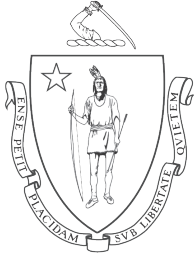


# Report of the Attorney General for Fiscal Year 2016



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
MAURA HEALEY





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

(617) 727-2200  
(617) 727-4765 TTY  
[www.mass.gov/ago](http://www.mass.gov/ago)

In accordance with the provisions of Section 11 of Chapter 12 of the Massachusetts General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This annual Report covers the period from July 1, 2016 to June 30, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ma Healey".

Maura Healey  
Attorney General



# The Attorney General's Office

## The Executive Bureau

Budget Division  
Child and Youth Protection Unit  
Communications Division  
Community Engagement Division  
General Counsel's Office  
Human Resources Division  
Information Technology Division  
Law Library  
Operations and Support Services Division  
Policy & Government Division

## The Criminal Bureau

Appeals Division  
Digital Evidence Lab  
Enterprise, Major, and Cyber Crimes Division  
Financial Investigations Division  
Gaming Enforcement Division  
Human Trafficking Division  
White Collar & Public Integrity Division  
Victim/Witness Services Division  
State Police Detective Unit

## Energy and Environmental Bureau

Energy and Telecommunications Division  
Environmental Crimes Strike Force  
Environmental Protection Division

## Government Bureau

Abandoned Housing Initiative  
Administrative Law Division  
Municipal Law Unit  
Open Government Division  
Trial Division

## Health Care and Fair Competition Bureau

Antitrust Division  
False Claims Division  
Health Care Division  
Medicaid Fraud Division  
Non-Profit Organizations/Public Charities Division

## Public Protection and Advocacy Bureau

Civil Investigations  
Civil Rights Division  
Consumer Advocacy & Response Division  
Consumer Protection Division  
Fair Labor Division  
Insurance and Financial Services Division

## Regional Offices

Central Massachusetts (Worcester)  
Southeastern Massachusetts (New Bedford)  
Western Massachusetts (Springfield)

## Office of the State Solicitor



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## EXECUTIVE BUREAU

The Executive Bureau provides administration, public information, and policy development support for the Attorney General's Office (Attorney General's Office), as well as operational, information technology, human resources, and fiscal management services. Executive Bureau leadership includes the First Assistant Attorney General, Deputy Attorneys General, and the Chief of Staff. Divisions within the Executive Bureau include: General Counsel's Office; Policy and Government; Child and Youth Protection Unit, Community Engagement; Information Technology; Human Resources; Communications; Budget; Operations and Support Services, and the Law Library.

### **Child and Youth Protection Unit**

The Child & Youth Protection Unit (CYPU) was established in September 2015 within the Executive Bureau. The mission of the CYPU is to use the unique position and expertise of the Attorney General's Office to advance initiatives fostering enhanced protections and positive outcomes for children and youth in Massachusetts. CYPU does so primarily by engaging in advisory, programmatic, and policy-making efforts. CYPU may also use criminal prosecution and civil enforcement tools, if appropriate.

#### Significant Cases

SJC victory in **Partanen v. Gallagher**: We submitted an amicus brief with the Civil Rights Division arguing that the unmarried partner of a biological mother, who decided with the mother to conceive a child through assisted reproductive technology (ART), can be the legal parent of that child despite lack of biological connection. The SJC ruled in favor of this position in a landmark case that for the first time held that an unmarried, non-biological, non-adoptive parent can be the legal parent of a child under Massachusetts law. This ruling ensures that children with a non-biological parent are not unduly deprived of the care, protection, and support of that parent.

#### Other Significant Achievements

The CYPU was launched in September 2015, and hit the ground running – providing consultation on child-related matters within the office, advising state agencies and the legislature, and pursuing specific projects to advance the best interests of children and youth throughout the Commonwealth. Among these projects were:

- **Mandated Reporter Training:** We worked with Middlesex DA's Office to revise and distribute a comprehensive online training to educate mandated reporters of child abuse and neglect. The training is the only free, comprehensive, and up-to-date training available to every mandated reporter in the Commonwealth. The updates include new guidance to clarify confusion and concern in the field regarding requirements for reporting underage sexual activity.
- **CASA Program for Transition-Aged Youth:** We developed a pilot program with Boston CASA and other stakeholders to provide specially-trained Court Appointed Special Advocates to youth ages 16+ in foster care in Boston. Through advocacy, mentorship, and a youth-driven transition-planning process, CASAs will help foster youth prepare for adulthood.
- **Campus Safety and Violence Prevention Report:** As part of the Department of Higher Education's Campus Safety and Violence Prevention Task Force, we worked on and released a report: Securing Our Future: Best Practice Recommendations for Campus Safety and Violence Prevention. The report contains a comprehensive set of recommendations to keep our campuses safe, with a focus on sexual violence and active shooter situations.

## Community Engagement Division

The Attorney General's Community Engagement Division (CED) aims to fulfill the Office's mission to serve all people in Massachusetts in every one of its diverse communities. The Division works to establish a bridge between community members and the Office so that every resident has access to our resources, services, and educational materials. To this end, the Division works with all bureaus in the Office – on a wide variety of topics – to develop trainings, informational sessions, office hours, and presentations to bring into communities.

In 2016, CED organized over 220 events and trainings and engaged directly with nearly 12,000 community members across the state. The Division director visited the White House to present our community engagement efforts as a national model to members of President Obama's White House Task Force on New Americans.

Among our major outreach efforts last year, CED worked with FLD to launch the AGO Wage Theft Clinics, by reaching out to hundreds of workers who have received Private Right of Action letters from the AGO to attend a clinic, where they can receive free legal assistance in their Wage Theft court action from a variety of legal service providers and private bar attorneys. In addition, these workers can meet with Workers' Centers who operate in their area and learn about all the other services of the AGO.

In addition, the division joined CPD to launch Access to Justice Clinics to bring consumers in Boston who have been sued over a debt to show up to their court date and connect them with legal aid to adequately defend themselves. While at court they are also connected with the AGO's resources regarding debt collection and encouraged to file complaints against unfair or deceptive business practices by debt collectors.

CED has also reached out to hundreds of youth across the state. Our Youth Outreach team visited last summer 50 youth development organizations and provided assistance to almost 350 youth, thanks to our Healthy Summer Youth Jobs grant. Employment provided youth with assistance to advance public health and wellness.

And a central means of advancing our mission on behalf of the public is through the management of grants awarded by the AGO to non-profit organizations, municipalities and related entities to advance our shared work on behalf of families and residents. In recent years, CED has administered AGO grants made to serve consumers and families facing foreclosure, support voluntary mediation programs, increase youth employment, advance technology for those with disabilities, expand legal services to veterans, diversify the construction industry, and partner with schools and community-based organizations to combat relationship violence and the opioid epidemic. AGO Grants funded a total of 162 non-profits, small businesses, faith-based groups, cities & towns, and hospitals. We have awarded \$18,254,819 in grants last year, helping to improve the lives and well-being of thousands of residents.

## General Counsel's Office

The GCO's primary responsibility is to provide legal assistance and operational support to the Attorney General, Senior Management, Executive Bureau (Human Resource Division, Information Technology Division, Operations Division, and Budget Office), and the substantive bureaus.

Specifically, the GCO provides legal assistance with employment, ethics, conflicts of interest issues; assists in the development and implementation of office policies and procedures; ensures that all staff members comply with G.L. c. 268A; coordinates the AGO's appointments to state boards and commissions; manages the AGO's responses to public records requests; and runs the AGO in-house training program.

The GCO also manages the library and eDiscovery teams.

The General Counsel's Office's reports to the Chief Legal Counsel.

The AGO has an internal mandatory minimum Continuing Legal Education (CLE) requirement of 12 CLEs per year for AAsG. The GCO, through the AG Institute, provides in-office high quality training to AGO legal and non-legal staff. This year, there were 68 programs and 1,675 "CLE seats" filled.

In FY2016, the AG Institute conducted 68 informal programs for AAsG, filling approximately 1,675 seats.

In FY2016, the AGO received 470 public records requests, a 20.5% increase in the number received in FY2015. Of the total received, 254 were handled through the GCO (54.0%) and 122 were from the press (26%).

The GCO is responsible for training other staff to assist with AGO responses to public records request. Among other trainings, the GCO conducted an office-wide staff training on best practices for responding to public records requests, in preparation for implementation of the new Public Records Law effective January 1, 2017.

The GCO also reviewed and coordinated the Attorney General's response to 13 requests from the National Association of Attorneys General to sign letters submitted to Congress or federal agencies representing the collective views of the Attorneys General.

## Policy & Government Division

The Policy & Government Division assists in the development and advancement of Attorney General Maura Healey's policy and legislative priorities. These initiatives focus on ensuring all Massachusetts residents have access to equal treatment under the law, a healthy environment, affordable health care, a transparent and open government, safe neighborhoods, and protection from abusive practices in the marketplace. Additionally, the Division articulates the Office's positions on legislation proposed by members of the Massachusetts Legislature and Congress. The Division responds to inquiries from members of the congressional delegation, state legislators, executive agencies, and local officials made on behalf of their constituents, and helps those constituents access the many resources within the Office.

### Achievements

The Division led the Office's efforts to support legislation protecting transgender persons from discrimination in places of public accommodation. The coordinated effort included legislative testimony, a roundtable discussion with transgender persons and their families, a letter of support from a broad coalition of businesses and the #EveryoneWelcome social media campaign. The bill was signed into law on July 6, 2016, and the Office proudly celebrated this important new protection with legislators, the transgender community, civil rights advocates and other stakeholders on the steps of the State House.

The Division, working with the Civil Rights Division, collaborated with legislators, advocates, and the business community on an update to the Commonwealth's 70-year-old pay equity statute, to ensure women are paid fairly and equally.

The Division partnered with legislators, law enforcement officials, and members of the recovery community on a new law that makes trafficking of fentanyl, a powerful and deadly opioid 30 to 50 times more powerful than heroin, a crime. The Division assisted in the rollout of the Good Samaritan campaign, to raise awareness of a law that protects people who call 911 during an overdose from being charged with possession of a controlled substance.

The Division collaborated with the Legislature to establish the Municipal Naloxone Bulk Purchasing Trust Fund. The fund allows cities and towns to buy naloxone, a medication relied upon by first responders to reverse an overdose from heroin and other opioids, at a deeply discounted rate. The Division, in partnership with the Health Care Division, also reached a first-of-its kind agreement with a naloxone manufacturer, Amphastar Pharmaceuticals, to provide \$325,000 for the fund.

The Division expressed the Office's strong support for repeal of an automatic license suspension law for certain drug offenses, which unnecessarily prevented people from rebuilding their lives, getting to work, and caring for their families.

The Division collaborated with the New England Patriots Charitable Foundation to launch Game Change, a first-of-its-kind violence prevention initiative. In its first year, Game Change trained nearly 200 staff from 90 high schools and nine domestic violence organizations in preventing relationship violence and intervening as bystanders. Mentors in Violence Prevention (MVP), a nationwide leader in addressing relationship violence and sexual assault, conducted the trainings. In its next phase, Game Change will train nearly 1,000 students as peer educators in anti-violence strategies

## CRIMINAL BUREAU

The Criminal Bureau works to protect the public by investigating and prosecuting a wide range of criminal cases. These include public corruption, financial fraud, and other violations of the public trust, organized crime, major narcotic offenses, appellate issues, insurance and unemployment fraud, environmental crimes, internet and online crimes, and more. The Criminal Bureau's investigations are supported by a team of State Police detectives.

### **Appeals Division**

The Appeals Division defends Massachusetts convictions, criminal justice officials, and criminal laws and practices, in federal and state courts. Specifically, the Division strives to uphold convictions secured by the Attorney General's Office when they are challenged in the Massachusetts Trial Court, Appeals Court, and Supreme Judicial Court. Such convictions often arise from large-scale drug trafficking; environmental violations; child pornography; and white-collar offenses, such as those involving public corruption, fraud, and financial crimes. The Division also responds to all challenges in federal court to convictions obtained by the AGO and the Commonwealth's District Attorney's Offices. Most commonly, they attack convictions for homicide; rape; other offenses involving violence and sexual assault; drug crimes; and weapons offenses. The Division is, in fact, the only unit of state government to defend Massachusetts convictions in federal courts. Challenges may come in the form of direct appeals to the United Supreme Court. Or they may be pursued through habeas corpus actions in the U.S. District Court, Court of Appeals for the First Circuit, and Supreme Court. The Division's role in the development of federal habeas law is considerable. In a typical year, between ninety and one hundred percent of the First Circuit's published decisions concerning habeas challenges to state convictions involve Massachusetts prisoners and thus Division attorneys. The Division additionally represents Massachusetts agencies and officials when they are sued or subpoenaed in relation to criminal justice matters in federal or state civil actions, and when they are subpoenaed in criminal cases. The Division's clients include the AGO itself, District Attorney's Offices, the Parole Board, the Inspector General's Office, courts, the Probation Service, other criminal justice agencies, and members of such bodies. In its various cases, the Division is often required to defend the constitutionality of statutes, rules, procedures, and practices related to criminal adjudication and punishment.

### Significant Cases

In FY2016, the Appeals Division successfully defended numerous convictions against habeas corpus challenges in federal trial and appellate courts. In fact, no Massachusetts conviction was set aside on habeas review. And in many of the Division's habeas cases, the courts resolved sophisticated questions of habeas corpus and constitutional law in ways that will benefit the Commonwealth and crime victims in the future.

A number of the challenges that the Division turned back arose from brutal murders that devastated families and communities. For example, as a result of Division efforts, the **United States Court of Appeals for the First Circuit upheld the convictions of: Helder Barbosa**, who shot and killed Edward Serret in Roxbury; **Jeffrey Bly**, who slayed Paul R. McLaughlin, a Massachusetts Assistant Attorney General who was prosecuting him for carjacking, in West Roxbury; **Alex Holmes**, who joined in mortally beating Todd Richardson in Springfield; **Charles Jaynes**, whose victim was ten-year-old Jeffrey Curley of East Cambridge; **Shaun Jenkins**, who fatally fired upon his cousin, Stephen Jenkins, in Dorchester; **Damion Linton**, who strangled his wife, Andrea Harvey, to death in Cambridge; **James P. Riva II**, who shot, stabbed, and set afire his grandmother, Carmen Lopez, in Marshfield; **Jose Rosario**, who ordered the shooting of Mario Cordova in Springfield; **Dagoberto Sanchez**, whose gunshots claimed the life of Jose Portillo in Chelsea; and **Darryl Scott**, who killed Nabil Essaid in



Boston. In several cases, the court's decision left additional, related judgments undisturbed. Some of those judgments involved other victims, such as: Barbosa's conviction for the armed assault with intent to murder, and assault and battery with a dangerous weapon, upon Geraldo Carbuccia; Riva's guilty verdict for assault and battery upon a police officer, Lieutenant James Lopes; and Scott's convictions for armed assault with intent to kill Ahmed Obbada and Moheemmed Lebdoi, and assault with a dangerous weapon on Boston Municipal Police Officer Matthew Clark. **The First Circuit also affirmed the denial of habeas corpus relief to: Reginald Butler**, who is in prison for raping a woman in Chelsea; and **Mark Sullivan**, who was convicted of possessing child pornography as a repeat offender after printing a lewd photo in the Hingham public library.

Additionally, the **U.S. Supreme Court denied habeas petitioner Aaron Powell's** request for certiorari, which advanced challenges to Massachusetts firearms laws and expansive interpretations of the Second Amendment. The denial was significant in part because the Court asked the Division to submit a formal brief in response to Powell's request, a step taken in only a small fraction of cases.

The Division also had an active, and largely successful, year defending state convictions secured by District Attorney's Offices on direct appeal to the U.S. Supreme Court. In five cases, the Court denied petitions for certiorari after asking the Division to submit briefs in opposition. One was brought by Manuel Arzola, who was convicted of assault and battery, and assault and battery by means of a dangerous weapon, as a result of the street robbery of Mauricio Arevalo in Chelsea. Arzola questioned the DNA testing of certain blood evidence on Fourth Amendment grounds. The remainder raised issues arising from courtroom closures during jury selection at the petitioners' trials. The petitioners were: Joshua Cintron, whose offenses included the murder of Santiago Mena; Edmund LaChance, Jr., who is in prison for the aggravated rape of a Malden woman and related crimes; Michael Jackson, who was convicted of murdering Jose Lane in Dorchester and other offenses; and Luis Penn, whose offenses included murdering Aneury Guzman in Lawrence. The Court did reverse Jaime Caetano's conviction of stun gun possession on Second Amendment grounds, but without entertaining briefing on the merits or oral argument by either side.

Added to the above, the Division prevailed in defending several AGO convictions or sentences on direct appeal or collateral review in the state system. Among these were: the convictions of James C. Hyde, Omar Castillo, and Michael H. Kaplan on multiple counts arising from a sophisticated auto insurance fraud scheme; judgments against Virgen Mille Lima for larceny over \$250 and auto insurance fraud; a guilty verdict against now-disbarred lawyer Edward W. Pepyne, Jr. for larceny over \$250 from persons over sixty years of age, based on allegations that he deprived his clients Roger and Marion Pearce of \$185,000 of their proceeds from a litigation settlement; the sentences of Joseph A. Phillips for indecent assault and battery on a child under fourteen; Philip Shaheen's convictions for oxycodone trafficking and marijuana possession; and judgments against former attorney Phillip Thompson on nine counts of larceny based on evidence that he bilked his clients and a bank of close to one million dollars.

In other cases, the Massachusetts Supreme Judicial Court declined to accept certain arguments by the Division, but without frustrating its ultimate goals. In connection with the prosecution of David Forlizzi, the court did not grant the Division's request for protection of certain confidential informant information. But the court made no new law on the subject, and it rejected an effort by Forlizzi and codefendant Fred Battista to get their prosecutions dismissed before trial. The AGO would ultimately secure the convictions that it desired the following fiscal year. Then, in cases against Branden E. Mattier and Domuniqua D. Grice – who were found guilty on multiple charges arising from their attempt to defraud The One Fund Boston by submitting a false claim – the SJC reversed one defendant's conviction

for identity fraud, but otherwise rejected the defendants' challenges and left their sentences unchanged. And in a proceeding brought by Joshua Charbonneau, the SJC found that the relevant statute and rule did not allow for use of a case management procedure that had been adopted by a district court represented by the Division. But in doing so, it granted the District Court Department the guidance that it desired and declined to accept Charbonneau's constitutional challenges to the procedure.

