

## CHAPTER 147

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**CRIMINAL LAW AND PROCEDURE**

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## SENATE BILL 22-010

BY SENATOR(S) Simpson and Lee, Bridges, Buckner, Donovan, Fields, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Moreno, Pettersen, Priola, Rankin, Winter, Zenzinger, Fenberg;  
also REPRESENTATIVE(S) Benavidez and Amabile, Pelton, Bacon, Bennett, Bird, Bockenfeld, Boesenecker, Cutter, Duran, Exum, Froelich, Geitner, Gonzales-Gutierrez, Gray, Herod, Hooton, Jodeh, Kennedy, Kipp, Lindsay, Lontine, McCormick, Michaelson Jenet, Pico, Sandridge, Sirota, Titone, Valdez A., Weissman, Young.

## AN ACT

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

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

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

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

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

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

program pursuant to this section, the district attorney's office must comply with the provisions of this section.

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

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

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

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

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

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

(b) The diversion agreement ~~shall~~ MUST include a written waiver of the right to a speedy trial for the period of the diversion. All diversion agreements ~~shall~~ MUST include a condition that the defendant not commit any criminal offense during the period of the agreement. Diversion agreements may also include provisions, agreed to by the defendant, concerning payment of restitution and court costs, payment of a supervision fee not to exceed that provided for in section 18-1.3-204 (2)(a)(V), ~~or~~ participation in restorative justice practices as defined in section 18-1-901 (3)(o.5), OR AN AGREEMENT TO RECEIVE TREATMENT, FOR ANY OF THE DEFENDANT'S BEHAVIORAL HEALTH DISORDERS. Any pretrial diversion supervision fees collected may be retained by the district attorney for purposes of funding its adult pretrial diversion program. The conditions of diversion ~~shall be~~ ARE limited to those specific to the individual defendant or necessary for proper supervision of the individual defendant. A diversion agreement ~~shall~~ MUST provide that if the defendant fulfills the obligations described therein, the court shall order all criminal charges filed against the defendant dismissed with prejudice.

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

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

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

Approved: May 2, 2022