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An Act

HOUSE BILL 13-1156

BY REPRESENTATIVE(S) Levy, Buckner, Hullinghorst, Labuda, Lee, Mitsch Bush, Pabon, Pettersen, Rosenthal, Schafer, Young, Exum;
also SENATOR(S) Steadman, Aguilar, Carroll, Giron, Guzman, Hudak, Jahn, Johnston, Kerr, Nicholson, Tochtrop, Ulibarri, Morse.

CONCERNING CREATION OF AN ADULT DIVERSION PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 18-1.3-101 as follows:

18-1.3-101. Pretrial diversion. (1) **Legislative intent.** THE INTENT OF THIS SECTION IS TO FACILITATE AND ENCOURAGE 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. DIVERSION SHOULD ENSURE DEFENDANT ACCOUNTABILITY WHILE ALLOWING DEFENDANTS TO AVOID THE COLLATERAL CONSEQUENCES ASSOCIATED WITH CRIMINAL CHARGES AND CONVICTIONS. A DISTRICT ATTORNEY'S OFFICE MAY DEVELOP OR CONTINUE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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 TO CREATE OR OPERATE A DIVERSION PROGRAM PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY'S OFFICE MUST COMPLY WITH THE PROVISIONS OF THIS SECTION.

(2) **Period of diversion.** IN ANY CASE, EITHER BEFORE OR AFTER CHARGES ARE FILED, THE DISTRICT ATTORNEY MAY SUSPEND PROSECUTION OF THE OFFENSE FOR A PERIOD NOT TO EXCEED TWO YEARS. THE PERIOD OF DIVERSION MAY BE EXTENDED FOR AN ADDITIONAL TIME UP TO ONE YEAR IF THE FAILURE TO PAY RESTITUTION IS THE SOLE CONDITION OF DIVERSION THAT HAS NOT BEEN FULFILLED, BECAUSE OF INABILITY TO PAY, AND THE DEFENDANT HAS A FUTURE ABILITY TO PAY. DURING THE PERIOD OF DIVERSION THE DEFENDANT MAY BE PLACED UNDER THE SUPERVISION OF THE PROBATION DEPARTMENT OR A DIVERSION PROGRAM APPROVED BY THE DISTRICT ATTORNEY.

(3) **Guidelines for eligibility.** EACH DISTRICT ATTORNEY THAT USES STATE MONEYS FOR A DIVERSION PROGRAM PURSUANT TO THIS SECTION SHALL ADOPT POLICIES AND GUIDELINES DELINEATING ELIGIBILITY CRITERIA FOR PRETRIAL DIVERSION, 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;

(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.

(4) BEFORE ENTERING INTO A PRETRIAL DIVERSION AGREEMENT, THE DISTRICT ATTORNEY MAY REQUIRE A DEFENDANT TO PROVIDE INFORMATION REGARDING PRIOR CRIMINAL CHARGES, EDUCATION AND WORK EXPERIENCE,

FAMILY, RESIDENCE IN THE COMMUNITY, AND OTHER INFORMATION RELATING TO THE DIVERSION PROGRAM. THE DEFENDANT SHALL NOT BE DENIED THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL BEFORE CONSENTING TO DIVERSION. LEGAL COUNSEL MAY BE APPOINTED AS PROVIDED UNDER ARTICLE 1 OF TITLE 21, C.R.S.

(5) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS SECTION, AN INDIVIDUAL ACCUSED OF AN OFFENSE, THE UNDERLYING FACTUAL BASIS OF WHICH INVOLVES DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3 (1), IS NOT ELIGIBLE FOR PRETRIAL DIVERSION UNLESS CHARGES HAVE BEEN FILED, THE INDIVIDUAL HAS HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, AND THE INDIVIDUAL HAS COMPLETED A DOMESTIC VIOLENCE TREATMENT EVALUATION, WHICH INCLUDES THE USE OF A DOMESTIC VIOLENCE RISK ASSESSMENT INSTRUMENT, CONDUCTED BY A DOMESTIC VIOLENCE TREATMENT PROVIDER APPROVED BY THE DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD AS REQUIRED BY SECTION 16-11.8-103 (4), C.R.S. THE DISTRICT ATTORNEY MAY AGREE TO PLACE THE INDIVIDUAL IN THE DIVERSION PROGRAM ESTABLISHED BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION IF HE OR SHE FINDS THAT, BASED ON THE RESULTS OF THAT EVALUATION AND THE OTHER FACTORS IN SUBSECTION (3) OF THIS SECTION, THAT THE INDIVIDUAL IS APPROPRIATE FOR THE PROGRAM.

