

SENATE BUSINESS & INDUSTRY 14  
COMMITTEE NO. 14  
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BILL NO. SB 327

Senate Business & Labor Committee  
SB 327 – Bail Bond Reform

City of Billings  
Written Testimony

February 10, 2005

Senator Balyeat, on behalf of the Montana Bail Agents Association, is sponsoring Senate Bill 327. If passed, this bill will in part amend M.C.A. § 46-9-401 (1)(a) to require that a defendant post bond in a single lump sum and prohibits courts from allowing installment payments on bonds.

It has been the practice of judges across the state of Montana, on a case-by-case basis, to allow defendants with limited finances the opportunity to make time payments toward their bail. By doing so, defendants are not forced to choose between entering a guilty plea in order to get out of jail or remaining in jail for several months to await trial. Instead, they are released and are able to obtain employment or maintain the employment they had prior to arrest. In cases in which a conviction results or in which a defendant changes his plea to guilty, bond payments already made by the defendant may be applied towards any fine imposed. This lowers the remaining obligation and ensures that at least a portion of the fine is immediately paid to the court and distributed to the state and county or municipality.

**1. The Ninth Circuit Court of Appeals has upheld the practice of “time pay bail”.**

In February of 2003, the Montana Eighteenth District Court ruled in favor of Bozeman Municipal Court Judge Patricia Carlson, the defendant in the case of Restvedt dba Valley Bail Bonds v. Carlson. The Court held that Judge Carlson’s practice of “time pay bail” was appropriate. The Plaintiff appealed that decision. On June 14, 2004, the Ninth Circuit Court of Appeals affirmed the Montana District Court’s decision, finding that “**such a program provides an alternative form of bond structure to persons who are unable or unwilling to pay for a surety bond. It is possible the program could compete with the plaintiffs’ opportunity to provide surety bonds, but neither Montana law nor the United States Constitution confers upon the plaintiffs any right to issue surety bonds free from competing alternative arrangements.**” (101 Fed.Appx.226, 2004 WL 1336752 (9<sup>th</sup> Cir.(Mont.))

**2. Passage of SB 327 would strip judges of their right to consider ability of the defendant to pay when setting bond conditions.**

M.C.A. § 46-9-301 sets forth the guidelines a judge must follow in determining the amount of bail a criminal defendant shall be required to post. The amount must be sufficient to ensure the appearance of the defendant and to assure his compliance with release conditions. In setting bail, the judge must ensure that the amount is not oppressive and take into consideration the financial ability of the accused to post bail.

Instead of being able to impose a bond which a defendant could afford and which would secure his appearance, the judge would be forced either to release the defendant on his own recognizance or require him to remain incarcerated.

**3. Passage of SB 327 would result in a higher financial burden on and potential loss of liberty for those who are presumed innocent.**

Furthermore, Montana statute currently provides judges the opportunity to consider an individual's ability to pay when addressing fines and payment of costs. Pursuant to M.C.A. § 46-18-231 (3), a judge may not impose a fine if a defendant is unable to pay it. Likewise, M.C.A. § 46-18-236, which addresses surcharges imposed upon conviction and bail forfeiture, prohibits the imposition of those surcharges if the defendant is unable to pay them. Passage of Senate Bill 327 would have the unfortunate consequence of a defendant without the financial resources to post bond in full on his own behalf either being forced to pay for the services of a bondsman or remain incarcerated. Passage of Senate Bill 327 would place a higher financial burden and possible loss of liberty on the accused, presumed innocent, than on those who have already been convicted.

Even those individuals who are charged with minor offenses which prohibit incarceration would be forced to use the services of a bail bondsman, including juveniles. These people now make monthly bond payments in an amount sufficient to guarantee appearance at trial, which covers court costs if they abscond and which is appropriate to their financial situation.

**4. Passage of SB 327 would discriminate against low-income offenders and lead to more jail overcrowding.**

When the services of a bondsman are utilized, the defendant traditionally pays that bondsman ten percent of the total bail posted plus a user fee. In addition, the offender must also pledge property to guarantee the surety. The fees are paid up front and are non-refundable, regardless of the final case disposition. For defendants with limited resources, the ability to obtain even \$100 for the bondsman fee on a \$1000 bond is difficult, if not impossible, and they may also lack the sufficient collateral. As a result of their inability to secure a bondsman, many elect to enter a plea of guilty then "sit out" their fine in jail. Others enter a not guilty plea, but remain incarcerated until a disposition has been reached. Senate Bill 327 compounds the jail overcrowding problem by confining indigent and often non-violent offenders by removing any alternative means of bail.

**5. The services that bail bondsman provide are valuable and recognized as essential, but passage of SB 327 should be opposed.**

Most judges have positive relationships with local bondsmen. The services that bondsmen provide to their clients, local communities and Montana courts are invaluable. Their role in the judicial system is recognized and appreciated; nevertheless, the monopoly created by SB 327 and the restrictions it would impose upon defendants of limited means are sufficient reasons to oppose bill passage.

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*Mary Jane Krissely - Billings Municipal Judge*