



OFFICE OF THE ATTORNEY GENERAL FY2020

What We Do: Four Core Functions

- **PROTECT** Vermont citizens and promote their health and safety.
- **ENFORCE** laws of the State of Vermont.
- **DEFEND** the State of Vermont's laws, policies, and employees by providing independent legal counsel and representation.
- **PRODUCE** revenues

OFFICE OF THE ATTORNEY GENERAL

Authority of the Attorney General

Title 3 of the Vermont Statutes Annotated

- Section 152 The attorney general may represent the state in all civil and criminal matters as at common law and as allowed by statute. The attorney general shall also have the same authority throughout the state as a state's attorney.
- Section 153 The attorney general shall have the general supervision of criminal prosecutions, shall consult with and advise the state's attorneys in matters relating to the duties of their office, and shall assist them by attending the grand jury in the examination of any cause or in the preparation of indictments and informations when, in his judgment, the interests of the state require it.
- Section 157 The attorney general shall appear for the state in the preparation and trial of all prosecutions for homicide and civil or criminal causes in which the state is a party or is interested when, in his judgment, the interests of the state so require.
- Section 159 The attorney general shall advise the elective and appointive state officers on questions of law relating to their official duties... He shall have general supervision of matters and actions in favor of the state and of those instituted by or against state officers wherein interests of the state are involved and may settle such matters and actions as the interests of the state require.

OFFICE OF THE ATTORNEY GENERAL

Division Highlights

Civil Litigation Division

Defends money claims against the State, State officials and State employees:

- 509 lawsuits were filed against the State, State officials and State employees in 2018, including wrongful death, personal injury, civil rights claims.

Defends lawsuits that challenge State laws and policies:

- Act 46 Litigation – Defending three cases brought by school districts challenging the constitutionality of Act 46 and seeking an injunction barring the mergers required under the Act.
- Education Funding Litigation – Defending case brought by students, town, and taxpayers challenging constitutionality of Act 68’s system of educational funding.
- *Federation of Vermont Sportsmen* case – Defending case challenging constitutionality of modest gun restrictions, including a restriction on the sale of bump stocks.
- *American Cable Company* – Defending case brought by internet provider trade association challenging constitutionality of net neutrality requirements to be included in contracts.
- *Comcast v. Public Utilities Commission* case – Defending federal court appeal and constitutional challenge to terms and conditions of PUC’s renewal of Comcast’s Certificate of Public Good to provide cable television services in Vermont.
- *EB-5 Litigation* – Defending claims against state agencies and employees by EB-5 investors challenging administration and oversight of program.

Criminal Division

Statewide review and prosecution of serious criminal matters throughout Vermont. The following correspond with the period of July 1, 2017 to December 31, 2018.

- Matters handled: Had several hundred pending matters, consisting of prosecutions, prosecution reviews, homicides, investigations, violations of

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Division Highlights

Criminal Division (continued)

probation, petitions for post-conviction relief, extraditions, committees, public records requests, and other miscellaneous matters.

- Vermont Internet Crimes Against Children (VT-ICAC) Task Force: Administers VT-ICAC grants. Lead agency responsible for operations of the VT-ICAC Task Force. Coordinates investigations amongst all affiliate agencies statewide, including 303 in FY18 (18% increase from FY17). Prosecutes cases arising from peer-to-peer investigations, undercover investigations, and cybertips from the National Center for Missing and Exploited Children. Includes child pornography charges, luring charges, and sexual assault charges. In April 2018, coordinated Operation Peer Review resulted in four arrests. VT-ICAC has also provided 497 presentations to approximately 8,476 attendees at various events.
- Prosecuted homicides through the state, including a murder trial conducted in February 2018. Handled cases of sexual assault and serious child abuse, including a trial in October 2017 for aggravated abuse of an infant. Reviewed all incidents involving the use of deadly force by a police officer which included six such incidents in the relevant time frame.
- Investigating allegations of abuse at the St. Joseph's Orphanage in partnership with other agencies.

Statewide enforcement of Medicaid Fraud, patient abuse laws, and Vermont's False Claims Act. The following also correspond with the period of July 1, 2017 to December 31, 2018.

