

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0365.01 Michael Dohr x4347

HOUSE BILL 13-1156

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Steadman,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CREATION OF AN ADULT DIVERSION PROGRAM.**

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://www.leg.state.co.us/billsummaries>.)

The bill repeals the adult deferred prosecution sentencing option and replaces it with an adult diversion program. A defendant and district attorney may enter into a diversion agreement for up to 2 years prior to proceeding with the criminal case against the defendant. During the period of the diversion the defendant is subject to the supervisory conditions of the diversion agreement. If the defendant successfully completes the diversion period, the court shall dismiss with prejudice the

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

charges against the defendant. If the defendant violates a condition of the diversion agreement, the prosecution may initiate revocation of diversion agreement proceedings against the defendant.

The bill makes conforming amendments.

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

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

4 **18-1.3-101. Pretrial diversion. (1) Legislative intent.** THE
5 INTENT OF THIS SECTION IS TO FACILITATE AND ENCOURAGE DIVERSION OF
6 DEFENDANTS FROM THE CRIMINAL JUSTICE SYSTEM WHEN DIVERSION MAY
7 PREVENT DEFENDANTS FROM COMMITTING ADDITIONAL CRIMINAL ACTS,
8 RESTORE VICTIMS OF CRIME, FACILITATE THE DEFENDANT'S ABILITY TO
9 PAY RESTITUTION TO VICTIMS OF CRIME, AND REDUCE THE NUMBER OF
10 CASES IN THE CRIMINAL JUSTICE SYSTEM. DIVERSION SHOULD ENSURE
11 DEFENDANT ACCOUNTABILITY WHILE ALLOWING DEFENDANTS TO AVOID
12 THE COLLATERAL CONSEQUENCES ASSOCIATED WITH CRIMINAL CHARGES
13 AND CONVICTIONS. A DISTRICT ATTORNEY'S OFFICE MAY DEVELOP OR
14 CONTINUE TO OPERATE ITS OWN DIVERSION PROGRAM THAT IS NOT
15 SUBJECT TO THE PROVISIONS OF THIS SECTION. IF A DISTRICT ATTORNEY'S
16 OFFICE ACCEPTS STATE MONEYS TO CREATE OR OPERATE A DIVERSION
17 PROGRAM PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY'S OFFICE
18 MUST COMPLY WITH THE PROVISIONS OF THIS SECTION.

19 (2) **Period of diversion.** ■■■ IN ANY CASE, EITHER BEFORE OR
20 AFTER CHARGES ARE FILED, ■■■ THE DISTRICT ATTORNEY MAY SUSPEND
21 PROSECUTION OF THE OFFENSE FOR A PERIOD NOT TO EXCEED TWO YEARS.
22 THE PERIOD OF DIVERSION MAY BE EXTENDED FOR AN ADDITIONAL TIME
23 UP TO ONE YEAR IF THE FAILURE TO PAY RESTITUTION IS THE SOLE

1 CONDITION OF DIVERSION THAT HAS NOT BEEN FULFILLED, BECAUSE OF
2 INABILITY TO PAY, AND THE DEFENDANT HAS A FUTURE ABILITY TO PAY.
3 DURING THE PERIOD OF DIVERSION THE DEFENDANT MAY BE PLACED
4 UNDER THE SUPERVISION OF THE PROBATION DEPARTMENT OR A DIVERSION
5 PROGRAM APPROVED BY THE DISTRICT ATTORNEY.

6 (3) **Guidelines for eligibility.** EACH DISTRICT ATTORNEY THAT
7 USES STATE MONEYS FOR A DIVERSION PROGRAM PURSUANT TO THIS
8 SECTION SHALL ADOPT POLICIES AND GUIDELINES DELINEATING
9 ELIGIBILITY CRITERIA FOR PRETRIAL DIVERSION, AND MAY AGREE TO
10 DIVERSION IN ANY CASE IN WHICH THERE EXISTS SUFFICIENT ADMISSIBLE
11 EVIDENCE TO SUPPORT A CONVICTION. IN DETERMINING WHETHER AN
12 INDIVIDUAL IS APPROPRIATE FOR DIVERSION, THE DISTRICT ATTORNEY
13 SHALL CONSIDER:

14 (a) THE NATURE OF THE CRIME CHARGED AND THE
15 CIRCUMSTANCES SURROUNDING IT;

16 (b) ANY SPECIAL CHARACTERISTICS OR CIRCUMSTANCES OF THE
17 DEFENDANT;

18 (c) WHETHER DIVERSION IS CONSISTENT WITH THE DEFENDANT'S
19 REHABILITATION AND REINTEGRATION; AND

20 (d) WHETHER THE PUBLIC INTEREST WILL BE BEST SERVED BY
21 DIVERTING THE INDIVIDUAL FROM PROSECUTION.

