

95TH CONGRESS
2D SESSION

S. 1819

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1978

Referred to the Committee on the Judiciary

AN ACT

To establish alternatives to criminal prosecution for certain persons charged with offenses against the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Diversion Act of
4 1978".

5 SEC. 2. The Congress finds and declares that (a) the
6 interests of operating the Federal criminal justice system
7 efficiently, protecting society, and deterring individuals
8 charged with violating criminal laws from future criminal
9 acts can be served by creating alternatives to prosecution;
10 and (b) such alternatives can be accomplished in appropri-

54258

1 ate cases without losing the general deterrent effect of the
2 criminal justice system.

3 SEC. 3. (a) Title 18, United States Code, is amended
4 by adding immediately after chapter 209, a new chapter
5 210, as follows:

6 "CHAPTER 210—DIVERSION

"Sec.

"3201. Definitions.

"3202. Admission to diversion program.

"3203. Voluntariness of waiver of rights.

"3204. Inadmissibility of diversion information.

"3205. Continuation and dismissal of charges.

"3206. Termination; review; completion; withdrawal.

"3207. District planning group.

"3208. Authority of the Attorney General.

7 "§ 3201. Definitions

8 "As used in this chapter, the term—

9 "(1) 'eligible individual' means any person against
10 whom a prosecutable case exists for an offense against
11 the United States where—

12 "(A) the alleged offense did not involve the
13 threat or infliction of serious bodily injury to other
14 persons;

15 "(B) it is reasonably foreseeable that the per-
16 son will not commit violent acts if admitted to a
17 diversion program;

18 "(C) the person has not exhibited a continuing
19 pattern of criminal behavior;

20 "(D) the person meets the criteria established

1 by regulations issued by the Attorney General and
2 guidelines established by the attorney for the Gov-
3 ernment in the district where the indictment, infor-
4 mation, or complaint is filed; and

5 “(E) the person is admitted to participation
6 in a diversion program by the attorney for the
7 Government in the district in which the indict-
8 ment, information, or complaint is filed;

9 “(2) ‘diversion program’ may include, but is not
10 limited to, medical, educational, vocational, social,
11 and psychological services; corrective and preventative
12 guidance, training, and counseling; provision for resi-
13 dence in a halfway house or other suitable place; other
14 services designed to protect the public and benefit the
15 individual; restitution to victim of the offense or offenses
16 charged; and uncompensated service to the community;

17 “(3) ‘diversion plan’ means a written agreement,
18 signed by the eligible individual, defense counsel, diver-
19 sion administrator, and the attorney for the Govern-
20 ment, that states those elements of a diversion pro-
21 gram in which the eligible individual will partici-
22 pate to assure that he will lead a lawful life, and states
23 the length of time required to complete the plan; but, in
24 no event shall a diversion plan exceed twelve months

1 except to allow the person admitted sufficient time to
2 make restitution; and

3 “(4) ‘diversion administrator’ means a person des-
4 ignated by the Attorney General, after consultation
5 with the district planning group, as administrator of
6 the diversion program.

7 “§ 3202. Admission to diversion program

8 “(a) The diversion administrator or his assistants shall,
9 to the extent possible, upon arrest or the issuance of a sum-
10 mons or as soon thereafter as possible, review the allegations
11 against each person charged with a criminal offense against
12 the United States and interview each person who he be-
13 lieves may be eligible for diversion. The diversion adminis-
14 trator shall then make a report to the attorney for the Gov-
15 ernment on the eligibility of each person charged. A person
16 who has not had the allegations against him reviewed may
17 request to be considered for admission by application to the
18 diversion administrator. The attorney for the Government
19 may require further investigation by the diversion adminis-
20 trator of a person being considered for admission with the
21 consent of that person. If the attorney for the Government
22 determines that a person is suitable, the diversion administra-
23 tor shall prepare a diversion plan. Upon agreement of the
24 attorney for the Government, diversion administrator, eligible
25 person, and defense counsel about the elements of the plan,

1 the attorney for the Government shall assign supervision of
2 the plan to the diversion administrator. A determination of
3 eligibility or suitability by the attorney for the Government
4 shall not be subject to review except as otherwise provided
5 by law.

6 “(b) The diversion administrator shall report to the
7 attorney for the Government on the progress of the person in
8 carrying out his plan in a manner and at times the attorney
9 for the Government and diversion administrator deem appro-
10 priate and shall at the same time provide a copy of each
11 such report to the person and defense counsel.

12 **“§ 3203. Voluntariness of waiver of rights**

13 “No person shall be admitted to a diversion program
14 unless he has voluntarily agreed to participate and has
15 received a copy of his diversion plan, and has voluntarily
16 waived, in the presence of a judge or magistrate and with
17 the advice of counsel (except in a case where counsel has
18 been voluntarily waived), all applicable statutes of limita-
19 tions and his right to speedy trial for the period of diversion.

20 **“§ 3204. Inadmissibility of diversion information**

21 “Whenever a person is admitted to a diversion program
22 and his diversion plan is later terminated or the person
23 withdraws and prosecution is resumed, any statement made
24 or other information given by the person in connection with
25 the determination of his eligibility or suitability for the

1 program, any statement made by the person while participat-
2 ing in the program, and any statement, report, or other
3 information concerning his participation in the program shall
4 not be admissible against the person on the issue of his guilt
5 of the offense that was the basis for diversion in any judi-
6 cial proceeding in which he is accused of the offense. This
7 section shall not be construed to limit the admissibility of any
8 information for purposes of impeachment.

9 **“§ 3205. Continuation and dismissal of charges**

10 “In each case involving a person who is admitted to a
11 diversion program under this chapter, this criminal charges
12 against the person shall be continued without final disposition
13 for the period agreed upon in the diversion plan, unless the
14 admission is terminated, completed earlier, or the person
15 withdraws pursuant to section 3206 of this chapter. Upon
16 the expiration of the diversion period, the attorney for the
17 Government shall file a dismissal with prejudice as provided
18 in section 3206 (c). Nothing in this paragraph shall be con-
19 strued to limit further investigation of the offense charged
20 or presentation of evidence to a grand jury during the di-
21 version period.

22 **“§ 3206. Termination; review; completion; withdrawal**

23 “(a) If the attorney for the Government finds the per-
24 son is not fulfilling his obligations under the plan, or has dis-
25 covered facts previously unknown to him demonstrating

1 that the person is not suitable for diversion, the attorney
2 for the Government may resume prosecution. The attorney
3 for the Government shall make a written statement of the
4 factual basis for his determination to resume prosecution and
5 transmit copies to the person and to defense counsel. The
6 person and defense counsel shall thereafter be notified of
7 their opportunity to appear before the attorney for the Gov-
8 ernment and the diversion administrator to contest the deter-
9 mination within a reasonable time as established by the
10 Attorney General.

11 “(b) If the person fails to contest the determination of
12 the attorney for the Government within the time specified,
13 no further review of the determination shall be granted. If,
14 on the appearance of the person and defense counsel before
15 the attorney for the Government and the diversion adminis-
16 trator, the attorney for the Government determines that
17 prosecution shall be resumed, the person may petition the
18 court for review. If the court finds that no fact exists upon
19 which the attorney for the Government could base a deter-
20 mination to resume prosecution, the court shall order that
21 the person be allowed to fulfill his obligations under the plan
22 or shall dismiss the charges if the court finds that all such
23 obligations have been fulfilled. In a proceeding under the
24 provisions of this subsection, evidence shall be admissible
25 regardless of its admissibility in a trial on the offense.

1 “(c) If the diversion administrator certifies to the at-
2 torney for the Government at any time during the period of
3 diversion that the person has fulfilled his obligations and
4 successfully completed the plan, and if the attorney for the
5 Government concurs, the attorney for the Government shall
6 file, by leave of court, a dismissal with prejudice of the indict-
7 ment, information, or complaint against the person.

8 “(d) A person participating in a diversion plan may
9 withdraw at any time, and the attorney for the Government
10 may resume prosecution.

11 “(e) Whenever a diversion plan is terminated or the
12 person withdraws before completion of the plan and the
13 prosecution is resumed resulting in a conviction, the court
14 shall consider the length and nature of the defendant's par-
15 ticipation in the plan and may credit such participation as
16 time served toward any sentence of probation or incarcer-
17 ation.

18 “§ 3207. District planning group

19 “(a) The district planning group established by sec-
20 tion 3168 (a) of this title, together with other individuals
21 as the chief judge may appoint, shall constitute a diver-
22 sion advisory committee. The chief judge may appoint
23 individuals representing agencies to which persons are re-
24 ferred under a diversion program pursuant to this chapter.
25 The group shall plan the implementation of the diversion

1 program for the district and review on a regular basis the
2 administration and progress of such program. The com-
3 mittee shall report to the Attorney General at times and in
4 a manner as the Attorney General shall prescribe.

5 “(b) Members of the committee shall not be compen-
6 sated, but may be reimbursed pursuant to section 3208 for
7 reasonable expenses incurred by them in carrying out their
8 duties as members of the committee.

9 **“§ 3208. Authority of the Attorney General**

10 “(a) In carrying out the provisions of this chapter, the
11 Attorney General shall—

12 “(1) reimburse agencies of the judicial branch of
13 the Government for the cost of services of United States
14 probation officers, pretrial service officers, and em-
15 ployees other than judges, magistrates, or Federal public
16 defenders, necessary to carry out the purposes of this
17 chapter;

18 “(2) employ and fix the compensation of such per-
19 sons as he determines necessary to carry out the purposes
20 of this chapter, without regard to the provisions of title
21 5, United States Code, relating to appointments in the
22 competitive services and the provisions of chapter 51
23 and subchapter III of chapter 53 of such title relating to
24 classification and General Schedule pay rates;

25 “(3) acquire such facilities, services, and materials

1 as he determines necessary to carry out the purposes of
2 this chapter; and

3 “(4) enter into contracts and other agreements
4 without regard to advertising requirements for the ac-
5 quisition of such personnel, facilities, services and mate-
6 rials which he determines necessary to carry out the
7 purposes of this chapter.

8 “(b) In addition to the responsibilities described in sub-
9 section (a), the Attorney General shall—

10 “(1) issue, within one hundred and eighty days
11 after the effective date of this section, regulations for use
12 by United States attorneys governing recommendations
13 of persons to diversion programs;

14 “(2) conduct research and prepare concise annual
15 reports for the President, the Congress and the Judicial
16 Conference showing the progress of all diversion pro-
17 grams in fulfilling the purposes set forth in this chapter;

18 “(3) provide for the audit of any funds expended
19 under the provisions of this chapter other than funds
20 expended to provide for defense counsel;

21 “(4) be authorized to accept voluntary and uncom-
22 pensated services; and

23 “(5) promote the cooperation of the Department of
24 Justice, local diversion programs, and all agencies which
25 provide education, training, counseling, legal, employ-

1 ment, or other social services under any Act of Congress
2 to assure that eligible individuals admitted to diversion
3 programs can benefit to the extent possible.”.

4 (b) The table of chapters for title 18, United States
5 Code, and for part II of title 18, United States Code, are
6 each amended by inserting immediately after the item relat-
7 ing to chapter 209 the following:

“210. Diversion ----- 3201”.

8 SEC. 4. (a) Section 3169 (a) of title 18, United States
9 Code, is amended by inserting after “Chief United States
10 Probation Officer for the district,” the words “the diversion
11 administrator for the district if other than the chief proba-
12 tion officer,”.

13 (b) Section 3168 (b) of title 18, United States Code,
14 is amended by striking the word “pretrial”.

15 SEC. 5. For the purposes of carrying out the provisions
16 of this Act, there is authorized to be appropriated for the
17 fiscal years ending September 30, 1980, 1981, 1982, and
18 1983, the sum of \$3,000,000.

Passed the Senate April 27 (legislative day, April 24),
1978.

Attest:

J. S. KIMMITT,

Secretary.

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