



Board Summary Report

File #: 21-722

Agenda Date: 10/26/2021

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To: Board of County Commissioners

Through: Todd Weaver, Finance Director

Prepared By:

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Subject:

Certifying Prosecution Costs to the Department of Corrections

Purpose and Request:

The Department of Corrections is responsible for reimbursing the counties of the Office of the District Attorney for the 18th Judicial District for the costs of prosecuting criminal cases in which the defendant, at the time of the criminal act, was in the custody of the Department of Corrections (DOC). Pursuant to State statute, in order for the County to receive its portion of the reimbursement, the Board of County Commissioners is required to adopt a resolution that certifies these costs to the DOC. This Board Summary Report provides information about the process, including the amount of reimbursable costs.

The Office of the District Attorney requests that the Board of County Commissioners adopt a resolution related to the costs of prosecuting criminal cases in which the defendant, at the time of the criminal act, was in the custody of the Department of Corrections (DOC). The proposed resolution certifies the costs to the DOC, for the purposes of Section 16-18-101 (3), C.R.S., so that the DOC can reimburse Arapahoe County for its portion of these costs. The costs are identified in the resolution. It is recommended that the Board adopt the resolution

Background and Discussion: Section 16-18-101 (3), C.R.S., was enacted because the costs of prosecuting crimes committed by a person in the custody of the DOC can be significant, and the Legislature believed that these costs should be borne by the State, not by the counties in which the DOC facilities are located. In the past, the DOC was unwilling to reimburse these costs due to challenges raised by the defendants in the criminal cases, and due to the statutory requirement that the counties “certify” the costs to the DOC.

State statute does not define whether a county, in order to “certify” the costs to the DOC, must independently

verify the accuracy of the costs. There is no Colorado case law interpreting the meaning of this statutory language. Since the Office of the District Attorney receives its primary funding from the counties within the judicial district, and because the Office of the District Attorney has prosecuted these criminal cases, it is reasonable for the County to rely on the Office's confirmation that the costs are accurate. Supervisory personnel in the Office of the District Attorney, 18th Judicial District, who have direct knowledge of the costs of prosecution for these cases, have confirmed the accuracy of the costs and that the DOC has not previously reimbursed these costs.

Alternatives: *Adopting the proposed resolution:* It is expected that adopting the proposed resolution will result in the DOC reimbursing to the Counties the identified prosecution costs.

Postponing action: If action is postponed, it is unknown whether the DOC will have funds within its budget to reimburse these costs if the amount is certified in the future. The DOC recently indicated that it is currently willing to reimburse costs that the counties certify. The reimbursement is contingent upon final approval by the Executive Director of the DOC, and it is unknown whether any future occurrences might affect this approval. It is possible that postponing action could result in Arapahoe County foregoing the ability to be reimbursed for these costs.

Taking no action: The prosecution costs have already been incurred. In accordance with Section 16-18-101 (3), C.R.S., the DOC has indicated that it will not reimburse these costs unless the County certifies them. If the Board of County Commissioners decides to not certify the costs, Arapahoe County will forego the opportunity to be reimbursed.

Fiscal Impact: The adoption of this resolution should enable Arapahoe County to be reimbursed by the DOC for the prosecution costs that have already been incurred. The Office of the District Attorney anticipates that the County's portion of costs incurred by the 18th Judicial District is \$28,921.63. Adoption of the resolution should not require Arapahoe County to expend any funds.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Concurrence: [Click or tap here to enter text.](#)

Resolution: Attach a copy of the draft resolution.

