

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 1, 2017

1:04 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Violent Crimes Compensation Board

Jeffrey Michael Stubblefield - Anchorage

Nora Barlow - Anchorage

- CONFIRMATION(S) ADVANCED

Alaska Judicial Council

Lynn Marie Gallant - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 42

"An Act relating to seizure of property; 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

PREVIOUS COMMITTEE ACTION

BILL: HB 42

SHORT TITLE: FORFEITURE & SEIZURE: PROCEDURE; LIMITS

SPONSOR(s): REPRESENTATIVE(s) WILSON

01/18/17	(H)	PREFILE RELEASED 1/13/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	JUD, FIN
01/23/17	(H)	JUD AT 1:00 PM GRUENBERG 120
01/23/17	(H)	Heard & Held
01/23/17	(H)	MINUTE (JUD)
03/01/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JEFFREY STUBBLEFIELD, Appointee
Anchorage, Alaska

POSITION STATEMENT: As appointee to the Violent Crimes Compensation Board, discussed his qualifications and answered questions.

LYNNE GALLANT, Appointee
Anchorage, Alaska

POSITION STATEMENT: As appointee to the Alaska Judicial Council, discussed her qualifications and answered questions.

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

POSITION STATEMENT: During the hearing of HB 42, offered testimony and answered questions.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 42, discussed the proposed amendments.

ACTION NARRATIVE

1:04:08 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Claman, Fansler, Eastman, Reinbold, and Kopp were present at the call to order. Representatives Kreiss-Tomkins and LeDoux arrived as the meeting was in progress.

CONFIRMATION HEARING(S):
VIOLENT CRIMES COMPENSATION BOARD
ALASKA JUDICIAL COUNCIL

[1:04:50 PM](#)

CHAIR CLAMAN announced that the first order of business would be confirmation hearings for positions on the Violent Crimes Compensation Board, Jeffrey Michael Stubblefield and Nora Barlow; and Lynn Gallant on the Alaska Judicial Council. He stated that Ms. Barlow will not testify today but he asked that members review her application and resume as her name would be forwarded to the joint session of the Senate and House of Representative for consideration. He noted that Ms. Barlow is being reappointed for her third term on the Violent Crimes Compensation Board.

CHAIR CLAMAN opened invited testimony.

[1:05:43 PM](#)

JEFFREY STUBBLEFIELD, Appointee, advised he is currently employed with the Alaska Native Medical Center Neuro Surgery Clinic and that he submitted his application to the Violent Crimes Compensation Board.

[1:06:33 PM](#)

LYNNE MARIE GALLANT, Appointee, advised she currently works as a neonatal intensive care nurse at Providence Alaska Medical Center and that she submitted her application to the Alaska Judicial Council.

CHAIR CLAMAN closed invited testimony.

[1:07:43 PM](#)

REPRESENTATIVE REINBOLD asked Mr. Stubblefield what he was trying to achieve by serving on this board.

MR. STUBBLEFIELD noted that he had volunteered for open positions and that his "whole goal" was strictly to help out in the community and the state in which he lives.

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REPRESENTATIVE EASTMAN asked Ms. Gallant to speak to why she chose this specific appointment as opposed to other boards and commissions with vacant positions.

MS. GALLANT responded that immediately following law school, her husband clerked for Judge James Arnold von der Heydt, who was one of the initial people setting up the Alaska Judicial Council. She said she was always aware of its function and found it somewhat unusual because growing up in the State of Maine, the public did not have any input over who was appointed to the judiciary. Since Governor Bill Walker requested public participation, she said she decided to give it a try.

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REPRESENTATIVE KOPP asked what she sees as the proper role of a judicial council member.

MS. GALLANT replied that the proper role is to evaluate the qualifications and professionalism of the candidates so Alaska has the most qualified candidates. She noted that she is aware of discussions over whether to increase the number of public members on the judicial council, thereby, providing more public input than the attorneys. She related that it should remain that attorneys of this state have an equal voice over who is presented to the governor for consideration because as professionals, they need to practice under that candidate. Also, she opined, part of the role of the judicial council is to review how well the candidate presents a legal argument and determine whether they can look at both sides of the equation, especially if considering someone for the Alaska Superior Court or the Alaska Supreme Court.

