, including 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*.

Steven Roy, et al. v. William Wrenn, et al., is a class action suit in federal district court brought in March 2009 by seven inmates challenging dental services provided by the Department of Corrections. Also, the case of *Gary Dube et al. v. State of New Hampshire*, is pending a hearing on class certification. In *Dube*, Harbor Homes,

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Inc., a provider of Medicaid-funded community mental health services, and four individuals who had been receiving services from Harbor Homes prior to June 30, 2011 sued the State and DHHS, challenging the State's decision to consolidate delivery of community mental health services in the approved community mental health program for Region 6. The core issue to be decided in the case is whether the state rules requiring an interagency agreement with a community mental health program are a reasonable qualification in order to be a community mental health provider of Medicaid-funded services.

Tax Litigation

Civil regularly defends the constitutionality of tax statutes and suits regarding whether the Department of Revenue Administration (DRA) has properly administered the tax statutes. Civil defends DRA in litigation brought by taxpayers pertaining to various taxes, including for example, the interest and dividends tax. Civil has also handled cases involving compensation deductions.

Tax cases handled during this past biennium include *TRG Holdings Corp. & Affiliates (TRG) v. NH DRA*, involving the assessment of a business profit tax. Civil negotiated a settlement of this case, and a related pending matter, with TRG in excess of \$700,000. In *First Berkshire Business Trust, et al v. N.H. DRA*, the taxpayers challenged a DRA ruling that two sequential transfers of

real property between a business entity and its wholly-owned subsidiaries were subject to Real Estate Transfer Tax (RETT) on the fair market value of the property transferred. DRA assessed the parties to the transfers over \$400,000 dollars in RETT, interest and penalties, based on the fair market value of the property. The superior court agreed with DRA, although it reduced the RETT owed to approximately \$300,000 dollars, based on evidence of a lower fair market value and eliminated penalties. The taxpayers appealed this ruling to the New Hampshire Supreme Court, which also decided in favor of DRA. Although the amount of tax at issue in this specific case was only several hundred thousand dollars, an adverse decision by the Court would have reduced annual RETT revenues to the State by millions of dollars.

In *Eby and Willey v. State of New Hampshire*, plaintiffs challenge the constitutionality of former RSA 77:39, the State's 10% tax on gambling winnings that was effective for tax years 2009 and 2010. The tax has since been repealed. Plaintiffs brought this case as a class action, but the State objected to it being certified as a class action. The court has yet to rule on that issue. The parties filed a joint interlocutory transfer without ruling in the Supreme Court, which was denied, and the case returned to superior court. The parties filed cross motions for summary judgment, and are awaiting a decision from the court.

Civil Law Bureau**Right-to-Know Litigation**

Civil continues to work on a regular basis with state agencies, boards, councils, and commissions in responding to requests for information under RSA 91-A, the Right-to-Know law. Such requests can generate litigation, which Civil defends. The Attorney General's Office has prepared a Right-to Know Memorandum that is available to the public on its website.

Insurance Litigation

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 \$4.5 billion and over 21,000 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, New York, and Massachusetts, and a Scheme of Arrangement is pending in the United Kingdom and a separate liquidation of The Home's Canadian branch is in process in Canada.

The New Hampshire Supreme Court has also 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. To date the Supreme Court has decided eight appeals in this matter.

In 2011, the U S Department of Labor sued the Liquidator in federal district court seeking a declaration that the Longshore and Harbor Workers Compensation Act preempts the New Hampshire insurer insolvency statute and that its \$2.8 million claim is entitled to absolute priority above all other creditors. The suit raises an issue of first impression, could have significant precedential effect on other liquidation proceedings, and is likely to be appealed at least to the First Circuit.

By the end of 2011, the Liquidator estimates that he will have determined

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approximately \$1.7 billion of claims, the single largest of which the Liquidator compromised after 3 years of extensive research and negotiation for \$242.5 million. Despite steady progress in resolving claims and collecting assets, the administration of the estate is likely to take at least another 10 years.

Another insurance case handled this past biennium involved whether the Legislature, through House Bill 2, could require the New Hampshire Medical Malpractice Joint Underwriting Association's (JUA) excess surplus to be placed into the State's general fund. Subsequent to the Supreme Court's decision in *Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Assoc.*, 159 N.H. 627 (2010), where it held HB 2 to be unconstitutional, the three JUA policyholders again brought a consolidated action in superior court, seeking an accounting, a distribution of the JUA excess surplus, and damages. Civil is defending the JUA Board of Directors in this action, through outside counsel, and intervened on behalf of the Insurance Commissioner. The lawsuit remains open. In the interim, however, the Legislature passed SB 170, which directed the JUA to interplead no less than \$110 million of excess surplus (minus a reserve for potential federal taxes) into the superior court, to be distributed to all policyholders.

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 or sentencing related cause or due to the conditions of their incarceration. Sixty-two petitions were filed during the biennium asserting a conditions-of-confinement claim. The State prevailed in the overwhelming majority of these cases. Also challenged this biennium were statutory changes made affecting the parole law. Several of these petitions are now up on appeal to the Supreme Court. Habeas corpus petitions are usually resolved within a month after submission of a written pleading and a hearing in superior court.

Inmate litigation filed this biennium included claims made against the parole board for either delaying a perceived right to parole or for failure to follow laws related to parole revocation and re-release due to a changes in the sentencing and parole laws.

Much more time-consuming and lengthy are the inmate civil rights actions that are filed in state court and increasingly in federal court. For example, lawsuits filed by inmates this biennium included challenges to the prison's health care program, First Amendment rights (freedom of religion) and for failure to protect. Although the federal magistrate dismisses a small percentage of the cases prior to service, of the 39 new federal court matters in the last biennium, 19

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were cases that the magistrate allowed to be served by inmates against state agencies, primarily DOC, alleging civil rights violations or complaining of prison conditions. This reflects a decrease in the number of federal inmate civil rights matters over prior years that may in part be related to the retention by DOC of an outside vendor to operate the medical, psychiatric, and dental services as most of the doctors are now employed by the outside vendor and are therefore represented by counsel retained by the vendor's insurance carrier and not this office. These cases are no longer reflected in the number of cases handled by this Office unless, as is often the case, nurses or non-medical staff are also sued. Many of these cases have multiple claims and are filed against as many as forty individual state employees as defendants. Additionally, in approximately 50% 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 often sets evidentiary hearing on these requests very shortly after service. The hearings are equivalent to trials and range from one to two full days of witness testimony.

