

# **ADULT DIVERSION ANNUAL LEGISLATIVE REPORT**

**ON THE IMPLEMENTATION OF HB 13-1156**

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**FISCAL YEAR 2015**

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**COLORADO STATE JUDICIAL DEPARTMENT  
OFFICE OF THE STATE COURT ADMINISTRATOR  
ADULT DIVERSION FUNDING COMMITTEE**

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## REPORTING REQUIREMENTS

This report is being submitted to the Colorado General Assembly Joint Budget Committee in compliance with HB 13-1156 that requires the Judicial Department to prepare a report that includes a summary of statistics and progress on programs supported by Adult Diversion funding. This work is being guided by the Adult Diversion Funding Committee.

### 2015 – 2016 ADULT DIVERSION FUNDING COMMITTEE

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## ADULT DIVERSION FUNDING PROGRAM TIMELINE

### PROGRAM BACKGROUND:

HB 13-1156 created a new mechanism for diverting individuals accused of certain crimes, generally low level offenses, away from the traditional criminal justice system. In addition to defining the legal parameters of pretrial diversion, it provided a source of funding for District Attorneys' Offices to institute or operate pretrial diversion programs. It also established the Adult Diversion Funding Committee to develop a process by which elected District Attorneys could request funding. The bill became law in August 2013.

The State Court Administrator's Office filled the Adult Diversion Funding Committee's 0.5 FTE staff position as of October 1, 2013. The Adult Diversion Funding Committee was in place by the end of October 2013. The first funding application materials were released in January 2014. Since then, the committee has continued to develop the funding guidelines, application process and report forms for this grant. Attached addendums to this report provide additional information on the application process for fiscal year (FY) 2016. Adult Diversion funding application materials have also been given to the Colorado District Attorneys' Council with an announcement from members of the Adult Diversion Funding Committee and staff. The application, guidelines, and answers to frequently asked questions are also posted on the Judicial Branch's website. All elected District Attorneys may apply if interested. A new web page for information regarding adult diversion funding is also under construction at the publishing of this document.

Following the planning and implementation of HB 13-1156 conducted in FY '14, four District Attorneys' Offices from the 6<sup>th</sup>, 9<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Judicial Districts requested funding and subsequent continuation in FY '15. Each of the four originally funded judicial districts reapplied for FY '16. These Judicial Districts include the following counties: 6<sup>th</sup> – La Plata, Archuleta and San Juan; 9<sup>th</sup> – Rio Blanco, Garfield and Pitkin; 15<sup>th</sup> – Cheyenne, Kiowa, Prowers and Baca; 16<sup>th</sup> – Crowley, Otero and Bent.

### CURRENT FUNDING STATUS:

All of the four funded programs are fully operational as of December 31, 2015. One district had difficulty staffing the program as originally planned but has been able to restructure their plan and begin to operate. The Adult Diversion Funding Committee understands that implementation of new programs takes 3-5 years according to implementation science and that some grantees will need time to further develop their programs.

FY 15 represented the first full year of operation for programs funded by the adult diversion grant. During this period, the current adult diversion programs continued to expand and adjust their screening and assessment procedures, participant data reporting, and their day-to-day management of grant funds and criteria for receiving clients. Each of the funded jurisdictions saw considerable growth in program capacity and have increased their use of available resources to better provide treatment for their adult diversion target populations.

The Adult Diversion Funding Committee has kept the door open for District Attorneys to apply during the remainder of this fiscal year in an effort to support any interest. Several additional District Attorneys' Offices have expressed interest in adult diversion funding, and one new judicial district, Boulder County (20<sup>th</sup> JD) has submitted an application which may result in a new diversion program beginning development in the fourth quarter of this FY. As of December 17, 2015, application materials for FY '17 funding have been posted on the website and inquiries are beginning to occur. All four of the currently funded District Attorney's Offices intend to reapply for funding as well as three other potential jurisdictions. The deadline for applications is February 5, 2016.

## CURRENT DIVERSION PROGRAM DESCRIPTIONS

### *6<sup>TH</sup> JD – ARCHULETA, LA PLATA AND SAN JUAN COUNTIES*

**ELECTED DISTRICT ATTORNEY:** *Todd Risberg*

*EST. POPULATION (2014): 66,947*

Program Narrative / Target Population:

In the 6<sup>th</sup> Judicial District, adult diversion targets low-risk offenses that favor quick resolution and also seeks to deter future similar charges, focusing on traffic infractions such as careless driving and driving under restraint.

### *9<sup>TH</sup> JD – GARFIELD, PITKIN, AND RIO BLANCO COUNTIES*

**ELECTED DISTRICT ATTORNEY:** *Sherry Caloia*

*EST. POPULATION (2014): 81,786*

Program Narrative / Target Population:

The 9<sup>th</sup> Judicial District diversion program mainly consists of minor-in-possession cases with individuals between the ages of 18-20 with additional case types referred to adult diversion for adults over 20. Other cases types include: harassment, theft, and providing alcohol to minors.

### *15<sup>TH</sup> JD – BACA, CHEYENNE, KIOWA, AND PROWERS COUNTIES*

**ELECTED DISTRICT ATTORNEY:** *Jennifer Swanson*

*EST. POPULATION (2014): 18,957*

Program Narrative / Target Population:

Adult diversion in the 15<sup>th</sup> Judicial District is available to first-time, low-risk, non-violent offenders. Qualifying felony charges can include: non-residential burglary, possession of burglary tools, drug possession (including prescription fraud), forgery, fraud, impersonation, criminal mischief, tampering, theft, and trespassing.

