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OFFICE OF PUBLIC DEFENSE**

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January 27, 2014

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 43.330.190, the Office of Public Defense (OPD) has evaluated the counties' 2013 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 Clallam, King, Klickitat, and Mason counties.

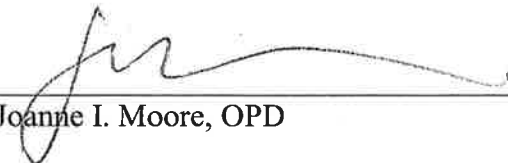
The statute names three factors for reimbursement consideration: disproportionate fiscal impact relative to the county criminal justice budget, efficient use of resources, and whether the costs were extraordinary and could not be reasonably accommodated and anticipated in the normal budget process.

The attached 2013 Extraordinary Criminal Justice Costs Act 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 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," as well as factors showing the counties' efficient use of resources, are specific to the individual circumstances of each case and to the counties in which they arose. Each county articulated reasons why the case 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 at Attachment B.

Finally, it recently came to OPD's attention that last year, Grant County's petition for reimbursement under RCW 43.330.190 included a non-aggravated murder case, *State v. Nickels*, no. 10-1-00322-6. The county requested \$678,464.85 for *Nickels*, out of a total county request of \$802,030.95. Grant County's petition did not specify that *Nickels* was a non-aggravated murder case. Grant County received \$545,000 reimbursement from the Legislature in Fiscal Year 2013. In the past, some counties have requested state funding relief for unusually expensive trial level murder cases that were clearly identified as not being aggravated murder cases, and the Legislature has granted funds. OPD regrets that *Nickels* was not identified as a non-aggravated murder case in last year's report.

Sincerely,



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Joanne I. Moore, OPD



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Tom McBride, WAPA



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Mitch Barker, WASPC

**Extraordinary Criminal Justice Costs Act 2013 Prioritized List**

<b>Year</b>	<b>County</b>	<b>Adjusted Claim</b>	<b>Criminal Justice Budget</b>	<b>Budget Impact</b>
2013	Clallam	\$942,216	\$22,147,698	4.3%
2013	King	\$2,574,879	\$559,548,880	0.4%
2013	Klickitat	\$36,230	\$8,541,440	0.4%
2013	Mason*	\$51,984	\$14,674,585	0.3%
2012	Mason*	\$96,306	\$14,474,667	0.6%

\*Mason County's ongoing aggravated murder case occurred during an elevated number of murder cases in 2012 and 2013. See p. 6 of Attachment B.

**Clallam County**

Number of 2013 cases claimed: 1

Total 2013 amount supported by documentation: \$942,216

**Extraordinary Nature of Costs—Clallam County reports:**

Clallam County could not have anticipated that the Supreme Court would grant Stenson's sixth PRP and reverse his convictions and death sentence and remand for a new trial. This is a 1993 case, and the age of the case complicated investigation, discovery, locating witnesses, travel costs for interviewing witnesses, and securing witnesses for trial.

**Efficient Use of Resources—Clallam County reports:**

Declarations for payment and appointments of experts were monitored by the trial Judge. Expenditures for witnesses and expert services required a motion and pre-authorization for expenditures. Case pre-assignment for Judicial review allowed for consistent case management.

**Mason County**

Number of 2012 cases claimed: 1

Number of 2013 cases claimed: 1 (same case)

**Extraordinary Nature of Costs—Mason County reports:**

Mason County's criminal justice system was overwhelmed beginning in 2012, when ten homicide cases were filed, including one Aggravated Murder, seven First Degree Murders, one Second Degree Murder and one Vehicular Homicide. We also had a murder-suicide in 2012. This disturbing trend continued into 2013, in which three homicide cases have been filed, including two First Degree Murders and one Second Degree Murder.

Not only were we not anticipating an aggravated murder case, we were not anticipating this vast number of other homicides. From 2008 through 2011, six homicide cases were filed in Mason County and of those, four were vehicular homicides (see list below).