22 (4) BEFORE ENTERING INTO A PRETRIAL DIVERSION AGREEMENT,
23 THE DISTRICT ATTORNEY MAY REQUIRE A DEFENDANT ■ ■ TO PROVIDE
24 INFORMATION REGARDING PRIOR CRIMINAL CHARGES, EDUCATION AND
25 WORK EXPERIENCE, FAMILY, RESIDENCE IN THE COMMUNITY, AND OTHER
26 INFORMATION RELATING TO THE DIVERSION PROGRAM. THE DEFENDANT
27 SHALL NOT BE DENIED THE OPPORTUNITY TO CONSULT WITH LEGAL

1 COUNSEL BEFORE CONSENTING TO DIVERSION. LEGAL COUNSEL MAY BE
2 APPOINTED AS PROVIDED UNDER ARTICLE 1 OF TITLE 21, C.R.S.

3 (5) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE
4 CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS
5 SECTION, AN INDIVIDUAL ACCUSED OF AN OFFENSE, THE UNDERLYING
6 FACTUAL BASIS OF WHICH INVOLVES DOMESTIC VIOLENCE AS DEFINED IN
7 SECTION 18-6-800.3 (1), C.R.S., IS NOT ELIGIBLE FOR PRETRIAL DIVERSION
8 UNLESS THAT INDIVIDUAL HAS COMPLETED A TREATMENT EVALUATION
9 CONDUCTED BY A DOMESTIC VIOLENCE EVALUATOR APPROVED BY THE
10 DOMESTIC VIOLENCE OFFENDER MANAGEMENT BOARD AS REQUIRED BY
11 SECTION 16-11.8-103 (4), C.R.S., AND THAT EVALUATION FINDS THAT THE
12 INDIVIDUAL IS APPROPRIATE FOR THE DIVERSION PROGRAM ESTABLISHED
13 BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION. A DISTRICT
14 ATTORNEY SHALL NOT PLACE AN INDIVIDUAL IN A DIVERSION PROGRAM
15 ESTABLISHED PURSUANT TO THIS SECTION UNLESS THE EVALUATION FINDS
16 THE INDIVIDUAL APPROPRIATE FOR SUCH A PLACEMENT.

17 (6) IN A JURISDICTION THAT RECEIVES STATE MONEYS FOR THE
18 CREATION OR OPERATION OF DIVERSION PROGRAMS PURSUANT TO THIS
19 SECTION, AN INDIVIDUAL ACCUSED OF A SEX OFFENSE AS DEFINED IN
20 SECTION 18-1.3-1003 (5), C.R.S., IS NOT ELIGIBLE FOR PRETRIAL
21 DIVERSION UNLESS THAT INDIVIDUAL HAS SUBMITTED TO A RISK AND
22 TREATMENT EVALUATION CONDUCTED BY A SEX OFFENDER EVALUATOR
23 APPROVED BY THE SEX OFFENDER MANAGEMENT BOARD AS REQUIRED BY
24 SECTION 16-11.7-103 (4), C.R.S., AND THAT EVALUATION FINDS THAT THE
25 INDIVIDUAL IS APPROPRIATE FOR THE DIVERSION PROGRAM ESTABLISHED
26 BY THE DISTRICT ATTORNEY PURSUANT TO THIS SECTION. A DISTRICT
27 ATTORNEY SHALL NOT PLACE AN INDIVIDUAL IN A DIVERSION PROGRAM

1 ESTABLISHED PURSUANT TO THIS SECTION UNLESS THE EVALUATION FINDS
2 THE INDIVIDUAL APPROPRIATE FOR SUCH A PLACEMENT. IF A DIVERSION
3 AGREEMENT IS ENTERED AND SUCCESSFULLY COMPLETED, THE CRIMES
4 CHARGED OR FACTS ALLEGED DO NOT CONSTITUTE A HISTORY OF SEX
5 OFFENSES FOR PURPOSES OF SECTION 16-11.7-102 (2) (a) (II), C.R.S.