Included in the federal civil rights inmate cases that Civil is currently handling are a series of four cases that all involve a common correctional officer assigned to the maximum security unit, SHU, alleging excessive force against four separate inmates. Three of the cases include additional DOC employees as defendants as well.

Tort Litigation

Civil defends state agencies, employees and officials who are sued in negligence and civil rights suits, unless the Attorney General's Office determines that the officials or 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 the New Hampshire Hospital.

In the case of *Timothy Hallam and Joseph Laramie v. Shawn Stone, et al.*, Civil attorneys were successful in having DOC dismissed from the lawsuit based on a failure to prove that DOC retaliated against the Plaintiffs, two DOC Officers, in an employment matter. However, Civil attorneys defended two individual DOC Officers who were being sued for allegedly damaging the reputations of the two Plaintiffs. The jury awarded \$1.3 million to Hallam and \$650,000 to Laramie as damages. The State appealed the verdict to the Supreme Court, which affirmed in part, reversed in part, and remanded the case to the Superior Court. The Supreme Court held that the \$475,000 per claimant cap on damages applied to this type of jury award and ordered a new trial on several issues. As a result of the Supreme Court's decision, damages were capped at a maximum of \$950,000. The trial court entered an order for interest to the first Plaintiff of approximately \$100,000 and no appeal was taken of that order. The second Plaintiff accepted \$350,000 for settlement of his claims.

Civil Law Bureau**Employment Litigation**

Civil defends the State in actions alleging discrimination in employment as well as wrongful termination claims in both state and federal court. The last biennium saw an increase in the number of employment related matters filed. Although there had been a trend to file more of the discrimination related matters in state court in prior years, they are now shifting back to federal court. Employment cases often encompass both state and federal violations and range in issues such as first amendment retaliation, racial discrimination, national origin discrimination, sexual harassment, violations of the Americans with Disabilities Act, and equal rights violations.

To address budgetary shortfalls in FY 09-10, state agencies were required to reduce their workforces. As a result of the reductions, union representatives for many employees who were laid-off or who were demoted or transferred in lieu of layoff, filed appeals with the Personnel Appeals Board. Over 150 actions were challenged with approximately 135 appeals being actually filed.

The vast majority of the appeals alleged that the State violated terms of the Collective Bargaining Agreement, failed to move employees to vacant positions, and failed to follow the personnel rules in implementing layoffs, including but not limited to, seniority. Most appeals were filed by DOC and DHHS

employees. Civil represented DOC and the other smaller agencies. To ensure coordination of strategy, Civil also oversaw the DHHS attorneys who managed the appeals filed by DHHS employees.

Over the course of many months and with no fewer than four pre-hearing conferences held requiring memoranda and oral argument on various issues, the matters were finally resolved in favor of the State. Most noteworthy was the decision that the PAB does not have jurisdiction to hear or adjudicate matters arising from alleged violations of the Collective Bargaining Agreement, leaving those matters to the jurisdiction of the Public Employee Labor Relations Board (PELRB) – also an active board for administrative litigation. Thus, over the biennium, no less than 10 appeals were filed by various unions with PELRB asserting a range of alleged contractual violations, most of which were resolved in the State's favor.

During the biennium, a majority of the legal work pertaining to the Department of Safety was reassigned to the Transportation and Construction Bureau, though Civil continued to represent Safety at the PELRB in connection to several matters arising out of the consolidation of the former Highway Patrol officers into the State Police, which was complicated by the two groups having different collective bargaining representatives. These issues were successfully resolved through a collaborative dialogue resulting in the

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unfair labor practice claim being withdrawn and the granting of Safety's request that the certification of the former Highway Patrol bargaining units be dissolved as they were fully integrated within the State Police bargaining units.

Constitutional Law Litigation

Many of the lawsuits defended by Civil allege constitutional violations. Those allegations fall in two general categories. First, allegations are made that state employees have acted in such a way as to violate the constitutional rights of some constituency. Second, allegations are made that legislation passed by the General Court violates one or more constitutional provisions. In that second category, the petitioners generally seek a court ruling that the State should be enjoined from enforcing the law. The following are examples of constitutional challenges defended by Civil in the last biennium:

In 2010, the First Circuit Court of Appeals upheld the New Hampshire statute requiring an opportunity for Pledge of Allegiance recitation in the State's public schools. 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. The federal district court ruled in favor of the State.

Plaintiffs appealed to the First Circuit and the First Circuit issued a decision upholding the New Hampshire statute requiring opportunity for Pledge of Allegiance recitation in the public schools. Plaintiffs request for writ of certiorari to the United States Supreme Court was denied.

In *Doyle v. Bald, et al.*, Mount Monadnock Park Manager, Patrick Hummel (Hummel), informed a film crew under the direction of Jonathan Doyle (Doyle) that it needed a special use permit from the New Hampshire Department of Resources and Economic Development (DRED) in order to shoot Bigfoot films on Mount Monadnock. Under DRED's Administrative Rule, Res 7306, a special use permit is required when using state property managed by DRED for "organized or special events which go beyond routine recreational activities." Doyle filed a complaint in state court alleging that the enforcement of Res 7306 violated his free speech rights under the New Hampshire and United States Constitutions. Following the filing of cross-motions for summary judgment, the court on May 20, 2011, issued an order denying Doyle's motion for summary judgment and granting the State's cross-motion for summary judgment. Doyle appealed the court's decision to the New Hampshire Supreme Court where it is currently pending.

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During the past biennium, Civil obtained a decision in the case of *Kimberly J. Blain v. Catherine Provencher, Treasurer* finding that the method used by the state treasurer to administer the abandoned property statute is constitutional. Also, in 2010, five New Hampshire civil litigants filed a challenge to the biennial budget for the judicial system captioned *Patricia Baxter v. State*. Petitioners alleged constitutional violations due to delays in the scheduling of jury trials in their respective civil lawsuits as a result of budgetary constraints on judicial branch. The trial court held a hearing on October 14, 2010, and on October 29, 2010, the trial court issued an order dismissing the lawsuit.