In all cases, Division members cooperated closely with the AGO's Victim/Witness Assistance Division to ensure that affected citizens were notified of proceedings and developments.

### Other Significant Achievements

Appeals Division members continued to serve the Commonwealth in ways beyond their core litigation work in FY2016. One way involved filing an amicus brief in *Commonwealth v. McGhee*, where the SJC rejected a set of constitutional challenges to the new Massachusetts human trafficking statutes. Another way involved representing the AGO as members of, or liaisons to, various governmental bodies. Such bodies included: the Massachusetts Criminal Records Review Board, Firearms Licensing Review Board, and Illegal Tobacco Task Force; the Massachusetts Supreme Judicial Court Standing Advisory Committees on the Rules of Criminal Procedure and on Eyewitness Identification; the Interstate Compact for Adult Supervision State Advisory Council; and the United States Department of State's Bureau of Consular Affairs. Division members also contributed to the process of revising the Massachusetts Rules of Appellate Procedure, Rules of Criminal Procedure, Rules of Professional Conduct, and Supreme Judicial Court Rules.

Members of Appeals additionally delivered presentations to their colleagues on subjects such as U.S. Supreme Court cases, eyewitness identification bias, and criminal justice policy initiatives. They also presented on appellate advocacy and habeas corpus law at Massachusetts Continuing Legal Education seminars; spoke on Supreme Court activity, amicus activity, and subpoena practice at a Commonwealth Attorneys Appellate Action Project conference; served as moot court judges at the National Cyber Crime Conference and the American Bar Association's National Appellate Advocacy Competition; and discussed working at the AGO on a Boston Bar Association panel. The Division further had a presence in the Massachusetts Digital Evidence Consortium, and on the Steering Committee of the BBA's Criminal Law Section.

Added to the above, Division members: participated on AGO criminal trial teams; contributed to Office policy initiatives by conducting research, developing proposals, and offering insights at meetings; represented the AGO at public events and otherwise participated in its community engagement efforts; regularly advised the Office's Victim Compensation Division on matters within its charge, and defended its decisions; recruited, interviewed, and coordinated placement of Harvard Law School interns for the AGO as a whole, and supervised several interns within the Division; counseled members of the Criminal Bureau and other state offices on interstate extradition matters; analyzed and made recommendations on whether the AGO should join amicus curiae briefs to, or file petitions for review in, the U.S. Supreme Court and other courts; oversaw the activities of seven Special Assistant Attorneys General and lawyers working under them, and reviewed certain of their legal work; prepared updates on relevant, new court decisions for the Criminal Bureau and District Attorney's Offices; helped plan for the statewide Campus Safety and Violence Protection Task Force Conference; routinely assisted state attorneys in preparing for oral arguments through moot courts; and consulted on dozens of civil and criminal matters being handled by other units of Massachusetts government.

In FY2016, the Division further sought to enhance its impact on the development of the law by appointing coordinators for four key areas: Supreme Court activity, state amicus activity, policy initiatives, and educational programs. Finally, the Division was pleased to see one of its own earn the Attorney General Thomas F. Reilly Award for Excellence.

### Important Statistics and Numbers

In Fiscal Year 2016, the Appeals Division opened about 250 new matters. A plurality of these were brought by prisoners seeking habeas corpus relief in the United States District Court, Court of Appeals, or Supreme Court. The remainder involved: direct appeals of Massachusetts convictions in the U.S. Supreme Court and state appellate courts; other post-conviction challenges in state courts, and appeals from decisions thereon; proceedings under Chapter 211, Section 3 of the Massachusetts General Laws in the Supreme Judicial Court for Suffolk County; civil actions and appeals in federal and state courts; and subpoena matters in relation to federal and state civil and criminal actions. Division members had around 100 court appearances, and their cases produced over 100 published and unpublished opinions by federal and state courts.

### **Digital Evidence Lab**

The Massachusetts Attorney General's Office operates one of the largest and most accomplished digital forensic labs in the Commonwealth. The Digital Evidence Laboratory is staffed by 7 full-time, expert digital forensic analysts, a part time analyst, an investigator, and support personnel. The state-of-the-art Lab facility is located on the fourth floor of Ashburton Place and features the latest and most advanced forensic hardware and software. The Laboratory falls under the Criminal Bureau. Lab personnel assist with the cyber components, and digital evidence, encountered in the vast majority of Criminal Bureau cases. Additionally, the Lab frequently assists other local and State police agencies and divisions as well as district attorneys offices with forensic examinations and technical consultations on pending criminal investigations. Upon request, Lab personnel perform forensic examinations in matters submitted by various civil divisions within the Office of the Attorney General. Lab personnel routinely offer expert testimony in court in the course of criminal grand jury investigations and trials.

Beyond case work, Lab personnel offer their experience, expertise, and specialized knowledge in many other ways. Lab personnel lead and contribute to the Massachusetts Digital Evidence Consortium, a formal working group of digital forensic experts who assemble on a regular schedule to discuss legal and technical issues impacting the field. Lab personnel also conduct training and take part in speaking engagements for law enforcement and other groups on many topics related to digital forensics and cyber crime. This includes playing a major role in the organization of the Office's annual National Cyber Crime Conference.

### Significant Cases

During the fiscal year, the Digital Evidence Laboratory opened 76 new cases and performed forensic examinations in support of investigations and prosecutions of a wide range of civil and criminal offenses including murder, sexual assault, narcotics, human trafficking, hacking, public protection, larceny, insurance fraud, environmental, public corruption, child exploitation, Medicaid fraud, illegal gaming, stalking, harassment, robbery, and rape cases. It is likely that many of these cases have already been detailed in the "Significant Cases" sections of respective Criminal Bureau divisions. Below are a few highlights of significant cases from the Lab.



Lab personnel performed the examination of digital evidence in the investigation of former state/judicial official **Michael Kickham** during the reporting period. The investigation of Kickham started with a tip that a computer user in his home was distributing child pornography. Upon further forensic examination, Lab personnel discovered videos Kickham created displaying his own desktop. The videos depicted Kickham actively chatting with young children and encouraging them to expose themselves and perform sexual acts.

Lab personnel also performed the examination of digital evidence in support of many significant narcotics investigations involving the distribution of large quantities of heroin, cocaine, and fentanyl. One such case was the investigation of **Regla Santana** and **Jose Nogue-Resto**. These defendants are charged with the distribution of cocaine and heroin. Lab personnel examined more than a dozen devices, including a surveillance system critical to the investigation.

Lab personnel are assisting with the examination of a significant amount of digital evidence collected from the former **State Drug Lab at Amherst** in support of pending investigations of misconduct.

During the reporting period, Lab personnel have or are assisting other agencies with digital evidence in their cases. Examples include the restoration of hundreds of thousands of deleted video files in a motor vehicle hit-and-run fatality in Suffolk County as well as the examination of a iPhone seized from a defendant in the Northwest District who collaborated with her husband in an alleged attempt to kill their child.

### Other Significant Achievements

- Lab personnel organized and ran the 2016 National Cyber Crime Conference. This year was the 5th anniversary of the NCCC, which has gained considerable attention as one of the premier, if not the premier, cyber conferences for law enforcement in the country. Approximately 675 law enforcement attendees, staff, exhibitors, and speakers took part in the 2016 NCCC. Attendees and speakers came from X states and 4 countries and had the opportunity to attend more than 150 sessions on diverse topics related to the investigation and prosecution of crimes involving technology. Over the first five years of operation, the NCCC has resulted in the training of 2,800 law enforcement personnel (including 500 prosecutors) from 7 countries and 48 states.
- Lab personnel are responsible for the ongoing organization of and contributions to the Massachusetts Digital Evidence Consortium. During the reporting period, MDEC organizational members engaged in two significant projects. The first project was to update the MDEC Model Policy for Digital Evidence Analysis. Upon completion of this project, the Model Policy was approved by the MDEC Board for distribution to the Cyber Crime and Digital Evidence Committee of the International Association of Chiefs of Police. The CCDE will be distributing the Model Policy to members for discussion at the fall meeting. After discussion it will be provided as a resource for police departments and other agencies performing digital forensics in law enforcement investigations. The second project was to create standard search warrant template language for Massachusetts law enforcement that can be customized to respective cases. State and local police as well as prosecutors from across the State are contributing to this initiative.
- Lab personnel have taken part in many priority Office programs including cyber security, the drug monitoring initiative, encryption, human trafficking, and law enforcement training during the reporting period.

- Lab personnel support and take part in the Massachusetts Internet Crimes Against Children task force. Lab personnel assist not only with the examination of digital evidence in online child exploitation investigation, they assist with certain components of the investigation including issuing and tracking subpoena and other legal orders for the state-wide initiative.
- During the reporting period, the DEL purchased a forensic van for use in search warrant execution, forensic previews of evidence, and surveillance.
- During the reporting period, several DEL personnel successfully completed digital forensic training and certification programs. Certifications were awarded to personnel for the forensic examination of computers and mobile devices as well as the search for and seizure of digital evidence.
- During the reporting period, DEL personnel took part or conducted several internal and external training and community events specific to cyber crime and digital evidence. These included training or panel events in human trafficking, sexual assault, and murder investigations. There were several hundred law enforcement personnel (police and prosecutors), judges, and others in attendance.

## **Enterprise, Major, and Cyber Crimes Division**

The Enterprise, Major and Cyber Crimes Division targets criminal enterprises and organizations using sophisticated investigative techniques and strategies in order to develop high-impact prosecutions. The Division includes prosecutors, support staff and State Police assigned to the Attorney General's Office who work closely with various federal, state, and local law enforcement authorities and agencies to target, investigate, prosecute and disrupt criminal organizations in order to promote and ensure public safety in communities throughout the Commonwealth. The Enterprise, Major and Cyber Crimes Division investigates and prosecutes a wide variety of offenses, including narcotics trafficking that focuses on heroin and fentanyl cases, extortion, firearms, possession/dissemination/manufacturing of child pornography, and cyber intimidation.

### Significant Cases

In May, 2015, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in conjunction with Homeland Security Investigations (HSI) and the United States Attorney's Office began an investigation into the 18th Street and East Side Money gangs operating in and around East Boston, MA. ATF used two confidential informants to conduct a series of firearms and narcotics purchases from various targets associated with both street gangs. The federal investigation ("Operation Las Vegas") ultimately led to a wiretap of several target phone numbers. In May, 2016, our office agreed to prosecute the non-federal cases stemming from this investigation. On June 9, 2016, the investigation culminated with a large scale sweep of all targets. Approximately 60 individuals were arrested; thirteen of whom were charged at the state-level with various narcotics and firearms trafficking charges.

### **Commonwealth v. Melkis Pena, Jonathan Sosa, Gerson Ceballos-Rosario and Francisco**

**Solanoespiritusa:** This was a long term investigation involving MSP-TDU and MSP-AGO. The target of this investigation was the Pena family DTO that operated in the Lynn area with ties to Texas and NJ. During the investigation, MSP troopers were able to seize over \$300,000 of cash believed to be proceeds of the narcotics trade. At the culmination of this investigation, troopers arrested Pena, Sosa and Cenallos-Rosario with approximately 12 kilos of cocaine and approximately 300 grams of heroin. Solanoespiritusa was arrested on money laundering charges and extradited to MA.

**Commonwealth v. Nicholas Azud:** In April 2015, Dropbox submitted a Cybertip to National Center for Missing and Exploited Children. The Cybertip concerned 1,421 images of suspected child pornography that were uploaded to a Dropbox cloud storage account between March 4, 2015 and March 31, 2015. The images were primarily of boys aged 4-12 being sexually abused. The Cybertip was forwarded to the Internet Crimes Against Children Taskforce, who referred the matter to the Massachusetts State Police (“MSP”). Using the IP address associated with the Dropbox account, the MSP traced the uploads to a residence in Clinton, Massachusetts.

On October 14, 2015, MSP executed a search warrant at the Clinton residence, seizing computers, tablets, phones, and media storage devices. During the execution of the search warrant, the MSP spoke to one of the residents, then-20-year-old Nicholas Azud. Before interviewing Azud, he was advised of his Miranda Rights and was provided a copy of a recording and Miranda form, which he read, initialed and signed. During the interview, Azud admitted to possessing child pornography, and sharing that pornography through Dropbox. Azud further admitted to posing as a female online for the purposes of obtaining nude and sexually explicit images of children. Following the interview, Azud was arrested and later arraigned in Clinton District court on one count possession of child pornography.

After further investigations, in February 2016, Azud was indicted by a Statewide Grand Jury on the following charges: (i) 1 count of possession of child pornography in violation of G.L. c. 272 § 29C; (ii) 3 counts of disseminating matter harmful to a minor in violation of 272 § 28; (iii) 3 counts of trafficking of persons under 18 for sexual servitude G.L. c. 265 § 50. He was later arraigned in Worcester County Superior Court and is being held on 20k cash bail.

## **Financial Investigations**

The Financial Investigations Division is a team of civilian criminal investigators who partner with Criminal Bureau prosecutors, State Police, victim witness advocates and support staff from the Fraud and Financial Crimes Division, the Public Integrity Division, the Enterprise and Major Crimes Division and the Human Trafficking Unit. The financial investigators provide extensive analysis and forensically examine evidence for allegations of criminal misconduct involving a broad array of complex financial crimes including larceny, embezzlement, identity theft, public corruption, money laundering and human trafficking. The financial investigators conduct interviews of victims, witnesses and targets and provide testimony in the Grand Jury and at trial to the documentary evidence they gathered and examined, which is vital to the Criminal Bureau’s investigations and prosecutions. The Financial Investigations Division also maintains an accounting and disbursement of the funds used in the undercover investigations of the State Police assigned to the office..

### Significant Cases

**Commonwealth v. Kevin Burnham:** financial investigators analyzed bank records and tracked thousands in cash that Burnham had stolen from his employer, the Springfield Police Department, when Burnham was serving as the Narcotics Officer. Burnham stole approximately \$400,000. Burnham was indicted and awaits disposition.

**Commonwealth v. Gregory M. Shea:** financial investigators tracked \$116, 675 in funds that Shea, former sergeant for Hull Police Department had stolen from the Hull Police Union and the Hull Relief Association. Shea plead guilty and was sentenced to 5 years probation and home confinement and GPS monitoring. Shea was ordered to pay \$116, 675 in restitution.

**Commonwealth v. Ennio Manto:** financial investigators tracked over \$122,000 that Manto stole from the Group Insurance Commission where he served as the Finance Director. Manto was indicted and awaits disposition.

**Commonwealth v. Caitlin Rocheleau and John Ethier:** financial investigators tracked over \$200,000 that Rocheleau and Ethier stole from the Buzzards Bay Water District where Rocheleau was the treasurer and Ethier was a clerk. Both were indicted and await disposition.

**Commonwealth v. Amey Molloy:** financial investigators tracked approximately \$8,000 that Molloy stole from the One Fund and an attempt of an additional \$12,000. The One Fund was set up by the City of Boston to collect funds for the victims of the Boston Marathon. Molloy plead guilty and was sentenced to 2 years probation and ordered to pay \$8,000.

**Commonwealth v. Teresa Nardelli-Goodsell:** financial investigators tracked more than \$290,000 that Nardelli-Goodsell stole from her employers. Nardelli-Goodsell has been indicted and awaits disposition.

**Commonwealth v. Laurieann Richard:** financial investigators tracked more than \$2.6 million dollars that Richard stole from her employer. Richard plead guilty and was sentenced to 3-4 years in state prison, 10 years probation upon her release and restitution to be determined.

**Commonwealth v. Richard Trott:** financial investigators tracked more than \$100,000 that Trott stole from the Hyannis Chapter of Disabled American Veterans, Inc. and after a trial was found guilty and sentenced to 2 years in jail, 18 months to serve and ordered to pay \$92,000 in restitution to the charity.

**Commonwealth v. Susan Abbott:** financial investigators tracked more than \$275,000 Abbott stole from 50 customers, some of whom were elderly. Abbott was a former life insurance agent. Abbott plead guilty and was sentenced to 18 months in the house of correction.

### Other Significant Achievements

The Financial Investigations Division has affiliations and memberships with the IAFCI (International Association of Financial Crimes Investigators), NEFIA (New England Fraud Investigators Association), the Check Fraud Sub-Committee, NW3C (National White Collar Crime Center) and NESPIN (New England State Police Information Network).

The Director of the Financial Investigations Division regularly conducts trainings for the AG Institute for criminal investigators and prosecutors involved in criminal investigations. The presentations include: Planning and Conducting an Interview and Basic Report Writing and Understanding Bank Documentary Evidence and Testifying at Grand Jury and Trial. The financial investigators also regularly attend outside trainings presented by NAGTRI, NESPIN and the USDOJ regarding interviewing, report writing, money laundering, and human trafficking.

The Financial Investigations Division is also a Financial Review Task Force Member of the Massachusetts Bank Secrecy Act group in Boston and Worcester. The task force is comprised of local, state, and federal law enforcement who review Suspicious Activity Reports that may result in a referral of criminal financial crimes cases.

## Gaming Enforcement Division

The mandate of the Gaming Enforcement Division is to investigate and prosecute criminal conduct related to expanded gaming in the Commonwealth, monitor the fairness and integrity of the gaming industry, provide assistance to the Gaming Commission in consideration and promulgation of rules and regulations, and participate in generating a list of persons to be excluded from licensed gaming facilities. The work of the division is not strictly limited to gambling offenses or crimes committed within casinos, but includes activity that is gaming-related, such as financial crime, organized crime, corruption and money laundering. The division works closely with the State Police Gaming Enforcement Unit, as well as other federal, state and local law enforcement entities. Members of the division adhere to an enhanced code of ethics, as mandated by G.L. c. 12, § 11M(c).

### Significant Cases

During Fiscal Year 2016, the Division responded to dozens of intakes from constituents, private businesses, police departments and other government entities.

The Division conducted dozens of investigations arising out of conduct at Plainridge Park Casino. All prosecutions that were resolved resulted in guilty findings or CWOFS. Three defendants were indicted for activity occurring at Plainridge Park Casino for crimes including illegal gun possession, larceny and impeding a gaming investigation.

The Division undertook a large-scale illegal bookmaking and money laundering investigation that resulted in the indictment of 36 defendants for various offenses. Many of the cases are still pending. All prosecutions that were resolved resulted in guilty findings or CWOFS.

## Human Trafficking Division

The Human Trafficking Division is a multidisciplinary team dedicated to prosecuting and preventing human trafficking through law enforcement efforts and policy development. Four AAGs, two victim witness advocates, a paralegal and four dedicated Massachusetts State Police troopers investigate and prosecute high impact human trafficking cases. All have received specialized training in human trafficking and sexual assault investigation. Staff members also conduct outreach and training for law enforcement and other community members statewide. The Division also has a staff member dedicated to outreach and training development.

### Significant Cases

In Fiscal Year 2016, the Human Trafficking Division charged several people with human trafficking and related offenses. These arrests include:

**Elena Gaston & Carlos Velazquez:** Gaston and Velazquez are each charged with human trafficking, deriving support from prostitution, money laundering, and conspiracy. The Commonwealth alleges Gaston operated an online escort business through which she and Velazquez arranged for women to engage in sexual activity with men in exchange for money. While Velazquez allegedly drove women to these appointments and managed the website, Gaston spoke with sex buyers on the phone to pair the clients with women who matched their preferences.

**Marvin Pompilus:** Pompilus is charged with human trafficking and deriving support from prostitution. The Commonwealth alleges that Pompilus targeted women with opiate addiction and lured them into prostitution. Pompilus posted advertisements on Backpage.com and allegedly provided these women with drugs in exchange for the profits made in the exchange of sex for money.



**Courtney Nicholopolous & Jon Lowell:** Nicholopolous and Lowell are each charged with human trafficking and conspiracy. Lowell is also charged with sex for a fee. The Commonwealth alleges that Nicholopolous and Lowell posted advertisements on Backpage.com for women to receive money to engage in sexual activity with men; the women allege they did not receive this payment. Nicholopolous and Lowell allegedly arranged for several events in hotel rooms in which multiple women engaged in commercial sexual activity with multiple men.

### Achievements

In Fiscal year 2016, the Human Trafficking Division has conducted multiple trainings for law enforcement and prosecutors across the state. In addition, the Human Trafficking Division has also partnered with the Department of Children and Families and other recipients of the Massachusetts Child Welfare Grant to provide training in child sex trafficking investigations for law enforcement in every county in the state. The first three of those trainings are in the fall of 2016. These trainings are given in conjunction with training by the Suffolk County SEEN Coalition and My Life My Choice and will take place over a period of three years. The Human Trafficking Division staff members have also conducted trainings for college and law students as well as community groups.

The Human Trafficking Division has also worked closely with Demand Abolition on their CEASE Boston and BEST initiatives to reduce demand for sex trafficking. We have participated in task forces dedicated to human trafficking investigation and policy work.

### **White Collar & Public Integrity Division**

The White Collar & Public Integrity Division investigates and prosecutes cases of serious criminal misconduct by corrupt public employees and officials who engage in or conspire to commit larceny, fraud, bribery, gratuities and other crimes in which there is a hidden or unwarranted personal financial interest, crimes committed against or upon public agencies, and crimes that have a corrosive or harmful effect on public confidence in our government and other trusted institutions, including such crimes as perjury and obstruction of justice.

The Division's staff of experienced prosecutors partner with State Police, civilian financial investigators, computer forensics investigators, victim witness advocates, and other support personnel within the Attorney General's Office, as well as local, state and federal investigative and enforcement agencies. Collectively, the combined resources of these law enforcement partners are used to handle these challenging and complex cases.

### Significant Cases

Nine defendants pled guilty during the fiscal year, with four of them receiving jail time. One defendant was convicted, and another entered into a disposition agreement.

**Edward A. Scigliano, IV**, who had been a district chief for the Boston Fire Department and drillmaster for the Boston Fire Academy, was found guilty of procurement fraud and larceny of nearly \$50,000 after a two-week trial in Suffolk County. Over the course of about four years, Scigliano used two schemes to direct BFD vendors to issue checks to him instead of the City of Boston and to buy items that he told them were meant for the Fire Academy. Those items, including a 52-inch television, gas grill, living room furniture, exercise equipment and gift cards for Home Depot and Lowe's, were for himself. Scigliano was ordered to serve three years of probation, 750 hours of community service and pay \$35,000 in restitution to the fire department.

In a case involving attempts to defraud the One Fund Boston, which was created to pay the legitimate claims of Boston Marathon bombing victims, **Amey Molloy** pled guilty to illegally collecting \$8,000 for one false claim and filing a second false claim to collect \$12,500. She was sentenced to serve two years of probation and pay \$8,000 in restitution to the One Fund. Molloy collected on her first false claim in which she said that she broke her foot fleeing the scene after one of the explosions. She was unsuccessful collecting on the second \$12,500 claim she submitted for subsequent foot and hip surgeries when it was discovered that she had lied about being at the Marathon.

**Gregory Shea**, a former Hull Police Department sergeant who was also treasurer of both the Hull Police Union and Police Relief Association, pled guilty to the theft of money, mostly funded by charitable donations, that was meant to provide death benefits and retirement payments to police department members. Shea received five years of probation and was ordered to repay \$116,675 in restitution. The first year of his probation includes home confinement, except when he goes to work and counseling, and GPS monitoring. Over an almost six-year period, Shea used the funds in the groups' bank accounts to write checks to himself and pay off portions of his mortgage and credit card charges.

In a case involving food stamp fraud, the owner of a Springfield convenience store and market pled guilty and was sentenced for making illegal profits through a scheme to traffic SNAP (Supplemental Nutrition Assistance Program) benefits (food stamps) in exchange for cash. **Julio C. Rodriguez**, who was only authorized to accept benefits for specific eligible items, illegally swiped customers' EBT cards and entered false information showing the customer had bought eligible products. He then gave customers cash for half the purchase amount and kept the rest for himself. Rodriguez received two consecutive suspended sentences of 364 days in the House of Correction, suspended for two-and-a-half years, and five years of probation. He was also ordered to pay \$38,000 in restitution.

#### New Cases Charged

**Kevin Burnham**, a former 43-year officer in the Springfield Police Department, was indicted and arraigned on seven larceny counts for the alleged theft of almost \$400,000 in seized drug money from the department evidence room. For approximately 30 years, Burnham was responsible for safely storing drugs, drug paraphernalia and cash from drug cases, recounting the cash originally counted and stored by officers, securing the cash envelopes in locked safes, and disbursing the money at the close of a case. Burnham was charged with stealing the cash from the evidence envelopes of more than 170 cases during a four-and-a-half-year period by shorting the cash count or replacing what he stole from some envelopes with either counterfeit money that was seized previously or money from newer cases. The matter was referred to the Attorney General's Office after an internal police investigation.

The case of **Michael Motyka**, a 17-year Worcester Police Department officer who had been charged in district court during the previous fiscal year, was moved to the superior court level after he was indicted by a Worcester Grand Jury and arraigned in Worcester Superior Court for Assault & Battery with a Dangerous Weapon. Motyka allegedly beat a handcuffed and shackled prisoner in a holding cell at the Worcester Police Station using his shod foot. The case was referred by the Worcester District Attorney's Office.

**Ennio Manto** of Braintree was indicted and arraigned for the theft of \$122,000 from the state's Group Insurance Commission, where he formerly worked as finance director. According to the charges, Manto tried to cover up that he diverted the money from the GIC through wire transfers – one for over \$72,000 and the other for \$50,000 - to his own company. Manto allegedly altered one wire transfer record after a GIC accountant found discrepancies between the transfer and internal records. The altered records were subsequently located in an agency recycling bin.

In a case referred by the Inspector General's Office, co-defendants **Caitlin Rocheleau** and **John Ethier**, both formerly employed by the Buzzards Bay Water District (BBWD), were charged with stealing approximately \$200,000 from the BBWD. Rocheleau was the former treasurer and clerk, and Ethier worked as a technician.

### Fraud and Financial Crimes

Fraud and Financial Crimes investigates and prosecutes cases involving a broad array of financial crimes, including fiduciary embezzlement by lawyers, stockbrokers, accountants and other professionals who steal client funds; theft and fraudulent recordkeeping by employees; complex financial frauds such as pyramid schemes, telemarketing fraud, commercial bribery and mortgage fraud; large-scale consumer fraud schemes; identity theft, and tax fraud crimes by individuals and businesses. The most significant cases are those that have a dramatic financial impact upon unsuspecting and vulnerable victims who trust is violated, and upon the community as a whole. The prosecutors work closely with Criminal Bureau financial investigators, Massachusetts State Police troopers assigned to the Attorney General's Office, and local, state and federal investigative and enforcement agencies.

### Significant Dispositions

During the fiscal year, several defendants received committed jail time for stealing funds from their employers or clients.

**Richard Trott** of East Sandwich was tried and found guilty of stealing over \$100,000 in charitable funds from the Disabled American Veterans that were meant to benefit disabled veterans and their families. He was sentenced to serve 18 months in the House of Correction and 10 years of probation and repayment of \$92,000 to the charity after his release. Trott was the Commander and corporate officer of the Disabled American Veterans chapter in Hyannis when he used various schemes to transfer and divert money from chapter accounts and third-party donations and use for himself. With the stolen funds, Trott bought a boat, took vacations, and paid for retail and household items and restaurant meals. Trott was found guilty after a four-day trial in Barnstable Superior Court.

**Laurieann Richard** pled guilty and was sentenced to state prison for embezzling more than \$2 and a half million from the Plainville medical device company that employed her as an office manager who handled the company accounts payable and corporate credit card accounts. She received three to four years of prison time, with 10 years of probation following her release from prison and restitution of \$2,647,647.00. Richard used various schemes to manipulate corporate accounts and open other unauthorized accounts to get cash advances, make payments on her vehicle, and pay for travel and retail purchases.

**Susan Abbott** pled guilty and was sentenced to serve time for swindling nearly 50 clients – some elderly – of over \$275,000 while she was a life insurance agent for Prudential Financial. She received 18 months in the House of Correction and four years of probation after her release. Abbott stole \$70,000 just from one client and between \$18,500 and \$25,000 from three elder clients. She personally used all of the stolen funds, which she obtained using false documents to request withdrawals from client accounts. Prudential was working with the Attorney General's Office to reimburse Abbott's victims.



## *New Cases*

Four individuals were charged with the theft of large amounts of money from employers.

**Teresa Goodsell**, was indicted and arraigned for alleged theft of nearly \$300,000 from the Lexington and Waltham employers for which she worked as Director of Operations and Director of Human Resources through schemes involving employee paychecks between 2006 and 2015.

**Suzanne Coriarty**, was indicted and arraigned for allegedly stealing more than \$2 million from the real estate development and management company for which she was authorized to issue checks as controller. Coriarty, a 30-year employee, reportedly benefitted from a series of schemes over a seven-to-eight-year period.

**Ann McHale**, was indicted and arraigned for the alleged embezzlement of \$900,000 plus from the energy company for which she managed some of the finances as executive secretary. McHale allegedly tampering with checks to deposit them into her own accounts.

**Paul Pyzowski**, hired as a consultant for Boston Microsystems to handle \$600,000 for merger transactions, was indicted and arraigned for allegedly diverting \$400,000 of those funds to a company controlled by him and transferring about \$200,000 of it to family accounts.

## Insurance and Unemployment Fraud Unit

The Insurance and Unemployment Fraud Unit investigates and prosecutes those who commit fraud against insurers and against the Commonwealth's unemployment insurance and workers' compensation system. This includes automobile, health care, and disability fraud.

The Unit prosecutes these crimes to protect both Massachusetts consumers and the integrity of the insurance system. These efforts help protect taxpayers from higher premiums and taxes that result from fraud and assuring that those in need receive appropriate services.

### Significant Cases

**Commonwealth v. Peter Farley & PJ Enterprises:** Defendant Peter Farley admitted to failing to pay over \$400,000 in unemployment tax contributions. His case was continued without a finding for 18 months with community service. The company pleaded guilty and was sentenced to 18 months probation. Both defendants were held jointly & severally liable for the full amount of restitution.

**Commonwealth v. Jonathan Hildebrandt & Enviro Services, Inc.:** Both defendants admitted to failing to pay over \$200,000 in unemployment tax contributions. The case was continued without a finding for one year and defendants were ordered to pay full restitution.

**Commonwealth v. Eugene Kelley/RDA Construction:** Both defendants admitted to failing to pay over \$200,000 in unemployment tax contributions. The case was continued without a finding for 8 years and defendants were ordered to pay full restitution.

**Commonwealth v. Jose Mizhirumbay:** Defendant plead guilty to underreporting his company's payroll in order to avoid paying appropriate workers' compensation premiums to his insurance company. Defendant was sentenced to 5 years probation and ordered to pay full restitution in the amount of \$190,000.

**Commonwealth v. Jerry Bull:** Defendant plead guilty to collecting \$26,000 in workers' compensation benefits while working. He was sentenced to one year probation and ordered to pay full restitution.

## Victim Witness Services

Victim Witness Services at the Office of the Attorney General is comprised of two Divisions: The Victim Witness & Assistance Division and the Victim Compensation & Assistance Division.

### Victim Witness & Assistance Division

The victim witness & assistance division provides comprehensive services to victims and witnesses involved in Attorney General Office cases. Victim Witness Advocates (VWA's) handled over 207 cases throughout the year serving victims and witnesses involved with criminal, civil and post-conviction matters. In addition, staff members have been active in numerous committees, outreach and over 50 trainings/conferences including Crimes Against Women's conference, Cyber Crime conference, DV round-table events, Garden of Peace, AGO Game Change Summit, Victim Rights conference and recruitment and hiring meetings.

### Significant Cases

**Commonwealth v. Thomas Sheehan:** Thomas Sheehan is a Quincy resident charged with Solicitation to Commit Rape (3 counts), Solicitation to Commit Rape of a Child (2 counts), Solicitation to Commit Kidnapping (5 counts) and Wanton or Reckless Behavior Creating a Risk of Serious Bodily Injury or Sexual Abuse to a Child (2 counts) in Norfolk Superior Court. These charges stem from the defendant's creation of fake online profiles of women to solicit the above mentioned behaviors that involve not only adult women, but children, on the website CollarSpace.com. Groveland PD originally investigated this matter and it was ultimately referred to the Attorney General's Office. Sheehan allegedly provided personal information to the men he was chatting with and enticed them to kidnap and rape the person he was posing as. Digital forensics show a lengthy history of this behavior, and we have been working closely with Groveland PD to investigate further. Sheehan is currently being held on \$50,000 bail with a multitude of conditions.

**Commonwealth v. Susan Abbott:** Former Prudential Life Insurance broker plead guilty to five (5) counts of Larceny over \$250 (including three counts of Larceny over \$250 from a Person over Sixty and two counts of Larceny over \$250 by a Single Scheme), as well as one count each of Identity Fraud, Forgery and Uttering. Susan Abbott stole more than a quarter of a million dollars from 50 of her former clients the majority of whom were elderly, infirm and vulnerable. The Commonwealth's indictment included 49 victims. Abbott was sentenced to 18 months in the House of Correction with 4 years of probation.

**Commonwealth v. Edward Scigliano:** A former Boston Fire Department Chief, Edward Scigliano, was found guilty on procurement fraud and larceny charges on February 9, 2016. This case involved over forty witnesses including members and former members of the Boston Fire Department, private emergency and apparatus company employees, bank keepers, and investigators. This case relied heavily on witness testimony. A significant amount of time was spent gathering written/non-written procedural information from those associated with the BFD as well as preparing the witnesses for upcoming court process. The Victim Witness Advocate role was instrumental in this case and duties included detailing the court process and guidelines for testifying, making travel/hotel arrangements, keeping an open line of communication, and a general advocating of needs as the case developed. Edward A. Scigliano, IV, age 46, of Kingston, was sentenced to a three-year probationary term and to 750 hours of community service. Judge Muse also ordered Scigliano to pay restitution to the City of Boston within two years.

**Commonwealth v. Marvin Pompilus:** Marvin Pompilus, (a.k.a. "Kise"), age 31, of Randolph, was

indicted by a Statewide Grand Jury on charges of Trafficking of Persons for Sexual Servitude (18 counts) and Deriving Support from Prostitution (12 counts) in connection with trafficking multiple women for sex. Pompilus targeted and recruited multiple women over a two-year period to provide commercial sexual services at hotels and other locations in Randolph, Boston, Braintree and Hyannis. Pompilus would have the women post ads online offering sexual services in exchange for money. Pompilus allegedly kept the money from these sexual encounters, and would provide the women with drugs instead. Pompilus is being held on \$100,000 cash bail.

**Charles Jaynes, Petitioner v. Lisa Mitchell, Respondent – USCA DOCKET NO 15-1342:** Petitioner is challenging his 1998 Middlesex County conviction for the second-degree murder of 10-year old Jeffrey Curley. The Victim Witness Advocate has been providing victim services to the Curley Family since 2007. The family attended oral argument in the USCA on 2/2/16 together with the Middlesex VWA who worked on the original prosecution in 1998. On 6/2/16, the USCA affirmed the USDC's denial of the petition. Petitioner filed a petition for a writ of certiorari on 8/19/16 which is pending in the Supreme Court of the United States.

**Commonwealth v Michael Leoney; Commonwealth v Shaun Leoney:** The AG's Office began an investigation in 2012 after the matter was referred by the Boston Police Department Human Trafficking Unit. The joint investigation determined that Michael Leoney ran a human trafficking operation in Greater Boston, coerced women into prostitution, advertised the women on websites alleged to advertise prostitution and managed the financial aspects of the operation. Further investigation revealed that Shaun Leoney was involved in this human trafficking operation.

According to investigators, Michael Leoney typically trafficked and sold Caucasian women, while Shaun Leoney typically trafficked and sold primarily Hispanic women. However, authorities allege that the brothers frequently shared internet advertisements, booked shared hotel rooms for the women they trafficked and sold and often transported the women together. Both Michael and Shaun Leoney allegedly frequently used threats of violence to control the women. Evidence revealed that the brothers were in regular communication with each other regarding the daily operations of the business, including discussing agreements to traffic women for sexual servitude and the exchange of money related to the shared business. The brothers allegedly received daily profits from the women under their control.

Michal Leoney pleaded guilty in Suffolk Superior Court Feb. 1, 2016 to the charges of Trafficking of Persons for Sexual Servitude, Conspiracy to Traffic Persons for Sexual Servitude, and Deriving Support from Prostitution (three counts). Michael Leoney was sentenced to seven years to seven years and one day in state prison. Shaun Leoney pleaded guilty in Suffolk Superior Court Nov 2, 2015 to charges of Trafficking in Persons for Sexual Servitude, Conspiracy to Traffic Persons for Sexual Servitude, Deriving Support from Prostitution, and Failure to Register as a Sex Offender. Shaun Leoney was sentenced to seven years in state prison and five years' probation.

