

THE NEW YORK STATE HUMAN RIGHTS LAW PROHIBITS DISCRIMINATION IN EMPLOYMENT, HOUSING, CREDIT, PLACES OF PUBLIC ACCOMMODATIONS, VOLUNTEER FIREFIGHTING, AND NON-SECTARIAN EDUCATIONAL INSTITUTIONS, BASED ON AGE, CREED, RACE, COLOR, SEX, SEXUAL ORIENTATION, NATIONAL ORIGIN, MARITAL STATUS, DISABILITY, MILITARY STATUS, ARREST RECORD, CONVICTION RECORD, FAMILIAL STATUS, AND PREDISPOSING GENETIC CHARACTERISTICS.

# 2007/2008 ANNUAL REPORT



NEW YORK STATE  
DIVISION OF  
**HUMAN  
RIGHTS**

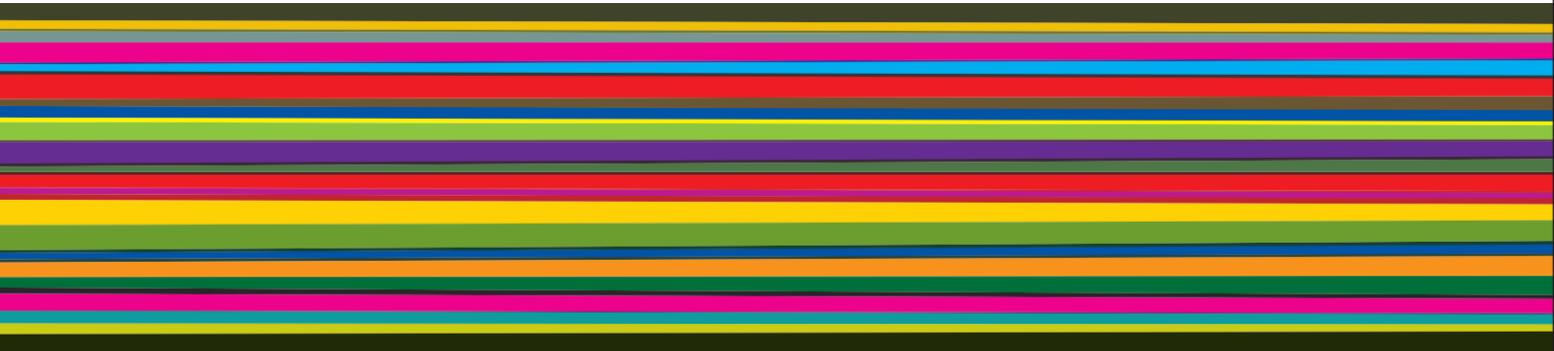
DAVID A. PATERSON, GOVERNOR  
GALEN D. KIRKLAND, COMMISSIONER

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718-741-8400

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## Message from the Commissioner...

It is my pleasure to report to the Governor, Legislature, and all New Yorkers on the activities of the New York State Division of Human Rights during the last fiscal year. Over the course of the last year, the Division has undergone substantial internal changes resulting from the election of a new Governor, after twelve years under the same leadership. Change can be a very positive influence, as it permits for new ideas to enhance the old, and for creative thinking, which facilitates innovation. In the case of the Division, our higher profile in the media and press, among other factors, led to an increase of 25% in the number of individual complaints filed. Internal procedural and policy changes improved both the timeliness of adjudicating these complaints, and the quality of those investigations.

Under its new leadership, the Division created an enforcement unit, which undertook a number of Division-Initiated Investigations and Complaints, the first in more than a decade. These Investigations and Complaints addressed alleged patterns and practices of discrimination that impacted tens, if not hundreds of thousands, of New Yorkers.

The Division conducted substantial outreach to educate New Yorkers regarding their rights, including holding a number of town hall meetings around the State, meeting with editorial boards of major regional papers, increasing the quantity and quality of publications available, and vastly improving the Division's website. In Albany, the Division proposed enhancements to our already broad Human Rights Law ("HRL" or "Law"). One bill, submitted as a Division departmental bill, was signed into law by the Governor. This bill clarified an ambiguity in the existing law pertaining to the rights of persons with hearing impairments, and reaffirmed the State's policy of permitting people utilizing service dogs expansive access to all areas under the Law's jurisdiction.

