

Amendment - 2nd Reading-yellow - Requested by: Gayle Lammers - (S) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

SB0070.001.002

SENATE BILL NO. 70

INTRODUCED BY G. LAMMERS

BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CONDITIONS OF PROBATION; ALLOWING FOR A PROBATION AND PAROLE OFFICER TO REMOVE A CONDITION OF SUPERVISION WITHOUT OBJECTION; REQUIRING VICTIM NOTIFICATION; 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 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 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 arrest, the offender must be

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1 brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

2 (a) the allegations of the petition;

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

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

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

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

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

10 (b) the sentencing court, the probationer, or the county attorney in the sentencing jurisdiction has
11 not objected to the removal of a condition of supervision pursuant to 46-23-1011 and the department of
12 corrections notifies the victim of the change, using any available contact information at the time the other
13 parties are notified; or

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

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

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

20 (ii) a condition of 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.

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

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

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1 violation, or both, the judge may:

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

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

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

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

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

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

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

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

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

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

26 (10) As used in this section:

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

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

17 **"46-23-1011. Supervision on probation -- removal of condition of supervision.** (1) The
18 department shall supervise probationers during their probation period, including supervision after release from
19 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
20 with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the
21 time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of
22 probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided
23 in chapter 8 of this title.

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