

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 13, 2012

2:05 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Lance Pruitt  
Representative Mike Chenault (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 216

"An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation."

- MOVED CSHB 216(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 30(2d JUD)

"An Act providing for the release of certain property in the custody of a law enforcement agency to a crime victim under certain conditions and relating to requests for that release by the office of victims' rights."

- HEARD & HELD

HOUSE BILL NO. 296

"An Act relating to service of process on prisoners; relating to the crime of escape; relating to the definition of 'correctional facility'; amending Rule 4, Alaska Rules of Civil Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 216

SHORT TITLE: REGULATIONS: INFORMATIVE SUMMARY/BILLS

SPONSOR(S): REPRESENTATIVE(S) P.WILSON

03/30/11 (H) READ THE FIRST TIME - REFERRALS  
03/30/11 (H) STA, JUD  
04/12/11 (H) STA AT 8:00 AM CAPITOL 106  
04/12/11 (H) Heard & Held  
04/12/11 (H) MINUTE(STA)  
01/19/12 (H) STA AT 8:00 AM CAPITOL 106  
01/19/12 (H) Moved CSHB 216(STA) Out of Committee  
01/19/12 (H) MINUTE(STA)  
01/20/12 (H) STA RPT CS(STA) 2DP 4AM  
01/20/12 (H) DP: P.WILSON, LYNN  
01/20/12 (H) AM: KELLER, GRUENBERG, SEATON, PETERSEN  
01/23/12 (H) FIN REFERRAL ADDED AFTER JUD  
01/30/12 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/12 (H) Heard & Held  
01/30/12 (H) MINUTE(JUD)  
02/03/12 (H) JUD AT 1:00 PM CAPITOL 120  
02/03/12 (H) Heard & Held  
02/03/12 (H) MINUTE(JUD)  
02/10/12 (H) JUD AT 1:00 PM CAPITOL 120  
02/10/12 (H) Heard & Held  
02/10/12 (H) MINUTE(JUD)  
02/13/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(S): SENATOR(S) DYSON

01/19/11 (S) PREFILE RELEASED 1/7/11  
01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) STA, JUD  
02/03/11 (S) STA AT 9:00 AM BUTROVICH 205  
02/03/11 (S) Heard & Held  
02/03/11 (S) MINUTE(STA)  
02/17/11 (S) STA AT 9:00 AM BUTROVICH 205  
02/17/11 (S) Moved CSSB 30(STA) Out of Committee  
02/17/11 (S) MINUTE(STA)  
02/21/11 (S) STA RPT CS 4DP 1NR NEW TITLE  
02/21/11 (S) DP: KOOKESH, PASKVAN, MEYER, GIESSEL  
02/21/11 (S) NR: WIELECHOWSKI  
02/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/28/11 (S) Heard & Held  
02/28/11 (S) MINUTE(JUD)  
03/18/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/18/11 (S) Heard & Held

03/18/11 (S) MINUTE(JUD)  
 03/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/21/11 (S) Moved CSSB 30(JUD) Out of Committee  
 03/21/11 (S) MINUTE(JUD)  
 03/22/11 (S) JUD RPT CS 2DP 2NR NEW TITLE  
 03/22/11 (S) DP: FRENCH, COGHILL  
 03/22/11 (S) NR: WIELECHOWSKI, PASKVAN  
 03/22/11 (S) FIN REFERRAL ADDED AFTER JUD  
 03/25/11 (S) RETURNED TO JUD COMMITTEE  
 04/04/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/04/11 (S) Heard & Held  
 04/04/11 (S) MINUTE(JUD)  
 04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/06/11 (S) Moved CSSB 30(2d JUD) Out of Committee  
 04/06/11 (S) MINUTE(JUD)  
 04/07/11 (S) JUD RPT CS (2d JUD) 3DP 1NR NEW TITLE  
 04/07/11 (S) DP: FRENCH, PASKVAN, MCGUIRE  
 04/07/11 (S) NR: WIELECHOWSKI  
 01/20/12 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 01/20/12 (S) Heard & Held  
 01/20/12 (S) MINUTE(FIN)  
 01/27/12 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 01/27/12 (S) Moved CSSB 30(2d JUD) Out of Committee  
 01/27/12 (S) MINUTE(FIN)  
 01/27/12 (S) FIN RPT CS (2d JUD) 6DP  
 01/27/12 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,  
 OLSON, ELLIS  
 02/01/12 (S) TRANSMITTED TO (H)  
 02/01/12 (S) VERSION: CSSB 30(2d JUD)  
 02/03/12 (H) READ THE FIRST TIME - REFERRALS  
 02/03/12 (H) JUD, FIN  
 02/13/12 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As the sponsor of HB 216, responded to a question.

REPRESENTATIVE TAMMIE WILSON

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented SB 30 on behalf of the sponsor, Senator Fred Dyson.

CHARLES KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Responding to questions, assisted with the presentation of SB 30 on behalf of the sponsor, Senator Dyson.

ANDREW WALKER, Owner  
Computer Renaissance  
Soldotna, Alaska

**POSITION STATEMENT:** Testified during discussion of SB 30.

D. VICTOR KESTER, Director  
Office of Victims' Rights (OVR)  
Alaska State Legislature  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during discussion of SB 30.

ANNE CARPENETI, Assistant Attorney General  
Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions during discussion of SB 30.

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 30.

#### **ACTION NARRATIVE**

[2:05:56 PM](#)

**CHAIR CARL GATTO** called the House Judiciary Standing Committee meeting to order at 2:05 p.m. Representatives Gatto, Keller, Thompson, Gruenberg, and Holmes were present at the call to order. Representative Lynn arrived as the meeting was in progress.

#### **HB 216 - REGULATIONS: INFORMATIVE SUMMARY/BILLS**

[2:06:26 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 216, "An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation." [Before the committee was CSHB 216(STA); adopted as the work draft on 2/10/12 was a proposed committee substitute (CS) for HB 216, Version 27-LS0701\R, Bannister, 2/9/12.]

REPRESENTATIVE GRUENBERG referred to Version R's [Section 4,] and mentioned that the bill's sponsor has said that its proposed effective date of July 1, 2012, is appropriate. He then drew members' attention to Section 1's proposed new AS 24.08.035(g), which lists certain entities that would be considered an agency of the executive branch of state government for purposes of complying with Section 1's proposed new AS 24.08.035(f).

[2:08:03 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to add the Alaska Energy Authority (AEA) to Section 1's proposed new AS 24.08.035(g).

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor of HB 216, in response to a query, indicated that she was amenable to the adoption of Conceptual Amendment 1.

CHAIR GATTO, after ascertaining that there were no objections, announced that Conceptual Amendment 1 was adopted.

[2:09:02 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed CS for HB 216, Version 27-LS0701\R, Bannister, 2/9/12, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 216(JUD) was reported from the House Judiciary Standing Committee.

### **SB 30 - RETURN OF SEIZED PROPERTY**

[2:10:43 PM](#)

CHAIR GATTO announced that the final order of business would be CS FOR SENATE BILL NO. 30(2d JUD), "An Act providing for the release of certain property in the custody of a law enforcement

agency to a crime victim under certain conditions and relating to requests for that release by the office of victims' rights."

[2:11:16 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, on behalf of the sponsor, Senator Fred Dyson, explained that SB 30 would establish a statutory process by which crime victims may request that property being retained by law enforcement agencies for evidentiary purposes be returned to them. When crime victims have their property held by a law enforcement agency as evidence, it can sometimes be months or even years before the property is returned. Such delay places additional burdens on crime victims, including, in some instances, having to replace the property, and the consequences can be even higher for crime victims who are small business owners if the property being held is a crucial component of their business. Under SB 30, a crime victim could ask [the Office of Victims' Rights (OVR) to request of the law enforcement agency holding his/her property that the agency return the property to him/her].

CHAIR GATTO noted that members' packets contain a letter from one such crime victim, a small business that's had one of its vehicles and trailers held as evidence for over a year. He mentioned that [the legislature] wants to ensure that businesses which are the victims of crimes are not hampered by such delays.

REPRESENTATIVE T. WILSON offered her understanding that there hasn't been any opposition to SB 30 thus far.

[2:14:59 PM](#)

CHARLES KOPP, Staff, Senator Fred Dyson, Alaska State Legislature, in response to questions and comments - after mentioning that he is a retired law enforcement officer, and that the purpose of SB 30 is to restore crime victims to "pre-offense status" with regard to their property - explained on behalf of the sponsor, Senator Dyson, that currently crime victims may ask a law enforcement agency to return their property, and nothing precludes the agency from doing so, but there is no specific statutory process in place to address situations in which the agency doesn't return the property when so asked, and SB 30 would remedy this lack without impinging on the ability of crime victims and law enforcement agencies to reach agreement about returning property without help from the OVR.

MR. KOPP, in response to further comments and questions, pointed out that the court can already use existing law to address any ownership issues that arise, and that nothing in the bill would preclude the court from continuing to do so. Under SB 30, he went on to explain, a crime victim who has not had his/her property returned after requesting it of a law enforcement agency, may ask the OVR to also request of the agency that it return the property. The OVR may then do so after first investigating whether the crime victim is entitled to the return of the property. Once the OVR has made such a determination and subsequent request of the agency, the agency shall - within 10 days - then request a hearing before the court to determine if the property shall be released to the crime victim. Nothing in the bill would prevent an agency from returning the property in question prior to the conclusion of such a hearing, and nothing in the bill stipulates when such a hearing shall occur - calendaring the hearing would still be at the discretion of the court.

MR. KOPP added that under SB 30, if the property is being held in connection with a criminal case, the hearing shall be before the court with jurisdiction over the case, and otherwise shall be before a district court or superior court where the property is located.

[2:25:10 PM](#)

ANDREW WALKER, Owner, Computer Renaissance, explained that through the use of a fraudulent check, merchandise from his company was stolen on September 9, 2010, but because three defendants were involved in the crime, the merchandise, which is still being held as evidence, won't be returned until all three defendants have been prosecuted, which has yet to occur. He has spent a considerable amount of time, he relayed, attempting to recover the merchandise, but to no avail, and now it's probably worth merely a fraction of its original value.

[2:27:10 PM](#)

D. VICTOR KESTER, Director, Office of Victims' Rights (OVR), Alaska State Legislature, explained that SB 30 would provide crime victims with a mechanism by which to recover property held by a law enforcement agency, and would provide the OVR with the authority to request of a law enforcement agency that it return property to its owner. Under SB 30, a crime victim could ask the OVR to request of a law enforcement agency that it return the crime victim's property, and the bill contains provision for

ensuring that the evidentiary value of the property is retained. Indicating that the OVR is aptly suited to help such crime victims because of its expertise and familiarity with Alaska's criminal justice system, he also offered his beliefs that SB 30 is aligned with Article I, Section 24, of the Alaska State Constitution - which provides, among other things, that crime victims shall be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process - and that in terms of property, the bill could help restore crime victims to the position they were in prior to having been victimized.

MR. KESTER, in response to earlier questions, indicated that the court could use existing law to address ownership issues; surmised that the OVR could arrange for an expedited hearing in situations where such is warranted; and pointed out that the language of the bill stipulates that a hearing for property held in connection with a criminal case shall be before the court with jurisdiction over the case, and otherwise shall be before a district court or superior court where the property is located. Hearing venue, he assured the committee, is not going to be a problem because of the flexibility the court has with regard to ensuring that proceedings are fair to all parties. Referring to Mr. Walker's testimony, Mr. Kester ventured that SB 30 could provide a means by which such business owners could obtain assistance. In conclusion, he indicated that his testimony was in support of SB 30.