We will continue to improve the individual complaint process, aggressively pursue systematic discrimination under the Division's jurisdiction through Division-Initiated Investigations and Complaints, increase our outreach to New Yorkers and support the enactment of important legislation, which will continue to expand New York's civil rights protections. In 1945, New York was the first State to enact an anti-discrimination law. We will ensure that our State continues to lead the way in expanding civil rights protections, which are necessitated by our ever-changing society.

## Governor Paterson

David A. Paterson is New York's first African-American Governor and first to be open about a physical disability.

The Governor is a person living with a visual impairment and embodies the principle that all Americans and New Yorkers, irrespective of physical challenges, can enrich society, if given equal access to the benefits and privileges of our State.

Governor Paterson has dedicated his more than two decades in public service to advocating for the civil rights of New Yorkers. During his tenure in the State Senate, he sponsored or co-sponsored numerous laws which broadened the protections afforded under our State's Human Rights Law. In 2001, he was instrumental in supporting the Sexual Orientation Non-Discrimination Act, which extended protection of the Law to the gay, lesbian and bisexual community. He has also been a staunch advocate of legislation to help people living with disabilities.

In the short time he has been Governor, he has moved expeditiously to continue to expand the rights of all New Yorkers. For example, Governor Paterson has ordered all State agencies to adjust their policies and procedures to ensure that out of state same sex marriages are afforded full recognition by the State. He supports the Gender Equality Non Discrimination Act, which would expand State civil rights protections to the transgendered community, and the same sex marriage bill currently pending in the State Legislature.



## Commissioner<sup>1</sup>

Galen D. Kirkland is an attorney with extensive experience in state government and civil rights issues, who has served in a variety of legal and policy positions.

In May 2008, Governor David A. Paterson appointed Mr. Kirkland to serve as Commissioner of the Division of Human Rights. As the Commissioner, he is responsible for developing, managing, and executing strategies to prosecute systematic forms of discrimination through investigations and complaints initiated by the Division or by individual complainants, and for developing policies and legislation to advance the civil rights of all New Yorkers.

Prior to joining the Division, Commissioner Kirkland served as Director of Program Development at the New York State Office of the Attorney General, where he also served as First Deputy Director of Policy Development during his eight year tenure at that Agency. He previously served as the Executive Director of Advocates for Children of New York, overseeing educational advocacy programs on behalf of students in the New York City public schools. He also served on the Board of Directors of the Campaign for Fiscal Equity.

From 1989 to 1990 Commissioner Kirkland was the Executive Director of the New York City Civil Rights Coalition, a multiracial coalition of civil rights, religious, and community organizations, where he formulated responses to bias-related violence and organized multiracial coalitions in certain neighborhoods. From 1978 to 1988 Commissioner Kirkland served as the Vice President and General Counsel of the West Harlem Community Organization, Inc., where he developed low-income housing and promoted economic development. During this time, he was also President of the Association for Neighborhood Housing Developers, President of the Task Force on City-Owned Property, and member of the Board of Directors of Community Training and Resource Center. He started his legal career as an associate at Cowan, Liebowitz and Latman in New York City.

Commissioner Kirkland holds a law degree from the University of Pennsylvania Law School and a Bachelor of Arts from Dartmouth College.

<sup>1</sup> Kumiki Gibson served as Commissioner of the Division of Human Rights from January 1, 2007 through April 12, 2008.



## First Deputy Commissioner

Luis R. Burgos, Jr. is an attorney with extensive experience in city government and civil rights issues.

In May 2008, Governor David A. Paterson appointed Mr. Burgos to serve as First Deputy Commissioner of the Division of Human Rights. As the second in command in the agency, Mr. Burgos is responsible for preparing and supervising agency administrative policy. He also represents the Commissioner on various intergovernmental committees in negotiation with State legislators and in negotiations with employee unions.

Prior to joining the Division, Mr. Burgos served as Deputy Commissioner with the New York City Department of Correction (NYCDOC), where he focused on equal employment opportunity issues, and assisted in the development of training for supervisors, managers and personnel.

From 1986 to 1994, Mr. Burgos was employed by the New York City Housing Authority (NYCHA) in various capacities, including Chief Administrator of the Impartial Hearing Office, Director of the Office of Equal Employment Opportunity, and Deputy Inspector General. He previously served as an Assistant District Attorney in the Queens County District Attorney's Office.

Mr. Burgos holds a law degree from Columbia Law School, where he was a Staff Editor of the Columbia Human Rights Law Review, and a Bachelor of Business Administration from Pace University. In addition, Mr. Burgos is a Colonel in the United States Army Reserve.

