

SENATE BILL NO. 321

INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

IN THE SENATE

February 4, 1985	Introduced and referred to Committee on Judiciary.
February 6, 1985	On motion by Chief Sponsor, Representative O'Hara added as sponsor.
February 18, 1985	Committee recommend bill do pass. Report adopted.
February 19, 1985	Bill printed and placed on members' desks.
February 20, 1985	Second reading, do pass as amended.
February 21, 1985	Correctly engrossed.
February 22, 1985	Third reading, passed. Ayes, 49; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 26, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

April 1, 1985	Received from House.
April 3, 1985	Second reading, pass consideration.
April 4, 1985	Second reading, amendments not concurred in. Ayes, 50; Noes, 0.
April 9, 1985	On motion, Conference Committee requested and appointed.
April 23, 1985	Conference Committee dissolved. On motion, Free Conference Committee requested and appointed. Free Conference Committee reported. Free Conference Committee report adopted by House.
April 24, 1985	Second reading, Free Conference Committee report adopted. Third reading, Free Conference Committee report adopted. Sent to enrolling. Reported correctly enrolled.

1 *Senate* BILL NO. *321*
 2 INTRODUCED BY *Julian Mezger Bob Brown*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
 5 RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A
 6 PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING
 7 BAIL AND BAIL CONDITIONS; TO EXPAND THE LIST OF BAIL
 8 CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-103,
 9 46-9-301, AND 46-9-501, MCA."

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

12 Section 1. Section 46-9-103, MCA, is amended to read:

13 "46-9-103. Bail ~~after--conviction pending sentence or~~
 14 ~~appeal.~~ (1) ~~After--conviction-of-an-offense-not-punishable-by~~
 15 ~~death--a-defendant-who-intends-to-appeal-may-be-admitted--to~~
 16 ~~bail:~~

17 (a) ~~--as--a--matter-of-right--from-a-judgment-imposing-a~~
 18 ~~fine-only-or-any-judgment-rendered-by-a--justice's--or--city~~
 19 ~~court;~~

20 (b) ~~--as--a--matter--of-discretion-in-all-other-cases.~~ A
 21 person found guilty of an offense and awaiting imposition or
 22 execution of sentence may not be admitted to bail unless the
 23 judge finds by clear and convincing evidence that the person
 24 is not likely to flee or pose a danger to the safety of any
 25 other person or the community.

1 (2) A person found guilty of an offense and sentenced
 2 to a term of imprisonment who has filed an appeal may not be
 3 admitted to bail unless the judge finds by clear and
 4 convincing evidence that the person is not likely to flee
 5 or pose a danger to the safety of any other person or the
 6 community and that the appeal raises a substantial question
 7 of law or fact and is not for the purpose of delay.

8 (2)(3) A defendant-convicted person found guilty of
 9 the offense of deliberate homicide is presumed to be pose a
 10 danger to others-and-not-entitled-to-be-admitted-to-bail the
 11 safety of the community, which presumption is rebuttable."

12 Section 2. Section 46-9-301, MCA, is amended to read:

13 "46-9-301. Determining the amount of bail. In all
 14 cases that bail is determined to be necessary, bail must be
 15 reasonable in amount and the amount shall be:

16 (1) sufficient to assure compliance with the
 17 conditions set forth in the bail;

18 (2) sufficient to assure that the safety of the
 19 community, the defendant, or any other person will not be
 20 endangered;

21 (2)(3) not oppressive;

22 (3)(4) commensurate with the nature of the offense
 23 charged;

24 (4)(5) considerate of the financial ability of the
 25 accused; and

INTRODUCED BILL
 SB 321



1 ~~(5)~~(6) considerate of the defendant's prior record,
2 employment status, and family background."