### *16<sup>TH</sup> JD – BENT, CROWLEY AND OTERO COUNTIES*

**ELECTED DISTRICT ATTORNEY:** *Jim Bullock*

*EST. POPULATION (2014): 29,485*

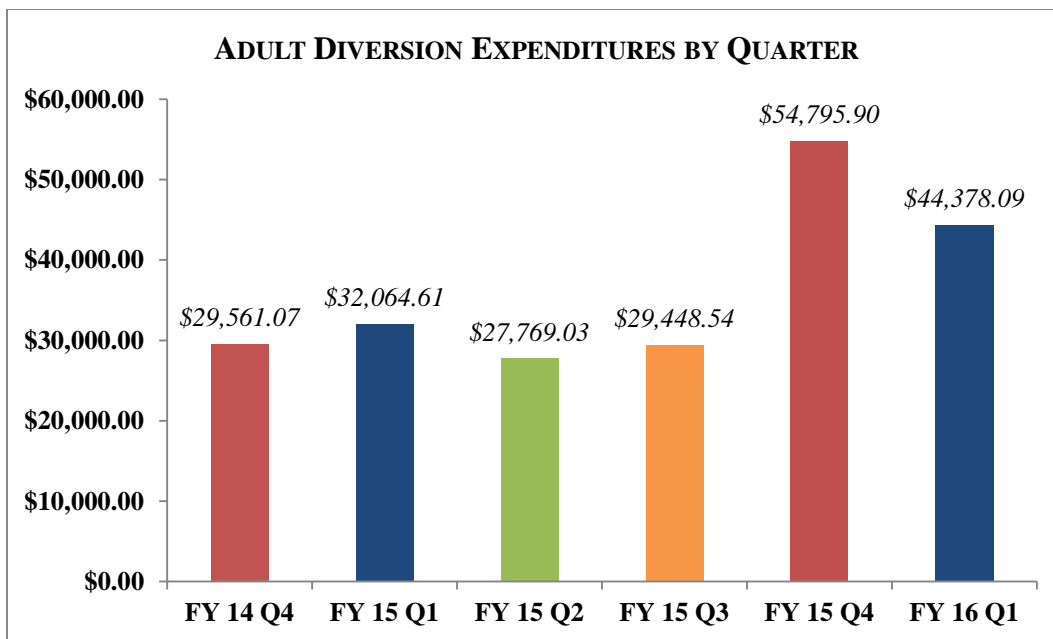
Program Narrative / Target Population:

The Office of the District Attorney for the 16<sup>th</sup> Judicial District has applied adult diversion funding toward addressing first-time, non-violent offenders that have substance abuse issues and would benefit from treatment as opposed to prosecution. Their program is currently expanding to include domestic violence cases.

## BUDGET INFORMATION

By statute, HB 13-1156 provides \$400,000 in allocations from the General Fund for Adult Diversion, of which \$366,453 is available to District Attorneys' Offices to directly support adult diversion programs. \$33,072 is used towards a 0.5 FTE general courts administration position as staff for statewide adult diversion coordination, and \$475 is designated for general courts administration for operating expenses.

The adult diversion grant funding requests have been lower than the allocated amount permits for the past year. This is to be expected with a new fund that requires education of district attorneys and their readiness to implement a new program. The Adult Diversion Funding Committee anticipates that more funding will be distributed in FY '17 as the current adult diversion programs grow and new programs are implemented. Similarly, expenditures among the funded programs have been relatively low but are increasing over time. Evidence of growth in program expenditures can be seen in FY '15 fiscal trends and quarter one spending for the current fiscal year.



In FY '15, diversion programs spent \$113,287.01 more than the prior year, approximately a 365% increase in spending. On average, the four programs in FY '15 used 60% of their grant award, compared to 25% the previous year.

The committee expects to see an increase in interest from other judicial districts as awareness of the availability of the grant funding grows and the successes of existing programs are communicated throughout the state.

### PROJECTIONS FOR FISCAL YEAR 2016:

\$400,000 was allocated from the General Fund for Adult Diversion.

\$244,193.46 was applied for and granted so far.

Adult Diversion funding breakdown by Judicial District for FY 16:

JUDICIAL DISTRICT	FY 15 CARRYOVER	FY 16 GRANT AWARD	FY 16 SPENDING AUTHORITY	DEFENDANT FEES (estimated)
6 <sup>th</sup>	\$17,440.00	\$80,170.00	\$62,730.00	\$10,000.00
9 <sup>th</sup>	\$715.79	\$21,418.90	\$20,703.11	\$6,000.00
15 <sup>th</sup>	\$0.00	\$69,154.56	\$69,154.56	\$9,000.00
16 <sup>th</sup>	\$18,424.08	\$73,450.00	\$55,025.92	\$14,000.00

FY 2016 grant amounts were offset by the amount of the remaining FY 2015 unexpended funds before any additional funds are to be dispersed, as referenced in the above graph.

**FISCAL YEAR 2015 SUMMARY:**

\$400,000 was allocated from the General Fund for Adult Diversion. A total of \$240,060 was applied for and granted.

Granted and expended Adult Diversion funds by Judicial District:

DISTRICT	GRANTED	EXPENDED
6 <sup>th</sup>	\$70,000.00	\$2,560.00
9 <sup>th</sup>	\$29,460.00	\$20,794.90
15 <sup>th</sup>	\$75,000.00	\$42,105.71
16 <sup>th</sup>	\$65,600.00	\$78,617.47

FY 2015 grant amounts were offset by the amount of the remaining FY 2014 unexpended funds before any additional funds were dispersed. The 6<sup>th</sup> JD had difficulty hiring staff and consequently was not able to spend as much as anticipated. The amount overspent by the 16<sup>th</sup> JD was paid via consulting fees to the 16<sup>th</sup> by the 15<sup>th</sup> JD for program development support.

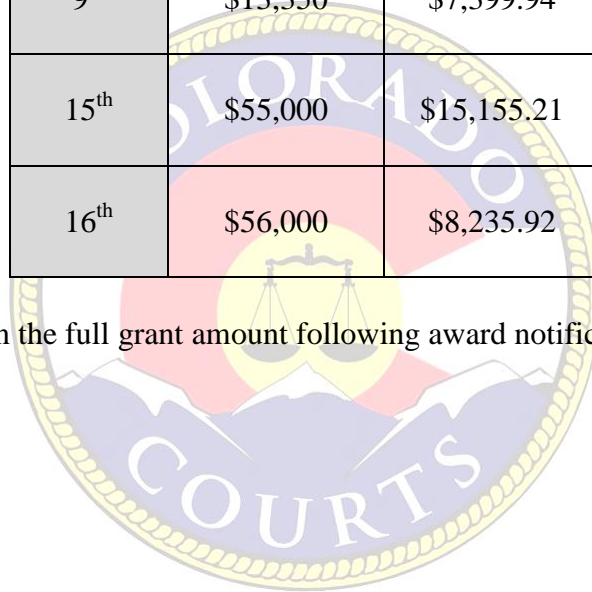
**FISCAL YEAR 2014 IN REVIEW:**

In FY '14, \$390,223 was allocated from the General Fund for Adult Diversion. A total of \$144,350 was applied for and granted. A total of \$30,791.07 was expended between April and June of 2014. Funded programs did not expend as much as anticipated because they were still in the process of developing their programs and hiring staff.

Granted and expended Adult Diversion funds by Judicial District:

DISTRICT	GRANTED	EXPENDED
6 <sup>th</sup>	\$20,000	\$0
9 <sup>th</sup>	\$13,350	\$7,399.94
15 <sup>th</sup>	\$55,000	\$15,155.21
16 <sup>th</sup>	\$56,000	\$8,235.92

All FY 2014 grantees were given the full grant amount following award notification to start the implementation process for their programs.





## AGGREGATE ADULT DIVERSION PROGRAM DATA

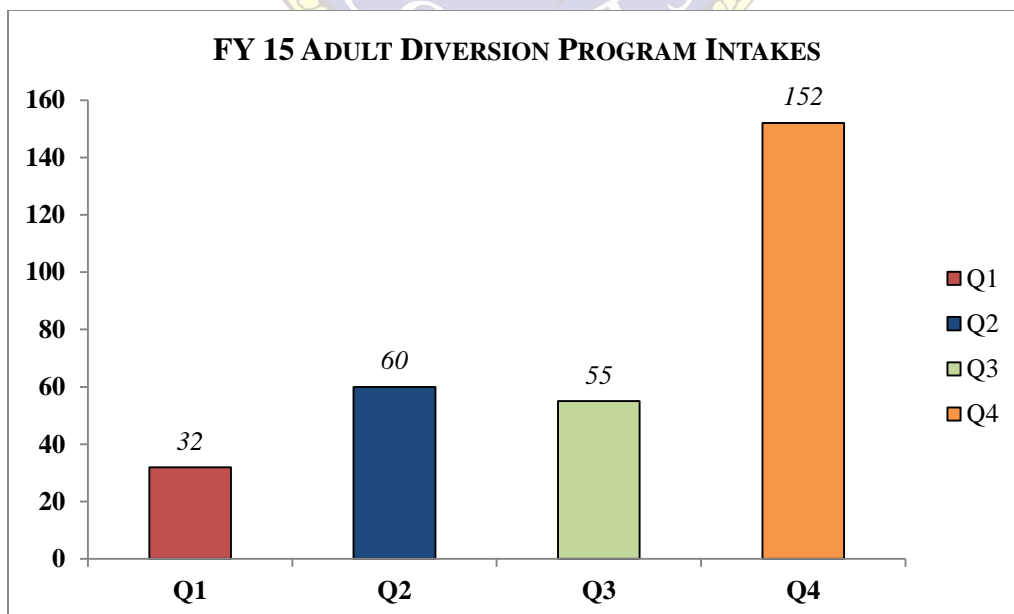
After a full year of operation, adult diversion programs are beginning to produce a data baseline for future trend analysis. The committee is in the process of developing a tool for participant data collection that is more comprehensive and will generate data that can better inform best practices, evaluate program effectiveness, and establish future funding priorities. This database will also help each respective D.A.'s office with implementation of adult diversion by streamlining data collection and reporting so adult diversion may become a more widely used prosecution tool to meet local needs.

