

LEGAL SERVICES

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MEMORANDUM

February 15, 2016

SUBJECT: Forfeiture: drafting issues (Work Order No. 29-LS1380\A)

TO: Representative Tammie Wilson
Attn: Barbara Barnes

FROM: Megan A. Wallace 
Legislative Counsel

Attached please find the draft bill you requested.

Please note the following drafting issues based on the materials you sent:

- 1) Please be advised that this bill has a major impact on forfeiture law and procedures currently enacted in various chapters of the Alaska Statutes. Given the volume of statutes affected by the draft bill, and the time constraints placed on this office during an active legislative session, I cannot provide a thorough legal analysis of each and every area of law affected by the draft bill. I would recommend that you consult with the Department of Law (DOL) regarding the contents of this bill, as DOL handles the majority of forfeiture proceedings under existing law.
- 2) In sec. 1 of the bill, a conforming change to AS 04.16.220(b) was necessary. As part of the conforming change, constructive seizure was repealed. Is this consistent with your intent?
- 3) Your initial materials stated that property was only subject to forfeiture if "the value of the property to be forfeited exceeds one thousand dollars (\$1,000)." Per your second request, I removed the \$1,000 value threshold requirement contained in your original materials. In addition, your materials state that you want to "ensure that only criminal forfeiture is allowed in this state." Accordingly, I have provided that all common law civil forfeiture proceedings be abolished.
- 4) In the materials provided, you requested that the court be permitted to issue a "writ of replevin" Most common law writs, including the "writ of replevin" have been eliminated by the Supreme Court. Accordingly, in AS 12.36.350, I have removed any reference to a "writ of replevin" and replaced it with a reference to a motion to return property. In addition, AS 09.10.070(a) provides a two-year statute of limitations for forfeiture proceedings. Please advise if this provision needs to be revised.

5) As I discussed with Ms. Barnes in your office several times, the materials you provided describing offenses for which forfeiture is to apply contain a series of incorrect citations on pages 11 - 12, sec. 17(4), of the materials provided. Some of the citations at issue appear to relate to motor vehicle offenses. Because I have not been provided with correct citations, I merely included all offenses under AS 28 to which forfeiture is currently permitted, which are offenses under AS 28.15.291, AS 28.35.030, and AS 28.35.032. These offenses were already included in the materials you provided at sec. 17(10), so I do not know what you meant to include in sec. 17(4). Similarly, in sec. 17(4)(d) of the materials provided, you requested to include language stating "[i]f charged with violation AS 08.65.030(C) or another law or ordinance with substantially similar elements within ten years preceding the date of the present offense." AS 08.65.030 relates to direct-entry midwives. As such, all the citations in sec. 17(4) of the materials provided are incorrect. Accordingly, I could not include these in the draft bill.

6) Please review AS 12.36.320 in the draft bill to ensure I have captured your intent as it relates to offenses to which forfeiture may apply. You requested that the bill include all forfeitures currently permitted under law. I did my best to identify all areas where forfeitures are currently permitted throughout the Alaska Statutes. As stated above, you may want to consult with DOL to ensure all forfeiture proceedings are captured in the draft bill. If you are aware of any forfeiture related proceedings not included in the draft bill, please advise. Also, the bill only includes offenses under Alaska law, did you want to include crimes from other jurisdictions?

7) You may want to consult the Alaska Court System regarding the procedures for filing a motion for return of property under AS 12.36.350, ancillary forfeiture under AS 12.36.400, and forfeiture proceedings under AS 12.36.450. In addition, these sections, and several others, will result in court rule changes. Court rule changes require a two-thirds vote in order to pass the measure under art. IV, sec. 15 of the Constitution of the State of Alaska, which reads:

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Rule 39(e) of the Uniform Rules requires:

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to

receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

For this reason, I have noted indirect court rule amendments in the draft bill. You may also want to consult the Alaska Court System to identify any additional court rules that may be affected by the draft bill, as given the scope of the draft bill, I may not have identified each court rule that could be affected by this bill.

8) I do not understand what you mean in AS 12.36.460 relating to "responsibility established in the court's proceedings." I recommend that this section be revised to clarify.

9) I recommend defining "substitute property" in AS 12.36.475. Please advise what should be included in the definition of "substitute property" or how the term should otherwise be defined.

10) What do you mean by "unconstitutionally excessive" in AS 12.36.500? What do you mean by "at any time"? Is there no statute of limitations for this section? It is my opinion that this provision is overly vague and should be revised for clarification.

11) In AS 12.36.450(g), should (g)(3) be modified to state that the "value of the property is not disproportional to the seriousness of the criminal offense," as used in AS 12.36.500?

12) The materials you provided stated in sec. 10 that "A party to a forfeiture proceeding may appeal a district court's decision . . . pursuant to the Forfeiture Act." However, the remainder of the materials did not address appeals. I presume you intend forfeiture matters to be appealed like the underlying criminal matters? And I presume you also intend to include decisions rendered in superior court? Please review AS 12.36.520 to ensure I have captured your intent regarding appeals.

13) In AS 12.36.700 you requested that to define "conveyance" as "a device used for transportation." This does not seem appropriate in the context used. I would recommend revising for clarification.

14) You did not request to repeal AS 12.55.015(c), so that provision is retained. Please let me know if this is not your intent.

15) You requested an effective date "90 days after this bill becomes law." We do not provide for effective dates in this manner. As such, I have included a July 1, 2016, effective date. If you would like to change this date, please advise.