

SENATE BILL NO. 327

INTRODUCED BY NOBLE, KENNEDY, WILLIAMS, HALLIGAN,
BURNETT, CROMLEY, THAYER, SWIFT,
YELLOWTAIL, HAMMOND, PHILLIPS

IN THE SENATE

FEBRUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 9, 1991 FIRST READING.

FEBRUARY 20, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 21, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 22, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 46; NOES, 3.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN.
AYES, 79; NOES, 20.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

MARCH 28, 1991

ON MOTION, CONFERENCE COMMITTEE
APPOINTED.

IN THE HOUSE

APRIL 3, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1991

CONFERENCE COMMITTEE REPORTED.

APRIL 23, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *327*
 2 INTRODUCED BY *Mark Kanady*
 3 *Burratt* *Cronley* *Jeff Yellowtail*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS PERTAINING TO SHOPLIFTING; INCREASING THE CIVIL PENALTY
 6 FOR SHOPLIFTING; INCREASING THE CRIMINAL PENALTY FOR SECOND
 7 AND SUBSEQUENT THEFT CONVICTIONS; ALLOWING PHOTOGRAPHS OF
 8 STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE; AND
 9 AMENDING SECTIONS 27-1-718 AND 45-6-301, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 27-1-718, MCA, is amended to read:

13 "27-1-718. Civil penalty for shoplifting. (1) An adult
 14 or emancipated minor, as defined in 20-25-501, who takes
 15 possession of any goods, wares, or merchandise displayed or
 16 offered for sale by any store or other mercantile
 17 establishment without the consent of the owner or seller and
 18 with the intention of converting the goods to his own use
 19 without having paid the purchase price thereof is liable to
 20 the owner or seller for a penalty, whether or not the goods
 21 have been returned undamaged, in the amount of the greater
 22 of \$100 or the retail value of the goods, not to exceed
 23 \$500. This amount is in addition to actual damages.

24 (2) When an unemancipated minor takes possession of any
25 goods, wares, or merchandise displayed or offered for sale

1 by any store or other mercantile establishment without the
 2 consent of the owner or seller and with the intention of
 3 converting the goods to his own use without having paid the
 4 purchase price thereof, the minor's parent or legal guardian
 5 having custody of the minor is liable to the owner or seller
 6 for a penalty, whether or not the goods have been returned
 7 undamaged, equal to the greater of \$100 or the retail value
 8 of the goods, not to exceed \$500. For the purposes of this
 9 subsection (2), liability may not be imposed upon any
 10 governmental or private agency that has been assigned
 11 responsibility for the minor child pursuant to court order
 12 or action of the department of family services.

13 (3) Judgments, but not claims, arising under this
14 section may be assigned.

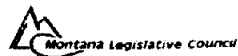
15 (4) A conviction for violation of 45-6-301 is not a
16 condition precedent to maintenance of a civil action under
17 this section."

18 **Section 2.** Section 45-6-301, MCA, is amended to read:

19 "45-6-301. Theft. (1) A person commits the offense of
20 theft when he purposely or knowingly obtains or exerts
21 unauthorized control over property of the owner and:

22 (a) has the purpose of depriving the owner of the
23 property;

24 (b) purposely or knowingly uses, conceals, or abandons
25 the property in such manner as to deprive the owner of the



1 property; or

2 (c) uses, conceals, or abandons the property knowing
3 such use, concealment, or abandonment probably will deprive
4 the owner of the property.

5 (2) A person commits the offense of theft when he
6 purposely or knowingly obtains by threat or deception
7 control over property of the owner and:

8 (a) has the purpose of depriving the owner of the
9 property;

10 (b) purposely or knowingly uses, conceals, or abandons
11 the property in such manner as to deprive the owner of the
12 property; or

13 (c) uses, conceals, or abandons the property knowing
14 such use, concealment, or abandonment probably will deprive
15 the owner of the property.

16 (3) A person commits the offense of theft when he
17 purposely or knowingly obtains control over stolen property
18 knowing the property to have been stolen by another and:

19 (a) has the purpose of depriving the owner of the
20 property;

21 (b) purposely or knowingly uses, conceals, or abandons
22 the property in such manner as to deprive the owner of the
23 property; or

24 (c) uses, conceals, or abandons the property knowing
25 such use, concealment, or abandonment probably will deprive

1 the owner of the property.

