

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 20, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Bill Yellowtail (D)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that the
Subcommittee studying SB 34 and SB 138 would meet once more
before Executive Action would be taken.

HEARING ON SENATE BILL 444

Presentation and Opening Statement by Sponsor:

Senator Dick Pinsoneault, District 27, said SB 444 provides
that a person's name may not appear on a jury list for more than
one court during a one-year term. He explained that it is an
effort to limit the people who appear on lists for jury duty which
are now determined by whether or not one is a registered voter in
Montana. Senator Pinsoneault advised the Committee he worked on
this issue with the Lake County and Lewis and Clark County Clerks
of Court.

Senator Pinsoneault stated this change is made on lines 21 and
22 of the bill, and said it is an effort to involve more people in
jury duty.

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked what the list is talking about. Senator Pinsoneault replied that a person's name would not appear on the justice court list for one year, if he or she had served in district court, and vice versa.

Closing by Sponsor:

Senator Pinsoneault made no closing comments.

HEARING ON SENATE BILL 327

Presentation and Opening Statement by Sponsor:

Senator Jerry Noble said SB 327 would revise and strengthen laws pertaining to shoplifting. He explained that shoplifting increased by 30 percent from 1985 to 1989, and that there were 1.3 million arrests, nationally, in 1989. Senator Noble stated that the \$12.70 average value per incident is expected to increase, further eroding profits.

Senator Noble told the Committee that the heart of the bill is on page 4, lines 17-27, which features home arrest for third-time offenders and allows for recovery of damages. He referred to an amendment on page 5, line 7 inserting "or" after "\$50,000. Senator Nobel commented that he was alarmed by wording in the fiscal note, and expressed the need to amend lines 6 and 8 on page 5, striking "not less" and inserting "not to exceed" (Exhibit #1).

Proponents' Testimony:

Charles Brookes, Executive Vice President, Montana Retail Association, and also representing the Montana Implement Dealers and Montana Tire Dealers, read from prepared testimony. He stated there is a \$10 billion annual loss to the retail community from shoplifting which represents \$30 to \$40 million in Montana.

Mr. Brookes said the state is looking at a 30 to 35 percent increase and approximately 45 to 70 percent inventory losses as a result of shoplifting. He commented that the public pays the price and the taxes for shoplifters. Mr. Brookes said he believes Montana needs this legislation to assist security personnel and store managers in properly prosecuting second- and third-time offenders.

Bill Lengang, Flathead County Merchants, advised the Committee that the penalties for shoplifting do not outweigh the risk of being caught. He stated that 90 percent of first-time offenders do not return to the same location, and so very few first-time offenders are caught. Mr. Lengang said 85 shoplifters were arrested in a grocery store in the Flathead area last year.

Marge Sperry, Billings JC Penney Co., told the Committee that \$470,000 in televisions and radios were stolen in the Billings area in 1989. She stated that since most of these were valued at under \$300, the thefts were only misdemeanors, but in other states would have been a felony.

Mike Wall, Power Townsend Company, Helena, advised the Committee that last fall \$2000 in professional tools were shoplifted from his store. He stated this is an on-going problem, and that without proper deterrents it would continue. Mr. Wall told the Committee that Helena is fairly lenient with first-time offenders, and clears their records after 90 days. He said that for this reason there are hardly ever any second-time offenders.

Bruce Rowsell, Buttrey Food and Drug, stated he has been involved in loss prevention and law enforcement for 22 years. He explained that seven of those years were spent in Washington where existing laws like SB 327 has been in effect and are a strong deterrent to repeat offenses.

Bob Heiser, United Food and Commercial Workers Union, told the Committee the bill is a safety issue. He explained that several members of the Union have been injured while trying to apprehend shoplifters.

Lloyd Knutson, Montana Retail Security Investigations, said Montana is behind in penalties nationwide. He agreed with the statement that most offenders caught are not first-time offenders, and said they are mostly between 25 and 40 years old. Mr. Knutson told the Committee he believes the civil penalty is a necessary provision, as right now retailers absorb 100 percent of costs.

Laurie Shadoan, Bozeman Chamber of Commerce stated her support of the bill, and said Bozeman relies very much on its retail businesses.

Forrest Boles, Montana Chamber of Commerce, stated his support of SB 327.

Riley Johnson, National Federation of Independent Businesses, stated his support of the bill.

Bill Stevens, Montana Food Distributors Association, said the grocery industry urges support of SB 327.

Kay Foster, Billings Chamber of Commerce, stated her support of the bill.

Opponents' Testimony:

There were no opponents of SB 327.

Questions From Committee Members:

Senator Rye asked what current shoplifting penalties are. Charles Brookes replied that the civil penalty allows recovery of retail value of merchandise up to \$500. He said the theft fine is \$300, and that the bills adds a second- and third-time offense penalty.

Senator Towe asked if the civil penalty passed in 1985 has worked. Lloyd Knutson replied it does. He explained that postage for certified letters is \$2, and that collections are about 45-50 percent. He said that filing in small claims court costs \$10; a judgment served is \$15; and collection agencies charge about \$30. Mr. Knutson added that the \$100 figure makes sense.

Closing by Sponsor:

Senator Noble advised the Committee that shoplifting is a big problem. He said he would have the amendments drafted as soon as possible.

HEARING ON SENATE BILL 419

Presentation and Opening Statement by Sponsor:

Senator Gary Aklestad, District 6, said he hoped SB 419 would prompt social workers to act more professionally. He said the bill revises laws relating to investigation and removal of children from their home in cases of suspected child abuse or neglect.

Senator Aklestad stated language needs to be added on page 16, line 20 to address the time factor in notifying parents or guardians when children are removed. He suggested a 12-hour time period.

Proponents' Testimony:

Representative Jerry Driscoll, District 92, advised the Committee of a case in his district where the children had been removed for five days before the parents were notified. He said the parents were accused of sexual abuse, and it was found that the child care provider was the abuser and is now in prison.

Opponents' Testimony:

There were no opponents. Ann Gilkey, Attorney, Department of Family Services, said the Department has no position on the bill.

Questions From Committee Members:

Senator Towe asked why "reasonable cause" was changed to "reasonable grounds". Senator Aklestad replied he thought about using "probable cause", but felt that language was too weak.

Senator Halligan asked about parent or guardian notification on page 6, line 14 of the bill. Senator Aklestad replied he believed it should be 12 hours.

Senator Halligan stated he has done this work during his five years with the county attorney's office, and found that sometimes parents can't be located. He said that, in such cases, a time limit might be a problem.

Closing by Sponsor:

Senator Aklestad said he believes the changes are necessary to protect children and to cause social workers to act in a more professional manner.

HEARING ON SENATE BILL 309**Presentation and Opening Statement by Sponsor:**

Senator Jim Burnett, District 42, said the bill creates the offense of obstruction of business or social or recreational function, and that the intent is expressed on lines 19-20.

Proponents' Testimony:

Forrest Boles, Montana Chamber of Commerce, said the bill addresses some concerns of the Chamber, and that he wanted to be on record in support of it.

Opponents' Testimony:

Joanne Chance, Montana Technical Council, said she opposed the bill as she believes it does not reflect the intent of the sponsor. She explained that anyone who repairs a sidewalk and disrupts the normal flow of customers into a bank could be fined or imprisoned by the provisions in this bill. Ms. Chance asked how a construction company could make improvements, and proposed amendments to the bill (Exhibit #2).

Don Judge, Montana AFL-COI, read from prepared testimony in opposition to the bill (Exhibit #2a). He said he believes the bill would prohibit picketing, and limits free speech. Mr. Judge further stated that section 1, subsection (3) makes "stepping on a bug a felony", and said he believes the bill is "blatantly unconstitutional". He asked the Committee to give SB 309 a do not pass recommendation.

Bob Heiser, United Food and Commercial Workers Union, said he opposed SB 309 as it would be a violation to even hand out literature.

Scott Chrichton read from prepared testimony in opposition to the bill. He stated he strongly opposes the bill as it challenges fundamental rights to speak, assemble, and demonstrate. Mr. Chrichton further stated that the bill is "fundamentally unamerican", and asked that the Committee not pass it out.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Senator Burnett commented that there is nothing wrong with peaceful assembly, but obstructors of civil rights should be arrested.

HEARING ON SENATE BILL 349

Presentation and Opening Statement by Sponsor:

Senator John Harp, District 4, said SB 349 would regulate attorney fees in workers' compensation matters. He advised the Committee that, as a businessman he felt that if he made a ten percent profit he was doing well. Senator Harp asked why workers' compensation attorneys should make 20 to 25 percent profits (Exhibit #3).

Senator Harp explained that the bill includes employers and claimants. He told the Committee state liability is well over \$200 million in workers' compensation, and said he believes it is partly due to high attorney fees. Senator Harp commented that benefits to workers were already reduced, and said he believes the bill would make litigation go more quickly, to the benefit of injured workers.

Senator Harp stated that many cases take two or three years, and that it doesn't seem fair for attorneys to go back to the date of injury when they may not have been hired until a year or two after the injury.

Senator Harp reported that the legislative process only can deal with setting fees. He said he spoke with Brenda Trolin, National Conference of State Legislatures, Denver, who said there is no shortage of attorneys, and that this kind of legislation makes for earlier resolution of cases.

Senator Harp asked why any attorney should earn \$800,000 in one year on 99 cases, when he or she may have spent very little time with the injured worker. He advised the Committee that one workers' compensation attorney in Montana earned \$810,000 in 1990, according to Department of Labor information. Senator Harp

reported that the same attorney earned \$591,000 in 1989; \$1 million in 1988. He said this averages \$2.4 million over 3 years, \$3,365 per day, or \$422.28 per hour. Senator Harp further stated that amount equals 9,111 hours for 225 40-hour work weeks or 4 1/2 years of work.

Senator Harp told the Committee he believes something is wrong. He commented that they would probably hear from opponents that SB 315 took care of the problem. Senator Harp stated that, as a union contractor, he found that people feel cheated by the cost of workers' compensation coverage. He said the bill would save money for the state, as well.

Proponents' Testimony:

There were no proponents of SB 349.

Opponents' Testimony:

Mike Sherwood, Montana Trial Lawyers Association, stated that SB 315, passed in 1987, is not working perfectly. He said the people interested in SB 315 aren't present, and that Norm Grosfield asked to go on record as opposing SB 349.

Mr. Sherwood said he understood Senator Harp's concerns, as employers of this state fund the system, and there is a need for cost control. He stated that the numbers disclosed by Senator Harp are gross and not net. Mr. Sherwood added that it costs a lot to practice law now, and said it is poor public policy to regulate fees.

Mr. Sherwood advised the Committee that the information presented fails to take into consideration the claims denied. He said he believed the injured worker would be the victim in this legislation rather than a beneficiary.

Mr. Sherwood commented that maybe the issue should be looked at, but not all 1987 cases resolved brought more money to attorneys. He stated that the Ingram decision in 1990 caused a lot of cases to be settled, and that maybe in one year the state will see the true impact of SB 315.

Janice VanRiper, told the Committee she represents a lot of workers' compensation claimants. She stated there is a limit on attorney fees in Montana, but not on defense. Ms. VanRiper said the example provided by Senator Harp is extreme, and so public policy is not well-dictated.

Ms. VanRiper advised the Committee that HB2, passed during the 1989 Special Session, allowed lump sum settlement on old cases. She stated she had no problem with a lot of the bill, but took issue with getting rid of the contingency fee scheme. Mr. VanRiper said the Committee needs to look at what the bill does to

claimants' access to legal services, as people with no money need contingency fee arrangements.

Ms. VanRiper suggested that the committee add language on page 3, after line 2, clarifying that this applies only to hourly fee basis. She said insurance companies pay very little for payments of attorney fees, so they must come out of awards.

Questions From Committee Members:

Senator Crippen advised Janice VanRiper that he would agree with her on tort cases, and asked if most workers' compensation cases weren't just dealing with an amount. He asked why contingency fees could not be based on a maximum of \$90 per hour. Ms. VanRiper replied that if cases won were averaged with cases lost that figure would be less than \$90 per hour.

Senator Towe commented that his firm has not taken many cases since the 1987 law.

Closing by Sponsor:

Senator Harp said he was amazed that no attorneys claim to be taking workers' compensation cases in Montana. He told the Committee his intent was not to disallow contingency fees, and said he hoped the Committee would be fair and just with regard to this issue.

HEARING ON SENATE BILL 214

Presentation and Opening Statement by Sponsor:

Senator Tom Towe, District 46, advised the Committee that SB 214 would increase the dollar amounts subject to civil jurisdiction in justice courts and in the small claims division of justice courts. He said the amounts would increase from \$3500 to \$5000 in justice court, and from \$2500 to \$3000 in small claims court.

Senator Towe said it makes sense to do this so more non-attorney cases can be handled by the justice courts. He further stated it might make sense to make the figure \$5000 for all courts.

Proponents' Testimony:

Justice of the Peace Pedro Hernandez, Billings, said the courts should be more readily available to the people, and added that filing fees are less in justice court.

Riley Johnson, National Federation of Independent Business, said he represented 6400 members in Montana who employ between three and five employees. He told the committee his organization supported the bad check bill in the 1980s and implemented a bad check policy which has reduced them by 80-85 percent (Exhibit #4).

Mr. Johnson said he would like to see the limits raised to cover larger items and to avoid attorney fees.

Patricia Bradley, Montana Magistrates, stated her support of SB 214.

John Cameron, Montana Collectors Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of SB 214.

Questions From Committee Members:

Senator Halligan asked if it were worth making an exception to handle cars up to \$10,000 in value. Judge Hernandez replied he believes \$10,000 is too high right now. He stated that some district courts in other states are courts of limited jurisdiction, and that \$7500 is used by the National Courts Institute. He added that it might be to the advantage of courts in the larger counties.

Closing by Sponsor:

Senator Towe made no closing comments.

HEARING ON SENATE RESOLUTION 5

Presentation and Opening Statement by Sponsor:

Senator Mazurek advised the Committee SR 5 is the formal presentation confirming the nomination of Judge James Purcell. He requested that testimony from the earlier hearing be included here.

Proponents' Testimony:

There were no proponents of SR 5.

Opponents' Testimony:

There were no opponents of SR 5.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Senator Mazurek made no closing comments.

EXECUTIVE ACTION ON SENATE RESOLUTION 5

Motion:

Senator Towe made a motion that SR 5 DO PASS.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 34

Motion:

Senator Halligan made a motion that SB 34 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 104

Motion:

Senator Halligan made a motion that SB 104 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 203

Motion:

Senator Halligan made a motion that SB 203 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 309

Motion:

Senator Halligan made a motion that SB 309 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 349

Motion:

Senator Harp made a motion that SB 349 DO PASS.

Discussion:

Senator Mazurek stated that SB 349 is fairly considered before the Committee and addresses a legitimate problem.

Senator Grosfield asked if language on page 3 of the bill would limit contingency agreements on both sides. Senator Harp replied it would.

