

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0365.01 Michael Dohr x4347

HOUSE BILL 13-1156

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary
Appropriations

Senate Committees

Judiciary
Appropriations

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.*

SENATE
Amended 2nd Reading
April 26, 2013

HOUSE
Amended 3rd Reading
April 5, 2013

HOUSE
Amended 2nd Reading
April 2, 2013

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), IS NOT ELIGIBLE FOR PRETRIAL DIVERSION
9 UNLESS CHARGES HAVE BEEN FILED, THE INDIVIDUAL HAS HAD AN
10 OPPORTUNITY TO CONSULT WITH COUNSEL, AND THE INDIVIDUAL HAS
11 COMPLETED A DOMESTIC VIOLENCE TREATMENT EVALUATION, WHICH
12 INCLUDES THE USE OF A DOMESTIC VIOLENCE RISK ASSESSMENT
13 INSTRUMENT, CONDUCTED BY A DOMESTIC VIOLENCE TREATMENT
14 PROVIDER APPROVED BY THE DOMESTIC VIOLENCE OFFENDER
15 MANAGEMENT BOARD AS REQUIRED BY SECTION 16-11.8-103 (4), C.R.S.
16 THE DISTRICT ATTORNEY MAY AGREE TO PLACE THE INDIVIDUAL IN THE
17 DIVERSION PROGRAM ESTABLISHED BY THE DISTRICT ATTORNEY PURSUANT
18 TO THIS SECTION IF HE OR SHE FINDS THAT, BASED ON THE RESULTS OF
19 THAT EVALUATION AND THE OTHER FACTORS IN SUBSECTION (3) OF THIS
20 SECTION, THAT THE INDIVIDUAL IS APPROPRIATE FOR THE PROGRAM.

21 (6) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE
22 CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS
23 SECTION, AN INDIVIDUAL ACCUSED OF A SEX OFFENSE AS DEFINED IN
24 SECTION 18-1.3-1003 (5), C.R.S., IS NOT ELIGIBLE FOR PRETRIAL
25 DIVERSION UNLESS CHARGES HAVE BEEN FILED AND, AFTER THE
26 INDIVIDUAL HAS HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, THE
27 INDIVIDUAL HAS COMPLETED A SEX-OFFENSE-SPECIFIC EVALUATION,

1 WHICH INCLUDES THE USE OF A SEX-OFFENSE-SPECIFIC RISK ASSESSMENT
2 INSTRUMENT, CONDUCTED BY AN EVALUATOR APPROVED BY THE SEX
3 OFFENDER MANAGEMENT BOARD AS REQUIRED BY SECTION 16-11.7-103
4 (4), C.R.S. THE DISTRICT ATTORNEY MAY AGREE TO PLACE THE
5 INDIVIDUAL IN THE DIVERSION PROGRAM ESTABLISHED BY THE DISTRICT
6 ATTORNEY PURSUANT TO THIS SECTION IF HE OR SHE FINDS THAT, BASED
7 ON THE RESULTS OF THAT EVALUATION AND THE OTHER FACTORS IN
8 SUBSECTION (3) OF THIS SECTION, THAT THE INDIVIDUAL IS APPROPRIATE
9 FOR THE PROGRAM. NOTWITHSTANDING THAT A SUCCESSFULLY
10 COMPLETED DIVERSION AGREEMENT DOES NOT CONSTITUTE A HISTORY OF
11 SEX OFFENSES FOR PURPOSES OF SECTIONS 16-11.7-102 (2) (a) (II) AND
12 16-22-103 (2) (d), C.R.S., THE INFORMATION CONSTITUTING THE CRIMES
13 CHARGED AND FACTS ALLEGED SHALL BE AVAILABLE FOR USE BY A COURT,
14 DISTRICT ATTORNEY, ANY LAW ENFORCEMENT AGENCY, OR AGENCY OF
15 THE STATE JUDICIAL DEPARTMENT, IF OTHERWISE PERMITTED BY LAW, IN
16 ANY SUBSEQUENT CRIMINAL INVESTIGATION, PROSECUTION, RISK OR
17 NEEDS ASSESSMENT EVALUATION, SENTENCING HEARING, OR DURING A
18 PROBATION OR PAROLE SUPERVISION PERIOD.