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

14 (8) **Diversion agreements.** (a) ALL PRETRIAL DIVERSIONS SHALL
15 BE GOVERNED BY THE TERMS OF AN INDIVIDUALIZED DIVERSION
16 AGREEMENT SIGNED BY THE DEFENDANT, THE DEFENDANT'S ATTORNEY IF
17 THE DEFENDANT IS REPRESENTED BY AN ATTORNEY, AND THE DISTRICT
18 ATTORNEY.

19 (b) THE DIVERSION AGREEMENT SHALL INCLUDE A WRITTEN
20 WAIVER OF THE RIGHT TO A SPEEDY TRIAL FOR THE PERIOD OF THE
21 DIVERSION. ALL DIVERSION AGREEMENTS SHALL INCLUDE A CONDITION
22 THAT THE DEFENDANT NOT COMMIT ANY CRIMINAL OFFENSE DURING THE
23 PERIOD OF THE AGREEMENT. DIVERSION AGREEMENTS MAY ALSO INCLUDE
24 PROVISIONS, AGREED TO BY THE DEFENDANT, CONCERNING PAYMENT OF
25 RESTITUTION AND COURT COSTS, PAYMENT OF A SUPERVISION FEE NOT TO
26 EXCEED THAT PROVIDED FOR IN SECTION 18-1.3-204 (2) (a) (V), OR
27 PARTICIPATION IN RESTORATIVE JUSTICE PRACTICES AS DEFINED IN

1 SECTION 18-1-901 (3) (o.5). THE CONDITIONS OF DIVERSION SHALL BE
2 LIMITED TO THOSE SPECIFIC TO THE INDIVIDUAL DEFENDANT OR
3 NECESSARY FOR PROPER SUPERVISION OF THE INDIVIDUAL DEFENDANT. A
4 DIVERSION AGREEMENT SHALL PROVIDE THAT IF THE DEFENDANT FULFILLS
5 THE OBLIGATIONS DESCRIBED THEREIN, THE COURT SHALL ORDER ALL
6 CRIMINAL CHARGES FILED AGAINST THE DEFENDANT DISMISSED WITH
7 PREJUDICE.

8 (c) THE DIVERSION AGREEMENT MAY REQUIRE AN ASSESSMENT OF
9 THE DEFENDANT'S CRIMINOGENIC NEEDS, TO BE PERFORMED AFTER THE
10 PERIOD OF DIVERSION HAS BEGUN BY EITHER THE PROBATION DEPARTMENT
11 OR A DIVERSION PROGRAM APPROVED BY THE DISTRICT ATTORNEY. BASED
12 ON THE RESULTS OF THAT ASSESSMENT, THE PROBATION DEPARTMENT OR
13 APPROVED DIVERSION PROGRAM MAY DIRECT THE DEFENDANT TO
14 PARTICIPATE IN PROGRAMS OFFERING MEDICAL, THERAPEUTIC,
15 EDUCATIONAL, VOCATIONAL, CORRECTIVE, PREVENTIVE, OR OTHER
16 REHABILITATIVE SERVICES. DEFENDANTS WITH THE ABILITY TO PAY MAY
17 BE REQUIRED TO PAY FOR SUCH PROGRAMS OR SERVICES.

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

26 (e) A DEFENDANT SHALL NOT BE REQUIRED TO ENTER ANY PLEA TO
27 A CRIMINAL CHARGE AS A CONDITION OF PRETRIAL DIVERSION. A

1 DEFENDANT'S OR COUNSEL'S STATEMENT IN A DIVERSION CONFERENCE OR
2 IN ANY OTHER DISCUSSION OF A PROPOSED DIVERSION AGREEMENT,
3 INCLUDING AN EVALUATION PERFORMED PURSUANT TO SUBSECTIONS (5)
4 AND (6) OF THIS SECTION, OTHER THAN A STATEMENT PROVIDED FOR IN
5 PARAGRAPH (d) OF THIS SUBSECTION (8), SHALL NOT BE ADMISSIBLE AS
6 EVIDENCE IN CRIMINAL PROCEEDINGS ON THE CRIMES CHARGED OR FACTS
7 ALLEGED.