2 (4) A person commits the offense of theft when he
3 purposely or knowingly obtains or exerts unauthorized
4 control over any part of any public assistance provided
5 under Title 53 by a state or county agency, regardless of
6 the original source of assistance, by means of:

7 (a) a knowingly false statement, representation, or
8 impersonation; or

9 (b) a fraudulent scheme or device.

10 (5) A person commits the offense of theft when he
11 purposely or knowingly obtains or exerts unauthorized
12 control over any part of any benefits provided under Title
13 39, chapter 71 or 72, by means of:

14 (a) a knowingly false statement, representation, or
15 impersonation; or

16 (b) deception or other fraudulent action.

17 (6) (a) A person convicted of the offense of theft of
18 property not exceeding \$300 in value shall be fined not to
19 exceed \$500 or be imprisoned in the county jail for any term
20 not to exceed 6 months, or both. A person convicted of a
21 second offense shall be fined \$500 or be imprisoned in the
22 county jail for a term not to exceed 6 months, or both. A
23 person convicted of a third or subsequent offense shall be
24 fined \$1,000 and be imprisoned in the county jail for a term
25 of not less than 30 days or more than 6 months.

1 **(b)** A person convicted of the offense of theft of
 2 property exceeding \$300 in value or theft of any commonly
 3 domesticated hooped animal shall be fined not to exceed
 4 \$50,000 or be imprisoned in the state prison for any term
 5 not to exceed 10 years, or both. A person convicted of a
 6 second or subsequent offense shall be fined not less than
 7 \$1,000 or more than \$50,000, be imprisoned in the state
 8 prison for a term of not less than 10 years, or both.

9 (7) Amounts involved in thefts committed pursuant to a
 10 common scheme or the same transaction, whether from the same
 11 person or several persons, may be aggregated in determining
 12 the value of the property."

13 **NEW SECTION. Section 3.** Photographs of items allegedly
 14 taken or converted -- admissibility procedure. (1) In a
 15 prosecution for a violation of 45-6-301, photographs of the
 16 items alleged to have been taken or converted are competent
 17 evidence of the items and are admissible in a proceeding,
 18 hearing, or trial as if the items themselves were introduced
 19 as evidence.

20 (2) The photographs must bear a written description of
 21 the items alleged to have been taken or converted, the name
 22 of the owner from whom the items were allegedly taken, or
 23 the store or establishment, as appropriate, where the
 24 alleged offense occurred, the name of the accused, the name
 25 of the arresting officer, the date the photographs were

1 taken, and the name of the photographer.

2 (3) The writing required under subsection (2) must be
 3 made under oath by the arresting officer, and the
 4 photographs must be identified by the signature of the
 5 photographer. Upon the filing of the photograph and the
 6 writing with the law enforcement agency or court holding the
 7 items as evidence, the items must be returned to their owner
 8 or the proprietor or manager of the store or establishment.

9 **NEW SECTION. Section 4.** Codification instruction.
 10 [Section 3] is intended to be codified as an integral part
 11 of Title 26, chapter 1, part 6, and the provisions of Title
 12 26, chapter 1, part 6, apply to [section 3].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0327, as introduced, with amendments.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to generally revise the laws pertaining to shoplifting; increasing the civil penalty for shoplifting; increasing the criminal penalty for second and subsequent theft convictions; allowing photographs of stolen merchandise to be submitted into evidence.


ASSUMPTIONS:

1. An average of 202 persons convicted of theft were admitted to the prison in each of the past 3 years. 68% or 137 inmates were repeat offenders.
2. The average sentence for repeat offenders has been 9.9 years.
3. An average of 446 persons convicted of theft were admitted to probation in each on the past 3 years. 36% or 159 of these offenders were repeat offenders each year.
4. One-half of repeat offenders had been convicted of second offense theft.
5. The Montana Board of Crime Control statistics include 3,335 shoplifting offenses reported for 1989 in Montana.
6. The bill, as amended, has minimal or no fiscal impact on the Department of Institutions or other state agencies.

