

SENATE BILL NO. 552

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PETITION TO TRANSFER MAY BE FILED BY A COUNTY ATTORNEY IF AN OFFENDER PREVIOUSLY SENTENCED FOR A FELONY WHO RECEIVED A SUSPENDED OR DEFERRED SENTENCE IN ONE COUNTY IS CHARGED WITH ANOTHER FELONY IN A DIFFERENT COUNTY SO THAT BOTH CASES CAN BE FILED IN THE COUNTY WHERE THE SECOND FELONY CASE IS ALLEGED TO HAVE OCCURRED; PROVIDING A FILING FEE; AND AMENDING SECTIONS 46-18-203 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~~On 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), 45-5-625(4), or 45-5-711, 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 or with a court as provided in subsection (3) 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) A county attorney in a county where the defendant is alleged to have committed a new felony offense may petition the sentencing court in a county where the defendant was sentenced to a suspended or deferred sentence in a prior felony conviction to transfer the matter to the county where the new felony is

1 alleged to have been committed for revocation of the prior suspended or deferred sentence. The petition must
2 be served on the county attorney in the original sentencing county, the sentencing judge in the sentencing
3 jurisdiction of the prior felony conviction, any victims, and the defendant.

4 ~~(3)~~(4) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons
5 arrested pursuant to this section.

6 ~~(4)~~(5) Without unnecessary delay and no more than 60 days after arrest, the offender must be
7 brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

8 (a) the allegations of the petition;

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

10 (c) the opportunity to question adverse witnesses; and

11 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8,
12 part 1.

13 ~~(5)~~(6) A hearing is required before a suspended or deferred sentence can be revoked or the terms or
14 conditions of the sentence can be modified unless:

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

16 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given
17 notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term
18 of probation is not favorable to the offender for the purposes of this subsection ~~(5)(b)~~ ~~(6)~~(b).

19 ~~(6)~~(7) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there
20 has been a violation of:

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

22 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
23 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711.

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

28 ~~(7)~~(8) (a) If the judge finds that the offender has violated the terms and conditions of the suspended

1 or deferred sentence by committing either compliance violations or noncompliance violations, or both, the judge
2 may:

3 (i) continue the suspended or deferred sentence without a change in conditions;
4 (ii) continue the suspended sentence with modified or additional terms and conditions, which may
5 include placement in:

6 (A) a secure facility designated by the department for up to 9 months; or
7 (B) a community corrections facility or program designated by the department for up to 9 months,
8 including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program,
9 enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety
10 program;

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

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

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

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

23 ~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
24 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must
25 be dismissed and the offender, if in custody, must be immediately released.

26 ~~(9)(10)~~ All sanction and placement decisions must be documented in the offender's file.

27 ~~(40)(11)~~ As used in this section:

28 (a) "absconding" means when an offender deliberately makes the offender's whereabouts

1 unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and
2 reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful; and
3 (b) "compliance violation" means a violation of the conditions of supervision that is not:
4 (i) a new criminal offense;
5 (ii) possession of a firearm in violation of a condition of probation;
6 (iii) behavior by the offender or any person acting at the offender's direction that could be
7 considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate
8 family or support network;
9 (iv) absconding; or
10 (v) failure to enroll in or complete a required sex offender treatment program or a treatment
11 program designed to treat violent offenders.

12 ~~(11)~~(12) The provisions of this section apply to any offender whose suspended or deferred sentence is
13 subject to revocation regardless of the date of the offender's conviction and regardless of the terms and
14 conditions of the offender's original sentence.

15 (13) A filing fee of \$120 must be filed with a petition for revocation when a transfer of jurisdiction is
16 requested."
17

18 **Section 2.** Section 46-23-1011, MCA, is amended to read:

19 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during
20 their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
21 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711, in accord with the conditions set by a sentencing judge. If
22 the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request
23 of the department, hold a hearing and set conditions of probation. The probationer must be present at the
24 hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

25 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the
26 conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the
27 offense or an immediate family member of the victim. If the victim or an immediate family member of the victim
28 requests to the department that the probationer not contact the victim or immediate family member, the

1 department shall request a hearing with a sentencing judge and recommend that the judge add the condition of
2 probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's
3 behalf.

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

6 (4) The probation and parole officer shall regularly advise and consult with the probationer using
7 effective communication strategies and other evidence-based practices to encourage the probationer to
8 improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on
9 successful completion of the sentence.

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

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

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

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

19 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-
20 503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711, the provisions of ~~46-18-203(7)(a)(ii)~~ 46-18-
21 203(8)(a)(ii) do not apply to this section.

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

24 (6) Based on the risk and needs of each individual as determined by the individual's most recent
25 risk and needs assessment, the probation and parole officer shall notify the probationer of eligibility for
26 conditional discharge from supervision when a probationer is in compliance with the conditions of supervision
27 when:

28 (a) under the women's risks and needs assessment:

- 1 (i) a low-risk probationer has served 9 months;
- 2 (ii) a moderate-risk probationer has served 12 months;
- 3 (iii) a medium-risk probationer has served 18 months; and
- 4 (iv) a high-risk probationer has served 24 months; and
- 5 (b) under the Montana offender reentry and risk assessment:
- 6 (i) a low-risk probationer has served 9 months;
- 7 (ii) a moderate-risk probationer has served 12 months;
- 8 (iii) a high-risk probationer has served 18 months; and
- 9 (iv) a very high-risk probationer has served 24 months.
- 10 (7) The probationer, the probationer's attorney, or the prosecutor may file a motion recommending
- 11 conditional discharge. The motion must set forth the following:
- 12 (a) why the probationer meets the requirements of subsection (6); and
- 13 (b) whether the department of corrections supports or opposes the motion.
- 14 (8) The motion must be served on the county attorney serving in the county of the presiding district
- 15 court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana
- 16 Uniform District Court Rules.
- 17 (9) The department of corrections shall make reasonable efforts to notify the victim if required by
- 18 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be
- 19 provided the following:
- 20 (a) a copy of the motion;
- 21 (b) written notice that:
- 22 (i) the victim may provide written input regarding the motion or may ask the county attorney to
- 23 state the victim's position on the motion;
- 24 (ii) if a hearing is set, the date, time, and place of the hearing; and
- 25 (iii) the victim may appear and testify at any hearing held on the motion.
- 26 (10) (a) The court may hold a hearing on the motion. A judge may conditionally discharge a
- 27 probationer from supervision before expiration of the probationer's sentence if:
- 28 (i) the judge determines that a conditional discharge from supervision:

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

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

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

4 (b) Subsection (10)(a) does not prohibit a judge from revoking the order suspending execution or

5 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally

6 discharged from supervision."

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