Civil also defended a number of constitutional challenges to legislation affecting the state and judicial retirement systems. In *SEA v. State and Judicial Retirement System*, Civil successfully defended a lawsuit brought on behalf of SEA's retired members challenging the law that required retirees under the age of 65 to pay a portion of their health care benefits out of retirement pension payments. In *City of Concord, et al. v. State, et al.*, Plaintiffs challenged the constitutionality of the legislation that reduced the State's share of funding of local employers' retirement costs for municipal, school, and county employees. The trial court ruled in favor of the State and the case is pending before the Supreme Court. In *Cloutier v. State and Judicial Retirement System*, several former judges challenged a

statute that limits a judge's retirement to 75% of the salary earned in the judge's last year of service, instead of 75% of the current salary level that was in effect prior to July 1, 2003, when RSA 100-C took effect. On September 14, 2010, the trial court granted summary judgment for Plaintiffs, and found that RSA 100-C is unconstitutional as applied to the judges who accepted their positions before the statutory change to the Retirement system. The State's appeal is pending before the Supreme Court.

In *American Federation of Teachers, et al. v. State, et al.*, a group of twelve plaintiffs challenged the changes to the retirement system made pursuant to Chapter 300, Laws of 2008 that affect (1) earnable compensation; (2) COLA payments; and (3) medical subsidies. Plaintiffs also sought class certification for all other New Hampshire retirees eligible for state retirement benefits. The parties filed cross motions for summary judgment on December 5, 2010. In January 2011, the court issued an order indicating that it would defer ruling on the parties' summary judgment motions until the class certification process was complete.

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 160 appeals. Civil filed 113 briefs and memoranda of law in the New Hampshire Supreme

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Court and 15 in the United States Court of Appeals for the First Circuit or other forums. 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 a significant percentage 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 regarding a wide variety of issues and agencies, including child support enforcement cases, cases involving constitutional claims, and all workers compensation cases filed in the New Hampshire Supreme Court. The Attorney General also reviews and analyzes appeals filed in federal courts of appeals throughout the country as well as the United States Supreme Court, and participates in some *amicus* briefs filed by other states' attorneys general. 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's efforts address election law related legal issues and litigation.

Election Day Activities

In the 2010 General Election, there were 461,423 ballots cast.

Following the 2010 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 those

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who registered without proper identification. The report provided that in New Hampshire, 23,512 persons registered to vote for the first time on the November 2, 2010, General Election day. Of those, according to the local election officials who entered voter registration information into the Statewide Voter Registration System (SVRS), 49 people 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 49 people who allegedly registered to vote for the first time at the 2010 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 49 identification verification letters that were sent, four 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 those four people.

After an investigation, Civil found that the identified four New Hampshire people registered and voted in New Hampshire's 2010 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.

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, push-polling and automated pre-recorded political calls associated with state and 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 123 election enforcement matters.

On October 15, 2010, the election law attorneys reached a settlement agreement with Mountain West Research Center ("Mountain West") following complaints that the company was engaged in push polling in a manner that violated New

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Hampshire's push polling law. An investigation by the Attorney General's Office revealed that Mountain West contacted 529 New Hampshire households during the period July 19-21, 2010. Mountain West did not provide the disclosures required by RSA 664:16-a, I. Under the terms of the Consent Agreement, Mountain West paid the State \$20,000 to settle the dispute. Over the biennium, Civil conducted an investigation that established that the Democratic Party was responsible for knowingly causing the delivery of a pre-recorded political message to 394 New Hampshire households on September 13, 2010, and that the message failed to contain the disclosures required by RSA 664:14-a, II. A consent agreement was reached under which the Democratic Party paid the State \$5,000 to settle the dispute.

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 development of the statewide voter database of registered voters, the ongoing acquisition and improvement 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 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.

Educational Activities

Pursuant to RSA 652:22, Civil attorneys and the Secretary of State's Office published the 2010-2011 edition of New Hampshire's Election Procedure Manual

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(EPM) for New Hampshire's local election officials. The EPM provides an easy-to-read interpretation of New Hampshire's election laws. In October 2010, and prior to the November 2010 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, Civil presented election law training to hundreds of local election officials throughout the State. Multiple training sessions were often held in a single day.

In October 2008, the Attorney General, the Secretary of State Secretary, and the University of New Hampshire launched an on-line election law training website that is available to voters, advocates, and election officials. This website 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 website. During this biennium, Civil, in conjunction with officials from the Secretary of State's Office, updated the content of the on-line training courses to reflect changes in the State's election laws.

Election Law Litigation

In a case started last biennium, *Libertarian Party of New Hampshire v. William Gardner*, the Libertarian Party challenged 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 was 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 maintained 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. The State's motion for summary judgment

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was granted, upholding the statutory scheme. The Libertarian Party and Barr appealed to the First Circuit. After briefing by both sides the First Circuit affirmed the trial court ruling. The Libertarian Party and Barr filed a writ of certiorari to the United States Supreme Court, which was denied.

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 reviewed all reports and spent many hours contacting individuals who did not file timely reports to ensure compliance with the reporting requirements.

Client Counseling

Providing legal advice to state agencies, boards and commissions is a core function of Civil and represents approximately 29% of attorney legal practice time for the biennium. Agencies require legal assistance interpreting and implementing the laws that define their obligations. 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, while 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.

If substantial research or multiple meetings are required to respond to an agency request, a specific client-counseling file is opened. During the biennium Civil opened 216 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, agency reorganizations, personnel issues, layoffs, collective bargaining issues, contract review and approval, assistance with legislation, real property issues including land conservation, proposed changes to the mental health civil commitment law, as well as various teaching and training activities including administrative law training for licensing board members. Civil also advised on matters involving the state employee health plan, pharmacy benefit and retirement, as well as the Right to Know law, charitable gaming, and HIPAA.

Civil works closely with Homeland Security and Emergency Management (HSEM) and Public Health to respond to legal issues as they arise during disaster events, including staffing the Emergency Operations Center. During this biennium, New Hampshire had a

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previously unprecedented naturally occurring anthrax incident arising from the use of drums in a religious service at an independent student ministry at UNH. While the exposed individual eventually recovered after a prolonged time in critical condition, an exhaustive investigation to determine the source of the contamination, and the scope for the remedial measures needed was required. Civil assisted in facilitating communications and drafting of documents for closure of the building, collection of privately owned drums for testing, coordination with the EPA and meetings with the building owners, the town, and UNH regarding decontamination measures and responsibility. Civil also worked with HSEM to put in place the agreements and policies needed for the New Hampshire Information and Analysis Center to become operational, which provides a venue for exchange of important all-hazard information across local, state, and federal authorities. 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 efforts to address volunteer liability at the state and local levels.