## Civil Servants

The heart of the Division is its approximately 200 civil servants. The Division is very proud to have a staff dedicated to public service and civil rights. Many of the staff at the Division have been with the agency for their entire careers, which demonstrates their commitment to the cause of advancing civil rights. The Division maintains staff in its eleven regional offices, to ensure that our mission is furthered in every region of the State.

## Individual Complaint Process

A major aspect of the Division's mission is to investigate and adjudicate individual complaints of discrimination. Approximately 7,000 cases are filed with the Division annually. After a complaint is filed, the Division assigns an investigator who interviews the parties and witnesses, holds conferences where appropriate, reviews documents, and in certain cases, conducts site visits. After investigation, a regional director will determine whether or not probable cause exists to believe discrimination occurred. If the Division finds probable cause, which means issues of fact or law are in dispute which can only be resolved through testimony taken under oath at a hearing, a hearing is scheduled before an Administrative Law Judge.

The Division provides attorneys who present the complaint on behalf of the Division at the hearing. The parties present witnesses and evidence, and the Administrative Law Judge ultimately issues a recommended order for the Commissioner's consideration. The recommended order can be a finding that no discrimination occurred, or a finding that discrimination did in fact occur. In a case where the Commissioner finds that discrimination occurred, the Commissioner can order that the Complainant be awarded monetary damages, and/or that a Respondent be ordered to cease engaging in prohibited conduct and/or implement an anti-discrimination policy to avoid future incidents of discrimination. The Commissioner can also order specific relief, such as reinstatement in an employment termination case, or access to a housing accommodation that had been unlawfully denied. The Division also maintains an appeals bureau which supports Commissioner's orders finding discrimination in the appellate process.

# Case Processing Times

In 2007/2008, the Division experienced a 25 percent increase in the number of individual complaints filed. (Table 1-A) The significant majority of these cases were in the area of employment, followed by housing and public accommodation (Figure 1). The basis most frequently alleged in these complaints was race/color, followed by disability, sex, etc. (Figure 2).

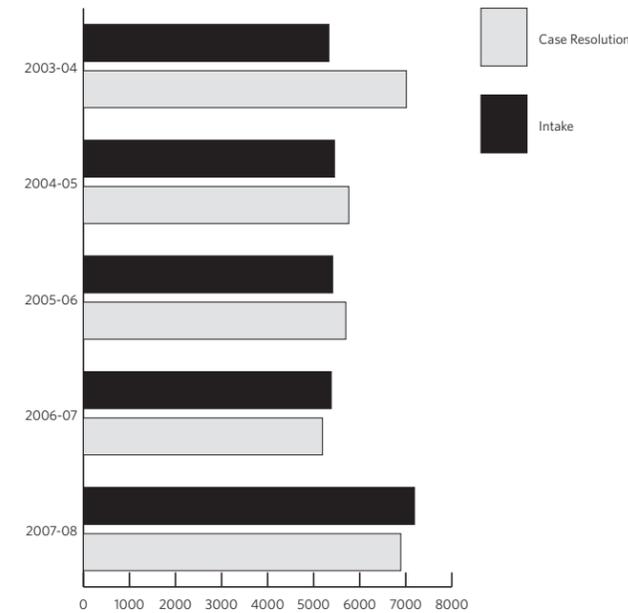
To handle this increase and to expedite pending cases, the Division rigorously enforced strict deadlines in the investigation and hearing process. (Table 1-B) The Legislature had enacted the time frames of 180 days to complete an investigation and 465 to adjudicate the entire complaint. Previous administrations and the courts had interpreted these time frames to be directory, rather than mandatory. However, in 2007/2008, the Division took a different view, and adopted the deadlines as mandatory. Substantial efforts were made to streamline and expedite the process, including the elimination of formal procedures to conciliate and/or settle disputes, both at the investigatory and/or hearing stage.

As indicated in Tables 2-A and 2-B on page 17, the Division had success in reducing the number of cases more than two years old by implementing a structured calendaring process which sought to eliminate cases more than two years old while ensuring that cases filed after January 1, 2007 remained timely. Although the calendaring policies implemented by the prior Administration were in some measure successful in moving cases from investigation to hearings in compliance with the 180 day statutory timeframe, the result has been a dramatic increase in cases pending in the hearing unit.