The Aggravated Murder case resulted from a double homicide occurring on May 28, 2012 within the City of Shelton. One individual is charged with Aggravated Murder and another is charged with First Degree Murder. There were four other cases filed in Superior Court and one case filed in Juvenile Court charging Rendering Criminal Assistance in the First Degree related to the aggravated murder charge.

This case resulted in a four-day multi-agency two-state manhunt for one of the two suspects. Mason County deputies provided surveillance and tracked suspects over a four-day period. The Mason County SWAT team was called upon to serve search warrants. Although a City of Shelton case, Mason County supplied the primary investigator who interrogated suspects and assembled the draft case file.

The Prosecuting Attorney responded to this homicide scene to observe crime scene processing and to be available for consultation on decisions.

Nearly eight thousand pages have been generated in the investigation, and staff in the Prosecutor's office has given each page an individual consecutive page number for discovery tracking and other purposes. There were

many motions filed to which responses have been filed and for which court hearings have been held in this case and associated cases.

The Prosecutor and multiple attorneys in his office have spent many hours reviewing the file, interviewing witnesses, and preparing the case for trial. In light of its complexity and the sheer volume of materials generated by both the criminal and mitigation investigations, this case will continue to demand a significant amount of Mason County criminal justice resources.

Trial in this case is now set to begin late January 2014, and is expected to take multiple weeks to finish.

The defendant in the aggravated murder case was held in the Mason County Jail and extra security and staffing was necessary to transport this individual to and from court hearings as well as to stand by in the courtroom for security purposes. This defendant also had a non-homicide case pending in 2012 that went to trial after the defendant was charged with aggravated murder. Because of the murder charge, extra security was needed during that non-homicide trial as well.

At the defendant's first appearance in the aggravated murder case, the Mason County Public Defense Administrator was appointed to represent the defendant while appointment of lawyers as required in SPRC Rule 2 was pending. This representation although brief, required court appearances, several jail visits with the defendant and many conversations with family members.

In addition to initially representing the defendant, the Mason County Public Defense Administrator (one attorney—no staff) began to search for two qualified attorneys willing to defend the aggravated murder case. There are no death penalty qualified attorneys in Mason County. The two attorneys appointed to defend in the aggravated murder case have offices in Tacoma. The Mason County Public Defense Administrator also needed to locate representation for the individual charged with Murder in the First Degree related to the Aggravated Murder case and for each of the five individuals charged with Rendering Criminal Assistance. There are only four Mason County attorneys that regularly defend felony cases and only three of these attorneys will accept court-appointed cases. Due to the number of defendants in the cases related to the aggravated murder case, it was difficult and time consuming to locate attorneys without conflicts of interest for these individuals. In the six cases associated with the aggravated murder, a total of 10 defense attorneys have been appointed and two are from Shelton, five from Olympia, one from Chehalis, one from Port Orchard, and one from Longview.

The Mason County Public Defense Administrator has remained actively involved in monitoring the aggravated murder case, resolving complaints by the defendant regarding representation and regarding numerous issues with respect to his jail housing, assisting in the location of defense investigators and expert witnesses for defense, and reviewing and approving invoices for attorney and investigatory time and expenses.

Our court clerk's office is understaffed and is significantly affected by the additional burden placed on their office by the demands of an aggravated murder case. These are among the most time consuming types of cases. The very nature and severity of the case requires special attention to detail.

Mason County Superior Court does not employ nor use court reporters. Our proceedings are audio recorded. Two clerks have been designated by the Court under SPRC 3 to attend court sessions in this case and to enter documents.

Numerous requests have been filed by the defense for the expenditure of public funds. The court has ordered these pleadings to be sealed, which requires extra work on the part of the clerks.

Mason County has been overwhelmed with the magnitude of murder cases since March 2012, including the aggravated murder case. Most of our reimbursement request is for actual expenses incurred rather than for the time of salaried employees. Because of the sheer volume of work needed on a total of 12 murder cases plus all other criminal matters, time has not been spent by salaried employees to separately document the time spent on the aggravated murder case.

