

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0365.01 Michael Dohr x4347

HOUSE BILL 13-1156

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CREATION OF AN ADULT DIVERSION PROGRAM, AND, IN**
102 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill repeals the adult deferred prosecution sentencing option and replaces it with an adult diversion program. A defendant and district attorney may enter into a diversion agreement for up to 2 years prior to proceeding with the criminal case against the defendant. During the period of the diversion the defendant is subject to the supervisory

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

conditions of the diversion agreement. If the defendant successfully completes the diversion period, the court shall dismiss with prejudice the charges against the defendant. If the defendant violates a condition of the diversion agreement, the prosecution may initiate revocation of diversion agreement proceedings against the defendant.

The bill makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** 18-1.3-101 as follows:

4 **18-1.3-101. Pretrial diversion.** (1) **Legislative intent.** THE
5 INTENT OF THIS SECTION IS TO FACILITATE AND ENCOURAGE DIVERSION OF
6 DEFENDANTS FROM THE CRIMINAL JUSTICE SYSTEM WHEN DIVERSION MAY
7 PREVENT DEFENDANTS FROM COMMITTING ADDITIONAL CRIMINAL ACTS,
8 RESTORE VICTIMS OF CRIME, FACILITATE THE DEFENDANT'S ABILITY TO
9 PAY RESTITUTION TO VICTIMS OF CRIME, AND REDUCE THE NUMBER OF
10 CASES IN THE CRIMINAL JUSTICE SYSTEM. DIVERSION SHOULD ENSURE
11 DEFENDANT ACCOUNTABILITY WHILE ALLOWING DEFENDANTS TO AVOID
12 THE COLLATERAL CONSEQUENCES ASSOCIATED WITH CRIMINAL CHARGES
13 AND CONVICTIONS. A DISTRICT ATTORNEY'S OFFICE MAY DEVELOP OR
14 CONTINUE TO OPERATE ITS OWN DIVERSION PROGRAM THAT IS NOT
15 SUBJECT TO THE PROVISIONS OF THIS SECTION. IF A DISTRICT ATTORNEY'S
16 OFFICE ACCEPTS STATE MONEYS TO CREATE OR OPERATE A DIVERSION
17 PROGRAM PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY'S OFFICE
18 MUST COMPLY WITH THE PROVISIONS OF THIS SECTION.

19 (2) **Period of diversion.** IN ANY CASE, EITHER BEFORE OR
20 AFTER CHARGES ARE FILED, THE DISTRICT ATTORNEY MAY SUSPEND
21 PROSECUTION OF THE OFFENSE FOR A PERIOD NOT TO EXCEED TWO YEARS.
22 THE PERIOD OF DIVERSION MAY BE EXTENDED FOR AN ADDITIONAL TIME

1 UP TO ONE YEAR IF THE FAILURE TO PAY RESTITUTION IS THE SOLE
2 CONDITION OF DIVERSION THAT HAS NOT BEEN FULFILLED, BECAUSE OF
3 INABILITY TO PAY, AND THE DEFENDANT HAS A FUTURE ABILITY TO PAY.
4 DURING THE PERIOD OF DIVERSION THE DEFENDANT MAY BE PLACED
5 UNDER THE SUPERVISION OF THE PROBATION DEPARTMENT OR A DIVERSION
6 PROGRAM APPROVED BY THE DISTRICT ATTORNEY.

7 (3) **Guidelines for eligibility.** EACH DISTRICT ATTORNEY THAT
8 USES STATE MONEYS FOR A DIVERSION PROGRAM PURSUANT TO THIS
9 SECTION SHALL ADOPT POLICIES AND GUIDELINES DELINEATING
10 ELIGIBILITY CRITERIA FOR PRETRIAL DIVERSION, AND MAY AGREE TO
11 DIVERSION IN ANY CASE IN WHICH THERE EXISTS SUFFICIENT ADMISSIBLE
12 EVIDENCE TO SUPPORT A CONVICTION. IN DETERMINING WHETHER AN
13 INDIVIDUAL IS APPROPRIATE FOR DIVERSION, THE DISTRICT ATTORNEY
14 SHALL CONSIDER:

15 (a) THE NATURE OF THE CRIME CHARGED AND THE
16 CIRCUMSTANCES SURROUNDING IT;

17 (b) ANY SPECIAL CHARACTERISTICS OR CIRCUMSTANCES OF THE
18 DEFENDANT;

19 (c) WHETHER DIVERSION IS CONSISTENT WITH THE DEFENDANT'S
20 REHABILITATION AND REINTEGRATION; AND

21 (d) WHETHER THE PUBLIC INTEREST WILL BE BEST SERVED BY
22 DIVERTING THE INDIVIDUAL FROM PROSECUTION.