19 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
20 AN INDIVIDUAL ACCUSED OF ANY OF THE FOLLOWING SEXUAL OFFENSES IS
21 NOT ELIGIBLE FOR PARTICIPATION IN A DIVERSION PROGRAM ESTABLISHED
22 IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE CREATION OR
23 OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS SECTION:

24 (a) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402;

25 (b) SEXUAL ASSAULT ON A CHILD AS DESCRIBED IN SECTION
26 18-3-405;

27 (c) ANY SEXUAL OFFENSE COMMITTED AGAINST AN AT-RISK ADULT

1 OR AN AT-RISK JUVENILE, AS DESCRIBED IN SECTION 18-6.5-101 (1) AND
2 (1.5);

3 (d) ANY SEXUAL OFFENSE COMMITTED WITH THE USE OF A DEADLY
4 WEAPON AS DESCRIBED IN SECTION 18-1-901 (3) (e);

5 (e) ENTICEMENT OF A CHILD, AS DESCRIBED IN SECTION 18-3-305;

6 (f) SEXUAL EXPLOITATION OF A CHILD AS DESCRIBED IN SECTION
7 18-6-403;

8 (g) PROCUREMENT OF A CHILD FOR EXPLOITATION, AS DESCRIBED
9 IN SECTION 18-6-404;

10 (h) SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST,
11 AS DESCRIBED IN SECTION 18-3-405.3; OR

12 (i) ANY CHILD PROSTITUTION OFFENSE IN PART 4 OF ARTICLE 7 OF
13 TITLE 18.

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

22 (9) **Diversion agreements.** (a) ALL PRETRIAL DIVERSIONS SHALL
23 BE GOVERNED BY THE TERMS OF AN INDIVIDUALIZED DIVERSION
24 AGREEMENT SIGNED BY THE DEFENDANT, THE DEFENDANT'S ATTORNEY IF
25 THE DEFENDANT IS REPRESENTED BY AN ATTORNEY, AND THE DISTRICT
26 ATTORNEY.

27 (b) THE DIVERSION AGREEMENT SHALL INCLUDE A WRITTEN

1 WAIVER OF THE RIGHT TO A SPEEDY TRIAL FOR THE PERIOD OF THE
2 DIVERSION. ALL DIVERSION AGREEMENTS SHALL INCLUDE A CONDITION
3 THAT THE DEFENDANT NOT COMMIT ANY CRIMINAL OFFENSE DURING THE
4 PERIOD OF THE AGREEMENT. DIVERSION AGREEMENTS MAY ALSO INCLUDE
5 PROVISIONS, AGREED TO BY THE DEFENDANT, CONCERNING PAYMENT OF
6 RESTITUTION AND COURT COSTS, PAYMENT OF A SUPERVISION FEE NOT TO
7 EXCEED THAT PROVIDED FOR IN SECTION 18-1.3-204 (2) (a) (V), OR
8 PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES AS DEFINED IN
9 SECTION 18-1-901 (3) (o.5). ANY PRETRIAL DIVERSION SUPERVISION FEES
10 COLLECTED MAY BE RETAINED BY THE DISTRICT ATTORNEY FOR PURPOSES
11 OF FUNDING ITS ADULT PRETRIAL DIVERSION PROGRAM. THE CONDITIONS
12 OF DIVERSION SHALL BE LIMITED TO THOSE SPECIFIC TO THE INDIVIDUAL
13 DEFENDANT OR NECESSARY FOR PROPER SUPERVISION OF THE INDIVIDUAL
14 DEFENDANT. A DIVERSION AGREEMENT SHALL PROVIDE THAT IF THE
15 DEFENDANT FULFILLS THE OBLIGATIONS DESCRIBED THEREIN, THE COURT
16 SHALL ORDER ALL CRIMINAL CHARGES FILED AGAINST THE DEFENDANT
17 DISMISSED WITH PREJUDICE.

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

1 (d) THE DIVERSION AGREEMENT MAY INCLUDE A STATEMENT OF
2 THE FACTS THE CHARGE IS BASED UPON AUTHORED BY THE DEFENDANT
3 AND AGREED TO BY THE DEFENDANT'S ATTORNEY IF THE DEFENDANT IS
4 REPRESENTED BY AN ATTORNEY AND THE DISTRICT ATTORNEY. THE
5 STATEMENT IS ADMISSIBLE AS IMPEACHMENT EVIDENCE AGAINST THE
6 DEFENDANT IN THE CRIMINAL PROCEEDINGS IF THE DEFENDANT FAILS TO
7 FULFILL THE TERMS OF THE DIVERSION AGREEMENT AND CRIMINAL
8 PROCEEDINGS ARE RESUMED.