Costs on this case will continue through the end of 2013 with trial set to begin late January, 2014.

**Homicide Cases 2008-2013 in Mason County**

2008

08-1-00380-9 Vehicular Homicide  
08-1-00434-1 Vehicular Homicide

2009

2010

10-1-00204-9 Murder First Degree  
10-1-00320-7 Manslaughter Second Degree

2011

11-1-00140-7 Vehicular Homicide  
11-1-00195-4 Vehicular Homicide

2012

12-1-00122-7 Murder First Degree  
12-1-00123-5 Murder First Degree  
12-1-00153-7 Murder First Degree  
12-1-00167-7 Rendering Criminal Assistance dismissed and refiled  
as Murder in the Second Degree  
12-1-00200-2 Vehicular Homicide  
12-1-00216-9 Murder First Degree  
12-1-00219-3 Aggravated Murder  
12-1-00497-8 Murder First Degree  
12-1-00498-6 Murder First Degree  
12-1-00501-0 Murder First Degree

2013

13-1-00268-0 Murder First Degree  
13-1-00360-1 Murder First Degree  
13-1-00383-0 Murder Second Degree

Efficient Use of Resources—Mason County reports:

When the Aggravated Murder case is on the court calendar, one of the two designated clerks is assigned to clerk for the entire calendar so that clerks do not need to switch during the day.

This defendant had a non-homicide case in addition to the aggravated murder case. Any hearings in either case were set for the same day and time to avoid added court appearances. Jail staff and clerks' time were minimized in this way. Additionally, once the trial in the non-homicide case was completed, the defendant's attorney in the Aggravated Murder case substituted in as counsel and has been involved in post trial motions in that case to allow the savings realized from one attorney representing this defendant rather than two.

These hearings were special set on the calendar to avoid wait time.

After the defendant was convicted in the non-homicide case, he was sentenced to prison. The Mason County Public Defense Administrator spent 6 hours in phone calls to DOC and prison facilities on the west side the state to attempt to keep the defendant closer to his attorneys.

Klickitat County

Number of 2013 cases claimed: 1

Extraordinary Nature of Costs—Klickitat County reports:

Our county had no knowledge that this case would be returned for retrial.

Efficient Use of Resources—Klickitat County reports:

Our individual offices utilized other office staff in preparing and making copies for discovery as well as working with our Budget Technical Services Department in using job cost codes to separate trial costs from the regular department costs.

King County

Number of 2013 cases claimed: 5

Extraordinary Nature of Costs—King County reports:

King County continues to experience the financial strain of numerous aggravated murder cases. This year's claim includes five cases, including one that was newly filed in 2013.

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. These cases frequently take several years to resolve, placing strains 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 to provide two attorneys for defendants in aggravated murder cases. However,

many of these cases take years to complete and require additional attorneys, as well as significant expert witness expenses.

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 2013 budgets, King County made additional expenditure reductions and revenue enhancements sufficient to close General Fund deficits totaling approximately \$230 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.

Efficient Use of Resources—King County reports:

King County has a number of mechanisms in place to efficiently manage the costs of aggravated murder cases. Within the court system, all cases are pre-assigned to a judge for the duration of the case. This method of case assignment allows for continuity, effective record keeping, and consistent case management. In addition, all aggravated murder defendants are held at King County's downtown correctional facility rather than the more remote Maleng Regional Justice Center (MRJC). This allows the county to maintain a single ultra security jail facility and saves the expense of transport costs between the downtown jail and the MRJC. In 2011, most King County employees agreed to forgo a cost of living allowance, which saved approximately \$5 million in the Law, Safety, and Justice program area. Since 2012, several Law, Safety, and Justice agencies have undertaken LEAN reviews of their operations with the goal of improving efficiency. King County's leadership has made investments in new information technology systems such as the PROMIS system used by the Prosecuting Attorney's Office. These investments are expected to reduce operating costs in the future. Although the fiscal impact of providing public defense directly rather than via contract is uncertain, it is hoped that this change will lead to the more efficient use of public defense resources going forward.