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

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

20 (b) UPON THE DEFENDANT'S SATISFACTORY COMPLETION OF AND
21 DISCHARGE FROM SUPERVISION, THE COURT SHALL DISMISS WITH
22 PREJUDICE ALL CHARGES AGAINST THE DEFENDANT. THE EFFECT OF THE
23 DISMISSAL IS TO RESTORE THE DEFENDANT TO THE STATUS HE OR SHE
24 OCCUPIED BEFORE THE ARREST, CITATION, OR SUMMONS. A SUCCESSFULLY
25 COMPLETED DIVERSION AGREEMENT SHALL NOT BE CONSIDERED A
26 CONVICTION FOR ANY PURPOSE. A PERSON WITH AN ORDER OF DISMISSAL
27 ENTERED PURSUANT TO THIS ARTICLE MAY NOT BE SUBJECT TO CHARGE,

1 PROSECUTION, OR LIABILITY UNDER COLORADO LAW OF PERJURY OR
2 OTHERWISE GIVING A FALSE STATEMENT BY REASON OF HIS OR HER
3 FAILURE TO RECITE OR ACKNOWLEDGE THE ARREST, CITATION, OR
4 SUMMONS IN RESPONSE TO ANY INQUIRY MADE FOR ANY PURPOSE.

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

12 (d) IF THE DEFENDANT VIOLATES THE CONDITIONS OF THE
13 DIVERSION AGREEMENT, THE SUPERVISING ENTITY SHALL PROVIDE
14 WRITTEN NOTICE OF THE VIOLATION TO THE DEFENDANT, THE DISTRICT
15 ATTORNEY, AND THE COURT. THE DISTRICT ATTORNEY, IN HIS OR HER SOLE
16 DISCRETION, MAY INITIATE REVOCATION OF A DIVERSION AGREEMENT BY
17 THE FILING OF A CRIMINAL COMPLAINT, INFORMATION, OR INDICTMENT, OR
18 IF CHARGES HAVE ALREADY BEEN FILED, BY GIVING THE COURT NOTICE OF
19 INTENT TO PROCEED WITH THE PROSECUTION. THE DEFENDANT MAY,
20 WITHIN FOURTEEN DAYS AFTER THE FIRST COURT APPEARANCE FOLLOWING
21 SUCH A FILING, REQUEST A HEARING TO CONTEST WHETHER A VIOLATION
22 OCCURRED. THE DISTRICT ATTORNEY HAS THE BURDEN BY A
23 PREPONDERANCE OF THE EVIDENCE TO SHOW THAT A VIOLATION HAS IN
24 FACT OCCURRED, AND THE PROCEDURAL SAFEGUARDS REQUIRED IN A
25 REVOCATION OF PROBATION HEARING PURSUANT TO SECTION 16-11-206,
26 C.R.S., SHALL APPLY. THE COURT MAY, WHEN IT APPEARS THAT THE
27 ALLEGED VIOLATION OF THE DIVERSION AGREEMENT IS A PENDING

1 CRIMINAL OFFENSE AGAINST THE DEFENDANT, CONTINUE THE DIVERSION
2 REVOCATION HEARING UNTIL THE COMPLETION OF THE CRIMINAL
3 PROCEEDING. IF THE COURT FINDS A VIOLATION HAS OCCURRED, OR A
4 HEARING IS NOT REQUESTED, THE PROSECUTION MAY CONTINUE. IF THE
5 COURT FINDS THE DISTRICT ATTORNEY HAS NOT PROVEN A VIOLATION, THE
6 COURT SHALL DISMISS THE CRIMINAL CASE WITHOUT PREJUDICE AND
7 RETURN THE DEFENDANT TO THE SUPERVISION OF THE DIVERSION
8 PROGRAM TO COMPLETE THE TERMS OF THE AGREEMENT.

9 (e) IF A DEFENDANT IS PROSECUTED FOLLOWING A VIOLATION OF
10 A DIVERSION AGREEMENT, A FACTUAL STATEMENT ENTERED PURSUANT TO
11 PARAGRAPH (d) OF SUBSECTION (8) OF THIS SECTION IS ADMISSIBLE AS
12 IMPEACHMENT EVIDENCE. ANY OTHER INFORMATION CONCERNING
13 DIVERSION, INCLUDING PARTICIPATION IN A DIVERSION PROGRAM,
14 INCLUDING AN EVALUATION PERFORMED PURSUANT TO SUBSECTIONS (5)
15 AND (6) OF THIS SECTION. THE TERMS OF A DIVERSION AGREEMENT, OR
16 STATEMENTS MADE TO TREATMENT PROVIDERS DURING A DIVERSION
17 PROGRAM, SHALL NOT BE ADMITTED INTO EVIDENCE AT TRIAL FOR ANY
18 PURPOSE.

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

21 **16-4-108. Exoneration from bond liability.** (2) Upon entry of
22 an order for deferred prosecution AS IT EXISTED BEFORE THE EFFECTIVE
23 DATE OF HOUSE BILL 13-1156, A DIVERSION AUTHORIZED BY SECTION
24 18-1.3-101, C.R.S., or deferred judgment as authorized in sections
25 ~~18-1.3-101~~ and SECTION 18-1.3-102, C.R.S., sureties upon any bond given
26 for the appearance of the defendant shall be released from liability on
27 such bond.