23 (4) BEFORE ENTERING INTO A PRETRIAL DIVERSION AGREEMENT,
24 THE DISTRICT ATTORNEY MAY REQUIRE A DEFENDANT TO PROVIDE
25 INFORMATION REGARDING PRIOR CRIMINAL CHARGES, EDUCATION AND
26 WORK EXPERIENCE, FAMILY, RESIDENCE IN THE COMMUNITY, AND OTHER
27 INFORMATION RELATING TO THE DIVERSION PROGRAM. THE DEFENDANT

1 SHALL NOT BE DENIED THE OPPORTUNITY TO CONSULT WITH LEGAL
2 COUNSEL BEFORE CONSENTING TO DIVERSION. LEGAL COUNSEL MAY BE
3 APPOINTED AS PROVIDED UNDER ARTICLE 1 OF TITLE 21, C.R.S.

4 (5) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE
5 CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS
6 SECTION, AN INDIVIDUAL ACCUSED OF AN OFFENSE, THE UNDERLYING
7 FACTUAL BASIS OF WHICH INVOLVES DOMESTIC VIOLENCE AS DEFINED IN
8 SECTION 18-6-800.3 (1), C.R.S., IS NOT ELIGIBLE FOR PRETRIAL DIVERSION
9 UNLESS THAT INDIVIDUAL HAS COMPLETED A TREATMENT EVALUATION
10 CONDUCTED BY A DOMESTIC VIOLENCE EVALUATOR APPROVED BY THE
11 DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD AS REQUIRED BY
12 SECTION 16-11.8-103 (4), C.R.S., AND THAT EVALUATION FINDS THAT THE
13 INDIVIDUAL IS APPROPRIATE FOR THE DIVERSION PROGRAM ESTABLISHED
14 BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION. A DISTRICT
15 ATTORNEY SHALL NOT PLACE AN INDIVIDUAL IN A DIVERSION PROGRAM
16 ESTABLISHED PURSUANT TO THIS SECTION UNLESS THE EVALUATION FINDS
17 THE INDIVIDUAL APPROPRIATE FOR SUCH A PLACEMENT.

18 (6) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE
19 CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS
20 SECTION, AN INDIVIDUAL ACCUSED OF A SEX OFFENSE AS DEFINED IN
21 SECTION 18-1.3-1003 (5), C.R.S., IS NOT ELIGIBLE FOR PRETRIAL
22 DIVERSION UNLESS THAT INDIVIDUAL HAS SUBMITTED TO A RISK AND
23 TREATMENT EVALUATION CONDUCTED BY A SEX OFFENDER EVALUATOR
24 APPROVED BY THE SEX OFFENDER MANAGEMENT BOARD AS REQUIRED BY
25 SECTION 16-11.7-103 (4), C.R.S., AND THAT EVALUATION FINDS THAT THE
26 INDIVIDUAL IS APPROPRIATE FOR THE DIVERSION PROGRAM ESTABLISHED
27 BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION. A DISTRICT

1 ATTORNEY SHALL NOT PLACE AN INDIVIDUAL IN A DIVERSION PROGRAM
2 ESTABLISHED PURSUANT TO THIS SECTION UNLESS THE EVALUATION FINDS
3 THE INDIVIDUAL APPROPRIATE FOR SUCH A PLACEMENT. IF A DIVERSION
4 AGREEMENT IS ENTERED AND SUCCESSFULLY COMPLETED, THE CRIMES
5 CHARGED OR FACTS ALLEGED DO NOT CONSTITUTE A HISTORY OF SEX
6 OFFENSES FOR PURPOSES OF SECTION 16-11.7-102 (2) (a) (II), C.R.S.

7 (7) DIVERSION PROGRAMS MAY INCLUDE, BUT ARE NOT LIMITED
8 TO, PROGRAMS OPERATED BY LAW ENFORCEMENT UPON AGREEMENT WITH
9 A DISTRICT ATTORNEY, DISTRICT ATTORNEY INTERNALLY OPERATED
10 PROGRAMS, PROGRAMS OPERATED BY OTHER APPROVED AGENCIES,
11 RESTORATIVE JUSTICE PROGRAMS, OR SUPERVISION BY THE PROBATION
12 DEPARTMENT. REFERENCES TO "DEFERRED PROSECUTION" IN COLORADO
13 STATUTES AND COURT RULES SHALL APPLY TO PRETRIAL DIVERSION AS
14 AUTHORIZED BY THIS SECTION.

15 (8) **Diversion agreements.** (a) ALL PRETRIAL DIVERSIONS SHALL
16 BE GOVERNED BY THE TERMS OF AN INDIVIDUALIZED DIVERSION
17 AGREEMENT SIGNED BY THE DEFENDANT, THE DEFENDANT'S ATTORNEY IF
18 THE DEFENDANT IS REPRESENTED BY AN ATTORNEY, AND THE DISTRICT
19 ATTORNEY.

20 (b) THE DIVERSION AGREEMENT SHALL INCLUDE A WRITTEN
21 WAIVER OF THE RIGHT TO A SPEEDY TRIAL FOR THE PERIOD OF THE
22 DIVERSION. ALL DIVERSION AGREEMENTS SHALL INCLUDE A CONDITION
23 THAT THE DEFENDANT NOT COMMIT ANY CRIMINAL OFFENSE DURING THE
24 PERIOD OF THE AGREEMENT. DIVERSION AGREEMENTS MAY ALSO INCLUDE
25 PROVISIONS, AGREED TO BY THE DEFENDANT, CONCERNING PAYMENT OF
26 RESTITUTION AND COURT COSTS, PAYMENT OF A SUPERVISION FEE NOT TO
27 EXCEED THAT PROVIDED FOR IN SECTION 18-1.3-204 (2) (a) (V), OR

1 PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES AS DEFINED IN
2 SECTION 18-1-901 (3) (o.5). ANY PRETRIAL DIVERSION SUPERVISION FEES
3 COLLECTED MAY BE RETAINED BY THE DISTRICT ATTORNEY FOR PURPOSES
4 OF FUNDING ITS ADULT PRETRIAL DIVERSION PROGRAM. THE CONDITIONS
5 OF DIVERSION SHALL BE LIMITED TO THOSE SPECIFIC TO THE INDIVIDUAL
6 DEFENDANT OR NECESSARY FOR PROPER SUPERVISION OF THE INDIVIDUAL
7 DEFENDANT. A DIVERSION AGREEMENT SHALL PROVIDE THAT IF THE
8 DEFENDANT FULFILLS THE OBLIGATIONS DESCRIBED THEREIN, THE COURT
9 SHALL ORDER ALL CRIMINAL CHARGES FILED AGAINST THE DEFENDANT
10 DISMISSED WITH PREJUDICE.

11 (c) THE DIVERSION AGREEMENT MAY REQUIRE AN ASSESSMENT OF
12 THE DEFENDANT'S CRIMINOGENIC NEEDS, TO BE PERFORMED AFTER THE
13 PERIOD OF DIVERSION HAS BEGUN BY EITHER THE PROBATION DEPARTMENT
14 OR A DIVERSION PROGRAM APPROVED BY THE DISTRICT ATTORNEY. BASED
15 ON THE RESULTS OF THAT ASSESSMENT, THE PROBATION DEPARTMENT OR
16 APPROVED DIVERSION PROGRAM MAY DIRECT THE DEFENDANT TO
17 PARTICIPATE IN PROGRAMS OFFERING MEDICAL, THERAPEUTIC,
18 EDUCATIONAL, VOCATIONAL, CORRECTIVE, PREVENTIVE, OR OTHER
19 REHABILITATIVE SERVICES. DEFENDANTS WITH THE ABILITY TO PAY MAY
20 BE REQUIRED TO PAY FOR SUCH PROGRAMS OR SERVICES.

21 (d) THE DIVERSION AGREEMENT MAY INCLUDE A STATEMENT OF
22 THE FACTS THE CHARGE IS BASED UPON AUTHORED BY THE DEFENDANT
23 AND AGREED TO BY THE DEFENDANT'S ATTORNEY IF THE DEFENDANT IS
24 REPRESENTED BY AN ATTORNEY AND THE DISTRICT ATTORNEY. THE
25 STATEMENT IS ADMISSIBLE AS IMPEACHMENT EVIDENCE AGAINST THE
26 DEFENDANT IN THE CRIMINAL PROCEEDINGS IF THE DEFENDANT FAILS TO
27 FULFILL THE TERMS OF THE DIVERSION AGREEMENT AND CRIMINAL

1 PROCEEDINGS ARE RESUMED.

2 (e) A DEFENDANT SHALL NOT BE REQUIRED TO ENTER ANY PLEA TO
3 A CRIMINAL CHARGE AS A CONDITION OF PRETRIAL DIVERSION. A
4 DEFENDANT'S OR COUNSEL'S STATEMENT IN A DIVERSION CONFERENCE OR
5 IN ANY OTHER DISCUSSION OF A PROPOSED DIVERSION AGREEMENT,
6 INCLUDING AN EVALUATION PERFORMED PURSUANT TO SUBSECTIONS (5)
7 AND (6) OF THIS SECTION, OTHER THAN A STATEMENT PROVIDED FOR IN
8 PARAGRAPH (d) OF THIS SUBSECTION (8), SHALL NOT BE ADMISSIBLE AS
9 EVIDENCE IN CRIMINAL PROCEEDINGS ON THE CRIMES CHARGED OR FACTS
10 ALLEGED.

11 (f) IF THE DISTRICT ATTORNEY AGREES TO OFFER DIVERSION IN
12 LIEU OF FURTHER CRIMINAL PROCEEDINGS AND THE DEFENDANT AGREES
13 TO ALL OF THE TERMS OF THE PROPOSED AGREEMENT, THE DIVERSION
14 AGREEMENT MAY BE EITHER FILED WITH THE COURT OR HELD BY THE
15 PARTIES. A COURT FILING SHALL BE REQUIRED ONLY IF THE PROBATION
16 DEPARTMENT SUPERVISES THE DEFENDANT. WHEN A DIVERSION
17 AGREEMENT IS REACHED, THE COURT SHALL STAY FURTHER PROCEEDINGS.

18 (9) **Diversion outcomes.** (a) DURING THE PERIOD OF DIVERSION,
19 THE SUPERVISING PROGRAM OR AGENCY DESIGNATED IN THE DIVERSION
20 AGREEMENT SHALL PROVIDE THE LEVEL OF SUPERVISION NECESSARY TO
21 FACILITATE REHABILITATION AND ENSURE THE DEFENDANT IS COMPLETING
22 THE TERMS OF THE DIVERSION AGREEMENT.

23 (b) UPON THE DEFENDANT'S SATISFACTORY COMPLETION OF AND
24 DISCHARGE FROM SUPERVISION, THE COURT SHALL DISMISS WITH
25 PREJUDICE ALL CHARGES AGAINST THE DEFENDANT. THE EFFECT OF THE
26 DISMISSAL IS TO RESTORE THE DEFENDANT TO THE STATUS HE OR SHE
27 OCCUPIED BEFORE THE ARREST, CITATION, OR SUMMONS. A SUCCESSFULLY

1 COMPLETED DIVERSION AGREEMENT SHALL NOT BE CONSIDERED A
2 CONVICTION FOR ANY PURPOSE. A PERSON WITH AN ORDER OF DISMISSAL
3 ENTERED PURSUANT TO THIS ARTICLE MAY NOT BE SUBJECT TO CHARGE,
4 PROSECUTION, OR LIABILITY UNDER COLORADO LAW OF PERJURY OR
5 OTHERWISE GIVING A FALSE STATEMENT BY REASON OF HIS OR HER
6 FAILURE TO RECITE OR ACKNOWLEDGE THE ARREST, CITATION, OR
7 SUMMONS IN RESPONSE TO ANY INQUIRY MADE FOR ANY PURPOSE.

8 (c) AT ANY POINT AFTER A DIVERSION AGREEMENT IS ENTERED A
9 DEFENDANT MAY PETITION THE COURT TO SEAL ALL ARREST AND OTHER
10 CRIMINAL RECORDS PERTAINING TO THE OFFENSE, USING THE PROCEDURE
11 DESCRIBED IN SECTION 24-72-308, C.R.S. UNLESS OTHERWISE PROHIBITED
12 UNDER SECTION 24-72-308 (3) (a), C.R.S., THE COURT SHALL ISSUE A
13 SEALING ORDER IF REQUESTED BY THE DEFENDANT FOLLOWING
14 SUCCESSFUL COMPLETION OF A DIVERSION AGREEMENT.

15 (d) IF THE DEFENDANT VIOLATES THE CONDITIONS OF THE
16 DIVERSION AGREEMENT, THE SUPERVISING ENTITY SHALL PROVIDE
17 WRITTEN NOTICE OF THE VIOLATION TO THE DEFENDANT, THE DISTRICT
18 ATTORNEY, AND THE COURT. THE DISTRICT ATTORNEY, IN HIS OR HER SOLE
19 DISCRETION, MAY INITIATE REVOCATION OF A DIVERSION AGREEMENT BY
20 THE FILING OF A CRIMINAL COMPLAINT, INFORMATION, OR INDICTMENT, OR
21 IF CHARGES HAVE ALREADY BEEN FILED, BY GIVING THE COURT NOTICE OF
22 INTENT TO PROCEED WITH THE PROSECUTION. THE DEFENDANT MAY,
23 WITHIN FOURTEEN DAYS AFTER THE FIRST COURT APPEARANCE FOLLOWING
24 SUCH A FILING, REQUEST A HEARING TO CONTEST WHETHER A VIOLATION
25 OCCURRED. THE DISTRICT ATTORNEY HAS THE BURDEN BY A
26 PREPONDERANCE OF THE EVIDENCE TO SHOW THAT A VIOLATION HAS IN
27 FACT OCCURRED, AND THE PROCEDURAL SAFEGUARDS REQUIRED IN A

1 REVOCATION OF PROBATION HEARING PURSUANT TO SECTION 16-11-206,
2 C.R.S., SHALL APPLY. THE COURT MAY, WHEN IT APPEARS THAT THE
3 ALLEGED VIOLATION OF THE DIVERSION AGREEMENT IS A PENDING
4 CRIMINAL OFFENSE AGAINST THE DEFENDANT, CONTINUE THE DIVERSION
5 REVOCATION HEARING UNTIL THE COMPLETION OF THE CRIMINAL
6 PROCEEDING. IF THE COURT FINDS A VIOLATION HAS OCCURRED, OR A
7 HEARING IS NOT REQUESTED, THE PROSECUTION MAY CONTINUE. IF THE
8 COURT FINDS THE DISTRICT ATTORNEY HAS NOT PROVEN A VIOLATION, THE
9 COURT SHALL DISMISS THE CRIMINAL CASE WITHOUT PREJUDICE AND
10 RETURN THE DEFENDANT TO THE SUPERVISION OF THE DIVERSION
11 PROGRAM TO COMPLETE THE TERMS OF THE AGREEMENT.