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

18 (f) IF THE DISTRICT ATTORNEY AGREES TO OFFER DIVERSION IN
19 LIEU OF FURTHER CRIMINAL PROCEEDINGS AND THE DEFENDANT AGREES
20 TO ALL OF THE TERMS OF THE PROPOSED AGREEMENT, THE DIVERSION
21 AGREEMENT MAY BE EITHER FILED WITH THE COURT OR HELD BY THE
22 PARTIES. A COURT FILING SHALL BE REQUIRED ONLY IF THE PROBATION
23 DEPARTMENT SUPERVISES THE DEFENDANT. WHEN A DIVERSION
24 AGREEMENT IS REACHED, THE COURT SHALL STAY FURTHER PROCEEDINGS.

25 (10) **Diversion outcomes.** (a) DURING THE PERIOD OF DIVERSION,
26 THE SUPERVISING PROGRAM OR AGENCY DESIGNATED IN THE DIVERSION
27 AGREEMENT SHALL PROVIDE THE LEVEL OF SUPERVISION NECESSARY TO

1 FACILITATE REHABILITATION AND ENSURE THE DEFENDANT IS COMPLETING
2 THE TERMS OF THE DIVERSION AGREEMENT.

3 (b) UPON THE DEFENDANT'S SATISFACTORY COMPLETION OF AND
4 DISCHARGE FROM SUPERVISION, THE COURT SHALL DISMISS WITH
5 PREJUDICE ALL CHARGES AGAINST THE DEFENDANT. THE EFFECT OF THE
6 DISMISSAL IS TO RESTORE THE DEFENDANT TO THE STATUS HE OR SHE
7 OCCUPIED BEFORE THE ARREST, CITATION, OR SUMMONS. A SUCCESSFULLY
8 COMPLETED DIVERSION AGREEMENT SHALL NOT BE CONSIDERED A
9 CONVICTION FOR ANY PURPOSE. A PERSON WITH AN ORDER OF DISMISSAL
10 ENTERED PURSUANT TO THIS ARTICLE MAY NOT BE SUBJECT TO CHARGE,
11 PROSECUTION, OR LIABILITY UNDER COLORADO LAW OF PERJURY OR
12 OTHERWISE GIVING A FALSE STATEMENT BY REASON OF HIS OR HER
13 FAILURE TO RECITE OR ACKNOWLEDGE THE ARREST, CITATION, OR
14 SUMMONS IN RESPONSE TO ANY INQUIRY MADE FOR ANY PURPOSE.

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

22 (d) IF THE DEFENDANT VIOLATES THE CONDITIONS OF THE
23 DIVERSION AGREEMENT, THE SUPERVISING ENTITY SHALL PROVIDE
24 WRITTEN NOTICE OF THE VIOLATION TO THE DEFENDANT, THE DISTRICT
25 ATTORNEY, AND THE COURT. THE DISTRICT ATTORNEY, IN HIS OR HER SOLE
26 DISCRETION, MAY INITIATE REVOCATION OF A DIVERSION AGREEMENT BY
27 THE FILING OF A CRIMINAL COMPLAINT, INFORMATION, OR INDICTMENT, OR

1 IF CHARGES HAVE ALREADY BEEN FILED, BY GIVING THE COURT NOTICE OF
2 INTENT TO PROCEED WITH THE PROSECUTION. THE DEFENDANT MAY,
3 WITHIN FOURTEEN DAYS AFTER THE FIRST COURT APPEARANCE FOLLOWING
4 SUCH A FILING, REQUEST A HEARING TO CONTEST WHETHER A VIOLATION
5 OCCURRED. THE DISTRICT ATTORNEY HAS THE BURDEN BY A
6 PREPONDERANCE OF THE EVIDENCE TO SHOW THAT A VIOLATION HAS IN
7 FACT OCCURRED, AND THE PROCEDURAL SAFEGUARDS REQUIRED IN A
8 REVOCATION OF PROBATION HEARING PURSUANT TO SECTION 16-11-206,
9 C.R.S., SHALL APPLY. THE COURT MAY, WHEN IT APPEARS THAT THE
10 ALLEGED VIOLATION OF THE DIVERSION AGREEMENT IS A PENDING
11 CRIMINAL OFFENSE AGAINST THE DEFENDANT, CONTINUE THE DIVERSION
12 REVOCATION HEARING UNTIL THE COMPLETION OF THE CRIMINAL
13 PROCEEDING. IF THE COURT FINDS A VIOLATION HAS OCCURRED, OR A
14 HEARING IS NOT REQUESTED, THE PROSECUTION MAY CONTINUE. IF THE
15 COURT FINDS THE DISTRICT ATTORNEY HAS NOT PROVEN A VIOLATION, THE
16 COURT SHALL DISMISS THE CRIMINAL CASE WITHOUT PREJUDICE AND
17 RETURN THE DEFENDANT TO THE SUPERVISION OF THE DIVERSION
18 PROGRAM TO COMPLETE THE TERMS OF THE AGREEMENT.

