

SENATE BILL NO. 237

INTRODUCED BY HALLIGAN, ASAY,
SWIFT, HANNAH, BOYLAN, ECK

IN THE SENATE

January 20, 1983	Introduced and referred to Committee on Judiciary.
February 10, 1983	Committee recommend bill do pass as amended. Report adopted.
February 11, 1983	Bill printed and placed on members' desks.
February 12, 1983	Second reading, do pass.
February 14, 1983	Correctly engrossed.
February 15, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 22, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983	Returned to Senate with amendments.
April 1, 1983	Second reading, amendments concurred in.

April 4, 1983

Third reading, amendments
concurred in. Ayes, 45;
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Legislator* BILL NO. *237*
2 INTRODUCED BY *Debra Day Swift Hermal*
3 *Engle Eck*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE
5 FOR RESTITUTION TO VICTIMS OF CRIMES BY THE PERPETRATORS OF
6 CRIMES AND A PROCEDURE UPON DEFAULT IN PAYMENT OF
7 RESTITUTION."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Sentence of restitution. As provided in
11 46-18-201, a sentencing court may sentence an offender to
12 make restitution to any victim of the offense. An insurer or
13 surety that has paid any part of a victim's pecuniary loss
14 is not a victim for purposes of obtaining restitution.

15 Section 2. Investigation and report of victim's loss.
16 Whenever the court believes that restitution may be a proper
17 sentence or the victim of the offense or the prosecuting
18 attorney requests, the court shall order a presentence
19 investigation and report by a probation officer documenting
20 the nature and amount of the victim's pecuniary loss.

21 Section 3. Definition. For purposes of [sections 1
22 through 9], "pecuniary loss" means:

23 (1) all special damages, but not general damages,
24 substantiated by evidence in the records, that a person could
25 recover against the offender in a civil action arising out

1 of the facts or events constituting the offender's criminal
2 activities, including without limitation the money
3 equivalent of loss resulting from property taken, destroyed,
4 broken, or otherwise harmed and out-of-pocket losses, such
5 as medical expenses; and

6 (2) reasonable out-of-pocket expenses incurred by the
7 victim in filing charges or in cooperating in the
8 investigation and prosecution of the offense.

9 Section 4. Type and time of payment -- defenses. (1)
10 The court shall specify the amount, method, and time of
11 payment or other restitution to the victim and may permit
12 payment or performance in installments. The court may not
13 establish a payment or performance schedule extending beyond
14 the statutory maximum term of confinement that can be
15 imposed for the offense.

16 (2) In determining the amount, method, and time of
17 payment or other restitution, the court shall consider the
18 financial resources and future ability of the offender to
19 pay or perform. The court may provide for payment to a
20 victim up to but not in excess of the pecuniary loss caused
21 by the offense. The defendant may assert any defense that he
22 could raise in a civil action for the loss sought to be
23 compensated by the restitution order.

24 Section 5. Supervision of payment. The court may order
25 a probation officer to supervise the making of restitution

-2- INTRODUCED BILL
55237

1 and to report to the court any default in payment or other
2 performance.

3 Section 6. Waiver or modification of payment. An
4 offender may at any time petition the sentencing court to
5 adjust or otherwise waive payment or performance of any part
6 of any ordered restitution. The court shall schedule a
7 hearing and give a victim to whom restitution was ordered
8 notice of the hearing date, place, and time and inform the
9 victim that he will have an opportunity to be heard. If the
10 court finds that the circumstances upon which it based the
11 imposition, amount, method, or time of payment or other
12 restitution no longer exist or that it otherwise would be
13 unjust to require payment or other restitution as imposed,
14 the court may adjust or waive unpaid or unperformed
15 restitution or modify the time or method of making
16 restitution. The court may extend the restitution schedule,
17 but not beyond the statutory maximum term of confinement
18 that may be imposed for the offense.

19 Section 7. Default. (1) If an offender sentenced to
20 make restitution is in default for 60 days, the sentencing
21 court, upon the motion of the prosecuting attorney or a
22 victim or upon its own motion, may issue an order under
23 46-18-203 requiring the offender to show cause why he should
24 not be confined for failure to obey the sentence of the
25 court. The court may order the offender to appear at a time,

1 date, and place for a hearing or issue a warrant for his
2 arrest. The order or warrant must be accompanied by written
3 notice of the offender's right to a hearing and the rights
4 and procedures applicable thereto. The procedures and rights
5 of the offender at the hearing are the same as those
6 applicable to a hearing under 46-18-203 to revoke a
7 suspended or deferred sentence.

8 (2) Unless the offender shows that his default was not
9 attributable to an intentional refusal to obey the sentence
10 of the court or to a failure on his part to make a good
11 faith effort to obtain the necessary funds for payment or
12 otherwise perform the ordered restitution, the court may
13 take any action provided for in 46-18-203. If confinement is
14 ordered, the court may provide in the order that payment or
15 satisfaction of the restitution order at any time entitles
16 the offender to his release from confinement. The court,
17 after entering the order, may at any time, for good cause
18 shown, reduce the term of confinement and waive satisfaction
19 of the restitution order.

20 (3) If restitution is imposed on an organization, it
21 is the duty of any person authorized to order the
22 disbursement of assets of the organization and his superiors
23 to pay the restitution from assets of the organization under
24 his control. Failure to do so renders such a person subject
25 to subsections (1) and (2) if he was found guilty of the

1 offense and subject to a contempt of court order if he was
2 not found guilty of the offense.

3 (4) An order to pay restitution constitutes a judgment
4 rendered in favor of the state, and following a default in
5 the payment of restitution or any installment thereof, the
6 sentencing court may order the restitution to be collected
7 by any method authorized for the enforcement of other
8 judgments for money rendered in favor of the state.

9 Section 8. Rights of crime victims' reparation fund.
10 (1) Whenever a victim is paid by a crime victims' reparation
11 fund for loss arising out of a criminal act, the fund is
12 subrogated, to the extent of the fund's payment to the
13 victim, to the rights of the victim to any restitution
14 ordered by the court and to any funds paid into a trust in
15 lieu of a fine to satisfy civil judgments.

16 (2) The rights of a crime victims' reparation fund are
17 subordinate to the claims of multiple victims who have
18 suffered loss arising out of multiple offenses by the same
19 offender or arising from any transaction which is part of
20 the same continuous scheme of criminal activity of an
21 offender.

22 Section 9. Civil actions by victim. (1) [Sections 1
23 through 9 do] not limit or impair the right of a victim to
24 sue and recover damages from the offender in a civil action.

25 (2) The findings in the sentencing hearing and the

1 fact that restitution was required or paid are not
2 admissible as evidence in a civil action and have no legal
3 effect on the merits of a civil action.

4 (3) Any restitution paid by the offender to the victim
5 must be set off against any judgment in favor of the victim
6 in a civil action arising out of the facts or events which
7 were the basis for the restitution. The court trying the
8 civil action shall hold a separate hearing to determine the
9 validity and amount of any setoff asserted by the defendant
10 under this section.

11 Section 10. Codification instruction. Sections 1
12 through 9 are intended to be codified as an integral part of
13 Title 46, chapter 18, part 2, and the provisions of Title 46
14 apply to sections 1 through 9.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 237

INTRODUCED BY HALLIGAN, ASAY,
SHIFT, HANNAH, BOYLAN, ECK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE
FOR RESTITUTION TO VICTIMS OF CRIMES BY THE PERPETRATORS-OF
CRIMES CRIMINAL-OFFENDERS AND A PROCEDURE UPON DEFAULT IN
PAYMENT OF RESTITUTION."

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

Section 1. ~~Section~~ CONDITION of restitution. As
provided in 46-18-201, a sentencing court may ~~sentence~~
~~REQUIRE~~ an offender to make restitution to any victim of the
offense. ~~An--insurer--or--surety--that--has--paid--any--part--of--a~~
~~victim's--pecuniary--loss--is--not--a--victim--for--purposes--of~~
~~obtaining--restitution.~~

Section 2. Investigation and report of victim's loss.
(1) Whenever the court believes that restitution may be a
proper ~~sentence--or--the--victim--of--the--offense~~ CONDITION-OF-A
DEFERRED-OR-SUSPENDED-SENTENCE or the prosecuting attorney
requests, the court shall order a THE-PROBATION-OFFICER-TO
INCLUDE-IN-THE presentence investigation and report: by--a
~~probation--officer--documenting--the--nature--and--amount--of--the~~
~~victim's--pecuniary--loss.~~

(1) DOCUMENTATION OF THE OFFENDER'S FINANCIAL

RESOURCES AND FUTURE ABILITY TO PAY RESTITUTION; AND

(1) DOCUMENTATION OF THE VICTIM'S PECUNIARY LOSS
SUBMITTED BY THE VICTIM.

(2) WHERE NO PRESENTENCE REPORT IS AUTHORIZED OR
REQUESTED, THE COURT MAY RECEIVE EVIDENCE OF THE OFFENDER'S
ABILITY TO PAY AND THE VICTIM'S LOSS AT THE TIME OF
SENTENCING.

Section 3. Definition. For purposes of [sections 1
through 9], THE FOLLOWING DEFINITIONS APPLY:

(1) "pecuniary PECUNIARY loss" means:

~~(1)(a)~~ all special damages, but not general damages,
substantiated by evidence in the record, that a person could
recover against the offender in a civil action arising out
of the facts or events constituting the offender's criminal
activities, including without limitation the money
equivalent of loss resulting from property taken, destroyed,
broken, or otherwise harmed and out-of-pocket losses, such
as medical expenses; and

~~(2)(b)~~ reasonable out-of-pocket expenses incurred by
the victim in filing charges or in cooperating in the
investigation and prosecution of the offense.

(2) "VICTIM" MEANS:

(a) A PERSON WHO SUFFERS LOSS OF PROPERTY, BODILY
INJURY, OR DEATH AS A RESULT OF:

(i) CRIMINALLY INJURIOUS CONDUCT; OR

1 (III) HIS GOOD FAITH EFFORT TO PREVENT CRIMINALLY
2 INJURIOUS CONDUCT;

3 (B) AN INSURER OR SURETY WITH A RIGHT OF SUBROGATION
4 TO THE EXTENT IT HAS REIMBURSED THE VICTIM OF THE OFFENSE
5 FOR HIS PECUNIARY LOSS.

6 Section 4. Type and time of payment -- defenses. (1)
7 The court shall specify the amount, method, and time of
8 payment or--other--restitution to the victim and may permit
9 payment or--performance in installments. The court may not
10 establish a payment or--performance schedule extending beyond
11 the statutory maximum term of confinement that can be
12 imposed for the offense.

13 (2) In determining the amount, method, and time of
14 payment or other restitution, the court shall consider the
15 financial resources and future ability of the offender to
16 pay or perform. The court may provide for payment to a
17 victim up to but not in excess of the pecuniary loss caused
18 by the offense. The defendant ~~DEFENDER~~ may assert any
19 defense that he could raise in a civil action for the loss
20 sought to be compensated by the restitution order.

21 Section 5. Supervision of payment. The court may order
22 a probation officer to supervise the making of restitution
23 and to report to the court any default in payment or other
24 performance.

25 Section 6. Waiver or modification of payment. An

1 offender may at any time petition the sentencing court to
2 adjust or otherwise waive payment or--performance of any part
3 of any ordered restitution. The court shall schedule a
4 hearing and give a victim to whom restitution was ordered
5 notice of the hearing date, place, and time and inform the
6 victim that he will have an opportunity to be heard. If the
7 court finds that the circumstances upon which it based the
8 imposition, amount, method, or time of payment or--other
9 restitution no longer exist or that it otherwise would be
10 unjust to require payment or--other--restitution as imposed,
11 the court may adjust or waive unpaid or--unperformed
12 restitution or modify the time or method of making
13 restitution. The court may extend the restitution schedule,
14 but not beyond the statutory maximum term of confinement
15 that may be imposed for the offense.

