



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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January 21, 2004

The Honorable Helen Sommers
Chair, Appropriations Committee
Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600

The Honorable Joseph Zarelli
Chair, Ways and Means Committee
Washington State Senate
PO Box 40418
Olympia, WA 98504-0418

Dear Representative Sommers and Senator Zarelli:

In accordance with the Extraordinary Criminal Justice Costs Act, the 2003 prioritized list of counties requesting reimbursement of their aggravated murder costs has been completed.

Four counties submitted petitions to the Washington State Office of Public Defense (OPD) for reimbursement of 2003 costs. The statute requires that all claims be supported by appropriate documentation. OPD audited and verified the petitions and supporting documentation. Deductions were made for amounts paid by grants and amounts paid by the state for judges' salaries.

The directors of the Washington Association of Prosecuting Attorneys (WAPA), Washington Association of Sheriffs and Police Chiefs (WASPC), and OPD met to evaluate the claims, discuss the process, and prepare the prioritized list. The counties are listed in order of the disproportionate fiscal impact relative to the county budget. The counties' adjusted claims were divided by their criminal justice budget to create a ratio quantifying the impact of the aggravated murder case costs.

In their petitions, each county described efforts to efficiently use resources by controlling costs within the context of the individual cases and constitutional

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standards, and their difficulties accommodating and anticipating the costs in the normal budget process, particularly because other budget cuts were required. Their descriptions of these efforts are set forth in Attachment 1.

Ridgway Case. While King County's claim is for 18 active cases, including four death penalty cases, the majority of the claimed costs were expended on the Ridgway case, which totaled \$6,791,207. After considerable work and cooperation between the investigative, prosecution, and defense teams, Ridgway pleaded guilty to 48 homicides. This saved millions more in county funds that would have been spent on trial costs, and, if Ridgway had been convicted, considerable sums of state funds for appellate costs.

Investigation and DNA costs for the Ridgway case were high due to the number of victims investigated, the age of some of the homicides, and the number of defense attorneys, prosecutors, and experts involved in this massive case.

The prioritized list is enclosed. Please let me know if OPD can provide any more information for the Legislature's use.

Sincerely,

Joanne I. Moore
Director

Enclosures

2003 County Petition Responses – Efficiencies and Budget Impacts

King County

Number of cases claimed in 2003: 29

Number of cases claimed in 2002: 18

Amount claimed in 2003: \$11,136,619

Amount supported by documentation: \$10,490,935 (\$4,289 is the sum of miscellaneous adjustments; \$641,395 is a reduction due to King County receiving a federal grant to assist in off-setting costs.)

Budget Impacts – “King County continues to experience the financial strains of a sizable body of increasingly complex aggravated murder cases. Last year, King County’s extraordinary justice costs act claim included 18 cases, three of which were death penalty cases.¹ This year’s claim includes 29 cases, four of which are death penalty cases. Once again, King County’s claim includes costs associated with *State v. Ridgway* and the Green River Homicides Investigation (GRHI). As you know, Mr. Ridgway recently pled guilty to 48 previously unresolved homicides, making him the most prolific serial murder in the nation’s history. Many of the cases for which Mr. Ridgway is responsible are more than 20 years old. Reaching this conclusion required a tremendous amount of work and cooperation among the defense, prosecution, and investigative teams assigned to the case. In fact, the Sheriff’s Office spent more than \$800 thousand on overtime on the case through October of this year, when only \$51 thousand had been budgeted. King County could not have anticipated when preparing the 2003 Adopted budget that the Ridgway case would take such a dramatic turn. The Sheriff’s Office continues to investigate other outstanding homicides that could be attributed to Mr. Ridgway.

While *State v. Ridgway* is a particularly unique case, aggravated murder cases in general 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 increases, strains are placed on 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. For example, the defendants in *State v. Burns* and *State v. Rafay* have been housed in the King County Correctional Facility since March 29, 2001 on charges that are over 8 years old.

Aggravated murder cases also require more public defense resources than the standard felony case. King County is required by Supreme Court rule and by contract to provide two attorneys for most aggravated murder cases. However, in a growing number of exceptional cases, King County is required by Court orders to provide more than 2 attorneys. In *State v. Ridgway*, King County was required under court order to provide 7 attorneys. In *State v. Champion*, King County is providing 6 attorneys under court order. And, in *State v. Matthews*, King County is providing 2.5 attorneys under court order.

In addition, the availability of technology, such as DNA testing, has dramatically changed how cases are adjudicated and cases are taking longer to process as a result of these complexities. Over the past several years, King County has seen an increase in the average time it takes to resolve an aggravated murder case - from 20 months in 1999 to 30 months in 2002.

