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Agency of Administration

**TO: House Committee on Appropriations
Senate Committee on Appropriations**

FROM: Trey Martin, Secretary of Administration

DATE: December 1, 2016

SUBJECT: State Government Legal Services Positions Evaluation

Legislative Directive

Section E.100.6 of 2016 Act 172, “An act relating to making appropriations for the support of government,” directs the Secretary of Administration to report to the House and Senate Committees on Appropriations regarding an evaluation of “the use of State government legal service positions” in the Executive Branch. The evaluation includes “the current number of positions, the change in the number of positions from 2006 to 2016, whether any positions duplicate services, and whether there are efficiencies to be gained by a different structure.”

In accordance with this directive, this report is submitted for your consideration.

Attorney Resources

Legal services for the State of Vermont’s Executive Branch are primarily provided by the Attorney General and Assistant Attorneys General (“AAGs”) who are part of the Attorney General’s Office (“AGO”), Staff Attorneys who are employed by the Office of the Defender General (“ODG”), and General Counsels and Staff Attorneys who are employed by Appointing Authorities (“in-house counsel”).¹ These attorneys are all exempt State employees.² Some agencies contract for legal services, usually on an ad hoc, limited basis, but only the ODG has a significant number of contracted attorneys. The chart below depicts the number of state-employed attorneys belonging to each of these organizations in 2006 and 2016, and the percentage increase in the numbers between 2006 and 2016.³

	2006	2016	Change	% Change
AGO	82	92	+10	12.20%
In-House	86	100	+14	16.28%
ODG	40	40	=	0.00%
Total	208	232	+24	11.54%

¹ State’s Attorneys and Deputy State’s Attorneys were not included in this study, as the Vermont Supreme Court determined they are not State employees. *In re Election Petitions*, 136 A.3d 213, 2016 VT 7 (2016).

² The Classified Legal Assistant AGO position is the one statutory exception to all Executive Branch attorney positions being exempt. 3 V.S.A. § 155.

³ The information in this report is accurate as of July 10, 2016.

Legal Support to State Agencies, Boards, and Departments

There is no single model for how legal support is provided to State agencies, but rather arrangements vary widely among agencies and departments. Some agencies, such as the Agency of Natural Resources and the Public Service Department and Board have in-house counsel for all legal work except limited AGO litigation support. Other agencies, like the Agency of Transportation, rely upon AGO support for all legal needs. Other agencies utilize a combination of in-house counsel hired directly by the appointing authorities and AGO support, either embedded or on an as-needed basis. For example, at the Agency of Human Services (“AHS”), embedded AAGs provide legal support to all departments in addition to in-house counsel. This structure has not changed significantly since the last survey of Executive Branch attorney services that was conducted in 2013. *See* Appendix A.

The following chart provides an overview of the current number and type of attorneys assigned to support each agency, department, and board. Appendix B contains detailed descriptions of each agency, department, and board’s legal services model, and a general description of the duties performed by attorneys in each organization.

	2006			2016			Change 2006-2016			
	In-House	AAG	Total	In-House	AAG	Total	In-House	AAG	Total	
ACCD	3	0	3	2	0	2	-1	=	-1	ACCD
AGO-Central	0	42	42	0	50	50	=	+8	+8	AGO
AGR	0	1	1	0	1	1	=	=	=	AGR
AHS-Central	4	0	4	10	1	11	+6	+1	+7	AHS-Central
AHS-DAIL	3	0	3	3	1	4	=	+1	+1	AHS-DAIL
AHS-DCF	11	13	24	11	17	28	=	+4	+4	AHS-DCF
AHS-DOC	1	4	5	1	4	5	=	=	=	AHS-DOC
AHS-VDH	1	6	7	1	2	3	=	-4	-4	AHS-VDH
AHS-DMH	N/A	N/A	0	2	4	6	+2	+4	+6*	AHS-DMH
AHS-DVHA	N/A	N/A	0	3	1	4	+3	+1	+4*	AHS-DVHA
ANR-Central	9	0	9	5	0	5	-4	=	-4	ANR-Central
ANR-DEC	5	0	5	8	0	8	+3	=	+3	ANR-DEC
ANR-DFW	1	0	1	1	0	1	=	=	=	ANR-DFW
ANR-FPR	1	0	1	1	0	1	=	=	=	ANR-FPR
ANR-NRB	4	0	4	3	0	3	-1	=	-1	ANR-NRB
AOA-Central	0	0	0	0	0	0	=	=	=	AOA-Central
AOA-BGS	0	3	3	1	0	1	+1	-3	-2	AOA-BGS
AOA-DHR	1	3	4	3	0	3	+2	-3	-1	AOA-DHR
AOA-TAX	2	5	7	1	6	7	-1	+1	=	AOA-TAX
AOE	4	0	4	2	0	2	-2	=	-2	AOE
AOT-Central	0	4	4	0	4	4	=	=	=	AOT-Central
AOT-DMV	0	1	1	0	1	1	=	=	=	AOT-DMV
DFR	9	0	9	9	0	9	=	=	=	DFR
DPS	3	0	3	2	0	2	-1	=	-1	DPS
GMCB	N/A	N/A	0	2	0	2	+2	=	+2*	GMCB
GOV	1	0	1	1	0	1	=	=	=	GOV
ODG	40	0	40	40	0	40	=	=	=	ODG
PSB	7	0	7	8	0	8	+1	=	+1	PSB
PSD	6	0	6	10	0	10	+4	=	+4	PSD
SOS	5	0	5	5	0	5	=	=	=	SOS
VDOL	5	0	5	5	0	5	=	=	=	VDOL
Total	126	82	208	140	92	232	+14	+10	+24	

*DMH, DVHA, and GMCB did not exist as separate entities in July 2006.

Funding

The AGO directly funds many, but not all, AAG positions. Agencies, departments, and boards directly fund all in-house counsel positions, and some AAG positions that are dedicated to agencies, departments, and boards. For example, in AHS, both in-house and embedded AAG positions are directly funded by AHS, although supervision of the AAG positions is maintained by the AGO.⁴ In other cases,

⁴ This situation has caused concerns on the part of some Appointing Authorities who want more control over the legal services aspect of their budgets, and feel that AAG merit salary increases were much larger than those that the appointing authority could or would provide to their own employees. The AGO expressed the perception that in-house counsels are better-compensated than AAGs and the AGO needs to award large merit bonuses to achieve pay parity for certain positions.

agencies and departments are allocated an assessment by the AGO for services provided by AGO divisions such as litigation support from the Civil or Environmental Divisions, or general legal advice from the General Counsel and Administrative Law Division (GCAL). Reportedly, this type of funding structure enables the State to maximize federal resources by utilizing federal grants and other funding received by specific agencies to pay for the AAG positions that support those agencies. Appendix C describes funding mechanisms by organization.

Survey Results

Appointing Authorities were interviewed as part of this evaluation and asked, among other things, to describe the type of legal support they receive, their level of satisfaction with their legal support, and any problems or concerns they have with the quality or quantity of legal support. Representatives from the AGO were also interviewed to describe services performed by AGO attorneys and provide the AGO's perspective on the provision of legal services in the State.

Because all agencies and departments have different needs, opinions, and staffing arrangements, it is difficult to make specific comprehensive conclusions from the survey responses, but some general trends and conclusions emerged.⁵

- Appointing Authorities reported a high level of satisfaction with current levels of legal support, although several agencies indicated a need for additional legal support. Appointing Authorities and the AGO believed that attorneys serving their organizations had heavy, if not overly-demanding workloads.
- Appointing Authorities that utilized in-house counsel expressed a strong desire to keep both in-house legal support, and AGO support if they had it.
- Appointing Authorities reported that in-house counsel and embedded AAGs perform different but vital functions for their organizations, and when the work of the two groups intersect, there is a high degree of cooperation and coordination, without duplication.
- The AGO expressed concerns that the work performed by AAGs and in-house counsel is duplicative at some agencies, particularly within AHS. Appendix D is a report by AHS that describes the legal needs of the agency in 2013, provides a detailed explanation of position types and duties, and recommends that agencies and departments utilize in-house counsel in addition to AAG support. Appendix E is a 2013 report by the AGO regarding the AGO's assessment of AHS's legal needs.
- Appointing Authorities generally expressed the view that legal advice regarding policies and legislative matters provided by in-house attorneys was particularly valuable, and was not part of the legal services AAGs provided. Some Appointing Authorities said they would not feel as comfortable relying exclusively on AAG advice for such matters because AAGs may have priorities and views on these matters that differ from the agency or department. Appointing Authorities also expressed a preference for in-house counsel in many cases due to the ability to

⁵ Exceptions exist for nearly every assertion in this section.

directly manage and supervise them. This did not negate the widely-held view that AAGs provide sound legal advice that is valued.

- Both in-house counsel and AAGs reportedly provide legal advice regarding contracts, grants and Public Records Act requests, and nearly all Appointing Authorities felt they needed additional support in these areas due to the volume of work the subjects require.

Conclusion

This evaluation did not identify a significant change in the number of attorney positions in the past 10 years, a significant duplication of legal services, or an excess number of attorney resources given the State's legal needs. Based upon this result, and the general satisfaction with legal services in state government, no immediate change is recommended to address the quantity or structure of legal services. What was clearly identified, however, was a philosophical divide between the AGO and executive agencies regarding the roles of AAGs and in-house counsel in state government. Essentially, the AGO expressed that AAGs have historically performed the full range of legal services required by executive organizations, and that the addition of in-house counsel by executive agencies in some cases is unnecessarily duplicative of such services. Conversely, many executive agencies expressed that, especially with respect to policy, rulemaking, and legislative advice, they did not feel that AAGs, who are responsible to a separate elected official, could serve the same function as in-house counsel.

Language from internal agency policies may help to illustrate some of the differences between in-house counsel and AAGs – differences that in part reflect the State's "split" executive branch, where the Governor and Attorney General are separately elected officials. For example, one State agency defines the role of in-house counsel as "attorney positions exist to assist Agency and Department programs achieve their goals as defined by the legislature through statutes and by the Governor and his appointed heads of Agencies and Departments, subject to Rules of Professional Conduct, requirements of the Vermont Bar Association or other guiding principles for legal professionals." An excerpt from the AGO Personnel Handbook (2005) states in part "It is our policy to try to reach consensus with our agency clients, where appropriate, in the course of litigation or other legal matters. In those rare, but occasional, circumstances where the position of a state agency is at variance with the public interest as determined by the Attorney General, the Office will proceed on behalf of the public interest." Regarding legislative testimony, the Attorney General handbook states: "*Do not advocate, or "lobby," for a bill without prior approval from the Attorney General.* It is the sole prerogative of the Attorney General to identify those bills that will receive the endorsement of the Office as to policy and substance." (Emphasis original.)

Given the above, and the natural differences that can exist in a split executive branch, it is recommended that the AGO and State agencies work together to delineate the parameters of advice provided by different types of attorneys. Specifically, each agency and department should develop an internal policy regarding legal services, including: a decision-making protocol for the agency as client; clear expectations for how attorneys can best assist in meeting the agency or department's statutory and executive objectives; and a clear process for review of attorneys for purposes of performance and compensation. Development of such agency-specific protocols or policies – in consultation with the

AGO – would likely help both organizations understand how best to structure, utilize, and compensate work for legal services going forward.⁶

The “chain of authority” regarding legal matters in a split executive branch is not necessarily straightforward, but it is also very common across states. In addition, the legal needs of each agency and department can vary greatly, with some agencies needing to respond to litigation daily, while others focus on transactions or complex matters of policy development. The Agency of Administration recommends that, before any significant statutory or other changes to the provision of legal services is contemplated, agencies and departments develop the protocols and policies described above in consultation with the Attorney General’s Office. The resulting dialogue and collaboration will likely assist each agency and department, as well as the AGO, to develop an ideal agency-specific model for the provision of legal services, and should result in the optimal use of legal service positions across state government going forward.

⁶ The Agency of Natural Resources has recently developed a protocol regarding legal services which may help serve as a model for other organizations.

APPENDIX A

PRELIMINARY REPORT ON WORKLOADS AND CASELOADS OF ATTORNEYS EMPLOYED BY THE STATE OF VERMONT

March, 2013

Preliminary Report on Workloads and Caseloads of Attorneys Employed by the State of Vermont

Prepared for the Department of Human Resources

by

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March 2013



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Background

The Commissioner of Human Resources has been directed by the 2011 - 2012 Legislative session to conduct a study by the Act 130, Sec 12(a):

(a) The commissioner of human resources shall conduct a caseload and workload study that assesses the caseloads and workloads of deputy state's attorneys, public defenders, assistant attorneys general, and staff attorneys in the executive branch and shall report his or her findings to the general assembly on or before March 15, 2013.

Introduction

The purpose of this report is to provide a preliminary review of the information currently available on the workloads and caseloads of the approximately 243 attorneys who work in the Executive Branch of Vermont State government (SOV) as directed by Act 130, Sec 12(a).

Almost 70% (167) of the total number of attorneys work in three departments/offices of State Government: the Attorney General's Office (AGO), the Department of State's Attorneys (DSA), and the Office of the Defender General (ODG). Most of these attorneys are either directly involved in litigation or are managing litigation attorneys. (There are a few attorneys in the AGO who provide legal counsel to constitutional officers, agencies or departments, and there are some who review and negotiate State contracts. They are not routinely involved in litigation.)

The remaining (76) are Department-based Non-Attorney General attorneys who are involved in a wide variety of department or program-specific legal work. This can run the gamut from permit review and rule making to highly specialized litigation. Many spend most of their time involved in legal or quasi-legal proceedings before various Boards (*e.g.*, Public Service Board, Natural Resources Board). Most of the remaining attorneys serve as General Counsels within various departments and agencies

The following chart shows in which departments the attorneys are located and the reporting structure.

Attorneys by Department and Reporting Structure (As of 1/10/13)

<u>Department</u>	<u>Type/Reporting</u>	<u>Total</u>
Agriculture, Food & Markets	AGO	1
Attorney General	AGO	45
Buildings & General Services	NONAGO	1
	AGO	1
Commerce & Community Development	NONAGO	2
Corrections, Department of	AGO	4
DAIL	AGO	4
Defender General	ODG	37
Department of Human Resources	NONAGO	2
Dept for Children & Families	NONAG	12
	AGO	11
Dept of Financial Regulation	NONAGO	9
Dept. of Mental Health	AGO	4
	NONAGO	1
Education, Dept of	NONAGO	3
Environmental Conservation	NONAGO	6
Executive Office	NONAGO	1
Fish & Wildlife, Dept of	NONAGO	1
Forests, Parks & Recreation	NONAGO	1
Green Mountain Care Board	NONAGO	1
Health	AGO	2
Human Services, Agency of	NONAGO	4
Labor, Dept of	NONAGO	5
Natural Resources Board	NONAGO	3
Natural Resources, Agency of	NONAGO	4
Office of VT Health Access	AGO	1
Public Safety, Dept of	NONAGO	2
Public Service Board	NONAGO	7
Public Service, Dept of	NONAGO	5
Secretary of State	NONAGO	5
State's Attorneys, Dept of	DSA	46
Taxes, Dept of	AGO	6
	NONAGO	1
Transportation, Agency of	AGO	5
Grand Total		243

NOTE: AGO – Staff Attorneys associated with the Attorney General’s Office. Many of the Attorney General’s staff are stationed in agencies/departments where they focus specifically on legal matters related to that department; NONAGO – Department-based Non-Attorney General staff attorneys and General Counsel; ODG – Staff Attorneys reporting to the Defender General; DSA – Staff Attorneys who are Deputy State’s Attorneys.

The workloads for these attorneys vary based on the location of the position, the time of the year, the timing of cases, their experience, and the nature of the work. And within each department/office, the process of assigning work varies. As a result, it is difficult to find a common metric to accurately compare workloads among attorneys state-wide. At this stage the best we can do is present some preliminary data on workloads in the various department/offices and describe how individual workloads are managed. We will do this in the next sections.

The Office of the Defender General

The Office of the Defender General's website describes their history and mission this way:

In 1972, the Office of the Defender General began providing constitutionally required representation to needy persons charged with serious crimes. The Office is also statutorily required to provide counsel to children who are the subject of juvenile proceedings as alleged delinquents; to parties in juvenile proceedings including children in need of care and supervision (CHINS) as required by the interests of justice; to children in the custody of the Commissioner of the Department for Children and Families; to persons in the custody of the Commissioner of Corrections; and, to needy persons in extradition, or probation or parole revocation proceedings.

Since 1972, the Office of the Defender General has evolved into a complex service delivery system consisting of two separate programs, Public Defense and Assigned Counsel. We have seven county staff offices with 35 attorneys and a variety of support staff, including investigators, secretaries, paralegals and case aides. In addition the Office manages almost 100 contractors under both programs, and more than 100 ad hoc counsel handling conflict cases. In total the Office handles approximately 20,000 cases each year.

The following chart shows the increase in the number of cases handled by the Office of the Defender General (ODG) between FY 2011 and FY 2012. Between these two years, the total number of new cases that it handled increased by 5.4%.¹

Office of the Defender General Total Added Cases by Category, FY2011 & FY2012

Case Type	#FY2011	#FY2012	% Change
Felonies	3,237	3,480	4.6
Misdemeanors	11,425	12,158	6.4
Juvenile	2,034	2,118	4.1
Other	2,293	2,253	-1.7
Total All Cases	18,989	20,009	5.4

Source: Office of the Defender General

The ODG assigns an attorney to each of these cases. Each assignment may go to one of three groups of attorneys that the ODG has at its disposal:

¹ All of the ODG caseload data provided in this section was provided by the ODG in February 2013.

- First, there are now 37 attorneys who are State employees. They are stationed in each of the counties of the state. They may have specialties such as prisoner rights, juvenile cases, or appeals.
- Second, there are contracted Public Defenders. Each of these attorneys is in private practice. The ODG contracts with them to represent defendants as needed. These attorneys – there are approximately 80 of them – are also located across the state.
- Finally, there is Ad Hoc Counsel. Sometimes, multiple defendants on a case create a conflict of interest for attorneys, requiring lawyers who are not employed or contracted by the ODG. In those cases, attorneys from outside the ODG system are asked to take a case. (This occurs in less than .5% of the cases handled by the ODG.)

The National Advisory Commission on Criminal Justice Standards and Goals conducted significant research on the typical amount of time that various types of cases – felonies, misdemeanors, juvenile court, mental health, appeals, etc. – require for effective representation. In 1973 the Commission issued a report that recommended caseload limits for public defenders (the “NAC standards”) to ensure that attorneys have time to prepare an adequate defense for each case. Standard 13.12 Workload for Public Defenders states that the caseloads of a public defender office should not exceed the following:

- felonies – not more than 150 per attorney per year
- misdemeanors (excluding traffic) – not more than 400 per attorney per year
- juvenile court (delinquency) – not more than 200 cases per attorney per year
- Mental Health Act cases – not more than 200 cases per attorney per year
- appeals – not more than 25 per attorney per year²

The ODG categorizes and tracks each case and each attorney assignment. By prorating these standards, the ODG can determine the relative size of each attorney’s caseload for any mix of types of cases in any given year and can manage the caseloads so that they are roughly comparable. (The caseload expectations also vary with the level of an attorney’s experience.) The ODG has the only quantitative system for tracking and comparing the caseloads of its attorneys (that we were able to uncover) within any department/office in the SOV.

² From the “American Council of Chief Defenders Statement on Caseloads and Workloads,” Aug. 24, 2007.

The Office of the Attorney General

The Attorney General's Office (AGO) currently has 84 attorneys. These attorneys are divided into five divisions, as follows:

Civil Litigation Division

- Defends lawsuits that challenge State laws and policies, *e.g.*, campaign finance law challenges.
- Defends money claims against the State, State officials, and State employees, *e.g.* wrongful death or excessive force claims against Public Safety or Corrections.

Criminal Division

- Investigates and prosecutes felonies, public corruption, and other crimes, *e.g.*, municipal embezzlement, Internet crimes against children
- Enforces Medicaid fraud and patient abuse laws.
- Handles criminal appeals and other criminal matters, *e.g.*, appeals from murder convictions, handling DNA evidence statewide, handling education and training on bias-free policing and human trafficking.

Environmental Protection Division

- Enforces clean air, clean water, hazardous waste and other environmental laws.
- Defends claims that Vermont statutes violate the US Constitution, *e.g.*, Vermont Yankee litigation.

General Counsel and Administrative Law Division

- Provides legal counsel to constitutional officers, agencies, and departments.
- Litigates Labor Board, Liquor Control and Medical Board cases.
- Reviews and negotiates state contracts.
- Handles and supervises all civil appeals.

Public Protection Division

- Enforces discrimination, hate crime and civil rights laws.
- Enforces consumer fraud laws.
- Enforces antitrust laws.
- Enforces privacy and security breach laws.
- Enforces the tobacco master settlement agreement.
- Manages The Consumer Assistance Program at UVM (which received 8,800 complaints and requests for information in 2012). Recovers funds for consumers.

The AGO also has an administrative group that sets policies and priorities for staff, makes decisions on major litigation initiatives, develops budgets, and provides support services to all divisions.

The caseload of the AGO increased between CY 2011 and CY 2012, as the chart below details:

Office of the Attorney General
Total Caseloads and Other Metrics, CY2011 & CY2012

<u>Case Type</u>	<u>CY 2011</u>	<u>CY 2012</u>	<u>% Change</u>
New lawsuits against state agencies and employees	565	680	20.4
Contract reviews, approvals	752	934	24.2
Consumer Assistance program complaints, inquiries	8,300	8,800	6.0

Source: Attorney General's Office

The lawsuit numbers include all lawsuits filed against State agencies, its officers, and employees. These lawsuits must be served on the Attorney General central office so that they can be reviewed and assigned by the Deputy Attorney General. The following chart shows the changes in the number of lawsuits between 2011 and 2012. The Civil Division numbers include both complaint activity and charges. The AGO investigates claims of employment discrimination against all employers in Vermont except the State of Vermont.

**Lawsuits Served on State, State Officials,
and State Employees**

Unit/Department/Agency	Number of Lawsuits	Number of Lawsuits	% Change
	<u>CY 2011</u>	<u>CY 2012</u>	
Corrections	311	339	9.0
Tax	104	162	55.8
Post-Conviction	75	84	12.0
AGO-Civil Division	57	71	24.6
Other	18	24	33.3
TOTAL	565	680	20.4

Source: Attorney General's Office

Notes

1. Corrections cases include serious complaints and minor grievances.
2. Tax cases include claims in excess of one million dollars, as well as foreclosure cases where the State's interests are limited.
3. Post conviction cases include habeas and post-conviction relief cases, and may be handled by the AGO or by State's Attorneys.
4. Civil Division cases include civil rights claims, tort claims and constitutional challenges to state laws.
5. Other cases include election, environmental and other claims against the State.

AGO central office reviews, sometimes rewrites, and negotiates most contracts entered into by the State agencies and departments. The exceptions are in Human Services (and its departments), Transportation, and Tax. Those are reviewed by the Assistant Attorneys General assigned to those departments and agencies. Exact numbers of contracts reviewed in those departments are not available.

AGO Contract Reviews, Rewrites, and Negotiations

Agency or Department Name	# Contracts CY 2011	# Contracts CY 2012
Administration	0	9
Agriculture	0	7
Attorney General	10	6
Auditor of Accounts	0	6
Buildings General Services	244	331
Commerce	26	56
Crime Victim Services	2	5
Criminal Justice Training	1	0
Defender General	9	8
E-911 Board	4	0
Education	19	30
Environmental Conservation	46	30
Finance and Management	7	2
Financial Regulation (BISHCA)	64	21
Fish and Wildlife	10	24
Forests Parks Recreation	48	72
Green Mountain Care	0	2
Health Access	0	1
Human Resources	6	8
Human Services	3	
Information and Innovation	11	65
Judiciary	0	1
Labor Department	2	3
Libraries	6	8
Liquor Control	37	33
Lottery Commission	4	4
Military	46	41
Public Safety	55	47
Public Service Board	4	7
Public Service Department	36	51
Secretary of State	17	14
State's Attorneys and Sheriffs	6	6
Tax	0	1
Transportation	3	1
Treasurer	22	19
Veterans Home	4	15
Total	752	934

There has been very little change in AGO staffing since June 30, 2011. At the moment, the AGO has one more attorney in its central office and one more attorney in the Department of Families and Children than it did then, but the latter addition was balanced by a decrease of one non-AGO attorney in that department. (At the moment there are exactly the same number of attorneys working for the SOV as were working on June 30, 2011. Very few offices have seen any change in staffing levels.)

Department of State's Attorneys

The powers and duties of the State's Attorneys are established in 24 V.S.A. 361 (a):

A state's attorney shall prosecute for offenses committed within his or her county, and all matters and causes cognizable by the supreme and superior courts in behalf of the state, file information and prepare bills of indictment..."

As described in the State's Attorney's budget submission to the Legislature for FY 2013,³ the State's Attorney and staff in each county are involved in determining adult and juvenile criminal case prosecution. This work involves (a) examining each criminal investigation submitted by police to determine the strength of evidence and the appropriate charge; (b) deciding on whether to file criminal charge(s), send to Diversion/Community Justice, or not file a charge; and, if the determination is to file a charge, then (c) litigate the cases charged through to final disposition, which can include a change of plea or a trial and appeal.⁴

In correspondence with Bram Kranichfeld, the Executive Director of the State's Attorneys and Sheriff's Association, he elaborated on the full range of the responsibilities of the State's Attorneys. He said that the State's Attorneys are involved in:

- All of the categories of cases that come before the District Courts. These include felonies, misdemeanors, civil suspensions, traffic appeals, and fish and game violations.
- Most of the juvenile cases in Family Court. Some counties handle termination of parental rights proceedings; others don't. Some, but not all, counties also handle protective service cases and mental health commitments under Title 18.
- Post Conviction Relief Cases.
- Appeals.
- Cases that are review but do not result in charges being filed in court.
- Cases that are handled prior to a referral from the police (*i.e.*, search warrant review).
- Reviewing untimely death cases.⁵

There is no data available that covers all of these categories at this time. The following chart describes the caseloads in several of the major categories mentioned.

³ Available at http://prosecutors.vermont.gov/sites/attorney/files/pdf/SOV_SAS_FY13_SA_Budget.pdf.

⁴ Adapted from the same budget submission.

⁵ Email correspondence with Bram Kranichfeld, March 8, 2013.

Some of the Caseload of the State's Attorneys

Year	Felonies	Misdemeanors	Other Criminal Court	Juvenile	Total
2012	3,423	13,630	2,055	2,122	21,230
2011	3,244	13,646	2,089	1,862	20,841
2010	3,321	14,275	2,400	1,908	21,904
2009	3,244	14,519	2,528	1,908	22,199
2008	3,385	14,393	2,460	2,032	22,270

Source: <http://vermontjudiciary.org>

The following chart shows the dispersion of criminal cases – felonies and misdemeanors – across the State of Vermont in FY2011 and FY2012.

Office of the State's Attorney Criminal Cases by County, FY 2011 & FY 2012

County	FY 2011	FY 2012	% Change
Addison	866	879	0.02
Bennington	1,176	1,125	(0.04)
Caledonia	802	736	(0.08)
Chittenden	4,404	4,414	0.00
Essex	83	112	0.35
Franklin	1,478	1,313	(0.11)
Grand Isle	98	103	0.05
Lamoille	613	671	0.09
Orange	472	542	0.15
Orleans	649	821	0.27
Rutland	1,745	1,904	0.09
Washington	1,545	1,613	0.04
Windham	1,422	1,350	(0.05)
Windsor	1,536	1,473	(0.04)
Total	16,889	17,056	0.01

Source: State's Attorneys and Sheriff's Association

The staffing in the State's Attorney's Offices has changed very little between FY 2011 and FY 2012. The next chart shows the staffing as of 6/30/2012. The only differences in staffing between 6/30/2011 and 6/30/2012 are a net change of one additional support staff (one additional support staff in Addison and Orleans County and one less in Essex County).

Staffing in State's Attorney Offices as of 6/30/2012

<u>Location</u>	<u>Deputy State's Attorney</u>	<u>States Attorney</u>	<u>Support</u>	<u>Victim Advocate</u>	<u>Grand Total</u>
Addison	1	1	1	1	4
Bennington	4	1	2	2	9
Caledonia	2	1	2	1	6
Chittenden	14	1	7	4	26
Essex		1		1	2
Franklin	4	1	2	2	9
Grand Isle		1	1		2
Lamoille	2	1	2	2	7
Montpelier	1		3	2	6
Orange	1	1	1	1	4
Orleans	2	1	3	2	8
Rutland	4	1	3	2	10
Washington	3	1	1	1	6
Windham	5	1	2	2	10
Windsor	4	1	2	2	9
Grand Total	47	14	32	25	118

Source: Vermont Department of Human Resources

It is the State's Attorney's responsibility (or a designee) to assign cases within an office in each county. The manner in which this is done, and the resources, vary widely by county.

Nationally, prosecuting attorneys have attempted to develop ways of quantifying and comparing their caseloads and workloads. This has proven impossible to do on a national basis, however. In one attempt, the number of felony cases handled by 308 individual prosecutors from across the country was compared. The number of felony cases closed by these attorneys varied so much, however, that it was clear that many different variables affected the number. The study concluded:

In review, national and local efforts to establish standards for allocating attorneys vary considerably. Although most studies consider the current resource level and volume of cases of an office, no standardized model specifies other factors that need to be included. In addition, no standardized measures are proposed that could operationalize concepts (such as time or case seriousness) universally across offices or states. Although results from national and local studies have proven promising on different levels, researchers are still lacking a comprehensive approach to developing a reliable caseload standard.⁶

⁶ "How Many Cases Should a Prosecutor Handle? Results of the National Work Assessment Project," American Prosecutors Research Institute, 2002, p. 19.

Department-based Attorneys (Non-Attorneys General)

As stated previously, there are 76 attorneys in the SOV who are not in one of the three offices just discussed. Of this group, 33 (45%) spend most of their time involved in legal or quasi-legal proceedings. They serve in the following offices. Their court or board is also listed:

<u>Department or Board</u>	<u>#</u>	<u>Court or Board Served</u>
Dept of Children & Family	12	Family Court
Public Service Board	7	Public Service Board
Public Service Department	5	Public Service Board
Dept of Environmental Conservation	6	Public Service Board & Natural Resources Board
Natural Resource Board	3	Natural Resource Board

We have very little data from this group. For the attorneys in the Department of Children and Family, we know that the caseload in the Family Court has fluctuated in the last few years, as the following chart shows.

Total Family Court Cases	
<u>Year</u>	
2012	19,684
2011	19,297
2010	18,949
2009	20,444
2008	19,496

Source: <http://vermontjudiciary.org>

For this group of 76 attorneys, we also know that there has been almost no change in the their number in the last few years. In this group there is now one fewer attorney in the Department of Environmental Conservation and the Public Service Board since June 30, 1911, but these numbers have fluctuated as attorneys have come and gone.

Most of the attorneys who have not been previously mentioned work as General Counsels or Staff Attorneys in an agency or department of the Vermont State Government. Their work may involve litigation, and it is also likely to include the development or enforcement of regulations, investigations, permit reviews, policy development, and the review of legal issues for a secretary or commissioner. This work is in very different combinations, depending on the agency or department. There is no clear way to compare workloads among this group.

Conclusions

In the effort to gather data on attorney caseloads and workloads for this study, it quickly became apparent that there is a notable lack of systems in place which provide reporting capacity and the ability to track and manage the caseload/workloads of attorneys within the SOV. The exception is the ODG where there is both a careful tracking of caseloads and a quantitative measure of the caseload of each attorney that is carefully managed. The AGO is currently implementing a Workload Management System for FY 14 that promises to provide that department with better reporting capacity and internal control over caseload management.

This lack of capability to report on caseloads and workloads, the wide differences in how the assignment of work is managed, and the sheer breadth of the legal work performed by the attorneys within the Vermont State Government make it difficult to find a common metric to accurately compare workloads among attorneys state-wide. The best that can be done at this time is to make assumptions about the workloads within specific offices based on changes in the number of cases and changes in the number of attorneys available to handle them.

From the data that we have been able to collect, two tentative conclusions can be offered:

1. From the Court data available, it appears that the overall number of cases which the Defender's General Office and the State's Attorneys handle neither steadily decreasing nor increasing. Instead, the number of cases has been fluctuating as much as 3% per year in either direction in recent years. At the same time, we know that the number of attorneys in both of these offices has stayed almost constant since June 30, 2011. Therefore, it is likely that caseloads have not increased dramatically in the last two years. This is most likely to be true in the ODG, which has an internal system for measuring caseloads.

It is quite possible, however, that there are exceptions to this conclusion. First, we have no baseline from which to compare caseloads. It is therefore possible that the current caseload level, while unchanged in recent years, may be either lower or higher than optimal. Second, it is likely in both organizations that there are local exceptions. With very small offices in many Court districts, the impact of a sudden increase in caseloads in one district can impact a local office significantly.

2. The data from the Attorney General's Office shows that there has been significant growth from 2011 to 2012 in at least some of the areas of AGO responsibility. Unfortunately, we do not have access to data from multiple years to determine if this is a trend or just be a one year spike. Since there has been no significant change in staffing – there may be an increase of one attorney in the last two years, but that may be simply a function of timing – it is likely that there has been an increase in the caseloads of some AGO attorneys in the last two years. (It is also possible that some of the work from the increasing caseload has been handled by non-attorneys so cannot assume that the whole burden of the increased caseload has fallen on the attorneys.)

For the remainder of the attorneys in the State Government, the range of work is even broader than it is for the attorneys in the ODG, SAO, and AGO. It is likely that most of them do much less litigation work, but they may be doing permit reviews, regulation development and enforcement, policy analysis and development, or legislative drafting as well. It is likely that each attorney who is working as a General Counsel or a Staff Attorney in a State agency or office has their own unique mix of responsibilities, making a comparison of workloads within this group impossible.

Next Steps

In the second phase of this project we will address Act 130, Sec 12 (b):

(b) The secretary of administration shall create a new pay plan for all exempt attorneys in the executive branch employed by the state who perform legal services in order to create parity and equity in the compensation paid to these attorneys. In creating the pay plan, the secretary shall consider the results of the study in subsection (a) of this section and the relative caseloads and workloads of the attorneys. Notwithstanding any provision of law to the contrary, the secretary shall have final authority over and shall be required to approve all salaries paid to exempt attorneys employed by the state in the executive branch and shall administer the pay plan to ensure that parity and equity in compensation are maintained.

The objectives for this second phase are as follows:

- To determine an accurate picture of how attorneys are currently spending their time on identified essential functions, tasks, and activities.
- To review and revise existing job descriptions for attorneys to more accurately reflect the full range of work in each position
- To provide the information necessary to develop a new pay plan for all attorneys that will create internal parity and equitable salaries.

Some information related to this work has already been collected. The rest of this project is scheduled to be completed within the next six months.

APPENDIX B

STATE GOVERNMENT LEGAL SERVICES

Description of Legal Services by Organization
as of July, 2016

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ATTORNEY GENERAL'S OFFICE (AGO) – FRONT OFFICE

➤ 5 AGO Attorneys:

- Attorney General
- Deputy Attorney General
- Chief Assistant Attorney General
- Senior Assistant Attorney General
- Staff Attorney

The Attorney General is the agency head for the Attorney General's Office. The Attorney General appoints a Deputy Attorney General who serves as the Attorney General directs, and who performs the duties of the Attorney General in his absence, if disabled, or if a vacancy in office occurs. Further, the Attorney General may appoint Assistant Attorneys General (AAGs) "as may be necessary for the proper and efficient performance" of the AGO.

The Attorney General is responsible for the acts of the Deputy, Chief Assistant Attorney General (the only classified attorney position in the State), AAGs, and Special Assistant Attorneys General. The supervisory structure of the AGO is designed to meet the Attorney General's independent and ethical obligations to supervise its own lawyers and to ensure that the statutory duties of the Attorney General are carried out professionally, responsibly, and consistent with the oath of office.

The AGO is organized into divisions by practice area, which carry out the statutory functions of the Attorney General. Each Division is headed by a Division Chief who is responsible for the legal services provided by staff AAGs. Some larger divisions are broken down further, into legal units with a supervising AAG appointed as the Unit Director.

The Chief Assistant Attorney General position ranks as third in charge of the Attorney General's Office. The position has an important administrative role within the Attorney General's Office, with strong involvement in budget planning, administrative procedures, and staff supervision. Work is performed under the policy direction of the Attorney General and Deputy. Authority and responsibility for the day to day management of the Attorney General's Office is shared with the Deputy Attorney General. This position is intended to provide continuity to the functioning of the AGO outside of the political focus of an individual Attorney General due to its status as a statutorily Classified position.

The State's Solicitor General directs the Appellate Unit and provides centralized management of the Office's appellate practice – including representation in the Vermont Supreme Court, federal appellate courts, and the U.S. Supreme Court. The Solicitor General has supervisory authority over the appellate work of all AAGs in all Divisions and reviews all amicus brief requests. All AAGs are expected to present draft briefs for review to the Solicitor General, and to participate in "moot court" arguments.

The AGO is organized into six divisions, each headed by a Division Chief: Criminal, Civil, Public Protection, Environmental, Human Services, and General Counsel & Administrative Law. Division Chiefs are responsible for the operations of each Division, including supervision of the

exempt, or “at will,” staff AAGs and classified service investigators, paralegals and support staff. The Division Chief, subject to approval of the AG, is responsible for recruitment, hiring, performance evaluation, salary adjustment recommendations, and termination of staff AAGs. The Chief provides general supervision to his or her Division staff, participates in AGO Chief meetings and management trainings, and assists the Solicitor General in evaluating appeals and amicus briefs within their expertise.

Unit directors, who report directly to a Division Chief, have significant managerial responsibilities for their units. A unit is generally a group of three to five attorneys with a particular focus within a Division.

The Chiefs and the Solicitor General report to the Deputy Attorney General and advise the Attorney General, Deputy Attorney General, and Chief Assistant Attorney General with respect to personnel, client relations, and legal matters within their respective Division’s subject matter and expertise. The Deputy, Solicitor General, Chiefs and Directors serve as the liaisons between the AGO and Agency heads, the Legislature, and the Judiciary.

AGO - CRIMINAL DIVISION

- **10 Assistant Attorneys General:**
 - 1 Legal Division Chief
 - 1 Senior Assistant Attorney General
 - 8 Staff Attorneys

The Criminal Division investigates and prosecutes crimes against the State. The Division Chief supervises the AAGs, support staff, and the Director of the Medicaid Fraud and Residential Abuse Unit, which is part of the Division. The Chief directs legal strategy; advises law enforcement on legal matters; responds to inquiries about pending cases and other matters handled by the Division staff; and personally handles a criminal caseload.

In addition to investigations and prosecutions, the Attorney General, as chief law enforcement officer, helps develop policy on a variety of law enforcement issues. The Division Chief also frequently testifies in legislative committees of jurisdiction and helps draft laws relating to all aspects of criminal practice, procedure, and victims’ rights, and represents the Attorney General on the Vermont Supreme Court’s Advisory Committee on the Rules of Criminal Procedure and the Vermont Criminal Justice Training Council.

Criminal Division AAGs are often tasked with drafting or reviewing statewide policies relating to policing, and represent the Attorney General on several important public bodies.

AGO – CIVIL DIVISION

- **10 Assistant Attorneys General:**
 - 1 Legal Division Chief
 - 1 Senior Assistant Attorney General
 - 8 Staff Attorneys

The Civil Litigation Division carries out the Attorney General's statutory obligation to defend lawsuits against the State. The Civil Division is counsel to the State's executive officers and agencies in most cases in which there is a claim for money damages. The Civil Division also defends challenges to Vermont's laws on constitutional or other grounds that seek to prevent the State from doing certain acts, such as implementing legislation or enforcing its law. These AAGs represent the State and its agencies, officers, and employees in civil lawsuits brought in state and federal courts (and, on occasion, in courts outside of Vermont). In consultation with the Solicitor General, they also regularly handle appeals in the Vermont Supreme Court and federal appellate courts.

The Civil Division Chief supervises the AAGs and support staff, provides oversight of all pending civil matters handled by the Division and advises on other major civil cases within the Office. The Chief reviews new lawsuits; assigns cases to AAGs; supervises litigation strategy in all cases; reviews and edits all major filings; reviews requests for settlement authority and approves case settlements; and participates in moot court sessions and office CLEs and training sessions. Further, the Chief supervises the docketing of the hundreds of new lawsuits served each year, consulting with the Deputy AG on service issues and questions relating to representation of state employees. In addition, the Chief personally handles a civil caseload and has been lead counsel on cases of major importance.

The Civil Division AAGs formulate case plans and litigation strategies, conduct legal research, and draft memoranda and briefs for motion practice. Their duties also include issuing and responding to discovery requests, reviewing and analyzing documents and other materials, meeting with clients, witness preparation, taking and defending witness depositions, retaining and examining expert witnesses, handling status and other court conferences and proceedings, presenting oral argument on motions and other matters, and drafting appellate briefs and other filings. Civil Division AAGs also conduct litigation-related CLEs and trainings for state lawyers and client agencies.

AGO – GENERAL COUNSEL AND ADMINISTRATIVE LAW DIVISION (GCAL)

- **8 Assistant Attorneys General:**
 - 2 Senior Assistant Attorney
 - 6 Staff Attorneys

***Additional GCAL AAGs assigned to specific agencies and departments, see agency/department pages below**

The GCAL Division includes the GCAL Unit, the Transportation Legal Unit, and the Tax Legal Unit, each headed by a Director who reports directly to the Division Chief. GCAL provides general counsel, as well as litigation services, to state agencies and departments outside the Agency of Human Services. The Division provides advice both directly to state officials and to attorneys who serve as internal general counsel. Some AAGs are assigned to specific agencies and departments and provide a full array of services as more specifically described below. A

GCAL AAG is assigned to the Appellate Unit and is supervised by the Solicitor General on appellate matters that arise across state government.

The Division prosecutes complaints filed with the Medical Practice Board, and represents state agencies at the Labor Relations Board and the Human Rights Commission. GCAL advises state agencies on complex contracts, and reviews state contracts for compliance with statutory and regulatory requirements. The Division counsels state agencies on access to records matters and handles related litigation. The GCAL Division also includes the Vermont statewide Juvenile and Adult Court Diversion and Pretrial Services Programs.

The Chief Assistant Attorney General is the Division Chief for the GCAL Division. The Chief directly supervises the Unit Directors, provides oversight of all matters handled by the Division, and advises on other major civil cases within the Office. The Chief reviews new lawsuits assigned to GCAL AAGs and supervises litigation strategy. The Unit Directors provide direct supervision of the AAGs in their units; review all major case filings; review requests for settlement authority; and approve case settlements, either independently or in consultation with the Division Chief or Deputy.

GCAL manages the Attorney General's continuing legal education program and provides relevant trainings for state agencies.

The GCAL Director has general oversight of ethical matters within the Attorney General's Office, helping assure that all AAGs conform to the Vermont Rules of Professional Conduct, and responding to individual AAGs who seek guidance on ethical questions.

AGO – PUBLIC PROTECTION DIVISION

- **12 Assistant Attorneys General:**
 - 1 Legal Division Chief
 - 2 Senior Assistant Attorneys General
 - 9 Staff Attorneys

The Public Protection Division exercises the Attorney General's statutory authority to enforce the state's civil rights, consumer protection, and antitrust laws. The Division Chief supervises the AAGs and oversees all enforcement and litigation matters handled by the Division. The Chief assigns cases; supervises litigation strategy; reviews all major filings; approves requests for settlement authority; and participates in moot courts, office CLEs, and training. The Division Chief is also the primary contact with the Legislature and its committees of jurisdiction in providing assistance and advice on consumer protection and privacy issues.

The Consumer Assistance and Antitrust Unit investigates and prosecutes allegations of unfair and deceptive trade practices and unfair methods of competition on both the state and national level. The Unit's AAGs provide civil investigatory, trial, and appellate counsel to the State in consumer protection, antitrust and privacy and data security enforcement actions.

The Unit enforces all sections of the Consumer Protection Act and consumer protections found in dozens of other laws.

A central part of the AGO's consumer-protection work is participation in multistate investigations and litigation. The Unit also promulgates consumer protection rules, comments on state and federal legislation, advises state agencies on compliance with antitrust laws, advocates for consumer protection legislation, and has been tasked by the Legislature to collect information and issue annual reports on prescribed products, drug prices, and cable television retransmission fees.

The Unit enforces Vermont's tobacco laws and is responsible for the diligent enforcement of the multistate Tobacco Master Settlement Agreement.

The Consumer Assistance Program (CAP) has operated in association with UVM for over 30 years. Each semester, CAP staff train UVM students to serve as consumer advocates, handling consumer calls, making appropriate referrals, and administering CAP's letter mediation service to assist consumers and businesses to resolve their complaints. CAP also develops and leads outreach programs to educate consumers and businesses.

CAP is headed by a Director who supervises the UVM staff and students who carry out the daily operations of the program. The Director also supervises an AAG who supports small businesses in recovering losses when the business is a consumer and provides guidance to businesses on compliance with the state's consumer protection laws.

The Civil Rights Unit investigates and reports on complaints of discrimination in private-sector employment and retaliation in workers' compensation matters, as well as complaints of illegal drug testing and employment-related polygraphs, and violations of the state "Hate Crimes" statute that might require civil injunctive relief. In addition, the CRU exercises the Attorney General's statutory authority to enforce a variety of other employment-related laws, including the requirement that an employer provide reasonable accommodations, protections for nursing mothers, the newly enacted "ban the box" law, and laws that provide for leaves of absence, such as parental and family leave and town meeting, legislative and National Guard leave.

The Civil Rights Unit provides educational materials and programs for the public, and promotes legislation that enhances Vermonter's civil rights, such as equal pay.

AGO – HUMAN SERVICES DIVISION

➤ 30 Assistant Attorneys General

- Legal Division Chief
- (See Department information below for specific AHS AAG assignments)

The Division Chief Supervises the Division's AAGs and support staff and manages the legal representation that the AGO provides to the Agency of Human Services. The Chief supervises legal strategy to assure consistency within the Agency and across state government; advises Agency officials on legal matters and responds to inquiries about pending cases and other

matters handled by AGO staff; provides general supervision (including recruiting, hiring, training, evaluating) for a staff of 29 AAGs and support staff; and directly supervises eleven attorneys. The Chief provides direct legal services to the Departments for Children and Families, Aging and Independent Living and Vermont Health Access; provides oversight of major civil and administrative litigation, including reviewing filings in major cases and participating in moot courts; personally handles litigation and other matters; provides oversight of other legal work (contracts, access to records, legal aspects of legislation and rulemaking); and coordinates training opportunities for AAGs.

The Division has three legal units, each headed by a Director: the Department of Corrections Unit; the Department of Children and Families – Family Services Unit; and the Department of Mental Health Unit. The Division Chief directly supervises the AAGs who provide services to DCF-Economic Services Division, DAIL, DVHA and Health.

The Agency's work generates substantial demands for legal services and the demands generally outstrip the current staff. The AAGs who provide services to the Agency regularly provide unpaid overtime and AAGs from other divisions routinely pitch in to meet the Agency's needs. Court cases handled by AHS AAGs are in every county in the State and fair hearings and other administrative matters are held across the State.

AGO – ENVIRONMENTAL DIVISION

➤ 7 Assistant Attorneys General:

- 1 Legal Division Chief
- 6 Staff Attorneys

The Environmental Protection Division litigates environmental cases of statewide importance and represents the State in Act 250 cases before the District Commissions and the Environmental Division of the Vermont Superior Court. If two or more state agencies, other than the Natural Resources Board, appeal an Act 250 commission decision to the Vermont Superior Court - Environmental Division, the AG is required to determine and represent the State's interest in the proceeding. The Environmental Protection Division also brings civil enforcement actions under Act 250 in civil court.

In addition to enforcement and cost recovery matters, Division AAGs represent the State and its officers when they are sued over environmental statutes and regulations, and represent the State in litigation relating to state lands such as boundary disputes, trespass, and wrongful timber cuts. In consultation with the Solicitor General, Division AAGs represent the State in appeals involving environmental issues, including toxic waste, solid waste violations, water and air quality standards, and Act 250. The Division coordinates with the Criminal Division on the investigation and prosecution of criminal environmental offenses.

The Division handles matters relating to the Vermont Yankee Nuclear Power Facility in federal court and before the Nuclear Regulatory Commission. It provides legal advice and counsel on environmental matters related to, or in anticipation, of litigation to state offices.

The Division litigates significant national environmental cases with other states in multi-state actions, at times joining as a party and other times filing amicus briefs. The Division also files formal comments, again often working with other states, to proposed environmental related rules by EPA and other federal agencies.

The Division Chief supervises the AAGs and provides oversight of all pending enforcement matters and litigation, as well as advising on other major cases within the AGO. The Chief assigns cases; supervises litigation strategy; reviews all major filings; approves settlement requests; and participates in moot courts, office CLEs, and training sessions. The Chief assists the Solicitor General in evaluating requests for the State to join amicus briefs. In addition, the Chief personally handles a caseload and argues before the Vermont Supreme Court and Second Circuit Court of Appeal.

GOVERNOR'S OFFICE

- **1 In-House Attorney:**
 - 1 Legal Counsel

The Governor's Counsel provides general legal advice for the Governor's Office, including the Secretary of Administration as a member of the Governor's senior staff. The position currently involves providing advice on the Executive Code of Ethics and certain Personnel Policies across the Administration; drafting conflict of interest/recusal memos; reviewing all bonds, grants, gifts, land transactions, FEMA requests, releases, certifications, etc. presented for the Governor's signature; drafting and consulting on Executive Orders; reviewing pardons and extraditions in consultation with the AGO; acting as a liaison for judicial and PSB appointments; and managing Public Records Act requests of the Governor's office, certain requests of the Secretary of Administration, and consultations across agencies. The Governor's Counsel also drafts and advises on policies for the Governor's Office, including records management; oversees various multi-agency legal matters, generally also involving the AGO; reviews all bills presented for the Governor's signature; takes on other legislative matters as assigned; and coordinates with the general counsels across all agencies and departments.

AGENCY OF ADMINISTRATION (AOA) – CENTRAL OFFICE

The Agency of Administration Central Office currently has no dedicated legal support, but receives legal advice from the Governor's Counsel and the AGO as needed. One AGO position in the Civil Litigation Division is dedicated to providing legal support for General Liability Insurance, under the umbrella of the Agency.

AOA - DEPARTMENT OF BUILDINGS AND GENERAL SERVICES

- **1 In-House Attorney:**
 - 1 General Counsel

BGS has utilized an in-house General Counsel as the primary legal advisor to the Commissioner, the Property Management Division, the Purchasing and Contracting Administration, Risk

Management, Information Centers, Surplus Property/Fleet Services, Engineering and Construction, and Postal and Print operations. The General Counsel also provides policy and legislative legal advice.

GCAL AAGs also provide legal services to the Department of Buildings and General Services, including legal advice and review for contracts, real estate transactions, and public records, as well as representation in litigation. GCAL works with the Department's Commissioner, the Division of Property Management and the Office of Purchasing and Contracting. GCAL AAGs represent the Department when it is sued and when it goes to court to enforce its legal rights.

GCAL's general counsel role recently expanded temporarily due to a vacancy in the Department's in-house General Counsel position.

AOA – DEPARTMENT OF FINANCE AND MANAGEMENT

DFM has no dedicated legal support, but receives support as needed from GCAL on contracts and miscellaneous issues.

AOA – DEPARTMENT OF HUMAN RESOURCES

- **3 In-House Attorneys:**
 - 1 General Counsel
 - 2 Staff Attorneys

The primary mission of the DHR Legal team is to ensure fair, consistent and legally sustainable employment practices for employees of the Executive Branch of the Vermont State Government. DHR attorneys provide advice and guidance to the DHR Commissioner and Staff, and leaders across State government on all employment related matters including but not limited to disciplinary actions, investigations, ethics, employee performance, equal employment opportunity, benefits, recruitment, classification, and labor relations. Attorneys also provide advice to DHR staff on records management, requests for information (such as public records act requests, requests for information from the Vermont State Employees Association (VSEA), the Human Rights Commission (HRC) and the Attorney General's Office (AGO)), contracts and memoranda of understanding. DHR attorneys develop, draft and analyze legislation and policy, testify before the legislature, represent the State in mediations of employment related disputes, and provide a representative to the Governor's Workforce Equity and Diversity Council, who is also the State EEO Officer. Attorneys advise management Statewide in all phases of administrative actions such as disciplinary actions and complaints before the Human Rights Commission (HRC), from inception up to administrative proceedings before the Vermont Labor Relations Board. In cases before the VLRB, HRC and in Superior or the Vermont Supreme Court the DHR paralegal and attorneys provide litigation support services to the AAGs. Administrative representation before the VLRB and HRC may also be performed by in-house DHR attorneys on a case-by-case basis, in coordination with AGO GCAL attorneys. The General Counsel supervises the Staff Attorneys and Paralegal.

AOA – DEPARTMENT OF INFORMATION AND INNOVATION

The Department of Information and Innovation has no in-house legal support, and currently has .75 GCAL AAGs assigned to it. The AAG support primarily entails providing input for complex IT contracts, and legal advice on other issues as needed.

AOA – DEPARTMENT OF LIBRARIES

The Libraries have no dedicated legal staff, but received assistance as needed from the AGO GCAL Division for contract reviews and public record requests. GCAL also supports the Board of Libraries regarding geographic naming.

AOA – DEPARTMENT OF TAXES

- **1 In-House Attorney**
 - 1 Staff Attorney
- **6 Assistant Attorneys General**
 - 6 Staff Attorneys

Tax has an in-house staff attorney whose role is to act as a hearing officer - presiding over administrative appeals (except property valuation appeals), writing determinations for the Commissioner, and writing formal rulings for the Commissioner.

AAGs in GCAL's Tax Department Legal Unit provide administrative, trial, and appellate representation to the Department. Their cases cover the spectrum of taxes including real property and current use, personal income, corporate income, estate and gift, rooms and meals, and sales and use taxes. Their work includes negotiating with taxpayers and their lawyers, handling refund requests and enforcement actions, pursuing and obtaining judgments against delinquent taxpayers, perfecting liens, and defending the Department's position in bankruptcy and foreclosure proceedings. Their cases are litigated as contested cases under the Vermont Administrative Procedures Act, as civil actions in the Superior Court, as appeals in the Vermont Supreme Court, and, occasionally, as claims in bankruptcy court. GCAL AAGs also advise the Department on legal issues relating to the negotiating and drafting of major contracts and policies, assist with replies to the more difficult access to records requests, and provide legal advice on legislation and rules that present legal issues.

Prior to September 2016, a GCAL AAG also acted as a General Counsel to the Tax Department. In addition to the litigation listed above, this AAG also assisted internal Tax staff with legal and policy issues; coordinated inter-division activities; responded to public records requests; and assisted with record retention protocols.

A shift in job duties occurred in September 2016 when Tax restructured its legal services to provide for an in-house General Counsel. This in-house General Counsel now provides legal services directly for the Commissioner; drafts regulations and legislation, reviews proposed tax legislation, and testifies in front of the legislature; assists the policy analyst team; coordinates inter-division activities; responds to public records requests and assists with record retention

protocols; and provides legal and policy advice. All AAGs assigned to Tax as of September 2016 are solely focused on litigation.

The numbers presented in this report are intended to represent accurate statistics as of July 2016; as of September 2016, Tax has 2 in-house attorneys and 5 AAGs assigned to it.

AGENCY OF AGRICULTURE, FOOD & MARKETS

- **1 Assistant Attorney General:**
 - 1 Staff Attorney

One GCAL AAG is assigned to the Agency of Agriculture, Food & Markets and, with some assistance from other AAGs, handles most of the Agency's legal matters. The AAG represents the Agency in court and in administrative litigation – for example, lawsuits by the Agency seeking civil penalties or injunctions for violations of agricultural laws and regulations, and before other tribunals, such as the Public Service Board; represents Agency staff in hearings held by the Secretary or designee and represents the Agency. The GCAL AAG also enforces the Agency's contract rights and conservation easements; defends the Agency when it is sued; protects the Agency's interests in bankruptcy cases affecting conserved farms; advises the Agency on difficult access to records requests; reviews Agency contracts and advises on drafting and negotiation of contracts, grants and memoranda of understanding; advises the Agency on open meeting laws; review the Agency's legislative proposals, with an emphasis on legal issues; and assists the Agency with rulemaking.

AGENCY OF COMMERCE & COMMUNITY DEVELOPMENT (ACCD)

- **1 In-House Attorney:**
 - 1 General Counsel

The ACCD General Counsel is the chief legal officer of the agency and cabinet-level advisor to the Secretary, Commissioners, and other officers of the agency. Essential activities include providing legal advice and published formal opinions to officials on issues involving significant public policy concerns or financial impacts; advising and testifying on legislation; developing, implementing, and executing litigation strategies in state and federal forums on complex regulatory, civil, or criminal matters; retaining and supervising outside counsel as needed; advising on compliance with state law on public inspection and copying of public records, including ACCD's compliance with its own records retention policies established for each division of ACCD; drafting, reviewing, and overseeing contracts, grants, licenses, leases, MOU's, MOA's, subscriptions, and other unique arrangements; providing statutory interpretation and legal advice on the Agency's powers and duties, as well as the manner in which they are exercised; and advising and assisting in the development of agency policies. The General Counsel maintains an agency-wide view of all legal matters, with particular attention paid to a wide range of programs administered by the agency and to the functions of the Department of Economic Development and the Department of Tourism and Marketing, and regularly collaborates with DHCD General Counsel on a number of matters, including

responding to public records requests, administering contracting and granting procedures, and appearances before public bodies and the legislature.

ACCD – DEPARTMENT OF ECONOMIC DEVELOPMENT

The Department of Economic Development does not have its own internal legal counsel; it uses the ACCD General Counsel for assistance with contracts and public records requests. Recently, the Department has been utilizing AGO services as well. There is currently a void in legal services related to legislative support and rulemaking.

ACCD – DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT (DHCD)

- **1 In-House Attorney:**
 - 1 General Counsel

The DHCD General Counsel provides specialized legal advice on issues of public policy concern and impact to the Department; develops agreements and processes required to administer and comply with state and federal programs; represents the Division for Historic Preservation in regulatory proceedings; reviews and drafts legislation on matters related to DHCD's mission; implements and executes litigation strategies in state and federal forums; provides legal counsel to public boards within DHCD; and collaborates with ACCD General Counsel on a number of matters, including responding to public records requests, administering contracting and granting procedures, and appearances before public bodies and the legislature.

ACCD – DEPARTMENT OF TOURISM & MARKETING

The Department of Tourism & Marketing does not have its own internal legal counsel; it uses the ACCD General Counsel for assistance with contracts and public record requests. Occasionally, if the ACCD General Counsel is unavailable, the Department of Housing & Community Development General Counsel is available to assist Tourism & Marketing as necessary.

AGENCY OF EDUCATION

- **2 In-House Attorneys:**
 - 1 General Counsel
 - 1 Staff Attorney

The Agency of Education's two in-house attorneys act as prosecuting attorneys with respect to allegations of unprofessional conduct or incompetence, or denial of licensure, and represent the Agency's position in any subsequent appeal, and are involved in investigating and responding to Administrative Complaints, which include findings of fact, conclusions of law, and a recommendation to the Secretary. They also represent the Agency in special education disputes, residency dispute appeals, and home study appeals; draft guidance to superintendents, school districts and school boards regarding execution of laws relating to public schools; advise the Agency Secretary, Deputies and Directors on legal matters arising out of administration of Vermont education law; research and respond to requests for information, including public

records requests; review all contracts, RFPs, and MOUs; draft decisions regarding school board member employment waivers; assist as needed with the process of hiring superintendents; provide research support to the State Board of Education; draft proposed legislation and provide legislative testimony, participate in the APA rulemaking process; assist with responses to media inquiries; interface with the Agency's contracted attorneys; and collaborate with the AGO as needed.

AGENCY OF HUMAN SERVICES (AHS) - CENTRAL OFFICE

- **10 In-House Attorneys:**
 - 2 General Counsel
 - 8 Staff Attorneys
- **1 Assistant Attorney General**
 - Legal Division Chief

The AHS General Counsel is the chief legal position at AHS, and supports the Secretary and executive management team as to Agency-wide and cross-departmental initiatives and operational issues. The General Counsel serves as the Secretary's legal representative with the legislature, the Office of the Governor and other SOV agencies and Departments; coordinates Agency wide rule-making; provides legal support and advice to individual Commissioners and their legal teams as needed; assists coordination of the work of the other attorneys providing legal support to the Agency and to its Departments; and serves as liaison to the Office of the Attorney General with respect to the work of AAGs providing legal support to AHS Departments.

AHS Medicaid Policy Attorneys have substantial responsibility for maintaining, amending and ensuring Agency wide legal compliance with the extensive system of Medicaid and Affordable Care Act eligibility rules. They act as Agency-wide resources with respect to ensuring compliance with due process requirements relating to the State's Medicaid program; provide advice relating to the complex long term services and supports regulations; and serve as general resource as to legal questions arising out of the work of the Medicaid Policy Group, which has Agency-wide responsibility for guiding the work of the many Departments providing Medicaid benefits.

The General Counsel of Health Services Enterprise (HSE) advises the AHS Secretary, HSE Governance Teams and Portfolio Director, and HSE staff on a variety of administrative and operational legal issues, including contract drafting, negotiation and management, funding requirements, public records and project-specific legal matters. The HSE Staff Attorney serves as Sustainability Legal Lead on designated projects, coordinates legal matters relating to HSE projects with other AHS attorneys and provides legal advice and counsel to project teams.

The AHS Rate Setting Attorney provides legal advice and support to the Director of the Agency's rate setting unit responsible for establishing reimbursement rates for long term care facilities; addresses complex legal issues and development of factual record arising from rate appeals; and assists the AHS General Counsel with legal issues requiring extensive legal analyses.

Human Services Board Hearing Officers make up 3 full-time attorney positions; they act as hearing officers at the AHS Fair Hearings in front of the Human Services Board, and support the Board in its decision-making. AHS AAGs represent the AHS departments in front of the Human Services Board.

AHS – DEPARTMENT FOR AGING AND INDEPENDENT LIVING (DAIL)

- **3 In-House Attorneys**
 - 1 General Counsel
 - 2 Staff Attorneys
- **1 Assistant Attorney General:**
 - 1 Staff Attorney

DAIL's General Counsel is a member of the Department's Senior Management Team; provides legal advice to the Commissioner and division and unit directors on issues involving substantial public policy concerns or financial impact; supervises the Department's staff attorneys; works closely with the AAG; provides daily legal advice and support to staff across all programs and units within the Department; drafts and/or assists with the development of Department and division policies, procedures and protocols; drafts and reviews RFIs and RFPs, contracts, grants, intragovernmental agreements and MOUs; collaborates with other General Counsels; reviews all responses to public records requests and requests for protected health information and other information determined to be confidential by law; proposes and drafts statutory and regulatory language and shepherds those proposals through the legislative and rulemaking processes; drafts legislative reports; communicates with Legislative Council; serves as an AHS representative for purposes of collective bargaining; drafts and/or reviews notices to program participants and their providers to ensure compliance with state and federal law; assists with developing legal assistance programs throughout the state; provides and/or arranges training to staff; assists with media inquiry responses; and appears before advisory boards.

DAIL's Staff Attorneys research and draft internal memoranda on complex legal issues ranging from Medicaid and HIPAA to data use agreements and the Americans with Disabilities Act; collaborate with staff to develop and draft regulations; draft letters in response to constituents' concerns; assist with developing and drafting protocols and policies; assist with the Department's Record Retention Plan and public record requests; serve as the Department's HIPAA liaison; negotiate contracts; draft motions and pleadings in response to complaints filed with the Human Rights Commission; and handle all administrative appeals, including those at the Human Services Board.

DAIL has one assigned AAG whose primary responsibility is to provide representation to DAIL in litigation before the probate, family, criminal and civil division of the Superior Court – including competency hearings and public guardianship and civil commitment cases – as well as before the Vermont Supreme Court.

The AAG also reviews contracts and grants for the Department; provides statutory and regulatory interpretation; provides guidance and risk assessment on policy development, legislative matters, and rulemaking related to civil commitments or public guardianship; and

works with prosecutors and defense counsel throughout the State providing the Department's perspective on civil commitments and public guardianships. The DAIL AAG spends about 80% of his time on DAIL legal work and is available as a "floater" the remainder of the time to assist with overflow work throughout the Division.

AHS – DEPARTMENT FOR CHILDREN AND FAMILIES (DCF)

Office of Child Support (OCS), Family Services Division (FSD), and Economic Services Division (ESD)

- **11 In-House Attorneys:**
 - DCF: 1 General Counsel
 - OCS: 10 Staff Attorneys
- **17 Assistant Attorneys General:**
 - 2 Senior Assistant Attorneys General
 - 15 Staff Attorneys

The DCF General Counsel is responsible for providing legal advice to the DCF Commissioner and the DCF divisions, including advice involving substantial public policy concerns and financial impact. In addition, the General Counsel coordinates legal work with the Assistant Attorneys General (AAGs) who represent the department primarily at administrative and judicial hearings, but also provide other legal services, to ensure that all legal needs of the department are met and addressed by the appropriate attorney; coordinates with AAGs to keep the department informed about litigation and advises on litigation strategy; is responsible for drafting legislation and rules and representing the department at legislative and public hearings, including appearing before legislative committees, as well as before other committees and boards; and is responsible for supervising the two attorney policy analysts within the Economic Services Division.

Two attorney Policy Analysts within the Economic Services Division of DCF work with a professional team of program managers, staff and attorneys and are subject matter experts in ESD's benefit programs, including Reach Up, 3SquaresVT, LIHEAP and General Assistance. The Policy Analysts are responsible for performing legal research and analysis to ensure that the administration of economic benefit programs is conducted in conformance with state and federal law. The Policy Analysts are also responsible for analyzing proposed state and federal legislation and regulations to understand the impact of these proposals on Vermont benefit programs and advise the Department on those impacts. In addition, the attorneys in these two positions are responsible for drafting legislation, rules and policies and representing DCF at public hearings, including administrative rule making and legislative hearings. Finally, the Policy Analysts may facilitate trainings and other meetings for staff and perform special projects as needed.