Senator Towe commented that the \$90 limit on contingencies would cause attorneys to "eat" the cases they lost. Senator Harp replied that very few cases are ever lost. Senator Mazurek added that, by and large, that is correct.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion carried 6-5 in a roll call vote (attached).

EXECUTIVE ACTION ON SENATE BILL 327

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to amend SB 327 (Exhibit #6); to strike "and" on page 6, line 1 and insert ", and a statement by the photographer that the photographs accurately represent the items in question", following "photographer"; to strike ", " following "officer" on page 6, line 3; and to strike line 4 on page 6 in its entirety.

Senator Halligan asked about the mandatory minimum on second sentence.

The motion made by Senator Towe carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that SB 327 DO PASS AS AMENDED. The motion carried with all members voting aye except Senator Halligan who voted no.

EXECUTIVE ACTION ON SENATE BILL 214

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe stated he would not be adverse to amending the limits to \$5000 for the courts or to \$7500 for justice courts. He said Justice of the Peace Hernandez believes there would be distinctions in limitations between the courts.

Senator Mazurek commented that the Committee may not want to go too far overboard in setting these limits.

Senator Towe made a motion to raise the court limits to \$5000 (3-11-103, MCA). The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that SB 214 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 444

Motion:

Discussion:

Senator Towe asked if people on the justice court list would be ineligible for any other list. Senator Pinsonault replied that would be correct.

Senator Towe said he favored the bill as people don't want to register to vote so they won't be called to serve on juries.

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Doherty made a motion that SB 444 DO PASS. The motion carried with all members voting aye except Senator Halligan who voted no.

EXECUTIVE ACTION ON SENATE BILL 419

Motion:

Discussion:

Senator Towe suggested amending page 6, line 17 following "possible, by inserting "in no event later than 12 hours".

Senator Halligan said language in the bill is too broad, and that the system works well as it is now.

Senator Towe referred to two incidents in Billings where parental, guardian notification was delayed.

Amendments, Discussion, and Votes:

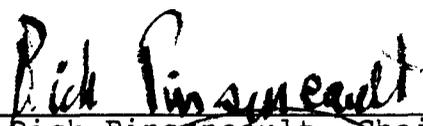
There were no amendments.

Recommendation and Vote:

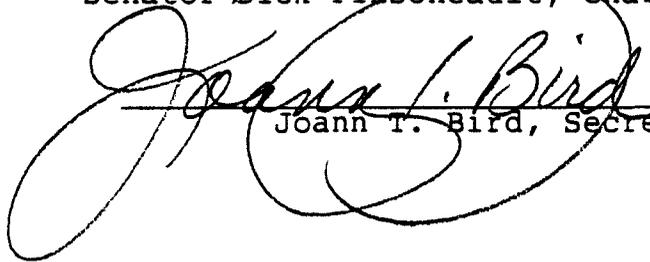
Senator Halligan made a motion that SB 419 be TABLED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12: 10 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1990

Date 20 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 214 (first reading copy -- white), respectfully report that Senate Bill No. 214 be amended and as so amended do pass:

1. Title, line 5.

Following: "COURTS"

Insert: ", "

2. Title, line 6.

Strike: "AND IN"

Following: "COURTS"

Insert: ", AND CITY COURTS"

3. Title, line 7.

Following: "3-10-301"

Strike: "AND"

Insert: ", "

Following: "3-10-1004,"

Insert: "AND 3-11-103,"

4. Page 3, line 11.

Following: line 10

Insert: "Section 3. Section 3-11-103, MCA, is amended to read:

"3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed ~~\$2,500~~ \$5,000, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds;

and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed ~~\$2,500~~ \$5,000;

(4) when the amount claimed, exclusive of costs, does not exceed ~~\$2,500~~ \$5,000, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed ~~\$2,500~~ \$5,000; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Signed: 
Richard Pinsoneault, Chairman

191 2-20-91
Asst. Coord.

SB 2-20 2:35
Sec. of Senate

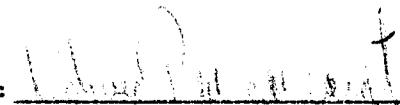
PRELIMINARY

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration the Governor's appointments in the attached Senate Resolution No. 5 (first reading copy -- white), respectfully report that said appointments be confirmed by the Senate and that the attached Senate Resolution No. 5 be adopted.

Signed: 
Richard Pinsoneault, Chairman

RP 2/20/91
Amd. Coord.

SR 12:50 2/20
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 25, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Resolution No. 5 (first reading copy -- white), respectfully report that Senate Resolution No. 5 be adopted.

Signed: _____
Richard Pinsonneault, Chairman

M 2-25-91
And. Coord.

57 2-25-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 349 (first reading copy -- white), respectfully report that Senate Bill No. 349 do pass.

Signed: *Richard Pinsoneault*
Richard Pinsoneault, Chairman

B 2/20/91
Amd. Coord.

SB 349 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 327 (first reading copy -- white), respectfully report that Senate Bill No. 327 be amended and as so amended do pass:

1. Page 5, line 7.

Following: "\$50,000"

Strike: "1"

Insert: "or"

2. Page 5, line 8.

Following: "not"

Strike: "less than"

Insert: "to exceed"

3. Page 6, line 1.

Strike: "and"

Following: "photographer"

Insert: ", and a statement by the photographer that the photographs accurately represent the items in question"

4. Page 6, line 3.

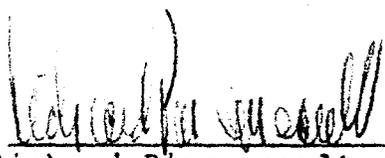
Following: "officer"

Strike: ", "

5. Page 6, line 4.

Following: line 3

Strike: line 4 in its entirety

Signed: 
Richard Pinsoneault, Chairman

1991 2-20-91
And. Coord.

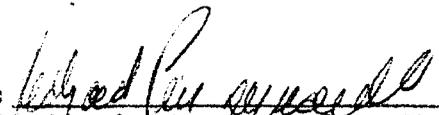
5 P. 2-20-91 2:35
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 444 (first reading copy -- white), respectfully report that Senate Bill No. 444 do pass.

Signed: 
Richard Pinsonneault, Chairman

AB 2/20/91
Amd. Coord.

SB 2/20 12:50
Sec. of Senate

Exhibit #1
20 Feb 91
SB 327

Amendments to Senate Bill No. 327
First Reading Copy

Requested by Senator Noble
For the Committee on Judiciary

Prepared by Greg Petesch
February 18, 1991

1. Page 5, line 7.
Following: "\$50,000"
Strike: "1"
Insert: "or"

2. Page 5, line 8.
Following: "not"
Strike: "less than"
Insert: "to exceed"

Exhibit #2
20 Feb 91
SB 309

SB 309

Proposed amendment by Montana Technical Council, assoc. of engineers, architects, and Surveyors.

Exclude all activities associated with infrastructure improvements and maintenance; and construction and remodeling of buildings when such work is proceeding in a responsible approved manner whereby all reasonable attempts are made by those responsible to mitigate adverse impacts on the normal conductance of business.

-Joanne C. Chang, PE
MT Tech Council



Exhibit #22
20 Feb 91

SB 309

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 309 BEFORE THE SENATE
JUDICIARY COMMITTEE, FEBRUARY 20, 1991

Mr. Chairman, Members of the Committee, for the record, my name is Don Judge and I'm here today representing the Montana State AFL-CIO in opposition to Senate Bill 309.

Let me begin by addressing what we perceive as SB 309's obvious attacks on the legitimate activities of trade labor unions. According to this bill, a person who knowingly obstructs the customers of any place of business, or in any way disrupts the normal functioning of any place of business is guilty of a crime.

This goes well beyond any attempt to simply limit a union's right to place picket in front of an employer's place of business -- it would also seem to outlaw handbilling, advertising, demonstrations, informational picketing, and perhaps even strikes themselves.

Taken at its extreme, SB 309 would seem to make it a crime for an employee to quit his or her job, if quitting "in any way disrupts the normal functioning of any place of business"!!! Or how about taking a sick leave day, when there is no one to cover for your absence?

Oh well, back to unions. The reason workers picket, handbill, place advertising or demonstrate is to call public attention to a problem they are having with their employer. If workers are prohibited from publicizing their grievance, then you limit free speech -- something which is still protected under both our State and Federal Constitutions.

If workers become criminals because they quit their jobs, as is conceivable under SB 309, then you have slavery -- something which is prohibited under our Federal Constitution.

Workers do not take strike votes lightly. After all, when they strike, they lose income, medical insurance, pension accrual and other contractually provided benefits. In addition, they put their home, car and college payments on hold. In fact, much of their life gets put on hold. So, you see, workers do not vote to strike capriciously or often.

When workers do vote to strike, its always as a last resort and often means that their employer has forced them to the point of having no other viable alternative. Under SB 309, that alternative becomes a crime.

The penalty provisions of this bill contained in Section 1, Subsection (2) would impose penalties on such criminals in the form of fines not to exceed \$1,000 or imprisonment or house arrest for a term of NOT LESS than six months! Imagine a county jail loaded with hundreds of such striking criminals for a period of at least six months.

In Section 1, Subsection (3), the penalty for stepping on a bug is a felony, and can result in a fine not to exceed \$50,000 or imprisonment in the state prison for a term not exceeding ten years! You heard me right -- the bill says that a person who commits the offense of obstruction of business, or social or recreational function "during which physical injury is inflicted on any living thing", is guilty of a felony!

In a case like this, you could be walking the picket line, a passer-by steps aside and squashes a bug, and you are charged with a felony!

Ridiculous? To quote a U.S. Senator, "you bet." But that's what SB309 in its literal form would allow.

SB 309 is an obvious affront on the labor movement, but its also an obvious affront on free speech and every individual exercising it -- consumer groups boycotting a product, social activists demonstrating for justice, farmers and ranchers marching in front of a congressman's office to protest the farm bill. Even Veterans parading to support our troops in the Middle East are possible targets of this bill.

In other words, we are all threatened and our rights placed in jeopardy by SB 309. We strongly encourage you to give this bill a "do not pass" recommendation. Thank You.

Exhibit #2
20 Feb 91
SB 349

Senator John Harp
January 30, 1991

ATTORNEY FEES WORKERS' COMPENSATION STATUTES FOR 1990

ALASKA: 25% minimum first \$1000.00; 10% on balance -- statute.

FLORIDA: 25% First \$5,000.00; 20% second \$5,000.00; 15% on balance -- statute.

KENTUCKY: 20% first \$25,000.00; 15% next \$10,000.00; 5% balance; \$6,5000.00 maximum -- statute.

LOUISIANA: 20% first \$10,000.00; 10% on balance -- statute.

MARYLAND: 20% first \$7,000.00; 15% next \$18,000; 10% balance -- policy.

NEW MEXICO: Maximum of \$12,500.00 -- statute.

UTAH: 20% first \$15,000.00; 15% next \$15,000.00; 10% balance, maximum \$9,051.00 -- rule.

VERMONT: 20% maximum \$3,000.00 -- policy.

JH/fdh

Ex. 3

2-20-91

JB 349

2-20-91

SB 349

Workers' compensation settlements top \$39 million

CHARLES S. JOHNSON
Tribune Capitol Bureau

HELENA — Attorneys obtained \$9.5 million in workers' compensation settlements for injured Montana workers in the last fiscal year and collected an estimated \$8.1 million in legal fees, the state Labor Department says.

Figures for the year ending June 30, 1990, show that 1,151 settlements averaging \$34,309 were paid to injured workers by the three methods used by Montana employers to obtain workers' compensation insurance. These are private insurance companies, self-insured employers and the state-run workers' compensation fund, better known as the State Fund.

Attorney fees averaged \$7,005 per settlement or 20.4 percent of the settlement amount.

The figures show that \$30.6 million of the \$39.5 million in settlements last year were paid by the State Fund, which insures the vast majority of Montana employers.

Similarly, \$6.3 million of the \$8.1 million in lawyer fees went to attorneys representing injured workers whose employers were insured by the State Fund.

Total settlements under the three insurance plans rose from \$38 million in fiscal 1987 to \$52.1 million in 1988. They dropped to \$32.1 million in 1989 before rising to \$39.5 million last year, the Labor Department said.

The share of the settlements that went to the injured workers' lawyers totaled \$8.6 million in fiscal 1987, \$11.67 million in 1988, \$6.6 million in 1989 and \$8.1 million last year, the department estimated.

In past years, the Labor Department has randomly checked one of every four settlements to determine the average fee as a percentage of the settlement.

In 1989 and 1990, the department used actual attorney fees for workers' compensation settlements by privately or self-insured companies.

For those insured by the State Fund, specific attorney fee information was available for only nine months out of the 24-month period. For the remaining 15 months, the department applied what was the average percentage fees, which turned out to be 20.4 percent of the settlement amounts.

Corresponding figures on how much the employers and their insurance companies paid their attorneys are shown in the table on page 3.

See COMP, 7A

Columbia Falls lawyer at head of earnings list

Tribune Capitol Bureau

HELENA — Columbia Falls attorney John Bothe continues to top the list of Montana attorneys both in the workers' compensation settlements they obtained for injured workers and the estimated legal fees they collected for their work.

Figures compiled by the state Labor Department show that Bothe obtained \$3.96 million for injured workers in 99 workers' compensation settlements in fiscal 1990, which ended June 30. The department estimates that he collected \$810,978 in legal fees for this work.

He also obtained the largest total work-comp settlements and thus the most estimated fees in fiscal 1989, according to the department's figures released recently. He obtained 71 settlements totaling \$2.9 million.

See LIST, 7A

List: Top fees

FROM IA
million and collected fees estimated at \$591,872.

Bothe also has led the list in previous compilations by the department. In fiscal 1988, he obtained more than \$4.56 million in settlements, with his fees estimated at \$1.02 million.

His law partner, David Lauridsen, was fifth in 1990 with settlements totaling \$1.2 million and fees estimated at \$251,980.

For 1989 and 1990, the Labor Department used actual attorney fee information from workers' compensation settlements by companies that were insured by private companies or self-insured.

But for those companies that insured with the state-run plan, specific attorney fee information was available for only nine months out of the 24-month period. For the remaining 15 months, the department applied what was the average percentage of attorney fees, which turned out to be 20.4 percent of the settlement amount, according to claims examiner Carol Gleed. Similar calculations were made in past years.

Here is a list of attorneys whose estimated fees from workers' compensation settlements topped \$100,000 in fiscal 1990:

1) Bothe, 99 settlements totaling \$3.96 million; estimated fees of \$810,978.

2) Tom Lewis of Great Falls, 46 settlements totaling \$2.1 million; estimated fees \$340,275.

3) Norman Grosfield of Helena, 41 settlements totaling \$1.4 million; estimated fees of \$281,196.

4) Thomas Lynaugh of Billings, 36 settlements totaling \$1.2 million; estimated fees of \$253,330.

5) Lauridsen of Columbia Falls, 38 settlements totaling \$1.2 million; estimated fees of \$251,980.

6) Monte Beck of Bozeman, 22 settlements totaling \$1.04 million; estimated fees of \$212,614.

7) Janice Van Riper of Helena, 22 settlements totaling \$850,433; estimated fees of \$173,488.

8) Milton Datsopoulos of Missoula, 19 settlements totaling \$813,163; fees of \$165,885.

9) Michael Prezeau of Whitefish, 24 settlements totaling \$794,410; estimated fees of \$162,060.

10) John Whelen of Butte, 24 settlements totaling \$723,821; estimated fees of \$147,659.

11) Ben Everett of Anaconda, 16 settlements totaling \$243,493; estimated fees of \$120,046.

12) Victor Halverson of Billings, 17 settlements totaling \$517,900;

13) Roger Sullivan of Kalispell, 10 settlements totaling \$514,600; estimated fees of \$104,978.

14) Gregory Skakles of Anaconda, 15 settlements totaling \$499,797; estimated fees of \$101,959.

15) Kenneth Grenfell of Missoula, 13 settlements totaling \$497,754; estimated fees of \$101,542.

Comp: Talled

FROM IA
torneys to defend work-comp cases are not a matter of public record, except for the state-run Compensation Mutual Insurance Fund, which insures 27,000 Montana employers.

The State Fund paid \$894,434 to hire outside defense lawyers to handle court cases in fiscal 1990 and \$691,594 in 1989, according to its president, Patrick Sweeney.

In addition, he estimated the State Fund spends about \$200,000 a year to its own legal staff, which handles mediation and some contested cases.

Sweeney said he has no idea how much self-insured or privately-insured companies pay in attorney fees.

Ex #3
2-20-91
SB 349

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of February, 1991.

Name: Riley Johnson

Address: 491 South Park Ave
Helena, mt 59601

Telephone Number: 443-3797

Representing whom?

(NFIB) National Federation of Independent Business

Appearing on which proposal?

SB-214

Do you: Support? Amend? Oppose?

Comments:

The passage of the "bad check" bill back in the
early 1980s was a major piece of small business legislation.
at the time the limit was \$1,500. It was subsequently raised
to \$2,500 and now we are asking you to support SB-214
to raise the limit to \$3,000. It is the one defense a
small business person has against one of our worst
enemies — bad checks. Utilizing the NFIB system, I have
brought bad checks under control without expensive
attorneys or major court costs. The new limit is
justified because many of our members are in the
"major purchase" area like furniture, appliances
or building materials. A limit of \$3,000 would include
99% of all checks written to a small business.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit # 4
2/20/91 SB 214

WARNING

BAD CHECK WRITERS

FACE SEVERE PENALTIES

IN MONTANA



Bad check writers also face criminal penalties.

CIVIL PROSECUTION

1) Prosecution allows you to take a bad check into court and sue for payment. This will cost some cost to you in both time and money.

2) Prepared to explain the circumstances of writing the check and your efforts to collect. Bring all documents with you including bank statements, copies of letters, notes of phone calls, and responses from the defendant.

3) Remember that the courts will not award additional damages if you are paid the amount of the check and any fees before the trial begins.

4) The first step in the collection procedure begins when a check is returned by the bank marked non-sufficient funds, account closed, or stop payment.

5) Collection procedures require that you submit the checks twice with at least seven days between deposits.

6) Act promptly after receiving a bank notice that a check has been dishonored. Notify the check writer either in person or by letter that the check has been returned and that you request immediate payment. You are also entitled to collect a reasonable handling fee.

7) If you fail to receive payment, mail the attached model letter by certified mail demanding payment. This letter must be sent by first class or certified mail.

8) Attach a copy of the check to the letter.

9) If you haven't received payment after 10 days from the date of the demand letter, you may file your claim in Small Claims Court or refer the check to a collection agency.

10) Collection Agencies usually will not pursue one or two checks, but instead, will contract to handle all of your bad check or bad debt problems. They will charge either a percentage of the amount of the check or a set fee on each collection.

11) Be certain that any agency you negotiate with is properly certified or licensed. Also consider the types of insurance they carry and the extent to which you will be protected if they make any mistake.

12) Small Claims Court requires you to fill out a form and pay a small fee. You recover the fee if you obtain favorable judgment and collect.

13) Section 27-1-717 MCA allows you to recover the amount of the check, plus damages of 3%, or three times the amount of the check - whichever is more. Damages may not exceed the amount of the check by more than \$500.

14) The statute requires that the letter demanding payment on the check have been sent to the check writer.

SAMPLE BAD CHECK DEMAND LETTER

(Name of Check Writer)
(Address of Check Writer)

Dear _____:

A check written by you and made payable to _____ (Business) has not been accepted for payment by _____ (Name of Bank). The check is dated _____ and it is numbered _____.

This letter is a demand for payment.
Please send us immediate payment for the following amount:
Amount of check \$ _____
Service charge \$ _____
Total to be paid \$ _____

Handwritten: Sent 11-27-85 [Signature]

You are CAUTIONED that unless you pay these amounts within fifteen days of the date of this letter is post marked, Montana Statutes, 27-1-712 MCA allows us to collect the following penalties in CIVIL court:

- 1) The original amount of the check.
- 2) Damages of three times the amount of the check or \$100, whichever is greater, up to \$500.
- 3) All court costs, attorney fees and service charges.

Our court action against you would be in the amount of \$ _____.

Please mail your payment promptly to:
(Name) _____
(Name of Business) _____
(Business Address) _____

You should be aware that these damages are allowed by law in a CIVIL action and do not take the place of any criminal prosecution that may be imposed on you by local law enforcement officials.

Sincerely,
(Signature)

(attach copy of check here)

The "Notice of Small Claims" is served upon the defendant by certified or registered mail, or by a sheriff or process server. The filing fee and costs can be recovered when judgment is obtained and collected. Check with your local court to determine this fee.

- 3) You will be notified by the court of the date when your case will be heard. You should be prepared to prove in court your attempts to collect.

Take all documents related to the case. These might include notices from the bank, demand letters, mail receipts, notes of your conversations and copies of any correspondence with the check writer regarding your effort to collect.

You should also take the person from your business who accepted the check. This is in order to identify the writer and testify about any initials, identification, or information written on the check.

- 4) A favorable judgment makes the defendant liable and requires payment in accordance with a court ordered payment plan.

If the bad check writer fails to make the payment on time, the court should be notified. They will issue a Writ of Garnishment or Writ of Execution along with cer-

tification entitling recovery of reasonable costs and attorney fees incurred while seeking enforcement.

CRIMINAL PROSECUTION

Although circumstances vary in different counties, nearly all police agencies find that demands placed on their resources by more serious crimes make it impossible to be involved in bad check cases except on a selective basis.

- 1) Contact your local police department and find out how they handle bad check cases. Some offices have detailed guide materials. Ask for a copy. If you believe criminal charges are warranted, contact the police to determine whether you should sign a complaint.
- 2) All further action will be completed by the police and local prosecutor. The fact that a check has been written and no payment received is considered prima facie evidence of an intent to defraud.
- 3) Once judgment is found, the law requires that you be paid the amount of the check immediately.

In criminal bad check prosecution, merchants must provide detailed information to the police and the courts. Law enforcement agencies are likely to refuse prosecution unless evidence is accurate and complete.

SMALL CLAIMS COURT PROCEDURES

1) Claims should be filed in the district where the defendant lives. The proper district can be determined by calling your local court house. The maximum amount that can be sued for in Small Claims Court is \$1,500. A judge presides over each case and lawyers are not allowed to represent either party.

Handwritten: \$2500

2) Filing is done by filling out a "Notice of Small Claims" form and paying a filing fee. You will need to give the defendant's name, address and the amount of the claim you are making.

ORDER FORM FOR BAD CHECK WARNING SIGN

(Black and Red vinyl decal with an adhesive back and measuring 5" x 8")

Hi-Noon, Inc _____ Business Name

P.O. Box 7578 _____ Street Address

Missoula _____ City Montana _____ State 59870 _____ Zip

5 _____ Number of Signs \$10.00 _____ Amount enclosed at \$2 per sign

Make checks payable to BAD CHECK SIGNS, NFIB
9 North Last Chance Gulch, Helena, MT 59601

Exhibit #4a
20 Feb 91
SB 309

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

February 20, 1991

Mister Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the the American Civil Liberties Union of Montana. On behalf of the 300 families who are dues paying members of our organization I am here to go on record as strongly opposing SB 309.

If this proposed legislation was to pass, you might as well rip up the Bill of Rights. It is overbroad as it challenges fundamental rights to assemble, speak and demonstrate. It would allow for content based interpretations of the law that would tolerate assembly and speech that supports the status quo while penalizing people who come together to voice their concerns about public policies or work conditions. For example, if a business is disrupted by a parade, say to support the troops, it is unlikely the ordinance would be put into effect. However, if a local union were to choose to picket a particular establishment, they would probably be prosecuted under this law. In addition, if there are further penalties when violence or physical injury is involved, are we not creating a redundant provision to existing assault or battery charges?

This bill is un-American to the core as it denies fundamental protections afforded all of us. The ACLU of Montana strongly recommends that you give SB 309 a DO NOT PASS. Thank you.

"Eternal vigilance is the price of liberty"

FEB 19 '91 11:11

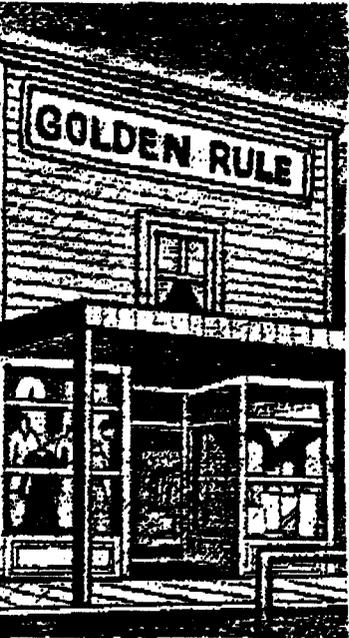
FROM J.C. PENNEY

SB 327
2-20-91
PAGE.001

JCPenney

WESTERN REGIONAL COUNSEL

6131 ORANGETHORPE AVENUE
BUENA PARK, CALIFORNIA 90624
TELEPHONE:
(714) 523-6822 / PN: 720-6822
FACSIMILE:
(714) 523-6844 / PN: 720-6844



F A X C O V E R L E T T E R

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Jim Peters

FAX NO.: (406) 656-0372

FROM: Richard Ceccia

DATE: February 18, 1991

TOTAL PAGES SENT: 7 (including cover letter)

PLEASE CALL BACK AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED.

MESSAGE TO RECIPIENT:

Have provided the summary on Crim Pen for Shoplifting
and the Hawaii, California and Utah statute

JCPenney
SOUTHWESTERN
REGIONAL OFFICE

THANK YOU.



1990
WESTERN REGION
CRIMINAL PENALTIES FOR SHOPLIFTING

<u>State & Statutory Citation</u>	<u>Maximum Penalty - First Offense</u>	<u>Maximum Penalty - Subsequent Offenses</u>
Arizona. A.R.S. §§13-1805(G), 13-707, 13-8021; 13-701	To \$100 - 6 months, \$2,500; over \$100 to \$1,000 - 1 1/2 years, \$150,000; over \$1,000 - 2 years, \$150,000.	Same
California. Penal Code §§490.5, 666	6 months; \$50 to \$1,000.	1 year, if previously imprisoned.
Hawaii. H.R.S. §§708-833.5, 706-640, 706-660,	To \$100 - 30 days, \$500, minimum twice value; over \$100 to \$300 - 1 year, \$1,000, minimum three times value; over \$300 - 5 years, \$5,000, minimum four times value.	Minimum fines doubled.
Idaho. I.C. §§ 18-2401, 18-2407, 18-2408; 18-4626	1 year, \$1,000; (concealment - 6 months, \$300).	Same
Montana. M. C. A. §45-6-301	To \$300 - 6 months, \$500; over \$300 - 10 years, \$50,000.	Same

Page Two

1990 Western Region - Criminal Penalties For Shoplifting

<u>State & Statutory Citation</u>	<u>Maximum Penalty - First Offense</u>	<u>Maximum Penalty - Subsequent Offenses</u>
Nevada N.R.S. § 205.0835	Less than \$250 - 6 months, \$1,000; \$250 or more - 10 years, \$10,000.	Same
New Mexico. N.M.S.A. §30-16-20, 31-19-1, 31-18-15	To \$100 - 6 months, \$500; over \$100 to \$2,500 - 18 months, \$5,000; over \$2,500 - 3 years, \$5,000.	Same
Oklahoma. O.S.A. Title 21, § 1731	To \$50 - 30 days, \$100; over \$50 - 5 years.	To \$50 - 1 year \$1,000; over \$50 same.
Oregon. O.R.S. §§ 164.043, 164.045, 164.055, 161.605, 161.615, 161.625, 161.635	To \$50 - 30 days, \$500 \$50 under \$500 - 1 year, \$2,500; \$500 and over - 5 years, \$100,000.	Same
Texas. Penal Code §§31-03(e) 12-21, 12-22, 12-23, 12-34,	To \$20 - \$200; \$20 but less than \$200 - \$1,000, 180 days; \$200 but less than \$ 750 - \$2,000, 1 year; \$750 or more - \$10,000, 10 years.	To \$20 - \$1,000, 180 days; to \$750 with two previous convictions- \$10,000, 10 years.

Page Three
1990 Western Region - Criminal Penalties For Shoplifting

<u>State & Statutory Citation</u>	<u>Maximum Penalty - First Offense</u>	<u>Maximum Penalty - Subsequent Offenses</u>
Utah. U.C.A. §§ 76-6-602, 76-6-606, 76-6-412(1), 76-3-203,, 76-3-204, 76-3-301	To \$100 - 6 months, \$1,000; over \$100 to \$250 - 1 year, \$2,500; over \$250 to \$1,000 - 5 years, \$5,000; over \$1,000 - 15 years, \$10,000.	Any amount with two prior theft convictions - 5 years, \$5000.
Washington. RCW 9A-56.030, 9A.56.040, 9A.56.050, 9A.94A-310, 9.94A.386	To \$250 - ? over \$250 to \$1,500 - 60 days, \$10,000 over \$1,500 - 90 days \$20,000	To \$250 - ? over \$250 to \$1,500 - 90 days, \$10,000 over \$1,500 - 6 months, \$20,000.

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny
§ 89.

C.J.S. — 52A C.J.S. Larceny §§ 46.47.
Key Numbers. — Larceny = 15.

76-6-411. Repealed.

Repeals. — Section 76-6-411, as enacted by
L. 1973, ch. 196, § 76-6-411, relating to theft
by failure to make required payment or dispo-

sition of property subject to legal obligation,
was repealed by Laws 1974, ch. 32, § 41.

UTAH

76-6-412. Theft — Classification of offenses — Action for treble damages against receiver of stolen property.

(1) Theft of property and services as provided in this chapter shall be punishable:

(a) as a felony of the second degree if the:

- (i) value of the property or services exceeds \$1,000;
- (ii) property stolen is a firearm or an operable motor vehicle;
- (iii) actor is armed with a deadly weapon at the time of the theft;

or

(iv) property is stolen from the person of another;

(b) as a felony of the third degree if the:

(i) value of the property or services is more than \$250 but not more than \$1,000;

(ii) actor has been twice before convicted of theft, any robbery, or any burglary with intent to commit theft; or

(iii) property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, or poultry;

(c) as a class A misdemeanor if the value of the property stolen was more than \$100 but does not exceed \$250; or

(d) as a class B misdemeanor if the value of the property stolen was \$100 or less.

(2) Any person who has been injured by a violation of Subsection 76-6-408(1) may bring an action against any person mentioned in Subsection 76-6-408(2)(d) for three times the amount of actual damages, if any sustained by the plaintiff, costs of suit and reasonable attorneys' fees.

History: C. 1953, 76-6-412, enacted by L. 1973, ch. 196, § 76-6-412; 1974, ch. 32, § 18; 1975, ch. 46, § 1; 1977, ch. 89, § 1; 1989, ch. 78, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, substituted "any robbery, or any burglary with intent to commit theft" for "of property or services valued at \$250 or less" in Subsection (1)(b)(ii),

changed the style of the statutory references in Subsection (2), and made stylistic changes.

Cross-References. — Bus Passenger Safety Act, theft of baggage or cargo, § 76-10-1508.

Civil liability for treble damages for theft of livestock, § 4-24-27.

Person convicted of theft or livestock liable in civil action, § 4-24-27.

issue as to lawfulness of an arrest or otherwise established that the without warrant. *People v Morcal* App 3d Supp 1, 270 Cal Rptr

tion for attempted murder (Pen. Code, § 187) and assault with a firearm (Pen. Code, § 245, subd. (a)(2)), the trial court did not instruct on attempted second degree murder since attempted murder is not a lesser offense. Under Pen. Code, § 664, the penalty varies depending upon the degree of the attempted murder was willful, premeditated; however, the Legislature has provided for varied punishments for a crime depending on factors involved in the commission of the offense without dividing it into degrees. Under instructions given by the trial court to the jury of its tasks and choices, Pen. Code, § 664, subd. 1. Further, since the offense is not divided into degrees, Pen. Code, § 664, subd. 1. Where the jury fails to determine a degree, the defendant is deemed guilty of lesser degree). *People v Douglas* (1990, 1st Dist) 211 Cal App 3d 544, 269 Cal Rptr 579.

Pen. Code, § 1731.5 (commitment to the State Authority for convictions of first degree murder and Pen. Code, § 664 (punishment for first degree murder) should not be construed as permitting a defendant to be tried as an adult, found guilty of first degree murder, and sentenced to death with possibility of parole, to be committed to the authority. Adding Pen. Code, § 664, to increase the punishment for attempted first degree murder or nine years to life with possibility of parole. The Legislature created a situation in which a defendant convicted of first degree murder while those convicted of second degree murder do not, it is not the purpose to define crimes and prescribe punishment in the absence of statutory ambiguity. Institutional infirmity, the plain language of Pen. Code, § 1731.5, and Pen. Code, § 664 should not be disregarded. *People v Williams* (1st Dist) 211 Cal App 3d 1114,

accomplishment of differ-

n attempting unsuccessful commission of another and in suffering the punish-

Sections" at the beginning of the

§ 666. [Punishment for petit theft after prior conviction]

Every person who, having been convicted of petit theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petit theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

Amended Stats 1986 ch 402 § 1. Amended Stats 1988 ch 831 sec 1.

Amendments

1986 Amendment: Added "auto theft under Section 10851 of the Vehicle Code."

1988 Amendment: Substituted (1) "Robbery, or a felony violation of Section 496" for "or robbery"; and (2) "that" for "such" wherever it appears.

Witkin & Epstein, Criminal Law (2d ed) §§ 19, 71, 302, 568, 1510, 1522, 1523, 1526, 1527, 1529, 2134, 2158, 2833.

Witkin Evidence (3d ed) §§ 295, 296.

Cal Jur 3d (Rev) Criminal Law §§ 526, 1206, 3167.

Calif Criminal Forms & Instructions (BW, 1983) §§ 23-9, 39:11.

Review of Selected 1976 Legislation. 18 Pacific LJ 567.

Review of Selected 1988 Legislation. 20 Pacific LJ 530.

1. In General

In the operation of Pen. Code, § 666, which provides that a person convicted of petit theft, grand theft, burglary, or robbery, who has served a prison term therefor, and who is subsequently convicted of petit theft, is punishable by imprisonment, a prior conviction for one of the specified offenses does not work as an enhancement, i.e., cause an additional term of imprisonment to be added to the base term for petit theft. Rather, it is a necessary element of an entirely different statutory offense. It transforms what otherwise would be a misdemeanor into a hybrid felony misdemeanor, with a greatly increased maximum penalty. In re Anthony R. (1984, 5th Dist) 154 Cal App 3d 772, 201 Cal Rptr 299.

2. Purpose, Construction, and Application

A juvenile who had been committed to the California Youth Authority based on juvenile court findings that he had committed two burglaries, vehicle theft, and had driven without a license, and who was subsequently found by the juvenile court to have committed petit theft, could not be found to have violated Pen. Code, § 666, which provides that a person who has been convicted of burglary, who has served a prison term therefor, and who is subsequently convicted of petit theft, is punishable by imprisonment. Cal. Const., art. I, § 28, subd. (f) (a part of the Victims' Bill of Rights (Proposition 8)), which provides that any prior felony conviction shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding, does not affect the rule of *Welf. & Inst. Code, § 203*, that adjudications of juvenile wrongdoings are not criminal convictions. In re Anthony R. (1984, 5th Dist) 154 Cal App 3d 772, 201 Cal Rptr 299.

Petty theft with a prior conviction (Pen Code,

§ 666) is a crime whose elements are not capable of attempt. *People v Bean* (1989, 3rd Dist) 213 Cal App 3d 639, 261 Cal Rptr 784.

6. Service of Sentence Under Prior Conviction

The same prior conviction charged as an element of the felony of petit theft with a prior conviction and imprisonment in any penal institution (Pen. Code, § 666) may also serve as the basis for an enhancement of the sentence for that crime under Pen. Code, § 667.5, subd. (b). The phrase "any penal institution" as used in § 666 includes not only those institutions in which service of a "prior separate prison term" qualifies as a sentence enhancement under Pen. Code, § 667.5, but also county jails. Since § 666 can be violated without service of a prior "prison term" within the meaning of § 667.5, the elements of the two provisions relating to prior incarcerations are not congruent. *People v Bruno* (1987, 3d Dist) 191 Cal App 3d 1102, 237 Cal Rptr 31.

10. Admissibility of Evidence

In a prosecution for theft with a prior theft conviction (Pen. Code, § 666), the trial court erred in allowing the prosecution to prove to the jury the fact that defendant had suffered a prior felony theft conviction over defendant's offer to stipulate to the conviction, notwithstanding the constitutional mandate (Cal. Const., art. I, § 28, subd. (f)) that a prior felony offense must be proven to the trier in open court when it is an element of a felony offense. An element of § 666 is a prior theft offense, but not necessarily a felony theft offense. The constitutional provision does not require that the jury be informed of a prior offense that is not described as a felony. Therefore, it was gratuitous and irrelevant to announce that defendant's prior conviction was a felony. *People v Haysbert* (1990, 1st Dist) 220 Cal App 3d 1108, 269 Cal Rptr 839.

