



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

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June 1, 2020

Sent via Electronic Mail

David Schumacher, Director
Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

Dear Director Schumacher:

Thank you for helping lead Washington State through the unprecedented economic upheaval caused by the COVID-19 pandemic. My office prepared the enclosed plans in accordance with your May 13, 2020 letter requiring State Agencies to identify reductions necessary to achieve a 15% budget reduction for the 2021 fiscal year.

To be blunt, I am deeply concerned that these cuts will significantly increase the State's legal risk in many areas of state government.

These reductions to Attorney General's Office (AGO) personnel will result in children remaining in the foster care system longer, consumers compromised at possibly the worst moment in our lifetimes, and weakened environmental enforcement. These are just a few of the destructive impacts of the reductions we have identified in this exercise. Moreover, these cuts may not realize savings, because reduced AGO staffing will require contracting with higher cost private attorneys to handle urgent legal matters.

Although the OFM reduction goal for my office was based solely on our direct general fund appropriation, we understand that our client agencies may propose cuts to their legal services funds as part of this exercise. These cuts, if implemented, would in turn require reductions to our budget.

In light of this situation and considering guidance offered by our designated OFM analysts, we have identified the impacts of a potential 15% budget reduction across all funds. By identifying the high-level impacts of budget reductions in all our funding sources now, we hope discussions about potential cuts to legal services can be better informed. **It is extremely important to me that your staff directly and consistently engage with my office so that the ramifications to any proposed reductions to the State's legal services are clearly understood.**

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Due to the constrained timeline for this exercise, we were unable to collaborate with our client agencies about potential prioritizations and reductions to their legal services. Rather, we are offering a high-level review, identifying the size of reductions (to both resources and positions) necessary to meet a 15% target. The impacts associated with such a reduction are significant.

Thank you for your efforts to help us navigate some very difficult but potentially unavoidable choices. I recognize the challenges we all face in reconciling our work with available resources. My team and I stand ready to help ensure that the difficult decisions we make are the best possible choices for the people of Washington.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

BOB FERGUSON
Attorney General

RWF/jlg

Encl.

Public Safety Legal Services

- Loss of funding to the AGO unit that prosecutes **sexually violent predator (SVP) cases** would result in an increased caseload for the attorneys and staff. There are currently 39 SVP jury trials pending and we actively monitoring an additional 43 SVP cases where courts ordered the release of sexually violent predators to the community on significant restrictions. ***Increased caseloads result in increased risk of the release of dangerous individuals to the community.***
- Most AGO work for the **Department of Corrections** is not discretionary; the State is required by statute to defend constitutional challenges to criminal judgements and sentences. ***Inability to handle this work effectively due to staffing cuts and unsustainable caseloads can result in dangerous felons releasing into the community.*** It would also stretch thin the capacity of the AGO to provide advice to the Department of Correction thus increasing exposure to liability that could be avoided.
- Reductions to the **Consumer Protection** budgets will severely impact the AGO's ability to protect consumers in Washington State. The AGO would have limited ability to take enforcement action regarding data breach violations or deceptive robocall scams. Few actions against fraudulent charities, foreclosure rescue scams and deceptive debt collection could be initiated. ***Cuts would also limit the AGO's response to issues arising from the COVID-19 pandemic, including lending issues, fake cures or testing, and scams that prey on those impacted by the financial downturn caused by the pandemic.***
- AGO attorneys prosecute licensed health care providers who present a risk to patients. Decreased staffing would result in fewer cases going forward, as well as delays, ***potentially allowing substandard providers to continue practicing and increasing the possibility of injury or death for patients.*** Cases impacted include opioid over prescription and substandard anesthesia care resulting in patient deaths; inappropriate or criminal sexual activities with vulnerable young and elderly patients; diversion of drugs for personal use; and financial fraud.
- New fraud schemes and serious cases of abuse and neglect in long-term care facilities have arisen due to the pandemic. We must maintain staff to effectively investigate and prosecute those committing fraud and abuse. The AGO's **Medicaid Fraud Control Unit** is 75% federally funded and 25% state funded. The state must meet its 25% match or face a cut in federal funding to its Medicaid Program. States must operate the MFCU in order to receive federal funding for their Medicaid program. In addition, ***these cuts would require MFCU to reduce work in other areas including their efforts to protect vulnerable individuals from abuse and neglect, leaving these populations at increased risk.***

Natural Resources Legal Services

- **Several AGO Divisions** provide legal services to State Agencies that protect Washington's Natural Resources. Cuts to these divisions would lead to reduced environmental and economic benefits of Washington natural resources. These divisions have: assisted with the Hanford Cleanup; protected endangered species; provided advice on tribal and public hunting issues; and brought litigation against companies that harm the environment - ***these activities are all jeopardized by these proposed cuts.***

Education Legal Services

- All of our education clients, from OSPI to the higher education institutions receive large amounts of federal funds tied to various forms of regulatory compliance. The reduction of our ability to assist clients with their regulatory responsibilities will put federal funds in jeopardy. Additionally, ***educational institutions are facing myriad challenges***

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brought on by the COVID-19 pandemic and are in need of increasing legal advice and representation to meet these challenges.

- Budget cuts to AGO divisions representing **the state's higher education institutions** mean that areas of significant legal risk will not receive sufficient attention. Campus safety and first amendment issues require legal advice in real time. Changes in federal funding and regulations, including new regulations from the U. S. Department of Education regarding Title IX, will increase our workload – reviewing new policies and conducting with more student conduct/Title IX hearings. Also, this year a new hospital was added to the UW Medicine system with no correlating increase in legal resources. ***Reduction of AGO staff in these Divisions creates an immediate cost increase to the State as the AGO then has to employ more expensive outside counsel to perform work that we lack capacity to take on.***

Human Services Legal Services

- The Governor's office and the Legislature have recognized that juvenile litigation is severely underfunded and proposed reductions will eliminate whatever small gains we have recently made. History has shown that neglect of **juvenile work** results in significant legal exposure. With a reduction of attorneys, caseloads will climb from their current levels of 80-100 for the permanent placement of children which are already higher than the American Bar Association's recommended 40-60 cases per AAG. ***These budget cuts will mean children will remain in Washington's foster care system longer without permanent homes. In addition, the AGO will have to withdraw from specialty courts, such as Family Treatment Court and Baby Court,*** because of lack of staff to cover these additional dockets.

Government Operations Legal Services

- The **Bankruptcy and Collections Unit** generates revenue for the state by ensuring that the State receives funds it is due in the bankruptcy process. These cuts would make it impossible to keep up with the anticipated large increase in bankruptcy cases that are sure to be filed based upon this pandemic. If the state is unable to participate in all cases where the state is a creditor, ***immediate reduction of State revenues will result.***
- These cuts would require cancellation of the AGO annual **Public Records Act** University training for local governments and open government consultant time and travel would also be reduced. Training and consultation for local governments is a key in helping local governments ***avoid public records lawsuits and reduce liability.***
- The AGO has developed in-house expertise in specialized areas of tax and finance law. This expertise enables the **Department of Retirement Systems and the Department of Revenue** to rely on AGO attorneys and staff to handle complex and high financial risk cases such as class action litigation. These cuts would require ***appointment of specialized outside counsel at an immediate, and vastly increased, expense.*** This also decreases the ability of the AGO to hire and retain top-notch attorneys.
- The volume of **tort lawsuits** filed against the state has steadily increased as well as the complexity of defense and the time required for resolution. This trend, paired with budget cuts, hurts proper staffing levels and the resources needed to defend cases. Cuts to personal services contracts negatively impacts results when quality experts cannot be retained. Similarly, cuts to litigation support tools and new courtroom technology solutions negatively impact our ability to defend cases properly.

Program/Activity	Dollar Reduction Target	Position Reductions Necessary to Meet Target	Impacts of Reductions and Other Considerations
	FY 21	FY 21	
Human Services Legal Services	7,969,000	74.0	These divisions provide legal services to State Agencies that serve Washington's most vulnerable citizens; children, vulnerable adults, individuals with mental health issues, and injured workers. These reductions would mean that children will stay in foster care longer, vulnerable citizens will be left in dangerous circumstances. Much of the legal work done by these divisions is regular and statutorily mandated. Non-mandatory work would be delayed or not get done.
Public Safety Legal Services	7,773,000	73.0	Many of these divisions have been working to provide COVID-19-related legal services to the Governor, Dept. of Health, Military Dept., and other state agencies. These divisions also investigate and prosecute violent and sexual crimes, and protect the public from fraud, nefarious business practices, and recover millions of dollars in revenue and restitution for the State and its residents. Cuts to these programs will put the public at risk and cost the State and its residents millions of dollars in lost revenue, relief, and restitution.
Natural Resources Legal Services	1,257,000	5.8	These divisions provide legal services to State Agencies that protect Washington's Natural Resources. Cuts to these divisions would lead to reduced environmental and economic benefits of Washington natural resources. These divisions have: assisted with the Hanford Cleanup; helped to protect endangered species; provided advice on tribal and public hunting issues; and brought litigation against companies that harm the environment - these activities are all jeopardized by these proposed cuts.
Education Legal Services	1,011,000	7.8	Divisions provide legal services to all of Washington's Education programs from K-12 to Higher Ed. Cuts to this area would greatly increase the risk of legal exposure at Washington's college campuses and in our K-12 schools. Examples include increased health and safety risks to students and employees, reduced or eliminated assistance on public health initiatives related to COVID-19, and delays in Title IX administrative hearings. These risks put federal funds in jeopardy which can include loss of federal funding.
Government Operations Legal Services	6,819,000	50.7	These divisions provide legal services for the general operation of government including: official opinions; legal representation and advice to the Governor, the Legislature, the Dept. of Licensing and the Dept. of Revenue; public records request educational services for local govts; and provide Tort claims defense against the State of Washington. Cuts to these areas will greatly increase the State's liability in Tort claims and reduce revenue due to increased adverse judgements against the State and the Dept. of Revenue.
Total	24,829,000	211.3	