

SB

30

<TARGET><BILL>SB 30</BILL><SUBJECT>SB
30</SUBJECT><COMM>SSTA27</COMM></TARGET>

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/19/11

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2-17-11

State Affairs Committee considered SENATE BILL NO. 30

SB 30-RETURN OF SEIZED PROPERTY

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

and recommends:

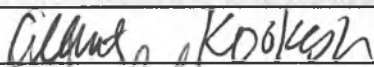

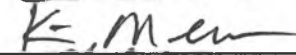
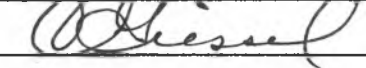
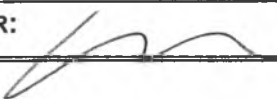
- be replaced with CS _____ (STP) [] Same Title [] New Title
- [] adopt previous CS _____ (_____) [] Same Title [] New Title
- [] attached amendment(s)
- [] adopt _____ Letter of Intent
- [] further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Kookesh	X			
	Paskvan	X			
	Meyer	X			
	Giessel	X			
CHAIR: 	Wielechowski			✓	

CS FOR SENATE BILL NO. 30(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

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 and relating to requests for
3 that release by the office of victims' rights."

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

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

6 **Sec. 12.36.070. Return of property by hearing.** (a) The owner of property
7 not belonging to a law enforcement agency that is in the custody of the agency under
8 this chapter may request that the office of victims' rights request that the agency return
9 the property to the owner. The request under this subsection shall be filed by the office
10 of victims' rights on behalf of the owner after the office has conducted an investigation
11 and has concluded that the owner is entitled to the return of the property under the
12 factors listed in (c) of this section.

13 (b) Within 10 days after receipt of a request under (a) of this section and
14 following reasonable notice to the prosecution, defense, and other interested parties,

1 the agency shall request a hearing before the court to determine if the property shall be
2 released to the owner. If the property is being held in connection with a criminal case,
3 the hearing shall be before the court with jurisdiction of the criminal case. If no
4 criminal case is pending regarding the property, the hearing shall be before a district or
5 superior court where the property is located.

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

8 (1) the owner by a preponderance of the evidence provides satisfactory
9 proof of ownership; and

10 (2) the law enforcement agency fails to prove by a preponderance of
11 the evidence that the agency or another interested party is authorized to retain
12 possession of the property.

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

15 * **Sec. 2.** AS 24.65 is amended by adding a new section to read:

16 **Sec. 24.65.115. Authority to request return of property on behalf of**
17 **certain persons.** (a) Notwithstanding another provision of this chapter, the victims'
18 advocate may file a request under AS 12.36.070 with a law enforcement agency for
19 the return of property to an owner after having conducted an investigation and
20 determining that the owner is entitled to the return of the property under the factors
21 listed in AS 12.36.070(c). In fulfilling the requirements of this section, the victims'
22 advocate may use any of the powers granted to the advocate under this chapter.

23 (b) In this section, "crime victim" includes any person who is the owner of
24 property that is in the custody of a law enforcement agency.

Senate Bill 30

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

SENATE STATE AFFAIRS COMMITTEE

Senator Bill Wielechowski, Chair

ALASKA STATE SENATE



SENATOR FRED DYSON

Date: January 24, 2011

To: Senator Bill Wielechowski
Senate State Affairs Committee

From: Senator Fred Dyson

Re: Committee Hearing Request for SB 30

I respectfully request a committee hearing be scheduled for SB 30, "An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."



SENATOR FRED DYSON

SPONSOR STATEMENT

SB 30

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

SB 30 introduces within the Alaska Code of Criminal Procedure a process for victims of property crime to petition the court for relief in recovering their property held as evidence.

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.

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 30 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



SENATOR FRED DYSON

SB 30 – SECTIONAL ANALYSIS

Section 1. Provides a right of hearing to property owners to request the return of their property, and requires a law enforcement agency to request a hearing before the court within 10 days of receipt of a request for hearing. It further provides that the court may return the property upon satisfactory proof of ownership, *and* the law enforcement agency does not prove that itself or another interested party is authorized to retain the property. Finally, it provides that the court may impose reasonable conditions on an owner claiming property.



SENATOR FRED DYSON

SB 30 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. 12.36.020(c) is problematic for two reasons. First, it is the property owner who suffers unjustly if the property was not properly photographed and authenticated; and second, 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. SB 297 is also endorsed by the Alaska Peace Officers Association.
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.

CHUCK - FYI &
INCLUSIONS IN OUR
Bill

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Anchorage

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APOA President
Soldotna

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Kim Wannamaker, President
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Kenai

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Mat-Su Chapter
Wasilla

Thecla LaLonde, President
Wrangell Chapter
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 4th 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, reading "D. Victor Kester".