Civil continued 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

included interpreting 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 child support enforcement, 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 and involved extensive briefing by the state and federal agencies.

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

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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:

- The ongoing effort to finalize the 10,208 acre Androscoggin Headwaters, Phase III conservation easement in Errol and Wentworth Location;
- The 1,716 acre Green Acre Woodlands 1 conservation easement in Groton and Rumney;
- The 1,256 acre Crotched Mountain conservation easement in Bennington, Frankestown, and Greenfield.

Civil attorneys assisted their agency-clients with numerous smaller property acquisitions over the biennium. Specifically, attorneys assisted with the acquisition of an additional 99.5 acres for the Joy State Forest in Alton; an additional 48.5 acres for the Annett State Forest in Rindge; and an additional 178.6 acres for the Cape Horn State Forest in Northumberland. When necessary, attorneys also assisted with the disposition of state land, including the disposal of the 21 acre Craney Hill State Forest in Henniker as part of a land exchange; the sale of a 4.3 acre parcel in Nottingham, which was deemed surplus; and the transfer of a 6.2 acre site in Pittsburg to the federal government for a new border crossing facility.

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 entities meet on a regularly scheduled basis ranging from bi-weekly to 90-day cycles. The role of Civil is to assist each entity to effectively and lawfully carry out its statutory duties. Additionally, Civil responds to the appeals of board/commission decisions and to defend members in litigation.

In an effort to provide broad advice and instruction to these entities, Civil presents an annual training seminar for board/commission/agency members, staff, and investigators. The 12th and 13th Annual Office of the Attorney General

Civil Law Bureau

Training Program: *The Wynn E. Arnold Administrative Law Workshops*, named in honor of former Senior Assistant Attorney General Wynn Arnold, were held on December 11, 2009, and December 10, 2010, respectively. Over 100 people attended each of these full-day seminars. Each workshop included a panel presentation by Supreme and Superior Court Justices and a segment on ethical standards and financial reporting. Break-out sessions included subjects such as the Right to Know law, investigations, due process, procedure and writing orders. The goal of Civil's work with the occupational, professional licensing boards, and other regulatory boards/commissions is to provide counsel on best procedural practices in order to help prevent problems from occurring during daily operations. Further, the objective is to minimize the potential for appeals by assisting the boards/commissions at all stages of the proceedings to ensure each licensee or regulated individual is afforded his or her right to due process while advancing the policy behind the legislation creating the board/commission.

Administrative proceedings, which are a less formal process than judicial proceedings, have become increasingly more complex and litigious. Parties to contested cases are now more likely to be represented by counsel, file more sophisticated motions, and generally be more litigious, which results in longer and more complex hearings. Civil has been fortunate to have the services of a part-time attorney dedicated to assisting these boards.

Contract Review

Review of contracts and leases is an important aspect of providing legal assistance to state agencies. Every contract for personal services for more than \$2,500, or for good and services for more than \$5,000 must be approved by the Attorney General's Office. Over the biennium, Civil reviewed and approved more than 3,708 contracts and leases. Most of these contracts were reviewed and returned to the agencies within a week or less. All executive branch agencies submit contracts and leases to their assigned attorney for review to ensure legal sufficiency with regard to substance, execution and form 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.

Over the biennium, Civil continued to work closely with the Department of Administrative Services to refine the contracting and procurement process and once again worked with them to train well over 200 state employees in contracting and procurement. This training was targeted toward state agency procurement professionals to assist them to be more efficient and knowledgeable about contracting law.

Formal Attorney General Opinions

Civil worked on two formal Attorney General opinions that were issued during this biennium. Both opinions are posted

Civil Law Bureau

on the Attorney General's website. The first opinion addressed an issue raised by the State Fire Marshal as to whether the State Fire Code (Saf-C 6000) applies to high-rise condominium buildings. The opinion concluded, based on a legal analysis of the applicable statutes and regulations, that the State Fire Code does apply to high-rise condominium buildings.

The second opinion addressed an issue raised by the Speaker of the New Hampshire House of Representatives as to whether an email sent to or received by a legislator via legislative email constitutes a "governmental record," as defined by RSA 91-A:1-a, III. The opinion found that individual legislator's emails may, in some instances, constitute governmental records; however some may fit within exemptions set forth in RSA 91-A:5 and the Speech and Debate Clause in Part I, Article 30 of the New Hampshire Constitution.



Transportation Law Bureau

The Transportation and Construction Bureau (the Bureau) is legal counsel for the Department of Transportation (DOT), the Department of Safety (Safety), and the Bureau of Public Works of the Department of Administrative Services (Public Works) in a broad array of legal matters. These matters include eminent domain, real estate, contract, construction, administrative, personnel, civil rights, malicious prosecution, excessive force and personal injury cases related to the state's transportation systems, law enforcement, motor vehicle licensing 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 are also provided on a daily basis.

The Bureau opened 407 new files during the two-year period of the biennium. This represents an increase of 32 files from the previous biennium. The Bureau resolved 346 matters during the biennium. The Bureau performed critical legal roles in

major public projects, including the Conway Bypass, the Manchester Airport Access Road, the Granite Street Extension, the continued implementation of E-ZPass, and the I-93 Expansion Project. The Bureau also provided assistance on a plethora of smaller projects throughout the State. Public Works' improvements included new courthouses, DOT and Safety's 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.

The Bureau attorneys achieved five jury verdicts in the State's favor and a bench trial with an extremely favorable outcome for the State. No unfavorable bench or jury verdicts occurred during the biennium.

Eminent Domain

Land acquisitions continue to be one of the central functions of the Bureau. Prior to condemnation, the Bureau routinely advises the DOT on land title issues, document

The Transportation Law Bureau performed critical legal roles in major public projects, including the Conway Bypass, the Manchester Airport Access Road, the Granite Street Extension, the continued implementation of E-ZPass, and the I-93 Expansion Project. The Bureau also provided assistance on a plethora of smaller projects throughout the State.