3 Section 3. Section 46-9-501, MCA, is amended to read:
4 "46-9-501. Form of conditions of bail. (1) If a person
5 is admitted to bail before conviction, the conditions of
6 bail shall be:

7 (a) that he will appear to answer in the court having
8 jurisdiction on a day certain and thereafter as ordered by
9 the court until discharged on final order of the court and
10 will not depart from this state without leave; and

11 (b) any other conditions that the court may reasonably
12 prescribe to assure his appearance ~~when--required:~~ as
13 required and the safety of any other person and the
14 community, including but not limited to a condition that the
15 person:

16 (i) remain in the custody of a designated person who
17 agrees to supervise him and to report any violation of a
18 release condition to the court, if the designated person is
19 reasonably able to assure the court that the person will
20 appear as required and will not pose a danger to the safety
21 of any other person or the community;

22 (ii) maintain employment or, if unemployed, actively
23 seek employment;

24 (iii) maintain or commence an educational program;

25 (iv) abide by specified restrictions on personal

1 associations, place of abode, or travel;

2 (v) avoid all contact with an alleged victim of the
3 crime or with a potential witness who may testify concerning
4 the offense;

5 (vi) report on a regular basis to a designated law
6 enforcement agency or other pretrial services agency;

7 (vii) comply with a specified curfew;

8 (viii) refrain from possessing a firearm, destructive
9 device, or other dangerous weapon;

10 (ix) refrain from the use of alcohol or a dangerous
11 drug without a prescription from a licensed medical
12 practitioner;

13 (x) undergo available medical or psychiatric
14 treatment, including treatment for drug or alcohol
15 dependency, and remain in a specified institution if
16 required for that purpose;

17 (xi) return to custody for specified hours following
18 release for employment, schooling, or other limited
19 purposes.

20 (2) The judge may at any time amend his order to
21 impose additional or different conditions of release.

22 ~~(2)~~(3) If the defendant is admitted to bail after
23 conviction, the conditions of bail shall be that:

24 (a) he will duly prosecute his appeal;

25 (b) he will appear at such time and place as the court

1 may direct;

2 (c) he will not depart from this state without leave
3 of the court; and

4 (d) if the judgment is affirmed or the cause reversed
5 and remanded for a new trial, he will forthwith surrender to
6 the officer from whose custody he was bailed."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 321

INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING BAIL AND BAIL CONDITIONS; TO EXPAND THE LIST OF BAIL CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-103, 46-9-301, AND 46-9-501, MCA."

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

Section 1. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail ~~after--conviction pending sentence or appeal.~~ (1) ~~After-conviction-of-an-offense-not-punishable-by death,-a-defendant-who-intends-to-appeal-may-be-admitted--to bail:~~

~~(a)--as--a--matter-of-right,-from-a-judgment-imposing-a fine-only-or-any-judgment-rendered-by-a--justice's--or--city court;~~

~~(b)--as--a--matter--of-discretion-in-all-other-cases. A~~ person found guilty of an offense and awaiting imposition or execution of sentence may not be admitted to bail unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community.

(2) A person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may not be admitted to bail unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community and that the appeal raises a substantial question of law or fact and is not for the purpose of delay.

~~(2)(3) A defendant-convicted person found guilty of the offense of deliberate homicide is presumed to be pose a danger to others-and-not-entitled-to-be-admitted-to-bail the safety of the community, which presumption is rebuttable."~~

Section 2. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to assure compliance with the conditions set forth in the bail;

(2) sufficient to assure that the safety of the community, the defendant, or any other person will not be endangered;

~~(2)(3)~~ not oppressive;

~~(3)(4)~~ commensurate with the nature of the offense charged;

~~(4)(5)~~ considerate of the financial ability of the accused; and

1 ~~(5)~~(6) considerate of the defendant's prior record,
2 employment status, and family background."

