

2005 DRAFTING REQUEST

Bill

Received: **02/08/2005**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **Anne**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Restitution from cash bail

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	chanaman 02/08/2005	jdyer 02/18/2005	pgreensl 02/18/2005	_____	mbarman 02/18/2005		S&L
/2	chanaman 07/06/2005	kfollett 07/27/2005	rschluet 07/28/2005	_____	mbarman 07/28/2005		S&L
/3	chanaman 09/20/2005	kfollett 10/03/2005	pgreensl 10/03/2005	_____	lemery 10/03/2005	lemery 01/26/2006	

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FE Sent For:

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p8/ks

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Pre Topic:

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Topic:

Restitution from cash bail

Instructions:

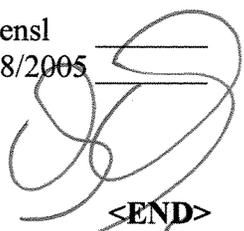
See Attached

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/1	chanaman 02/08/2005	jdyer 02/18/2005	pgreensl 02/18/2005		mbarman 02/18/2005		

FE Sent For:

12/19/05
7/27


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/?	chanaman	1/3/18 jld	2/18 ps	2/18 scw			

FE Sent For:

<END>

DARWIN L. ZWIEG
CLARK COUNTY DISTRICT ATTORNEY

517 COURT STREET
NEILLSVILLE, WI 54456

RICHARD R. LEWIS
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EMILE MILLER
VICTIM/WITNESS COORDINATOR
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TELEPHONE 715-743-5270

November 18, 2004

Scott Suder
State Capitol, Room 21 North
P.O. Box 8953
Madison, WI 53708

Dear Scott:

During the course of the recent election for office of the District Attorney for Clark County you voiced your need for input from the District Attorney on legislation. First of all, let me say that I will give you my best judgment on any legislation you may propose. You or anyone on your staff may call, write or e-mail me on any subject in that regard.

I believe that a great service could be provided to victims by legislation amending sections 969.02(6), 969.03(4), and 969.13(5) Wis. Stats. The first two sections provide in substance that fines and costs can be taken out of any cash bail posted. They say nothing about restitution. The same is true with the last quoted section except that it talks about applying the remaining amount of money to the judgment of forfeiture. (That happens when someone runs out on their bail rather than when they're convicted and pay a fine and costs.) With respect to section 969.13 Stats. the then Attorney General, Bronson Lafollette, opined that restitution does not constitute a "cost" such that a forfeited cash bond may be used to satisfy the restitution request. A copy of that opinion is attached for your convenience.

As it stands now the Court needs to get consent from a defendant to use bail for the payment of restitution. Many times bail is posted by a third party, which adds an additional delay. Amending the above quoted statutes to permit the Court to take restitution out of any cash bail posted before and in addition to a fine and costs would be of great help to victims.

It would also appear to be appropriate to amend sections 969.02(6) and 969.03(4) Stats. to indicate that when a judgment for a fine, *forfeiture* or costs or both... is entered that restitution could also be taken out of bail. This would be helpful, for example, if circumstances warrant it, where a misdemeanor is amended to a county ordinance and a forfeiture imposed. Once again victims would benefit greatly from this.

If you have any questions concerning this possible amendment to the statutes please feel free to contact me at any time.

Very truly yours,



Darwin L. Zwieg
District Attorney

DLZ/csg

cc: Judge Jon M. Counsell

may be exceptions, the general rule is that a custodian of public records in this state cannot be concerned with the purposes behind a person's request to view records. 58 Op. Att'y Gen. 67, 72 (1969); 63 Op. Att'y Gen. 400, 406 (1974).

BCL:JEA

Criminal Law; A forfeited cash bond may not be used to pay restitution to the victim of the crime. OAG 25-79

March 2, 1979.

JAMES MOHR, *District Attorney*
Vilas County

Prior to the recent expiration of his term, your predecessor, Timothy Vocke, had asked whether a cash bond which has been declared forfeited, as authorized by sec. 969.13, Stats., may be used to pay restitution to the victim of the crime with which the forfeiting defendant was charged. My opinion is that a forfeited cash bond may not be used for that purpose.

A court's order declaring the bail to be forfeited may be set aside if justice does not appear to require its enforcement. Sec. 969.13(2), Stats. Prior to the time that judgment for the amount of the bail and costs of the court proceeding is entered and the proceeds of the judgment are paid to the county treasurer, sec. 969.13(4), Stats., the cash bond is still subject to being returned to the defendant. *State v. Brown*, 149 Wis. 572, 574, 136 N.W. 174 (1912); sec. 969.13(2), Stats.