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REPRESENTATIVE KOPP noted that Ms. Gallant is a newborn intensive care nurse which, he described, as a demanding job, and as a former member of the judicial council he was surprised at the workload of the council. He added that the members travel probably 12-13 weekends a year, it requires significant

preparation time, and he asked whether she is up for the workload.

MS. GALLANT answered that she reviewed some of the judicial council's prior work, and that she works part-time and tends to work every other weekend. She is aware that most of the judicial council meetings, over the next year, will be Monday through Friday and she can shift her work schedule around to accommodate that. She added that she teaches classes possibly every other month so if she has enough notice she can work her professional life around her judicial council commitment. She said she is not very concerned about the amount of work that needs to be done and is interested in getting into it, it is an extension of when she worked on municipal elections together with being more involved in the democratic process, which she fully enjoys.

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REPRESENTATIVE KOPP said he has no doubt that with her demanding professional background she can manage being on the judicial council. He referred to her past political involvement and asked whether she would be able to set that aside as a council member. He warned that she doesn't want her role as a council member to also be a lightning rod politically, and that she wants to be seen as someone who is disinterested in a particular outcome.

MS. GALLANT responded that this question may be in reference to the op-ed pieces she wrote regarding the judicial council during the prior election. That being said, she advised that she came to that position from her own personal knowledge of the initial actions and for the judicial council due to her lifelong relationship with Judge von der Heydt. She stated that she is willing to step back, set that aside, and evaluate what was going on in front of her.

CHAIR CLAMAN offered to Ms. Gallant that there are many busy people on the council and if they don't schedule ahead, no one will make any of the meetings so there will opportunities to plan ahead.

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REPRESENTATIVE FANSLER thanked both applicants for their desire to perform public service and serve the state.

REPRESENTATIVE REINBOLD agreed.

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CHAIR CLAMAN pointed out that periodically there are discussions about the makeup of the Alaska Judicial Council, and some suggest that it should be constitutionally expanded, although, its members would probably say that whether or not the voters change the number of members, they will continue to serve.

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REPRESENTATIVE FANSLER said the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointees and recommends that the following names be forwarded to a joint session of the Senate and House of Representative for consideration: Nora Barlow and Jeffrey Stubblefield to the Violent Crimes Compensation Board; and Lynne Gallant to the Alaska Judicial Council. This does not reflect intent by any of the members to vote for or against these individuals during any further sessions for the purposes of confirmation.

HB 42-FORFEITURE & SEIZURE: PROCEDURE; LIMITS

[1:20:11 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 42, "An Act relating to seizure of property; 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."

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JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), referred to the Department of Law's document titled "Amendment to HB 42 v. D" [there were numerous provision changes within that document] and Version D of the bill, and explained there are conforming sections, and that the amendment attempts to lay out the following: the procedure by which property can be seized when it is subject to forfeiture; provide for a post seizure hearing; express in statute the forfeiture process; raise the burden of proof from a preponderance of the evidence to clear and convincing evidence;

a section discusses what property is subject to forfeiture - for what offenses; a section addresses third party or innocent third parties and the remission process; a statute specifically addresses substituting other property for the piece of property seized; and two sections deal with the disposition of property when charges are no longer relevant, and an annual report to the legislature about forfeited property.

MR. SKIDMORE explained that the department attempted to put all of the various concepts within Representative Tammie Wilson's original bill and the department's amendment together, which resulted in the following: eliminating potential confusion between evidence versus property subject to forfeiture; ensuring the statutes outlined therein are consistent with existing case law on how to address forfeiture while adding in a few new things; and that the way in which the department amended the bill should eliminate the need to amend any court rules.

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REPRESENTATIVE KOPP noted that he went through this amendment in detail with Kaci Schroeder of the Department of Law and the bill sponsor, and he does not have any questions.

REPRESENTATIVE REINBOLD noted that she also spoke with the sponsor of the bill and because the sponsor put her blessing on it, Representative Reinbold was happy with it.

[1:25:00 PM](#)

CHAIR CLAMAN referred to [Page 3 of the amendment] AS 12.35.035, Post seizure hearing. He related that he had previously suggested adding language allowing for the option of posting a bond as security for the asset, and the packet before him does not include that modification of language.

MR. SKIDMORE agreed that the bond option has not been added there and he will discuss it further with the sponsor.

CHAIR CLAMAN advised that the bill sponsor was fine with his suggestion, and surmised that the Department of Law did not have a problem with such language.

MR. SKIMORE responded that posting a bond to have property returned makes sense and the provisions found in proposed statute, AS 12.35.035, are there to ensure that the property goes back to the lawful owner if it wouldn't be illegal for them

to possess the property, and it was not needed for evidence. Under those same concepts he said he would not have a problem with it.

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CHAIR CLAMAN referred to [the amendment] page 6, Sec. 12.36.080, Disposition of seized property [second line], and noted there were previous discussions to change the time limit from 60 days to 30 days.

[Chair Claman then realized he did not have the most current version after Mr. Skidmore pointed out that the language currently reads: "(a) Within 30 days".]

[1:28:41 PM](#)

CHAIR CLAMAN noted he had had a number of conversations as to satisfying the annual reporting requirement with properties where there is a real interest in keeping track of, such as, motor vehicles, airplanes, boats, and snow machines, and he was unsure whether the conversations led to any changes.

MR. SKIDMORE advised that the department had not modified anything with regard to the annual reporting requirement itself, and he pointed out that the requirement does not directly impact the criminal division of the department. Although, he remarked, concerns have been expressed by the Department of Public Safety, and he opined that the concept being referred to is found under AS 11.81.900(b) [50], which read as follows:

(50) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

MR. SKIDMORE said that that definition appears to encompass those larger item Chair Claman referred to, and informed the committee that the department has not been asked to make those changes.

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The committee took an at-ease from 1:30 p.m. to 1:32 p.m.

[1:32:29 PM](#)

CHAIR CLAMAN advised that it was pointed out that the issue about posting a bond for property subject to forfeiture is addressed under Sec. 12.35.035(c) [page 4 of the amendment], which read as follows:

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

CHAIR CLAMAN advised that consistent to what Mr. Skidmore indicated, the language of the property subject to the annual report had not been changed, and it is an ongoing discussion that does not require a resolution today. He opined that there were questions about obtaining the correct information and not creating a burden on the Department of Public Safety, thereby, causing it to spend, potentially, thousands of dollars reporting properties where there is no real interest.

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REPRESENTATIVE REINBOLD asked for clarification that the money from any of the seized or forfeited property would not be used to pay an attorney bill.

MR. SKIDMORE responded that with regard to the proposed amendment before the committee, that was one of the issues the department had a concern with and it was not included in the amendment. Although, he pointed out, the amendment does say that under the post seizure hearing, a person is able to request property be returned if the court would allow the property to be returned. He explained that the law cannot prevent a person from using it in some manner, and it is not a factor the courts consider. From the standpoint of the department, it would be improper for the department to say what they could use the money for if it was appropriate to return it, he said.

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REPRESENTATIVE FANSLER remarked that he was leery since there are almost 12 full pages of amendments and it appears like some offices have been interacted with regarding those amendments and have a clear understanding of their meaning. He stressed that he certainly did not have that clear understanding at this time.

He said he was loath to force those with a clear understanding to have to march through this section-by-section, and he certainly would have appreciated being included in those discussions on the office level if that was the way it was being handled, or doing it all on the public record. He asked for a different procedure in the future.

MR. SKIDMORE explained that the legislative offices reached out to the department, it wasn't the department affirmatively going to anyone in particular, because its primary focus has been to work with the sponsor. He said he would be happy to sit down and discuss it further with anyone.

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REPRESENTATIVE FANSLER stressed he did not want to imply it was disrespectful, and commented that there is a lot to go through and maybe he is a slow processor and needs time to think about unintended consequences and such, but he absolutely wants to be certain he knows what he is doing when voting. He speculated that it appears the intention of the committee, at least in the long term, is to take it up as a committee substitute, of which he agrees. He asked whether there was already a finalized amended version because it would be easier to process than flipping between the lines.

