

DIVERSION FEES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Kathleen Riebe

LONG TITLE

General Description:

This bill authorizes a court to assess a diversion fee on a criminal defendant when that defendant is eligible for a diversion, enters into a diversion agreement with the prosecuting attorney, and the court approves that agreement.

Highlighted Provisions:

This bill:

- ▶ allows a court to assess a diversion fee; and
- ▶ does not disqualify those eligible for diversion due to an inability to pay the diversion fee.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-2-5, as enacted by Laws of Utah 1980, Chapter 15

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-2-5** is amended to read:

77-2-5. Diversion agreement -- Negotiation -- Contents.



28 (1) At any time after the filing of an information or indictment and prior to conviction,
29 the prosecuting attorney may, by written agreement with the defendant, filed with the court,
30 and upon approval of the court, divert a defendant to a non-criminal diversion program.

31 (2) A defendant shall be represented by counsel during negotiations for diversion and
32 at the time of execution of any diversion agreement unless he shall have knowingly and
33 intelligently waived his right to counsel.

34 (3) The defendant has the right to be represented by counsel at any court hearing
35 relating to a diversion program.

36 (4) Any diversion agreement entered into between the prosecution and the defense and
37 approved by a magistrate shall contain a full, detailed statement of the requirements agreed to
38 by the defendant and the reasons for diversion. A decision by a prosecuting attorney not to
39 divert a defendant is not subject to judicial review.

40 [~~(5) Diversion programs longer than two years shall not be permitted.~~]

41 (5) Any diversion agreement entered into between the prosecution and the defense and
42 approved by a magistrate may contain an order that the defendant pay a nonrefundable
43 diversion fee, which shall be allocated in the same manner as if paid as a fine for a criminal
44 conviction under Section 78A-5-110, and which may not exceed the maximum fine that could
45 have been imposed upon conviction and sentencing for the same offense.

46 (6) A diversion agreement shall not be approved unless the defendant, before a
47 magistrate and in the agreement, knowingly and intelligently waives his constitutional right to a
48 speedy trial.

49 (7) A defendant, who is eligible for a diversion agreement under this chapter, shall not
50 be denied a diversion agreement based on an inability to pay the diversion fee.

51 (8) Diversion programs longer than two years shall not be permitted.