



AN ACT ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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 or any condition of a deferred imposition of sentence, 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 the period of suspension or deferral. 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) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. 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 ~~lesser~~ 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, ~~however~~, 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."

Section 2. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees -- account established. (1)(a) Except as provided in subsection (1)(b), a probationer, ~~or parolee,~~ or person committed to the department who is supervised by the department under intensive supervision or conditional release shall pay to the clerk of the district court that has jurisdiction over the person during the person's supervision a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision. A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The fee interstate transfer fees required by this subsection must be collected by the ~~clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part~~ department.

(b) The court, department, or ~~the~~ board may reduce or waive ~~the~~ a fee required by subsection (1)(a) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the ~~probationer or parolee~~ person a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.

(b) (i) ~~Prior to July 1, 2003, district court clerks~~ Prior to July 1, 2003, district court clerks shall deduct from the total supervisory fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). After June 30, 2003, district court clerks shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator.

(ii) ~~After June 30, 2003, district court clerks shall deposit the fees into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator."~~

Section 3. Section 53-30-402, MCA, is amended to read:

"53-30-402. ~~Sentence reduction for offenders~~ Completion of boot camp -- suspension of sentence. A sentencing court retains jurisdiction for purposes of this section. ~~A sentencing court may order a~~

~~reduction of sentence for a convicted offender who:~~

~~——— (1) is certified by the department as having successfully completed the boot camp incarceration program;~~

~~and~~

~~——— (2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution. At the time of sentencing, the sentencing court may order that if the convicted person successfully completes the boot camp incarceration program:~~

~~(1) the court will consider a petition from the person, after which the court may suspend all or part of the remainder of the person's sentence of imprisonment; or~~

~~(2) a part or all of the remainder of the person's sentence of imprisonment, as determined by the court at the time of sentencing, is automatically suspended on conditions imposed by the court at the time of sentencing."~~

Section 4. Arrest by probation and parole officer. A probation and parole officer who, while in the course of conducting the officer's duties, has a reasonable suspicion that a person is interfering or will interfere with the officer's duties or has probable cause to believe that the person is committing or has committed an offense may detain the person. The probation and parole officer shall immediately notify the nearest available law enforcement agency or peace officer, and the law enforcement agency or peace officer shall either take the person into custody or release the person.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 46, chapter 6, part 5, and the provisions of Title 46 apply to [section 4].

Section 6. Coordination instruction. If House Bill No. 29 and [this act] are both passed and approved, then [section 1 of House Bill No. 29], amending 53-30-402, is void.

Section 7. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0222, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 222
INTRODUCED BY PARKER
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AN ACT ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.