(6) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS SECTION, AN INDIVIDUAL ACCUSED OF A SEX OFFENSE AS DEFINED IN SECTION 18-1.3-1003 (5) IS NOT ELIGIBLE FOR PRETRIAL DIVERSION UNLESS CHARGES HAVE BEEN FILED AND, AFTER THE INDIVIDUAL HAS HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, THE INDIVIDUAL HAS COMPLETED A SEX-OFFENSE-SPECIFIC EVALUATION, WHICH INCLUDES THE USE OF A SEX-OFFENSE-SPECIFIC RISK ASSESSMENT INSTRUMENT, CONDUCTED BY AN EVALUATOR APPROVED BY THE SEX OFFENDER MANAGEMENT BOARD AS REQUIRED BY SECTION 16-11.7-103 (4), C.R.S. THE DISTRICT ATTORNEY MAY AGREE TO PLACE THE INDIVIDUAL IN THE DIVERSION PROGRAM ESTABLISHED BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION IF HE OR SHE FINDS THAT, BASED ON THE RESULTS OF THAT EVALUATION AND THE OTHER FACTORS IN SUBSECTION (3) OF THIS SECTION, THAT THE INDIVIDUAL IS APPROPRIATE FOR THE PROGRAM. NOTWITHSTANDING THAT A SUCCESSFULLY COMPLETED DIVERSION AGREEMENT DOES NOT CONSTITUTE

A HISTORY OF SEX OFFENSES FOR PURPOSES OF SECTIONS 16-11.7-102 (2) (a) (II) AND 16-22-103 (2) (d), C.R.S., THE INFORMATION CONSTITUTING THE CRIMES CHARGED AND FACTS ALLEGED SHALL BE AVAILABLE FOR USE BY A COURT, DISTRICT ATTORNEY, ANY LAW ENFORCEMENT AGENCY, OR AGENCY OF THE STATE JUDICIAL DEPARTMENT, IF OTHERWISE PERMITTED BY LAW, IN ANY SUBSEQUENT CRIMINAL INVESTIGATION, PROSECUTION, RISK OR NEEDS ASSESSMENT EVALUATION, SENTENCING HEARING, OR DURING A PROBATION OR PAROLE SUPERVISION PERIOD.

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

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

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

(c) ANY SEXUAL OFFENSE COMMITTED AGAINST AN AT-RISK ADULT OR AN AT-RISK JUVENILE, AS DESCRIBED IN SECTION 18-6.5-101 (1) AND (1.5);

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

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

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

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

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

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

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

(9) **Diversion agreements.** (a) ALL PRETRIAL DIVERSIONS SHALL BE 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 INCLUDE A WRITTEN WAIVER OF THE RIGHT TO A SPEEDY TRIAL FOR THE PERIOD OF THE DIVERSION. ALL DIVERSION AGREEMENTS SHALL 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). 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 LIMITED TO THOSE SPECIFIC TO THE INDIVIDUAL DEFENDANT OR NECESSARY FOR PROPER SUPERVISION OF THE INDIVIDUAL DEFENDANT. A DIVERSION AGREEMENT SHALL 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 NEEDS, TO BE PERFORMED AFTER THE PERIOD OF DIVERSION HAS BEGUN BY EITHER THE PROBATION DEPARTMENT OR A DIVERSION PROGRAM APPROVED BY THE DISTRICT ATTORNEY. BASED ON THE RESULTS OF THAT ASSESSMENT, THE PROBATION DEPARTMENT OR APPROVED DIVERSION PROGRAM MAY DIRECT THE DEFENDANT TO PARTICIPATE IN PROGRAMS OFFERING MEDICAL, THERAPEUTIC,

EDUCATIONAL, VOCATIONAL, CORRECTIVE, PREVENTIVE, OR OTHER REHABILITATIVE SERVICES. DEFENDANTS WITH THE ABILITY TO PAY MAY BE REQUIRED TO PAY FOR SUCH PROGRAMS OR SERVICES.

