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**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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January 30, 2013

The Honorable Andy Hill
Chair, Senate Ways & Means Committee
Washington State Senate
PO Box 40411
Olympia, WA 98504-0411

The Honorable Ross Hunter
Chair, House of Representative Ways & Means Committee
Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600

Re: RCW 43.330.190—Reimbursement for Extraordinary Criminal Justice Costs

Dear Senator Hill and Representative Hunter:

In accordance with the Extraordinary Criminal Justice Costs Act, RCW 43.330.19, the Office of Public Defense (OPD) has evaluated the counties' 2012 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 Grant, King and Yakima 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 2012 Extraordinary Criminal Justice Costs Act list shows the claimed aggravated murder cases' impact on the counties' budgets (Attachment A). The impact is derived by dividing the cost of the claimed cases by the county's criminal justice budget. 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 each case and to the counties in which they arose. Each county articulated measures showing efficient

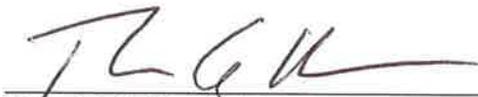
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use of resources and reasons that the case costs were difficult to accommodate and anticipate in the normal budget process. A summary of the three counties' statements is at Attachment B.

Sincerely,



Joanne I. Moore, OPD



Tom McBride, WAPA



Don Pierce, WASPC

MITCH BARKER

Extraordinary Criminal Justice Costs Act 2012 Prioritized List

Year	County	Adjusted Claim	Criminal Justice Budget	Budget Impact
2012	Grant	\$837,836.18	\$ 18,864,796	4.4%
2012	Yakima	\$365,634.98	\$ 46,386,499	0.8%
2012	King	\$2,317,587.00	\$554,122,891	0.4%

Grant County

Number of 2012 cases claimed: 2

Total 2012 amount supported by documentation: \$837,836.18

Extraordinary Nature of Costs—Grant County reports:

State v. Gilberto Valdovinos Medina, Jr.

- a. The State initially listed sixty-six witnesses, all of who defense counsel sought to interview. At least one counsel attended most of the interviews; those not attended were briefed with the investigator. Many of the interviews required travel to Moses Lake and other areas; Moses Lake is an hour and fifteen minutes round-trip. The State's witness list has been amended six times, sometimes subtracting witnesses, other times adding witnesses. Initially (until ordered to do so) the State omitted a statement of what a witnesses were expected to testify to as well as addresses and telephone numbers, requiring additional research and motions by the defense.
- b. The state has amended the information on seven occasions; many of these amendments have required motions and briefing on the part of defense counsel.
- c. The case involves several types of difficult forensic evidence (tool marks, DNA, other ballistics evidence) as well as four lay witnesses indicating that they either saw the incident or heard statements concerning the incident. In addition, the crime scene was "destroyed" long before defense counsel was able to see it. Thus, there has been considerable investigation of scientific theories requiring outside experts as well as investigations into lay witnesses.
- d. There have been numerous substantive motions required in this case, including approximately a dozen discovery related motions, motions to suppress, several motions in limine, motions for criminal records of State's witnesses, several motions to sever, and motions for entry of order (very few have been entered by agreement, although several were signed on the day of hearing by the prosecutor), motions to dismiss an aggravator (agreed), a motion concerning the propriety of using unlawful possession of a firearm as a predicate offense for felony murder (case of apparently first impression in Washington State—defense successful), a 3.5 motion with a witness from California – which took hours to complete and argue, several motions for release of evidence to experts, together with problems that could not have been anticipated and several motions for depositions. Most motions have been contested, including defense motions for depositions. Few orders have been entered without objection following defense success.
- e. The State filed suit against the Coroner alleging that the death certificate was improperly signed and that the Deputy Coroner lacked authority to act, requiring additional research and motions, some of which continues and has resulted in a public documents request and motion to compel. The motion to compel was denied in part upon the representation of the State that the Deputy Coroner was not a witness for the State; however, two days following the hearing the State amended the witness list adding the Deputy Coroner, so this argument may be revisited. In addition, the State's disclosures in the lawsuit (previously unknown to defense counsel) required defense counsel to re-interview the forensic pathologist and Jerry Jasman, Deputy Coroner. Defense counsel has also been researching judicial estoppels.
- f. The State filed a brief with the Court seeking to have lead counsel disqualified, which required substantial additional work on the part of defense counsel and appointment of two additional attorneys per the Court's order to review potential conflicts of interest with the defendant and witness for the State. The State was unsuccessful in this motion; however it took considerable time of defense counsel. Following a successful ruling, defense counsel was required to brief and argue whether the waiver executed by the defendant should be sealed (which was successful); next, the State contested the language of the protective order prepared by the defense counsel. The State then abandoned the issue.

