

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising laws related to supervision of probationers and of defendants serving a deferred or suspended sentence; revising the process to revoke a deferred or suspended sentence for violations of conditions; defining terms; allowing a probation and parole officer to file a petition to terminate the time remaining on a deferred or suspended sentence; creating a deadline after which the deferred or suspended sentence is terminated; creating a schedule for conditional discharge recommendations for probationers; amending sections 46-18-203, 46-18-208, and 46-23-1011, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 46-18-203 , MCA, is amended to read:

**"46-18-203. Revocation of suspended or deferred sentence.** (1)

Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a

specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after the petition is filed, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence

can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is not a compliance violation, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and either expressly allow all or part of the elapsed time served without any record or recollection of violations as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination that elapsed time should not be credited in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence and the violation is a compliance violation, the judge may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) impose a sanction of up to 60 days if it is the first or second petition that is based on a compliance violation to reach the judge;

(d) impose a sanction of up to 180 days if it is the third petition that is based on a compliance violation to reach the judge; or

(e) revoke as provided in subsection (7)(a)(iii) through (7)(c) if it is the fourth or subsequent petition that is based on a compliance violation to reach the judge.

~~(8)~~(9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(10) Probation and parole officers shall use the violation guidelines and intermediate response guidelines adopted under 46-23-218 [only works in conjunction with LCj013] to assist in determining the severity of response in reference to the severity of a violation.

(11) As used in this section, the following definitions apply:

(a) "Absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful;

(b) "Compliance violation" means a violation of the conditions

of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered staking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network; or

(iv) absconding.

~~(9)~~(12) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

{Internal References to 46-18-203:

41-5-208x	41-5-2510x	46-18-204x	46-18-247x
46-18-247c	46-18-247c	46-23-1011x	46-23-1011x
46-23-1011x	46-23-1012x	46-23-1015x	61-8-731x 7/12 }

**Section 2.** Section 46-18-208 , MCA, is amended to read:

**"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, ~~or~~ defendant, or the defendant's probation and parole officer may file a petition to terminate the time remaining on the sentence if:

(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the sentence, whichever

is less, and has demonstrated compliance with supervision requirements; or

(b) in the case of a suspended sentence:

(i) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and

(ii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and has demonstrated compliance with the conditional discharge for a minimum of 12 months.

(2) The court may hold a hearing on the petition on its own motion or upon request of the prosecutor or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended sentence is terminated 30 days after the petition is filed.

(3) ~~The~~ If the court requires a hearing on the petition, the court may grant the petition if it finds that:

(a) termination of the remainder of the sentence is in the best interests of the defendant and society;

(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the victim of the offense; and

(c) the defendant has paid all restitution and court-ordered financial obligations in full."

{*Internal References to 46-18-208:*

46-18-204x 7/8 }

**Section 3.** Section 46-23-1011 , MCA, is amended to read:

**"46-23-1011. Supervision on probation.** (1) The department

shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or an immediate family member of the victim. If the victim or an immediate family member of the victim requests to the department that the probationer not contact the victim or immediate family member, the department shall request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

(3) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(4) The probation and parole officer shall regularly advise and consult with the probationer using effective communication strategies and other behavioral change techniques to encourage the probationer to improve the probationer's condition and conduct and

shall inform the probationer of the restoration of rights on successful completion of the sentence.

(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(6) (a) The probation and parole officer shall recommend conditional discharge when a probationer is in compliance with the conditions of supervision according to the following schedule based on the risk and needs of each individual when:

(i) a low-risk probationer has served 9 months;

(ii) a moderate-risk probationer has served 18 months; and

(iii) a high-risk probationer has served 24 months.

(b) On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the~~

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~~department. The department shall determine the optimum workload for each district probation and parole office."~~

{Internal References to 46-23-1011:

46-18-203x 46-18-208x 46-18-1003x 46-23-1005x  
46-23-1020x 46-23-1020x 46-24-203x 46-24-212x

61-8-731x \* 7/8}

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