

SENATE BILL NO. 63

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF

6 PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING

7 THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF

8 CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE

9 THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER

10 WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR

11 CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR

12 AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS

13 TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO

14 PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING

15 DEFINITIONS; AND AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203,

16 MCA."

17

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

19

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

21 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for

22 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of

23 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed

24 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), and describing

25 the exhaustion of appropriate violation responses according to the incentives and interventions grid adopted

26 under 53-1-203, the judge may issue an order for a hearing on revocation. The order must require the offender

27 to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and

28 order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a

29 probation and parole officer to arrest the offender and bring the offender before the court.

30 (2) The petition for a revocation must be filed with the sentencing court either before the period of

1 suspension or deferral has begun or during the period of suspension or deferral but not after the period has
2 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of
3 its jurisdiction to rule on the petition.

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

6 (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought
7 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, part

12 1.

13 (5) 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 notice
17 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of
18 probation is not favorable to the offender for the purposes of this subsection (5)(b).

19 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has
20 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), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

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

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

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

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

1 imprisonment for up to 9 months in a facility designated by the department;

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

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

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

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

15 (8) (a) IF EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE
16 terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that
17 the appropriate violation responses under the incentives and interventions grid have not been exhausted, the
18 judge shall notify the department and refer the matter back to the hearings officer.

19 (b) IF EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS
20 and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the
21 appropriate violation responses under the incentives and interventions grid have been exhausted, the judge may:

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

23 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which
24 may include imprisonment for up to 9 months in a facility designated by the department.

25 (C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE SUSPENDED
26 OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S CONDUCT
27 INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES AND
28 INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

29 ~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
30 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must

1 be dismissed and the offender, if in custody, must be immediately released.

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

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

6 (b) "Compliance violation" means a violation of the conditions of supervision that is not:

7 (i) a new criminal offense;

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

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

12 (iv) absconding; OR

13 (v) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT
 14 PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

15 ~~(9)~~(11) The provisions of this section apply to any offender whose suspended or deferred sentence is
 16 subject to revocation regardless of the date of the offender's conviction and regardless of the terms and
 17 conditions of the offender's original sentence."

18

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

20 **"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)**

21 When imposition of a sentence has been deferred or execution of a sentence has been suspended, the
 22 prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate the
 23 time remaining on the sentence if:

24 (a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of the
 25 sentence, whichever is less, and has demonstrated compliance with supervision requirements; or

26 (b) in the case of a suspended sentence:

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

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

30 (2) The court may hold a hearing on the petition on its own motion or ~~upon~~ on request of the prosecutor

1 or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended
2 sentence is terminated 30 days after the petition is filed.

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

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

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

7 (c) the defendant has paid all restitution and court-ordered financial obligations in full."
8

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

10 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
11 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
12 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
13 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
14 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be
15 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

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

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

24 (4) The probation and parole officer shall regularly advise and consult with the probationer using effective
25 communication strategies and other behavioral changes techniques to encourage the probationer to improve the
26 probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful
27 completion of the sentence.

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

30 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with

1 a report that identifies the conditions of probation and the reason why the officer believes that the judge should
2 modify or add the conditions.

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

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

7 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to
8 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
9 46-18-203(7)(a)(ii) do not apply to this section.

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

12 (6) (a) Based on the risk and needs of each individual, the probation and parole officer shall recommend
13 conditional discharge when a probationer is in compliance with the conditions of supervision when:

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

15 (ii) a medium-risk probationer has served 12 months;

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

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

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

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

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

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

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

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

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

1 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The
 2 department shall determine the optimum workload for each district probation and parole office."

3

4 **Section 4.** Section 46-23-1015, MCA, is amended to read:

5 **"46-23-1015. Informal probation violation intervention hearing.** (1) A probation and parole officer
 6 who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and
 7 interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal
 8 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation
 9 without a formal revocation hearing under 46-18-203.

10 (2) A hearings officer designated by the department shall conduct the intervention hearing.

11 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
 12 violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county~~
 13 ~~detention center, with credit for time served since the time of arrest, or order the probationer to participate in a~~
 14 ~~day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~
 15 ~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the~~
 16 ~~probationer shall consult the incentives and interventions grid and determine an appropriate response, including~~
 17 whether to:

18 (a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;

19 (b) recommend confinement, electronic monitoring, or day reporting for up to a 90-day period; or

20 (c) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the
 21 violation is not a compliance violation or if it is a compliance violation and appropriate responses under the
 22 incentives and interventions grid have been exhausted.

23 (4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall
 24 notify the probationer of the recommendation and of the probationer's right to instead have the matter referred
 25 by petition for a revocation hearing under 46-18-203.

26 ~~(4)(5)~~ The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime
 27 ~~are not applicable~~ do not apply to a probationer ordered to be held in a county detention center or other facility
 28 under this section."
 29

30 **Section 5.** Section 53-1-203, MCA, is amended to read:

- 1 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:
- 2 (a) subject to subsection (6), adopt rules necessary:
- 3 (i) to carry out the purposes of 41-5-125;
- 4 (ii) for the siting, establishment, and expansion of prerelease centers;
- 5 (iii) for the expansion of treatment facilities or programs previously established by contract through a
- 6 competitive procurement process;
- 7 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and
- 8 (v) for the admission, custody, transfer, and release of persons in department programs except as
- 9 otherwise provided by law;
- 10 (b) subject to the functions of the department of administration, lease or purchase lands for use by
- 11 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
- 12 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
- 13 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
- 14 persons confined in correctional facilities;
- 15 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
- 16 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and
- 17 maintain:
- 18 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
- 19 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
- 20 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
- 21 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
- 22 centers must be operated in coordination with other department correctional programs. This subsection does not
- 23 affect the department's authority to operate and maintain prerelease centers.
- 24 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
- 25 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
- 26 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
- 27 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.
- 28 (d) use the staff and services of other state agencies and units of the Montana university system, within
- 29 their respective statutory functions, to carry out its functions under this title;
- 30 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including

1 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
2 in correctional facilities or programs;

3 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
4 education of felony offenders;

5 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined
6 in 41-5-103;

7 (h) collect and disseminate information relating to youth who are committed to the department for
8 placement in a state youth correctional facility;

9 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
10 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

11 (j) provide funding for youth who are committed to the department for placement in a state youth
12 correctional facility;

13 (k) administer youth correctional facilities;

14 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

15 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

16 (i) provide for delinquent youth committed to the department; and

17 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
18 administered by the department.

19 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish
20 and maintain a residential sexual offender treatment program. If the department intends to contract for that
21 purpose, the department shall adopt rules for the establishment and maintenance of that program.

22 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
23 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
24 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
25 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
26 committee. The legislative audit division shall review the contract and make recommendations or comments to
27 the legislative audit committee. The committee may make recommendations or comments to the department. The
28 department shall respond to the committee, accepting or rejecting the committee recommendations or comments
29 prior to entering into the contract.

30 (4) The department of ~~corrections~~ may enter into contracts with nonprofit corporations or associations

1 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on
2 juvenile parole supervision.

3 (5) The department may contract with Montana corporations to operate a day reporting program as an
4 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
5 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
6 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
7 with any conditions of probation, such as drug testing.

8 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory
9 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
10 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
11 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
12 at any location without community support. The prerelease siting, establishment, and expansion must be subject
13 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection
14 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
15 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

16 (7) The department shall revise, maintain, and fully implement the policy known as the Montana
17 incentives and interventions grid. The grid must guide responses to negative and positive behavior by people
18 under supervision by the department, including responses to violations of supervision conditions in a swift,
19 certain, and proportional manner. The grid must include guidance and procedures to determine when and how
20 to:

21 (a) request a warrant or arrest without a warrant;

22 (b) use a 72-hour detention;

23 (c) initiate an intervention hearing;

24 (d) seek departmental approval to use up to 90-day interventions; and

25 (e) exhaust violations responses before initiating the revocation process.

26 (8) The department shall:

27 (a) provide information and training on the grid for probation and parole officers and supervisors and for
28 members and staff of the board of pardons and parole; and

29 (b) offer information and training on the grid to district court judges, prosecution and defense attorneys,
30 law enforcement personnel, and county detention center personnel."

31 - END -