FISCAL IMPACT:

No material impact.


ROD SUNDSTED, BUDGET DIRECTOR 2-21-91 DATE
Office of Budget and Program Planning


JERRY NOBLE, PRIMARY SPONSOR 2/22/91 DATE
Fiscal Note for SB0327, as introduced, with amendments
SB327

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 327

INTRODUCED BY NOBLE, KENNEDY, WILLIAMS, HALLIGAN,
BURNETT, CROMLEY, THAYER, SWIFT,
YELLOWTAIL, HAMMOND, PHILLIPS

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AND SUBSEQUENT THEFT CONVICTIONS; ALLOWING PHOTOGRAPHS OF
STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE; AND
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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or emancipated minor, as defined in 20-25-501, who takes
possession of any goods, wares, or merchandise displayed or
offered for sale by any store or other mercantile
establishment without the consent of the owner or seller and
with the intention of converting the goods to his own use
without having paid the purchase price thereof is liable to
the owner or seller for a penalty, whether or not the goods
have been returned undamaged, in the amount of the greater
of \$100 or the retail value of the goods, not to exceed
\$500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any
goods, wares, or merchandise displayed or offered for sale
by any store or other mercantile establishment without the
consent of the owner or seller and with the intention of
converting the goods to his own use without having paid the
purchase price thereof, the minor's parent or legal guardian
having custody of the minor is liable to the owner or seller
for a penalty, whether or not the goods have been returned
undamaged, equal to the greater of \$100 or the retail value
of the goods, not to exceed \$500. For the purposes of this
subsection (2), liability may not be imposed upon any
governmental or private agency that has been assigned
responsibility for the minor child pursuant to court order
or action of the department of family services.

(3) Judgments, but not claims, arising under this
section may be assigned.

(4) A conviction for violation of 45-6-301 is not a
condition precedent to maintenance of a civil action under
this section."

Section 2. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of
theft when he purposely or knowingly obtains or exerts
unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the
property;

1 (b) purposely or knowingly uses, conceals, or abandons
2 the property in such manner as to deprive the owner of the
3 property; or

4 (c) uses, conceals, or abandons the property knowing
5 such use, concealment, or abandonment probably will deprive
6 the owner of the property.

7 (2) A person commits the offense of theft when he
8 purposely or knowingly obtains by threat or deception
9 control over property of the owner and:

10 (a) has the purpose of depriving the owner of the
11 property;

12 (b) purposely or knowingly uses, conceals, or abandons
13 the property in such manner as to deprive the owner of the
14 property; or

15 (c) uses, conceals, or abandons the property knowing
16 such use, concealment, or abandonment probably will deprive
17 the owner of the property.

18 (3) A person commits the offense of theft when he
19 purposely or knowingly obtains control over stolen property
20 knowing the property to have been stolen by another and:

21 (a) has the purpose of depriving the owner of the
22 property;

23 (b) purposely or knowingly uses, conceals, or abandons
24 the property in such manner as to deprive the owner of the
25 property; or

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2 such use, concealment, or abandonment probably will deprive
3 the owner of the property.

4 (4) A person commits the offense of theft when he
5 purposely or knowingly obtains or exerts unauthorized
6 control over any part of any public assistance provided
7 under Title 53 by a state or county agency, regardless of
8 the original source of assistance, by means of:

9 (a) a knowingly false statement, representation, or
10 impersonation; or

11 (b) a fraudulent scheme or device.

12 (5) A person commits the offense of theft when he
13 purposely or knowingly obtains or exerts unauthorized
14 control over any part of any benefits provided under Title
15 39, chapter 71 or 72, by means of:

16 (a) a knowingly false statement, representation, or
17 impersonation; or

18 (b) deception or other fraudulent action.

19 (6) (a) A person convicted of the offense of theft of
20 property not exceeding \$300 in value shall be fined not to
21 exceed \$500 or be imprisoned in the county jail for any term
22 not to exceed 6 months, or both. A person convicted of a
23 second offense shall be fined \$500 or be imprisoned in the
24 county jail for a term not to exceed 6 months, or both. A
25 person convicted of a third or subsequent offense shall be

1 fined \$1,000 and be imprisoned in the county jail for a term
 2 of not less than 30 days or more than 6 months.

