

HOUSE BILL NO. 301

INTRODUCED BY MATSKO, TURNAGE, MOORE, PHILLIPS, LEE,
J. O'HARA, IVERSON, VAN VALKENBURG, KEEDY

IN THE HOUSE

January 16, 1981	Introduced and referred to Committee on Judiciary.
January 29, 1981	Committee recommend bill do pass as amended. Report adopted.
January 30, 1981	Bill printed and placed on members' desks.
January 31, 1981	Second reading, do pass.
February 2, 1981	Correctly engrossed.
February 3, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 4, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurrred in as amended. Report adopted.
March 6, 1981	Second reading, pass con- sideration.
March 7, 1981	Second reading, concurrred in as amended.
March 10, 1981	Third reading, concurrred in as amended. Ayes, 47; Noes, 1.

IN THE HOUSE

March 11, 1981	Returned from Senate with amendments.
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March 12, 1981	Second reading, amendments not concurred in.
March 18, 1981	On motion Conference Committee requested and appointed.
March 25, 1981	Conference Committee reported and dissolved.
March 26, 1981	Second reading, Conference Committee report adopted.
March 28, 1981	Third reading, Conference Committee report adopted. Ayes, 92; Noes, 1. Transmitted to Senate.

IN THE SENATE

April 4, 1981	Second reading, Conference Committee report rejected.
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IN THE HOUSE

April 8, 1981	On motion new Free Conference Committee requested and appointed.
April 16, 1981	Free Conference Committee reported and dissolved. On motion rules suspended and bill placed on second reading this day.
April 20, 1981	Second reading, Free Conference Committee report adopted. On motion rules suspended and bill placed on third reading this day. Third reading, Free Conference Committee report adopted. Ayes, 95; Noes, 0. Transmitted to Senate.

IN THE SENATE

April 20, 1981

Free Conference Committee
report adopted.

IN THE HOUSE

April 20, 1981

Returned from Senate. Con-
curred in. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 301

INTRODUCED BY

Mark Ferrigno, Anne Phillips, Lee J. O'Hara, Jensen, Steve Kelly, Keedy

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE ABILITY OF VICTIMS OF CRIMINAL MISCHIEF TO RECOVER RESTITUTION FROM THE OFFENDER; AMENDING SECTIONS 40-6-237, 40-6-238, AND 45-6-101, MCA."

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

Section 1. Section 40-6-237, MCA, is amended to read:

"40-6-237. Destruction of property by minor -- liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed ~~\$2,500~~ \$2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization."

Section 2. Section 40-6-238, MCA, is amended to read:

"40-6-238. Limitation on amount of recovery. The

recovery shall be limited to the actual damages in an amount not to exceed ~~\$2,500~~ \$2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed \$100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237."

Section 3. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

~~(2) A person convicted of the offense of criminal mischief shall be ordered to make full restitution.~~

~~(2)(3)~~ (3) ~~* In addition to the restitution required by subsection (2),~~ a person convicted of the offense of criminal mischief shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6

1 months, or both. If the offender commits the offense of
2 criminal mischief and causes pecuniary loss in excess of
3 \$150, injures or kills a commonly domesticated hoofed
4 animal, or causes a substantial interruption or impairment
5 of public communication, transportation, supply of water,
6 gas, or power, or other public services, ~~in addition to the~~
7 ~~restitution required by subsection (2),~~ he shall be
8 imprisoned in the state prison for any term not to exceed 10
9 years."

-End-

Approved by Committee
on Judiciary

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INTRODUCED BY MATSKO, TURNAGE, MOORE, PHILLIPS, LEE,

J. O'HARA, IVERSON, VanVALKENBERG, KEEDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE ABILITY OF VICTIMS OF CRIMINAL MISCHIEF TO RECOVER RESTITUTION FROM THE OFFENDER; AND TO INCREASE TO \$2,500 THE AMOUNT OF RECOVERY ALLOWED AGAINST PARENTS UNDER SECTIONS 40-6-237 AND 40-6-238, MCA; AMENDING SECTIONS 40-6-237, 40-6-238, AND 45-6-101, MCA."

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2 criminal mischief shall be fined not to exceed \$500 or be
3 imprisoned in the county jail for any term not to exceed 6
4 months, or both. If the offender commits the offense of
5 criminal mischief and causes pecuniary loss in excess of
6 \$150, injures or kills a commonly domesticated hoofed
7 animal, or causes a substantial interruption or impairment
8 of public communication, transportation, supply of water,
9 gas, or power, or other public services, ~~in-addition-to--the~~
10 ~~restitution---required---by---subsection--f21v~~ he shall be
11 imprisoned in the state prison for any term not to exceed 10
12 years."

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(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be ordered to make full restitution.

~~(2)(3) * In addition to the restitution required by~~

1 ~~subsection-(2)(a)~~ A person convicted of the offense of
2 criminal mischief shall be fined not to exceed \$500 or be
3 imprisoned in the county jail for any term not to exceed 6
4 months, or both. If the offender commits the offense of
5 criminal mischief and causes pecuniary loss in excess of
6 \$150, injures or kills a commonly domesticated hoofed
7 animal, or causes a substantial interruption or impairment
8 of public communication, transportation, supply of water,
9 gas, or power, or other public services, ~~in-addition-to--the~~
10 ~~restitution---required---by---subsection--(2)(a)~~ he shall be
11 imprisoned in the state prison for any term not to exceed 10
12 years."

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(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall MAY be ordered to make full restitution. SUCH ORDER SHALL HAVE THE FORCE AND EFFECT OF A CIVIL JUDGMENT

1 AGAINST THE PERSON NAMED IN THE ORDER AND MAY BE ENFORCED AS
 2 PROVIDED IN TITLE 25, CHAPTER 13, FOR CIVIL JUDGMENTS. THE
 3 COURT MAY ORDER A PART OR ALL OF THE RESTITUTION BE PAID IN
 4 INSTALLMENTS, PROVIDED THE FINAL INSTALLMENT IS PAID 30 DAYS
 5 BEFORE RELEASE OF STATE AUTHORITY OVER THE PERSON THROUGH
 6 TERMINATION OF A DEFERRED IMPOSITION OF SENTENCE, A
 7 SUSPENDED SENTENCE, OR PAROLE. FULL PAYMENT MUST BE MADE OR
 8 INSTALLMENTS COMMENCED WITHIN 6 MONTHS OF CONVICTION.
 9 PAYMENT MAY BE MADE TO THE CLERK OF THE DISTRICT COURT. IF
 10 PAYMENT OF RESTITUTION IS MADE A CONDITION OF THE DEFERRED
 11 IMPOSITION OF SENTENCE, A SUSPENDED SENTENCE, OR PAROLE,
 12 SUCH STATUS MAY NOT BE REVOKED FOR DEFAULT IF THE DEFAULT IS
 13 NOT ATTRIBUTABLE TO AN INTENTIONAL REFUSAL TO PAY OR A
 14 FAILURE TO MAKE A GOOD FAITH EFFORT TO MAKE THE PAYMENT.

15 ~~(2)(3) A in-addition-to-the--restitution--required--by~~
 16 ~~subsection--(2)--a~~ A person convicted of the offense of
 17 criminal mischief shall be fined not to exceed \$500 or be
 18 imprisoned in the county jail for any term not to exceed 6
 19 months, or both. If the offender commits the offense of
 20 criminal mischief and causes pecuniary loss in excess of
 21 \$150, injures or kills a commonly domesticated hooved
 22 animal, or causes a substantial interruption or impairment
 23 of public communication, transportation, supply of water,
 24 gas, or power, or other public services, ~~in-addition-to-the~~
 25 ~~restitution--required--by--subsection--(2)~~ he shall be

1 imprisoned in the state prison for any term not to exceed 10
 2 years."

-End-

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 19 damages in a civil action in an amount not to exceed \$1,500
 20 \$2,500 in a court of competent jurisdiction from the parents
 21 of any person under the age of 18 years, living with the
 22 parents, who shall maliciously or willfully destroy
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 19 defraud an insurer; or
 20 (d) fails to close a gate previously unopened which he
 21 has opened, leading in or out of any enclosed premises. This
 22 does not apply to gates located in cities or towns.
 23 ~~(2) A person convicted of the offense of criminal~~
 24 ~~mischief shall MAY SHALT MAY be ordered to make full~~
 25 ~~restitution. SUCH ORDER SHALL HAVE THE FORCE AND EFFECT OF A~~

REFERENCE BILL: Includes Joint -2-
 Conference Committee Report
 Dated 3-23-81

HP 301
 REFERENCE BILL: Includes Free
 Conference Committee Report
 Dated 4-18-81

1 ~~CIVIL JUDGMENT AGAINST THE PERSON NAMED IN THE ORDER AND MAY~~
 2 ~~BE ENFORCED AS PROVIDED IN TITLE 25, CHAPTER 13, FOR CIVIL~~
 3 ~~JUDGMENTS. THE COURT MAY ORDER A PART OR ALL OF THE~~
 4 ~~RESTITUTION BE PAID IN INSTALLMENTS, PROVIDED THE FINAL~~
 5 ~~INSTALLMENT IS PAID 30 DAYS BEFORE RELEASE OF STATE~~
 6 ~~AUTHORITY OVER THE PERSON THROUGH TERMINATION OF A DEFERRED~~
 7 ~~IMPOSITION OF SENTENCE, A SUSPENDED SENTENCE, OR PAROLE.~~
 8 ~~FULL PAYMENT MUST BE MADE OR INSTALLMENTS COMMENCED WITHIN 6~~
 9 ~~MONTHS OF CONVICTION. PAYMENT MAY BE MADE TO THE CLERK OF~~
 10 ~~THE DISTRICT COURT. IF PAYMENT OF RESTITUTION IS MADE A~~
 11 ~~CONDITION OF THE DEFERRED IMPOSITION OF SENTENCE, A~~
 12 ~~SUSPENDED SENTENCE, OR PAROLE, SUCH STATUS MAY NOT BE~~
 13 ~~REVOKED FOR DEFAULT IF THE DEFAULT IS NOT ATTRIBUTABLE TO AN~~
 14 ~~INTENTIONAL REFUSAL TO PAY OR A FAILURE TO MAKE A GOOD FAITH~~
 15 ~~EFFORT TO MAKE THE PAYMENT. A PERSON CONVICTED OF CRIMINAL~~
 16 ~~MISCHIEF SHALL BE ORDERED TO MAKE RESTITUTION IN AN AMOUNT~~
 17 ~~AND MANNER TO BE SET BY THE COURT. THE COURT SHALL DETERMINE~~
 18 ~~THE MANNER AND AMOUNT OF RESTITUTION AFTER FULL~~
 19 ~~CONSIDERATION OF THE CONVICTED PERSON'S ABILITY TO PAY THE~~
 20 ~~SAME. UPON GOOD CAUSE SHOWN BY THE CONVICTED PERSON, THE~~
 21 ~~COURT MAY MODIFY ANY PREVIOUS ORDER SPECIFYING THE AMOUNT~~
 22 ~~AND MANNER OF RESTITUTION. FULL PAYMENT OF THE AMOUNT OF~~
 23 ~~RESTITUTION ORDERED SHALL BE MADE PRIOR TO THE RELEASE OF~~
 24 ~~STATE JURISDICTION OVER THE PERSON CONVICTED.~~

25 ~~{2}(3) A in-addition-to-the-restitution-required-by~~

1 ~~subsection (2) -~~ A person convicted of the offense of
 2 criminal mischief shall be fined not to exceed \$500 or be
 3 imprisoned in the county jail for any term not to exceed 6
 4 months, or both. If the offender commits the offense of
 5 criminal mischief and causes pecuniary loss in excess of
 6 \$150, injures or kills a commonly domesticated hoofed
 7 animal, or causes a substantial interruption or impairment
 8 of public communication, transportation, supply of water,
 9 gas, or power, or other public services, ~~in-addition-to-the~~
 10 ~~restitution-required-by-subsection (2)~~ he shall be
 11 imprisoned in the state prison for any term not to exceed 10
 12 years."

-End-

FREE CONFERENCE COMMITTEE

ON HOUSE BILL NO. 301

REPORT NO. 2

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on House Bill No. 301, met April 15, 1981, and considered:

Senate Committee on Judiciary Amendment dated March 4, 1981,
Senate Committee of the Whole Amendment dated March 7, 1981,
Joint Conference Committee Amendment dated March 23, 1981,
and

recommend as follows:

Having had under consideration Senate Committee on Judiciary Amendment dated March 4, 1981,

That the Senate recede from amendment number 1;

Having had under consideration Senate Committee of the Whole Amendment dated March 7, 1981,

That the Senate recede from amendment number 1;

Having had under consideration Joint Conference Committee Amendment dated March 23, 1981,

That the Joint Conference Committee recede from amendment number 1.

And further that House Bill No. 301, reference bill, be amended as follows:

1. Page 2, line 23 through page 3, line 14.
Following: "(2)"
Strike: the remainder of line 23 through the end of line 14
Insert: "A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the

(Handwritten mark)

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release of state jurisdiction over the person convicted."

And that the Free Conference Committee Report on House Bill No. 301 be adopted.

FOR THE HOUSE:

(Handwritten signature)
MATSUG

(Handwritten signature)
GOULD

(Handwritten signature: Michael H. Keedy)
KEEDY

FOR THE SENATE:

(Handwritten signature: Bob Brown)
B. BROWN

(Handwritten signature: Larry Tveit)
TVEIT

(Handwritten signature: Harry K. Berg)
BERG

March 4, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 301 be amended as follows:

1. Page 2, line 24.
Following: "mischief"
Strike: "shall"
Insert: "may"

March 23, 1981

JOINT CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 301

House Bill No. 301, reference copy, amend as follows:

1. Page 2, line 24.

Following: "shall"

Strike: "MAY"

Insert: "shall"

SENATE **COMMITTEE OF THE WHOLE AMENDMENT**

3 7 87

MR. CHAIRMAN: I MOVE TO AMEND HOUSE BILL 301, THIRD READING COPY, AS FOLLOWS:

1. Page 2.

Following: line 24.

Insert: "Such order shall have the force and effect of a civil judgement against the person named in the order and may be enforced as provided in Title 25, chapter 13, for civil judgements. The court may order a part or all of the restitution be paid in installments, provided ~~the~~ final installment is paid 30 days before release of state authority over the person through termination of a deferred imposition of sentence, a suspended sentence, or parole. Full payment must be made or installments commenced within 6 months of conviction. Payment may be made to the clerk of the district court. If payment of restitution is made a condition of the deferred imposition of sentence, a suspended sentence, or parole, such status may not be revoked for default if the default is not attributable to an intentional refusal to pay or a failure to make a good faith effort to make the payment."