

**S B**

**457**

# Senator John B. (Jack) Coghill

Alaska State Legislature

Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



## MEMORANDUM

DATE: January 25, 1990

TO: Tamara Cook  
LAA/Legal Services

FROM: Senator Jack Coghill

SUBJECT: Drafting Request

Attached you will find a draft bill that I would like put in the proper form and delivered to my office in a working draft.

This bill concerns the return of property seized under criminal warrant.

SENATE BILL \_\_\_\_\_

For an Act entitled: "An Act providing for the return of property seized under criminal warrant."  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 12.36.020 is amended by adding a new subsection to read:

(d) A law enforcement agency, including the State of Alaska Department of Law shall return property in its custody to the owner or the agent of the owner if

(1) the return is authorized under subsection (a) of this section; and

(2) the owner or agent of the owner makes demand for said return in writing delivered to the agency having custody of the property.

\* Section 2. AS 12.36.090 is amended by adding new subsections to read:

(4) "in connection with" means while the proceedings described are ongoing and once the described proceedings have terminated continued custody is no longer in connection with said proceedings;

(5) "criminal proceeding" means an ongoing criminal action filed pursuant to the Alaska Rules of Criminal Procedure or the Alaska District Court Rules of Criminal Procedure through the final disposition of the case only;

(6) "official investigation of a crime" means a probe into alleged criminal conduct prior to the filing of any criminal charges by a state or municipal agency authorized to conduct such a probe.

\* Section 3. AS 12.36 is amended by adding a new section to read:

Sec. 12.36.050. Procedure for claiming property. (a) No less than thirty days after the final disposition of all criminal proceedings the claimant shall file a notice of claim with the Department of Law stating the items demanded to be returned, the basis for the claim of ownership, the case numbers of all proceedings involving the articles, and the date of the final termination of such proceedings.

(b) Return of claimed property under this chapter relieves the State of any obligation to preserve or maintain the claimed evidence.

(c) The Department of Law is responsible for returning the claimed property and must return same in accordance with this chapter within thirty days of receipt of the notice described herein excepting those instances where the Department believes that the seized property is contraband that can not be returned or where the Department has reason to believe that the claimant is not the sole or true owner of the property in which case the Department shall, within the thirty days set forth serve written notice of its intention not to return the property together with the basis under this section for such refusal, upon the claimant.

(d) Upon receipt of a notice of refusal or failure of the Department to timely return the property the claimant may file a civil action against the State in a court of appropriate jurisdiction for the return of the property.

# Senator John B. (Jack) Coghill

Alaska State Legislature

Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



## MEMORANDUM

DATE: February 15, 1990

TO: Senator Jan Faiks  
Chairman Judiciary Committee

FROM: Senator Jack Coghill *Jack*

SUBJECT: Hearing for SB 457

SB 457 has been in your committee since February 8, 1990. SB 457 creates a mechanism where people falsely accused of a criminal offense can regain their property.

We have received a number of requests by innocent people who have had trouble getting their property back. At your convenience, I would appreciate holding a public hearing on SB 457.

This bill has a lot of merit, and we need to start the hearing process.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

February 26, 1990

The Honorable John B. (Jack) Coghill  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 457

Dear Senator Coghill:

You have asked our opinion of SB 457, a bill relating to the return of property in the custody of law enforcement agencies. In its present form, we believe that the legislation presents a high risk of interfering with the ability of the Department of Law and other prosecuting authorities to successfully prosecute criminal violations. One of the reasons the legislation presents this risk is that it does not clearly tie return of property, in cases where judicial proceedings have not been initiated, to a decision by the prosecuting attorney to decline prosecution of a case.

The bill will also create serious problems in pursuing homicide cases (in which the statute of limitations does not apply) that may be solved years after the death occurred. For example, this year we instituted prosecution against a man who committed a murder in Fairbanks in 1975. If important evidence in that case been returned, it is likely that we would not have been able to pursue the prosecution.

We understand from your staff that the bill is designed to require the return of property in situations where a person has been found not guilty following a trial. Attached you will find a proposed committee substitute designed to protect prosecution interests, while still providing a clear mechanism for return of property to persons acquitted of criminal charges.

The Honorable John B. (Jack) Coghill

February 26, 1990  
Page 2

If you have any questions about the proposed committee substitute, please let me know.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By: 

Laurie H. Otto  
Assistant Attorney General

Attachment

✓cc: The Honorable Jan Faiks  
Gayle Horetski

\*Section 1. AS 12.36.020 is amended by adding new subsections to read:

(d) Except as provided in AS 12.36.070, a law enforcement agency shall return property in its custody that is not the subject of forfeiture proceedings to the owner of the property or to the agent of the owner following the entry of a not guilty verdict if the owner makes a written demand for return of the property under AS 12.36.070 and delivers the demand to the agency having custody of the property.

\*Sec. 2. AS 12.36 is amended by adding a new section to read:

Sec. 12.36.070. PROCEDURE FOR CLAIMING UNFORFEITED PROPERTY. (a) A person claiming unforfeited property under this chapter shall file a notice of claim with the law enforcement agency having custody of the property. The notice must include a list of the items of property whose return is sought, the basis for the claimant's claim of ownership, the case numbers of all judicial proceedings involving the items, and the date of final disposition of the case. The notice may not be filed until 30 days after the final disposition of the case that resulted in the agency's custody of the property.

(b) The law enforcement agency having custody of property that has been taken into custody in connection with a case in which a not guilty verdict is entered shall return the property within 45 days of the receipt of the claim unless

(1) the claim does not meet the requirements of (a) of this section;

(2) the property is not subject to return under this chapter;

(3) the property is a prohibited weapon as defined in AS 11.61.200, a controlled substance as defined in AS 11.71.900, or an alcoholic beverage as defined in AS 04.21.080; or

(4) the person claiming the property does not present satisfactory proof of ownership; if the agency determines that the proof of ownership is unsatisfactory, it shall, within 30 days of the receipt of the claim, notify the claimant in writing of the reasons for not returning the property.

(c) If a law enforcement agency is aware that more than one person claims an ownership interest in the property, the law enforcement agency shall determine which person has the superior claim to the property, and shall provide written notification of this determination to all claimants of which the agency has knowledge ten days prior to releasing custody of the property. If the law enforcement agency provides the notification required under this subsection, the agency is immune from liability for releasing the property.

LAW OFFICES OF MARC GROBER  
BOX 467  
NENANA, ALASKA 99760  
(907) 832-5227

April 25, 1990

Senator Jack Coghill  
Fax: 907-465-3922  
Re: Senate Bill 457

Dear Senator Coghill,

Please forward a copy of your proposed CSSB457 together with my previous testimony, the Connecticut statute and the following comments to the Senate Judiciary committee for its hearing on the bill scheduled for April 25, 1990. When I spoke to you last I had not understood that your proposed committee substitute had as yet not been presented to the Committee. Thank you.

TESTIMONY

As I have noted before in a letter which I understand this committee was provided some months ago by Senator Coghill, the purpose of this bill is to cure the abuses inherent in the current practice involving return of property seized by law enforcement officials. Briefly, the Department of Law has attempted to bar the filing of civil actions to obtain return of property seized under warrant and has requested and obtained orders allowing it to continue holding property seized under a warrant even after a criminal action that was subsequently filed was dismissed.

These abuses have been on the increase with the rise of so-called "white-collar" prosecutions. These prosecutions regularly involve expansive "fishing expeditions" through the business records of "suspects" in the hope that some kind of case can be made against the defendant. In a recent matter it was discovered by the defendants after seizure of the records that the judge issuing the warrants had not read the subject regulations and was not conversant with them and relied solely on the officer's representations that the alleged regulation prohibited what the officer said it did, or that the evidence to be seized would demonstrate such a violation. Business records for some seven years were seized and the department of Law continues to retain the documents even after the District Attorney was forced to dismiss the case because the crime alleged did not exist!

The holding of property seized under a warrant after the final disposition of that action (whether by conviction, acquittal, dismissal or appeal) constitutes a violation of several constitutional provisions; the rights to property, due process and privacy. In holding property after the only lawful basis for its retention (a warrant) is rendered moot (final disposition of the criminal proceeding) places the property in the status of having been illegally seized and held from that point on. The department of Law has expressed its intent to hold such property for circulation among various other agencies for the purpose of concocting some form of further proceedings against the property owners. This is certainly not the type of conduct that should be endorsed by this legislature.

