

**SB**

**297**

26-LS1536E  
Bailey  
3/23/10

**CS FOR SENATE BILL NO. 297( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR DYSON**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act providing for the release of certain property in the custody of a law**  
2 **enforcement agency to the owner under certain conditions."**

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

4 **\* Section 1.** AS 12.36 is amended by adding a new section to read:

5 **Sec. 12.36.070. Return of property by hearing.** (a) The owner of property  
6 not belonging to a law enforcement agency that is in the custody of the agency under  
7 this chapter may request that the agency return the property to the owner.

8 (b) Within 10 days after receipt of a request under (a) of this section and  
9 following reasonable notice to the prosecution, defense, and other interested parties,  
10 the agency shall request a hearing before the court to determine if the property shall be  
11 released to the owner.

12 (c) After a hearing, the court may order the return of the property in the  
13 custody of a law enforcement agency to the owner if

14 (1) the owner provides satisfactory proof of ownership; and

1                   (2) the law enforcement agency fails to prove that the agency or  
2 another interested party is authorized to retain possession of the property.

3                   (d) The court may impose reasonable conditions on an owner claiming  
4 property under this section.

**CS FOR SENATE BILL NO. 297**

1. Line 9 – 12.36.070(b) clarifies that the “interested parties” identified in version 26-LS1536\R, includes the prosecution, defense and other interested parties.
2. p.2, lines 1 & 2 adds the language “or another interested party”, for the purpose of those situations where a third party is claiming an ownership and possessory interest in the property.
3. P.2, line 3 replaces the word “receiving” in version 26-LS1536\R, with “claiming”. This clarifies that the person making the request for return of property may not receive the property from the Court.

26-LS1536R  
Bailey  
3/13/10

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- 13 (1) the owner provides satisfactory proof of ownership; and  
14 (2) the law enforcement agency fails to prove that the agency is

1 authorized to retain possession of the property.

2 (d) The court may impose reasonable conditions on an owner receiving  
3 property under this section.

CHUCK - FYI 6  
INCLUSION IN OUR  
Bill

STATE OFFICE

# ALASKA PEACE OFFICERS ASSOCIATION

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Wrangell

March 17, 2010

Senator Fred Dyson  
Alaska State Senate  
State Capitol  
Juneau AK 99801-1182

Dear Senator Dyson:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 297, an act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions.

The APOA Executive Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.  
State President



**STATE OF ALASKA  
OFFICE OF VICTIMS' RIGHTS**

March 25, 2010

Senator Fred Dyson  
Chuck Kopp, Chief of Staff  
Alaska State Legislature  
120 4<sup>th</sup> Street, State Capitol, Room 3  
Juneau, Alaska 99801-1182

*Via Fax to (907) 465-4587 and  
First Class U.S. Mail*

**RE: Senate Bill Number 297 - "An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."**

Dear Mr. Kopp:

The Alaska Office of Victims' Rights endorses Senate Bill Number 297 entitled, "An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

The Alaska Office of Victims' Rights appreciated the opportunity to speak with you directly on March 24, 2010 regarding the proposed legislation. The Alaska Office of Victims' Rights views this legislation as providing an important mechanism for crime victims to seek return of property seized during the course of a criminal prosecution.

It is the understanding of the Alaska Office of Victims' Rights that Senate Bill Number 297 is also endorsed by the Alaska Peace Officers Association and the Alaska Department of Law.

Thank you for the opportunity to meaningfully comment on Senate Bill Number 297.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. Victor Kester".

D. Victor Kester  
Executive Director



## SENATOR FRED DYSON

### SPONSOR STATEMENT

#### SB 297

#### **An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions**

All too often victims of theft and robbery are victimized a second time by bureaucracy. This is particularly true in cases of property crimes where demonstrable loss occurs to the victim's person or business as a result of property being held for a protracted period of time by a law enforcement agency, usually at the direction of prosecution, defense counsel and/or other interested parties.

SB 297 addresses the lack of a provision in the Alaska Code of Criminal Procedure that identifies a process for victims of property crime to petition the court for relief in recovering their property held as evidence. The law as currently written, provides discretionary authority to the prosecution for release of property, but does not clearly provide a right of hearing for a property owner to directly petition the court in those circumstances when property owners, prosecution and defense cannot come to agreement on return of property to the owner.