16 Section 7. Default. (1) If an offender sentenced to
17 make restitution is in default for--60--days, the sentencing
18 court, upon the motion of the prosecuting attorney or--a
19 victim or upon its own motion, may issue an order under
20 46-18-203 requiring the offender to show cause why he should
21 not be confined for failure to obey the sentence of the
22 court. The court may order the offender to appear at a time,
23 date, and place for a hearing or, IF HE FAILS TO APPEAR AS
24 ORDERED, issue a warrant for his arrest. The order or
25 warrant must be accompanied by written notice of the

offender's right to a hearing and the rights and procedures applicable thereto. The procedures and rights of the offender at the hearing are the same as those applicable to a hearing under AS PROVIDED IN 46-18-203 to revoke a suspended or deferred sentence.

(2) Unless the offender shows that his IF THE COURT FINDS THAT THE DEFENDER'S default was not attributable to an intentional refusal to obey the sentence of the court or to a failure on his part to make a good faith effort to obtain the necessary funds for payment or otherwise perform of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court may provide in the order that payment or satisfaction of the restitution order at any time entitles the offender to his release from confinement. The IHE court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) If restitution is imposed on an organization, it is the duty of any person authorized to order the disbursement of assets of the organization and his superiors to pay the restitution from assets of the organization under his control. Failure to do so renders such a person subject to subsections (1) and (2) if he was found guilty of the offense and subject to a contempt of court order if he was

not found guilty of the offense.

(4)(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments for money rendered in favor of the state.

Section 8. Rights of crime victims' reparation fund COMPENSATION ACCOUNT. (1) Whenever a victim is paid by or from the crime victims' reparation fund COMPENSATION ACCOUNT ESTABLISHED IN 53-9-109 for loss arising out of a criminal act, the fund ACCOUNT is subrogated, to the extent of the fund's ACCOUNT'S payment to the victim, to the rights of the victim to any restitution ordered by the court and to any funds paid into a trust in lieu of a fine to satisfy civil judgments.

(2) The rights of a IHE crime victims' reparation fund COMPENSATION ACCOUNT are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

Section 9. Civil actions by victim. (1) [Sections 1 through 9 do] not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

1 (2) The findings in the sentencing hearing and the
2 fact that restitution was required or paid are not
3 admissible as evidence in a civil action and have no legal
4 effect on the merits of a civil action.

5 (3) Any restitution paid by the offender to the victim
6 must be set off against any judgment-in-favor-of PECUNIARY
7 LOSS-AWARDED-TO the victim in a civil action arising out of
8 the facts or events which were the basis for the
9 restitution. The court trying the civil action shall hold--a
10 separate-hearing-to determine the validity-and amount of any
11 setoff asserted by the defendant under this section.

12 Section 10. Codification instruction. Sections 1
13 through 9 are intended to be codified as an integral part of
14 Title 46, chapter 18, part 2, and the provisions of Title 46
15 apply to sections 1 through 9.

-End-

SENATE BILL NO. 237

INTRODUCED BY HALLIGAN, ASAY,

SWIFT, HANNAH, BOYLAN, ECK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE FOR RESTITUTION TO VICTIMS OF CRIMES BY THE PERPETRATORS-OF CRIMES CRIMINAL-OFFENDERS AND A PROCEDURE UPON DEFAULT IN PAYMENT OF RESTITUTION."

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

Section 1. Sentence ~~CONDITION~~ of restitution. As provided in 46-18-201, a sentencing court may sentence ~~REQUIRE~~ an offender to make restitution to any victim of the offense. ~~An--insurer--or--surety--that--has--paid--any--part--of--a--victim's--pecuniary--loss--is--not--a--victim--for--purposes--of--obtaining--restitution--~~

Section 2. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper sentence ~~or the victim of the offense~~ ~~CONDITION OF A DEFERRED OR SUSPENDED SENTENCE~~ or the prosecuting attorney requests, the court shall order ~~a~~ ~~THE PROBATION OFFICER TO INCLUDE IN THE~~ presentence investigation and report; ~~by--a--probation--officer--documenting--the--nature--and--amount--of--the--victim's--pecuniary--loss--~~

