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**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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January 23, 2018

The Honorable Christine Rolfes
Chair, Senate Ways & Means Committee
Washington State Senate
303 John A. Cherberg Building
PO Box 40423
Olympia, WA 98504

The Honorable Timm Ormsby
Chair, House of Representatives Appropriations Committee
Washington State House of Representatives
315 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504

Re: RCW 43.330.190—Reimbursement for Extraordinary Criminal Justice Costs

Dear Senator Rolfes and Representative Ormsby:

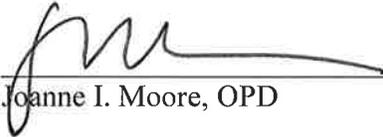
In accordance with the Extraordinary Criminal Justice Costs Act, RCW 43.330.190, the Office of Public Defense (OPD) has evaluated the counties' 2017 petitions for state reimbursement of costs incurred in aggravated murder cases. As required by the statute, OPD audited the veracity of the petitions. The petitions were then prioritized in consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC). This year, the list includes claims by Thurston, Yakima, and Mason counties.

The statute names three factors for reimbursement consideration: 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.

The attached 2017 Extraordinary Criminal Justice Costs Act prioritized list shows the claimed aggravated murder cases' disproportionate impact on the counties' budgets (Attachment A). The impact is derived by dividing the cost of the claimed cases by a county's criminal justice budget. Factors making these costs extraordinary and preventing them from being "reasonably accommodated and anticipated in the normal budget process," as well as factors showing the

counties' efficient use of resources, are specific to the circumstances of each case and county. Each county provided statements addressing why the costs were difficult to accommodate and anticipate in the normal budget process, and listed the measures it took to ensure the efficient use of resources. The counties' statements are included as Attachment B.

Sincerely,



Joanne I. Moore, OPD



Tom McBride, WAPA



Steve Strachan, WASPC

Extraordinary Criminal Justice Costs Act 2017 Prioritized List

County	Verified Claim	Criminal Justice Budget	Budget Impact
Thurston	\$420,015	\$50,317,292	0.8%
Yakima	\$401,279	\$56,117,087	0.7%
Mason	\$2,831	\$21,371,640	0.01%

Thurston County

Number of 2017 aggravated murder cases claimed: 3

Total 2017 amount supported by documentation: \$420,015

Extraordinary Nature of Costs—Thurston County reports:

Thurston County currently has three aggravated murder cases pending. Two of the three claimed carry over from the previous year (*Lawton* and *Lamere*) and all three cases will continue into 2018. Thurston County hasn't had a capital murder case since 1981 (*State v. Rupe*), and as such there was no reason to anticipate the filing of three aggravated murder cases in two years.

Lawton and *Lamere* is a triple homicide and single count attempted murder with an unusually high number of potential witnesses and voluminous e-discovery requiring all counsel to outsource assistance in discovery and data compilation. Given the large number of potential witnesses, *Lawton* in particular has required a large number investigative hours at cost as Thurston County Public Defense (TCPD) does not employ any investigators. Travel costs have also been a contributing factor in all cases as all lead counsel and more than one co-counsel are based in Vancouver and Seattle. Additional travel costs include a witness interview in Alaska on *Lawton* with both lead counsel and an investigator traveling. *Lawton* will likely proceed to trial in 2018 and is expected to last several weeks and incur expert and investigative expenses not yet incurred.

Travel expenses for *Gardin-Gonzalez* to pursue a potential defense and/or for mitigation have already been incurred and are likely to continue. *Gardin-Gonzalez* will continue to require significant and extensive mitigation investigation as death remains a potential sanction. Specialized experts are expected in *Gardin-Gonzalez* and, with limited availability of subject matter experts nationally, will likely be unusually expensive. Additionally, *Gardin-Gonzalez* suffered a self-inflicted gunshot wound to the head and is being housed 57 miles away at Stafford Creek Corrections Center for medical reasons, therefore increasing travel expenses for counsel, the mitigation specialist, and the investigation. *Gardin-Gonzalez* will likely require several additional surgeries during the pendency of the case, thereby lengthening the life of the case and increasing cost. Thurston County filed 3 more homicide cases in 2016 than in 2015 for a total of 10. In 2017, 11 homicides have been filed year to date through October. This rise in homicide filings in Thurston County has also contributed to the budget shortfall for TCPD considering these 3 cases.

Efficient Use of Resources—Thurston County reports:

TCPD has no death penalty qualified attorneys on staff. Additionally, TCPD does not employ any investigators nor any mitigation specialists for death penalty cases. Terms of the appointment of qualified contracted attorneys in all three cases were tailored to meet the case needs of each case and to comply with SPRC 2 requirements. Local second counsel has been appointed in *Gardin-Gonzalez* to mitigate costs along with local private investigation. Counsel in

all matters have made appropriate requests for experts and other professional services and per local court rule those requests have been made to TCPD. TCPD also bears the financial obligations of all requests in these cases. Recently, in *Gardin-Gonzalez*, counsel for defense will be motioning the court for CrR 3.1 services, however TCPD will administer those requests and absorb the costs.

Yakima County

Number of 2017 aggravated murder cases claimed: 11
Total 2017 amount supported by documentation: \$401,279

Extraordinary Nature of Costs—Yakima County reports:

Yakima County currently has seven aggravated murder cases pending in its Superior Court. All carry over from previous years. One matter, Grismer, was added to the aggravated murder category in 2017 by Amended Information. Three cases, Gaitan, McNeil, and Rice, are aggravated murder cases requiring *Miller* re-sentencings. *Miller* resentencing requires extensive preparation and mitigation investigation similar to death mitigation. The expenditures are also on par with pre-filing death mitigation. The expenses incurred were unexpected due to a significant change in the law. Three of the seven aggravated murder cases, *Casares*, *Verduzco*, and *Rios*, were filed prior to 2017.

The eighth case, *Condon*, was set for a retrial after mandate from the appellate courts. The original appointed attorney was not available for re-appointment. The expenses were not anticipated after the reversal on appeal. The case settled in 2017 and is no longer a pending matter.

The remaining Yakima County aggravated murder cases (7) will continue into 2018. The county has for the third time passed a 3/10th of a percent sales tax to help fund the county's criminal justice needs. The funding from that initiative is included in the county's criminal justice budget. The expenses incurred by the cited aggravated murder cases cannot be accommodated within the county's current budget. Finally, three additional aggravated murder cases are currently in the appellate courts. The Yakima County Prosecutor's Office is defending appeals in *State v. Gallegos* and *State v. Stafford*.

Efficient Use of Resources—Yakima County reports:

Death requests have not been filed. Staff attorneys at the Dept. of Assigned Counsel are used where no conflicts exist. Terms of appointment are tailored to case needs.

Mason County

Number of 2017 aggravated murder cases claimed: 1

Total 2017 amount supported by documentation: \$2,831

Extraordinary Nature of Costs—Mason County reports:

This is an additional case returned from appeal due to technical error in jury instructions by the prosecuting attorney. The normal budget process did not anticipate having to do this aggravated murder case a second time. Furthermore, while the amount looks small at the moment, this is because this case returned from appeal in November. We anticipate a significantly increased expense in 2018. In our current office setup, we would generally assign a case like this in-house to minimize expense. However, this case comes to us after a lengthy appeal, and appointing previous hourly-pay counsel is going to minimize the cost to the court system as a whole, albeit being an unexpected end-of-year cost on an already strapped budget. This county has not had an aggravated murder charge occur since this case originally appeared back in 2012, and has not taken aggravated murder cases into account during the normal course of budgeting as a result.

Efficient Use of Resources—Mason County reports:

Defense costs are being forwarded to the county Office of Public Defense, which reviews all expenses for reasonableness. The county re-appointed counsel from the original case in order to cut down on the time needed for counsel to familiarize himself with the case.

The Prosecution and Defense have agreed on a case schedule in order to minimize both court time and jail transportation time.