

1 SENATE BILL NO. 353

2 INTRODUCED BY J. GROSS, E. BOLDMAN, M. SWEENEY, R. LYNCH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PROBATIONERS AND
5 PAROLEES; PROVIDING THAT PROBATION AND PAROLE OFFICERS INFORM AND DOCUMENT EACH
6 RESTORATION OF RIGHTS THAT OCCURS AT DIFFERENT TIMES FOLLOWING CONVICTION FOR A
7 FELONY OFFENSE; AND AMENDING SECTIONS 46-23-1011 AND 46-23-1021, MCA."

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

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11 **Section 1.** Section 46-23-1011, MCA, is amended to read:

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13 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during
14 their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
15 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
16 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
17 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be
18 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

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20 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
21 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
22 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to
23 the department that the probationer not contact the victim or immediate family member, the department shall
24 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the
25 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

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

29

30 (4) The probation and parole officer shall regularly advise and consult with the probationer using
31 effective communication strategies and other evidence-based practices to encourage the probationer to
32 improve the probationer's condition and conduct. ~~and The probation and parole officer shall inform the~~

1 probationer of:

2 (a) inform the probationer that the probationer's right to vote is restored after release from a penal
3 institution as provided in Article IV, section 2, of the Montana constitution;

4 (b) inform the probationer that the probationer may not run for elected office until final discharge from
5 supervision as provided in Article IV, section 4, of the Montana constitution;

6 (c) inform the probationer that full rights of citizenship are restored on termination of state supervision
7 for any offense against the state as provided in Article II, section 28, of the Montana constitution; and

8 (d) inform the probationer of the restoration of rights on successful completion of the sentence, as
9 provided in 46-18-801.

10 (5) (a) The probation and parole officer may recommend and a judge may modify or add any
11 condition 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
13 with a report that identifies the conditions of probation and the reason why the officer believes that the judge
14 should 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 45-5-
20 503(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 46-18-
21 203(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) 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
26 supervision when a probationer is in compliance with the conditions of supervision when:

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

28 (b) a moderate-risk probationer has served 12 months;

1 (c) a medium-risk probationer has served 18 months; and

2 (d) a high-risk probationer has served 24 months.

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

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

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

7 (8) The motion must be served on the county attorney serving in the county of the presiding district
8 court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana
9 Uniform District Court Rules.

10 (9) The department of corrections shall make reasonable efforts to notify the victim if required by 46-
11 24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided
12 the following:

13 (a) a copy of the motion;

14 (b) written notice that:

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

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

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

19 (10) (a) The court may hold a hearing on the motion. A judge may conditionally discharge a
20 probationer from supervision before expiration of the probationer's sentence if:

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

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

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

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

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

28 (11) Records kept by the probation and parole officer must include documentation that the

1 requirements in subsection (4) have been completed."

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3 **Section 2.** Section 46-23-1021, MCA, is amended to read:

4 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
5 on parole and shall supervise the persons during their parole periods in accordance with the conditions set by
6 the board.

7 (2) The department shall assign personnel to assist a person who is eligible for parole in preparing a
8 parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its
9 consideration of the case of the eligible person.

10 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to
11 the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the
12 board.

13 (4) The probation and parole officer shall regularly advise and consult with the parolee, use effective
14 communication strategies and other evidence-based practices, and assist the parolee in adjusting to community
15 life, ~~and~~. The probation and parole officer shall inform the parolee of:

16 (a) inform the parolee that the parolee's right to vote is restored after release from a penal institution
17 as provided in Article IV, section 2, of the Montana constitution;

18 (b) inform the parolee that the parolee may not run for elected office until final discharge from
19 supervision as provided in Article IV, section 4, of the Montana constitution;

20 (c) inform the parolee that full rights of citizenship are restored on termination of state supervision for
21 any offense against the state as provided in Article II, section 28, of the Montana constitution; and

22 (d) inform the parolee of the restoration of rights on successful completion of the sentence, as
23 provided in 46-18-801.

24 (5) The probation and parole officer shall keep records as the board or department may require. The
25 records must include documentation that the requirements in subsection (4) have been completed. All records
26 must be entered in the master file of the individual.

27 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
28 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a

1 conditional discharge from supervision is in the best interests of the parolee and society and will not present
2 unreasonable risk of danger to the victim of the offense.

3 (b) Any of the achievements listed in 46-23-1027(2) must be considered a significant achievement by
4 the board in deciding whether to grant a conditional discharge from supervision to a parolee.

5 (c) If the board discharges a parolee from supervision, the department is relieved of the obligation of
6 supervising the parolee.

7 (d) For good cause, the board may return a parolee who was conditionally discharged to the status of
8 a regular parolee.

9 (e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025,
10 of a parolee who has been conditionally discharged from supervision."

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