

## 1 SENATE BILL NO. 59

2 INTRODUCED BY C. WOLKEN

3 BY REQUEST OF THE COMMISSION ON SENTENCING

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REQUIRING  
6 THE BOARD OF CRIME CONTROL TO CREATE A PRETRIAL GRANT PROGRAM; REQUIRING THE BOARD  
7 OF CRIME CONTROL TO CREATE A PROSECUTION DIVERSION GRANT PROGRAM; GRANTING THE  
8 BOARD RULEMAKING AUTHORITY TO ADMINISTER THE PROGRAMS; ALLOWING A COURT TO USE  
9 INFORMATION FROM A PRETRIAL RISK ASSESSMENT TOOL WHEN DETERMINING WHETHER A  
10 DEFENDANT SHOULD BE RELEASED OR DETAINED; ELIMINATING THE REQUIREMENT THAT A JUDGE  
11 OR JUSTICE OF THE PEACE REPORT DRUG USERS TO THE COUNTY ATTORNEY; AMENDING SECTION  
12 46-9-109, MCA; AND REPEALING SECTION 46-9-203, MCA."

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 NEW SECTION. **Section 1. Pretrial program -- rulemaking.** (1) Within the limits of available funds,  
17 the board of crime control shall develop and administer a pretrial grant program to encourage local adoption of:

18 (a) a validated pretrial risk assessment tool; and

19 (b) a dangerousness or lethality assessment for individuals charged with an offense of partner or family  
20 member assault.

21 (2) Grant funds may be used for pretrial services staff, to obtain assessment instruments, and to provide  
22 supervision of pretrial defendants. A county or a nonprofit organization contracting with a county to provide the  
23 pretrial services may be eligible for a grant.

24 (3) In administering the pretrial program, the board shall:

25 (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

26 (b) monitor the expenditure of funds by organizations receiving funds under this section;

27 (c) evaluate the effectiveness of services and activities under this section; and

28 (d) adopt rules necessary to implement this section.

29 (4) (a) Grants available under subsection (1) consist of state appropriations and federal funds received  
30 by the board for the purposes of administering the pretrial program or any funds received pursuant to subsection

1 (4)(b).

2 (b) The board may accept gifts, grants, and donations from other public or private sources, which must  
3 be used within the scope of this section.

4  
5 **NEW SECTION. Section 2. Prosecution diversion program -- rulemaking.** (1) Within the limits of  
6 available funds, the board of crime control shall develop and administer a prosecution diversion grant program  
7 to encourage local adoption of prosecution diversion programs under 46-16-130.

8 (2) Grant funds may be used for staff, to provide supervision, or to contract for program services for  
9 defendants in the program. A county attorney or a nonprofit organization contracting with a county attorney may  
10 be eligible for a grant.

11 (3) In administering the prosecution diversion program, the board shall:

12 (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

13 (b) monitor the expenditure of funds by organizations receiving funds under this section;

14 (c) evaluate the effectiveness of services and activities under this section; and

15 (d) adopt rules necessary to implement this section.

16 (4) (a) Grants available under subsection (1) consist of state appropriations and federal funds received  
17 by the board for the purposes of administering the prosecution diversion program or any funds received pursuant  
18 to subsection (4)(b).

19 (b) The board may accept gifts, grants, and donations from other public or private sources, which must  
20 be used within the scope of this section.

21  
22 **Section 3.** Section 46-9-109, MCA, is amended to read:

23 **"46-9-109. Release or detention hearing.** (1) The release or detention of the defendant must be  
24 determined immediately upon the defendant's initial appearance.

25 (2) In determining whether the defendant should be released or detained, the court may use a validated  
26 pretrial risk assessment tool and shall take into account the available information concerning:

27 (a) the nature and circumstances of the offense charged, including whether the offense involved the use  
28 of force or violence;

29 (b) the weight of the evidence against the defendant;

30 (c) the history and characteristics of the defendant, including:

1 (i) the defendant's character, physical and mental condition, family ties, employment, financial resources,  
2 length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse,  
3 criminal history, and record concerning the appearance at court proceedings; and

4 (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on  
5 other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

6 (d) the nature and seriousness of the danger to any person or the community that would be posed by  
7 the defendant's release; and

8 (e) the property available as collateral for the defendant's release to determine if it will reasonably ensure  
9 the appearance of the defendant as required.

10 (3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is  
11 established in the appropriate amount or whether any other condition or restriction upon the defendant's release  
12 will reasonably ensure the appearance of the defendant and the safety of any person or the community."

13  
14 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is  
15 repealed:

16 46-9-203. Report to county attorney concerning drug users.

17  
18 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified  
19 as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [sections  
20 1 and 2].

21 - END -