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

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

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

(10) **Diversion outcomes.** (a) DURING THE PERIOD OF DIVERSION, THE SUPERVISING PROGRAM OR AGENCY DESIGNATED IN THE DIVERSION AGREEMENT SHALL PROVIDE THE LEVEL OF SUPERVISION NECESSARY TO FACILITATE REHABILITATION AND ENSURE THE DEFENDANT IS COMPLETING THE TERMS OF THE DIVERSION AGREEMENT.

(b) UPON THE DEFENDANT'S SATISFACTORY COMPLETION OF AND DISCHARGE FROM SUPERVISION, THE COURT SHALL DISMISS WITH PREJUDICE ALL CHARGES AGAINST THE DEFENDANT. THE EFFECT OF THE DISMISSAL IS TO RESTORE THE DEFENDANT TO THE STATUS HE OR SHE OCCUPIED BEFORE

THE ARREST, CITATION, OR SUMMONS. A SUCCESSFULLY COMPLETED DIVERSION AGREEMENT SHALL NOT BE CONSIDERED A CONVICTION FOR ANY PURPOSE. A PERSON WITH AN ORDER OF DISMISSAL ENTERED PURSUANT TO THIS ARTICLE MAY NOT BE SUBJECT TO CHARGE, PROSECUTION, OR LIABILITY UNDER COLORADO LAW OF PERJURY OR OTHERWISE GIVING A FALSE STATEMENT BY REASON OF HIS OR HER FAILURE TO RECITE OR ACKNOWLEDGE THE ARREST, CITATION, OR SUMMONS IN RESPONSE TO ANY INQUIRY MADE FOR ANY PURPOSE.

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

(d) IF THE DEFENDANT VIOLATES THE CONDITIONS OF THE DIVERSION AGREEMENT, THE SUPERVISING ENTITY SHALL PROVIDE WRITTEN NOTICE OF THE VIOLATION TO THE DEFENDANT, THE DISTRICT ATTORNEY, AND THE COURT. THE DISTRICT ATTORNEY, IN HIS OR HER SOLE DISCRETION, MAY INITIATE REVOCATION OF A DIVERSION AGREEMENT BY THE FILING OF A CRIMINAL COMPLAINT, INFORMATION, OR INDICTMENT, OR IF CHARGES HAVE ALREADY BEEN FILED, BY GIVING THE COURT NOTICE OF INTENT TO PROCEED WITH THE PROSECUTION. THE DEFENDANT MAY, WITHIN FOURTEEN DAYS AFTER THE FIRST COURT APPEARANCE FOLLOWING SUCH A FILING, REQUEST A HEARING TO CONTEST WHETHER A VIOLATION OCCURRED. THE DISTRICT ATTORNEY HAS THE BURDEN BY A PREPONDERANCE OF THE EVIDENCE TO SHOW THAT A VIOLATION HAS IN FACT OCCURRED, AND THE PROCEDURAL SAFEGUARDS REQUIRED IN A REVOCATION OF PROBATION HEARING PURSUANT TO SECTION 16-11-206, C.R.S., SHALL APPLY. THE COURT MAY, WHEN IT APPEARS THAT THE ALLEGED VIOLATION OF THE DIVERSION AGREEMENT IS A PENDING CRIMINAL OFFENSE AGAINST THE DEFENDANT, CONTINUE THE DIVERSION REVOCATION HEARING UNTIL THE COMPLETION OF THE CRIMINAL PROCEEDING. IF THE COURT FINDS A VIOLATION HAS OCCURRED, OR A HEARING IS NOT REQUESTED, THE PROSECUTION MAY CONTINUE. IF THE COURT FINDS THE DISTRICT ATTORNEY HAS NOT PROVEN A VIOLATION, THE COURT SHALL DISMISS THE CRIMINAL CASE WITHOUT PREJUDICE AND RETURN THE DEFENDANT TO THE SUPERVISION OF THE DIVERSION PROGRAM TO COMPLETE THE TERMS OF THE AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Upon a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence under section 18-1.3-102 or a verdict of guilty by the court or a jury, to any offense under this article, or upon entry of a ~~deferred prosecution~~ DIVERSION pursuant to section 18-1.3-101 for any offense under this article, the court shall order the drug offender to immediately report to the sheriff's department in the county where the drug offender was charged, at which time the drug offender's fingerprints and photographs shall be taken and returned to the court, which fingerprints and photographs shall become a part of the court's official documents and records pertaining to the charges against the drug offender and the drug offender's identification in association with such charges. On any trial for a violation of any criminal law of this state, a duly authenticated copy of the record of former

convictions and judgments of any court of record for any of said crimes against the drug offender named in said convictions and judgments shall be prima facie evidence of such convictions and may be used in evidence against the drug offender. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or which are part of the record at the place of the drug offender's incarceration after sentencing for any of such former convictions and judgments shall be prima facie evidence of the identity of the drug offender and may be used in evidence against such drug offender. Any drug offender who fails to immediately comply with the court's order to report to the sheriff's department, to furnish fingerprints, or to have photographs taken may be held in contempt of court.

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

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

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

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

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

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

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

24-72-308. Sealing of arrest and criminal records other than convictions. (1) (a) (I) Except as otherwise provided in subparagraphs (II)

and (III) of this paragraph (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged OR ENTERED INTO A DIVERSION AGREEMENT PURSUANT TO SECTION 18-1.3-101, C.R.S., in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

SECTION 10. In Colorado Revised Statutes, 24-72-308, **amend** (1) (c) as follows:

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

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

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

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

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

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcohol content - tests - penalties - useful public service program. (7) (b) The provisions of this subsection (7) relating to the performance of useful public service are also applicable to any defendant who receives a ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

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

42-4-1301.3. Alcohol and drug driving safety program. (5) The provisions of this section are also applicable to any defendant who receives

a ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated alcohol evaluation, level I or level II education program, or level I or level II treatment program to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

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

42-4-1301.4. Useful public service - definitions - local programs - assessment of costs. (6) The provisions of this section relating to the performance of useful public service are also applicable to any defendant who receives a ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

SECTION 15. In Colorado Revised Statutes, **add** 13-3-115 as follows:

13-3-115. Diversion funding committee. (1) THE STATE COURT ADMINISTRATOR SHALL ESTABLISH A DIVERSION FUNDING COMMITTEE, REFERRED TO IN THIS SECTION AS THE "COMMITTEE". THE COMMITTEE SHALL CONSIST OF:

- (a) THE ATTORNEY GENERAL OR HIS OR HER DESIGNEE;
- (b) THE EXECUTIVE DIRECTOR OF A STATEWIDE ORGANIZATION REPRESENTING DISTRICT ATTORNEYS OR HIS OR HER DESIGNEE;
- (c) THE STATE PUBLIC DEFENDER OR HIS OR HER DESIGNEE;
- (d) THE DIRECTOR OF THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY; AND

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

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

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

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

(II) THE NUMBER OF ADULTS THAT COULD BE ENROLLED IN A PRETRIAL DIVERSION PROGRAM USING THE FUNDS REQUESTED AND A DESCRIPTION OF THE ELIGIBILITY CRITERIA DEVELOPED BY THE DISTRICT ATTORNEY;

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

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

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

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

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

(3) THE COMMITTEE MUST REVIEW ALL FUNDING REQUESTS

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

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

(5) A DISTRICT ATTORNEY THAT RECEIVES FUNDING PURSUANT TO THIS SECTION SHALL COLLECT DATA AND PROVIDE A STATUS REPORT TO THE JUDICIAL DEPARTMENT BY A DATE PRESCRIBED BY THE COMMITTEE THAT INCLUDES BUT IS NOT LIMITED TO:

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

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

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

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

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

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

(7) ANY FUNDS PROVIDED TO A DISTRICT ATTORNEY FOR PURPOSES OF OPERATING AN ADULT PRETRIAL DIVERSION PROGRAM PURSUANT TO THIS

SECTION SHALL NOT BE REVERTED TO THE GENERAL FUND IF UNEXPENDED BY THE END OF THE FISCAL YEAR IN WHICH THE FUNDS WERE RECEIVED.

SECTION 16. In Colorado Revised Statutes, 18-19-103, **amend** (5) (d) (I) as follows:

18-19-103. Source of revenues - allocation of moneys. (5) (d) Moneys from the correctional treatment cash fund may be used to serve the following populations:

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

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

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

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

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

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

SECTION 18. Act subject to petition - effective date. (1) 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 (August 7, 2013, if adjournment sine die is on May 8, 2013); 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 2014 and, in such case, will take effect on the date of the official declaration of

the vote thereon by the governor.

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

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO