

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILL E

LLS NO. 24-0278.01 Alana Rosen x2606

SENATE BILL

SENATE SPONSORSHIP

Rodriguez and Fields,

HOUSE SPONSORSHIP

English and Bradfield, Amabile

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONSIDERING FACTORS RELATED TO THE CAPABILITY TO**
102 **PARTICIPATE IN THE JUDICIAL PROCESS IN DETERMINING**
103 **WHETHER TO PLACE A PERSON INTO A PRETRIAL DIVERSION**
104 **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://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill requires a district attorney's office, or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

the office's designee, to consider the use of a juvenile diversion program (program) to prevent a juvenile who demonstrates behaviors or symptoms consistent with an intellectual and developmental disability, a mental or behavioral health issue, or a lack of mental capacity from further involvement in formal delinquency proceedings.

Current law allows programs to use the results of an approved and validated assessment tool to identify the appropriate diversion services a juvenile may need and the professionals who may provide the services. The bill adds behavioral health services and services for juveniles with developmental disabilities to the types of services a juvenile may need and adds behavioral health treatment providers and providers who offer services to juveniles with developmental disabilities to the list of professionals who may provide the appropriate diversion services.

If a defendant's competency is raised or a defendant is found incompetent to proceed, the bill allows the defendant to enter into a diversion agreement if the court finds that the defendant has the ability to participate and is advised of the potential consequences of failure to comply. The defendant's entrance into the diversion agreement does not waive the issue of competency to stand trial if there is a violation of the diversion agreement and proceedings on the charges resume. The diversion agreement alone is not evidence of competency.

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

2 **SECTION 1.** In Colorado Revised Statutes, 19-2.5-402, **amend**
3 (3)(e), (4)(c)(III), (4)(c)(IV), and (4.5)(c); and **add** (1)(c)(I.5), (4)(b.5),
4 (4)(c)(V), and (4)(c.5) as follows:

5 **19-2.5-402. Juvenile diversion program - authorized - report**
6 **- allocation of money - legislative declaration - definitions.** (1)(c) The
7 goals of the diversion programs are to:

8 (I.5) CONSIDER A JUVENILE WHO DEMONSTRATES BEHAVIORS OR
9 SYMPTOMS CONSISTENT WITH AN INTELLECTUAL AND DEVELOPMENTAL
10 DISABILITY, A MENTAL OR BEHAVIORAL HEALTH ISSUE, OR LACK OF
11 MENTAL CAPACITY, AND DIVERT THE JUVENILE OUT OF THE JUVENILE
12 JUSTICE SYSTEM AND INTO A COMMUNITY TREATMENT PROGRAM;

13 (3) For purposes of this section:

1 (e) "Services" may include, but are not limited to, provision of
2 diagnostic needs assessment, general counseling and counseling during
3 a crisis situation, BEHAVIORAL HEALTH SERVICES, SERVICES FOR
4 JUVENILES WITH DEVELOPMENTAL DISABILITIES, specialized tutoring, job
5 training and placement, restitution programs, community service,
6 constructive recreational activities, day reporting and day treatment
7 programs, and follow-up activities.

8 (4) District attorneys' offices or the office's designees shall:

9 (b.5) CONSIDER THE USE OF DIVERSION TO PREVENT A JUVENILE
10 WHO DEMONSTRATES BEHAVIORS OR SYMPTOMS CONSISTENT WITH AN
11 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A MENTAL HEALTH OR
12 BEHAVIORAL HEALTH ISSUE, OR A LACK OF MENTAL CAPACITY FROM
13 FURTHER INVOLVEMENT IN FORMAL DELINQUENCY PROCEEDINGS. A
14 DISTRICT ATTORNEY'S OFFICE OR THE OFFICE'S DESIGNEE SHALL NOT
15 DISQUALIFY A JUVENILE FROM DIVERSION CONSIDERATION BASED SOLELY
16 ON THE JUVENILE RAISING COMPETENCY PURSUANT TO SECTION
17 19-2.5-702 IF THE JUVENILE IS CAPABLE OF PARTICIPATING IN DIVERSION
18 AND IS ADVISED OF THE POTENTIAL CONSEQUENCES OF FAILURE TO
19 COMPLY WITH DIVERSION.

