

## 1 SENATE BILL NO. 63

2 INTRODUCED BY C. WOLKEN

3 BY REQUEST OF THE COMMISSION ON SENTENCING

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SUPERVISION OF  
6 PROBATIONERS AND OF DEFENDANTS SERVING A DEFERRED OR SUSPENDED SENTENCE; REVISING  
7 THE PROCESS TO REVOKE A DEFERRED OR SUSPENDED SENTENCE FOR VIOLATIONS OF  
8 CONDITIONS; ALLOWING A PROBATION AND PAROLE OFFICER TO FILE A PETITION TO TERMINATE  
9 THE TIME REMAINING ON A DEFERRED OR SUSPENDED SENTENCE; CREATING A DEADLINE AFTER  
10 WHICH THE DEFERRED OR SUSPENDED SENTENCE IS TERMINATED; CREATING A SCHEDULE FOR  
11 CONDITIONAL DISCHARGE RECOMMENDATIONS FOR PROBATIONERS; REVISING PROCEDURES FOR  
12 AN INFORMAL PROBATION VIOLATION HEARING; REQUIRING THE DEPARTMENT OF CORRECTIONS  
13 TO IMPLEMENT AN INCENTIVES AND INTERVENTIONS GRID; REQUIRING THE DEPARTMENT TO  
14 PROVIDE TRAINING RELATED TO THE INCENTIVES AND INTERVENTIONS GRID; PROVIDING  
15 DEFINITIONS; AND AMENDING SECTIONS 46-18-203, 46-18-208, 46-23-1011, 46-23-1015, AND 53-1-203,  
16 MCA."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19  
20 **Section 1.** Section 46-18-203, MCA, is amended to read:  
21 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for  
22 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of  
23 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed  
24 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  
25 the exhaustion AND DOCUMENTATION IN THE OFFENDER'S FILE of appropriate violation responses according to the  
26 incentives and interventions grid adopted under 53-1-203, the judge may issue an order for a hearing on  
27 revocation. The order must require the offender to appear at a specified time and place for the hearing and be  
28 served by delivering a copy of the petition and order to the offender personally. The judge may also issue an  
29 arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the  
30 offender before the court.

1           (2) The petition for a revocation must be filed with the sentencing court either before the period of  
2 suspension or deferral has begun or during the period of suspension or deferral but not after the period has  
3 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of  
4 its jurisdiction to rule on the petition.

5           (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested  
6 pursuant to this section.

7           (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought  
8 before the judge, and at least 10 days prior to the hearing the offender must be advised of:

9           (a) the allegations of the petition;

10           (b) the opportunity to appear and to present evidence in the offender's own behalf;

11           (c) the opportunity to question adverse witnesses; and

12           (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part

13 1.

14           (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or  
15 conditions of the sentence can be modified unless:

16           (a) the offender admits the allegations and waives the right to a hearing; or

17           (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice  
18 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of  
19 probation is not favorable to the offender for the purposes of this subsection (5)(b).

20           (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has  
21 been a violation of:

22           (i) the terms and conditions of the suspended or deferred sentence; or

23           (ii) a condition of 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).

25           (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the  
26 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the  
27 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

28           (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or  
29 deferred sentence and the violation is not a compliance violation, the judge may:

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

1 (ii) continue the suspended sentence with modified or additional terms and conditions, which may include  
 2 imprisonment for up to 9 months in a facility designated by the department PLACEMENT IN A COMMUNITY  
 3 CORRECTIONS FACILITY OR PROGRAM DESIGNATED BY THE DEPARTMENT FOR UP TO 9 MONTHS, INCLUDING BUT NOT  
 4 LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL LIVING PROGRAM, ENHANCED  
 5 SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT, OR 24/7 SOBRIETY  
 6 PROGRAM;

7 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed  
 8 or any sentence that could have been imposed that does not include a longer imprisonment or commitment term  
 9 than the original sentence; or

10 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

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

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

20 (8) (a) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the  
 21 terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that  
 22 the appropriate violation responses under the incentives and interventions grid have not been exhausted AND  
 23 DOCUMENTED IN THE OFFENDER'S FILE, the judge shall notify the department and refer the matter back to the  
 24 hearings officer.