- 90 opened investigations.
- Filed 14 criminal cases and convicted 12 criminal defendants.
- Settled 10 civil cases
- Obtained over \$2,753,597 in judgements.

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Division Highlights

Environmental Protection Division

Enforces clean air, clean water, hazardous waste and other environmental laws. Actions and highlights include:

- PFOA contamination in Bennington. Continuing our work with ANR technical and legal teams, Division attorneys have worked on behalf of the State in the ongoing negotiations with Saint-Gobain Performance Plastics to address the contamination of drinking water in Bennington due to the release of the chemical PFOA from Saint-Gobain owned facilities. In 2017, the State agreed to a settlement with Saint-Gobain to provide funding for construction of a water line extension for approximately 200 homes in the western portion of Bennington and North Bennington. The cost of the water line construction was around \$20 million. The settlement with Saint-Gobain also included a payment of \$1.8 million to the State of Vermont for past state costs incurred during the response to PFOA contamination. In addition, Saint-Gobain committed to working with the State on an expedited investigation of the remaining impacted area in eastern Bennington. At a public meeting in Bennington on January 28th, the State team announced that Saint-Gobain had agreed to terms of a settlement with the State that will result in additional water line construction in the eastern side of Bennington. The settlement is expected to be finalized and submitted to the court in the spring, after design costs have been finalized. The State will again receive payment for past costs incurred.
- Volkswagen. The State's environmental settlement of its claims against Volkswagen was finalized this year. Division attorneys worked to secure a payment of \$4.2 million to Vermont as its share of a 10-state settlement to resolve claims relating to Volkswagen's sale and lease of diesel automobiles that were fitted with illegal "defeat devices." The devices concealed the release of harmful pollutants in excess of Vermont's vehicle emission standards. Division attorneys played a large role on the multi-state team and their work resulted in a greater dollar figure total coming to Vermont.
- Cost recovery actions on behalf of ANR. Division attorneys obtained court orders to recover past costs incurred by ANR including, but not limited to, a \$1.8 million judgment following a Rutland property owner's failure to

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Division Highlights

Environmental Protection Division (continued)

remediate hazardous chemicals found at his property.

- Settlement with a Chittenden, Vermont, resort to resolve allegations that the resort had violated land use and environmental permitting laws during a recent expansion. Division attorneys, representing ANR and the Natural Resources Board, negotiated a settlement that included the resort agreeing to hire a Compliance Officer to serve as a contact for all state environmental permitting matters at the resort and the payment of \$90,000 to the State.
- Settlement of environmental claims against the owner/operator of the “Moretown Landfill,” which included alleged violations of Vermont’s environmental air quality and waste management laws, regulations and permits at the landfill. As a part of the settlement, Moretown Landfill, Inc. agreed to pay the State \$180,000 in civil penalties and an additional \$20,000 to fund a supplemental environmental project to be used by the Vermont Solid Waste District Managers Association to purchase residential compost bins, food scrap collection buckets, and kitchen counter-top compost containers, which will be sold to Vermonters at a discount.
- A Division attorney served as the State’s lead attorney in the litigation relating to the Diverging Diamond Interchange at Exit 16 in Colchester (*In re Diverging Diamond Interchange Act 250 Permit, In re Diverging Diamond Interchange Stormwater Permit*). The Division attorney, representing VTrans, worked alongside attorneys representing ANR and the Natural Resources Board to represent the State’s interests in a week-long trial at the Environmental Court. The State prevailed and the Court authorized the construction to commence as planned. The opponents to the project have appealed the decision to the Vermont Supreme Court (Vt. Sup. Ct., No. 2018-232) and the Environmental Division attorney has served as the primary author of the State’s joint brief. The appeal is currently pending.
- The Division represented ANR in an appeal at the Vermont Supreme Court concerning permits relating to the proposed Champlain Parkway construction in Burlington (*In re Champlain Parkway Wetland Conditional Use Determination (Fortieth Burlington, LLC)*) (Vt. Sup. Ct. No. 2018 VT 123). In a 3-2 decision, the Court rejected the challenge of a neighboring property owner to ANR’s approval of a 5-year extension of a wetlands permit issued to the City of Burlington and required for the project. The permit authorizes construction through a wetland in the project’s path. The

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Division Highlights

Environmental Protection Division (continued)

Environmental Court had previously affirmed ANR's grant of the extension. The Supreme Court accepted the position of the State and city that the only requirement for a permit extension is the timely submission of an extension request and rejected the position that the permit required a re-delineation of wetland boundaries prior to approval of an extension.