1 **SECTION 3.** In Colorado Revised Statutes, 16-7-301, **amend** (2)
2 (d) as follows:

3 **16-7-301. Propriety of plea discussions and plea agreements.**

4 (2) The district attorney may agree to one or more of the following,
5 depending upon the circumstances of the individual case:

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

8 ■ ■

9 **SECTION 4.** In Colorado Revised Statutes, 18-18-432, **amend**
10 (2) (b) and (3) as follows:

11 **18-18-432. Drug offender public service and rehabilitation**

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

21 (3) Upon a plea of guilty, including a plea of guilty entered
22 pursuant to a deferred sentence under section 18-1.3-102 or a verdict of
23 guilty by the court or a jury, to any offense under this article, or upon
24 entry of a ~~deferred prosecution~~ DIVERSION pursuant to section 18-1.3-101
25 for any offense under this article, the court shall order the drug offender
26 to immediately report to the sheriff's department in the county where the
27 drug offender was charged, at which time the drug offender's fingerprints

1 and photographs shall be taken and returned to the court, which
2 fingerprints and photographs shall become a part of the court's official
3 documents and records pertaining to the charges against the drug offender
4 and the drug offender's identification in association with such charges. On
5 any trial for a violation of any criminal law of this state, a duly
6 authenticated copy of the record of former convictions and judgments of
7 any court of record for any of said crimes against the drug offender
8 named in said convictions and judgments shall be prima facie evidence
9 of such convictions and may be used in evidence against the drug
10 offender. Identification photographs and fingerprints that are part of the
11 record of such former convictions and judgments of any court of record
12 or which are part of the record at the place of the drug offender's
13 incarceration after sentencing for any of such former convictions and
14 judgments shall be prima facie evidence of the identity of the drug
15 offender and may be used in evidence against such drug offender. Any
16 drug offender who fails to immediately comply with the court's order to
17 report to the sheriff's department, to furnish fingerprints, or to have
18 photographs taken may be held in contempt of court.

19 **SECTION 5.** In Colorado Revised Statutes, 24-4.1-302, **add** (2)
20 (a.7) as follows:

21 **24-4.1-302. Definitions.** (2) "Critical stages" means the
22 following stages of the criminal justice process:

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

25 **SECTION 6.** In Colorado Revised Statutes, 24-4.1-302.5, **amend**
26 (1) (b) as follows:

27 **24-4.1-302.5. Rights afforded to victims.** (1) In order to

1 preserve and protect a victim's rights to justice and due process, each
2 victim of a crime shall have the following rights:

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

9 **SECTION 7.** In Colorado Revised Statutes, 24-72-308, **amend**
10 (1) (a) (I) as follows:

11 **24-72-308. Sealing of arrest and criminal records other than**
12 **convictions.** (1) (a) (I) Except as otherwise provided in subparagraphs
13 (II) and (III) of this paragraph (a), any person in interest may petition the
14 district court of the district in which any arrest and criminal records
15 information pertaining to said person in interest is located for the sealing
16 of all of said records, except basic identification information, if the
17 records are a record of official actions involving a criminal offense for
18 which said person in interest was not charged OR ENTERED INTO A
19 DIVERSION AGREEMENT PURSUANT TO SECTION 18-1.3-101, C.R.S., in any
20 case which was completely dismissed, or in any case in which said person
21 in interest was acquitted.

22 **SECTION 8.** In Colorado Revised Statutes, 24-72-308, **amend**
23 (1) (c) as follows:

24 **24-72-308. Sealing of arrest and criminal records other than**
25 **convictions.** (1) (c) EXCEPT AS PROVIDED FOR IN SECTION 18-1.3-101 (9)
26 (c), C.R.S., after the hearing described in subparagraph (II) of paragraph
27 (b) of this subsection (1) is conducted and if the court finds that the harm

1 to the privacy of the petitioner or dangers of unwarranted adverse
2 consequences to the petitioner outweigh the public interest in retaining
3 the records, the court may order such records, except basic identification
4 information, to be sealed. Any order entered pursuant to this paragraph (c)
5 shall be directed to every custodian who may have custody of any part of
6 the arrest and criminal records information which is the subject of the
7 order. Whenever a court enters an order sealing criminal records pursuant
8 to this paragraph (c), the petitioner shall provide the Colorado bureau of
9 investigation and every custodian of such records with a copy of such
10 order. The petitioner shall provide a private custodian with a copy of the
11 order and send the private custodian an electronic notification of the
12 order. Each private custodian that receives a copy of the order from the
13 petitioner shall remove the records that are subject to an order from its
14 database. Thereafter, the petitioner may request and the court may grant
15 an order sealing the civil case in which the records were sealed.

