

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 27, 2017

1:21 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

HOUSE BILL NO. 123

"An Act relating to disclosure of health care services and price information; and providing for an effective date."

- HEARD & HELD

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 123

SHORT TITLE: DISCLOSURE OF HEALTH CARE COSTS

SPONSOR(S): REPRESENTATIVE(S) SPOHNHOLZ

02/13/17	(H)	READ THE FIRST TIME - REFERRALS
02/13/17	(H)	HSS, JUD
03/02/17	(H)	HSS AT 3:00 PM CAPITOL 106

03/02/17 (H) Heard & Held
03/02/17 (H) MINUTE (HSS)
03/09/17 (H) HSS AT 3:00 PM CAPITOL 106
03/09/17 (H) Moved CSHB 123(HSS) Out of Committee
03/09/17 (H) MINUTE (HSS)
03/10/17 (H) HSS RPT CS (HSS) 5DP 2NR
03/10/17 (H) DP: JOHNSTON, TARR, EDGMON, SULLIVAN-
LEONARD, SPOHNHOLZ
03/10/17 (H) NR: KITO, EASTMAN
03/24/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/24/17 (H) Heard & Held
03/24/17 (H) MINUTE (JUD)
03/27/17 (H) JUD AT 1:00 PM GRUENBERG 120

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
03/01/17 (H) Heard & Held
03/01/17 (H) MINUTE (JUD)
03/13/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/13/17 (H) Scheduled but Not Heard
03/22/17 (H) JUD AT 1:00 PM GRUENBERG 120
03/22/17 (H) Heard & Held
03/22/17 (H) MINUTE (JUD)
03/27/17 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE IVY SPOHNHOLZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 123, presented a recap on the legislation, and answered questions.

BARBARA BARNES, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska

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

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

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

HILARY MARTIN, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

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

ACTION NARRATIVE

[1:21:57 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:21 p.m. Representatives Claman, Fansler, Kopp, Kreiss-Tomkins, LeDoux, Eastman, and Reinbold were present at the call to order.

HB 123-DISCLOSURE OF HEALTH CARE COSTS

[1:22:33 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 123, "An Act relating to disclosure of health care services and price information; and providing for an effective date."

[1:23:27 PM](#)

REPRESENTATIVE IVY SPOHNHOLZ, Alaska State Legislature, advised that the bill is about price transparency and bringing an element of the free market into the health care marketplace of which, currently, does not exist. She pointed out that health care consumers do not know their health care services cost unless they call and ask for special quotes and rates. Through this bill, she said, her goal is to introduce more price

competition, open up the conversation about price competition to compare prices in health care consumerism.

[1:24:34 PM](#)

CHAIR CLAMAN referred to a document titled "Top 50 CPT Codes - Hospital 1," and asked Representative Spohnholz to explain the document.

REPRESENTATIVE SPOHNHOLZ explained that the list for the top 50 CPT codes most frequently provided was requested of Becky Hultberg, Alaska State Hospital and Nursing Association (ASHNA). This is not exactly the manner in which the services would be listed that the bill requires. She explained as follows:

We actually asked for services listed by CPT code, which is the designation, is appropriate in the third column here with a description that is written in plain language so that a non-medical professional can understand it along with the undiscounted price. So, what we're looking at here is a very different sort of list, it is the CPT code description which is for billing purposes, along with the CPT code number, and the number of times this service was offered at this particular hospital over the last -- the 2016 year. So, you can see that the vast majority of services that were offered in this particular hospital were either labs of some kind, or emergency department treatments.

[1:26:27 PM](#)

REPRESENTATIVE LEDOUX read the title of the second column as "Charge CPT Code," and whether the [third column - 2016 Count] was how many times people have had the procedure.

REPRESENTATIVE SPOHNHOLZ responded that the CPT code is the number used for medical billing purposes, and [the third column] "2016 Count" is the number of times that service was provided within that facility.

REPRESENTATIVE SPOHNHOLZ clarified that this description of CPT is how the medical billing people see them, not as the bill requires. Also, it is important to note in HB 123 that it distinguished between individual providers of health care and facilities. Therefore, a hospital would clearly fall into the facility category offering more services due to the volume and

the scope of its services, and the bill asks for the top 50 CPT codes. In the case of an individual medical practitioner, such as a family doctor, they would list the top 25 most frequently offered services, and their services could differ depending upon the medical services offered by each practitioner.

1:28:08 PM

REPRESENTATIVE REINBOLD asked whether their discussion in her office regarding facilities had been fixed in the bill.

REPRESENTATIVE SPOHNHOLZ referred to the bill, page 2, lines 26-29, [Sec. 18.23.400(d)], which read as follows:

(d) A health care provider or health care facility may include a statement with a list published under (c) of this section explaining that the undiscounted price may be higher or lower than the amount an individual actually pays for health care services described in the list.

REPRESENTATIVE SPOHNHOLZ explained that the bill allowed for a disclaimer to be included on the price list, and the bill did not prescribe what that disclaimer should read specifically. In the case of a community health center with a sliding fee schedule, the Alaska Primary Care Association wanted to be certain that potential health care consumers were not scared off by the undiscounted price listed. The Alaska Primary Care Association wanted to be able to post that there was a sliding fee schedule and that the actual price a consumer would pay would be much different. She offered that this would apply to a private practitioner's needs, such as indicating they are a preferred provider or covered under various health insurance plans.

1:29:55 PM

REPRESENTATIVE REINBOLD referred to the Veterans Administration, and having the Indian Health Service publish its top 25 or top 50 "expenses, and I would love that ..." In the event everyone else has that requirement, it is only fair that the government facilities "expose that, as well."

REPRESENTATIVE SPOHNHOLZ referred to HB 123, Version I, page 3, lines [24-31, Sec. 18.23.400(h)(2)] which read as follows:

(2) ... "health care facility" does not include

(A) the Alaska Pioneers' Home and the Alaska Veterans' Home administered by the department under AS 47.55;

(B) an assisted living home as defined in AS 47.33.990;

(C) a nursing facility licensed by the department to provide long-term care;

(D) a facility operated by an Alaska tribal health organization; and

REPRESENTATIVE SPOHNHOLZ pointed out that the provision provides a few exclusions because the health care consumed in those services was different. She added that it had been brought to her attention that there could be a separation of powers issue because the legislature did not have authority to mandate federally funded facilities.

[1:31:16 PM](#)

REPRESENTATIVE REINBOLD reiterated that if the private sector was under this requirement, it was only fair that the public be under the same requirement, especially if it was the government's requirement. She asked Representative Spohnholz to speak to the issue of possibly being in conflict with anti-trust laws.

REPRESENTATIVE SPOHNHOLZ responded that she was unsure any specific antitrust statutes related to this, there was a domain issue. She reiterated that state governments cannot tell the federal government what to do; therefore, the legislature cannot legally require, for instance, the Veterans' Administration to list its prices. She related that in the event the committee wanted to propose an amendment changing the body of this bill, perhaps Legislative Legal and Research Services should be brought in to consult on that particular element. She acknowledged that she did not consult with Legislative Legal and Research Services on that particular limitation because she was advised by professionals in the field that it was not advisable.

