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.

SECOND READING, DO PASS.

FEBRUARY 20, 1989 ENGROSSING REPORT.

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

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989

FEBRUARY 18, 1989

FEBRUARY 21, 1989

MARCH 13, 1989

MARCH 15, 1989

MARCH 16, 1989

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

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

RETURNED TO SENATE.

IN THE SENATE

MARCH 17, 1989

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RECEIVED FROM HOUSE. SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

51st Legislature

LC 1384/01

INTRODUCED BY Melle God M. Sometime 1 2 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE 5 FOR THE DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT 6 OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES; AND 7 AMENDING SECTION 46-5-305, MCA."

8

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

10 <u>NEW SECTION.</u> Section 1. Purpose. The purpose of 11 [sections 1 through 4] is to provide a procedure by which 12 physical evidence in criminal cases may be destroyed or 13 appropriated for law enforcement use when prosecutions have 14 been completed and no further legal proceeding is 15 contemplated or when it does not appear that criminal 16 charges will be initiated.

17 <u>NEW SECTION.</u> Section 2. Petition for destruction, 18 disposal, or use of evidence. (1) The prosecutor may file a 19 petition with the court alleging that there exist certain 20 items held as evidence either by the law enforcement agency 21 or the court and that the items no longer have any 22 evidentiary value. The petition must include:

23 (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

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

(c) when the items were seized;

3

(d) whether the items constitute contraband;

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

8 (f) whether, in those instances in which the items are 9 not contraband, an effort has been made to return the items 10 to the apparent owner and the results of such effort;

11 (g) an allegation to the effect that any criminal 12 prosecutions involving the items of evidence have been 13 completed and no appeals are pending or that no criminal 14 charges have been filed or are presently contemplated; and 15 petitioner's (h) the intentions relative to 16 disposition of the items.

17 (2) If the petition requests the destruction or use of 18 contraband, it must describe how destruction is to be 19 accomplished or how the contraband has training or law 20 enforcement value and its contemplated use by a law 21 enforcement agency.

22 <u>NEW SECTION.</u> Section 3. Order. (1) The court may 23 enter an order providing for the destruction or disposition 24 of the evidence. A proposed order must be presented by the 25 petitioner to the court and may include:

INTRODUCED BILL

LC 1384/01

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

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

7 (c) if the petition requests training or law 8 enforcement use of noncontraband items, authorization to 9 retain the items by the law enforcement agency and a 10 description of the items;

11 (d) if the evidence is money and the owner cannot be 12 ascertained and no civil forfeiture action is pending, 13 authorization to deposit the money to the appropriate city, 14 county, or state drug forfeiture fund;

15 (e) if the petition requests, authorization to sell 16 noncontraband property at public sale or auction and deposit 17 the proceeds to the appropriate city, county, or state drug 18 forfeiture fund; or

19 (f) authorization to destroy all other items not 20 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 1 of other 2 statutes. The provisions of Title 70, chapter 9, relating to 3 the disposition of unclaimed or abandoned property, do not 4 apply to actions filed pursuant to [sections 1 through 4]. Section 5. Section 46-5-305, MCA, is amended to read: 5 6 "46-5-305. Disposition of unclaimed property. If 7 property seized as evidence is not claimed within 6 months 8 of completion of the case for which it was seized and-if 9 after-proper-inquiry-the-judge-cannot--ascertain--or--locate 10 any--person--entitled--to--its-possession,-he-must-order-the property-to-be-sold-by-the-sheriff.-The--proceeds--from--the 11 12 sale7--after-deduction-of-the-costs-of-storage7-preservation 13 of-the-property;-and-the-sale;-must-be-paid-into-the--county 14 treasury, it must be disposed of pursuant to the provisions 15 of [sections 1 through 4]." NEW SECTION. Section 6. Codification 16 instruction. 17 [Sections 1 through 4] are intended to be codified as an 18 integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to 19

-End-

[sections 1 through 4].

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51st Legislature

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APPROVED BY COMMITTEE ON JUDICIARY

1	SENATE BILL NO. 367
2	INTRODUCED BY NOBLE, GOOD, MCLANE,
3	SIMPKINS, MEYER, PINSONEAULT
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
6	FOR THE DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT
7	OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES; AND
8	AMENDING SECTION 46-5-305, MCA."
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10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	NEW SECTION. Section 1. Purpose. The purpose of
12	[sections 1 through 4] is to provide a procedure by which
13	physical evidence in criminal cases may be destroyed or
14	appropriated for law enforcement use when prosecutions have
15	been completed and no further legal proceeding is
16	contemplated or when it does not appear that criminal
17	charges will be initiated.
18	NEW SECTION. Section 2. Petition for destruction,
19	disposal, or use of evidence. (1) The prosecutor may file a
20	petition with the court alleging that there exist certain
21	items held as evidence either by the law enforcement agency
22	or the court and that the items no longer have any

23 evidentiary value. The petition must include:

(a) the name and title of petitioner;

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

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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;

5 (d) whether the items constitute contraband, WHICH FOR
6 THE PURPOSES OF [SECTIONS 1 THROUGH 4] MEANS ANY PROPERTY
7 THAT IS UNLAWFUL TO PRODUCE OR POSSESS;
8 (e) whether the items relate to a filed case and, if

9 so, the court and cause number of the case and its 10 procedural status;

11 (f) whether, in those instances in which the items are 12 not contraband, an effort has been made to return the items 13 to the apparent owner and the results of such effort;

14 (g) an allegation to the effect that any criminal
15 prosecutions involving the items of evidence have been
16 completed and no appeals are pending or that no criminal
17 charges have been filed or are presently contemplated; and
18 (h) the petitioner's intentions relative to

19 disposition of the items.

20 (2) If the petition requests the destruction or use of 21 contraband, it must describe how destruction is to be 22 accomplished or how the contraband has training or law 23 enforcement value and its contemplated use by a law 24 enforcement agency.

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25 NEW SECTION. Section 3. Order. (1) The court may

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SECOND READING

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1 enter an order providing for the destruction or disposition 2 of the evidence. A proposed order must be presented by the 3 petitioner to the court and may include:

4 (a) authorization to destroy all contraband listed in 5 the petition, the method of destruction, and the time within which such destruction must be accomplished: 6

7 (b) if certain contraband is requested by the 8 petitioner for training or law enforcement purposes, 9 authorization to use the items and a description of each;

10 (c) if the petition requests training or law 11 enforcement use of noncontraband items, authorization to 12 retain the items by the law enforcement agency and a description of the items; 13

14 (d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, 15 16 authorization to deposit the money to the appropriate city, 17 county, or state drug forfeiture fund;

18 (e) if the petition requests, authorization to sell 19 noncontraband property at public sale or auction and deposit 20 the proceeds to the appropriate city, county, or state drug 21 forfeiture fund: or

22 (f) authorization to destroy all other items not 23 otherwise provided for.

24 (2) The order must specify the time period in which destruction or sale shall occur. Within 10 days following 25

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the destruction or sale, a return must be filed with the 1 2 court, listing the property destroyed or sold and the date 3 and method of disposition.

NEW SECTION. Section 4. Applicability 4 of other 5 statutes. The provisions of Title 70, chapter 9, relating to 6 the disposition of unclaimed or abandoned property, do not 7 apply to actions filed pursuant to [sections 1 through 4]. 8 Section 5. Section 46-5-305, MCA, is amended to read: 9 "46-5-305. Disposition of unclaimed property. If 10 property seized as evidence is not claimed within 6 months 11 of completion of the case for which it was seized and -- if 12 after--proper--inquiry--the-judge-cannot-ascertain-or-locate 13 any-person-entitled-to-its-pessession;--he--must--order--the 14 property--to--be--sold-by-the-sheriff--The-proceeds-from-the 15 sale--after-deduction-of-the-costs-of-storage---preservation of--the-property-and-the-sale--must-be-paid-into-the-county 16 17 treasury, it must be disposed of pursuant to the provisions 18 of [sections 1 through 4]." 19 NEW SECTION. Section 6. Codification instruction. 20 [Sections 1 through 4] are intended to be codified as an 21 integral part of Title 46, chapter 5, part 3, and the

22 provisions of Title 46, chapter 5, part 3, apply to

23 [sections 1 through 4].

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disposed of, or used, including a specific description of 1 SENATE BILL NO. 367 1 INTRODUCED BY NOBLE, GOOD, MCLANE, 2 each that may be attached to the petition by separate 2 SIMPKINS, MEYER, PINSONEAULT 3 inventory; 3 (c) when the items were seized; 4 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE ς (d) whether the items constitute contraband, WHICH FOR 5 FOR THE DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT 6 THE PURPOSES OF [SECTIONS 1 THROUGH 4] MEANS ANY PROPERTY 6 OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES; AND THAT IS UNLAWFUL TO PRODUCE OR POSSESS; 7 7 AMENDING SECTION 46-5-305. MCA." 8 (e) whether the items relate to a filed case and. if 8 9 9 so, the court and cause number of the case and its 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 procedural status: 11 (f) whether, in those instances in which the items are NEW SECTION. Section 1. Purpose. The purpose of 11 12 not contraband, an effort has been made to return the items [sections 1 through 4] is to provide a procedure by which 12 to the apparent owner and the results of such effort; 13 13 physical evidence in criminal cases may be destroyed or 14 (g) an allegation to the effect that any criminal appropriated for law enforcement use when prosecutions have 14 prosecutions involving the items of evidence have been 15 been completed and no further legal proceeding is 15 16 completed and no appeals are pending or that no criminal contemplated or when it does not appear that criminal 16 17 charges have been filed or are presently contemplated; and charges will be initiated. 17 (h) the petitioner's intentions 18 relative to NEW SECTION. Section 2. Petition for destruction, 18 disposition of the items. 19 disposal, or use of evidence. (1) The prosecutor may file a 19 (2) If the petition requests the destruction or use of 20 petition with the court alleging that there exist certain 20 contraband, it must describe how destruction is to be 21 items held as evidence either by the law enforcement agency 21 22 accomplished or how the contraband has training or law or the court and that the items no longer have any 22 23 enforcement value and its contemplated use by a law 23 evidentiary value. The petition must include: 24 enforcement agency. (a) the name and title of petitioner; 24 NEW SECTION. Section 3. Order. (1) The court may 25 25 (b) the items of evidence sought to be destroyed, -2-SB 367

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THIRD READING.

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REFERENCE BILL

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