### Victim Compensation & Assistance Division

Through the Victim Compensation & Assistance Division, the Attorney General's Office is often able to provide financial assistance to eligible victims of violent crime for medical and dental care, mental health counseling, funeral and burial costs, crime scene clean up services, and security measures. Our Division uses funds obtained from perpetrators, and can assist with expenses up to a maximum of \$25,000 per crime or up to maximum of \$50,000 per crime for cases where the victim sustained catastrophic injuries. Experienced staff within the Division will assist victims in understanding their rights as a crime victim, determining what expenses may be eligible for compensation, and assessing what other resources are available to assist them.

## Achievements

Several statistics highlight the effectiveness and impact of the Victim Compensation and Assistance Division (“Division”) in responding to the needs of victims of violent crime. In fiscal year 2016 (“FY16”), the Division received 1438 new applications. These new claims represent the numbers of individuals who were impacted by violent crimes in the state of Massachusetts. In FY16, the Division responded to and found 1223 claims eligible. By the end of the fiscal year, the Division paid out a total of \$3,466,771.91 in crime-related expenses using federal and state monies. Of the 1048 eligible claims that were paid out during FY16, 15% were related to domestic violence and almost 83% were related to crimes of assault, homicide, and sexual assault. Half of all claims paid out fell in the crime category of assault. The top three expense categories paid out by the Division in FY16 were economic support (\$1,330,334.06), funeral/burial expenses (\$811,080.98) and medical/dental services (\$772,680.58).

Through a collaborative effort with the Executive Office of Public Safety and Security’s Office of Grants & Research, Massachusetts Department of Public Health, and the Massachusetts Hospital Association, the Division worked to develop a protocol to ensure that state is in compliance with the amendments to VAWA 2013 for expenses associated with the performance of forensic sexual assault exams for sexual assault survivors. In FY16, the Division received 343 applications for services associated with the performance of a forensic sexual assault exam kit in hospitals across the Commonwealth. This represents a significant increase in the number of applications received due to the initiation of direct billing.

The Division also provided support to constituents of the Commonwealth through the Office Service Desk Express. During FY16, the Division responded to 50 open and closed intakes. These intakes involved requests for assistance with issues that included bullying, domestic violence, sexual assault, child abuse, and stalking.

In addition, the Division continued its outreach efforts in FY16 by attending events and presenting at over 40 trainings for agencies throughout Massachusetts. This year, the Division established important connections with agencies that work with survivors of homicides and agencies that work with victims of violent crimes with limited English understanding. In addition to conducting trainings about our program, the Division also provided resources at tabling events throughout the state to interact with the public and increase the awareness about the help offered by the Office of the Attorney General. The Division also had a presence at the Resiliency Forums held by the Massachusetts Resiliency Center and continued to provide support to the victims of the Boston Marathon bombing.

Finally, the Division offered educational opportunities inside the office as well. In October, the Division sponsored a Domestic Violence Awareness Day and in March, the Division held its annual White Ribbon Day in the Ashburton Café. Members of the team interacted with visitors to the cafeteria and offered individuals an opportunity to sign a pledge to end violence against women and wear a ribbon to show their support.

## **ENERGY AND ENVIRONMENT BUREAU**

The Energy and Environment Bureau works to protect utility ratepayers and our environment, and to reduce the threat of climate change for the people and families of the Commonwealth. As the state's Ratepayer Advocate, the Bureau's Energy and Telecommunications Division represents consumers in matters involving the price and delivery of natural gas, electricity and telecommunication services before state and federal regulators. The Bureau's Environmental Protection Division and Environmental Crimes Strike Force enforce the laws that protect our air and water, preserve our lands and open space, require the clean-up of contaminated sites, and govern the use of pesticides and the handling and disposal of hazardous waste. The Bureau's integration of energy and environmental advocacy ensures that our office speaks with one voice in addressing the intertwined ratepayer and environmental protection matters that impact the Commonwealth and our residents.

### **Energy and Telecommunications Division**

Through the Energy and Telecommunications Division, the Attorney General serves as the statutory Ratepayer Advocate in administrative and judicial proceedings on behalf of consumers in matters involving the rates, charges, or tariffs of electric, gas, telephone, or water companies doing business in the Commonwealth.

The Division works to ensure that businesses and residents have access to reliable, safe, and affordable energy. The Division litigates cases before state and federal courts, as well as administrative bodies, such as the Massachusetts Department of Public Utilities, the Massachusetts Department of Telecommunications and Cable, the Federal Energy Regulatory Commission, and the Federal Communications Commission.

In many of these matters, the Attorney General is the only active participant advocating on behalf of Massachusetts consumers.

### **Significant Cases**

#### **Electric Ratepayers Financing Gas Pipelines**

The AGO successfully advocated to prevent electric ratepayers from financing the construction of additional natural gas pipeline in Massachusetts. On April 27, 2015, the Department of Public Utilities opened an investigation into means by which the Department could add natural gas delivery capacity to the New England market. In its comments, the AGO, among other arguments, questioned the legality of a proposal to finance the construction of additional pipeline with money from electric ratepayers. On October 2, 2015, the Department ordered that it had authority pursuant to G.L. c. 164, s. 94A to review and approve contracts for natural gas pipeline capacity financed by electric ratepayers. The AGO filed an amicus brief in an appeal of the Department's order to the Supreme Judicial Court, arguing that the Department did not have authority to approve these types of contracts. On August 17, 2016, the Supreme Judicial Court agreed with the AGO and reversed the Department's order. The Supreme Judicial Court's order halted on-going Department proceedings in which National Grid and Eversource requested approval to finance the Access Northeast pipeline expansion project with electric ratepayer dollars.

#### **Federal Order Lowering Transmission Rates**

The AGO has been active in fighting for low and transparent costs for electric transmission. As a result of litigation initiated by a complaint filed by the AGO in 2011, on March 22, 2016, Administrative Law Judge Steve L. Sterner entered an order that New England electric transmission companies should refund



customers \$234 million. Based on the initial complaint filed in 2011 by the AGO and others, FERC had previously reduced the transmission owners' allowed profits or ROE from 11.14 percent to 10.57 percent. That order resulted in a one-time refund to New England customers of \$78 million. Judge Sterner's decision, however, found that FERC had not lowered transmission rates enough, and reduced the allowed return on equity to 9.59 percent for rates that were in effect between January 2013 and April 2014. Judge Sterner also found that rates in effect from July 2014 through October 2015 should be lowered from 11.14 percent to 10.9 percent. FERC must still approve the judge's decision before it becomes final.

### Customer Savings in Electric and Gas Distribution Rate Cases

In FY2016, the AGO avoided approximately \$37.9 million in gas and electric distribution rate increases through negotiated settlements and its advocacy before the Department of Public Utilities. Specifically, in litigated rate cases before the Department of Public Utilities, the AGO achieved a reduction of \$18.1 million, \$1.7 million, and \$1.4 million for Eversource's gas customers and Unital's electric and gas customers, respectively. The AGO also secured a reduction of \$13.2 million and \$3.5 million, respectively, for Columbia Gas and Liberty Utilities' proposed rate increases through negotiated settlements. Under the settlement agreements, Columbia Gas is barred from requesting another rate increase prior to November of 2018 and Liberty Utilities is barred from requesting another rate increase prior to March of 2019.

### Other Significant Achievements

#### Reliability Study

On November 18, 2015, the AGO released a study it commissioned that determined that the region is unlikely to face electric reliability issues in the next 15 years and any additional electricity needs can be met more cheaply and cleanly through energy efficiency and demand response than through additional natural gas pipelines. Power System Reliability in New England: Meeting Electric Resource Needs in an Era of Growing Dependence on Natural Gas, Analysis Group, Inc., (November 2015). The study concluded that, under a worst case scenario where the region becomes more reliant on natural gas power than expected and experiences short-term disruption in other fuels, the region could need appropriately 2,400 MW of additional electricity for a few hours across nine cold days by 2020/2030. To solve that deficiency, the study evaluated several options including 1) reliance on incremental dual fuel-power plants (the status quo), 2) a higher reliance on firm liquefied natural gas (LNG), 3) incremental natural gas capacity, 4) energy efficiency and demand response, 5) energy efficiency and low-carbon imports on existing transmission, and 6) energy efficiency and low-carbon imports with new transmission. The study concluded that all of the solutions would ensure the reliability of the electric system in a worst case scenario, but investment in energy efficiency and demand response would result in the greatest customer savings and would reduce GHG emissions.

### Important Statistics and Numbers

In FY2016, the Division represented ratepayers and energy customers in 441 dockets pending before state and federal courts and regulatory bodies. The Division also participates in New England ISO stakeholder technical and governance issues and has a seat on the Massachusetts Energy Efficiency Council matters.

Cases that were finalized in FY2016 yielded approximately \$170 million in savings to ratepayers and customers.

## Environmental Crimes Strike Force

The Environmental Crimes Strike Force investigates and prosecutes crimes that harm the state's air, land or water, or that pose a significant threat to human health. The Strike Force is an inter-agency unit that includes prosecutors from the Attorney General's Office, Environmental Police Officers assigned to the Attorney General's Office, and investigators, engineers and attorneys from the Massachusetts Department of Environmental Protection. Task Force partners meet regularly to evaluate whether enforcement against particular environmental violations should be done administratively, civilly or criminally. The most egregious violations are referred to the Division for criminal investigation and prosecution.

During FY2016, the Division continued its long-standing cooperative relationship with the Massachusetts Department of Environmental Protection and the Massachusetts Environmental Police in the investigation and prosecution of state environmental crimes, including but not limited to investigations of unreported releases of hazardous materials, unlawful handling of hazardous and solid waste, unlawful handling of asbestos, and fraudulent reporting of tests required under state water protection laws. The Division also worked cooperatively and extensively with US EPA's Region I Criminal Investigations Division; the Massachusetts Department of Licensing and Standards; and the State Police, Massachusetts Registry of Motor Vehicles, the Department of Agricultural Resources, and various local police departments on a wide variety of cases, such as the unlawful handling of hazardous and solid waste, animal cruelty, improper use of pesticides, unlawful handling of asbestos, and improper motor vehicle inspections.

### Significant Cases

**Commonwealth v. Jose & Tommy Sostre:** In September 2014, the Suffolk County Grand Jury returned multi-count indictments against the co-defendants for making and issuing counterfeit motor vehicle inspection stickers out of their Dorchester auto service station as well as conspiring to make and issue counterfeit motor vehicle inspection stickers. The Defendants were alleged to have charged customers, whose vehicles could not legitimately pass emissions testing, a price in excess of the standard inspection fee for fake "passing" stickers. In August 2015, Jose Sostre pleaded guilty to the charges against him and was sentenced to one year in the House of Correction, 90 days to serve and three years probation of which 90 days would be served on home confinement. Jose Sostre was also required by the terms of his sentence to surrender his motor vehicle inspector's license; not to conduct any motor vehicle inspections for the term of his probation; and pay a \$5,000 fine. In June 2016, after a three day trial, Tommy Sostre was found guilty on forgery and uttering forged inspection stickers. He was sentenced to three years probation. Under his terms of probation, he was required to surrender his motor vehicle inspector's license; not to conduct any motor vehicle inspections for the term of his probation; and pay a \$2,000 fine.

**Commonwealth v. David Harder:** In March 2016, after a multi-day hearing in Essex Superior Court, Harder was found in violation of his probation conditions and sentenced to sixty days in the House of Correction. Harder had previously been convicted of improperly conducting asbestos remediation and wage violations. One condition of his probation prohibited him from working for an asbestos abatement company. After receiving information from the Department of Environmental Protection in May 2015 that Harder had been involved in an asbestos abatement job in Dedham, ECSF investigated the incident and requested that a probation violation hearing go forward.

**United States v. Scott Paterson & Frederick Baker:** In February 2015, as a result of a joint federal-state criminal environmental investigation in which a Division AAG served as a Special Assistant United States Attorney, the United States Attorney's Office for the District of Massachusetts filed informations

and corresponding plea agreements in the United States District Court in Springfield. The informations alleged that the Defendants, former employees at Berkshire Power Plant in Agawam, MA, tampering with air pollution monitoring equipment required under the Clean Air Act, in order to save money, delay repairs, and avoid reporting to state and federal regulators that the plant was, at times, releasing pollutants in excess of regulatory limits. Both defendants and the corporation have plead guilty and are awaiting sentencing.

## **Environmental Protection Division**

The Environmental Protection Division of the Attorney General's Office enforces environmental laws that protect our air and water, preserve our wetlands, tidelands, and public open space, require the clean-up of contaminated sites, and govern the use of pesticides and the handling and disposal of solid and hazardous waste. Working in close coordination with state and federal environmental agencies, particularly the Massachusetts Department of Environmental Protection, the Environmental Protection Division pursues three main types of work:

- Prosecuting civil enforcement and cost recovery cases, seeking to produce the greatest results in terms of compliance and deterrence, environmental and public health benefits, and financial recovery;
- Handling defensive cases, seeking to provide effective representation to support the policy choices made by state agencies and officials in implementing our environmental protection laws; and
- Undertaking affirmative, non-enforcement work to develop and pursue innovative ways to further environmental protection exercising the Attorney General's role as the Commonwealth's chief law officer. This includes bringing "impact litigation"; participating as an amicus to help develop the law in a way that will further the Commonwealth's interests; developing or supporting legislative or other policy proposals; intervening, where appropriate, in siting disputes; and entering into Brownfields covenant not to sue agreements to further the clean-up and redevelopment of contaminated sites.

### Significant Cases

**Commonwealth v. Volkswagen AG, et al.:** In this case, federal and state authorities are seeking to hold Volkswagen and related entities accountable for implementing engineering cheats designed to conceal the illegally high nitrogen oxide emissions of its passenger diesel vehicles and deliberately deceiving consumers and regulators about those emissions. In June 2016, following a nine-month investigation, 40 states including Massachusetts settled most state consumer protection penalty claims against Volkswagen for a combined \$570 million (with \$22 million for Massachusetts, received in FY2017), and Massachusetts also helped craft the terms of a partial federal environmental settlement, which is pending final federal court approval. The federal environmental settlement will fund a \$2.7 billion trust for pollution mitigation projects, which will be available to states over the next decade (including \$70 million for Massachusetts). In July 2016, Massachusetts, simultaneously with several other states, initiated state court litigation to enforce state clean air laws and seek civil penalties, claims which were not resolved in the settlements. Massachusetts was one of six leadership team states in this matter. Working closely with First Assistant AG Chris Barry-Smith and FCD Chief Gillian Feiner, EPD Chief Christophe Courchesne and AAG Peter Mulcahy are handling the environmental aspects of the case. (Former AAG Fred Augenstern played a key role prior to his retirement.)

**Clean Power Plan and Related Litigation:** Continuing our office's legacy of advocating for federal controls on greenhouse gas emissions under the Clean Air Act, EPD worked with our multistate coalition of 17 states and several local governments supporting EPA's Clean Power Plan, a set of



regulations promulgated in October 2015 that impose carbon emission limits on existing power plants, which are the largest source of carbon pollution in the United States. Numerous petitions challenging the Clean Power Plan are under review by the D.C. Circuit Court of Appeals, and Massachusetts worked with New York and California to oppose the petitioners' motions to stay the rule (which the Supreme Court ultimately granted) and to prepare the merits briefing, which was completed in April 2016. An en banc hearing in the case is scheduled for September 2016. We also worked with our coalition to defend EPA's rule regulating the carbon emissions of new power plants in a parallel case before the D.C. Circuit.

**EthosEnergy:** In this joint federal/state civil/criminal enforcement case, EPD AAG Fred Augenstern settled the Commonwealth's civil environmental claims against a power plant management company that participated in a scheme to violate federal and state air emission requirements by tampering with emission control equipment at the Berkshire Power plant in Agawam. EPD's work built off the broader criminal investigation and settlements secured by federal authorities and ECSE. This civil environmental settlement included \$1.1 million in civil penalties and a \$200,000 supplemental environmental project to install charging stations for zero-emission electric vehicles.

**Exxon Investigation:** Leading a cross-office team, EPD initiated a consumer and investor fraud investigation against Exxon Mobil Corporation regarding the company's statements regarding climate change, in light of recently disclosed internal documents suggesting Exxon knew about the catastrophic effects of its fossil fuel products in contributing to climate change in the 1970s and 1980s. This investigation parallels a similar investigation initiated by New York under the Martin Act in November 2015. With support from IFSD, EPD served a civil investigative demand on Exxon in April 2016. In June 2016, Exxon filed litigation challenging the CID on constitutional and other grounds in both Superior Court and in federal district court in the Northern District of Texas, and our cross-office team has since moved to dismiss the Texas action and is urging the Superior Court to compel Exxon's compliance with the CID. EPD also has supported a cross-office team responding to an inquiry into our investigation by the House Science, Space, and Technology Committee. EPD's team includes Chief Christophe Courchesne, AAG Andy Goldberg, and AAG Peter Mulcahy, and the overall effort is led by EEB Chief Melissa Hoffer and Chief Legal Counsel Richard Johnston.

**Navy Yard Four Associates, LLC v. MassDEP:** In this Waterways (G.L. c. 91) and public trust doctrine case, AAG Seth Schofield argued before the Appeals Court that tidal flats (the land between the high and low water marks, filled or un-filled) can regain a pre-Colonial Ordinance status equivalent to submerged lands and all of the associated legal protections and requirements at least when the tidal flats are owned by the Commonwealth, a political subdivision, or quasi-public agency or authority at the time a project is licensed under the Waterways Act. In a precedential decision, the Appeals Court accepted that position. The decision is reported as *Navy Yard Four Associates, LLC v. Department of Environmental Protection*, 88 Mass. App. Ct. 213 (2015).

**Battye Dump Site Enforcement Cases:** In a series of significant enforcement cases involving the illegal disposal of construction and demolition debris at a large unlawful dumping ground abutting protected wetlands in Methuen (*Com. v. Gigs, LLC*, *Com. v. Mattuchio Construction Co., Inc.*, *Com. v. NASDI, LLC*, *Com. v. Stockbridge Corp.*, and *Com. v. W.L. French Excavating Corp.*), EPD AAGs Matthew Ireland and Andy Goldberg secured Superior Court judgments totaling \$484,500. Of the total amount collected, \$459,500 was designated for payment into an Expendable Trust to assess and cleanup the site, and \$25,000 for civil penalties. (April 2015 (French), November 2015 (Stockbridge), February 2016 (Mattuchio), and June 2016 (NASDI/Gigs)).

**Mercury and Air Toxics Standards Litigation:** In December, the U.S. Court of Appeals for the District of Columbia ordered in *White Stallion v. EPA* that EPA’s regulation of mercury emissions from power plants would remain in place while EPA revised the rule to comply with the Supreme Court’s ruling in *Michigan v. EPA* that EPA erroneously failed to consider the cost of the regulation in promulgating it. Melissa Hoffer, Tracy Triplett, and Jillian Riley filed extensive briefing and evidentiary support in the D.C. Circuit remand proceedings on behalf of the coalition of state and local government intervenor-respondents that we have led since the litigation commenced in 2012. During the first half of 2016, we successfully defended the D.C. Circuit’s remand decision against a stay request and a cert petition in the Supreme Court. EPA has since finalized a supplemental cost-consideration finding, and we are preparing, on behalf of our coalition, to defend that finding against multiple industry and state challenges that have been filed in the D.C. Circuit.

**Commonwealth v. Sudbury Pines Extended Care:** AAG Tracy Triplett settled an enforcement case against a Sudbury nursing home and its owner (Sudbury Pines Extended Care, Inc. and Roberta Henderson), who, for years, had failed to comply with a MassDEP groundwater discharge permit requiring replacement of the facility’s failing septic system with a modern wastewater treatment facility. The owner’s noncompliance came to a head in 2014 when sewage overflowed into the facility’s parking lot and a playground serving an onsite daycare center, creating a risk of contamination of the inside of the facility due to foot traffic. We immediately obtained an agreed-to preliminary injunction requiring defendants to pump and undertake substantial repairs to the system. Under the final settlement agreement, defendants will pay a \$50,000 penalty, and construct a new wastewater treatment system, at a cost of \$1 million.

**Commonwealth v. Rogers:** AAG Matt Ireland settled this case involving the destruction, with a “Bobcat” track loader, of about 2,000 square feet of salt marsh and damage to other coastal wetland resource areas in Chatham. The settlement required the property owner, David Rogers, to pay a \$140,000 civil penalty for his destruction of the coastal wetlands and to fund a \$39,000 coastal wetlands enhancement project to be identified and implemented by the Town. A portion—\$50,000—of the civil penalty was waived under consent judgment terms because Rogers completely restored (at substantial cost) all damaged coastal wetland resource areas to DEP’s satisfaction.

### Other Significant Achievements

**Gas Pipeline Advocacy and Litigation:** EPD Chief Christophe Courchesne and AAGs Matt Ireland and Seth Schofield led EPD’s significant contributions to bureau-wide advocacy on natural gas pipeline proposals and financing. AAG Schofield led the briefing and oral argument at the Supreme Judicial Court in the *Engie* case, in which the SJC ultimately adopted our arguments that the Department of Public Utilities could not authorize electric ratepayer funding of natural gas pipeline projects. Earlier, EPD provided significant support to the Office’s Regional Electric Reliability Options Study, which determined that new natural gas pipelines would not be needed for electric reliability and that there are cleaner and cheaper options to meet future energy needs. EPD participated in the Federal Energy Regulatory Commission NEPA process for the now-canceled Tennessee Gas Northeast Energy Direct pipeline by filing extensive scoping comments highlighting the study and urging a rigorous federal environmental review. Finally, EPD defended the Commonwealth and state agencies in eminent domain and other litigation initiated by Tennessee Gas for its Connecticut Expansion pipeline project, which affects state-protected land in Otis State Forest.

**TSCA Reform:** AAG Andy Goldberg worked closely with Sen. Markey’s office, and with a 12 state coalition of Attorneys General which we led, to help reform the 40-year-old, and largely ineffective,

Toxic Substances Control Act of 1976 (TSCA), while preserving states' authority to regulate toxics to the greatest extent possible. President Obama signed the Frank R. Lautenberg Chemical Security for the 21st Century Act in June 2016, and the Office was invited to attend the signing ceremony in Washington D.C. in recognition of our efforts.

**Brownfields Covenant Not to Sue Program:** Led by Deputy Chief Betsy Harper, EPD's Brownfields work was very active in FY2016, and we entered into six Brownfields Covenant Not to Sue Agreements with applicants (including a municipality) who have agreed to the remediation and development of blighted properties in the Commonwealth. The projects are located in Brockton, W. Springfield, Woburn, Walpole, Stockbridge, and North Adams. Due to a regulatory change in the MCP, we were able to issue our first covenants at two Superfund properties in Walpole and Woburn at which two highly contaminated properties will be redeveloped and put back into productive use. Additionally, we provided a covenant to a developer in Stockbridge who intends to convert a former truck stop into a 10-acre, 2.0 megawatt alternating current ground-mounted solar photovoltaic array. Finally, in Western Mass, we provided a covenant to Greylock Works and Greylock Flume who plan to develop and renovate a 200,000 square foot mill building into a space that houses a mix of production, hospitality, and cultural uses.

**Healthy Buildings, Healthy Air (Asbestos Initiative):** This year we developed our Healthy Buildings, Healthy Air Initiative, which takes a comprehensive approach to addressing the public health impacts of asbestos exposure in the Commonwealth. As part of the Initiative, we are focusing our enforcement caseload on cases involving significant asbestos impacts on vulnerable populations, especially those found in Environmental Justice communities. The Initiative also includes a focus on asbestos in schools, partially in response to a report from Senators Markey and Boxer identifying the lack of compliance with asbestos laws in schools nationally and in Massachusetts. We are working with the Department of Labor Standards on specific cases involving problem schools as well as conducting a statewide outreach program to school districts to determine the extent of the problem and how we can help schools come into compliance. Other components include partnering with DLS to reinvigorate their enforcement system for licensing of asbestos professionals, working with both DLS and the Department of Environmental Protection on statutory and regulatory amendments to the laws that govern asbestos work and disposal in the Commonwealth, and providing outreach and education to vulnerable sectors of the public who may not have sufficient information about asbestos and the laws that regulate it.

## GOVERNMENT BUREAU

The Government Bureau represents the Commonwealth, its agencies, and officials in many types of civil litigation, and defends Commonwealth employees from civil claims made against them resulting from the performance of their duties. The Bureau develops and maintains close working relationships with the agencies it represents, often providing them guidance and advice where advance legal consultation may prevent unnecessary and costly lawsuits. The Government Bureau initiates affirmative litigation in the public interest, on behalf of the Commonwealth and its residents. The Bureau also enforces the state's Open Meeting Law through its Division of Open Government, and reviews and approves town bylaws through its Municipal Law Unit.

### **Abandoned Housing Initiative**

Blighted properties, abandoned by their owners in residential areas, create safety hazards, attract crime and lower property values. The Abandoned Housing Initiative (AHI) uses the enforcement authority of the State Sanitary Code to turn these properties around. Working in close partnership with cities and towns, the Attorney General's Office seeks out delinquent owners of abandoned residential property and encourages them to voluntarily repair their properties and make them secure. If owners refuse, then Attorney General's Office attorneys will petition the relevant court to appoint a receiver to bring the property up to code.

#### Significant Cases

**Revere: 400 Park Street**, an abandoned single family home in Revere that was initially thought to require demolition was completely rehabilitated and sold at auction in January 2016. Dramatic before and after pictures demonstrate the significant amount of work done on this property and the improvement to the neighborhood.

**Montague: A 6 family property (110 L Street, Turners Falls)** was returned to full compliance and fully occupied prior to sale in 2/2016. Some of the units are subsidized rentals. Another property down the street is currently in receivership which will return an additional 8 units to the rental housing market in this small community in Western Massachusetts.

**Brockton: 209 Tribou**, a single family home that had been vacant for several years and the location of drug activity and severe vandalism was returned to habitability through a receivership action brought by our office. We worked with the Brockton Redevelopment Authority on this property, which intends to sell the property to a first time homebuyer. The Attorney General visited the property and spoke at an event there in October 2015.

#### Other Significant Achievements

**AHI expansion and Receivership Fund:** On 1/25/2016, AG Healey formally announced AHI's expansion and dedicated an additional \$2 million to the AHI Receivership Fund.

**AHI Strategic Demolition Fund:** \$500,000 was allocated to a grant program which will assist communities in strategically demolishing residential structures in cases where no other viable remediation strategy exists. Successful funding proposals will emphasize the redevelopment of lots after demolition has occurred. AHI will be partnering with the four regional AHI Receivership Fund grantees to evaluate demolition proposals and administer awards.

## Important Statistics and Numbers:

During the Fiscal Year 2016, AHI was active in 103 municipalities, opened 329 new cases, and filed 65 petitions in court. Since the end of Fiscal Year 2015, AHI doubled the number of cases closed with successful outcomes from 90 to 180. AHI continued its expansion across the Commonwealth by increasing its municipal partnerships by 41% from Fiscal Year 2015.

## **Administrative Law Division**

The Administrative Law Division represents state agencies and state officials in a broad range of civil litigation. The Division defends legal challenges to state statutes and regulations, suits that challenge state policies and programs, and suits that challenge the decisions of state administrative agencies. The Division also initiates litigation on behalf of state agencies to support their programs or assist their regulatory activities.

## Relevant Fiscal Information

In *Bank of America v. Commissioner of Revenue*, 474 Mass. 702 (2016), the Supreme Judicial Court held that the bank, in its capacity as corporate trustee, was subject to the Massachusetts fiduciary income tax despite not being domiciled in Massachusetts. The AGO argument, made on behalf of the Department of Revenue, won in the appeal. DOR estimated that it would have been required to return \$22.5 million to the bank in this and dozens of other similar cases if it had lost. The case was briefed and argued in FY 2016, but decided at the beginning of FY 2017 (on July 11, 2016).

The following item was reported before, but had additional activity during FY 2016:

In *DirectTV, Inc. v. Department of Revenue*, the Supreme Court ended the satellite-television industry's constitutional challenge to the Commonwealth's Satellite Television Services Tax (G.L. c. 64M) in November 2015. The Court denied the industry's petition requesting review of an SJC decision that had rejected its challenge to the tax. DirectTV had argued that the tax discriminates against interstate commerce because it is not also imposed on cable-television services. The estimated annual revenue from this tax is \$12 million.

## Significant Cases

**D'Agostino v. Baker**, First Circuit. The Court upheld a Massachusetts law that extends collective-bargaining rights to persons paid by the state to provide home-based child care to low-income and at-risk children. The law allows the providers to select a union to act as their "exclusive representative" to negotiate a collective bargaining agreement with the state. The Court held that the law does not violate the First Amendment rights of child-care providers who objected to the union acting on their behalf. The law does not require the plaintiffs to join the union or fund its activities, and the plaintiffs remained free to speak out in opposition to the union or oppose its activities in other ways.

**Sirva Relocation v. Massachusetts Commission Against Discrimination**, First Circuit. The Court held that the lower court properly abstained from hearing this action, which attempted to enjoin the MCAD from investigating and adjudicating a charge of disability discrimination against the plaintiff. The plaintiff had asserted that ERISA preempts the state proceeding because it related to the company's disability benefit plan.



**Massachusetts Association of Private Career Schools v. Healey**, U.S. District Court. The Court (Saylor, J.) rejected a variety of constitutional challenges to regulations promulgated by the Attorney General to stop unfair and deceptive practices in the for-profit school industry. The court held that two of the challenged regulations were permissible but too broad, and identified modest amendments that would address any legal concern.

**Morin v. Chief of Police of Northborough**, U.S. District Court. The court (Hillman, J.) held that the Massachusetts law that prohibits people with weapons-related convictions from obtaining a license to carry firearms does not violate the Second Amendment.

**Magazu v. Department of Children and Families**, Supreme Judicial Court. The Court held that the Department did not violate the Free Exercise Clause of the First Amendment when it denied a couple's application to become foster parents because they practiced corporal punishment on their own children (even though they promised not to do so as to foster children). Although the couple maintained that physical discipline was an integral part of their Christian faith, the Department was entitled to protect the physical and emotional well-being of foster children.

**Blouin v. Ordoñez**, SJC. The Court held that, as a matter of due process, when an indigent parent seeks to remove a guardian and regain custody of her child, the parent has a right to counsel to prosecute the petition, provided the parent presents a meritorious claim for removal.

**Kain v. Department of Environmental Protection**, SJC. The Court held that the Department's existing regulatory initiatives do not meet its obligations under the state Global Warming Solutions Act, which requires the Department to promulgate regulations that limit, on a declining annual basis, emissions released from regulated sources of greenhouse gases.

**Schussel v. Commissioner of Revenue**, Supreme Judicial Court. The Court upheld the imposition of a double tax assessment on two individuals for filing false tax returns "knowingly" and with an "intent to evade taxes" after they substantially underreported their income and falsely stated they did not reside in Massachusetts.

## **Municipal Law Unit**

The Municipal Law Unit carries out the Attorney General's statutory mandate to review all town by-laws, and city and town charters, for consistency with state law and the Constitution. The Unit also assists municipal attorneys, local and state officials and residents with questions regarding municipal law, and regularly conducts trainings for municipal attorneys and town clerks.

The Unit received 1202 by-laws and charters for review, and issued 468 decisions regarding 1387 by-laws and charters during this time period.

Staff of the Unit conducted 8 trainings for municipal officials, counsel and town clerks regarding siting of substance abuse treatment centers and the by-law submission process

## Division of Open Government

The Division of Open Government has two primary responsibilities: state-wide enforcement of the Open Meeting Law and Public Records Law. The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently. To help public bodies understand and comply with the law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints and, when necessary, makes findings and orders remedial action to address violations of the law. Under the Public Records Law, any person may appeal a public official's denial of a request for a record to the Supervisor of Records within the Office of the Secretary of the Commonwealth. The Supervisor may refer an order to comply with the Public Records Law to the Attorney General for enforcement. The Division reviews these referrals and works with record custodians to ensure compliance with the Public Records Law.

### Significant Cases

**Dudley Planning Board (OML 2015-139):** We found that the Board secretly deliberated during a recess of an open meeting, changing the outcome of a vote. We found an intentional violation of the Open Meeting Law and ordered a civil penalty of \$1000.

**Freetown Board of Selectmen (OML 2016-31):** We found that the Board engaged in improper deliberation over email regarding a disciplinary matter. Because the Board had been previously advised by the Attorney General that deliberations outside of noticed meeting violated the Open Meeting Law (OML 2013-186), we found an intentional violation of the law, and ordered a civil penalty of \$1000. Upon negotiated settlement, the Board waived its right to a hearing and paid \$750.

**Massachusetts Department of Transportation Board of Directors (OML 2015-92):** We concluded that a public body may set reasonable security policies for admittance to open meetings, such as requiring photo identification to access the building in which the meeting is being held.

**Boston Zoning Board of Appeals (OML 2016-69):** We found that the Board intentionally violated the Open Meeting Law by holding a meeting after being informed that the meeting had not been properly noticed, and ordered a civil penalty of \$1000.

**Boston Fair Housing Commission (OML 2015-149):** We concluded that the Commission could not conduct certain adjudicatory meetings without following the requirements of the Open Meeting Law.

**Rockport Board of Selectmen (OML 2015-164):** We concluded that a public body must review and make available executive session meeting minutes for which confidentiality has expired, within 30 days of a request, even where the request is for a large set of meeting minutes, stretching back decades.

### Significant Achievements

Our office's primary goal in enforcing the OML is compliance with the law. In order to help individuals who are subject to the OML comply with its requirements, the Division has continued to devote significant time and resources to education and training.

During FY16, the Division conducted 6 regional trainings on the OML across the state, reaching 350 attendees. In addition to these in-person training opportunities, the Division offered 4 interactive online training events, reaching an additional 49 attendees. Finally, the Division participated in a dozen conferences and workshops offered by groups including the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Office of the Inspector General, and the Massachusetts Municipal Lawyers Association.

The Division has also continued to update and supplement the materials on its website. The Division's website now includes a database listing all Open Meeting Law complaints pending under the Division's review.

### Important Statistics and Numbers

The Division resolved more than 237 Open Meeting Law complaints in FY16, and issued 193 written determinations. The Division responded to more than 1400 inquiries by telephone, e-mail, and letter in FY16, often providing responses within 24 hours. These questions came from members of public bodies, municipal attorneys, members of the public, and the press. Finally, the Division led or participated in 29 training events, reaching 1,223 attendees.

### **Trial Division**

The Trial Division defends suits brought against state agencies, officials and employees who are sued in the context of their agency duties. The types of cases generally include employment, torts, civil rights, contracts, erroneous conviction, eminent domain and land use cases. These suits generally seek damages or other relief for alleged wrongful acts of government agencies, officials or employees. The Trial Division handles cases in both federal and state court, and the cases range from those with simple fact patterns to multi-million dollar cases with complex fact patterns and legal issues.

### Significant Cases

**Doe v. Patrick, et al., United States District Court:** This is a class action brought on behalf of a class of women who have been committed for substance abuse treatment under G.L. c. 123, § 35. It is being handled jointly by AdLaw and Trial. The class in Doe is made up of women who, after being involuntarily committed pursuant to Section 35, are sent to MCI-Framingham for a period of time rather than a DPH treatment facility. This typically occurs in instances where there are no beds available at DPH. The plaintiffs seek relief for due process violations under the United States Constitution and the Massachusetts Declaration of Rights. The plaintiffs also bring a claim under the ADA and Article 114 of the Massachusetts Constitution as it pertains to disabled individuals.

**Tobacco Diligent Enforcement (2004):** This matter concerns a nationwide arbitration to establish whether Massachusetts (and other states) diligently enforced their escrow statutes against non-settling tobacco companies in 2004.

**Tatum et al. v. Commonwealth. Suffolk Superior Court:** Plaintiffs are African-American and Hispanic municipal police officers who are subject to the civil service law, G.L. c. 31. They allege that the Human Resources Division engaged in racial discrimination through the design and administration of multiple-choice exams for candidates seeking promotion to police sergeant that had an adverse, discriminatory impact on African-American and Hispanic candidates, and that they were denied promotional opportunities as a result.



**Cummings v. Commonwealth, Norfolk Superior Court:** Plaintiff alleges unlawful discrimination based on his dismissal from the Boylston Police Academy because he could not complete the endurance run portion of the police academy curriculum because he has one lung. We are working on a summary judgment motion.

**Judge Rotenberg Center Litigation:** In re Guardianship of Stephanie Lee Bedard, Bristol Probate Court, Trial. Probate Court denied petition and petitioner did not appeal. Ms. Bedard is an adult patient at JRC. Ms. Bedard's guardian and JRC petitioned the Probate Court for permission to use Level III aversive treatments on Ms. Bedard. Ms. Bedard opposed this petition and DDS intervened, also in opposition. After a substituted judgment hearing, the judge issued an order denying the petition. The judge further agreed with DDS that less intrusive treatments than Level III aversives were available for Ms. Bedard.

