

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; CREATING A SPECIAL REVENUE ACCOUNT; PROVIDING FOR
7 A TRANSFER FROM THE MARIJUANA SPECIAL REVENUE ACCOUNT TO THE PRETRIAL DIVERSION
8 SPECIAL REVENUE ACCOUNT; AND ESTABLISHING REPORTING REQUIREMENTS; AMENDING
9 SECTION 16-12-111, MCA; AND PROVIDING A TERMINATION DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. Section 1. PRETRIAL DIVERSION SPECIAL REVENUE ACCOUNT. (1) THERE IS A PRETRIAL
14 DIVERSION ACCOUNT IN THE STATE SPECIAL REVENUE FUND ESTABLISHED IN 17-2-102.

15 (2) THERE MUST BE PAID INTO THE ACCOUNT MONEY FROM MARIJUANA TAXES DEPOSITED UNDER 16-12-
16 111.

17 (3) MONEY IN THE ACCOUNT MAY ONLY BE USED BY THE DEPARTMENT OF JUSTICE TO PROVIDE A PRETRIAL
18 DIVERSION PILOT PROGRAM.

19 (4) INTEREST AND INCOME EARNED ON THE ACCOUNT AND ANY UNSPENT OR UNENCUMBERED MONEY IN
20 THE ACCOUNT AT THE END OF A FISCAL YEAR MUST REMAIN IN THE ACCOUNT.

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22 NEW SECTION. Section 2. Nonviolent felony drug offense pretrial diversion pilot program. (1)
23 Within the limits of available funds, the department of justice shall develop and administer a pretrial diversion
24 pilot program in A MINIMUM OF three counties.

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

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

27 (b) make allocations to counties or ~~nonprofit~~ organizations contracting with a county to provide
28 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 7]; and

(d) develop policies and procedures necessary to implement [sections 1 through 6 7].

(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).

(b) The office may accept gifts, grants, and donations from other public or private sources, which must be used 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.

NEW SECTION. Section 3. 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,~~ OR OTHER OFFENSE WHEN THE DEFENDANT'S CHEMICAL DEPENDENCY EVALUATION REQUIRED BY SUBSECTION (1)(D)(I) SHOWS THAT THE DEFENDANT HAS A SUBSTANCE USE DISORDER AND THE DEFENDANT'S SUBSTANCE USE DISORDER PLAYED A LARGE ROLE IN THE COMMISSION OF THE OFFENSE, may petition the court to approve a diversion agreement under [sections 1 through 6 7], if the defendant has:

(a) not previously participated in a diversion under [sections 1 through 6 7];

(b) no prior convictions of a sexual offense as defined in 46-23-502(9) or a violent offense as

1 defined in 46-23-502(13);

2 (c) been screened using a validated substance abuse screening tool and a validated public safety
3 assessment; and

4 (d) within 10 days of arraignment in the district court or initial appearance in a court of limited
5 jurisdiction, has:

6 (i) obtained a current chemical dependency evaluation that recommends treatment from a
7 licensed addiction counselor;

8 (ii) waived confidentiality of the chemical dependency evaluation and treatment records; and

9 (iii) filed with the court a diversion agreement with the prosecution pursuant to [section ~~3~~ 4].

10
11 **NEW SECTION. Section 4. Diversion agreement.** (1) ~~A diversion agreement. IF A DIVERSION~~
12 ~~AGREEMENT~~ under [sections 1 through ~~6~~ 7] IS ENTERED INTO, THE AGREEMENT must be in writing, AND signed by
13 the parties, and MAY include:

14 (a) the charge subject to the diversion agreement;

15 (b) WHETHER THERE IS an agreement by the defendant to plead guilty to the charge subject to the
16 diversion agreement OR AN AGREEMENT TO DEFER THE PROSECUTION UNDER 46-16-130;

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

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

21 (2) A diversion agreement under [sections 1 through ~~6~~ 7] may contain reasonable conditions,
22 including that the defendant:

23 (a) use a specific treatment provider;

24 (b) commit no new offenses;

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

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

28 (e) complete a supervised rehabilitation program, based on the recommendations from the current

1 chemical dependency evaluation;

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

4 (g) pay applicable fines and fees.