Victims of property theft often face the added burden of replacing stolen property. Small business owners who suffer property loss may face bankruptcy if the theft of property results in the inability to consummate a sale, continue their business operations, or the stolen property is uninsured or underinsured.

Property recovered by a law enforcement agency may be held as evidence for months or years. Property owners deserve protections in the law to ensure their property is held as evidence only as long as necessary for the prosecution and defense to physically retain the item, without jeopardizing the case.

SB 297 will provide property owners in the Alaska Code of Criminal Procedure, a clearly identifiable process to petition the court for the recovery of their property in those circumstances where they are otherwise not able to reach agreement with interested parties on the return of the property.

Contact: Chuck Kopp, Staff to Senator Dyson (907)465-6580

During Session (January - May): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 (fax)  
During Interim (June-December): 10928 Eagle River Road, Suite 238 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 (fax)  
senator.fred.dyson@legis.state.ak.us • www.akrepublicans.org



**SENATOR FRED DYSON**

## **CS SB 297**

The proposed Committee Substitute for SB 297 alters SB 297 language at Line 8.

Sec. 12.36.070(b) provides additional language that sets a period of time for a request for return of property to be acted upon, and that notice be given to interested parties.



## SENATOR FRED DYSON

### SB 297 NOTES

1. Alaska Statutes - Title 12 *Code of Criminal Procedure*, Chapter 36 *Disposition of Recovered or Seized Property*, Sec. 20 *Return of Property*, provides the legal process for return of property.
2. 12.36.020(a) identifies those circumstances when a law enforcement agency may **not** return property to an owner.
3. 12.36.020(b) provides for the return of property to owners at the discretion of the prosecuting attorney where photographs are used as evidence in place of the property, stating the prosecuting attorney may release the property to the owner upon presentation of satisfactory proof of ownership.
4. 12.36.020(c) states that wrongfully taken or damaged property that is *not* properly photographed and authenticated under 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, and used as evidence in a criminal or children's court proceeding, is to be returned to the owner within 60 days after the final disposition of the case.
5. Unfortunately, final disposition of the case may be protracted for a long period of time. The return of property to its rightful owner may be hindered by concerns of prosecution, defense, and/or other interested parties.
6. 12.45.086 *Photographic evidence of property wrongfully taken or damaged*, defines the process for admissibility of photographs as evidence in criminal and children's court proceedings. This section states that properly submitted photographs are to be regarded to the same extent as if the property itself was introduced as evidence. This sounds good, but in practice falls short of its intent. 12.45.086(c) seems to recognize this problem by singling out only the theft of commercial fishing gear as being property that shall be returned to the owner as soon as possible. Nearly all thefts of property from businesses should be returned to the rightful owners ASAP.
7. SB 158 (last session, endorsed by the Alaska Peace Officers Association) sought to amend 12.36.020(c) by providing an alternative to waiting for final case disposition, which can take years. This allowed for the possibility of a law enforcement agency controlling the property to consult with the prosecuting attorney and defense counsel to determine if the property is no longer required to be retained as evidence, and if agreed on by all parties, returned to the rightful owner. In retrospect, this language placed all the discretion with the criminal justice entities, and still left victim property owners powerless to recover their property.
8. SB 297 corrects that deficiency by providing directly to the property owner the right of a court hearing to recover possession of the owner's property, and requiring that the law enforcement agency prove to the court that another parties' interest in the property overrides the owner's interest in having it returned.
9. 12.36.090 *Definitions* of "law enforcement agency" includes the Office of District Attorney, Department of Law, as this is a public agency having one of its principal functions being the enforcement of the criminal law.

# ALASKA STATE SENATE



## SENATOR FRED DYSON

Date: March 12, 2010

To: Senator Hollis French, Chair  
Senate Judiciary Committee

From: Senator Fred Dyson

A handwritten signature in black ink, appearing to read "Fred Dyson", written over the printed name.

Re: Committee Hearing Request for SB 297

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I respectfully request a committee hearing be scheduled for SB 297, "An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions."