

1 SENATE BILL NO. 89  
2 INTRODUCED BY R. LYNCH  
3 BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL  
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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 **NEW SECTION. 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 (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 the defendant to plead guilty to the charge subject to the diversion  
28 agreement;