25 (b) If EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF the judge finds that the offender has violated the terms  
 26 and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the  
 27 appropriate violation responses under the incentives and interventions grid have been exhausted AND  
 28 DOCUMENTED IN THE OFFENDER'S FILE, the judge may:

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

30 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which

1 ~~may include imprisonment for up to 9 months in a facility designated by the department~~ PLACEMENT AS PROVIDED  
 2 ~~IN SUBSECTION (7)(A)(II).~~

3 (C) IF THE JUDGE FINDS THAT THE OFFENDER HAS VIOLATED THE TERMS AND CONDITIONS OF THE SUSPENDED  
 4 OR DEFERRED SENTENCE, THAT THE VIOLATION IS A COMPLIANCE VIOLATION, AND THAT THE OFFENDER'S CONDUCT  
 5 INDICATES THAT THE OFFENDER WILL NOT BE RESPONSIVE TO FURTHER EFFORTS UNDER THE INCENTIVES AND  
 6 INTERVENTIONS GRID, THE JUDGE MAY SENTENCE THE OFFENDER AS PROVIDED IN SUBSECTION (7).

7 ~~(8)(9)~~ If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that  
 8 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must  
 9 be dismissed and the offender, if in custody, must be immediately released.

10 (10) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE.

11 ~~(10)(11)~~ As used in this section, the following definitions apply:

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

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

16 (i) a new criminal offense;

17 (ii) possession of a firearm in violation of a condition of probation;

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

21 (iv) absconding; OR

22 (V) FAILURE TO ENROLL IN OR COMPLETE A REQUIRED SEX OFFENDER TREATMENT PROGRAM OR A TREATMENT  
 23 PROGRAM DESIGNED TO TREAT VIOLENT OFFENDERS.

24 ~~(9)(11)(12)~~ The provisions of this section apply to any offender whose suspended or deferred sentence  
 25 is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and  
 26 conditions of the offender's original sentence."

27

28 **Section 2.** Section 46-18-208, MCA, is amended to read:

29 **"46-18-208. Termination of remaining portion of deferred or suspended sentence -- petition. (1)**

30 When imposition of a sentence has been deferred or execution of a sentence has been suspended, the

1 prosecutor, ~~or the defendant, or the defendant's probation and parole officer~~ may file a petition to terminate the  
2 time remaining on the sentence if:

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

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

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

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

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

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

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

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

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

18 **Section 3.** Section 46-23-1011, MCA, is amended to read:

19 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their  
20 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),  
21 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  
22 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court  
23 shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be  
24 present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

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

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

3 (4) The probation and parole officer shall regularly advise and consult with the probationer using effective  
4 communication strategies and other ~~behavioral changes techniques~~ EVIDENCE-BASED PRACTICES to encourage  
5 the probationer to improve the probationer's condition and conduct and shall inform the probationer of the  
6 restoration of rights on successful completion of the sentence.

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

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

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

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

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

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

21 (6) (a) Based on the risk and needs of each individual AS DETERMINED BY THE INDIVIDUAL'S MOST RECENT  
22 RISK AND NEEDS ASSESSMENT, the probation and parole officer shall recommend conditional discharge when a  
23 probationer is in compliance with the conditions of supervision when:

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

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

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

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

28 (b) On recommendation of the probation and parole officer, a judge may conditionally discharge a  
29 probationer from supervision before expiration of the probationer's sentence if:

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

- 1 (A) is in the best interests of the probationer and society; and  
 2 (B) will not present unreasonable risk of danger to the victim of the offense; and  
 3 (ii) the offender has paid all restitution and court-ordered financial obligations in full.  
 4 ~~(b)(c)~~ Subsection ~~(6)(a)~~ (6)(b) does not prohibit a judge from revoking the order suspending execution  
 5 or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally  
 6 discharged from supervision.  
 7 ~~(c) If the department certifies to the sentencing judge that the workload of a district probation and parole  
 8 office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place  
 9 an offender on probation under supervision by that district office unless the judge grants a conditional discharge  
 10 to a probationer being supervised by that district office. The department may recommend probationers to the  
 11 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The  
 12 department shall determine the optimum workload for each district probation and parole office."~~

13  
 14 **Section 4.** Section 46-23-1015, MCA, is amended to read:  
 15 **"46-23-1015. Informal probation violation intervention hearing.** (1) A probation and parole officer  
 16 who reasonably believes that a probationer has violated a condition of probation shall consult the incentives and  
 17 interventions grid adopted under 53-1-203 to determine an appropriate response and may initiate an informal  
 18 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation  
 19 without a formal revocation hearing under 46-18-203.

20 (2) A hearings officer designated by the department shall conduct the intervention hearing.  
 21 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has  
 22 violated a condition of probation, the hearings officer ~~may order the probationer to serve up to 30 days in a county~~  
 23 ~~detention center, with credit for time served since the time of arrest, or order the probationer to participate in a~~  
 24 ~~day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration or~~  
 25 ~~participation in the day reporting program. The department shall pay the incarceration costs not paid by the~~  
 26 ~~probationer~~ shall consult the incentives and interventions grid and determine an appropriate response, including  
 27 whether to:

- 28 (a) order the probationer to serve, or receive credit for serving, up to 30 days in detention;  
 29 (b) recommend ~~confinement~~, electronic monitoring; or day reporting for up to a 90-day period; or  
 30 (c) RECOMMEND PLACEMENT IN A COMMUNITY CORRECTIONS FACILITY OR PROGRAM FOR UP TO A 90-DAY

1 PERIOD, INCLUDING BUT NOT LIMITED TO PLACEMENT IN A PRERELEASE CENTER, SANCTION OR HOLD BED, TRANSITIONAL  
 2 LIVING PROGRAM, ENHANCED SUPERVISION PROGRAM, RELAPSE INTERVENTION BED, CHEMICAL DEPENDENCY TREATMENT,  
 3 OR 24/7 SOBRIETY PROGRAM; OR

4 (e)(D) direct the probation and parole officer to initiate a petition for revocation under 46-18-203, if the  
 5 violation is not a compliance violation or if it is a compliance violation and appropriate responses under the  
 6 incentives and interventions grid have been exhausted.

7 (4) If the hearings officer recommends a response under subsection (3)(b), the hearings officer shall  
 8 notify the probationer of the recommendation and of the probationer's right to instead have the matter referred  
 9 by petition for a revocation hearing under 46-18-203.

10 (4)(5) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime  
 11 are not applicable do not apply to a probationer ordered to be held in a county detention center or other facility  
 12 under this section.

13 (6) ALL SANCTION AND PLACEMENT DECISIONS MUST BE DOCUMENTED IN THE OFFENDER'S FILE."

14

15 **Section 5.** Section 53-1-203, MCA, is amended to read:

16 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

17 (a) subject to subsection (6), adopt rules necessary:

18 (i) to carry out the purposes of 41-5-125;

19 (ii) for the siting, establishment, and expansion of prerelease centers;

20 (iii) for the expansion of treatment facilities or programs previously established by contract through a  
 21 competitive procurement process;

22 (iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

23 (v) for the admission, custody, transfer, and release of persons in department programs except as  
 24 otherwise provided by law;

25 (b) subject to the functions of the department of administration, lease or purchase lands for use by  
 26 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural  
 27 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown  
 28 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the  
 29 persons confined in correctional facilities;

30 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community



1 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish and  
2 maintain:

3 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole  
4 eligibility or discharge for release into the community, providing an alternative placement for offenders who have  
5 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The  
6 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The  
7 centers must be operated in coordination with other department correctional programs. This subsection does not  
8 affect the department's authority to operate and maintain prerelease centers.

9 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as  
10 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for  
11 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using  
12 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

13 (d) use the staff and services of other state agencies and units of the Montana university system, within  
14 their respective statutory functions, to carry out its functions under this title;

15 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including  
16 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed  
17 in correctional facilities or programs;

18 (f) encourage the establishment of programs at the local and state level for the rehabilitation and  
19 education of felony offenders;

20 (g) administer all state and federal funds allocated to the department for delinquent youth, as defined  
21 in 41-5-103;

22 (h) collect and disseminate information relating to youth who are committed to the department for  
23 placement in a state youth correctional facility;

24 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed  
25 of the specific information, by category, related to delinquent youth in out-of-home care facilities;

26 (j) provide funding for youth who are committed to the department for placement in a state youth  
27 correctional facility;

28 (k) administer youth correctional facilities;

29 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

30 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

1 (i) provide for delinquent youth committed to the department; and  
2 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs  
3 administered by the department.

4 (2) The department may contract with private, nonprofit or for-profit Montana corporations to establish  
5 and maintain a residential sexual offender treatment program. If the department intends to contract for that  
6 purpose, the department shall adopt rules for the establishment and maintenance of that program.

7 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a  
8 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit  
9 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a  
10 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit  
11 committee. The legislative audit division shall review the contract and make recommendations or comments to  
12 the legislative audit committee. The committee may make recommendations or comments to the department. The  
13 department shall respond to the committee, accepting or rejecting the committee recommendations or comments  
14 prior to entering into the contract.

15 (4) The department ~~of corrections~~ may enter into contracts with nonprofit corporations or associations  
16 or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on  
17 juvenile parole supervision.

18 (5) The department may contract with Montana corporations to operate a day reporting program as an  
19 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.  
20 The department shall adopt by rule the requirements for a day reporting program, including but not limited to  
21 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance  
22 with any conditions of probation, such as drug testing.

23 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory  
24 powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and  
25 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,  
26 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited  
27 at any location without community support. The prerelease siting, establishment, and expansion must be subject  
28 to, and the rules must include, a reasonable mechanism for a determination of community support for or objection  
29 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,  
30 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