MR. KESTER and MR. KOPP, in response to further questions, both referred to Section 1's proposed AS 12.36.070(d) - which stipulates that if the court orders the return of the property, the court may impose any reasonable condition necessary to maintain the evidentiary integrity of the property - and surmised that whether to order the return of the property, and, if so, whether to impose certain conditions on that return, and, if so, what those conditions shall entail, would be decided by the court on a case-by-case basis.

[2:41:59 PM](#)

REPRESENTATIVE T. WILSON pointed out that SB 30 merely establishes a process that's not currently available to crime victims, and surmised that a law enforcement agency would not return property if doing so might jeopardize a criminal case.

MR. KESTER, in response to a question and request, indicated that SB 30 won't have any fiscal impact on the OVR, and agreed to submit a fiscal note to that effect.

REPRESENTATIVE GRUENBERG said he likes the bill, generally.

MR. KESTER, in response to further comments and questions, pointed out that if there really are unanswered questions about who the rightful owner of the property is, the process established via the bill would not be undertaken, because under Section 1's proposed AS 12.36.070(a), the OVR would only be requesting of a law enforcement agency that it return property if, after investigating the matter, the OVR concludes that the crime victim is entitled to the return of the property under the factors listed in Section 1's proposed 12.36.070(c), which in turn stipulates that in order for the court to order the return of the property, the crime victim must, by a preponderance of the evidence, provide to the court satisfactory proof of ownership, and any party objecting to the return of the property must fail to prove to the court, also by a preponderance of the evidence, that the property must be retained for evidentiary purposes. Furthermore, the process provided for via the bill would only be undertaken in those situations where the crime victim has not had his/her property returned after initially requesting it of the law enforcement agency himself/herself, and, again, Section 1's proposed AS 12.36.070(d) stipulates that the court may impose any reasonable condition necessary to maintain the evidentiary integrity of the property.

[2:54:58 PM](#)

MR. KESTER, in conclusion, reiterated his beliefs that SB 30 is in alignment with the Alaska State Constitution and is not anticipated to have a fiscal impact on the OVR, and indicated that in the past, whenever the OVR has assisted a crime victim with getting property returned, it has been relatively clear that he/she owned the property and why he/she wanted it back, and that a means of retaining the evidentiary value of the property was available.

MR. KOPP, indicating that SB 30 was carefully crafted with input from the administration, added his understanding that the court wouldn't even calendar a hearing requested by a law enforcement agency under the bill until all [ownership] issues have been satisfactorily resolved - again, via existing law.

CHAIR GATTO surmised that once the property is returned, the owner could choose to dispose of it.

MR. KOPP agreed, but again pointed out that the bill stipulates that the court may impose any reasonable condition necessary to maintain the evidentiary integrity of the property, which could include requiring that the owner retain the property.

REPRESENTATIVE GRUENBERG characterized SB 30 as a good bill.

[2:59:45 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to a question - noting that SB 30 applies to all crime victims, not just victims of property crimes, remarking on the importance of retaining certain property's evidentiary value in compliance with existing law, and surmising that there will be instances when one of the parties will want the law enforcement agency to retain the property because of its evidentiary value - offered her belief that the DOL has submitted an indeterminate fiscal note for SB 30 because each request made under the bill for the return of property will have to be addressed by the DOL on a case-by-case basis and thus the bill's fiscal impact on the DOL is not yet known. In response to a further question, she indicated her belief that as currently written, the bill doesn't require modification.

[3:04:40 PM](#)

SENATOR FRED DYSON, Alaska State Legislature, sponsor, opined that SB 30 is necessary to ensure that a crime victim has his/her property returned as soon as possible; explained that the bill merely establishes a process by which to address situations in which a law enforcement agency hasn't returned a crime victim's property when asked to do so by the crime victim; concurred that issues of questionable ownership can be addressed via existing law; and offered his understanding that SB 30 has been thoroughly vetted by all interested parties.

CHAIR GATTO announced that CSSB 30(2d JUD) would be held over.

[3:07:34 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:07 p.m.