

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

DRAFT  
10.5.21

**BILL 5**

LLS NO. 22-0142.01 Jane Ritter x4342

**INTERIM COMMITTEE BILL**

**Legislative Oversight Committee Concerning the Treatment of Persons  
with Mental Health Disorders in the Criminal and Juvenile Justice  
Systems**

**BILL TOPIC: "Pretrial Diversion For Person With Behavioral Hlth"**

**A BILL FOR AN ACT**

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

**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://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning the Treatment  
of Persons with Mental Health Disorders in the Criminal and**

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

**Juvenile Justice Systems.** The bill expands the existing pretrial diversion program to include diversion programs that are intended to identify eligible individuals with behavioral health disorders and divert such individuals out of the criminal justice system and into community treatment programs. This expansion replaces the alternative pilot programs to divert individuals with mental health conditions that are currently set to repeal July 1, 2022.

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*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 ARE INTENDED TO IDENTIFY 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 program pursuant to this section, the district

1 attorney's office must comply with the provisions of this section.

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

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

12 (b) Any special characteristics or circumstances of the defendant,  
13 INCLUDING BUT NOT LIMITED TO WHETHER THE DEFENDANT HAS A MENTAL  
14 HEALTH OR OTHER BEHAVIORAL HEALTH DISORDER;

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

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

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

23 (b) The diversion agreement ~~shall~~ MUST include a written waiver  
24 of the right to a speedy trial for the period of the diversion. All diversion  
25 agreements ~~shall~~ MUST include a condition that the defendant not commit  
26 any criminal offense during the period of the agreement. Diversion  
27 agreements may also include provisions, agreed to by the defendant,

1 concerning payment of restitution and court costs, payment of a  
2 supervision fee not to exceed that provided for in section 18-1.3-204  
3 (2)(a)(V), ~~or~~ participation in restorative justice practices as defined in  
4 section 18-1-901 (3)(o.5), OR AN AGREEMENT TO RECEIVE TREATMENT  
5 FOR ANY OF THE DEFENDANT'S BEHAVIORAL HEALTH DISORDERS. Any  
6 pretrial diversion supervision fees collected may be retained by the  
7 district attorney for purposes of funding its adult pretrial diversion  
8 program. The conditions of diversion ~~shall be~~ ARE limited to those  
9 specific to the individual defendant or necessary for proper supervision  
10 of the individual defendant. A diversion agreement ~~shall~~ MUST provide  
11 that if the defendant fulfills the obligations described therein, the court  
12 shall order all criminal charges filed against the defendant dismissed with  
13 prejudice.

14 (c) The diversion agreement may require an assessment of the  
15 defendant's criminogenic AND BEHAVIORAL HEALTH needs, to be  
16 performed after the period of diversion has begun by either the probation  
17 department, ~~or a~~ diversion program, OR COMMUNITY TREATMENT  
18 PROGRAM approved by the district attorney. Based on the results of that  
19 assessment, the probation department or approved diversion OR  
20 COMMUNITY TREATMENT program may direct the defendant to participate  
21 in programs offering medical, therapeutic, BEHAVIORAL HEALTH,  
22 educational, vocational, corrective, preventive, or other rehabilitative  
23 services. Defendants with the ability to pay may be required to pay for  
24 such programs or services.

25 **SECTION 2. 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; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
2 of the state constitution against this act or an item, section, or part of this  
3 act within such period, then the act, item, section, or part will not take  
4 effect unless approved by the people at the general election to be held in  
5 November 2022 and, in such case, will take effect on the date of the  
6 official declaration of the vote thereon by the governor.