

1 HOUSE BILL NO. 548

2 INTRODUCED BY L. BANGERTER, K. HANSEN, M. MENAHAN

3 BY REQUEST OF THE HOUSE JUDICIARY STANDING COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REGARDING REVOCATION OF SUSPENSION OR DEFERRAL OF
6 A CRIMINAL SENTENCE; PROVIDING THAT A PETITION FOR REVOCATION MAY BE FILED WITH A COURT
7 EITHER BEFORE THE PERIOD OF SUSPENSION OR DEFERRAL BEGINS TO RUN OR DURING THE
8 PERIOD OF SUSPENSION OR DEFERRAL; ~~AND~~ AMENDING SECTION 46-18-203, MCA; AND PROVIDING
9 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

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11 WHEREAS, the Montana Supreme Court, in its opinion in State v. Stiffarm (2011) held that a petition for
12 revocation of a suspended or deferred imposition of sentence must be filed during the period of suspension or
13 deferral; and

14 WHEREAS, in its ruling in Stiffarm, the Supreme Court overruled several of its prior decisions allowing
15 the filing of a petition for revocation before the period of suspension or deferral began; and

16 WHEREAS, in Stiffarm, the Supreme Court invited the Legislature to examine the issue and confirm or
17 change the language of section 46-18-203(2), MCA, requiring that the petition be filed during the period of
18 suspension or deferral; and

19 WHEREAS, the purpose of this legislation is to respond to the Court's invitation in Stiffarm by continuing
20 the practice allowed by the Supreme Court's past decisions of allowing a petition for revocation to be filed either
21 before or after a defendant begins serving the period of suspension or deferral but NOT later than the end of that
22 period of suspension or deferral.

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

25
26 **Section 1.** Section 46-18-203, MCA, is amended to read:

27 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
28 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of
29 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed
30 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 either before~~ the period
6 of suspension or deferral has begun or during the period of suspension or deferral but not after the period has
7 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of
8 its jurisdiction to rule on the petition.

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

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

- 13 (a) the allegations of the petition;
- 14 (b) the opportunity to appear and to present evidence in the offender's own behalf;
- 15 (c) the opportunity to question adverse witnesses; and
- 16 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part
17 1.

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

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

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

- 26 (i) the terms and conditions of the suspended or deferred sentence; or
- 27 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
28 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

29 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the
30 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the

1 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

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

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

5 (ii) continue the suspended sentence with modified or additional terms and conditions;

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

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

10 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either
11 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.
12 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time
13 served in a detention center or home arrest time already served.

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

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

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

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24 ~~NEW SECTION. **Section 2. Saving clause.** [This act] does not affect rights and duties that matured,
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].~~

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27 ~~NEW SECTION. **SECTION 2. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

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29 ~~NEW SECTION. **SECTION 3. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE
30 MEANING OF 1-2-109, TO ALL PAST REVOCATIONS, REGARDLESS OF THE DATE WHEN A DEFERRED OR SUSPENDED~~

1 SENTENCE WAS ORDERED AND REGARDLESS OF THE DATE OF REVOCATION.

2 - END -