

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

**Department of Law
Criminal Appeals/Special Litigation Component
Component Budget Summary**

Component: Criminal Appeals/Special Litigation Component

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Component Mission

Mission statement appears at the department summary and BRU levels.

Component Services Provided

(A) The Office of Special Prosecutions and Appeals (OSPA) represents the state in all felony appellate proceedings challenging convictions obtained in the trial courts, and handles most state and federal post-conviction and habeas corpus proceedings. These post-trial procedures are constitutionally required; when convicted criminals file such actions the state must respond. Without these functions, the efforts of criminal justice agencies to detect and punish crime through investigation, trial, and conviction would be nullified.

(B) OSPA prosecutes economic and other complex crimes. In addition to filing criminal charges and conducting criminal trials, this office also gives day-to-day advice to special "white collar" investigation units. These prosecution services protect private investors, small businesses, and government agencies that are the victims of fraud or other wrongdoing. OSPA also handles civil litigation challenging statutes related to criminal justice, such as sex offender registration, victims' rights, and physician-assisted suicide.

(C) OSPA prosecutes environmental crimes through a reimbursable services agreement with the Department of Environmental Conservation. These prosecution services protect the state's air and water quality by providing advice and assistance to state environmental investigators and by prosecuting appropriate criminal cases.

(D) OSPA prosecutes welfare cheaters through a reimbursable services agreement with the Department of Health and Social Services. These prosecution services protect the state's welfare system.

(E) OSPA prosecutes medical providers who cheat the Medicaid system, through a federal grant and matching state general funds. The unit can institute criminal prosecution for fraud or civil actions for overpayments. In addition, the unit is responsible for investigating and prosecuting abuse of patients in Medicaid-funded facilities.

(F) OSPA prosecutes selected fish and game cases, depending on the importance of the case or the legal issues involved. Funding is provided by the Fish and Game Fund.

(G) OSPA prosecutes criminal child support enforcement matters through a reimbursable services agreement from the Department of Revenue.

(H) OSPA participates in the bootlegging/alcohol interdiction prosecution by cross-designating a prosecutor as an assistant United States attorney to obtain federal search warrants to search packages shipped via the US mail, to handle the prosecutions in Anchorage, Nome and Kotzebue, to provide legal advice during investigations, and to respond to motions and appeals in bootlegging cases.

(I) OSPA provides services to the entire state with eight appellate attorney positions, one "white collar crime" prosecutors and one environmental crimes prosecutor, one welfare fraud prosecutor, one Medicaid provider fraud prosecutor, one fish and game prosecutor, one bootlegging prosecutor and a half-time child support enforcement prosecutor.

Component Goals and Strategies

The primary goal of the Office of Special Prosecutions and Appeals (OSPA) is to uphold criminal convictions on appeal and on collateral attack. Additional goals of OSPA are to assure safe and healthy communities by prosecuting and convicting offenders in the many special units now under the supervision of OSPA: (1) complex criminal cases, with

special emphasis on "white collar" crime, (2) environmental crimes, (3) child support enforcement, (4) welfare fraud, (5) Medicaid provider fraud, and (6) selected fish and game prosecutions.

Key Component Issues for FY2003 – 2004

Misdemeanor appeals

The Office of Special Prosecutions and Appeals is the state's office for handling most appeals in criminal cases. It is staffed by an experienced corps of appellate lawyers capable of the in-depth legal research and writing necessary for effective appellate work. OSPA has never been able to handle all the state's criminal appeals, however, so each DA's office has been forced to write certain appeals on their own. This has had mixed results. Writing appellate briefs takes away time from the DA's offices that could be spent on day-to-day trial work. In addition, the briefs written by the DA's offices are not as well-researched as those written by OSPA and often issues of statewide importance are decided by the court of appeals based on these DA briefs.

Post-conviction relief: Criminals get two chances to appeal their conviction

Once a criminal is convicted and sentenced, he can appeal his case to the Alaska Court of Appeals and the Alaska Supreme Court. Even after his conviction is affirmed, he can then come back to superior court (often many years later) and file a new action, called Post-Conviction Relief (PCR), in which the defendant usually complains about mistakes made by his first attorney. Naturally for this PCR he gets another public attorney, ordinarily from OPA.. These cases almost always involve serious felony offenders.