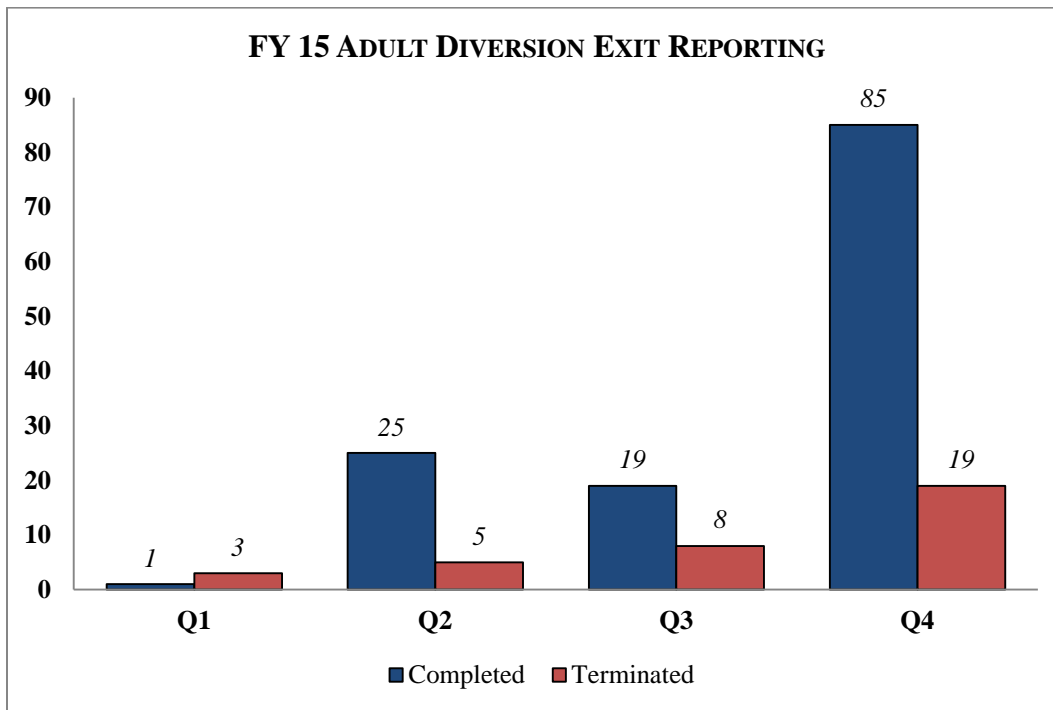
### FY '15 PARTICIPANT INFORMATION FOR GRANT FUNDED ADULT DIVERSION PROGRAMS: (AS OF JULY 31, 2015)

- Number of people who met criteria and were referred for consideration (screened): **406**
- Number of people who were enrolled in the program (agreed to participate): **299**
- Number of program participants that have completed successfully: **130**
- Number of program participants under contract pending completion: **134**
- Number of participants who did not successfully complete the program: **35**
  - 18 were non-compliant, 4 were terminated on account of a new offense, 5 voluntarily withdrew, 1 chose to go to trial, 2 no-response from defense counsel, and 5 for substantial criminal history upon further review.

\* The length of participation in a diversion program varies from a few months up to a year, based upon each individualized agreement. By statute, diversion programs are not to exceed one year, unless unpaid restitution is the sole remaining condition (at which time the agreement can be extended for another year).

As of January 15, 2016, 168 people are actively supervised statewide by adult diversion programs funded by this grant. This number does not reflect other adult diversion programs in the state that are not part of this grant, which the committee does not have data for, nor is it tasked to collect.





**PARTICIPANT DEMOGRAPHICS:**

Demographic data continues to be collected when a participant has successfully completed a pretrial diversion agreement or has been terminated unsuccessfully. Therefore, the demographic data below does not represent individuals who are currently in a diversion program. As of this reporting period the following demographic information is available:

Race/Ethnicity	
Caucasian/White	94
African American/Black	1
Hispanic/Latino	15
Native American	2
Asian/Pacific Islander	0
Other	0

Age			
< 18	18-25	26-35	36 +
5	69	17	21

Gender		
Male	Female	Other
67	45	0

**Total number sampled: 112**

## ADULT DIVERSION PROGRAM FORECAST FOR FY 16

Statewide, 122 people agreed to participate and enroll in diversion programs during FY '16 Q1. Based upon aggregate data trends from FY '15 and FY '16 Q1, we predict that diversion programs can be expected to serve approximately 650 people during FY '16. If FY '15 expenditure patterns hold true for FY '16, programs will be expected to cut the average costs per defendant down from the \$480 per participant (total statewide diversion expenses divided by number of participants statewide) to sustain their growth patterns without requesting any additional funding. However, the flexible nature of diversion agreements can provide the district attorneys sufficient discretion to use grant funding to leverage community resources to maximize treatment while maintaining successful completion rates despite a potential unplanned influx of participants into the program, as jurisdictions have demonstrated they were able to do in FY '15.

## STORIES FROM THE FIELD / CONCLUSION

Throughout the fiscal year, supplemental narrative information has been provided to the Adult Diversion Funding Committee (as well as the limited hard data which has been reported to date) which indicates that Colorado's pretrial diversion programs are operating successfully. The District Attorneys from all four jurisdictions have been pleased with the results they are seeing and have continued to explore additions to their current target populations for adult diversion. For example:

During the past few quarters, the 6<sup>th</sup> JD Diversion Coordinator and D.A. partnered with a victim-offender mediator to help streamline the referral and case management processes which has doubled program capacity while applying restorative justice principles to their adult diversion program.

