

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 31, 2016

1:07 p.m.

**MEMBERS PRESENT**

Representative Gabrielle LeDoux, Chair  
Representative Wes Keller, Vice Chair  
Representative Bob Lynn  
Representative Charisse Millett  
Representative Matt Claman  
Representative Jonathan Kreiss-Tomkins

**MEMBERS ABSENT**

Representative Neal Foster  
Representative Kurt Olson (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 236

"An Act relating to marriage solemnization."

- HEARD & HELD

HOUSE BILL NO. 317

"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 205

"An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court-ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating

to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 236

SHORT TITLE: RIGHT TO REFUSE TO SOLEMNIZE MARRIAGE

SPONSOR(S): REPRESENTATIVE(S) TALERICO

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	JUD
03/30/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/16	(H)	Scheduled but Not Heard
03/31/16	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 317

SHORT TITLE: FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL

SPONSOR(S): REPRESENTATIVE(S) WILSON

02/17/16	(H)	READ THE FIRST TIME - REFERRALS
02/17/16	(H)	JUD, FIN
03/30/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE (JUD)
03/31/16	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

DAVID TALERICO, Representative  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 236 as prime sponsor.

JOSHUA BANKS, Staff  
Representative Dave Talerico

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 236, answered questions.

BISHOP EDWARD BURNS  
Diocese of Juneau and Southeast Alaska  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 236, offered support.

TAMMIE WILSON, Representative  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, explained the committee substitute.

DOUG WOOLIVER, Deputy Director  
Administrative Staff  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, discussed the fiscal note.

JOHN SKIDMORE, Director  
Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, answered questions.

KEVIN FITZGERALD, Attorney  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, answered questions.

CAPTAIN JEFF LAUGHLIN  
Statewide Drug Enforcement Unit Commander  
Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, provided testimony and answered questions.

MAJOR BERNARD CHASTAIN, Deputy Director  
Division of Alaska Wildlife Troopers

Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, testified and answered questions.

PETER SANDBERG, Attorney  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 317, offered to answer questions in Mr. Fitzgerald's stead.

#### **ACTION NARRATIVE**

[1:07:51 PM](#)

**CHAIR GABRIELLE LEDOUX** called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Millett, Kreiss-Tomkins, Keller, Lynn, and LeDoux were present at the call to order. Representatives Claman arrived as the meeting was in progress.

#### **HB 236-RIGHT TO REFUSE TO SOLEMNIZE MARRIAGE**

[1:08:35 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 236, "An Act relating to marriage solemnization."

[1:08:57 PM](#)

DAVID TALERICO, Representative, Alaska State Legislature, paraphrased his sponsor statement as follows:

A key component of the United States Constitution is the secure fundamental right to freely worship and practice religion in America found in the First Amendment. House Bill 236 clarifies the rights for clergy in Alaska. It acknowledges that those authorized to solemnize a marriage may not be forced to violate their religious beliefs nor will their religious freedom be coerced by the government or the courts.

Alaska Statute 25.05.261 provides that three entities are authorized to solemnize marriages - 1) religious leaders of churches or congregations in the state, 2) a marriage commissioner or judicial officer of the

state, or 3) any religious organization or congregation according to the established ritual or form commonly practiced in the organization or congregation. The intent of this legislation is narrowly focused on those individuals who are authorized to solemnize a marriage in AS 25.05.261 (a) (1) or (3).

HB 236 states that clergy in their official capacity may refrain from participating in solemnizing a marriage, providing services, accommodations, facilities or goods related to the solemnization of a marriage without legal ramifications. This bill will not marginalize any marriage relationship, but simply protects the right of all religious leaders to conduct marriage ceremonies according to their beliefs.

While the Constitution clearly states that all Americans, including clergy, have the right to freely practice their religion, there is currently a dangerous trend in America towards the erosion of religious liberty. House Bill 236 affirms the crucial freedom of clergy and religious institutions to celebrate and solemnize marriages in accordance with their deeply held beliefs.

[1:11:36 PM](#)

REPRESENTATIVE TALERICO acknowledged that initially people assumed this was about same sex marriage and he pointed out that there are several things within the tenets of faith and the beliefs of many religious institutions that go well beyond that. He offered that this bill is about the deeply held religious beliefs of the clergy, and the state's inability to have courts or government interfere with a person's deeply held religious beliefs.

[1:13:47 PM](#)

JOSHUA BANKS, Staff, Representative Dave Talerico, Alaska State Legislature, said he is available for questions.

REPRESENTATIVE CLAMAN opined that the United States Constitution provides clergy with the protection to decline performing a ceremony, and asked whether this bill provides any greater protection than is created by the constitution.

REPRESENTATIVE TALERICO responded that the intent is not to provide a greater scope of protection but to clearly identify that Alaska firmly holds to that constitutional belief and that the state judicial system would probably be the first recourse rather than the federal judicial system. Representative Talerico related his strong feelings and said that many of the religious institutions in the state provide services to their communities with limited budgets, such as single mothers and potentially battered spouses. He expressed concern for the clergy being able to continue performing these services rather than directing its time and money toward a legal defense.

1:18:05 PM

BISHOP EDWARD BURNS, Diocese of Juneau and Southeast Alaska, paraphrased a letter signed by Roger L. Schwietz, Archdiocese of Anchorage; Chad W. Zielinski, Diocese of Fairbanks; and Edward Burns, Diocese of Juneau, as follows:

As pastors, we have watched as our religious liberties have eroded over the last several years on a nationwide level. As you know, our United States Constitution ensures all people to freely practice their religious beliefs according to the tenants [sic] of their individual faith traditions. As leaders of the Roman Catholic Church in Alaska, we are grateful that Rep. Talerico and Senator Miccichi introduced this legislation to clarify and codify our rights here in Alaska.

