

SB BILL NO. 142

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PROCEDURE APPLICABLE TO THE APPEAL OF THE REVOCATION OF A SUSPENDED SENTENCE BY A JUSTICE'S COURT; AMENDING SECTION 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

WHEREAS, in State v. Rogers, 267 Mont. 190 (1994), the Montana Supreme Court held that an appeal de novo was available for a Justice's Court revocation of a suspended sentence and also held that a jury trial was not available.

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

Section 1. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

1 NEW SECTION. **Section 2. Applicability.** Because [section 1] codifies existing case law, [section
2 1] applies to all suspended sentence revocation proceedings regardless of when the sentence was entered.

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4 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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APPROVED BY COM
ON JUDICIARY

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20 court to the district court is governed by 3-6-110.

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