

HOUSE BILL NO. 463

INTRODUCED BY M. REGIER, J. KEANE, R. LYNCH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SUPERVISION OF
5 PROBATIONERS AND DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING
6 PROCEDURES RELATED TO TERMINATION OF A DEFERRED OR SUSPENDED SENTENCE; REVISING
7 PROCEDURES RELATED TO GRANTING CONDITIONAL DISCHARGE TO A PROBATIONER; ~~AND~~
8 AMENDING SECTIONS 46-18-208 AND 46-23-1011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
9 DATE."

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

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

14 **"46-18-208. Termination of remaining portion of deferred or suspended sentence -- ~~petition~~**
15 **motion.** (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended,
16 the prosecutor, the defendant, or the defendant's ~~probation and parole officer~~ attorney may file a ~~petition~~ motion
17 to terminate the time remaining on the sentence if:

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

20 (b) in the case of a suspended sentence:

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

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

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

27 (2) The motion must set forth the following:

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

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

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

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

3 (4) The department of corrections and the county attorney shall make reasonable efforts to notify the
 4 victim IF REQUIRED BY 46-24-212, AND THE COUNTY ATTORNEY SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE
 5 VICTIM. The victim must be provided the following information:

6 (a) a copy of the motion;

7 (b) written notice that:

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

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

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

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

14 ~~(3)~~(6) If the court requires a hearing on the petition motion, the court may grant the petition motion if it
 15 finds that:

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

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

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

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

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

28 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
 29 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
 30 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to

1 the department that the probationer not contact the victim or immediate family member, the department shall
2 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the
3 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

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

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

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

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

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

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

19 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to
20 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
21 46-18-203(7)(a)(ii) do not apply to this section.

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

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

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

28 ~~(ii)(b)~~ a ~~medium-risk~~ MODERATE-RISK probationer has served 12 months;

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

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

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

3 (a) why the probationer meets the requirements of subsection (6); and

4 (b) whether the department of corrections supports or opposes the motion.

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

6 The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana Uniform
7 District Court Rules.

8 (9) The department of corrections and the county attorney shall make reasonable efforts to notify the
9 victim IF REQUIRED BY 46-24-212, AND THE COUNTY ATTORNEY SHALL MAKE REASONABLE EFFORTS TO NOTIFY THE
10 VICTIM. The victim must be provided the following:

11 (a) a copy of the motion;

12 (b) written notice that:

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

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

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

17 ~~(b)(10) (a)~~ On recommendation of the probation and parole officer, a The court may hold a hearing on
18 the motion. A judge may conditionally discharge a probationer from supervision before expiration of the
19 probationer's sentence if:

20 (i) the judge determines that a conditional discharge from supervision:

21 (A) is in the best interests of the probationer and society; and

22 (B) will not present unreasonable risk of danger to the victim of the offense; and

23 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

24 ~~(e)(b)~~ Subsection ~~(6)(b)~~ (10)(a) does not prohibit a judge from revoking the order suspending execution
25 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
26 discharged from supervision."

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28 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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