



## SENATOR FRED DYSON

### CS SB 30 (2d JUD) 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 crime victim 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. CS SB 30 (2d JUD) seeks to restore victims to a pre-offense condition by *providing directly to the crime victim the right of a court hearing to recover possession of the crime victim's property*, and requiring that the party who objects to the return of the property prove to the court that their interest in the property overrides the crime victim's interest in having it returned.
8. CS SB 30 (2d JUD) provides that property owners who are *crime victims* must make a request for hearing through the Office of Victims' Rights (OVR) whose purpose is to vet the requests to determine if certain conditions are met in the law to allow for an owner claiming property to request a hearing.
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.