

1 SENATE BILL NO. 204

2 INTRODUCED BY J. COBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A COURT SENTENCING A CRIMINAL
5 OFFENDER MUST SPECIFY THE TOTAL AMOUNT OF RESTITUTION TO BE PAID TO THE VICTIM;
6 PROVIDING THAT THE TOTAL AMOUNT ORDERED TO BE PAID MAY BE COLLECTED BY THE VICTIM
7 ~~IN A CIVIL PROCEEDING~~ AT ANY TIME, INCLUDING AFTER STATE SUPERVISION OF THE OFFENDER
8 ENDS, USING ANY METHOD ALLOWED BY LAW FOR THE COLLECTION OF A CIVIL JUDGMENT;
9 AMENDING SECTIONS 46-18-244 AND 46-18-249, MCA; AND PROVIDING A RETROACTIVE
10 APPLICABILITY DATE."

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

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14 **Section 1.** Section 46-18-244, MCA, is amended to read:

15 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the total amount;
16 to be paid and the method; and time of ~~each~~ payment ~~to the victim~~ and may permit payment in
17 installments.

18 (2) In determining the amount, method, and time of each installment payment, the court shall
19 consider the financial resources and future ability of the offender to pay. The court shall provide for
20 payment to a victim of the full amount of the pecuniary loss caused by the offense. The offender may
21 assert any defense that the offender could raise in a civil action for the loss sought to be compensated by
22 the restitution order.

23 (3) In addition to other methods of payment, the court may order one or more of the following in
24 order to satisfy the offender's restitution obligation:

25 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
26 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
27 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless
28 the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim
29 after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and
30 sale, any remaining amount must be returned to the offender.

1 (b) return of any property to the victim;

2 (c) payment of up to one-third of the offender's prison earnings.

3 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
4 to make restitution in services to the victim in lieu of money or to make restitution to a person designated
5 by the victim, if that person provided services to the victim as a result of the offense.

6 (5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant
7 a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the
8 restraining order or injunction, bond, or other action is necessary to preserve property or assets that could
9 be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person
10 with an interest in the property is entitled to be heard."

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12 **Section 2.** Section 46-18-249, MCA, is amended to read:

13 **"46-18-249. Civil actions by victim.** (1) ~~Sections~~ The total amount that a court orders to be paid
14 TO A VICTIM may BE TREATED AS A CIVIL JUDGMENT AGAINST THE OFFENDER AND MAY be collected by the victim
15 in a civil proceeding at any time, including after state supervision of the offender ends, using any method
16 allowed by law, INCLUDING EXECUTION UPON A JUDGMENT, for the collection of a civil judgment. However,
17 46-18-241 through ~~46-18-249~~ 46-18-248 and this section do not limit or impair the right of a victim to
18 sue and recover damages from the offender in a separate civil action.

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

22 (3) Any restitution paid by the offender to the victim under a restitution order contained in a
23 criminal sentence, including an amount or amounts paid in a civil proceeding to enforce payment of a
24 restitution order contained in a criminal sentence, must be set off against any pecuniary loss awarded to
25 the victim in a separate civil action arising out of the facts or events ~~which~~ that were the basis for the
26 restitution. The court trying the separate civil action shall determine the amount of any setoff asserted by
27 the defendant under this section."

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29 NEW SECTION. **Section 3. Retroactive applicability.** [Section 2] applies retroactively, within the
30 meaning of 1-2-109, to restitution ordered to be paid prior to [the effective date of this act].

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