

# **The Department of the Public Advocate Annual Report**



**A Voice for the People**

**March 2007**

**Ronald K. Chen  
Public Advocate**



**Jon S. Corzine  
Governor**



# A Voice for the People

The Department of the Public Advocate is charged with making government more accountable and responsive to the needs of New Jersey residents, especially our most vulnerable citizens.

The Public Advocate's mission is to act as a voice for the people on a range of critical issues. This is accomplished through many avenues: policy research and reform, investigation of abuse and neglect, community partnerships, legal advocacy, legislative and regulatory action, education and outreach.

The Public Advocate works both inside and outside state government to protect the interests of the public, with a special focus on the elderly, people with mental illness or developmental disabilities, consumers and children.

Originally formed in 1974 under then Gov. Brendan T. Byrne, the department was dissolved in 1994. After years of vigorous advocacy by a broad coalition of New Jersey citizens, the New Jersey Legislature adopted the Public Advocate Restoration Act in 2005 with the leadership of Senators Joseph F. Vitale and Robert J. Martin and Assemblymen Wilfredo Caraballo, John J. Burzichelli, Alfred E. Steele and Mims Hackett Jr. On July 12, 2005, Governor Richard Codey signed the bill into law.

In 2006, Governor Jon Corzine inaugurated the new department with the appointment of Ronald K. Chen to serve as the first Public Advocate in New Jersey in nearly 12 years.

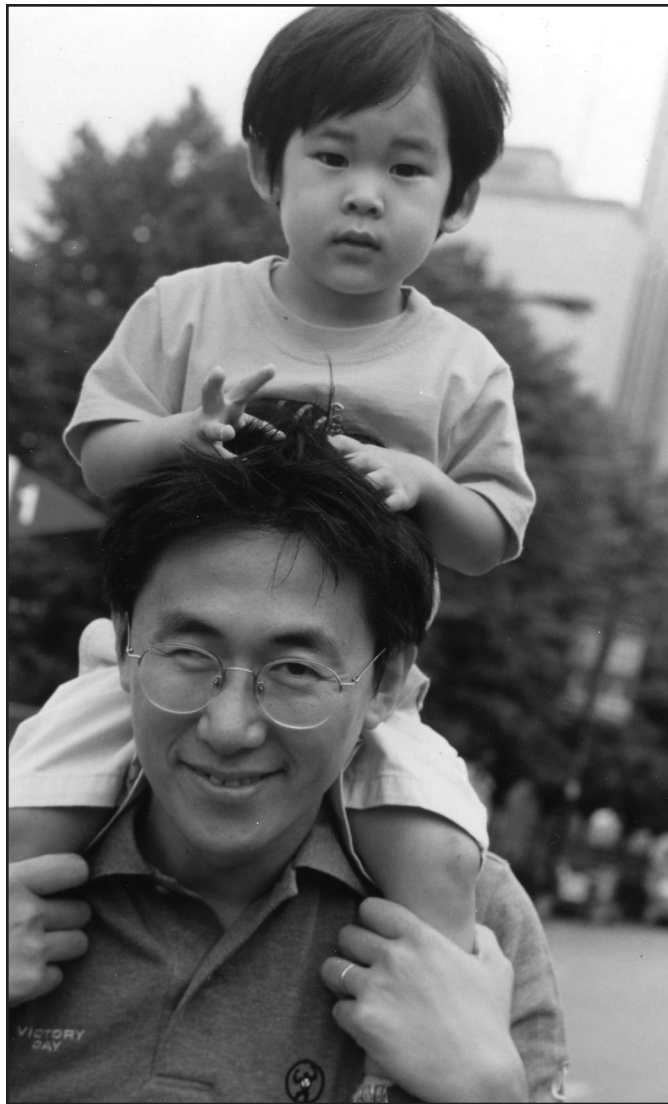
# A Strong Start

## Public Advocate Advances Key Efforts In First Year

The new Public Advocate Ronald K. Chen set ambitious goals for the first year. The department made strong strides toward achieving those objectives.

In the first year, the Public Advocate took action to protect. . .

- Property owners from unlawful government seizure of their homes for private redevelopment
- Children from lead poisoning
- Elderly people from abuse or neglect
- Children in special education programs
- People with developmental disabilities and mental illness from being denied appropriate services and supports
- Citizens from unresponsive government agencies
- Ratepayers from unfair rate increases
- Voters from barriers that prevent them from exercising their right to vote
- Immigrant children from being blocked from enrolling in school
- Residents governed by homeowners' associations from civil rights violations
- The public from being denied access to beaches and other public waterways



### Reforming Eminent Domain

The Public Advocate led the effort to reform New Jersey's eminent domain laws and curtail abuses of this government powerful to ensure the constitutional rights of renters and property owners are protected.

In addition to working with the Legislature on reforms, the department joined court cases in Long Branch, Lodi and Paulsboro where residents are fighting for the right to keep their homes, businesses and land, and where important legal precedents are at stake.

### Preventing Childhood Lead Poisoning

Exposure to lead toxins in peeling paint is one of the most serious health threats confronting New Jersey children. The Public Advocate joined in a legal effort by New Jersey communities seeking to hold paint manu-

facturers liable for the cost of cleaning up lead paint contamination.

The department, in collaboration with the Office of the Child Advocate, has also undertaken a broad study of existing state and local systems designed to protect children from lead poisoning, with an eye toward improving these systems to safeguard the health of all New Jersey children.

### **Protecting Utility Ratepayers**

When New Jersey's largest utility, PSEG, proposed merging with Exelon Corporation to create the largest energy company in the nation, the Public Advocate voiced serious concerns about the potential adverse impact on ratepayers. Ultimately, the merger petition was withdrawn.

In addition, the Public Advocate's Rate Counsel examined all requests for rate hikes and protected consumers from unfair or unjustified increases in their electric, gas, cable TV, telecommunications or water bills.

Through negotiations and settlements, the rate counsel helped to save ratepayers an estimated \$473 million in reduced rate hikes and other credits.

### **Advocating for People with Disabilities**

Adults with developmental disabilities who live with aging caregivers have a more secure future now that they can receive much-needed state help when their parents are no longer able to care for them, thanks to a state Supreme Court ruling.

The Public Advocate had filed a "friend-of-the court brief" in the case.

The high court's unanimous ruling overturned a state regulation that denied services to people if they were unable to prove that at least three specific limitations, such as speech or mobility problems, had existed before a person turned 22.

This was a win for families across New Jersey—and the Public Advocate's first court victory.

The Public Advocate also helped protect the rights of children to receive special education services when it released a report arguing that school districts must prove they are providing a child with an appropriate education, if parents challenge that plan.

That report prompted several newspapers to write editorials in support of that position and legislators to sponsor a bill that would change the current law.

### **Protecting Voters' Rights**

The Advocate also acted to protect the rights of voters with disabilities through a broad range of actions, including educating people about their voting rights and ensuring access to polls on election day.

In addition, the Public Advocate worked last year to identify issues that prevent people from exercising their right to vote. That research laid the foundation for statewide efforts to expand voter registration, ensure poll accessibility and have secure and reliable voting machines in place by January 2008.

### **Safeguarding the Elderly**

Elderly people living in nursing homes are especially vulnerable to abuse and neglect. The Office of the Ombudsman for the Institutionalized Elderly, its investigators and a cadre of trained volunteers safeguarded thousands of our aging citizens, many with no family to watch over them.

In 2006, the elder ombudsman staff responded to about 6,200 complaints or incidents involving people over 60 living in nursing homes or other long-term care facilities. Many of these involved allegations of abuse or neglect.

In addition, the office's 200 volunteer advocates served as another set of eyes in nursing homes across the state, logging more than 9,000 visits and resolving 5,000 concerns to the satisfaction of the residents and their families.

### **Helping People with Mental Illness**

One of the department's first actions was to advocate for expanding mental health insurance coverage. In a cost analysis presented to a Congressional panel, the Public Advocate showed that offering coverage of mental illness on par with physical illness saves both medical and human costs.

Pending state legislation would help thousands of people who now go without mental health treatment.

Through our Mental Health & Guardianship Advocacy staff, the department represents individuals facing civil commitment in state, county, private and

general hospitals. In 2006, the unit opened 17,642 cases and closed 16,082. With an overall success rate of 86 percent, department attorneys were able to prove in the vast majority of cases that clients should be treated in less restrictive settings.

### **Helping Citizens Navigate State Government**

As a newly-created office, Citizen Relations began addressing complaints from citizens who were having trouble with various local and state government agencies.

The division's staff responded to complaints about municipal matters, eminent domain, the Motor Vehicle Commission, the Department of Environmental Protection, housing, the state's handling of developmental disability and mental health cases and various consumer complaints.

### **Protecting Civil Liberties**

The Public Advocate has taken action in a number of areas involving individual civil liberties, including:

- Protecting the rights of immigrant children to register for school
- Fighting to safeguard the personal telephone information of New Jersey residents from warrantless searches, and serving as Homeland Security Ombudsman for Civil Rights
- Advocating for the free speech rights of the more than 1 million New Jersey residents who live in communities governed by private housing associations
- Opposing Medicaid rule changes that would deny coverage to newborns of undocumented mothers.