19 (e) IF A DEFENDANT IS PROSECUTED FOLLOWING A VIOLATION OF
20 A DIVERSION AGREEMENT, A FACTUAL STATEMENT ENTERED PURSUANT TO
21 PARAGRAPH (d) OF SUBSECTION (9) OF THIS SECTION IS ADMISSIBLE AS
22 IMPEACHMENT EVIDENCE. ANY OTHER INFORMATION CONCERNING
23 DIVERSION, INCLUDING PARTICIPATION IN A DIVERSION PROGRAM,
24 INCLUDING AN EVALUATION PERFORMED PURSUANT TO SUBSECTIONS (5)
25 AND (6) OF THIS SECTION, THE TERMS OF A DIVERSION AGREEMENT, OR
26 STATEMENTS MADE TO TREATMENT PROVIDERS DURING A DIVERSION
27 PROGRAM, SHALL NOT BE ADMITTED INTO EVIDENCE AT TRIAL FOR ANY

1 PURPOSE.

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

4 **16-4-108. Exoneration from bond liability.** (2) Upon entry of
5 an order for deferred prosecution AS IT EXISTED BEFORE THE EFFECTIVE
6 DATE OF HOUSE BILL 13-1156, A DIVERSION AUTHORIZED BY SECTION
7 18-1.3-101, C.R.S., or deferred judgment as authorized in ~~sections~~
8 ~~18-1.3-101~~ and SECTION 18-1.3-102, C.R.S., sureties upon any bond given
9 for the appearance of the defendant shall be released from liability on
10 such bond.

11 **SECTION 3.** In Colorado Revised Statutes, 16-4-110, **amend as**
12 **amended in House Bill 13-1236** (3) as follows:

13 **16-4-110. Exoneration from bond liability.** (3) Upon entry of
14 an order for deferred prosecution AS IT EXISTED BEFORE THE EFFECTIVE
15 DATE OF HOUSE BILL 13-1156, ENACTED IN 2013, A DIVERSION
16 AUTHORIZED BY SECTION 18-1.3-101, C.R.S., or deferred judgment as
17 authorized in sections 18-1.3-101 and 18-1.3-102, C.R.S., sureties upon
18 any bond given for the appearance of the defendant shall be released from
19 liability on such bond.

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

22 **16-7-301. Propriety of plea discussions and plea agreements.**
23 (2) The district attorney may agree to one or more of the following,
24 depending upon the circumstances of the individual case:

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

27 **SECTION 5.** In Colorado Revised Statutes, 18-6-801, **amend** (4)

1 as follows:

2 **18-6-801. Domestic violence - sentencing.** (4) No person
3 accused or convicted of a crime, the underlying factual basis of which has
4 been found by the court on the record to include an act of domestic
5 violence, as defined in section 18-6-800.3 (1), shall be eligible for home
6 detention in the home of the victim pursuant to section 18-1.3-105 or
7 18-1.3-106. ~~or for deferred prosecution pursuant to section 18-1.3-101.~~
8 Nothing in this subsection (4) is intended to prohibit a court from
9 ordering a deferred sentence for a person accused or convicted of a crime,
10 the underlying factual basis of which has been found by the court on the
11 record to include an act of domestic violence, as defined in section
12 18-6-800.3 (1).

13

14 **SECTION 6.** In Colorado Revised Statutes, 18-18-432, **amend**
15 (2) (b) and (3) as follows:

16 **18-18-432. Drug offender public service and rehabilitation**
17 **program.** (2) (b) The provisions of this subsection (2) relating to the
18 performance of useful public service are also applicable to any drug
19 offender who receives a ~~deferred prosecution~~ DIVERSION in accordance
20 with section 18-1.3-101 or who receives a deferred sentence in
21 accordance with section 18-1.3-102 and the completion of any stipulated
22 amount of useful public service hours to be completed by the drug
23 offender shall be ordered by the court in accordance with the conditions
24 of such deferred prosecution or deferred sentence as stipulated to by the
25 prosecution and the drug offender.

26 (3) Upon a plea of guilty, including a plea of guilty entered
27 pursuant to a deferred sentence under section 18-1.3-102 or a verdict of

1 guilty by the court or a jury, to any offense under this article, or upon
2 entry of a ~~deferred prosecution~~ DIVERSION pursuant to section 18-1.3-101
3 for any offense under this article, the court shall order the drug offender
4 to immediately report to the sheriff's department in the county where the
5 drug offender was charged, at which time the drug offender's fingerprints
6 and photographs shall be taken and returned to the court, which
7 fingerprints and photographs shall become a part of the court's official
8 documents and records pertaining to the charges against the drug offender
9 and the drug offender's identification in association with such charges. On
10 any trial for a violation of any criminal law of this state, a duly
11 authenticated copy of the record of former convictions and judgments of
12 any court of record for any of said crimes against the drug offender
13 named in said convictions and judgments shall be prima facie evidence
14 of such convictions and may be used in evidence against the drug
15 offender. Identification photographs and fingerprints that are part of the
16 record of such former convictions and judgments of any court of record
17 or which are part of the record at the place of the drug offender's
18 incarceration after sentencing for any of such former convictions and
19 judgments shall be prima facie evidence of the identity of the drug
20 offender and may be used in evidence against such drug offender. Any
21 drug offender who fails to immediately comply with the court's order to
22 report to the sheriff's department, to furnish fingerprints, or to have
23 photographs taken may be held in contempt of court.

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

26 **24-4.1-302. Definitions.** (2) "Critical stages" means the
27 following stages of the criminal justice process:

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

3 **SECTION 8.** In Colorado Revised Statutes, 24-4.1-302.5, **amend**
4 (1) (b) as follows:

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

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

14 **SECTION 9.** In Colorado Revised Statutes, 24-72-308, **amend**
15 (1) (a) (I) as follows:

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

27 **SECTION 10.** In Colorado Revised Statutes, 24-72-308, **amend**

1 (1) (c) as follows:

2 **24-72-308. Sealing of arrest and criminal records other than**
3 **convictions.** (1) (c) EXCEPT AS PROVIDED FOR IN SECTION 18-1.3-101 (10)
4 (c), C.R.S., after the hearing described in subparagraph (II) of paragraph
5 (b) of this subsection (1) is conducted and if the court finds that the harm
6 to the privacy of the petitioner or dangers of unwarranted adverse
7 consequences to the petitioner outweigh the public interest in retaining
8 the records, the court may order such records, except basic identification
9 information, to be sealed. Any order entered pursuant to this paragraph (c)
10 shall be directed to every custodian who may have custody of any part of
11 the arrest and criminal records information which is the subject of the
12 order. Whenever a court enters an order sealing criminal records pursuant
13 to this paragraph (c), the petitioner shall provide the Colorado bureau of
14 investigation and every custodian of such records with a copy of such
15 order. The petitioner shall provide a private custodian with a copy of the
16 order and send the private custodian an electronic notification of the
17 order. Each private custodian that receives a copy of the order from the
18 petitioner shall remove the records that are subject to an order from its
19 database. Thereafter, the petitioner may request and the court may grant
20 an order sealing the civil case in which the records were sealed.

21 **SECTION 11.** In Colorado Revised Statutes, 33-13-108.1,
22 **amend** (12) (f) as follows:

23 **33-13-108.1. Operating a vessel while under the influence.**
24 (12) (f) For the purposes of this subsection (12), "alcohol and drug
25 driving safety education or treatment" has the meaning set forth in section
26 42-4-1301.3, C.R.S., and the alcohol and drug driving safety program and
27 the presentence alcohol and drug evaluations authorized in said section