12 (e) IF A DEFENDANT IS PROSECUTED FOLLOWING A VIOLATION OF
13 A DIVERSION AGREEMENT, A FACTUAL STATEMENT ENTERED PURSUANT TO
14 PARAGRAPH (d) OF SUBSECTION (8) OF THIS SECTION IS ADMISSIBLE AS
15 IMPEACHMENT EVIDENCE. ANY OTHER INFORMATION CONCERNING
16 DIVERSION, INCLUDING PARTICIPATION IN A DIVERSION PROGRAM,
17 INCLUDING AN EVALUATION PERFORMED PURSUANT TO SUBSECTIONS (5)
18 AND (6) OF THIS SECTION. THE TERMS OF A DIVERSION AGREEMENT, OR
19 STATEMENTS MADE TO TREATMENT PROVIDERS DURING A DIVERSION
20 PROGRAM, SHALL NOT BE ADMITTED INTO EVIDENCE AT TRIAL FOR ANY
21 PURPOSE.

22 **SECTION 2.** In Colorado Revised Statutes, 16-4-108, **amend** (2)
23 as follows:

24 **16-4-108. Exoneration from bond liability.** (2) Upon entry of
25 an order for deferred prosecution AS IT EXISTED BEFORE THE EFFECTIVE
26 DATE OF HOUSE BILL 13-1156, A DIVERSION AUTHORIZED BY SECTION
27 18-1.3-101, C.R.S., or deferred judgment as authorized in sections

1 ~~18-1.3-101~~ and SECTION 18-1.3-102, C.R.S., sureties upon any bond given
2 for the appearance of the defendant shall be released from liability on
3 such bond.

4 **SECTION 3.** In Colorado Revised Statutes, 16-7-301, **amend** (2)
5 (d) as follows:

6 **16-7-301. Propriety of plea discussions and plea agreements.**

7 (2) The district attorney may agree to one or more of the following,
8 depending upon the circumstances of the individual case:

9 (d) To consent to ~~deferred prosecution~~ DIVERSION, as provided in
10 section 18-1.3-101, C.R.S.;



12 **SECTION 4.** In Colorado Revised Statutes, 18-18-432, **amend**
13 (2) (b) and (3) as follows:

14 **18-18-432. Drug offender public service and rehabilitation**

15 **program.** (2) (b) The provisions of this subsection (2) relating to the
16 performance of useful public service are also applicable to any drug
17 offender who receives a ~~deferred prosecution~~ DIVERSION in accordance
18 with section 18-1.3-101 or who receives a deferred sentence in
19 accordance with section 18-1.3-102 and the completion of any stipulated
20 amount of useful public service hours to be completed by the drug
21 offender shall be ordered by the court in accordance with the conditions
22 of such deferred prosecution or deferred sentence as stipulated to by the
23 prosecution and the drug offender.

24 (3) Upon a plea of guilty, including a plea of guilty entered
25 pursuant to a deferred sentence under section 18-1.3-102 or a verdict of
26 guilty by the court or a jury, to any offense under this article, or upon
27 entry of a ~~deferred prosecution~~ DIVERSION pursuant to section 18-1.3-101

1 for any offense under this article, the court shall order the drug offender
2 to immediately report to the sheriff's department in the county where the
3 drug offender was charged, at which time the drug offender's fingerprints
4 and photographs shall be taken and returned to the court, which
5 fingerprints and photographs shall become a part of the court's official
6 documents and records pertaining to the charges against the drug offender
7 and the drug offender's identification in association with such charges. On
8 any trial for a violation of any criminal law of this state, a duly
9 authenticated copy of the record of former convictions and judgments of
10 any court of record for any of said crimes against the drug offender
11 named in said convictions and judgments shall be prima facie evidence
12 of such convictions and may be used in evidence against the drug
13 offender. Identification photographs and fingerprints that are part of the
14 record of such former convictions and judgments of any court of record
15 or which are part of the record at the place of the drug offender's
16 incarceration after sentencing for any of such former convictions and
17 judgments shall be prima facie evidence of the identity of the drug
18 offender and may be used in evidence against such drug offender. Any
19 drug offender who fails to immediately comply with the court's order to
20 report to the sheriff's department, to furnish fingerprints, or to have
21 photographs taken may be held in contempt of court.

