

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)(b), or 45-5-625(4), and describing the exhaustion and documentation in the offender's file of appropriate violation responses according to the incentives and interventions grid adopted under 46-23-1028, 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 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 and no more than 60 days after arrest unless in custody in another jurisdiction on another matter, the offender must be brought before the judge, and at least 10 days prior to the hearing 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:

- (e) the offender admits the allegations and waives the right to a hearing; or
- (f) 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)(b), 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 and the violation is not a compliance violation, the judge may:

- (i) continue the suspended or deferred sentence without a change in conditions;
- (ii) continue the suspended sentence or revoke and re-suspend the sentence with modified or additional terms and conditions, which may include placement in:
 - (A) a secure facility designated by the department for up to 9 months; or
 - (B) a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program;

(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.

(a) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

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

(8)(a) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.

(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted and documented in the offender's file, the judge may:

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

(iv) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include placement as provided in subsection (7)(a)(ii).

(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7).

(9) 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.

(10) All sanction and placement decisions must be documented in the offender's file.

(11) As used in this section, the following definitions apply:

(c) "Absconding" means when an offender's whereabouts are unknown to a probation and parole officer or where the offender fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful.

(d) "Compliance violation" means a violation of the conditions of supervision that is not:

(v) a new criminal offense;

(vi) possession of a firearm in violation of a condition of probation;

(vii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(viii) absconding; or

(ix) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

(12) 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.

46-18-208. Termination of remaining portion of deferred or suspended sentence — petition. (1) When imposition of a sentence has been deferred or execution of a sentence has been suspended, the prosecutor ~~or the defendant, or the defendant's probation and parole officer~~ may file a motion petition 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 motion must set forth the following:

(a) why the defendant meets the time limitations set forth in subsection (1);

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

(c) whether the victim of defendant's offense has been contacted regarding the petition, and any input provided by the victim; and

(d) whether the department supports or opposes the motion.

(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, Montana Uniform District Court Rules.

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

(5) If the court requires a hearing on the motion petition, the court may grant the motion petition if it finds that:

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

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

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

46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including 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)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

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

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

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

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

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

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

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

(f) Except as they apply to 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)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

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

(6) (a) Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, that has been completed no more than six months prior to the filing of the petition, and the probationer's general compliance with the terms governing his or her release, the probationer or the prosecutor ~~probation and parole officer may~~ shall file a motion recommending conditional discharge when a probationer is in compliance with the conditions of supervision when:

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

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

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

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

(7) The motion must set forth the following:

- (a) why the probationer meets the requirements of subsection (6);
- (b) whether the victim of defendant's offense has been contacted regarding the petition, and any input provided by the victim; and
- (c) whether the department supports or opposes the petition.

(8) (b) 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, Montana Uniform District Court Rules.

(9) If the county attorney concurs with the motion or does not file an answer to the motion, or after a hearing on the motion, On recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

- (i) the judge determines that a conditional discharge from supervision:
 - (i) is in the best interests of the probationer and society; and
 - (ii) will not present unreasonable risk of danger to the victim of the offense; and
 - (iii) (ii) the offender has paid all restitution and court-ordered financial obligations in full.

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

46-23-1002. Powers of department. The department may:

- (1) Appoint probation and parole officers and other employees necessary to administer this part;

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- (5) The department is an "agency" as defined by the Montana Administrative Procedure Act, Sec. 2-4101. et seq., MCA.