

HB

318

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
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MEMORANDUM

February 18, 2000

SUBJECT: Police Custody and Disposal of Property (Work Order No. 21-LS1294/G)

TO: Representative Pete Kott
Attn: Lesil McGuire

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

Enclosed is the bill draft you requested. I have a few comments.

1. It seems obvious to me that law enforcement can keep property that comes into their custody personally (for example, in the police property room) or constructively by leaving the property with someone else (for example, in a towing company's impound lot or a vicious dog with the humane society). Providing that in this CS seems unnecessary to me.
2. Similarly, I question the need to provide that law enforcement may require that a person who finds property and delivers it to law enforcement must provide their name and address and must indicate if they want the property if the property remains unclaimed. I don't understand why law enforcement would not be able to do this anyway.
3. And, finally, I question the need to clarify that the provisions of AS 18.65.340 do not apply to a firearm or ammunition found by a person who is considered the owner of the property after one year due to the operation of AS 12.36.045. If the person is considered the owner under AS 12.36.045 and they want the firearm or ammunition the firearm or ammunition is not unclaimed any longer and AS 18.65.340 does not apply. The clarification is not necessary.

GPL:glc:jr
00-073.glc

1-LS1294G
Luckhaupt
2/18/00

CS FOR HOUSE BILL NO. 318(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES BUNDE, Dyson, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and disposal of property by law enforcement
2 agencies."

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

4 * **Section 1.** AS 12.36.010 is amended to read:

5 **Sec. 12.36.010. Property custody and disposition.** When property not
6 belonging to a law enforcement agency comes into the custody of the agency, the
7 property shall be **kept in the direct or constructive custody of the law enforcement**
8 **agency until** disposed of in accordance with this chapter.

9 * **Sec. 2.** AS 12.36.040(a) is amended to read:

10 (a) When the owner of property is unknown and the property comes into the
11 possession of a law enforcement agency as suspected evidence of a crime but is not
12 used in a criminal proceeding or a children's court proceeding, or when the property
13 comes into the possession of a law enforcement agency by other means, the property
14 shall be held for **one year** [TWO YEARS]. If the property is not claimed within **one**

1 year [TWO YEARS] of the date it comes into the possession of a law enforcement
2 agency, the property shall be disposed of as provided in AS 12.36.030(b).

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

4 **Sec. 12.36.045. When finder of property is considered the owner.** (a)

5 When a private individual obtains property of another that is lost, mislaid, or delivered
6 to the individual by mistake, the individual delivers that property to a law enforcement
7 agency, and the true owner of the property remains unknown for a period of one year
8 or does not claim the property within one year, the individual delivering the property
9 shall be considered the owner of the property under this chapter if possession of the
10 property by the individual is otherwise legal. If, after the one-year period, the private
11 individual who delivered the property to the law enforcement agency cannot be found
12 or does not want the property, the property shall be disposed of by the agency as if the
13 owner is unknown.

14 (b) A law enforcement agency may require a person who delivers to the
15 agency lost or mislaid property or property delivered by mistake to provide the
16 person's name and address and to indicate the person's interest in receiving the
17 property if the property remains unclaimed.

18 (c) This section does not apply to property that comes into the custody of a
19 law enforcement agency of a municipality that has adopted an ordinance providing for
20 the custody and disposition of property that meets the requirements specified in
21 AS 12.36.030(c).

22 * **Sec. 4.** AS 18.65.340 is amended to read:

23 **Sec. 18.65.340. Disposal of firearms and ammunition by the state.** The
24 state may only dispose of forfeited, surplus, or recovered but unclaimed, firearms and
25 ammunition by sale or trade to a federally licensed firearms dealer. Only firearms and
26 ammunition that are serviceable and safe and legal for a federally licensed firearms
27 dealer to possess may be sold or traded under this section. Firearms and ammunition
28 that are not serviceable and safe shall be destroyed. Firearms and ammunition that are
29 not legal for a federally licensed firearms dealer to possess shall be disposed of only
30 by destruction or by transfer to a law enforcement agency that can legally possess the
31 firearms or ammunition. In this section, "unclaimed" does not include a firearm

1

or ammunition obtained by a person who is considered the owner under

2

AS 12.36.045.

Alaska State Legislature
Representative Con Bunde
District 18

Vice Chair: House Finance Committee
Member: Legislative Budget & Audit Committee

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MEMORANDUM

DATE: February 8, 2000
TO: House Judiciary Committee Members
FROM: Representative Con Bunde
RE: Changes to HB 318, "Return Found Property to Finder"

The Department of Public Safety has recommended changes to HB 318, "Return Found Property to Finder". These changes have been incorporated into the attached blank CS that will be before you at the House Judiciary Committee meeting on February 9th.

This memo explains those changes.

Change #1, Page 1, Lines 8 and 9: This change amends AS 12.36.040 to say that property will be held for one year instead of two. The Department of Public Safety feels that making this one year provision consistent throughout the statute will simplify law enforcement's procedures for handling property.

Change #2, Page 2, Lines 3 to 6: This change makes clear that the law enforcement agency may continue to dispose of property as current statute now reads in cases where the finder cannot be located or does not want the property. (AS 12.36.030(b))

Trooper Hudson, of the Department of Public Safety, will be available by teleconference from Fairbanks to answer questions about the bill and these changes.

1-LS1294\D
Luckhaupt
2/8/00

CS FOR HOUSE BILL NO. 318()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES BUNDE, Dyson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to property disposal by law enforcement agencies."**

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

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5 possession of a law enforcement agency as suspected evidence of a crime but is not
6 used in a criminal proceeding or a children's court proceeding, or when the property
7 comes into the possession of a law enforcement agency by other means, the property
8 shall be held for one year [TWO YEARS]. If the property is not claimed within one
9 year [TWO YEARS] of the date it comes into the possession of a law enforcement
10 agency, the property shall be disposed of as provided in AS 12.36.030(b).

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

12 **Sec. 12.36.045. When finder of property is considered the owner. (a)**
13 **When a private individual obtains property of another that is lost, mislaid, or delivered**
14 **to the individual by mistake, the individual delivers that property to a law enforcement**
15 **agency, and the true owner of the property remains unknown for a period of one year**

1 or does not claim the property within one year, the individual delivering the property
2 shall be considered the owner of the property under this chapter if possession of the
3 property by the individual is otherwise legal. If, after the one-year period, the private
4 individual who delivered the property to the law enforcement agency cannot be found
5 or does not want the property, the property shall be disposed of by the agency as if the
6 owner is unknown.

7 (b) This section does not apply to property that comes into the custody of a
8 law enforcement agency of a municipality that has adopted an ordinance providing for
9 the custody and disposition of property that meets the requirements specified in
10 AS 12.36.030(c).

POINTS OF INQUIRY
HB 318

- Does the one year period in the statute serve to completely extinguish the rights of the property's rightful owner? What happens if the rightful owner comes back 1 and 1/2 years later to claim his/her property? Or even 3 years later? Is there any method by which the rightful owner can seek to recover his/her property?
- What record-keeping provisions are in place? After what length of time will those records be destroyed, if ever? Are those records made available to the rightful owner if he/she comes forward after rights to the property have been transferred to the finder?
- Is the term property sufficiently defined?

→ not. But D Smith says there needs to be a limit (some time period) we have to cut this off at some point.

→ The SOL for the crime would still apply

Hypo - 2 kids steal watch
ditch it in the lawn
lawn Homeowner turns
in. Years later after
Homeowner takes possession
connect crime to 2 kids
What happens.

Alaska State Legislature

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REPRESENTATIVE CON BUNDE

District 18

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Sponsor Statement

HB 318

"An Act relating to property disposal by law enforcement agencies."

Common law, the basis of modern-day law, provides that a private individual who finds property and takes the responsibility to give it into safekeeping has a greater right to claim that property than anyone else other than the true owner of the property. This makes sense. Unfortunately, Alaska Statute provides less than clear guidance to state departments about what they may do when an individual finds property and turns it in.

HB 318 affects property that is lost, mislaid, or delivered to a private individual by mistake, and turned in to a law enforcement agency, and is unclaimed by the rightful owner for one year.

HB 318:

- Allows private individuals who responsibly deliver property to a law enforcement agency to own that property after one year if possession of that property by that private individual is otherwise legal.
- Would not affect any municipal ordinance.
- Provides clear guidance to state law enforcement agencies.
- Encourages individuals to turn property into law enforcement agencies to find the rightful owner.

The Alaska Department of Public Safety and the Alaska Department of Revenue support this legislation, and I urge your support.

MEMORANDUM

State of Alaska

Department of Revenue, Office of the Commissioner

TO: Representative Con Bunde

DATE: Jan. 27, 2000

PHONE: 465-5469

FROM: Larry Persily
Deputy Commissioner

SUBJECT: HB 318

The Department of Revenue has reviewed House Bill 318 (An Act Relating to Property Disposal by Law Enforcement Agencies) and believes it would not affect the operations of the Unclaimed Property Section at the department's Tax Division.

Please let me know if I can offer any additional information on the bill or our unclaimed property operations.