[1:32:57 PM](#)

CHAIR CLAMAN pointed out to Representative Reinbold that in terms of offering an amendment, it would be due by 5:00, 3/28/17. He commented that the issue was not a separation of powers, but rather "federal supremacy" which meant no state had

the authority to order the federal government to do anything, and this would not be an exception. Frankly, he said, there was no basis for Alaska to require federal agencies to disclose that information.

[1:33:39 PM](#)

REPRESENTATIVE REINHOLD said she will look into the issue because in the event any state dollars were going into these facilities, it was only prudent for the legislature to be wise. She opined that a lot of Medicaid state funding does go to some of these facilities.

REPRESENTATIVE SPOHNHOLZ pointed out that there are facilities receiving public money that will be required to post their fees, and there was not a clear bright line between those as it related to public funding versus not public funding. For example, she pointed to the community health centers that receive a substantial amount of funding through Medicaid, and said they will list their billing amounts.

[1:34:46 PM](#)

REPRESENTATIVE REINHOLD asked whether this conflicts with federal laws because a couple of doctors sent her laws, although, those laws were not currently in front of her.

REPRESENTATIVE SPOHNHOLZ answered that, to her knowledge, this bill does not conflict with federal law beyond the constitutional limitations previously discussed.

[1:35:13 PM](#)

REPRESENTATIVE LEDOUX commented that just because she was insured did not mean she didn't care about the costs of service. She offered a scenario of being insured and visiting a doctor with his rack rates on the wall, and she then checking with another doctor who has lower rack rates listed. She asked whether it was conceivable, due to the type of insurance she carried and the relationship between her physician and the insurance company, that the doctor with the higher rack rate was actually charging her insurance company a lower fee than the doctor with the lower rack rates.

REPRESENTATIVE SPOHNHOLZ responded that it was possible if the doctor with the higher rack rate was a preferred provider with her insurance provider, and the doctor with the lower rack rate

was not. In the event they were both preferred providers they would likely be paid at the same rate. However, she pointed out, there will be some patients who pay the full rate or pay a higher percentage of that full rack rate. Yet, posting the full undiscounted price still has merit because it is the basis for which all prices are derived.

[1:36:56 PM](#)

REPRESENTATIVE LEDOUX said her question goes back to the person with insurance and why they would care which doctor had the higher rack rate. In the event both providers were preferred providers, one could have a rack rate of \$200 and the other a rack rate of \$100, and both providers would end up with \$50 from the insurance company. She asked whether she was correct.

REPRESENTATIVE SPOHNHOLZ noted that, in theory, it was possible, and what Representative LeDoux identified is one of the big challenges in the health care market place, in which it is difficult to determine exactly what [amount] would be paid. She said she does not claim that this bill would solve that problem because the bill's goal is to help consumers understand that some health care is expensive, some is less expensive, and to get more information out to the consumer. It was also designed to stimulate a conversation between individual health care consumers, the billing departments, and their doctors.

REPRESENTATIVE SPOHNHOLZ said that in following up on the 3/24/17 discussion, a letter was received from Jeff Ranf, Co-Chair of the Legislative Community Committee, Alaska Association of Health Care Underwriters. Mr. Ranf reminded the committee that it was not always clear to individuals that someone was paying full freight even if they were not paying full freight. Due to the fact that health care costs are dramatically increasing, there is disconnect between the end user of health care services and those charging for it. Representative Spohnholz described this bill as one tiny step forward in the first mile of a long-term marathon in trying to reduce health care costs. This bill is simple to implement, a simple strategy to understand, and it will help inform conversations and dialogs about health care costs, she explained.

[1:39:57 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he appreciates the place the bill is trying to get to, but he is also cognizant of the legal realities.

[1:40:37 PM](#)

REPRESENTATIVE EASTMAN asked the sponsor to offer an understanding of "how it is that we get here" with health care and the lack of transparency. He further asked why it was that health care traveled down such a different road than other services to then get to the point of passing a bill like this to fix it.

REPRESENTATIVE SPOHNHOLZ related that that's a big question and posited that the journey into opacity in health care pricing occurred when health care insurance was first introduced. The first provider of health care insurance was what is now Premera Blue Cross, a group of doctors came together to put together a funding structure that made it more affordable for regular working people to get health care and afford their services. She opined that that was a laudable goal in financing for health care, but that was the beginning of separating the consumer from the person selling the services. Since that time, the market has gotten more complex with more payors in the market adding to its complexity, and "anytime you're not actually looking at the actual cost and paying attention, you are more likely to not pay attention to the cost" such as, certain young people with their first credit card, she offered. Her hope, she said, is to shine a little more light on the costs of health care, and she looks forward to advancing other bills approaching the issue from a different tact.

[1:43:44 PM](#)

REPRESENTATIVE EASTMAN asked that since most consumers of health care in Alaska fall under some kind of private or government sponsored health care program, and insurance sets those costs, whether she had considered hitting it dead on and going after the insurance costs side of things and the need for transparency.

REPRESENTATIVE SPOHNHOLZ said that she had considered his suggestion and it would possibly be a bill for another day.

[1:44:59 PM](#)

REPRESENTATIVE REINBOLD, in response to Representative Eastman, offered that previously she was the operations manager for Medical Park Family Care, and that it was difficult to quote a price at someone's request. For example, a person may say they

have a sore throat when in reality they have more complicated issues they are not comfortable telling the receptionist. Once the patient was before the doctor, five or six other issues may come up that required a shot or whatever. She said that vaccine charges change often, insurance plans change regularly, and sometimes people come in as a veteran, under TRICARE, or due to a car accident. She related that Medical Park Family Care charged different prices when it was an automobile accident, or workers' compensation', or a contract with unions, or state employees, and it was complicated to determine the fees for "twenty different things" in a comprehensive exam.

[1:46:50 PM](#)

CHAIR CLAMAN commented that Representative Reinbold's comments were far afield from this bill.

REPRESENTATIVE KREISS-TOMKINS noted his appreciation to ASHNA in providing the top 50 most common CPT codes.

CHAIR CLAMAN said he found the confusion of price between Hospital 1 and the unidentified hospital interesting, and noted that a complete blood count was the most common procedure.

[HB 123 was held over.]

HB 42-FORFEITURE & SEIZURE: PROCEDURE; LIMITS

[1:48:16 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."

CHAIR CLAMAN advised that this was the fourth hearing on the bill, and last week the committee adopted a committee substitute [Version U] as the working document wherein John Skidmore walked the committee through the bill. He then described the amendment procedure.

CHAIR CLAMAN further advised that he had submitted Amendments 1-4, and passed the gavel to Vice Chair Fansler.

[1:49:12 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, Version 30-LS0193\U.11, which read as follows:

Page 5, lines 8 - 10:

Delete all material and insert:

"(c) Before ordering the return of seized property subject to forfeiture, the court

(1) must find that

(A) the item has no evidentiary value; or

(B) the parties have reached an agreement or stipulation that preserves the evidentiary value of the property or maintains the evidentiary integrity of the property; and

(2) may require the property owner to post cash or a secured monetary bond in an amount up to the fair market value of the property."

REPRESENTATIVE EASTMAN objected for purposes of discussion.

[1:49:38 PM](#)

The committee took a brief at ease.

[1:50:29 PM](#)

CHAIR CLAMAN advised that Amendment 1 responds to a discussion during the last hearing regarding [Sec. 12.35.220(c), Version U,] page 5, [lines 8-10], which read as follows:

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

CHAIR CLAMAN explained that subsection (c) addressed the topic of returning seized property to the owner of that property, and addressed that sometimes evidence has no evidentiary value, yet other times the evidence has continuing evidentiary value. There are ways in which to reach an agreement allowing the value of the evidence to be shown in court without the evidence, for

example, pictures of the item if the defendant waived any objection to not having the evidence present.