The forfeiture statute directs that the proceeds of the judgment should be utilized first to pay costs and that any remaining amount should be applied to payment of the forfeiture judgment. Sec. 969.13(5), Stats. It was suggested that restitution might be regarded as a "cost."

In the context of forfeitures, the term "costs" is understood to refer to court costs involved in processing the judgment of forfeiture. Sec. 969.13(4), Stats.; *State ex rel. Commissioners of Public Lands v. Anderson*, 56 Wis. 2d 666, 672, 203 N.W.2d 84 (1973). Although

the loss suffered by a victim of crime is a cost of the activity which underlies the criminal charge and the payment of a cash bond, it is not a cost connected with the forfeiture of the bond.

The statutes provide that proceeds of the judgment of forfeiture "shall be paid to the county treasurer." Sec. 969.13(4), Stats. Forfeited cash bonds are to be retained by the county for county use. *State ex rel. Guenther v. Miles*, 52 Wis. 488, 491, 9 N.W. 403 (1881); *State v. Wettstein*, 64 Wis. 234, 243, 25 N.W. 34 (1885); 8 Op. Att'y Gen. 26, 27 (1919); 41 Op. Att'y Gen. 166, 167 (1952); 58 Op. Att'y Gen. 142 (1969); 62 Op. Att'y Gen. 247, 248 (1973).

A defendant's forfeiture of a cash bond is unrelated to his or her liability on the underlying charge. It does not amount to paying a fine upon conviction.

The forfeiting of bail does not in any way atone for or dispose of the criminal charge against a defendant and, therefore, he may be brought into court and subsequently tried on the criminal charge and if found guilty as charged, may be fined, said fine having no connection with the amount already forfeited on the bail bond.

41 Op. Att'y Gen. 166, 168 (1952); *see also Guenther*, 52 Wis. 488; 58 Op. Att'y Gen. 142 (1969); 62 Op. Att'y Gen. 247 (1973). *Cf.* sec. 194.175(2), Stats., dealing with certain traffic offenses regarding which findings of guilt *in absentia* are permissible.

I am aware of a program such as that which you propose having been utilized in only one other jurisdiction. There the statutes specifically directed that the alleged victim should receive the amount forfeited. *See Commonwealth v. Jakub*, 182 Pa. Super. 418, 128 A.2d 98, 100 (1956); *Commonwealth v. Friedman*, 121 Pa. Super. 591, 184 A. 672 (1936); 8 C.J.S. *Bail* sec. 109. The Wisconsin Legislature has not demonstrated an intent that bail bond deposits be passed on to crime victims under any circumstances.

BCL:KK



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2035/1

CMH:.....

Jed

2005 BILL

reinsert

1 AN ACT ...; relating to: applying cash deposited for bail to restitution payments
2 ordered in criminal cases. ✓

Analysis by the Legislative Reference Bureau

→ Under current law, a judge may set conditions of release for a person charged with a crime (defendant) that are designed to assure the defendant's appearance in court. A judge may require the defendant to execute an unsecured appearance bond in a specified amount or, as an alternative to an unsecured appearance bond, a judge may require the defendant to execute an appearance bond in a specified amount. The amount specified in an appearance bond must be either posted as a cash deposit or guaranteed by solvent sureties. If the defendant is convicted and ordered to pay a fine or court costs or both, any cash deposited for an appearance bond must be applied to the payment of the fine and costs, with any remaining amount returned to the defendant.

* → This bill provides that, if a defendant is convicted, ordered to pay a fine or court costs or both, and ordered to pay restitution to the victim of the crime, any cash deposited for an appearance bond must first be applied to the payment of the restitution and then, if restitution is fully satisfied, to the payment of the fine and costs imposed on the defendant, with any amount remaining after the payment of restitution, fines, and costs returned to the defendant. If a defendant is not ordered to pay restitution, any cash deposited for an appearance bond would, as under current law, be applied to pay any fine and costs imposed on the defendant. The bill also requires that a person who deposits cash for an appearance bond must be notified that, if the defendant is convicted, the money will be applied to the payment

BILL

of any restitution, fines, and costs that the defendant is ordered to pay in the case in which the cash deposit was made.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 969.02 (2) of the statutes is amended to read:

2 969.02 (2) In lieu of release pursuant to sub. (1), the judge may require the
3 execution of an appearance bond with sufficient solvent sureties, or the deposit of
4 cash in lieu thereof of sureties. If the judge requires a deposit of cash in lieu of
5 sureties, the person making the cash deposit shall be given written notice of the
6 requirements of sub. (6).

7 History: 1971 c. 298 ss. 10, 13; 1979 c. 111, 112; 1981 c. 148, 183; 1989 a. 31; 1991 a. 63, 315; 1993 a. 486; 1999 a. 85.

8 **SECTION 2.** 969.02 (6) of the statutes is amended to read:

9 969.02 (6) When a judgment for a fine or costs or both of conviction is entered
10 in a prosecution in which a deposit had been made in accordance with sub. (2), the
11 balance of such deposit, after deduction of the bond costs, shall be applied first to the
12 payment of any restitution ordered under s. 973.20 and then, if ordered restitution
is satisfied in full, to the payment of the judgment.

13 History: 1971 c. 298 ss. 10, 13; 1979 c. 111, 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63, 315; 1993 a. 486; 1999 a. 85.

14 **SECTION 3.** 969.03 (1) (d) of the statutes is amended to read:

15 969.03 (1) (d) Require the execution of an appearance bond with sufficient
16 solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a
17 deposit of cash in lieu of sureties, the person making the cash deposit shall be given
written notice of the requirements of sub. (4).

18 History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486.

SECTION 4. 969.03 (4) of the statutes is amended to read:

Wisconsin's 69th Assembly District



SCOTT SUDER
STATE REPRESENTATIVE

Cathlene,

Please find attached -
information regarding a
draft request. Please
with any questions.

Thanks!

Anne
Rep. Suder

State Capitol, Room 21 North
P.O. Box 8953
Madison, WI 53708-8953

Telephone/Fax 715-261-5334
Toll-Free (888)534-5334
Rep Suder@legis.wisconsin.gov

Hanaman, Cathlene

From: Emerson, Anne
Sent: Monday, June 06, 2005 1:03 PM
To: Hanaman, Cathlene
Subject: 2035/1 Restitution

Cathlene,

I had our District Attorney take a look at the draft since it was his suggestion, and he had the following comments:

The only thing I would add, which I think would be consistent with the proposed amendment to the sections delineated, is a similar amendment to section 969.13 (5). If someone is arrested and posts a cash bail and thereafter fails to appear in court it seems only fair and reasonable for the law to allow the court to have the restitution to the victim paid out of the bail forfeited. 68 Atty. Gen. 71 specifically opines that a forfeited cash bond may not be used to pay restitution under the wording of that statute as it now stands.

We would like to have these changes incorporated in the bill. Should you have any questions or comments regarding this, please feel free to contact me.

Thank you!
Anne Emerson
Office of State Representative Scott Suder



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2035/1

CMH:jld:tg

8/2

2
↓
e/kgf

2005 BILL

repeal

1 AN ACT *to amend* 969.02 (2), 969.02 (6), 969.03 (1) (d) and 969.03 (4) of the
2 statutes; **relating to:** applying cash deposited for bail to restitution payments
3 ordered in criminal cases.

Analysis by the Legislative Reference Bureau

Under current law, a judge may set conditions of release for a person charged with a crime (defendant) that are designed to assure the defendant's appearance in court. A judge may require the defendant to execute an unsecured appearance bond in a specified amount or, as an alternative to an unsecured appearance bond, a judge may require the defendant to execute an appearance bond in a specified amount. The amount specified in an appearance bond must be either posted as a cash deposit or guaranteed by solvent sureties. If the defendant is convicted and ordered to pay a fine or court costs or both, any cash deposited for an appearance bond must be applied to the payment of the fine and costs, with any remaining amount returned to the defendant.

This bill provides that, if a defendant is convicted, ordered to pay a fine or court costs or both, and ordered to pay restitution to the victim of the crime, any cash deposited for an appearance bond must be applied first to the payment of the restitution and then, if restitution is fully satisfied, to the payment of the fine and costs imposed on the defendant, with any amount remaining after the payment of restitution, fines, and costs returned to the defendant. If a defendant is not ordered to pay restitution, any cash deposited for an appearance bond would, as under current law, be applied to pay any fine and costs imposed on the defendant. The bill

BILL

also requires that a person who deposits cash for an appearance bond must be notified that, if the defendant is convicted, the money will be applied to the payment of any restitution, fines, and costs that the defendant is ordered to pay in the case in which the cash deposit was made.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 969.02 (2) of the statutes is amended to read:

2 969.02 (2) In lieu of release pursuant to sub. (1), the judge may require the
3 execution of an appearance bond with sufficient solvent sureties, or the deposit of
4 cash in lieu thereof of sureties. If the judge requires a deposit of cash in lieu of
5 sureties, the person making the cash deposit shall be given written notice of the
6 requirements of sub. (6).

7 **SECTION 2.** 969.02 (6) of the statutes is amended to read:

8 969.02 (6) When a judgment ~~for a fine or costs or both~~ of conviction is entered
9 in a prosecution in which a deposit had been made in accordance with sub. (2), the
10 balance of such deposit, after deduction of the bond costs, shall be applied first to the
11 payment of any restitution ordered under s. 973.20 and then, if ordered restitution
12 is satisfied in full, to the payment of the judgment.

13 **SECTION 3.** 969.03 (1) (d) of the statutes is amended to read:

14 969.03 (1) (d) Require the execution of an appearance bond with sufficient
15 solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a
16 deposit of cash in lieu of sureties, the person making the cash deposit shall be given
17 written notice of the requirements of sub. (4).

18 **SECTION 4.** 969.03 (4) of the statutes is amended to read:

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FROM THE
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LRB-2035/2ins
CMH:jld:pg

INS 3-6

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2

SECTION 1. 969.13 (5) of the statutes is amended to read:

3

969.13 (5) A cash deposit made with the clerk pursuant to this chapter shall

4

be applied to the payment of costs. If any amount of such deposit remains after the

5

payment of costs, it shall be applied first to the payment of any restitution ordered

6

under s. 973.20 and then, if ordered restitution is satisfied in full, to payment of the

7

judgment of forfeiture. The person making the cash deposit shall be given written

8

notice of the requirements of this subsection.

History: 1971 c. 298; 1993 a. 486.



State of Wisconsin
2005 - 2006 LEGISLATURE

3
LRB-2035/2
CMH:jld&kjf:ts
stays
EMR

2005 BILL

1 AN ACT *to amend* 969.02 (2), 969.02 (6), 969.03 (1) (d), 969.03 (4) and 969.13 (5)
2 of the statutes; **relating to:** applying cash deposited for bail to restitution
3 payments ordered in criminal cases.

regr car

OF recompense ← recompense INS A-1

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is used to pay

INS A2

This bill provides ^{also} that, if a defendant is convicted, ordered to pay a fine or court costs or both, and ordered to pay restitution to the victim of the crime, any cash deposited for an appearance bond must be applied first to the payment of the restitution and then, if restitution is fully satisfied, to the payment of the fine and costs imposed on the defendant, with any amount remaining after the payment of restitution, fines, and costs returned to the defendant. If a defendant is not ordered to pay restitution, any cash deposited for an appearance bond would, as under current law, be applied to pay any fine and costs imposed on the defendant. The bill

BILL

recompense

does not comply with the bond conditions or

also requires that a person who deposits cash for an appearance bond must be notified that, if the defendant is convicted, the money will be applied to the payment of any restitution, fines, and costs that ~~the defendant is~~ ^{are} ordered to pay in the case in which the cash deposit was made.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

*INS
2-1*

1 SECTION 1. 969.02 (2) of the statutes is amended to read:

2 969.02 (2) In lieu of release pursuant to sub. (1), the judge may require the
3 execution of an appearance bond with sufficient solvent sureties, or the deposit of
4 cash in lieu thereof of sureties. If the judge requires a deposit of cash in lieu of
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6 requirements of sub. (6).

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8 969.02 (6) When a judgment for a fine or costs or both of conviction is entered
9 in a prosecution in which a deposit had been made in accordance with sub. (2), the
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13 SECTION 3. 969.03 (1) (d) of the statutes is amended to read:

14 969.03 (1) (d) Require the execution of an appearance bond with sufficient
15 solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a
16 deposit of cash in lieu of sureties, the person making the cash deposit shall be given
17 written notice of the requirements of sub. (4).

18 SECTION 4. 969.03 (4) of the statutes is amended to read:

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FROM THE
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LRB-2035/3ins
CMH:jld&kjfrs

1 Ins A-1

no ff If the person does not comply with the conditions of the bond, *any cash deposited for an appearance bond* the bail is forfeited and used to pay costs and the judgment of forfeiture.

2 Ins A-2

cash deposited for an appearance
ff The bill provides that, if a person forfeits bail by not complying with the conditions of bond, an amount determined by the court will be distributed to the victim of the crime for which the bond conditions were imposed as recompense for that crime. *no ff*

3

4 Insert 2-1

5 SECTION 1. 895.80 (4) of the statutes is amended to read:

6 895.80 (4) Any recovery under this section shall be reduced by the amount
7 recovered as restitution under ss. 800.093 and 973.20 and ch. 938 *for the same act* or as recompense
8 under s. 939.13 (5) (a). *for the same act*

9 History: 1995 a. 27; 1997 a. 101; 2001 a. 16, 91; 2003 a. 361, 138.

9 SECTION 2. 943.245 (3m) of the statutes is amended to read:

10 943.245 (3m) Any recovery under this section shall be reduced by the amount
11 recovered as restitution for the same act under ss. 800.093 and 973.20 or as
12 recompense under s. 939.13 (5) (a) for the same act. *96*

13 History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71; 2003 a. 138.

13 SECTION 3. 943.51 (3r) of the statutes is amended to read:

14 943.51 (3r) Any recovery under this section shall be reduced by the amount
15 recovered as restitution for the same act under ss. 800.093 and 973.20 or as
16 recompense under s. 939.13 (5) (a) for the same act. *96*

17 History: 1985 a. 179; 1989 a. 31; 1993 a. 71; 1995 a. 77; 2003 a. 138.

17 SECTION 4. 949.15 (1) of the statutes is amended to read:

18 949.15 (1) Whenever the department orders the payment of an award under
19 this chapter as a result of the occurrence of an event that creates a cause of action

1 on the part of a claimant against any person, the department is subrogated to the
 2 rights of the claimant and may bring an action against the person for the amount of
 3 the damages sustained by the claimant. If an amount greater than that paid under
 4 the award order is recovered and collected in any such action, the department shall
 5 pay the balance to the claimant. If the person responsible for the injury or death has
 6 previously made restitution payments to the general fund under s. 973.20 or paid
 7 recompense under s. 969.13 (5) (a), any judgment obtained by the department under
 8 this section shall be reduced by the amount of the restitution payments to the general
 9 fund.

History: 1975 c. 344; 1979 c. 189; 1981 c. 20; 1985 a. 242; 1987 a. 398; 1993 a. 157.

10 **SECTION 5.** 950.04 (1v) (qm) of the statutes is created to read:

11 950.04 (1v) (qm) To recompense as provided under s. 969.13 (5) (a).

12
 13 Ins 2-13

14 **SECTION 6.** 969.13 (5) of the statutes is renumbered 969.13 (5) (a) and amended
 15 to read:

16 969.13 (5) (a) A cash deposit made with the clerk pursuant to this chapter shall
 17 be applied first to the payment of any recompense determined under par. (b) and
 18 then, if the recompense is paid in full, to the payment of costs. If any amount of such
 19 deposit remains after the payment of costs, it shall be applied to payment of the
 20 judgment of forfeiture. The person making the cash deposit shall be given written
 21 notice of the requirements of this paragraph.

History: 1971 c. 298; 1993 a. 486.

22 **SECTION 7.** 969.13 (5) (b) of the statutes is created to read:

23 969.13 (5) (b) The court shall determine a recompense amount for any victim,
 24 or if the victim is deceased, for his or her estate, of the crime for which the bond was

1 entered into unless the court finds substantial reason not to do so and states the
2 reason on the record. The court shall determine the recompense amount in the same
3 manner as the court would have determined the restitution amount under s. 973.20
4 (2), (3), (4), (4m), (5), and (7) had the person been convicted.

5 **SECTION 8.** 973.20 (9m) of the statutes is created to read:

6 **973.20 (9m)** When restitution is ordered, the court shall inquire to see if
7 recompense has been made under s. 969.13 (5) (a). If recompense has been made and
8 the restitution ordered is less than or equal to the recompense, the restitution shall
9 be paid only to the general fund. If recompense has been made and the restitution
10 ordered is greater than the recompense, the general fund shall receive an amount
11 equal to the recompense and the balance shall be paid to the victim. This subsection
12 applies without regard to whether the person who paid the recompense is the person
13 who is convicted of the crime.

Emery, Lynn

From: Emerson, Anne
Sent: Thursday, January 26, 2006 3:51 PM
To: LRB.Legal
Subject: FW: Draft review: LRB 05-2035/3 Topic: Restitution from cash bail

It has been requested by <Emerson, Anne> that the following draft be jacketed for the ASSEMBLY:

FW: Draft review: LRB 05-2035/3 Topic: Restitution from cash bail