

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 22-0142.01 Jane Ritter x4342

SENATE BILL 22-010

SENATE SPONSORSHIP

Simpson and Lee, Bridges, Buckner, Donovan, Fenberg, Fields, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Moreno, Pettersen, Priola, Rankin, Winter, Zenzinger

HOUSE SPONSORSHIP

Benavidez and Amabile, Pelton

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PRETRIAL DIVERSION PROGRAMS THAT ARE INTENDED TO**
102 **IDENTIFY ELIGIBLE INDIVIDUALS WHO HAVE BEHAVIORAL**
103 **HEALTH DISORDERS IN ORDER TO DIVERT THEM FROM THE**
104 **CRIMINAL JUSTICE SYSTEM INTO COMMUNITY TREATMENT**
105 **PROGRAMS.**

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://leg.colorado.gov/>.)

SENATE
3rd Reading Unamended
March 21, 2022

**Legislative Oversight Committee Concerning the Treatment
of Persons with Mental Health Disorders in the Criminal and**

SENATE
Amended 2nd Reading
March 18, 2022

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

Juvenile Justice Systems. The bill expands the existing pretrial diversion program to include diversion programs that are intended to identify eligible individuals with behavioral health disorders and divert such individuals out of the criminal justice system and into community treatment programs. This expansion replaces the alternative pilot programs to divert individuals with mental health conditions that are currently set to repeal July 1, 2022.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.3-101, **amend**
3 (1), (3), (9)(a), (9)(b), and (9)(c) as follows:

4 **18-1.3-101. Pretrial diversion.** (1) (a) **Legislative intent.** The
5 intent of this section is to facilitate and encourage THE diversion of
6 defendants AND DEFENDANTS WITH BEHAVIORAL HEALTH DISORDERS,
7 REFERRED TO COLLECTIVELY IN THIS SECTION AS "DEFENDANTS", from the
8 criminal justice system when diversion may prevent SUCH defendants
9 from committing additional criminal acts, restore victims of crime,
10 facilitate the defendant's ability to pay restitution to victims of crime, and
11 reduce the number of cases in the criminal justice system. Diversion
12 should ensure defendant accountability while allowing defendants to
13 avoid the collateral consequences associated with criminal charges and
14 convictions. IN ADDITION, DIVERSION PROGRAMS MUST INCLUDE
15 INDIVIDUALS WITH BEHAVIORAL HEALTH DISORDERS WHO ARE ELIGIBLE
16 FOR DIVERSION PURSUANT TO SUBSECTION (3) OF THIS SECTION AND
17 DIVERT SUCH INDIVIDUALS OUT OF THE CRIMINAL JUSTICE SYSTEM AND
18 INTO COMMUNITY TREATMENT PROGRAMS.

19 (b) A district attorney's office may develop or continue to operate
20 its own diversion program that is not subject to the provisions of this
21 section. If a district attorney's office accepts state ~~money~~ MONEY to
22 create or operate a diversion program pursuant to this section, the district

1 attorney's office must comply with the provisions of this section.

2 **(3) Guidelines for eligibility.** Each district attorney that uses state
3 **money** MONEY for a diversion program pursuant to this section shall
4 adopt policies and guidelines delineating eligibility criteria for pretrial
5 diversion, INCLUDING TYPES AND LEVELS OF OFFENSES SO LONG AS THOSE
6 OFFENSES ARE CONSISTENT WITH SUBSECTIONS (5) TO (7) OF THIS SECTION,
7 and may agree to diversion in any case in which there exists sufficient
8 admissible evidence to support a conviction. In determining whether an
9 individual is appropriate for diversion, the district attorney shall consider:

10 (a) The nature of the crime charged and the circumstances
11 surrounding it;

12 (b) Any special characteristics or circumstances of the defendant,
13 WHICH MAY INCLUDE WHETHER THE DEFENDANT HAS A MENTAL HEALTH
14 OR OTHER BEHAVIORAL HEALTH DISORDER;

15 (c) Whether diversion is consistent with the defendant's
16 rehabilitation and reintegration; and

17 (d) Whether the public interest will be best served by diverting the
18 individual from prosecution.

19 **(9) Diversion agreements.** (a) All pretrial diversions ~~shall be~~
20 ARE governed by the terms of an individualized diversion agreement
21 signed by the defendant, the defendant's attorney if the defendant is
22 represented by an attorney, and the district attorney.

23 (b) The diversion agreement ~~shall~~ MUST include a written waiver
24 of the right to a speedy trial for the period of the diversion. All diversion
25 agreements ~~shall~~ MUST include a condition that the defendant not commit
26 any criminal offense during the period of the agreement. Diversion
27 agreements may also include provisions, agreed to by the defendant,

1 concerning payment of restitution and court costs, payment of a
2 supervision fee not to exceed that provided for in section 18-1.3-204
3 (2)(a)(V), ~~or~~ participation in restorative justice practices as defined in
4 section 18-1-901 (3)(o.5), OR AN AGREEMENT TO RECEIVE TREATMENT,
5 FOR ANY OF THE DEFENDANT'S BEHAVIORAL HEALTH DISORDERS,
6 INCLUDING TREATMENT WITH LONG-ACTING INJECTABLE MEDICINES,
7 WHERE CLINICALLY APPROPRIATE AND WHERE ADHERENCE TO
8 MEDICATIONS HAS BEEN A SIGNIFICANT CONTRIBUTING FACTOR IN THE
9 DEFENDANT'S ARRESTING CHARGES. IF THE DEFENDANT IS CURRENTLY
10 HOUSED IN A JAIL OR CORRECTIONAL FACILITY, ONLY A LICENSED
11 PHARMACIST OR OTHER HEALTH-CARE PROVIDER MAY INJECT SUCH
12 INJECTABLE MEDICINES, NOT JAIL OR CORRECTIONAL FACILITY STAFF. Any
13 pretrial diversion supervision fees collected may be retained by the
14 district attorney for purposes of funding its adult pretrial diversion
15 program. The conditions of diversion ~~shall be~~ ARE limited to those
16 specific to the individual defendant or necessary for proper supervision
17 of the individual defendant. A diversion agreement ~~shall~~ MUST provide
18 that if the defendant fulfills the obligations described therein, the court
19 shall order all criminal charges filed against the defendant dismissed with
20 prejudice.

21 (c) The diversion agreement may require an assessment of the
22 defendant's criminogenic AND BEHAVIORAL HEALTH needs, to be
23 performed after the period of diversion has begun by either the probation
24 department, ~~or~~a diversion program, OR COMMUNITY TREATMENT
25 PROGRAM approved by the district attorney. Based on the results of that
26 assessment, the probation department or approved diversion OR
27 COMMUNITY TREATMENT program may direct the defendant to participate

1 in programs offering medical, therapeutic, BEHAVIORAL HEALTH,
2 educational, vocational, corrective, preventive, or other rehabilitative
3 services. Defendants with the ability to pay may be required to pay for
4 such programs or services.

5 **SECTION 2. Act subject to petition - effective date.** This act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly; except
8 that, if a referendum petition is filed pursuant to section 1 (3) of article V
9 of the state constitution against this act or an item, section, or part of this
10 act within such period, then the act, item, section, or part will not take
11 effect unless approved by the people at the general election to be held in
12 November 2022 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.