

2002 Extraordinary Criminal Justice Costs Prioritized List Commentary

Introduction

Aggravated murder cases are charged under RCW Chapter 10.95, which provides that a person is guilty of aggravated murder if he or she is convicted of premeditated first degree murder and one or more specific aggravating circumstances are found to exist beyond a reasonable doubt. Under the law, a defendant convicted of aggravated murder must be sentenced to life imprisonment without possibility of release or parole, or, if the prosecutor serves a death penalty notice and the jury finds no sufficiently mitigating circumstances, sentenced to death.

The 1999 Washington State Legislature, in recognition of the extraordinary expense involved in investigating, prosecuting and defending aggravated murder cases, and of the insufficiency of budgeted criminal justice funds to meet these demands, passed the Extraordinary Criminal Justice Costs Act. This statute created a process for counties to seek state reimbursement of the costs incurred in these cases.

In accordance with the Act, the Washington State Office of Public Defense (OPD) in 1999, 2000 and 2001 developed procedures for processing the petitions, auditing their veracity, and prioritizing them in consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC). The 2000 Legislature appropriated a total of \$550,000 to three of the eight counties that submitted reimbursement petitions for 1999 costs, the 2001 Legislature divided a total appropriation of \$975,000 among each of the seven counties that submitted petitions for reimbursement of 2000 costs, and the 2002 Legislature appropriated \$394,000 to two of nine counties that submitted reimbursement petitions for 2001 costs.

Petitions

Before petition forms were distributed to the counties in 2002, Washington State OPD revised and simplified them based on the prior three years' experience. Initial petitions were filed in December, and the counties were permitted to submit supplemental materials in January, in order to include updated information regarding pending cases. Throughout the process, Washington State OPD worked with the counties to give guidance on appropriate documentation that preserved protection of privileged or confidential information, and to encourage the submission of additional county records when they were needed to support claims.

Review Process

In accordance with the statute, Washington State OPD audited and verified the petitions that were submitted. Undocumented expenses, costs for cases not active in 2002 and capital expenses were disallowed.

A meeting with WAPA and WASPC was held to evaluate the claims, discuss the process and prepare the prioritized list.

Prioritizing the Petitions

The 2002 petitions were prioritized based on the factors listed in the statute: disproportionate fiscal impact relative to the county criminal justice budget, efficient use of resources, and whether the costs were extraordinary and could not be reasonably accommodated and anticipated in the normal budget process. They appear on the list in order of priority.

Disproportionate Fiscal Impact Relative to the County Budget. This factor addresses the difficulty faced by counties when the costs of investigating, preparing and trying the most serious criminal cases compete with other obligations of county government. The county's calendar year case costs were divided by the county's criminal justice budget to create a ratio quantifying the degree of disproportionate fiscal impact experienced by each county.

Efficient Use of Resources. When faced with the demands aggravated murder cases imposed on limited resources, counties found a variety of ways to economize. Each county made efforts to control costs within the context of the individual cases and constitutional mandates. Their descriptions of their efforts are set forth in Attachment 1.

Extraordinary Nature of Costs. When aggravated murder cases are extraordinary, they cannot be easily incorporated into the county budget cycle. Factors that make these costs extraordinary and prevent them from being "reasonably accommodated and anticipated in the normal budget process" are specific to the individual circumstances of the cases and the counties in which they arise.

Ridgway Case

The State v. Ridgway case is unique. This case cost King County more in 2002 than the other aggravated murder cases reported by all counties combined. Defendant Gary Ridgway is charged with the aggravated first degree murder with a death penalty notice of four victims of the 'Green River killings.' The Ridgway case has been described as like no other murder case, for two reasons. First, law enforcement has associated nearly 50 victims with the Green River killings. Second, the Green River Task Force, which investigated the case for about twenty years, created a record of about one million documents about the killings.

Out of its total petition request for reimbursement of \$9,138,423 for 18 cases, King County petitioned for reimbursement of \$5,680,235 for the Ridgway case. Verifying documents support \$4,960,560 of these costs; part of the reduction was for a \$274,475 federal grant pursued to offset DNA costs, as noted by the County in their petition.

The Extraordinary Criminal Justice Costs Act directs an examination of the disproportionate county budget impacts aggravated murders have caused. In 2002, due to a severe budget deficit, King County eliminated \$41 million in services. The County

ordinarily copes with multiple aggravated murder cases each year. However, the Ridgway case, as a serial murder death penalty case involving an enormous amount of potential evidence, is qualitatively different from other aggravated murder cases handled by the County. Coping with the Ridgway case has required planning and investment of a relatively large amount of county funds to ensure that the proceedings are of appropriate magnitude and are fair. By funding the case adequately at the pre-trial stage, King County is avoiding foreseeable problems that develop when complex, massive death penalty cases are not provided sufficient resources. Such underfunding often results in trial mistakes, grounds for reversals of decisions, and costly re-trials that can delay final resolution of the case for years.

Each of the parties in the Ridgway case have undertaken concerted efforts to handle the numerous investigatory tasks required to take the case to trial. The King County Sheriff's Office has, with funds approved by the county for that purpose, undertaken an intensive, continued investigation. This investigation is being conducted assiduously and involves additional investigators, a large number of DNA and other scientific tests, and the leasing of equipment necessary to carry out the required tasks.

In July 2002, upon the advice of a special master about what resources the defendant is constitutionally allowed for his defense, the King County Superior Court ordered that additional counsel be appointed. The appointment of a total of 8 part-time and full-time attorneys (one is privately retained) and support and investigator staff was based on the special master's conclusion that the task force's 20-year investigation created an enormous amount of potential evidence that must be examined by defense attorneys, as it includes information about additional suspects and evidence. The appointment of the large defense team was also based on the number of victims and the fact that the case is still being investigated and evidence regarding other victims may be introduced at trial.

In July 2002, the King County Prosecutor's Office requested and received King County Council authorization for funds to hire additional prosecutors, bringing the total to 5 plus support staff. Additional prosecutors were approved due to the Sheriff's Office substantial current investigation and the need for the prosecutor's office to review the documents created by the task force. The Court has set a March 2003 cut-off date for the filing of additional charges against the defendant, but evidence about other victims may still be admissible (under the death penalty statute, RCW 10.95.02, evidence regarding whether the defendant committed homicides under a 'common scheme or plan' is relevant.)

In order to handle the distribution of the nearly 1,000,000 documents that must be reviewed by both sides, the county consulted with Preston, Gates & Ellis to set up a database. It is obvious that the creation of this database will save overall time and labor costs by facilitating efforts to obtain, copy, and review documents.

The County Council has sought independent attorney advice regarding the basis and necessity of requested spending authority before approving funding requests. At this point, the Council has approved funding requests for the first half of 2003, but is

requiring detailed cost reports from the sheriff, prosecutor, and the King County Office of Public Defense before approving funds for the second half of 2003.

Given the unique circumstances of the Ridgway case, it appears that the parties have taken appropriate steps to cope with the strenuous demands of handling it properly. Thus far, primarily, this has involved the undertaking of a large amount of pretrial investigatory work by all concerned, including the sheriff, defense attorneys, and prosecutor.

Prospectively, two upcoming periods may prove to be stages at which the number of advocates and investigators necessary to work on the case can be reevaluated, if the circumstances indicate this would be appropriate. One is after the initial review of the nearly 1,000,000 Green River Task Force documents now being read by the defense and prosecution teams. Once the thousands of hours required for an initial reading of all documents within the necessarily limited case timelines have been spent, and the number of relevant documents have been narrowed considerably, depending on circumstances, it may be possible that fewer professional hours are required by both sides for the continuation of high-quality legal representation. Similarly, once all discovery has been conducted and the issues are narrowed, the number of persons needed to effectively carry out the remainder of the case can be reevaluated.

It is important also to note that the parties seem to be reporting carefully the actual time spent. This practice is to be expected and commended. The amounts spent by each party total less than the maximum authorized in 2002. The County Council's practice of scrutinizing funding requests carefully and periodically reviewing the case and each party's spending and budget needs is likewise very important for this case.

Attachment I

2002 County Petition Responses – Efficiencies and Budget Impacts

King County

Number of cases claimed: 18

Amount claimed: \$9,138,423

Amount supported by documentation: \$8,396,785 (Note: Excluded amounts: capital equipment that will have a residual use - \$136,766, reimbursement from a federal grant for the Ridgway case - \$274,475, indirect costs applied to sheriff department salaries - \$322,195, and other costs claimed on the data sheet for sheriff investigation costs not identified by supporting documentation - \$8,202.)

