

Memorandum

Alaska Court System

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TO: Nancy Meade
FROM: Adam Keller
Court Rules Analyst
DATE: June 28, 2012
SUBJ: Senate Bill 30 Testimony

I was asked to review the legislative testimony of Senate Bill 30 (Chapter 3 SLA 12), which become effective on June 19, 2012. Specifically, I was asked to discern what the meaning of the term “agency” is as referred to on page two, line one.

It is my finding that the term “agency” refers to the law enforcement agency that is in custody of the property in question. Below is a summary of the testimony, at each stage of the legislative process, which brought me to this conclusion.

February 3, 2011

Senate State Affairs Committee Chairman Wielechowski states “the owner of the property may request that the agency return the property. And who would the agency be in that particular case?” To which Chuck Kopp, Chief of Staff to Senator Dyson (who sponsored the bill) responds, “the agency, as defined in the terms under Chapter 36 Disposition of Recovered or Seized Property, includes ‘any agency who is responsible for the enforcement or prosecution of the law.’ So, that would include, both, the law enforcement agency, be it municipal or state, and the Department of Law.’... [The agency] is required to request a hearing before the court to determine if the property shall be released to the owner.” See [Audio testimony from Feb. 3, 2011](#), at 10:14:00 thru 10:15:10.

February 17, 2011

Mr. Kopp explains the process outlined in Senate Bill 30 outlines. The Office of Victims’ Rights (OVR), the official State’s advocate for victims, will act as an intermediary throughout the process. OVR will determine if the owners of the property can show, through a preponderance of the evidence, that they do own the property. Then OVR will contact the law enforcement agencies, which “include[s] the Department of Law,” and see if they are able to show, similarly, that they have a claim on the property in the law that exceeds that of the interest of the property owner in getting their property back. Based on what they learn, OVR would then request that the law enforcement agency return the property to the owner. “Once that request is put into place, that law enforcement agency has 10 days to request that of the court.” The bill does require that a law enforcement agency act once the request is filed. See [Audio testimony from Feb. 17, 2011](#), at 09:19:50 through 09:21:08.

Victor Kester, Executive Director of OVR, states the process as he understands it. Mr. Kester explains that OVR is not the agency that requests a hearing from the court, and Chairman Wielechowski agrees that “that is the way I understand the bill as well.” See [Audio testimony from Feb. 17, 2011](#), at 09:25:18 through 09:26:13.

At this hearing SB 30 was moved to the next committee of referral.

February 28, 2011 – March 21, 2011

SB 30 is heard by the Senate Judiciary Committee. Mr. Kopp and Mr. Kester testified to the process and intent of the bill. The term “agency” is not debated or brought up during any of this testimony.

April 4, 2011

Anne Carpeneti, Assistant Attorney General, Criminal Division, Department of Law, suggested a change to subsection page 2, lines 13-18, subsection (d). This does not change the meaning or the use of the term “agency” in page 2, line 1. Ms. Carpeneti does not object to the meaning of the term “agency” as written.

The proposed change to subsection (d) and Ms. Carpeneti’s explanation can be found at [Audio testimony from Apr. 4, 2011](#), 01:57:21 through 02:16:03.

April 6, 2011

SB 30 passes through to the next committee of referral.

January 20, 2012

Mr. Kopp testifies to the Senate Finance Committee about the process that SB 30 outlines. Most importantly, Mr. Kopp states that “the law enforcement entity files with the court a request for hearing.” See [Audio testimony from Jan. 20, 2012](#), 10:50:56 through 10:52:58. The other testimony in front of the Senate Finance Committee makes no mention of the term agency. At the January 27, 2012 hearing, SB 30 moves to the next committee of referral.

February 13, 2012

In front of the House Judiciary Committee, Mr. Kopp explains the process of SB 30, again. Mr. Kopp states that SB 30 “puts into law an avenue for someone to request a hearing through the Office of Victims’ Rights, who then vets the request... then the Office of Victims’ Rights makes the request to the law enforcement agency who then has 10 days from the receipt of that request to ask the court to schedule a hearing.” See [Audio testimony from Feb. 13, 2012](#), 02:22:00 through 02:23:12. The other testimony in front of the House Judiciary Committee does not touch upon the term agency. At the February 15, 2012 hearing, SB 30 moves to the next committee of referral.

February 27, 2012

Mr. Kopp testifies in front of the House Finance Committee stating that SB 30 “allows a crime victim, who is the owner of property in the custody of a law enforcement agency, may request the agency for the return of their property through the Office of Victims’ Rights. The Office of Victims’ Rights will file a request with the agency after conducting an investigation to make an initial determination if the crime victim is entitled to the return of the property being claimed under the proposed requirements of AS 12.36.070(c)... Once the Office of Victims’ Rights makes a predetermination, they will request on behalf of the crime victim that the agency return the property. Within 10 days after the receipt of the request, and following reasonable notice to prosecution, defense and other interested parties, the agency will request a hearing before the court.” [See Audio testimony from Feb. 27, 2012, 02:41:50 through 02:44:05.](#)

In conclusion, at no point in time during any of the testimony on SB 30 did the term “agency” mean anything but a law enforcement agency. It is clear that the law enforcement agency, after being requested by the Office of Victims’ Rights on behalf of the crime victim, must request a hearing with the court within 10 days.