

1 SENATE BILL NO. 95
2 INTRODUCED BY B. USHER
3 BY REQUEST OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SENTENCING LAWS FOR THEFT, FAILURE TO
6 RETURN RENTED OR LEASED PERSONAL PROPERTY, ISSUING A BAD CHECK, DECEPTIVE
7 PRACTICES, AND FORGERY; AND AMENDING SECTIONS 45-2-101, 45-6-301, 45-6-309, 45-6-316, 45-6-
8 317, AND 45-6-325, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 **Section 1.** Section 45-2-101, MCA, is amended to read:

13 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in
14 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the
15 following definitions apply in this title:

16 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
17 communication, and when relevant, a failure or omission to take action.

18 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based
19 on a record or documentation prescribed by law or in which a law or a regulation is particularized in its
20 application to an individual.

21 (3) "Another" means a person or persons other than the offender.

22 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
23 advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

24 (b) Benefit does not include an advantage promised generally to a group or class of voters as a
25 consequence of public measures that a candidate engages to support or oppose.

26 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes
27 mental illness or impairment.

28 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a

1 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
2 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the
3 instrument might reasonably suffer by virtue of the loss of the instrument.

4 (iii) The value of electronic impulses, electronically produced data or information, computer
5 software or programs, or any other tangible or intangible item relating to a computer, computer system, or
6 computer network is considered to be the amount of economic loss that the owner of the item might reasonably
7 suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not
8 limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

9 (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the
10 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

11 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
12 whether from the same person or several persons, may be aggregated in determining the value of the property.

13 (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with
14 provision for transport of an operator.

15 (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is
16 readily capable of being used to produce death or serious bodily injury.

17 (80) "Witness" means a person whose testimony is desired in an official proceeding, in any
18 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

19

20 **Section 2.** Section 45-6-301, MCA, is amended to read:

21 **"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly
22 obtains or exerts unauthorized control over property of the owner and:

23 (a) has the purpose of depriving the owner of the property;

24 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
25 owner of the property; or

26 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
27 probably will deprive the owner of the property.

28 (2) A person commits the offense of theft when the person purposely or knowingly obtains by

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1 threat or deception control over property of the owner and:

2 (a) has the purpose of depriving the owner of the property;

3 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
4 owner of the property; or

5 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
6 probably will deprive the owner of the property.

7 (3) A person commits the offense of theft when the person purposely or knowingly obtains control
8 over stolen property knowing the property to have been stolen by another and:

9 (a) has the purpose of depriving the owner of the property;

10 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
11 owner of the property; or

12 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
13 probably will deprive the owner of the property.

14 (4) A person commits the offense of theft when the person purposely or knowingly obtains or
15 exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or
16 county agency, regardless of the original source of assistance, by means of:

17 (a) a knowingly false statement, representation, or impersonation; or

18 (b) a fraudulent scheme or device.

19 (5) A person commits the offense of theft when the person purposely or knowingly obtains or
20 exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title
21 39, chapter 71, by means of:

22 (a) a knowingly false statement, representation, or impersonation; or

23 (b) deception or other fraudulent action.

24 ~~(6) — A person commits the offense of theft when the person:~~

25 ~~(a) — purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or~~

26 ~~(b) — purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-~~

27 ~~1102.~~

28 ~~(7)(6)~~ A person commits the offense of theft of property by embezzlement when, with the purpose to

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1 deprive the owner of the property, the person:

2 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's
3 employer or over property entrusted to the person; or

4 (b) purposely or knowingly obtains by deception control over property of the person's employer or
5 over property entrusted to the person.

6 ~~(7)(8)(7)~~ —(a) A person convicted of a first offense of the offense of theft of property not
7 exceeding \$500 in value shall be fined an amount not to exceed \$1,500. A person convicted of a second or
8 subsequent offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term
9 not to exceed 6 months, or both.

10 (b) ~~Except as provided in subsections (7) subsection (8)(b) (7)(b) and (7)(d), a~~ person convicted
11 of a first offense of the offense of theft of property exceeding \$500 in value and not exceeding \$1,500 in value
12 shall be fined an amount not to exceed \$1,500. A person convicted of a second offense shall be fined an
13 amount not to exceed ~~\$500~~ \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or
14 both. A person convicted of a second offense shall be fined an amount not to exceed \$500 \$1,500 or be
15 imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or
16 subsequent offense shall be fined an amount not to exceed ~~\$500~~ \$1,500 and be imprisoned in the county jail
17 for a term of not less than ~~5~~ 30 days or more than ~~6 months~~ 1 year.

18 ~~(b)(c)~~ (i) Except as provided in subsection ~~(8)(7)(c)~~ (7)(c) (7)(d), a person convicted of the offense of
19 theft of property that exceeds \$1,500 in value and ~~does not exceed \$5,000 in value shall be fined an amount~~
20 ~~not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3 years, or both. A person~~
21 ~~convicted of a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state~~
22 ~~prison for a term not to exceed 5 years, or both. A person convicted of a third or subsequent offense shall be~~
23 ~~imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined an~~
24 ~~amount not to exceed \$5,000.~~

25 (ii) ~~A person convicted of the theft of property exceeding \$5,000 in value or as part of a common~~
26 ~~scheme as defined in 45-2-101, or the theft of any amount of anhydrous ammonia for the purpose of~~
27 ~~manufacturing dangerous drugs, shall be fined an amount not to exceed \$10,000~~ \$50,000 or be imprisoned in a
28 state prison for a term not to exceed 10 years, or both.

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1 ~~(iii)(ii)~~—A person convicted of the theft of any commonly domesticated hoofed animal shall be fined
2 an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to
3 exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of
4 community service during a 1-year period, in the offender's county of residence. In addition to the fine and
5 imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

6 ~~(e)(d)~~ A person convicted of the offense of theft of property exceeding \$10,000 in value by
7 embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years
8 and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on
9 probation with the requirement that restitution be made under terms set by the court. If the terms are not met,
10 the required prison term may be ordered.

11 ~~(d)~~—A person convicted of a first offense for the offense of theft of property not exceeding \$1,500 in
12 value and who utilized an emergency exit in furtherance of that offense shall be fined an amount not to exceed
13 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a second conviction, the
14 offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to
15 exceed 1 year, or both. On a third conviction, the offender shall be fined an amount not to exceed \$5,000 and
16 be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

17 ~~(8)(9)(8)~~—Amounts involved in thefts committed pursuant to a common scheme or the same
18 transaction, whether from the same person or several persons, may be aggregated in determining the value of
19 the property.

20 ~~(9)~~—A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to
21 qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or
22 felony offense in the past 5 years."

23

24 **Section 3.** Section 45-6-309, MCA, is amended to read:

25 **"45-6-309. Failure to return rented or leased personal property.** (1) A person commits the offense
26 of failure to return rented or leased personal property if, without notice to and permission of the lessor, the
27 person purposely and knowingly fails to return the property within 48 hours after the time provided for return in
28 the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the

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1 property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

2 (2) Presentation to the lessor by the lessee of identification that is false for the purpose of
3 obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

4 ~~(3) — After the rental or lease period specified in the rental or lease agreement has expired, failure to~~
5 ~~return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail~~
6 ~~to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes~~
7 ~~prima facie evidence of commission of the offense.~~

8 (4)(3) (a) A person convicted of failure to return rented or leased personal property not exceeding
9 \$1,500 in value or a first offense of failure to return rented or leased personal property that exceeds \$1,500 in
10 value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed
11 6 months, or both.

12 (b) A person convicted of a second offense of failure to return rented or leased personal property
13 that exceeds \$1,500 in value and ~~does not exceed \$5,000 in value~~ shall be fined an amount not to exceed
14 \$1,500 ~~or be imprisoned in the state prison for a term not to exceed 3 10 years, or both.~~ A person convicted of
15 ~~a second offense shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term~~
16 ~~not to exceed 5 years, or both.~~ A person convicted of a third or subsequent offense shall be imprisoned in the
17 state prison for a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed
18 \$5,000.

19 (c) ~~A person convicted of failure to return rental or leased personal property exceeding \$5,000 in~~
20 ~~value or part of a common scheme shall be fined an amount not to exceed \$10,000 or be imprisoned in the~~
21 ~~state prison for a term not to exceed 10 years, or both."~~

22
23 **Section 4.** Section 45-6-316, MCA, is amended to read:

24 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the
25 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money
26 knowing that it will not be paid by the depository.

27 (2) If the offender has an account with the depository, failure to make good the check or other
28 order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence