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OFFICE OF PUBLIC DEFENSE**

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January 25, 2019

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' 2018 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 2018 Extraordinary Criminal Justice Costs Act prioritized list (Attachment A) shows the claimed aggravated murder cases' disproportionate impact on the counties' budgets. 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

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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.

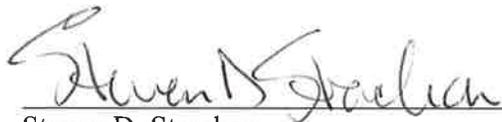
Sincerely,



Joanne I. Moore
Director
OPD



Russell Brown
Executive Director
WAPA



Steven D. Strachan
Executive Director
WASPC

Extraordinary Criminal Justice Costs Act 2018 Prioritized List

County	Verified Claim	Criminal Justice Budget	Budget Impact
Yakima	\$483,919	\$57,609,120	0.8%
Thurston*	\$438,050	\$79,068,128	0.5%
Mason	\$35,174	\$18,288,428	0.01%

*Thurston County reports: “The work and cost associated with three aggravated murder cases over two years has caused over spending in each year. We were disappointed our request of \$420,014.73 from 2017 was not funded and hope this year the legislature will fund both years. . . . As with other counties, over two thirds of our budget is dedicated to specific uses and cannot be used for litigation. Continued reductions in funding and recent slashing of court impact fees has strangled our ability to respond.”

Yakima County

Number of 2018 aggravated murder cases claimed: 15
Total 2018 amount supported by documentation: \$483,913

Extraordinary Nature of Costs—Yakima County reports:

Yakima County had expenses in 15 aggravated murder cases pending in its Superior Court in 2018. One of these cases, *State v. Ramos*, remains at the appellate level.

Medina-Beltran, a juvenile matter, was added to the aggravated murder category in 2018 by amended information after the Superior Court declined juvenile jurisdiction. That juvenile defendant continues to be detained in Yakima County's Juvenile Detention Facility and the costs to the county are included in this petition.

Three cases, *Gaitan*, *McNeil*, and *Rice*, are aggravated murder cases requiring *Miller* resentencings. *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 14 pending aggravated murder cases, *Grismer*, *Verduzco* and *Rios*, were finalized at the trial level in 2018.

The remaining Yakima County aggravated murder cases pending at the trial level (11) will continue into 2019. The county has for the third time passed a three-tenths 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 with the county's current budget.

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.

Thurston County

Number of 2018 aggravated murder cases claimed: 4
Total 2018 amount supported by documentation: \$438,050

Extraordinary Nature of Costs—Thurston County reports:

Thurston County had three aggravated murder cases which have now settled. One of the cases was filed in 2017, two of the three claims carry over from 2 year prior (*Lawton* and *Lamere* from 2016) and all three cases continued 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 usually high number of potential witnesses and voluminous eDiscovery 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. 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. The *Lawton* case did proceed to trial in 2018 and settled after many hours and expenses were incurred in trial preparation. Additionally, *Gardin-Gonzalez* suffered a self-inflicted gunshot wound to the head and was housed 57 miles away at Stafford Creek Corrections Center for medical reasons, therefore increasing travel expenses for counsel, the mitigation specialist, and the investigation. Nearly \$70k in medical costs as well as hospital guard transport costs were incurred, which were not budgeted.

Efficient Use of Resources—Thurston County reports:

Thurston County Public Defense has no death penalty qualified attorneys on staff. Additionally, TCPD only employs one investigator for all Public Defense clients and therefore was unable to dedicate that resource to these cases. TPCD contracts with a part time mitigation specialist who is not qualified to conduct death penalty mitigation. Terms of the appointment to 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 are administered by Public Defense. Thurston County Public Defense also bears the financial obligations of all requests in these cases. Despite these steps, budget impacts on Public Defense on these cases have resulted in the Department spending +/- 9% of their entire 2018 panel attorney budget on these three cases in 2018. Additionally, +/- 20% of TCPD's 2018 professional services (investigation and experts) budget has been spent on those same three murder cases.

Mason County

Number of 2018 aggravated murder cases claimed: 1

Total 2018 amount supported by documentation: \$35,174

Extraordinary Nature of Costs—Mason County reports:

This was a 2012 case that came back from appeal.

Efficient Use of Resources—Mason County reports:

Appointed an attorney already familiar with the case.