16 **SECTION 9.** In Colorado Revised Statutes, 33-13-108.1, **amend**
17 (12) (f) as follows:

18 **33-13-108.1. Operating a vessel while under the influence.**

19 (12) (f) For the purposes of this subsection (12), "alcohol and drug
20 driving safety education or treatment" has the meaning set forth in section
21 42-4-1301.3, C.R.S., and the alcohol and drug driving safety program and
22 the presentence alcohol and drug evaluations authorized in said section
23 shall be utilized for the purposes of this subsection (12). The presentence
24 alcohol and drug evaluation shall be conducted on all persons convicted
25 of a violation of subsection (1) of this section; except that this
26 requirement shall not apply to persons who are not residents of Colorado
27 at the time of sentencing. Any defendant sentenced to level I or level II

1 education or treatment programs shall be instructed by the court to meet
2 all financial obligations of the programs. If the financial obligations are
3 not met, the sentencing court shall be notified for the purpose of
4 collection or review and further action on the defendant's sentence. In
5 addition to any other penalties, fines, fees, or costs prescribed in this
6 section, the court shall assess an amount, not to exceed the amount
7 established in section 42-4-1301.3, C.R.S., upon any person convicted of
8 a violation of subsection (1) of this section. The amount shall be used
9 only to pay for the costs authorized in section 42-4-1301.3, C.R.S. The
10 court shall consider the alcohol and drug evaluation prior to sentencing.
11 This paragraph (f) is also applicable to any defendant who receives a
12 ~~deferred prosecution~~ DIVERSION in accordance with section 18-1.3-101,
13 C.R.S., or who receives a deferred sentence in accordance with section
14 18-1.3-102, C.R.S.

15 **SECTION 10.** In Colorado Revised Statutes, 41-2-102, **amend**
16 (7) (b) as follows:

17 **41-2-102. Operating an aircraft under the influence -**
18 **operating an aircraft with excessive alcohol content - tests - penalties**
19 **- useful public service program.** (7) (b) The provisions of this
20 subsection (7) relating to the performance of useful public service are also
21 applicable to any defendant who receives a ~~deferred prosecution~~
22 DIVERSION in accordance with section 18-1.3-101, C.R.S., or who
23 receives a deferred sentence in accordance with section 18-1.3-102,
24 C.R.S., and the completion of any stipulated amount of useful public
25 service hours to be completed by the defendant shall be ordered by the
26 court in accordance with the conditions of such deferred prosecution or
27 deferred sentence as stipulated to by the prosecution and the defendant.

1 **SECTION 11.** In Colorado Revised Statutes, 42-4-1301.3,
2 **amend** (5) as follows:

3 **42-4-1301.3. Alcohol and drug driving safety program.**

4 (5) The provisions of this section are also applicable to any defendant
5 who receives a ~~deferred prosecution~~ DIVERSION in accordance with
6 section 18-1.3-101, C.R.S., or who receives a deferred sentence in
7 accordance with section 18-1.3-102, C.R.S., and the completion of any
8 stipulated alcohol evaluation, level I or level II education program, or
9 level I or level II treatment program to be completed by the defendant
10 shall be ordered by the court in accordance with the conditions of such
11 deferred prosecution or deferred sentence as stipulated to by the
12 prosecution and the defendant.

13 **SECTION 12.** In Colorado Revised Statutes, 42-4-1301.4,
14 **amend** (6) as follows:

15 **42-4-1301.4. Useful public service - definitions - local
16 programs - assessment of costs.**

17 (6) The provisions of this section relating to the performance of useful public service are also applicable to
18 any defendant who receives a ~~deferred prosecution~~ DIVERSION in
19 accordance with section 18-1.3-101, C.R.S., or who receives a deferred
20 sentence in accordance with section 18-1.3-102, C.R.S., and the
21 completion of any stipulated amount of useful public service hours to be
22 completed by the defendant shall be ordered by the court in accordance
23 with the conditions of such deferred prosecution or deferred sentence as
24 stipulated to by the prosecution and the defendant.

25 **SECTION 13. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2014 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.