Judge Rotenberg Center v. DDS, Bristol Probate Court. Evidentiary hearing completed (6 months). In 1987, JRC and DDS entered into a Consent Decree allowing JRC to use Level III aversive treatments subject to court approval. In 2011, however, the DDS issued regulations banning Level III aversives but JRC claimed that the 1987 Consent Decree exempted it from these regulations. DDS then moved to vacate the Consent Decree on the ground that Level III aversives are no longer within the relevant standard of care. The Court denied this motion and ordered an evidentiary hearing. The parties completed a 43-day hearing in June 2016. Proposed findings of fact and rulings of law are due on October 7 and closing arguments are scheduled for October 17.

**Hinton Lab Cases:** Series of approximately 7 cases alleging a variety of claims against the Commonwealth, including alleged tort claims, erroneous conviction claims and civil rights violations, arising out of the criminal conduct of Annie Dookhan, who was a lab technician for the Hinton Lab and falsified lab results during the course of her employment.

### Significant Achievements

**Maguires, Inc. v. MHD,** Middlesex Superior Court. Eminent Domain Trial arising out of a series of permanent and temporary takings impacting Plaintiffs gas station on the West bound side of Rt. 9 in Framingham. MHD replaced the bridge adjacent to the property and made a series of temporary and permanent takings to accomplish the project. The jury awarded \$235,000, including severance damages that we had argued were not applicable both legally and factually. The judge granted a new trial on the grounds that it was error to admit evidence of severance damages and lost profits, and it was error to instruct the jury on severance damages. Case set for re-trial in Spring 2017.

**Renaud v. Commonwealth,** Suffolk Superior Court. Defense verdict in the trial of an erroneous conviction case. Plaintiff alleged he was wrongfully convicted for malicious destruction of property and breaking and entering in the daytime. Plaintiff's convictions were reversed on the ground that there was insufficient evidence to convict.

**Santana v. Commonwealth,** Essex Superior Court. Defense Verdict in trial of erroneous conviction case. Plaintiff's conviction for drug trafficking was reversed for insufficient evidence. Plaintiff was a passenger in a vehicle that police tried to stop. The driver of the car attempted to flee and crashed into a school bus. Cocaine and a scale were found in plain view in the center console of the vehicle right next to where Plaintiff was sitting.

**Clemmey v. MHD,** Bristol Superior Court. Jury Verdict for Commonwealth's number, below the pro

tanto. Motion for a new trial was denied. Eminent domain case involving three adjoining parcels of land located off of South Main Street, Mansfield. The pro tanto was approximately \$1.4 million. Our expert said that the 3 residential properties were worth a total of \$1,062,000. This was based on residential use with a small bonus for commercial potential. The plaintiff's expert claimed a total of \$1,950,000 based on commercial use.

**Yunker v. EOHHS**, Suffolk Superior Court. Defense Verdict in Employment Litigation Trial. Plaintiff alleged age discrimination against DTA. The Director of the Revere office claimed that his demotion to Assistant Director and/or offer of lateral transfer was based on age discrimination and was a violation of first amendment associational rights. Initially the Court granted our motion for summary judgment of all counts. However, the appeals court (1) reversed grant of summary judgment on Plaintiff's age discrimination claim because of a factual dispute; (2) affirmed summary judgment on Plaintiff's "violation of associational rights" claim. Trial proceeded on the one remaining count for Plaintiff's age discrimination claim because of a factual dispute.

**Chiappini v. Commonwealth**, Suffolk Superior Court. Defense Verdict in trial of an erroneous conviction case. Plaintiff was involved in a bar fight with Timothy Guinazzo, resulting in the plaintiff stabbing Guinazzo with a knife. Both men were charged with assault as a result of this altercation. At his trial, Plaintiff claimed self-defense but lost and spent 15 months in jail. Guinazzo testified at plaintiff's trial differently from what he later admitted to at his own plea hearing. The Appeals Court reversed plaintiff's conviction and granted him a new trial in light of Guinazzo's inconsistent statements about the incident.

**Griffiths v. Commonwealth**, Middlesex Superior Court. Defense verdict in trial of Employment case. Plaintiff, a State Police toxicology lab employee, claimed that the State Police and two supervisors discriminated and retaliated against her while she was working in a different division at the State Police, on the basis of her handicap (mental health condition). Due to her mental health condition, the plaintiff engaged in inappropriate behavior at work, including an unhealthy emotional attachment to her supervisor and disruptive conduct. The State Police paid for the plaintiff to receive counseling, did not discipline her, and moved her into a new work situation, in which she is now doing well.

## **HEALTH CARE AND FAIR COMPETITION BUREAU**

The Health Care and Fair Competition Bureau aligns Divisions within the Attorney General's Office that routinely touch upon the Massachusetts health care sector in fundamental ways. The work of the bureau includes overseeing public charities, preventing anticompetitive or fraudulent practices by providers of health care products and services within the Commonwealth, safeguarding rights of health care consumers, and combating fraud and abuse in the MassHealth system. The Divisions within the Health Care Fair Competition Bureau bring affirmative litigation on behalf of Massachusetts consumers and taxpayers, maintain a health care help line and mediation service, and engage in advocacy and policy initiatives to ensure access to quality, affordable health care in our state. In addition, some of the Divisions work on cases and issues beyond the health care arena, such as overseeing a wide variety of charitable organizations, combatting fraud across the spectrum of government contracting, and investigating anticompetitive behavior in all manner of businesses.

### **Antitrust Division**

The Attorney General's Antitrust Division protects the people, state agencies and businesses of Massachusetts from anticompetitive practices and helps maintain and encourage a competitive and vibrant economy through fair and effective enforcement of antitrust laws. The Antitrust Division investigates and challenges anticompetitive mergers, price-fixing agreements and other illegal practices by companies, both local and national, that harm Massachusetts consumers and important state interests; promotes and protects competition in various industries directly affecting consumers, such as health care, pharmaceuticals, retail and communications; obtains relief for consumers in the form of refunds for overcharges, civil penalties, and injunctions against offending businesses; and advocates for effective competition policy at the state and national levels by filing legal briefs in important antitrust cases, engaging in policy initiatives, and promoting pro-competitive legislation.

### **Significant Cases**

Following the Court's rejection of a proposed agreement with Partners HealthCare, ATD continued to review Partners' proposed acquisition of Hallmark Health System. Partners then stated that it was reconsidering the acquisition and ultimately abandoned it. This result preserved competition on cost and quality in the health care market to the benefit of consumers.

ATD also reviewed a number of other significant health care matters in order to protect and maintain competition in this vital market. For example, ATD reviewed the proposed contractual affiliation of Beth Israel Deaconess Care Organization with MetroWest Medical Center and similar contractual affiliations with New England Baptist Hospital and New England Baptist Clinical Integration Organization. In each instance, ATD ensured that the proposed transaction complied with the antitrust laws.

ATD worked with other antitrust enforcement authorities to successfully obtain restitution for Massachusetts consumers following an alleged conspiracy by E-book publishers and Apple, Inc. to raise E-book prices. The publishers previously settled with the AGO, other states, and the Department of Justice. A separate settlement agreement with Apple was implemented after Apple's appeal of the liability verdict against it in the Federal District Court was upheld by the U.S. Supreme Court. Apple made a nationwide total payment of \$400 million. Of that, Massachusetts consumers received restitution of approximately \$9 million.

ATD reviewed the merger of the parent companies of Stop & Shop and Hannaford Supermarkets. Together with federal authorities, ATD obtained the agreement of the parties to divest eight Massachusetts stores in markets where the merger would have substantially reduced supermarket competition. The stores were sold to new entrants in these markets in order to preserve essential competition for the benefit of consumers.

## **False Claims Division**

Created in 2015 by Attorney General Healey to expand upon the Office's existing false claims initiative, the False Claims Division works to safeguard public funds by enforcing high standards of integrity against companies and individuals that make false statements to obtain government contracts or government funds in violation of the Massachusetts False Claims Act, G.L. c. 12, sec. 5A-5O.

### Significant Cases

**CTA Construction Co, Inc., MDR Construction, Luxor Equipment**, Aug-15, \$1.4M settlement of allegations that 3 contractors violated the state's False Claims Act by falsely certifying compliance with equal opportunity requirements on multiple public construction contracts in Massachusetts.

**D'Allessandro Corp.**, Nov-15, \$190K settlement of allegations that D'Allessandro Corp. violated the state's consumer protection laws and False Claims Act by failing to comply with provisions requiring it to subcontract a certain percentage of work to businesses known as Minority/Women Business Enterprises (M/WBEs).

**US ex rel. John Hendrix v. J-M Manufacturing Company, Inc. and Formosa Plastics Corporation**, C. (C.D. Ca.), Jan-16 Allocation of \$257K proceeds from settlement with defendant Formosa Plastics Corporation resolving allegations that Formosa was the inadvertent beneficiary of false claims made by its subsidiary, JM Manufacturing Company, Inc., concerning the quality of the PVC pipe it sold.

**Level 3 Communications, LLC**, Mar-16, \$8.185M settlement of allegations that Level 3 breached its contract with MassDOT and violated the Massachusetts False Claims Act by concealing the amount it owed the state agency and knowingly avoiding its annual rent obligations.

**B-G Mechanical Contractors, Inc.**, Jun-16, \$220,500 settlement of allegations that B-G Mechanical Contractors, Inc. (B-G) violated the state's consumer protection laws and False Claims Act by failing to abide by provisions in two public design-build energy contracts requiring B-G to subcontract a certain percentage of work to Minority/Women Business Enterprises (M/WBEs).

**Volkswagen AG, et al**, Jun-16, \$22.2M settlement of allegations Volkswagen violated state consumer protection act by marketing, selling and leasing diesel vehicles equipped with illegal and undisclosed defeat device software and commencement of litigation of related environmental claims.

## Health Care Division

The Health Care Division was created in 2007 to place a heightened focus on promoting the interests of consumers as Massachusetts undertook its landmark health reform effort. Since its creation, the Division has led a range of actions to protect the public from unfair and illegal conduct by insurers, providers, pharmaceutical companies, and medical device manufacturers. The Division also leads state efforts to examine the health care market and develop standards for public reporting of cost and quality information to help consumers and employers make more prudent health care purchasing decisions. In addition, the Division mediates hundreds of health care complaints annually and educates consumers regarding their health care coverage and billing rights.

### Significant Cases

The Health Care Division has been at the forefront of health care advocacy, enforcement, and consumer protection. During FY16, HCD obtained several high-profile resolutions, including:

An agreement with **Amphastar Pharmaceuticals**, manufacturer of Naloxone, under which the company paid \$325,000 to help offset the costs of the drug that counters the effects of opioid overdose. The first-of-its kind payment went to Massachusetts's Municipal Naloxone Bulk Purchase Trust Fund to increase access to life-saving Naloxone through a discounted program.

**Tufts Associated Health Plans** paid \$90,000 to the Commonwealth and agreed to reimburse members and providers for costs related to ABA therapy to resolve allegations that it violated the state's autism insurance, mental health parity, and consumer protection laws when it inhibited member access to treatment for Autism Spectrum Disorder.

A consent judgment was entered against the **Insurance Company of the State of Pennsylvania (ICSOP)** pursuant to which it paid \$430,000 to settle allegations that it sold unauthorized health insurance to Massachusetts consumers and failed to cover mandated benefits required by state law.

A consent judgment was entered against **Amgen, Inc.** in a multi-state resolution requiring the company to pay a total of \$71 million, including \$1.3 million to Massachusetts to settle allegations of unlawfully promoting Aranesp and Enbrel for uses not approved by the FDA.

### Other Significant Achievements

HCD worked with the Health Policy Commission and the Center for Health Information and Analysis to hold the state's annual health care cost trend hearings in October 2015. In September 2015, HCD released its fifth examination of health care cost trends and cost drivers, evaluating the performance of recent consumer directed and provider oriented cost containment initiatives and documenting provider price variation not explained by quality under global budget arrangements.

In December 2015, HCD worked with NPCD to issue two comprehensive reports documenting Steward Health Care System's impact on the Massachusetts health care market following its acquisition of eight nonprofit hospitals from 2010 to 2012, as well as its compliance with the public interest provisions in each of those acquisitions.

In FY16, HCD analyzed and reported on more than \$750 million in Community Benefits provided by hospitals and health plans in the Commonwealth in the previous fiscal year.

In partnership with CRD, HCD conducted trainings in May and July 2016 on best practices for delivering health care to LGBT patients, with a focus on the unique challenges faced by the transgender community in accessing health care. The trainings were cosponsored with the National LGBT Education Center at the Fenway Institute and the Massachusetts Hospital Association.

## Medicaid Fraud Division

The Medicaid Fraud Division investigates and prosecutes health care providers who defraud the Massachusetts Medicaid program, known as MassHealth. In addition, the Medicaid Fraud Division is responsible for reviewing complaints of abuse, neglect, mistreatment and financial exploitation of patients in long-term care facilities.

Through criminal and civil enforcement actions, the division seeks to have a significant deterrent impact on fraudulent activities within every area of the Commonwealth's healthcare provider community. The Division serves as the Medicaid Fraud Control Unit for the Commonwealth of Massachusetts and is annually certified by the Secretary of the U.S. Department of Health and Human Services. The Medicaid Fraud Division employs investigators, auditors, data analysts and attorneys who work together to develop investigations and execute prosecutions.

The Medicaid Fraud Division partners with other local, state and federal law enforcement agencies in its efforts to combat fraud, save taxpayer dollars, and protect the most vulnerable in our society from exploitation and abuse by their caregivers.

### Significant Cases

The Medicaid Fraud Division has continued its work to combat the opioid epidemic in Massachusetts. In the Fall of 2015, the Medicaid Fraud Division reached two settlements between physicians **Dr. Joshua Golden** and **Dr. Masoud Shahidi**, and recovered \$345,720 to be paid directly to affected MassHealth members. These civil settlements resolved allegations of requiring their MassHealth patients to pay out-of-pocket to receive the drug Suboxone as part of their addiction treatment.

Additionally, **Dr. Mohammad Nassery**, pled guilty in March 2016 to over twenty charges. Dr. Nassery was sentenced to 2 ½ years in the House of Correction, suspended for five years and ordered to pay \$10,278.26 in restitution to MassHealth. Dr. Nassery was indicted in May 2015, following an investigation that alleged the doctor prescribed opiates to 10 individuals for no legitimate medical purpose, and causing pharmacies to bill MassHealth for prescriptions he knew were not medically necessary.

The Medicaid Fraud Division also brought charges against **Dr. Fernando Jayma** in December 2015. Dr. Jayma was indicted by a Grand Jury in Hampden County of over forty charges including Illegal Prescribing of a Controlled Substance and Medicaid False Claims. The investigation and subsequent charges were the result of a MassHealth referral. The referral indicated that Dr. Jayma was the second highest MassHealth prescriber of schedule II opioids. The investigation revealed allegations where Dr. Jayma prescribed opioids to patients for no legitimate medical purpose.



The Medicaid Fraud Division continued to lead the States in **qui tam whistleblower cases involving the False Claims Act**, and received the largest Medicaid Fraud recovery in state history. In June 2016, the Medicaid Fraud Division served as the lead litigator to resolve allegations against pharmaceutical manufacturers Wyeth and Pfizer who engaged in an unlawful scheme to reduce the amount required to pay state Medicaid programs for the sale of the drug Protonix. As a result of the Division's efforts, Massachusetts was able to recover \$68 million, which is the largest recovery for the Medicaid Fraud Division in state history.

Massachusetts served as **principal negotiator in several settlements**. In August 2015, Massachusetts lead negotiations to a recovery of \$2.7 million for 19 states. Massachusetts received over \$82,000, resolved allegations against, nursing and home care services provider, **Pediatric Services of America**. It was alleged that the company failed to return overpayments it had received from Medicaid Programs.

In November 2015, Massachusetts negotiated a \$1.87 million settlement for the States. This settlement against two pharmaceutical companies, **AstraZeneca LP and Cephalon, Inc.**, resolved allegations that the companies manipulated price reporting to decrease rebates that were owed to state Medicaid programs.

In October 2015, Massachusetts served on a team to resolve off-label marketing allegations against **PharMerica**. Massachusetts received over \$335,000, resolved allegations that the pharmacy services provider conspired with Abbott Laboratories to promote and misbrand the anti-psychotic drug, Depakote. Massachusetts also served on the settlement team to resolve allegations against Genentech and OSI, two pharmaceutical companies, for over \$200,000. This settlement resolved allegations that the companies made misleading representations involving the drug, Tarceva, which treats non-small cell lung cancer.

The Medicaid Fraud Division brought charges against five individuals in February 2016, for defrauding MassHealth through the personal care attendant program. The cases include allegations of billing MassHealth for services that were not provided, double billing for PCA and adult foster care services, and charging for home care when a patient was hospitalized, along with several other schemes.

**Crystal Clark**, PCA surrogate for her disabled son was indicted by an Essex County Grand Jury based on allegations that Clark submitted timesheets by various individuals when in fact they were working elsewhere or could not have provided services.

**Mary Yost**, a PCA surrogate for her son, was indicted by a Plymouth County Grand Jury for allegations that she billed MassHealth for PCA and AFC services simultaneously and submitted timesheets that her other son provided PCA services when he was working elsewhere or in college.

**Frederick Phillips**, who was a PCA surrogate for his brother, was indicted by a Berkshire County Grand Jury for allegations that he double-billed for PCA and AFC services simultaneously.

**Scott Gibeault**, also a PCA surrogate, was indicted by a Worcester Country Grand Jury based on allegations that he submitted fraudulent timesheets for PCA services provided by individuals who were either out of state, working elsewhere, or unable to provide services.

A criminal complaint was issued against **Tamekha Lewis-Sturup**, a PCA, in Boston Municipal Court. The complaint detailed allegations that Lewis-Sturup allegedly billed for PCA services that were not rendered and failing to provide services to a consumer resulting in hospitalization.

## Other Significant Achievements

FY2016 is the highest recovery amount that the Medicaid Fraud Division has ever recorded. The majority of the total recovery was due in part to the **largest single settlement in MFD history, a \$68 million settlement with pharmaceutical manufacturers Wyeth and Pfizer** who engaged in an unlawful scheme to reduce the amount required to pay state Medicaid programs for the sale of the drug Protonix.

As highlighted above, in what was the largest Medicaid fraud recovery in state history, pharmaceutical manufacturer Wyeth, Inc., a wholly owned subsidiary of Pfizer, Inc., agreed to pay nearly \$68 million to the Massachusetts Medicaid program.

