

SENATE BILL NO. 230

INTRODUCED BY G. PERRY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OFFENSE OF CONTEMPT OF COURT; PROVIDING THAT VIOLATIONS OF COURT-ORDERED CONDITIONS OF RELEASE OR SENTENCE CAN BE CHARGED AS CONTEMPT OF COURT; AND AMENDING SECTIONS 45-7-309 AND 46-18-203, MCA."

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

Section 1. Section 45-7-309, MCA, is amended to read:

"45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when ~~he~~ the person knowingly engages in any of the following conduct:

- (a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;
- (b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;
- (c) purposely disobeying or refusing any lawful process or other mandate of a court;
- (d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;
- (e) purposely publishing a false or grossly inaccurate report of a court's proceeding; ~~or~~
- (f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15; or
- (g) violating any condition of bond, release, suspended sentence, or deferred sentence.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 2. 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), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the judge may

1 issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and
2 place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The
3 judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the
4 offender and bring the offender before the court.

5 (2) The petition for a revocation must be filed with the sentencing court during the period of suspension
6 or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court
7 of its jurisdiction to rule on the petition.

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

10 (4) Without unnecessary delay, the offender must be brought before the judge, and the offender must
11 be advised of:

- 12 (a) the allegations of the petition;
- 13 (b) the opportunity to appear and to present evidence in the offender's own behalf;
- 14 (c) the opportunity to question adverse witnesses; and
- 15 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part
16 1.

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

- 19 (a) the offender admits the allegations and waives the right to a hearing; or
- 20 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice
21 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of
22 probation is not favorable to the offender for the purposes of this subsection (5)(b).

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

- 25 (i) the terms and conditions of the suspended or deferred sentence; or
- 26 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
27 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

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

1 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or
2 deferred sentence, the judge 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;

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

8 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed; or

9 (v) charge the offender with criminal contempt under 45-7-309 for disobeying any condition of bond,
10 release, suspended sentence, or deferred sentence. The contempt charge is a separate offense generated by
11 the offender's violation of conditions.

12 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either
13 expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit.
14 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time
15 served in a detention center or home arrest time already served.

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

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

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

25 - END -