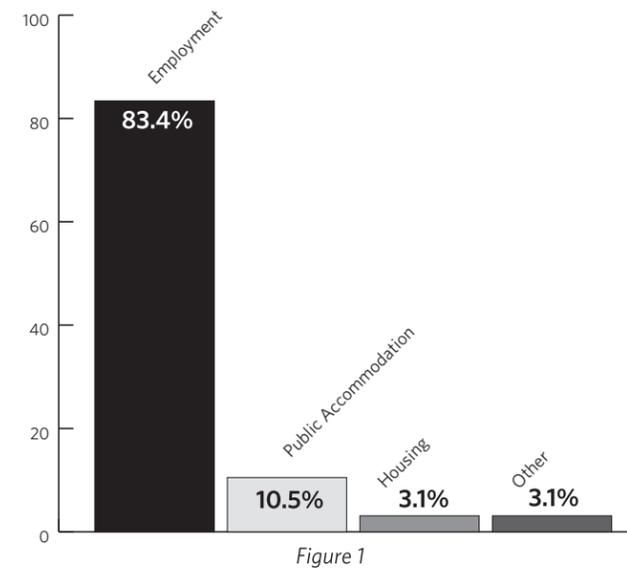
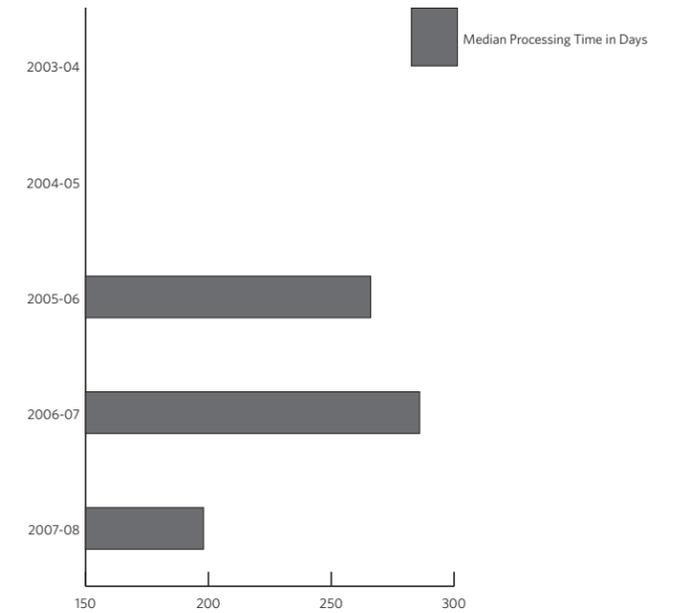
The Division completed a record number of investigations during FY2007/2008, and their outcomes can be seen in Figure 3. The outcomes of the Division's hearings process as depicted in Figure 4.

Over the course of the next year, the Division will seek to continue its success in the timely processing of investigations, and attempt to ensure the large increase in the number of cases awaiting hearings is addressed in the most expeditious way possible. It is true that justice delayed is justice denied. Thus, the Commissioner and almost two hundred dedicated public servants at the Division will prioritize timely processing of cases awaiting hearing.

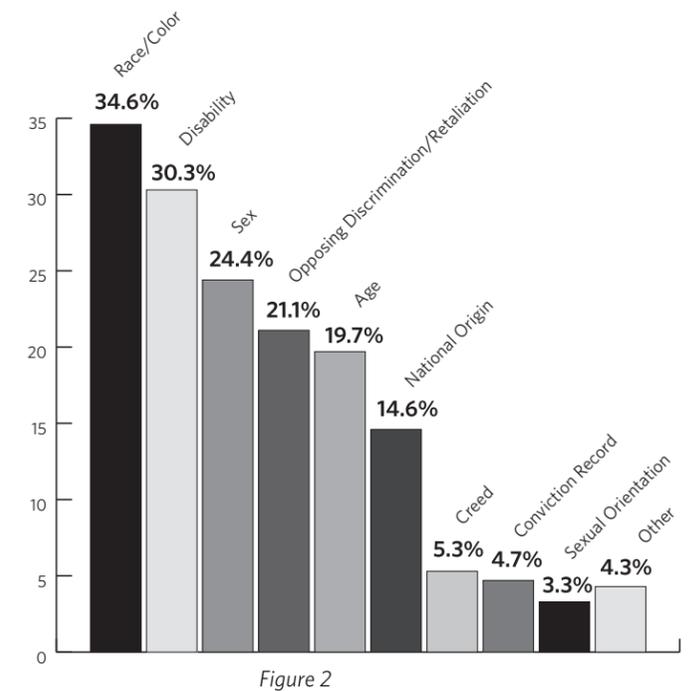
**TABLE 1-A Cases**



**TABLE 1-B Days**



NOTE: Percentages for jurisdiction do not equal 100 percent because of rounding errors.  
SOURCE: NYS DHR Case Management System



For Bases Cited, some complaints allege more than one basis; therefore the total percentage of bases cited will be more than 100 percent.  
SOURCE: NYS DHR Case Management System

## Putting A Face To Our Process

All Commissioner's Orders are available on our website,  
[www.dhr.state.ny.us](http://www.dhr.state.ny.us).

