

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 24-006

BY SENATOR(S) Rodriguez and Fields, Cutter, Exum, Michaelson Jenet, Priola, Winter F. ;
also REPRESENTATIVE(S) English and Bradfield, Amabile, Bacon, Brown, Clifford, deGruy Kennedy, Duran, Epps, Garcia, Hernandez, Herod, Jodeh, Joseph, Lindsay, Mabrey, Martinez, Parenti, Ricks, Rutinel, Sirota, Story, Weissman, Woodrow, Young, McCluskie.

CONCERNING CONSIDERING FACTORS RELATED TO THE CAPABILITY TO PARTICIPATE IN THE JUDICIAL PROCESS IN DETERMINING WHETHER TO PLACE A PERSON INTO A PRETRIAL DIVERSION PROGRAM.

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

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

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

(I.5) CONSIDER A JUVENILE WHO DEMONSTRATES BEHAVIORS OR

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SYMPTOMS CONSISTENT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A MENTAL OR BEHAVIORAL HEALTH ISSUE, OR LACK OF MENTAL CAPACITY, AND DIVERT THE JUVENILE OUT OF THE JUVENILE JUSTICE SYSTEM AND INTO A COMMUNITY TREATMENT PROGRAM;

(3) For purposes of this section:

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

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

(b.5) CONSIDER THE USE OF DIVERSION TO PREVENT A JUVENILE WHO DEMONSTRATES BEHAVIORS OR SYMPTOMS CONSISTENT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A MENTAL HEALTH OR BEHAVIORAL HEALTH ISSUE, OR A LACK OF MENTAL CAPACITY FROM FURTHER INVOLVEMENT IN FORMAL DELINQUENCY PROCEEDINGS.

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

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

(IV) Legal representation; OR

(V) BEHAVIORS OR SYMPTOMS CONSISTENT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A MENTAL HEALTH OR BEHAVIORAL HEALTH ISSUE, OR A LACK OF MENTAL CAPACITY, UNLESS THE BEHAVIORS OR SYMPTOMS ARE SO SEVERE THAT THE JUVENILE CANNOT UNDERSTAND OR PARTICIPATE IN DIVERSION.

(c.5) IN A CASE IN WHICH A JUVENILE DEMONSTRATES BEHAVIORS OR SYMPTOMS THAT ARE SO SEVERE THAT THE JUVENILE CANNOT UNDERSTAND OR PARTICIPATE IN DIVERSION, CONSIDER ALL AVAILABLE ALTERNATIVES, INCLUDING, BUT NOT LIMITED TO, REFERRAL TO THE STATE DEPARTMENT OR

A COLLABORATIVE MANAGEMENT PROGRAM IN LIEU OF ADJUDICATION IF IT IS LIKELY THAT A JUVENILE WOULD BE FOUND INCOMPETENT AND UNLIKELY TO BE RESTORED IN THE FORESEEABLE FUTURE.

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

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

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

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

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

(I) THE DEFENDANT MAY ENTER INTO A DIVERSION AGREEMENT WITH THE CONSENT OF THE DISTRICT ATTORNEY AND THE COURT IF THE COURT FINDS THAT THE DEFENDANT HAS THE ABILITY TO PARTICIPATE AND IS ADVISED OF THE POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY;

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

(III) 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.

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

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO