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1 IN THE SENATE

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2 SENATE BILL NO. 686

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the return of property recovered or
7 seized by law enforcement agencies or acquired as
8 evidence in a criminal proceeding."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 12 is amended by adding a new chapter to read:

11 CHAPTER 38. RETURN OF RECOVERED OR SEIZED PROPERTY.

12 Sec. 12.38.010. PROPERTY IN CUSTODY OF PEACE OFFICER. When prop-
13 erty not belonging to a law enforcement agency or to its peace officers
14 comes into the custody of the agency or its peace officers, the property
15 shall be disposed of in accordance with the provisions of this chapter.

16 Sec. 12.38.020. RELEASE OF PROPERTY WITH NO EVIDENTIARY VALUE.

17 (a) Except when prohibited by this chapter, a peace officer shall
18 immediately release property in his custody to the owner or agent of the
19 owner without delivering it for recording in the property book in accor-
20 dance with AS 12.38.060, if

21 (1) the peace officer reasonably believes that the property
22 will have no evidentiary value in a criminal proceeding;

23 (2) the owner is known;

24 (3) the owner or agent of the owner presents proper personal
25 identification and reasonable proof of ownership;

26 (4) the peace officer reasonably determines that ownership of
27 the property is undisputed by

28 (A) informing the person claiming ownership or his agent
29 that release of the property is without prejudice to the state, to

1 the person from whom custody was taken, or to any other person who
2 may have a claim to the property, including the person, if any,
3 accused of theft of the property;

4 (B) asking the person claiming ownership of the property
5 or his agent whether he knows of any other persons claiming owner-
6 ship of the property; and

7 (C) checking the criminal justice information system for
8 ownership information if it is possible that the property is re-
9 corded in the system;

10 (5) the owner or the agent of the owner signs a property
11 release form in accordance with AS 12.38.040.

12 (b) If a peace officer is unable to immediately release property
13 under (a) of this section because the owner is not known, the peace
14 officer shall attempt to locate the owner at the earliest possible time
15 and shall inform the owner of the recovery of the property and the
16 release procedures. If the peace officer is unable to release the
17 property by the end of his work shift, he shall deliver the property to
18 the person who has the duty of recording it in a property book under
19 AS 12.38.060.

20 Sec. 12.38.030. RELEASE OF PROPERTY THAT HAS EVIDENTIARY VALUE.

21 (a) Except when prohibited by AS 12.38.050, a peace officer shall
22 release property in his custody to the owner or agent of the owner, even
23 if the property has potential evidentiary value in a criminal prosecu-
24 tion, without first recording the property in a property book in accor-
25 dance with AS 12.38.060, if

26 (1) the requirements of AS 12.38.020(2) - (5) are satisfied;

27 (2) in the case of property having potential evidentiary
28 value in a felony prosecution, photographs are taken at the scene of the
29 crime or at the peace officer's headquarters; the photographs must depict

1 (A) the property owner, his agent, or the victim of the
2 offense;

3 (B) the property to be released;

4 (C) the report number written on card stock propped up
5 or held by a person in the photograph; and

6 (D) unique or distinguishing characteristics that may be
7 beneficial in identifying the property;

8 (3) in the case of property having potential evidentiary
9 value in a misdemeanor prosecution, the peace officer makes taking of
10 photographs as set out in (2) of this subsection a prerequisite to
11 release of the property;

12 (4) the owner or agent of the owner agrees, as evidenced by
13 his signature on the property release form under AS 12.38.040, that he
14 will not alter or dispose of the released property until notified that
15 the case is officially closed or adjudicated, with the following excep-
16 tions:

17 (A) perishable items, including consumable items with
18 broken seals, need not be retained;

19 (B) if the property to be released has evidentiary value
20 in a prosecution for theft of the first or second degree, is part
21 of a merchant's inventory, and there are several items being
22 returned, the merchant must retain only one representative item
23 until the case is officially closed or adjudicated and the other
24 items may be returned to inventory for sale;

25 (C) if the property to be released has evidentiary value
26 in a prosecution for theft of the third or fourth degree, is part
27 of a merchant's inventory, and the merchant intends to prosecute,
28 the peace officer may allow the merchant to return a released item
29 to inventory for sale if the merchant or his agent, in the presence

1 of the peace officer, takes a color photograph depicting the suspect
2 (if he is on the merchant's premises and does not refuse to be
3 photographed), the stolen property, and a large sheet of white
4 paper containing a complete description of the stolen items and the
5 date of the incident;

6 (5) before release of the property the peace officer marks
7 items to be retained by the owner with an identifying number in an
8 inconspicuous place.