3 (b) A person convicted of the offense of theft of
 4 property exceeding \$300 in value or theft of any commonly
 5 domesticated hoofed animal shall be fined not to exceed
 6 \$50,000 or be imprisoned in the state prison for any term
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 8 second or subsequent offense shall be fined not less than
 9 \$1,000 or more than \$50,000, OR be imprisoned in the state
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16 NEW SECTION. Section 3. Photographs of items allegedly
 17 taken or converted -- admissibility procedure. (1) In a
 18 prosecution for a violation of 45-6-301, photographs of the
 19 items alleged to have been taken or converted are competent
 20 evidence of the items and are admissible in a proceeding,
 21 hearing, or trial as if the items themselves were introduced
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23 (2) The photographs must bear a written description of
 24 the items alleged to have been taken or converted, the name
 25 of the owner from whom the items were allegedly taken, or

1 the store or establishment, as appropriate, where the
 2 alleged offense occurred, the name of the accused, the name
 3 of the arresting officer, the date the photographs were
 4 taken, and the name of the photographer, AND A STATEMENT BY
 5 THE PHOTOGRAPHER THAT THE PHOTOGRAPHS ACCURATELY REPRESENT
 6 THE ITEMS IN QUESTION.

7 (3) The writing required under subsection (2) must be
 8 made under oath by the arresting officer, and the
 9 ~~photographs must be identified by the signature of the~~
 10 photographer. Upon the filing of the photograph and the
 11 writing with the law enforcement agency or court holding the
 12 items as evidence, the items must be returned to their owner
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14 NEW SECTION. Section 4. Codification instruction.
 15 [Section 3] is intended to be codified as an integral part
 16 of Title 26, chapter 1, part 6, and the provisions of Title
 17 26, chapter 1, part 6, apply to [section 3].

-End-

SENATE BILL NO. 327

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(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of \$100 or the retail value of the goods, not to exceed \$500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of family services.

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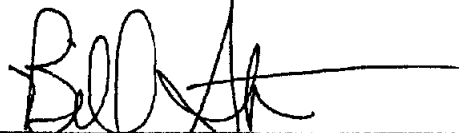
HOUSE STANDING COMMITTEE REPORT¹

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 327 (third reading copy -- blue) be concurred in as amended.

Signed:



Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 9 and 10.

Strike: "ALLOWING" on line 9 through "EVIDENCE;" on line 10

2. Page 5, lines 7 through 11.

Strike: "A person" on line 7 through "both." on line 11

3. Page 5, line 16, through page 6, line 17.

Strike: sections 3 and 4 in their entirety

Insert: "NEW SECTION. Section 3. Coordination instruction. If House Bill No. 501 is passed and approved and if it contains an amendment to 27-1-718, then [section 1 of this act] is void."

HOUSE

SB 327

551548SC.HSF

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3 BURNETT, CROMLEY, THAYER, SWIFT,

4 YELLOWTAIL, HAMMOND, PHILLIPS

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20 **Section 2.** Section 45-6-301, MCA, is amended to read:

21 "45-6-301. Theft. (1) A person commits the offense of
22 theft when he purposely or knowingly obtains or exerts
23 unauthorized control over property of the owner and:

24 (a) has the purpose of depriving the owner of the
25 property;

1 (b) purposely or knowingly uses, conceals, or abandons
2 the property in such manner as to deprive the owner of the
3 property; or

4 (c) uses, conceals, or abandons the property knowing
5 such use, concealment, or abandonment probably will deprive
6 the owner of the property.

7 (2) A person commits the offense of theft when he
8 purposely or knowingly obtains by threat or deception
9 control over property of the owner and:

10 (a) has the purpose of depriving the owner of the
11 property;

12 (b) purposely or knowingly uses, conceals, or abandons
13 the property in such manner as to deprive the owner of the
14 property; or

15 (c) uses, conceals, or abandons the property knowing
16 such use, concealment, or abandonment probably will deprive
17 the owner of the property.

