

HOUSE BILL NO. 349

INTRODUCED BY STRIZICH, VAN VALKENBURG, HALLIGAN, CODY,  
MAZUREK, PAVLOVICH, WALKER, O'CONNELL, STANG, DRISCOLL,  
WYATT, PHILLIPS, COCCHIARELLA, SIMPKINS, GOOD, DARKO,  
SQUIRES, J. BROWN, CLARK, REAM, HARRINGTON, NISBET,  
RUSSELL, GERVAIS, MCCORMICK, CONNELLY, DEMARS,  
JOHNSON, COHEN, MCDONOUGH

IN THE HOUSE

JANUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 23, 1989	FIRST READING.
FEBRUARY 9, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 10, 1989	PRINTING REPORT.
FEBRUARY 11, 1989	SECOND READING, DO PASS.
FEBRUARY 13, 1989	ENGROSSING REPORT.
FEBRUARY 14, 1989	THIRD READING, PASSED. AYES, 97; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, CONCURRED IN.
MARCH 18, 1989	THIRD READING, CONCURRED IN. AYES, 45; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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INTRODUCED BY *House* BILL NO. *349* *Carlson*  
*Van Valkenburg* *Chapman* *Connelly* *Reamy*  
*Wright* *Phillips* *Amphlett* *Ward* *Clark*  
*May* *Drake* *Goodman* *Spencer* *Reamy*  
A BILL FOR AN ACT ENTITLED: "AN ACT DESIGNATING THE SEIZING  
LAW ENFORCEMENT AGENCY AS THE ENTITY THAT HOLDS AND DISPOSES  
OF SEIZED PROPERTY THAT WAS USED TO VIOLATE DRUG LAWS; AND  
AMENDING SECTIONS 44-12-103 AND 44-12-205, MCA."

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

**Section 1.** Section 44-12-103, MCA, is amended to read:

"44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff offices of his law enforcement agency of--the--county--in--which--the--seizure--is--made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102

1 may be seized by a peace officer under a search warrant  
2 issued by a district court having jurisdiction over the  
3 property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

**Section 2.** Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing.

(1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for

the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property ~~must~~ may be sold at public auction by the ~~sheriff-of-the-county-in-which-the seizure-was-made~~ law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the state law enforcement agency may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so

provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons."

NEW SECTION. **Section 3.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

-End-

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an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff offices of his law enforcement agency of-the-county-in-which-the-seizure--is--made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

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(1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property ~~must~~ may be sold at public auction by the ~~sheriff-of-the-county-in-which-the seizure-was-made~~ law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the state law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. THE PROPERTY MAY NOT BE SOLD TO AN OFFICER OR EMPLOYEE OF THE LAW

ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY OR TO A PERSON RELATED TO AN OFFICER OR EMPLOYEE BY BLOOD OR MARRIAGE.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

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21 unlawfully transport a controlled substance, or probable  
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24 conveyance so used or intended to be used or any conveyance  
25 in which a controlled substance is unlawfully possessed by

1 an occupant. He shall immediately deliver a conveyance that  
2 he seizes to the sheriff offices of his law enforcement  
3 agency of-the-county-in-which-the-seizure--is--made, to be  
4 held as evidence until forfeiture is declared or release  
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6 (2) All property subject to forfeiture under 44-12-102  
7 may be seized by a peace officer under a search warrant  
8 issued by a district court having jurisdiction over the  
9 property. Seizure without a warrant may be made if:

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11 under a search warrant issued for another purpose or an  
12 inspection under an administrative inspection warrant;

13 (b) the property subject to seizure has been the  
14 subject of a prior judgment in favor of the state in a  
15 criminal proceeding or a forfeiture proceeding based on this  
16 chapter;

17 (c) the peace officer has probable cause to believe  
18 that the property is directly or indirectly dangerous to  
19 health or safety; or

20 (d) the peace officer has probable cause to believe  
21 that the property was used or is intended to be used in  
22 violation of Title 45, chapter 9, or in violation of Title  
23 45, chapter 10, part 1."

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25 "44-12-205. Disposition of property following hearing.

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(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

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-End-



SENATE STANDING COMMITTEE REPORT

March 15, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 349 (third reading copy -- blue), respectfully report that HB 349 be amended and as so amended be concurred in:

Sponsor: Strizich (Van Valkenburg)

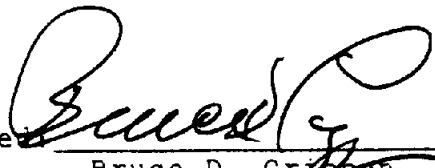
1. Page 3, line 18.

Following: "~~must~~"

Strike: "may"

Insert: ", if it is sold, must"

AND AS AMENDED BE CONCURRED IN

Signed 

Bruce D. Crippen, Chairman

SENATE

scrhb349.315

HB 349

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