

1 SENATE BILL NO. 459

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4 B. USHER, W. MCKAMEY, M. NOLAND, D. LENZ, D. BARTEL, G. HERTZ, S. MORIGEAU, C. GLIMM, D.
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7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRETRIAL RELEASE;
8 ALLOWING A SHERIFF TO RELEASE A DEFENDANT ON THE DEFENDANT'S OWN RECOGNIZANCE IN
9 CERTAIN CIRCUMSTANCES; REQUIRING A SHERIFF TO CREATE A WRITTEN POLICY GOVERNING
10 RELEASE; PROVIDING DEFINITIONS; AND AMENDING SECTION 46-9-111, MCA."

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

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14 NEW SECTION. **Section 1. Sheriff release authority -- written policy -- definitions.** (1) A sheriff
15 may release a defendant from the county detention center under the sheriff's jurisdiction on the defendant's
16 own recognizance if:

- 17 (a) the individual was arrested without a warrant;
- 18 (b) law enforcement has not submitted a probable cause statement to a court;
- 19 (c) the individual agrees in writing to appear for any future criminal proceedings related to the
20 arrest;
- 21 (d) the individual qualifies for release under the sheriff's written policy established as provided in
22 subsection (2); and
- 23 (e) the individual was not arrested for a disqualifying offense.

24 (2) A sheriff shall create and approve a written policy for the county that governs the release of a
25 defendant on the defendant's own recognizance. The written policy must describe the criteria a defendant must
26 meet to be released on the defendant's own recognizance. A sheriff may include in the written policy criteria
27 relating to:

- 28 (a) criminal history;

- 1 (b) prior instances of failing to appear for a mandatory court appearance;
 - 2 (c) current employment;
 - 3 (d) residency;
 - 4 (e) ties to the community;
 - 5 (f) the offense for which the defendant was arrested;
 - 6 (g) any potential criminal charges that have not yet been filed;
 - 7 (h) the defendant's health;
 - 8 (i) any potential risks to a victim, a witness, or the public; and
 - 9 (j) any other similar factors the sheriff considers relevant.
- 10 (3) As used in this section, the following definitions apply:
- 11 (a) "Detention center" has the meaning provided in 7-32-2241.
 - 12 (b) "Disqualifying offense" means:
 - 13 (i) a crime of violence, as defined in 46-18-104;
 - 14 (ii) a violation of 45-5-206, 45-5-209, 45-5-220, 45-5-626, OR 45-8-103; or
 - 15 (iii) a violation of Title 61, chapter 8, part 10, if the violation resulted in death or serious bodily
 - 16 injury.

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18 **Section 2.** Section 46-9-111, MCA, is amended to read:

19 **"46-9-111. Release on own recognizance.** Any person in custody, if otherwise eligible for bail, may
20 be released on the person's personal recognizance subject to conditions that the court may reasonably
21 prescribe to ensure the person's appearance when required or by a sheriff pursuant to [section 1]. Any person
22 released as provided in this section must be fully apprised by the court or the sheriff of the penalty provided for
23 failure to comply with the terms of the person's recognizance."

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25 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 46, chapter 9, part 1, and the provisions of Title 46, chapter 9, part 1, apply to [section 1].

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