Here is a sampling of the cases that were adjudicated last year:

### **Jackson v. Heflin Painting**

In a case alleging a hostile work environment based on race, the co-workers of Randolph Jackson, a Black painting contractor, referred to him and other Blacks in derogatory language while on the job. After enduring intolerable discriminatory behavior by his colleagues and a supervisor, Mr. Jackson resigned from his job, and came to the Division for assistance. After an investigation and then a hearing, the Commissioner found that Heflin Painting had violated the Human Rights Law and awarded Mr. Jackson \$8,690 in lost wages and \$15,000 for his mental suffering.

### **Orton v. Ronald Woehrling**

In this case, Julie Orton signed a lease for an apartment, located in Buffalo, NY, with Ronald Woehrling. After Mr. Woehrling learned of Ms. Orton's pregnancy (she was six months pregnant at the time), he refused to let her move into the apartment, despite the fact that Ms. Orton had signed the lease, had relinquished her current apartment, and had arranged for movers to move her belongings. Mr. Woehrling's refusal to rent left Ms. Orton homeless with no family in the area, and resulted in her obtaining a slightly more expensive apartment, without some of the amenities of the one being rented by Mr. Woehrling. The Division investigated the matter, and after a full hearing the Commissioner concluded that Mr. Woehrling had violated Ms. Orton's civil rights and awarded her \$20,000 for mental suffering, \$10,000 in punitive damages, and \$2,970.95 for out-of-pocket expenses.

### **Anderson v. NYS Worker's Compensation Board**

A disabled Black employee requested to be stationed at respondent's New York City office, which was located closer to her home in Pennsylvania, because of a temporary ankle injury. Her employer, the New York State Worker's Compensation Board, relocated the complainant to an alternate

office location, other than the one the complainant requested, but closer to her home than her previous office. Staffing concerns precluded the employer from granting the complainant the office she requested. The complainant then filed a complaint with the Division alleging that the employer reasonably accommodated non-Black employees with disabilities in a preferential manner in comparison to disabled Black employees. Following a hearing, the Division dismissed the complaint, finding that the employer made reasonable efforts to accommodate the complainant. The Division's decision reiterated that employers are under no obligation to "meet the personal preferences of disabled employees" and that "difficulties commuting to work need not be accommodated."

### **Nichols v. Sacred Heart Church of Auburn, NY**

In Nichols v. Sacred Heart Church of Auburn, NY, a divorced, female employee claimed that she was denied equal health insurance benefits by her employer, the Sacred Heart Church of Auburn, NY, because of her marital status and sex. Respondent brought an action in Court challenging the Division's jurisdiction, which the Division successfully opposed. Following investigation and then a hearing, the Division determined that the church was subject to the State's Human Rights Law in these circumstances, but had not acted in any discriminatory manner against Ms. Nichols, and dismissed the complaint.

*These cases and many others like them show the real and tangible impact of complaints filed through the individual complaint process.*

# Division-Initiated Investigations and Complaints

The Legislature has empowered the Division to combat patterns and practices of discrimination which are systemic in nature and have widespread impact on constituents across the State through Division-Initiated Investigations, and where appropriate, Division-Initiated Complaints. This powerful weapon in the Division's arsenal went unused for more than a decade. In January 2007, the new administration dusted off this potent weapon, and put it to use to defend New Yorkers against the scourge of discrimination. Division-Initiated Investigations and Complaints had a tremendous impact across the State, improving the lives of tens, if not hundreds-of-thousands of New Yorkers.

## East Meadow Union Free School District

In January 2007, we commenced our first Division-Initiated Investigation into the East Meadow Union Free School District's policy of prohibiting students with disabilities from using guide and service dogs. The Investigation was triggered by the plight of a hearing-impaired student who was denied the use of his service dog. However, the action was brought on behalf of all students with disabilities in East Meadow who rely on service animals to access the education they are both entitled to, and deserve.