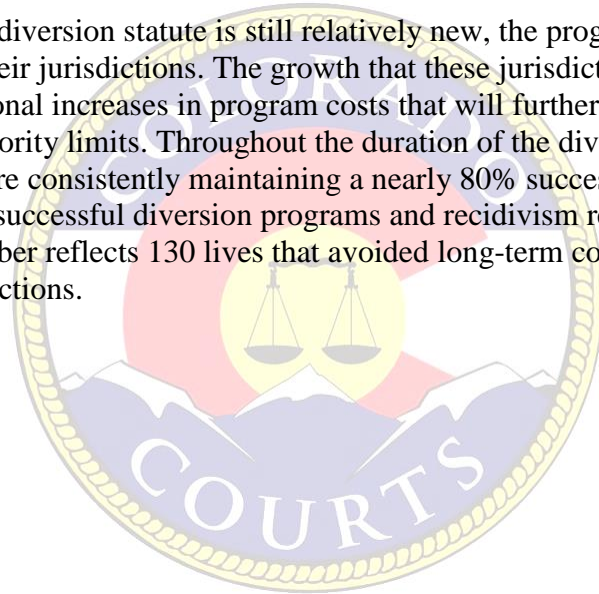
Through use of adult diversion, the 9<sup>th</sup> JD was able to handle a large influx of cases as a result of a large, community event such as the X-Games. As explained by the diversion coordinator, "We had 60 cases of first time offenders with Minors In Possession cases (MIP) come through last year in which the individuals from the X-games in Aspen were given a three month Diversion term to complete an online class and monitored sobriety. Fifty-nine of these cases successfully completed the program. A typical MIP case may have not been seen for 3 months or more out, where with Diversion the case gets started on the first court appearance. The program is meant to have cases begin quickly with the program and out of court for the duration of the term, saving hours and hours, possibly months for each individual case."

In the 15<sup>th</sup> JD, one participant was arrested for 3<sup>rd</sup> Degree Assault and Domestic Violence that occurred while the individual had been drinking. This participant was well-known in the community as a hard worker performing farm labor and had no prior criminal history. As terms of his diversion agreement, the participant completed alcohol abuse treatment and level C DV offender treatment that included individual mental health therapy and group therapy sessions. Through diversion, this individual was able to take responsibility for the situation, repair his relationship with his family, and maintain employment in the community without experiencing the long-term collateral consequences associated with criminal convictions.

Diversion programs have also been used as effective community outreach tools for the District Attorney to reduce future criminal caseload in the judicial system. Another jurisdiction, the 16<sup>th</sup> JD, was able to use their diversion program to address a significant, local community need: bullying. Their diversion coordinator reports:

Our office was given a special prosecution case involving a school hazing incident which involved 6 juveniles and 4 adults. Our office worked closely with our treatment provider, Southeast Health Group, to develop a program to deal with this issue. The Director of Diversion contacted and organized a guest speaker who is educated and trained in this field to come to Colorado for 2 days. He put on a seminar for the 6 juveniles and 4 adults on 2 separate days. This seminar was 6 hours long and included open discussions on this issue, and gave each group the tools to recognize and understand how to deal with these issues and learn to become leaders. The Director of Diversion also arranged for a former high school athlete who was a victim to come and speak to each group regarding his experience and how it affected his life. The D.A.'s office paid for this program. The D.A. and Director of Diversion plan to approach the school board and present a program on bullying in hopes the school will adopt this into their education program. Many of the parents on both sides, meaning the participants and victims, have expressed interest in talking about this.

While Colorado's adult pretrial diversion statute is still relatively new, the programs continue to evolve and expand their influence within their jurisdictions. The growth that these jurisdictions are experiencing will correspondingly result in additional increases in program costs that will further close the gap between monies expended and the spending authority limits. Throughout the duration of the diversion fund being active, statewide, diversion programs are consistently maintaining a nearly 80% successful completion rate. As time passes, the correlation between successful diversion programs and recidivism reduction may be more evident. But, most importantly, this number reflects 130 lives that avoided long-term collateral consequences associated with criminal charges and convictions.



## ADDENDUM TO ANNUAL REPORT

- ATTACHMENT [ I ] – Adult Diversion Funding Application for FY 16
- ATTACHMENT [ II ] – FY 16 Funding Application Guidelines
- ATTACHMENT [ III ] – Frequently Asked Questions



**ATTACHMENT I – FY 16 ADULT DIVERSION FUNDING APPLICATION**

SCAO use only:	Score:	Recommendation:	Award Amount:\$
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<b>Section 1. Applicant Information</b>			
<b>Judicial District Information:</b> <i>Include the judicial district number, elected District Attorney name, and the counties served by the district.</i>			
<b>Primary Contact Name:</b>			
<b>Email:</b>	<b>Office Phone:</b>	<b>Alt. Phone:</b>	
<b>Mailing Address:</b>	<b>City:</b>	<b>CO</b>	<b>Zip:</b>
<b>Amount Requested:</b> <i>How much funding are you requesting for FY 2016?</i>			<b>\$</b>

<b>Section 2. Adult Diversion Program Information</b>			
<b>Program Status:</b> <i>Is this a new or existing program?</i>			
<b>Target Population:</b> <i>Describe the program’s target group of defendants, and how many defendants you anticipate will be served.</i>			
<b>Partner Organizations:</b> <i>If applicable, identify any partnering organizations. Include name, point of contact, phone, e-mail, and mailing address. These are organizations expected to provide services or supervision as a part of the adult diversion agreement with the defendant.</i>			
<b>Partner Organization’s Roles and Responsibilities:</b> <i>Please describe any collaborative efforts, partnerships, or contract support that will be part of this program. Include what service partners will provide and their qualifications for providing that service.</i>			
<b>Please include with the application a letter of commitment from each partner organization clearly stating their understanding of their role in the District Attorney’s adult diversion program.</b>			

<b>Section 3. Adult Diversion Program Narrative</b>			
<b>A. Need for Adult Diversion Program:</b> <i>Help us understand the need for adult diversion funding in your district. Limit your response to a half page.</i>			

**B. Description of Adult Diversion Program:** Describe the adult diversion program. What is the implementation plan? What training will be needed for staff? How will you know if your adult diversion program is successful? (Note that for all funded adult diversion programs a copy of the adopted policies and guidelines delineating eligibility criteria for case acceptance must be submitted with the final report in June/July.) Limit your response to one page.

**C. If funding is for an existing adult diversion program please answer the following:** What are the eligibility criteria for defendants to participate in adult diversion? How are defendants selected for adult diversion? Describe the nature of supervision of defendants. How do you determine their success? Limit your response to one page.

**D. Description of Treatment Assessment Plan:** What process will be employed to determine if a treatment assessment referral is necessary? Who will provide assessment? How will successful treatment be determined? If the treatment provider and assessment agency are the same, what oversight will be in place to ensure people are not over assessed into treatment? What is the anticipated number of people who may need treatment, if possible to estimate? Limit your response to one page.

**E. Goals, Objectives, Outcomes and Timeframes:** Please briefly note the program's overarching goals. Use the form below and add goal/objective/outcome/timeframe sections as needed. The objectives are relative stepping stones with measurable outcomes and timeframes.

Program Goal:

Objective:

Objective:

Objective:

Outcomes:

Outcomes:

Outcomes:

Timeframe:

Timeframe:

Timeframe:

Program Goal:

Objective:

Objective:

Objective:

Outcomes:

Outcomes:

Outcomes:

Timeframe:

Timeframe:

Timeframe:

Program Goal:

Objective:

Objective:

Objective:

Outcomes:

Outcomes:

Outcomes:

Timeframe:	Timeframe:	Timeframe:
<b>F. Program Evaluation:</b> <i>How will data required by the statute be collected and reported? Who will be responsible for this? Limit your response to a half page.</i>		
<b>G. Long Term Plan:</b> <i>What will the district do to sustain adult diversion in the event funds are not available for this program? What would happen if these funds became unavailable? Limit your response to a half page.</i>		

<b>Section 4. Adult Diversion Budget</b>			
<b>Budget Narrative:</b> <i>Explain program needs relative to expenses. Is this a continuation of an existing program? If so how will this new money help continue the adult diversion services? What fees if any will be charged to the defendant? What is the anticipated cost per defendant and relative formula for this estimate? Limit your response to a half page.</i>			
<b>Expenses Category</b>	<b>Explanation/Detail</b>		<b>Total</b>
Personnel:			
Training:			
Consultants/Contract Support:			
Operating:			
Treatment:			
Other: <i>please specify</i>			
<i>Please note any other revenue sources for the adult diversion program.</i>			
<b>Total Anticipated Defendant Fees:</b>	\$	<b>Match or In Kind support:</b>	\$
<b>Total Amount Requested:</b>	\$	<b>Total Cost for Adult Diversion Program:</b>	\$



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## ATTACHMENT II – ADULT DIVERSION FUNDING GUIDELINES FOR FY 16

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### Background:

The Colorado Commission on Criminal and Juvenile Justice supported the passage of HB 13-1156, which replaced deferred prosecution with adult diversion. (C.R.S. 18-1.3-101)

Diversion is a voluntary alternative to criminal adjudication that allows a person accused of a crime to fulfill a set of conditions or complete a formal program designed to address, treat, or remedy issues related to or raised by the allegation. Upon successful completion of the conditions or program, the charges against the defendant are dismissed or not filed.<sup>1</sup>

Diversion is intended to operate simply and flexibly. District Attorneys can agree to divert a defendant at any point before plea or trial, including before charges are filed. They can preserve their ability to reinstate prosecution by requiring a signed “statement of facts” upon which the allegation is based. The terms of a diversion agreement can restore victims and require defendants to address the antecedents to their criminal behavior, thereby reducing the likelihood of future criminal behavior. Compliance with the agreement can be monitored and enforced by any approved entity, including, but not limited to, diversion programs run by District Attorneys’ offices, law enforcement agencies, and pretrial service organizations. Alternatively, a diversion agreement may be filed with a court, thus allowing the defendant to be ordered to the supervision of the probation department. If the agreement is successfully completed, the defendant is returned to the same legal status as if the offense had never occurred.

Upon passage of the adult diversion bill, HB 13-1156, the State Court Administrator’s Office appointed the Adult Diversion Funding Committee coordinated by Deb Witzel.

The statutory goals of adult diversion include:

- Preventing defendants from committing additional criminal acts.
- Restoring victims of crime.
- Facilitating defendants’ ability to pay restitution to victims of crime.
- Reducing the number of cases within the criminal justice system.

### Overview:

- There will be an application process for both existing and new adult diversion programs as funding is available.
- The FY’16 Adult Diversion Fund has \$400,000 available. Additional funding for treatment needs is available to funded programs via the Correctional Treatment Fund. This money will fund multiple requests that demonstrate they will meet the legislative goals and intents of diversion, as well as the reporting requirements. This year new programs will be considered pilots, so startup costs will also be considered.
- The use of documented best practices is encouraged but not required at this time.