D. Victor Kester
Executive Director

Chuck Kopp

OFFICE OF VICTIM'S RIGHTS

Subject: FW: SB 30 - Request for OVR Support

From: Victor Kester

Sent: Monday, January 31, 2011 8:04 AM

To: Chuck Kopp

Subject: RE: SB 30 - Request for OVR Support

Mr. Kopp: Thank you for the recent email. Please advise if I may be of assistance with regard to SB 30. The OVR supports the proposed legislation. Senate Bill 30 stands to assist property crime victims. I look forward to hearing from you. Respectfully, D. Victor Kester

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 297(JUD)
 (S) Publish Date: 3/30/10

Identifier (file name): SB297-LAW-CRIM-03-15-10 Dept. Affected: Law
 Title An Act providing for the release of property in the custody of a law RDU CRIMINAL
enforcement agency to the owner under certain conditions. Component Criminal Justice Litigation
 Sponsor Senator Dyson
 Requester Judiciary Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		***	***	***	***	***	***	***

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill provides for a statutory amendment to disposition of recovered or seized property for return of property by hearing. This note is indeterminate because the department may be required to represent law enforcement agencies at the hearings proposed in the bill. At this time we are not sure how many of these proceedings will occur. The issues raised may be complex, particularly if defense counsel opposes the return.

Prepared by: Eileen Donahue, Division Operations Manager
 Division: Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/15/10 1:00 PM
 Date 3/15/2010

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version SB 030
 () Publish Date _____

Identifier (file name) SB030-DPS-DET-01-31-11 Dept. Affected Public Safety
 Title "An Act providing for the release of certain property." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Senator Dyson
 Requester State Affairs OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version

Not applicable initial version.

Prepared by Lt. Rodney Dial
 Division Alaska State Troopers
 Approved by Sue Standcliff, DPS Legislative Liaison
Department of Public Safety

Phone (907) 247-4480
 Date/Time 1/31/11 3:38 PM
 Date 1/31/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB030

Analysis

This bill amends AS 12.36 by adding a new section regarding the return of property in the custody of a law enforcement agency. This legislation specifies that the owner of property in the custody of a law enforcement agency may request that the agency return the property. Further, that within 10 days of the request and following reasonable notice to all involved parties, a request for a court hearing shall be made.

Currently It is the standard practice of the department to return seized personal property as soon as possible. This legislation will not have a significant impact on the workload of the department.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: SB 30

- 1 Page 1, line 7, following "owner":
- 2 Insert ", except that the owner of property may not request the return of property that
- 3 must be preserved under AS 12.36.200(a)"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: SB 30

1 Page 1, line 7, following "request":

2 Insert "that the Office of Victims' Rights request"

3

4 Page 1, line 7, following "owner.":

5 Insert "The request under this subsection shall be filed by the Office of Victims'
6 Rights on behalf of the owner after the office has conducted an investigation and has
7 concluded that the owner is entitled to the return of the property under the factors listed in (c)
8 of this section."

9

10 Page 2, following line 4:

11 Insert a new bill section to read:

12 **** Sec. 2.** AS 24.65 is amended by adding a new section to read:

13 **Sec. 24.65.115. Authority to request return of property on behalf of**
14 **certain persons.** (a) Notwithstanding another provision of this chapter, the victims'
15 advocate may file a request under AS 12.36.070 with a law enforcement agency for
16 the return of property to an owner after having conducted an investigation and
17 determining that the owner is entitled to the return of the property under the factors
18 listed in AS 12.36.070(c). In fulfilling the requirements of this section, the victims'
19 advocate may use any of the powers granted to the advocate under this chapter.

20 (b) In this section, "crime victim" includes any person who is the owner of
21 property that is in the custody of a law enforcement agency."

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 30

1 Page 1, line 11, following "owner":

2 Insert "If the property is being held in connection with a criminal case, the hearing
3 shall be before the court with jurisdiction of the criminal case. If no criminal case is pending
4 regarding the property, the hearing shall be before a district or superior court where the
5 property is located."

6

7 Page 1, line 14, following "owner":

8 Insert "by a preponderance of the evidence"

9

10 Page 2, line 1, following "prove":

11 Insert "by a preponderance of the evidence"

SYREN LAW OFFICES



P.O. Box 112141 ♦ Anchorage, AK 99511
Phone (907) 345-8333 ♦ Fax (907) 345-8952

February 9, 2011

Police Chief Mark Mew
APD
Fax: 786-8667

Re: Long Phung Jewelry Store: APD Number 07-25111

Dear Police Chief Mew:

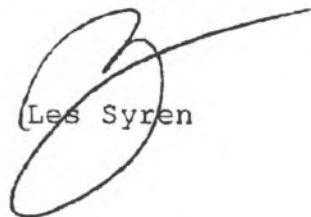
Some time ago, in I believe in June of 2007, the Anchorage Police Department served a warrant on my clients at their Jewelry store, Long Phung located at 510 East Northern Lights. The police officers removed a number of expensive pieces of jewelry. If I'm not mistaken, this was done in conjunction with an investigation into a suspected theft ring that was believed to be fencing stolen jewelry through jewelry stores.