East Meadow unsuccessfully challenged the Division's jurisdiction and right to investigate their practices in court. After an investigation resulted in a finding that probable cause existed to believe discrimination has occurred, a hearing was held before an Administrative Law Judge, who found that East Meadow's policies did, in fact, violate the Human Rights Law.

On March 10, 2008, the Commissioner issued an Order instructing East Meadow to cease its discriminatory practices. The Order establishes the principle that all school districts in the State must permit full and unimpeded access to educational facilities to students with disabilities who use a service animal. This matter is currently pending on appeal in the Appellate Division, Second Department.

## Kensington Gardens - Buffalo

On December 11, 2007, the Division commenced an investigation into developers of a housing complex limited to students. The investigation indicated that the developers were taking an integrated, moderate income housing complex, and converting it into a gated community that would serve a predominately single, young, and White student community. It was alleged that these actions, by design and in effect, discriminated against area residents based on familial status, race, and/or age.

After intensive negotiations, the Division and developers announced a settlement which provided for approximately 126 renovated, affordable housing units to be reserved for low-income individuals, seniors, and families. The Agreement also creates community, educational, and athletic centers that will provide classes and seminars, such as computer training and accounting classes, to all area residents for a nominal fee. All told, the new inclusive development will provide renovated and affordable housing to over 400 lower-income residents of the racially diverse Buffalo region, while providing economic development, and needed student housing for the Buffalo metropolitan area. This investigation and settlement demonstrates that integrated, fair, and accessible housing development is achievable and economically viable.

## Refund Anticipation Loans

The Division commenced an investigation into three major tax preparation companies - H & R Block, Jackson Hewitt, and Liberty Tax Service - alleging that these companies targeted communities of color and military families for high interest tax refund anticipation loans. The annual interest rate for these loans can rise as high as 700%. After a thorough investigation, the Division found that probable cause exists to believe that Jackson Hewitt and Liberty Tax Service engaged in discriminatory practices. A hearing will be held before an Administrative Law Judge to determine if in fact these companies engaged in prohibited discriminatory conduct. The investigation into H & R Block continues following Block's unsuccessful challenge to the Division's pre-complaint subpoena authority. The Supreme Court, Bronx County, decision upholding the Division's authority in this matter is currently on appeal.

# Amicable Resolution of Disputes

The Division was frequently successful in achieving positive change without having to launch formal investigations or complaints, by negotiating a resolution with affected parties. Below is an example of one of the Division's collaborative efforts.

## Home Depot

Under the Human Rights Law, it is unlawful to deny any employment or license solely because of an individual's prior criminal conviction record. Employers and licensing agencies are required to weigh factors set out in New York State Correction Law Article 23-A, which is referenced in the Human Rights Law, to determine whether there is a direct relationship between the prior conviction and the employment or license sought or held or whether the employment or licensing would cause an unreasonable risk to property or to the safety and welfare of specific individuals or the general public.

These factors include a recognition that it is the public policy of New York to encourage the employment and licensing of persons with such records. Part of the reasoning for this policy is that housing the more than 64,000 inmates currently in State prisons costs in excess of \$3 billion a year. This is on top of the costs associated with housing of the more than 27,000 inmates in county and city prisons. Many ex-offenders, once released, are unable to find employment which may result in their returning to illegal activity, and ultimately prison. Central to the mitigation of this problem is increasing access to employment and licensing for those who have paid their debt to society, and are willing and able to become productive, taxpaying citizens.

The Division began an examination into whether Home Depot's service provider screening process complied with the legal requirements set out above, to which the company promptly responded. Working collaboratively with the Division, Home Depot agreed to assure that its policies conformed to the Law, so that the required factors would be considered in the company's background check screening process for selecting contractors to join its network of independent, licensed professionals that complete

contracts for its home services division. The agreement allowed Home Depot to retain all the necessary tools to conduct proper background checks while protecting the rights of all New Yorkers.

Home Depot's Regional Vice President agreed on the value of this process for the company and all New Yorkers: "This was a productive collaboration between New York's Division of Human Rights and The Home Depot that makes sure all of our contractors are screened properly and fairly, while also protecting the quality and safety of the services we provide."

## The Future

*The Division has a number of on-going investigations and will continue to ensure that New Yorkers continue to benefit through our Division-Initiated Investigations and Complaints, and through amicably negotiated resolutions.*

## Interagency Collaborations

In these difficult budget times, the Paterson Administration is dedicated to maximizing taxpayer resources through interagency collaborations, which also serve to enhance delivery of services to constituents. The Division is represented on the following interagency Taskforces: HIV/AIDS Taskforce, led by the Department of Health; HALT (Halt Abusive Lending Transactions) Taskforce, led by the Department of Banking to end predatory lending and other abusive lending practices; Economic Security Council for Working Families; and the Environmental Justice Taskforce, led by the Department of Environmental Conservation. The Division's Commissioner is also vice-chairperson of the Governor's Executive Committee for Affirmative Action, which is chaired by the Commissioner of the Department of Civil Service.

The Division continues to work with its sister agencies to determine what future collaboration would maximize taxpayer resources and delivery of services to constituents.

## Outreach

Outreach and education is a vital component of the important work performed by the Division. In FY 2007/2008, the Division engaged in an extensive outreach in all regions around the State. The Division participated in community town hall meetings, multiple panels with the New York State Bar Association and county bar associations, and in educational forums sponsored by sister state agencies, not-for-profits and other community groups to ensure that New Yorkers understood their rights under the Human Rights Law.

The Division completely revamped its website to assure that it was user friendly and provided substantive content for visitors. For example, for the first time, the Division posted Commissioner's Orders on-line and the full text of the Human Rights Law and Regulations. The Division recently entered into an agreement with Westlaw to publish Commissioner's Orders on their legal search engine.

The Division redrafted all of its existing brochures and expanded the number of publications available. Division publications are also available in substantially more

languages, ensuring that as many of our diverse citizens as possible have access to Division publications. All of our brochures and other education materials are available on our website.

We invite you to visit our website at [www.dhr.state.ny.us](http://www.dhr.state.ny.us). We will continue to expand on the website to offer increased access to as many New Yorkers as possible.

The Division is committed to expanding its outreach efforts in the year to come in conjunction with its sister state agencies and federal partners, the United States Department of Housing and Urban Development and the United States Equal Employment Opportunity Commission.

## Legislative Progress

In 1945, New York State became the first state in the country to enact a Human Rights Law. Over the course of the past decades, New York has amended its Law to enhance protections for New Yorkers and address our dynamic society which continues to evolve and change.

During FY 2007/2008, New York continued its proud history as a national leader in the effort to adopt cutting edge civil rights legislation.

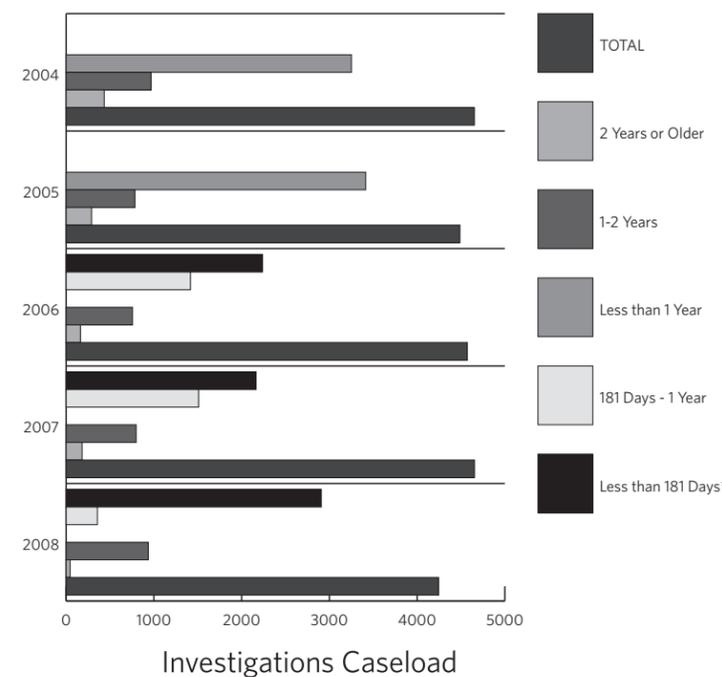
- The Governor signed into law a bill that requires public accommodations to provide greater access to their facilities for people with disabilities, by making explicit the requirement that public accommodations reasonably accommodate the disabilities of persons utilizing their facilities. This law, codified in Section 296.2 of the HRL, constitutes a major expansion of our law that will impact tens of thousands of New Yorkers living with disabilities, and increase their access to restaurants, hotels, stores, medical and professional offices and other public accommodations throughout our State. The law took effect on January 1, 2008.
- The Governor signed into law a bill that amends Article 23-A of the Correction Law, referenced in Section 296.15 of the HRL, to clarify that current employees with prior criminal records have the same protections against discrimination by employers as job applicants. Employers are prohibited from terminating employees based solely on prior criminal convictions, and must apply the "weighing process" set out in Article 23-A. The law took effect on July 18, 2007.