Budget Impacts – King County reports:

“While King County’s overall felony caseload has remained flat, the number of aggravated murder cases has increased dramatically. Last year, King County’s extraordinary justice costs act claim included nine cases. This year’s claim includes eighteen cases. In addition, King County’s aggravated murder cases are increasingly serious, complex and of a high profile. Last year’s claim included one death penalty case. This year’s claim includes three death penalty cases. This year’s claim includes costs associated with the case against Gary Leon Ridgway for four of the so-called Green River murders. This case is one of the most notorious cases in U.S. history and involves evidence associated with 44 other cases. Much of this evidence is nearly 20-years old.

Aggravated murder cases are among the most complicated and time consuming given the severity of the offense and the potential severity of the sentence. As the number of these cases persist, strains are placed on other components of the King County criminal justice system, including the jail. For instance, all inmates charged with aggravated murder are classified in the jail as ‘ultra security’ inmates, requiring specialized and more intense supervision. They generally spend more time in the facility than other inmates, as well. The cases also require more public defense resources than the standard felony case. King County is required by the Court to provide 2 attorneys for most aggravated murder cases. In an extreme example, King County is required by Court order to provide publicly funded attorneys in the Ridgway case given the complexity of the case. In addition, the need for expert witnesses goes up dramatically in aggravated murder cases. For example, over \$300,000 has been spent so far this year for defense experts for the Ridgway case. It is difficult to anticipate these needs – especially when the death penalty is involved.

King County is incurring all of these costs at the same time it is dealing with an unprecedented fiscal crisis. King County eliminated \$41 million in services in 2002 and \$52 million for 2003. Twenty-four million dollar shortfalls are expected in both 2004 and 2005. The legal and financial obligations associated with the proliferation of these aggravated murder cases significantly impacts King County’s ability to maintain other services – including other criminal justice services.”

Efficiencies – King County reports:

“King County has a number of mechanisms in place to efficiently manage the costs of aggravated murder cases. On the Court side, all cases are pre-assigned to a judge for the duration of the case. In addition, the ancillary staff assigned to the case remain throughout. This method of case assignment allows for continuity, effective record keeping, and consistent case management. In addition, all ultra security cases, which is the jail classification for all persons charged with aggravated murder, are held at King County’s downtown courthouse facility, rather than the more remote Regional Justice Center (RJC). This allows the County to maintain one ultra security jail facility and saves the county from expensive transport costs between the downtown jail and the RJC.

King County has instituted a number of mechanisms to efficiently manage costs associated with the Ridgway case, in particular. King County has relied on the services of a court-appointed Special Master to assist in the review of the appropriateness of the defense costs associated with the case. In addition,

the prosecution, defense and Sheriff teams are working cooperatively on a shared discovery database that will allow all parties to review the nearly 1-million pieces of case-related evidence that have been amassed since the early 1980s. This database will allow the County to save significant amounts of time and money as a result of not needing to copy and store all of these documents for three separate agencies. In addition, the database will assist the defense and prosecution in building their cases in a timely manner. The database will have the capability to search documents for keywords, eliminating the time needed to read each and every document. This capability will allow this case to go to trial in a timely manner, also saving money.”

Kitsap County

Number of cases claimed: 2

Amount claimed: \$737,414

Amount supported by documentation: \$737,417

Budget Impacts – Kitsap County reports:

“At the 2002 budget process, it was unknown how many aggravated murder cases would occur or how long the trials would take. Public defense costs, expert witness and staff time were unexpectedly high due to complicated issues in each case.”

Efficiencies – Kitsap County reports:

“Defense counsel were chosen based on actual experience in these types of cases. Efforts are coordinated to review costs for reasonableness and actual time spent on the case. The county strives to be efficient and effective as possible in these situations.”

Chelan County

Number of cases claimed: 1

Amount claimed: \$237,046

Amount supported by documentation: \$237,046

Budget Impacts – Chelan County reports:

“The crime occurred after the 2002 budget was adopted. The county does not have the financial means to set aside a capital trial reserve.”

Efficiencies – Chelan County reports:

“All claims paid go before the superior court judge.”

Snohomish County

Number of cases claimed: 12

Amount claimed: \$450,719

Amount supported by documentation: \$450,719

Budget Impacts – Snohomish County reports:

- “1) There is difficulty in forecasting the number of aggravated murder filings in a year as well as difficulty in forecasting the number of hours to be billed for representation on a particular defendant.
- 2) Snohomish County has multiple aggravated murder cases in progress simultaneously, and some of these cases have had multiple defendants. When there is more than one case or defendant, or when a conflict arises, private counsel needs to be appointed, often at higher rates and without the expenditure caps in the county’s Public Defender Association contract.

- 3) These cases impact many parts of our criminal justice system, including the Sheriff's Office, Prosecutor, Office of Public Defense, Corrections, Courts, Clerk and Medical Examiner. The impact to these different departments varies from case to case, making it difficult to plan for in the budget.
- 4) These defendants tend to spend more time in jail than do inmates on other charges, and many have special custody or housing/management concerns due to age, multiple defendants, offense history, or other issues.
- 5) By law, two defense attorneys must be appointed for each defendant in these cases until the period for filing the death notice has passed and the death notice has not been filed, after which the court may reduce the number of attorneys to one.
- 6) Law and justice programs continue to consume the most significant share of the county's General Fund budget, 67.7% in 2002. As those program costs have grown, the county's ability to generate additional General Fund revenue has been limited by various property tax initiatives. Although year-to-date expenditures for aggravated murder cases are down from 2001, the county must pursue the opportunity to offset these costs by petitioning for reimbursement of extraordinary criminal just costs."

Efficiencies – Snohomish County reports:

- Appointment as possible to the Public Defender Association with whom there is a negotiated cap.
- If the Public Defender Association is not available, Supreme Court Capital Counsel Panel attorneys are used."

Whatcom County

Number of cases claimed: 2

Amount claimed: \$125,618

Amount supported by documentation: \$109,751

Budget Impacts –Whatcom County reports:

"Aggravated murders have not historically been common occurrences in Whatcom County. Thus, the need to contend with two aggravated murders, plus one that has come back on appeal for a hearing, was definitely not something that would or should have been anticipated during the County's normal 2002 budget process. This fact combined with the perpetual scarcity of financial resources, precluded the County's criminal justice agencies from budgeting for these types of uncertain events.

In 2002, the county is experiencing flat or decreasing revenues and higher operating costs. These two factors, ultimately resulted in a mid-year, across the board, appropriation reduction equaling tow percent (2%). Additionally, all current expense funded operations were required to implement a one percent (1%) reduction in their respective budget submissions for 2003. Again, due to these financial constraints, anticipatory budgeting for uncertain events (like aggravated murders) was not even within the realm of possibility.

The situation in the County is further exacerbated by the fact the criminal justice system is feeling the pressure of growing caseloads, particularly pertaining to adult felons. It is anticipated, that 2002 criminal filings in Superior Court will exceed the 2001 level by 20%. This increase translates into a need to shift and utilize existing resources to handle the higher than expected caseloads and all their ancillary costs. According to the 2002 budget document, "Law and Justice expenditures have increased at an average rate of 6.6% per year since 1998. Law and Justice has grown from 47% of the general fun's 1998 budget to 52% of the general fund's 2002 budget." Thus, it is imperative to attempt to recoup unanticipated expenditures where possible in order to alleviate the impact of higher criminal justice costs on other county services."

Efficiencies – Whatcom County reports:

"The County has a number of mechanisms in place that ensure the effective and efficient management of aggravated murder cases, including vertical prosecution and case processing. Additionally, the county's ability to assign both aggravated murder cases to the County Public Defenders Office in 2002 will result in significant saving for the County."

Extraordinary Criminal Justice Costs Act 2002 Prioritized List

<u>Year</u>	<u>County</u>	<u>Adjusted Claim</u>	<u>Criminal Justice Budget</u>	<u>Budget Impact</u>
2002	King	8,396,785	381,524,959	2.2%
2002	Kitsap	737,414	42,900,683	1.7%
2002	Chelan	237,046	15,614,959	1.5%
2002	Snohomish	450,719	109,499,770	0.4%
2002	Whatcom	109,751	29,625,162	0.4%

Notes:

1. The list has been prioritized in order of the impact of counties' 2002 aggravated murder costs on their 2002 criminal justice budgets.
2. Budget impacts were rounded. Snohomish (.41) and Whatcom (.37) Counties appear in the order of their actual (unrounded) 2002 criminal justice budget impacts.