The Department of Social and Health Services (DSHS) requests $940,022 ($705,000 GF-State) for the Mental Health Section of the Attorney General’s Office (AGO). The mental health legal team continues to be inadequately staffed for its increasing workload. The AGO is unable to prioritize important client requests for advice and to initiate discretionary, but important, legal cases. This will increase the number of trained staff needed to meet the legal needs of the DSHS Mental Health program.

Representation of high-profile institutions, such as Western State Hospital (WSH) and the Special Commitment Center (SCC), and programs serving the criminally insane, criminal defendants found incompetent to stand trial, sexually violent predators and individuals committed to mental institutions, requires highly trained attorneys to provide effective, high quality legal services. The workload has steadily increased over the last three years and now exceeds the current staff’s capacity.

In addition to the litigation demands described below, requests for legal advice from the mental health team have also been increasing. The state behavioral health system is currently undergoing an extraordinary amount of change. Behavioral integration between mental health services and chemical dependency services is underway, as well as planning for integration of all community-based behavioral services under the Health Care Authority. There is increasing demand for state hospital services for both civil and forensic patients in the face of limited capacity. Centers for Medicare and Medicaid Services (CMS) certification at Western State Hospital remains a critical issue. All of this drives time-sensitive and nuanced legal advice so that policy makers can consider risks when making difficult policy decisions.

The mental health team also provides legal advice to a number of DSHS programs, including the Special Commitment Center, the Behavioral Health Administration, Western State Hospital, Child Study Treatment Center, the Office of Forensic Mental Health Services, the Division of Vocational Rehabilitation and the Division of Behavioral Health and Recovery. The team advises on broad range of subject matter, including the DSHS Systems Improvement Agreement with the Centers for Medicare and Medicaid Services, changes to institutional policy, constitutional and statutory provision of care issues, statutory notice obligations, interpretation of court orders and subpoenas, the Public Records Act, and compliance with HIPAA, 42 CFR Part 2 and the Washington Uniform Health Care Information Act (RCW 70.02). Generating this advice often involves considerable legal research, developing a thorough understanding of the relevant factual circumstances, and the drafting of a detailed advice memo.

The number of forensic and civil show cause hearings also continue to increase at a rate not anticipated when requesting funds for the 2017-19 Biennium. These hearings result from motions filed by plaintiffs asking the court to require DSHS to appear in court to “show cause” why it should not be found in contempt of court for failure to comply with the law, and the cases typically relate to exceeding permissible wait times for competency evaluations,
restoration, and failure to place individuals for long-term civil commitment beds at Western State Hospital in a timely manner. The hearings require defense in the form of legal briefing, travel for appearances in courts and counties all over the state, witness testimony, and often result in sanctions against DSHS. This work will continue—and may continue to increase—as long as the state’s mental health system does not have capacity to meet constitutional time periods.

With the increase in civil and forensic show cause (contempt) hearings, other division attorneys are also covering these hearings and the docket at WSH. These attorneys are diverted from their other important work, including public assistance, public records, revenue recovery, complex litigation and appellate cases. The following cases and issues reflect current legal work and are examples of anticipated future workloads:

- **Trueblood and DRW v. DSHS**, a federal class action concerning criminal defendants in jail awaiting competency services, continues to spawn multi-day hearings and, to date, five Ninth Circuit appeals. Federal court fines now exceed $27 million, and the latest motions require the almost fulltime attention of several staff. This case is very high profile, and presents significant financial and policy implications for the State;
- **T.R. v. Quigley**, federal class action concerning severely mentally ill children in Washington state requires support to the client during the ongoing settlement monitoring and implementation phase;
- **R.R., et al. v. DSHS**, federal class action concerning treatment for disabled residents at the SCC, requires support to the client during the ongoing settlement monitoring and implementation phase;
- **Ross v. Inslee**, federal case concerning services to those committed as not guilty by reason of insanity at Eastern and Western State Hospitals, requires support to the client during the ongoing settlement monitoring and implementation phase;
- **Special Commitment Center Litigation**: Attorneys assigned to the SCC have experienced an increase in litigation. In FY 2016, Assistant Attorney General (AAG) spent 3018 hours on litigation
  - In Fiscal Year (FY) 2016, AAGs spent 3331 hours on litigation related to the SCC; in FY 2017, AAGs spent 3917 hours on the same type of litigation, an increase of nearly 600 hours and 18%. Those matters include civil rights and public records litigation brought by SCC residents, regular §1983 actions, and a new series of lawsuits over water quality at the SCC.
  - The Special Commitment Center litigation team is also now regularly required to appear across western Washington in the civil commitment cases of sexually violent predators related to the structure of, and financial responsibility for, sexually violent predators community placements. That work is also increasing. In FY 2016, AAGs appeared in 30 of these community placement cases; in FY 2017 AAGs appeared in 37 community placement cases, an increase of 23%.
- **Guardianship petitions** are initiated for the protection of alleged incapacitated adults, at the request of the Western State Hospital.