3 Section 3. Section 46-9-501, MCA, is amended to read:

4 "46-9-501. Form of conditions of bail. (1) If a person
5 is admitted to bail before conviction, the conditions of
6 bail shall be:

7 (a) that he will appear to answer in the court having
8 jurisdiction on a day certain and thereafter as ordered by
9 the court until discharged on final order of the court and
10 will not depart from this state without leave; and

11 (b) any other conditions that the court may reasonably
12 prescribe to assure his appearance ~~when--required;~~ as
13 required and the safety of any other person and the
14 community, including but not limited to a condition that the
15 person:

16 (i) remain in the custody of a designated person who
17 agrees to supervise him and to report any violation of a
18 release condition to the court, if the designated person is
19 reasonably able to assure the court that the person will
20 appear as required and will not pose a danger to the safety
21 of any other person or the community;

22 (ii) maintain employment or, if unemployed, actively
23 seek employment;

24 (iii) maintain or commence an educational program;

25 (iv) abide by specified restrictions on personal

1 associations, place of abode, or travel;

2 (v) avoid all contact with an alleged victim of the
3 crime or with a potential witness who may testify concerning
4 the offense;

5 (vi) report on a regular basis to a designated law
6 enforcement agency or other pretrial services agency;

7 (vii) comply with a specified curfew;

8 (viii) refrain from possessing a firearm, destructive
9 device, or other dangerous weapon;

10 (ix) refrain from the use of alcohol or a dangerous
11 drug without a prescription from a licensed medical
12 practitioner;

13 (x) undergo available medical or psychiatric
14 treatment, including treatment for drug or alcohol
15 dependency, and remain in a specified institution if
16 required for that purpose;

17 (xi) return to custody for specified hours following
18 release for employment, schooling, or other limited
19 purposes.

20 (2) The judge may at any time amend his order to
21 impose additional or different conditions of release.

22 ~~(2)~~(3) If the defendant is admitted to bail after
23 conviction, the conditions of bail shall be that:

24 (a) he will duly prosecute his appeal;

25 (b) he will appear at such time and place as the court

1 may direct;

2 (c) he will not depart from this state without leave
3 of the court; and

4 (d) if the judgment is affirmed or the cause reversed
5 and remanded for a new trial, he will forthwith surrender to
6 the officer from whose custody he was bailed."

-End-

SENATE BILL NO. 321

INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING BAIL AND BAIL CONDITIONS; TO EXPAND THE LIST OF BAIL CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-103, 46-9-301, AND 46-9-501, MCA."

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

Section 1. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail ~~after--conviction pending sentence or appeal.~~ (1) ~~After-conviction-of-an-offense-not-punishable-by death,-a-defendant-who-intends-to-appeal-may-be-admitted--to bail:~~

~~(a)--as--a--matter-of-right,-from-a-judgment-imposing-a fine-only-or-any-judgment-rendered-by-a--justice's--or--city court;~~

~~(b)--as--a--matter--of-discretion-in-all-other-cases; A person found guilty of an offense and awaiting imposition or execution of sentence may not-be-admitted-to-bail-unless~~ BE DENIED BAIL IF the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community.

(2) A person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may not be admitted to bail unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community and that the appeal raises a substantial question of law or fact and is not for the purpose of delay.

~~(2)(3) A defendant--convicted person found guilty of the offense of deliberate homicide is presumed to be pose a danger to others-and-not-entitled-to-be-admitted-to-bail the safety of the community, which presumption is rebuttable."~~

Section 2. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to assure compliance with the conditions set forth in the bail;

(2) sufficient to assure that the safety of the community, the defendant, or any other person will not be endangered;

~~(2)(3) not oppressive;~~

~~(3)(4) commensurate with the nature of the offense charged;~~

~~(4)(5) considerate of the financial ability of the accused; and~~



1 ~~(5)~~(6) considerate of the defendant's prior record,
2 employment status, and family background."

3 Section 3. Section 46-9-501, MCA, is amended to read:

4 "46-9-501. Form of conditions of bail. (1) If a person
5 is admitted to bail before conviction, the conditions of
6 bail shall be:

7 (a) that he will appear to answer in the court having
8 jurisdiction on a day certain and thereafter as ordered by
9 the court until discharged on final order of the court and
10 will not depart from this state without leave; and

11 (b) any other conditions that the court may reasonably
12 prescribe to assure his appearance ~~when--required:~~ as
13 required and the safety of any other person and the
14 community, including but not limited to a condition that the
15 person:

16 (i) remain in the custody of a designated person who
17 agrees to supervise him and to report any violation of a
18 release condition to the court, if the designated person is
19 reasonably able to assure the court that the person will
20 appear as required and will not pose a danger to the safety
21 of any other person or the community;

22 (ii) maintain employment or, if unemployed, actively
23 seek employment;

24 (iii) maintain or commence an educational program;

25 (iv) abide by specified restrictions on personal

1 associations, place of abode, or travel;

2 (v) avoid all contact with an alleged victim of the
3 crime or with a potential witness who may testify concerning
4 the offense;

5 (vi) report on a regular basis to a designated law
6 enforcement agency or other pretrial services agency;

7 (vii) comply with a specified curfew;

8 (viii) refrain from possessing a firearm, destructive
9 device, or other dangerous weapon;

10 (ix) refrain from the use of alcohol or a dangerous
11 drug without a prescription from a licensed medical
12 practitioner;

13 (x) undergo available medical or psychiatric
14 treatment, including treatment for drug or alcohol
15 dependency, and remain in a specified institution if
16 required for that purpose;

17 (xi) return to custody for specified hours following
18 release for employment, schooling, or other limited
19 purposes.

20 (2) The judge may at any time amend his order to
21 impose additional or different conditions of release.

22 ~~(2)~~(3) If the defendant is admitted to bail after
23 conviction, the conditions of bail shall be that:

24 (a) he will duly prosecute his appeal;

25 (b) he will appear at such time and place as the court

1 may direct;

2 (c) he will not depart from this state without leave
3 of the court; and

4 (d) if the judgment is affirmed or the cause reversed
5 and remanded for a new trial, he will forthwith surrender to
6 the officer from whose custody he was bailed."

-End-

STANDING COMMITTEE REPORT Page 1 of 3

HOUSE

March 26 1985

March 26 1985

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate

Bill No. 321

Third reading copy (Blue color)

CONSIDER DANGER TO COMMUNITY, OTHERS TO SET BAIL; EXPAND BAIL CONDITIONS

Respectfully report as follows: That Senate

Bill No. 321

be amended as follows:

1. Title, line 7.
Strike: "AND BAIL CONDITIONS"
2. Title, line 9.
Following: "MCA"
Insert: "; AND REPEALING SECTION 46-9-101, MCA"
3. Page 1, line 20.
Following: "eases"
Insert: "(a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail. (b)"
4. Page 1, line 22.
Following: "sentence"
Insert: "or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal"

5. Page 1, line 23.
Strike: "DENIED BAIL"
Insert: "admitted to bail only"

6. Page 1, line 24.
Following: "not"
Insert: "not"
Following: "flee"
Strike: "or"
Insert: "and does not"

7. Page 2, lines 1 through 7.
Strike: subsection (2) in its entirety.
Renumber: subsequent subsection.

8. Page 2, following line 15.
Insert: "(1) sufficient to insure the presence of the defendant in a pending criminal proceeding;"
Renumber: subsequent subsections.

9. Page 2, line 18.
Following: "sufficient to"
Strike: "assure" through "endangered" on line 20.
Insert: "protect any person from bodily injury"

10. Page 2, line 25.
Strike: "and"

11. Page 3, line 1.
Following: "record"
Strike: "; employment" through "background" on line 2.
Insert: "; (8) considerate of the length of time the defendant has resided in the community and of his ties to the community;
(9) considerate of the defendant's family relationships and ties;
and
(10) considerate of the defendant's employment status"

12. Page 3, line 5.
Strike: "before conviction"

13. Page 3, line 13.
Following: "required"
Strike: "and" through "community" on line 14
Insert: "and to protect any person from bodily injury"

14. Page 3, line 15.
Following: "person"
Insert: "admitted to bail"

(continued)

(continued)