### **Resolving Conflicts Without Litigation**

In state fiscal year 2006, the Public Advocate's Office of Dispute Settlement mediated 615 cases and trained 185 people in mediation techniques. These services saved millions of dollars in litigation costs, hundreds of hours of judicial time and helped the courts relieve their civil case backlog.

### **Guarding Inmates' Rights**

In 2006, the Public Advocate's Corrections Ombudsman fielded more than 10,000 complaints and calls from inmates in New Jersey's state prison. The ombudsman role has a long and honorable tradition as a means of protecting against abuse, bias and other improper treatment or unfairness.

The Ombudsman intervened for concerns regarding inmates' living conditions and allegations of mistreatment by correctional authorities. The office investigated complaints when inmates failed to get satisfactory results through available institutional channels.

By responding to inmates' concerns, the Corrections Ombudsman helped to reduce the number of lawsuits filed against the New Jersey Department of Corrections and aided in relieving tensions that can result in serious disturbances at the prisons.

### **Protecting Public Access to Our Beaches and Waterways**

The Public Advocate is committed to strengthening efforts to ensure that all New Jersey residents have access to coastal waterways and beaches. A first step toward that goal was to issue a 2006 Beach Fee Guide, available on our website, that includes information about daily, weekly and seasonal fees, accessibility for individuals with disabilities, parking, rest rooms, lifeguard coverage and beach locations.

In addition, the Public Advocate submitted comments to the Department of Environmental Protection, supporting its proposed regulations to guarantee public access to tidal waterways and their shores and recommending improved protections.

The annual report that follows satisfies the requirements of P.L. 2005, c.155., which requires a report to be submitted annually to the New Jersey Legislature.

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# Section 1: Advancing Good Public Policy



## Reforming Eminent Domain

In recent years, the public practice of taking people's property for private redevelopment has raised serious concerns. Under the current law, homes have been deemed "blighted" for little more than chipping paint, uncut grass or other minor deficiencies.

People have lost their homes without ever receiving adequate notice or a meaningful chance to defend their rights in court. And a lack of transparency has fueled doubts about the fairness and ethical standards of the redevelopment process.

Because of these serious problems, the Public Advocate made eminent domain one of its top public policy priorities during its first year of operation and expects that focus to continue through 2007.

In May 2006, the Public Advocate released *Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey*, which examines the use of eminent domain in New Jersey, the potential for abuses and offers a roadmap for future reform.

This report was used to further understanding of the eminent domain issue among the public, key constituents, state leaders and others who are invested in this process.

The Public Advocate seeks to:

- Limit eminent domain for private redevelopment to truly blighted areas, as the state Constitution requires.
- Make the process transparent so people receive fair notice and have a meaningful chance to defend their rights in court.

- Provide adequate compensation so families that lose their homes can replace them in their same communities.

Recognizing that redevelopment is vital for this state's economic future, the Public Advocate believes these reforms are critical to protect homeowners' and renters' rights and allow good redevelopment projects to move forward with full public support.

In 2006, the department worked through the courts, the state Legislature and the Executive Branch to advance eminent domain reforms.

Court action centered on filing amicus curie briefs in four pending cases: *LBK Assocs. v. Borough of Lodi*, *City of Long Branch v. Anzalone*, *City of Long Branch v. Brower and Gallenthin Realty Development v. Borough of Paulsboro*.

Because many eminent domain cases are winding through the courts, the Public Advocate decided that the department's limited resources would be better used to act as amicus, or friend-of-the-court, in existing cases, rather than initiating our own litigation. Each case was strategically chosen because it exposed fundamental flaws in the current laws governing the use of eminent domain.

**Lodi.** This case, pending in the Appellate Division, concerns the use of eminent domain to take two contiguous mobile home parks that provide the last remaining unrestricted private housing for low-income people in Lodi. The trial court rejected Lodi's attempt to declare the area "blighted" based on superficial and cursory inspection of the property, and no evidence of any detriment to the community.

The Advocate's brief urged the Appellate Court to affirm the lower court's ruling and to clarify the "burden of proof" when homeowners challenge a town's decision to take their home, business or land. The Public Advocate argued for a higher burden of proof. Specifically, the Advocate argued that a blight determination must be supported by substantial, credible evidence and establish that the property in its current condition is detrimental to the community.

Because the city must make a record to support its initial declaration of blight, the city should bear the burden of justifying that declaration in court, rather than requiring the property owner to disprove the city's blight declaration, the Advocate argued.

In addition, the Advocate's brief challenged Lodi's use of eminent domain as in conflict with its constitutional obligation to safeguard affordable housing. The brief concluded that when the use of eminent domain results in a net loss of such housing, the city may run afoul of the state Supreme Court's *Mount Laurel* decisions, which require every municipality to create and maintain a fair opportunity for low- and moderate-income people to live there.

The Advocate argued the case before the Appellate Division on Jan. 30, 2007. A decision is pending.

**Long Branch.** Also pending in the Appellate Division, the Long Branch case centers on the condemnation of a small neighborhood of modest sea-side homes to make way for upscale condominiums.

The Public Advocate filed an amicus brief arguing that the lower court's ruling in favor of Long Branch's use of eminent domain should be vacated and returned to the lower court because the homeowners' rights of due process were violated. The current, incomplete record contains no proof of adequate notice, no indication that homeowners received a fair hearing and some evidence of potential conflicts of interest that warrant additional discovery and fact-finding.

The brief also argued that the record evidence of blight is insufficient to sustain the trial court's affirmation of the municipal decision to demolish the neighborhood.

In response to the Advocate's brief, the City of Long Branch filed a motion, asking the appeals panel to reject the Public Advocate's involvement in the case. The Appellate Division denied Long Branch's motion to strike the Public Advocate's brief, allowing the Advocate's arguments to be considered when the case is decided. The Public Advocate will participate in oral arguments, which have not yet been scheduled.

**Paulsboro.** Currently before the New Jersey Supreme Court, this case exposes serious problems with current state law, which defines "blight" so broadly that it could apply to virtually any property in New Jersey, even, as in this case, undeveloped wetlands.



In an amicus brief, the Public Advocate urged the court to narrow that definition to protect the rights of property owners across the state and to ensure they receive the constitutional protections to which they are entitled.

This case will essentially review the 15-year-old Local Redevelopment and Housing Law.

One section of that law allows government to condemn land for private redevelopment if it deems that land to be “in need of redevelopment” because it is “not fully productive” and lacks “proper utilization.” Under such broad criteria, “there is no parcel of land in New Jersey that is safe from such pursuit,” Chen wrote in the brief.

The Public Advocate asked the high court to narrow the definition of blight and remand the case for further court review. Ronald Chen will present oral argument before the high court on April 26, 2007.

**Legislation.** In addition to our legal work, the Public Advocate has been working closely with lawmakers to craft reforms to existing law. Those efforts resulted in the Assembly’s overwhelming passage of A-3257 in June 2006, 51 to 18, with 11 abstentions.

Sponsored by Assemblyman Burzichelli, who is also a mayor, A-3257 is a comprehensive reform bill that would tighten the definition of blight, provide homeowners with a meaningful opportunity to contest the taking of their homes and provide adequate compensation when homes are taken. The bill was the product of extensive negotiations between the Public Advocate, the League of Municipalities and other parties.

The state Senate is now considering reform proposals. The Public Advocate maintains that any reform bill must address the fundamental concerns of the definition of blight, adequate due process and fair compensation.

**Outreach.** Recognizing the controversial nature of this issue, the Public Advocate spent considerable time meeting with local elected officials, developers,

planners and community activists. Through these discussions, the Advocate sought to find a common ground that would protect homeowners, allow redevelopment projects to move ahead and ensure that essential constitutional protections are in place to protect against the improper uses of eminent domain.

The Public Advocate also worked to reach consensus with other top level state officials whose agencies deal with the issues of housing and redevelopment. While not always in agreement, these meetings did help to advance common areas.

### **Protecting Voters’ Rights**

The right to vote is one of the most basic and fundamental rights of every U.S. citizen. That right must be fiercely guarded. But when doors are too narrow or no ramps are available to accommodate wheelchairs, many New Jersey residents are denied that right.

Still others are denied this right when they are unconstitutionally turned away because of developmental disabilities, never offered the opportunity to register or not informed of their voting rights.

Again, the Public Advocate deployed a multi-pronged approach to begin addressing these problems during its first year of operation.

### **Election Day Work**

One of our first goals was to educate the public on their rights to unfettered access to the polls on Nov. 7, 2006.

The department distributed letters to people with disabilities detailing their voting rights. Letters also were sent to state developmental centers, educating administrators and urging them to support the voting rights of the people they serve. Poll workers also received a fact sheet on the voting rights of people with disabilities. Training and outreach for self advocates was provided.

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Prior to Election Day, department staff trained lawyers and other advocates to assist or represent voters who were denied the right to vote on Election Day. Attorneys from the department staffed county courthouses around the state to represent voters who were improperly denied their right to vote at the polls.

We successfully represented many voters who sought a court order allowing them to cast ballots. Through other research, we determined many polling places were located in places inaccessible to people with disabilities.

### **Ensuring Access to Polling Places**

The department conducted an extensive analysis of the laws that guarantee access to the election process for people with disabilities and shared this analysis with the Attorney General. We have met with the Attorney General and several county election officials to pursue appropriate action to ensure polling places are accessible.

The Public Advocate also released a report that looks at progress made and challenges still ahead to ensure that every polling place in the state is accessible to all who seek to use it.

### **Registering People To Vote**

In addition, our research revealed significant problems concerning New Jersey's compliance with the National Voter Registration Act. One provision of that Act requires motor vehicle agencies to give people the opportunity to register to vote whenever they obtain, renew or update their drivers' licenses. This commonly fails to happen.

The department initiated discussions with the Motor Vehicles Commission to negotiate a plan for compliance. Those discussions are ongoing.

### **Voting Machines**

The department conducted initial research into the merits of various voting systems as the state considers how to comply with a new state law, effective Jan. 1, 2008, requiring a paper trail on all voting machines. We will work with the Attorney General to ensure stringent certification tests are in place.

In addition, we are assisting state election officials to ensure that the Voter Bill of Rights contains accurate and comprehensive information for voters on their recourse should they be denied the right to vote and expanded mechanisms for distributing these materials to the general public.



# Section 2: Helping Our Most Vulnerable Citizens



## **Advocating for People with Disabilities**

People with developmental disabilities and children with learning disabilities are among our most vulnerable citizens and deserve the caring concern of the communities in which they live. Sadly, this often fails to happen.

The Public Advocate, under both statute and principle, has made safeguarding these citizens one of his top priorities.

In the first year, the Public Advocate acted as a forceful friend to people with disabilities, taking a leadership role on a wide range of issues, including:

- Protecting the rights of individuals with disabilities to qualify for essential services
- Advocating for fairer treatment of children in special education programs

- Fighting for effective, responsible action so individuals who are able and willing to move from institutions to the community have the opportunity to do so and enjoy full inclusion in their communities
- Monitoring conditions in state institutions for individuals with disabilities to ensure they receive appropriate care
- Protecting the rights of voters with disabilities
- Working closely with the Office of the Child Advocate to monitor reforms in facilities for children with disabilities.

Much of this work was accomplished through the divisions of Developmental Disability Advocacy and Public Interest Advocacy.

## **Reaching Out to the Community**

In its first months of operation, staff from the Division of Developmental Disability Advocacy engaged in extensive outreach that included meetings with advocacy groups, families and provider agencies. We worked closely with state officials, attended conferences and participated on community taskforces.

In addition, the division received and responded to about 425 constituent calls from May through December 2006. Many of these calls were resolved through information and referral. More than half of the calls were related to special education. Some required intervention with the Department of Human Services or community-based provider agencies on the constituent's behalf.

This outreach and interaction with individual constituents enabled the Division to identify several priority areas for future public policy work.

## **Helping Adults with Disabilities**

State policy left a gaping hole for adults with developmental disabilities who live with aging caregivers. That policy denied disabilities services to people if they were unable to prove they had at least three specific limitations, such as speech or mobility problems, before they turned 22.

The Public Advocate, as one of its first legal acts, filed a friend-of-the-court brief in a Supreme Court case centering on this issue. In February, the high court handed down a ruling overturning the state regulation, which had resulted in many families being punished simply because they chose to care for their children for many years without state help.

This was a win for families across New Jersey—and the Public Advocate's first court victory.

The case involved a 55-year-old man, referred to as T.H., who had a disorder known as Asperger Syndrome, a form of autism that was only recognized in the 1990s. He had lived with his parents his entire life. When they died in 2000, his siblings sought help from the state to care for him.

The state denied that help because it said family members could not produce medical or other professional documents proving that T.H. had at least three

“functional limitations” before age 22, as required by a Division of Developmental Disabilities regulation.

The Public Advocate argued in an amicus brief and oral argument that the regulation violated state law. The New Jersey Supreme Court agreed. In early March, the high court overturned the regulation.

The unanimous ruling is particularly important because the medical community now recognizes certain developmental disabilities that were unknown as little as 10 years ago. It would be virtually impossible to document the existence of these disabilities before that time.

This ruling also encourages families to care for relatives with developmental disabilities at home, even after those relatives become adults. The alternative—seeking state services before age 22 out of fear the state would refuse services later—would create a harmful disincentive to families and more expense to the state.

## **Giving Students Quality Special Education**

Fielding hundreds of calls from concerned parents whose children are not getting an adequate education, the department made the interests of students in special education programs a top priority.

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In addition to responding to hundreds of individual complaints, the department released a report that examined how the shift in the “burden of proof” in special education hearings was putting children's education in jeopardy.

For 17 years, New Jersey had operated under the appropriate policy that when a family challenges a school's plan for a child with special needs, the school should prove it is providing an effective education for the child. But federal court rulings in 2005 and 2006 changed that, placing the responsibility on the person who challenges the plan.

New Jersey's longstanding policy was not codified into law and so the federal rulings shifted this practice, weakening parents' ability to advocate for their children. Low-income parents of children with special needs are at a particular disadvantage because they cannot afford to hire lawyers to argue their case.

The department closely studied this issue and in February 2007 released a report critical of the shift in law.

In the report, the Public Advocate argued that it is unfair to place the burden of proof on families because they lack access to information that could help prove their claims. School districts are in a far better position to prove an education plan is appropriate because they gather detailed information when preparing plans and have greater access to educational experts and legal counsel, the Advocate argued.

In response to the Advocate's report, Assembly members Joseph Cryan, D-Union, Joan Voss, D-Bergen and David Wolfe, R-Monmouth, and Senators Steven Sweeney, D-Gloucester, and Joseph Doria, D-Hudson, introduced legislation to require school districts to prove they are providing an appropriate education when a student's plan is challenged.

The Advocate supports this legislation.

### **Ensuring Safety, Supports for People with Disabilities, Mental Illness**

New Jersey is failing to meet its legal obligation to individuals who want to move from institutions to community settings. Only Louisiana and Mississippi have a higher rate of institutionalizing people with developmental disabilities.

Roughly half of the more than 3,000 people with developmental disabilities who live in state-run institutions have been identified as able and willing to move into community settings. Another 1,000 people in crowded state psychiatric hospitals have been deemed ready to leave the hospital, if proper community placements and support were available.

State law requires the Department of Human Services to produce a plan by May 5, 2007 for how it will move 1,500 people with developmental disabilities

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from institutions into the community. The Public Advocate will be actively involved in influencing the shape of that plan to ensure that appropriate community supports and services are created first. In addition, the Advocate will work to ensure people with mental illness also receive the right services and supports.

Some key changes the Advocate will advance include:

- Conduct accurate assessments of individuals residing in developmental centers and psychiatric hospitals.
- Create a statewide database of people eligible for disability services.
- Invest in services to support community living and prevent unnecessary institutionalization.
- Develop transitional services to ensure safe, smooth transitions to community living.
- Ensure that people in developmental centers, psychiatric hospitals, other residential programs and state-funded day programs receive safe, appropriate services.
- Expand family support programs.
- Examine the current process for determining which individuals on waiting lists receive services.

### **Helping People with Mental Illness**

People with mental illness often face discrimination, both from the public and from the systems that are supposed to help them.

The Public Advocate began substantial work this year to ensure that people with mental illness receive the medical care, services and supports they need to live full, productive lives.

One of our first actions was to advocate for expanding health insurance coverage of mental illnesses.

In 1999, New Jersey enacted a limited mental health parity law that requires insurers that provide coverage for biologically-based mental illnesses to offer coverage that is equal to a plan's physical health benefits. The law, however, exempts a host of illnesses, such as addictions, eating disorders and other conditions that may not be recognized as biologically based. This leaves a huge gap in coverage for thousands of New Jerseyans who struggle with these disorders.

The two bills now in the Legislature, S-807 and A-2512, would change that. These mental health parity bills would require health plans that offer mental health coverage to offer benefits equal to those provided for physical health. The measure has passed the Senate but remains under review in an Assembly committee.

New Jersey is among 25 states that have these limited parity laws, while 11 states have full parity and the rest impose no requirements on mental health coverage.

One of the opposition's primary arguments is that full parity would drive up insurance costs. To address this concern, the Public Advocate studied the fiscal effects of parity laws in other states. That analysis found that the cost of providing parity coverage is negligible. Some states have actually reduced medical costs when they expanded coverage of mental illnesses.

For example, Texas enacted a partial parity law in 1991 and saw a 48 percent decrease in the cost of mental health care within managed care plans. In 1997, the Texas Legislature enacted an even stronger parity law.

A recent study conducted by the federal Department of Health and Human Services found there was "little or no increase in total mental health or substance abuse spending" as a result of parity. Over the 5-year period ending December 2006, federal health insurance costs increased by 13 percent. During that same time, full mental health coverage costs increased just 0.1 percent.

In addition, people who are treated early and appropriately are more likely to be treated successfully, their treatment is likely to cost less, and they are less likely to miss work, resulting in increased productivity.

The Advocate's report was presented to a Congressional forum convened in Trenton to hear from state residents whose lives have been touched by mental illness and addiction. The event was part of a nationwide tour, The Campaign to Insure Mental Health and Addiction Equity, hosted by Congressmen Frank Pallone, (D-NJ), Patrick J. Kennedy (D-RI) and Jim Ramstad (R-MN).

Congressmen Kennedy and Ramstad have introduced federal legislation aimed at ensuring that when health plans offer coverage for mental health and addiction care, that coverage is equal to the coverage provided for physical ailments.

The Advocate's report will be presented to the state Assembly Appropriations Committee when it considers legislation, A-2512, that would expand healthcare coverage to include mental health conditions exempted under current law. The department will continue to work on passage of this legislation, finally ending the unconscionable practice of stigmatizing people with mental illness and failing to give them the medical care they need to become healthy.

### **Out of the Hospital**

Another major public policy shift is underway in the way the state cares for people with mental illness. Currently, an estimated 1,100 people living in psychiatric institutions have been deemed able to live in the community, if the proper supports were available.

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In the coming year, the Public Advocate will work closely with other state agencies and advocates to ensure that people are appropriately moved out of institutions, with strong services and supports, so they can live fully productive lives.

Overcrowding in the state psychiatric hospitals, a scarcity of appropriate community services and the need for culturally-competent services are other key issues the department is exploring and will advance specific recommendations.

**Representing People with Mental Illness**

Through our Mental Health & Guardianship Advocacy staff, the department represents individuals facing civil commitment in state, county, private and general hospitals. The unit also represents individual

clients at guardianship hearings, mental health commitments and sex offender commitments.

This representation is court-ordered, mandated by constitutional and common law decisions, as well as by state statute, and is provided to both adults and children.

In 2006, the unit opened a total of 17,642 cases and closed 16,082. With an overall success rate of 86 percent, department attorneys were able to prove in the vast majority of cases that clients should be treated in less restrictive settings.

<b>Mental Health &amp; Guardianship Caseloads</b>					
	<b>Asbury Park</b>	<b>Gibbsboro</b>	<b>Newark</b>	<b>Trenton</b>	<b>Total</b>
<b>Openings</b>	1,809	5,343	5,588	4,902	17,642
<b>Closings</b>	1,673	4,836	4,985	4,588	16,082
<b>Success</b>	96%	82%	84%	87%	86%

**Extensions Must Be Justified**

In addition to these individual cases, Deputy Public Advocates were successful in two reported appeals as well as several unreported Appellate cases.

**In re Commitment of M.M.**, the court determined that at an initial hearing, a judge could not extend the time for a hearing beyond the statutorily mandated 20 days unless the cause for the extension was “atypical, unforeseen and unavoidable.”

The trial court found the state had not proven the case for commitment and wanted to adjourn the case to allow the state to improve its case. The appellate panel found the state’s interest in extending the time limit must substantially outweigh the patient’s interest in release.

**In re Commitment of M.C.**, the same appellate panel determined that a finding of hospitalization conditionally extended pending placement [CEPP] could not be used unless the person was unable to survive on his or her own. Hospitals cannot keep individuals committed against their will unless they meet the legal standard for commitment. This decision will affect many of the 1,100 people currently on CEPP status in New Jersey’s state psychiatric hospitals.

**Ensuring Troubled Youth Get Treatment**

In addition to these appeals, hundreds of interesting decisions were obtained from the trial courts, two of which are listed below. These court decisions protect adolescents from inappropriate hospitalization by their custodians.

In the first case, a mother with temporary custody convinced the Family Court to order her child into Bergen Regional Medical Center without any due process. Our attorney argued before the Family Court that it had no authority to make such an order, and the subsequent commitment hearing at the facility resulted in a finding that community treatment was all that was necessary.

In the second case, the Division of Youth and Family Services failed to remove a child from a Children’s Crisis Intervention Service after the court found the standard for hospitalization was not met, and the child was being harmed by continued hospitalization.

The child was eventually placed in an appropriate setting, and the court further ordered DYFS to place \$2,500 in trust for the child. The court also mandated that DYFS devise a plan for timely placements of all children ordered discharged from inpatient psychiatric care by a civil commitment judge.

This will have a significant impact on children who are wrongly ordered to be admitted for inpatient care, as well as those children for whom inpatient care is no longer necessary.

### **Improving the Quality of Life**

Adult patients also require special attention and effort. Frequently, our staff investigators intervene to improve the quality of life for both individuals and groups of patients.

One investigator spent four months trying to reunite a mother and her six children. After considerable efforts, the staff investigator was able to piece together a plan for the mother's discharge, which everyone agreed was appropriate, but the available supports fell short of what the woman needed. There was a \$400 shortfall for rent.

With additional effort, the investigator was able to get one of the state agencies to fund the shortfall, securing the woman's release from the hospital, where the bill for her stay exceeded \$40,000. Not only was this solution better for the mother and children, it saved considerable state resources.

This is an example of service gaps within the mental health system and the need to ensure that mental health consumers are receiving the appropriate services and supports they need.

Investigators also have protected the rights of groups of patients and resolved concerns about the conditions of confinement. For example, the geriatric patients at a private hospital were being denied the right to go outside during their hospitalization. An investigator contacted the hospital's chief executive officer, supplied him with a copy of the Patients' Bill of Rights, and convinced him the right was being inappropriately denied and patients could be permitted outside with only minimal supervision.

Another investigator protected patients on wards during the early August heat wave. Arriving on the ward to interview clients, she found the wards overheated because the air conditioning unit malfunctioned. She contacted hospital administrators and had fans set up, cold water provided and patients moved to the cooler basement.

The department also has assisted patients committed under the Sexually Violent Predators Act. The Public Advocate prepared comments for the proposed regulations concerning the conditions of confinement for this population. He took the position that these New Jersey residents should have the same protection under the law as anyone who is civilly committed, unless a specific justification for different treatment was provided.

### **Safeguarding the Elderly**

After extensive community outreach and responding to constituent calls, the Department's Division of Elder Advocacy, which began work in September 2006, identified some top areas of need.

These include:

- Improved regulation of assisted-living facilities
- Issues surrounding the monthly personal allowance received by nursing home residents who rely on Medicaid
- Potential changes in state policies that address the needs of low-income elderly
- Ensuring elderly individuals get the supports they need to remain at home
- Fraud directed at elderly individuals and public education about basic legal issues confronting the elderly.

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***In 2006, the Elder Ombudsman responded to 6,200 concerns over the welfare of seniors living in institutions.***

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These issues will be the subject of extensive research and advocacy in the coming year.

As part of the re-establishment of the Department of the Public Advocate, the Office of the Ombudsman for Institutionalized Elderly became part of the department and continued the work it has been doing for nearly 30 years.



In 2006, the Elder Ombudsman responded to about 6,200 complaints or incidents involving people over 60 living in nursing homes or other long-term care facilities. The Ombudsman both responds to com-

plaints and reviews “incident reports” that facilities are required to produce for any type of injury or other incident that raises concerns.

### Elder Ombudsman, 2006

Type of complaints	Nursing Facility	Board & Care	Total	% Total
Abuse, Gross Neglect, Exploitation	852	129	981	15.8
Access to Information	103	18	121	1.9
Admissions, Transfer, Discharge, Eviction	186	51	237	3.8
Autonomy, Choice, Exercise of Rights, Privacy	445	33	478	7.7
Financial, Property	166	35	201	3.2
Care	1889	216	2105	33.9
Rehabilitation, Maintenance of Function	112	4	116	1.8
Restraints	52	4	56	0.9
Activities and Social Services	95	7	102	1.6
Dietary	186	23	209	3.3
Environment	161	30	191	3.0
Policies, Procedures, Attitudes, Resources	463	113	576	9.2
Staffing	110	18	128	2.0
Certification/Licensing Agency	0	0	0	0
State Medicaid Agency	3	0	3	0.04
System/Others	80	120	700	1.1
<b>Total</b>	<b>5403</b>	<b>801</b>	<b>6204</b>	

Most of these issues were resolved “at the bedside,” meaning the Ombudsman staff worked out a solution with the facility operators.

In one case, for example, a 93-year-old resident who has dementia fell, hitting his head and arm. The resident was sent to a hospital and returned with a mild head injury and a fractured elbow.

The Ombudsman investigator determined that the resident was prone to wandering and the resident’s care plan was inadequate to deal with these behaviors. The investigator worked with facility staff to develop a more appropriate plan to address the resident’s needs. No further incidents have occurred with this resident.

Not all incidents can be resolved at the bedside, however, and in such cases, the office refers its findings to appropriate enforcement agencies. In one case, a pattern of neglect on the part of nursing home staff ultimately led to a resident’s death.

The office investigated all aspects of the case and referred its findings to the Department of Health and Senior Services, Division of Health Facilities Evaluation and Licensing. As a result of the referral, the facility was cited for several severe deficiencies and fined. Federal authorities have taken the extraordinary step of beginning closure proceedings against this facility.

Sadly, the institutionalized elderly are often targets of theft. The Ombudsman’s investigations of such complaints have increased steadily in recent years, resulting in arrests and convictions of many perpetrators. In the past year, investigators have frequently assisted the courts when appointing guardians and conservators to protect residents in both their person and their property.

## **Volunteer Advocacy Program**

Thanks to the availability of funds from the federal Administration on Aging, the Office of the Ombudsman is assisted in its advocacy by a cadre of citizen volunteers. Each trained volunteer advocate visits an assigned facility for at least four hours per week. Many of these dedicated volunteers donate more time than required because they see a need for additional monitoring of the care being provided to residents.

They visit their facilities during different shifts and also make unannounced visits. They speak to the staff and observe how residents are treated. They observe the quality of services provided by the nursing home staff, such as how well residents are groomed and if their personal needs are being met.

Over the past year, these volunteer advocates have donated more than 25,000 hours in nursing homes, visiting elderly residents and advocating for residents' rights. More than 9,000 visits were made and approximately 5,000 concerns resolved to the satisfaction of the residents and their families.

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***Over the past year, these volunteer advocates have donated more than 25,000 hours in nursing homes, visiting elderly residents and advocating for residents' rights.***

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In addition to resolving concerns, Volunteer Advocates have worked proactively to create a better quality of life for long-term care residents. One diligent volunteer, who has been with the program more than 10 years, was able to assist in preserving residents' rights concerning choice of physician services. Another sponsored a fishing trip for more than 30 residents, funding the all-day event, including transportation and lunch. One woman, a retired school librarian, set up a library and reading room in the facility where she volunteers.

## **Biomedical Ethics**

In a 1985 case, the New Jersey Supreme Court charged the Elder Ombudsman with the responsibility of overseeing end-of-life decision-making in long-

term care facilities. The Ombudsman continued to conduct ethics education training programs around the state in 2006, which has been invaluable in assisting facility staff to know when to call the Ombudsman to assist in end-of-life decision making, as well as dealing with other ethics issues.

## **Preventing Childhood Lead Poisoning**

Exposure to lead toxins in peeling paint is one of the most serious health threats confronting New Jersey children.

The department, in collaboration with the Office of the Child Advocate, has launched a broad study of existing state and local systems designed to protect children from lead poisoning, with an eye toward improving these systems to safeguard the health of all New Jersey children.

This project is designed to identify ways to reduce the unusually high incidence of childhood lead burden in New Jersey. This year, the department staff conducted extensive research on the problem and potential solutions and interviewed officials in the departments of Health and Senior Services, Human Services, Education and Community Affairs.

We have also coordinated with the Office of the Child Advocate to ensure outreach to the Department of Children and Families, and advocates from the ACLU, the Association for Children of New Jersey and Legal Services of New Jersey, among others, to understand their efforts on this issue.

In 2007, we will continue this research, expand our outreach and produce a report with recommendations for a more effective and coordinated response to this public health crisis.

In addition to this public policy work, the Public Advocate filed an amicus brief in ***In re Lead Paint Manufacturers***, a case pending before the New Jersey Supreme Court. The brief supported various municipalities in their lawsuits against paint manufacturers to recover some of the costs of making older, lead-laden buildings safe.

The brief documents the magnitude of the problem in New Jersey, establishes that lead has been a known poison for centuries, and argues that the municipalities should be allowed to proceed with their case under the public nuisance doctrine. The Public Advocate argued the case before the court on November 28, 2006. No decision has yet been rendered.

# Section 3: Fostering More Responsive Government

## Helping Citizens Navigate Government Agencies

The department keeps an open line of communication with New Jersey citizens through its Division of Citizen Relations. Division investigators respond to complaints about state agencies and local governments. They educate citizens on the most effective government service for a particular problem. If a state agency fails to respond, Citizen Relations staff investigate to determine what steps should be taken. The goal of the office is to make state government more responsive to citizens, especially those citizens who are unable to represent themselves.

As a newly-created office, Citizen Relations spent most of the first year adding staff and addressing a backlog of cases. That backlog has been cleared up and Citizen Relations staff are now actively responding to new cases.

When a complaint is received, Citizen Relations evaluates the complaint to determine if it is within the division's statutory responsibility. If so, the complainant is referred to a field representative for full investigation and resolution.

The complaints cover a broad spectrum of issues, including problems with specific state agencies and more general concerns about state policy. Citizen Relations fielded complaints about municipal matters, eminent domain, the Motor Vehicle Commission, the Department of Environmental Protection, housing, the



state's handling of developmental disability and mental health cases and various consumer complaints.

For example, one complainant alleged that a 23-year-old individual with mental disabilities was homeless. The caller said the divisions of Developmental Disabilities and Mental Health were neglecting to follow a court order to provide housing to "R."

Citizen Relations interviewed the family member and learned the man's parents were deceased. "R" was living with an elderly grandfather and the grandfather could no longer take care of "R." The young man had been working a part-time job and used his pay to buy bus tickets from New Jersey to Washington D.C. He would

get on the bus after work and ride back and forth, just so he would have a warm place to sleep.

Citizen Relations conferenced a call between the family and a caseworker to encourage this case to be treated as an emergency matter. Upon completion of the call, all preliminary steps and evaluations were being taken and the process for placement into permanent housing was started.

Citizen Relations confirmed with the caseworker a few weeks later that "R" had been successfully placed in permanent housing and subsequently closed the file.

### Resolving Disputes Without Litigation

Established in 1974, the **Office of Dispute Settlement** (ODS) began as a small community mediation program and has evolved into one of the leading public dispute resolution offices in the country. ODS is part of the Public Advocate's Division of Citizen Relations.

The Office of Dispute Settlement provides neutral mediation services to resolve a wide variety of disputes, including those brought by individuals seeking access to government records under the Open Public Records Act and claims under the New Home Warranty Act. This office also serves as a court-appointed mediator and provides dispute resolution training.

In fiscal year 2006, the office handled 615 cases and trained 185 people. These services saved millions of dollars in litigation costs, hundreds of hours of judicial time and helped the courts relieve their civil case backlog. (ODS maintains statistics on a state fiscal year basis. FY 2006 began on July 1, 2005, about eight months before the new Public Advocate was functioning).

<b>Office Of Dispute Resolution</b>	
<b>Type of Case</b>	<b>#Cases</b>
Court Mediation	50
Home Warranty	452
Open Public Records	61
Underground Facilities	42
Federal Mediation	10
Total Cases	615

### Court Mediation

In FY 2006, the office mediated more than 50 cases pending in state and federal courts in New Jersey. The office mediates all types of civil cases, but has particular expertise in public interest cases.

Some of the cases mediated in past years include:

- A multi-million dollar dispute over insurance reimbursement rates between a major medical center and a healthcare insurance company. The resulting settlement preserved healthcare coverage for thousands of New Jersey residents.

- A federal class action lawsuit involving the proposed demolition of high-rise public housing in Newark. The resulting settlement preserved millions of dollars in federal housing money for the state and ensured adequate low-income housing was available for citizens.
- A multi-jurisdictional lawsuit resulting from a major Exxon pipeline oil spill in the Arthur Kill Waterway. The resulting multi-million dollar settlement funded the clean-up of the waterway and the preservation of environmentally sensitive land.
- A \$100 million dispute regarding the construction of the River Line Rail System. The settlement saved the parties years of potential litigation and more than \$1 million in potential litigation costs.

### Managing Dispute Resolution Programs

The Office of Dispute Settlement also arbitrates disagreements between homeowners and builders regarding defects in new home construction. The office uses a panel of neutral construction experts to handle these disputes. In FY 2006, the office handled 245 New Home Warranty cases and 207 Residential Warranty disputes.

### Fostering Open Government Records

Under an agreement with the Government Records Council, the Office of Dispute Settlement is the mediator for disputes arising under the NJ Open Public Records Act (OPRA). ODS staff mediates between the person denied access to a government record and the custodian responsible for providing such access to reach a resolution. In FY 2006, ODS mediated 61 of these cases.

### Underground Facility

Under recent changes to state law, disputes between excavators and underground facilities operators involving amounts under \$25,000 must go through alternative dispute resolution. ODS handled 42 of these cases. The goal is to provide a fast, efficient and cost-effective way to settle disputes when utility lines are damaged during digging. Through this newly created program, ODS expects to handle about 100 of these cases each year.

### **Federal Government Mediation Programs**

In addition, the office serves as a member of both the Equal Employment Opportunity Commission (EEOC) and the U.S. Postal Service mediation roster in order to mediate employment disputes. In fiscal year 2006, ODS mediated 10 of these cases.

### **Dispute Resolution Training**

One of the primary goals of ODS is to foster widespread use of cost-saving mediation techniques to resolve conflicts. To achieve that goal, ODS offers state-of-the-art negotiation and mediation training to judges, attorneys and state agency personnel. In FY 2006, ODS trained 185 people.