20 (c) Not deny diversion to a juvenile based on the juvenile's:

21 (III) Age, race or ethnicity, gender, gender identity, gender
22 expression, or sexual orientation; ~~or~~

23 (IV) Legal representation; OR

24 (V) BEHAVIORS OR SYMPTOMS CONSISTENT WITH AN
25 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A MENTAL HEALTH OR
26 BEHAVIORAL HEALTH ISSUE, OR A LACK OF MENTAL CAPACITY, UNLESS
27 THE BEHAVIORS OR SYMPTOMS ARE SO SEVERE THAT THE JUVENILE

1 CANNOT UNDERSTAND OR PARTICIPATE IN DIVERSION.

2 (c.5) IN A CASE IN WHICH A JUVENILE DEMONSTRATES BEHAVIORS
3 OR SYMPTOMS THAT ARE SO SEVERE THAT THE JUVENILE CANNOT
4 UNDERSTAND OR PARTICIPATE IN DIVERSION, CONSIDER ALL AVAILABLE
5 ALTERNATIVES, INCLUDING, BUT NOT LIMITED TO, REFERRAL TO THE STATE
6 DEPARTMENT OR A COLLABORATIVE MANAGEMENT PROGRAM IN LIEU OF
7 ADJUDICATION IF IT IS LIKELY THAT A JUVENILE WOULD BE FOUND
8 INCOMPETENT AND UNLIKELY TO BE RESTORED IN THE FORESEEABLE
9 FUTURE.

10 (4.5) Diversion programs may use the results of an approved
11 validated assessment tool to inform:

12 (c) What services, if any, may be offered to the juvenile.
13 Professionals involved with the juvenile's needs, treatment, and service
14 planning, including district attorneys, public defenders, probation,
15 BEHAVIORAL HEALTH TREATMENT PROVIDERS, PROVIDERS WHO OFFER
16 SERVICES TO JUVENILES FOR DEVELOPMENTAL DISABILITIES, and state and
17 local governmental entities, such as the state department of human
18 services and county departments of human or social services,
19 nongovernmental agencies, and individuals collaborating to provide
20 appropriate diversion services.

21 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-101, **add**
22 (9)(g) as follows:

23 **18-1.3-101. Pretrial diversion - appropriation - repeal.**

24 (9) **Diversion agreements.** (g) IF A DEFENDANT'S COMPETENCY TO
25 PROCEED IS RAISED PURSUANT TO SECTION 16-8.5-102 OR A DEFENDANT
26 IS FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION 16-8.5-103,
27 THE FOLLOWING APPLY:

1 (I) THE DEFENDANT MAY ENTER INTO A DIVERSION AGREEMENT IF
2 THE COURT FINDS THAT THE DEFENDANT HAS THE ABILITY TO PARTICIPATE
3 AND IS ADVISED OF THE POTENTIAL CONSEQUENCES OF FAILURE TO
4 COMPLY;

5 (II) NOTWITHSTANDING SUBSECTION (1)(b) OF THIS SECTION, THE
6 DEFENDANT'S ENTRANCE INTO A DIVERSION AGREEMENT CONSTITUTES A
7 WAIVER OF THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL FOR THE PERIOD
8 OF DIVERSION PURSUANT TO SECTION 18-1-405 (6) REGARDLESS OF
9 WHETHER A WRITTEN WAIVER IS COMPLETED; AND

10 (III) THE DEFENDANT'S ENTRANCE INTO THE DIVERSION
11 AGREEMENT DOES NOT WAIVE THE ISSUE OF COMPETENCY TO STAND TRIAL
12 IF THERE IS A VIOLATION OF THE DIVERSION AGREEMENT AND
13 PROCEEDINGS ON THE CHARGES RESUME. THE DIVERSION AGREEMENT
14 ALONE IS NOT EVIDENCE OF COMPETENCY.

15 **SECTION 3. Safety clause.** The general assembly finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety or for appropriations for
18 the support and maintenance of the departments of the state and state
19 institutions.