

**DIVERSION FEES AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

Senate Sponsor: Kathleen A. Riebe

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**LONG TITLE**

**General Description:**

This bill allows 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 criminal defendant based on the defendant's ability to pay; and
- ▶ makes technical and conforming changes.

**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

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

(2) A defendant shall be represented by counsel during negotiations for diversion and

30 at the time of execution of any diversion agreement unless ~~[he shall have]~~ the defendant has  
31 knowingly and intelligently waived ~~[his]~~ the defendant's right to counsel.

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

34 (4) ~~[Any]~~ (a) A diversion agreement entered into between the prosecution and the  
35 defense and approved by a magistrate shall contain a full, detailed statement of the  
36 requirements agreed to by the defendant and the reasons for diversion.

37 (b) A decision by a prosecuting attorney not to divert a defendant is not subject to  
38 judicial review.

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

40 (5) A diversion agreement entered into between the prosecution and the defense and  
41 approved by a magistrate may contain an order that the defendant pay a nonrefundable  
42 diversion fee that:

43 (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction  
44 under Section 78A-5-110 or Section 78A-7-120; and

45 (b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by  
46 the Judicial Council.

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

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

52 (b) The court may:

53 (i) consider any relevant evidence in determining the defendant's ability to pay a  
54 diversion fee; and

55 (ii) lower or waive the diversion fee based on that evidence.

56 (8) A diversion program longer than two years is not permitted.