

## HOUSE BILL NO. 463

INTRODUCED BY M. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SUPERVISION OF PROBATIONERS AND DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING PROCEDURES RELATED TO TERMINATION OF A DEFERRED OR SUSPENDED SENTENCE; REVISING PROCEDURES RELATED TO GRANTING CONDITIONAL DISCHARGE TO A PROBATIONER; AND AMENDING SECTIONS 46-18-208 AND 46-23-1011, MCA."

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

**Section 1.** Section 46-18-208, MCA, is amended to read:

**"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor, the defendant, or the defendant's ~~probation and parole officer~~ attorney may file a petition motion to terminate the time remaining on the sentence if:

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

(b) in the case of a suspended sentence:

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

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

~~(2) The court may hold a hearing on the petition on its own motion or on request of the prosecutor or the defendant. Unless the court requires a hearing, the remaining portion of the deferred or suspended sentence is terminated 30 days after the petition is filed.~~

(2) The motion must set forth the following:

(a) why the defendant meets the time limitations provided in subsection (1); and

(b) how the defendant has demonstrated compliance with supervision requirements.

(3) The motion must be served on the county attorney serving in the county of the presiding district court.

The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform

1 District Court Rules.

2 (4) The department of corrections and the county attorney shall make reasonable efforts to notify the  
3 victim. The victim must be provided the following information:

4 (a) a copy of the motion;

5 (b) written notice that:

6 (i) the victim may provide written input regarding the motion or may ask the county attorney to state the  
7 victim's position on the motion;

8 (ii) if a hearing is set, the date, time, and place of the hearing; and

9 (iii) the victim may appear and testify at any hearing held on the motion.

10 (5) The court may hold a hearing on its own motion and may consider a hearing request from the county  
11 attorney or defendant.

12 ~~(3)~~(6) If the court requires a hearing on the petition motion, the court may grant the petition motion if it  
13 finds that:

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

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

17 (c) the defendant has paid all restitution and court-ordered financial obligations in full."  
18

19 **Section 2.** Section 46-23-1011, MCA, is amended to read:

20 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their  
21 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),  
22 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  
23 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court  
24 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be  
25 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

26 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions  
27 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or  
28 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to  
29 the department that the probationer not contact the victim or immediate family member, the department shall  
30 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the

1 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

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

4 (4) The probation and parole officer shall regularly advise and consult with the probationer using effective  
5 communication strategies and other evidence-based practices to encourage the probationer to improve the  
6 probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful  
7 completion of the sentence.

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

10 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with  
11 a report that identifies the conditions of probation and the reason why the officer believes that the judge should  
12 modify or add the conditions.

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

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

17 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to  
18 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  
19 46-18-203(7)(a)(ii) do not apply to this section.

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

22 (6) ~~(a)~~ Based on the risk and needs of each individual as determined by the individual's most recent risk  
23 and needs assessment, the probation and parole officer shall recommend conditional discharge from supervision  
24 when a probationer is in compliance with the conditions of supervision when:

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

26 ~~(ii)~~(b) a medium-risk probationer has served 12 months;

27 ~~(iii)~~(c) a moderate-risk probationer has served 18 months; and

28 ~~(iv)~~(d) a high-risk probationer has served 24 months.

29 (7) The probationer, the probationer's attorney, or the prosecutor may file a motion recommending  
30 conditional discharge. The motion must set forth the following:

