

Department of Law

Office of the Attorney General

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Amendment to HB 42 v. D

Page 1, lines 2-3

Following “**criminal law**;”:

Delete all material.

Page 1, line 4

Delete “**Rules 202, 209, and 217, Alaska Rules of Appellate Procedure**,”

Page 1, line 9

Delete “AS 12.36.300 – 12.36.490”

Insert “this section and the procedure authorized under AS 12.35 and 12.36.”

Page 3, line 1-2

Delete “AS 12.36.300 – 12.36.490 [AS 16.05.195]”

Insert “AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36”

Page 3, line 6-7

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35” and 12.36”

Page 3 lines 11-12

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 3, lines 16-17

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 3, line 21

Delete “AS 12.36.300 – 12.36.490 [AT SENTENCING]”

Insert “AS 12.36, at sentencing”

Page 3, line 22-29

Delete all material.

Page 4, line 1

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 4, line 7

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 4, line 27-31

Delete all material.

Page 5, lines 1-11

Delete all material.

Page 5, line 12 – page 16, line 5

Delete all material.

Insert:

* **Sec. 12.** AS 12.35 is amended by adding a new sections to read:

Sec. 12.35.022 Issuance of an order to seize property subject to forfeiture.

(a) Except has provided in AS 12.35.020, a court may issue an order to seize property that is subject to forfeiture if the court finds that

- (1) property being seized is subject to forfeiture; and
- (2) there is probable cause to believe that:
 - (A) the state will prevail on the issue of forfeiture;
 - (B) failure to enter the order will result in the property being destroyed, removed from the state, or otherwise made unavailable for forfeiture; or
 - (C) the item to be seized is otherwise illegal to possess

(b) Property subject to forfeiture under this section may be seized at any time, without a prior court order, if the

- (1) seizure is incident to a lawful arrest or citation for an offense or to a search lawfully conducted under a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture;
- (2) property subject to forfeiture is the subject of a previous judgment in favor of the state; or
- (3) law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.

(c) The execution on the order to seize the property and the return of the property, if applicable, are subject to this chapter and other state laws.

Sec. 12.35.030. Seized property

Seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the court, insured against those risks.

Sec. 12.35.035. Post seizure hearing

(a) Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may request return of the seized property. The request must be made to the court, identify the court case or search warrant number, and include facts to support the person's interest in the property. Except upon a showing of good cause, the post seizure hearing shall occur within 45 days of the moving party's request.

(b) The court may order the return of the property in the custody of law enforcement to the moving party if

(1) the moving party proves by a preponderance of the evidence that:

(i.) they are the lawful owner of the property;

(ii.) the property is not subject to forfeiture under AS 12.36.025;

(iii.) the property is not otherwise illegal to possess; and

(2) the party that objects to the return of the property fails to prove by a preponderance of the evidence that the property must be retained for evidentiary purposes under the provisions of AS 12.36 or another law.

(c) The court may order the return of property subject to forfeiture upon the finding that the item has no evidentiary value and establishing that the property owner has posted a secured monetary bond equal to the fair market value of the property.

* **Sec. 13.** AS 12.36 is amended by adding new sections to read:

Sec. 12.36.025. Property subject to forfeiture

(a) A person's property is subject to forfeiture to the state if the

(1) person is convicted of the offense listed in AS 12.36.027; and

(2) the state establishes by clear and convincing evidence that the property is subject to forfeiture under (b) of this section;

(b) Following conviction for an offense listed in AS 12.36.027, a court may order a person to forfeit

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense;
or

(3) any instrumentality the person used in the commission of the offense.

(c) Nothing in this section prevents property from being forfeited by the terms of a plea agreement that is approved by a court, by other agreement of the parties to a criminal proceeding.

Sec. 12.36.027. Offenses subject to forfeiture

(a) Forfeiture to the state is permitted following the conviction of an offense under

(1) AS 04.11.010, 04.11.499, 04.11.501, or an ordinance adopted under AS 04.11.501;

(2) AS 04.16.205;

(3) AS 04.21.060;

(4) AS 08.54;

(5) AS 11.41;

- (6) AS 11.46
- (7) AS. 11.56
- (8)AS 11.61
- (9) AS 11.66.
- (10) AS 11.71;
- (11) AS 11.73;
- (12) AS 16, or any regulation adopted under AS 16;
- (13) an ordinance adopted under AS 28.01.015;
- (14) AS 28.15.291;
- (15) AS 28.35.030 or 28.35.032;
- (16) AS 43.50.640;
- (17) any applicable law if a motor vehicle, weapon, electronic communication device, or money or other valuable was used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;
- (18) any applicable law if a deadly weapon was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence;
- (19) wherever specifically authorized by statute, regulation or municipal ordinance; or
- (20) any property that is illegal to possess under state law.

*** Sec. 14. AS 12.36.050 is amended to read:**

(a) A claimant seeking remission of the claimant's interest in [A WEAPON ORDERED FORFEITED UNDER AS 12.55.015(A)(9)] **property ordered forfeited under this chapter** shall prove to the court by a preponderance of evidence that the claimant

(1) holds a [VALID INTEREST IN THE WEAPON] **legal right, title, or interest in the property seized**, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the [WEAPON] **property** was used; and

(3) did not know or have reasonable cause to believe that the [WEAPON] **property** was used or would be used to commit a crime; **and**

(4) was a bona fide purchaser for fair value.

(b) Upon a showing that a claimant is entitled to relief under (a) of this section, the court may order that the [WEAPON] **property** be released to the claimant.

(c) A claim may not be filed under this section more than 120 days after the entry of the last final judgment in the case in which the [WEAPON] **property** was ordered forfeited.

Sec. 12.36.055. Forfeiture of substitute property

Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by clear and convincing evidence that the person intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property, and the substitute property is owned in full by the convicted person.

Sec. 12.36.080 Disposition of seized property

(a) Within 30 days after receipt of a court order directing the return of property or of notification the declination, acquittal, or dismissal of criminal charges, a law enforcement agency that holds seized property shall return the seized property to the owner of the property. The court may extend the 30 day period upon a showing of good cause.

(b) The Department of Law or the law enforcement agency that holds the seized property may petition the court to return or dispose of seized property at any time.

Renumber bill sections accordingly.

Page 16, lines 6 – 31

Delete all material.

Insert:

Sec. 12.36.085. Annual report. (a) By February 1 of each year, each law enforcement agency that initiates a case resulting in items being forfeited by the court under this chapter shall prepare a report itemizing property that has been forfeited to that law enforcement agency and transmit that report to the Department of Public Safety. The report must include all items forfeited as they are listed in the judgment.

(b) By April 1 of each year, the Department of Public Safety shall compile the reports submitted by each law enforcement agency under (a) of this section and publish an aggregate report on its Internet website.

(c) The report prepared and transmitted under (a) of this section shall comply with the format requirements developed by the Department of Public Safety.

Page 17, lines 1-31

Delete all material.

Page 18, lines 1-31

Delete all material.

Page 19, lines 1-14

Delete all material.

Page 19, line 22

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 19, line 26

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 19, line 31

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 20, line 4

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 20, line 15

Delete “AS 16.05.710 [AS 16.05.195 AND 16.05.710]

Insert “AS 16.05.195, 16.05.710, and the procedure authorized under AS 12.35 and 12.36.

Page 20, line 18

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36”

Page 20, line 20

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36”

Page 20, line 22-24

Delete “[ANY FISH, OR ITS FAIR MARKET VALUE, FORFEITED UNDER THIS SUBSECTION MAY NOT ALSO BE FORFEITED UNDER AS 16.05.195]”

Insert “Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under as 16.05.195.”

Page 21, line 2

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 10

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 14

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 21

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 27

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 22, line 1

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 22, line 5

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 23, line 9

Delete “AS 12.36.300 – 12.36.490 [AS 16.05.195(f), AS 17.30.122]”

Insert “AS 16.05.195(f), AS 17.30.122, and the procedure required under AS 12.35 and 12.36”

Page 24, line 5

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 24, line 8

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 25, line 27

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 27, line 8-9

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 27, line 10

Delete “[, SUBJECT TO REMISSION UNDER AS 28.35.037]”

Insert “,subject to remission under as 28.35.037”

Page 28, line 29

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 30, line 10-11

Delete “AS 12.36.300 – 12.36.490 [UNDER AS 28.35.036]”

Insert “under AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 30, lines 12-13

Delete “[, SUBJECT TO REMISSION UNDER AS 28.35.037]”

Insert “, subject to remission under AS 28.35.037”

Page 30, line 21-22

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 30, line 27-28

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 31, line 9

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 31, line 10-14

Delete “[(1) UPON CONVICTION OF A PERSON FOR A VIOLATION OF AS 43.50.640; OR

(2) UPON JUDGMENT BY THE SUPERIOR COURT IN A PROCEEDING IN REM THAT THE PROPERTY WAS USED IN A MANNER SUBJECTING IT TO FORFEITURE UNDER (a) OF THIS SECTION]

Insert “(1) upon conviction of a person for a violation of as 43.50.640; or

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section”

Page 31, lines 15-28

Delete all material.

Insert “The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses, seizures, or forfeitures described and declared to be subject to forfeiture by the laws referenced herein. It specifically excludes application to in rem civil court actions initiated against real, personal or intangible property outside of a criminal context, including but not limited to, actions to quiet title, condemnation, abandoned or nuisance property, probate, and trespass.”

Page 32, lines 2-6

Delete all material