These PCR actions are time consuming and can be complicated by the length of time that has passed since the original conviction was entered. Often the issues involve narrow points of law, and extensive briefing. When the defendant loses in superior court (they almost always lose), many of them appeal. Between 1999-2001 there were over 250 of these "second bites at the apple" filed, and this causes an enormous time drain on busy DA's offices. This year is shaping up to be a record year for such cases.

Special Prosecution

In mid 2002, OSPA was split into two sections. The lead general fund special prosecutor was moved into a supervisory role, which effectively took time away from prosecution of general fund cases. Cases referred for special prosecution are much more time consuming and complex than ordinary cases. As many as five banker's boxes of financial information is sometimes submitted for review. The initial review of a case with such a large number of documents can take over a week. Just to arrive at the point of declining a document-intensive case can take up more time than is devoted to the prosecution of many drug or theft cases. Because of the restrictive funding sources in the section, it is difficult for anyone other than the special prosecution supervisor to cover other positions for long periods of time. The following are some specific examples of special prosecutions that must be funded by the general fund:

1. Crimes committed by police officers
2. Conflict cases from DA's offices
3. Charitable gaming, workers comp and insurance fraud
4. White collar crimes – high value embezzlement
5. Prosecution under esoteric criminal statutes not typical of normal prosecution work
6. Computer intrusion and cyber crime

Alcohol Interdiction

Alcohol is at the root of a number of problems in Alaska. The correlation between alcohol and crime is significant, and alcohol is related to a number of accidental deaths and injuries. In addition, many children are born with FAS or FAE because their mothers consumed alcohol during pregnancy. The bootlegging interdiction project focuses on keeping alcohol out of dry communities. The project is a joint effort between the Departments of Public Safety and Law. Funding is from the Department of Justice. The project was to have been funded for three to five years. The Departments of Public Safety and Law coordinate with local law enforcement agencies, as well as with the United States Attorney's Office, the United States Postal Service and other federal law enforcement agencies. FY 2004 would mark the third year of funding.

Major Component Accomplishments in 2002

Major accomplishments are reflected in the performance measures at the BRU level.

Statutory and Regulatory Authority

AS 44.23.020

Criminal Appeals/Special Litigation Component
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	1,975.5	2,363.3	2,369.5
72000 Travel	72.7	83.4	83.4
73000 Contractual	176.3	309.4	309.4
74000 Supplies	41.4	55.0	55.0
75000 Equipment	9.1	18.0	18.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	2,275.0	2,829.1	2,835.3
Funding Sources:			
1002 Federal Receipts	338.3	488.4	495.5
1003 General Fund Match	112.8	158.6	158.8
1004 General Fund Receipts	1,256.2	1,430.3	1,422.6
1007 Inter-Agency Receipts	440.7	622.6	628.3
1134 Fish and Game Criminal Fines and Penalties	127.0	129.2	130.1
Funding Totals	2,275.0	2,829.1	2,835.3

Criminal Appeals/Special Litigation Component
Proposed Changes in Levels of Service for FY2004

No service changes.

Summary of Component Budget Changes
From FY2003 Authorized to FY2004 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	1,588.9	488.4	751.8	2,829.1
Adjustments which will continue current level of service:				
-Annualize FY2003 COLA Increase for GG/GP/SS Bargaining Units	0.0	6.4	2.0	8.4
-\$75 per Month Health Insurance Increase for Non-covered Staff	10.6	0.7	4.6	15.9
-To Second Judicial District to adjust vacancy by fund source	-10.9	0.0	0.0	-10.9
-To First Judicial District to adjust vacancy by fund source	-7.2	0.0	0.0	-7.2
FY2004 Governor	1,581.4	495.5	758.4	2,835.3

Criminal Appeals/Special Litigation Component**Personal Services Information**

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	30	30	Annual Salaries	1,913,277
Part-time	2	2	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	580,955
			<i>Less 5.00% Vacancy Factor</i>	(124,732)
			Lump Sum Premium Pay	0
Totals	32	32	Total Personal Services	2,369,500

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Clerk II	1	0	0	0	1
Administrative Clerk III	1	0	0	0	1
Assoc Attorney II	1	0	0	0	1
Attorney III	4	0	0	0	4
Attorney IV	6	0	0	0	6
Attorney V	7	0	0	0	7
Attorney VI	1	0	0	0	1
Internal Auditor IV	1	0	0	0	1
Investigator II	1	0	0	0	1
Investigator III	3	0	0	0	3
Law Office Assistant I	4	0	0	0	4
Law Office Assistant II	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	32	0	0	0	32