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**WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE**

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January 28, 2015

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 Appropriations 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' 2014 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 Jefferson, King, 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 2014 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 the 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 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.

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 2014 Prioritized List**

<b>County</b>	<b>Verified Claim</b>	<b>Criminal Justice Budget</b>	<b>Budget Impact</b>
Jefferson	\$246,000	\$9,890,120	2.5%
Mason*	\$154,009	\$23,698,706	0.6%
King	\$2,687,095	\$606,000,000	0.4%

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

**Jefferson County**

Number of 2014 cases claimed: 1

Total 2014 amount supported by documentation: \$246,000

Extraordinary Nature of Costs—Jefferson County reports:

The county does not have a consistent history of aggravated murder cases; *State v. Pierce* is the first statutorily eligible aggravated murder case in Jefferson County.

The county has averaged approximately one murder every five years, but over the previous fifteen years the murders were not aggravated and they involved less complex fact patterns which led to shorter proceedings. The longest murder trial in the past fifteen years was less than two weeks in duration.

*State v. Pierce* was longer than a typical trial because it was two different trials. Because it was two separate trials, which was an unforeseeable circumstance, it was not possible for the county to include the additional expenses in the annual budget. *Pierce* initially started at the beginning of March 2014. Three quarters of the way through the trial, the attorneys learned that *Pierce* had been denied his psychotropic medications for approximately four days. The denial of the medication led to the Court declaring a mistrial.

Due to the nature of the mistrial, defense counsel moved for dismissal based upon governmental misconduct. The investigation into why the jail had denied *Pierce* his medications and the subsequent motion caused the case to continue on for seven months—during which time defense costs continued to accrue at \$7,717 per month.

After the court denied the motion, a second trial was held. This trial lasted nearly six weeks—one week longer than expected—because an error in voir dire led to dismissal of the first jury and commencing voir dire with a new venire panel.

Because this case had so many unusual problems including two trials, three juries, a mistrial, and a motion to dismiss, there was no way for the county to budget for the excess costs.

Efficient Use of Resources—Jefferson County reports:

The county efficiently managed the costs of *State v. Pierce* by not hiring any outside experts, not hiring outside investigators, and hiring clerks on a temporary basis to fill in only when the trial caused staff shortages that could not be remedied by shifting duties to other attorneys or legal assistants.

*State v. Pierce* required three major experts: one in DNA, one in ballistics, and one in fire dynamics. Instead of hiring outside experts, the prosecutor relied on employees of the WSP crime laboratory and from a fire expert from the ATF. None of these witnesses cost the county or the State any additional money.

The State worked with approximately forty witnesses, each of which required follow up interviews and coordination of schedules. Instead of hiring a new investigator, as was done during the first trial in 2010, the prosecutor and the sheriff worked together and absorbed the additional costs through reassigning duties to other staff.

State v. Pierce required two attorneys—which is fifty percent of the Jefferson County criminal Division. Instead of hiring two part time attorneys to fill in the void, the county only hired one part time attorney, and the trial attorneys worked extra hours to fill the remaining gap in coverage.

**Mason County**

Number of 2014 cases claimed: 1

Total 2014 amount supported by documentation: \$154,009

**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. To date in 2014, there has only been one First Degree Murder case filed.

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.

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 were designated by the Court under SPRC 3 to attend court sessions in this case and to enter documents.

The jury selection process took longer than usual and required additional work by our jury manager. Additional postage costs were incurred to summons in extra jurors in advance of the trial. Space limitations in the courthouse further complicated and lengthened the jury selection process. For the initial questioning, jurors needed to be divided into two groups of 60 and the groups were brought in at different times so as not to exceed the maximum seating capacity in the courtroom. Each juror filled out a lengthy questionnaire, and costs were incurred to photocopy the questionnaires for counsel. It was also necessary to have an additional bailiff present throughout the jury selection process.

The jail was heavily impacted by the trial. Due to the nature of the charges and community anger over the crime, it was determined that four jail officers were needed to provide necessary security for the trial. Jail officers were also responsible to transport the defendant to and from the DOC facility where the defendant was housed. The defendant met with his attorney after court each day at the jail before he was returned to DOC. Considerable overtime was incurred by jail staff in order to maintain the number of officers in the courtroom and also to transport the defendant before and after hours.

The trial in this matter occurred over a 4-week period. The jury found the defendant guilty of two counts of aggravated murder. Sentencing is currently set in mid-December. Costs on this case will continue through the end of 2014 and into early 2015.

**Homicide Cases 2008-2014 in Mason County**

2008

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

2009

No Homicide Cases

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

2014

14-1-00318-8    Murder First Degree

Efficient Use of Resources—Mason County reports:

In order to make the most efficient use of time for the prosecutor, defense counsel, jail and DOC, hearings were special set so there were no delays due to being heard on the lengthy criminal dockets. The defendant was

serving time at DOC on another case. The jail coordinated with DOC to have the defendant housed at WCC in Shelton (10 minutes from the courthouse) in the months prior to trial and during trial. This lessened the travel expenses of counsel and investigators, and transport time and costs for jail staff.

**King County**

Number of 2014 cases claimed: 5

Total 2014 amount supported by documentation: \$2,687,095

**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 for a defendant that is currently out-of-state.

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. For example, the Monfort case has utilized well beyond two full-time attorneys in recent months as the case prepares to go to trial.

Three of the five cases reported here have been in the King County criminal justice system for at least five years. These three are also death penalty cases, meaning that they demand even greater public defense attorney and expert witness resources to ensure that justice is applied fairly. These cases are expected to go to trial in 2015, which will likely result in a spike in case costs. King County hopes to see a decline in aggravated murder costs following the resolution of these cases.

In recent years, King County has incurred these costs while dealing with an unprecedented fiscal crisis. In the 2009 through 2014 budgets, King County made expenditure reductions and revenue enhancements sufficient to close General Fund deficits totaling approximately \$230 million. The legal and financial obligations associated with costly 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 recent years, King County's leadership has made investments in new information technology systems such as replacing the PROMIS system used by the Prosecuting Attorney's Office and implementing a consolidated case management system for the Department of Public Defense. In July 2013, the County moved from a system of providing public defense through contracts to providing defense services directly via County staff. Although there have been growing pains associated with establishing a new department and merging the cultures of four independent firms, the County expects this change to enable better management and improved efficiency in the provision of public defense in the future.