

RE-ENTRY TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
August 11, 2017

FY17-RE #07. Support pretrial diversion programs.

Recommendation

Continue or expand financial support of Colorado's adult pretrial diversion programs.

Discussion

Based on a CCJJ recommendation,¹ in 2013 the General Assembly replaced the previously-existing deferred prosecution statute with a "pretrial diversion" disposition option in criminal cases.² Diversion is a voluntary individualized agreement between the defendant and the prosecution, under which the defendant agrees to certain conditions before entering a guilty plea.³ If the defendant fulfills his or her obligations, the associated criminal charges are either never filed in court or dismissed with prejudice.⁴ A successfully completed diversion agreement shall not be considered a conviction for any purpose.⁵

The legislature's intent when enacting the pretrial diversion statute was to facilitate diversion of defendants from the criminal justice system when diversion "may prevent 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."⁶ Pretrial diversion should "ensure defendant accountability while allowing defendants to avoid the collateral consequences associated with criminal charges and convictions."⁷

When enacting the pretrial diversion statute, the legislature also created the Adult Diversion Funding Committee. Elected district attorneys can apply to the committee to receive state funding for the creation or operation of adult diversion programs.⁸

In 2014, the first fiscal year the committee took applications, District Attorney's Offices from the 6th, 9th, 15th, and 16th Judicial Districts⁹ requested and received funding to start pretrial diversion programs. District Attorney's Offices in the 20th and 21st Judicial Districts¹⁰ requested and received funding beginning in fiscal year 2017. All six of those jurisdictions are now operating adult pretrial diversion programs that did not exist before the General Assembly made funding available through the committee. District Attorney's Offices in the 2nd, 4th, and

¹ FY13-CS #4 (Expand the availability of adult pretrial diversion options within Colorado's criminal justice system) (at cdpsdocs.state.co.us/ccjj/Meetings/2012/2012-11-09_CSTFRec_Pretrial_FY13-CS4.pdf).

² Ch. 336, sec. 1, § 18-1.3-101, 2013 Colo. Sess. Laws 1952 (H.B. 13-1156).

³ § 18-1.3-101(9), C.R.S. 2016.

⁴ *Id.*

⁵ *Id.* at -101(10)(b).

⁶ *Id.* at -101(1).

⁷ *Id.*

⁸ § 13-3-115(2), C.R.S. 2016.

⁹ 6th Judicial District: Archuleta, La Plata, and San Juan Counties; 9th Judicial District: Garfield, Pitkin, and Rio Blanco Counties; 15th Judicial District: Baca, Cheyenne, Kiowa, and Prowers Counties; and 16th Judicial District: Bent, Crowley, and Otero Counties.

¹⁰ 20th Judicial District: Boulder County; and 21st Judicial District: Mesa County.

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22nd Judicial Districts¹¹ applied for and were allocated funding to either start new diversion programs or support existing programs in fiscal year 2018.

Diversion programs supported by the committee employ a spectrum of models designed to meet the needs of their respective communities. The program in the 6th Judicial District, for instance, engages large numbers of individuals who have committed low-level offenses.¹² The 16th Judicial District's program, in contrast, facilitates intensive intervention for a smaller number of individuals who have committed relatively high level, albeit non-violent, offenses.¹³ Although the first four programs to receive funding were all in rural counties, an increasing number of urban jurisdictions are now starting their own.

In fiscal year 2016, 502 people enrolled in the four then operational grant-funded jurisdictions, an increase of 67% from the prior year.¹⁴ There were 419 people who successfully completed diversion agreements during the same period, 75% of all terminations.¹⁵ Enrollees paid 94% of restitution in cases where restitution was ordered.¹⁶

The General Assembly appropriated \$390,233 for the committee to allocate to adult diversion programs in the committee's first year of existence.¹⁷ The committee also has access to \$77,000 of Correctional Treatment Funding.¹⁸ Those amounts have remained consistent in subsequent years. The demand for funding, however, has grown as more jurisdictions have decided to start pretrial diversion programs. Requests for fiscal year 2018 funding totaled \$694,653.16.¹⁹

Non-Statutory Recommendation

CCJJ continues to support the creation and operation of adult pretrial diversion programs in all areas of the state. The number of cases in the traditional criminal justice system is being reduced, restitution is being paid, and defendants are being held accountable while avoiding the collateral consequences associated with a conviction.²⁰ The current discrepancy between requested and available funding for adult diversion programs is, however, limiting programs' ability to fully realize their potential. CCJJ thus recommends that the General Assembly continue to provide funding to adult diversion programs at existing or greater levels.

¹¹ 2nd Judicial District: Denver County; 4th Judicial District: El Paso and Teller Counties; and 22nd Judicial District: Dolores and Montezuma Counties.

¹² Adult Diversion Funding Committee (2016, January). *Adult Diversion Annual Legislative Report: Fiscal Year 2015-2016* (see p. 5 at www.courts.state.co.us/Administration/Program.cfm?Program=55).

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 15.

¹⁷ Ch. 336, sec. 17, 2013 Colo. Sess. Laws 1963 (H.B. 13-1156).

¹⁸ State of Colorado Correctional Treatment Board. (2015, November). *FY2017 Funding Plan* (see p. 4 at www.courts.state.co.us/userfiles/file/Administration/Probation/CTB/FY2017%20Funding%20Plan.pdf).

¹⁹ Kyle Gustafson, Court Programs Analyst, Colo. State Court Adm'r Office (Feb. 23, 2017).

²⁰ See § 18-1.3-101(1), C.R.S. 2016.