### Timelines:

- Request for proposals announced: January 5<sup>th</sup>, 2015.
- Application deadline: February 27<sup>th</sup>, 2015.
- Approximate date for grant award notices: May 14<sup>th</sup>, 2015.
- Award distributions begin July 1<sup>st</sup>, 2015 (the beginning of FY ’16)

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<sup>1</sup> There is no universally accepted definition of diversion. The definition here is drawn from the National Association of Pretrial Services Agencies, *Performance Standards and Goals for Pretrial Diversion/Intervention*, standard 1.1 (2008), as well as a draft of the [ABA Diversion Standards \(publication pending\)](#).

## **Instructions for submissions:**

Complete the application and submit electronically as a PDF document to [deb.witzel@judicial.state.co.us](mailto:deb.witzel@judicial.state.co.us). All requests for adult diversion funding should be received by 5:00 p.m. on **February 27<sup>th</sup>, 2015**.

## **Funding Criteria:**

In making funding decisions, the following criteria will be taken into consideration:

- The local need for adult diversion with the target population including the projected number of adult diversion participants (18 years or older).
- Explanation of how the proposed pre-plea/pre-trial adult diversion service will meet the statutory goals.
- Illustration of how the District Attorney's office will comply with reporting requirements.
- Plan for adult diversion program management including budget management, data collection, and reporting.
- Priority will be given to program needs including but not limited to: start-up costs for new programs, personnel, operating, training, and contract support for program needs.

## **Funding and Reporting Cycle:**

- All District Attorney's offices receiving adult diversion funding will be required to maintain a contract with the State Court Administrator's Office (SCAO) and to adhere to the SCAO policies and procedures related to data collection, reporting, and billing.
- The state operates on a July 1 – June 30 fiscal year.
- *All awarded funds must be expended by June 30, 2016 and reported by July 15, 2016.*
- All reporting and funding cycles will be quarterly and comply with the state fiscal year. Reports will be due by the 10<sup>th</sup> day of the month following the quarter's end. (Example: Q1 is July to September. Reports will be due October 10)
- Quarterly reporting will include financial updates, Intake/Exit Forms for participants who have exited the program, and basic program information.
- Funds will be distributed to District Attorney's offices on a quarterly basis provided expenditures indicate the need.
- A year-end report will require more extensive reporting, evaluation and final financial reports.
- There are no guarantees of funding or that there will be funding in subsequent years.

## **Program Evaluation:**

Award recipients will be required to report as defined below to the SCAO. Incomplete reporting will affect funding.

## **Award Recipient Requirements:**

Award recipients must collect data and provide status reports on the following by the 10<sup>th</sup> day of October, January, April, and July:

- The number of people screened and the number of people who met criteria for adult diversion.
- The number of people enrolled in adult diversion.
- Demographic information on those enrolled (age, gender, ethnicity, judicial district, county of residence).
- Participant status within adult diversion (intake, under agreement, complete, did not complete and reason they did not complete, if did not complete, what was next step).

Provide financial updates including:

- Funds requested.
- Funds received.
- Funds expended and on what (receipts must be available upon request).
- Unexpended and unencumbered funds at the end of the quarter.

Annual reporting will include all quarterly reporting details, and:

- Recidivism data for all participants, including those who successfully completed diversion and those who did not.
  - Pre-Discharge Recidivism: A filing for a new felony or misdemeanor offense that occurred prior to discharge from diversion. This could also affect the completion rates if defendants are referred back for prosecution due to re-offense.
  - Post-Discharge Recidivism: A filing for a new felony or misdemeanor offense that occurred within one year following termination of the diversion agreement.
- Aggregate data on outcomes, restitution, and other diversion agreement data.
- A copy of adopted adult diversion policies and guidelines for eligibility in the Judicial District's program.

### **Program Guidelines:**

Elected District Attorneys may apply, requesting funds to operate an adult diversion program consistent with section 18-1.3-101, C.R.S. These may be existing or new adult diversion programs.

Funded programs will involve pre-plea or pre-trial diversion targeting adults 18 years and older.

All funded adult diversion programs must adopt and submit policies and guidelines delineating eligibility criteria for their program. In determining eligibility the District Attorney shall consider:

- The nature of the crime and the circumstances surrounding it.
- Any special circumstances or characteristics of the defendant.
- Whether diversion is consistent with the defendant's rehabilitation and reintegration.
- Whether the public interest will be best served by diverting the individual from prosecution.

Adult diversion may operate internally at a District Attorney's office or in conjunction with outside agencies or programs approved by the District Attorney, including those that provide restorative justice services. The supervising agency shall provide the supervision necessary to facilitate rehabilitation and support completion of the diversion agreements.

Supervising agencies will hold defendants accountable to agreements. Victims shall have the right to be informed of the decision to enter an adult diversion agreement. The intent of diversion is to reduce collateral consequences to defendants and to repair harm to victims.

The diversion period may not extend beyond two years unless payment of restitution is the only reason the diversion is not complete and the reason was inability to pay and the defendant has the future ability to pay. In this event the diversion may be extended as much as one year.

