

Staffeldt, Darlene

From: Scheier, James
Sent: Tuesday, January 22, 2002 3:45 PM
To: Strege, Karen
Cc: Staffeldt, Darlene
Subject: theft

Karen and Darlene -

You asked me whether a person who fails to return library materials can be charged with theft. The statute that you cited, 45-6-309, would not apply since library materials are really not "rented" or "leased." That statute is normally used to prosecute theft of rented videos or DVDs.

However, the basic theft statute, 45-6-301, would appear to cover theft of library materials, assuming the prosecutor could establish that a person purposely or knowingly failed to return the materials.

I spoke with several prosecutors in our office. They advised me that it's possible to prosecute this type of offense, but they are not aware of any instances where Montana prosecutors have actually charged anyone with theft. One prosecutor I spoke to used to work for the Missoula City Attorney's office years ago. The city librarian would occasionally send over a list of library users who had failed to return materials and ignored overdue notices. The city attorney's office would apparently contact those persons and raise the possibility of a theft charge, and that got the materials returned in most instances.

Local libraries should contact their city or county attorney, as appropriate, to determine whether those prosecutors would view this as theft and, if so, how they would prefer to handle it.

Let me know if you have any questions.

Jim

Staffeldt, Darlene

From: Strege, Karen
Sent: Tuesday, January 22, 2002 9:20 AM
To: Scheier, James
Cc: Darlene Staffeldt (E-mail)
Subject: Theft and libraries

Jim,

MSL has been asked to research if not returning materials to a public library is "theft" under Montana laws and, if so, what types of penalty might be imposed by the city or county.

I found this section, does it or others apply to library property? Thanks.

Karen

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement. (2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense. (3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense. (4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$1,000 in value shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. (b) A person convicted of failure to return rented or leased personal property exceeding \$1,000 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981; amd. Sec. 3, Ch. 581, L. 1983; amd. Sec. 4, Ch. 616, L. 1993; amd. Sec. 6, Ch. 397, L. 1999.