

Original sponsors: Rodey, Bradley,
Dankworth, et al

Offered: 4/8/82
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 686 (Judiciary)

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; and changing
9 Rule 901, Alaska Rules of Evidence."

10

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

11

* Section 1. AS 12.35.025 is amended by adding new subsections to read:

12

(b) When property is seized under this chapter, the peace officer
13 taking the property shall give to the person from whom or from whose
14 premises the property was taken a copy of the warrant, a copy of the
15 supporting affidavit, and a receipt for the property taken, or shall
16 leave the copies and the receipt at the place from which the property
17 was taken.

18

(c) The return of the warrant to the court shall be made promptly
19 and shall be accompanied by a written inventory of the property taken.
20 The inventory shall be made in the presence of the applicant for the
21 warrant and the person from whose possession or premises the property
22 was taken, if they are present, or in the presence of at least one other
23 person as witness.

24

(d) The inventory required by (c) of this section shall be signed
25 by the peace officer under penalty of perjury under AS 09.63.020. The
26 judge or magistrate shall, upon request, deliver a copy of the inventory
27 to the person from whom or from whose premises the property was taken
28 and to the applicant for the warrant.

29

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

1 CHAPTER 36. DISPOSITION OF RECOVERED OR SEIZED PROPERTY.

2 Sec. 12.36.010. PROPERTY DISPOSITION. When property not belonging
3 to a law enforcement agency comes into the custody of the agency, the
4 property shall be disposed of in accordance with this chapter.

5 Sec. 12.36.020. RETURN OF PROPERTY. (a) A law enforcement agency
6 may return property in its custody to the owner or the agent of the
7 owner if

8 (1) the property is not in custody in connection with a
9 children's court proceeding, a criminal proceeding, or an official
10 investigation of a crime; and

11 (2) the property in custody is not subject to forfeiture
12 under the laws of the state.

13 (b) In a criminal proceeding or a children's court proceeding
14 involving the wrongful taking or damaging of property where photographs
15 of the property are used as evidence in place of the property, the
16 prosecuting attorney may release the property to the owner upon presenta-
17 tion of satisfactory proof of ownership.

18 (c) If wrongfully taken or damaged property is not photographed
19 and authenticated under AS 12.80.050 and the property is used as evi-
20 dence in a criminal proceeding or a children's court proceeding, the law
21 enforcement agency in possession of the property shall return it to the
22 owner upon presentation of satisfactory proof of ownership within 60
23 days after the final disposition of the case.

24 Sec. 12.36.030. DISPOSAL OF UNCLAIMED PROPERTY USED AS EVIDENCE.

25 (a) If property that is used as evidence in a criminal proceeding or a
26 children's court proceeding, including wrongfully taken or damaged
27 property, is not claimed by the owner within one year after the final
28 disposition of the case, the law enforcement agency having custody of
29 the property shall dispose of it under (b) of this section.

1 (b) If the property to be disposed of is money, the law enforce-
2 ment agency shall deposit it in the court or, if it is property other
3 than money, sell it in the same manner as a sale upon execution. After
4 paying the expenses of the sale and the preservation of the property,
5 the law enforcement agency shall dispose of the proceeds of the sale in
6 the same manner as money collected upon a judgment in favor of the
7 state.

8 Sec. 12.36.040. DISPOSAL OF PROPERTY WHEN OWNER UNKNOWN. When the
9 owner of property is unknown and the property comes into the possession
10 of a law enforcement agency as suspected evidence of a crime but is not
11 used in a criminal proceeding or a children's court proceeding, or when
12 the property comes into the possession of a law enforcement agency by
13 other means, the property shall be held for two years. If the property
14 is not claimed within two years of the date it comes within the posses-
15 sion of a law enforcement agency, the property shall be disposed of as
16 provided in AS 12.36.030(b).

17 Sec. 12.36.090. DEFINITION. In this chapter,

18 (1) "final disposition of a case" means the time when all
19 appeals have been exhausted or the time when all appeals that could have
20 been taken has expired;

21 (2) "law enforcement agency" means a public agency that
22 performs as one of its principal functions an activity relating to crime
23 prevention, control, or reduction or relating to the enforcement of the
24 criminal law; "law enforcement agency" does not include a court;

25 (3) "peace officer" means a public servant vested by law with
26 a duty to maintain public order or to make arrests, whether the duty
27 extends to all offenses or is limited to a specific class of offenses or
28 offenders.

29 * Sec. 3. AS 12.80 is amended by adding a new section to read:

1 Sec. 12.80.050. PHOTOGRAPHIC EVIDENCE OF PROPERTY WRONGFULLY TAKEN
2 OR DAMAGED. (a) In a criminal proceeding or a children's court proceed-
3 ing involving the wrongful taking or damaging of property, photographs
4 of the property are competent evidence of the property and are admissible
5 in the proceeding to the same extent as if the property had been intro-
6 duced as evidence.

7 (b) Photographs of property that are to be introduced as evidence
8 under this section shall be accompanied by a written description of the
9 property, the name of the owner of the property, the location where the
10 alleged crime occurred, the name of the investigating peace officer, the
11 date the photograph was taken, and the name and signature of the photo-
12 grapher. The written description shall be signed by the investigating
13 peace officer under penalty of perjury under AS 09.63.020.

14 * Sec. 4. AS 12.35.050 and 12.35.080 - 12.35.110 are repealed.

15 * Sec. 5. AS 12.80.050 added in sec. 3 of this Act has the effect of
16 amending Rule 901, Alaska Rules of Evidence, by specifying requirements for
17 the authentication of photographic evidence of property unlawfully taken or
18 damaged.