Transportation Law Bureau

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 biennium, 42 new eminent domain cases were opened and 44 were resolved. The number of new cases remained steady compared to 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.

The major highway improvements in the southern part of New Hampshire resulted in eminent domain actions with extraordinarily high commercial valuations and complex land development analysis affecting the properties being acquired. These factors cause the need for 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 recent economic conditions.

Environmental Challenges to Major Projects

Legal challenges confronting transportation improvement projects continued throughout the biennium. During the two years, the Bureau dedicated considerable resources to overseeing the proper completion of the Supplemental Environmental Impact Statement (SEIS) regarding the I-93 improvements from Manchester to Salem. The SEIS was necessary to resolve outstanding issues resulting from the Conservation Law Foundation's challenge to the project's previous approvals. The necessary documentation was successfully completed and finalized without project delays or further appeals.

The Bureau also expended considerable resources assisting DOT as it addresses water quality concerns arising from the I-93 project. In particular, the use of chloride from road salt resulted in significant regulatory and management challenges for the DOT. In addition, a heightened awareness of temporary water quality impacts from nitrates caused by blasting activities has raised new contractual and legal challenges. Further issues relating to storm water treatment during construction have raised many new and complicated legal issues. The water quality concerns have resulted in significant construction delays and additional costs, as well as the expenditure of legal resources.

Transportation Law Bureau**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. Over the biennium, the Bureau handled 165 DOT tort claims, a significant increase over the previous biennium's 105. A total of \$17,481.06 was awarded against the DOT and settlements totaling \$318,105.95 were paid out from state funds during the two-year period. As there was a significant increase in the number of total claims, the payment of \$335,587.01 to claimants was a substantial increase from the total of \$97,527.55 paid during the previous biennium.

Over the biennium, the Bureau handled 11 Safety tort claims. Claims against Safety generally arise from its law enforcement responsibilities. These duties can result in claims for civil rights violations under 42 U.S.C. Sec. 1983, malicious prosecution or excessive force allegations. As this is a new state agency client for the Bureau, this added to the increase in the number of claims handled by the Bureau, which had no Safety tort claims in the previous biennium. A total of \$474.19 was awarded against the Safety and settlements totaling \$192,802.91 were paid out from state funds during the two-year period.

It should be noted that several large claims remain pending at the close of the biennium. A recent legislative increase in the state's liability cap has resulted in a rise in both claims and potential liabilities.

During the biennium, weather related events resulted in numerous claims for property damage and personal injury. Several lawsuits related to flooding damages caused by major rainfall events were filed. The Bureau successfully defended one such suit, which sought damages in excess of \$1 million. Winter weather also resulted in lawsuits involving plaintiffs injured in highway accidents. Bureau attorneys successfully defended the State in such a case brought by a major trucking firm when a jury returned a verdict in favor the State. Another case brought by a plaintiff injured at an intersection during a power outage caused by a major ice storm was dismissed, though the appeal is pending before the New Hampshire Supreme Court at the close of the biennium.

Contract Law And Construction Issues

The Bureau reviewed and approved 788 state contracts and leases during the recent two-year period. While this is a decrease from the previous two-year period's total of 908, it is consistent with the historical average, indicating the previous biennium was likely an aberration. Moreover, many of these contracts were unique or highly complex in nature. E-ZPass, for instance,

Transportation Law Bureau

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. The State also moved away from traditional project delivery through design/bid/build techniques and has ventured into more design/build systems. This created new legal issues that are being addressed on an ongoing basis.

Increased emphasis on rail and transit options 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 the projects forward.

The surge in federal funding from the economic stimulus program, ARRA, created complex contract management and oversight issues that continued into this biennium. The Bureau continued to actively participate in the statewide effort to streamline and expedite the construction project contract approval process. These efforts allowed New Hampshire to become a national leader by maximizing its use of this unique program.

Human Resources

The Bureau 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 conducted trainings for senior management on issues ranging from sexual harassment to the new conflict of interest law enacted by the Legislature. The Bureau also expanded its outreach to inform DOT personnel of the recent impact of changes in the right-to-know law.

The number of disciplinary reviews conducted by the Bureau were relatively steady at 253 separate cases. During the biennium, the Bureau defended 10 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 United States Equal Employment Opportunity Commission. With the addition of Safety as a client agency, Bureau attorneys worked to successfully resolve several disputes regarding alleged unfair labor practices pending against Safety at the Public Employees Labor Relations Board.



Administration

Program Administration

The Attorney General's Office 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, the Attorney General has had the responsibility for paying all law enforcement and civilian witnesses who are subpoenaed by the State in criminal cases. The courts forward all information to the Business Office which is responsible for processing the payments. A total of \$1,427,004 for approximately 53,507 witnesses was paid in fiscal years 2010 and 2011.

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 administers the program, which is funded through the Victim's Compensation Fund from monies collected on penalty assessments 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 liens against any monies paid out if any other financial resources become available to the victims. The program also benefited from ARRA 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 the establishment of the program,

The Attorney General's Office administers a variety of programs including the Witness Payment Unit, the Victim's Compensation Program, and the Grants Management Unit. These programs provide services to all areas of New Hampshire's criminal justice system.

Administration

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 who meet monthly to oversee the awards. The Commissioners volunteer their time and the members currently are a victim, a sexual assault nurse examiner, a licensed mental health professional, a professional social worker, 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 \$1,208,291 in total compensation to crime victims for fiscal years 2010 and 2011. This amount represents awards to 824 claimants. These funds allowed for the relocation of 60 families in life-threatening, domestic violence situations, paying a total of \$161,814. 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

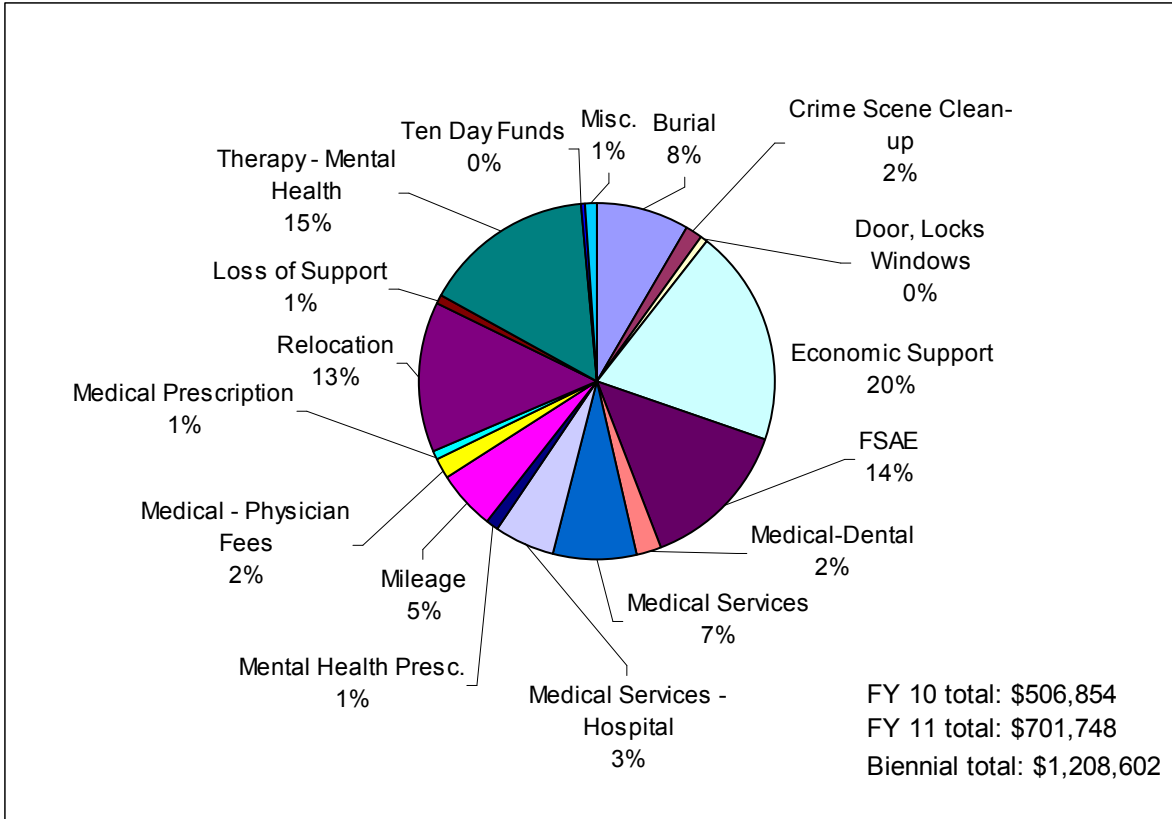
for dependents of homicide victims was a large portion of the Unit's payments. A total of \$239,150 was paid to victims unable to work due to the nature of their crime-related injuries, and to survivors of homicide victims who depended on economic support from the deceased victim. During the past biennium, the Unit continued to work with the County-based victims advocates and crisis center personnel to ensure that victims' compensation is readily available.

Cyber crime continues 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 due to court appearances, attendance at counseling, and bringing their children 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.

During this biennium, another significant change to the Victims' Compensation Program was the statutory increase in the level of compensation per claim from \$10,000 to \$25,000 for crimes occurring on or after September 14, 2009. The Unit continues to look for process improvements and to assess the Program's benefits to ensure that resources are available for victims who have been impacted by violent crimes.

Administration

**Victims Compensation By Service Types
Fiscal Years 2010-2011**



| Service Type | FY 10 | FY 11 | Totals | Percentage of Total | No. of Cases FY 10 | No. of Cases FY 11 |
|-----------------------------|------------------|------------------|--------------------|---------------------|--------------------|--------------------|
| Burial | \$52,238 | \$49,496 | \$101,734 | 8% | 11 | 13 |
| Crime Scene Clean-up | \$0 | \$19,229 | \$19,229 | 2% | 0 | 6 |
| Door, Locks Windows | \$3,123 | \$2,139 | \$5,262 | 1% | 6 | 6 |
| Economic Support | \$63,714 | \$175,436 | \$239,150 | 20% | 11 | 83 |
| FSAE | \$108,007 | \$60,397 | \$168,404 | 14% | 162 | 103 |
| Medical-Dental | \$13,337 | \$14,375 | \$27,712 | 2% | 11 | 10 |
| Medical Services | \$20,137 | \$69,143 | \$89,280 | 7% | 43 | 54 |
| Medical Services - Hospital | \$12,992 | \$53,863 | \$66,855 | 6% | 24 | 32 |
| Mental Health Presc. | \$6,212 | \$8,861 | \$15,073 | 1% | 24 | 25 |
| Mileage | \$29,638 | \$33,527 | \$63,165 | 5% | 90 | 105 |
| Medical - Physician Fees | \$9,869 | \$14,997 | \$24,866 | 2% | 49 | 39 |
| Medical Prescription | \$3,737 | \$6,435 | \$10,172 | 1% | 15 | 26 |
| Relocation | \$87,097 | \$74,717 | \$161,814 | 13% | 30 | 30 |
| Loss of Support | \$0 | \$12,112 | \$12,112 | 1% | 0 | 3 |
| Therapy - Mental Health | \$88,157 | \$97,331 | \$185,488 | 15% | 124 | 135 |
| Ten Day Funds | \$2,882 | \$1,888 | \$4,770 | 1% | 4 | 5 |
| Misc. | \$5,714 | \$7,802 | \$13,516 | 1% | 17 | 11 |
| Totals | \$506,854 | \$701,748 | \$1,208,602 | 100% | 621 | 686 |

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Grants Management Unit

The Grants Management Unit (the 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 27 different grant programs. Over the biennium, the Grants Management Unit brought in over \$20 million in revenue from open, previously awarded, grants. Approximately \$15 million in new grant awards were also received during this biennium. The grants have four main purpose areas focusing on Crime Prevention and 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 224 separate grants awarded during the biennium. These awards went to city/towns (31), nonprofit agencies (27), county agencies (16) and state agencies (5). These figures reflect the recipients of each of those grants, although many of these organizations did receive multiple grants during this period.

Because of these grant dollars, New Hampshire's citizens receive many services that would not otherwise be available. Examples of some of the

programs benefiting from grants include the following.

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 the use of a multidisciplinary team approach to the investigation of child abuse cases. 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 New Hampshire 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 the operation of crisis centers and shelters.
- Support for the AmeriCorps Victim Assistance Program.
- Training for law enforcement and prosecutors in the unique aspects of Elder Abuse cases.
- Supervised Visitation Centers across the State. Studies have shown that the risk of increased violence is 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

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of children between parents with a history of family violence.

- Additional DV/SA Culturally Specific Advocates working in immigrant/ethnic populated communities.
- Victim/Witness Advocate positions in County Attorney offices and police departments.
- Specifically trained domestic and sexual violence prosecutors located in the counties of Belknap, Cheshire, Coos, Grafton, Hillsborough, Rockingham and Strafford.
- 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.

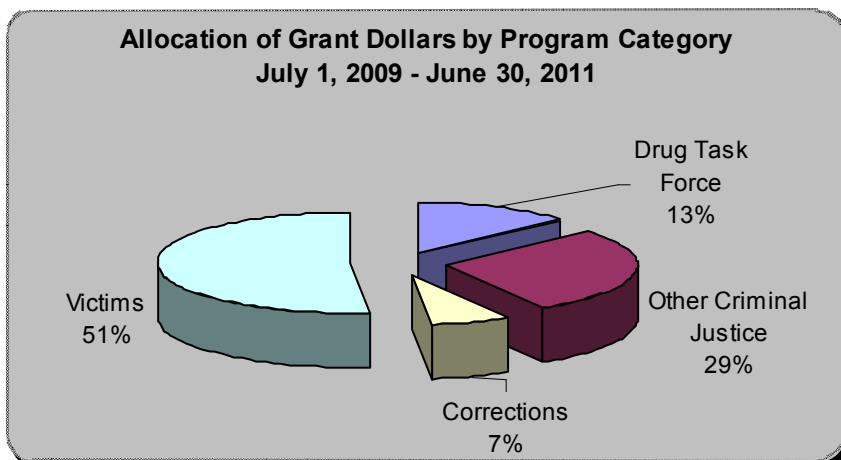
- Court Appointed Special Advocacy (CASA) programs to provide advocates for abused and neglected children in the New Hampshire court system.
- Support to the Department of Corrections for victim-offender mediation programs, and victim notification services.
- Mental health services in the North Country 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

- Creation of a 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

- The creation of a Cold Case Unit in New Hampshire comprised of a prosecutor, two State Troopers and a local police officer tasked with the investigation of New Hampshire's unsolved homicides.



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- The addition of a trained pharmacist to the New Hampshire State Police drug unit to assist with investigations.
 - Drug Court Programs designed to provide more specialized assistance to drug involved offenders with the goal of reducing recidivism.
 - Ongoing efforts to support J-One — a comprehensive criminal justice information system involving the courts, law enforcement, and corrections.
 - Support for youth-at-risk programs throughout New Hampshire designed to help keep troubled youth out of the court system.
 - Funding to combat underage drinking through 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.
 - Support provided to the New Hampshire State Police in an effort to make National Incident Based Reporting System (NIBRS) data available to the public via the Internet, and a collaborative effort with Massachusetts and Vermont to publish regional crime data.
 - Funding to assist with the HAVA requirements through the streamlining of and compliance with the elections process.
 - Assistance for the New Hampshire State Police Forensic Crime Lab designed to increase testing and analysis capacity.
- Programs in the Correctional Arena
- Statewide efforts to provide corrections related services designed to keep offenders from recidivating and, thereby, increase public safety.
 - Substance abuse treatment services provided for male and female offenders at County correctional facilities and at the Sununu Youth Services Center.

Administration

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

| Grants Available By Program Category | FY10 | FY11 | Total |
|---|---------------------|---------------------|---------------------|
| <i>Criminal Justice</i> | | | |
| Byrne Justice Assistance Grant Program Drug Task Force | \$1,228,411 | \$1,323,926 | \$2,552,337 |
| Byrne Justice Assistance Grant Program General Criminal Justice Activities | 1,026,004 | 2,195,724 | |
| COPS Meth Grant | 378,044 | 72,518 | |
| Bullet Proof Vest Grant | | 12,242 | |
| Enforcing Underage Drinking Laws | 279,806 | 692,224 | |
| Help America Vote Act | 92,473 | 81,316 | |
| PEW Charitable Foundation | 12,048 | | |
| National Criminal History Improvement | 269,193 | | |
| National Forensic Science Improvement | 101,928 | 107,283 | |
| Project Safe Neighborhoods | 195,961 | 148,794 | |
| Traffic Safety Resource Prosecutor | 107,372 | 113,557 | |
| Statistical Analysis Center | 29,128 | 99,020 | |
| Drug Court Program | | 34,977 | |
| Other Criminal Justice | 109,987 | 125,343 | |
| Total: | 3,940,345 | 4,823,339 | 8,763,684 |
| <i>Corrections</i> | | | |
| Residential Substance Abuse and Treatment | 61,811 | 53,857 | |
| Prisoner Reentry Initiative (Going Home Program) | 825,207 | 174,180 | |
| Family Based RSAT | | 26,375 | |
| Other Corrections | 109,987 | 125,343 | |
| Total: | 997,005 | 379,757 | 1,376,762 |
| <i>Victim Services</i> | | | |
| Children's Justice Act | 66,859 | 54,611 | |
| Sexual Assault Support Program | 31,574 | 147,574 | |
| Rural Domestic Violence & Child Victimization | 86,185 | 12,077 | |
| Safe Havens Visitation Centers | 195,232 | 215,859 | |
| State Victim Fund – Victim Comp Portion | 316,575 | 429,324 | |
| State Victim Fund Grants to Victim Programs | 536,678 | 556,645 | |
| Victims Compensation – Federal | 213,991 | 286,023 | |
| Victims of Crime Act | 2,123,339 | 2,351,824 | |
| Violence Against Women Act | 1,370,339 | 1,323,104 | |
| Homicide Victims Program | 56,505 | 125,912 | |
| Elder Abuse Program | 32,087 | 55,285 | |
| Other Victim Services | 109,987 | 125,343 | |
| Total: | 5,139,357 | 5,683,587 | 10,822,944 |
| <i>Totals</i> | | | |
| Drug Task Force – Byrne | 1,338,398 | 1,449,270 | |
| Other Criminal Justice | 2,601,947 | 3,374,069 | |
| Corrections | 997,005 | 379,757 | |
| Victims | 5,139,357 | 5,683,587 | |
| Total: | \$10,076,707 | \$10,886,339 | \$20,963,390 |