22 **SECTION 5.** In Colorado Revised Statutes, 24-4.1-302, **add** (2)
23 (a.7) as follows:

24 **24-4.1-302. Definitions.** (2) "Critical stages" means the
25 following stages of the criminal justice process:

26 (a.7) THE DECISION TO ENTER INTO A DIVERSION AGREEMENT
27 PURSUANT TO SECTION 18-1.3-101, C.R.S.;

1 **SECTION 6.** In Colorado Revised Statutes, 24-4.1-302.5, **amend**
2 (1) (b) as follows:

3 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
4 preserve and protect a victim's rights to justice and due process, each
5 victim of a crime shall have the following rights:

6 (b) The right to be informed of and present for all critical stages
7 of the criminal justice process as specified in section 24-4.1-302 (2);
8 except that the victim shall have the right to be informed of, without
9 being present for, the critical stages described in section 24-4.1-302 (2)
10 (a), (2) (a.5), (2) (a.7), (2) (e.5), (2) (k.3), (2) (n), (2) (p), (2) (q), and (2)
11 (u);

12 **SECTION 7.** In Colorado Revised Statutes, 24-72-308, **amend**
13 (1) (a) (I) as follows:

14 **24-72-308. Sealing of arrest and criminal records other than**
15 **convictions.** (1) (a) (I) Except as otherwise provided in subparagraphs
16 (II) and (III) of this paragraph (a), any person in interest may petition the
17 district court of the district in which any arrest and criminal records
18 information pertaining to said person in interest is located for the sealing
19 of all of said records, except basic identification information, if the
20 records are a record of official actions involving a criminal offense for
21 which said person in interest was not charged OR ENTERED INTO A
22 DIVERSION AGREEMENT PURSUANT TO SECTION 18-1.3-101, C.R.S., in any
23 case which was completely dismissed, or in any case in which said person
24 in interest was acquitted.

25 **SECTION 8.** In Colorado Revised Statutes, 24-72-308, **amend**
26 (1) (c) as follows:

27 **24-72-308. Sealing of arrest and criminal records other than**

1 **convictions.** (1) (c) EXCEPT AS PROVIDED FOR IN SECTION 18-1.3-101 (9)
2 (c), C.R.S., after the hearing described in subparagraph (II) of paragraph
3 (b) of this subsection (1) is conducted and if the court finds that the harm
4 to the privacy of the petitioner or dangers of unwarranted adverse
5 consequences to the petitioner outweigh the public interest in retaining
6 the records, the court may order such records, except basic identification
7 information, to be sealed. Any order entered pursuant to this paragraph (c)
8 shall be directed to every custodian who may have custody of any part of
9 the arrest and criminal records information which is the subject of the
10 order. Whenever a court enters an order sealing criminal records pursuant
11 to this paragraph (c), the petitioner shall provide the Colorado bureau of
12 investigation and every custodian of such records with a copy of such
13 order. The petitioner shall provide a private custodian with a copy of the
14 order and send the private custodian an electronic notification of the
15 order. Each private custodian that receives a copy of the order from the
16 petitioner shall remove the records that are subject to an order from its
17 database. Thereafter, the petitioner may request and the court may grant
18 an order sealing the civil case in which the records were sealed.

19 **SECTION 9.** In Colorado Revised Statutes, 33-13-108.1, **amend**
20 (12) (f) as follows:

21 **33-13-108.1. Operating a vessel while under the influence.**

22 (12) (f) For the purposes of this subsection (12), "alcohol and drug
23 driving safety education or treatment" has the meaning set forth in section
24 42-4-1301.3, C.R.S., and the alcohol and drug driving safety program and
25 the presentence alcohol and drug evaluations authorized in said section
26 shall be utilized for the purposes of this subsection (12). The presentence
27 alcohol and drug evaluation shall be conducted on all persons convicted

1 of a violation of subsection (1) of this section; except that this
2 requirement shall not apply to persons who are not residents of Colorado
3 at the time of sentencing. Any defendant sentenced to level I or level II
4 education or treatment programs shall be instructed by the court to meet
5 all financial obligations of the programs. If the financial obligations are
6 not met, the sentencing court shall be notified for the purpose of
7 collection or review and further action on the defendant's sentence. In
8 addition to any other penalties, fines, fees, or costs prescribed in this
9 section, the court shall assess an amount, not to exceed the amount
10 established in section 42-4-1301.3, C.R.S., upon any person convicted of
11 a violation of subsection (1) of this section. The amount shall be used
12 only to pay for the costs authorized in section 42-4-1301.3, C.R.S. The
13 court shall consider the alcohol and drug evaluation prior to sentencing.
14 This paragraph (f) is also applicable to any defendant who receives a
15 ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101,
16 C.R.S., or who receives a deferred sentence in accordance with section
17 18-1.3-102, C.R.S.

18 **SECTION 10.** In Colorado Revised Statutes, 41-2-102, **amend**
19 (7) (b) as follows:

20 **41-2-102. Operating an aircraft under the influence -**
21 **operating an aircraft with excessive alcohol content - tests - penalties**
22 **- useful public service program.** (7) (b) The provisions of this
23 subsection (7) relating to the performance of useful public service are also
24 applicable to any defendant who receives a ~~deferred prosecution~~
25 DIVERSION in accordance with section 18-1.3-101, C.R.S., or who
26 receives a deferred sentence in accordance with section 18-1.3-102,
27 C.R.S., and the completion of any stipulated amount of useful public

1 service hours to be completed by the defendant shall be ordered by the
2 court in accordance with the conditions of such deferred prosecution or
3 deferred sentence as stipulated to by the prosecution and the defendant.