The Department of Law raises only one objection to Senate Bill 457. Though the argument is akin to the ballyhoo raised over

Willie Horton, the issue raised is very real. So real that Senator Coghill had a draft CSSB457 prepared that recognizes the problem and addresses it squarely. The proposed Committee substitute offered by Senator Coghill (Sec. 2, amending AS 12.36.70 by adding subparagraph (b)(5)) acknowledges the Department of Law's need to retain evidence if there is an outstanding crime (but not once a dismissal has been entered.)

I would also like to point out that a similar statute which served as the model for the bill before you has been in place in Connecticut for over fifteen years without any serious breakdown in the public order there.

The problem that is not addressed as yet is the poor victim whose brand new automobile is stolen and becomes the scene of an unsolved murder. Is the owner going to be required to continue to make \$500 per month payments on an automobile that the State refuses to release? Eminent domain might resolve this problem only if the State were required to return the property.

The Department's proposed substitute totally fails to meet the appropriate needs and is based upon a misconception that SB 457 was designed to deal only with situations in which there has been an acquittal. The Department attempts to address only the tip of the iceberg and essentially relegates defendants whose cases have been dismissed to second class citizens.

Lastly I wish to address the fiscal question raised by the department of Law. Presently, the Department spends thousands of hidden dollars attempting to block the return of property improperly held by law enforcement agencies, and this expense is more than matched by the thousands of dollars and inconvenience to the property owners, not to mention the clear violation of their rights. The proposed procedure will streamline this entire process and will thereby result in a potential savings to the State as the Department applies its resources to matters of substance.

Thank you for your consideration.

Sincerely,  
Marc Grober

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1990

SUBJECT: Bill on return of seized property  
(Work Order No. 6-2030)

TO: Senator Jack Coghill

FROM: John B. Gaguine ~~786~~  
Legislative Counsel

Enclosed is a bill on the return of property seized during a criminal investigation. It differs in a few ways from the rough draft you sent over:

- I did not include the Department of Law either in AS 12.36.020(d) or in the definition of law enforcement agency in AS 12.36.090. I think it clear that Law is a "public agency that performs as one of its principal functions an activity relating to . . . the enforcement of the criminal law"; hence it does not need to be named specifically.

- I deleted all three of the proposed definitions. It seemed to me that the definitions of "in connection with" and "criminal proceeding" were included only to stress that a law enforcement agency's right to hold onto seized property ceases when the investigation or criminal proceedings are over, and I think that the other provisions of this bill make that quite clear. It also seemed to me that including the proposed definition of "official investigation of a crime" might create a problem during the period between the end of an investigation and the decision by the prosecutor whether or not to file charges.

- I broadened new section AS 12.36.070 (there is already a 12.36.050) to cover all law enforcement agencies, and not just the Department of Law. If criminal charges are never brought after an investigation, Law will never obtain custody of seized property, and the proper entity to file a claim with would be the Department of Public Safety or a municipal police department. Also, if property is seized in

Senator Jack Coghill  
Page 2  
January 29, 1990

a misdemeanor case in a municipality that prosecutes its own misdemeanors (such as Anchorage or Juneau), it may be the municipal prosecutor that has custody of the evidence.

- I left in the provision of the rough draft stating that return of claimed property relieves the state or political subdivision of any obligation to preserve or maintain the property claimed, although I do not understand what the point of this provision is. I left it in because I assume that whoever prepared the rough draft had a specific purpose in mind. I would be interested in knowing the purpose.

- I changed the title of the bill, since I assume it is intended to apply (as I believe current law does) to all property seizures by law enforcement agencies, and not just those done pursuant to warrants. Many seizures can be made without warrants, such as items seized during searches of automobiles or during searches of persons incident to arrest. Moreover, AS 12.36 probably applies to property obtained by law enforcement agencies in other ways, such as property stolen during a burglary and abandoned by the burglar. See AS 12.36.010 (chapter governs disposal of property coming into custody of law enforcement agency and not belonging to agency).

- I added a provision repealing current AS 12.36.-020(c), since it seemed to conflict with new AS 12.36.-020(d).

If I may be of further assistance, please advise.

JBG:pl  
WKP1/050

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FEB 17 1990

~~FEB 11 1990~~

POUCH Y STATE CAPITOL

JUNEAU ALASKA 99811

907 465 3800

M E M O R A N D U M

February 15, 1990

SUBJECT: Sectional analysis of SB 457  
(Work Order No. 6-2030)

TO: Senator Jack Coghill

FROM: John B. Gaguine *JBG*  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of SB 457 adds two new subsections to AS 12.36.-020. Subsection (d) makes it mandatory for a law enforcement agency to return unforfeited property in its custody to the owner if the property is subject to discretionary return by the agency under AS 12.36.020(a) and if the owner makes a proper written demand for the return. Subsection (e) notes that property is no longer to be considered in the custody of an agency when the criminal or children's case has reached final disposition, or when the agency has completed its investigation and no prosecution has resulted.

Section 2 adds a new section, AS 12.36.070, setting forth the procedure for an owner to claim property in the custody of a law enforcement agency. It requires the agency to return claimed property unless the claim is not sufficiently complete, the property is not subject to return under AS 12.36, or the agency believes that the claimant is not the real owner, or there is more than one owner. The new section also authorizes an aggrieved claimant to sue the agency.

Senator Jack Coghill  
Page 2  
February 15, 1990

Section 3 repeals an existing section of AS 12.36.020 that is superseded by the enactment of AS 12.36.020(d).

JBG:pl  
WKP2/047

# Senator John B. (Jack) Coghill

Alaska State Legislature

Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



## SPONSOR STATEMENT ON SB 457

SB 457 CREATES A MECHANISM WHERE PEOPLE FALSELY ACCUSED OF A CRIMINAL OFFENSE CAN REGAIN THEIR PROPERTY. THE PROBLEM WE HAVE IS THAT ENFORCEMENT AGENCIES WILL NOT RETURN PEOPLE'S PROPERTY AFTER THEY HAVE BEEN FOUND INNOCENT.

ORIGINALLY THE PROPERTY IS SEIZED BECAUSE IT'S PART OF THE EVIDENCE THAT IS USED IN COURT. WHEN OUR BILL BECOMES LAW IT WILL BE MANDATORY FOR THE AGENCY TO RETURN SEIZED PROPERTY. ONCE SOMEONE HAS BEEN FOUND INNOCENT, THERE IS NO REASON NOT TO RETURN THEIR PROPERTY.

SB 457 ALSO CREATES THE PROCESS UNDER WHICH SOMEONE CAN PETITION TO HAVE THEIR PROPERTY RETURNED. WHEN A PETITION HAS BEEN RECEIVED THE AGENCY WOULD HAVE TO RETURN PROPERTY UNLESS THERE WAS AN INCOMPLETE APPLICATION MADE.

SB 457 IS RATHER CLEAR AND ITS INTENT IS TO ALLOW PEOPLE FOUND INNOCENT TO REGAIN THEIR PROPERTY AND TO BEGIN TO REBUILD THEIR LIVES. ITS PASSAGE IS ONE OF SIMPLE FAIRNESS TO PEOPLE WHO HAVE HAD TO GO TO TRIAL TWICE: ONCE TO ESTABLISH THEIR INNOCENCE, AND ONCE AGAIN TO REGAIN WHAT IS RIGHTFULLY THEIRS.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Court System  
 Title: An Act relating to the return of property in the custody of law enforcement... BRU: Trial Courts  
 Sponsor: Coghill Components: \_\_\_\_\_  
 Requestor: Judiciary

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel  
 Division: Alaska Court System  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 02/23/90  
 Date: 02/23/90

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating... property in  
 the custody of law enforcement agencies."  
 Sponsor: Senator Cochill  
 Requestor: Senator Cochill

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: Criminal Justice Litigation

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues  
 Richard I. Pegues, Director  
 Division: Administrative Services  
 Phone: 465-3672  
 Date: February 26, 1990

Approved by Commissioner: Richard I. Pegues /FOR/  
Douglas B. Baily, Attorney General  
 Date: February 26, 1990  
 Agency: Department of Law

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 457

This bill amends AS 12.36 to make it mandatory for a law enforcement agency to return forfeited property in its custody to the owner, when a criminal or children's case has reached final disposition or when the agency has complete its investigation and no prosecution has resulted, if the property is subject to discretionary return by the agency, and if the owner makes a proper written demand for the return.

The bill specifies that property is no longer to be considered in the custody of a law enforcement agency when the criminal or children's case has reached final disposition, or when the agency has completed its investigation and the investigation report has been filed with the appropriate authority, except that custody is considered to have ended if the report has not been filed within 30 days of the completion of the investigation.

Lastly, the bill provides a procedure for an owner to claim property in the custody of a law enforcement agency. The bill requires an agency to return claimed property unless the claim is not sufficiently complete, the property is not subject to return under AS 12.36, the agency believes that the claimant is not the real owner, or there is more than one owner. The bill also authorizes a claimant to file a civil action if a law enforcement agency fails to return claimed property in a timely manner, or refuses to return claimed property as prescribed by the bill.

It is not possible to accurately predict costs that might result for the Department of Law, if it is required to defend state law enforcement agencies in civil actions brought by claimants for the return of property in the custody of the state. Consequently, no costs are being shown at this time. Because of concerns the department has with certain provisions in the bill, mentioned briefly below, the eventual cost to the state could be considerable.

First, it will be very difficult for a law enforcement agency to determine when a final disposition of any particular case has occurred. All criminal and children's court proceedings are subject to appeal. This process may even include collateral appeals to the Federal courts in major cases such as First Degree Murder or other unclassified felonies. If a retrial was ordered by an appellate court, it might be impossible to have a retrial if key evidence, in the form of private property, was returned to the owner of the property. Not only would the required chain of custody have been broken, but the evidence might simply be no longer available.

Second the provision that property is no longer in custody in connection with an official investigation of a crime when the investigation is complete and the investigation report has been filed with the appropriate authority, appears to have the effect of forcing prosecutors to make immediate screening and charging decisions without benefit of proper research. A prosecutor must often conduct extensive reviews of relevant caselaw, examine evidence for sufficiency and admissibility, and interview witnesses before screening and charge decisions can be made. Moreover, it is important to understand that the screening of cases is an ongoing process subject to continuing review as cases are developed. Consequently, as new information comes to light, previous screening or charging decisions are often justified or reversed.

During the past fiscal year, more than 24,000 criminal offenses were referred to state prosecutors for prosecution or for assistance in investigation. This is a horrendous caseload that must be shouldered by about 60 criminal prosecutors, after accounting for forced salary vacancy and staff assigned to prisoners' rights cases. Imposition of an arbitrarily short screening period, either immediate or 30 days depending upon how the bill is read, will result in prosecutors being forced to decline to prosecute large numbers of offenses or being forced to bring charges that may not be appropriate under the circumstances.

NOTES TO DECISIONS

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), 525 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), 791 P.2d 969 (1979).

Quoted in *Sandland v. State*, Ct. App. Op. No. 59 (File No. 4960), 636 P.2d 1196 (1981).

*Sec. 12.35.050. Disposition of property taken. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]*

**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)

**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 that person is brought to have on the 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 the presence of the judge or magistrate, and the weapon or other thing be retained subject to the order of the judge or magistrate or the order of the court in which the defendant may be tried. (§ 4.07 ch 34 SLA 1962)

*Secs. 12.35.080 — 12.35.110. Disposition of stolen property. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.36.]*

**Sec. 12.35.120. Definition of search warrant.** A search warrant is an order in writing, signed by a judge or magistrate or signed at the direction of a judicial officer in accordance with AS 12.35.015, directed to a peace officer, commanding the peace officer 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; am § 20 ch 143 SLA 1982)

**Effect of amendments.** — The 1982 amendment inserted "or signed at the direction of a judicial officer in accordance with AS 12.35.015."

**Chapter 36. Disposition of Recovered or Seized Property.**

<p>Section</p> <p>10. Property disposition</p> <p>20. Return of property</p> <p>30. Disposal of unclaimed property used as evidence</p>	<p>Section</p> <p>40. Disposal of property when owner unknown</p> <p>90. Definitions</p>
---	--

Collateral references. — 68 Am. Jur. 79 C.J.S., Searches and Seizures, §§ 115  
2d, Searches and Seizures, §§ 116 — 119. — 117.

**Sec. 12.36.010. Property disposition.** When property not belonging to a law enforcement agency comes into the custody of the agency, the property shall be disposed of in accordance with this chapter. (§ 21 ch 143 SLA 1982)

**Sec. 12.36.020. Return of property.** (a) A law enforcement agency may return property in its custody to the owner or the agent of the owner if

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

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

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

(c) If wrongfully taken or damaged property is not photographed and authenticated under AS 12.80.050 and the property is used as evidence in a criminal proceeding or a children's court proceeding, the law enforcement agency in possession of the property shall return it to the owner upon presentation of satisfactory proof of ownership within 60 days after the final disposition of the case. (§ 21 ch 143 SLA 1982)

~~**Sec. 12.36.030. Disposal of unclaimed property used as evidence.** (a) If property that is used as evidence in a criminal proceeding or a children's court proceeding, including wrongfully taken or damaged property, is not claimed by the owner within one year after the final disposition of the case, the law enforcement agency having custody of the property shall dispose of it under (b) of this section.~~

~~(b) If the property to be disposed of is money, the law enforcement agency shall deposit it in the court or, if it is property other than money, sell it in the same manner as a sale upon execution. After paying the expenses of the sale and the preservation of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same manner as money collected upon a judgment in favor of the state. (§ 21 ch 143 SLA 1982)~~

**Sec. 12.36.040. Disposal of property when owner unknown.** When the owner of property is unknown and the property comes into

the possession of a law enforcement agency as suspected evidence of a crime but is not used in a criminal proceeding or a children's court proceeding, or when the property comes into the possession of a law enforcement agency by other means, the property shall be held for two years. If the property is not claimed within two years of the date it comes into the possession of a law enforcement agency, the property shall be disposed of as provided in AS 12.36.030(b). (§ 21 ch 143 SLA 1982)

**Sec. 12.36.090. Definitions.** In this chapter,

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

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

(3) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders. (§ 21 ch 143 SLA 1982)

**Chapter 40. Grand Jury.**

Section	Section
10. Qualifications and manner of drawing grand jurors	60. Access to public jails, prisons, and public records
20. Number of jurors	70. Duty of prosecuting attorney
30. Duty of inquiry into crimes and general powers	80. Effect of failure to return indictment
40. Juror to disclose knowledge of crime	90. Questioning juror for conduct
50. Holding to answer as affecting indictment or presentment	100. Contents of indictment

---

**Cross references.** — For court rules on grand juries, see Cr. R. 6; for constitutional provisions see art. I, sec. 8, Alaska Constitution.

---

**Sec. 12.40.010. Qualifications and manner of drawing grand jurors.** Grand jurors shall have the qualifications and be drawn as are trial jurors under AS 09.20.010 — 09.20.080. (§ 5.01 ch 34 SLA 1962)

**NOTES TO DECISIONS**

**Exclusionary method of jury selection held invalid.** — Any method of jury selection which is in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community must be held

(4) public interest in ensuring the appearance. *Adkerson v. State*, 731 P.2d 1218 (Alaska 1987).

Applied in *Ashton v. State*, 737 P.2d 1365 (Alaska Ct. App. 1987).

Cited in *Lipscomb v. State*, 700 P.2d

1298 (Alaska Ct. App. 1985); *Dunlop v. State*, 721 P.2d 604 (Alaska 1986); *Patterson v. State*, 747 P.2d 535 (Alaska Ct. App. 1987); *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

### Chapter 35. Search and Seizure.

#### Sec. 12.35.015. Issuance of search warrant upon testimony communicated by telephone or other means.

Revisor's notes. — Criminal Rule 38.1(b), effective June 15, 1985, provides

that AS 12.35.015 governs the issuance of search warrants by telephone.