- The Governor signed into law a bill adding two additional categories to HRL 296.16, which prohibited employers, creditors, insurers or licensing agencies from inquiring about, or discriminating, based upon a prior arrest that has been resolved favorably. The categories added were persons who have youthful offender adjudications or certain sealed conviction records. These changes are not merely technical fixes, but expand into important areas that were not protected under the existing law. The law took effect on November 1, 2007.
- The Governor signed into law a bill removing limitations from HRL 296.14, so that all people with hearing impairments now have an absolute right to utilize hearing dogs in any area covered by the HRL. This equalized the playing field and offered the same degree of protection to people with hearing impairments that had been afforded to those with visual impairments and other disabilities. The terms guide dog, hearing dog and service dog were also defined by this legislation. The law took effect on October 1, 2007.

## Conclusion

*We firmly believe that in FY 2007-2008, the Division improved efficiency and service to our constituents across New York State. Our challenge over the course of the coming year will be to continue these improvements in a dramatically different economic environment both in New York State, and our country. Next year, we look forward to reporting to you on our achievements in this regard.*

**TABLE 2-A**



**TABLE 2-B**

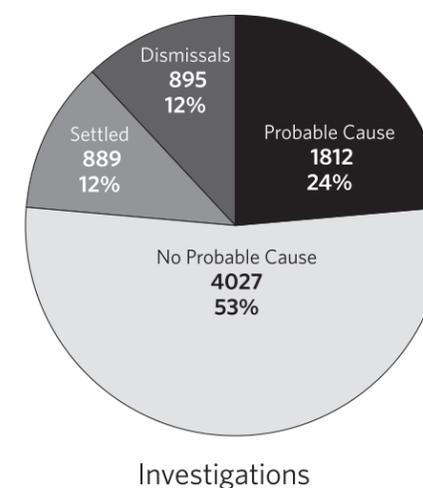
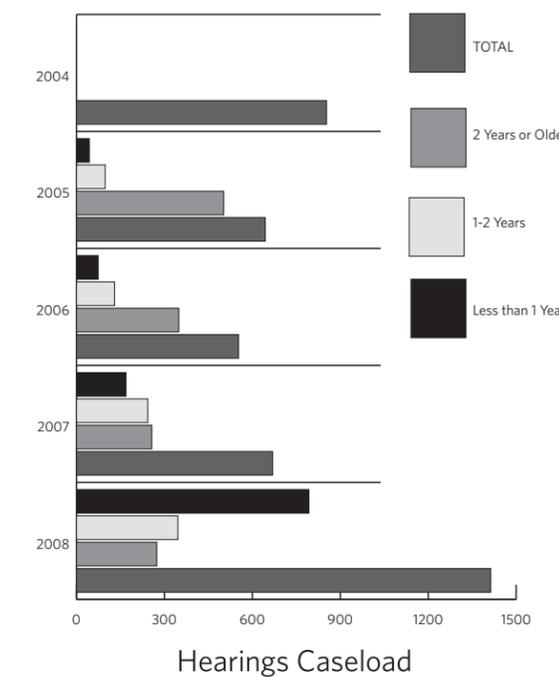


Figure 3

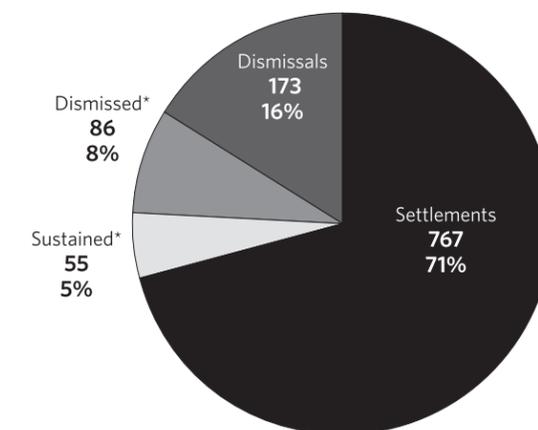


Figure 4  
\*Order after hearing

## HEADQUARTERS

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**Toll Free Number (for Complaint Info)**  
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**Binghamton** 44 Hawley Street  
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Binghamton, NY 13901  
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## REGIONAL OFFICES

**Long Island** (Nassau) 175 Fulton Avenue  
Suite 404  
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**Long Island** (Suffolk) State Office Building  
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**Manhattan** (Lower) 20 Exchange Place  
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