CHAIR CLAMAN further explained that the courts have the option of asking the owner of the property to post a monetary bond, up to the value of that property, in the event the property was not returned at the end of the case.

[1:52:08 PM](#)

REPRESENTATIVE EASTMAN asked the sponsor's thoughts regarding Amendment 1.

CHAIR CLAMAN noted that Representative Tammie Wilson had advised his office that she was comfortable with "all of these amendments."

[1:52:47 PM](#)

BARBARA BARNES, Staff, Representative Tammie Wilson, Alaska State Legislature, advised that the sponsor had no objection to Amendment 1.

VICE CHAIR FANSLER asked whether that was true with the other offered amendments.

MS. BARNES replied that some of the amendments are obviously somewhat duplicative, but the sponsor had no objection to the amendments.

[1:53:28 PM](#)

REPRESENTATIVE EASTMAN withdrew his objection. There being no objection, Amendment 1 was adopted.

[1:53:56 PM](#)

CHAIR CLAMAN moved to adopt Amendment 2, Version 30-LS0193\U.6, which read as follows:

Page 6, following line 2:

Insert new bill sections to read:

"* **Sec. 10.** AS 12.36.060(a) is amended to read:

(a) A deadly weapon, other than a firearm or ammunition, forfeited to the state under AS 12.55.015(a)(9), unless remitted under **AS 12.36.320** [AS 12.36.050], shall be disposed of by the

commissioner of public safety under this section. Under this subsection, the commissioner of public safety

(1) may declare a weapon surplus and transfer it to the commissioner of administration;

(2) may, if the weapon is suitable for law enforcement purposes, training, or identification, retain the weapon for use by the Department of Public Safety or transfer the weapon to the municipal law enforcement agency making the arrest that led to the forfeiture;

(3) shall destroy a weapon that is unsafe or unlawful.

* **Sec. 11.** AS 12.36.060(c) is amended to read:

(c) A firearm or ammunition forfeited to the state under AS 12.55.015(a)(9), unless remitted under **AS 12.36.320** [AS 12.36.050], shall be disposed of as provided in AS 18.65.340."

Renumber the following bill sections accordingly.

Page 20, following line 22:

Insert a new bill section to read:

"* **Sec. 31.** AS 12.36.050 is repealed."

Renumber the following bill sections accordingly.

REPRESENTATIVE REINBOLD objected for purposes of discussion.

[1:54:04 PM](#)

CHAIR CLAMAN explained Amendment 2 as follows:

Prior to what is in Sec. 12.35.220, which is pages 4 and 5 of the -- of the CS. That provides a mechanism for all property to be returned, not just firearms. And, 12.36.060 is a specific provision that relates to the return of firearms. And so, the purpose of this amendment -- the purposes of this amendment is to add Sec. 320, which we just referenced, to the remission of firearms, and then later in the section, we repeal Sec. 12.36.050 that was the specific provision relating to remission of property. And that's probably not the most clear description of what this does.

[1:55:40 PM](#)

REPRESENTATIVE EASTMAN asked Chair Claman to explain Sec. 12.36.320 because the amendment basically replaces Sec. 12.36.050 with Sec. 12.35.220.320, and Sec. 12.35.320 doesn't appear in the amendment."

CHAIR CLAMAN further explained Amendment 2, as follows:

So, .320 -- .320 is the provision that provides for the remission of forfeited property, as well as seized property. And, 12.36.050, which is what you see on the last page of Amendment number 2, is a separate provision in the statutes -- it's a separate provision in the statute that relates to the remission of forfeited property. And, the analysis of -- showed that we were actually now, by enacting the portion that is the 12.36.320, we are essentially doing the same thing that takes place in 12.36.050, but expanding the scope of the return of forfeited property. And so, the advice from Legislative Legal was that keeping 12.36.050 duplicated what we were doing in 12.36.320. And then -- and then what goes on in 12.36.060 is now replacing 12.36.050 with 12.36.320, which is what we are enacting.

So, in -- in broad terms what Amendment 2 does is it takes on a specific provision as to one type of property in 12.36.050, and replaces it with what is now .320 that is broader in scope for the return of property.

[1:57:50 PM](#)

REPRESENTATIVE KOPP offered his understanding of Amendment 2 as follows:

It takes the explanation offered currently in 12.36.050, of the findings of fact that are necessary for a forfeited weapon to be returned. And, it takes those same findings of fact and it says these are necessary for any property to be returned to avoid duplicative -- not duplicative - that's sound like false, but duplicate references in the law, not just a section just for weapons, but for any property that's sought to be returned to the owner. 12.36.320 in this bill covers all property including weapons, and so

it's a -- Legal's way of expanding that standard we have for owners to get guns back, to all property.

[1:58:58 PM](#)

REPRESENTATIVE LEDOUX pointed out as follows:

We don't seem to have 12.36.050, I don't think is actually in this new bill. But, I guess I'm just wondering if the -- if that's the reason -- if .050 is everything except weapons, then why don't we just add weapons to .050, instead of making .050 everything except weapons. Maybe it would be just easier to include weapons in .050 -- undo the exclusion.

REPRESENTATIVE KOPP advised Representative LeDoux that the intention was not to exclude weapons from AS 12.36.050, which was solely about remitting a weapon. He said that the amendment said that those findings of fact, that have to be made by the court to give that back to the owner, apply to all property that an owner claimed interest, that's the standard that had to be met for the property to be returned.

[2:00:35 PM](#)

REPRESENTATIVE LEDOUX pointed out that AS 12.36.050 relates to weapons, but it doesn't relate to all weapons and asked whether it just relates to a firearm or ammunition.

REPRESENTATIVE KOPP answered that it is just related to guns.

REPRESENTATIVE LEDOUX suggested making AS 12.36.050 relate to all deadly weapons rather than including two sections for it.

[2:01:39 PM](#)

CHAIR CLAMAN offered the following:

The goal in .320 is not -- is to expand it, not just to firearms and deadly weapons, to all property. So it isn't a question of -- we would need -- well, first Leg Legal did not seem to want to do it with .050, but -- that's the first part of the answer. But, the second part of the answer is that .320 would expand it to all types of property. The areas that are very concerned in forfeiture being planes, boats, automobiles, they would be covered by .320, and not --

and because they cover all those kinds of property would also apply to firearms and deadly weapons. Whereas, .050 is a much more limited rescission of property statute. So, I think Leg Legal -- I think the way they started was, they started drafting a section for rescission of property about boats, planes, and automobiles. And then in the course of working on it, we realized that there was a statute about guns, and that we should remove that statute about guns and all put it into what was being drafted for the bill. That was probably the sequence that led us where we are.

[2:02:55 PM](#)

REPRESENTATIVE REINBOLD asked that Legislative Legal and Research Services describe the workings of Amendment 2.

VICE CHAIR FANSLER asked whether there was other discussion, outside of the Legislative Legal and Research Services question, regarding Amendment 2.