#### Sec. 12.35.040. Authority of officer executing warrant.

#### NOTES TO DECISIONS

**Standing to complain of violation.** — A person who is not present when a search warrant is executed does not have standing to complain of the state's failure to comply with the "knock and announce" requirements of Alaska law. *State v. Johnson*, 716 P.2d 1006 (Alaska Ct. App. 1986).

**Burden of proof.** — A defendant complaining of a violation of the knock and announce statutes must make a prima fa-

cie showing that the statutes were not complied with; the state then bears the burden of persuasion to show that the requirements were met, or that exigent circumstances existed. *State v. Johnson*, 716 P.2d 1006 (Alaska Ct. App. 1986).

Applied in *Fleener v. State*, 686 P.2d 730 (Alaska Ct. App. 1984).

Quoted in *Sandland v. State*, 636 P.2d 1196 (Alaska Ct. App. 1981).

### Chapter 36. Disposition of Recovered or Seized Property.

#### Section

30. Disposal of unclaimed property used as evidence

#### Section

50. Remission of forfeited property

60. Disposal of forfeited deadly weapons

**Sec. 12.36.030. Disposal of unclaimed property used as evidence.** (a) If property that is used as evidence in a criminal proceeding or a children's court proceeding, including wrongfully taken or damaged property, is not claimed by the owner within one year after the final disposition of the case, the law enforcement agency having custody of the property shall dispose of it under (b) of this section.

(b) The law enforcement agency shall dispose of that part of the property referenced in (a) of this section that is

(1) subject to AS 34.45.110 — 34.45.780 in accordance with AS 34.45.110 — 34.45.780;

(2) not subject to AS 34.45.110 — 34.45.780 by selling the property in the same manner as a sale upon execution; after paying the expenses for the preservation and sale of the property, the law enforcement agency shall dispose of the proceeds of the sale in the same

manner as money collected upon a judgment. (§ 21 ch 143 SLA 1982; am § 4 ch 133 SLA 1986)

*Effect of amendments.* — The 1986 amendment rewrote subsection (b).

**Sec. 12.36.040. Disposal of property when owner unknown.**

NOTES TO DECISIONS

Quoted in *Wilson v. State*, 756 P.2d 307 (Alaska Ct. App. 1988).

**Sec. 12.36.050. Remission of forfeited property.** (a) A claimant seeking remission of the claimant's interest in a weapon ordered forfeited under AS 12.55.015(a)(9) shall prove to the court by a preponderance of evidence that the claimant

(1) has a valid interest in the weapon, acquired in good faith;  
(2) did not knowingly participate in the commission of the crime in which the weapon was used; and

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

(b) Upon a showing that a claimant is entitled to relief under (a) of this section, the court may order that the weapon be released to the claimant.

(c) A claim may not be filed under this section more than 120 days after the entry of the last final judgment in the case in which the weapon was ordered forfeited. (§ 1 ch 169 SLA 1988; am § 29 ch 50 SLA 1989)

*Effect of amendments.* — The 1989 amendment, effective May 27, 1989, deleted "or remittance of the value of" following "remission of" near the beginning of subsection (a).

*Legislative history reports.* — For an analysis of the 1989 amendment to (a) of this section, see Senate-House Joint Journal Supplement No. 10, May 5, 1989, p. 5, under "Sec. 29."

**Sec. 12.36.060. Disposal of forfeited deadly weapons.** (a) A deadly weapon forfeited under AS 12.55.015(a)(9), unless remitted under AS 12.36.050, shall be disposed of by the commissioner of public safety under this section. The commissioner of public safety may declare a weapon surplus and transfer it to the commissioner of administration. A weapon suitable for law enforcement purposes, ballistics testing, training, or identification may be retained by the Department of Public Safety or transferred to the municipal law enforcement agency making the arrest that led to the forfeiture. A weapon that is unsafe or unlawful shall be destroyed.

(b) The commissioner of public safety may adopt regulations necessary to carry out the provisions of this section. (§ 1 ch 169 SLA 1988)

NO  
MATERIAL  
IN FOR 1st PART  
SUPP.

*Connecticut*  
GENERAL STATUTES ANNOTATED

Under Arrangement of the Official  
General Statutes of Connecticut  
Revision of 1958

Volume 29

Titles

- 53a. Penal Code § 53a-187-En1
- 54. Criminal Procedure
- 55. Concluding Provisions

ST. PAUL, MINN.  
WEST PUBLISHING CO.

ANCHORAGE LAW LIBRARY

§§ 54-34, 54-35  
Repealed

1902 Rev. § 1497

See now § 54-33f

Former § 54-35, relating to condemnation of gambling implements, was derived from:

1961, P.A. 255, § 1

## CRIMINAL PROCEDURE

1961, P.A. 214

1949 Rev. § 8758

1930 Rev. § 6441

1918 Rev. § 6591

1917 P.A. ch. 68

1902 Rev. § 1498

See now § 54-33g

### PART III

#### SEIZED PROPERTY

§ 54-36. Repealed. (1971, P.A. 74-221, § 9, eff. June 17, 1971)

##### Historical Note

See now §§ 54-36a, 54-36b

§ 54-36a. "Contraband", "stolen property", "owner" defined; seized property; inventory filed with clerk, court orders re. return of compliance, criminal contempt

(a) As used in this section, sections 53-278c and 54-36c: (1) "Contraband" means any property, the possession of which is prohibited by any provision of the general statutes; (2) "stolen property" shall include, but not be limited to, cash or the proceeds from the sale of such property obtained by theft or other illegal means; (3) "owner" means a person or persons entitled to seized property as a matter of law or fact.

(b) Whenever property is seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest, the law enforcement agency seizing such property shall file, on forms provided for this purpose by the office of the chief court administrator, an inventory of the property seized. The inventory, together with the uniform arrest report, in the case of an arrest, shall be filed with the clerk of the court for the geographical area in which the criminal offense is alleged to have been committed; except, when the property is stolen property and, in the opinion of the law enforcement officer, does not exceed two hundred fifty dollars in value, or when an attempt was made to steal the property but the property at all times remained on the premises in a sealed container, the filing of an inventory shall not be required and such property may be returned to the owner. In the case of property seized in connection with a search warrant without an arrest, the inventory shall be attached to the warrant and shall be filed with the clerk of the court for the geographical area in which the search

## COURT JURISDICTION AND POWER

§ 54-36a

warrant was issued. If the seized property is stolen property, within ten days of the seizure, the law enforcement agency seizing the property shall notify the owner of the property if known, or, if the owner of the property is unknown at the time of seizure, such agency shall within ten days of any subsequent ascertainment of the owner notify such owner, and, on a form prescribed by the office of the chief court administrator, advise the owner of his rights concerning the property and the location of the property. Such written notice shall include a request form for the return of the property. The owner may request the return of the property by filing such request form with such law enforcement agency, and upon receipt of such request, the law enforcement agency shall forward it to the clerk of the court for the geographical area in which the criminal offense is alleged to have been committed. The clerk of the court shall notify the defendant or defendants of the request to return the property. The court shall order the return of the property within thirty days of the date of filing such return request by the owner, except that for good cause shown, the court may order retention of the property for a period to be determined by the court. Any secondary evidence of the identity, description or value of such property shall be admissible in evidence against such defendant in the trial of such case. The fact that the evidence is secondary in nature may be shown to affect the weight of such evidence, but not to affect its admissibility. If any criminal proceeding is transferred to another court location, then the clerk with whom the inventory is filed shall transfer such inventory to the clerk of the court location to which such action is transferred.

(c) Unless such seized property is stolen property and is ordered returned pursuant to subsection (b) of this section or unless such seized property is adjudicated a nuisance in accordance with section 54-33g, or unless the court finds that such property shall be forfeited or is contraband, or finds that such property is a controlled drug, a controlled substance or drug paraphernalia as defined in subdivision (8), (9) or (20) of section 21a-240, it shall, at the final disposition of the criminal action or as soon thereafter as is practical, or, if there is no criminal action, at any time upon motion of the prosecuting official of such court, order the return of such property to its owner within six months upon proper claim therefor.

(d) When the court orders the return of the seized property to the owner, the order shall provide that if the seized property is not claimed by the owner within six months, the property shall be destroyed or be given to a charitable or educational institution or to a governmental agency or institution, except that (1) if such property is money it shall be remitted to the state or (2) if such property is a valuable prize it shall be disposed of by public auction or private

sale in which case the proceeds shall become the property of the state; provided any person who has a bona fide mortgage, assignment of lease or rent, lien or security interest in such property shall have the same right to the proceeds as he had in the property prior to the sale.