9 (b) If a peace officer is unable to release property with potential
10 evidentiary value in accordance with this section, he shall deliver it
11 to the person responsible for recording it in a property book as set out
12 in AS 12.38.060.

13 Sec. 12.38.040. PROPERTY RELEASE FORM. (a) Property in the
14 custody of a peace officer or law enforcement agency may not be released
15 to the owner or agent of the owner unless the owner or agent executes a
16 property release form containing the following:

17 (1) the name of the owner;

18 (2) a description of the released property, including serial
19 number, manufacturer, model, and distinguishing characteristics;

20 (3) a declaration that the property is owned by the person
21 whose name is listed as the owner;

22 (4) the date;

23 (5) the signature of the releasing officer;

24 (6) the name of the person authorizing release;

25 (7) a notation of whether the property was released at the
26 scene of the crime or in the station;

27 (8) a statement that

28 (A) the property has no evidentiary value in a criminal
29 proceeding and that the owner is not required to retain the item

1 for use as evidence; or

2 (B) the owner has been advised that he must produce the
3 released property if required by the court as evidence in a criminal
4 proceeding in connection with its original loss, and that he should
5 not dispose of the released property or alter the physical charac-
6 teristics until after criminal prosecution involving the loss of
7 the property is completed since doing so could seriously impair the
8 prosecution;

9 (9) property release form number.

10 (b) When an officer executes the property release form, he shall
11 strike the statements set out in accordance with (a)(8) of this section
12 according to whether or not the property released must be retained by
13 the owner for its evidentiary value.

14 Sec. 12.38.050. PROPERTY THAT MUST BE RECORDED IN PROPERTY BOOK.
15 A peace officer may not release the following property but shall deliver
16 it to the person responsible for recording it in a property book under
17 AS 12.38.060:

- 18 (1) items taken as the result of a search warrant;
19 (2) money;
20 (3) items that cannot be examined at the scene of the crime
21 but must be processed by a crime laboratory;
22 (4) items used as weapons in the commission of a crime;
23 (5) items that, although not normally considered weapons,
24 tend to show the aggravated nature of a crime;
25 (6) unlawful property.

26 Sec. 12.38.060. PROPERTY CONTROL DUTIES OF LAW ENFORCEMENT AGENCY.
27 (a) Each law enforcement agency shall maintain a property book in which
28 shall be entered a description of each article of property delivered by
29 a peace officer for recording. The law enforcement agency shall attach

1 a number to each article corresponding to the entry in the property book
2 and shall record all available information pertaining to the ownership
3 of each article. The law enforcement agency may engrave or embed an
4 identification number on an article from which a serial number has been
5 removed.

6 (b) Each law enforcement agency shall follow the procedures set
7 out in AS 12.38.020 and 12.38.030 in releasing property described in
8 those sections to the rightful owner, including making reasonable efforts
9 to locate as early as possible the owner of property that may be immedi-
10 ately released.

11 (c) Each law enforcement agency shall arrange a hearing under
12 AS 12.39.030 before a judge or magistrate in the judicial district where
13 the property is located to adjudicate disputed ownership of property in
14 its custody that it is authorized to release. The law enforcement
15 agency shall provide the judge or magistrate with the names of all
16 claimants, including the person from whose custody the property was
17 taken and the person, if any, accused of theft of the property.

18 (d) The law enforcement agency shall attempt to locate the owner
19 of property listed in AS 12.38.050(1) - (5) and shall release the
20 property to the owner upon

21 (1) receipt of authorization from the prosecuting attorney
22 when the criminal investigation involving the property is closed or the
23 criminal prosecution is concluded or dismissed; or

24 (2) order of a judge or magistrate in the judicial district
25 where the property is located.

26 (e) The law enforcement agency shall destroy, sell, or otherwise
27 dispose of property used in the commission of a crime for which the
28 owner of the property is convicted and unlawful property according to
29 the order of a judge or magistrate in the judicial district where the

1 property is located.

