

Montana Bail Laws

1. Applicable Statutes.

- A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF.

2. Licensing Requirements for Agents.

*** Montana's statutes currently do not contain regulations for regarding the licensing of bail bond recovery or bail enforcement agents. The closest equivalent in the MT statutes are the provisions dealing with licensing of a "surety." ***

- A. MONTANA CODE ANNOTATED TITLE 33. INSURANCE AND INSURANCE COMPANIES CHAPTER 17. INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS PART 12. INSURANCE PRODUCER AND CONSULTANT CONTINUING EDUCATION ACT 33-17-1203. Continuing education -- basic requirements – exceptions
- (a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;
 - (c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;
 - (4) The minimum continuing education requirements do not apply to:
 - (e) a person who only executes surety bail bonds

3. Notice of Forfeiture

- A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-503. Violation of release condition – forfeiture
- (2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

4. Allotted Time between Forfeiture Declaration and Payment Due Date.

- A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-503. Violation of release condition – forfeiture

- (3) If at any time within 90 days after the forfeiture the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge may direct the forfeiture to be discharged upon terms as may be just. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

5. Forfeiture Defenses.

A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-510. Surrender of defendant

- (1) At any time before the forfeiture of bail:
 - (a) the defendant may surrender to the court or any peace officer of this state; or
 - (b) the surety company may arrest the defendant and surrender the defendant to the court or any peace officer of this state.
- (2) The peace officer shall detain the defendant in the officer's custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court may then order the bail exonerated.

B. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-503. Violation of release condition – forfeiture

- (4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (3).

6. Remission.

- (No specific provisions exist in the MT statutes at this time in regard to "remission").

7. Bail Agent's Arrest Authority.

A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE-CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-510. Surrender of defendant

- (b) the surety company may arrest the defendant and surrender the defendant to the court or any peace officer of this state.

8. Other Noteworthy Provisions.

A. MONTANA CODE ANNOTATED TITLE 46. CRIMINAL PROCEDURE- CHAPTER 9. BAIL PART 5. CONDITIONS OF BAIL -- VIOLATION THEREOF 46-9-502. Conditions performed -- bail discharged

- When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

9. Noteworthy State Appellate Decisions.

A. State v. Neely

296 Mont. 557, 8 P.3d 121 (Table, Text in WESTLAW), Unpublished Disposition, 1999, WL 589049, 1999 MT 183N

Mont.

Jul 28, 1999

- If forfeiture is justified, the court's decision on the amount, if any, of the forfeiture to be discharged must be based on consideration of six factors:
 1. The willfulness of the defendant's violation of bail conditions;
 2. The surety's participation in locating or apprehending the defendant;
 3. The cost, inconvenience, and prejudice suffered by the State because of the violation;
 4. Any intangible costs;
 5. The public interest in ensuring the defendant's appearance; and
 6. Any mitigating factors.

State v. Seybert (1987), 229 Mont. 183, 187, 745 P.2d 687, 689.

- In this case, the first two factors suggest opposite results. Under the record, there is nothing to indicate that Neely's violation of bail conditions was anything but willful. Addressing factor 2, however, McFadden points out that he located and produced Neely within days of Neely's failure to appear in court.
- If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss. McFadden asserts that the revocation hearing was related to a conviction of drinking while

Allegheny Casualty - International Fidelity - Associated Bond

driving, not the burglary conviction on which Neely owed \$1,245.91 in restitution. But as the State points out, the record reflects that the court received bail because Neely violated probation on his burglary conviction.

- Accordingly, the court did not act improperly in ordering that the proceeds of bond forfeiture be used for restitution.
- After reviewing the facts of this case, we conclude that the District Court did not abuse its discretion in refusing to discharge the bail forfeiture. We affirm the decision of the District Court.

B. Siroky v. Richland County

271 Mont. 67, 894 P.2d 309

Mont.

Apr 25, 1995

- Owner of cash bond used as bail deposit brought suit for conversion of interest earned while bond was deposited with District Court before criminal defendant was exonerated. The Seventh Judicial District Court, Richland County, Richard G. Phillips, J., entered summary judgment in favor of owner and county appealed. The Supreme Court, Leaphart, J., held that bond remained private property throughout criminal proceedings and, thus, county's retention of interest would violate due process and takings clauses of State Constitution. Affirmed.

City of Helena v. Buck

247 Mont. 313, 806 P.2d 27

Mont.

Feb 19, 1991

- Bail bondsman sought to have forfeiture of bail discharged. The city court refused to grant discharge. Bondsman filed appeal and alternative application for writ of certiorari. The District Court, Lewis and Clark County, Thomas C. Honzel, J., dismissed appeal and alternative application. Bail bondsman appealed. The Supreme Court, Turnage, C.J., held that: (1) there was no right of appeal from city court show cause hearing on whether forfeiture of bail should be discharged, and (2) certiorari was proper remedy. Affirmed in part, and reversed and remanded in part.

10. Bounty Hunter Provisions.

- At this time, there appear to be no specific regulations for "Bounty Hunters" in the Montana statutes.

Allegheny Casualty - International Fidelity - Associated Bond