18 (3) A person commits the offense of theft when he
19 purposely or knowingly obtains control over stolen property
20 knowing the property to have been stolen by another and:

21 (a) has the purpose of depriving the owner of the
22 property;

23 (b) purposely or knowingly uses, conceals, or abandons
24 the property in such manner as to deprive the owner of the
25 property; or

1 (c) uses, conceals, or abandons the property knowing
2 such use, concealment, or abandonment probably will deprive
3 the owner of the property.

4 (4) A person commits the offense of theft when he
5 purposely or knowingly obtains or exerts unauthorized
6 control over any part of any public assistance provided
7 under Title 53 by a state or county agency, regardless of
8 the original source of assistance, by means of:

9 (a) a knowingly false statement, representation, or
10 impersonation; or

11 (b) a fraudulent scheme or device.

12 (5) A person commits the offense of theft when he
13 purposely or knowingly obtains or exerts unauthorized
14 control over any part of any benefits provided under Title
15 39, chapter 71 or 72, by means of:

16 (a) a knowingly false statement, representation, or
17 impersonation; or

18 (b) deception or other fraudulent action.

19 (6) (a) A person convicted of the offense of theft of
20 property not exceeding \$300 in value shall be fined not to
21 exceed \$500 or be imprisoned in the county jail for any term
22 not to exceed 6 months, or both. A person convicted of a
23 second offense shall be fined \$500 or be imprisoned in the
24 county jail for a term not to exceed 6 months, or both. A
25 person convicted of a third or subsequent offense shall be

1 fined \$1,000 and be imprisoned in the county jail for a term
2 of not less than 30 days or more than 6 months.

3 (b) A person convicted of the offense of theft of
4 property exceeding \$300 in value or theft of any commonly
5 domesticated hoofed animal shall be fined not to exceed
6 \$50,000 or be imprisoned in the state prison for any term
7 not to exceed 10 years, or both. A person convicted of a
8 second or subsequent offense shall be fined not less than
9 \$17,000 or more than \$50,000 OR be imprisoned in the state
10 prison for a term of not less than 10 EXCEED 10 years, or
11 both.

12 (7) Amounts involved in thefts committed pursuant to a
13 common scheme or the same transaction, whether from the same
14 person or several persons, may be aggregated in determining
15 the value of the property."

16 NEW SECTION. Section 3. Photographs of items allegedly
17 taken or converted. Admissibility procedure. (1) In a
18 prosecution for a violation of 45-6-301, photographs of the
19 items alleged to have been taken or converted are competent
20 evidence of the items and are admissible in a proceeding,
21 hearing, or trial as if the items themselves were introduced
22 as evidence.

23 (2) The photographs must bear a written description of
24 the items alleged to have been taken or converted, the name
25 of the owner from whom the items were allegedly taken, or

1 the store or establishment, as appropriate, where the
2 alleged offense occurred, the name of the accused, the name
3 of the arresting officer, the date the photographs were
4 taken, and the name of the photographer, AND A STATEMENT BY
5 THE PHOTOGRAPHER THAT THE PHOTOGRAPHS ACCURATELY REPRESENT
6 THE ITEMS IN QUESTION.

7 (3) The writing required under subsection (2) must be
8 made under oath by the arresting officer, and the
9 photographs must be identified by the signature of the
10 photographer. Upon the filing of the photograph and the
11 writing with the law enforcement agency or court holding the
12 items as evidence, the items must be returned to their owner
13 or the proprietor or manager of the store or establishment.

14 NEW SECTION. Section 4. Codification. Instruction.
15 {Section 3} is intended to be codified as an integral part
16 of Title 26, chapter 1, part 6, and the provisions of Title
17 26, chapter 1, part 6, apply to {section 3}.

18 NEW SECTION. SECTION 3. COORDINATION INSTRUCTION. IF
19 HOUSE BILL NO. 501 IS PASSED AND APPROVED AND IF IT CONTAINS
20 AN AMENDMENT TO 27-1-718, THEN [SECTION 1 OF THIS ACT] IS
21 VOID.