708-832

HAWAII PENAL CODE

(2) Theft in the third degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1974, c 201, §2 and c 242, §2; am L 1979, c 106, §7; am L 1986, c 314, §65]

§708-833 Theft in the fourth degree. (1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of \$100.

(2) Theft in the fourth degree is a petty misdemeanor. [L 1972, c 9, pt of §1; am L 1986, c 314, §66]

SUPPLEMENTAL COMMENTARY ON §§708-830 TO 833

Act 314, Session Laws 1986, amended §§708-831 to 833 by increasing the dollar amount of the property involved in the theft offenses. The previous figures were designated in 1972 when the Code was first codified. With the increase, the dollar amount will more accurately reflect current property values and consequently the offenses will warrant the level of culpability intended when the offenses were originally drafted. Senate Standing Committee Report No. 820-86.

§708-833.5 Shoplifting. A person convicted of committing the offense of shoplifting as defined in section 708-830 shall be sentenced as follows:

- (1) In cases involving property the value or aggregate value of which exceeds \$300: as a class C felony, provided that the minimum fine shall be four times the value or aggregate value involved;
- (2) In cases involving property the value or aggregate value of which exceeds \$100: as a misdemeanor, provided that the minimum fine shall be three times the value or aggregate value involved;
- (3) In cases involving property the value or aggregate value of which is \$100 or less: as a petty misdemeanor, provided that the minimum fine shall be twice the value or aggregate value involved;
- (4) If a person has previously been convicted of committing the offense of shoplifting as defined in section 708-830, the minimum fine shall be doubled that specified in paragraphs (1), (2), and (3), respectively, as set forth above; provided in the event the convicted person defaults in payment of any fine, and the default was not contumacious, the court may sentence the person to community services as authorized by section 706-605(1)(e). [L 1979, c 202, §2; am L 1982, c 233, §1; am L 1986, c 314, §67]

COMMENTARY ON §708-833.5

Act 314, Session Laws 1986, increased the dollar amounts of the property involved in the offense of shoplifting. With the increase, the dollar amounts will more accurately reflect current property values and consequently the offense will warrant the level of culpability intended when it was originally drafted. Senate Standing Committee Report No. 820-86.

§708-836 Unauthorized control of propelled vehicle.

Case Notes

Section covers defendant's unauthorized use of truck for his convenience; evidence sufficient to sustain conviction. 789 F.2d 1364.

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Act 155, Session
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WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of FEB., 1991.

Name: JOLYN FORTER

Address: 924 AVE B #A

Telephone Number: 248-1400

Representing whom?
GIBSONS - BILLINGS

Appearing on which proposal?
SB 327

Do you: Support? Amend? Oppose?

Comments:
I support this bill, because I feel second time shop lifters need to have a harsher penalty. As a college student majoring in Sociology, I have become very interested in crime. As a result I have become involved in security at Gibsons in Billings. I decided to get a list of college students from Eastern Montana College as well as Rocky Mountain College to sign their name and age in support of bill 327.

SD 327
2-20-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of Feb, 1991.

Name: MARJORIE SPERRY

Address: 511 9th ST West
BILLINGS, MT 59101

Telephone Number: 248-4297

Representing whom?
J.C. PENNEY Co.

Appearing on which proposal?
SB 327

Do you: Support? Amend? Oppose?

Comments:

Increasing the Penalty for Shoplifters

Name	Age
1. Lisa Lymondowski	27
2. Kathy Sherwood	21++
3. Jesse Bisceno	-
4. Joe Strungari	20
5. Kyle Palm	19
6. Todd Fardige	21
7. Don Anderson	19
8. Brian Hunter	19
9. Paul McK	19
10. Patrick H. Dawson II	19
11. Mark Wally	19
12. JONATHAN GOFF	19
13. Dan D. Tyla	21
14. Bryan Frew	22
15. Arturo Puri	19
16. Damon Ballantyne	23
17. Kyle B. Lorange	21
18. Jeremy Blaylock	18
19. Brad Beun	20
20. Rick Baxter	
21. Scott Lloyd	18
22. Monte Banks	18
23. Jeff Davenport	18
24. Jay Kragh	14
25. Grant Fisher	19
26. Dennis G. Deise	20
27. Eric Steiner	20
28. Mike White	20
29. Monte Stokes	20
30. Dan Lencioni	20
31. Lloyd Pilcher	21
32. M. J. C. L.	18

293

	<u>Name</u>	<u>Age</u>
33	Mike Kee	20
34	Kelly Marrou	19
35	Kristie Johnson	18
36	Sammy Breeman	18
37	Jennifer Degett	18
38	Caitlyn Fusley	18
39	John for	20
40	William C. Injun	23
41	Mark A. Zervoz	26
42	Mandi Oskesen	31
43	Tom Mollin	20
44	C. Catt	19
45	C. Catt	18
46	Papa P. Thiel	20
47	Colleen Lee Lawrence	23
48	Lyn Ann M. Vogel	21
49	Gina Simpson	21
50	Robert Fisher Sr.	19

Increase Penalty for Shoplifting

51.	John Nelson	210
52.	Bruce Brown	28
53.	Paul [unclear]	23
54.	Paula Lewis	29
55.	Nancy Brown	35
56.	Jean Fortner	51

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SB 327
2-20-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of FEBRUARY, 1991.

Name: LLOYD KNUDSEN SB 327

Address: 717 E. 6TH AVE #A
HELENA, MT. 59601

Telephone Number: 442-7503

Representing whom?
MONTANA PERMIL SECURITY + INVESTIGATIONS

Appearing on which proposal?
SB 327

Do you: Support? Amend? Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 20 Feb 91 Bill No. JB349 Time 11:45am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail	✓	
Sen. Pinsonneault	✓	
	6	5

Jody Bird
Secretary

Sen. Dick Pinsonneault
Chairman

Motion: Harp - DP carried

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bruce Rowse	Buttreys Food & Drug	327	X	
Bill LEWIS	HERBSTGEE'S DEPT STORES	327	X	
Wyn Fottell	GIBSONS	327	X	
Bill Stevens	117 Food Dist Assn	327	X	
John CAMSON	MT. COLLECTORS ASSOCIATION	214	X	
Floyd Knudsen	MT. RETAIL SEC + INVEST.	327	X	
Charles R. Brooks	MT RETAIL ASSOC.	327		✓
Jose Pedro Hernandez	Limited Cuts of Fabric	214		✓
Vivian N. Van Buren	SD # 42	309		✓
Auric Shadon	Bozeman Chamber	327	X	
Richard Robbins	W. VALLEY COOP	309	X	
H. Buck Bels	MT Chamber of Commerce	309	X	
Bob Heiser	U. F. C. W.	309		X
Pat Bradley	MT Magistrate Assc	214	X	
MIKE WALL	POWER TOWNSEND Co Helena	327	X	
Don Judge	MT STATE AFL-CIO	309		X
John Winters	MT Trial Lawyers	349		X
DAN EDWARDS	O. C. B. W.	309		X
Ann Gilkey	DEFS	419		
DAN EDWARDS	O. C. B. W.	444	X	
Janice S. Van Riper	self	345		X
Kay Foster	Bieling Chamber	327	X	
Joanne P. Chance PE	MT Tech Council	309		X
Jim Jansen	MEIC	309		X
Bob Heiser	U. F. C. W.	327	X	
Scott Omelet	ACLU	309		X
DAN EDWARDS	O. C. B. W.	327	X	

