

Representative Andrew Stoddard proposes the following substitute bill:

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.

Highlighted Provisions:

This bill:

▶ allows a court to assess a diversion fee on a defendant based on the defendant's ability to pay.

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.

(1) At any time after the filing of an information or indictment and prior to conviction,



26 the prosecuting attorney may, by written agreement with the defendant, filed with the court,
27 and upon approval of the court, divert a defendant to a non-criminal diversion program.

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

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

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

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

38 (5) Any diversion agreement entered into between the prosecution and the defense and
39 approved by a magistrate may contain an order that the defendant pay a nonrefundable
40 diversion fee, which shall be allocated in the same manner as if paid as a fine for a criminal
41 conviction under Section 78A-5-110, or Section 78A-7-120, and which may not exceed the
42 suggested fine listed in the Uniform Fine and Bail Forfeiture Schedule adopted by the Judicial
43 Council.

44 (6) A diversion agreement ~~[shall]~~ may not be approved unless the defendant, before a
45 magistrate and in the agreement, knowingly and intelligently waives his constitutional right to a
46 speedy trial.

47 (7) (a) The court shall, on the defendant's request, consider the defendant's ability to
48 pay a diversion fee before ordering the defendant to pay a diversion fee.

49 (b) The court may consider any relevant evidence in determining the defendant's ability
50 to pay and may lower or waive the diversion fee based on that evidence.

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