(e) If such seized property is adjudicated a nuisance or if the court finds that such property shall be forfeited or is contraband other than a controlled drug, a controlled substance or drug paraphernalia as defined in subdivision (8), (9) or (20) of section 21a-240, the court shall order that such property be destroyed or be given to a charitable or educational institution or to a governmental agency or institution, except that (1) if such property is money, the court shall order that it be remitted to the state or (2) if such property is a valuable prize, the court shall order that it be disposed of by public auction or private sale in which case the proceeds shall become the property of the state; provided any person who has a bona fide mortgage, assignment of lease or rent, lien or security interest in such property shall have the same right to the proceeds as he had in the property prior to sale.

(f) If the court finds that such seized property is a controlled drug, a controlled substance or drug paraphernalia as defined in subdivision (8), (9) or (20) of section 21a-240, the court shall order the forfeiture and destruction of such property or order it delivered to the commissioner of consumer protection pursuant to section 54-36g.

(g) Any order made under the provisions of subsections (b), (c), (d), (e) and (f) of this section or section 54-33f or 54-33g, shall upon notification from the clerk, be complied with by the person or department having custody or possession of such property.

(h) A return of compliance with the court order, on a form prescribed by the office of the chief court administrator, shall be filed with the clerk of the court by the person or department to whom notice is sent in accordance with the provisions of subsection (g) of this section. If the court ordered the seized property returned to the owner within six months upon proper claim therefor, the return of the compliance shall be filed upon the return of the property to the owner. If the owner does not claim the property within six months, then the return of compliance shall be filed upon immediate compliance with the order of the court pursuant to subsection (d) of this section. If the court renders an order concerning the disposition of the property other than an order to return the property to the owner, the return of compliance shall be filed with the clerk forthwith. Failure to file the return of compliance or to comply with the court order shall constitute criminal

contempt. Anyone convicted of criminal contempt may be punished by a fine of not more than one hundred dollars.

(1974, P.A. 74-221, §§ 1 to 6, 1975, P.A. 75-530, §§ 16, 17, eff. June 30, 1975; 1976, P.A. 76-77, § 1, 1978, P.A. 78-280, § 1, eff. July 1, 1978, 1979, P.A. 79-22, 1981, P.A. 81-240, § 1, eff. July 1, 1981, 1982, P.A. 82-235, 1985, P.A. 85-263, § 1.)

#### Historical Note

1975, P.A. 75-530, § 16, eff. from passage, June 30, 1975, in subsection (b), in the first sentence, substituted "arrest or seizure pursuant to a search warrant without an arrest, the law enforcement agency for 'offense the person'", and divided the sentence after "inventory of the property seized" by inserting ". The inventory shall be filed in the case of an arrest.", in the new second sentence, substituted "or geographical area" for "or circuit" following "judicial district", deleted "from which such seizure arose" following "the criminal offense", and added at the end "and, in the case of a \* \* \* the search warrant was issued"; and inserted the third sentence in subsection (b).

1975, P.A. 75-530, § 17, eff. from passage, June 30, 1975, in subsection (c) substituted "or unless" for "the court shall enter an order concerning the disposition of the seized property at the final disposition of any civil or criminal action, as soon thereafter as is practical, provided if" following "section 54-33g", substituted "finds" for "does not find" following "the court", and inserted ", at the final disposition \* \* \* prosecuting official of such court."

1976, P.A. 76-77, § 1, divided the second sentence of subsection (b) by substituting "except, where the property \* \* \* may be returned to the owner. In" for "and in"; amended the second sentence of subsection (b) by substituting ", together with the uniform arrest report," for "shall be filed"; and by inserting "shall be filed" following "in the case of an arrest"; amended the third sentence by inserting "property seized in connection with" and by inserting "the inventory shall be attached to the warrant and shall be filed"; divided the former third sentence (now, fourth) of subsection (b), by substituting "or the court or a judge thereof \* \* \* When any" for "provided, if"; inserted, in the fourth sentence of subsection (b), "if an inventory is re-

quired"; inserted in the fifth sentence of subsection (b), "under the provisions of this section"; substituted, in subsection (c), "six months" for "one year"; substituted, in the second sentence of subsection (c), "six months" for "one year" in two places, and substituted "forthwith" for "promptly" at the end; and substituted, in the first sentence of subsection (f), "six months" for "one year".

1978, P.A. 78-280, § 1, changed "county" or "county or judicial district" to "judicial district".

Section 127 of 1978, P.A. 78-280, provided that § 1 of the act takes effect July 1, 1978.

1979, P.A. 79-392 amended subsection (a) by inserting "As used in this section, sections 53-278c and 54-36c, (1)" at the beginning, by deleting "as used in this section, sections 53-278c and 54-36c" following "Contraband", and added subds. (2) and (3).

1981, P.A. 81-240, § 1, amended the fourth sentence of subsection (b) by substituting "the seized" for "such" following "if", and by substituting "within forty-eight hours of the seizure, \* \* \* and the location of the property," for "it may, after the filing of the inventory if an inventory is required, be returned to its owner in the discretion of the law enforcement agency seizing such property after consultation with the prosecuting official of the court in which the charge for which the arrest was made is pending or the court which issued such search warrant, as the case may be, or the court or a judge thereof, may if it is determined to be just and reasonable, order the return of such property upon the application to the court or judge by the owner."; substituted, in the fifth sentence of subsection (b), "Such written notice shall \* \* \* be determined by the court. Any" for "When any such return under the provisions of this section has deprived any defendant in a criminal

§ 54-36a

case of the opportunity to examine, test, or appraise such property to such defendant's prejudice, any"; deleted, from the ninth sentence of subsec (b), "not" following "value of such property shall"; inserted, in subsec (b), the tenth sentence; substituted, at the end of subsec (c), "in accordance with subsection (b) of this section" for "within six months upon claim therefor"; in subsec (e), deleted the former second sentence which read "If the court ordered the seized property returned to the owner within six months upon proper claim therefor, the return of compliance shall be filed at the termination of the six month period or upon the return of the property to the owner, whichever occurs first", and deleted, from the beginning of the second sentence, "(otherwise)".

Section 3 of 1981, P.A. 81-240, provided that § 1 of the act takes effect July 1, 1981.

1982, P.A. 82-235 substituted, in the first sentence of subsec. (b), "office of the chief court administrator" for "executive secretary of the judicial department"; deleted "judicial district or" following "court for the" from the second, third and sixth sentences of subsec (b); in the fourth sentence of subsec. (b) substituted "ten days" for "forty eight hours" following "stolen property, with in" and following "agency shall within"; substituted "office of the chief court administrator" for "executive secretary of the judicial department"; inserted "location" following "court" in two places and substituted "whom" for "which" preceding "the inventory is filed" in the eleventh sentence of subsec. (b); in subsec. (c) inserted "stolen property and is ordered returned pursuant to subsection (b) of this section or unless such seized property is", and substituted "within six months upon proper claim therefor" for "in accordance with subsection (b) of this section" at the end; substituted, in subsec (d), "subsections (b) and" for "subsection" following "under the provisions of"; substituted, in the first sentence of subsec. (e), "office of the chief court administrator" for "executive secretary of the judicial department"; inserted, in subsec. (e), the second sentence; and deleted, from the end of the fourth sentence of subsec. (e),

CRIMINAL PROCEDURE

"and imprisoned for not more than four days, or both"

1985, P.A. 85-267, § 1, in subsec (b) inserted in the second sentence "two hundred" preceding "fifty dollars in value," and inserted "or when an attempt was made to steal the property but the property at all times remained on the premises in a sealed container"; in subsec (c), inserted "finds that such property is a controlled drug," added references to subds (8) and (20) of § 21a-21a and changed punctuation; added subsec. (d), (e), (f), added the subsection designation (g) and added the references to subsecs (d), (e) and (f), redesignated former subsec (e) as subsec (h), in subsec (h), in the first sentence, substituted the reference to subsec "(g)" for "(f)", in the second sentence deleted "at the termination of the six month period or" following "shall be filed" and deleted "whichever occurs first" at the end of the sentence, inserted the third sentence regarding filing the return of compliance, and in the fourth sentence substituted "If the court renders an order concerning the disposition of the property other than an order to return the property to the owner" for "Otherwise", and deleted former subsec. (f), which read:

"(f) If a return of compliance with a court order states that the seized property was not claimed by the owner within six months, the clerk shall notify the court and the court shall order that such property be destroyed or given to a charitable or educational institution or to a governmental agency or institution, provided, if such property is money or valuable prize, it shall become the property of the state. The court may also order that such property be sold by public sale or at public auction, in which case the proceeds shall become the property of the state. The clerk shall notify the custodian of such property of the court order and he shall comply with the court order and file a return of compliance."

