

Unofficial Draft Copy - CJOC 6.2

For review by the Criminal Justice Oversight Council on 11/15/2022

68th Legislature

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CJOC 6.2

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**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A PRETRIAL PROGRAM; PROVIDING AN APPROPRIATION; PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Nonviolent felony drug offense pretrial pilot program. (1) Within the limits of available funds, the department of justice shall develop and administer a pretrial pilot program in [number] counties.

(2) The department may use program funds to:

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

(b) make allocations to counties or nonprofit organizations contracting with a county to provide pretrial services.

(3) Allocated funds may be used for pretrial services staff, to obtain assessments and assessment instruments, and to provide supervision of pretrial defendants.

(4) In administering the pretrial 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 1-6]; and

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

(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 program or any funds 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 program report to the criminal justice oversight
4 council and law and justice interim committee. The report shall include participating counties, fund allocations
5 and expenditures, program effectiveness, cost savings, recommendations, and other germane information
6 identified by the department or requested by the criminal justice oversight council and law and justice interim
7 committee.

8
9 **NEW SECTION. Section 2. Eligibility for pilot program.** (1) A defendant charged with a violation of
10 45-9-102, 45-9-104, 45-9-105, or 45-9-121 may petition the court to approve a diversion agreement under
11 [sections 1-6], if the defendant has:

- 12 (a) not previously participated in a diversion under [sections 1-6];
- 13 (b) no prior convictions of a sexual offense as defined in 46-23-503 (9), or of a violent offense as
14 defined in 46-23-503 (13);
- 15 (c) been screened using a validated substance abuse screening tool and validated public safety
16 assessment; and
- 17 (d) within 10 days of arraignment in the district or initial appearance in a court of limited jurisdiction,
18 has:
 - 19 (i) obtained a current chemical dependency assessment that recommends treatment from a
20 licensed addiction counselor;
 - 21 (ii) waived confidentiality of the chemical dependency assessment and treatment records; and
 - 22 (iii) filed with the court a diversion agreement with the prosecution, pursuant to [section 3].

23
24 **NEW SECTION. Section 3. Diversion agreement.** (1) A diversion agreement under [sections 1-6]
25 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;

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

3 (d) a sentencing recommendation if the defendant is terminated from the diversion program or fails
4 to complete the program.

5 (2) A diversion agreement under [sections 1-6] may contain reasonable conditions, including that
6 the defendant:

7 (a) use a specific treatment provider;

8 (b) commit no new offenses;

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

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

12 (e) complete a supervised rehabilitation program, based on the recommendations from the current
13 chemical dependency evaluation;

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

16 (g) pay applicable fines and fees.

17
18 **NEW SECTION. Section 4. Accepting or rejecting a diversion agreement.** (1) Upon approving a
19 diversion agreement under this part, the court shall conduct a change of plea hearing as described in Title 46,
20 chapter 12, part 2, on the change subject to the diversion agreement.

21 (a) If the court accepts the plea, the court shall sign and date the diversion agreement, and order
22 that sentence and judgement be withheld for the duration of the diversion period, subject to the conditions
23 enumerated in the diversion agreement, and order any bail or release conditions as specified in the diversion
24 agreement.

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

27
28 **NEW SECTION. Section 5. Terminating a diversion agreement.** (1) If a defendant violates a

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;

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.

16
17 **NEW SECTION. Section 6. Petition to dismiss or expunge records.** (1) An offender who fully
18 complies with the conditions of a diversion agreement may petition the court to dismiss the charge per 46-18-
19 204 or expunge records as provided in [46-18-1109 and 46-18-1110].

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

21
22 **NEW SECTION. Section 7. Appropriation.** There is appropriated [an amount] from the general fund
23 to the Department of Justice for the biennium beginning July 1, 2023, for the purposes of developing and
24 administering the program as provided in [sections 1-6].

25
26 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 6] are intended to be
27 codified as an integral part of Title 45, chapter 9, part 2, and the provisions of Title 45, chapter 9, part 2, apply
28 to [sections 1 through 6].

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NEW SECTION. **Section 9.** **Effective date.** [This act] is effective July 1, 2023.

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- END -

DRAFT