[2:03:37 PM](#)

REPRESENTATIVE EASTMAN asked the following:

So, under Amendment 2, the section that we're dealing with here in Sec. 10, does specifically deal with deadly weapons and, we're simply bringing .320, which isn't -- doesn't one -- at least one of the amendments for the bill do something to change .320? Or, are we simply saying .320 is great as is, unamended, unchanged, and now we want it to cover deadly weapons also?"

[2:04:18 PM](#)

VICE CHAIR FANSLER opined that Amendments 4 and 6 speak to AS 12.36.320. He then held Amendment 2, and moved the committee to Amendment 3.

CHAIR CLAMAN moved to adopt Amendment 3, Version 30-LS0193\U.4, which read as follows:

Page 6, line 7:

Delete "under AS 12.36.310"

Insert "that provides for forfeiture by law, regulation, or ordinance"

Page 6, line 10:

Delete "under AS 12.36.310"

Insert "that provides for forfeiture by law, regulation, or ordinance"

Page 6, lines 24 - 26:

Delete all material.

REPRESENTATIVE EASTMAN objected for purposes of discussion.

[2:04:59 PM](#)

CHAIR CLAMAN referred to Amendment 3, and advised that part of what was recommended in the bill was to no longer provide a list of every single offense with a forfeiture provision within Title 12.36. He explained as follows:

But instead, just make a reference to laws and regulations that involve forfeiture, and by adding language that doesn't list the offenses, which was -- a list of offenses is under AS 12.36.310. If there was just a reference to the statutes themselves, then there is no longer a need to have AS 12.36.310 where the statutes would be listed separately. Which would tend to create lots of revisor's bills in the years ahead if we were supposed to list every -- every offense that had a -- was subject to forfeiture. So that, the purpose in trying to reduce the number of words in the statutes was to just reference offenses that had forfeiture provisions, and take out AS 12.36.310, and that is the purpose of Amendment 3.

REPRESENTATIVE REINBOLD surmised that this had nothing to do with "the lists being collected of -- the lists that they took," it's simply listing the laws, regulations, ordinances.

CHAIR CLAMAN answered in the affirmative.

[2:06:31 PM](#)

REPRESENTATIVE EASTMAN withdrew his objection. There being no objection, Amendment 3 was adopted.

[2:06:50 PM](#)

CHAIR CLAMAN moved to adopt Amendment 4, Version 30-LS0193\U.9, which read as follows:

Page 7, line 5, following "fair":
Insert "market"

Page 7, following line 8:
Insert a new subsection to read:
"(c) The court may order the remission of property conveyed by
(1) inheritance to an individual who was not a party to the offense resulting in forfeiture; or
(2) gift from a person other than the defendant."

Reletter the following subsection accordingly.

REPRESENTATIVE LEDOUX objected.

[2:06:57 PM](#)

CHAIR CLAMAN referred to the committee packet and explained that [Conceptual Amendment 1 to] Amendment 4 was provided by the Department of Law. Chair Claman moved to adopt [Conceptual Amendment 1 to] Amendment 4. There being no objection, [Conceptual Amendment 1 to] Amendment 4 was adopted.

[2:08:24 PM](#)

The committee took a brief at ease.

[2:08:54 PM](#)

CHAIR CLAMAN explained that Amendment 4, as amended, spoke to concerns regarding AS 12.36.320, remission of forfeited property, and this was a change to AS 12.36.320. He reminded the committee there was concern regarding someone who receives property by gift or inheritance, and how that would impact the analysis of whether the owner could receive their property. Within discussions at the Department of Law, he said, it became apparent the committee was focused on what happened to gifted property before a crime occurred. He referred to his previous example of the gift of his grandfather's favorite pistol being stolen from his house and used in a crime, and said that is an example of the pre-crime transmission of property. Although, he noted, the Department of Law was concerned about post-crime

transfer of property wherein people transfer property to conceal the property and avoid its forfeiture for a variety of reasons. In addressing both the pre-crime transfer of property by gift or inheritance, as well as not allowing that to be a basis upon which one could avoid forfeiture of property for post-crime transfers of property, [Conceptual Amendment 1 to] Amendment 4 addressed those issues, he said.

CHAIR CLAMAN pointed out that the first thing that happens in Amendment 4, [Sec. 12.36.320(a)(4)], page 7, line 5, which read:

(4) was a bona fide purchaser for fair value.

CHAIR CLAMAN advised that the drafters realized the term more commonly used was fair market value, and "market" was added into paragraph (4), as follows:

(4) was a bona fide purchaser for fair market value.

[2:11:31 PM](#)

CHAIR CLAMAN advised that new subsection (c) was added, and would be positioned before the current subsection (c). He explained that this subsection (c) was designed to address concerns with inheritance and gifts, and it incorporated [Conceptual Amendment 1 to] Amendment 4. He further explained that the concern from the Department of Law was that even in the gift situation, it was important to that the concepts in paragraphs (1), (2), and (3) be added into the gift and inheritance language, regarding legal right to the property, did not knowingly participate in the commission of a crime, and did not know that the property was used in the commission of a crime. The new subsection (c) provides that first, the court would have to find by a preponderance of the evidence that AS 12.36.320(a)(1)(2)(3), but not paragraph (4) are proven by a preponderance of the evidence. The court would then have the option that it "may order" the remission of the property if the property was conveyed by gift or inheritance, he offered. There was a note in the gift that it must come from a person other than the defendant, he pointed out.

CHAIR CLAMAN explained that that was an effort to address the gift and inheritance situation, and also the concerns directed at both the pre-crime and post-crime gift and inheritance issues.

[2:13:38 PM](#)

REPRESENTATIVE EASTMAN advised that he was not entirely sure how [Conceptual Amendment 1 to] Amendment 4 was beneficial, and asked Chair Claman to speak specifically to the amended portion.

CHAIR CLAMAN responded that the concern the Department of Law raised was that circumstances could arise in which a person could gift property for the purpose of concealment. For example, he said, his mother gifts him a car, he then loans the car to a friend who he knows is a bit of ne'er-do-well, and that the person has a tendency to commit crimes in vehicles. In that situation, he should not qualify as an innocent owner and receive his property back because he was foolish enough to loan it to that ne'er-do-well friend. He noted that [Conceptual Amendment 1 to] Amendment 4 added in paragraphs (1), (2), and (3), meaning that he had to show that he was the equivalent of an innocent owner and not gaming the system.

[2:15:22 PM](#)

REPRESENTATIVE EASTMAN noted that [Conceptual Amendment 1] ended with an ellipsis punctuation, and asked what language takes the place of the ellipsis.

CHAIR CLAMAN advised that "if the court finds" language would come just after subsection (c), which would read as follows:

(c) If the court finds by a preponderance of the evidence that AS 12.36.320(1), (2), and (3), are proven, the court may order the remission of property conveyed by

CHAIR CLAMAN explained that he handwrote a comma and a lower case "t" on the face of Amendment 4, [to include Conceptual Amendment 1] because Amendment 4 originally read with a capital "T", as follows:

(c) The court may order the remission of property conveyed by

REPRESENTATIVE EASTMAN advised that he understood.

[2:16:33 PM](#)

REPRESENTATIVE REINBOLD noted that [Conceptual Amendment 1] read as follows:

If the court finds by a preponderance of the evidence

REPRESENTATIVE REINBOLD asked the reason for the language "by a preponderance of the evidence," and whether that was the highest level of evidence.