-End-

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 327, met and considered the House Judiciary Standing Committee Report dated March 14, 1991.

We recommend that Senate Bill No. 327 (reference copy - salmon) be amended as follows:

1. Title, line 9.
Following: "CONVICTIONS;"
Insert: "ALLOWING PHOTOGRAPHS OF STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE;"
2. Page 5, line 16.
Following: line 15
Insert: **NEW SECTION.** Section 3. Photographs of items allegedly taken or converted -- admissibility procedure. (1) In a prosecution for a violation of 45-6-301, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in a proceeding, hearing, or trial as if the items themselves were introduced as evidence so long as responding law enforcement personnel have designated a person to be responsible for properly photographing the items and preserving the photographic evidence.
(2) The photographs must bear a written description of the items alleged to have been taken or converted, the name of the owner from whom the items were allegedly taken, or the store or establishment, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting officer, the date the photographs were taken, and a statement by the photographer that the photographs accurately represent the items in question.
(3) The writing required under subsection (2) must be made under oath by the arresting officer, and the photographs must be identified by the signature of the photographer. Upon the filing of the photograph and the writing with the law enforcement agency or court holding the items as evidence, the items must be returned to their owner or the proprietor or manager of the store or establishment.

NEW SECTION. Section 4. Codification instruction.
[Section 3] is intended to be codified as an integral part of Title 26, chapter 1, part 6, and the provisions of Title 26, chapter 1, part 6, apply to [section 3]."

Renumber: subsequent section

ADOPT

REJECT

861347CC.Sj1

And that this Conference Committee report be adopted.

For the Senate:

Wm. Yellowtail
Chair, Sen. Yellowtail
J. Noble
Sen. Noble
W. Halligan
Sen. Halligan

For the House:

Diana Wyatt
Chair, Rep. Wyatt
Terrence Keller
Rep. Keller
Ted Schye
Rep. Schye

4-22-91
And. Coord.

SB 4-22-91
Sec. of Senate

CCR #1
SB 327
861347CC.Sj1

1 SENATE BILL NO. 327

2 INTRODUCED BY NOBLE, KENNEDY, WILLIAMS, HALLIGAN,

3 BURNETT, CROMLEY, THAYER, SWIFT,

4 YELLOWTAIL, HAMMOND, PHILLIPS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS PERTAINING TO SHOPLIFTING; INCREASING THE CIVIL PENALTY
8 FOR SHOPLIFTING; INCREASING THE CRIMINAL PENALTY FOR SECOND
9 AND SUBSEQUENT THEFT CONVICTIONS; ALLOWING PHOTOGRAPHS OF
10 STOLEN MERCHANDISE TO BE SUBMITTED INTO EVIDENCE; ~~ALLOWING~~
11 PHOTOGRAPHS--OF--STOLEN--MERCHANDISE--TO--BE--SUBMITTED--INTO
12 EVIDENCE; AND AMENDING SECTIONS 27-1-718 AND 45-6-301, MCA."
13

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

15 **Section 1.** Section 27-1-718, MCA, is amended to read:

16 "27-1-718. Civil penalty for shoplifting. (1) An adult
17 or emancipated minor, as defined in 20-25-501, who takes
18 possession of any goods, wares, or merchandise displayed or
19 offered for sale by any store or other mercantile
20 establishment without the consent of the owner or seller and
21 with the intention of converting the goods to his own use
22 without having paid the purchase price thereof is liable to
23 the owner or seller for a penalty, whether or not the goods
24 have been returned undamaged, in the amount of the greater
25 of \$100 or the retail value of the goods, not to exceed

1 \$500. This amount is in addition to actual damages.

2 (2) When an unemancipated minor takes possession of any
3 goods, wares, or merchandise displayed or offered for sale
4 by any store or other mercantile establishment without the
5 consent of the owner or seller and with the intention of
6 converting the goods to his own use without having paid the
7 purchase price thereof, the minor's parent or legal guardian
8 having custody of the minor is liable to the owner or seller
9 for a penalty, whether or not the goods have been returned
10 undamaged, equal to the greater of \$100 or the retail value
11 of the goods, not to exceed \$500. For the purposes of this
12 subsection (2), liability may not be imposed upon any
13 governmental or private agency that has been assigned
14 responsibility for the minor child pursuant to court order
15 or action of the department of family services.

16 (3) Judgments, but not claims, arising under this
17 section may be assigned.

18 (4) A conviction for violation of 45-6-301 is not a
19 condition precedent to maintenance of a civil action under
20 this section."

21 **Section 2.** Section 45-6-301, MCA, is amended to read:

22 "45-6-301. Theft. (1) A person commits the offense of
23 theft when he purposely or knowingly obtains or exerts
24 unauthorized control over property of the owner and:

25 (a) has the purpose of depriving the owner of the

1 property;

2 (b) purposely or knowingly uses, conceals, or abandons
3 the property in such manner as to deprive the owner of the
4 property; or

5 (c) uses, conceals, or abandons the property knowing
6 such use, concealment, or abandonment probably will deprive
7 the owner of the property.

8 (2) A person commits the offense of theft when he
9 purposely or knowingly obtains by threat or deception
10 control over property of the owner and:

11 (a) has the purpose of depriving the owner of the
12 property;

13 (b) purposely or knowingly uses, conceals, or abandons
14 the property in such manner as to deprive the owner of the
15 property; or

16 (c) uses, conceals, or abandons the property knowing
17 such use, concealment, or abandonment probably will deprive
18 the owner of the property.

19 (3) A person commits the offense of theft when he
20 purposely or knowingly obtains control over stolen property
21 knowing the property to have been stolen by another and:

22 (a) has the purpose of depriving the owner of the
23 property;

24 (b) purposely or knowingly uses, conceals, or abandons
25 the property in such manner as to deprive the owner of the

1 property; or

2 (c) uses, conceals, or abandons the property knowing
3 such use, concealment, or abandonment probably will deprive
4 the owner of the property.

5 (4) A person commits the offense of theft when he
6 purposely or knowingly obtains or exerts unauthorized
7 control over any part of any public assistance provided
8 under Title 53 by a state or county agency, regardless of
9 the original source of assistance, by means of:

10 (a) a knowingly false statement, representation, or
11 impersonation; or

12 (b) a fraudulent scheme or device.

13 (5) A person commits the offense of theft when he
14 purposely or knowingly obtains or exerts unauthorized
15 control over any part of any benefits provided under Title
16 39, chapter 71 or 72, by means of:

17 (a) a knowingly false statement, representation, or
18 impersonation; or

19 (b) deception or other fraudulent action.

20 (6) (a) A person convicted of the offense of theft of
21 property not exceeding \$300 in value shall be fined not to
22 exceed \$500 or be imprisoned in the county jail for any term
23 not to exceed 6 months, or both. A person convicted of a
24 second offense shall be fined \$500 or be imprisoned in the
25 county jail for a term not to exceed 6 months, or both. A

1 person convicted of a third or subsequent offense shall be
2 fined \$1,000 and be imprisoned in the county jail for a term
3 of not less than 30 days or more than 6 months.

4 (b) A person convicted of the offense of theft of
5 property exceeding \$300 in value or theft of any commonly
6 domesticated hooped animal shall be fined not to exceed
7 \$50,000 or be imprisoned in the state prison for any term
8 not to exceed 10 years, or both. ~~A person convicted of a~~
9 ~~second or subsequent offense shall be fined not less than~~
10 ~~\$1,000 or more than \$50,000, or be imprisoned in the state~~
11 ~~prison for a term of not less than 30 days or more than 6 months,~~
12 ~~or both.~~

13 (7) Amounts involved in thefts committed pursuant to a
14 common scheme or the same transaction, whether from the same
15 person or several persons, may be aggregated in determining
16 the value of the property."