2 (f) Except as provided in AS 12.38.070, the law enforcement agency
3 shall dispose of unclaimed property that is authorized to be released
4 and that remains unclaimed one year after the date it is authorized to
5 be released. Disposal shall be in accordance with the procedures set
6 out in AS 34.49 (Unclaimed Property).

7 (g) Property released or disposed of under this section is released
8 or disposed of without prejudice to the state or to a person accused of
9 theft of the property or to the person from whom the property was taken
10 or to any other person who may have a claim to the property.

11 Sec. 12.38.070. DISPOSITION OF MONEY NOT USED AS EVIDENCE. (a)
12 If money received by a law enforcement agency as part of a criminal
13 investigation does not become evidence in a criminal prosecution and
14 does not belong to the agency, the money shall be returned to the owner,
15 if known, at the close of the investigation.

16 (b) Money described in (a) of this section that remains unclaimed
17 one year after the investigation is closed may be deposited with the
18 state Department of Revenue or with the treasurer of the political
19 subdivision of the state served by the law enforcement agency. Upon the
20 expiration of two years after the deposit, the department or the
21 treasurer shall cause a notice to be published once a week for two
22 successive weeks in a newspaper of general circulation published in the
23 political subdivision served by the law enforcement agency, except that
24 in the case of money deposited with the state, the department shall
25 cause the publication to be made in the borough or boroughs appropriate
26 to effect the return.

27 (c) The notice required by (b) of this section shall state the
28 amount of money, the circumstances of its delivery to or recovery by the
29 law enforcement agency, and that it is proposed that the money will

1 become the property of the state or political subdivision of the state,
2 as the case may be, on a designated date not less than 45 days or more
3 than 60 days after the first publication of the notice.

4 (d) Unless a person files a verified complaint seeking to recover
5 all or part of the money in a court of competent jurisdiction within the
6 judicial district in which the notice is published, and serves a copy of
7 the complaint and the summons issued on the complaint upon the Department
8 of Revenue or the treasurer before the date designated in the notice, on
9 that date the money becomes the property of the state or political
10 subdivision of the state.

11 Sec. 12.38.080. DEFINITIONS. In this chapter

12 (1) "law enforcement agency" means a public agency that
13 performs as one of its principal functions activities pertaining to law
14 enforcement as defined in AS 12.62.070(5);

15 (2) "peace officer" means a public servant vested by law with
16 a duty to maintain public order or to make arrests, whether the duty
17 extends to all offenses or is limited to a specific class of offenses or
18 offenders;

19 (3) "unlawful property" means a dangerous or deadly weapon,
20 narcotic or poison drug, explosive, or property of any kind or character
21 that the law makes unlawful to possess.

22 * Sec. 2. AS 12 is amended by adding a new chapter to read:

23 CHAPTER 39. DISPOSITION OF EVIDENCE.

24 Sec. 12.39.010. PROPERTY IN CUSTODY OF COURT OR OFFICER OF COURT.

25 When property comes into the custody of the court or an officer of the
26 court for use as evidence in a criminal prosecution, whether or not
27 actually introduced into evidence, the court or an officer of the court
28 shall dispose of the property in accordance with the provisions of this
29 chapter.

1 Sec. 12.39.020. DISPOSITION OF EXHIBIT WHEN OWNERSHIP NOT DISPUTED.

2 (a) If the ownership of property acquired as an exhibit in a criminal
3 proceeding is undisputed and the owner can be reasonably ascertained,
4 the court or the officer of the court who has custody of the property
5 shall notify the owner of the location of the property and the procedure
6 for obtaining possession of the property. Notice must be given at the
7 time the conviction or at the time the judgment or other termination of
8 the proceedings becomes final. After the expiration of three months
9 from the time notice is given, the court or an officer of the court may,
10 on application of the owner or agent of the owner, order the property
11 delivered to the owner or agent. If a criminal proceeding results in an
12 order granting probation, the property may be delivered after final
13 determination of an appeal of the order or after the time for appeal has
14 elapsed but no sooner than after the expiration of three months.

15 (b) If the owner of an exhibit other than a documentary exhibit is
16 unknown or fails to apply for the return of the exhibit, the procedure
17 for its disposition is as follows:

18 (1) After the expiration of one year from the time the convic-
19 tion becomes final or, if the criminal proceeding has not resulted in a
20 conviction, at any time after the judgment becomes final or the proceed-
21 ing is dismissed, the court shall make an order specifying what exhibits
22 may be released from the custody of the court without prejudice to the
23 state. Upon receipt of the order, the clerk of the court shall dispose
24 of the exhibits by following the procedures set out in AS 34.49 (Un-
25 claimed Property).

26 (2) If the exhibit consists of money, the clerk or other
27 officer of the court having custody of the money shall dispose of it
28 following the procedure set out in AS 12.38.070(b) - (d).

29 (c) If the owner of a documentary exhibit is unknown or fails to

1 apply for the return of the exhibit, after the expiration of one year
2 from the time the conviction becomes final or, if the criminal proceed-
3 ing has not resulted in a conviction, at any time after the judgment
4 becomes final or the proceeding is dismissed, the court shall make an
5 order requiring the exhibit to be destroyed. However, an order autho-
6 rizing the destruction of a documentary exhibit may not be made if the
7 destruction of the exhibit would prejudice the state.

8 (d) Notwithstanding (a) - (c) of this section, the court may, on
9 application of the owner of an exhibit or the agent of the owner, order
10 an exhibit delivered to the applicant before the final determination of
11 the criminal proceeding upon stipulation of the parties to the proceed-
12 ing if

- 13 (1) prejudice will not be suffered by either party;
14 (2) it is not otherwise unlawful to release the exhibit;
15 (3) a full and complete photographic record is made of the
16 exhibit released.

17 (e) The court shall order the destruction, sale, or other appropri-
18 ate disposition of an exhibit that was used as an instrumentality in the
19 commission of a crime for which the accused is convicted or that is
20 considered unlawful property as defined in AS 12.38.080. An order may
21 not be issued under this subsection unless the court has determined that
22 prejudice will not be suffered by the state or the accused.

23 Sec. 12.39.030. DISPOSITION OF EXHIBIT WHEN OWNERSHIP IS DISPUTED.

24 (a) The court shall give notice by registered mail to all persons
25 claiming ownership of an exhibit in the custody of the court or an
26 officer of the court, the person from whom custody of the property was
27 taken, and the person accused of theft of the item. The notice must
28 contain the date, time, and place of the hearing to be conducted to
29 determine the ownership of the exhibit.

1 (b) At the hearing the court or an officer of the court shall
2 receive evidence of ownership of the property concerned and order dis-
3 position of the property.

4 (c) Delivery of property made under AS 12.38 or AS 12.39.020 may
5 be reviewed under the procedures set out in this section upon application
6 of a person claiming ownership of property delivered to another.

7 (d) The court shall adjudicate under the procedures set out in
8 this section any property dispute referred under AS 12.38.060(c).

9 (e) Delivery of property under this section is without prejudice
10 to the state.

11 Sec. 12.39.040. EVIDENCE RESULTING FROM SEARCH AND SEIZURE.

12 Nothing in this chapter affects the right of a person aggrieved by an
13 unlawful search and seizure to seek redress under the provisions of Rule
14 37, Rules of Criminal Procedure.

15 * Sec. 3. AS 12.35.050 is repealed and reenacted to read:

16 Sec. 12.35.050. DISPOSITION OF PROPERTY TAKEN. Property seized
17 under a search warrant shall be disposed of in accordance with AS 12.38
18 and AS 12.39.

19 * Sec. 4. AS 12.35.070 is amended to read:

20 Sec. 12.35.070. SEARCH OF DEFENDANT IN PRESENCE OF JUDGE OR
21 MAGISTRATE. When a person charged with a crime is believed by the judge
22 or magistrate before whom he is brought to have on his person a dangerous
23 weapon, or anything which may be used as evidence of the commission of
24 the crime, the judge or magistrate may direct the accused to be searched
25 in his presence, and the weapon or other thing be retained subject to
26 the provisions of AS 12.38 and AS 12.39 [HIS ORDER OR THE ORDER OF THE
27 COURT IN WHICH THE DEFENDANT MAY BE TRIED].

28 * Sec. 5. AS 12.35.080 - 12.35.110 are repealed.

29