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## MEMORANDUM

July 17, 2017

**TO:** County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee

**FROM:** Chris Creighton, Fiscal Analyst, 303-866-5834

**SUBJECT:** Legislative History of County Courthouse Funding

### Summary

This memorandum provides a legislative history of county courthouse funding in Colorado. Specifically, this memorandum provides information on:

- the origins of county courthouse funding laws;
- notable legal decisions regarding county courthouse funding;
- county courthouse funding reports and recommendations;
- bills introduced, but not enacted related to county courthouse funding; and
- county court supplemental funding grant legislation.

### Origins of County Courthouse Funding

Under state law, counties are required to provide funds for the provision and maintenance of county court facilities. This requirement can be found in Sections 30-11-104 and 13-3-108, C.R.S. The origins of these laws are described below.

**Section 30-11-104, C.R.S.** This law dates back to the General Laws of Colorado, which were compiled in 1877. Under this law, each county, at its own expense, must provide a suitable courthouse, a sufficient jail, and other necessary county buildings and keep them in repair. New sections were later added authorizing the acquisition of land or buildings for such facilities using eminent domain (1987) and providing for penal institution standards (2000).

**Section 13-3-108, C.R.S.** This law was enacted in 1969 by the passage of Senate Bill 69-126. Specifically, under this bill:

**Open records requirements:** Pursuant to Section 24-72-202 (6.5)(b), C.R.S., research memoranda and other final products of Legislative Council Staff are considered public records and subject to public inspection unless: a) the research is related to proposed or pending legislation; and b) the legislator requesting the research specifically asks that the research be permanently considered "work product" and not subject to public inspection. If you would like to designate this memorandum to be permanently considered "work product" not subject to public inspection, or if you think additional research is required and this is not a final product, please contact the Legislative Council Librarian at (303) 866-4011 within seven days of the date of the

- starting January 1, 1970, the state was required by annual appropriation to provide funds for the operations, salaries, and other expenses of all courts of record and take over all supplies and equipment, except vehicles.<sup>1</sup> Courts of record included county courts, but excluded municipal courts and Denver County Court;
- the responsibility of the board of county commissioners in each county to provide and maintain adequate courtrooms and other court facilities including janitorial service was reaffirmed;
- the State Court Administrator was required to prepare annual capital construction budgets regarding court facility requirements and a long-range judicial construction plan;
- The Chief Justice of the Colorado Supreme Court was authorized to approve the payment of state funds for the construction of any capital improvement facilities to be used for judicial purposes authorized and approved by the General Assembly; and
- joint local government construction and leasing arrangements were authorized.

Sections of law were later added to require approval by the Chief Justice for the construction and remodeling of any court or court-related facility (1975), and to repeal the requirement that the annual capital construction budgets and the long-range judicial construction plans be provided to the Joint Budget Committee and the Office of State Planning and Budget (1997).

### **Notable Legal Decisions Regarding County Courthouse Funding**

Two notable court decisions have upheld the county requirement to provide funding for the provision and maintenance of county courthouses. They are briefly described below.

**1975.** The Colorado Court of Appeals affirmed in *Lawson v. Pueblo County* that the burden of providing courtroom space and facilities remained with the counties.<sup>2</sup>

**1995.** The Colorado Supreme Court in *State ex rel. Norton v. Board of County Commissioners of Mesa County* ruled that counties may not reduce or eliminate their responsibilities to provide court facilities, including security.<sup>3</sup>

### **County Courthouse Funding Reports and Recommendations**

The following section provides background, in chronological order, on county courthouse-related reports and recommendations that have previously been compiled by legislative interim committees and the Judicial Department.

**1958.** The Legislative Committee on Justice Courts provided a report on justice courts to the General Assembly with various recommendations to improve justice courts. Among these recommendations was the mandatory provision of adequate justice court facilities and materials by county commissioners; however, the committee was divided on this specific recommendation.<sup>4</sup>

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<sup>1</sup>Section 13-3-104, et seq., C.R.S.

<sup>2</sup>*Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975).

<sup>3</sup>*State ex rel. Norton v. Board of County Commissioners*, 897 P.2d 788 (1995).

<sup>4</sup>Justice courts are courts that are presided over by a Justice of the Peace and have limited jurisdiction to handle minor offenses; they were eliminated by the voters in 1962 through a constitutional referendum and 1964 implementing legislation (Senate Bill 64-19). Justice Courts were replaced by County Courts.

**1959/1960.** The Judicial Administration in Colorado Committee met 21 times, including ten regional meetings between June 1959 and December 1960. The main purpose of these meetings was to discuss the preliminary results of a docket analysis; however, the committee discussed other topics, including consolidating district and county courts in the 29 smallest counties, consolidating county and justice courts, changing county court jurisdiction, and reducing the number of lower court judges.

