68th Legislature Drafter: Julianne Burkhardt, 406-444-4025 SB0089.001.006

1		SENATE BILL NO. 89
2		INTRODUCED BY R. LYNCH
3		BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL
4		
5	A BILL FOR A	N ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A
6	PRETRIAL DI	VERSION PILOT PROGRAM; AND ESTABLISHING REPORTING REQUIREMENTS; AND
7	PROVIDING A	A TERMINATION DATE."
8		
9	BE IT ENACT	ED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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11	<u>NEW</u>	SECTION. Section 1. Nonviolent felony drug offense pretrial diversion pilot program. (1)
12	Within the limi	ts of available funds, the department of justice shall develop and administer a pretrial diversion
13	pilot program i	n three counties.
14	(2)	The department may use pretrial diversion pilot program funds to:
15	(a)	develop, implement, and administer the pretrial diversion pilot program; and
16	(b)	make allocations to counties or nonprofit organizations contracting with a county to provide
17	pretrial service	PS.
18	(3)	Allocated funds may be used for pretrial diversion pilot program staff, to obtain assessments
19	and assessme	ent instruments, and to provide supervision of pretrial defendants.
20	(4)	In administering the pretrial diversion pilot program, the department shall:
21	(a)	identify priorities for funding services and activities and the criteria for the allocation of program
22	funds;	
23	(b)	monitor the expenditure of funds by counties and organizations receiving funds under this
24	section;	
25	(c)	evaluate the effectiveness of services and activities under [sections 1 through 6]; and
26	(d)	develop policies and procedures necessary to implement [sections 1 through 6].
27	(5)	(a) Funds available under subsection (1) consist of state appropriations and federal funds
28	received by th	e department for the purposes of administering the pretrial diversion pilot program or any funds



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1	received i	oursuant to	subsection	(5)	(b)	١.
ı	i eceiveu i	pursuant to	SUDSCULOTI	U	(D)	

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

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

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- NEW SECTION. Section 2. Eligibility for pretrial diversion pilot program. (1) A defendant 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 diversion agreement under [sections 1 through 6], if the defendant has:
  - (a) not previously participated in a diversion under [sections 1 through 6];
- (b) no prior convictions of a sexual offense as defined in 46-23-502(9) or a violent offense as defined in 46-23-502(13);
- (c) been screened using a validated substance abuse screening tool and a validated public safety assessment; and
- (d) within 10 days of arraignment in the district court or initial appearance in a court of limited jurisdiction, has:
  - (i) obtained a current chemical dependency evaluation that recommends treatment from a licensed addiction counselor:
    - (ii) waived confidentiality of the chemical dependency evaluation and treatment records; and
- 23 (iii) filed with the court a diversion agreement with the prosecution pursuant to [section 3].

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- NEW SECTION. Section 3. Diversion agreement. (1) A diversion agreement under [sections 1 through 6] must be in writing, signed by the parties, and include:
- 27 (a) the charge subject to the diversion agreement;
- 28 (b) an agreement by the defendant to plead guilty to the charge subject to the diversion



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1	agreement;		
2	(c)	a period for the diversion, not to exceed 18 months from the date that the court approves the	
3	diversion agree	ement; and	
4	(d)	a sentencing recommendation if the defendant is terminated from the pretrial diversion pilot	
5	program or fail	s to complete the program.	
6	(2)	A diversion agreement under [sections 1 through 6] may contain reasonable conditions,	
7	including that t	he defendant:	
8	(a)	use a specific treatment provider;	
9	(b)	commit no new offenses;	
10	(c)	remain on bail and subject to release conditions as provided in Title 46, chapter 9;	
11	(d)	not engage in specified activities, conduct, or associations related to the charge subject to the	
12	diversion agreement;		
13	(e)	complete a supervised rehabilitation program, based on the recommendations from the current	
14	chemical depe	ndency evaluation;	
15	(f)	make restitution in a specified manner for harm or loss caused by the offense subject to the	
16	diversion agree	ement; and	
17	(g)	pay applicable fines and fees.	
18			
19	NEW S	SECTION. Section 4. Accepting or rejecting diversion agreement. (1) On approving a	
20	diversion agree	ement under this part, the court shall conduct a change of plea hearing as described in Title 46,	
21	chapter 12, pa	rt 2, on the change subject to the diversion agreement.	
22	(a)	If the court accepts the plea, the court shall sign and date the diversion agreement, order that	
23	sentence and j	udgment 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	



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.
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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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27	NEW SECTION. Section 8. Termination. [Sections 1 through 6] terminate June 30, 2029.
28	- END -