Cases involving domestic violence or sexual offenses require special consideration:

- Charges must be filed before a defendant can be eligible for diversion.
- Defendants must have had the opportunity to consult with counsel, and have completed a domestic violence treatment evaluation or sex-offender specific evaluation.
- Defendants accused of the following offenses are not eligible for diversion in state-funded programs: Sexual assault, sex assault on a child, any sexual offense committed against an at-risk adult or juvenile, any sexual offense with a deadly weapon, enticement of a child, sexual exploitation of a child, procurement of a child for exploitation, sexual assault on a child by a person in a position of trust, or any child prostitution offense.

Diversion agreements shall include:

- Signature by the defendant, the defendant's attorney if represented, and the District Attorney.
- A written waiver of the right to a speedy trial for the period of diversion.
- A condition that no other criminal offense is committed during the diversion agreement time frame.
- A statement clarifying that if the defendant completes the agreement and the obligations therein, the court shall order all criminal charges filed against the defendant relative to this case dismissed with prejudice.

Diversion agreements may also include:

- Individually designed agreement items based on the defendant's strengths, risks, needs, and abilities, as well as the victim's needs for repair.
- Assessment of criminogenic needs and subsequent treatment to meet their needs
- A designated supervisor or supervisory agency with contact information.

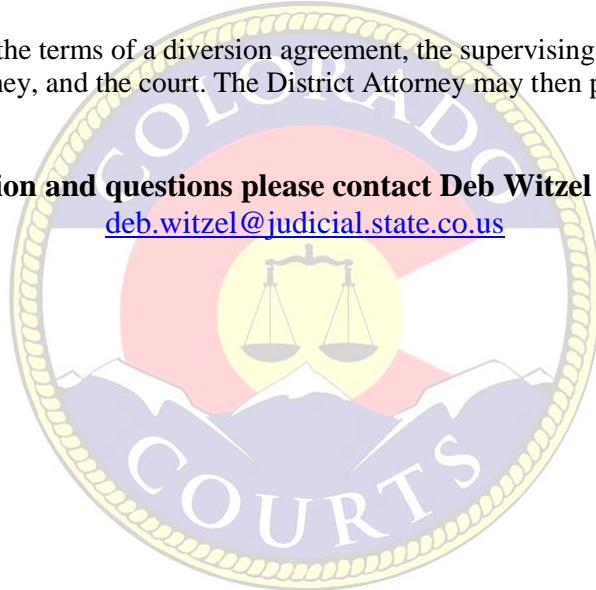
A defendant shall not be required to enter any plea to criminal charges as a condition of pre-trial diversion. No information obtained during the diversion process, other than a statement of fact completed by the defendant, may be used as evidence in criminal proceedings on the referred crime or facts alleged relative to the adult diversion case.

If the District Attorney offers diversion in lieu of further criminal proceedings and the defendant agrees to all of the terms of the agreement, the agreement may either be filed with the court or held by the parties. A court filing is only required if the probation department supervises the defendant.

When a diversion agreement is entered the court shall stay further proceedings. When the diversion agreement is completed successfully all charges, if filed, will be dismissed. At any point after a diversion agreement is completed a defendant may petition the court to seal all records pertaining to the relative offense. Sealing is mandatory, upon request by the defendant, following successful completion of a diversion agreement.

In the event the defendant violates the terms of a diversion agreement, the supervising entity must provide written notice to the defendant, the District Attorney, and the court. The District Attorney may then proceed with the prosecution as allowed by law.

**For more information and questions please contact Deb Witzel at (720) 625-5964 or [deb.witzel@judicial.state.co.us](mailto:deb.witzel@judicial.state.co.us)**



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## ATTACHMENT III – FREQUENTLY ASKED QUESTIONS (FY 16)

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### Adult Diversion Frequently Asked Questions

If a DA's office applies for funding for a new Adult Diversion program but has an existing Adult Diversion program, does the existing program have to comply with the statutory language too?

These funds can only be used for Adult Diversion programs that meet the requirements of the statute. (HB 13-1156) Programs operating outside of this funding do not currently need to comply. Reporting will need to reflect the distinction between programs funded by these dollars and any additional Adult Diversion programs in the judicial district.

Would this be considered a grant funded program therefore the employee(s) would technically not employed directly by the DA's office?

This would be considered grant funding. How the DA chooses to employ or contract for services is at their discretion. Funding is not guaranteed. However, as long as you are running a program compliant with the statute and keeping up with reporting and funding from the general fund still exists, you would be a good candidate for continuation funding.

Would the employee(s) hired to manage the program only be able to perform duties specifically pertaining to the grant?

If you clearly document in reports how the contractor/employee's time is spent on this Adult Diversion program that time could be paid for by the grant. If they had other duties outside of adult diversion that time would not be paid for by the grant. But it does not matter if they are working only a percentage of their time on Adult Diversion. These funds could cover the percentage that is dedicated to this Adult Diversion funded program.

Will training be required if funded?

Topic specific training may be offered to support grantees. At this time no training is required. Questions are answered by direct contact between the coordinator (Deb Witzel, [deb.witzel@judicial.state.co.us](mailto:deb.witzel@judicial.state.co.us)) and the grantee.

Can the application for funding be done by an organization outside of the DA's office to help cover the costs of supervision, or does the application for funding have to filled out by the District Attorney's office?

It does not matter to the committee who completes the application. However, it must be approved and submitted by the DA.

Can we charge a fee for Adult Diversion?

Yes, the statute allows Adult Diversion fees up to \$50.

Can we use funds for treatment?

Yes, and there are additional funds available from the Correctional Treatment Board specifically for treatment of Adult Diversion participants.