

CS FOR HOUSE BILL NO. 295(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/6/96

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Toohey

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeitures of property; and relating to the custody and
2 disposition of property in the custody of municipal law enforcement agencies."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 12.36.020(a) is amended to read:

5 (a) A law enforcement agency may

6 (1) not return property in its custody to the owner or the agent of the
7 owner if

8 (A) [(1)] the property is [NOT] in custody in connection with
9 a children's court proceeding, a criminal proceeding, or an official investigation
10 of a crime; or

11 (B) [AND (2)] the property in custody is [NOT] subject to
12 forfeiture under the laws of the

13 (i) state; or

14 (ii) United States, and the United States has

1 commenced forfeiture proceedings against the property or has
2 requested the transfer of the property for the commencement of
3 forfeiture proceedings; and

4 (2) with the approval of the court, transfer the property to another
5 state or federal law enforcement agency for forfeiture proceedings by that agency;
6 the court having jurisdiction shall grant the approval under this paragraph if the
7 property

8 (A) will be retained within the jurisdiction of the court by
9 the agency to which the property is being transferred; or

10 (B) is

11 (i) not needed as evidence; or

12 (ii) needed as evidence, and the property is fungible
13 or the property's evidentiary value can otherwise be preserved
14 without retaining the property within the jurisdiction of the court.

15 * **Sec. 2.** AS 12.36.030 is amended by adding a new subsection to read:

16 (c) This section does not apply to property that comes into the custody of a
17 law enforcement agency of a municipality if the municipality has adopted an ordinance
18 providing for the custody and disposition of the property and if the ordinance requires
19 that

20 (1) property held or collected as evidence in a children's court
21 proceeding, a criminal proceeding, or an official investigation of a crime is to be held
22 until at least 30 days after final disposition of the case to which the evidence pertains;
23 and

24 (2) the municipality make reasonable attempts to identify and locate the
25 owner of the property that is unclaimed.

26 * **Sec. 3.** AS 12.36.040 is amended by adding a new subsection to read:

27 (b) This section does not apply to property that comes into the custody of a
28 law enforcement agency of a municipality that has adopted an ordinance providing for
29 the custody and disposition of property that meets the requirements specified in
30 AS 12.36.030(c).

31 * **Sec. 4.** AS 12.36.060(a) is amended to read:

1 (a) A deadly weapon forfeited to the state under AS 12.55.015(a)(9), unless
2 remitted under AS 12.36.050, shall be disposed of by the commissioner of public
3 safety under this section. The commissioner of public safety may declare a weapon
4 surplus and transfer it to the commissioner of administration. A weapon suitable for
5 law enforcement purposes, ballistics testing, training, or identification may be retained
6 by the Department of Public Safety or transferred to the municipal law enforcement
7 agency making the arrest that led to the forfeiture. A weapon that is unsafe or
8 unlawful shall be destroyed.

9 * **Sec. 5.** AS 12.55.015(a) is amended to read:

10 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
11 sentence on a defendant convicted of an offense, may singly or in combination

12 (1) impose a

13 (A) fine when authorized by law and as provided in
14 AS 12.55.035; or

15 (B) [A] day fine when authorized by law and as provided in
16 AS 12.55.036, if the court does not impose a term of periodic or continuous
17 imprisonment or place the defendant on probation;

18 (2) order the defendant to be placed on probation under conditions
19 specified by the court that may include provision for active supervision;

20 (3) impose a definite term of periodic imprisonment;

21 (4) impose a definite term of continuous imprisonment;

22 (5) order the defendant to make restitution under AS 12.55.045;

23 (6) order the defendant to carry out a continuous or periodic program of
24 community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence imposed under
26 AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public safety **or a**
29 **municipal law enforcement agency** of a deadly weapon that was in the actual
30 possession of or used by the defendant during the commission of an offense described
31 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

32 (10) order the defendant, while incarcerated, to participate in or comply

1 with the treatment plan of a rehabilitation program that is related to the defendant's
2 offense or to the defendant's rehabilitation if the program is made available to the
3 defendant by the Department of Corrections.

4 * **Sec. 6.** AS 12.55.015(c) is amended to read:

5 (c) In addition to the penalties authorized by this section, the court may invoke
6 any authority conferred by law to order a forfeiture of property, suspend or revoke a
7 license, remove a person from office, or impose any other civil penalty. **When**
8 **forfeiting property under this subsection, a court may award to a municipal law**
9 **enforcement agency that participated in the arrest or conviction of the defendant,**
10 **the seizure of property, or the identification of property for seizure, (1) the property**
11 **if the property is worth \$5,000 or less and is not money or some other thing that**
12 **is divisible, (2) up to 75 percent of the property or the value of the property if the**
13 **property is worth more than \$5,000 or is money or some other thing that is**
14 **divisible. In determining the percentage a municipal law enforcement agency may**
15 **receive under this subsection, the court shall consider the municipal law**
16 **enforcement agency's total involvement in the case relative to the involvement of the**
17 **state.**

18 * **Sec. 7.** AS 17.30.112 is amended by adding a new subsection to read:

19 (c) When forfeiting property under (a) of this section, a court may award to a
20 municipal law enforcement agency that participated in the arrest or conviction of the
21 defendant, the seizure of property, or the identification of property for seizure, (1) the
22 property if the property is worth \$5,000 or less and is not money or some other thing
23 that is divisible, (2) up to 75 percent of the property or the value of the property if the
24 property is worth more than \$5,000 or is money or some other thing that is divisible.
25 In determining the percentage a municipal law enforcement agency may receive under
26 this subsection, the court shall consider the municipal law enforcement agency's total
27 involvement in the case relative to the involvement of the state.

28 * **Sec. 8.** AS 17.30.114(b) is amended to read:

29 (b) Property taken or detained under (a) of this section shall be held in the
30 custody of either the commissioner of public safety or a municipal law enforcement
31 agency authorized by the commissioner of public safety to retain custody of property
32 listed in AS 17.30.110 subject only to the orders and decrees of the court having

1 jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the
2 commissioner of public safety or an authorized municipal law enforcement agency may

3 (1) place the property under seal;

4 (2) remove the property to a place designated by the court; [OR]

5 (3) take custody of the property and remove it to an appropriate location
6 for disposition in accordance with law; or

7 (4) with court approval, transfer the property to another state or
8 federal law enforcement agency for forfeiture proceedings by that agency; the court
9 having jurisdiction shall grant the approval under this paragraph if the property

10 (A) will be retained within the jurisdiction of the court by the
11 agency to which the property is being transferred; or

12 (B) is

13 (i) not needed as evidence; or

14 (ii) needed as evidence, and the property is fungible or
15 the property's evidentiary value can otherwise be preserved without
16 retaining the property within the jurisdiction of the court.

17 * **Sec. 9.** AS 34.45.230 is amended to read:

18 Sec. 34.45.230. PROPERTY HELD BY COURTS AND PUBLIC AGENCIES.

19 Except as provided by AS 34.45.720(d), intangible [INTANGIBLE] property held for
20 the owner by a court, state, municipality or other government, governmental subdivision,
21 or agency, public corporation, or public authority, that remains unclaimed by the owner
22 for more than one year after becoming payable or distributable, is presumed abandoned.

23 * **Sec. 10.** AS 34.45.720 is amended by adding a new subsection to read:

24 (d) Checks, drafts, currency, and tangible property that are found and turned over
25 to, or found and recovered by, a law enforcement agency of a municipality are not
26 subject to AS 34.45.110 - 34.45.780 if the municipality has adopted an ordinance
27 providing for the custody and disposition of the property.