Prior Laws:

1973, P.A. 73-667, § 1  
1973, P.A. 73-116, § 22  
1969, P.A. 669, § 31  
1958 Rev., § 54-36  
1949 Rev., § 8759  
1941, Supp. § 870f

COURT JURISDICTION AND POWER

§ 54-36a  
Note 3

Law Review Commentaries

Permanent confiscation of prison contraband - Fifth amendment behind bars (1984) 94 Yale L.J. 901

Library References

Searches and Seizures 2-5  
C.J.S. Searches and Seizures §§ 91 to 97 112 to 114

United States Supreme Court

Investigative detention of luggage must be limited in scope to comply with intrusion on Fourth Amendment interests on less than probable cause, see United States v. Place, 1983, 103 S.Ct. 2637, 102 U.S. 696, 77 L.Ed.2d 110

Notes of Decisions

In general 1  
Acquittal 5  
Civil action 6  
Evidence 9  
Forfeitures 2  
Garnishment 1  
Parties 7  
Return of property 3  
Review 9

1. In general

This section relied upon as authority for forfeiture applies only to property which has been seized and not to that which has come into possession of state in some other manner. State v. Pirro (1984) 470 A.2d 210, 192 Conn. 98

Courts had inherent power to direct that property taken from accused be returned or otherwise disposed of when no longer required. Bruchal v. Smith (1922) 145 A. 491, 109 Conn. 316

2. Forfeitures

Defendant, who voluntarily gave \$20,000 to policeman, relinquished both title and possession to money once funds were delivered, which passed to state through policeman as its agent. State v. Pirro (1984) 470 A.2d 240, 192 Conn. 98

Where there was no search warrant used prior to trial court order forfeiting defendant's radar detector to state upon conviction of defendant for using radar detection device in violation of motor vehicle regulation and violation of such regulation did not constitute "crime" under statutory definition of such term,

court ordered forfeiture of radar detection device could not be sustained either under § 54-13g providing for forfeiture of items seized under search warrant or under this section relating to forfeiture of items used in commission of crime. State v. Anonymous (1980) 421 A.2d 667, 36 Conn.Sup. 351.

Order, in summary proceeding to forfeit money taken in course of gambling prosecution, directing return of money to claimant, did not, and could not without violating due process, determine question of title. Aponte v. Rivera (1964) 199 A.2d 182, 2 Conn.Cir. 237.

Summary proceeding to forfeit money taken in course of gambling prosecution was for sole purpose to decide whether money was object of forfeiture, in furtherance of public policy of discouraging gambling activity by destroying or confiscating means used in it, in addition to imposing prescribed penalties. Id.

3. Return of property

At moment order, which directed that seized money be returned to claimant, was issued in rem proceeding following sentence in gambling prosecution, city and police department ceased to exercise legal custody of money. Aponte v. Rivera (1964) 199 A.2d 182, 2 Conn.Cir. 337.

Money declared forfeited on account of its connection with gambling became state property, while money which was ordered returned to claimant was subject to immediate return. Id.

## § 54-36a

Note 4

### 4. Garnishment

Money seized by police in course of gambling prosecution, and held for use as evidence and later disposition pursuant to statute, was in custodia legis and immune from garnishment. *Apointe v. Rivera* (1964) 199 A.2d 182, 2 Conn.Cir. 337.

### 5. Acquittal

Defendant seeking return of alleged bribe following acquittal in criminal action for bribery is in same position as any other person who claims to have been damaged by some action of state or its agents: unless particular statute can be found waiving state's sovereign immunity, his only recourse is to claim commission. *State v. Pierro* (1984) 470 A.2d 240, 192 Conn. 98.

### 6. Civil action

Although seizure of property used for illegal purposes is part of criminal proceeding, action to condemn such property is not a criminal proceeding but is a separate civil action, in rem, in which guilt or innocence of owner of property is not in issue but in which res is considered the offender. *State v. Rosarbo* (1964) 199 A.2d 575, 2 Conn.Cir. 399.

### 7. Parties

City, which claimed that gambling prosecution defendant owned money that was taken in course of prosecution, and which sought to impress fund with lien it claimed against defendant, must assert its right as creditor and could not accomplish that purpose as custodian of alleged contraband, by asserting that defendant, not claimant, owned property.

## § 54-36b. Examiner of seized property, appointment, duties

There shall be an examiner of seized property who shall be appointed and be subject to supervision by the chief court administrator of the judicial department. The examiner of seized property may prescribe forms and procedures to be used in identifying and labeling seized property, shall recommend to the judges any procedures which may be necessary to implement the provisions of this section, sections 53-278c and 54-36a, may inspect records maintained by clerks of court in connection with accounting for seized property, and may inspect offices where seized property is kept to

## CRIMINAL PROCEDURE

*Apointe v. Rivera* (1964) 199 A.2d 182, 2 Conn.Cir. 337.

Neither city nor police department, which held money that had been taken in course of gambling prosecution and that had been ordered returned to claimant, had any interest in money as object of forfeiture, and neither had standing to challenge decision on forfeiture, since only the state could have been adversely affected. *Apointe v. Rivera* (1964) 199 A.2d 182, 2 Conn.Cir. 337.

### 8. Evidence

Testimony of state trooper that torn pieces of paper seized from glove compartment of automobile constituted a legal gambling record, based upon trooper's direct observation of paper, together with his expertise, and certain information he had previously obtained from wiretap investigation of illegal gambling, was sufficient to support finding that automobile had been used to store illegal gambling record in violation of the law, and thus, was subject to forfeiture, even though the wiretap information had been obtained by state trooper two months prior to seizure of automobile. *State v. One 1977 Buick Auto* (1985) 493 A.2d 874, 196 Conn. 171.

### 9. Review

Where there was no showing that defendant ever sought to examine test or otherwise see currency taken from victim, but returned to victim before trial, claimed error that currency was not made exhibit before secondary evidence in the form of testimony was affirmed was not reviewable. *State v. Tinsley* (1980) 435 A.2d 1002, 181 Conn. 309, certiorari denied 101 S.Ct. 874, 449 U.S. 1086, 66 L.Ed.2d 811.

## COURT JURISDICTION AND POWER

## § 54-36c

insert the filing of inventories and compliance with other provisions of said sections. The examiner of seized property shall conduct or contract for any public auction required pursuant to the provisions of section 54-36a, section 54-33g and section 53-278c and, at his discretion, such property may be sold by him to the highest bidder in whatever locality of the state he determines affords the most favorable market. The examiner of seized property may decline the highest bid at any such sale and reoffer the property at a later sale if he considers the bid insufficient. He may dispose of any such property by private sale if, in his opinion, the probable cost of public sale will exceed the value of the property. He may also, at his discretion, dispose of such property to a charitable or educational institution or to a governmental agency or institution.

(1974, P.A. 74-221, § 7, 1975, P.A. 75-530, § 18, eff. June 30, 1975; 1976, P.A. 76-77, § 2; 1985, P.A. 85-110, § 6, 1985, P.A. 85-263, § 3.)

### Historical Note

1975, P.A. 75-530 § 18, eff. from passage, June 30, 1975, on the third sentence inserted "or contract for" following "shall conduct", and added "and, at his discretion, . . . the most favorable market", and added the fourth through the sixth sentences.

1976, P.A. 76-77 § 2, inserted in the third sentence, the reference to "section 54-33g".

1985, P.A. 85-110 § 6 in the first sentence, substituted "chief court administrator" for "executive secretary".