4 **SECTION 11.** In Colorado Revised Statutes, 42-4-1301.3,
5 **amend** (5) as follows:

6 **42-4-1301.3. Alcohol and drug driving safety program.**

7 (5) The provisions of this section are also applicable to any defendant
8 who receives a ~~deferred prosecution~~ DIVERSION in accordance with
9 section 18-1.3-101, C.R.S., or who receives a deferred sentence in
10 accordance with section 18-1.3-102, C.R.S., and the completion of any
11 stipulated alcohol evaluation, level I or level II education program, or
12 level I or level II treatment program to be completed by the defendant
13 shall be ordered by the court in accordance with the conditions of such
14 deferred prosecution or deferred sentence as stipulated to by the
15 prosecution and the defendant.

16 **SECTION 12.** In Colorado Revised Statutes, 42-4-1301.4,
17 **amend** (6) as follows:

18 **42-4-1301.4. Useful public service - definitions - local
19 programs - assessment of costs.** (6) The provisions of this section

20 relating to the performance of useful public service are also applicable to
21 any defendant who receives a ~~deferred prosecution~~ DIVERSION in
22 accordance with section 18-1.3-101, C.R.S., or who receives a deferred
23 sentence in accordance with section 18-1.3-102, C.R.S., and the
24 completion of any stipulated amount of useful public service hours to be
25 completed by the defendant shall be ordered by the court in accordance
26 with the conditions of such deferred prosecution or deferred sentence as
27 stipulated to by the prosecution and the defendant.

1 **SECTION 13.** In Colorado Revised Statutes, **add** 13-3-114 as
2 follows:

3 **13-3-114. Diversion funding committee.** (1) THE STATE COURT
4 ADMINISTRATOR SHALL ESTABLISH A DIVERSION FUNDING COMMITTEE,
5 REFERRED TO IN THIS SECTION AS THE "COMMITTEE". THE COMMITTEE
6 SHALL CONSIST OF:

7 (a) THE ATTORNEY GENERAL OR HIS OR HER DESIGNEE;

8 (b) THE EXECUTIVE DIRECTOR OF A STATEWIDE ORGANIZATION
9 REPRESENTING DISTRICT ATTORNEYS OR HIS OR HER DESIGNEE;

10 (c) THE STATE PUBLIC DEFENDER OR HIS OR HER DESIGNEE;

11 (d) THE DIRECTOR OF THE DIVISION OF CRIMINAL JUSTICE IN THE
12 DEPARTMENT OF PUBLIC SAFETY; AND

13 (e) THE DIRECTOR OF THE DIVISION OF PROBATION SERVICES IN THE
14 JUDICIAL DEPARTMENT OR HIS OR HER DESIGNEE.

15 (2) (a) THE COMMITTEE SHALL DEVELOP FUNDING GUIDELINES,
16 INCLUDING PERMISSIBLE USES FOR THE FUNDING, AND AN APPLICATION
17 PROCESS FOR ELECTED DISTRICT ATTORNEYS TO REQUEST FUNDS
18 APPROPRIATED BY THE GENERAL ASSEMBLY IN ORDER TO OPERATE AN
19 ADULT DIVERSION PROGRAM CONSISTENT WITH SECTION 18-1.3-101,
20 C.R.S.

21 (b) THE COMMITTEE SHALL ALSO DEVELOP AN APPLICATION THAT
22 INCLUDES BUT IS NOT LIMITED TO:

23 (I) A DESCRIPTION OF THE ADULT PRETRIAL DIVERSION PROGRAM,
24 INCLUDING THE PROJECT'S GOALS, OBJECTIVE, AND TIMELINE FOR
25 IMPLEMENTATION;

26 (II) THE NUMBER OF ADULTS THAT COULD BE ENROLLED IN A
27 PRETRIAL DIVERSION PROGRAM USING THE FUNDS REQUESTED AND A

1 DESCRIPTION OF THE ELIGIBILITY CRITERIA DEVELOPED BY THE DISTRICT
2 ATTORNEY;

3 (III) THE PROCESS AND METHOD BY WHICH A PARTICIPANT'S
4 TREATMENT OR SERVICES NEEDS WILL BE ASSESSED;

5 (IV) OUTCOMES AND PERFORMANCE MEASURES THAT THE
6 PROGRAM WILL USE IN ITS EVALUATION;

7 (V) ITEMIZED EXPENSES FOR THE AMOUNT OF THE FUNDING
8 REQUEST AND WHETHER THE FUNDING REQUEST IS FOR A NEW ADULT
9 PRETRIAL DIVERSION PROGRAM OR FUNDING TO CONTINUE OR EXPAND AN
10 EXISTING ADULT PRETRIAL DIVERSION PROGRAM;

11 (VI) THE DIVERSION SUPERVISION FEES, IF ANY, THAT THE
12 DISTRICT ATTORNEY WILL REQUIRE AS A CONDITION OF PARTICIPATION IN
13 A PRETRIAL DIVERSION PROGRAM; AND

14 (VII) A LIST OF ANY OTHER AGENCIES, ORGANIZATIONS, SERVICE
15 PROVIDERS, OR PLANNING GROUPS THAT WOULD BE INVOLVED IN THE
16 PLANNING AND IMPLEMENTATION OF THE PROJECT.

17 (3) THE COMMITTEE MUST REVIEW ALL FUNDING REQUESTS
18 SUBMITTED BY A DISTRICT ATTORNEY TO SUPPORT AN ADULT PRETRIAL
19 DIVERSION PROGRAM. BY MAJORITY VOTE, THE COMMITTEE MAY APPROVE
20 ALL OR A PORTION OF A FUNDING REQUEST THAT MEETS THE GUIDELINES
21 ESTABLISHED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS
22 SECTION OR DENY A REQUEST.

23 (4) THE JUDICIAL DEPARTMENT SHALL EXECUTE THE CONTRACT
24 AND ALLOCATE THE FUNDING REQUESTS APPROVED BY THE COMMITTEE.

25 (5) A DISTRICT ATTORNEY THAT RECEIVES FUNDING PURSUANT TO
26 THIS SECTION SHALL COLLECT DATA AND PROVIDE A STATUS REPORT TO
27 THE JUDICIAL DEPARTMENT BY A DATE PRESCRIBED BY THE COMMITTEE

1 THAT INCLUDES BUT IS NOT LIMITED TO:

2 (a) THE NUMBER OF PEOPLE SCREENED AND THE NUMBER OF
3 PEOPLE WHO MET THE DIVERSION PROGRAM CRITERIA;

4 (b) THE NUMBER OF PEOPLE ENROLLED IN THE ADULT PRETRIAL
5 DIVERSION PROGRAM;

6 (c) DEMOGRAPHIC INFORMATION ON THOSE ENROLLED IN THE
7 ADULT PRETRIAL DIVERSION PROGRAM INCLUDING AGE, GENDER, AND
8 ETHNICITY;

9 (d) PARTICIPANT STATUS, INCLUDING THE NUMBER OF PEOPLE
10 THAT HAVE SUCCESSFULLY COMPLETED THE DIVERSION PROGRAM, THE
11 NUMBER OF PEOPLE STILL UNDER ACTIVE SUPERVISION IN THE DIVERSION
12 PROGRAM, THE NUMBER OF PEOPLE TERMINATED FROM THE DIVERSION
13 PROGRAM, AND THE REASON FOR THEIR TERMINATION; AND

14 (e) THE ACCOUNTING OF THE FUNDS EXPENDED AND THE AMOUNT
15 OF ANY FUNDS UNEXPENDED AND UNENCUMBERED AT THE END OF THE
16 FUNDING PERIOD.

17 (6) BY JANUARY 31, 2015, AND EACH JANUARY 31 THEREAFTER,
18 THE JUDICIAL DEPARTMENT SHALL PROVIDE TO THE JOINT BUDGET
19 COMMITTEE A STATUS REPORT THAT INCLUDES THE INFORMATION
20 REQUIRED BY SUBSECTION (5) OF THIS SECTION.

21 (7) ANY FUNDS PROVIDED TO A DISTRICT ATTORNEY FOR PURPOSES
22 OF OPERATING AN ADULT PRETRIAL DIVERSION PROGRAM PURSUANT TO
23 THIS SECTION SHALL NOT BE REVERTED TO THE GENERAL FUND IF
24 UNEXPENDED BY THE END OF THE FISCAL YEAR IN WHICH THE FUNDS WERE
25 RECEIVED.

26 **SECTION 14.** In Colorado Revised Statutes, 18-19-103, **amend**
27 (5) (d) (I) as follows:

1 **18-19-103. Source of revenues - allocation of moneys.**

2 (5) (d) Moneys from the correctional treatment cash fund may be used to
3 serve the following populations:

4 (I) Adults and juveniles serving a diversion sentence for a state
5 offense AND ADULTS AND JUVENILES UNDER SUPERVISION IN A PRETRIAL
6 DIVERSION PROGRAM FOR A STATE OFFENSE;

7 **SECTION 15. Appropriation.** In addition to any other
8 appropriation, there is hereby appropriated, out of any moneys in the
9 general fund, not otherwise appropriated, to the judicial department, for
10 the fiscal year beginning July 1, 2013, the sum of \$425,000 and 0.5 FTE,
11 or so much thereof as may be necessary, to be allocated for the
12 implementation of this act as follows:

13 (a) \$33,072 and 0.5 FTE for general courts administration for
14 personal services;

15 (b) \$475 for general courts administration for operating expenses;

16 (c) \$1,230 for courthouse capital/infrastructure maintenance; and

17 (d) \$390,223 for allocation to district attorney adult pretrial
18 diversion programs.

19 **SECTION 16. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2014 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.