5
6 **NEW SECTION. Section 5. Accepting or rejecting diversion agreement.** (1) On approving a
7 diversion agreement under this part, the court ~~shall~~MAY conduct a change of plea hearing as described in Title
8 46, chapter 12, part 2, on the change subject to the diversion agreement.

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

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

15
16 **NEW SECTION. Section 6. Terminating diversion agreement.** (1) If a defendant violates a
17 condition of the diversion agreement, the prosecutor may file a petition to terminate the diversion agreement.

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

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

21 (b) set an appearance date; and

22 (c) be served to the defendant.

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

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

25 (b) at the hearing on the order to show cause, the court finds by a preponderance of the evidence
26 that the defendant no longer qualifies for the diversion agreement or failed to fulfill the conditions of the
27 diversion agreement.

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

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

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

4
5 **NEW SECTION. Section 7. Petition to dismiss or expunge records.** (1) A pretrial diversion pilot
6 program participant who fully complies with the conditions of a diversion agreement may petition the court to
7 dismiss the charge pursuant to 46-18-204 or expunge records as provided in 46-18-1109 and 46-18-1110.

8 (2) The prosecutor may contest the petition within 20 days.

9
10 **SECTION 8. SECTION 16-12-111, MCA, IS AMENDED TO READ:**

11 **"16-12-111. Marijuana state special revenue account -- operating reserve -- transfer of excess**
12 **funds.** (1) There is a dedicated marijuana state special revenue account within the state special revenue fund
13 established in 17-2-102, to be administered by the department.

14 (2) The account consists of:

15 (a) money deposited into the account pursuant to this chapter;

16 (b) the taxes collected pursuant to Title 15, chapter 64, part 1;

17 (c) license and registered cardholder fees deposited into the account pursuant to this chapter;

18 (d) taxes deposited into the account pursuant to 16-12-310; and

19 (e) civil penalties collected under this chapter.

20 (3) Except as provided in subsection (4), money in the account must be used by the department
21 for the purpose of administering the provisions of this chapter.

22 (4) At the end of each fiscal year, the department shall transfer funds in excess of a 3-month
23 operating reserve necessary to fund operating costs at the beginning of the next fiscal year in the following
24 order:

25 (a) an amount not to exceed \$6 million must be transferred to the healing and ending addiction
26 through recovery and treatment (HEART) account established in 16-12-122;

27 (b) the net balance remaining after distribution to the HEART account must be distributed as
28 follows:

(i) ~~20%~~ 18% to the credit of the department of fish, wildlife, and parks to be used solely as funding for wildlife habitat in the same manner as funding generated under 87-1-242(3) and used pursuant to 87-1-209;

(ii) 4% to the state park account established in 23-1-105(1);

(iii) 4% to the trails and recreational facilities account established in 23-2-108;

(iv) 4% to the nongame wildlife account established in 87-5-121;

(v) 3% or \$200,000, whichever is less, to the veterans and surviving spouses state special revenue account provided for in 10-2-108;

(vi) 2% to the pretrial diversion account established in [section 1];

~~(vi)~~(vii) for the biennium beginning July 1, 2021, \$300,000 to the department of justice to administer grant funding to local and state law enforcement agencies for the purpose of purchasing and training drug detection canines and canine handlers, including canines owned by local law enforcement agencies to replace canines who were trained to detect marijuana;

~~(viii)~~(viii) \$150,000 to the board of crime control to fund crisis intervention team training as provided in 44-7-110; and

~~(viii)~~(ix) the remainder to the general fund. (Subsection ~~(4)(b)(vi)~~ (4)(b)(vii) terminates June 30, 2025--sec. 117(2), Ch. 576, L. 2021.)"

NEW SECTION. Section 9. Codification instruction. [Sections 1 through ~~6~~7] are intended to be codified as an integral part of Title 45, chapter 9, part 2, and the provisions of Title 45, chapter 9, part 2, apply to [sections 1 through ~~6~~7].

NEW SECTION. Section 10. TERMINATION. [SECTIONS 1 THROUGH ~~6~~ 7] TERMINATE JUNE 30, 2029.

- END -