The United States Department of Health and Human Services, Office of Inspector General (OIG) noted in its October 2015 assessment that in response to the opioid abuse problem in Massachusetts, the AG's Medicaid Fraud Division developed successful partnerships with other agencies and effective methods of accessing specialized expertise in its investigation and prosecution of cases involving the over-prescription and/or abuse of opioids. A cooperative relationship with the Drug Enforcement Administration's (DEA) Diversion Control Program led to the Unit's successful prosecutions of cases involving drug diversion and illegal prescription of opioids and a strong relationship with the Norfolk County Overdose Death Review Team proved to be a rich source of referrals and investigative information. It was also noted that the MFD successfully streamlined a number of administrative processes through the use of the AG's intranet. The adoption of this system has improved MFD's capacity to efficiently track and document significant activity and fulfill outside agency requests.

In January 2016, the Interagency Group on Illegal Prescribing (IGIP) was formed to investigate and prosecute prescribers, pharmacists and other medical providers who illegally prescribe or dispense controlled substances. The group is led in part by the MFD and includes federal and state agencies such as the Federal Bureau of Investigation (FBI), the DEA, the OIG, the Massachusetts State Auditor's Office and MassHealth. The coalition works collaboratively on investigations and meets regularly to share information. By working more closely together, the group looks to eliminate duplicative efforts and save time and resources.

Additionally, MFD has made written recommendations to MassHealth, regarding Home Health Agencies, including support for a moratorium on new Home Health Agencies, use of independent medical examinations of members in selected cases, and consideration for licensing Home Health Agencies in Massachusetts with a Determination of Need or Certificate of Need process. As a result of these recommendations, MassHealth imposed a six-month moratorium effective February 11, 2016. The Centers of Medicare and Medicaid Systems (CMS) then granted approval for EOHHS and MassHealth to extend the temporary moratorium through August 11, 2017. MassHealth also included a provision for independent clinical assessment in a revision of Home Health Agency regulations effective March 1, 2016.

The MFD continued to uphold a national presence in several ways, as several members of the Division were invited to instruct at national conferences and served in varied positions in the National Association of Medicaid Fraud Control Units (NAMFCU). An AAG and Chief of the Division served as President of NAMFCU, while another AAG continued to serve as co-chair of the Association's Global Case Committee. Additionally, two of the Division's Investigations Supervisors continued to serve with NAMFCU; one as the co-chair of the Association's Training Committee and the other a member of the Data Analyst Sub-Committee. The MFD regularly played a leadership role in national initiatives and in bringing false claims cases from initial intake to ultimate resolution.

## Non-Profit Organizations/Public Charities Division

The Non-Profit Organizations/Public Charities Division is responsible for overseeing more than 27,000 public charities in Massachusetts, including ensuring appropriate application of charitable assets, investigating allegations of wrongdoing or fraud in the application or solicitation of charitable funds, and initiating enforcement actions in cases of breach of fiduciary duty. This work includes reviewing sales of significant charitable assets and dissolution of public charities, reviewing documentation of and ensuring fulfillment of charitable bequests, and supporting non-profit charitable boards of directors in their efforts to discharge their fiduciary duties appropriately. The Division's compliance unit comprises administrative staff who support transparency in the sector by processing and managing registration and annual filings by public charities, professional solicitors, fundraising counsel and commercial co-venturers, and by maintaining the AGO's Annual Filings Document Search, which makes much of this information available to the public.

### Significant Cases

#### Fiduciary Duty & Governance

**Suffolk University Governance Inquiry:** In February 2016, the Division commenced an inquiry into governance issues at Suffolk University, following a very public controversy between the Board of Trustees and the President that undermined public confidence in Suffolk's leadership and that threatened to impair the long-term wellbeing of the institution. Lacking a clear and balanced division of authority in recent years between the Board and the office of the president and central administration, Suffolk struggled to implement certain plans to strengthen the institution, and suffered from excessive turnover in the president's office. The Division's inquiry involved interviews with members of the Board, including the Board Chair; and with members of University administration, including President McKenna. We also reviewed documents that we requested and that the University and Trustees made available to us. We concluded our inquiry in May 2016 with a lengthy letter that documented our findings, and set forth specific expectations regarding changes in communications and governance practices to be adopted by the Board.

#### 93A & Fiduciary Duty

**Commonwealth v. Michael W. O'Donnell, et al**, Civ. A. No. 2005-05242 (Sup. Ct. Suffolk Co.): Following a nine-day bench trial, Suffolk Superior Court Judge Brian Davis held Michael W. O'Donnell personally liable for \$1,285,300 in restitution, plus interest, for orchestrating "sham transactions" to obtain four real estate properties from two Taunton-area charities he created, Bay State Affordable Housing (organized to provide low-income housing) and Save the Star (organized to rehabilitate Taunton's historic Star Theater). Judge Davis ordered that Pro-Home, Inc. and the Community Foundation of Southeastern Massachusetts will receive any restitution funds paid by O'Donnell, and that O'Donnell must also pay \$190,000 in penalties for his failure to register the two charities and his failure to file annual financial reports on their behalf with the Attorney General.

In addition, Judge Davis held O'Donnell liable for \$250,000 in penalties for certain unfair and deceptive practices related to creating the two sham charities, using fake names to conceal his relationship with the charities and disguise his business activities, and taking unfair advantage of an elderly woman in granting her a home repair loan designed to fail.

Finally, Judge Davis permanently banned O'Donnell from transacting any real estate or mortgage lending activity, serving any role in any charity, and contacting any family members of the elderly victim.

## AGO Exclusive Standing

**Harvard Climate Justice Coalition v. President & Fellows of Harvard College, et al.**, Docket No. 2015-P-0905 (Appeals Court): In this matter, a collection of Harvard students (law students, graduate students and undergraduates) filed a complaint alleging that the investment of a portion of Harvard's endowment in "fossil fuel companies" amounted to a breach of fiduciary duty. The Attorney General – a necessary party under Massachusetts law – successfully moved in Suffolk Superior Court to dismiss on the ground that she has the exclusive standing to bring an action alleging the mismanagement of a public charity. The matter was appealed, and was briefed and argued before the Appeals Court. After oral argument in June 2016, a decision is pending.

## Solicitation/Multistate

**Federal Trade Comm'n, et al. v. Cancer Fund of Am., Inc., et al.**, Civ. A. No. 2:15-884 (D. Az.) – In this multistate enforcement action, all fifty states, the District of Columbia and the Federal Trade Commission filed a lawsuit against four sham cancer charities, Cancer Fund of America, Inc. ("CFA"), Cancer Support Services, Inc. ("CSS"), Children's Cancer Fund of America, Inc., and The Breast Cancer Society, Inc., and their operators, James Reynolds, Sr., James Reynolds, Jr., Kyle Effler and Rose Perkins. The complaint alleges that the sham cancer charities falsely portrayed themselves to donors as legitimate charities with substantial nationwide programs whose primary purposes were to provide direct support to cancer patients, when they did not, in fact, operate such programs. The defendants allegedly used the organizations for lucrative employment for family members and friends, and spent consumer donations on cars, trips, luxury cruises, college tuition, gym memberships, Jet Ski outings, sporting event and concert tickets, and dating site memberships. In FY2015, five of the eight defendants settled with the multistate coalition for a combination of monetary and injunctive relief. The multistate coalition settled with the remaining three defendants – Reynolds, Sr., CFA and CSS – for monetary and injunctive relief in March 2016.

## Deviation

**Boston Medical Center Funds Modifications:** Boston Medical Center, which was formed in 1996 through a merger of several charitable hospitals, had a number of restricted funds which it was not able to use. Many of these funds were restricted to purposes that could no longer be fulfilled, and all had been given to predecessor entities. Working with BMC, the Division helped identify which funds could be modified administratively by the Division under the provisions of UPMIFA (G.L. Chapter 180A), and which would need to be modified through a judicial order. In total, sixteen funds were modified so that BMC could make use of these charitable assets.

## Achievements

### Inter-Agency Training

**DHCD/Housing Authority Trainings:** In conjunction with the Department of Housing and Community Development, the State Ethics Commission, the Office of the Inspector General, and the AG's Division of Open Government, the Division presented on fiduciary duties and obligations to new and experienced board members of local housing authorities statewide.

## Conferences

**National Association of Attorneys General (NAAG)/National Association of State Charity Officials (NASCO) Annual Conference:** The Division participated in three panel presentations at the October 5-7, 2015 NAAG/NASCO conference in Washington, D.C. addressing (1) collaboration between charity general counsels and charity regulators, (2) civil and criminal enforcement options to address misappropriation of charitable funds and (3) first amendment limitations on judicial remedies for fundraising fraud.

**American Health Lawyers Association Tax Issues for Healthcare Organizations conference:** A member of the Division presented at a panel on the authority of state attorneys general at the AHLA Tax Issues for Healthcare Organizations conference in Arlington, Virginia. Our presentation was on the role of the Division, the Health Policy Commission and the Center for Health Information and Analysis.

## Annual Filings

**e-Payment:** In December 2015, the office launched an e-payment option to accept online payments for annual charities filings. As of June 30, 2016, the office received a total of 3,819 e-payments totaling \$645,445.00. While the office is still accepting checks, the number of online payments have increased each month.

## Important Statistics and Numbers

In FY 2016, the Division accepted 1,512 initial charities registrations, processed approximately 27,155 payments for initial registration or annual reports, and accepted 914 registrations for Professional Solicitors, Fundraising Counsel, and Commercial Co-Venturers. Fees for these activities generated in excess of \$6,335,130.00 for the Commonwealth.

As a party to the probate of all estates in which a charitable interest exists and in all judicial proceedings affecting charitable trusts, during FY2016, the AGO received and reviewed: 832 new wills, 1,067 interim accounts, and 578 final accounts/documents closing estate files; approved 32 petitions to sell real estate; and received and reviewed 71 trust terminations and 602 miscellaneous complaints and filings with respect to these matters. The AGO also resolved 134 matters involving the misapplication of charitable bequests or excessive fees, which in the aggregate, resulted in approximately \$189,792.02 being recovered for charitable purposes.

In carrying out its responsibility to assure the proper use of charitable funds, the AGO reviews: significant asset dispositions, changes in purposes, and other material transactions undertaken by non-profit charitable organizations, including all dissolution proceedings. During FY16, the AGO reviewed several hundred notices regarding significant transactions and approved the dissolution of 262 public charities.



## **PUBLIC PROTECTION AND ADVOCACY BUREAU**

The Public Protection and Advocacy Bureau (PPAB) uses investigation, litigation, and other advocacy to enforce laws protecting the Commonwealth. The Bureau works towards meaningful economic recovery for Massachusetts by tackling the economic and mortgage foreclosure crisis with a multifaceted and aggressive strategy. The Bureau works to protect consumers from unfair and deception activity, enforces state and federal civil rights laws, ensuring access and equal opportunity for all residents, advocates for protection of our environmental resources, pursues complex insurance and finance cases on behalf of residents or government entities, works towards affordable, high-quality health care for all, and enforces antitrust laws. The Bureau is supported by a team of skilled civil investigators.

### **Civil Rights Division**

The Attorney General's Civil Rights Division (CRD) protects and advances the constitutional and statutory civil rights and liberties of residents and visitors to the Commonwealth. The Division works to remedy and end discrimination on the basis of race, national origin, religion, gender, gender identity, sexual orientation, age, and disability, as well as other protected categories, and to ensure equal opportunity in areas such as education, housing, employment, healthcare, public accommodations, and voting.

#### **Significant Cases**

In January 2016, the Division obtained an Assurance of Discontinuance from a Worcester convenient store following allegations that it falsely accused a Hispanic patron of stealing. The AOD requires the store to pay up to \$25,000 and to provide its staff with comprehensive training and nondiscrimination policies, including training on unconscious bias.

In March 2016, the Division obtained a consent judgment against a Hadley diner and its owners following years of pervasive sexual harassment and discrimination against female wait-staff. The consent judgment requires the defendants to pay up to \$200,000 over time, and includes significant injunctive relief.

#### **Achievements**

In July 2015, the Division led the creation of a Disability Rights Advisory Committee which brings together experts and advocates from across the Commonwealth to advise the Attorney General on a wide range of issues related to equal access and opportunity for individuals with disabilities.

In October 2015, the Division filed an amicus brief with the United States Court of Appeals for the First Circuit addressing the civil liability of websites that facilitate human trafficking.

In November 2015, the Division led the filing of a multi-state amicus brief in *Fisher v. University of Texas at Austin*, urging the Supreme Court of the United States to uphold the University's race-conscious admissions program as constitutional (which it later did).

In December 2015, the Division helped to launch a grant program, Innovating to Improve Access and Opportunity, that funded projects using technology and innovative design to improve access and opportunity for individuals with disabilities in the fields of employment, education, transportation, and health care. The program was funded with the proceeds of the Division's settlement with Cardtronics, Inc., which also required the company to make as many as 100,000 ATMs nationwide accessible. The projects awarded grants include the Spaulding Rehabilitation Hospital for a handicapped parking space



finder application, The National Braille Press for a new editor application for Microsoft Word with advanced word processing functions for a braille computer, and the WGBH Educational Foundation for a free, high-quality video captioning tool.

In March 2016, the Division partnered with the Child and Youth Protection Unit to file a brief with the Supreme Judicial Court in *Partanen v. Gallagher*, supporting the rights of the children of unwed, same-sex couples.

Working with P&G, the Division helped to advance a new pay equity law intended to help close the persistent pay gap between men and women in the Commonwealth, and a transgender nondiscrimination law prohibiting discrimination on the basis of gender identity in places of public accommodation.

The Division partnered the Health Care Division and with Fenway Health and the Massachusetts Hospital Association to provide training for hospitals and providers to ensure equal access to health care for LGBTQ patients, with a special emphasis on the barriers that transgender patients face in obtaining care.

## **Civil Investigations Division**

The Civil Investigations Division employs a trained staff who provide investigative support in civil matters for the divisions both within within PPAB and throughout the Attorney General's office. The divisions investigators locate and interview victims, witnesses and subjects connected with actions taken by the office. They obtain and review documentary evidence from numerous sources including individuals, corporations, federal, state, county and municipal agencies, conduct background investigations, analyze financial records and perform other forensic accounting functions, and testify in court. Investigators often work closely with other states Attorney General offices, local and state law enforcement agencies, the US Attorneys Office and other federal law enforcement agencies.

## **Consumer Advocacy & Response Division**

In an effort to resolve matters between consumers and merchants outside of court, the AGO offers a free, voluntary mediation service with the goal of reaching a mutual resolution for both of the parties involved in a dispute. We handle these mediation services in our Public Inquiry and Assistance Center (PIAC). PIAC serves as a great source of information and assistance for the residents of the Commonwealth in the area of consumer protection. PIAC serves as one of the central intakes sources for the Office. We have both a Consumer and Elder hotline operating weekdays from 10 a.m. to 4 p.m. with trained information specialists that assist callers in addressing a wide range of questions and concerns. In addition, the PIAC staff may direct consumers that call into the hotline to areas of the AGO website for further in-depth information; we offer referrals to appropriate organizations or other government agencies; direct consumers to file a written complaint if they believe they have been a victim of an unfair or deceptive practice; and, if the complaint is deemed appropriate, provide information on the consumer complaint and mediation processes conducted by the Division as well as our community-based local consumer mediation programs.

PIAC received 10,336 intakes between July 1, 2015 and December 31, 2015.

In March 2016, the Attorney General announced the formation of the Consumer Advocacy & Response Division (CARD). Combining the staff and resources from the Public Inquiry and Assistance Center, HomeCorps (the AGO's foreclosure prevention program), and the Elder Hotline, CARD reflects a new and enhanced approach to consumer assistance within the Attorney General's Office.

## Significant Cases

The Division helped four consumers obtain refunds for cosmetic warranties they did not want to purchase. Woburn Toyota had required the consumers to buy the warranty in order to obtain the previously advertised prices for the vehicles. In one of the cases the dealer had even told the consumer that if they rejected the warranty, the dealer would simply increase the price of the car by \$500. In addition to issuing the refunds to these consumers, Woburn Toyota agreed to end the practice of requiring consumers to purchase these warranties.

The Division helped a consumer obtain an \$7,005 payoff of his trade-in vehicle and helped the consumer get his damaged credit repaired after the dealer, Auto Center Sales in West Bridgewater, failed to pay off the loan as promised for over two months.

The Division helped to stop collections on more than \$6,000 in disputed debt that a consumer said had been paid off more than 10 years ago.

The Division obtained a discharge of a second mortgage worth about \$30,000 from Ocwen. The homeowner received benefits under the 2010 Morgan Stanley settlement but the servicer at the time had not properly credited the amount paid to the homeowner's account and instead sent the file to collections. The homeowner did not even know that the 2nd mortgage was still on the property until he went to sell it. Graham was able to track the loan down at Ocwen, escalated, and Ocwen acknowledged its mistake and recorded a mortgage release.

## Achievements

CARD became the first paperless division at the AGO in January 2016.

CARD significantly revamped the referral and reporting process with our LCP partners.

Auto Team worked with CPD to contact 206 title loan borrowers affected by the Liquidation LLC settlement and continue to assist any of those borrowers who need help navigating the terms of the injunction.

The Debt Team worked with CPD to conduct detailed intake interviews of over 100 consumers who filed complaints against the debt collection law firm Lustig, Glaser, & Wilson in support of CPD's ongoing litigation.

## HomeCorps

The HomeCorps Loan Modification Initiative (LMI) was the primary of the three HomeCorps Program initiatives. The primary function of HomeCorps was to assist Massachusetts homeowners with loan modification and foreclosure prevention through mediation with national and local mortgage servicers. Additionally, the HomeCorps team monitored compliance with the National Mortgage Settlement servicing standards, M.G.L. Chapter 244 and the corresponding Division of Banks regulations and Consumer Financial Protection Bureau mortgage servicing regulations.

AAA Constable Investigation in partnership with False Claims. Mike Lecaroz started an investigation against this process server based on information received from several HomeCorps LRI grantees. We allege that they are falsely attesting to proper service, performing service without legal authority and failing to remit required fees to towns and municipalities. Settlement discussions are ongoing.

In partnership with CPD, HomeCorps continues investigations into the mortgage servicing practices and 35B compliance of Nationstar, Greentree and Caliber.

## Consumer Protection Division

The Consumer Protection Division is committed to ensuring the economic security of citizens of the Commonwealth and investigates unfair and deceptive business practices and brings enforcement actions against in-state and nationwide companies under the Consumer Protection Act (M.G.L. c. 93A). The Division reviews and, where appropriate, acts on data breach notices submitted to the Attorney General pursuant to M.G.L. 93H. Finally, the Division also enforces the injunctive relief obtained in the 1998 Tobacco Master Settlement Agreement.

