

SENATE BILL NO. 200

INTRODUCED BY E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE DISPOSITION OF CERTAIN PROPERTY HELD BY LAW ENFORCEMENT AGENCIES; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH PROCEDURES TO ALLOW LOCAL LAW ENFORCEMENT TO DISPOSE OF FOUND OR ABANDONED PROPERTY; ALLOWING STATE AGENCIES THAT EMPLOY A PEACE OFFICER TO ADOPT RULES TO DISPOSE OF FOUND OR ABANDONED PROPERTY HELD BY THE AGENCY; REVISING PROCEDURES FOR DESTRUCTION OF PROPERTY HELD AS EVIDENCE BY A LAW ENFORCEMENT AGENCY FOR A CASE FILED IN A COURT OF LIMITED JURISDICTION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 46-5-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Authorization to dispose of certain property in possession of local law enforcement. (1) The legislative body of a local government may, by ordinance or resolution, provide for the care, restitution, sale, donation, return, or destruction of unclaimed tangible personal property that may come into the possession of a peace officer or a law enforcement entity of the local government for which state law does not otherwise provide a procedure for disposition.

(2) At a minimum, the ordinance or resolution must provide:

(a) that unclaimed property valued at \$20 or more must be held by the local government for a period of at least 3 months;

(b) a process by which the local government shall attempt to notify the legal owner of unclaimed property held in its possession;

(c) a process by which the local government may allow a finder of unclaimed personal property to take possession of that property if it remains unclaimed;

(d) that unclaimed property will be destroyed as allowed or required by local, state, or federal law, returned to the finder, donated, or otherwise sold at public auction to the highest bidder;

(e) that, at least 10 days prior to the time fixed for the destruction, return, donation, or sale at public auction of unclaimed property, notice of the planned disposal must be given by publication one time in a

1 newspaper of general circulation; and

2 (f) that, upon proof of legal ownership, the local government shall restore the unclaimed property to its
3 legal owner.

4 (3) After property has been destroyed, returned, donated, or sold at public auction, the property or the
5 value of the property is not redeemable by the owner or another person entitled to possession.

6
7 **NEW SECTION. Section 2. Disposition of property held by state public safety officer --**
8 **rulemaking.** (1) A state agency that employs a public safety officer may adopt administrative rules to provide for
9 the care, restitution, sale, donation, return, or destruction of unclaimed tangible personal property that may come
10 into the possession of the agency or a public safety officer employed by the agency for which state law does not
11 otherwise provide a procedure for disposition.

12 (2) At a minimum, the ordinance or resolution must provide:

13 (a) that unclaimed property valued at \$20 or more must be held by the state agency for a period of at
14 least 3 months;

15 (b) a process by which the state agency shall attempt to notify the legal owner of unclaimed property held
16 in its possession;

17 (c) a process by which the state agency may allow a finder of unclaimed personal property to take
18 possession of that property if it remains unclaimed;

19 (d) that unclaimed property will be destroyed as allowed or required by local, state, or federal law,
20 returned to the finder, donated, or otherwise sold at public auction to the highest bidder;

21 (e) that, at least 10 days prior to the time fixed for the destruction, return, donation, or sale at public
22 auction of unclaimed property, notice of the planned disposal must be given by publication one time in a
23 newspaper of general circulation; and

24 (f) that, upon proof of legal ownership, the state agency shall restore the unclaimed property to its legal
25 owner.

26 (3) After property has been destroyed, returned, donated, or sold at public auction, the property or the
27 value of the property is not redeemable by the owner or another person entitled to possession.

28 (4) For the purposes of this section, "public safety officer" has the meaning provided in 44-4-401.

29
30 **Section 3.** Section 46-5-307, MCA, is amended to read:

1 **"46-5-307. Petition for destruction, disposal, or use of evidence.** (1) ~~The~~ For a case filed in district
2 court, the prosecutor may file a petition with the court alleging that there exist certain items held as evidence
3 either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The
4 petition must include:

5 (a) the name and title of the petitioner;

6 (b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description
7 of each that may be attached to the petition by separate inventory;

8 (c) when the items were seized;

9 (d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means
10 any property that is unlawful to produce or possess;

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

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

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

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

19 (2) If the petition required under subsection (1) requests the destruction or use of contraband, it must
20 describe how destruction is to be accomplished or how the contraband has training or law enforcement value and
21 its contemplated use by a law enforcement agency.

22 (3) ~~The county attorney~~ petitioner shall provide a victim of the offense with a copy of the petition required
23 under subsection (1) at the victim's last known address and shall advise the court whether the victim wishes to
24 be heard on the petition. It is the duty of the victim to provide the law enforcement agency, court, or prosecuting
25 attorney's office with the victim's current contact information.

26 (4) (a) For a case filed in a court of limited jurisdiction, the owner of property seized in connection with
27 a criminal charge must contact the prosecuting attorney's office within 6 months of the conclusion of the case,
28 including appeal, to claim the property.

29 (b) An owner who fails to contact the prosecuting attorney's office within 6 months after the conclusion
30 of the case surrenders the property to the seizing or holding agency and forfeits any right to the property.

(c) If an owner claiming property demonstrates proof of ownership and the prosecuting attorney determines the property is no longer needed for the prosecution of the case, the property must be returned to the claiming owner."

NEW SECTION. **Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 8, part 1, and the provisions of Title 7, chapter 8, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [section 2].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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