1985, P.A. 85-263, § 3, in the third sentence deleted "subsection (f) of" preceding "section 54-36a," and deleted "subsection (e) of" preceding "section 53-278c".

### Prior Law:

1973, P.A. 73-667, § 1.  
1973, P.A. 73-116 § 22.  
1969, P.A. 669, § 31.  
1958 Rev., § 54-36.  
1949 Rev., § 4759.  
1941, Supp. § 870f.

## § 54-36c. Disposition of seized property on order of the examiner of seized property

If there is no criminal action, property seized prior to October 1, 1974, held by law enforcement agencies in connection with a crime, which has not been claimed by the owner, except property held for disposition pursuant to section 54-33g, shall, upon notification by the police authority, be disposed of on the order of the examiner of seized property if he obtains the consent of the prosecuting official of such court. Property, seized after October 1, 1974, in connection with a crime for which an inventory need not be filed and held by law enforcement agencies for six months and which has not been claimed by the owner, shall be disposed of by an order of the examiner of seized property if he obtains the consent of the prosecuting official of such court. In disposing of property pursuant to this section, the examiner of seized property may order that such property be destroyed or be given to a charitable or education-

al institution or to a governmental agency or institution; provided, (1) if such property is money, he shall order that it be remitted to the state or (2), if such property is a valuable prize, he shall order that it be disposed of by public auction or private sale, in which case the proceeds shall become the property of the state; provided any person who has a bona fide mortgage, assignment of lease or rent, lien or security interest in such property shall have the same right to the proceeds as he had in the property prior to sale.

(1975, P.A. 75-530, § 19, eff. June 30, 1975; 1976, P.A. 76-77, § 11)

#### Historical Note

1976, P.A. 76-77, § 3, amended the first sentence by deleting "at any time upon the motion of the prosecuting official of such court," following "no criminal action," by deleting "other than stolen property," following "prior to October 1, 1974," by deleting "for one year" following "law enforcement agencies", by substituting "a crime," for "which there has been no arrest and" following "in connection with", and by adding "if he obtains the consent of the prosecuting official of such court" at the end, and substituted the second sentence for former second sentence which read, "Stolen property seized before October 1, 1974, held by law enforcement agencies, and in connection with which there has been no arrest and which has not been claimed by the owner, shall, upon notification by the police authority, be disposed of on the order of the examiner of seized property if he determines that the property will not be needed in connection with any criminal trial as evidence."

#### Library References

Searches and Seizures ¶5.  
C.J.S. Searches and Seizures §§ 91 to 97, 112 to 114.

§ 54-36d. Proceedings under chapters 211, 220 and 490 concerning cigarettes, alcohol and fisheries and game, respectively, exempt from certain licensing and disposition requirements

Sections 21-1, 54-36a, 54-36b and 54-36c, shall not be applicable to the proceedings taken pursuant to chapters 214, 220 and 490.<sup>1</sup> (1975, P.A. 75-530, § 23, eff. June 30, 1975.)

<sup>1</sup> Sections 12-285 et seq., 12-433 et seq. and 26-1 et seq.

#### Library References

Searches and Seizures ¶5.  
C.J.S. Searches and Seizures §§ 91 to 97, 112 to 114.

§ 54-36e. Firearms to be turned over to state police

(a) Except as provided in sections 26-85 and 26-90, firearms, adjudged by the court to be contraband, pursuant to subsection (c)

of section 54-36a, or adjudicated a nuisance pursuant to section 54-33g, shall be turned over to the bureau of identification of the Connecticut division of state police within the department of public safety for destruction or appropriate use or disposal by sale at public auction.

(b) Firearms turned over to the state police pursuant to subsection (a) of this section which are not destroyed or retained for appropriate use shall be sold at a public auction held annually on or before the thirtieth of June, conducted by the commissioner of administrative services or his designee. Pistols and revolvers as defined in section 53a-3, which are antiques, as defined in section 29-33, or curios or relics, as defined in the Code of Federal Regulations, title 27, chapter 1, part 178, or modern pistols and revolvers which have a current retail value of one hundred dollars or more may be sold at such public auction, provided such pistols and revolvers shall be sold only to persons who have a valid permit to sell a pistol or revolver, or a valid permit to carry a pistol or revolver, issued pursuant to section 29-28. Rifles and shotguns, as defined in section 53a-3, shall be sold only to persons qualified under federal law to purchase such rifles and shotguns. The proceeds of any such sale shall be paid to the state treasurer and by him deposited in the general fund.

(1976, P.A. 76-77, § 8; 1977, P.A. 77-614, § 486, eff. Jan. 1, 1979; 1985, P.A. 85-263, § 11)

#### Historical Note

1977, P.A. 77-614, § 486, changed "state police commissioner" or "commissioner of state police" to "commissioner of public safety" and "state police department" to "division of state safety within the department of public safety".

Section 610 of 1977, P.A. 77-614, provided that § 486 of the act takes effect Jan. 1, 1979.

1985, P.A. 85-263, § 4, inserted subsection designation (a) and added "or disposal by sale at public auction" at the end of that subsection and added subsection (b).

#### Library References

Searches and Seizures ¶5.  
C.J.S. Searches and Seizures §§ 91 to 97, 112 to 114.

§ 54-36f. Receipt for seized property to be given by law enforcement officials

Whenever property is seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest, the law enforcement agency seizing such property shall give a receipt

therefor to the person or persons from whom such property was seized or to the person or persons having a possessory interest in the premises from which such property was seized. The receipt, on a form provided for this purpose by the office of the chief court administrator, shall list with specificity the property seized, be signed by the law enforcement official or officials who seized the property and be given to the person or persons from whose person or premises the property was seized at the time of such seizure or, if the property was seized from premises in the absence of the person or persons having a possessory interest therein, be mailed to such person or persons by registered or certified mail within five days of such seizure.

(1984, P.A. 84-222.)

#### Library References

Searches and Seizures 495  
C.J.S. Searches and Seizures §§ 91 to  
97, 112 to 114

§ 51-36g. Destruction of controlled drugs, controlled substances and drug paraphernalia held as evidence in criminal proceedings. Petition, notice and hearing. Representative samples. Certificate of results. Destruction upon final disposition of criminal action. Records

(a) At any time after the seizure of a controlled drug or a controlled substance, as defined in subdivision (8) or (9) of section 21a-240, or drug paraphernalia, as defined in subdivision (20) of section 21a-240, in connection with a criminal arrest or pursuant to a search warrant without an arrest, the prosecuting official of the court for the geographical area in which the criminal offense is alleged to have been committed may petition the court for destruction of such controlled drug, controlled substance or drug paraphernalia. After notice, by certified or registered mail to the defendant and his attorney, and hearing on the petition, the court may order the forfeiture and destruction of such controlled drug, controlled substance or drug paraphernalia, under procedures and to the extent determined by the court, or order it delivered to the commissioner of consumer protection as soon as possible. Such order shall be in writing and shall provide for the analysis of representative samples of such controlled drug, controlled substance or drug paraphernalia. The results of such analysis shall be recorded on a certificate signed by the person making the analysis, witnessed and acknowledged pursuant to section 1-29. Such certificate shall be

prima facie evidence of the composition and quality of such controlled drug, controlled substance or drug paraphernalia.

(b) Upon final disposition of the criminal action or, if there is no criminal action, at any time upon motion of the prosecuting official, the court shall order the destruction of any controlled drug, controlled substance or drug paraphernalia not previously destroyed pursuant to an order under subsection (a) of this section, or order it delivered to the commissioner of consumer protection as soon as possible.

(c) The law enforcement agency seizing the controlled drug, controlled substance or drug paraphernalia shall keep a full and complete record of the time and place where such controlled drug, controlled substance or drug paraphernalia was seized, the kinds, quantities and weight of drugs received, by whom the controlled drug, controlled substance or drug paraphernalia were delivered and received and the date and manner of destruction or disposition of such controlled drug, controlled substance or drug paraphernalia. Such record and the certificate of the results of the analysis shall be disclosed only to attorneys of record in the case, the defendant and to federal and state officers charged with enforcement of federal and state narcotic laws.

(1984, P.A. 84-44, § 1; 1985, P.A. 85-263, § 2.)

