

February 9, 2005

**VIA FACSIMILE (406.444.4875)**

The Honorable Vicki Cocchiarella, Chairperson  
Senate Business, Labor & Economic Affairs Committee

RE: Senate Bill 327

Dear Senator Cocchiarella:

Senator Balyeat, on behalf of the Montana Bail Agents Association, is sponsoring Senate Bill 327. If passed, this bill will amend M.C.A. § 46-9-401 (1)(a) to prohibit courts from allowing installment payments on bonds, requiring instead bond be posted in a single lump sum.

M.C.A. § 46-9-301 sets forth the guidelines a judge must follow in determining the amount of bail that 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 nature of the offense charged and financial ability of the accused to post bail.

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 installment means of bail.

It has been the practice of judges across the state of Montana, on a case-by-case basis, to allow defendants with financial limitations 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 toward any fine imposed. This lowers their 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.

In February of 2003, the Montana Eighteenth District Court ruled in favor of Bozeman Municipal Court Judge Patricia Carlson 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.))

Essentially, the Montana Bail Agents Association now seeks to circumvent the Eighteenth District Court and the Ninth Circuit Court by changing Montana law and legislating a monopoly in criminal cases. Passage of Senate Bill 327 would have the unfortunate consequence of a defendant without the financial resources to post bond in full either being forced to pay for the services of a bondsman or remain incarcerated.

Even those individuals who are charged with minor offenses not subject to incarceration would be forced to use the services of a bail bondsman, including juveniles. These people now make monthly bond payments which are appropriate to their financial condition, and which are in an amount sufficient to guarantee appearance at trial and to cover court costs if they abscond.

If Senate Bill 327 becomes law, judges would be stripped of their discretion in imposing bond. 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.

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 place a higher financial burden and a potential loss of liberty on the accused, presumed innocent, than on those defendants who have already been convicted.

Most courts, including the one in which I preside, have positive relationships with local bonding agencies. The services that these agencies provide to their clients, local communities and Montana courts are invaluable. I recognize and appreciate the important role that they play in the judicial system and believe that the courts could not function as effectively or as efficiently without their services. Nevertheless, I must oppose passage of Senate Bill 327 because of the restrictions that it would impose upon defendants with limited financial means. Likewise, I urge you and all members of the Senate Business, Labor and Economic Committee adopt a do not pass to Senate Bill 327.

I thank you for your time and consideration.

Sincerely,

Mary Jane McCalla Knisely  
Municipal Court Judge, City of Billings