The Office of Child Support employs 9 in-house staff attorneys; 7 work in the regional offices and 2 are assigned to the DCF Central Office. All OCS regional staff attorneys are responsible for carrying out legal tasks to support their region or unit, including providing legal advice to regional staff; representing OCS before the magistrate and judge in child support-related proceedings to include parentage and contempt hearings; all aspects of appellate practice; conducting administrative reviews as needed; and appearing before the Human Services Board. Higher level OCS attorneys are also responsible for rulemaking, legislative drafting, policy

drafting, training legal staff and new employees, developing child support programs & projects, and providing specialized expertise in fields such as bankruptcy, interstate, domestic violence, intercept and criminal law. The Senior Management OCS Attorney provides legal assistance to the units in the central office; is the head litigation attorney; is the lead counsel for policy and training; provides supervision of five regional attorneys and one non-attorney staff member; acts as the court liaison; and oversees projects with statewide impact.

The OCS Supervising Attorney is the Administrative Collection and Hearing Officer, and is responsible for oversight of all administrative collection remedies. This position also provides legal assistance to the Intercept Unit, which collects child support through administrative wage withholding, administrative license suspension, trustee process, real estate liens and foreclosure. This position is also assigned a County caseload, supervises three regional attorneys, provides other court coverage as needed and is also assigned to other specialized projects.

The 5 AAGs who provide administrative, trial and appellate representation to the DCF Economic Services Division (ESD) report directly to the Division Chief. They handle administrative appeals before the Human Services Board and its hearing officers, as well as appeals from these decisions that go to the Vermont Supreme Court. The DCF-ESD AAGs also address eligibility, benefit levels, and coverage under the many social welfare programs administered by the ESD, the Department of Vermont Health Access, and other parts of the Agency; represent the ESD in administrative disqualification hearings; represent DCF and its staff as parties in civil litigation; and represent DCF's interests in cases where ESD is not a party. Litigation work includes witness preparation, filing motions to quash subpoenas for confidential beneficiary records, responding to discovery requests and motions, and attending hearings.

The DCF Family Services Division is staffed by 12 AAGs, including the Unit Director and an AAG who spends half of her time advising all AHS Departments on HIPAA and privacy matters. The Unit Director supervises the Unit AAGs, who handle an administrative and litigation case load, provides multiple social worker trainings throughout the year, and advises on legislative proposals. DCF-FSD AAGs are primarily responsible for termination of parental rights (TPRs) litigation and administrative hearings to substantiate abuse allegations.

In addition to the TPR and Human Services Board litigation, AAGs represent DCF district staff when they are drawn into criminal and domestic matters to which DCF itself is not a party. The AAGs provide training and daily legal advice to their respective district office. One of the AAG positions in the Unit is split between appellate work and HIPAA/Privacy work. This AAG briefs and argues appeals before the Vermont Supreme Court and also serves as the Agency's privacy officer, providing advice and legal training on HIPAA and other privacy mandates; advising the Agency on possible internal HIPAA violations; and drafting HIPAA-related documents. Another AAG primarily handles appellate work, with the assistance of the Solicitor General and Appellate Unit, and trains Department and AAG staff on newly developed law, best practices, and appellate trends. Additional AAG resources, in the AHS Division and elsewhere, are regularly needed to brief and argue almost 50 appeals a year before the Vermont Supreme Court.

The DCF AAGs provide a broad range of other legal services to the Agency including review and approval of contracts, grants, and MOUs from DCF and the AHS Central Office; advise and

consult with staff on legal issues relating to existing and proposed rules and public records requests; and plan and present trainings for AHS staff.

In addition, other divisions of the AGO provide substantial AAG resources to help to meet the legal needs of DCF. The Civil Division often defends complex lawsuits, the Solicitor General and appellate unit supervise and assist with appeals, and GCAL assists with Human Rights Commission investigations, public records and complex contract matters for the Department.

AHS – DEPARTMENT OF CORRECTIONS (DOC)

- **1 In-House Attorney**
 - 1 General Counsel
- **4 Assistant Attorneys General**
 - 1 Senior Assistant Attorney General
 - 3 Staff Attorneys

The DOC General Counsel provides counsel to the Commissioner, senior staff, and line staff on a variety of legal, policy, legislative, and personnel matters; advice regarding media inquiries, public records requests, and rulemaking; reviews and drafts Department policies, rules, and proposed legislation; reviews and drafts responses from the Commissioner to offenders' denials of grievances and requests for ADA accommodations, as well as appeals of denials of public records requests; collaborates with AAGs, Risk Management, and DHR on litigation; testifies on behalf of the Department in court and before the HRC; works frequently with other AHS GCs on matters of interdepartmental concern; reviews and approves all MOUs for the Commissioner's signature; and supervises the Department's Director of Policy Development, Offender Due Process and Public Records Officer.

The AAGs in the DOC Unit act as trial, appellate and general legal advisors for the Department. They represent the State and DOC officials and employees in cases filed in both federal and state courts, including habeas corpus petitions and constitutional claims, tort cases, requests for review of disciplinary actions and sentencing calculations, small claims cases, public records cases, sex offender classifications, and post-conviction relief claims. The AAGs also respond to subpoenas, motions and discovery requests in civil and criminal matters to which DOC is not a party, attend depositions of DOC staff, and appear in some criminal matters when DOC's interests should be represented. They routinely respond to legal issues arising from out-of-state lawsuits and court orders such as requests for extradition, detainers and transports. The Unit also defends actions brought against the Vermont Parole Board and provides the Board legal advice on matters arising from their duties.

The Director of the DOC AAG Unit supervises all litigation, reviews and assigns cases, supervises legal strategy, and reviews the work product of the AAGs. The Director confers with DOC administrative personnel on particular litigation, litigation trends, and overall results, and monitors litigation filed against the State for the actions of DOC's contractors who are legally obligated to defend and indemnify the State in these lawsuits. In addition to this litigation caseload, Unit AAGs review DOC contracts and grants and provide legal advice to the Commissioner, senior management, and DOC personnel in correctional facilities and field

probation and parole offices. The Unit provides training to DOC, including teaching at the Correctional Academy and arrest certification course, Parole Board training, hearing officer training, contract training, and witness testimony training.

In addition, other divisions of the AGO provide substantial AAG resources to help to meet the legal needs of the Department. The Civil Division defends many complex lawsuits against the Department, the Appellate Unit handles appeal, and GCAL assists with Human Rights Commission investigations, public records, and contract matters for the Department.

AHS – DEPARTMENT OF HEALTH (VDH)

- **1 In-House Attorney**
 - 1 Senior Policy & Legal Advisor
- **2 Assistant Attorneys General**
 - 2 Staff Attorneys

The Senior Policy and Legal Advisory provides counsel to the Commissioner of Health and senior staff on a variety of legal, regulatory, policy, litigation and legislative matters; oversees the Legal Office, including interaction with the AAGs and VDH Policy Advisors; is involved in all aspects of rulemaking; and serves as the Department of Health's legislative liaison.

The Department of Health has two AAGs who provide administrative, trial and appellate services, as well as legal advice, to Department staff in all of its programs and subdivisions, including the Commissioner's Office, the State Board of Health, the Medical Practice Board, ADAP and the Chief Medical Examiner. They are supervised by the AHS Division Chief. The AAGs handle civil and administrative litigation, including appeals from State Board of Health determinations; attend all hearings on requests for child personal care services, and handle appeals from those determinations at the Human Services Board; handle administrative and civil enforcement cases of various public health laws, regulations governing food establishments, and restrictions on public use of tobacco products; and provide legal support during public health emergencies such as PFOA and Ebola. The AAGs also respond to subpoenas, motions, discovery requests, and litigation holds in civil and criminal matters; review Probate Division decisions amending vital records; advise the Licensing Committee of the Medical Practice Board on all license applications to practice medicine in this state that are under review by that committee; review contracts; advise on public records requests; and participate in the rulemaking process for the Department.

Other divisions of the AGO provide AAG resources to help to meet the legal needs of the Department. The Civil Division and Solicitor General defend complex lawsuits involving VDH, such as the recent challenge in federal court to the State's implementation of the death with dignity law. GCAL assists with Human Rights Commission investigations, public records, and contract matters for the Department.

GCAL AAGs also prosecute complaints of unprofessional conduct against Vermont physicians and physician assistants filed with the Medical Practice Board. The AAGs work with the Board's investigatory committees and two full-time investigators; review complaints; conduct

investigations; prepare cases for presentation to the Board's three regional committees; prepare and negotiate consent orders; and prepare formal charges of unprofessional conduct against physicians. They also participate in pre-trial discovery, witness preparation, and motion practice before the Board's Hearing Panel; and advise the Board and its committees regarding all aspects of physician licensing.

AHS – DEPARTMENT OF MENTAL HEALTH (DMH)

- **2 In-House Attorneys**
 - 1 General Counsel
 - 1 Staff Attorney
- **4 Assistant Attorneys General**
 - 1 Senior Assistant Attorney General
 - 3 Staff Attorneys

The General Counsel for the Department of Mental Health advises the Commissioner and senior leadership on policy and legal implications on a host of issues; advises on and drafts proposed legislation, and testifies to the legislature; works closely with DHR on all levels of personnel issues; advises and assists on a variety of issues related to the running of a hospital and therapeutic residence, such as state and federal licensing and accreditation, risk management, and policy and procedures; works closely with department AAGs when specific cases or situations have policy, political, or publicity implications; assists AAGs with HRC, VLRB, and court cases as necessary, and attends mediations as the Commissioner's representative; works closely with other General Counsels on cross-department/agency issues; consults with the Governor's General Counsel when appropriate and necessary; supports DMH staff on a host of issues, including HIPAA; attends committee/work group/council/board meetings when necessary or requested; responds to Public Records Requests; develops, drafts, negotiates, and enforces contracts and grants; and participates in the APA rulemaking process.

The DMH-AGO Legal Unit has four AAGs who handle trial and appellate litigation for DMH. The Unit Director, who reports to the Division Chief, manages the litigation, supervises the other AAGs, reviews their work product, handles a caseload, and provides backup when there are scheduling conflicts. In addition to supervisory and litigation duties, the Director also conducts legal trainings around the state for mental health professionals; provides legal advice to the Commissioner's Office, administrators and medical staff at the state psychiatric hospital and DMH's Care Management Unit; and provides assistance in drafting legislation, administrative rules, and policies.

The AAGs represent DMH in all cases where the Commissioner has determined an individual is suffering from mental illness and is in need of care and treatment, continued treatment, or medication, including petitions in the Family Division of Superior Court for orders placing individuals in the custody of the Commissioner; representing the Commissioner's determination at court hearings; and handling involuntary medication hearings. Additionally, the AAGs represent the Department's interest in Superior Court when the Criminal Division is considering a hospitalization order for a criminal defendant; review the Department's contracts; provide legal advice and opinions on mental health matters; and conduct trainings.

AAGs in the GCAL Division and the Criminal Division assist the Unit AAGs on public records requests, criminal matters, and Human Rights Commission matters, and the Solicitor General and Appellate Unit provide substantial assistance with appeals.

AHS – DEPARTMENT OF VERMONT HEALTH ACCESS (DVHA)

- **3 In-House Attorneys**
 - 1 General Counsel
 - 2 Staff Attorneys
- **1 Assistant Attorney General**
 - 1 Staff Attorney

The DVHA General Counsel provides legal opinions to Commissioner and Deputy Commissioners regarding Medicaid Law, regulations, Vermont Health Benefits Exchange, The Blueprint Program, eligibility, compliance issues and litigation risks; reviews and enforces contracts; drafts and reviews Medicaid and Vermont Health Benefits Exchange rules; drafts and reviews proposed legislation; responds to Public Records Act requests; reviews allegations of fraud for the Program Integrity Unit; advises regarding provider overpayment; provides litigation support services to AAGs regarding discovery and administrative hearings; works collaboratively with DHR on personnel issues; and participates in Senior Management Team meetings.

The in-house Staff Attorneys conduct legal research and writing; assist in responding to discovery requests; analyze, review and determine the impact of proposed legislation; assist with requests involving the Public Records Act, HIPPA or Medicaid confidentiality laws; review contracts; and review and participate in the APA rulemaking process. In-house DVHA attorneys provide specialized legal support regarding Medicare law.

One AAG is assigned to DVHA, and reports directly to the AHS Division Chief. This AAG represents DVHA in third-party and estate recovery cases, and other litigation including appeals of health care provider tax assessments, provider overpayment recoveries, and the imposition of provider sanctions. The DVHA AAG also provides legal advice on matters before they reach litigation, such as ongoing provider investigations and audits, provider sanctions, collection of overpayments, and administrative appeals; legal issues relating to third party and estate recovery, including federal preemption and doctrines such as the made whole doctrine, the common fund doctrine, and the collateral source rule; provider tax assessments and their interplay with federal tax law; and issues relating to HIPAA and other confidentiality statutes.

AGENCY OF NATURAL RESOURCES (ANR) – CENTRAL OFFICE

➤ 5 In House Attorneys:

- 1 General Counsel
- 4 Staff Attorneys

The Agency's Office of General Counsel is comprised of fifteen lawyers and one program assistant, and provides legal assistance and services to the Office of Planning, Department of Environmental Conservation (DEC), Department of Fish and Wildlife (DFW), and Department of Forests, Parks and Recreation (FPR). The range of legal services includes litigation in the Environmental Court and other administrative bodies, Act 250 and Section 248 proceedings, and enforcement matters; drafting and reviewing permits; rulemaking; legislation; and providing general advice on Agency matters.

The ANR General Counsel manages the Agency's Office of General Counsel; provides legal advice to the Secretary and Department Commissioners on litigation, legislation, permitting, records management and public records act, and other legal matters; and represents the Agency in Environmental Court, the legislature, and other administrative bodies. The ANR General Counsel directly supervises the three Department General Counsels and the Chief of the Enforcement and Litigation Section and supervises litigation and program attorneys on special projects.

The Chief of the Enforcement and Litigation Section directly supervises three ANR Central and two DEC Enforcement and Litigation Section attorneys, who represent the agency in litigation before the Environmental Court and other administrative bodies, Act 250 proceedings, and enforcement matters. The Chief of the Section manages the Agency's litigation docket; co-chairs the Agency's Enforcement Referral Committee; is responsible for the development and implementation of litigation procedures; and is the lead attorney or co-counsel on select litigation cases. The attorneys in the Enforcement and Litigation Section represent the Agency in litigation before the Environmental Court and other administrative bodies, Act 250 proceedings, and enforcement matters. Specifically, these attorneys are responsible for permit appeals, enforcement matters, Section 248 proceedings, and Act 250 proceedings. These attorneys may also assist the Office of Planning and Policy and Agency programs on special projects, including but not limited to the development of policy guidance and review of regulations.

ANR – DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

➤ 8 In-House Attorneys:

- 1 General Counsel
- 7 Staff Attorneys

The DEC in-house attorneys provide legal advice to the Commissioner of DEC and DEC divisions on a wide variety of matters, including legislation, rulemaking, permitting, records management and public records act, and other legal matters and represents the Agency in the legislature and at public hearings. In some cases, the DEC General Counsel may also represent the Agency in litigation on specific cases where they have specialized expertise or knowledge.

ANR – DEPARTMENT OF FISH & WILDLIFE (DFW)

- **1 In-House Attorney:**
 - 1 General Counsel

The DFW General Counsel provides legal advice to the Commissioner of DFW and DFW divisions on a wide variety of matters, including legislation, rulemaking, permitting, land acquisitions, contracts and grants, records management and public records act, and other legal matters and represents the Agency in the legislature and at public hearings. In some cases, the DFW General Counsel may also represent the Agency in litigation on specific cases where they have specialized expertise or knowledge.

ANR – DEPARTMENT OF FORESTS, PARKS, AND RECREATION (FPR)

- **1 In-House Attorney:**
 - 1 Staff Attorney

The FPR General Counsel provides legal advice to the Commissioner of FPR and FPR divisions on a wide variety of matters, including legislation, rulemaking, permitting, land acquisitions, contracts and grants, records management and public records act, and other legal matters and represents the Agency in the legislature. In some cases, the FPR General Counsel may also represent the Agency in litigation on specific cases where they have specialized expertise or knowledge.

AGENCY OF TRANSPORTATION (AOT)

- **4 Assistant Attorneys General:**
 - 2 Senior Assistant Attorney General
 - 2 Staff Attorneys

The Transportation Legal Unit AAGs represent the Agency in civil litigation; file legal proceedings to acquire rights of way for highway projects; and defend lawsuits against the Agency. AOT AAGs also advise the Agency on construction and other contracts, and on the enforcement of contract rights. They defend contractor claims for additional compensation and pursue claims against contractors for design and construction defects; handle real estate matters, including environmental permitting and property management; handle all legal matters relating to public transit, railroads, and rail trails; advise the Agency on legislative and policy matters; and assists with public record requests. A Senior AAG serves on AOT's executive staff.

AOT - DEPARTMENT OF MOTOR VEHICLES (DMV)

- **1 Assistant Attorney General:**
 - 1 Staff Attorney

The DMV AAG focuses on policy decisions, rule-making, and legislative matters; is in DMV's executive meetings; represents the DMV in administrative appeals to the Agency and Superior

Court; advises the Department on legal issues that arise under the Federal Drivers' Privacy Protection Act and the Federal REAL ID Act; and responds to inquiries from other attorneys.

DEPARTMENT OF FINANCIAL REGULATION (DFR)

➤ 9 In-House Attorneys

- 1 General Counsel
- 8 Staff Attorneys

The DFR General Counsel provides legal advice to the Commissioner and oversees the staff attorneys. Staff attorneys work on the legal issues of the respective divisions of the DFR (i.e., banking, captive insurance, insurance and securities). One staff attorney focuses solely on health care law and oversees the DFR's role in state health care policy, and the remaining attorneys are broadly divided into generalists who serve all the divisions and specialists who focus specifically on providing legal services to a single division; any attorney may be asked to provide legal advice to any of the divisions. Other key DFR attorney functions include taking administrative/civil enforcement actions; drafting and shepherding rules through the administrative process; drafting proposed legislation and collaborating with the Legislative Council; performing studies for the legislature; reviewing contracts and RFPs; and reviewing responses to public records requests. Contracted attorneys are used on an as-needed basis as hearing officers in administrative hearings, as well as acting as outside liquidation counsel for insurance company insolvencies.

AAGs in the GCAL Division routinely advise the Department of Financial Regulation on contracts, regulatory matters and on access to records matter. GCAL and other AAGs have also worked with the Department on a variety of other matters such as the EB-5 program and civil litigation.

DEPARTMENT OF LABOR (VDOL)

➤ 5 In-House Attorneys:

- 1 General Counsel
- 4 Staff Attorneys

The VDOL General Counsel acts as an advisor to the Commissioner, deputy and division heads on legal and policy matters; supervises three staff attorneys, three non-attorney unemployment hearing officers, and administrative support staff; serves as counsel to the Employment Security Board, drafts Board decisions, and represents the Department on Board decisions appealed to Supreme Court; defends VOSHA citations before the VOSHA Review Board; drafts proposed legislation, provides legislative testimony, and collaborates with the Legislative Council; participates in the APA rulemaking process; serves on legislative and departmental study committees; drafts reports for the Vermont Legislature; responds to citizens, employers, stakeholders, attorneys, and media on behalf of Commissioner and Governor's office; reviews and drafts contracts and MOUs; is responsible for federal complaint proceedings; handles all public records requests and advises on record retention policy; and ensures that the UI federal performance measures and timeframes are met.

Two staff attorneys serve as Workers' Compensation hearing officers, conducting formal Workers' Compensation appeal hearings; drafting decisions for the Commissioner's signature; and hearing disputed wage and hour claims and issuing written decisions. The Chief Workers' Compensation hearing officer supervises the other WC hearing officer and one Administrative Assistant; represents the Commissioner at meetings, and on study committees; assists in drafting legislative proposals; participates in the APA rulemaking process; serves on legislative and departmental study committees; drafts reports for the Commissioner and the Vermont Legislature; responds to inquiries relating to Workers' Compensation. The other Staff Attorney who acts as a Workers' Compensation hearing officer serves as the Department's EEO Compliance Officer and represents DOL on the Governor's Workforce Equity and Diversity Council.

A staff attorney under the direct supervision of the General Counsel provides legal support for all divisions and units in VDOL, and oversees the Wage and Hour and Employment Practices program. This attorney supervises wage and hour unit staff; drafts wage orders for the Commissioner; tracks changes to the FLSA and attendant federal regulations; advises VDOL and other stakeholders on changes to state and federal labor laws; pursues settlements of workers' compensation administrative penalties on behalf of the workers' compensation division; assists and helps direct the workers' compensation division; participates in the APA rulemaking process; serves on legislative and departmental study committees; drafts reports for the Vermont Legislature; responds to citizens, employers, stakeholders, attorneys, and media inquiries; defends VOSHA citations to the VOSHA Review Board; rules on VOSHA whistleblower appeals for the Commissioner; provides advice and conducts research for VDOL Commissioner and Division Heads as necessary; pursues court actions; serves as counsel to VDOL MSFW program; and serves on the coalition of state, federal, educational and advocacy organizations that monitor farmworkers' rights and issues.

A Collections staff attorney pursues recovery of tax assessments, penalties, and interest issued by the Department for various state and federal programs under VDOL jurisdiction, such as overpaid unemployment benefits, underpaid unemployment insurance taxes, unpaid wages owed to wage claimants, unpaid workers' compensation penalties, and unpaid VOSHA citations; pursues other civil actions, such as liens, at the direction of General Counsel; maintains an active caseload in all county superior courts and small claims courts; and pursues recovery under bankruptcy proceedings when conditions warrant.

DEPARTMENT OF LIQUOR CONTROL

GCAL AAGs provide legal counsel to the Department of Liquor Control. They work closely with the Department's Enforcement Division and represent the State in contested case hearings before the Liquor Control Board, as well as appeals from those decisions. GCAL AAGs also serve as general counsel to the Department, providing legal services for liquor licensing, public records and open meeting law issues, retail tobacco licensing, proposed rules, policies or guidance, and legislative initiatives. GCAL reviews the Department's contracts; represents the Department in litigation; and has worked with the management team on legal aspects of several initiatives including modernizing business practices and revising laws that govern the sale and distribution of alcoholic beverages.

DEPARTMENT OF MILITARY

The military department is a State and Federal entity, and has federal attorneys who handle federal matters. For State matters they have a paralegal, who coordinates with attorneys from various State agencies including DHR and the AGO GCAL, depending upon the situation. They have a small State legal workload.

DEPARTMENT OF PUBLIC SAFETY (DPS)

➤ 2 In-House Attorneys:

- 1 General Counsel
- 1 Staff Attorney

The DPS General Counsel provides direct supervision of the staff attorney; legal advice to Executive and Department officials on a wide variety of legal issues; and legal support to the Department on legislative bills. The General Counsel also assists the divisions in the development of policies; supports the public records department; participates in the negotiation and mediation of Department litigation; participates in the drafting and review of policies; assists in support of the Department boards; drafts and reviews legal documents related to the operation of the divisions; and keeps abreast of legal developments that affect the Department and individual divisions. The staff attorney provides general legal advice and drafts memos to the Commissioner, Deputy Commissioner, Directors and Boards; drafts personnel documents; and represents the Department at administrative hearings, depositions and in court.

The DPS attorneys also draft, review, and negotiate contracts and MOUs with municipalities, and database user agreements; respond to public record requests; handle administrative appeals of building/code violations; federal grants; assist with VSP internal investigations as needed; and advise on registry and licensing laws and requirements.

DEPARTMENT OF PUBLIC SERVICE (PSD)

➤ 10 In-House Attorneys:

- 9 Staff Attorneys
- 1 Senior Policy & Legal Advisor

The Public Service Department is a party in all Public Service Board (Board) proceedings, and the eight attorney positions in PSD's Public Advocacy Division represents the public interest in litigation and other proceedings before the Board. These attorneys participate in investigations involving deregulation, expanded competition, alternative regulatory plans, electric facility siting, and power purchase contracts; are responsible for review of proposed utility tariff changes and special contracts; and recommendations to the Public Service Board regarding filings. The Public Advocacy attorneys also represent the public interest in cases before the Vermont Supreme Court, federal district and appellate courts, Vermont Superior Court, and in matters before federal administrative agencies such as the Federal Communications Commission, Federal Energy Regulatory Commission, Securities and Exchange Commission, and Nuclear Regulatory Commission.

Another PSD staff attorney position acts as Special Counsel for the Telecommunications Division, and the Senior Policy & Legal Advisor is the Regional Policy Director in the Commissioner's Office.

GREEN MOUNTAIN CARE BOARD (GMCB)

- **2 In-House Attorneys:**
 - 1 General Counsel
 - 1 Staff Attorney

The GMCB's in-house attorneys provide advice on ethics, the APA, Public Records Act requests, and other daily advice on complex and specialized programmatic issues such as rate review, hospital budget and certificate of need, each of which may involve public hearings. The AGO is consulted in cases likely to result in litigation, and at other times as needed.

NATURAL RESOURCES BOARD (NRB)

- **3 In-House Attorneys:**
 - 1 General Counsel
 - 2 Staff Attorney

NRB in-house attorneys handle prosecution of NRB enforcements that are appealed to the Superior Court Environmental Division, both at the administrative level and at the Superior Court; and appeals to the Superior Court of permits under \$70k in value. The AGO has specific authority to prosecute appeals to the Superior Court of permits that are over \$70k in value, and also handles Supreme Court appeals of Environmental Division decisions.

PUBLIC SERVICE BOARD (PSB)

- **8 In-House Attorneys:**
 - 1 General Counsel
 - 7 Staff Attorneys

The PSB General Counsel directly supervises all legal work and the conduct of all PSB staff; reviews the legal sufficiency of all proposed decisions and Board orders; supervises and manages a complex and varied caseload; is responsible for the development, implementation, and execution of litigation strategies in state and federal forums on complex regulatory and civil matters; provides legal advice to PSB staff and the Clerk of the Board; provides legal advice to the Board on issues involving public policy concerns or financial impact; represents the Board in inter-agency coordination matters; appears before legislative committees; participates in the day-to-day management of the agency; and otherwise performs special duties as assigned by the Board Chair in the management of the agency.

PSB staff attorneys preside over contested cases as quasi-judicial hearing officers; prepare comprehensive proposed decisions; and assist the Board in evaluating the proposed decisions prepared by the staff attorneys. The PSB staff attorneys are also responsible for reviewing utility-related filings; drafting proposed rules; assisting in the development of Board policy on utility-

related matters; testifying before the Legislature and otherwise performing special duties as assigned by the Board Chair in the management of the agency.

VERMONT VETERAN'S HOME (VVH)

VVH has no embedded legal support, but receives support as needed from GCAL with Public Records Act requests and contract reviews. They have a local attorney under contract to assist with collections; DHR provides legal support for personnel actions; and DAIL provides assistance regarding patient and provider issues.

AUDITOR OF ACCOUNTS

GCAL AAGs provide legal advice to the Auditor of Accounts, including advice on access to records issues, contracts, and statutory interpretation. GCAL also prepares the Audit Disclosure Letter for the annual audit of Vermont's financial statements.

SECRETARY OF STATE'S OFFICE

- **5 In-House Attorneys**
 - 5 Staff Attorneys

The Secretary of State's five attorneys all reside within the Office of Professional Regulation (OPR). Three staff attorneys act as prosecutors in front of the 20-25 licensing boards OPR regulates licenses for. The other two staff attorneys act as legal counsel to the various licensing boards – they assist in drafting board decisions, researching legal matters, and advise regarding legal burdens and thresholds. There is an exempt position titled General Counsel, but the position serves the purpose of providing guidance to municipalities and the public, rather than advising the Secretary directly on legal matters.

GCAL AAGs provide legal services to several divisions in the Secretary of State's Office, including legal advice on election and campaign finance matters, assistance drafting and negotiating contracts, and legal representation in civil litigation and appeals. They provide advice on interpretation of statutes and court decisions governing campaign finance, open meetings, and public records. GCAL has also advised the Secretary on legislative proposals and assisted with the drafting of legislation. GCAL represents the Elections Division in contested cases in the courts and other tribunals, including employment, professional licensing, and election matters and represents the Office of Professional Regulation when sued in court.

STATE TREASURER'S OFFICE

GCAL AAGs serve as legal counsel to the Office of the State Treasurer, and are statutorily designated as counsel to the State Employees', Teachers', and Municipal Employees' Retirement Boards as well as the Vermont Pension Investment Committee. GCAL AAGs advise the Treasurer's Office on contracts, access to records request, legislative matters, and open meeting law questions. They represent the Office in related litigation and appeals; advise the Unclaimed Property Division; advise the Retirement Boards; assist the Vermont Pension Investment

Committee with drafting and negotiating investment contracts, rulemaking, and other legal issues as needed; and prepare litigation reports for the Municipal Bond Bank and other entities related to the Treasurer's Office.

OFFICE OF THE DEFENDER GENERAL (ODG)

➤ 40 In-House Attorneys:

- 40 Staff Attorneys
- Numerous contracted attorneys
- Numerous ad hoc attorneys

The Office of the Defender General provides constitutionally required representation to needy persons charged with crimes. The Office is also statutorily required to provide counsel to children who are the subject of juvenile proceedings as alleged delinquents; to parties in juvenile proceedings including children in need of care and supervision (CHINS) as required by the interests of justice; to children in the custody of the Department for Children and Families; to persons in the custody of the Department of Corrections; and, to needy persons in extradition, or probation or parole revocation proceedings. In addition to the 40 staff attorneys, the ODG also manages almost 100 contracting attorneys and more than 100 ad hoc counsel that handle conflict cases. An attorney is assigned to each of the approximately 20,000 cases the ODG handles each year.

The seven Supervising Attorneys and 23 Staff Attorneys spread amongst seven county staff offices provide representation in criminal misdemeanor and felony cases; provide representation to juveniles misdemeanor or felony delinquency cases, and to either a child or parent of the subject child in Children in Need of Care or Supervision and Termination of Parental Rights (TPR) cases; represent clients who may be facing significant jail time, and may argue positions that create new case law; may be assigned to handle post-conviction relief or appellate cases; analyze the evidence and other sources of law to select appropriate trial strategy and negotiate with opposing counsel; and are required to exercise independence of judgment in providing representation in a wide array of Criminal and Family Division cases, which may require analysis of legal issues, drafting of motions and memoranda in non-routine situations. Newer staff attorneys may provide research, pretrial and litigation assistance to more senior attorneys, and are typically subject to the direct supervision, direction, instruction and periodic review of routine legal tasks by senior counsel or supervising attorney.

Five attorneys in the Prisoners' Rights Office address a wide range of issues that deal with the fact, length and conditions of confinement and community supervision for people serving sentences. These include post-conviction relief criminal appeals, furlough, parole, and supervised community sentence eligibility and violations, health care, prison discipline and sentence calculation.

Three attorneys in the Juvenile Division provide ongoing post-dispositional representation to children and youth who are in the custody of the Department for Families and Children and were represented in original Family Court proceedings by a public defender. The staff attorneys advocate for these children in a wide variety of situations, and provide representation for these

clients at DCF case plan review meetings, administrative hearings at the Woodside Detention Center and at certain administrative appeal hearings and judicial hearings.

Three attorneys in the Appellate Division primarily handle appeals of cases to the Vermont Supreme Court.

APPENDIX C

FISCAL 2016 AGENCY BILLINGS

Attorney General's Office

Fiscal 2016 Agency Billings

Agency / Department	Billing	Pay't 1 TSF/AP Date	Pay't 2 TSF/AP Date	Pay't 3 TSF/AP Date	Pay't 4 TSF/AP Date	Balance
Board of Medical Practice	178,790	40,810 TSF 2108718 01/07/16	47,854 TSF 2113432 01/19/16	48,529 TSF 2150545 04/13/16	41,596 TSF 2204147 08/02/16	0
Buildings & General Services, Dept. of State Buildings	59,030	59,030 TSF 2164186 05/10/16				0
Buildings & General Services, Dept. of Risk Management	741,580	741,580 TSF - 2066842 10/01/15				0
Corrections, Dept. of	150,000	150,000 TSF 2150057 04/11/16				0
Financial Regulation, Department of	43,351	43,351 TSF - 2061056 09/18/15				0
Human Resources, Dept. of	73,856	73,856 TSF 2111512 01/13/16				0
Information & Innovation, Dept. of	114,352	114,352 TSF 2164818 05/11/16				0
Liquor Control, Dept. of	63,311	63,311 TSF - 2071610 10/12/15				0
Lottery Commission	48,019	48,019 TSF - 2107307 01/06/16				0
Natural Resources, Agency of Air Cases	55,000	55,000 TSF - 2174734 06/02/16				0
Natural Resources, Agency of Petroleum Clean-Up	155,000	155,000 TSF - 2174735 06/02/16				0
Public Service	0					0
Transportation, Agency of	86,831	86,831 TSF 2166088 05/13/16				0
Treasurer, Office of Retirement Boards	98,863	18,347 TSF 2111520 01/13/16	31,085 TSF 2111524 01/13/16	49,432 TSF 2142290 03/23/16		0
Treasurer, Office of VPIC	139,453	69,727 TSF 2111524 01/13/16	18,347 TSF 2142289 03/23/16	51,380 TSF 2142290 01/13/16		0
Totals	2,007,436	2,312,963	224,508	276,647	84,180	0

APPENDIX D

MEMO RE: AGENCY OF HUMAN SERVICES LEGAL NEEDS ASSESSMENT

October 25, 2013



STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Douglas Racine, Secretary, Agency of Human Services
FROM: Ken Schatz, AHS General Counsel *KAS*
DATE: October 25, 2013
SUBJECT: Agency of Human Services Legal Needs Assessment

Introduction:

When I became General Counsel in February, 2013, you asked that I provide a review and assessment of the legal needs of the Agency of Human Services (Agency or AHS). As I worked on various matters during the first months of my tenure here, I had the opportunity to review and consider how the legal needs of the Agency are addressed. Specifically, in preparing this memorandum, I met with the Deputy Secretary and AHS Commissioners. I also engaged in a considerable amount of discussion with the Attorney General Office (AGO) AHS Division Chief and the Chief Assistant Attorney General. Finally, I have had the opportunity to review the AGO Legal Needs Assessment.

The AGO assessment identifies legal services provided by Assistant Attorneys Generals (AAGs) and caseload data related to those services. In addition to legal services provided by the AGO, some of the Agency's legal needs are met in other ways. For example, DCF employs several lawyers as "policy analysts" to assist with rulemaking, DVHA relies on outside counsel for certain complex contracts and assistance on privacy issues, the Health Department employs a general counsel and the Department of Human Resources (DHR) provides legal support on personnel matters. I have attempted to provide you with recommendations that address all of the Agency's legal needs.

General Recommendations:

Recommend hybrid approach of utilizing AAGs and a General Counsel in each department

The AGO provides law firm style resources with experience, expertise and support that go beyond the 29 individual AAGs who are assigned to particular AHS departments. For example, the resources of the AGO Civil and General Counseling and Administrative Law (GCAL) divisions are utilized in addressing the Agency's legal needs. Consequently, my assessment is that AAGs can provide for most of the legal needs of AHS. As the new AGO AHS Division Chief and I are both relatively new in our positions, we are learning together and have productively engaged in regular communication and coordination on cases and systemic issues. I particularly welcome and appreciate the renewed commitment to periodic performance

evaluations. It is also noteworthy that as a statutory office the AGO has its own positions and priorities that may not always align with needs and priorities of AHS.

I recommend that each AHS department employ a General Counsel to provide legal advice and support, particularly with respect to legislative, policy, rulemaking, personnel and other operational and executive branch related matters. General Counsel can serve as a liaison and coordinate the legal services provided by the AAGs and with attorneys for other state or federal agencies on behalf of the AHS department. General Counsel can also oversee those legal services provided by policy analysts, contractors, etc. to make sure the department's legal needs are being met on an ongoing basis. Such general counsel can give undivided loyalty as an attorney to the needs and priorities of the client. A general counsel employed by a department can effectively look at the big picture of the department's goals and provide legal support and leadership to assist each department to attain those goals. The hybrid model is working well in the Health Department. Adding general counsel with a focus on legislative, policy and rulemaking will enable AAGs to have more time available for litigation, administrative appeals, etc. We should move forward toward using this approach in all AHS departments.

Recommend enhanced coordination of administrative law efforts

DCF, DVHA, DAIL and VDH decisions prompt a considerable number of administrative appeals to the Human Services Board. DCF and DVHA appeals are handled by DCF AAGs. DAIL and Health appeals are handled by each department's own AAGs. Particularly in light of the recent increase in fair hearing requests, we should consider working with the AGO to create an AHS AAG administrative law unit. Creating such a unit across department lines would support the development of specialized expertise and potentially avoid duplication of effort.

Recommend that attorneys provide more training to program staff

AAGs currently provide some good training, primarily for their own departments. Additional training will enable program staff to utilize legal staff more effectively. Many functions where training can be of value cross department lines, e.g. rulemaking, contracts and grants, public records, preparing for and resolving administrative appeals, etc. We should explore working with the AAGs and department general counsel to provide more training to the Agency, which may also help break down silos. Periodic repetition of basic training in addition to more advanced training would be helpful.

AHS Department Recommendations:

Department of Children and Families (DCF)

Recommend general counsel

The DCF Commissioner, deputies and program staff would benefit from additional direct legal presence and advice on legislation, policy, rulemaking, personnel and other operational and

executive branch matters. As such a diverse department, a legal focus on the big picture would be particularly advantageous to DCF.

Recommend consideration of restructuring policy analysts

We should explore structuring the policy analysts (who are lawyers) as a legal unit. Doing so would clarify that the policy analysts provide legal advice. The policy analysts do not currently provide rulemaking support to all DCF programs. Consideration should also be given to building capacity to enable them to do so.

One approach to consider is to change one of the vacant policy analyst positions to a Senior Policy Analyst/Legal Advisor position to provide general counsel support to all of DCF and supervise and coordinate the work of the policy analysts.

An AHS health care staff attorney limited service position has recently been created. In light of the present and upcoming health care reform initiatives, my recommendation is that this becomes a permanent position. As DCF has a significant role with respect to health care eligibility, related rulemaking and appeals, consideration should be given to eventually transferring this legal position to DCF when a general counsel is in place to provide supervision.

DCF – Economic Services Division

Support AGO recommendation to create ESD Administrative Appeals Unit

Providing an internal appeal process will hopefully result in a reduction of the number of fair hearings. DVHA utilizes an internal appeal process and indicates that a significant number of cases are resolved without the necessity of a fair hearing. Creating an administrative appeals unit also provides the opportunity to identify areas in the ESD process that warrant improvement, including policy or rule modification that will reduce appeals and result in better service for the public.

Recommend monitoring of ESD AAGs caseload

There has been a dramatic increase in fair hearing requests in recent years. Two limited service ESD AAGs are about to be added to the legal unit to handle the expected increase in fair hearings as a result of Vermont Health Connect coming online.

In addition to DCF matters, the ESD AAGs currently handle DVHA administrative appeals and some of their increasingly complex contracts.

I recommend review of their staffing needs, including the range of AAG responsibilities and an assessment of opportunities to create efficiencies over the course of the next year to avoid having the demands for legal services outstrip the capacity of the legal staff.

DCF – Family Services Division

Support exploration of AGO recommendation for one additional AAG

The increased caseload demands on the attorneys in the DCF Family Services Division Unit are significant. Those attorneys are assigned to the DCF district offices around the State and are primarily involved in important and challenging civil litigation (termination of parental rights cases) and administrative hearings (child abuse substantiation cases). I suggest that we give serious consideration to creating an additional Family Services AAG position.

Recommend review of privacy resources

One of the AAG positions includes .5 FTE work on privacy issues for the Agency. That attorney pitched in to assist DVHA on privacy issues over the spring and summer. Filling the new AHS privacy position will hopefully result in adequate resources to enable AHS privacy legal needs to be met. With health care and IT initiatives and changes to HIPAA, privacy issues are increasing in importance. I recommend that we specifically assess how well the Agency's privacy needs are being met six months after filling the new AHS privacy position.

I do not address the DCF – Child Support Unit in this memorandum. Although there are 10 full time program lawyers, including the Director, in that unit, they operate independently. My recommendation is that any assessment of that program should be done separately.

Department of Corrections (DOC)

Recommend general counsel

The DOC Commissioner, deputy and staff would benefit from additional direct legal presence and advice on legislation, policy, rulemaking, personnel and other operational and executive branch matters. DOC has a particular need for legal support and coordination of personnel matters. DHR's capacity to investigate matters is limited. A DOC general counsel could work with DHR and enable DOC to handle more personnel matters on its own and in a timely fashion.

I support the current effort to transfer and fill a vacant DOC position as a general counsel position.

Department of Disabilities, Aging and Independent Living (DAIL)

Recommend general counsel

The DAIL Commissioner, deputy and program staff would benefit from additional direct legal presence and advice on legislation, policy, rulemaking, personnel and other operational and

executive branch matters. As another diverse department, DAIL has an ongoing need for leadership to address the legal issues raised by the Department's constituents and stakeholders.

I support the current effort to change the vacant attorney position to a general counsel position. This would result in a transfer of responsibility for legal services, not a reduction. Separating out the general counsel responsibilities will enable the AAGs to focus on their litigation and administrative law responsibilities.

I am optimistic that the direct involvement of the AHS Division Chief will have a positive impact on the provision of legal services by the AAGs. I am also hopeful that the DAIL AAGs may benefit from better coordination of AHS administrative appeals as those matters comprise more than 50% of their workload.

Recommend Review of Caseload

Given that the legislative session will start soon, I believe it makes sense to employ a general counsel now to address the immediate need to assist the DAIL Commissioner on legislative, rulemaking and policy matters. However, in light of the concerns about the caseloads of the DAIL AAGs, I recommend a review of their caseloads three months after hiring of general counsel to determine whether there is a need for additional AAG staff.

Department of Health (VDH)

The current hybrid approach of general counsel (Senior Policy and Legal Advisor) and AAGs seems to be working very well. Working together they have developed systems, address issues and ensure that the legal team functions effectively and efficiently for VDH.

Department of Mental Health (DMH)

Recommend general counsel

The DMH Commissioner, deputy and program staff would benefit from additional direct legal presence and advice on legislation, policy, rulemaking, personnel and other operational and executive branch matters. With significant changes to the manner in which the Department provides services after Hurricane Irene, there is an ongoing need for a legal focus on how to address the controversial issues faced by the Department.

I agree with the AGO that the demand for legal services exceeds the current staffing at DMH. I recommend changing and filling the vacant attorney position as a general counsel position. Adding a general counsel to provide legal support in legislative, policy, rulemaking and personnel issues will allow the AAGs to more effectively handle DMH litigation matters around the State.

Department of Vermont Health Access (DVHA)

Recommend general counsel

The DVHA Commissioner, deputies and program staff would benefit from additional direct legal presence and advice on legislation, policy, rulemaking, personnel and other operational and executive branch matters. With so many complex health care reform initiatives there is clearly a need for legal support and coordination. I support the current effort to hire a DVHA general counsel.

DVHA's legal needs have become increasingly complex as a result of health care reform. Their one assigned AAG has stepped up and provides a wide range of legal services. A substantial amount of complex contract work has been provided by a private law firm. The AGO GCAL Division has also provided significant assistance on complex contracts. The DCF -ESD AAGs currently handle DVHA administrative appeals and contracts.

As discussed in the DCF-Family Services section, there is also an increasing need for legal services related to privacy issues. DVHA's AAG, and DCF's privacy AAG, along with and a private attorney, worked together to address privacy issues this spring and summer. The person who fills the new AHS privacy position will add to our privacy resources and hopefully will enable AHS (especially DVHA) to meet our privacy legal needs. As set forth in the DCF-Family Services section, I recommend that we specifically assess how well the Agency's privacy needs are being met six months after filling the new AHS privacy position.