- Agricultural Water Quality enforcement cases in collaboration with, and on behalf of, the Agency of Natural Resources and Agency of Agriculture.
- \$9,324,289 in awards, penalties and recoveries in FY18 and 2019 to date.

Vermont Yankee and Nuclear Matters

- The Division continued its role representing the State on post-closure issues relating to the Vermont Yankee nuclear power plant in Vernon, providing legal advice to State agencies as needed.
- The Division represented the State before the Nuclear Regulatory Commission (NRC) on the proposed sale of Vermont Yankee from Entergy to NorthStar.
- The Division intervened as a party in the parallel proceeding on the sale of Vermont Yankee before the Public Utility Commission to ensure that the interests of Vermonters are protected in the transaction. The transfer of Vermont Yankee from Entergy to NorthStar was approved in December 2018.

General Counsel and Administrative Law Division

- Provides legal counsel to constitutional officers, agencies, departments.
- Litigates Labor Board, Human Rights Commission, Liquor Control and Medical Board cases (GCAL handled approximately 1,250 administrative cases in 2018).
- Negotiates and drafts complex investment and IT contracts; for example, contracts for \$4,000,000,000 in pension investments.
- Reviewed approximately 1,450 contracts and amendments in FY18 for compliance with state law.

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Division Highlights

General Counsel and Administrative Law Division (continued)

- Advises state agencies on routine and complex access to records, open meetings, and administrative law matters. The AG's Office itself received just over 90 formal records requests in 2018.
- Defended lawsuits seeking more than \$4,000,000 in property tax reductions for hydroelectric plants on the Connecticut and Deerfield Rivers.
- Supervises the statewide Court Diversion and Pretrial Services programs responsible for more than 7,000 referrals in FY18.

Human Services Division

- Provides legal representation to the Agency of Human Services and its Departments in civil and administrative litigation including termination of parental rights trials and appeals, fair hearings in benefits cases, inmate grievances, contract disputes, competency, hospitalization and medication cases; hospital tax appeals.
- Reviews Agency and Department contracts and grants.
- Advises on legal matters including licensing and rulemaking, legislation, access to records requests and privacy and HIPAA matters.
- Division attorneys led litigation team to obtain a receiver for the Pillsbury residential care homes in South Burlington and St. Albans.
- Division Caseload FY18:

Department for Children and Families - Economic Services Division

Administrative Hearings	355
Civil Litigation	11
Contracts and Grants	631

Department for Children and Families – Family Services Division

Termination of Parental Rights (Civil Litigation)	201
CHINS	8
Supreme Court Appeals	39
Administrative Appeals before the Human Services Board	88
Probate Guardianship	28
Woodside Juvenile Rehabilitation Center Litigation	10

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Division Highlights

Human Services Division (continued)

Department of Corrections	
Litigation	379
Supreme Court Appeals	9
Contracts and Grants	100
Other Matters	91
Department of Disabilities, Aging and Independent Living	
Civil Litigation	46
Contracts and Grants	92
Department of Health	
Contracts and Grants	344
Public Records Requests	9
Legislative Matters	4
Civil Matters (Litigation, AOD's, Licensing Stipulations)	14
Internal Commissioner Appeals	8
Department of Mental Health	
Applications for Involuntary Treatment	485
Applications for Continued Treatment	288
Applications for Voluntary Medication	90
Forensic Commitments	45
Contracts and Grants	95
Supreme Court Appeals	8
Department of Vermont Health Access	
Administrative Hearings	403
Civil Litigation	25
Contracts and Grants	119

Public Protection Division

- Civil Rights Unit: Protecting Vermont values; Enforcing employment discrimination, hate crime, and civil rights laws. Returned 741 calls to Vermonters in distress.
- Three-prong strategy to protect vulnerable communities in Vermont:
 - Litigation: Joined lawsuits around the country opposing so-called “travel bans”, DACA, citizenship status questions on the census, and other

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Division Highlights

Public Protection Division (continued)

federal overreach targeting immigrant populations. Division attorneys have served in leadership of a multi-state investigation into the pharmaceutical industry's involvement in the opioid crisis. The Division, also, filed an action against Purdue Pharma for violations of consumer protection and nuisance laws relating to Purdue Pharma's marketing and promotion of opiate drugs.

Legislation: Partnering with lawmakers and others on sexual harassment and other employment and civil rights legislation; Act 171 data broker legislation signed into law; issued report and recommendation on data privacy.

- Community Based: Civil rights presentations to hundreds of Vermont youth throughout the state; landlord restoration program to enhance abatement of hazardous lead paint in rental properties.
- Enforces consumer protection and antitrust laws with financial recoveries to the State of approximately \$8.35 million in FY17-FY18 YTD. In addition to the total recoveries to the State; restitution to consumers was more than \$3 million. The AGO continues to provide relief for consumers across various industries, for example:
 - Data Breach Notification
 - Wire Transfers
 - False Claims
 - Auto
 - Health Care Products.
- Consumer Assistance Program: Over 13,000 contacts assisting Vermonters; continued "Small Business Initiative" reaching small businesses through events as well as outreach, presentations, and general assistance; launched Scam Alert system in partnership with DPS and Scam Busters outreach tour with utilities and major retailers. More than 6,000 Vermonters have signed up for Scam Alert notifications.

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Division Highlights

Tobacco

- Diligent enforcement of tobacco master settlement agreement

Total tobacco recoveries in SFY2018 were \$58.9 million (approximately \$29.9 million in MSA payment resulted from settlement of years old diligent enforcement claims).

Solicitor General and Appellate Unit

Responsible for litigation and oversight of state and federal appeals of lower court decisions, as well as constitutional and other high-profile litigation in the trial courts.

- *Supervision and assistance of appeals across all divisions:* In SFY18, the AGO opened 102 appeals, 90 in the Vermont Supreme Court and 12 in federal courts. In addition to handling many of the office's appeals itself, the Unit has provided substantial input and supervision for appeals across most divisions of the office, including tax, mental health, environmental and Act 250, corrections, criminal and civil defense. Some significant recent or pending appeals include:
 - *Dep't of Taxes v. Montani* – in consolidated appeal of four cases, Vermont Supreme Court reversed trial court decisions imposing a statute-of-limitations on Tax Department's ability to assess tax liability on non-filers.
 - *State v. VanBuren* – successfully defended 13 V.S.A. § 2606, which criminalizes distribution of nonconsensual pornography, from a facial constitutional challenge in the Vermont Supreme Court. The Supreme Court's decision reversed a trial court ruling that had found the statute unconstitutional.
 - *State v. Noll* – The Unit filed an amicus brief successfully defending the facial constitutionality of Vermont's anti-stalking statute, 13 V.S.A. § 1062.

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Division Highlights

Solicitor General and Appellate Unit (continued)

