

Document: C.R.S. 18-1.3-101

C.R.S. 18-1.3-101

Copy Citation

Statutes current through Chapter 122 of the 2022 Regular Session and effective on or before April 22, 2022. The inclusion of the 2022 legislation is not final. It will be final later in 2022 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated **Title 18. Criminal Code (Arts. 1 – 26)** **Article 1.3. Sentencing in Criminal Cases (Pts. 1 – 14)** **Part 1. Alternatives in Sentencing (§§ 18-1.3-101 – 18-1.3-107)**

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 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, 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, 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 defined in section 18-6.5-102 (2) and (4);
- (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 this title.

(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 completed, a defendant may petition the court to seal all arrest and other criminal records pertaining to the offense using the procedure described in sections 24-72-704 and 24-72-705. Unless otherwise prohibited under section 24-72-703 (11), 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.

History

Source: **L. 2002:**Entire article added with relocations, p. 1365, § 2, effective October 1. **L. 2012:**(1) amended,(SB 12-175), ch. 208, p. 863, § 105, effective July 1. **L. 2013:**Entire section R&RE,(HB 13-1156), ch. 336, p. 1952, § 1, effective August 7. **L. 2014:**(10)(c) amended,(SB 14-206), ch. 317, p. 1377, § 1, effective August 1. **L. 2016:**(7)(c) amended,(SB 16-189), ch. 210, p. 759, § 28, effective June 6. **L. 2019:**(10)(c) amended,(HB 19-1275), ch. 295, p. 2747, § 2, effective August 2.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 1.3

State Notes

ANNOTATION

Law reviews.

For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982).

Annotator's note.

Since § 18-1.3-101 is similar to § 16-7-401 as it existed prior to the 2002 relocation of certain criminal sentencing provisions, relevant cases construing that provision have been included in the annotations to this section.

The obvious legislative intent

in passing the deferred prosecution statute was to delay prosecution for a probationary period, which, if completed satisfactorily, would then require that the charge against a defendant be dismissed with prejudice by the trial court. *People v. Ybarra*, 190 Colo. 409, 547 P.2d 925 (1976).

Defendant alone benefits.

In those cases where the trial court approves a defendant's application for deferred prosecution, it is the defendant alone who benefits by this procedure which may result in the dismissal of charges against him. *People v. Ybarra*, 190 Colo. 409, 547 P.2d 925 (1976).

And the period of any delay in the prosecution of a case is obviously at the instance of the defendant.

People v. Ybarra, 190 Colo. 409, 547 P.2d 925 (1976).

Under § 18-1-405(6)(f) of the speedy trial statute,

it specifically states that the period of any delay in the prosecution of a case "caused at the instance of the defendant" shall be excluded in computing the time within which the defendant shall be brought to trial. *People v. Ybarra*, 190 Colo. 409, 547 P.2d 925 (1976).

Thus failure to execute waiver does not inure to defendant's benefit.

The fact that the defendant did not execute a written waiver of her right to a speedy trial as required in the deferred prosecution statute and as she agreed to do in open court does not inure to her benefit. *People v. Ybarra*, 190 Colo. 409, 547 P.2d 925 (1976).

The prosecutor's consent is a matter of prosecutorial discretion

just as is the choice of several possible charges to press or the decision to move for the dismissal of a criminal charge. *People v. District Court*, 186 Colo. 335, 527 P.2d 50 (1974).

Which is limited by pragmatic factors.

A prosecutor's discretion in charging, deferring, or requesting dismissal is limited by pragmatic factors, but not by judicial intervention. *People v. District Court*, 186 Colo. 335, 527 P.2d 50 (1974).

District court cannot require prosecutor to give reasons for refusing to consent.

Because of the doctrine of separation of powers and because the district attorney is a part of the executive branch, the district court can no more require the district attorney to give his reasons for refusing to consent to a deferred prosecution than a court can require a Colorado governor to give his reasons for failing to grant a pardon. *People v. District Court*, 186 Colo. 335, 527 P.2d 50 (1974).

Content Type:

Terms:

Narrow By: -None-

Date and Time: May 18, 2022 08:13:08 p.m. EDT



[Print](#)

[Cookie Policy](#)

[Terms & Conditions](#)