

HOUSE BILL NO. 335

INTRODUCED BY BRADLEY, WALLIN, BACHINI, WALDRON

IN THE HOUSE

January 22, 1985	Introduced and referred to Committee on Judiciary.
February 5, 1985	Committee recommend bill do pass as amended. Report adopted.
February 6, 1985	Bill printed and placed on members' desks.
February 8, 1985	Second reading, do pass.
February 9, 1985	Considered correctly engrossed.
February 11, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 12, 1985	Introduced and referred to Committee on Judiciary.
March 5, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 6, 1985	Second reading, concurred in.
March 8, 1985	Third reading, concurred in Ayes, 48; Noes, 0. Returned to House with amendments.

IN THE HOUSE

March 9, 1985	Received from Senate.
---------------	-----------------------

March 13, 1985

Second reading, amendments
concurrent in.

March 14, 1985

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 335
 2 INTRODUCED BY Bradley W. Winters Buckie Wallion

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A COURT TO
 5 ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM
 6 OF AN OFFENSE; TO REQUIRE THE COURT TO HOLD A HEARING PRIOR
 7 TO THE AWARD OF RESTITUTION; AMENDING SECTION 46-9-504,
 8 MCA."

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

11 Section 1. Section 46-9-504, MCA, is amended to read:

12 "46-9-504. Procedure on forfeiture -- restitution.

13 (1) Unless restitution is ordered as provided for in
 14 subsection (2), the court having jurisdiction shall proceed
 15 with the disposition of forfeited bail as follows:

16 †1}(a) If judgment be rendered or the forfeiture not
 17 discharged and the defendant has deposited money as bail,
 18 the court with whom it is deposited must, immediately after
 19 receiving notice of said judgment or order of forfeiture,
 20 pay over the money deposited to the treasury of the city or
 21 county wherein the bail was taken.

22 †2}(b) When judgment is entered in favor of the state
 23 or the order of forfeiture is not discharged on any bail,
 24 execution may be issued forthwith for levy on stocks or
 25 bonds deposited with the court or upon the real estate

1 described in the bail schedule. Such stocks, bonds, and real
 2 estate shall be sold in the same manner as in execution
 3 sales in civil actions. The proceeds of such sale shall be
 4 used to satisfy all court costs and prior encumbrances, if
 5 any, and from the balance a sufficient sum to satisfy the
 6 judgment or forfeiture shall be paid into the treasury of
 7 the city or county wherein the bail bond was taken. The
 8 balance shall be returned to the owner. The real estate so
 9 sold may be redeemed in the same manner as real estate may
 10 be redeemed after execution sales in civil actions.

11 †3}(c) When judgment is entered in favor of the state
 12 and against the sureties or the surety company or when the
 13 forfeiture has not been discharged, execution may be issued
 14 against the sureties or the surety company in the same
 15 manner as executions in civil actions.

16 (2) If the court enters a judgment declaring bail to
 17 be forfeited or if the order of forfeiture is not
 18 discharged, the court having jurisdiction may order the bail
 19 forfeited to be paid as restitution to any victim of the
 20 offense for which the court has received bail. Whenever the
 21 court believes that restitution may be proper, the court
 22 shall order a hearing for the purpose of considering the
 23 nature and extent of the victim's pecuniary loss as defined
 24 in 46-18-243. If the court finds that restitution is
 25 appropriate, the court shall order restitution in an amount

1 not exceeding the amount of the victim's complaint or the
2 amount of the victim's pecuniary loss. An order to require
3 restitution is a judgment against the defendant and his
4 sureties, and the court may order the restitution to be made
5 by payment of money deposited as bail, by execution sale, by
6 execution against the sureties, or by any method authorized
7 for enforcement of other judgments. Any balance of the bail
8 money must be disposed of in the same manner as provided in
9 subsection (1)."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 335

INTRODUCED BY BRADLEY, WALLIN, BACHINI, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM OF AN OFFENSE; TO REQUIRE THE COURT TO HOLD A HEARING PRIOR TO THE AWARD OF RESTITUTION; AMENDING SECTION 46-9-504, MCA."

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

Section 1. Section 46-9-504, MCA, is amended to read:

"46-9-504. Procedure on forfeiture -- restitution.

(1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate

described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount



1 not exceeding the amount of the victim's complaint or the
2 amount of the victim's pecuniary loss. An order to require
3 restitution is a judgment against the defendant and his
4 sureties, and the court may order the restitution to be made
5 by payment of money deposited as bail, by execution sale, by
6 execution--against-the-sureties,-or-by-any-method-authorized
7 for-enforcement-of-other-judgments. Any balance of the bail
8 money must be disposed of in the same manner as provided in
9 subsection (1)."

-End-

HOUSE BILL NO. 335

INTRODUCED BY BRADLEY, WALLIN, BACHINI, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM OF AN OFFENSE; TO REQUIRE THE COURT TO HOLD A HEARING PRIOR TO THE AWARD OF RESTITUTION; AMENDING SECTION 46-9-504, MCA."

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

Section 1. Section 46-9-504, MCA, is amended to read:

"46-9-504. Procedure on forfeiture -- restitution.

(1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(1)(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(2)(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate

described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(3)(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount

1 not exceeding the amount of the victim's complaint or the
2 amount of the victim's pecuniary loss. An order to require
3 restitution is a judgment against the defendant and his
4 sureties, and the court may order the restitution to be made
5 by payment of money deposited as bail, by execution, sale, by
6 execution--against-the-sureties, or by any method authorized
7 for enforcement of other judgments. Any balance of the bail
8 money must be disposed of in the same manner as provided in
9 subsection (1)."

-End-

STANDING COMMITTEE REPORT

SENATE

March 5 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 335

third reading copy (blue color)

(Senator Yellowtail)

ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM

Respectfully report as follows: That HOUSE BILL No. 335

be amended as follows:

1. Page 3, line 9.

Following: "(1)."

Insert: "Provided no such determination or decision under this subsection shall be admissible as evidence in any other civil action, nor shall it be res adjudicata in any other civil action."

AND AS AMENDED

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

HOUSE BILL NO. 335

INTRODUCED BY BRADLEY, WALLIN, BACHINI, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A COURT TO ORDER FORFEITED BAIL TO BE PAID AS RESTITUTION TO A VICTIM OF AN OFFENSE; TO REQUIRE THE COURT TO HOLD A HEARING PRIOR TO THE AWARD OF RESTITUTION; AMENDING SECTION 46-9-504, MCA."

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

Section 1. Section 46-9-504, MCA, is amended to read:

"46-9-504. Procedure on forfeiture -- restitution.

(1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate

described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount



1 not exceeding the amount of the victim's complaint or the
2 amount of the victim's pecuniary loss. An order to require
3 restitution is a judgment against the defendant and his
4 sureties, and the court may order the restitution to be made
5 by payment of money deposited as bail, ~~by execution sale, by~~
6 ~~execution--against the sureties, or by any method authorized~~
7 ~~for enforcement of other judgments.~~ Any balance of the bail
8 money must be disposed of in the same manner as provided in
9 subsection (1). PROVIDED NO SUCH DETERMINATION OR DECISION
10 UNDER THIS SUBSECTION SHALL BE ADMISSIBLE AS EVIDENCE IN ANY
11 OTHER CIVIL ACTION, NOR SHALL IT BE RES JUDICATA IN ANY
12 OTHER CIVIL ACTION."

-End-