

SENATE BILL NO. 367

INTRODUCED BY NOBLE, GOOD, MCLANE,
SIMPKINS, MEYER, PINSONEAULT

IN THE SENATE

FEBRUARY 7, 1989

RULES SUSPENDED TO ALLOW
INTRODUCTION OF SB 367.

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 16, 1989

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 17, 1989

PRINTING REPORT.

FEBRUARY 18, 1989

SECOND READING, DO PASS.

FEBRUARY 20, 1989

ENGROSSING REPORT.

FEBRUARY 21, 1989

THIRD READING, PASSED.
AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 13, 1989

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 15, 1989

SECOND READING, CONCURRED IN.

MARCH 16, 1989

THIRD READING, CONCURRED IN.
AYES, 96; NOES, 0.

RETURNED TO SENATE.

MARCH 17, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 367

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE FOR THE DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES; AND AMENDING SECTION 46-5-305, MCA."

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 4] is to provide a procedure by which physical evidence in criminal cases may be destroyed or appropriated for law enforcement use when prosecutions have been completed and no further legal proceeding is contemplated or when it does not appear that criminal charges will be initiated.

NEW SECTION. Section 2. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of

each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

NEW SECTION. Section 3. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all other items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale shall occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition.

NEW SECTION. **Section 4.** Applicability of other statutes. The provisions of Title 70, chapter 9, relating to the disposition of unclaimed or abandoned property, do not apply to actions filed pursuant to [sections 1 through 4].

Section 5. Section 46-5-305, MCA, is amended to read:

"46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized ~~and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury, it must be disposed of pursuant to the provisions of [sections 1 through 4]."~~

NEW SECTION. **Section 6.** Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [sections 1 through 4].

-End-

APPROVED BY COMMITTEE
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(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed,

disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, WHICH FOR THE PURPOSES OF [SECTIONS 1 THROUGH 4] MEANS ANY PROPERTY THAT IS UNLAWFUL TO PRODUCE OR POSSESS;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

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12 retain the items by the law enforcement agency and a
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