(A) ~~DOCUMENTATION OF THE OFFENDER'S FINANCIAL~~

~~RESOURCES AND FUTURE ABILITY TO PAY RESTITUTION; AND~~

~~(B) DOCUMENTATION OF THE VICTIM'S PECUNIARY LOSS SUBMITTED BY THE VICTIM.~~

~~(2) WHERE NO PRESENTENCE REPORT IS AUTHORIZED OR REQUESTED, THE COURT MAY RECEIVE EVIDENCE OF THE OFFENDER'S ABILITY TO PAY AND THE VICTIM'S LOSS AT THE TIME OF SENTENCING.~~

Section 3. Definition. For purposes of [sections 1 through 9], ~~THE FOLLOWING DEFINITIONS APPLY:~~

(1) "pecuniary ~~PECUNIARY~~ loss" means:

~~(1)(A)~~ all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

~~(2)(B)~~ reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "VICTIM" MEANS:

(A) ~~A PERSON WHO SUFFERS LOSS OF PROPERTY, BODILY INJURY, OR DEATH AS A RESULT OF:~~

~~(1) CRIMINALLY INJURIOUS CONDUCT; OR~~

1 IIII HIS GOOD FAITH EFFORT TO PREVENT CRIMINALLY
2 INJURIOUS CONDUCT;

3 (B) AN INSURER OR SURETY WITH A RIGHT OF SUBROGATION
4 TO THE EXTENT IT HAS REIMBURSED THE VICTIM OF THE OFFENSE
5 FOR HIS PECUNIARY LOSS.

6 Section 4. Type and time of payment -- defenses. (1)
7 The court shall specify the amount, method, and time of
8 payment or--other--restitution to the victim and may permit
9 payment or--performance in installments. The court may not
10 establish a payment or--performance schedule extending beyond
11 the statutory maximum term of confinement that can be
12 imposed for the offense.

13 (2) In determining the amount, method, and time of
14 payment or other restitution, the court shall consider the
15 financial resources and future ability of the offender to
16 pay or perform. The court may provide for payment to a
17 victim up to but not in excess of the pecuniary loss caused
18 by the offense. The defendant ~~DEFENDER~~ may assert any
19 defense that he could raise in a civil action for the loss
20 sought to be compensated by the restitution order.

21 Section 5. Supervision of payment. The court may order
22 a probation officer to supervise the making of restitution
23 and to report to the court any default in payment or other
24 performance.

25 Section 6. Waiver or modification of payment. An

1 offender may at any time petition the sentencing court to
2 adjust or otherwise waive payment or--performance of any part
3 of any ordered restitution. The court shall schedule a
4 hearing and give a victim to whom restitution was ordered
5 notice of the hearing date, place, and time and inform the
6 victim that he will have an opportunity to be heard. If the
7 court finds that the circumstances upon which it based the
8 imposition, amount, method, or time of payment or--other
9 restitution no longer exist or that it otherwise would be
10 unjust to require payment or--other--restitution as imposed,
11 the court may adjust or waive unpaid or--unperformed
12 restitution or modify the time or method of making
13 restitution. The court may extend the restitution schedule,
14 but not beyond the statutory maximum term of confinement
15 that may be imposed for the offense.

16 Section 7. Default. (1) If an offender sentenced to
17 make restitution is in default ~~for 60 days~~, the sentencing
18 court, upon the motion of the prosecuting attorney or--a
19 victim or upon its own motion, may issue an order under
20 46-18-203 requiring the offender to show cause why he should
21 not be confined for failure to obey the sentence of the
22 court. The court may order the offender to appear at a time,
23 date, and place for a hearing or, IF HE FAILS TO APPEAR AS
24 ORDERED, issue a warrant for his arrest. The order or
25 warrant must be accompanied by written notice of the

1 offender's right to a hearing and the rights and procedures
2 applicable thereto. The procedures and rights of the
3 offender at the hearing are the same as those applicable to
4 a hearing under AS PROVIDED IN 46-18-203 to revoke a
5 suspended or deferred sentence.

6 (2) Unless the offender shows that his IF THE COURT
7 FINDS THAT THE OFFENDER'S default was not attributable to an
8 intentional refusal to obey the sentence of the court or to
9 a failure on his part to make a good faith effort to obtain
10 the necessary funds for payment or otherwise perform OF the
11 ordered restitution, the court may take any action provided
12 for in 46-18-203. If confinement is ordered, the court may
13 provide in the order that payment or satisfaction of the
14 restitution order at any time entitles the offender to his
15 release from confinement. The IHE court, after entering the
16 order, may at any time, for good cause shown, reduce the
17 term of confinement and waive satisfaction of the
18 restitution order.

19 (3) If restitution is imposed on an organization, it
20 is the duty of any person authorized to order the
21 disbursement of assets of the organization and his superiors
22 to pay the restitution from assets of the organization under
23 his control. Failure to do so renders such a person subject
24 to subsections (1) and (2) if he was found guilty of the
25 offense and subject to a contempt of court order if he was

1 not found guilty of the offense

2 (4) (1) An order to pay restitution constitutes a
3 judgment rendered in favor of the state, and following a
4 default in the payment of restitution or any installment
5 thereof, the sentencing court may order the restitution to
6 be collected by any method authorized for the enforcement of
7 other judgments for money rendered in favor of the state.

8 Section 8. Rights of crime victims' reparation fund
9 COMPENSATION ACCOUNT. (1) Whenever a victim is paid by a
10 FROM THE crime victims' reparation fund COMPENSATION ACCOUNT
11 ESTABLISHED IN 53-9-109 for loss arising out of a criminal
12 act, the fund ACCOUNT is subrogated, to the extent of the
13 fund's ACCOUNT'S payment to the victim, to the rights of the
14 victim to any restitution ordered by the court and to any
15 funds paid into a trust in lieu of a fine to satisfy civil
16 judgments.

17 (2) The rights of a IHE crime victims' reparation fund
18 COMPENSATION ACCOUNT are subordinate to the claims of
19 multiple victims who have suffered loss arising out of
20 multiple offenses by the same offender or arising from any
21 transaction which is part of the same continuous scheme of
22 criminal activity of an offender.

23 Section 9. Civil actions by victim. (1) [Sections 1
24 through 9 do] not limit or impair the right of a victim to
25 sue and recover damages from the offender in a civil action.

1 (2) The findings in the sentencing hearing and the
2 fact that restitution was required or paid are not
3 admissible as evidence in a civil action and have no legal
4 effect on the merits of a civil action.

5 (3) Any restitution paid by the offender to the victim
6 must be set off against any ~~judgment-in-favor-of~~ PECUNIARY
7 LOSS_AWARDED_TO the victim in a civil action arising out of
8 the facts or events which were the basis for the
9 restitution. The court trying the civil action shall ~~hold--a~~
10 ~~separate-hearing-to~~ determine the ~~validity-and~~ amount of any
11 setoff asserted by the defendant under this section.

12 Section 10. Codification instruction. Sections 1
13 through 9 are intended to be codified as an integral part of
14 Title 46, chapter 18, part 2, and the provisions of Title 46
15 apply to sections 1 through 9.

-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENTAT BILL 237

March 22, 1983

Third Reading Copy (Blue)

Be amended as follows:

1. Page 1, line 21.

Following: "OFFICER"

Insert: ", restitution officer, or other designated person"

2. Page 3, lines 11 and 12.

Following: "the"

Strike: "statutory" through "offense" on line 12.

Insert: "period for which the sentence has been suspended or deferred
under 46-18-201"

3. Page 3, line 14.

Following: "payment"

Strike: "or other restitution"

4. Page 3, line 16.

Following: "pay"

Strike: "or perform"

5. Page 3, line 22.

Following: "officer"

Insert: ", restitution officer, or other designated person"

6. Page 3, lines 23 and 24

Following: "payment"

Strike: "or other performance"

7. Page 4, lines 14 and 15.

Following: "the" on line 14.

Strike: "statutory" through "offense" on line 15.

Insert: "period for which the sentence has been suspended or deferred
under 46-18-201"

SENATE BILL NO. 237

INTRODUCED BY HALLIGAN, ASAY,

SWIFT, HANNAH, BOYLAN, ECK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE FOR RESTITUTION TO VICTIMS OF CRIMES BY THE PERPETRATORS OF CRIMES [CRIMINAL OFFENDERS] AND A PROCEDURE UPON DEFAULT IN PAYMENT OF RESTITUTION."

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

Section 1. Sentence CONDITION of restitution. As provided in 46-18-201, a sentencing court may sentence REQUIRE an offender to make restitution to any victim of the offense. ~~An insurer or surety that has paid any part of a victim's pecuniary loss is not a victim for purposes of obtaining restitution.~~

Section 2. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper sentence ~~or the victim of the offense~~ CONDITION OF A DEFERRED OR SUSPENDED SENTENCE or the prosecuting attorney requests, the court shall order ~~a~~ THE PROBATION OFFICER, RESTITUTION OFFICER, OR OTHER DESIGNATED PERSON TO INCLUDE IN THE presentence investigation and report; ~~by a probation officer documenting the nature and amount of the victim's pecuniary loss.~~

(A) DOCUMENTATION OF THE OFFENDER'S FINANCIAL RESOURCES AND FUTURE ABILITY TO PAY RESTITUTION; AND

(B) DOCUMENTATION OF THE VICTIM'S PECUNIARY LOSS SUBMITTED BY THE VICTIM.

(2) WHERE NO PRESENTENCE REPORT IS AUTHORIZED OR REQUESTED, THE COURT MAY RECEIVE EVIDENCE OF THE OFFENDER'S ABILITY TO PAY AND THE VICTIM'S LOSS AT THE TIME OF SENTENCING.

Section 3. Definition. For purposes of [sections 1 through 9], THE FOLLOWING DEFINITIONS APPLY:

(1) "pecuniary PECUNIARY loss" means:

~~(1)(A)~~ (1)(A) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

~~(2)(B)~~ (2)(B) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "VICTIM" MEANS:

(A) A PERSON WHO SUFFERS LOSS OF PROPERTY, BODILY INJURY, OR DEATH AS A RESULT OF:

~~(11) CRIMINALLY INJURIOUS CONDUCT; OR~~

~~(111) HIS GOOD FAITH EFFORT TO PREVENT CRIMINALLY
INJURIOUS CONDUCT;~~

~~(12) AN INSURER OR SURETY WITH A RIGHT OF SUBROGATION
TO THE EXTENT IT HAS REIMBURSED THE VICTIM OF THE OFFENSE
FOR HIS PECUNIARY LOSS.~~

Section 4. Type and time of payment -- defenses. (1)
The court shall specify the amount, method, and time of
payment ~~or other restitution~~ to the victim and may permit
payment ~~or performance~~ in installments. The court may not
establish a payment ~~or performance~~ schedule extending beyond
the ~~statutory maximum term of confinement that can be~~
~~imposed for the offense~~ PERIOD FOR WHICH THE SENTENCE HAS
BEEN SUSPENDED OR DEFERRED UNDER 46-18-201.

(2) In determining the amount, method, and time of
payment ~~or other restitution~~, the court shall consider the
financial resources and future ability of the offender to
pay ~~or perform~~. The court may provide for payment to a
victim up to but not in excess of the pecuniary loss caused
by the offense. The defendant ~~DEFENDER~~ may assert any
defense that he could raise in a civil action for the loss
sought to be compensated by the restitution order.

Section 5. Supervision of payment. The court may order
a probation officer, ~~RESTITUTION OFFICER, OR OTHER~~
~~DESIGNATED PERSON~~ to supervise the making of restitution and

to report to the court any default in payment ~~or other~~
performance.

Section 6. Waiver or modification of payment. An
offender may at any time petition the sentencing court to
adjust or otherwise waive payment ~~or performance~~ of any part
of any ordered restitution. The court shall schedule a
hearing and give a victim to whom restitution was ordered
notice of the hearing date, place, and time and inform the
victim that he will have an opportunity to be heard. If the
court finds that the circumstances upon which it based the
imposition, amount, method, or time of payment ~~or other~~
~~restitution~~ no longer exist or that it otherwise would be
unjust to require payment ~~or other restitution~~ as imposed,
the court may adjust or waive unpaid ~~or unperformed~~
restitution or modify the time or method of making
restitution. The court may extend the restitution schedule,
but not beyond the ~~statutory maximum term of confinement~~
~~that may be imposed for the offense~~ PERIOD FOR WHICH THE
SENTENCE HAS BEEN SUSPENDED OR DEFERRED UNDER 46-18-201.

Section 7. Default. (1) If an offender sentenced to
make restitution is in default ~~for 60 days~~, the sentencing
court, upon the motion of the prosecuting attorney ~~or a~~
victim or upon its own motion, may issue an order under
46-18-203 requiring the offender to show cause why he should
not be confined for failure to obey the sentence of the

1 court. The court may order the offender to appear at a time,
 2 date, and place for a hearing or, IF HE FAILS TO APPEAR AS
 3 ORDERED, issue a warrant for his arrest. The order or
 4 warrant must be accompanied by written notice of the
 5 offender's right to a hearing and the rights and procedures
 6 applicable thereto. The procedures and rights of the
 7 offender at the hearing are the same as those applicable to
 8 a hearing under AS PROVIDED IN 46-18-203 to revoke a
 9 suspended or deferred sentence.

10 (2) Unless the offender shows that his IF THE COURT
 11 FINDS THAT THE DEFENDER'S default was not attributable to an
 12 intentional refusal to obey the sentence of the court or to
 13 a failure on his part to make a good faith effort to obtain
 14 the necessary funds for payment or otherwise perform OR the
 15 ordered restitution, the court may take any action provided
 16 for in 46-18-203. If confinement is ordered, the court may
 17 provide in the order that payment or satisfaction of the
 18 restitution order at any time entitles the offender to his
 19 release from confinement. The THE court, after entering the
 20 order, may at any time, for good cause shown, reduce the
 21 term of confinement and waive satisfaction of the
 22 restitution order.

23 (3) If restitution is imposed on an organization, it
 24 is the duty of any person authorized to order the
 25 disbursement of assets of the organization and his superiors

1 to pay the restitution from assets of the organization under
 2 his control. Failure to do so renders such a person subject
 3 to subsections (1) and (2) if he was found guilty of the
 4 offense and subject to a contempt of court order if he was
 5 not found guilty of the offense.

6 (4)(3) An order to pay restitution constitutes a
 7 judgment rendered in favor of the state, and following a
 8 default in the payment of restitution or any installment
 9 thereof, the sentencing court may order the restitution to
 10 be collected by any method authorized for the enforcement of
 11 other judgments for money rendered in favor of the state.

12 Section 8. Rights of crime victims' reparation fund
 13 COMPENSATION ACCOUNT. (1) Whenever a victim is paid by a
 14 FROM THE crime victims' reparation fund COMPENSATION ACCOUNT
 15 ESTABLISHED IN 93-2-102 for loss arising out of a criminal
 16 act, the fund ACCOUNT is subrogated, to the extent of the
 17 fund's ACCOUNT'S payment to the victim, to the rights of the
 18 victim to any restitution ordered by the court and to any
 19 funds paid into a trust in lieu of a fine to satisfy civil
 20 judgments.

21 (2) The rights of a THE crime victims' reparation fund
 22 COMPENSATION ACCOUNT are subordinate to the claims of
 23 multiple victims who have suffered loss arising out of
 24 multiple offenses by the same offender or arising from any
 25 transaction which is part of the same continuous scheme of

1 criminal activity of an offender.

2 Section 9. Civil actions by victim. (1) [Sections 1
3 through 9 do] not limit or impair the right of a victim to
4 sue and recover damages from the offender in a civil action.

5 (2) The findings in the sentencing hearing and the
6 fact that restitution was required or paid are not
7 admissible as evidence in a civil action and have no legal
8 effect on the merits of a civil action.

9 (3) Any restitution paid by the offender to the victim
10 must be set off against any judgment-in-favor--of PECUNIARY
11 LOSS--AWARDED-TO the victim in a civil action arising out of
12 the facts or events which were the basis for the
13 restitution. The court trying the civil action shall hold-a
14 separate-hearing-to determine the validity-and amount of any
15 setoff asserted by the defendant under this section.

16 Section 10. Codification instruction. Sections 1
17 through 9 are intended to be codified as an integral part of
18 Title 46, chapter 18, part 2, and the provisions of Title 46
19 apply to sections 1 through 9.

-End-