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SENATE BILL NO. 89

INTRODUCED BY R. LYNCH

BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A PRETRIAL DIVERSION PILOT PROGRAM; AND ESTABLISHING REPORTING REQUIREMENTS."

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

**NEW SECTION. Section 1. Nonviolent felony drug offense pretrial diversion pilot program. (1)**

Within the limits of available funds, the department of justice shall develop and administer a pretrial diversion pilot program in three counties.

(2) The department may use pretrial diversion pilot program funds to:

(a) develop, implement, and administer the pretrial diversion pilot program; and

(b) make allocations to counties or nonprofit organizations contracting with a county to provide pretrial services.

(3) Allocated funds may be used for pretrial diversion pilot program staff, to obtain assessments and assessment instruments, and to provide supervision of pretrial defendants.

(4) In administering the pretrial diversion pilot program, the department shall:

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

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

(c) evaluate the effectiveness of services and activities under [sections 1 through 6]; and

(d) develop policies and procedures necessary to implement [sections 1 through 6].

(5) (a) Funds available under subsection (1) consist of state appropriations and federal funds received by the department for the purposes of administering the pretrial diversion pilot program or any funds received pursuant to subsection (5)(b).

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

3 (6) The department shall submit an annual pretrial diversion pilot program report to the criminal  
4 justice oversight council and the law and justice interim committee in accordance with 5-11-210. The report  
5 must include participating counties, fund allocations and expenditures, program effectiveness, cost savings,  
6 recommendations, and other germane information identified by the department or requested by the criminal  
7 justice oversight council and the law and justice interim committee.

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9 **NEW SECTION. Section 2. Eligibility for pretrial diversion pilot program.** (1) A defendant  
10 charged with a violation of 45-9-102, 45-9-104, 45-9-105, or 45-9-121 may petition the court to approve a  
11 diversion agreement under [sections 1 through 6], if the defendant has:

- 12 (a) not previously participated in a diversion under [sections 1 through 6];
- 13 (b) no prior convictions of a sexual offense as defined in 46-23-502(9) or a violent offense as  
14 defined in 46-23-502(13);
- 15 (c) been screened using a validated substance abuse screening tool and a validated public safety  
16 assessment; and
- 17 (d) within 10 days of arraignment in the district court or initial appearance in a court of limited  
18 jurisdiction, has:
  - 19 (i) obtained a current chemical dependency evaluation that recommends treatment from a  
20 licensed addiction counselor;
  - 21 (ii) waived confidentiality of the chemical dependency evaluation and treatment records; and
  - 22 (iii) filed with the court a diversion agreement with the prosecution pursuant to [section 3].

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24 **NEW SECTION. Section 3. Diversion agreement.** (1) A diversion agreement under [sections 1  
25 through 6] must be in writing, signed by the parties, and include:

- 26 (a) the charge subject to the diversion agreement;
- 27 (b) ~~an agreement by that~~ the defendant ~~to may~~ plead guilty to the charge subject to the diversion  
28 agreement;

1 (c) a period for the diversion, not to exceed 18 months from the date that the court approves the  
2 diversion agreement; and

3 (d) a sentencing recommendation if the defendant is terminated from the pretrial diversion pilot  
4 program or fails to complete the program.

5 (2) A diversion agreement under [sections 1 through 6] may contain reasonable conditions,  
6 including that the defendant:

7 (a) use a specific treatment provider;

8 (b) commit no new offenses;

9 (c) remain on bail and subject to release conditions as provided in Title 46, chapter 9;

10 (d) not engage in specified activities, conduct, or associations related to the charge subject to the  
11 diversion agreement;

12 (e) complete a supervised rehabilitation program, based on the recommendations from the current  
13 chemical dependency evaluation;

14 (f) make restitution in a specified manner for harm or loss caused by the offense subject to the  
15 diversion agreement; and

16 (g) pay applicable fines and fees.

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18 **NEW SECTION. Section 4. Accepting or rejecting diversion agreement.** (1) On approving a  
19 diversion agreement under this part, if the defendant has agreed to plead guilty, the court shall conduct a  
20 change of plea hearing as described in Title 46, chapter 12, part 2, on the change subject to the diversion  
21 agreement.

22 (a) If the court accepts the plea, the court shall sign and date the diversion agreement, order that  
23 sentence and judgment be withheld for the duration of the diversion period subject to the conditions  
24 enumerated in the diversion agreement, and order any bail or release conditions as specified in the diversion  
25 agreement.

26 (b) If the court rejects the plea, the court shall deny the diversion agreement and resume  
27 proceedings.

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1            **NEW SECTION. Section 5. Terminating diversion agreement.** (1) If a defendant violates a  
2 condition of the diversion agreement, the prosecutor may file a petition to terminate the diversion agreement.

3            (2)        The court shall require the defendant to appear and show cause why the court should not  
4 terminate the diversion agreement. The order to show cause must:

- 5            (a)        state the reasons for the proposed termination;
- 6            (b)        set an appearance date; and
- 7            (c)        be served to the defendant.

8            (3)        The court shall terminate the diversion agreement and set the matter for sentencing if:

- 9            (a)        the defendant fails to appear at the hearing on the order to show cause, or
- 10          (b)        at the hearing on the order to show cause, the court finds by a preponderance of the evidence  
11 that the defendant no longer qualifies for the diversion agreement or failed to fulfill the conditions of the  
12 diversion agreement.

13          (4)        If the court terminates the diversion agreement, the court shall resume proceedings and  
14 schedule a sentencing hearing and order a presentence investigation pursuant to 46-18-111.

15          (5)        Any alleged violations of a condition of bail or release entered pursuant to a diversion  
16 agreement under this part are also subject to the provisions of Title 46, chapter 9.

18           **NEW SECTION. Section 6. Petition to dismiss or expunge records.** (1) A pretrial diversion pilot  
19 program participant who fully complies with the conditions of a diversion agreement may petition the court to  
20 dismiss the charge pursuant to 46-18-204 or expunge records as provided in 46-18-1109 and 46-18-1110.

21          (2)        The prosecutor may contest the petition within 20 days.  
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23           **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be  
24 codified as an integral part of Title 45, chapter 9, part 2, and the provisions of Title 45, chapter 9, part 2, apply  
25 to [sections 1 through 6].  
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