Chairman

Chairman

SB 321

March 26 1985

15. Page 3, line 20.
Following: "required"
Strike: "and" through "community," on line 21
16. Page 3, line 25.
Following: "on"
Strike: "personal associations, place of abode, or" on Page 4, line 1
17. Page 4, line 3.
Following: "or"
Insert: "limit contact"
18. Page 4, line 4.
Following: "offense"
Insert: "except that contact which is necessary to the preparation of the defense"
19. Page 4, line 16.
Following: "purpose"
Strike: "1"
Insert: ","
20. Page 4, lines 17 through 20.
Strike: subsection (xi) in its entirety
21. Page 4, line 23.
Following: "of bail"
Insert: "," in addition to those set forth in subsection (1),"
22. Pages 4 and 5.
Following: line 24 on page 4
Strike: subsection (b) in its entirety and subsection (c) through "court," on line 3 of page 5
Re-number: subsequent subsection.
23. Page 5, following line 6.
Insert: "NEW SECTION. Section 4. Repealer. Section 46-9-101, MCA, is repealed."

KMK
SK
324
AND AS AMENDED,
BE CONCURRED IN

Tom Hannah
REP. TOM HANNAH

Chairman.

SENATE BILL NO. 321

INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING BAIL AND--BAIL--CONDITIONS; TO EXPAND THE LIST OF BAIL CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-103, 46-9-301, AND 46-9-501, MCA; AND REPEALING SECTION 46-9-101, MCA."

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

Section 1. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail after--conviction pending sentence or appeal. (1) After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) as a matter of right, from a judgment imposing a fine only or any judgment rendered by a justice's or city court;

(b) as a matter of discretion in all other cases. (A) A PERSON INTENDING TO APPEAL FROM A JUDGMENT IMPOSING A FINE ONLY OR FROM ANY JUDGMENT RENDERED BY A JUSTICE'S OR CITY COURT MUST BE ADMITTED TO BAIL.

(B) A person found guilty of an offense and awaiting

imposition or execution of sentence OR A PERSON FOUND GUILTY OF AN OFFENSE AND SENTENCED TO A TERM OF IMPRISONMENT WHO HAS FILED AN APPEAL may not be admitted to bail unless BE DENIED BAIL ADMITTED TO BAIL ONLY IF the judge finds by clear--and--convincing--evidence that the person is not NOT likely to flee or AND DOES NOT pose a danger to the safety of any other person or the community.

(2) A person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may not be admitted to bail unless the judge finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community and that the appeal raises a substantial question of law or fact and is not for the purpose of delay.

(2)(3) A defendant convicted person found guilty of the offense of deliberate homicide is presumed to be pose a danger to others and not entitled to be admitted to bail the safety of the community, which presumption is rebuttable."

Section 2. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) SUFFICIENT TO ENSURE THE PRESENCE OF THE DEFENDANT IN A PENDING CRIMINAL PROCEEDING;

(2) sufficient to assure compliance with the



1 conditions set forth in the bail;

2 ~~(2)(3) sufficient to assure that the safety of the~~
3 ~~community, the defendant, or any other person will not be~~
4 ~~endangered~~ PROTECT ANY PERSON FROM BODILY INJURY;

5 ~~(2)(3)(4)~~ not oppressive;

6 ~~(3)(4)(5)~~ commensurate with the nature of the offense
7 charged;

8 ~~(4)(5)(6)~~ considerate of the financial ability of the
9 accused; and

10 ~~(5)(6)(7)~~ considerate of the defendant's prior record,
11 employment status, and family background;

12 (8) CONSIDERATE OF THE LENGTH OF TIME THE DEFENDANT
13 HAS RESIDED IN THE COMMUNITY AND OF HIS TIES TO THE
14 COMMUNITY;

15 (9) CONSIDERATE OF THE DEFENDANT'S FAMILY
16 RELATIONSHIPS AND TIES; AND

17 (10) CONSIDERATE OF THE DEFENDANT'S EMPLOYMENT STATUS."
18 Section 3. Section 46-9-501, MCA, is amended to read:
19 "46-9-501. Form of conditions of bail. (1) If a person
20 is admitted to bail before conviction, the conditions of
21 bail shall be:

22 (a) that he will appear to answer in the court having
23 jurisdiction on a day certain and thereafter as ordered by
24 the court until discharged on final order of the court and
25 will not depart from this state without leave; and

1 (b) any other conditions that the court may reasonably
2 prescribe to assure his appearance when required: as
3 required and the safety of any other person and the
4 community AND TO PROTECT ANY PERSON FROM BODILY INJURY,
5 including but not limited to a condition that the person
6 ADMITTED TO BAIL:

7 (i) remain in the custody of a designated person who
8 agrees to supervise him and to report any violation of a
9 release condition to the court, if the designated person is
10 reasonably able to assure the court that the person will
11 appear as required and will not pose a danger to the safety
12 of any other person or the community;

13 (ii) maintain employment or, if unemployed, actively
14 seek employment;

15 (iii) maintain or commence an educational program;

16 (iv) abide by specified restrictions on personal
17 associations, place of abode, or travel;

18 (v) avoid all contact with an alleged victim of the
19 crime or LIMIT CONTACT with a potential witness who may
20 testify concerning the offense, EXCEPT THAT CONTACT WHICH IS
21 NECESSARY TO THE PREPARATION OF THE DEFENSE;

22 (vi) report on a regular basis to a designated law
23 enforcement agency or other pretrial services agency;

24 (vii) comply with a specified curfew;

25 (viii) refrain from possessing a firearm, destructive

1 device, or other dangerous weapon;
 2 (ix) refrain from the use of alcohol or a dangerous
 3 drug without a prescription from a licensed medical
 4 practitioner;
 5 (x) undergo available medical or psychiatric
 6 treatment, including treatment for drug or alcohol
 7 dependency, and remain in a specified institution if
 8 required for that purpose.
 9 ~~(xi) return to custody for specified hours following~~
 10 ~~release for employment, schooling, or other limited~~
 11 ~~purposes;~~
 12 (2) The judge may at any time amend his order to
 13 impose additional or different conditions of release.
 14 ~~(2)(3)~~ If the defendant is admitted to bail after
 15 conviction, the conditions of bail, IN ADDITION TO THOSE SET
 16 FORTH IN SUBSECTION (1), shall be that:
 17 (a) he will duly prosecute his appeal;
 18 ~~(b) he will appear at such time and place as the court~~
 19 ~~may direct;~~
 20 ~~(c) he will not depart from this state without leave~~
 21 ~~of the court; and~~
 22 ~~(d)(B)~~ if the judgment is affirmed or the cause
 23 reversed and remanded for a new trial, he will forthwith
 24 surrender to the officer from whose custody he was bailed."
 25 NEW SECTION. SECTION 4. REPEALER. SECTION 46-9-101,

1 MCA, IS REPEALED.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1

APR 23, 19 85

MR. SPEAKER

We, your FREE Conference Committee on

SENATE BILL NO. 321, reference copy,

met and considered SENATE BILL NO. 321 in its entirety on APR 23.

We recommend as follows:

1. Title, line 8.

Following: "SECTIONS"

Insert: "46-9-101,"

2. Title, lines 9 and 10.

Following: "MCA" on line 9

Strike: "; AND REPEALING SECTION 46-9-101, MCA"

3. Page 1, line 13.

Following: line 12

Insert: "Section 1. Section 46-9-101, MCA, is amended to read:

"46-9-101. Definition and purpose. "Bail" is the security given for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding."

Renumber: subsequent sections.

~~4~~ Page 5, line 25 through line 1, page 6.

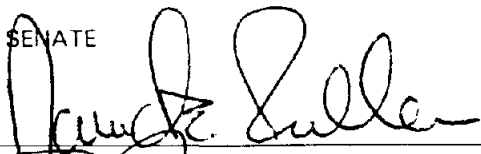
Strike: Section 4 in its entirety

~~Renumber: subsequent section~~

FCCSB321

And that this Conference Committee report be adopted.

FOR THE SENATE



FULLER

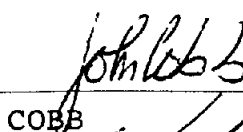

MAZUREK


BROWN


ADOPT

REJECT

FOR THE HOUSE



COBB


KRUEGER


MERCER



1 SENATE BILL NO. 321

2 INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
5 RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A
6 PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING
7 BAIL ~~AND--BAIL--CONDITIONS~~; TO EXPAND THE LIST OF BAIL
8 CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-101,
9 46-9-103, 46-9-301, AND 46-9-501, MCA; ~~AND--REPEALING--SECTION~~
10 ~~46-9-101--MCA.~~"

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

12 SECTION 1. SECTION 46-9-101, MCA, IS AMENDED TO READ:

13 "46-9-101. Definition and purpose. "Bail" is the
14 security given for the primary purpose of insuring the
15 presence of the defendant in a pending criminal proceeding."

16 Section 2. Section 46-9-103, MCA, is amended to read:

17 "46-9-103. Bail ~~after conviction pending sentence or~~
18 ~~appeal.~~ (1) ~~After conviction of an offense not punishable by~~
19 ~~death;--a defendant who intends to appeal may be admitted to~~
20 ~~bail:~~

21 (a) ~~--as a matter of right, from a judgment--imposing--a~~
22 ~~fine--only--or--any judgment rendered by a justice's or city~~
23 ~~court;~~

24 (b) ~~--as a matter of discretion in all other--cases.~~ (A)

1 A PERSON INTENDING TO APPEAL FROM A JUDGMENT IMPOSING A FINE
2 ONLY OR FROM ANY JUDGMENT RENDERED BY A JUSTICE'S OR CITY
3 COURT MUST BE ADMITTED TO BAIL.

4 (B) A person found guilty of an offense and awaiting
5 imposition or execution of sentence OR A PERSON FOUND GUILTY
6 OF AN OFFENSE AND SENTENCED TO A TERM OF IMPRISONMENT WHO
7 HAS FILED AN APPEAL may not be admitted to bail--unless BE
8 DENIED--BAIL ADMITTED TO BAIL ONLY IF the judge finds by
9 clear and convincing evidence that the person is not NOT
10 likely to flee or AND DOES NOT pose a danger to the safety
11 of any other person or the community.

12 (2) ~~--A person found guilty of an offense and--sentenced~~
13 ~~to a term of imprisonment who has filed an appeal may not be~~
14 ~~admitted--to--bail--unless--the--judge--finds--by--clear--and~~
15 ~~convincing evidence that the person is not--likely--to--flee~~
16 ~~or--pose--a--danger--to--the--safety--of--any--other--person--or--the~~
17 ~~community and that the appeal raises a substantial--question~~
18 ~~of law or fact and is not for the purpose of delay.~~

19 (2)(3)(2) A defendant convicted person found guilty of
20 the offense of deliberate homicide is presumed to be pose a
21 danger to others and not entitled to be admitted to bail the
22 safety of the community, which presumption is rebuttable."

23 Section 3. Section 46-9-301, MCA, is amended to read:

24 "46-9-301. Determining the amount of bail. In all
25 cases that bail is determined to be necessary, bail must be

