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## HOUSE BILL NO. 612

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INTRODUCED BY G. OVERSTREET

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IF A SENTENCE IS REVOKED THE NEW  
5 SENTENCE MUST RUN CONSECUTIVELY TO ANY EXISTING SENTENCE UNLESS THE ORIGINAL  
6 SENTENCE RAN CONCURRENTLY; AND AMENDING SECTIONS 46-18-203 AND 46-18-401, MCA."

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

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

11 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for  
12 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of  
13 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed  
14 pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711, the judge may issue an order for a  
15 hearing on revocation. The order must require the offender to appear at a specified time and place for the  
16 hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may  
17 also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender  
18 and bring the offender before the court.

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

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

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

27 (a) the allegations of the petition;

28 (b) the opportunity to appear and to present evidence in the offender's own behalf;

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

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

7 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given

8 notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term

9 of probation is not favorable to the offender for the purposes of this subsection (5)(b).

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

12 (i) the terms and conditions of the suspended or deferred sentence; or  
13 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),  
14 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711.

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

19 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended  
20 or deferred sentence by committing either compliance violations or noncompliance violations, or both, the judge  
21 may:

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

23 (ii) continue the suspended sentence with modified or additional terms and conditions, which may

24 include placement in:

25 (A) a secure facility designated by the department for up to 9 months; or

26 (B) a community corrections facility or program designated by the department for up to 9 months,

27 including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program,

28 enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety

1 program;

2 (iii) revoke the suspension of sentence and require the offender to serve either the sentence  
3 imposed or any sentence that could have been imposed that does not include a longer imprisonment or  
4 commitment term than the original sentence. A sentence imposed upon revocation must run consecutively to  
5 any other previously existing sentence unless the suspended or deferred sentence that is being revoked ran  
6 concurrently to the previously existing sentence; or.

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

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

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

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

19 (9) All sanction and placement decisions must be documented in the offender's file.

20 (10) As used in this section:

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

24 (b) "compliance violation" means a violation of the conditions of supervision that is not:

25 (i) a new criminal offense;

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

27 (iii) behavior by the offender or any person acting at the offender's direction that could be

28 considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate

1       family or support network;

2           (iv)     absconding; or

3           (v)     failure to enroll in or complete a required sex offender treatment program or a treatment

4       program designed to treat violent offenders.

5           (11)    The provisions of this section apply to any offender whose suspended or deferred sentence is

6       subject to revocation regardless of the date of the offender's conviction and regardless of the terms and

7       conditions of the offender's original sentence."

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9           **Section 2.** Section 46-18-401, MCA, is amended to read:

10           **"46-18-401. Consecutive sentences.** (1) Unless the judge otherwise orders:

11           (a)     whenever a person serving a term of commitment imposed by a court in this state is committed

12       for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

13           (b)     whenever a person under suspended sentence or on probation for an offense committed in this

14       state is sentenced for another offense, the period still to be served on suspended sentence or probation may

15       not be merged in any new sentence of commitment or probation.

16           (2)     The court, whether or not it merges the sentences, shall immediately furnish each of the other

17       courts and the penal institutions in which the defendant is confined under sentence with authenticated copies of

18       its sentence, which must cite any sentence that is merged.

19           (3)     If an unexpired sentence is merged pursuant to subsection (1), the court that imposed the

20       sentence shall modify it in accordance with the effect of the merger.

21           (4)     Separate sentences for two or more offenses must run consecutively unless the court

22       otherwise orders.

23           (5)     If a sentence is revoked pursuant to 46-18-203, the sentence imposed upon revocation must

24       run consecutively to any other previously existing sentence unless the suspended or deferred sentence that is

25       being revoked ran concurrently to the previously existing sentence."

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