

# Alaska State Troopers/ Alaska Wildlife Troopers HB 317 Summary

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## DPS Concerns with HB 317

- This bill appears to confuse state **civil** asset forfeiture and state **criminal** asset forfeiture. DPS, in consultation with DOL has been unable to identify a single case where civil asset forfeiture actions resulted in the civil forfeiture of an item. In criminal forfeiture cases, property is ordered forfeited by the courts during the criminal proceedings and due process occurs.
- This bill appears to confuse seized items and forfeited items.
- This bill appears to require a person be arrested before items can be subject to forfeiture. Many investigations result in formal charges by way of issuance of a summons rather than a physical arrest.
- This bill suggests that DPS directly receives proceeds from state forfeitures. While that may be the case in very limited occasions pursuant to applicable statutes pertaining to firearms, vessels, and aircraft, most forfeited items are either destroyed or sold by DOA and the proceeds go to the general fund. In drug cases, DPS is not allowed to retain forfeited money. That money is either deposited in the general fund or some portions may be shared with local law enforcement who participates in taskforces or we're actively involved in the criminal case.
- On its surface, the abolishment of civil in rem Forfeiture may seem appropriate due to the infrequency of its use however an alternative process for obtaining a forfeiture order should be considered. For example, if law enforcement investigates a distributing or manufacturing child porn case in which child porn and computers are seized, and the case is not prosecuted, perhaps due to an evidentiary issue, the state may have an interest in not returning the computer equipment back to the alleged offender despite the lack of a conviction. Civil in rem would be an option but if abolished, another alternative should be available to protect the public from future offenses.
- This bill appears to require additional hearings for property, separate from the criminal proceeding that currently deals with seized items that will likely have a fiscal impact on the court system, DOL, DPS, and DOA (public defender?) for court appearances and litigation. As it is currently written HB 317 would force litigation on the seizure of evidence by lawful warrant in what amounts to a second trial on a shortened timeline. This bill (specifically proposed section 12.36.400) would materially affect DPS's and DOL's ability to investigate and prosecute crimes of child sexual exploitation. Section 12.36.400 would require DOL to file a so-called "complaint of ancillary forfeiture" within 30 days of seizure of any item of evidence or indictment. In the specific context of an ongoing child exploitation investigation, it is not always possible to complete forensic examination of all suspect devices within 30 days. In effect, this bill would require the DOL and DPS to litigate the appropriateness of the seizure of every item of evidence seized in the course of a child exploitation investigation at the very outset of the investigation. In a recent case the suspect devices were so large (several terabytes of images of child sexual exploitation) that the forensic imaging process itself took several weeks of uninterrupted computer analysis. Similarly, in another recent case ABI TCU seized dozens of devices in a case where the defendant set up his own illicit server while acting as an IT administrator in Bethel and downloaded terabytes of child pornography. There are a number of similar investigations from recent investigations that uncovered not only serious offenses

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involving the possession and distribution of child pornography, but the hands-on sexual abuse of minors as well. It is the belief that the legislature cannot be aware of the potential implications of this bill for complex and resource-intensive child exploitation investigations and the fact that imposing a requirement to litigate civilly within 30 days the appropriateness of the seizure of every item of evidence seized pursuant to a lawful warrant would expose additional children in our community to the risk of harm by impairing the ability of law enforcement and prosecutors to investigate and charge these offenses.

- In addition, during the newly established hearing, any “inculpatory” evidence presented cannot be used in the criminal action. How does the criminal justice system un-ring that bell? 12.36.50(h) provides that statements made during a preliminary forfeiture hearing cannot be used against the person in subsequent proceedings. This appears to invite perjurious statements.
- The section regarding ancillary forfeiture appears to add another layer of bureaucratic process when the criminal complaint and associated police reports already describe the required information.
- The purposed AS 12.36.400 limits law enforcement’s ability to engage in long-term investigations. This section requires the state to file an ancillary proceeding within 30 days of the seizure. Complex investigations routinely last longer than 30 days.
- This bill appears to attempt to abolish Alaska’s participation in the Department of Justice Asset Sharing program by requiring assets to be deposited in the general fund, an action prohibited by the DOJ asset sharing program. This would effectively end the task-force participation both at the federal and local level, and contradicts AS 17.30.100. It would also severely hamper Alaska law enforcement’s ability to expand drug investigations beyond Alaska’s borders that included source states and countries because Alaska law enforcement relies on federal agency partnerships to work collaboratively with various agencies such as the DEA, FBI, HIS, USPI, USCGIS and others. For the most part, Alaska is a consumer state of controlled substances, not a producing state.
- HB317 repeals 28.35.036 and 28.35.037. Forfeiture of DUI vehicles now are subject to 12.36.300. Changes: Jury trials now required for DUI vehicle forfeiture (previously was just bench trial); Quantum of proof raised to clear and convincing; Court now required to consider the defendant’s “hardship”. Regarding forfeiture, general deterrence is an important tool in DUI enforcement – i.e., “drive drunk, lose your car.”
- The Innocent owner provision provides a safe-haven alternative for someone engaged in a criminal act to simply refrain from registering property in their name so as to protect the asset from forfeiture. The current criminal process already provides ample due process for an innocent third-party to be heard by the court.
- This bill requires an onerous reporting requirement for all law enforcement to report on both seizures and forfeitures, despite the fact that the property is already tracked through the criminal justice process by police agencies chain of custody and subsequent court judgment. In order to consolidate all of that information into the required report will require additional administration that will need to work with the law enforcement agencies, DOL, the court

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system, and DOA. Although such a report does not currently exist and there is no current mechanism to produce such a report, if an inquiry is made about any item that has come into law enforcement's custody, it can be traced to its final disposition, just not in an all-inclusive report as described by this bill.