King County is incurring all of these costs at the same time it is dealing with an unprecedented fiscal crisis. Over the past two years, King County has made \$93 million in reductions to Current Expense fund services. The 2004 budget assumes \$24 million in reductions. The projected budget shortfalls for 2005 and 2006 are

¹ King County’s petition includes all aggravated murder cases with any activity for 2003. Eleven of the cases had minimal activity and the costs reflect document processing fees for the clerk’s office.

\$22 million and \$18 million respectively. The legal and financial obligations associated with the proliferation of these aggravated murder cases significantly impacts King County's ability to provide other public services."

Efficiencies – "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 continued in 2003 to rely 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. All parties in the case benefited in 2003 from the shared discovery database that was developed in 2002. This database allows all parties to review the nearly 1 million pieces of case-related evidence that have been amassed since the early 1980s. In 2003, the King County Council adopted a reporting format for all affected agencies to use to track costs associated with the case on a quarterly basis. These reports are closely monitored by both the Executive's Office of Management & Budget and the King County Council.

King County intends to use lessons learned in management of costs associated with the Ridgway case for other complex cases in King County. The Office of the Public Defender (OPD) and the defense agency assigned to the case worked closely to ensure effective assistance of counsel as a primary objective and management of costs as an important secondary objective. King County has benefited from the appointment in January of a new Public Defender for King County. This represents the first time that an attorney with criminal justice experience has been at the helm of OPD. This allows for better management and oversight resources in all cases, and aggravated murder cases, in particular."

Kitsap County

Number of cases claimed in 2003: 2

Number of cases claimed in 2002: 2

Amount claimed in 2003: \$440,243

Amount supported by documentation: \$439,437 (\$806 is a miscellaneous adjustment)

Budget Impacts - "The original Lord verdict from 1986 was overturned and retried. These extensive costs were not anticipated in the budget process. The expert witness, investigation and forensic costs for the Hacheney case were much more than anticipated originally."

Efficiencies - "Expenditures were monitored closely by the affected departments and elected officials. Invoices for defense attorney costs, prosecutor expenses, expert witness expenses, etc. were all carefully audited by department staff."

Snohomish County

Number of cases claimed in 2003: 10

Number of cases claimed in 2002: 12

Amount claimed in 2003: \$882,494

Amount supported by documentation: \$882,404 (\$90 is a miscellaneous adjustments)

Budget Impacts -

- 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. There were eight co-defendants in the case involving John Philip Anderson and John Alan Whitaker, and there were also eight co-defendants in the Barbara Marie Opel case.
- 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, 68.7% in 2003. As those program costs have grown, the county's ability to generate additional General Fund revenue has been limited by various property tax initiatives. Expenditures for aggravated murder cases rose significantly in 2003 to \$809,900 for the January to October timeframe from \$289,890 in 2002 for that same timeframe. The county must pursue the opportunity to offset these costs by petitioning for reimbursement of extraordinary criminal just costs."

Efficiencies -

- "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."

Spokane County

Number of cases claimed in 2003: 4

Number of cases claimed in 2002: 0

Amount claimed in 2003: \$34,894

Amount supported by documentation: \$34,477

Budget Impacts – "State v. Woods is on-going litigation. The majority of the time reported in this Petition was for the State's required response to Mr. Woods' Personal Restraint Petition.

State v. Pirtle was remanded by the 9th Circuit Court of Appeals for a new trial, which was not anticipated and therefore could not be included as a known expense in the budget.

State v. Goldberg and State v. Thang were reversed by the Washington Supreme Court and remanded for new trials, which was not anticipated and therefore could not be included as a known expense in the budget.

The Spokane County Current Expense Budget was reduced in 2003 due to the loss of sales tax, a road tax revenue, real estate excise tax revenue, and cable franchise fees due to the newly incorporated City of Spokane Valley. Although the Criminal Justice Budget was increased 0.04% in 2003, the increase went toward specific programs. The requirement to respond to Mr. Woods' lengthy and complicated Personal Restraint Petition and the unanticipated reversals and remands by the Washington State Supreme Court and the 9th Circuit Court of Appeals placed a hardship on the County due to the already reduced budget."

Efficiencies – "The Prosecuting Attorney's Office used in-house staff who have experience with death penalty cases, both at the trial level and the appellate level."

Extraordinary Criminal Justice Costs Act 2003 Prioritized List

<u>Year</u>	<u>County</u>	<u>Adjusted Claim</u>	<u>Criminal Justice Budget</u>	<u>Budget Impact</u>
2003	King	10,490,935	387,354,758	2.71%
2003	Kitsap	439,437	43,958,838	1.00%
2003	Snohomish	882,404	113,486,058	0.78%
2003	Spokane	34,477	78,194,528	0.04%

Notes:

1. The list has been prioritized in order of the impact of counties' 2003 aggravated murder costs on their 2003 criminal justice budgets.
2. Budget impacts are rounded to the nearest hundredth.