In past years, ODS has trained more than 100 Superior Court and Administrative Law Judges in settlement techniques. As an approved provider of basic and advanced mediation training for attorneys on the State Court Mediation Roster, ODS has trained hundreds of attorneys in basic and advanced mediation.

ODS has also provided training to more than 10 state agencies in negotiation and mediation techniques in order to avoid and reduce conflict both within an agency, such as employment disputes, and conflicts between agencies and private entities.

More than 100 members of the New Jersey State Police also have received ODS training that is designed to improve communication skills and lower conflict. More than 150 senior state officials have been trained by ODS in negotiation and mediation techniques to enhance their ability to manage their respective agencies.

In addition, the department is helping to craft legislation that would require alternative dispute resolution training and procedures for state government. Under this proposal, state officials would learn how to resolve conflicts through mediation, rather than resorting to expensive litigation. Federal studies have shown that similar federal requirements implemented many years ago have resulted in significant cost savings. The Public Advocate will work toward passage of this measure in the coming months.

### **Humane Treatment for Inmates**

In 2006, the Corrections Ombudsman fielded more than 10,000 complaints and calls from inmates in New Jersey's state prisons. The Ombudsman has a long and

honorable tradition in protecting against abuse, bias and other improper treatment or unfairness.

The Ombudsman can seek help for issues and concerns regarding inmates' living conditions and allegations of mistreatment by correctional authorities. The office investigates complaints if the inmate believes he or she has failed to get satisfactory results through available institutional channels. In 2006, the Ombudsman continued to address the issues and concerns of the incarcerated, their families and other interested parties.

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## ***The Corrections Ombudsman has a long and honorable tradition of protecting against abuse, bias and other improper treatment.***

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The Ombudsman is on call 24 hours a day, seven days a week and has six assistant ombudsmen assigned to state correctional facilities. Inmate concerns are addressed by conducting interviews, telephone contact, correspondence, and/or referrals.

**Lawsuit Prevention.** In the last 34 years, the Ombudsman has helped reduce the number of lawsuits filed against the New Jersey Department of Corrections by responding to inmates' concerns and encouraging resolution through institutional remedies and informal mediation. While it is difficult to quantify the actual savings in litigation costs, the office has clearly served to minimize lawsuits associated with inmate complaints.

**Pulse of the Institutions.** The office continues to monitor the pulse of the institutions in an effort to relieve the pressures, tensions and hostilities that abound within them by means of more open communications, thus providing a release valve and preventing potential serious disturbances at the prisons. Inmates correspond with the Ombudsman using a standardized, bilingual form through which they can express their concerns or complaints in an organized manner. Ombudsmen staff then determine if the inmate has used institutional remedies and develop a potential course of action.

**Special Assignments.** In 2006, Ombudsman staff participated in approximately 68 special assignments, consisting primarily of searches of congregate and living areas in correctional facilities. Attendance at these searches helps to minimize allegations of destruction of inmate property and other difficulties. Inmates as well as administrative staff welcome the Ombudsman's role in this process. Other activities included inmate representative meetings and elections, graduations, community events and other special projects.

The Corrections Ombudsman also is part of the Department of Corrections "Collaborative Team" established to develop procedures for compliance with the Prison Rape Elimination Act.

### **Primary Inmate Issues and Concerns During 2006**

**Records (2,526).** Common inquiries center on the accuracy of the calculation of inmates' anticipated maximum release dates, requests for updated calculations of their time, earned work and minimum status credits, and concerns regarding sentencing information noted on their records. (24 percent of inquiries)

**Parole (1,346).** These inquiries involve requests for updated parole eligibility dates, accuracy of the calculations of their parole eligibility release dates, status of parole hearing results and complaints that they are overdue for hearings. (13 percent of inquiries)

**Program (1,122).** Inquiries regarding the inmates' eligibility for reduced custody, community release, work assignments and visitation programs, as well as concerns about inmates being denied admission to these programs. (11 percent of inquiries)

**Medical (986).** Inquiries deal with dissatisfaction with medical treatment or complaints about a lack of medical treatment, delays with processing medication, delays in referrals for outside consultations, discrepancies concerning medical co-pays and being treated poorly or with disrespect by medical personnel. (9 percent of inquiries)

In addition to the Corrections Ombudsman's work, the department also undertook two other projects to help ensure the humane treatment of inmates in state institutions.

**New Jersey State Prison.** The Division of Public Interest Advocacy assisted in assessing the demands of inmates at the state prison in Trenton over the last several months, following a threatened hunger strike, and monitored the status of responses to those demands. The Ombudsman also helped to investigate an account of a recent incident at the prison that resulted in injuries both to a guard and a prisoner. Public Advocate Chen accompanied the Corrections Ombudsman on a visit to the prison for meetings with inmate representatives on these and other issues.

**The Special Treatment Units.** The department has also monitored conditions at the Special Treatment Units where people convicted of violent sex offenses may be civilly committed after they complete their criminal sentences. Such monitoring is part of the normal work of the Division of Mental Health Advocacy, whose Alternative Commitment Unit represents eligible people subject to civil commitment under the Sexually Violent Predator Act.

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# Section 4: Guarding the Interests of Ratepayers



## **Conserving Ratepayer Resources**

The Public Advocate, through its Division of Rate Counsel, ensures that utility consumers receive safe, adequate and proper service at affordable rates. One of the Rate Counsel's major functions is to examine all requests for rate hikes and protect consumers from unfair or unjustified increases in their electric, gas, cable TV, telecommunications or water bills.

Rate Counsel has legal standing to challenge proposed increases and represents the ratepayer on any changes to utility service. The division also represents consumers in a limited number of health and auto insurance matters.

Last year, through negotiations and settlement agreements, the Rate Counsel helped to save ratepayers an estimated \$473 million in reduced rate hikes and other credits.

The division worked on other fronts to protect ratepayers.

## **Public Advocate Defeats Dangerous Merger**

One of the most significant threats to ratepayers came when a merger was proposed between New Jersey-based Public Service Enterprise Group (PSEG), the parent company of Public Service Electric and Gas (PSE&G), and Illinois-based Exelon Corporation.

The merger would have created the largest utility in the United States. It would have meant that PSE&G, a 100-year old New Jersey corporation that provides electric and gas service to more than 2 million New Jersey homes and businesses, would have been owned by an out-of-state company. And, it could have had a dramatic impact on the cost of energy, on New Jersey's economy and on the quality of utility service received by millions of state residents.

The Public Advocate, through the Division of Rate Counsel, opposed the merger as it was proposed. The department maintained that the merger would have had a negative impact on New Jersey.

The department detailed its opposition in a brief to the Administrative Law Judge who was hearing the matter. The Public Advocate also produced a Citizen's Guide to the PSEG-Exelon Merger, which helped the public understand the significance and magnitude of the merger, including its potential impact on energy rates for every single family, business and government entity in New Jersey, not just PSE&G customers.

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***Last year alone, Rate Counsel helped to save ratepayers an estimated \$473 million in reduced rate hikes and other credits.***

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Specifically, the Public Advocate was concerned that the merged company, due to its increased market share, could raise the wholesale price of electricity above competitive levels. Rate Counsel, the BPU and other parties requested a re-hearing by the Federal Energy Regulatory Commission on the proposed merger, but the requests were denied in December 2005.

In February 2006, the Division of Rate Counsel, the BPU and other parties appealed the FERC's decisions to the U.S. Court of Appeals for the D.C. Circuit.

After numerous efforts to reach a negotiated settlement, on Sept. 14, 2006, Exelon and PSEG announced they would abandon the proposed merger.

**Water and Sewer.** The Division of Rate Counsel also represented consumers in water and wastewater matters before the Board of Public Utilities. The division evaluates the quality of services and has become increasingly active in protecting the supply of clean, safe, affordable drinking water for consumers, as well as monitoring and participating in the activities of several water supply and water quality organizations, including the DEP.

**Insurance.** As part of the formation of the Department of the Public Advocate last year, the division took on the added responsibility of representing consumers when companies in certain insurance matters seek a rate increase.

In 2006, rate counsel reviewed 17 filings of companies seeking rate increases in the insurance area.

Type of Case	#Cases
Medicare	15
Automobile	2
Generic	1

This area of law is rapidly expanding and the Rate Counsel regularly reviews cases from insurance companies with the assistance of an experienced insurance consultant. On two occasions, the division has requested that the Commissioner of Banking and Insurance suspend proposed increases pending receipt and review of additional data from the insurance companies. Both filings have been resolved to the benefit of consumers.

**Fostering Competitive Energy Policies**

Under state law, New Jersey's electric distribution companies are required to provide basic generation service (BGS) for customers who did not choose a competitive supplier following the deregulation of electric utilities. In reality, this encompasses the entire New Jersey residential market, as well as parts of the commercial market because no effective competition has ever been established.

For the past several years, the BPU ordered the distribution companies to procure the electric supply by a single, statewide auction. In February 2006, the BPU held its 2006 auction. Bid prices increased about 55 percent from the previous year.



After the auction, the BPU requested that comments be filed to determine whether changes should be made to the power auction.

Rate Counsel raised several issues. We recommended expanding the type of resources considered for provision of supply to include longer-term contracts and arrangements to help develop the emerging longer term wholesale market, and provide a ballast of longer-term procurement to stabilize prices and reliability for customers.

The BPU voted to explore Rate Counsel's recommendation for a longer term contract in a working group after the 2007 auction. The BPU also requested an independent assessment of the power auction to obtain recommendations to enhance the competitiveness of the auction.

### **Comprehensive Hospital Services**

The Public Advocate responded to a threatened loss of health services resulting from a hospital consolidation in Passaic City.

The state faced a decision whether to authorize and support St. Mary's Hospital in acquiring the assets of PBI Regional Medical Center, which is in bankruptcy. In this, as in all hospital consolidations, the state's overriding interest is in ensuring the community maintains local access to comprehensive, high quality hospital care.

Because St. Mary's is affiliated with the Roman Catholic Church, it operates under the strictures of the Church's *Ethical and Religious Directives for Catholic Health Care Services*, and questions arose about whether the consolidation would result in the loss of vital reproductive health and end-of-life care in the Passaic community.

The Public Advocate briefed state officials about the threatened services, the associated legal mandates and important questions to ask to assess the propriety of the state's commitment of government money to any such consolidation.

On Jan. 10, 2007, Public Advocate staff testified at hearings on the hospital consolidation in Passaic, emphasizing the importance of maintaining comprehensive services.

Our advocacy contributed to the state's decision to attach conditions to its support of St. Mary's larger and more exclusive role in the Passaic community. These conditions will help to ensure the preservation of vital reproductive health services, including comprehensive HIV/AIDS counseling, family planning services and sterilization.

Going forward, we are working with the Governor's Commission on Rationalizing Health Care to provide guidance as it considers the financial status and possible consolidation of hospitals.

# Section 5: Protecting Civil Rights



## Medicaid Coverage for Newborns of Undocumented Mothers

The Public Advocate opposed new federal rules that would deny emergency Medicaid coverage to newborns of undocumented women. The proposed policy would have required parents to document citizenship for these babies before receiving services, even though their birth in the United States itself establishes their citizenship.

The Public Advocate recommended that New Jersey continue to provide automatic coverage to these newborns while advocating that the federal Department of Health and Human Services rescind the policy.

On March 20, 2007, the federal Centers for Medicare and Medicaid Services rescinded the harmful policy and “put all newborns whose deliveries are covered by Medicaid on equal footing again.”

## School Enrollment without a Social Security Number

In September 2006, an ACLU study showed that of 224 New Jersey school districts surveyed, 27 percent required a child’s social security number as a condition of enrollment. This is prohibited by law.

The Public Advocate worked with Education Commissioner Lucille Davy to address the problem, and Commissioner Davy sent a directive to county superintendents to instruct districts that they may not ask for Social Security numbers when enrolling students.

The directive required the districts to:

- Inform those staff members who interact with parents that they cannot ask for a Social Security number when enrolling a child; and
- Review and delete from all websites, enrollment forms and any indication that a Social Security number is required.

The department will continue to monitor this issue.

## Immigration Issues

With an eye to addressing other immigration problems arising around the state, the Public Advocate is working with the League of Municipalities to identify the most pressing issues at the municipal level. Department staff are monitoring the activities of towns and cities with regard to their immigrant populations and assisting the League in surveying mayors about their views of and responses to these issues. Based on this research, we will develop an agenda to advance the fair and humane treatment of immigrant residents of our state.

## Civil Rights Cases

The Public Advocate this year took action in two cases involving individual civil liberties.

*United States v. Rabner*, pending in the United States District Court. The United States seeks to enjoin the enforcement of subpoenas issued by the New Jersey Attorney General to investigate whether telecommunications companies serving New Jersey consumers violated state law by turning domestic phone records over to the National Security Administration without a warrant or any other judicial authorization.

The Public Advocate filed two amicus briefs, arguing both that the federal court lacks jurisdiction and that there is no basis in federal law for preventing enforcement of the subpoenas. The matter has been transferred to federal court in San Francisco and consolidated with a number of other matters, and there has been no ruling yet from the federal court.

*Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association*, pending before the New Jersey Supreme Court. This case presents the question of whether residents in planned, privately-owned housing developments have the right under the New Jersey Constitution to express their views and to participate meaningfully in the governance of their homeowners' associations.

The Public Advocate filed an amicus brief supporting the Appellate Division's holding that these associations function like municipalities and must accord their residents the same state constitutional rights that all New Jersey residents enjoy.

### **Public Access to Public Land**

The Public Advocate submitted comments to the Department of Environmental Protection in January 2007 supporting its proposed regulations to guarantee public access to tidal waterways and their shores and recommending increased protections.

The comments underscore the importance of the rules and reinforce their roots in the ancient doctrine of the public trust, under which the people of New Jersey are provided access to waterways. The comments also suggest ways of strengthening the regulations to ensure access for all, including people with disabilities.

To help educate the public about beach access, the department published a guide to New Jersey's beaches in the summer of 2006, providing information on fees, restrooms, parking, disability access, and more.

# The Re-Building of the Department of the Public Advocate

When the Department of the Public Advocate was reopened on March 27, 2006, the new **Public Advocate Ronald K. Chen** faced the daunting task of rebuilding disbanded divisions and reorganizing offices that had been scattered to other state agencies.

Chen, with the help of Chief of Staff Curtis Fisher and Assistant Public Advocate Jo Astrid Glading, was able to assemble an impressive array of staff, including attorneys with dozens of years public policy experience and legislative and policy experts who brought a breadth of knowledge and experience to the new department.

These talented individuals lead an equally talented and dedicated junior and support staff to form a team that is committed to advocating for the people of New Jersey.

**Public Advocate Ronald K. Chen** is an accomplished attorney and law professor who has dedicated the past 18 years to public service. Prior to becoming the Public Advocate, Ron was the Associate Dean for Academic Affairs at Rutgers University Law School, Newark. In addition to his work at the law school, Ron



handled many cases for the American Civil Liberties Union aimed at protecting people's civil and constitutional rights.

Ron summed up his vision for the Department of the Public Advocate during his confirmation hearings:

**“New Jersey is a great state. But too many New Jersey citizens continue to face economic hardships and other injustices. At some point in our lives, almost all of us may find ourselves in one of the groups who do not have access to effective**

**advocacy—children, the elderly, rate payers—so in giving a voice to those groups, we are in a sense giving a voice to the public at large.”**

*Ronald K. Chen*

*March 2006*

*New Jersey Senate Judiciary Committee  
Hearing*

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# Department Overview

## **Fiscal Responsibility**

In order to maximize limited resources, the department made a decision during its first months of operation to enter into an innovative agreement with the Department of Treasury.

Under that shared services agreement, the Public Advocate pays Treasury to provide it with administrative services at a much lower cost than if the Public Advocate were to build an internal bureaucratic structure to provide those services internally. The agreement covers technology services, personnel services and fiscal/budget services. It also takes advantage of the exceptional expertise and skills of Treasury Department staff in these areas.

Under this agreement, the Department of the Public Advocate became the first principal department in New Jersey State government to enter into this type of innovative arrangement.

The Department of the Public Advocate now contains six divisions and three ombudsman offices, plus the Office of the Child Advocate, which is “in but not of” the Department of the Public Advocate.

With a \$19.5 million budget, the department is funded to employ 223 full-time employees. It should be noted, however, that, of the total budget, roughly \$14 million was shifted from existing budgets as offices housed in other departments were moved to the Public Advocate.

That includes the staff for the Office of the Ombudsman for the Institutionalized Elderly, the Office of the Corrections Ombudsman, the Office of Dispute Settlement and the former Division of Mental Health Guardianship. All of these offices and their employees had continued to operate in the years after the former Public Advocate was disbanded. When the new department was formed, they were moved under the umbrella of the Public Advocate.

## **Protecting the Public Interest**

One of the core functions of the department is to protect the public interest. The **Division of Public Interest Advocacy** examines public policy and uses research, advocacy and legal intervention to advance

reforms that will benefit New Jersey citizens. Key areas include reforming the use of eminent domain for private redevelopment, reducing childhood lead poisoning and securing the right to vote for all New Jersey citizens.

**Division Leader: Catherine Weiss**

## **Improving Life for People with Developmental Disabilities**

Protecting the safety and legal rights of New Jersey citizens with developmental disabilities is the central charge of the **Division of Developmental Disability Advocacy**. The division’s staff works to promote policies and practices that ensure people with developmental disabilities have safe and effective supports and services and opportunities to participate fully in all aspects of their communities.

**Division Leader: Elizabeth Shea**

## **Protecting Individuals With Mental Illness**

The **Division of Mental Health Advocacy** protects and advocates for people who have mental illness. The attorneys and staff in this division ensure that people within the mental health system receive the care and assistance they need to live the fullest lives possible. The division includes the Mental Health and Guardianship unit, which represents individuals who are facing commitment to psychiatric facilities.