**1967.** The Judicial System Examination and Administration report was submitted by the Judicial Department to the Joint Budget Committee. This report examined ways to increase state financial responsibility for the judicial system pursuant to House Joint Resolution 66-1004. Recommendations, while not endorsed by the Judicial Department, were made regarding the organization and procedures to be followed should the state assume all judicial system costs and alternative methods to finance a greater portion of judicial system costs.

**1969.** The Committee on Fiscal Policy recommended, effective January 1, 1970, that the state assume responsibility for funding courts, including district courts, county courts, public defenders' offices, and central administration costs. Counties would continue to pay for the salaries of district attorneys, office costs, and maintenance of facilities. Expanded court facilities would be the responsibility of the state, instead of the counties as required under current law.<sup>5</sup> The estimated General Fund cost increase at the time was \$8.2 million.

### **Bills Introduced, but Not Enacted, Related to County Courthouse Funding<sup>6</sup>**

Several bills related to county courthouse funding have been considered by the General Assembly since 1973, but were ultimately not enacted. As a result, no significant changes to the legal requirement that counties must provide funds for the provision and maintenance of county court facilities have been enacted, and the county courthouse funding structure has remained the same since 1969.

**1981.** Senate Bill 81-081 and House Bill 81-1211 would have authorized the Chief Justice of the Colorado Supreme Court to approve the payment of state funds for the rental of facilities used for judicial purposes. These bills were postponed indefinitely by the Senate Appropriations Committee and the House Judiciary Committee.

**1987.** House Bill 87-1053 would have added county facilities and expenses incidental to all courts of record to the current state court funding requirements. Similar to SB 81-081 and HB 81-1211, this bill also would have authorized the Chief Justice to approve the payment of state funds for the rental of facilities used for judicial purposes. This bill was postponed indefinitely by the House Appropriations Committee.

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<sup>5</sup>Section 30-11-104, *et seq.*, C.R.S.

<sup>6</sup>Dates back to 1973. Prior to the 1972 Sunshine Law, records of introduced bills were not fully recorded.

**1989.** House Bill 89-1099 would have imposed surcharges of varying amounts for all civil actions, criminal actions resulting in a conviction or deferred judgement, and all traffic offenses. These surcharges were to be used to finance, maintain, and provide security for judicial facilities in each county. Funds were to be distributed to counties from the newly created Judicial Facilities Fund, and allocated using a formula that compared current and future facility needs. Lastly, the State Court Administrator was to report annually on county judicial facilities. Counties with adequate facilities would have been authorized to use this appropriation as reimbursement for prior capital expenditures. This bill was postponed indefinitely by the House Appropriations Committee.

**1997.** House Bill 97-1335 would have eliminated the state responsibility to provide funds for the acquisition of furniture and other furnishings for county courts. On or after July 1, 1997, the board of county commissioners would have been responsible for the purchase of such furnishings. This bill was postponed indefinitely by the Senate Appropriations Committee.

**2002.** House Bill 02-1240 would have prohibited the General Assembly from passing legislation that increased the number of county court judges or district court judges in a manner that required counties to remodel an existing courthouse, unless the legislation contained an appropriation to pay for such county remodeling costs. This bill was postponed indefinitely by the House Appropriations Committee.

**2015.** Senate Bill 15-089 proposed transferring fiscal responsibility for court facilities from counties to the state. Two groupings of counties would have been created. Group 1 would have included smaller counties, which would receive a 20 percent subsidy for the fair market rent of their court facilities. This would have increased by 20 percent increments for five years. Group 2 would have included larger counties, which would have received a 10 percent subsidy, to increase by 10 percent each year for ten years. This bill was postponed indefinitely by the Senate Appropriations Committee.

**2016.** Senate Bill 16-060 proposed gradually transferring courtroom and court facility maintenance costs from the counties to the state by requiring the State Controller to pay each county treasurer a percentage of the certified fair market rent value of each courtroom and court facility beginning in FY 2017-18 and increasing by 5 percent each year through FY 2036-37. This bill was postponed indefinitely by the Senate Finance Committee.

## **County Court Supplemental Funding Grant Legislation**

While counties are responsible for the provision and maintenance of county court facilities, two state grants are available to provide supplemental funding to counties with limited financial resources. A brief legislative history of these grants is provided below in chronological order.

**2007.** The Court Security Cash Fund and Commission were enacted by Senate Bill 07-118.<sup>7</sup> As of June 2017, \$25.5 million has been awarded to 63 counties.

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<sup>7</sup>Section 13-1-201, *et seq.*, C.R.S.

**2014.** The Underfunded Courthouse Facility Cash Fund and Commission were enacted by House Bill 14-1096.<sup>8</sup> As of June 2017, \$4.6 million has been awarded to 18 counties. The Underfunded Courthouse Facility Cash Fund and Commission is scheduled to repeal September 1, 2024, following a sunset review.

**2017.** Following a 2016 sunset review, the Court Security Cash Fund Commission and the Court Security Cash Fund were continued indefinitely by Senate Bill 17-221. These were scheduled to repeal July 1, 2017.

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<sup>8</sup>Section 13-1-301, *et seq.*, C.R.S.