Recommend review of legal resources

I recommend a review of the demand for legal services within DVHA three months after hiring of general counsel. My view is that in the past we understaffed DVHA's legal resources. Adding a general counsel and a privacy position will help address the legal demands. With the current and increasing number of new, complicated health care related initiatives we should monitor the need for additional legal services.

Summary

In conclusion, my recommendations are as follows:

Employ general counsel in each department.

- In DCF, I recommend considering restructuring the policy analysts and changing and filling one of the vacant policy analyst positions as a general counsel position.
- In DOC, I support the current effort to transfer and fill a vacant DOC position as a general counsel position.
- In DAIL, I support the current effort to change and fill the vacant attorney position as a general counsel position.

- In DMH, I recommend changing and filling the vacant attorney position as a general counsel position.
- In DVHA, I support the current effort to hire a general counsel.

Recommend enhanced coordination of administrative law efforts

Recommend that attorneys provide more training to program staff

Support AGO recommendation to create DCF - ESD Administrative Appeals Unit

Recommend monitoring of DCF - ESD AAGs caseload over course of next year

Support exploration of AGO recommendation for additional DCF – Family Services AAG

Recommend review of privacy resources 6 months after filling new privacy position

Recommend review of DAIL AAG caseload 3 months after filling general counsel position

Recommend review of DVHA legal resources 3 months after filling general counsel position

I trust this memorandum is responsive to your request. Please feel free to let me know if you have any questions or require additional information.

APPENDIX E

STATE OF VERMONT AGENCY OF HUMAN SERVICES LEGAL NEEDS ASSESSMENT

October, 2013

Prepared by:

William E. Griffin, Chief Assistant Attorney General

Linda Purdy, Assistant Attorney General
and Chief, Human Services Legal Division



STATE OF VERMONT
AGENCY OF HUMAN SERVICES

LEGAL NEEDS ASSESSMENT

October, 2013

Prepared by:

William E. Griffin, Chief Assistant Attorney General

**Linda A. Purdy, Assistant Attorney General
and Chief, Human Services Legal Division**

WILLIAM H. SORRELL, ATTORNEY GENERAL

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Summary

The work of the Agency of Human Services is diverse, challenging, and crucial to the health, safety, and well-being of Vermonters. The Agency oversees public benefit programs, health care programs and the new Exchange; runs the State's correctional facilities; provides services to the elderly and disabled; protects abused and vulnerable children; protects public health; licenses child care centers, nursing homes, and other facilities; and is responsible for the commitment and treatment of the mentally ill. Not surprisingly, the Agency's work generates substantial demands for legal services. As this report shows, those demands outstrip the current staff. The Assistant Attorney Generals (AAGs) who provide services to the Agency regularly provide unpaid overtime and AAGs from other divisions routinely pitch in to meet the Agency's needs. The Agency needs additional AAGs and possibly staff positions to meet current needs, and any reduction in current staff levels would seriously undermine the Attorney General's ability to provide adequate representation.

The Human Services Division of the Attorney General's Office (AGO) provides legal representation to the Agency and its Departments. The Division is staffed by twenty-nine AAGs, four administrative assistants and four paralegals. The Division's work is generally organized along the lines of the Departments and Divisions in the Human Services Agency. Three of these legal units – DCF, Mental Health and DAIL – are under-staffed and struggling to keep up with their workloads. The other units are busy but reasonably staffed.

Some key numbers provide a snapshot of the demands placed on these 29 lawyers and eight staff members. In FY 2013, 1,732 new lawsuits were filed in court by or against Agency Departments, officials and employees. An additional 1,351 cases were filed with administrative boards. This civil and administrative litigation includes inmate grievances and wrongful death claims (Corrections), involuntary medication cases (Mental Health), termination of parental rights cases and appeals (DCF-FS), Human Services Board fair hearings and appeals (DCF-ES, DAIL and Health), Medicaid lien and provider tax cases (DVHA) and Act 248 competency hearings (DAIL). There were 67 appeals to the Vermont Supreme Court affecting all but two Agency Departments.

Along with this substantial litigation docket, in FY 2013 AAGs reviewed 1,681 agency contracts, grants and MOUs for Agency Departments – often drafting and helping to negotiate contract terms. Every day, across the Agency, AAGs responded to requests for legal advice from Agency officials and employees on a wide range of legal issues, including licensing and rulemaking disputes, proposed legislation, the interpretation of statutes and rules, and the requirements

of federal law. AAGs provided legal advice on 133 access-to-records requests. One AAG spends half of her time providing legal advice on HIPAA and privacy issues.

This report provides detailed descriptions of the legal services that the AGO provided last year to the Agency and its Departments. The report uses a lawyer FTE – calculated as 1,750 “billable” hours over the course of a year – as a benchmark for quantifying the legal services provided by the AGO. The hours worked last year by the AAGs in the Human Services Division alone represent 31 lawyer FTEs. AAGs from other divisions added another 8 FTEs. The appendices to the report quantify the various legal services provided to each Department by describing the service (e.g., administrative litigation) and then listing the number of matters, the complexity of the work and the time demands for each type of service.

Recommendations

There may be ways for the Agency to control the demand for legal services and for the Attorney General to gain some efficiencies in delivering services. For example, the Agency could expand its practice of resolving disputes through administrative reviews, without lawyers, before they ripen into formal contested cases. The AGO could expand its practice of assigning work (complex contracts, access to records issues) to AAGs who have particular expertise in an area, without regard to Department lines. The AGO and the Agency can use the information provided in this report to pursue these and other options.

Finally, this report identifies three areas where staff shortages put the Agency at risk and undermine the AGO’s ability to provide adequate legal representation: DCF/Family Services, Mental Health and DAIL. The Attorney General recommends that:

- The AAG vacancy in the Mental Health Unit be filled.
- A part-time position in the DAIL Unit be increased to full-time.
- A new AAG position be created to address needs in the DCF/Family Services Unit.

Purpose and Methodology

Secretary of Human Services Douglas A. Racine and Attorney General William H. Sorrell requested a review and assessment of the legal services needs of the Vermont Agency of Human Services. The report that follows was prepared by the Attorney General's Office, with assistance from the Agency's general counsel. It was prepared by interviewing the supervisors and staff in the AGO, by developing templates to define specific services that Assistant Attorneys General provide to the Agency and by compiling caseload and other data to measure the legal services that were provided to the Agency in FY 2013.

This report covers the legal services provided by AAGs in the Human Services Division and in other Divisions of the AGO. It does not cover legal services provided by other lawyers employed by the Agency or by lawyers in private practice retained by the Agency

Department for Children and Families/Economic Services Legal Unit

The Economic Services Division Legal Unit is currently staffed with three full-time Assistant Attorneys General and two administrative assistants. The second administrative assistant is new and that position is temporary. Two AAG positions (limited service) are in recruitment. When hired, they will handle administrative litigation. The Unit does not have a Director and is supervised by the Human Services Division Chief.

The AAGs in this Unit represent the Economic Services Division (ESD) in administrative appeals, called "fair hearings," before the Human Services Board and its hearing officers. These hearings involve issues of eligibility, benefits levels and coverage under the many social welfare programs administered by the ESD, the Department of Vermont Health Access, and other parts of the Agency.

For example, a person denied coverage for one of Vermont's health care assistance programs – for income or other reasons – may appeal to the Human Services Board. A hearing officer holds a hearing, takes evidence, and issues a proposed decision for the Board's review. At its monthly meetings, the Board listens to arguments from the parties and then makes final decisions in pending cases. The AAGs represent the Department in this process. In some cases, the Board's decision may be modified or reversed by the Secretary of the Agency of Human Services. "Secretary Reversals" and all Board decisions are appealable directly to the Vermont Supreme Court.

The Unit has recently experienced a dramatic increase in fair hearing requests, which more than doubled over the past four years:

FY 2010	390
FY 2011	533
FY 2012	625
FY 2013	781

The FY 2013 increase was due in part to the number of "expedited appeals." These appeals are a feature of the General Assistance program, which provides housing for the homeless and other "safety net" benefits. In the expedited process, a hearing officer may grant preliminary relief the same day the appeal is requested; for example, a woman with two minor children may appeal denial of her application for assistance to stay in a motel room. The hearing officer, after an expedited process, may order ESD to provide lodging pending further proceedings.

More demands on this Unit are expected as the Healthcare Exchange comes online. Many individuals will experience changes in existing benefits or may apply for and be denied additional benefits. For example, persons may experience changes in co-payment obligations and changes in coverage. These benefits and eligibility determinations may add to the already large number of fair hearing requests.

The Agency and the ESD Legal Unit have taken some steps to address the rapid increase in caseloads. The Unit has added an administrative assistant and is recruiting two AAGs who will be assigned to the fair hearing work. These new positions, however, are temporary and limited service. For the longer term, the Attorney General's Office recommends that the Department establish and staff an informal review process to reduce the number of fair hearings. If the Department was able to provide quick, informal reviews of complaints, many cases might be resolved without lawyers and hearing officers.

The AAGS in this Unit provide a broad range of other legal services to the Agency:

Contracts: AAGs review, advise and approve contracts, grants and MOUs from several AHS Departments: the Economic Services Division, the Department of Vermont Health Access, the Office of Child Support, the Juvenile Justice Division, and the Agency Central Office. In the past year, the number and complexity of DVHA contracts has significantly increased because of the Healthcare Exchange and other health care reform initiatives.

Advice on proposed rules and interpretation of existing rules and statutes. AAGs advise and consult with ESD staff on legal issues relating to existing and proposed rules. For example, AAGs reviewed health care rules promulgated to comply with the Affordable Care Act and they advised staff on a new rule concerning emergency housing for vulnerable adults. When a Human Services Board decision reveals a gap in the rules or a problem in the language governing one of Vermont's public assistance programs, the AAGs alert ESD to the issue and recommend solutions. Department staff look to these lawyers for advice on urgent matters; for example, when an ESD client broke the door to a district office, Department staff asked whether the name of the client could be disclosed to law enforcement.

Other litigation and legal matters. AAGs represent the ESD in civil litigation that arises from the administration of benefit programs. They respond to subpoenas for Department records and testimony. These subpoenas typically require analysis of the statutes and rules that regulate the confidentiality of ESD records. Likewise, AAGs advise ESD on public records requests.

Training. AAGs plan and present trainings for AHS staff. They conduct a yearly training for all AHS Departments on legal considerations in contracts and grants. Other trainings addressed public record requests and the preparation of documents and exhibits for fair hearings.

As shown in Appendix A, the legal services provided by the 3 AAGs in the DCF-ES Unit in 2013 exceeded the actual staffing of the Unit by 0.35 FTEs. The difference represents unpaid overtime worked by these lawyers. In addition, other Divisions within the AGO provided 0.46 FTEs of legal services. This time was spent on appeals, public record requests and Labor Board and Human Rights Commission work.

As already noted, two AAGs will be appointed to fill limited services positions to assist with increased caseloads and the demands that the Vermont Healthcare Exchange will place on the Unit. The AGO recommends that this legal staffing -- three full-time AAGs positions, plus two full-time limited service AAGs -- be reviewed in December 2014. The AGO also recommends that the temporary administrative position be made permanent to provide the continued support needed to handle the increased workload.

Department for Children and Families/Family Services, Child Development Legal Unit

The Legal Unit that represents the DCF Family Services (FS) and Child Development Divisions (CDD) has the largest workload in the Human Services Division. It is staffed by 9 AAGs, including the Director and an AAG who spends half of her time advising DCF and other Departments on HIPAA and privacy matters. The Director carries a full caseload, reviews contracts, provides legal advice, and consistently works more than fifty hours per week. Because of the demands placed on this Unit, it has the most critical need for additional Assistant Attorney General positions.

Eight of the AAGs in the Unit are assigned to the DCF-FS district offices. These attorneys are primarily responsible for termination of parental rights (TPRs) litigation and administrative hearings to substantiate abuse allegations. TPR litigation is fact-intensive and demanding. Even cases that resolve short of a contested evidentiary hearing require extensive discovery and witness preparation because the matters rarely settle before the first day of trial. Complex cases involve multiple parties and counsel, complex discovery, dueling expert witnesses, and contested hearings lasting up to eight days.

In addition to TPR and Human Services Board litigation, AAGs represent DCF district staff when they are drawn into criminal and domestic matters. The AAGs provide training and daily legal advice to their respective district offices. This everyday professional interaction plays an important role in the success of DCF's litigation efforts. The legal issues that AAGs handle in court are closely connected to Department policy and procedure and to Department practice in licensing matters and administrative investigation of child abuse cases.

One of the AAG positions in the Unit is split between appellate work and HIPAA/privacy work. The appellate work includes briefing and arguing appeals before the Vermont Supreme Court; providing legal advice to the Residential Licensing Unit and Adoptions Unit; and representing the Licensing and Adoptions Units at the Human Services Board. This AAG also serves as the Agency's privacy officer, providing advice and legal training on HIPAA and other privacy mandates to the entire Agency of Human Services; advising the Agency on possible internal HIPAA violations; and drafting HIPAA-related documents.

The Director supervises all of the AAGs in the Unit and handles an administrative and litigation case load from the St. Johnsbury district. The Director is also primarily responsible for the appellate caseload, provides multiple social worker trainings throughout the year, does legislative and committee work, and reviews all the contracts and grants out of the DCF central office.

As shown in Appendix B, the legal services required by the Department in fiscal year 2013 exceeded the legal staffing of the Unit by one FTE. This shortfall was absorbed in part by the Director and others in the Unit who routinely work 50 to 60 hours per week. In addition, AAGs from other divisions within the Attorney General's Office provided 0.86 FTEs of legal services. These AAGs represented the Family Services Division in civil and administrative litigation and appeals.

The AGO recommends that a new AAG position be created for the DCF/FS Legal Unit. An additional AAG would allow the Director and other AAGs in the Unit to reduce caseloads to a sustainable level. Other Divisions in the AGO will continue to provide legal support, but at a level closer to historical norms (0.50 FTEs).

The Unit lacks paralegal, investigative and administrative support, which means that lawyers do work that could be done by non-lawyers. However, given that the work and the lawyers are spread across the State, it is not clear that efficiencies could be gained by hiring a single paralegal or investigator for the Unit. This is a topic that needs more study.

Department of Corrections Legal Unit

The Department of Corrections Legal Unit is staffed with four Assistant Attorneys General and one administrative assistant. The Director of this Legal Unit supervises all of the litigation and, in addition to the supervisory duties, has his own caseload. The Director gives legal advice to the Commissioner and to the Commissioner's administrative team as well as DOC personnel in the correctional facilities and field probation and parole offices. There are many legal questions that are posed daily by the DOC administration, facilities, and field offices. The Director also gives legal advice to the Vermont Parole Board.

The Department and its employees were named in 432 lawsuits last year. The Director, as supervisor of litigation, reviews and assigns all lawsuits that the Legal Unit defends, assigns cases and reviews the work product of the AAGs. The Director confers with DOC administrative personnel on particular litigation, litigation trends and overall results.

The three AAGs spend most of their time defending the 400+ lawsuits filed against the Department each year. Each AAG is handling about seventy-five cases at any given time. The Director's caseload is about fifty cases.

The DOC legal team defends cases in both federal and state courts. Federal cases include habeas corpus petitions and constitutional claims, including First Amendment claims, alleged violations of due process and equal protection, and Eighth Amendment claims of cruel and unusual punishment. Similar claims are brought in state court, along with tort cases (alleging bodily injury, wrongful death and property damage), requests for review of disciplinary actions and sentencing calculations, small claims cases, public records cases, sex offender classifications, and post-conviction relief claims.

The AAGs also respond to subpoenas, motions and discovery requests in civil and criminal matters to which DOC is not a party, attend depositions of DOC staff, and appear in some criminal matters when DOC's interests should be represented. They routinely respond to legal issues arising from out-of-state lawsuits and court orders such as requests for extradition, detainers and transports. The Unit also defends actions brought against the Vermont Parole Board and provides the Board legal advice on matters arising from their duties.

Notwithstanding the demanding litigation caseload, the Unit regularly provides legal advice on other matters:

Proposed legislation. The Unit participates in legislative initiatives, often prompted by litigation. This includes drafting, reviewing and counseling DOC on proposed or existing legislation.

Training. The Unit regularly assists in DOC training. The Director teaches an annual session on arrest certification and assists with hearing officer training. The entire legal team presented at a full one day session on testimony training.

Rules and Department policies. The team assists DOC policy staff with the promulgation of DOC directives and rules by reviewing and editing proposed directives and rules. During the rule making process, an AAG attends the ICAR and LCAR hearings with DOC personnel. An AAG also appears at the Sex Offender Review Committee hearings to assist the Committee with legal and procedural issues. A sample of the legal issues addressed by the Unit include: religious diets, religious accessories and head wear, religious services, sentence computation, search and seizure, extradition, disciplinary hearing due process, public records requests, administrative segregation, transportation, detainers, escape warrants, visitation, inmate telephone calls, press access, inmate mail, custody level, contraband, surveillance, bail, conditions of release, furlough violation hearings, and potential HIPAA violations and questions.

As shown in Appendix C, the legal services required by the Department of Corrections exceed the four full-time assistant attorney general positions by 0.39 AAG. This shortfall was covered last year because the Director and other AAGs in the Unit routinely work more than 40 hours a week.

In addition, other divisions of the AGO provided almost three full-time AAGs to meet the legal needs of the Department last year. The Civil Division defends many complex lawsuits against the Department and assigned 1.81 AAGs to this work. The GCAL Division handles appeals as well as public records and contract matters for the Department and assigned 1.04 AAGs to this work. See Appendix C.

The AGO believes that the current staffing in the DOC Legal Unit is adequate to meet the needs of the Department of Corrections. However, current demands for services are creating some strains and staffing needs should be reviewed in June 2014.

Department of Disabilities, Aging and Independent Living Legal Unit

The Department of Disabilities, Aging and Independent Living (DAIL) Legal Unit is staffed with four AAGs and one paralegal. Two of the four AAGs share one full-time position so there are three FTE attorneys. One of the AAGs serves as the Director of the Unit.

The Director works with the Department on wide-ranging, complex matters on a daily basis. These matters include civil and administrative litigation and appeals, statutory and regulatory interpretation, contracts and grants, public records, program issues, policy development, legislative matters, rulemaking and staff training. The Director provides legal advice to the Commissioner and Deputy Commissioner and to division directors, supervisors, and staff.

The Director also represents the Department in civil litigation and represents the Department's interests before the state legislature and associated committees. These latter duties include negotiating and drafting proposed rules and regulations and drafting and reviewing program policies and procedures. Responding to complaints from the public and advocacy groups also falls within the Director's responsibilities. The Director supervises the attorneys and the paralegal in the Unit and attends weekly DAIL Senior Management meetings and occasional AGO management meetings.

The Department has four divisions: Division for the Blind and Visually Impaired, Division of Disability and Aging Services, Division of Licensing & Protection, and Division of Vocational Rehabilitation. These divisions require legal advice and representation in administrative matters, including:

- Public records requests;
- Investigations conducted by the Division of Licensing and Protection (DLP);
- Long-term care Medicaid (Choices for Care) benefits and other Medicaid program issues;
- Developmental Services;
- Licensing of long term care facilities;
- Variance requests;
- Involuntary discharge from long term care facilities;
- Traumatic Brain Injury program services; and
- Attendant Services program.

These four divisions also become involved in civil litigation which requires legal representation in complex matters such as mandamus actions, guardianship proceedings for vulnerable adults, competency hearings and appeals before the Commissioner, the Human Services Board and the

Vermont Supreme Court. The three AAGs, who work under the Director, carry a varied caseload and address wide-ranging legal issues. The AAGs field calls each day from the Department as well as the public, and are asked to troubleshoot issues that do not fall squarely within the matters referenced above, but may require a significant amount of time on any given day.

The AAGs are assigned cases involving the four divisions and Adult Protective Services, Attendant Services, Choices for Care, Developmental Services, and the Traumatic Brain Injury program. The attorneys are responsible for legal claims concerning licensing, variances, expungements and other issues related to the Adult Abuse Registry, and any legal challenges to involuntary program and facility discharges. The competency hearings are handled exclusively by the two AAGs who share one full-time position. The guardianship cases are handled primarily by the Director.

As detailed in Appendix D, the legal needs of the Department of Disabilities, Aging, and Independent Living exceed the existing three lawyer positions by 0.73 AAGs. In addition, other divisions of the AGO provide 0.28 of AAG legal support to DAIL in civil litigation, appeals and other legal matters.

The AGO recommends that the staff shortage be addressed by increasing one of the half-time AAG positions to full-time. Current demands for services are being met only because the two part-time attorneys are providing more than 1.0 FTE of services and the Director and full-time attorneys are logging additional hours.

Department of Health Legal Unit

The Department of Health has two assistant attorney generals and one paralegal assigned to the DOH Legal Unit. The AAGs spend much of their time on civil and administrative litigation and enforcement work. They provide legal advice to the 500 Department of Health employees. They participate in regular meetings of the Boards of Health, EMS, and Medical Practice. One of the AAGs advises the Chief Medical Examiner.

Rulemaking is a critical part of the Department's public health mission, and both attorneys work closely with program staff to promulgate rules for the Department and its programs. The AAGs have substantial expertise in drafting rules and negotiating the rulemaking process. In addition to advising DOH staff, these AAGs assist the rest of the Human Services Division with this complex and sometimes confusing process.

The AAGs in this Unit also negotiate complex contracts for the Department. The paralegal provides the necessary research and support to the AAGs and the Department.