From our perspective, the bill you have before you is important on several fronts. First, it ensures that neither we nor our priests or deacons Statewide would be required to solemnize a same sex marriage. Our Catholic faith tradition clearly professes that marriage is defined as between one man and one woman. While it is doubtful that a same sex couple would present themselves to one of our pastors and ask him to solemnize their marriage, this legislation would uphold our religious liberties.

Our second reason for supporting this bill is based on the assurances that we would not be required to allow parish or church facilities to be used for services or events that would be tied to a union that we do not recognize.

Here in Juneau, many of you may be familiar with the Shrine of St. Therese. St. Therese is the patron saint of Alaska. In 1938, a little stone chapel was built in her honor 22 miles north of here. Two previous bishops of the Diocese of Juneau, Bishop Cremont and Bishop Kenny are buried directly under the altar of this sacred space. Over the last 75 years we have welcomed guests from all over the world. Because of the unique surroundings and the simple beauty of this small chapel, many weddings have occurred here. In the past we have allowed all faith traditions to use the chapel. Now, we limit it strictly to Catholic weddings between one man and one woman. Passage of this legislation would ensure we could maintain our current practice.

In the Archdiocese of Anchorage, we have a mission parish in Girdwood, Our Lady of the Snows. This chapel has been marketed through Alyeska Hotel as a "destination wedding" location. A clause in the contract that the Archdiocese has with the hotel states that marriages or use of the facility may not conflict with Catholic Church teaching. This legislation would ensure that clause would remain true to our church teaching and that the chapel would be used for couples who support our definition of marriage.

In the Diocese of Fairbanks, we have Immaculate Conception Church on the banks of the Chena River. The distinctive white buildings with its tapering bell tower and statue of our Holy Mother Mary is on the National Historical Register. It attracts interest from Catholic and non-Catholics alike as a venue for marriage ceremonies. This bill would provide peace of mind should we need to decline enquiries from inappropriate parties.

We urge you to support this important piece of legislation that will ensure our religious liberties will be maintained.

[1:23:24 PM](#)

REPRESENTATIVE CLAMAN asked whether the facilities would be rented to an event such as a high school graduation party.

BISHOP BURNS answered that the church would ascertain that the event is upheld within the church's moral standard and tenets of its faith as opposed to groups of people contrary to the church's teachings.

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CHAIR LEDOUX asked whether, currently, facilities could be rented to a Catholic and a non-Catholic couple marrying in a non-religious ceremony.

BISHOP BURNS said that the facilities could be used by individuals who were Catholic and non-Catholic ...

CHAIR LEDOUX clarified that it would be a Catholic and non-Catholic couple marrying each other.

BISHOP BURNS said right, and explained that there are certain regulations for the couples getting married, whether a Catholic is marrying a non-baptized person or a non-Catholic, that they would simply follow the tenets of the Catholic faith. He expressed that the church would be more than open and welcoming to their marriage in the chapel.

CHAIR LEDOUX continued the scenario of allowing a marriage in the chapel with a non-Catholic person not agreeing to raise the children in the church or follow the tenets of the faith, and asked whether the church would still rent the facility to them if they were married by a judge and wanted to celebrate their reception at the church facility.

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BISHOP BURNS advised that the church would not rent its chapel space out for such a use because the marriages taking place in the chapel follow the rites of the church and it would not afford the chapel for a Justice of the Peace to conduct weddings because it is a Catholic chapel. It becomes a pastoral discussion, he said, when there may be question between a bride and groom regarding faith and he extended the tensions between them would not necessarily preclude them from marrying there. He reiterated that it doesn't necessarily preclude that the church would not allow the wedding to take place.

CHAIR LEDOUX offered a scenario that a Baptist Church was in the vicinity and two Baptists wanted to use the Catholic Church to be married ...

BISHOP BURNS replied there was a day the church would have allowed that. Times have changed, he said, and the Catholic Church recognized it could be the recipient of a lawsuit if it did not open it up to everyone, thereby, causing the church to establish policies to only conduct Catholic weddings. He then described a letter he received wherein a couple wished to be married at the Shrine of St. Thérèse but due to the church's current policy, all weddings are restricted to Catholic weddings. He stated the church is before this committee asking that the government not force the church to violate its religious beliefs and the ability to exercise religious liberty. It is within the church's tradition to go outside its walls especially when given a mission to feed the hungry, clothe the naked, and give drink to the thirsty. He related that the church helps all people no matter their identity or their orientation, and it embraces all people as brothers and sisters and it is not discriminatory for the church to say no to certain things and uphold its beliefs, he related.

[1:30:52 PM](#)

REPRESENTATIVE MILLETT asked whether the consistencies in the church's policies statewide keeps it from opening itself up to a lawsuit.

[1:31:22 PM](#)

BISHOP BURNS agreed.

REPRESENTATIVE MILLETT surmised that this bill would not only protect the Catholic Church from a lawsuit but also churches, synagogues, mosques, or anyone with policies set in place consistent with its beliefs.

BISHOP BURN agreed, and he pointed out that the image of the shepherd is to protect the flock, protect the faith, defend the faith, but also a responsibility to protect and defend the resources of the church. In time society changes so the laws begin to change and the church has seen it must take steps to uphold and defend its faith and resources, he said.

REPRESENTATIVE MILLETT commented that the church is protecting its religious freedoms.

BISHOP BURNS agreed.

1:33:34 PM

REPRESENTATIVE CLAMAN offered a scenario of a Lutheran couple asking the church whether they could get married at the Shrine of St. Therese and asked whether they could be married there if a Catholic priest performed the ceremony.