**Division Leaders: Ann Portas and Patrick Reilly**

## **Advocating for the Elderly**

The **Division of Elder Advocacy** works to secure, preserve and promote the health, safety and welfare of New Jersey’s elderly population. Through legislative and policy work, education and outreach, this division advances reforms to improve the quality of life for New Jersey’s older residents.

This division is also charged with protecting the rights of residents of long-term healthcare facilities who are age 60 or older. The **Office of the Ombudsman for the Institutionalized Elderly** is staffed with investigators and nurses who investigate reports of abuse or

neglect of people living in nursing homes and other long-term care facilities and take action to protect them from harm.

**Division Leader: Alice Dueker**  
**Elder Ombudsman: William Isele**

#### **Helping Citizens Navigate Government Agencies**

The department keeps an open line of communication with New Jersey citizens through its **Division of Citizen Relations**. The division investigators respond to complaints about state agencies and local governments. They educate citizens on the most effective government service for a particular problem. If a state agency fails to respond, Citizen Relations staff advocate on behalf of citizens to resolve disputes.

The **Office of Dispute Settlement and the Corrections Ombudsman** are also located in this division. The Office of Dispute Settlement provides neutral mediation services to resolve a wide variety of disputes, including those brought by individuals seeking access to government records under the Open Public Records Act and claims under the New Home Warranty Act. This office also serves as court-appointed mediator and provides dispute resolution training.

The Office of the Corrections Ombudsman addresses issues, problems or complaints of those confined to the New Jersey state correctional system.

**Division Leaders: Eric Max and Donna Jago**  
**Corrections Ombudsman: Luis Silva**

#### **Fighting For Consumers**

The Division of Rate Counsel ensures that utility consumers receive safe, adequate and proper service at affordable rates. The division examines each request by a public utility for a change in rates or service terms, with the goal of protecting ratepayers from unfair or unjustified increases in their electric, gas, cable TV, telecommunications or water bills. This division has the legal right to challenge proposed increases and represents the ratepayer on any changes to utility service. The division also represents consumers in a limited number of health and auto insurance matters.

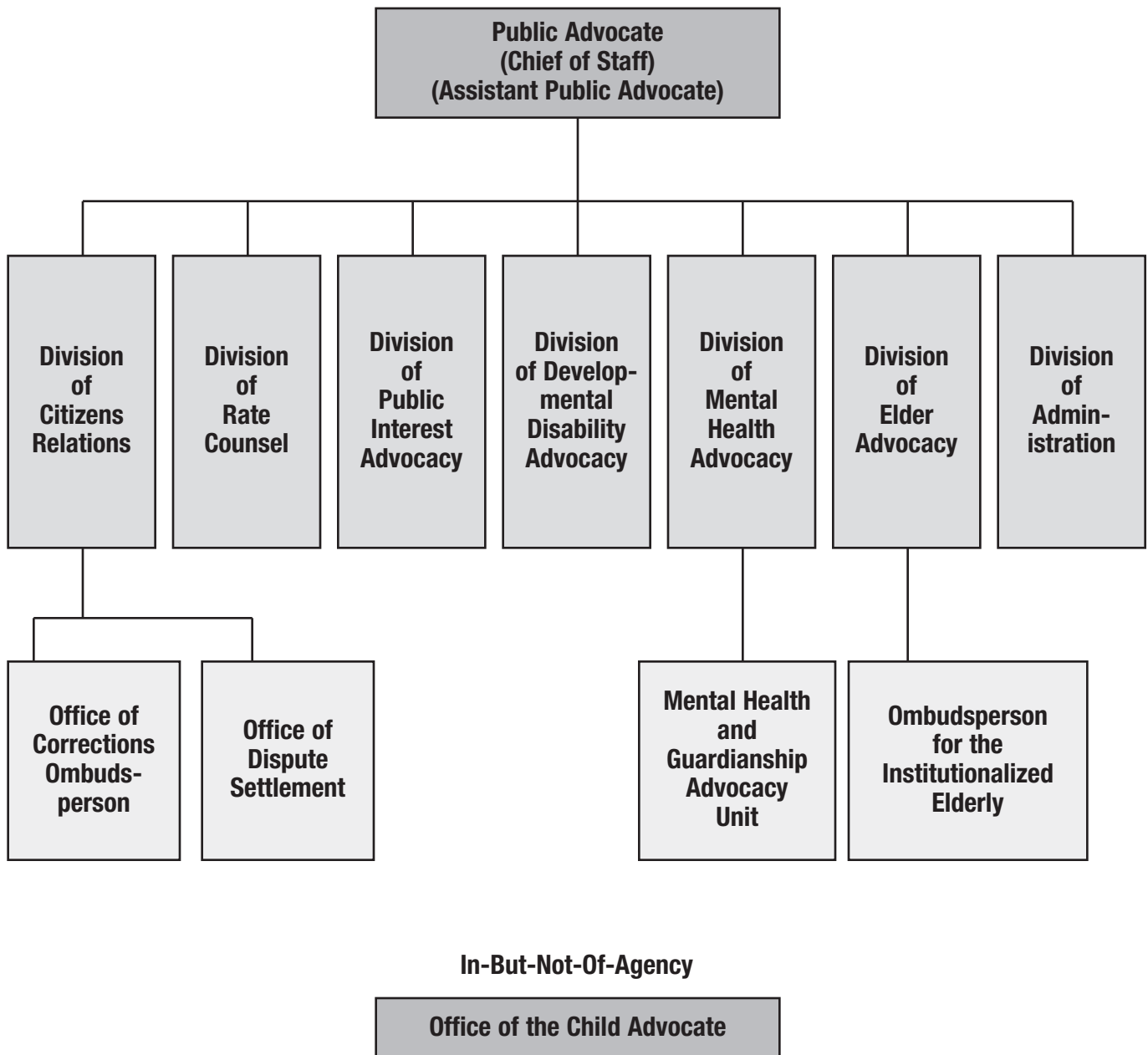
**Division Leader: Seema Singh**  
**(Resigned effective April 5, 2006)**

#### **Safeguarding Children**

The Office of the Child Advocate, an independent agency within the Department of the Public Advocate, works to protect the interests of children who are at risk of abuse or neglect. The Child Advocate seeks to improve the safety and well-being of New Jersey's children through investigation, policy and practice reform, public reporting, hearings, litigation and other strategies.

**Child Advocate: Dr. E. Susan Hodgson**

# Department of the Public Advocate



# On Our Website

The Public Advocate strives to be an accurate source of information for the public, policymakers, advocates and others on specific issues. Following is a list of reports, legal briefs, citizen guides and other information currently available on our website.

## Reports and Publications

- Expanding Mental Health Coverage Saves Medical, Human Costs
- Restoring the Burden of Proof to School Districts in Special Ed Hearings
- 2006 Guide to State Beach Fees
- Citizen's Guide on PSEG-Exelon merger
- Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey
- Office of the Ombudsman for the Institutional Elderly Annual Report

## Legal Briefs

- Public Advocate Opposes City of Long Branch's Motion to Strike Amicus Brief and Appendix
- *Amicus* brief in Eminent Domain case: Gallenthin Realty Development, Inc. v. Borough of Paulsboro
- *Amicus* brief in Eminent Domain cases: City of Long Branch v. Gregory P. Brower et al. and City of Long Branch v. Anzalone

- *Amicus* brief in Eminent Domain case: Save our Homes et al. v. Borough of Lodi
- *Amicus* brief in Free Speech Case: Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association
- *Amicus* brief filed with the New Jersey State Supreme Court on Lead Paint Case
- *Amicus* brief: T.H. vs Division of Developmental Disabilities
- Public Advocate Asks U.S. District Court to Dismiss Federal Lawsuit
- Petitioner's Brief on Opinion 705 Supreme Court Advisory Committee on Attorney Ethics

## Citizens Guides

- Consumer Conservation Handbook
- Citizens Guide To Exelon-PSEG Merger
- Consumer Assistance Handbook: A Guide for Natural Gas, Water, Electric, Telephone and Cable TV Customers
- Financial Assistance Programs
- Understanding Your Electric Bill
- Understanding Your Natural Gas Bill
- Cable Television Edition: Informed Consumers Make Smart Decisions
- Customer Choice Q & A
- Natural Gas Customer Choice Edition



# Contact Us

In addition to advocating for broad public policy change, the Department of Public Advocate helps individuals with specific concerns related to the care of the institutionalized elderly, interaction with local and state governmental agencies and inmates confined to state prisons.

Email: [PublicAdvocate@advocate.state.nj.us](mailto:PublicAdvocate@advocate.state.nj.us)

**Office of the Ombudsman for the Institutionalized Elderly**

Ph: (877) 582-6995  
Fax: (609) 943-3479

**Division of Citizen Relations**

Phone: (609) 826-5070  
Fax: (609) 984-4770

**Office of Dispute Settlement**

Phone: (609) 292-1773  
Fax: (609) 292-6292

**Office of the Corrections Ombudsman**

Phone: (609) 292-8020 or (609) 633-2596  
Fax: (609) 633-8644

**Department of the Public Advocate**

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