1 shall be utilized for the purposes of this subsection (12). The presentence
2 alcohol and drug evaluation shall be conducted on all persons convicted
3 of a violation of subsection (1) of this section; except that this
4 requirement shall not apply to persons who are not residents of Colorado
5 at the time of sentencing. Any defendant sentenced to level I or level II
6 education or treatment programs shall be instructed by the court to meet
7 all financial obligations of the programs. If the financial obligations are
8 not met, the sentencing court shall be notified for the purpose of
9 collection or review and further action on the defendant's sentence. In
10 addition to any other penalties, fines, fees, or costs prescribed in this
11 section, the court shall assess an amount, not to exceed the amount
12 established in section 42-4-1301.3, C.R.S., upon any person convicted of
13 a violation of subsection (1) of this section. The amount shall be used
14 only to pay for the costs authorized in section 42-4-1301.3, C.R.S. The
15 court shall consider the alcohol and drug evaluation prior to sentencing.
16 This paragraph (f) is also applicable to any defendant who receives a
17 ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101,
18 C.R.S., or who receives a deferred sentence in accordance with section
19 18-1.3-102, C.R.S.

20 **SECTION 12.** In Colorado Revised Statutes, 41-2-102, **amend**
21 (7) (b) as follows:

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

1 receives a deferred sentence in accordance with section 18-1.3-102,
2 C.R.S., and the completion of any stipulated amount of useful public
3 service hours to be completed by the defendant shall be ordered by the
4 court in accordance with the conditions of such deferred prosecution or
5 deferred sentence as stipulated to by the prosecution and the defendant.

6 **SECTION 13.** In Colorado Revised Statutes, 42-4-1301.3,
7 **amend** (5) as follows:

8 **42-4-1301.3. Alcohol and drug driving safety program.**

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

18 **SECTION 14.** In Colorado Revised Statutes, 42-4-1301.4,
19 **amend** (6) as follows:

20 **42-4-1301.4. Useful public service - definitions - local**

21 **programs - assessment of costs.** (6) The provisions of this section
22 relating to the performance of useful public service are also applicable to
23 any defendant who receives a ~~deferred prosecution~~ DIVERSION in
24 accordance with section 18-1.3-101, C.R.S., or who receives a deferred
25 sentence in accordance with section 18-1.3-102, C.R.S., and the
26 completion of any stipulated amount of useful public service hours to be
27 completed by the defendant shall be ordered by the court in accordance

1 with the conditions of such deferred prosecution or deferred sentence as
2 stipulated to by the prosecution and the defendant.

3 **SECTION 15.** In Colorado Revised Statutes, **add** 13-3-114 as
4 follows:

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

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

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

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

13 (d) THE DIRECTOR OF THE DIVISION OF CRIMINAL JUSTICE IN THE
14 DEPARTMENT OF PUBLIC SAFETY; AND

15 (e) THE STATE COURT ADMINISTRATOR OR HIS OR HER DESIGNEE;

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

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

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

27 (II) THE NUMBER OF ADULTS THAT COULD BE ENROLLED IN A

1 PRETRIAL DIVERSION PROGRAM USING THE FUNDS REQUESTED AND A
2 DESCRIPTION OF THE ELIGIBILITY CRITERIA DEVELOPED BY THE DISTRICT
3 ATTORNEY;

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

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

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

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

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

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

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

26 (5) A DISTRICT ATTORNEY THAT RECEIVES FUNDING PURSUANT TO
27 THIS SECTION SHALL COLLECT DATA AND PROVIDE A STATUS REPORT TO

1 THE JUDICIAL DEPARTMENT BY A DATE PRESCRIBED BY THE COMMITTEE
2 THAT INCLUDES BUT IS NOT LIMITED TO:

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

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

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

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

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

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

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

27 **SECTION 16.** In Colorado Revised Statutes, 18-19-103, **amend**

1 (5) (d) (I) as follows:

2 **18-19-103. Source of revenues - allocation of moneys.**

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

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

8 **SECTION 17. Appropriation.** In addition to any other
9 appropriation, there is hereby appropriated, out of any moneys in the
10 general fund, not otherwise appropriated, to the judicial department, for
11 the fiscal year beginning July 1, 2013, the sum of \$425,000 and 0.5 FTE,
12 or so much thereof as may be necessary, to be allocated for the
13 implementation of this act as follows:

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

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

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

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

20 **SECTION 18. Act subject to petition - effective date. (1) This**
21 act takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 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.

3 (2) Section 3 of this act takes effect only if House Bill 13-1236
4 becomes law and takes effect either upon the effective date of this act or
5 House Bill 13-1236, whichever is later. If section 3 of this act takes
6 effect, then section 2 of this act will not take effect.