1 reasonable in amount and the amount shall be:
 2 (1) SUFFICIENT TO ENSURE THE PRESENCE OF THE DEFENDANT
 3 IN A PENDING CRIMINAL PROCEEDING;
 4 ~~(2)~~(2) sufficient to assure compliance with the
 5 conditions set forth in the bail;
 6 ~~(3)~~(3) sufficient to ~~assure--that--the--safety--of--the~~
 7 ~~community,--the--defendant,--or--any--other--person--will--not--be~~
 8 ~~endangered~~ PROTECT ANY PERSON FROM BODILY INJURY;
 9 ~~(3)~~~~(4)~~(4) not oppressive;
 10 ~~(4)~~~~(5)~~(5) commensurate with the nature of the offense
 11 charged;
 12 ~~(5)~~~~(6)~~(6) considerate of the financial ability of the
 13 accused; and
 14 ~~(6)~~~~(7)~~(7) considerate of the defendant's prior record,
 15 ~~employment-status,--and--family--background;~~
 16 (8) CONSIDERATE OF THE LENGTH OF TIME THE DEFENDANT
 17 HAS RESIDED IN THE COMMUNITY AND OF HIS TIES TO THE
 18 COMMUNITY;
 19 (9) CONSIDERATE OF THE DEFENDANT'S FAMILY
 20 RELATIONSHIPS AND TIES; AND
 21 (10) CONSIDERATE OF THE DEFENDANT'S EMPLOYMENT STATUS."
 22 Section 4. Section 46-9-501, MCA, is amended to read:
 23 "46-9-501. Form of conditions of bail. (1) If a person
 24 is admitted to bail ~~before-conviction~~, the conditions of
 25 bail shall be:

1 (a) that he will appear to answer in the court having
 2 jurisdiction on a day certain and thereafter as ordered by
 3 the court until discharged on final order of the court and
 4 will not depart from this state without leave; and
 5 (b) any other conditions that the court may reasonably
 6 prescribe to assure his appearance when--required: as
 7 required and--the--safety--of--any--other--person--and--the
 8 community AND TO PROTECT ANY PERSON FROM BODILY INJURY,
 9 including but not limited to a condition that the person
 10 ADMITTED TO BAIL:
 11 (i) remain in the custody of a designated person who
 12 agrees to supervise him and to report any violation of a
 13 release condition to the court, if the designated person is
 14 reasonably able to assure the court that the person will
 15 appear as required and--will--not--pose--a--danger--to--the--safety
 16 of--any--other--person--or--the--community;
 17 (ii) maintain employment or, if unemployed, actively
 18 seek employment;
 19 (iii) maintain or commence an educational program;
 20 (iv) abide by specified restrictions on personal
 21 associations,--place-of-abode,--or travel;
 22 (v) avoid all contact with an alleged victim of the
 23 crime or LIMIT CONTACT with a potential witness who may
 24 testify concerning the offense, EXCEPT THAT CONTACT WHICH IS
 25 NECESSARY TO THE PREPARATION OF THE DEFENSE;

1 (vi) report on a regular basis to a designated law
 2 enforcement agency or other pretrial services agency;
 3 (vii) comply with a specified curfew;
 4 (viii) refrain from possessing a firearm, destructive
 5 device, or other dangerous weapon;
 6 (ix) refrain from the use of alcohol or a dangerous
 7 drug without a prescription from a licensed medical
 8 practitioner;
 9 (x) undergo available medical or psychiatric
 10 treatment, including treatment for drug or alcohol
 11 dependency, and remain in a specified institution if
 12 required for that purpose.
 13 ~~(xi) return to custody for specified hours following~~
 14 ~~release for employment, schooling, or other limited~~
 15 ~~purposes.~~
 16 (2) The judge may at any time amend his order to
 17 impose additional or different conditions of release.
 18 (2)(3) If the defendant is admitted to bail after
 19 conviction, the conditions of bail, IN ADDITION TO THOSE SET
 20 FORTH IN SUBSECTION (1), shall be that:
 21 (a) he will duly prosecute his appeal;
 22 ~~(b) he will appear at such time and place as the court~~
 23 ~~may direct;~~
 24 ~~(c) he will not depart from this state without leave~~
 25 ~~of the court; and~~

1 (d)(B) if the judgment is affirmed or the cause
 2 reversed and remanded for a new trial, he will forthwith
 3 surrender to the officer from whose custody he was bailed."
 4 ~~NEW SECTION--SECTION 4--REPEALER---SECTION 46-9-1017~~
 5 ~~MCA 7-16-REPEALER~~

-End-