

1 SENATE BILL NO. 70

2 INTRODUCED BY G. LAMMERS

3 BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CONDITIONS OF  
6 PROBATION; ALLOWING FOR A PROBATION AND PAROLE OFFICER TO REMOVE A CONDITION OF  
7 SUPERVISION WITHOUT OBJECTION; REQUIRING VICTIM NOTIFICATION; AND AMENDING SECTIONS  
8 46-18-203 AND 46-23-1011, MCA."  
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11

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

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

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

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

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

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

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

- 8 (a) the offender admits the allegations and waives the right to a hearing; or
- 9 (b) the sentencing court, the probationer, or the county attorney in the sentencing jurisdiction has  
10 not objected to the removal of a condition of supervision pursuant to 46-23-1011 AND THE DEPARTMENT OF  
11 CORRECTIONS NOTIFIES THE VICTIM OF THE CHANGE, USING ANY AVAILABLE CONTACT INFORMATION AT THE TIME THE  
12 OTHER PARTIES ARE NOTIFIED; or

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

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

- 18 (i) the terms and conditions of the suspended or deferred sentence; or
- 19 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),  
20 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711.

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

25 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended  
26 or deferred sentence by committing either a compliance violations-violation or a noncompliance violations  
27 violation, or both, the judge may:

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

1 (ii) continue the suspended sentence with modified or additional terms and conditions, which may  
2 include placement in:

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

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

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

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

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

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

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

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

24 (10) As used in this section:

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

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

- 1 (i) a new criminal offense;
- 2 (ii) possession of a firearm in violation of a condition of probation;
- 3 (iii) behavior by the offender or any person acting at the offender's direction that could be
- 4 considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate
- 5 family or support network;
- 6 (iv) absconding; or
- 7 (v) failure to enroll in or complete a required sex offender treatment program or a treatment
- 8 program designed to treat violent offenders.

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

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

11 conditions of the offender's original sentence."

12

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

14 **"46-23-1011. Supervision on probation -- removal of condition of supervision.** (1) The

15 department shall supervise probationers during their probation period, including supervision after release from

16 imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711, in accord

17 with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the

18 time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of

19 probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided

20 in chapter 8 of this title.

21 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the

22 conditions of probation may require the probationer to refrain from direct or indirect contact with the victim of the

23 offense or an immediate family member of the victim. If the victim or an immediate family member of the victim

24 requests to the department that the probationer not contact the victim or immediate family member, the

25 department shall request a hearing with a sentencing judge and recommend that the judge add the condition of

26 probation. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's

27 behalf.

28 (3) A copy of the conditions of probation must be signed by the probationer. The department may

1 require a probationer to waive extradition for the probationer's return to Montana.

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

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

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

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

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

15 (6) (a) The probation and parole officer may submit the intent to remove a condition of supervision  
16 by notifying the sentencing court, the probationer, and the county attorney in the sentencing jurisdiction in  
17 writing of the condition of supervision to be removed. If no objection pursuant to subsection (6)(b) occurs, the  
18 condition is removed.

19 (b) If the sentencing court, the probationer, or the county attorney in the sentencing jurisdiction  
20 objects within 14 days to the probation and parole officer's notification of intent to remove a condition of  
21 supervision, the court shall hold a hearing as provided in 46-18-203.

22 (c) To reinstate a condition of supervision that was removed pursuant to subsection (6)(a), the  
23 probation and parole officer shall notify the sentencing court, the probationer, and the county attorney in the  
24 sentencing jurisdiction in writing.

25 (d) If a condition of supervision removed or reinstated under this subsection (6) affects restitution  
26 and interest to the victim, as provided in 46-18-241 through 46-18-249, or if the removed or reinstated condition  
27 affects direct or indirect contact with the victim, as provided in 46-24-203, or both, the county attorney in the  
28 sentencing jurisdiction shall make reasonable efforts to notify the victim by providing a copy of the notice

1 described in subsection (6)(a).

2 ~~(e)~~(7) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-  
3 503(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) do not apply to  
4 this section.

5 ~~(f)~~(8) The probationer shall sign a copy of new, removed, reinstated, or modified conditions of  
6 probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

7 ~~(6)~~(9) Based on the risk and needs of each individual as determined by the individual's most recent  
8 risk and needs assessment, the probation and parole officer shall notify the probationer of eligibility for  
9 conditional discharge from supervision when a probationer is in compliance with the conditions of supervision  
10 when:

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

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

13 (ii) a moderate-risk probationer has served 12 months;

14 (iii) a medium-risk probationer has served 18 months; and

15 (iv) a high-risk probationer has served 24 months; and

16 (b) under the Montana offender reentry and risk assessment:

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

18 (ii) a moderate-risk probationer has served 12 months;

19 (iii) a high-risk probationer has served 18 months; and

20 (iv) a very high-risk probationer has served 24 months.

21 ~~(7)~~(10) The probationer, the probationer's attorney, or the prosecutor may file a motion recommending  
22 conditional discharge. The motion must set forth the following:

23 (a) why the probationer meets the requirements of subsection ~~(6)~~(9); and

24 (b) whether the department of corrections supports or opposes the motion.

25 ~~(8)~~(11) The motion must be served on the county attorney serving in the county of the presiding district  
26 court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana  
27 Uniform District Court Rules.

28 ~~(9)~~(12) The department of corrections shall make reasonable efforts to notify the victim if required by

1 46-24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be  
2 provided the following:

3 (a) a copy of the motion;

4 (b) written notice that:

5 (i) the victim may provide written input regarding the motion or may ask the county attorney to  
6 state the victim's position on the motion;

7 (ii) if a hearing is set, the date, time, and place of the hearing; and

8 (iii) the victim may appear and testify at any hearing held on the motion.

9 ~~(10)~~(13)(a) The court may hold a hearing on the motion. A judge may conditionally discharge a  
10 probationer from supervision before expiration of the probationer's sentence if:

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

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

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

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

15 (b) Subsection ~~(10)(a)~~ (13)(a) does not prohibit a judge from revoking the order suspending  
16 execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been  
17 conditionally discharged from supervision."

18 - END -