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COMMITTEE REPORT
SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 686 - "An Act relating to the return of property received or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."

SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."

HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 686 before the committee.

179 - Senator Ray moved that on Page 2, Line 22, delete [six months] and insert 60 days. There was no objection.

202 - Senator Parr moved to pass SB 686 with individual recommendations. There was no objection.

228 - Chairman Rodey brought SB 863 before the committee.

245 - Ron Lorenson, Department of Law, testified that the committee substitute was superior to the original bill and that the fiscal impact would be considerably smaller.

771 - Gary Jenkins, National Federation of Independent Business' testified in favor of this bill, but asked the committee to adopt language which would allow individuals that file against the state in tax cases be covered for attorney fees.

820 - Chairman Rodey directed Mr. Bruce to work with Mr. Asper to prepare language to include all state agencies within the bill, including the University of Alaska. Staff was directed to delete [offense or] on Line 24, Page 1, and to draft language to meet Mr. Jenkins concerns.

845 - SB 863 returned to file.

SIDE TWO

234 - Chairman Rodey brought HB 194 before the committee.

295 - Mr. Stark, Department of Law, testified in favor of HB 194.

635 - Mr. Charles Campbell and Mr. Roman, Department of HESS, Division of Corrections, testified in favor of this bill.

684 - HB 194 returned to file.

756 - Adjourned 3:05 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 5, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 327 - "An Act relating to parole of offenders; continuing the existence of the Board of Parole; and providing for an effective date."
- HB 377 - "An Act relating to factors in aggravation for purposes of imposing presumptive terms of imprisonment for felonies."
- SB 686 - "An Act relating to the return of property recovered or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."
- SB 864 - "An Act continuing the existence of the Alaska Code Revision Commission and amending the statutes relating to its responsibilities."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 327 before the committee.

027 - Senator Anderson moved to delete [\$100] and insert \$150 on Page 3, Line 1. Senator Ray objected.

076 - Senator Anderson's amendment was adopted with Senator's Rodey, Parr, and Anderson a yes vote. Senator Ray voted no.

124 - Senator Parr moved to pass SB 327 with individual recommendations. There was no objection.

184 - Chairman Rodey brought SB 864 before the committee.

220 - Mr. Bruce goes over language.

417 - Senator Parr moved that beginning on Page 2, Line 24 the following language be added: Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis; the commission shall prepare the sectional analysis using language that is understandable to a layman. There was no objection.

531 - Senator Ray moved to strike Sec. 4 of the committee substitute beginning on Page 2, Line 21: [(2) establish one or more subcommissions to assist it in the performance of its duties; the commission may appoint any person to serve on a subcommission established under this paragraph.] There was no objection.

547 - Senator Ray moves to pass SB 864 with individual recommendations. There was no objection.

558 - Chairman Rodey brought HB 377 before the committee.

560 - Mr. Bruce explains the committee substitute.

640 - Senator Anderson moved to adopt the committee substitute for HB 377. Senator Ray objected on the basis that the committee substitute is not germane to the original bill.

659 - Senator Anderson moved to pass HB 377 pending the chair's decision on germaneness.

675 - Chairman Rodey brought SB 686 before the committee.

677 - Pat Conheady, Department of Law, testified, giving the changes in the bill.

107 - Don Magnuson, representing the Alaska Retailers Association, testified in favor of photographing evidence.

180 - SB 686 returned to file.

183 - Adjourned at 3:15 P.M.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 686
Title "An Act relating to...property...seized...as evidence...."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		86.5	94.3	102.8	112.1	122.1
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		217.3	236.9	258.2	281.5	306.8
500 EQUIPMENT		35.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		338.8	331.2	361.0	393.6	428.9

FUNDING (Thousands of Dollars)

GENERAL FUND		338.8	331.2	361.0	393.6	428.9
FEDERAL FUNDS						
OTHER (Specify Source)						
Total		338.8	331.2	361.0	393.6	428.9

POSITIONS

FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						
Total		3	3	3	3	3

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The Division's review of the potential impact of this Bill indicates that three Clerk' IV's will be required to man evidence rooms in Anchorage, Fairbanks and Juneau for more hours than are presently required. Additionally, a sufficient number of cameras (100) will be needed to equip troopers not already equipped with 35mm rigs. Film is estimated at \$20.70 per roll for purchase and processing and it is estimated that each of 300 officers will use 35 rolls per year.