CHAIR CLAMAN explained that the language was tracking the language in AS 12.36.320(a), and further explained that "beyond a reasonable doubt" is the highest standard, "clear and convincing evidence" is the next highest standard, and "preponderance of the evidence," is typically the civil standard. In terms of evidentiary findings those are the only three standards involved.

[2:17:36 PM](#)

REPRESENTATIVE KOPP advised that he supports Amendment 4, and then referred to [Sec. 12.36.320(b)], page 7, lines 6-7, which read as follows:

(b) Upon a showing that the person is entitled to relief under (a) of this section, ...

REPRESENTATIVE KOPP offered testimony as follows:

So, it seems to me that all of Amendment 4 could be just dropped in right there, "the court may order that ..." and then you go right -- right down through this -- this amendment, "the court may order" because you - - because (a) has to be proven. We've just said it in line (b) [sic], "Upon a showing the person is entitled to relief under (a)" that's what we're saying in this Amendment 4, as amended. "under (a) of this section" and then go right into Amendment 4, the court may order the remission of property conveyed by (1), (2), and then what we have there in (b) now should be number (3). And that to me, seems like it would just flow logically and we wouldn't have broken up showing things that have to be proved under (a) first, under two different subsections.

[2:18:51 PM](#)

CHAIR CLAMAN noted that the issue driving Amendment 4 was the issue of gifts and inheritance, of which subsection (b) doesn't address.

REPRESENTATIVE KOPP argued that it would if that language was inserted there, "the court may order" and just taking Chair Claman's language there, right after the word "section," on page 7, line 7. He then read as follows:

the court may order the remission of property conveyed by (1) inheritance to an individual who is not a party to the defense resulting in forfeiture; (2) gift from a person other than the defendant; or, (3) would be ...

[2:19:59 PM](#)

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), responded to Representative Kopp's suggestion by advising that the problem with trying to fold what was happening with Amendment 4 in with subsection (b), Version U, was that subsection (b) addressed the fact there was a posting of money for the property when it had released it. He related that that was a different concept than what was in Amendment 4, in that Amendment 4 attempted to address the ability for property to be returned if it was an inheritance or a gift, and there had not been the concerns raised in paragraphs (1) - (3) of subparagraph (a).

REPRESENTATIVE KOPP further argued that he was not convinced because it logically flowed perfectly, as all four would drop right in there. He said, "You have to find (a), and just like what you have said, the court ordering an amount equal to the value of the person's interest be paid to the person, or that the property be released to the person, (a) must be found, (a)(1), (2), and (3), must be found, so (a)(1), (2), and (3), must be found for all of your amendment too."

[2:22:00 PM](#)

VICE CHAIR FANSLER noted the purchasing an item less than fair market value, that was not a gift, would automatically disqualify someone from receiving their property. For example, he offered, parents sold their daughter a car for an extremely reduced price, and it was not quite a gift even though it was not purchased at fair market value. Then, he said, someone takes that car and uses it in the commission of a crime and now

the daughter can't get it back because she fell into the Netherlands.

MR. SKIDMORE responded that his scenario would not be a problem because the concerns presented during the last committee hearing dealt with that bone fide purchaser for fair value. Amendment 4 said that a person had to comply with paragraphs (1), (2), and (3), but not paragraph (4). The fair market value was no longer an issue for the court to decide if the person had legal right or interest in the property. For example, his uncle sold him a Ferrari for \$50, Mr. Skidmore now held legal right to the car even though he didn't pay fair market value under paragraph (1). Mr. Skidmore then loaned his Ferrari to his friend, Jeff, not knowing Jeff would use it in the commission of a crime. Mr. Skidmore could still get his Ferrari back because he had no reason to know the car would be used in the commission of a crime, thereby, not having to establish now that he paid fair market value. Amendment 4, he explained, was designed to eliminate that rationale of the fair market value having to be established.

[2:24:40 PM](#)

VICE CHAIR FANSLER referred to Amendment 4, page 1, lines 6-9, which read as follows:

(c) the court may order the remission of property conveyed by

(1) must be an inheritance to and individual who was not a party to the offense resulting in forfeiture; or

(2) gift from a person other than the defendant.

VICE CHAIR FANSLER said those are now two new requirements replacing paragraph (4).

[2:24:58 PM](#)

MR. SKIDMORE answered that when his uncle allowed Mr. Skidmore to purchase the Ferrari for \$50, a certain aspect of that remained a gift. He explained that a gift does not have to be, "I give it to you and you don't pay me anything for it. A gift is that I'm giving you something for which I haven't gotten fair market value." Therefore, even when he paid less than fair market value, that was still a gift from his uncle. He explained that Amendment 4 does not add two of them, it is one

or the other because the "or" is used on Amendment 4, page 1, line 8.

VICE CHAIR FANSLER offered a scenario wherein an item was not intended to be a gift, such as a person conducting a yard sale who unknowingly sold a valuable antique gun to a person for a small price that was not a gift.

MR. SKIDMORE referred to AS 11.46.980, market value of the property at the time and place in which the crime occurred, which was actually discussing the value of the property stolen. He offered that if everyone knew absolutely everything there was to know about that piece of property at the time it was sold, it was "I, as the seller, think that I'm getting a fair return for the property that I have," and if he didn't realize the item's true value, that was the fair market price.

[2:27:57 PM](#)

VICE CHAIR FANSLER, noted that the next scenario was more for the committee to consider, and referred to Amendment 4, page 1, line 9, which read as follows:

(2) gift from a person other than the defendant,"

REPRESENTATIVE FANSLER said that the defendant gifts "this" to a person 20 years earlier, and later steals it in the commission of a crime. In that situation, the person was an innocent party who held legal title, did not knowingly participate in the commission of a crime, and did not have reasonable cause to believe, and the person still could not receive it back because it was the defendant that gifted it to the person.

MR. SKIDMORE offered his response as follows:

I think I understand the proposition that you are suggesting that a defendant gifts property to another person and then obtains that property to use in the commission of a crime. And, the person to whom they gifted it to, you are suggesting, the state's going to seek forfeiture from that person simply because the defendant took it back to use it in a crime. To me, it's not that it was given to you by the defendant, to me, what matters are subsections [sic] (1), (2), and (3). That the person actually had the property -- had legal right to the property, that they didn't

knowingly participate in the commission of the offense, and they did not know or have reason to believe that the property would be used to commit a crime. That's actually the exact same language to go back to the previous discussion the committee had about eliminating the statute that dealt only with weapons. Those same three concepts are the exact same three concepts that are in that other statute. Those are the exact same three concepts that are found in statute that we want to make sure that when the person is using whatever property it is in the commission of a crime, a person that they took it from or that loaned it to them, didn't realize how it would be used. Those are the key elements, not who actually gave them the property.

2:30:15 PM

VICE CHAIR FANSLER responded that it makes sense, although, the gift from a person part gives him a bit of heartburn, but ...

MR. SKIDMORE offered that it was a policy call as to whether or not to eliminate it, and that it would not change the analysis for the Department of Law. What remained important were the first three paragraphs, he said.

2:30:37 PM

REPRESENTATIVE EASTMAN referred to Amendment 4, page 1, line 5, dealing with "fair market value," and commented that paragraph (4) was not especially helpful. He then referred to paragraph (1) "acquired in good faith," and opined that paragraph (4) simply reestablished that the property was acquired in good faith.

2:31:37 PM

REPRESENTATIVE LEDOUX referred to [Sec. 12.36.320, remission of forfeited property], page 7, line 5, and said that [with Conceptual Amendment 1 to Amendment 4] it currently read as follows:

(4) was a bona fide purchaser for fair market value.

REPRESENTATIVE LEDOUX suggested inserting as follows:

(4) was a bona fide purchaser for fair market value, or inherited the property from an individual who was not a party to the offense resulting in forfeiture, or the property was a gift.

CHAIR CLAMAN explained that the language in Amendment 4 was recommended by the Legislative Legal and Research Services in dealing with the problem.

REPRESENTATIVE LEDOUX requested a comment from Hilary Martin, Legislative Legal and Research Services, as to her suggested language.

[2:33:04 PM](#)

HILARY MARTIN, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, said that the proposed language could easily be added on page 7, line 5, because if the committee was keeping preponderance of the evidence and wanted paragraphs (1), (2), and (3), to apply, paragraph (4) could be rewritten as follows:

either bona fide purchaser for fair value inherited the property or was gifted a property to someone other than the defendant.

[2:33:57 PM](#)

REPRESENTATIVE LEDOUX asked whether it would have to read "inherited the property from -- it was a gift from somebody other than the defendant," because Mr. Skidmore had advised that it didn't matter whether it came from the defendant or not.

MR. SKIDMORE stated that Representative LeDoux was correct.

MS. MARTIN said that was a decision for the committee to make, as she was just relating to the language in Amendment 4.

REPRESENTATIVE LEDOUX noted that it was just a suggestion.

[2:34:43 PM](#)

REPRESENTATIVE EASTMAN offered that he understood the requirement in paragraph (4) dealing with fair market value to relate directly to whether the property was acquired in good faith. Paragraphs (1) and (4) more or less accomplish the same thing, and he asked what would be lost by simply eliminating the

following language, "was a bona fide purchaser for fair market value."

MS. MARTIN explained that it would just remove the requirement that the person must have purchased it for fair value, and paragraphs (1), (2), and (3), would still apply. Again, she related, that was a decision for the committee as to whether it wanted to require a bona fide purchaser for fair value.

[2:36:01 PM](#)

REPRESENTATIVE EASTMAN surmised that in addition to making it shorter, it might render a lot of the issues being discussed today unnecessary to work through.

MR. SKIDMORE explained that the significance of the bona fide purchaser for fair market value goes to the crux of the issue. He explained that the committee was focused on the exchange of property prior to the commission of an offense, and the prosecutors were more interested in what happened after the offense had occurred. He offered a scenario of committing a crime with the antique gun, and after committing the crime he asked his friend, Fred, to buy the \$5,000 gun for \$100. There was nothing that said that was not in good faith, but in reality, Mr. Skidmore tried to divest himself, give away that property to someone else so it was no longer subject to forfeiture, and sold it for far less than its worth. In the event no one was able to prove Mr. Skidmore sold the property inappropriately, judgment was passed, the property was not forfeited, two years later he goes back to Fred and offers \$2,000 for the antique gun, and Mr. Skidmore now has the gun he was trying to prevent from being forfeited, he offered.

MR. SKIDMORE explained that forfeiture was important and powerful in law enforcement because a fishing vessel, or airplane could be altered in a manner as to be used for criminal circumstances. He then referenced Star Wars, and how Hans Solo altered the Millennium Falcon to enable him to smuggle goods into the Millennium Falcon, that is what people do. Criminals alter airplanes, boats, and other items in such a manner that the actual value of the item was not as important, but rather the importance then became that the alternation allowed a criminal to engage in illegal conduct. Case law discusses forfeiture, and the value of forfeiture ensures that whatever item had been altered for illegal purposes was taken out of the market place and was no longer used for illegal purposes. He reiterated that when a particular piece of property had been

altered for illegal use and was taken out of the market place, therein lies its value. He remarked that when discussing the bona fide purchaser, the division wanted to be certain it was not a "shell game" where the property somehow slid into someone else's hands after the crime, and that person claimed they did not knowingly participate in a crime, and didn't have reason to believe the property was used in a crime. The division has had cases in which fishing vessels were altered to hide catches, airplanes altered for hunting or fishing, which is why the bona fide purchaser remains important from the law enforcement's perspective, he said.

[2:40:56 PM](#)

REPRESENTATIVE EASTMAN commented that he did not believe the language in Amendment 4, would limit the ability of the courts working with information provided by law enforcement, or whether the fair market value of an item changed when it's modified or rendered for smuggling purposes. He referred to paragraph (1) and the language "acquired in good faith," and said there was nothing in the language that kept an item, returned by the court, from being sold back to whomever sold it to them in the first place. "Acquired in good faith" appeared to be the interest here, and if the prosecutor had established it was a tool used by smugglers, then possibly the good faith portion would come into question there, he offered.

REPRESENTATIVE EASTMAN pointed out that he was convinced the committee should get rid of paragraph (4), thereby, ending many of the issues being discussed.

[2:44:20 PM](#)

REPRESENTATIVE REINBOLD noted that whether Amendment 4 was perfect was yet to be decided, and maintained her objection.

REPRESENTATIVE LEDOUX said she supported the philosophy of the amendment, but wondered whether the language was correct.

[2:45:10 PM](#)

CHAIR CLAMAN noted that Amendment 4 went through a tremendous number of iterations in coordination with different members of the committee, the Department of Law, and Legislative Legal and Research Services. Chair Claman said he recognized that the amendment might be less than a perfect solution so the committee

could vote down the amendment, and he would continue to work on it because it was a committee bill.

REPRESENTATIVE LEDOUX reiterated that she was just not comfortable with the language, and pointed out that the next committee of referral was the House Finance Committee, and that committee wanted the House Judiciary Standing Committee to do the substantive work.

[2:46:27 PM](#)

REPRESENTATIVE KOPP referred to Version U, [page 6, lines 27-31 and page 7, lines 1-5], which read as follows:

(a) A person seeking remission of the person's interest in property forfeited under AS 12.36.300 - 12.36.340 shall prove to the court by a preponderance of the evidence that the person

(1) holds a legal right, title, or interest in the property seized, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the property was used;

(3) did not know or have reasonable cause to believe that the property was used or would be used to commit a crime; and

(4) was a bona fide purchaser for fair value.

REPRESENTATIVE KOPP offered testimony as follows:

I think that the sum total of the language of the CS, Version U, in front of us, as Representative Eastman has pointed out, it could very -- clearly identifies that a person seeking remission of the persons interest. Their interest in the property, you have to show that you have legal right, title, or interest, so that's covered. That that person did not knowingly participate in the commission of the crime in which property was used, which the Millennium Falcon was used, that's covered. And, they did not know or have reasonable cause to believe that the property was used, or would be used to commit a crime, that's covered. And then, with the amendment, we get rid of the problem of the language saying "and, you have to show that you are a bona fide purchaser for fair market value." Now, by adding this subsection to say

that -- "the court, in those situations where its inheritance or a gift, the court may still order the remission of property, if you were not a party to the offense resulting in forfeiture, or it was given to you as a gift from someone other than the defendant." So, I think if -- we may be a little windy, but I think we get at something conceptually that arrives us to protecting people's rights, allowing, certainly, anybody who can make at least make a case to the court that they are an innocent party to do so. So, that's my comment. I think -- still the word "and" on line 4, page 7 troubles me when we are still tying all four of those things together, "and, was a bona fide purchaser for fair market value." I'm not sure why we have to have an "and" there. But, I think -- because you can certainly have (1) through (3), and (4) not apply. And still have your legal right, title, or interest and not have been a bona fide purchaser. So, but if -- if this new subsection cures that, then -- and it looks to me like it does, it specifically addresses inheritance and gifts. I'm trying to think if there was any other way you can get property, tooth fairy. But, or someone transfers something to you, is that -- is that a gift? Because someone has transferred to you, families transfer property to each other's names, fishermen will transfer permits sometimes, maybe even boats, I don't know.

