1   SENATE BILL NO. 89

2   INTRODUCED BY R. LYNCH

3   BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

4

5   A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A

6   PRETRIAL DIVERSION PILOT PROGRAM; AND ESTABLISHING REPORTING REQUIREMENTS."

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

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10   <u>NEW SECTION.</u> **Section 1.   Nonviolent felony drug offense pretrial diversion pilot program.** (1)

11   Within the limits of available funds, the department of justice shall develop and administer a pretrial diversion

12   pilot program in three counties.

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

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

15   (b)   make allocations to counties or nonprofit organizations contracting with a county to provide

16   pretrial services.

17   (3)   Allocated funds may be used for pretrial diversion pilot program staff, to obtain assessments

18   and assessment instruments, and to provide supervision of pretrial defendants.

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

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

21   funds;

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

23   section;

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

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

26   (5)   (a) Funds available under subsection (1) consist of state appropriations and federal funds

27   received by the department for the purposes of administering the pretrial diversion pilot program or any funds

28   received pursuant to subsection (5)(b).

1   condition of the diversion agreement, the prosecutor may file a petition to terminate the diversion agreement.

2   (2)   The court shall require the defendant to appear and show cause why the court should not

3   terminate the diversion agreement. The order to show cause must:

4   (a)   state the reasons for the proposed termination;

5   (b)   set an appearance date; and

6   (c)   be served to the defendant.

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

8   (a)   the defendant fails to appear at the hearing on the order to show cause, or

9   (b)   at the hearing on the order to show cause, the court finds by a preponderance of the evidence

10   that the defendant no longer qualifies for the diversion agreement or failed to fulfill the conditions of the

11   diversion agreement.

12   (4)   If the court terminates the diversion agreement, the court shall resume proceedings and

13   schedule a sentencing hearing and order a presentence investigation pursuant to 46-18-111.

14   (5)   Any alleged violations of a condition of bail or release entered pursuant to a diversion

15   agreement under this part are also subject to the provisions of Title 46, chapter 9.

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17   NEW SECTION. **Section 6.**   ~~Petition to dismiss or~~ <u>Dismiss and</u> expunge records. (1) A pretrial

18   diversion pilot program participant who fully complies with the conditions of a diversion agreement ~~may petition~~

19   ~~the court to dismiss the charge pursuant to 46-18-204 or expunge records as provided in 46-18-1109 and 46-~~

20   ~~18-1110~~ <u>shall have the charge dismissed and expunged from their record within 20 days</u>.

21   (2)   The prosecutor may contest the ~~petition~~ <u>dismissal and expungement</u> 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].

26   - END -