CHAIR CLAMAN explained the idea was to get it all together as a committee substitute, and that the bill will not be passed out today because so many changes came from this proposal from the Department of Law. His plan, he explained, is for the committee to look at the bill in total, and ask more questions to get a full understanding of exactly how it will work because he suffers from the same challenges as Representative Fansler.

REPRESENTATIVE EASTMAN asked whether the sponsor would be speaking to these amendments.

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REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, responded to Representative Fansler that when this bill was brought forward there was much concern from the Department of Law, the Department of Public Safety, and the Alaska Court System. All parties discussed what could and could not be included in the bill, and the Department of Law came back with the amendment before the committee. She acknowledged that it deletes parts of the original bill, but it does put all of the

statues together, which is why the bill is so lengthy. She advised that the issue of ensuring that an innocent party with seized property have a clear process to have their property returned to them has been addressed. There will be some sort of mechanism where the person must prove they own the item, but it also reverts back to law to explain why it cannot be returned, she explained.

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REPRESENTATIVE WILSON noted that the bigger part is the reporting portion because the Department of Public Safety currently does not have a mechanism to "spit out a report." Although, she pointed out, during this process, it was discovered that the State of Oregon has a "pretty good system," and she was advised last week that the other part of the system the State of Oregon uses matches Alaska, which would be under \$20,000. She explained that the goal is to not duplicate and have law enforcement involved in paperwork anymore than necessary, and it appears they will enter information "right on the spot that they already have." She said she has no problem narrowing the list of requested items down because, legally, certain items will not be returned. Representative Wilson expressed that she is absolutely in favor of this, it has been provided to many departments, and she agreed that a sectional of the committee substitute would be much easier to understand.

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REPRESENTATIVE EASTMAN noted that the biggest concern from his constituents was the ability of government officials to take property when there was no conviction and the constituent has to go through forfeiture where it becomes the government's property. He asked how wide that door is open, or whether it is closed.

REPRESENTATIVE WILSON answered that it is not closed completely because that won't happen in one swipe, but it does provide a process wherein the person can submit a request advising they had nothing to do with [the crime]. In the event it was proven that the person may have had something to do with [the crime], once the defendant is found innocent or convicted, there is another part of this bill wherein that person now has standing in front of the same court to have another bite at the apple.

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REPRESENTATIVE EASTMAN offered a scenario of a "future wayward prosecutor" deciding to hold a person hostage by advising the conviction would be pursued unless the person forfeits their property, "But, if you give it to me then we're not going to -- you know, prosecute." Obviously, he pointed out, he is not referring to the Alaska Department of Law, and queried whether within the statutes that type of situation is possible.

REPRESENTATIVE WILSON responded that tactics can be used while going through the criminal process and the legislature will never be able to make a law that stops everything from happening. Unfortunately, in different places in the country and sometimes in Alaska, when property has been taken, the defendant could be told that their guiding license would not be taken away if the person says they are guilty of the citation. She related that this bill includes a requirement for reporting the properties forfeited, which is a huge part of this bill, because if it's not being reported then there, obviously, is an issue. She offered that many states do not do any sort of reporting whatsoever, and it allows things to happen. Again, she stated, everyone is trying to do the right thing and be certain justice is brought and that the property rights of the individuals are protected.

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REPRESENTATIVE KOPP reminded the committee that Senate Bill 64, passed two or three years ago, that made it illegal to forgo criminal prosecution in lieu of civil forfeiture. Thereby, he related, telling the Department of Law that they cannot tell a defendant they will not be prosecuted "if you'll give us this." This bill allows for a post seizure hearing and the standard to justify a seizure was raised from a preponderance of the evidence to clear and convincing evidence that the court can rule on. The higher standard protects the public, he pointed out, and the Department of Law must prove to a higher standard that that property was connected to that crime and that the property should have been taken as evidence. He described it as a balance.

REPRESENTATIVE REINBOLD offered that initially she had concerns with this bill, but Representative Wilson and everyone worked well together, including the Department of Law and the Alaska Court System, and she gave "a shout out for the wildlife troopers who took special time to come to the office."

[HB 42 was held over.]

1:48:59 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:48 p.m.