- Regarding federal asset sharing reporting, this information is already published by the DOJ.
- The requirement for seized currency to be deposited with the clerk of court creates an unnecessary link to the chain of custody for a criminal case and as it relates to drug investigations. Drug odors on currency are often identified by sent detection K9s and is potential evidence in a drug prosecution that will become unusable in court.
- The Alaska Wildlife Troopers are the primary enforcement agency for all fish and wildlife laws in the state. Hunting and fishing is extremely important to the citizens of Alaska and violations are taken seriously. The value of Alaska's resources are in excess of 5 Billion dollars annually. There are many reasons why it is difficult to enforce fish and game laws in the state. The huge area, multiple seasons, lack of manpower and difficulty in detecting violations all play into this issue. Forfeiture of items used in commission of the crime is a primary deterrent against fish and game violations. Deterrence of fish and game violations is sometimes the only substitute for situations where Alaska Wildlife Troopers cannot be there to effectively catch violators. This bill will directly affect how law enforcement conducts business. There are many examples of things that we "seize" with due process in our daily work. This bill will require additional paperwork to be completed, additional affidavits to be filed in court and additional time spent prosecuting cases. We read this bill to mean that an additional affidavit will need to be filed in court for all applicable items seized. This list will vary from vehicles, money, fingerprints, clothing, fish/game and many others. State and local law enforcement cooperate with our federal partners on a regular basis. This bill appears to hinder the cooperation between federal and state/local agencies. We have very limited resources in Alaska and cooperation with other agencies is essential. The ability to charge within the State or Federal system is inherently a good thing.
- This bill will undoubtedly add increased operation costs to multiple agencies. Because this bill has so many parts and its effect will be so far reaching, we do not have estimates on the overall cost. However, we can say that the cost will be measured in multiple ways; new money needed from the legislature, more time spent on forfeiture cases resulting in less time in other areas of law enforcement, more time spent in court for these cases, additional motions filed by the state and others. The fiscal impact is such that we will likely not be able to meet our existing mandates without adding additional PCNs. A good example of this can be found in their new section AS 12.36.450 (c) [page 10 lines 13-20]. This will burden the entire criminal justice system. . Additionally, it would effectively make forfeiture illegal in all fish and game cases. The proposed law states in pertinent part that a person's property is subject to forfeiture to the state if the "1) person is arrested for an offense listed in AS 12.36.320..." In fish and game matters defendants are seldom arrested, rather they are summonsed to a district court arraignment. It can be virtually guaranteed that fish and game populations will suffer as the primary legal deterrent will have been dismantled.

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- This bill would require a civil trial in any case where items are forfeit. As such, any commercial big game guide case that goes to trial will be accompanied by another civil trial regarding forfeiture and all the accompanying motions, appeals, habeas writs and the newly created 12.36.500 petition for unconstitutionally excessive forfeiture. This will, quite simply, double the amount of work in prosecuting a commercial big game guiding crime, as instrumentalities of the crimes are seized in virtually every 08.54 proceeding. It also requires that there be a “trial” before the trial to determine the likelihood that the item will be forfeited to the state. This will require additional court appearances by DPS and DOL, require additional paperwork to be filed and create additional cost to an already burdened criminal justice system. This bill additionally requires that the court return the property if the property is not held for investigatory reasons. This is a problem for all fish and wildlife crimes. Items are sometimes seized for investigatory reasons, but often they are seized because they were used in commission of the crime or the item is fish or game and cannot be legally possessed if taken illegally. This is provided for in AS 16.05.190, AS 16.05.195, 5 AAC 75.010, 5 AAC 92.140, 5 AAC 92.220(h) and several other regulations. This bill amends AS 16.05.190 and requires that items seized follow the new statutory requirements. There is extensive existing criminal case law with respect to fish and wildlife crimes and forfeiture in Alaska. This will hamper enforcements ability to seize items in the field and increase court hearings and court time for DPS and DOL.
- If the idea of this bill is to do away with forfeiture all together, it may be better to submit a bill that states that specifically. There are lots of reasons why forfeiture of any item is a good thing for the citizens of the state:
  - Deterrence of the convicted person from the commission of future offenses.
  - Protection of the safety and welfare of the public.
  - Deterrence of other persons who are potential offenders.
  - Expression of public condemnation of the seriousness or aggravated nature of the convicted persons conduct.
  - Keeping the offender from benefiting in any way from ill-gotten gains.
  - Preventing the ill-gotten gains from being used to promote or build criminal enterprises.