The Department's program staff encounters many legal questions in the course of their work. To better serve VDH by developing an expertise and familiarity with the various programs, the two AAGs have split up their legal coverage of the various programs. In 2013 they handled civil and administrative litigation for and provided legal advice to the following programs:

- Alcohol and Drug Abuse Programs (ADAP)
- Office of Public Health Preparedness (OPHP)
 - Emergency Preparedness
 - Emergency Medical Services (EMS)
- Health Promotion and Disease Prevention (HPDP)
- Health Surveillance
 - Infectious Disease
 - Epidemiology
 - HIV/AIDS/STD/Hepatitis
 - Immunization
- Board of Health
- Maternal Child Health
 - Children with Special Health Needs (CSHN)
 - WIC
 - Early Periodic Screening Diagnosis and Treatment Programs (EPSDT)
- Office of Local Health
- Board of Medical Practice
- Health Surveillance
 - Public Health Lab
 - Public Health Statistics

- Environmental Health
 - Lead
 - Asbestos
 - Food & Lodging
 - Environmental Health and Toxicology
- Planning and Health Care Quality
 - Rural Health and Primary Care

As noted in Appendix E, the legal needs of the Department of Health are being met by the two full-time assistant attorney general positions. The AGO provides an additional 1.67 equivalent of AAGs to the Department of Health. This is largely due to the fact that AAGs in the GCAL Division handle the work of the Medical Practice Board, which is part of the Department of Health. The legal services provided to the Department by the DOH Legal Unit is equal to the number of fulltime AAGs assigned.

Department of Mental Health Legal Unit

The Mental Health Department Legal Unit has five AAG positions, two paralegal positions, and one administrative assistant position. One of the AAG positions is shared by two lawyers. Another AAG position is currently vacant and frozen, meaning that there are just four lawyers available to meet the Department's legal needs. Given the legal needs of the Department, this unfilled vacancy has placed severe demands on the remaining lawyers in the Unit and undermined the AGO's ability to provide adequate representation. The AGO has assigned AAGs from other Divisions to handle some matters, but this is neither a complete nor a long-term fix. The current staffing level is not sustainable and the AAG vacancy should be filled as soon as possible.

The legal needs of the Department of Mental Health are varied and complex. In FY 2013 the Legal Unit responded to 430 applications for involuntary treatment, approximately 300 applications for continued treatment, and 42 applications for involuntary medication. In addition, the Unit assisted with 153 hospitalization hearings in the Criminal Division of the Superior Court. The DMH attorneys need to participate in these criminal hearings to represent the Department's interests and advise the court on the availability of hospital beds or community treatment options. The AAGs also handled discharge hearings, administrative litigation and appeals to the Vermont Supreme Court.

The dislocation caused by Tropical Storm Irene put additional demands on the Unit. The time needed to handle the Unit's court docket has increased substantially. Before Irene, most of the work performed by AAGs was done in Waterbury, near the former state hospital. Mental health patients are now treated in regional hospitals, and court hearings must be held where they are treated. The attorneys now spend an enormous amount of time traveling across Vermont to attend court hearings in the counties where the regional hospitals are located. This past year, on average, the AAGs were litigating multiple hearings per week in locations all over the state, often on short notice. A recent spate of appeals to the Supreme Court in involuntary treatment cases has added unexpected demands on the Unit.

Because litigation comprises a large bulk of the legal work, the Department's two paralegals are indispensable. One paralegal mostly manages the civil cases filed by the Department. These include applications for involuntary hospitalization, applications for continued treatment, and applications for involuntary medication. The other paralegal manages those criminal cases where a defendant's mental health is at issue and the Department is called upon by the courts to provide treatment or examinations.

Other legal services provided by the Legal Unit includes contract reviews, assistance with public records requests, legal advice and opinions on mental health matters, and training of law enforcement officers and health care providers on mental health legal issues.

The AAGs in the Legal Unit specialize to some degree. One of the half-time attorneys focuses on involuntary treatment cases in family courts in a particularly busy region. Because of the Department's substantial and often unpredictable legal needs and the inevitable court scheduling conflicts, nearly all of the Unit attorneys handle, at some point, the range of assignments that come through the Unit. For example, while one attorney specializes in contract review, several of the other attorneys also review contracts. Because the litigation demands are substantial, every AAG is expected to go to court occasionally, if not regularly.

The Director of the DMH Legal Unit manages the litigation and supervises the work. She handles her own caseload and provides backup when there are scheduling conflicts. This is not uncommon given the statutory mandate that mental health litigation be resolved within a short time period. She provides legal advice to the Commissioner's Office, officials at the State's temporary hospital and residential facility, and community mental health providers across the state. She provides legal advice and assistance in drafting Department Rules.

There have been significant staffing changes for the DMH Legal Unit in the past year. One full-time position was vacated when an attorney passed away, another AAG left and that position was frozen, and a part-time AAG was hired to fill half of a full-time AAG position that had been staffed with a part-time AAG. In addition, one of the paralegals left and another was hired. Currently all of the positions are filled except for the AAG position that remains frozen. As a result of this staff shortage, the AAGs and paralegals have struggled to keep up with the litigation and have done less training. One of the priorities of the coming year is to conduct more training on the many legal issues encountered in litigation.

As shown in Appendix F, the legal needs of the Department of Mental Health in FY 13 were 5.36 AAGs. This exceeds the current staffing -- four full-time AAG positions -- by 1.36 AAGs. In FY 13, other divisions within the AGO provided 0.48 FTEs of legal services for civil litigation, appeals, records requests, contracts and employment work.

In summary, the current staffing in the DMH Legal Unit is not adequate to meet the needs of the Department. Given the anticipated opening of the new state hospital next year, the Department's legal needs and therefore the shortfall, are likely to increase. The AGO recommends that the frozen AAG position be filled. This would allow the Unit to meet its litigation obligations all over the state. It would allow time for the Director to fulfill her

supervisory and other duties. It would allow all of the AAGs to conduct essential trainings on mental health legal issues.

Department of Vermont Health Access Legal Unit

There is currently one assistant attorney general assigned to the Department of Vermont Health Access (DVHA). DVHA has grown dramatically over the last five years and Vermont's Medicaid budget now exceeds 1 billion dollars. Vermont is also participating in the Affordable Care Act's Healthcare Exchange/Medicaid expansion program.

The AAG assigned to this Department was originally hired to be responsible for third-party Medicaid lien recoveries for DVHA. The Department is entitled to recover medical expenses paid on behalf a recipient who is injured due to the negligence of a third party. DVHA also has a statutory lien on the proceeds of any settlement or judgment that an injured Medicaid recipient obtains as damages from the responsible party. In addition, the AAG is responsible for estate recoveries identified by the Collection of Benefits Unit. The AAG consults with the Collection of Benefits Unit on Medicaid lien issues, including the statute of limitations, recovery from insurance carriers, recovery when the recipient has not asserted a claim against the third party, and HIPAA. The AAG is currently representing DVHA in a lawsuit filed by an insurer over one of DVHA's liens.

While the lien work was the catalyst to hire an AAG for this Department, the legal needs of the Department have increased. For instance, the AAG recently recouped over \$700,000 in back taxes owed on the sale of a nursing home. The AAG advises the Program Integrity Unit on a number of issues including ongoing investigations of providers, provider sanctions issues, collection of overpayments, administrative appeals of overpayment collection, HIPAA, review and analysis of changes in federal law, provider audits, suspension and withholding of payments, and provider screening requirements.

The AAG also handles administrative disputes and enforcement actions for the Department, such as provider tax disputes. The states use various sources of funding for the states' share of Medicaid expenditures, including proceeds from "permissible" health care related taxes, also known as provider taxes. The Social Security Act and federal regulations specify the types of provider taxes a state is permitted to receive without a reduction in federal funding. In July 2012, eleven hospitals requested reconsideration of their SFY 2013 provider tax assessments, claiming that the hospital tax is inconsistent with federal and state law. The AAG is representing the Department in these cases, which are consolidated in Washington Superior Court.

Additionally, in the fall of 2012, the Center for Medicare and Medicaid Services (CMS) notified DVHA that it had questions regarding Vermont's hospital tax and made approval of several state Medicaid plan amendments contingent on approval of Vermont's hospital tax. The AAG

has worked with the Commissioner and others in DVHA and AHS on this issue including filing a legal memorandum of law and participating in negotiations. The AAG has also consulted with the Commissioner and others on possible amendments to the tax statutes. He works with the business office on collection of past due taxes from providers.

The AAG also provides DVHA staff and the Commissioner legal advice concerning discounts on drug purchases called "rebates" and has provided legal advice and represented DVHA in disputes over the disputed rebate amounts to covered entities. Other issues that routinely arise involve contract disputes with vendors and outside contractors that require legal assistance from the AAG.

The AAG also works on projects and initiatives for DVHA including the Medicare Advocacy Project regarding DVHA requirements for "dual eligibles" to qualify for Medicaid home health reimbursement. The AAG successfully defended Commissioner Larson in a lawsuit brought by Essex-Orleans Home Health and Hospice, Inc. on a motion for summary judgment filed by the Department. The Superior Court case was dismissed in favor of the Department.

Since February of 2013, the AAG has also been providing legal advice to the Vermont Healthcare Exchange on privacy and security issues. On a weekly basis, the AAG provides legal counsel to various DVHA staff and Departments on any number of legal issues that arise.

As shown in Appendix G, the AHS legal needs of the Department of Vermont Health Access exceed the one full-time assistant attorney general position by 0.10 AAGs. The AGO provides an additional 0.75 AAG services for work on complex contracts, litigation and appeals.

It is the recommendation of the AGO that the current staffing in the DVHA Legal Unit is adequate to meet the needs of the Department.

Human Services Division Chief

The senior, supervising attorney for the Human Services Division of the AGO is the Division Chief. Division chiefs in the Attorney General's Office ensure that the Office provides high quality legal services to the State. The division chiefs manage the work of the divisions so that it is done competently, ethically and on time. They recruit, supervise and support the lawyers and other legal staff who work in their division. The AGO's longstanding practice of employing division chiefs to provide close supervision of AAGs is not just sound management. It fulfills the ethical obligations of the Attorney General, Vermont Rules of Professional Conduct, Rule 5.1. In addition to this crucial supervisory role, division chiefs provide legal advice to client agencies and state officials and handle complex litigation.

The Division Chief for the Human Services Legal Division oversees 28 AAGs, four administrative assistants, and four paralegals. She directly supervises ten AAGs (including four who supervise others) and an administrative assistant. Along with supervising division AAGs, the Chief personally handles a large and diverse caseload, with matters drawn from most of the Agency's Departments.

The Chief assigns cases and other matters considering the complexity of the assignment, the legal skills needed, staff workloads and deadlines and other concerns. The Chief is responsible for the legal analysis and strategy in major cases and takes a lead role in them. She monitors the progress of all legal work within the division, ensuring that clients are consulted on legal strategy and agency priorities and that work is completed professionally and promptly. She reviews attorneys' written work, observes their oral presentations in moot courts, administrative hearings, and the courtroom, and provides appropriate feedback. She makes recommendations for promotions and other personnel actions.

The AHS Legal Division Chief duties include the following:

- Manage the legal representation that the AGO provides to the Agency of Human Services;
- Supervise legal strategies pursued by AAGs on behalf of the Agency Departments to assure consistency within the Agency and across state government;
- Advise Agency officials on legal matters and respond to inquiries about pending cases and other matters handled by AGO staff;
- Provide general supervision (including recruiting, hiring, training, evaluating) for a staff of 28 AAGs, 4 paralegals and 4 administrative assistants;
- Directly supervise ten attorneys;
- Provide direct legal services to the Economic Services Division;

- Provide oversight of major civil and administrative litigation, including reviewing filings in major cases and participating in moot courts;
- Personally handle litigation and other matters;
- Provide oversight of other legal work (contracts, access to records, legal aspects of legislation and rulemaking);
- Coordinate training opportunities such as appellate training of new AAGs and selection of AAGs for NAGTRI programs;
- Attend and participate in AGO chiefs meetings and director meetings/trainings.

In January 2013, the Attorney General appointed a new Chief to run the Human Services Division and in February 2013, the Secretary of Human Services filled a newly created general counsel position. The two attorneys work together to address the legal needs of the Agency.

**Appendix A -Department for Children and Families/Economic Services
Legal Services Provided by AGO DCF/ES Unit in FY 2013**

1. Administrative litigation/Human Services Board.

Description: Fair hearings before Human Services Board Hearing Officers and the Human Services Board. These cases involve appeals from denials of health and welfare benefits.

Number of matters: 827 fair hearings filed in the year ending June 30, 2013

Complexity: Routine to complex

Time demands: 2.30 FTEs

2. Appellate litigation/Vermont Supreme Court.

Description: Human Services Board decisions may be appealed to the Vt. Supreme Court.

Number of matters: 5 appeals filed in year ending June 30, 2013

Complexity: Routine to complex

Time demands: 0.10 FTEs

3. Contracts, grants, and MOU's for DCF/ES, DVHA, and AHS Central Office.

Description: Review, advise and approve contracts, grants and MOU's

Number of matters: 554 contracts, grants and MOU's

Complexity: Routine to complex

Time demands: 0.25 FTEs

4. Provide legal advice and opinions to the Department Staff, Commissioner and Deputy

Description: Advice on legal issues that arise within the ESD

Number of matters: Numerous

Complexity: Routine to complex

Time demands: 0.30 FTEs

5. Access to records requests.

Description: Respond to Commissioner/Deputy/Staff requests for help with legal problems presented by access to records requests. The work may include advice on the collection of documents, document reviews, legal research, drafting responses and advice on appeals to the Commissioner.

Number of matters: 27 for the year ending June 30, 2013

Complexity: Routine to very complex

Time demands: 0.10 FTEs

6. Civil litigation support.

Description: Legal assistance with pretrial litigation preparation, discovery and litigation holds.

Number of matters: 9

Complexity: Complex

Time demands: 0.05 FTEs

7. Rulemaking, legislation and policy interpretation and consultation.

Description: Provide legal advice to the Department on rules, policies and legislation.

Number of matters: Numerous

Complexity: Routine to complex

Time demands: 0.20 FTEs

8. Training.

Description: Training on legal topics.

Number of matters: Several trainings each year

Complexity: Routine to complex

Time demands: 0.05 FTEs

DCF/ESD Legal Staffing

AAG services provided by the DCF/ESD Legal Unit exceeded AAG staffing by 0.35 FTEs.

AAG services provided by AGO DCF/Economic Services Unit: 3.35 FTEs

AAGs assigned to DCF/Economic Services Unit: 3.00 FTEs

* * *

1 permanent and 1 temporary position provide administrative support.

2 AAG positions (limited service) are in recruitment.

* * *

AAGs in other divisions in the AG's Office provided 0.46 FTEs of legal services.

Civil Division: 0.35 FTEs

GCAL Division, etc.: 0.11 FTEs

AAGs in other divisions handled civil litigation, appeals, access to records, contracts, labor and HRC matters for the DCF Economic Services Division.

**Appendix B - Department for Children and Families/Family Services, Child Development
Legal Services Provided by AGO DCF/FS-CD Unit in FY 2013**

1. Civil litigation/Family court/Termination of parental rights cases.

Description: Prosecute petitions filed at the request of the FSD to terminate parental rights and free children for adoption.

Number of matters: 226 TPR cases

Complexity: Moderately complex (voluntary relinquishments with minimal discovery and trial preparation) to highly complex (multiple parties/parents/relatives, complex discovery issues, multi-day contested evidentiary hearings)

Time demands: 4.86 FTEs

2. Civil litigation/Other.

Description: Represent DCF's interests in Juvenile Court, Probate Court, other forums.

Number of matters: 45 hearings

Complexity: Moderately complex to highly complex

Time demands: 0.68 FTEs

3. Appeals/State Court.

Description: Defend and prosecute DCF FS/CDD appeals to Vermont Supreme Court.

Number of matters: 39

Complexity: Moderately to highly complex

Time demands: 0.70 FTEs

4. Administrative litigation/Human Services Board.

Description: Prosecute and defend DCF-FS and CDD before the Human Services Board. Cases concern registered child care, licensed child care, legally exempt child care, child care subsidy, adoption subsidy, guardianship subsidy, foster care licensing, residential child home licensing, direct challenges to placement on child protection registry

(substantiations), expungement (substantiations) from child protection registry, challenges to service and placements decisions made by the FSD.

Number of matters: 89 cases

Complexity: Routine to highly complex

Time demands: 1.75 FTEs

5. Administrative litigation/Woodside Residential Treatment Facility

Description: Defend DCF placement decisions.

Number of matters: 4 cases

Complexity: Routine to highly complex

Time demands: N/A

6. Contracts/Grants.

Description: Review and advise DCF FS and CDD on all contracts and grants.

Number of matters: 404

Complexity: Routine to highly complex

Time demands: 0.10 FTEs

7. Access to records requests, policy development, legislative matters, training, committee work, rulemaking.

Description: Review and advise DCF FS/CDDC on records requests and defend appeals to Superior Court, including conducting file reviews and redacting non-disclosable information; review, revise and edit DCF policies; educate State's Attorneys and others on DCF policies and juvenile law as interpreted by DCF; advise on and draft legislative proposals and make legislative appearances as required; lead and participate in training of DCF personnel and others on DCF policies, legal skills and court process, including conducting two-day training each year that requires 4 AAGs to present a mock trial.

Number of matters: 20-40 per year

Complexity: Routine to highly complex

Time demands: 0.05 FTEs

8. Legal advice and opinions.

Description: Respond to legal inquiries from DCF personnel (administration, facilities and field), including providing afterhours legal advice to DCF FS when emergent situations arise, such as critically injured children, issues arising involving interstate matters.

Number of matters: Numerous

Complexity: Routine to highly complex

Time demands: 1.11 FTEs

9. HIPAA and privacy matters.

Description: Respond to legal inquiries from Department and agency staff on HIPAA and privacy matters.

Number of matters: Numerous

Complexity: Moderately to highly complex

Time demands: 0.63 FTEs

10. Management and supervision of DCF FS legal staff.

Description: Manage, coordinate and supervise the legal services provided by 9 AAGs and an administrative secretary.

Number of matters: Numerous

Complexity: Routine to highly complex

Time demands: 0.10 FTEs

DCF/FS-CD LEGAL STAFFING

AAG services provided by the DCF/FS-CD Legal Unit exceeded AAG staffing by 0.98 FTEs.

AAG services provided by AGO DCF/FS-CD Unit: 9.98 FTEs

AAGs assigned to DCF/FS-CD Unit: 9.00 FTEs

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1 administrative secretary provides staff support.

* * *

AAGs in other divisions in the Attorney General's Office provided 0.86 FTEs of legal services.

Civil Division:	0.35 FTEs
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GCAL Division:	0.39 FTEs
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Other AGO Divisions:	0.12 FTEs
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AAGS in other divisions handled civil litigation, appeals and employment cases.

**Appendix C - Department of Corrections
Legal Services Provided By AGO Corrections Unit in FY 2013**

1. Civil litigation/State Courts/1983 claims and tort claims.

Description: Defend state court actions alleging the deprivation of rights, privileges, or immunities secured by the U.S. Constitution and Federal laws and/or alleging negligence.

Number of matters: 9

Complexity: Highly complex (1983 claims); moderately complex (tort actions)

Time demands: 0.21 FTEs

2. Civil litigation/State Courts/ Tort claims tendered to contractors.

Description: Monitor cases being defended by contractors' (medical and private correctional facilities) lawyers.

Number of matters: 44

Complexity: Routine to highly complex

Time demands: 0.03 FTEs

3. Civil litigation/State Courts/Rule 65 actions.

Description: Defend state court actions seeking injunctive relief.

Number of matters: 95

Complexity: Routine to moderately complex

Time demands: 0.39 FTEs

4. Civil litigation/State Courts/Rule 75 actions.

Description: Defend state court actions seeking review of governmental action.

Number of matters: 134

Complexity: Routine to moderately complex

Time demands: 1.18 FTEs

5. Civil litigation/State Courts/Habeas petitions.

Description: Defend actions seeking habeas corpus relief in the form of immediate release from unlawful detention.

Number of matters: 67

Complexity: Routine to moderately complex

Time demands: 0.41 FTEs.

6. Civil litigation/State Courts/Small claims.

Description: Defend actions seeking money damages for lost and damaged property and other similar claims.

Number of matters: 48

Complexity: Routine

Time demands: 0.21 FTEs

7. Civil litigation/State Courts/Subpoenas.

Description: Advise DOC on compliance, file and prosecute motion to quash, communicate with and negotiate resolution with attorney/party issuing subpoena.

Number of matters: 17

Complexity: Routine

Time demands: 0.02 FTEs

8. Criminal matters/State Courts/Violation of probation and other court orders.

Description: Assist States' Attorneys in responding to discovery requests and court orders for production of DOC records and other court actions.

Number of matters: 11

Complexity: Routine

Time demands: 0.02 FTEs

9. Civil litigation/Federal Court.

Description: Defend actions alleging constitutional claims and defend federal habeas corpus actions.

Number of matters: 12

Complexity: Highly complex

Time demands: 0.59 FTEs

10. Civil litigation/Out of state courts.

Description: Monitor suits against DOC filed in other jurisdictions where Vermont inmates are housed.

Number of matters: 2

Complexity: Routine

Time demands: Minimal

11. Appeals/State Court.

Description: Defend and prosecute appeals to Vermont Supreme Court.

Number of matters: 16

Complexity: Moderately to highly complex

Time demands: 0.27 FTEs

12. Appeals/Federal Court.

Description: Defend and prosecute appeals to U. S. Court of Appeals, Second Circuit.

Number of matters: 2

Complexity: Highly complex

Time demands: 0.02 FTEs

13. Administrative litigation.

Description: Attend Hearings and advise Sex Offender Review Committee on procedure.

Number of matters: 4

Complexity: Routine

Time demands: 0.01 FTEs

14. Contracts/Grants

Description: Review and advise DOC on all contracts and grants.

Number of matters: 167

Complexity: Routine to highly complex

Time demands: 0.06 FTEs

15. Access to records requests.

Description: Review and advise DOC on novel and contested records requests and defend appeals to Superior Court.

Number of matters: 5

Complexity: Routine

Time demands: 0.02 FTEs

16. Parole Board matters.

Description: Advise Parole Board on procedure and legal issues. Defend actions brought against the Board.

Number of matters: 9

Complexity: Routine to moderately complex

Time demands: 0.06 FTEs

17. Sex Offender Review Committee matters.

Description: Defend appeals of high risk designation in Superior Court.

Number of matters: 4

Complexity: Moderately to highly complex

Time demands: 0.02 FTEs

18. Policy Development.

Description: Review, revise and edit DOC policies and procedures to address issues encountered in litigation.

Number of matters: 13

Complexity: Routine to moderately complex

Time demands: 0.04 FTEs

19. Legislative matters.

Description: Advice, drafting to address issues encountered in litigation.