BISHOP BURNS responded "Yes," they could be married at the Shrine of St. Therese if they then entered into the rites of the Catholic Church.

REPRESENTATIVE CLAMAN surmised that in order to be married in the Catholic Church, a Catholic priest or someone wearing the cloth performs the ceremony.

BISHOP BURNS agreed.

REPRESENTATIVE CLAMAN referred to the Lutheran couple, and asked whether the church would allow them to rent the Shrine of St. Therese for the wedding reception.

BISHOP BURNS replied absolutely.

1:35:13 PM

CHAIR LEDOUX asked whether that is the current policy.

BISHOP BURNS said it would be allowed now because the church is not performing a sacrament so it is not a religious ceremony. He explained the couple would be allowed to use the facility in a manner that is not contrary to the teaching of the church's faith because the church rejoices in the marriage of a man and a woman in all faiths. Although, he said, the wedding did not take place within the Catholic Church's faith it upholds a marriage between one man and one woman and they would be allowed to use the facilities. Currently, people live in interesting times it is important to look at these interesting times and come forward, he said.

CHAIR LEDOUX commented that the phrase "May you live in interesting times" is a Chinese curse.

CHAIR LEDOUX open public testimony.

1:37:32 PM

The committee took an at-ease from to 1:37 p.m. to 1:38 p.m.

[1:38:33 PM](#)

CHAIR LEDOUX advised the bill would be held over to give the public an opportunity to testify.

[HB 236 was held over.]

**HB 317-FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL**

[1:39:29 PM](#)

CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 317, "An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

[1:39:51 PM](#)

REPRESENTATIVE KELLER moved to adopt CSHB 317, Version 29-LS1380\W, Wallace/Martin, 4/4/16, as the working document. There being no objection, Version W was before the committee.

[1:40:16 PM](#)

TAMMIE WILSON, Representative, Alaska State Legislature, advised that the Departments of Law, Public Safety, the Alaska Court System, Legislative Legal and Research Services, and her office worked together to offer Version W, and referred to her document entitled "CS for HB 317, Explanation of Changes".

REPRESENTATIVE WILSON referred to Sec. 12.36.300(3), line 24 - changed to require a higher standard of "beyond a reasonable doubt" with the idea of eliminating forfeiture all together. She said she was advised by Legislative Legal and Research Services that otherwise it would require going through all of the different statutes so the sponsor raised the standard to make it harder. She commented that civil forfeiture was eliminated with this bill, and that this section deals with the process for criminal forfeiture.

REPRESENTATIVE WILSON referred to Sec. 12.36.300(e) - paragraphs (1) and (2) deleted which narrows the scope by which property

subject to forfeiture under this section may be seized at any time with a prior court order, thereby making it more difficult.

REPRESENTATIVE WILSON referred to Sec. 12.36.350 (e)(1) - after claimant, "and" was added for clarification.

REPRESENTATIVE WILSON referred to Sec. 12.36.350(e) - paragraph (3) deleted which excludes the ability of a person to request the return of property in order to pay for legal representation under this section.

REPRESENTATIVE WILSON referred to Sec. 12.36.450 - deleted "Chief Public Defender" and "the District Public Defender", and she described it as a cleanup in that the State of Alaska does not have either of the positions.

REPRESENTATIVE WILSON referred to Sec. 12.36.450(f) - deleted "clear and convincing evidence" and inserted "beyond a reasonable doubt" requiring a higher standard.

REPRESENTATIVE WILSON referred to 12.36.450(g) - added language clarifying that forfeiture proceedings after conviction isn't necessary in cases where forfeitures are, by statute, not challengeable or illegal, for example felony DUI.

REPRESENTATIVE WILSON referred to Sec. 12.36.460 - deleted "in full or partial fulfillment of responsibility established in the court's proceedings" because the language is not necessary.

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REPRESENTATIVE WILSON referred to Sec. 12.36.500 - deleted "At any time" and added "within 90 days to establish a specific timeline under this section." Although, it was believed that people would come sooner rather than later, it would have opened up retroactive and into the future on a case, which would be costly. She commented that "within 90 days" was determined because if a person's property is part of the forfeiture they would probably be following the case closely.

REPRESENTATIVE WILSON referred to Sec. 12.36.500 and advised it was rolled into Sec. 12.36.450(g) to prevent duplication and additional cost by having another hearing.

[1:44:21 PM](#)

REPRESENTATIVE CLAMAN referred to the committee substitute and noted he could not locate Sec. 12.36.500, and referred to number 9 on her explanation of changes, which read the sponsor is deleting Sec. 12.36.500.

REPRESENTATIVE WILSON responded that it is two-part because Sec. 12.36.500 no longer exists; therefore, Sec. 12.36.500 was placed into Sec. 12.36.450(g). The words "at any time" were deleted and the words "within 90 days" were inserted because it would have caused another hearing, she explained.

REPRESENTATIVE WILSON referred to Sec. 12.36.600 - deleted "district," which is a cleanup.

REPRESENTATIVE WILSON referred to Sec. 12.36.625 - deleted "by abandonment of the prosecution," which was deleted for clarity.

[1:45:33 PM](#)

CHAIR LEDOUX expressed concern that this bill appears to be similar to a cartoon depicting something simple and it becoming convoluted. The bill appears convoluted and she expressed that the committee just wants to simply be rid of civil forfeiture period.

REPRESENTATIVE WILSON offered that is part of it. Although, criminally there are times things are taken away especially when getting into the area of fish and game. She offered that there may or may not have been a violation requiring Wildlife Troopers to check and the person may have that their fishing boat, netting and other property seized at that time. Currently, she indicated there is not a good process on how to get the property back when it is not required as evidence and pointed to the testimony that it took 3-4 years before the person was found correct, and then get their airplane back. She referred to the discussion of putting the airplane in storage but the testimony given doesn't necessarily happen and it may sit outside in the weather until the case is completed. The civil issue has a lower expectation as does the process and she related that this is the committee's bill right now.

[1:47:32 PM](#)

CHAIR LEDOUX asked whether there is any possibility of asking Legislative Legal and Research Services to go through Alaska Statutes and just eliminate what is called a civil forfeiture, although it really is a criminal forfeiture.

REPRESENTATIVE WILSON opined that she understood Legislative Legal and Research Services could do it but probably not in the time left for this session.

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CHAIR LEDOUX listed the people on line available to answer questions.

[1:49:50 PM](#)

DOUG WOOLIVER, Deputy Director, Administrative Staff, Alaska Court System, explained that the issues that would require a fiscal note include additional hearings and the length of those hearings. He pointed out there would be a whole new scheme for forfeitures and it has been working with the sponsor in an ongoing process because there are unanswered questions for the court system.

CHAIR LEDOUX pointed out that civil forfeiture actually sounds like criminal forfeiture, apparently, due to the in rem nature wherein the airplane is being sued as opposed to the person.

MR. WOOLIVER agreed that there is confusion as to what a civil forfeiture means and what it doesn't because these are all in conjunction with a criminal case. He pointed to the national news comments and John Oliver's clip wherein "they just come in and take your money from your car," and he opined that is not the process here. The Alaska Statutes did allow "in rem, just simple civil forfeitures" but from the testimony of others it appears that's not the norm here. These are forfeitures in conjunction with criminal cases only, he reiterated.

REPRESENTATIVE CLAMAN commented that John Skidmore was in the audience and he was not certain whether he would like to testify as to his concerns.

[1:53:06 PM](#)

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), said he was available for questions.

REPRESENTATIVE KELLER said the Daily News-Miner quoted Mr. Skidmore and he paraphrased "to say that having civil forfeiture, I believe, eliminates the need for hiring -- or

maybe the resource for hiring extra help in the Department of Law." Representative Keller asked him to discuss the implications.

MR. SKIDMORE replied that he had not seen the article and was unsure ...

REPRESENTATIVE KELLER asked him to explain the implications.

MR. SKIDMORE responded that he understood the question to be what was [included in the bill] that resulted in the fiscal note. He explained that the elimination of in rem forfeitures, which is the civil component as he refers to it, does not impact the fiscal note because those civil forfeitures are used infrequently and the Department of Law (DOL) does not have a problem with eliminating them. The inclusion of the fiscal note is with regard to the rest of HB 371 in that it attempts to redraft the process that occurs for forfeiture in criminal cases because it creates additional hearings, the necessity to have to file against particular pieces of property. He related that under the bill, the department doesn't just file a charge against someone with possession of child pornography, it then has to file an action against the individual images of child pornography that the state will seek to forfeit at the end of the case. Subsequent to that, there is an opportunity for hearings for people to try to get property back, then a trial, then a forfeiture proceeding after the trial to deal only with the property, then a sentencing, then a reconsideration of the forfeiture decision, and then a right of appeal about the forfeiture decision. He pointed out that all of the various hearings resulted in the fiscal note and opined there are ways for a process addressing the concerns of the sponsor. Although, he did not believe there had been enough time to wrap his suggestions into the committee substitute today. He opined that the sponsor's concerns related to consolidating forfeiture laws into one title and clearly articulate what the case law in Alaska says so it is easier to find and follow. There is a process through the criminal case to address forfeiture that would eliminate that fiscal note and none of that is associated with the in rem forfeitures, he remarked.

[1:56:37 PM](#)

CHAIR LEDOUX referred to in rem forfeitures currently in the statutes, and said they have nothing to do with a criminal case.

MR. SKIDMORE agreed.

CHAIR LEDOUX verified that Mr. Skidmore has no objection to eliminating those forfeitures.

MR. SKIDMORE agreed.

CHAIR LEDOUX continued that there is another group of cases in which the forfeiture is in conjunction with a criminal case.

MR. SKIDMORE agreed.

CHAIR LEDOUX asked whether people acquitted in the criminal case automatically receive their property back, assuming the forfeited property is not contraband or in and of itself illegal.

MR. SKIDMORE noted that Chair LeDoux placed in the question the caveat of the items that in and of themselves are illegal, and said the answer to her question is yes.

[1:58:03 PM](#)

CHAIR LEDOUX restated her question to confirm that the property is automatically given back to the person at the time they are acquitted.

MR. SKIDMORE commented that when she used the phrase "at the time that they are acquitted," he doesn't want to quibble but does not want it to be understood that the jury comes back with the acquittal and the person is handed their property at that moment. The person does receive their property and it shouldn't be more than a matter of days, although there are probably horror stories of times it has taken longer than it should. The law does say that when a person is acquitted the property is to be returned, unless the possession of those items is illegal in and of themselves. There are statutes that discuss the disposition of property, and he opined they do not list timeframes within them.

[2:00:03 PM](#)

KEVIN FITZGERALD, Attorney, said he was available.

CHAIR LEDOUX asked Mr. Fitzgerald's whether he would concur with Mr. Skidmore's analysis.

MR. FITZGERALD responded not entirely, no.

CHAIR LEDOUX asked him to explain his understanding of the way the law works that differs from Mr. Skidmore's understanding.

MR. FITZGERALD referred to the disposition of property at the conclusion of a case, and agreed there are statutes under Title 12 dealing with the disposition of property and there are no timelines. Mr. Fitzgerald then expressed that he has an enormous amount of respect for Mr. Skidmore. Generally, he opined, the law is pretty well followed as far as trying to get property back, and he then related a horror story. Subsequent to his horror story, he put forth that the idea a whole host of additional hearings are required is similar to "Chicken Little." For example, with regard to the opportunity to appeal a decision made as it relates for forfeiture is a right parties already have and that would not require additional hearings. His main focus in the current forfeiture law, has to do with items seized pre-charge or post-charge but pre-conviction, in that there is little remedy for the party to whom the property has been taken to seek redress. In the instance of pre-charge, he said he does not know of an adequate process and as a result there are situations he related during yesterday's testimony. He opined there has been an indication from the Law Office of Brent R. Cole of a similar situation involving another client and the situations are not unique. It is the pre-charge, pre-conviction process in which there isn't any appropriate remedy to allow parties to seek redress. He pointed to due process case law that indicates if law enforcement seizes property that affects someone's livelihood they have a right to a hearing within 48 - 72 hours. There is no statutory construct or regulatory construct that says that, but there is case law that certainly suggests that is the case. He related that there is a problem in trying to get a superior court to pay attention to a pre-charge situation, and "secondly of all that law frankly is -- that case law is ignored." Therefore, even if a person manages to get a hearing all the prosecution need say is that the property is needed for purposes of evidence and there is no further inquiry. He opined that violates due process and his concern is that there is no procedural mechanism to afford an aggrieved party some relief.

[2:05:54 PM](#)

MR. FITZGERALD continued that he cannot say what the fiscal consequence is likely to be, and that with regard to the pre-charge or pre-conviction process like the one contemplated by HB 317 there is likely to be situations in which there are

additional hearings, he could not say how many additional hearings but not close to the number contemplated by the Department of Law (DOL). He pointed out that the constitutional protections require no less, so by virtue of that hearing put into the bill and a statute require no less than the constitution otherwise requiring and why shouldn't that be the case.

CHAIR LEDOUX surmised that he believes the constitution requires this now and that the courts are not following the constitutional requirements as they exist now, asked why he would think the courts would follow a statute.

MR. FITZGERALD responded that the courts are bound to follow the statutes.

CHAIR LEDOUX interjected, but not the constitution.

[Mr. Fitzgerald continue to speak, thereby, speaking over Chair LeDoux and his conversation was difficult to decipher.]

MR. FITZGERALD ... follow a statute, particularly a statutory construct like this dealing with the very situation being discussed. He commented that other states have recognized that the construct that "we have now, which is really no construct or it's certainly not standardized or centralized," is in need of fixing and [the states] have done so. He said he has not researched and is unaware whether other states having adopted similar statutory constructs are facing the fiscal consequences suggested by DOL. He reiterated that there isn't any statutory construct now and this bill provides centralized and standardized construct concerning forfeitures.

[2:09:04 PM](#)

CHAIR LEDOUX asked whether Mr. Fitzgerald has reviewed the committee substitute for HB 317 [Version W].

MR. FITZGERALD said he received the committee substitute moments ago and he was also provided a copy of the Alaska State Trooper (DPS) summary regarding its concerns with HB 317, but he has not gone through the documents in great detail. He then reiterated that many of the concerns or complaints are a case of "Chicken Little," and he expressed great respect for Wild Life Troopers, Alaska State Troopers and Mr. Skidmore as they are trying to do the best they can.

CHAIR LEDOUX asked Mr. Fitzgerald whether he could review the new committee substitute by tomorrow so the committee can be assured it takes care of the problems he articulated.

MR. FITZGERALD agreed.

[2:10:49 PM](#)

REPRESENTATIVE KELLER commented that some of the issues Mr. Fitzgerald related are sobering and that there have been reports that Alaska's justice system compared to other states have received low grades in this arena. He expressed concern that when a person is charged their property is taken, and then suddenly the burden is on the person charged to keep track, and figure out how to get their property back when there is no process or system that is working. He pointed out that that is the context he would like everyone to consider when reviewing the committee substitute.

[2:12:02 PM](#)

CAPTAIN JEFF LAUGHLIN, Alaska State Troopers, Statewide Drug Enforcement Unit Commander, Department of Public Safety (DPS), said he is the Alaska State Troopers Captain and currently the Statewide Drug Enforcement Unit Commander. After listening to the discussions today, he said he was unsure whether he had testimony because some of his concerns appear to be a confusion between civil asset forfeiture and forfeiture pursuant to criminal proceedings, which was adequately addressed. Although, he has not had a chance to review the committee substitute and how the changes might affect his concerns that DPS provided to the [sponsor]. He argued that, contrary to Mr. Fitzgerald's testimony, this is not "Chicken Little" in that these are realities of what "those of us in the business of practicing this" will be faced with if the bill is passed as it stands, even with what he knows of the committee substitute. Major Chastain is available to discuss wildlife issues and Captain Laughlin is available for other questions, he offered.

[2:13:37 PM](#)

REPRESENTATIVE KELLER asked whether there is an incentive for law enforcement to include a federal charge due to different federal and state standards having to do with an equitable sharing agreement.

CAPTAIN LAUGHLIN opined that Representative Keller was asking about the Department of Justice Equitable Sharing Program, and opined that it is a large concern for people and the national dialogue on the asset sharing program done by the Department of Justice surrounding civil forfeitures. Although, he offered people may have looked like that in March of 2015, through President Obama's administration, Attorney General Eric Holder offered clarification and new direction on the Department of Justice's assets sharing program. He pointed out that the biggest change is that there is no longer the ability for state and local law enforcement to participate in that program for civil asset forfeiture proceedings. In addition to that, in order for state and local law enforcement to participate in federal criminal asset forfeiture, such that when a defendant has been charged in drug cases a federal agent must be involved in that proceeding from the onset. In the past, he explained, state or local law enforcement might begin an investigation into a drug trafficking organization, and at a later date during the investigation they would engage in conversations with the drug enforcement administration or the FBI. The federal agency would then adopt that case, see it through prosecution, and any potential assets would be forfeited through the Department of Justice asset sharing program. Currently, with the changes announced last March, in order for the state to work collaboratively with its federal partners, they must be involved in that investigation from the beginning.

[2:16:42 PM](#)

CAPTAIN LAUGHLIN expressed that it is important for the committee to understand that this change is particularly important, not only to law enforcement nationally, but to law enforcement in Alaska. The reason being, he explained, is that Alaska, with the rare exception of marijuana and perhaps methamphetamine to a certain degree, is a consuming state. For example, the state doesn't produce heroin, opioids, prescription medications, or cocaine. Therefore, in order for law enforcement try to effectively reduce the flow of those controlled substances coming into Alaska, it oftentimes has to work beyond the borders of Alaska and in order to do that its best approach is to partner with its federal partners who have reached beyond the borders of Alaska.

[2:17:33 PM](#)

CAPTAIN LAUGHLIN related that he can't in good conscious, especially in this fiscal climate, send troopers out to its

source states, such as Oregon, Washington or Arizona to try to intercept or interdict multiple kilos of heroin without that partnership availability because law enforcement has to wait until the drug is smuggled into the border of Alaska and then try to determine where it was disbursed to. He described it as a very, very difficult challenge for Alaska's law enforcement and the partnership with its federal partners are extremely important. The contrast, he pointed out is that the Alaska State Troopers are limited with the number of personnel assigned to its drug investigative unit so in turn it relies heavily on its municipal partners to work together. For example, in Fairbanks they partner with the North Pole Police Department, Fairbanks Police Department, Alaska State Troopers, Drug Enforcement Administration and various agencies to collectively and collaboratively try to target the state's mid-level to upper-level drug offenders and the federal asset sharing program goes a long way to allow them to do that.

2:19:00 PM

CAPTAIN LAUGHLIN noted that while he is on the topic of assets and concerns about state seized assets coming back to the Department of Public Safety, advised that the statutes do not allow for that. For example, say law enforcement prosecuted a defendant on a drug charge and seized \$1,000, if it is a state charge and ordered forfeited by the judge through the criminal due process, that \$1,000 must be deposited into the general fund and it does not remain with the Department of Public Safety (DPS). The exception would be where the DPS is engaged with a task force cooperative effort with its local partners, and if the local partners are part of that investigation there is an allowance in statute that allows DPS to share a portion with its local partners to help offset the cost of those investigations. He related that any remaining amount and at least a minimum of 25 percent must go into the general fund because the DPS is not allowed to receive any of those funds from state asset forfeitures from the court.

REPRESENTATIVE KELLER thanked Captain Laughlin because it was good information for the record.

2:20:27 PM

CHAIR LEDOUX related that she is still confused and asked whether they can partner with people without getting involved in civil forfeiture. For example, say they are trying to intercept a large quantity of heroin before it hits Alaska, can't they

partner with the federal government without a forfeiture statute.

CAPTAIN LAUGHLIN replied that they absolutely can, and that is why the confusion is between criminal forfeiture and civil forfeiture. In analyzing this bill to determine whether it would have any impact on DPS, he said, that on its surface, because the sponsor appeared to be focused on civil asset forfeiture, he looked back to 2012 and he could not relate a single case where the State of Alaska, particularly in drug investigations, has ever used civil asset forfeiture or civil in rem to seize anything. He offered that everything he just referred to has to do with criminal law and criminal investigations and ultimately criminal forfeiture through the court system. The department can absolutely work with its partners, absent civil asset forfeiture, "both at the federal level which already exists, they've discontinued that practice," and if it is the committee's desire is to just simply end civil in rem, it will have absolutely no impact on what the department does. However, he pointed out some stipulations in this bill, for example, requiring all proceeds to be deposited into the general fund, and there is a further prohibition that reads if a federal partnered agency does not allow deposit of any forfeited funds into the general fund, then the department is not allowed to participate in it. He described that as that having a pretty dramatic effect on the department's partnership with its federal taskforce officers. In response to Chair LeDoux's previous question, he replied that the lack of civil forfeiture proceedings, either at the state or local level, has absolutely no impact on the department. He related his concerns regarding HB 317 is that, although, the discussion is civil asset forfeiture, most of the suggestions and change to law affect criminal seizure and criminal forfeiture, and those would have a dramatic effect on what Alaska does for drug investigations.

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CHAIR LEDOUX said she is still trying to follow this because civil forfeiture, which is the in rem proceeding, doesn't have to have any criminal case attached to it. Then, she continued, there are two aspects of the criminal forfeiture, such as items seized which are evidentiary items, and items seized that don't have anything to do with evidence. For example, if they are seizing money it could be photocopied and it is not necessary to keep the money for evidence. She said, other than the fact that statutes were enacted a while ago, she doesn't see justification for grabbing property until there is a criminal conviction,

unless it is evidentiary. It appears there are cases where property is taken that is not evidentiary and it is confusing, she related.

CAPTAIN LAUGHLIN responded that he cannot think of a case he has been exposed to in which items were seized in a criminal case that were not of evidentiary value. The Department of Public Safety (DPS) absolutely does seize cash and/or assets during a drug investigation, for example. Generally, it can be for reasons such as: belief to be proceeds from illegal activities; proceeds from ill-gotten gains; a drug detection canine may have alerted on that money; and in many cases undercover "buy funds" to enact the transaction to prove the illegal distribution of controlled substance. He confidentially related that anything seized during a drug investigation is all believed to be evidence of the crime of drug trafficking. There is no instance where DPS would seize property that cannot be tied to the whole idea of drug trafficking and drug trafficking organizations because it is all evidence of what the department believes is evidence of that crime.

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CHAIR LEDOUX remarked that she could understand if there was some question as to whether drugs are literally on the money, but if they don't have that circumstance and they are photocopying it first, before it's spent, to compare what they get back, asked why couldn't they photocopy what they get back. It was photocopied in the beginning, why can't they photocopy what they get back, she reiterated.

CAPTAIN LAUGHLIN answered that they do. For example, within the criminal justice reform bills, HB 205 and SB 91, one of the ideas being discussed is having law enforcement not focus on drug addicts or even low-level drug dealers that may be selling a drug just so they can continue with their drug habit. What that does, he offered, and even prior to the bills is that the department focuses on mid-level and upper-level drug dealers and drug trafficking organizations. One of the ways they attempt to prove to the court and juries that someone is involved in larger scale drug trafficking is not only the amount of drug they are able to seize, but the amount of cash they are carrying with them at the time those seizures are made because that is indicative of the sale of controlled substance, he explained.

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CAPTAIN LAUGHLIN continued that should an undercover officer or an informant buy an ounce of heroin from a dealer and law enforcement grabs that dealer to effect the arrest and finds \$10,000 cash in their pocket that, to the courts and most juries, is indicative of drug trafficking at a much larger scale. He further explained that that is why that money becomes important ....

CHAIR LEDOUX asked why he couldn't do the same thing with simply photocopying the money, and if the person is convicted law enforcement could seize the money or fine the person. She inquired as to why the actual money is needed for evidence, as opposed to a photocopy of the money.

CAPTAIN LAUGHLIN opined that it is evidence of crime that needs to be preserved and is used in trial. He posed that the same question could be asked for different items seized through the investigative processes.

CHAIR LEDOUX commented that the question could be asked, and she surmised that that is what the committee is doing.

[2:29:57 PM](#)

MAJOR BERNARD CHASTAIN, Deputy Director, Division of Alaska Wildlife Troopers, Department of Public Safety, referred to Mr. Fitzgerald's testimony regarding seizure and having the ability to remedy the situation, and pointed to the remedy under Alaska Rules of Criminal Procedure Rule No. 37(c), which read as follows:

A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

MAJOR CHASTAIN advised that Mr. Fitzgerald has sometimes been the defense attorney in wildlife cases involving the seizure of aircraft or vessels. He extended that the Department of Public Safety (DPS) and the Department of Law (DOL) believe there is sufficient remedy in place in the criminal rules for that. Items are seized for many reasons, he related, and in the fish and wildlife world in Alaska it is worth a lot of money to the residents and the state. This arena is worth over \$5 billion a

year, which includes commercial fisheries, wildlife, big game guiding, sport fish guiding, and it is a substantial piece to Alaska's economy. He stated that commercial wildlife violations are about making money illegally, and the primary reason property is seized in fish and wildlife crimes is because the property was the instrumentality of the crime. The property is seized due to the re-occurring nature of a commercial wildlife crime and they often happen more than once or several times before law enforcement gets the ability to contact the violating individual. When the violations occur they tend to be of a more serious nature ...

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CHAIR LEDOUX referred to his statement that property is seized due to the re-occurring nature, and asked whether that means it is being seized so they can't do it again.

MAJOR CHASTAIN responded correct, it is being seized to keep the individual from continuing to violate.

CHAIR LEDOUX argued that law enforcement is then presuming the individual is guilty before being convicted.

MAJOR CHASTAIN answered that is not correct.

CHAIR LEDOUX contended that in his response to her question he agreed that property is being seized to keep the individual from doing something again. Chair LeDoux then reminded Major Chastain that her response to his agreement was that it sounds like law enforcement is presuming the individual had done something wrong in the first place without a conviction.

MAJOR CHASTAIN explained that the items seized are seized under a criminal search and seizure warrant that a judge signed under "probable cause" that the violation had taken place, those items are seized ...

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CHAIR LEDOUX pointed out that "probable cause" is not the same standard as "guilty beyond a reasonable doubt."

MAJOR CHASTAIN said she was correct and it is not the same standard in that "guilty beyond a reasonable doubt" is used when someone is convicted and the judge decides what happens to that item. Currently, he reiterated there is sufficient remedy under

Alaska Rules of Criminal Procedure Rule No. 37(c) for a defendant to go before the court and petition to have that item returned to them.

[2:34:24 PM](#)

REPRESENTATIVE CLAMAN asked whether there are occasions when law enforcement would seize a commercial guide's airplane before ever arresting the guide for hunting violations.

MAJOR CHASTAIN answered yes, law enforcement goes before the court with a criminal affidavit and a judge issues a search warrant as part of the investigatory process. The item is seized and, he acknowledged, that sometimes the case takes an excess of months to complete before it is ready to be charged. Once the case is charged it goes through the court process, the state is ready to proceed in court, and oftentimes defense is not ready to proceed and the case moves slowly as the defense attorney has the ability to defend their client.

REPRESENTATIVE CLAMAN restated his question, used an airplane as an example, and said that law enforcement seized an airplane that isn't an instrument of crime and there wouldn't be evidence of a crime in the airplane. Although, the guide/owner used the airplane to fly to wherever to take their hunters hunting and it happens to be the means by which they fly to the middle of nowhere to hunt. He asked whether, in that situation, the department would periodically get a warrant, not for purposes of obtaining evidence, but to actually seize the airplane and prevent the guide/owner from using it for flying any longer.

MAJOR CHASTAIN replied the statute provides that if the item is used in commission of the crime itself, such as same day airborne of an animal, the item itself is subject to seizure and subject to forfeiture.

REPRESENTATIVE CLAMAN said he understands the statute allows the department to do it, and asked that if the department doesn't need that airplane to prove this person has been committing same day airborne hunting and there is nothing requiring DPS to seize the airplane, why does the department choose to seize the airplane.

[2:37:21 PM](#)

MAJOR CHASTAIN responded that it is in preservation of that evidence in that the item itself could be disposed of before the

court forfeits the item to the state. For example, a defendant actually dismantled his aircraft so he could hide it from the Alaska State Troopers and keep them from seizing it. He noted that there have been several cases wherein people have flown their aircraft out-of-state to different locations in order to hide the aircraft and in those situations oftentimes it's very difficult to find that asset. Therefore, when a criminal search and seizure warrant is obtained from the court the department seeks that asset out to preserve the evidence, he explained.

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CHAIR LEDOUX argued that there are two questions, such that the property is seized for evidence actually necessary in order to present the item to the jury to prove someone's guilt is one thing, but if the department is just seizing it because it is concerned that once the person has been convicted that the department will not get this airplane or other property of value. She said she doesn't understand why the department should be in such a different position than any other plaintiff who thinks they have a good case and do not want the defendant to be able to hide assets. When she practiced law, she related, there were few instances that the plaintiff could seize property before a court or jury determined someone had actually done something wrong. Chair LeDoux acknowledged this is the way the statute reads and that it does so because a past legislature enacted the statute. Even so, she said she has a real problem with the idea that the department can seize property it doesn't need for evidence prior to a finding by a judge or jury that someone committed a crime beyond a reasonable doubt.

MAJOR CHASTAIN said that a neutral detached magistrate has already made a finding of probable cause when the department goes before a magistrate or judge to get the warrant issued. That finding is from a criminal court saying there is enough evidence to warrant seizure of that item. In addition, the item itself is subject to forfeiture but not evidence, and he reiterated that the defendant has the ability to go before the court under Alaska Rules of Criminal Procedure Rule 37(c) and ask the court to find for the item ...

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REPRESENTATIVE CLAMAN advised Major Chastain that he was not answering the question. In the event the department is trying to convict someone of same day airborne hunting, the evidence of that is typically either there is someone undercover in the

airplane that later testifies they were in the airplane, it landed and shot the wolf. Or, alternatively, the trooper knows enough about the snow conditions to determine where the airplane had to have landed, finds evidence of a kill in that area, and puts the case together with pictures. He argued that the airplane itself gives no evidence that the crime occurred because they don't put GPS tracker in the airplanes telling the troopers exactly where the airplane went.

MAJOR CHASTAIN responded that he is correct.

REPRESENTATIVE CLAMAN surmised that more often than not the department does not seize the airplane as evidence of the crime, but seizes it because the department is allowed, during the course of the prosecution, to forfeit the airplane as it was the instrument of the illegal activity.

MAJOR CHASTAIN replied that he is correct.

REPRESENTATIVE CLAMAN explained that the committee is trying to determine whether it likes the idea that Alaska is seizing airplanes for the purpose of forfeiture at the end of the case, as opposed to seizing the airplane because it is evidence itself of the crime and is needed to prove the elements of the crime to get the conviction, which is a rare occasion. Usually, he said, the department seizes the airplane because it is an instrument of the illegal activity and the department's goal is to forfeit it.

[2:44:03 PM](#)

MAJOR CHASTAIN related there are many reason for seizure and forfeiture, and in fish and wildlife crimes, one of the main reasons is deterrents of other violators. He expressed that deterrents are a big factor, especially with the amount of law enforcement patrolling Alaska for fish and wildlife cases. He offered that in remote locations there is not a Wildlife Trooper for thousands of miles sometimes.

REPRESENTATIVE CLAMAN surmised the reason the department wanted it forfeited was to send a message to the community that the department is taking this seriously. He referred to same day airborne hunting, anyone doing it needs to aware of the risk they take on, going to court, and also losing their airplane, which may cause more concern. He extended that if the department didn't have the right to seize it to be forfeited later, people would have a tendency to make airplanes disappear

and the state would no longer have an airplane to forfeit at the end of the case.

MAJOR CHASTAIN answered that he is correct.

[2:45:21 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked whether seizure and forfeiture is effectively used as a deterrent tool.

MAJOR CHASTAIN reiterated there are many reasons for seizure and forfeiture, and he offered a short list of examples as follows: deterrents of convicted persons from the commission of future offenses; protection, safety and welfare of the public; deterrents of other persons as potential offenders; an expression of public condemnation of the seriousness or aggravated nature of the convicted person's conduct; keeping the offender from benefiting in any way from ill-gotten gains; and preventing the ill-gotten gains from being used to promote or build criminal enterprises. He noted that fish and game taken illegally in the state belongs to the State of Alaska. Therefore, in regulations and statutes throughout criminal fish and wildlife law, the item itself, such as the fish or game taken illegally does not belong to the person - it belongs to the state. In addition, he said, forfeiture of the fish and game items themselves are an important part of successfully enforcing fish and wildlife laws in the state.

[2:47:29 PM](#)

PETER SANDBERG, Attorney, said he works with Kevin Fitzgerald who had to step away, and he is making himself available for questions.

CHAIR LEDOUX, after ascertaining no one wished to testify closed public testimony. She advised that she is holding HB 317 because she likes the concept and wants to get the bill right.

[HB 317 was held over.]

[2:49:43 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:49 p.m.

