



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

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

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

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

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

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), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), 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 ~~during 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, the offender must be brought before the judge, and the offender must be advised of:

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

1.

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

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

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

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a 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).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the

violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

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

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

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

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

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

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

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

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

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

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all past revocations, regardless of the date when a deferred or suspended sentence was ordered and regardless

of the date of revocation.

- END -

I hereby certify that the within bill,
HB 0548, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 548

INTRODUCED BY L. BANGERTER, K. HANSEN, M. MENAHAN
BY REQUEST OF THE HOUSE JUDICIARY STANDING COMMITTEE

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