Administration

| Federal Grant Awards Received By Grant Program | FY10 | FY11 | Total |
|--|--------------------|--------------------|---------------------|
| Byrne Justice Assistance Grant Program (JAG) | \$1,685,252 | \$1,377,971 | |
| Drug Task Force Congressional Award | 750,000 | | |
| Paul Coverdell National Forensic Science Improvement | 199,728 | 166,108 | |
| Natl. Criminal History Improvement Program (NCHIP) | 300,000 | | |
| Children's Justice Act | 107,824 | 104,269 | |
| Victims of Crime Act (VOCA) Assistance Program | 2,137,895 | 2,187,180 | |
| Victims of Crime Act (VOCA) Compensation Program | 223,000 | 402,000 | |
| Traffic Safety Resource Prosecutor (TSRP) | 124,653 | 129,857 | |
| Help America Vote Act (HAVA) | 138,000 | 138,000 | |
| John R. Justice Grant Program (JRJ) | 100,000 | 100,000 | |
| Residential Substance Abuse and Treatment (RSAT) | 156,088 | 125,772 | |
| Family Based RSAT | | 300,000 | |
| Violence Against Women Act (VAWA) | 1,036,028 | 1,036,741 | |
| Project Safe Neighborhoods (PSN) | 73,563 | 66,065 | |
| Sexual Assault Support Program | 157,022 | 156,826 | |
| Safe Havens | 639,337 | | |
| Second Chance Act – Reentry | 400,000 | | |
| Drug Court | | 350,000 | |
| Enforcing Underage Drinking Laws (EUDL) Program | 356,400 | 300,000 | |
| Statistical Analysis Center (SAC) | 67,944 | 50,000 | |
| Total Biennium Amount: | \$8,652,734 | \$6,990,789 | \$15,643,523 |

An additional resource made available to the State was ARRA. ARRA funds were awarded to the State at the end of the State 2008-2009 biennium and have continued to provide benefits to the citizens of New Hampshire through the current 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

Appendix A

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

During the biennium, the Attorney General filed six petitions for authorization to intercept telecommunications under RSA 570-A:7, all of which were granted. In addition, the court granted four petitions for an extension of the orders authorizing intercepts. The Attorney General applied for and received one order to install and use pen register devices under RSA 570-B:4. The Attorney General did not file any petitions for an extension of the orders authorizing pen registers. The Attorney General, or designated Assistant Attorneys General, authorized 273 interceptions pursuant to RSA 570-A:2.

Appendix**Appendix B**

Personnel Data

| Current Number of Positions Authorized | 6/30/10 | 6/30/11 |
|--|------------|------------|
| 1. Unclassified | 78 | 78 |
| 2. Classified | 65 | 65 |
| 3. Temporary | 3 | 3 |
| TOTAL | 146 | 146 |

Physical Plant and Property Appraisal

| | 6/30/10 | 6/30/11 |
|-------------------|--------------------|--------------------|
| 1. Equipment | \$2,564,719 | \$2,486,968 |
| 2. Physical Plant | 0 | 0 |
| 3. Farm | 0 | 0 |
| 4. Highway | 0 | 0 |
| TOTAL | \$2,564,719 | \$2,486,968 |

Appendix**Appendix C**

RECEIPTS AND EXPENDITURES

| | SFY 10 | SFY 11 |
|---|---------------------|---------------------|
| <i>Receipts</i> | | |
| Federal Funds | \$5,487,473 | \$10,337,133 |
| Transfers from Other Agencies | 2,853,029 | 2,386,968 |
| Health Club Registrations - unrestricted | 26,855 | 21,690 |
| Consumer Land/Condo Registrations - unrestricted | 99,860 | 75,300 |
| Judgments and Recoveries - unrestricted | 45,496 | 34,487 |
| Tobacco Settlement | 44,220,526 | 41,691,580 |
| All Other Sources | 5,109,441 | 7,025,535 |
| Total | \$57,842,680 | \$61,572,693 |
| <i>Expenditures</i> | | |
| Permanent Personnel | \$8,484,502 | \$8,320,323 |
| Current Expense incl Rent and Trfr General Services | 491,967 | 647,426 |
| Equipment | 161,519 | 182,716 |
| Benefits incl Retirees Benefits | 3,366,593 | 3,500,588 |
| In State Travel | 75,411 | 75,716 |
| Out of State Travel | 33,163 | 58,322 |
| Contracts for Program Services (ADME) | 679,352 | 717,973 |
| Litigation | 874,503 | 989,548 |
| Witness Fees | 723,987 | 646,974 |
| Autopsy Expense | 538,548 | 500,662 |
| Office Information Technology (OIT) | 420,703 | 465,307 |
| Grants/Activities | 3,743,367 | 7,080,072 |
| Miscellaneous | 187,860 | 910,087 |
| Total | \$19,781,475 | \$24,095,714 |
| <i>Disbursements On Behalf of Victims</i> | | |
| Victim's Compensation Payments/Victim's Assistance Grants | \$1,008,831 | \$1,270,291 |
| Total of all Expenditures | \$20,790,306 | \$25,366,005 |

Appendix**Appendix D**

OPINIONS

July 1, 2009 - June 30, 2011

Opinion No. OPN-09-001
Date Response: July 20, 2009
Requesting Party: State Fire Marshal
Directed To: J. William Degnan, State Fire Marshal
Subject: Whether or not the State Fire Code (Saf-C 6000) applies to a high-rise condominium building
Written By: Orville B. Fitch, II and Nancy J. Smith

Opinion No. OPN-11-001
Date Response: June 29, 2011
Requesting Party: NH House of Representatives
Directed To: Honorable William L. O'Brien, Speaker of the House of Representatives
Subject: Whether or not an e-mail sent to or received by a legislator via a legislative e-mail address constitutes a "governmental record" as defined by RSA 91-A:1-a, III
Written By: Michael A. Delaney and Suzanne M. Gorman

Appendix

Appendix E

Expenditures Pursuant to RSA 7:12

SFY 2010

February 5, 2010 Fiscal Committee Meeting

RSA 7:12 request for \$400,000 for litigation funds

RSA 7:12 request for \$184,231 for Memorandum of Understanding with NH Department of Insurance

SFY 2011

No requests submitted