AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Diversion Act of 1978".

Sec. 2. The Congress finds and declares that (a) the interests of operating the Federal criminal justice system efficiently, protecting society, and deterring individuals charged with violating criminal laws from future criminal acts can be served by creating alternatives to prosecution; and (b) such alternatives can be accomplished in appropr.
ate cases without losing the general deterrent effect of the
criminal justice system.

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

"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.

§ 3201. Definitions

"As used in this chapter, the term—

"(1) ‘eligible individual’ means any person against

whom a prosecutable case exists for an offense against

the United States where—

"(A) the alleged offense did not involve the

threat or infliction of serious bodily injury to other

persons;

"(B) it is reasonably foreseeable that the person

will not commit violent acts if admitted to a

diversion program;

"(C) the person has not exhibited a continuing

pattern of criminal behavior;

"(D) the person meets the criteria established
by regulations issued by the Attorney General and
guidelines established by the attorney for the Gover-
ment in the district where the indictment, informa-
tion, or complaint is filed; and

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

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

"(3) 'diversion plan' means a written agreement,
signed by the eligible individual, defense counsel, diver-
sion administrator, and the attorney for the Govern-
ment, that states those elements of a diversion pro-
gram in which the eligible individual will partici-
pate to assure that he will lead a lawful life, and states
the length of time required to complete the plan; but, in
no event shall a diversion plan exceed twelve months
except to allow the person admitted sufficient time to make restitution; and

"(4) 'diversion administrator' means a person designated by the Attorney General, after consultation with the district planning group, as administrator of the diversion program.

"§ 3202. Admission to diversion program

"(a) The diversion administrator or his assistants shall, to the extent possible, upon arrest or the issuance of a summons or as soon thereafter as possible, review the allegations against each person charged with a criminal offense against the United States and interview each person who he believes may be eligible for diversion. The diversion administrator shall then make a report to the attorney for the Government on the eligibility of each person charged. A person who has not had the allegations against him reviewed may request to be considered for admission by application to the diversion administrator. The attorney for the Government may require further investigation by the diversion administrator of a person being considered for admission with the consent of that person. If the attorney for the Government determines that a person is suitable, the diversion administrator shall prepare a diversion plan. Upon agreement of the attorney for the Government, diversion administrator, eligible person, and defense counsel about the elements of the plan,
the attorney for the Government shall assign supervision of
the plan to the diversion administrator. A determination of
eligibility or suitability by the attorney for the Government
shall not be subject to review except as otherwise provided
by law.

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

"§ 3203. Voluntariness of waiver of rights

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

"§ 3204. Inadmissibility of diversion information

"Whenever a person is admitted to a diversion program
and his diversion plan is later terminated or the person
withdraws and prosecution is resumed, any statement made
or other information given by the person in connection with
the determination of his eligibility or suitability for the
program, any statement made by the person while participat-
ing in the program, and any statement, report, or other
information concerning his participation in the program shall
not be admissible against the person on the issue of his guilt
of the offense that was the basis for diversion in any judi-
cial proceeding in which he is accused of the offense. This
section shall not be construed to limit the admissibility of any
information for purposes of impeachment.

"§ 3205. Continuation and dismissal of charges

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

"§ 3206. Termination; review; completion; withdrawal

"(a) If the attorney for the Government finds the per-
son is not fulfilling his obligations under the plan, or has dis-
covered facts previously unknown to him demonstrating
that the person is not suitable for diversion, the attorney
for the Government may resume prosecution. The attorney
for the Government shall make a written statement of the
factual basis for his determination to resume prosecution and
transmit copies to the person and to defense counsel. The
person and defense counsel shall thereafter be notified of
their opportunity to appear before the attorney for the Gov-
ernment and the diversion administrator to contest the deter-
mination within a reasonable time as established by the
Attorney General.

(b) If the person fails to contest the determination of
the attorney for the Government within the time specified,
no further review of the determination shall be granted. If,
on the appearance of the person and defense counsel before
the attorney for the Government and the diversion adminis-
trator, the attorney for the Government determines that
prosecution shall be resumed, the person may petition the
court for review. If the court finds that no fact exists upon
which the attorney for the Government could base a deter-
mination to resume prosecution, the court shall order that
the person be allowed to fulfill his obligations under the plan
or shall dismiss the charges if the court finds that all such
obligations have been fulfilled. In a proceeding under the
provisions of this subsection, evidence shall be admissible
regardless of its admissibility in a trial on the offense.
§ 3207. District planning group

(a) The district planning group established by section 3168 (a) of this title, together with other individuals as the chief judge may appoint, shall constitute a diversion advisory committee. The chief judge may appoint individuals representing agencies to which persons are referred under a diversion program pursuant to this chapter. The group shall plan the implementation of the diversion
program for the district and review on a regular basis the
administration and progress of such program. The com-
mittee shall report to the Attorney General at times and in
a manner as the Attorney General shall prescribe.

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

"§ 3208. Authority of the Attorney General

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

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

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

"(3) acquire such facilities, services, and materials
as he determines necessary to carry out the purposes of this chapter; and

"(4) enter into contracts and other agreements without regard to advertising requirements for the acquisition of such personnel, facilities, services and materials which he determines necessary to carry out the purposes of this chapter.

"(b) In addition to the responsibilities described in subsection (a), the Attorney General shall—

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

"(2) conduct research and prepare concise annual reports for the President, the Congress and the Judicial Conference showing the progress of all diversion programs in fulfilling the purposes set forth in this chapter;

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

"(4) be authorized to accept voluntary and uncompensated services; and

"(5) promote the cooperation of the Department of Justice, local diversion programs, and all agencies which provide education, training, counseling, legal, employ-
ment, or other social services under any Act of Congress
to assure that eligible individuals admitted to diversion
programs can benefit to the extent possible.”.

(b) The table of chapters for title 18, United States
Code, and for part II of title 18, United States Code, are
each amended by inserting immediately after the item relating
to chapter 209 the following:

“210. Diversion ------------------------------------------ 3201”.

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

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

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

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

Attest: J. S. KIMMITT,
Secretary.
AN ACT

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

MAY 1, 1978

Referred to the Committee on the Judiciary