[2:49:26 PM](#)

REPRESENTATIVE EASTMAN related that he would rather give the courts some discretion, which was why he was not comfortable with the current language. He said that in the event an individual paid greater than fair market value, they wouldn't be caught up by any of this because it would not be a gift when paying more than its fair market value.

REPRESENTATIVE LEDOUX pointed out that it was difficult to draft language in a committee hearing, and suggested appointing a subcommittee to come back with the appropriate language.

CHAIR CLAMAN noted that the language did not address Representative Eastman's issue about fair market value, and the prosecutor's office has problems eliminating the fair market value language.

[2:51:40 PM](#)

REPRESENTATIVE REINBOLD maintained her objection.

A roll call vote was taken. Representative Claman voted in favor of adopting Amendment 4. Representatives Eastman, Reinbold, Kopp, Kreiss-Tomkins, LeDoux, Fansler voted against it. Therefore, Amendment 4 failed to be adopted by a vote of 1-6.

[2:52:25 PM](#)

VICE CHAIR FANSLER then returned the committee to the motion to adopt Amendment 2, and noted that Representative Reinbold had asked that Ms. Martin to speak to Amendment 2.

VICE CHAIR FANSLER explained to Ms. Martin that previously Chair Claman explained Amendment 2, and Representative Reinbold asked that Legislative Legal and Research Services also explain Amendment 2.

[2:53:34 PM](#)

MS. MARTIN responded that Amendment 2 repealed existing statute AS 12.36.050, and new Secs. 10 and 11, in the amendment, are conforming changes. AS 12.36.050 was repealed, and AS 12.36.320 had similar language in the bill. Therefore, she offered, the reference was updated from AS 12.36.050 to 12.36.320.

REPRESENTATIVE REINBOLD asked Ms. Martin to carefully explain repealed AS 12.36.050.

MS. MARTIN answered that AS 12.36.050, remission of forfeited property, specifically discussed remission of a forfeited weapon. The language under AS 12.36.320, in the bill, was almost identical, except it covered all property and not just weapons. She referred to AS 12.36.320(a)(4), bona fide purchaser for fair value, and noted that it was not a current requirement under AS 12.36.050.

[2:54:56 PM](#)

REPRESENTATIVE REINBOLD surmised that it streamlined the law to include firearms.

MS. MARTIN reiterated that repealed AS 12.36.050 dealt solely with weapons, AS 12.36.320 applied to all property, and it would be fairly duplicative to have both.

REPRESENTATIVE REINBOLD surmised that it expanded the scope of returned property to include firearms.

MS. MARTIN reiterated that repealed AS 12.36.050 applied solely to weapons, and the new bill section applies to all property.

[2:56:38 PM](#)

REPRESENTATIVE EASTMAN withdrew his objection. There being no objection, Amendment 2 was adopted.

[2:57:05 PM](#)

REPRESENTATIVE KOPP withdrew Amendment 5, labeled 30-LS0193\U.3, and Amendment 6, labeled 30-LS0193\U.2 [prior to moving to adopt the amendments].

[2:57:19 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 7, Version 30-LS0193\U.1, which read as follows:

Page 4, line 23, following "**property.**":
Insert "(a)"

Page 4, following line 25:

Insert new subsections to read:

"(b) If a law enforcement agency has possession of seized property belonging to a victim of a crime or to an innocent owner, the law enforcement agency shall return the property to the victim or innocent owner not later than 120 days after a defendant has been charged in the underlying criminal case.

(c) When a law enforcement agency has seized property but a suspect has not been identified or charged within 120 days after the seizure, the law enforcement agency shall inform the owner of the property that a suspect has not yet been charged and return the property to the owner if the owner requests the return of the property. The law enforcement agency shall, before returning the property to the owner, require the owner to sign a waiver acknowledging that return of the property might affect a future prosecution if a suspect is later identified.

(d) In this section, "innocent owner" means a person who

(1) holds a legal right, title, or interest in the property seized, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the property was used;

(3) did not know or have reasonable cause to believe that the property was used or would be used to commit a crime; and

(4) was a bona fide purchaser for fair value."

Page 6, following line 23:

Insert a new subsection to read:

"(f) Unless a defendant requests inspection or testing of property not later than 120 days after the defendant has been charged, the defendant's right to inspect or test the property is waived."

REPRESENTATIVE FANSLER objected for discussion.

[2:57:30 PM](#)

REPRESENTATIVE EASTMAN offered that currently, the legislature asks law enforcement to focus on convictions, preserving evidence, and such. Except, there was not a counterbalance to at least minimize re-victimizing victims of crimes. For example, a mother had her car carjacked while she was in it with her daughter, the car was later found and seized as evidence, which left the mother with no car and no way to get to work. This situation made the mother's victimization worse than had the car simply been stolen because the state now had the car, and she couldn't get the car. Inevitably, victims' rights stepped in, petitioned the court, and the car was returned to the mother. It appeared to him, he noted, that the legislature set up those types of circumstances to continue. In that regard, he would like to counterbalance the ask the legislature gave to law enforcement to pursue the conviction with making a reasonable determination as to whether the conviction was worth more than the actual injury crime victims suffer. Obviously, he commented, a win-win would be to ...

CHAIR CLAMAN asked Representative Eastman to focus on the amendment itself, and not an amendment that is not before the committee.

[3:00:01 PM](#)

REPRESENTATIVE EASTMAN explained that this amendment specifically set out a reasonable timeline of 120 days, and after that point, a determination would be made as to whether the property should go back to the crime victim. He offered that, currently, the legislature asks law enforcement to not give property back in these situations, and commented that this amendment would nudge law enforcement to speed up the process.

[3:01:29 PM](#)

MR. SKIDMORE, in addressing the department's concerns and possible constitutional issues, offered that while he appreciates returning property back to innocent victims, Amendment 7 violates the constitution. He referred to Thorne v. Department of Public Safety, 774 P.2d 1326 (1989), and explained that Thorne specifically referred back to other Alaska Supreme Court cases establishing due process rights and the requirement to preserve evidence until the time of trial. He explained that Amendment 7 could create substantial problems for the prosecution in any number of cases. For example, he said, when he was a prosecutor in Dillingham, they prosecuted a double homicide in which a 14-year old girl was raped, murdered, and her body placed in a land dump. It took the prosecutors six months to [indict the defendant], which was two months longer than the 120 days. In those circumstances it would have compromised the prosecutors' ability to file charges and ultimately bring the responsible person to justice and a sentence of 99-years. He agreed there is a need to find a good way to return property to innocent folks, and he argued that this amendment was not the right way to achieve that goal.

[3:03:24 PM](#)

REPRESENTATIVE REINBOLD commented that she understood where Mr. Skidmore was coming from, but believed Representative Eastman had an important point because over 2,000 vehicles are stolen. She described it as outrageous that in the event a car was stolen, the victim then had no way to get to work and was re-victimized. She asked Mr. Skidmore for a solution.

MR. SKIDMORE said that he agreed, reiterating that there was a need to find an avenue to get property back to the innocent victim, and that the Department of Law has been working on solving the problem. With regard to vehicles, he pointed out, not only was it a problem for victims, it was also extremely expensive for law enforcement to store property. Three years ago the division implemented the policy of having motions filed,

by either a prosecutor or defense attorney, to have the seized property returned, and a response was not required by the other party, and the court would ultimately rule on the property. Absent that process, he advised, there was a constitutional problem and the answer is to use the court process.

[3:05:07 PM](#)

REPRESENTATIVE REINBOLD said, "I truly believe that you can find an amendment to this amendment" allowing property to be given back to the victim, unless the prosecution or defense absolutely needed that evidence. She said she would back up her colleague, "and expect, you know, some sort of an amendment to an amendment" to address this issue before the bill moves forward.

[3:05:49 PM](#)

CHAIR CLAMAN instructed Representative Reinbold that the Department of Law [a separate branch of state government] is not part of the legislative branch of state government, and the Department of Law had no obligation to propose amendments. He reminded her that the committee had been advised that Amendment 7 violated the constitution and the committee could do as it wished.

REPRESENTATIVE REINBOLD argued that it violated the constitution in the opposite way.

[3:06:12 PM](#)

REPRESENTATIVE KOPP said he agreed with the sentiment of the amendment, and reminded the committee that the 2014 legislature passed AS 12.36.070, Return of property by hearing, which read as follows:

(a) A crime victim who is the owner of property not belonging to a law enforcement agency that is in the custody of the agency under this chapter may request that the office of victims' rights request that the agency return the property to the crime victim. The request under this subsection shall be filed by the office of victims' rights on behalf of the crime victim after the office has conducted an investigation and has concluded that the crime victim is entitled to the return of the property under the factors listed in (c) of this section.

(b) Within 10 days after receipt of a request under (a) of this section and following reasonable notice to the prosecution, defense, and other interested parties, the agency shall request a hearing before the court to determine if the property shall be released to the crime victim. If the property is being held in connection with a criminal case, the hearing shall be before the court with jurisdiction of the criminal case. If no criminal case is pending regarding the property, the hearing shall be before a district or superior court where the property is located.

(c) At the hearing, a party that objects to the return of the property shall state the reason on the record. After a hearing, the court may order the return of the property in the custody of a law enforcement agency to the crime victim if

(1) the crime victim by a preponderance of the evidence provides satisfactory proof of ownership; and

(2) the party that objects to the return of the property fails to prove by a preponderance of the evidence that the property must be retained by the agency for evidentiary purposes under the provisions of this chapter or another law.

(d) If the court orders the return of the property to the crime victim, the court may impose reasonable conditions on the return. Those conditions may include an order that the crime victim retain and store the property so that the property is available for future court hearings, requiring photographs of the property to be taken, or any other condition the court considers necessary to maintain the evidentiary integrity of the property.

(e) In this section, "crime victim" has the meaning given to "victim" in AS 12.55.185 .

[3:08:04 PM](#)

REPRESENTATIVE KOPP advised that this law was well vetted through three legislative sessions before enactment, and "it totally addresses" what Amendment 7 was driving at, and it gave authority to crime victims to bring it [before the court]. He

related that the problem with setting a 120 day timeline, as Mr. Skidmore pointed out, certain trials take a long time, sometimes years. In all types of situations, this statute specifically allowed a person to petition the court for a hearing to decide whether the evidentiary value the state was claiming outweighed the crime victim receiving their property back.

[3:09:40 PM](#)

REPRESENTATIVE EASTMAN offered that due to recently passed legislation, certain cases are not prosecuted for whatever reason. Vehicles are stolen, he said, and after whatever process the state went through, the state determined there was a way to prosecute, yet, decided not to prosecute the case. He commented that this is all in the backdrop of the system not working in the manner that "we would like to see it designed to." Last weekend, in his district ...

CHAIR CLAMAN interjected that while these are interesting comments, they have nothing to do with Amendment 7, and the 120 day timeline wherein if the property had not been returned, it must be returned immediately.

REPRESENTATIVE EASTMAN said the second and third portions of the amendment dealt strictly with situations in which an unidentified suspect had not been charged, and the state gave the owner of the property the opportunity to waive their claim in allowing that property to be used in the prosecution. He continued that the legislature asked that person to make a decision on whether or not they want to risk the evidence not being sufficient to pursue a conviction against the person who violated their property rights. Which, he commented, appeared to be a reasonable thing to do, especially in the backdrop of cases that would not be prosecuted. He argued, there is nothing unconstitutional about this, although, if there was anything unconstitutional it may be pursuing prosecution of a case in an unconstitutional manner. There was nothing here that said that had to happen, but it is known that fewer cases were going to prosecution which was the reason for Amendment 7, he said.

[3:12:49 PM](#)

REPRESENTATIVE REINBOLD noted that she liked the language, "they shall return it," and she appreciated Representative Kopp's point about the 2014 legislature. Unfortunately, she said, it still put the victim in the "mother may I, mother may I, mother may I have a hearing, mother may I," and asked the Department of

Law to work with her on this issue. She said that the executive branch doesn't have to work with amendments, but "I can tell you that it seems like the executive branch is pretty much running the legislature right now with all the rebuttals, with their testifying, with their carrying their bills ..."

3:14:20 PM

CHAIR CLAMAN pointed out that her statements were beyond the scope of this amendment.

REPRESENTATIVE REINBOLD said, "I'm just saying, you guys brought it up where he doesn't have to help me, you know, write an amendment," but there are probably one thousand people in the executive branch working with different members in some way or another.

CHAIR CLAMAN clarified that he did not say Mr. Skidmore did not need to work with her, and further clarified that he said Mr. Skidmore did not need to write the amendment. Chair Claman told Representative Reinbold to not say that he made statements he did not make.

3:14:40 PM

REPRESENTATIVE REINBOLD reiterated that victims of crime have a right to their property, and requested that the committee have a hearing with regard to the process for returning property.

CHAIR CLAMAN noted that he had been a victim of crime and had also been a prosecutor. He commented that he would not want to be the prosecutor who, working with a victim of crime who had lost a loved one, and have to advise the crime victim that the case couldn't be prosecuted because that piece of property had to be given back because the legislature gave law enforcement no choice. Also, he said, he would not want to be the prosecutor who had to look into the eyes of the victims and advise that he lost the case because the legislature determined the property had to be returned in 120 days.

REPRESENTATIVE REINBOLD argued that that is exactly why she wants an amendment to Amendment 7, to address extreme circumstances where the prosecution absolutely needed the evidence. Although, she said, she doesn't want 2,000 people unable to able to go to work, lose their jobs, and not feed their families because the state kept their car. She said, an amendment was worthy on this amendment.

3:16:20 PM

REPRESENTATIVE FANSLER maintained his objection to adopting Amendment 7.

REPRESENTATIVE EASTMAN withdrew Amendment 7.

3:16:57 PM

CHAIR CLAMAN noted that the bill would not move from committee today, and he encouraged every member to communicate with his office to work on an alternative to Amendment 4.

[HB 42 was held over.]

3:18:18 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:18 p.m.