

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSHB 42(JUD)
Fiscal Note Number:	4
(H) Publish Date:	3/31/2017

Identifier: HB042-LAW-CRIM-01-21-17

Department: Department of Law

Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS

Appropriation: Criminal Division

Sponsor: WILSON

Allocation: Criminal Justice Litigation

Requester: (H) Judiciary Committee

OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services	1,715.8		1,715.8	1,715.8	1,715.8	1,715.8	1,715.8
Travel	39.8		39.8	39.8	39.8	39.8	39.8
Services	267.4		267.4	267.4	267.4	267.4	267.4
Commodities	23.4		23.4	23.4	23.4	23.4	23.4
Capital Outlay	1.0		1.0	1.0	1.0	1.0	1.0
Grants & Benefits							
Miscellaneous							
Total Operating	2,047.4	0.0	2,047.4	2,047.4	2,047.4	2,047.4	2,047.4

Fund Source (Operating Only)

1004 Gen Fund (UGF)	2,047.4		2,047.4	2,047.4	2,047.4	2,047.4	2,047.4
Total	2,047.4	0.0	2,047.4	2,047.4	2,047.4	2,047.4	2,047.4

Positions

Full-time	16.0		16.0	16.0	16.0	16.0	16.0
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*

(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*

(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?

If yes, by what date are the regulations to be adopted, amended or repealed? No

Why this fiscal note differs from previous version:

Not applicable; initial version.

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Agency: Department of Law

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Date: 01/21/2017 08:26 AM

Date: 01/21/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation makes significant changes to the process by which evidence is collected in criminal cases and items subject to forfeiture are taken into custody.

HB 42 will affect most criminal cases including, but not limited to, murder, drug, child-sexual exploitation, sex trafficking, fish and wildlife, and alcohol interdiction cases. Under HB 42, before law enforcement may collect most evidence or take an item subject to forfeiture into custody, the court must make a preliminary finding. The state must file a request to seize the evidence or property to be forfeit. Under HB 42, the owner of the property has a right to be heard on that request before the court grants the request. The state must show substantial probability that (1) the property is subject to forfeiture, (2) that the state will prevail on the issue of forfeiture (which includes convicting the owner of a crime), (3) that property will be destroyed, removed from the state or otherwise unavailable for forfeiture, and (4) that the need to preserve outweighs the hardship on the owner of the property.

Once the property is seized, a party from whom evidence or property subject to forfeiture was collected may request another hearing before the trial to seek the return of the property. While the right to this additional hearing already exists under the law, HB 42 changes the criteria and burden of proof for not releasing the property. This changed criteria includes allowing the property to be released to be used to pay for an attorney if needed.

Finally, for property subject to forfeiture, a person convicted of a crime may request a jury trial (after the jury trial on guilt) to determine if the property should be forfeited. Under current law this would be decided by a judge at the sentencing hearing.

The additional hearings and changes to the burdens of proof imposed by HB 42 could significantly increase the amount of attorney and staff time in all cases, including fish and wildlife cases. Numerous pieces of physical evidence are collected in the course of a criminal investigation, to further the investigation and to offer as proof at trial. Under the law, many items are subject to forfeiture upon conclusion of the criminal case. The additional hearings mandated by HB 42 would slow the course of criminal investigations and increase the number, length, and complexity of criminal trials.

HB 42 would increase the number of hearings the Department of Law must prepare for and attend, and the number of appeals it must process. It is estimated that the department would need an additional eight attorneys to cover this work regionally across the state as well as an accounting technician I to track the items seized and handle the corresponding financial transactions. Additionally, the department would need seven support staff to support the additional work of the eight attorneys. Staff would be responsible for communicating with the victims, gathering information, explaining the process, preparing court documents, arranging travel and completing data entry. Further, given the significant time limitations imposed by HB 42, these additional staff members will ensure that the property is disposed consistent with the bill.

The eight attorneys mentioned above would be spread across the state. Six attorneys would handle the cases in specific regions of the state. The regions would be Southeast, Southwest, Anchorage, Kenai, Palmer and Fairbanks. Additionally, one attorney would be needed in the Office of Special Prosecutions and one attorney would be needed in the Office of Criminal Appeals to handle appeals relating to the collection of evidence or the retention of property under HB 42. The regional attorneys will be required to travel significantly to cover hearings in all court locations.