17 NEW SECTION. SECTION 3. PHOTOGRAPHS OF ITEMS ALLEGEDLY
18 TAKEN OR CONVERTED -- ADMISSIBILITY PROCEDURE. (1) IN A
19 PROSECUTION FOR A VIOLATION OF 45-6-301, PHOTOGRAPHS OF THE
20 ITEMS ALLEGED TO HAVE BEEN TAKEN OR CONVERTED ARE COMPETENT
21 EVIDENCE OF THE ITEMS AND ARE ADMISSIBLE IN A PROCEEDING,
22 HEARING, OR TRIAL AS IF THE ITEMS THEMSELVES WERE INTRODUCED
23 AS EVIDENCE SO LONG AS RESPONDING LAW ENFORCEMENT PERSONNEL
24 HAVE DESIGNATED A PERSON TO BE RESPONSIBLE FOR PROPERLY
25 PHOTOGRAPHING THE ITEMS AND PRESERVING THE PHOTOGRAPHIC

1 EVIDENCE.

2 (2) THE PHOTOGRAPHS MUST BEAR A WRITTEN DESCRIPTION OF
3 THE ITEMS ALLEGED TO HAVE BEEN TAKEN OR CONVERTED, THE NAME
4 OF THE OWNER FROM WHOM THE ITEMS WERE ALLEGEDLY TAKEN, OR
5 THE STORE OR ESTABLISHMENT, AS APPROPRIATE, WHERE THE
6 ALLEGED OFFENSE OCCURRED, THE NAME OF THE ACCUSED, THE NAME
7 OF THE ARRESTING OFFICER, THE DATE THE PHOTOGRAPHS WERE
8 TAKEN, AND A STATEMENT BY THE PHOTOGRAPHER THAT THE
9 PHOTOGRAPHS ACCURATELY REPRESENT THE ITEMS IN QUESTION.

10 (3) THE WRITING REQUIRED UNDER SUBSECTION (2) MUST BE
11 MADE UNDER OATH BY THE ARRESTING OFFICER, AND THE
12 PHOTOGRAPHS MUST BE IDENTIFIED BY THE SIGNATURE OF THE
13 PHOTOGRAPHER. UPON THE FILING OF THE PHOTOGRAPH AND THE
14 WRITING WITH THE LAW ENFORCEMENT AGENCY OR COURT HOLDING THE
15 ITEMS AS EVIDENCE, THE ITEMS MUST BE RETURNED TO THEIR OWNER
16 OR THE PROPRIETOR OR MANAGER OF THE STORE OR ESTABLISHMENT.

17 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.
18 [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
19 OF TITLE 26, CHAPTER 1, PART 6, AND THE PROVISIONS OF TITLE
20 26, CHAPTER 1, PART 6, APPLY TO [SECTION 3].

21 NEW SECTION:--Section 3.--Photographs of items allegedly
22 taken or converted--admissibility procedure--(1)--in a
23 prosecution--for a violation of 45-6-301, photographs of the
24 items alleged to have been taken or converted are competent
25 evidence of the items and are admissible in a proceeding

1 hearing, or trial as if the items themselves were introduced
2 as evidence.

3 {2}--The photographs must bear a written description of
4 the items alleged to have been taken or converted, the name
5 of the owner from whom the items were allegedly taken, or
6 the store or establishment, as appropriate, where the
7 alleged offense occurred, the name of the accused, the name
8 of the arresting officer, the date the photographs were
9 taken, and the name of the photographer. AND A STATEMENT BY
10 THE PHOTOGRAPHER THAT THE PHOTOGRAPHS ACCURATELY REPRESENT
11 THE ITEMS IN QUESTION.

12 {3}--The writing required under subsection {2} must be
13 made under oath by the arresting officer, and the
14 photographs must be identified by the signature of the
15 photographer. Upon the filing of the photograph and the
16 writing with the law enforcement agency or court holding the
17 items as evidence, the items must be returned to their owner
18 or the proprietor or manager of the store or establishment.

19 NEW SECTION: Section 4. Codification. Instruction.
20 {Section 3} is intended to be codified as an integral part
21 of Title 26, chapter 17, part 6, and the provisions of Title
22 26, chapter 17, part 6, apply to {section 3}.

23 NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF
24 HOUSE BILL NO. 501 IS PASSED AND APPROVED AND IF IT CONTAINS
25 AN AMENDMENT TO 27-1-718, THEN [SECTION 1 OF THIS ACT] IS

1 VOID.

-End-