It is particularly difficult to quantify the legal work that is delayed or simply cannot be done, due to prioritizing the escalating workloads described above. As examples, a single AAG assigned to the AGO mental health section described the following impacts of an unmanageable workload:

- Guardianship cases are often prioritized below other, more pressing matters. AAGs are often unable to pursue motions in the cases we do file, even when there is a need to do so.
- Client advice that is not immediately time sensitive may drop in priority, even when the legal issue is significant. An example is a medication policy change for which WSH requested advice.
145 - M2 - KP - AGO Mental Health Workload Increase

- An AAG could no longer participate in the WINGS (Washington Interdisciplinary Network of Guardianship Stakeholders) committee due to workload. The committee was formed for the purpose of addressing long term challenges to medical treatment for hospitalized adults who lack a surrogate decision maker and are incapable of providing informed consent. This is a subject that regularly leads to client advice requests.
- AAG trainings for the ward staff at WSH were narrowed to trainings only the leaders of treatments teams because AAGs did not have the capacity to provide more training.
- Civil show cause cases are increasing in complexity, and the AAG only has time to prepare a standard defense, rather than developing strategic new defenses based on the facts of the case presented.

The legal division has attempted to answer workload increases by temporarily diverting AAGs from other assignments, but this is a not a sustainable practice. The large volume of mandatory litigation deadlines force section AAGs to deprioritize important client advice tasks, discretionary legal challenges requested by the client, and the filing of guardianship petitions. AAGs struggle to perform important internal functions, such as proper records management and case closing, training, and strategic litigation management resulting in the deprioritization of these tasks. This has resulted in staff frequently working excessive hours and through many weekends. The resulting stress and burnout increases the risk of turnover of the current, well-trained staff. The lack of sufficient resources also undermines capacity for proactive work to meet longer term risk management objectives.

**PROPOSED SOLUTION**

This request will add funding to pay for 2.0 AAG, 1.0 Legal Assistant, and 0.5 Management Analyst 5 FTEs to the Mental Health Section. This will increase the number of trained staff needed to meet the legal needs of the DSHS Mental Health program.

**EXPECTED RESULTS**

DSHS has statutory and constitutional obligations to provide mental health services and due process to individuals who are civilly committed or under the care of the state. The AGO provides essential legal services to DSHS in the form of advice and representation in court in order for DSHS to fulfill its obligations. The AGO is also mandated to represent DSHS in actions challenging the adequacy of the mental health programs it administers. The AGO is integral to the success of alternative methods to resolve litigation in a manner that serves individuals in need of mental health services and the state. Funding for additional attorneys will contribute to having an adequate number of trained staff to meet the mounting demand for legal services related to the state’s strained and challenged mental health system.

**STAKEHOLDER IMPACT**

Agency Contact: Adam Lewis, (360) 902-8179
Program Contact: Brendan VanderVelde, (360) 586-2104

**OTHER CONNECTIONS**

**Performance Outcomes/Important Connections**

1. Does this DP provide essential support to one or more of the Governor’s Results Washington priorities?
Goal 4: Healthy & Safe Communities - Safe People - Help keep people safe in their homes, on their jobs and in their communities.

2. Identify other important connections or impacts below. (Indicate ‘Yes’ or ‘No’. If ‘Yes’ identify the connections or impacts related to the proposal.)

a) Regional/County impacts? No
b) Other local government impacts? No
c) Tribal government impacts? No
d) Other state agency impacts? Yes
e) Responds to specific task force, report, mandate or executive order? No
f) Does request contain a compensation change or require changes to a Collective Bargaining Agreement? No
g) Facility/workplace needs or impacts? No
h) Capital budget impacts? No
i) Is change required to existing statutes, rules or contracts? No
j) Is the request related to litigation? Yes
k) Is the request related to Puget Sound recovery? No
l) Other important connections? No

3. Please provide a detailed discussion of connections/impacts identified above.

AGO will submit a budget request to coincide with this request. The additional staff will be assigned to the Mental Health Section and will work on those cases and similar cases as cited on page 2-3 of this request.

Alternatives/Consequences/Other

4. What alternatives were explored by the agency, and why was this alternative chosen?

The legal division has attempted to answer workload increases by temporarily diverting AAGs from other practice groups, but this is a not a sustainable practice, since those attorneys also have full workloads. AAGs are often compelled to delay important client advice tasks, discretionary legal challenges requested by the client, and the filing of guardianship petitions, in order to meet the large volume of mandatory litigation deadlines. AAGs struggle to perform important internal functions, such as proper records management and case closing, training, and
strategic litigation management. This has resulted in staff frequently working excessive hours and through many weekends. The resulting stress and burnout increases the risk of turnover of the current, well-trained staff. The AGO and DSHS may enter into an interagency agreement which will provide a mechanism to create additional AAG positions in FY 2018. However, this is a stop-gap measure and is not a sustainable funding source for this ongoing type and level of work.

5. **How has or can the agency address the issue or need within its current appropriation level?**

Not funding this request risks an increasing inability to meet DSHS’s critical legal needs, and increased turnover of very highly skilled and experienced attorneys who are experts in this area of the law. Without this funding, the AGO is unable to prioritize important client requests for advice and to initiate discretionary, but important, legal cases.

6. **Does this decision package include funding for any IT-related costs (hardware, software, services, cloud-based services, contracts or IT staff)?**

☐ No
☒ Yes (Include an IT Addendum) (PLEASE SEE AAG DP FOR ATTACHED IT ADDENDUM)
## Fiscal Detail

### Operating Expenditures

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## Performance Measure Detail

### Incremental Changes

#### Activity: Program: 145

- N073 Payment to Other Agencies

No measures submitted for package

## Object Detail

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## DSHS Source Detail

### Overall Funding

#### Operating Expenditures

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**Total for Fund 001-1**

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**Total for Fund 001-2**

**Total Overall Funding**

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