



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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January 25, 2020

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' 2019 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 and Yakima counties.

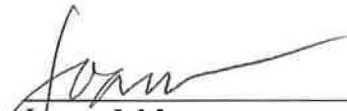
The statute names three factors for reimbursement consideration: disproportionate fiscal impact relative to the county criminal justice budget, efficient use of resources, and whether the costs were extraordinary and could not be reasonably accommodated and anticipated in the normal budget process.

The attached 2019 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

The Honorable Christine Rolfes
The Honorable Timm Ormsby
January 25, 2020
Page 2

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 2019 Prioritized List

County	Verified Claim	Criminal Justice Budget	Budget Impact
Clallam	\$405,867	\$20,294,797	1.99%
Yakima	\$445,199	\$60,053,028	0.74%

Clallam County

Number of 2019 aggravated murder cases claimed: 4
Total 2019 amount supported by documentation: \$405,867

Extraordinary Nature of Costs—Clallam County reports:

In the past ten years, Clallam County has not had a single aggravated murder. Based on a decade long history without an aggravated murder, an accommodation was not made in our 2019 Criminal Justice related budgets for the high expenses related to an aggravated murder case. In 2019, we have had four unanticipated aggravated murder cases with seven victims. Three of the aggravated murder cases are defendants in a triple murder. The court verified a defense conflict of interest existed because many of the witnesses in this case had been/are clients of the *Clallam County Public Defenders Office*, our indigent defense contract attorneys. To avoid the conflict of interest, the Superior Court appointed three attorneys outside of any existing county contracting structure to represent the defendants, to be paid for out of the Clallam County budget. This conflict of interest, (x3) could not be anticipated.

To preserve the integrity of the criminal investigation and the trials, two of the defendants are housed in neighboring counties, (Kitsap and Jefferson) to separate the defendants from each other and the 25+ witnesses in the case, many who are in custody on unrelated crimes. This necessary custody arrangement caused additional unanticipated expenses related to transportation and medical services.

The remaining case is a quadruple murder that is being defended under our existing indigent defense contract; however, the complexity of the crime foreshadows an even greater impact on our financial ability to deliver criminal justice services.

This unpredicted level of aggravated murder has had a significant impact on our criminal justice budget, requiring Clallam County to take resources from other important functions to support the unforeseen level of criminal justice costs directly related to these four aggravated murder cases. Because of these unforeseeable circumstances, it was not possible for Clallam County to include the additional expenses in the annual budget.

Efficient Use of Resources—Clallam County reports:

Sheriff

- 1) Through a contract arrangement with The Washington State Patrol, Clallam County agreed to trade services to lower expenses. In return for all crime lab work conducted by the Washington State Patrol, Clallam County has waived booking fees for all arrests made by the Washington State Patrol.

- 2) Crime scene security at each homicide site was conducted by Clallam County Correction's Officers, whose hourly rates are less than commissioned deputies.

3) During the investigative phase of these cases, we averaged 10 detectives actively investigating each day. To mitigate the costs, we activated our Multi-Agency Investigative Team (MIRT), which by Interlocal Agreement, provided detectives from neighboring agencies whose costs were borne by their home agencies.

Prosecutor:

4) Death Notices were not filed.

Superior Court

5) All requests for experts, investigators, travel and witness fees require prior approval of the court. Declarations for payment and appointment of experts are monitored by the trial judge. Expenditures for witness and expert services require a motion and pre-authorization for expenditures.

Yakima County

Number of 2019 aggravated murder cases claimed: 23

Total 2019 amount supported by documentation: \$445,199

Extraordinary Nature of Costs—Yakima County reports:

Yakima County had 16 aggravated murder cases pending trial or post-conviction proceedings in its Superior Court in 2019. One 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 aggravated murder cases require *Miller* resentencings. *Miller* resentencing requires extensive preparation and mitigation investigation similar to death penalty litigation. The expenditures are also on par with pre-filing death mitigation. The expenses incurred are due to the continued expectation and requirement of significant sentencing mitigation investigations.

The Yakima County aggravated murder cases pending trial are expected to continue well into 2020. To meet its obligation to its citizens, Yakima 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 with the county's current budget.

Efficient Use of Resources—Yakima County reports:

Death requests have not been filed in the cases pending in Yakima County. Qualified staff attorneys at the Dept. of Assigned Counsel, or qualified attorneys who have contracts with the county to provide indigent defense services, are appointed when possible. Terms of

Attachment B
Extraordinary Nature of Costs & Efficient Use of Resources

appointments of qualified attorneys outside of the indigent defense program are tailored to case needs.