Number of matters: 4

Complexity: Moderately complex

Time demands: 0.02 FTEs

20. Legal advice.

Description: Respond to general legal inquiries from DOC personnel (administration, facilities and field).

Number of matters: Not tracked

Complexity: Routine to highly complex

Time demands: 0.81 FTEs

DOC LEGAL STAFFING

AAG Services provided by AGO Corrections Legal Unit exceeded AAG staffing by 0.39 FTEs.

AAG Services provided by AGO Corrections Unit:	4.39 FTEs
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AAGs assigned to Corrections Unit:	4.00 FTEs
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* * *

1 Administrative Secretary provides staff support.

* * *

AAGs in other divisions in the AG's Office provided 2.85 FTEs of legal services.

Civil Division:	1.81 FTEs
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GCAL Division, etc.:	1.04 FTEs
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AAGs in other divisions represented Corrections in civil litigation, administrative litigation, appeals and other matters.

**Appendix D - Department of Disabilities, Aging and Independent Living
Legal Services Provided By AGO DAIL Unit in FY 2013**

1. Civil litigation/State Courts.

Description: Mandamus action against AHS and DAIL for alleged failures of the Adult Protective Services Program (handled primarily by Civil Division).

No. of matters: 1 action pending in year ending June 30, 2013

Complexity: Complex

Time demands: 0.10 FTEs

2. Civil litigation/State Courts/Guardianship matters.

Description: Petitions in both family and probate divisions for individuals in need of guardianship.

Number of matters: 88 matters opened from May 2011 through May 2013

Complexity: Varies

Time demands: 0.25 FTEs

3. Civil litigation/State Courts/ Act 248 Cases

Description: Commitment proceedings for persons with mental retardation who present a danger of harm to others.

Number of matters: 14 cases opened from May 2011 through May 2013

Complexity: Varies

Time demands: 0.25 FTEs

4. Civil litigation/State Courts/Motions to quash.

Description: Prepare objections to and/or motions to quash subpoenas duces tecum.

Number of Matters: 5 in year ending June 30, 2013

Complexity: Varies

Time Demands: 0.0 3FTEs

5. Appeals/State Court.

Description: Appeals from the Human Services Board to the Vermont Supreme Court.

Number of matters: 4

Complexity: Varies

Time demands: .03 FTEs

6. Administrative litigation/Fair Hearings.

Description: Commissioner's hearings and fair hearings before the Human Services Board stemming from decisions made in connection with the following: Choices for Care; Developmental Services; Adult Protective Services, including registry expungements and Commissioner hearings to review recommendations of non-substantiation; licensing of long term care facilities; variance requests; involuntary discharges from long term care facilities; Children's Personal Care (now with VDH); Traumatic Brain Injury (TBI); and Attendant Services.

Number of matters: 333 cases opened from May 2011 through May 2013

Complexity: Varies

Time demands: 2.00 FTEs

7. Contracts/Grants.

Description: Review, assist DAIL on all contracts and grants.

No. of matters: 249 contracts & grants reviewed in year ending June 30, 2013

Complexity: Varies

Time demands: 0.07 FTEs

8. Access to records requests.

Description: Review, assist DAIL on novel and contested records requests.

Number of matters: 38

Complexity: Varies

Time demands: 0.10 FTEs

9. Legal advice/Program Issues.

Description: Provide advice to the Commissioner, Deputy Commissioner, division directors, supervisors and staff on issues ranging from the interpretation of state statutes and federal regulations to the application of program rules and regulations to the response to inquiries and complaints from both the public and members of the advocacy community.

Number of matters: Numerous

Complexity: Varies

Time demands: 0.50 FTEs

10. Policy development.

Description: Assist with the drafting of memoranda of understanding, the State System of Care Plan, and policies and procedures for divisions and programs; attend weekly meetings of DAIL Senior Management; represent DAIL on CIPS Committee.

No. of matters: Numerous

Complexity: Varies

Time demands: 0.25 FTEs

11. Legislative matters.

Description: Prepare bill reviews and testimony, testify before legislative committees, draft proposed statutory language; participate on summer study committees, including the APS statutory workgroup and Protecting Older Consumers Workgroup.

Number of matters: Numerous

Complexity: Varies

Time demands: 0.03 FTEs

12. Rulemaking

Description: Work with program staff to draft proposed rules; attend ICAR, public hearings and LCAR; assist with drafting responses to public comments.

No. of matters: 2 pending in year ending June 30, 2013

Complexity: Complex

Time demands: 0.10 FTEs

13. Training.

Description: Attend meetings of program staff (e.g., APS, CFC, Vocational Rehabilitation) to update on legal issues.

Number of matters: 6 trainings in year ending June 30, 2013

Complexity: Varies

Time demands: 0.02 FTEs

TOTAL TIME DEMANDS: 3.73 AAGs

DAIL LEGAL STAFFING

AAG services provided by the AGO DAIL Legal Unit exceeded AAG staffing by 0.73 FTEs.

AAG services provided by the AGO DAIL Unit: 3.73 FTEs

AAGs assigned to the DAIL Unit: 3.00 FTEs

* * *

Two of the four AAGs assigned to the Unit share one position.

A Legal Hearing Support Specialist (paralegal/administrative assistant) provides staff support.

* * *

AAGs in other divisions in the AG's Office provided 0.28 FTEs of legal services.

Civil and GCAL Divisions: 0.28 FTEs

AAGs in these divisions represented DAIL in civil litigation and other matters.

**Appendix E - Department of Health
Legal Services Provided By AGO Department of Health Unit in FY 2013**

1. Civil litigation/Environmental health.

Description: Enforce statutes and rules.

Number of matters: 4

Complexity: Varies

Time demands: 0.10 FTEs

2. Civil litigation/Other: respond to motion for injunctive relief.

Description: Defend Project CRASH.

Number of matters: 1

Complexity: Varies

Time demands: 0.02 FTEs

3. Civil and criminal litigation/Subpoenas.

Description: Oppose subpoenas of DOH employees/documents, or advise on compliance.

Number of matters: 20

Complexity: Varies

Time demands: 0.10 FTEs

4. Administrative litigation/Board of Health.

Description: Litigate contested cases – for example, EMS licensing disputes.

Number of matters: 2

Complexity: Somewhat complex

Time demands: 0.05 FTEs

5. Administrative Litigation/Human Services Board.

Description: Litigate contested cases – disputes about children's personal care services.

Number of matters: 22

Complexity: Medium

Time demands: 0.15 FTEs

6. Administrative/Commissioner Hearings.

Description: Litigate contested hearings on EMS licensing, food and lodging licensing, etc.

Number of Matters: 34

Complexity: Varies

Time demands: 0.20 FTEs

7. HIPAA compliance.

Description: Advise staff on HIPAA, review medical releases and data use agreements to determine HIPAA compliance, consult with HIPAA compliance officer on possible HIPAA violations, review of approximately 180 BAA's/year. Assist AHS to comply with HIPAA by serving on interagency privacy committee.

Number of matters: Numerous and constant

Complexity: Varies

Time demands: 0.30 FTEs

8. Contracts/Grants/MOUs.

Description: Review and advise DOH on all contracts, grants and MOUs.

Number of matters: 194 contacts, grants and/or MOUs

Complexity: Varies

Time demands: 0.15 FTEs

9. Access to records.

Description: Review and advise DOH on unusual and contested records requests.

Number of matters: 16 complete reviews plus another 20 to 30 responses to general questions without reviewing the records for exemptions.

Complexity: Varies

Time demands: 0.20 FTEs

10. Legal advice/Board of Health.

Description: Advise Board of Health on all legal matters relating to its duties including open meetings, standard Board meeting practice and procedure, public records.

Number of matters: Generally 3-6 meetings annually.

Complexity: Varies

Time demands: 0.01 FTEs

11. Legal advice/Medical Practice Board.

Description: Advise Board on all legal matters relating to its duties, except on issues relating to specific contested cases. For example, public record requests and licensing applications.

Number of matters: 10 – 15 matters per month.

Complexity: Varies

Time demands: 0.15 FTEs

12. Legislative matters.

Description: Advise on legal issues in pending legislation, some drafting.

Number of matters: Somewhat hard to estimate but I helped to draft 2 pieces of legislation, and advised on several bills for the last session and other legislative matters.

Complexity: Varies

Time demands: 0.05 FTEs

13. Rulemaking.

Description: Advise on legal issues in rules proposed by DOH, assist with drafting, and assist in presentation to ICAR and LCAR.

Number of matters: 9

Complexity: Varies

Time demands: 0.15 FTEs

14. Legal training/Health Department employees.

Description: Assist with training –for Food and Lodging sanitarians and division management staff on rule writing.

Number of matters: 2

Complexity: Medium

Time demands: 0.05 FTEs

15. Legal training/Town Health officers and municipal attorneys.

Description: Assist with training –local town health officers, municipal attorneys.

Number of matters: 2

Complexity: Medium

Time demands: 0.05 FTEs

16. Legal training/ Smoke Free Housing Summit.

Description: Assist with training for landlords and housing authorities.

Number of matters: 1

Complexity: Medium

Time demands: 0.02 FTEs

17. Criminal matters.

Description: Represent VDH on a Court order requiring VDH to test a defendant for sexually transmitted disease; provide legal counsel to lab personnel at a criminal trial.

Number of matters: 2

Complexity: Medium

Time demands: 0.05 FTEs

18. Legal advice.

Description: Advise all divisions of VDH on day to day legal matters.

Number of matters: Numerous and constant

Complexity: Varies

Time demands: 0.20 FTEs

DOH LEGAL STAFFING

Legal services provided by AGO Department of Health Unit Legal Unit equaled AAG staffing.

AAG services provided by AGO Department of Health Unit: 2.0 FTEs

AAGs assigned to Department of Health Unit: 2.0 FTEs

* * *

1 paralegal provides staff support.

* * *

AAGs in other divisions in the AG's Office provided 1.67 FTEs of legal services.

Civil Division: 0.28 FTEs

GCAL Division, etc.: 1.39 FTEs

AAGs in other divisions represented the Department in civil and administrative litigation, primarily Medical Practice Board work.

**Appendix F - Department of Mental Health
Legal Services Provided by AGO DMH Unit in FY 2013**

1. Civil litigation/State Courts/Application for Involuntary treatment.

Description: Petitions filed in Family Courts regarding individuals for whom an application for an emergency examination has been filed.

Number of matters: 430 applications filed in the year ending June 30, 2013

Complexity: Routine

Time demands: 1.25 FTEs

2. Civil litigation/State Courts/ Application for continued treatment.

Description: Petitions filed in Family Courts regarding those individuals who continue to need treatment following the expiration of the initial order, whether in a hospital or in the community.

Number of matters: Approximately 300 (for both OHs and ONHs)

Complexity: Varies

Time demands: 1.50 FTEs

3. Civil litigation/State Courts/ Application for involuntary medication.

Description: Petitions filed in Family Courts seeking involuntary medication orders, or renewals of such orders, for hospitalized patients committed to the Commissioner's custody.

Number of matters: 42

Complexity: Varies; mostly routine.

Time demands: 0.25 FTEs

4. Civil litigation/State Courts/Preliminary hearings.

Description: Presentation of evidence in Family Court hearings to demonstrate there was probable cause to file an application for involuntary treatment.

Number of matters: 6 to 10 a year

Complexity: Routine

Time demands: 0.10 FTEs

5. Civil litigation/State Courts/Other.

Description: Motions to show cause/contempt petitions.

Number of matters: 1 to 2 a year

Complexity: Complex

Time demands: 0.10 FTEa

6. Criminal litigation/State Courts/ Section 4822 hospitalization hearings.

Description: Assisting with or conducting hospitalization hearings with regard to defendants found incompetent to stand trial and/or insane at the time of an alleged offense pursuant to 13 V. S. A. § 4822.

Number of matters: 150

Complexity: Varies

Time demands: 0.87 FTEs

7. Criminal litigation/State Courts/Section 4822 discharge hearings.

Description: Hearings held when the Department seeks to discharge patients from its custody (or from a hospital) when the patient was initially ordered into custody following a hospitalization hearing in criminal court. The criminal court retains jurisdiction over certain defendants and can require that a hearing be held in criminal court before the individual can be discharged.

Number of matters: 3

Complexity: Complex

Time demands: 0.09 FTEs

8. Appeals/State Court.

Description: Appeals from Vermont Family Court to the Vermont Supreme Court (primarily responses to appeals filed by patients from involuntary medication orders). Decisions by the Human Services Board also are appealed to the Vermont Supreme Court; however DMH has very few HSB hearings.

Number of matters: 3

Complexity: Complex

Time demands: 0.07 FTEs

9. Administrative litigation/Fair hearings.

Description: Administrative hearing filed by CRT clients dissatisfied with the determination of eligibility or level of services.

Number of matters: 1 to 2 a year

Complexity: Varies

Time demands: Minimal

10. Contracts/Grants.

Description: Review and assist all contract and grants generated by or presented to the Department.

Number of matters: 119

Complexity: Varies

Time demands: 0.14 FTEs

11. Access to records requests.

Description: Receive and oversee DMH responses to public records requests. Coordinate the collection of records and discuss with Commissioner/staff potential exemptions when warranted.

Number of matters: 15-20 a year

Complexity: Varies

Time demands: 0.10 FTEs

12. Legal advice, consultations.

Description: Provide legal advice to DMH staff on to the state's facilities and other matters. Respond to inquiries from providers, doctors conducting evaluations, screeners, attorneys, sheriffs and others about the mental health statutes, Department procedures and other issues related to the care of individuals in the care and custody of the Commissioner.

Number of matters: Many

Complexity: Varies

Time demands: 0.04 FTEs

13. Policy development.

Description: Meetings, advice, drafting, and review of facility and Department policies.

Number of matters: Both facilities have extensive policies; the Department has fewer.

Complexity: Varies

Time demands: 0.35 FTEs

14. Legislative matters.

Description: Meetings, advice, drafting and attending hearings.

Number of matters: 2 -4 major pieces of legislation with 8 to 10 bills that were less directly connected to the Department

Complexity: Varies

Time demands: 0.06 FTEs

15. Rulemaking.

Description: Advice, rule drafting/review, hearings (preliminary, public, ICAR, LCAR).

Number of matters: 2 sets of rules (TCR regulations, EIP rule)

Complexity: Complex

Time demands: 0.09 FTEs

16. Training.

Description: Provide training to staff, community providers, law enforcement, court personnel and others about mental health law and procedures.

Number of matters: 1

Complexity: Complex

Time demands: 0.20 FTEs

17. Weekend on-call.

Description: Attorneys are required to be on call each weekend (Friday night through Sunday night, as well as holidays) to respond to emergencies and answer legal questions because of the lack of beds caused by the loss of Vermont State Hospital. (This is time for which the attorneys are not compensated, even if they receive calls.)

Number of matters: Every weekend must be covered, which means that each attorney is on call at least one weekend a month (more at times if one of the attorneys is away).

Complexity: Varies

Time Demands: 0.15 FTEs (if 10% of the 2,600 on-call hours are counted)

DMH LEGAL STAFFING

Legal services provided by Mental Health Legal Unit exceeded AAG staffing by 1.36 FTEs.

Legal services provided by AGO Mental Health Unit: 5.36 FTEs

AAGs assigned to Mental Health Unit: 4.00 FTEs

* * *

There are presently just 4.00 AAGs in the Unit – one of the positions is vacant. Two of the five lawyers work half-time. Two paralegals and one administrative secretary provide staff support.

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AAGs in other divisions in the AG's Office provided 0.48 FTEs of legal services.

Civil Division:	0.36 FTEs
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GCAL Division, etc.:	0.12 FTEs
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Civil Division AAGs defended the Department in civil litigation. The GCAL Division handled some appeals and employment cases and assisted with contracts and other legal matters.

Appendix G – Department of Vermont Health Access

Legal Services Provided By AGO DVHA Unit in FY 2013

1. Civil litigation/Medicaid liens

Description: Enforcement of liens on financial recoveries by Medicaid recipients.

Number of matters: Represented DVHA in one court case in which DVHA was a party; assisted COB Unit w/lien enforcement in 4 other large PI cases. Meet/advise Unit on lien cases.

Complexity: Varies

Time demands: 0.10 FTEs

2. Civil litigation/Estate recovery work

Description: Enforce Medicaid claims in probate court when denied by the executor/administrator of the Estate.

Number of matters: 7 petitions to allow claims filed in Probate court on behalf of DVHA; consult with DVHA on approx. 15-20 estate cases. Meet w COB Unit on regular basis to discuss estate cases.

Complexity: Varies

Time demands: 0.10 FTEs

3. Civil litigation/Medicaid Fraud.

Description: Work with AG Medicaid Fraud Unit to pursue claims against providers.

Number of matters: 2

Complexity: Very complex

Time demands: 0.05 FTEs

4. Administrative disputes/Hospital providers.

Description: Section 340B covered drugs disputes.

Number of matters: 2

Complexity: Very complex

Time demands: 0.05 FTEs

5. Administrative disputes/Pharmaceutical manufacturers.

Description: Rebate disputes.

Number of matters: 5

Complexity: Very complex

Time demands: 0.10 FTEs

6. Administrative disputes/Reimbursement/Program integrity.

Description: Provider payment disputes under State Plan and the Section 1115 waiver/collection of overpayment due to error, fraud waste & abuse.

Number of matters: 6

Complexity: Complex

Time demands: 0.15 FTEs

7. Administrative disputes/Provider taxes.

Description: Advice and enforcement of provider tax statutes.

Number of matters: 9 hospital; 6-10 other provider types such as nursing homes.

Complexity: Complex

Time demands: 0.20 FTEs

8. Health Exchange/Privacy and HIPAA compliance.

Description: Legal advice on HIPAA and other privacy matters.

Number of matters: 10-15 HIPAA questions; advise Exchange on privacy issues.

Complexity: Varies

Time demands: 0.15 FTEs

9. Other matters.

Description: Provide legal advice on issues including contracts, access to records, subpoenas, legislation, rule-making, audits, data sharing between DVHA and insurers, CMS program integrity requirements, provider enrollment and screening under the Affordable Care Act.

Complexity: Varies

Time demands: 0.20 FTEs

DVHA LEGAL STAFFING

AAG Services provided by AGO DVHA Unit exceeded AAG staffing by 0.10 FTEs.

AAG Services provided by AGO DVHA Unit: 1.10 FTEs

AAGs assigned to DVHA Unit: 1.00 FTE

* * *

AAGs in other divisions in the AG's Office provided 0.46 FTEs of legal services.

Civil Division: 0.12 FTEs

GCAL Division, etc.: 0.63 FTEs

AAGs in the Civil Division defended the Department in litigation. AAGs in the GCAL Division provided representation on complex contracts, litigation and appeals.

Appendix H – Agency of Human Services
Legal Services Provided by AGO Division Chief in FY 2013

1. Manage/Coordinate/Organize the legal work of the Human Services Division.

Description: The Division Chief's primary role is to manage, prioritize and coordinate the legal work of the Division to meet the needs of the Agency and Agency Departments. The Division Chief assures that litigation and other matters are properly assigned and handled in a competent and timely way. She monitors the legal work to assure that legal theories asserted by Agency Departments are generally consistent within the Agency and with legal theories asserted by other State agencies. She reviews practices and procedures and changes them as needed, keeps accurate records and statistics, and monitors caseloads.

Number of matters: N/A

Complexity: Routine to complex

Time demands: 0.20 FTEs

2. Supervise staff to assure that high quality legal services are delivered efficiently.

Description: The Division Chief oversees the quantity and the quality of the legal services provided by the Division. This responsibility includes the direct supervision of ten AAGs (including four supervisors) and an administrative assistant. The Chief reviews written work and oral presentations on a regular basis, provides or arranges on the job and other training, supervises compliance with ethical requirements and provides feedback to assure satisfactory job performance.

Number of staff : 28 AAGs, 4 admin assistants, 4 paralegals

Complexity: Complex

Time demands: 0.25 FTEs

3. Contracts, Grants, and MOU's for DCF/ES, DVHA, and AHS Central Office

Description: The Chief assigns and supervises the contracts, grants and MOUs entered by the ESD and the AHS Central office. This work includes review and advice on major contracts and consultation on others.

Number of matters: Numerous

Complexity: Routine to complex

Time demands: 0.05 FTEs

4. Provide legal advice and opinions to Department staff, Commissioners and Deputies

Description: The Chief advises Department officials and staff who seek advice on legal issues and assigns matters to AAGs with appropriate expertise.

Number of matters: Numerous

Complexity: Routine to complex

Time demands: 0.20 FTEs

5. Assignment and coordination of access to records requests.

Description: The Chief assigns, coordinates and oversees responses to the more challenging public records requests within the division and ensures that the General Counsel Division of the AGO is consulted when necessary.

Number of matters: Many

Complexity: Complex

Time demands: 0.05 FTEs

6. Civil litigation.

Description: The Chief reviews, monitors and participates in litigation brought by or against Agency Departments. This work includes reviewing pleadings and taking other actions as needed respecting other aspects of the litigation.

Number of matters: Many

Complexity: Complex

Time demands: 0.20 FTEs

7. Administrative litigation.

Description: The Chief reviews and monitors major litigation against Agency Departments. This work includes reviewing pleadings and getting involved in other aspects of the litigation.

Number of matters: Many

Complexity: Complex

Time demands: 0.20 FTEs

8. Supervising rulemaking, legislation and policy interpretation and consultation.

Description: The Chief directly supervises the AAGs who provide legal advice to the Agency Departments on rules, policies and legislation.

Number of matters: Numerous

Complexity: Routine to complex

Time demands: 0.05 FTEs

9. Training.

Description: The Chief assists with the planning and implementation of training on contracts and grants. She provides training for AAGs and other government lawyers through the Continuing Legal Education programs offered by the AGO.

Number of matters: Several trainings each year

Complexity: Complex

Time demands: 0.05 FTEs

Agency of Human Services Legal Staffing

AAG services provided by AGO Division Chief exceeded AAG staffing by 0.25 FTEs.

AAG services provided by AGO Division Chief: 1.25 FTEs

AAGs assigned to Division Chief position: 1.00 FTE

* * *

AAGs in other Divisions provided 0.53 FTEs of legal services.

AGO GCAL Division: 0.53 FTE