- g. Several of the witnesses were difficult to locate, and several have not yet been located. An additional investigator (who was private) was hired to assist with this need. Many of the witnesses are no longer on the State's witness list; however, time, effort and funds were expended while the witnesses remained on the State's list. Several are still being sought.
- h. An important witness was incarcerated approximately eight hours away, requiring an extended trip by hired counsel and staff for interview. A material witness warrant was issued for this individual upon defense counsel learning that he had an ICE hold. The witness' return to Grant County required negotiation with ICE, as well as several conversations with the witness' immigration attorney. Conversations remain ongoing with the attorney appointed to represent this particular witness; defense counsel have, to date, not been permitted to re-interview him.
- i. There have been thousands of pages of discovery, including in excess of dozen CDs and there was no discernible order to the discovery. The State did not Bates stamp pages and the effort to organize the materials placed a significant burden on the defense attorneys.
- j. In-house counsel has continue to carry a caseload necessitating transfer of much research, etc. to private counsel, thus increasing costs. In addition, in-house counsel is responsible for all document preparation, photocopying, filing, etc. of pleadings.
- k. Numerous requests have been filed for expert funds. On each occasion, in-house counsel prepared pleadings, took them to the judge for sealing, coordinated their payments, and reviewed all documentation submitted by the experts. Attempts to manage costs by the judges have resulted in the requirement of additional documentation from experts.
- l. Late disclosed evidence from one witness has required a re-investigation of certain events the evening of the murder, as well as interviewing several neighbors.
- m. Costs on this case will continue to the end of 2012 and a supplemental petition for these end of year costs, as permitted, will be submitted.
- n. Following the application's signature page is an Affidavit of Stephen R. Hormel, Esq., of Hormel Law Office, testifying to the obstacles and challenges presented in conducting diligent defense in this case.

State v. David Nickels

- The judge ordered the defendant's privately retained attorney to be paid \$90/hour at public expense after the defendant's private funding source was unable to support the exorbitant defense costs being accrued. This happened shortly after the attorney was retained. Also approved per court order were the attorneys; paralegal and special private investigator fees to be paid at public expense as well as a second defense attorney (non-contracted/non-County staff member). The lead attorney and others were based 170.46 miles away from Ephrata, for an average of 2 hours and 47 minutes' pay each way per individual.
- There was exceptionally high travel, meal, car rental, hotel, witness fees, and other miscellaneous costs associated with this case.
- There were three material witnesses and other out of state witnesses, multiple depositions and interviews.
- The court proceedings were long and of an extraordinary number. There were multiple motions, affidavits, notices, support briefs, procedural issues raised, etc. Many of the court filings were sealed. The County has included documentation to the extensiveness of Superior Court proceedings in this case with the Clerk's Office Supporting Declaration of Department for Salaried Employee Costs.
- The County received numerous and extensive Requests for Public Records from defendant's attorneys and/or investigators.
- The trial lasted from July 9 to September 6th, with heightened security.

King County

Number of 2012 cases claimed: 4

Total 2012 amount supported by documentation: \$2,317,587

Extraordinary Nature of Costs—King County reports:

King County continues to experience the financial strains of numerous and increasingly complex aggravated murder cases. This year's claim includes four cases.

Aggravated murder cases are among the most complicated and time consuming types of cases, given the severity of the offense and the potential severity of the sentence. As King County sees more of these cases over time, strains are placed on components of the King County criminal justice system. For instance, all inmates charged with aggravated murder are classified in the jail as "ultra security" inmates, requiring specialized and more intensive supervision. They also generally spend more time in county facilities than other inmates.

Aggravated murder cases require more public defense resources than standard felony cases. King County is required by Supreme Court rule and by contract to provide two attorneys for aggravated murder cases. However, many of these cases take years to complete and require additional attorneys. In addition, defense expert witness costs for aggravated murder cases have grown tremendously in recent years.

In recent years, King County has incurred these costs while dealing with an unprecedented fiscal crisis. Between 2002 and 2005, King County identified \$137 million in expenditure reductions and revenue enhancements to close budget deficits in the General Fund. In the 2009 through 2012 budgets, King County made additional expenditure reductions and revenue enhancement sufficient to close General Fund deficits totaling \$229 million. 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.

Yakima County

Number of 2012 cases claimed: 5

Total 2012 amount supported by documentation: \$365,634.98

Extraordinary Nature of Costs—Yakima County reports:

All the Cases claimed this year were ongoing and carried over from 2010-2011.¹ Yakima County has been experiencing a high number of homicide cases, many gang related. Last year there were 13 Aggravated Murder I cases active, including three 'cold cases' charged after new DNA evidence was identified by law enforcement. The *Kevin Harper* matter is a triple homicide case that occurred in 2011. All of the claimed cases were resolved by trial or plea in 2012, although *State v. Harper* is pending sentencing. The county already has twice passed the 3/10th of a percent sales tax option for criminal justice and already includes it in the criminal justice budget.

¹ State v. Villegas is a 2010 gang related shooting allegation which started as Murder I. The prosecutor filed Aggravated Murder I charges shortly before the commencement of trial in 2012.