- *State v. Schenk* – The Unit filed an amicus brief successfully defending the facial constitutionality of the “threatening behavior” provision of Vermont’s disorderly conduct statute, 13 V.S.A. § 1026(a)(1).
- *State v. Jody Herring* – The Unit is defending the life-without-parole sentence that Jody Herring received for the murder of DCF social worker Lara Sobel (pending at Vermont Supreme Court).
- *Sutton v. Vermont Regional Center* – The Appellate Unit worked with the Civil Division to obtain dismissal in the trial court of a lawsuit for money damages brought by foreign investors against the State related to the State’s involvement with fraudulent EB-5 projects in the Northeast kingdom. The Unit is defending the trial court’s judgment on appeal (pending at Vermont Supreme Court).
- *Child protection appeals*: In FY18, the office opened more than 40 appeals in child protection cases. The Appellate Unit oversees all of these cases – the largest part of the appellate docket – to assure that the cases are adequately staffed when our Family Services attorneys are over-burdened. In addition to reviewing all child protection appeals, the appellate unit attorneys frequently handle these cases or assign them to AAGs in other divisions to relieve burdens on the Family Services unit.
- *Amicus participation*: The Unit coordinates amicus participation at the U.S. Supreme Court and other federal courts. Vermont has participated in amicus briefs supporting environmental programs and defending constitutional rights. The unit also responds to requests for briefing from the Vermont Supreme Court and files briefs in federal courts when cases between private parties that present important questions of Vermont law.
 - In FY2018, the Unit authored an amicus brief, on behalf of 35 States, at the U.S. Supreme Court in *United States v. Microsoft* arguing that law enforcement should be permitted, upon a showing of probable cause, to obtain email data that an email provider has chosen to store on a foreign server. The case led Congress to enact the CLOUD Act, which ensured law enforcement’s right to access overseas data.

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Division Highlights

Solicitor General and Appellate Unit (continued)

- *Federal multi-state litigation:* Appellate Unit attorneys also staff multistate litigation in federal court in which Vermont is a party, including challenges to the federal government's decisions to separate migrant families at the Southern border, end the Deferred Access to Childhood Arrival (DACA) program, include a citizenship question on the 2020 Census, allow distribution of programming codes for 3-D printable guns, and allow employers to opt out of providing contraceptive coverage to their employees based on the employers' religious beliefs. The Unit is also representing Vermont as a part of a multi-state coalition defending the Affordable Care Act against a constitutional challenge brought by the State of Texas.
- *Gun law litigation:* The Solicitor General is currently leading the defense of two separate lawsuits that assert state constitutional challenges to Vermont's recently enacted laws requiring universal background checks (13 V.S.A. § 4019), generally prohibiting the purchase of firearms by individuals under the age of 21 (13 V.S.A. § 4020), limiting the size of ammunition magazines (13 V.S.A. § 4021), and banning bump stocks (13 V.S.A. § 4022).

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Financial Recoveries for State of Vermont
July 1, 2017 to December 31, 2018

Civil Law Division	\$	500
Environmental Division	\$	9,324,289
Medicaid Fraud & Residential Abuse Unit (Criminal)	\$	1,364,506
Public Protection Division (Consumer Fraud/Antitrust)	\$	8,346,732
Tobacco / MSA, Strategic, and Significant Factor	\$	59,000,751
Attorney General Total	\$	78,036,778

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AGO Recoveries - FY18 to FY19 (YTD)
Period of July 1, 2017 to December 31, 2018

SUMMARY OF RECOVERIES			
DIVISION	FY18	FY19 YTD	
Civil Division	500	0	
Environmental Division	9,220,789	103,500	
Medicaid Fraud & Residential Abuse Unit	1,181,087	183,418	
Public Protection Division	5,705,156	2,641,576	
Tobacco	59,000,751	0	
Total Recoveries	75,108,283	2,928,494	

Case State v.	Settle Date	Vermont Share	Comments
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CIVIL DIVISION			
Emmons, Danial	07/17/17	250	Campaign Finance
Brigham, Marcy	07/17/17	250	Campaign Finance
Total	FY18	500	
Total	FY19 YTD	0	

ENVIRONMENTAL DIVISION			
Plum Creek Maine Timberlands	07/14/17	375,000	
Safety Kleen	08/03/17	25,000	Haz Waste
St. Gobain Performance	10/02/17	1,857,853	ANR
Ruggiero, John / 84 Woodstock	10/05/17	1,863,035	ANR
Great American	10/25/17	523,251	ANR
Volkswagen	11/03/17	4,242,402	ANR
Westminster Meats/Mandich, Daniel	11/06/17	86,250	Balance Pending
Pleasant Valley Farms	12/17/17	14,000	
Parkway / Richard Daniels	04/10/18	4,498	ANR
Ace Carting	04/13/18	49,500	
Moretown Landfill	05/21/18	180,000	
Total	FY18	9,220,789	
Chittenden Resorts / RMT Assoc	09/11/18	90,000	
Kane's Scenic River Farms	10/08/18	13,500	Balance Pending
Total	FY19 YTD	103,500	

Case State v.	Settle Date	Vermont Share	Comments
MEDICAID FRAUD & RESIDENTIAL ABUSE UNIT			
Allergan	07/07/17	938	
Wiley, Holly	07/08/17	1,630	Restitution to DVHA
Novo Nordisk	07/21/17	10,182	
LeClaire, Chantal	08/09/17	1,172	Restitution to DVHA
Mylan, Inc.	09/27/17	832,527	
Handelman, Bob	10/11/17	60,328	Restitution to DVHA
Handelman, Barbara	10/11/17	0	Restitution to DVHA
Palmer, Jaime	11/02/17	3,214	Restitution to DVHA
Francis, Jeanne	11/17/17	20,828	Restitution to DVHA
Dominion Diagnostics	12/20/17	91,156	Restitution to DVHA
KMart	12/22/17	2,969	
Brattleboro Memorial Hospital	02/16/18	128,289	
Ferrin, Shannon / Byers, Shannon	05/22/18	6,765	Restitution to DVHA
Gebo, Melissa	06/01/18	1,993	Restitution to DVHA
Alere San Diego	06/15/18	19,096	
Total	FY18	1,181,087	
Harness, Mitchell	07/01/18	9,009	Restitution to Provider
AngioDynamics	07/09/18	1,676	
Tice, Jodi / Byers, Shannon	07/12/18	6,805	Restitution to DVHA
Martinez, Renee	08/06/18	10,400	Restitution to DVHA
Amerisource Bergen	11/27/18	125,819	
Unwin, Lisa	12/11/18	14,294	Restitution to DVHA
Preston, Hannah	12/19/18	7,956	Restitution to DVHA
Abbott Labs	12/21/18	7,459	
Total	FY19 YTD	183,418	

Case State v.	Settle Date	Vermont Share	Comments
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PUBLIC PROTECTION DIVISION			
FireCo, LLC	07/11/17	15,000	
Nationwide Mutual Insurance	07/24/17	203,695	
Bushey, David	07/28/17	1,000	Lead
Lenovo, Inc.	09/05/17	52,620	
SAManage USA, Inc.	09/27/17	264,000	
General Motors Company	10/23/17	1,066,481	
Hilton Domestic Operating	10/31/17	300,000	
Demar, Roger - D & R Family Properties	11/02/17	3,000	Lead
Aiken, Donna	11/22/17	500	Lead
Boehringer Ingelheim	12/20/17	130,860	
Wisch, Daryl and Herbert	12/29/17	2,500	Lead
MD Cosmetics	01/26/18	58,000	
Hickey, Bernadette	02/08/18	2,500	Lead
Sandor, Andrea	02/08/18	500	Lead
Pierce, Jonathan	02/12/18	3,000	Lead
Gadbois, Matthew	04/12/18	500	Lead
Remy-Powers, Robert	04/30/18	500	Lead
Otis, Raymond	05/22/18	500	Lead
Volkswagen	06/12/18	3,600,000	
Total	FY18	5,705,156	
Uber Technologies	09/25/18	587,220	
Kwon, Soon	11/05/18	3,000	Lead
Midland Funding (Encore Capital)	12/04/18	67,309	
Wells Fargo Bank	12/28/18	1,984,407	
Total	FY19 YTD	2,641,576	

TOBACCO			
Annual Tobacco MSA Payment	FY18	17,474,017	
Prior Years Diligent Enforcement Tobacco Settlement	FY18	41,472,086	
Colorado, State of / 2015 MSA Sig Factor	09/14/17	54,647	Significant Factor
Total	FY18	59,000,751	
Annual Tobacco MSA Payment	FY19 YTD		Payment due April 2019
Colorado, State of / 2016 MSA Sig Factor			Significant Factor
Total	FY19 YTD	0	