IV. DATE February 17, 1982 PREPARED BY *Francis C. Allan*
AGENCY Department of Public Safety
PHONE 269-5691
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Sec. 12.30.070. Contempt. Nothing in this chapter shall prevent a court from exercising its power to punish for contempt. (§ 1 ch 20 SLA 1966)

Stated in *White v. State*, Sup. Ct. Op. No. 946 (File No. 1907), 514 P.2d 814 (1973).

Sec. 12.30.080. Definitions. In AS 12.30.010 — 12.30.070

(1) "judicial officer" means a person authorized to release a person pending trial, sentencing, or pending appeal;

(2) "offense" means any criminal offense. (§ 1 ch 20 SLA 1966)

Chapter 35. Search and Seizure.

Section

- 10. Issuance of search warrant
- 20. Grounds for issuance
- 25. Seizure of property
- 30. (Repealed)
- 40. Authority of officer executing warrant
- 50. Disposition of property taken
- 60. Malicious procurement of search warrant

Section

- 70. Search of defendant in presence of judge or magistrate
- 80. Judge, magistrate or officer to hold property allegedly stolen or embezzled
- 90. Delivery of property to owner
- 100. Property not delivered to owner
- 110. Disposal of unclaimed property
- 120. Definition of search warrant

Sec. 12.35.010. Issuance of search warrant. A judicial officer may issue a search warrant upon a showing of probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the thing to be seized. (§ 4.01 ch 34 SLA 1962; am § 13 ch 69 SLA 1970)

Cross references. — See Cr. R. 37(a) for constitutional provisions as to searches and seizures, see Alaska Const., art. I, § 14.

Legislative history report. — For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7 (February 10, 1970).

For discussion of when an affidavit contains sufficient facts to establish probable cause for the issuance of a search warrant, see *Keller v. State*, Sup. Ct. Op. No. 1221 (File No. 2330), 543 P.2d 1211 (1975).

Am. Jur. 2d and ALR references. — 68 Am. Jur. 2d, Searches and Seizures, § 16.

Supporting affidavit, disputing matters stated in, 5 ALR2d 394.

Propriety and legality of issuing only one search warrant to search more than one place or premises occupied by same person, 31 ALR2d 44.

Sufficiency of description of automobile or other conveyance to be searched, 47 ALR2d 1444.

Sufficiency of description of person to be searched, 49 ALR2d 1209.

Interest in, or connection with, premises searched as affecting standing to attack legality of search, 78 ALR2d 246.

Propriety or lawfulness of seizure, not incident to arrest, of papers, documents, letters, books, and records not described in warrant, 79 ALR2d 1005.

Lawfulness of nonconsensual search and seizure without warrant, prior to arrest, 89 ALR2d 715.

Sufficiency of showing as to time of occurrence of facts relied upon, 100 ALR2d 525.

Propriety of considering hearsay or other incompetent evidence in establishing probable cause for issuance of search warrant, 10 ALR3d 359.

Sufficiency of description, in search warrant, of apartment or room to be searched in multiple-occupancy structure, 11 ALR3d 1330.

Modern status of rule as to validity of nonconsensual search and seizure made

without warrant after lawful arrest as affected by lapse of time between, or difference in places of, arrest and search, 19 ALR3d 727.

Propriety of execution of search warrant at night time, 26 ALR3d 951.

Sec. 12.35.020. Grounds for issuance. A search warrant may be issued if the judicial officer reasonably believes any of the following:

- (1) that the property was stolen or embezzled;
- (2) that the property was used as a means of committing a crime;
- (3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered;
- (4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime;
- (5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle. (§ 4.02 ch 34 SLA 1962; am §§ 1, 2 ch 198 SLA 1968; am § 4 ch 86 SLA 1969; am § 14 ch 69 SLA 1970)

Cross reference. — See Cr. R. 37(a).
Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p

7 (February 10, 1970).
C.J.S. reference. — 79 C.J.S. Searches and Seizures §§ 63-84, 91-97, 112-117.

Sec. 12.35.025. Seizure of property. Property described in AS 12.35.020 may be taken on a warrant from:

- (1) a house or other place in which it is concealed or may be found;
- (2) the possession of the person by whom it was stolen, embezzled, or used in the commission of a crime;
- (3) a person who is in possession of the property;
- (4) the possession of a person to whom the property has been delivered for the purpose of concealing it or preventing its being discovered, or from a house or other place occupied by him or under his control. (§ 15 ch 69 SLA 1970)

Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p 7 (February 10, 1970).
ALR references. — Authority to

consent for another to search or seizure, 31 ALR2d 1078.
 Validity of consent to search given by one in custody of officers, 9 ALR3d 858.

Sec. 12.35.030. Showing of probable cause.

Repealed by § 16 ch 69 SLA 1970.

Editor's note. — The repealed section derived from § 4.03, ch. 34, SLA 1962. Legislative history report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7 (February 10, 1970).

Sec. 12.35.040. Authority of officer executing warrant. In the execution or service of a search warrant, the officer has the same power and authority in all respects to break open any door or window, to use the necessary and proper means to overcome forcible resistance made to him, or to call any other person to his aid as he has in the execution or service of a warrant of arrest. (§ 4.04 ch 34 SLA 1962)

Cross reference. — For discussion of knock and announce requirement, see note to AS 12.25.100.

AS 12.25.100, in conjunction with this section, establishes the procedure for forcing entry in executing both a search warrant and an arrest warrant. Davis v. State, Sup. Ct. Op. No. 1070 (File No. 1973), 575 P.2d 541 (1974). AS 12.25.100 and this section operate jointly to establish the procedure required for the lawful execution of a search warrant. Lockwood v. State, Sup. Ct. Op. No. 1809 (File No. 3356), 591 P.2d 969 (1979).

~~Sec. 12.35.050. Disposition of property taken. When the property is delivered to the judge or magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in AS 12.35.090 and AS 12.35.100. If it was taken on a warrant issued on the grounds stated in AS 12.35.020(2) and (3), he shall retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or any other court in which the crime in respect to which the property was taken is triable. (§ 4.05 ch 34 SLA 1962)~~

~~Sec. 12.35.060. Malicious procurement of search warrant. A person who maliciously and without probable cause causes a search warrant to be issued and executed is guilty of a misdemeanor. (§ 4.06 ch 34 SLA 1962)~~

15 WHERE THIS REPEALS

Sec. 12.35.070. Search of defendant in presence of judge or magistrate. When a person charged with a crime is believed by the judge or magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the crime, the judge or magistrate may direct the accused to be searched in his presence, and the weapon or other thing be retained subject to his order or the order of the court in which the defendant may be tried. (§ 4.07 ch 34 SLA 1962)

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Sec. 12.35.080. Judge, magistrate or officer to hold property allegedly stolen or embezzled. When property alleged to have been stolen or embezzled comes into the custody of a judge, magistrate or peace officer, he shall hold it subject to the order of the judge or

magistrate who examines the charge against the person accused of stealing or embezzling the property. (§ 4.08 ch 34 SLA 1962; am § 11 ch 8 SLA 1971)

Cross reference. — See Cr. R. 37(b). report on ch. 8, SLA 1971 (HB 15), see 1971 Legislative history report. — For House Journal, p. 52.

~~Sec. 12.35.090. Delivery of property to owner. On satisfactory proof of ownership of the property, the judge or magistrate who examines the charge against the person accused of stealing or embezzling it shall order it to be delivered to the owner or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the judge or magistrate. The order entitles the owner to demand and receive the possession of the property but does not affect the rights of third persons. (§ 4.09 ch 34 SLA 1962; am § 12 ch 8 SLA 1971)~~

~~Legislative history report. — For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.~~

~~Sec. 12.35.100. Property not delivered to owner. If the property stolen or embezzled has not been delivered to the owner, the court before which the trial is had for the theft or embezzlement of the property may order its delivery to the owner or his agent under the conditions of AS 12.35.090. (§ 4.10 ch 34 SLA 1962)~~

~~Sec. 12.35.110. Disposal of unclaimed property. If property stolen or embezzled is not claimed by the owner within 60 days after the conviction of the person for stealing or embezzling it, the judge, magistrate or other officer having it in custody shall, if it is money, deposit it in court, or if it is other property, sell it in the same manner as a sale upon an execution. After paying the expenses of the sale and preservation of the property as certified by the court, the proceeds shall be disposed of in the same manner as money collected upon judgments in favor of the state. (§ 4.11 ch 34 SLA 1962; am § 13 ch 8 SLA 1971)~~

~~Cross reference. — See Cr. R. 37(b). report on ch. 8, SLA 1971 (HB 15), see 1971 Legislative history report. — For House Journal, p. 52.~~

Sec. 12.35.120. Definition of search warrant. A search warrant is an order in writing, signed by a judge or magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the judge or magistrate. (§ 4.01 ch 34 SLA 1962; am § 14 ch 8 SLA 1971)

ARTICLE IX. DOCUMENTARY EVIDENCE**Rule 901. Requirement of Authentication or Identification.**

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims, except as provided in paragraphs (a) and (b) below:

(a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.

(b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403. (Added by Supreme Court Order 364 effective August 1, 1979)