



## SENATOR FRED DYSON

### SB 30 NOTES

1. Alaska Statutes - Title 12 *Code of Criminal Procedure*, Chapter 36 *Disposition of Recovered or Seized Property*, Sec. 20 *Return of Property*, provides the legal process for return of property.
2. 12.36.020(a) identifies those circumstances when a law enforcement agency may **not** return property to an owner.
3. 12.36.020(b) provides for the return of property to owners at the discretion of the prosecuting attorney where photographs are used as evidence in place of the property, stating *the prosecuting attorney may release the property to the owner upon presentation of satisfactory proof of ownership*.
4. 12.36.020(c) states that wrongfully taken or damaged property that is *not* properly photographed and authenticated under 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, and used as evidence in a criminal or children's court proceeding, is to be returned to the owner within 60 days after the final disposition of the case.
5. 12.36.020(c) is problematic for two reasons. First, it is the property owner who suffers unjustly if the property was not properly photographed and authenticated; and second, final disposition of the case may be protracted for a long period of time. The return of property to its rightful owner may be hindered by concerns of prosecution, defense, and/or other interested parties.
6. 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, defines the process for admissibility of photographs as evidence in criminal and children's court proceedings. This section states that properly submitted photographs are to be regarded to the same extent as if the property itself was introduced as evidence. This sounds good, but in practice falls short of its intent. 12.45.086(c) seems to recognize this problem by singling out only the theft of commercial fishing gear as being property that shall be returned to the owner as soon as possible. Nearly all thefts of property from businesses should be returned to the rightful owners ASAP.
7. SB 158 (last session, endorsed by the Alaska Peace Officers Association) sought to amend 12.36.020(c) by providing an alternative to waiting for final case disposition, which can take years. This allowed for the possibility of a law enforcement agency controlling the property to consult with the prosecuting attorney and defense counsel to determine if the property is no longer required to be retained as evidence, and if agreed on by all parties, returned to the rightful owner. In retrospect, this language placed all the discretion with the criminal justice entities, and still left victim property owners powerless to recover their property.
8. SB 297 corrects that deficiency by providing directly to the property owner the right of a court hearing to recover possession of the owner's property, and requiring that the law enforcement agency prove to the court that another parties' interest in the property overrides the owner's interest in having it returned. SB 297 is also endorsed by the Alaska Peace Officers Association.
9. 12.36.090 *Definitions* of "law enforcement agency" includes the Office of District Attorney, Department of Law, as this is a public agency having one of its principal functions being the enforcement of the criminal law.