#### Historical Note

1985, P.A. 85-263, § 2, inserted reference to "controlled drug" throughout, in subsec. (a), inserted reference to subd. (8) of § 21a-240, in subsec. (b), inserted "or, if there is no criminal action, at any time upon motion of the prosecuting official"

#### Library References

Searches and Seizures 495  
C.J.S. Searches and Seizures §§ 91 to  
97, 112 to 114

§ 51-37. Repealed. (1971, P.A. 871, § 129.)

#### Historical Note

The repealed section, relating to confinement of persons acquitted by reason of insanity, was derived from  
1929 Rev. § 8749.  
1941, Supp. § 886f.  
1930 Rev. § 6432.  
1918 Rev. § 6385.  
1902 Rev. § 1473.  
1963, P.A. 642, § 65.  
1959, P.A. 523, § 1.  
1959, P.A. 28, § 150.  
1953, Supp. §§ 2506c, 33214.  
See, now, § 53a-47.

§ 54-37a  
Repealed

## CRIMINAL PROCEDURE

§ 54-37a. Repealed. (1980, P.A. 80-116.)

### Historical Note

The repealed section, which related to release of persons confined under order in October 1, 1969, was derived from 1965 P.A. 555.

§§ 54-38, 54-39. Repealed. (1971, P.A. 871, § 129.)

### Historical Note

Former § 54-38, relating to petition for release of persons confined after acquittal by reason of insanity was derived from

1967 P.A. 261, § 2  
1949 Rev. § 8750  
1930 Rev. § 6433  
1918 Rev. § 6586  
1902 Rev. §§ 2474, 2780

See, now, § 53a-47.

Former § 54-39, relating to continued confinement of a person acquitted by

reason of insanity after maximum period set by court was derived from

1965 P.A. 435 § 2  
1963 P.A. 642, § 84  
1955 Supp. § 23253  
1953 Supp. § 25076  
1949 Rev. § 8751  
1930 Rev. § 6434  
1918 Rev. § 6567  
1909 P.A. ch. 143

1902 Rev. § 1472  
See, now, § 53a-47

§ 54-10. Transferred to § 51-56d in Gen.St., Rev. to 1981

§ 54-10a. Transferred to § 51-1i in Gen.St., Rev. to 1981

§ 54-11. Transferred to § 51-352c in Gen.St., Rev. to 1981

## CHAPTER 959a WIRETAPPING AND ELECTRONIC SURVEILLANCE

### Section

- 51-41a Definition.  
51-41b Application for order authorizing interception.  
51-41c Information in application.  
51-41d Issuance of order.  
51-41e Statement by panel on issuance of order. Contents of order.  
51-41f Execution of order; progress reports.  
51-41g Extensions of order.  
51-41h Privileged wire communications: issuance of order and interception prohibited.  
51-41i Recording of interception; sealing, custody and destruction.  
51-41j Sealing, custody, storage and destruction of applications and orders.  
51-41k Service of notice of interception; inspection of intercepted communications, applications and orders; postponement of service.  
51-41l Intercepted communication admissible as evidence, when.  
51-41m Motion to suppress.  
51-41n Report by panel to chief court administrator.  
51-41o Reports by state's attorneys.  
51-41p Disclosure of contents of wire communication. Unauthorized disclosure: Class D felony.  
51-41q Authority of communication common carrier to intercept, disclose or use wire communication.  
51-41r Remedies of party intercepted: defense.  
51-41s Illegal possession, sale, distribution of equipment: Class D felony.  
51-41t Unauthorized or illegal interception: Class C felony.

### § 51-11a. Definitions

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of telephone or telegraph between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications;

(2) "Intercept" means the intentional overhearing or recording of a wire communication through the use of any electronic, mechanical or other device;

(3) "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire communication other than (A) any telephone or telegraph instrument, equipment or

Original Sponsor(s): SEN. COGHILL

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 457 ( )  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the return of property in the  
7 custody of law enforcement agencies."

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

9 \* Section 1. AS 12.36.020 is amended by adding new subsections to read:

10 (d) Except as provided in AS 12.36.070, a law enforcement agency  
11 shall return unforfeited property in its custody to the owner of the  
12 property or to the agent of the owner if

13 (1) the return is authorized under (a) of this section;

14 (2) the owner or agent of the owner makes a written demand  
15 for return of the property under AS 12.36.070 and delivers the demand  
16 to the agency having custody of the property; and

17 (3) the agency does not have cause to refuse the demand  
18 under AS 12.36.070(b).

19 (e) For the purposes of (a)(1) of this section

20 (1) property is no longer "in custody in connection with a  
21 children's court proceeding or a criminal proceeding" when there has  
22 been a final disposition of the case;

23 (2) property is no longer "in custody in connection with an  
24 official investigation of a crime" when the investigation is complete  
25 and the earliest of the following events occurs:

26 (A) six months elapse from the completion of the  
27 investigation;

28 (B) the prosecuting authority does not initiate pro-  
29 ceedings as a result of the investigation; or

1 (C) the prosecuting authority initiates criminal  
2 proceedings or proceedings in children's court as a result of the  
3 investigation, in which case the property becomes property in  
4 custody in connection with a children's court proceeding or a  
5 criminal proceeding.

6 \* Sec. 2. AS 12.36 is amended by adding a new section to read:

7 Sec. 12.36.070. PROCEDURE FOR CLAIMING UNFORFEITED PROPERTY.

8 (a) A person claiming unforfeited property under this chapter shall  
9 file a notice of claim with the law enforcement agency having custody  
10 of the property. The notice must include a list of the items of  
11 property whose return is sought, the basis for the claimant's claim of  
12 ownership, the case numbers of all judicial proceedings involving the  
13 items, and the date of final termination of the proceedings. If the  
14 property was the subject of a criminal or children's court proceeding,  
15 the notice may not be filed until 30 days after the final disposition  
16 of that proceeding.

17 (b) The law enforcement agency having custody of the property  
18 that is the subject of a claim under this section shall return the  
19 property within 30 days of the receipt of the claim unless

20 (1) the claim does not meet the requirements of (a) of this  
21 section;

22 (2) the property is not subject to return under this chap-  
23 ter;

24 (3) the property is a prohibited weapon as defined in  
25 AS 11.61.200, a controlled substance as defined in AS 11.71.900 or  
26 paraphernalia for the use of the controlled substance, an alcoholic  
27 beverage as defined in AS 04.21.080 when possession of the beverage  
28 was illegal, or material whose distribution would be illegal under  
29 AS 11.61.125;

1 (4) the person claiming the property does not present  
2 satisfactory proof of ownership; if the agency determines that the  
3 proof of ownership is unsatisfactory, it shall, within 30 days of the  
4 receipt of the claim, notify the claimant in writing of the reasons  
5 for not returning the property; or

6 (5) the agency acquired the property in connection with the  
7 investigation of a serious offense, the identity of the offender is  
8 unknown or there is insufficient evidence to proceed against a sus-  
9 pected offender, and the return of the property would hamper future  
10 prosecution if evidence later acquired by a law enforcement agency  
11 warranted the commencement of criminal proceedings or proceedings in  
12 children's court.

13 (c) If a law enforcement agency is aware that more than one  
14 person claims an ownership interest in property that is the subject of  
15 a demand for return under this section, the agency shall determine  
16 which person has the superior claim to the property, and shall provide  
17 written notification of this determination to all claimants of which  
18 the agency has knowledge 10 days before releasing custody of the  
19 property. If the agency provides the notification required under this  
20 subsection, the agency is immune from liability for releasing the  
21 property. If the person demanding return of the property presents  
22 satisfactory proof that the person is acting on behalf of all claim-  
23 ants of which the agency has knowledge, the agency is not required to  
24 provide the written notification specified in this subsection, and is  
25 immune from liability for releasing the property to the person demand-  
26 ing its return.

27 (d) If a law enforcement agency fails to return claimed property  
28 in a timely manner under this section or refuses to return claimed  
29 property, the claimant may file a civil action in the superior court

1 against the state if the law enforcement agency is a state agency, or  
2 against a political subdivision, if the law enforcement agency is a  
3 municipal agency. The court may not order the property returned if  
4 the defendant shows that return would be improper under (b) or (c) of  
5 this section.

6 \* Sec. 3. AS 12.36.020(c) is repealed.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29