



FY2013 RECOMMENDATION/FY13-CS04 EXPAND THE AVAILABILITY OF ADULT PRETRIAL DIVERSION OPTIONS WITHIN COLORADO'S CRIMINAL JUSTICE SYSTEM.

Status: Implementation Complete

Actions/Updates

2013 ACTION/IMPLEMENTATION

Action on this recommendation was completed with the passage of House Bill 13-1156.

2012 ACTION/IMPLEMENTATION

This recommendation requires statutory change to be implemented.

Description

The Comprehensive Sentencing Task Force recommends enhancing the availability of pretrial diversion options throughout the state, as well as developing appropriate funding alternatives, by:

1. Replacing the existing deferred prosecution statute (C.R.S. 18-1.3-101) with the three statutory sections proposed below.
2. Amending the Victim's Rights Act to ensure victims are able to provide input to the pretrial diversion decision.

Agencies Responsible

Discussion

Diversion is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a prescribed set of conditions or complete a formal program designed to address, treat, or remedy issues related to or raised by the allegation. Upon successful completion of the conditions or program, the charges against the defendant are dismissed or not filed. Goals of diversion include, but are not limited to:*

- *preventing defendants from committing additional criminal acts;*
- *restoring victims of crime;*
- *assisting district attorneys' offices, courts, detention facilities, and the state public defender by reducing the number of cases within the criminal justice system; and*
- *limiting defendants' penetration into the criminal justice system.***

*In Colorado, “deferred prosecution” and “deferred sentencing” are both currently permitted by statute. The deferred sentencing option requires a defendant to enter a guilty plea and the punishment, or sentence, is then suspended for a period of time.*** Provided the defendant successfully completes certain requirements of the deferred sentencing, the charge is subsequently dismissed. Deferred sentencing is a well-accepted and frequently employed option, and thus is not the focus here.*

Deferred prosecution, as it exists under current law, is a form of pretrial diversion where prosecution of the offense is deferred for a period of time and then dismissed if the defendant satisfactorily completes supervision.^ This option is rarely used in Colorado.^ Although it is difficult to pinpoint precisely why deferred prosecution is seldom employed, commonly expressed reasons include:

- *district attorneys do not have the resources to screen defendants for deferment, implement a deferment agreement, and then monitor defendants for compliance;*
- *the ability to follow through with prosecution is impeded by fading memories, scattering witnesses, and other practical impediments to gathering evidence when prosecutorial action on an offense is delayed; and*
- *there is little motivation for prosecutors to make it available because deferred prosecution inures solely to the benefit of defendants.*

This recommendation is an effort to address those concerns. It would replace the presently existing deferred prosecution statute, and strives to facilitate diversion of appropriate defendants in a way that is:

- *more readily available to criminal justice practitioners statewide;*
- *more beneficial to prosecutors; and*

- *more consistent with the long-term rehabilitation and recidivism reduction of individual defendants.*

The recommended statutory changes are intended to operate simply and flexibly. District attorneys can agree to divert a defendant at any point before plea or trial, including before charges are filed. They can preserve their ability to reinstate prosecution by requiring a signed “statement of facts” upon which the allegation is based. The terms of a diversion agreement can restore victims and require defendants to address criminogenic needs. Compliance with the agreement can be monitored and enforced by any approved entity, including, but not limited to, diversion programs run by district attorneys’ offices, law enforcement agencies, and pretrial service organizations. Alternatively, a diversion agreement may be filed with a court, thus allowing the defendant to be ordered to the supervision of the Probation Department. If the agreement is successfully completed, the defendant is returned to the same legal status as if the offense had never occurred.

Pretrial diversion is intended to increase the available options for resolution after a crime has occurred. Prosecutors will have the discretion to pursue diversion, deferred sentencing, a traditional plea, or a jury trial. As explained below, that decision will be based upon the nature of the offense, the characteristics of the offender, and the interests of the public.

To further encourage the expansion and use of diversion programs, CCJJ recommends that cost-savings associated with FY13-CS#1 (regarding the reclassification of various theft offenses) be used for that purpose consistent with this recommendation.

This recommendation seeks to improve public safety by allowing people accused of a crime to take responsibility for their mistakes while limiting the collateral consequences that accompany a criminal record.

A copy of the complete recommendation can be found in Appendix C of the 2013 CCJJ Annual report.

Footnotes

Note: Specific statutory changes can be obtained by contacting CCJJ staff.

**There is no universally accepted definition of diversion. The definition here is drawn from the National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Diversion/Intervention, standard 1.1 (2008) [hereinafter NAPSA standards], as well as a draft of the ABA Diversion Standards (publication pending).*

***Different organizations assign different goals to diversion. The four goals listed here, however, are widely accepted. They are consistent with the stated goals of programs currently operating in Colorado’s first and seventeenth judicial districts, as well as the National District Attorneys Association, National Prosecution Standards 55 (3d ed.) [hereinafter NDAA standards], and NAPSA standard 1.2.*

****See § 18-1.3-102, C.R.S. 2011.*

[^]See § 18-1.3-101, C.R.S. 2011.

^{^^}Statistics provided by the Colorado Judicial Branch, Division of Planning and Analysis, indicate that in FY 2011, approximately 0.5% of misdemeanor cases (216 of 42,590) and 1.7% of felony cases (484 of 28,536) received a court-involved deferred prosecution.