### Significant Cases

**Commonwealth v. The Career Institute, LLC:** The American Career Institute was a for-profit school with four Massachusetts campuses that defrauded thousands of students by fabricating job-placement and program-completion statistics, failing to provide qualified instructors and meaningful job training, and ultimately leaving students without the ability to repay their student loans. After vigorously litigating its enforcement action against the school and its principals, CPD obtained a consent judgment in which ACI admitted to its widespread violations of the Consumer Protection Act and the Division is presently advocating for the Department of Education to grant a group discharge to ACI students of their federal student loans.

**Commonwealth v. Liquidation, LLC:** Liquidation, LLC is an unlicensed, online auto-title lending company that illegally made extremely high-interest, short-term loans to consumers. Liquidation did not even disclose the many illegal terms in loan agreements, including interest-only payment schedules, and large final payments. When consumers were unable to pay, Liquidation used harassing tactics to collect payments, and failing that, seized and sold their vehicles. This matter is ongoing, but the Division filed suit and successfully obtained a temporary restraining order and preliminary injunction barring Liquidation from enforcing its loans or repossessing any vehicles.

**Commonwealth v. Lustig, Glaser & Wilson, P.C.:** The Lustig Firm is the largest debt collection law firm in the Commonwealth and has wrongfully obtained millions of dollars from vulnerable consumers with little income apart from anti-poverty assistance. Lustig demanded these payments on the basis of extremely old debts owned by national debt buying corporations that cannot document the existence of most of their debts and often have inaccurate information regarding the identity of debtors and the amount and character of debts. As a result, the Firm regularly collects on inaccurate or unsubstantiated debts, time-barred debts, and extracts income that should be exempt from court process. The Division commenced an enforcement action against the firm and its principals in December 2015 for their violations of the Consumer Protection Act, which is presently ongoing.

### Other Significant Achievements

CPD has taken a leading national role on the issue of mandatory arbitration, an unfair practice that prohibits consumers from enforcing their contractual rights in a court of law, but instead requires any dispute to be resolved in truncated, secret and private arbitration proceedings. The Division led a group of 18 states in submitting comments in support of the Consumer Financial Protection Bureau's proposed rule limiting the use of mandatory arbitration clauses. The Division also submitted an amicus brief, joined by a group of 19 states, in support of the State of New Mexico in an appeal by a for-profit school seeking to force the State to arbitrate its claims for restitution for consumers.

CPD also advocated for reform to Massachusetts debt collection laws by supporting the Family Financial Protection Act. The Act would limit wage garnishment, curtail the use of *capias* arrest warrants in debt

collection litigation and address abuses associated with old, frequently time-barred debt. The Act passed the Massachusetts Senate, and will be reintroduced this term.

Pursuant to G.L. c. 93H, in Q1 2016, CPD received 420 data breach notices reporting 867 data breaches that affected 49,203 Massachusetts residents. This is 114 notices more than we received in Q1 of last year, a 37.25% increase, documenting breaches that affect 3,317 more residents, an increase of 7.23%.

## **Fair Labor Division**

The Fair Labor Division enforces various laws that enhance the economic security of working people and their families. These laws include the prevailing wage, minimum wage, timely payment of wages, overtime, misclassification, tips, child labor, and Sunday and holiday premium pay laws. FLD is also charged with enforcing the earned sick time law, domestic workers bill of rights, domestic violence leave act, and small necessities act. The Division has broad powers to investigate and enforce violations of these laws through criminal and civil enforcement actions.

### Significant Cases

The Division prioritizes enforcement efforts in industries with high incidences of wage theft and misclassification, and concentrations of vulnerable workers. Below are two significant cases:

**Arbor Home Care Services, LLC (“Arbor”)** paid more than \$871,301 to 376 of its home health aides and an \$85,000 penalty for overtime violations. Home health aides are among the lowest paid employees in the industry, and they are entitled an overtime rate of pay when they work more than 40 hours per week. The Division’s settlement with Arbor resulted in an average payment of \$2,300 per impacted employee, and one employee received \$24,584.

FLD has seen a rise complaints involving children in the last year, and issued 26 citations with \$67,760 in assessed penalties, for child labor violations. One particularly egregious case involved **Delgado Donuts (d/b/a Dippin Donuts)**, which is a coffee shop chain with locations in Leominster and Littleton. FLD issued four citations against this employer for approximately \$47,000 for violating Massachusetts child labor and wage and hour laws..

### Other Significant Achievements

FLD is aggressively enforcing the Massachusetts Wage Act and related laws to protect working people. We have increased penalties, hired new multilingual staff, and strengthened collaborations. From FY2015 to FY2016, assessed penalties have increased from an average of 15 percent of restitution to an average of 24 percent of restitution. FLD hired 11 new staff in the last year, 8 of whom speak a second language. We have developed systems to better track data, and laid the groundwork for the launch of FLD’s open data portal which includes information regarding all FLD citations issue (beginning 1/1/2015), all FLD debarments and Bid Unit decisions.

FLD worked helped to roll out the new Earned Sick Time Law by working with others in the office to hold more than 100 outreach and training sessions, handle roughly 10,000 inquiries, and resolve 84 complaints.

Additionally, FLD has strengthened its partnerships to enhance enforcement efforts. FLS has engaged in joint investigations with other agencies including the US Department of Labor and Mass. Department of Industrial Accidents. We have worked closely with the Department of Revenue to improve our ability to collect on unpaid citations. FLD, in collaboration with 8 community partners, developed plans for a pilot Wage Theft Clinic which will launch in October 2016. Finally, the AG convened the first meeting of her Labor Advisory Council.

### Important Statistics and Numbers

In FY2016, FLD issued 420 citations and entered into 30 settlement agreements without citations. The total amount cited was \$2,836,969.36 (i.e., \$2,119,408.59 in restitution and \$717,560.77 in penalties); additionally, employers agreed to pay \$477,472.43 (i.e., \$355,232.11 in restitution, and \$122,240.32 in penalties) in cases where a citation was not issued.

FLD received 6,092 complaints, which represents a 33 percent increase from the last fiscal year, in which 4,500 complaints were filed.

FLD's Hotline fielded more than 21,306 calls.

FLD's Bid Unit resolved 110 bid protests, issuing 30 hearing decisions; the remaining 80 protests were informally resolved.

FLD staff participated in 146 community engagement events.

### **Insurance and Financial Services Division**

The Insurance & Financial Services Division represents consumers, cities, towns and the state in civil matters involving the insurance, securities and lending industries. The Division performs key consumer protection functions, including securities enforcement, insurance and lending enforcement, and litigation and advocacy concerning insurance rates. The Division also provides mediation services to consumers relating to property, casualty and life insurance, as well as annuities, investments, and student loans.

#### Significant Cases

**For-Profit Schools:** As part of the Attorney General's for-profit school initiative, IFSD continued to investigate the advertising and recruiting practices used by for-profit schools on prospective students. During FY 2016, IFSD reached settlements with **Lincoln Technical Institute** and **Kaplan Higher Education**, which required the schools to pay over \$2 Million in cash and forgive over \$2 Million in private loan debt to resolve allegations that the schools misrepresented job placement numbers and used deceptive enrollment tactics. In addition, IFSD brought lawsuits against **ITT Technical Institute** and **Hosanna College of Health** for misleading potential students and also took action against **Irvine Webworks** and **Direct Student Aid**, two so called student loan credit services organizations, which charged illegal fees to help student borrowers apply for loan relief programs that were available free from the federal government.

**Auto Financing:** IFSD's investigation into unlawful GAP insurance charges on auto loans resulted in settlements with **Santander USA Holdings Inc.**, **American Credit Acceptance, LLC**, and **Westlake Services, LLC** requiring the lenders to pay a total of \$12.8 Million. These settlements resolved allegations that the lenders charged excessive interest rates on subprime auto loans.

**Force-placed Insurance:** IFSD successfully completed two cases involving force-placed homeowners insurance practices which resulted in improper charges to policyholders. We reached settlements with **American Security Insurance Company** and **HSBC**, recovering approximately \$9.6 Million.

**Securities and Investment:** IFSD investigated numerous allegations regarding unfair marketing of securities to consumers in Massachusetts, and completed cases regarding a variety of issues, including unsuitable investments, unfair diversion of pension assets, and deceptive sales tactics. Filings against **LPL, Inc., FI Payments**, and **TD Ameritrade** resulted in consumer recoveries exceeding \$4 Million. IFSD also sued a Massachusetts reverse mortgage company and an annuity broker for predatory marketing schemes against seniors, and that case is ongoing in superior court.

**False Claims:** IFSD pursued a number of false claims investigations in FY 2016, and reached a settlement of approximately \$4.4 Million with **Hess Corporation** regarding allegations that the company submitted false reimbursement applications to the state for environmental cleanup projects, thereby illegally obtained payments from the state fund.

### Other Significant Achievements

During FY 2016, IFSD worked aggressively in the interest of students targeted by for-profit schools. IFSD's investigative work resulted in recoveries for students who were promised good jobs with high salaries, but instead were left with no job prospects and crushing debts. The Division was also a major advocate for students in the administrative context, urging the U.S. Department of Education to forgive millions of dollars in federal student debt for students misled by for profit schools. IFSD successfully obtained federal agreement to accept loan discharge applications for thousands of Massachusetts students of Everest Institute, and also submitted discharge requests for students of other for profit schools. In addition, IFSD weighed in with U.S. Department of Education regarding new defense to repayment regulations, and the status of accrediting agencies that fail to ensure educational quality in the institutions they accredit.

IFSD's extensive outreach efforts engaged well over one thousand students directly. The new Student Loan Assistance Unit began its mission of helping student loan borrowers with a wide range of student debt issues, such as contacting loan servicers, determining eligibility for debt relief, and applying for repayment plans or loan discharges. IFSD also held numerous outreach events in different regions throughout the state to meet with students in need of help.



## Important Statistics and Numbers

In FY 2016, IFSD's Insurance & Financial Services Mediation Program fielded over 5,348 hotline calls, opened 912 complaint files, closed 822 complaint files and generated \$821,640.89 in savings and recoveries for Massachusetts residents. Successful mediation results included:

- reversing denials of auto, home, long term care, travel, pet, and life insurance claims;
- securing reinstatements of non-renewed homeowners insurance policies;
- persuading companies to unwind unsuitable annuity sales and reinstate life insurance policies;
- obtaining premium refunds for consumers who were deceived into signing up for insurance coverage;
- obtaining GAP claim payments and refunds;
- remedying mortgage escrow disbursement errors and helping consumers avoid expensive force-placed insurance;
- reversing incorrect auto insurance surcharges;
- securing the release of homeowners insurance checks from mortgage loan servicers, and
- obtaining refunds of incorrectly calculated premiums.

Since its launch in November 2015, IFSD's Student Loan Assistance Unit (SLAU) fielded over 1,927 hotline calls, received 1,564 requests for assistance, closed 1,273 requests, held 12 student loan workshops, and generated \$259,631.42 in savings and recoveries for student loan borrowers. Examples of the services provided by SLAU include:

- helping borrowers complete and submit Borrower Defense to Repayment applications and put associated federal loans into special forbearances;
- providing information about income-driven repayment plans and assisting borrowers in enrolling in these plans in order to lower their monthly federal student loan payments;
- aiding borrowers in resolving defaulted federal loans and helping borrowers end wage garnishments and tax refund interceptions;
- obtaining write-downs of institutional and private student loan debt;
- resolving billing disputes with loan servicers and correcting student loan servicer errors;
- recovering payments made to student loan "debt relief" companies;
- helping borrowers obtain information about their student loans through NSLDS or loan servicers; and
- helping borrowers complete and submit disability and closed school discharge applications.

## **REGIONAL OFFICES**

### **Central Massachusetts**

The Central Massachusetts Regional Office brings the work of the Attorney General's Office to the Central Massachusetts area by serving as a local resource for consumer and labor complaints, and prosecution of mainly local criminal, civil rights, and Medical Fraud cases. Staff of the Office regularly conduct local trainings and outreach events for the local community, and are active participants in local boards and committees including the City Manager's Coalition Against Bias and Hate, the Mayor's Brownfields Taskforce, and the Worcester Joint Commission on Youth Violence and Prevention.

The staff of the Central Massachusetts Regional Office were involved in many high profile cases including several cases involving the trafficking of heroin, Fentanyl and cocaine. Staff from the Central Massachusetts Regional Office also collaborated with the Civil Rights Division to assist the Worcester Islamic Cemetery in gaining approval to site a burial ground in a local community.

### **Southeastern Massachusetts**

The Southeastern Massachusetts (SEMA) regional office continues to be a valuable resource for residents of the region. The SEMA staff is made up of personnel from the Attorney General's Government and Public Protection and Advocacy Bureaus. SEMA Assistant Attorneys General handle a variety of matters from the FLD, CPD, AdLaw and Trial Division. The SEMA consumer mediator is extremely successful in mediating consumer related issues including auto sales/repair problems, retail sale disputes and problems with home improvement projects. Our FLD investigators readily assist local workers with rights and wage issues. The SEMA IFSD mediator assists with auto, life and homeowners insurance issues. All members of the SEMA team are knowledgeable of the resources available throughout the entire Attorney General's office and regularly participate in outreach events coordinated through the office's Community Engagement Division.

### **Achievements**

The SEMA Abandoned Housing Initiative (AHI) team continues to be successful in partnering with various local communities in the Southeastern Massachusetts region to locate the owners of properties with serious health and safety code violations and demand that the violations be corrected. In addition to continue working with New Bedford, Brockton, Fall River, Taunton, Barnstable Abington, Carver, Swansea, Truro and Wareham, the SEMA AHI team has now expanded into Somerset, Scituate and Middleboro. In instances when negotiations with the property owners or banks fail, our office has been successful in petitioning either the Housing Court or District Court to appoint receivers to address those violations.

SEMA staff continues to be a presence in the SEMA community with the goal to provide area residents with information regarding the work of the AGO and its resources. To that end, SEMA has participated in various events including those sponsored by the Bristol County District Attorney Office, the Community Foundation of Southeastern Massachusetts (AHA Nights), Southeastern Massachusetts Agricultural Partnership, Barnstable Youth Commission, Bristol Elder Services, Catholic Social Services, New Bedford Council on Aging, Coastline Elder Services, Senior Whole Health, New Bedford Neighborhoods United, Somerset Police Department and UMass Dartmouth School of Law.

## Western Massachusetts

The Western Massachusetts Division (“WMAS”) of the AGO was the first regional office and remains the largest regional office in Massachusetts. WMAS has 29 employees representing the following Divisions: Medicaid Fraud, State Police, Trial, Administrative Law, HomeCorps\*, Abandoned Housing Initiative, Fair Labor, Insurance and Financial Services, Criminal Appeals, Criminal, Civil Rights, Consumer Protection, Investigations and Consumer Advocacy and Response. WMAS handles matters throughout the state with a particular focus on those matters within the jurisdictions of Hampden, Hampshire, Franklin and Berkshire Counties. \*HomeCorps existed during the reporting period but is now subsumed within the new Consumer Advocacy and Response Division.

### Significant Cases.

**In Re Sunset Properties, LLC** – Assurance of Discontinuance (AOD) filed on 7/31/15 in this housing discrimination case involving landlord’s failure to promptly provide reasonable accommodation and reasonable modification. AOD included injunctive relief, mandatory fair housing training and \$11,000 plus free rent and rent freeze to the victim, as well as \$2,000 each to the AGO and MFHC.

**Masteron v. EOPSS and MSP** – Successful defense on damages on 8/12/15 in this c. 258 jury trial arising from a motor vehicle accident involving a motorcyclist and a Massachusetts State Police cruiser.

**Seneca One, LLP v. State Lottery Commission** – On 10/1/15 the Appeals Court held that sovereign immunity bars the imposition of trustee process against the State Lottery Commission for the recovery of a debt owed by a prize-winner, and thus reversed the Superior Court’s decision approving trustee process attachment against the Commission.

**Doe v. Department of Children & Families** – Following a successful defense in a bench trial, on 2/16/16 the Court issued its decision entering judgment for DCF in this c. 258 tort action by grandparents who alleged that DCF’s negligence prevented them from successfully adopting their grandson via the Interstate Compact for the Placement of Children.

**Patricia Taste-Ray v. Sherriff Michael Ashe, et. al.** – Following argument on 3/10/16, the USDC denied from the bench the Plaintiff’s request for preliminary injunctive relief in her challenge, which included claims of discriminatory siting of group homes in communities of color, to the new siting of the Western Massachusetts Correctional Addiction Center. Then on 3/16/16 the Plaintiff voluntarily dismissed her action.

### Achievements

The Western Massachusetts Regional Office attains its mission of providing accessible AGO assistance to Western Massachusetts citizens in four western counties: Berkshire, Hampden, Hampshire and Franklin. The Western Massachusetts Regional Office reflects the AG’s dedication to providing access to effective services throughout Western Massachusetts. In addition to providing direct constituent services in areas including consumer protection, civil rights and fair labor, the Western Massachusetts Regional staff participates in numerous community outreach programs, establishing new relationships and solidifying ongoing relationships with partner agencies throughout a significant geographic area. Through the extensive work of the AGO’s Community Engagement Division (“CED”), including WMAS’s CED working-group, WMAS effectively partners with and outreaches to the communities that it serves in the Commonwealth’s four westernmost counties.

Significantly, on October 20, 2015, WMAS hosted a first-of-its-kind Attorney General's Office Consumer Protection Conference at Holyoke Community College. Through this Consumer Protection Conference, service professionals and educators were furnished training in the areas of identity theft, home improvement, buying and repairing cars, scams and consumer debt.

## **OFFICE OF THE STATE SOLICITOR**

The Office of the State Solicitor's mission is to ensure the highest quality of appellate advocacy throughout the Office of the Attorney General. We are here to be a resource to all Assistant and Special Assistant Attorneys General, at any stage of a case. This includes determining whether and when to appeal, helping craft a brief or argument, consulting on appellate procedure or strategy, and framing and ensuring adequate preservation of key issues at the trial-court level. We also help ensure the consistency of legal positions taken in briefs filed by the Office of the Attorney General; serve as a liaison to the appellate courts on recurring or difficult procedural problems; advise the Attorney General on whether to write or join amicus curiae briefs, particularly in the U.S. Supreme Court; and offer other support for Attorney General's appellate work.





**OFFICE OF ATTORNEY GENERAL MAURA HEALEY**

One Ashburton Place

Boston, MA 02108

(617) 727-2200

*[www.mass.gov/Attorney General's Office/](http://www.mass.gov/Attorney%20General's%20Office/)*