In any event, over three years have passed. My clients have never been charged, nor were they ever accused of any wrong doing. I wrote to the APD on two occasions in 2007, asking for the return of the jewelry. (See attached.) Because I have had no response to my letters, I am contacting you directly.

Would you be so kind as to assist us in returning the items taken, or provide us with an update as to their status?

Thanks.

Sincerely,



Les Syren

cc: Senator Fred Dyson
Fax: (907) 465-4587

SYREN LAW OFFICES



P.O. Box 112141 ♦ Anchorage, AK 99511
Phone (907) 345-8333 ♦ Fax (907) 345-8952

June 12, 2007

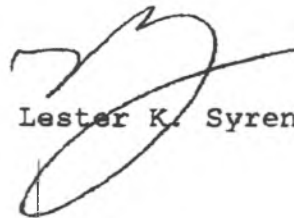
Detective Tammy Dunn
APD
Fax: 786-8667

Re: Long Phung Jewelry Store

Dear Detective Dunn:

The Lam family, including Van Lam, Van Nguyen, Kim Lam, Long Lam and Lan Lam have retained me to assist them with any matter you may wish to contact them about, including but not limited to Case Number 07-25111. Please do not have any contact with them outside of my presence or without my consent.

Sincerely,



Lester K. Syren

SYREN LAW OFFICES



P.O. Box 112141 • Anchorage, AK 99511
Phone (907) 345-8333 • Fax (907) 345-8952

October 26, 2007

Detective Tammy Dunn
APD
Fax: 786-8667

Re: Long Phung Jewelry Store

Dear Detective Dunn:

The Lam family, including Van Lam, Van Nguyen, Kim Lam, Long Lam and Lan Lam have retained me to assist them with any matter you may wish to contact them about, including but not limited to Case Number 07-25111. They are wondering if you are finished with the items you seized from their jewelry store.

A couple of weeks ago I called and left a message asking for the return of the property, but I have not heard from you. Would you be so kind as to let us know if my clients can retrieve their property?

Sincerely,



Lester K. Syren

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 14, 2011

SUBJECT: Amendment A.3 - Providing for Office of Victims' Rights
Participation with Return of Property
(Work Order No. 27-LS0344\A.3)

TO: Senator Fred Dyson
Attn: Chuck Kopp

FROM: Gerald P. Luckhaupt *GPL*
Assistant Revisor

Enclosed is the amendment you requested. I have one comment. As I told Chuck Kopp of your staff, I am unsure of the constitutionality of this approach. The Office of Victims' Rights is located in the legislative branch, and so there are considerable limitations on the ability of that office to represent crime victims. Clearly, the office can investigate and provide information and assistance to crime victims, but problems develop when we attempt to assign functions to the office that would appear to be beyond the authority of the legislature. Specifically, trying to represent someone in dealings with the executive branch or in court is questionable.

GPL:ljw
11-101.ljw

Enclosure

ALASKA STATE SENATE



SENATOR FRED DYSON

Date: February 16, 2011

To: Senator Bill Wielechowski, Chair
Senate State Affairs Committee

From: Senator Fred Dyson *WLD* For F.O.

Re: CS for SB 30 (STA)

On February 3, 2011 SB 30 was heard and held in State Affairs. Committee member comments indicated a concern that SB 30 may inadvertently open the door to a significant number of requests for hearing from property owners, and that some type of requirement or intermediary step be considered to prevent the hearings from becoming onerous to the Court system and law enforcement agencies.

In response to State Affairs Committee comments, and further review with the Office of Victims' Rights, private attorneys and various law enforcement entities, the CS for SB 30 (STA) is now before you for consideration. Primary changes to the original SB 30 are as follows:

Section 1

1. Property owners must make a request for hearing through the Office of Victims' Rights (OVR).
2. OVR will conduct an investigation into the request to make an initial determination if the owner is entitled to return of the property being claimed under the requirements of proposed 12.36.070(c): that the owner provides satisfactory proof of ownership, and the law enforcement agency is not able to show that the agency or another interested party is authorized to retain the property.
3. Once OVR makes such a determination, they will request on behalf of the owner that the agency return the property.
4. The court of jurisdiction is identified in cases involving a pending criminal case, and in situations where no criminal case is pending
5. Establishes the burden of proof to be a *preponderance of the evidence*, for both the property owner showing ownership and the law enforcement agency showing that they or another party are authorized to retain possession of the property.

Section 2

1. Establishes within Title 24, Chapter 65 *Office of Victims' Rights*, the authority for OVR to request a law enforcement agency for return of property on behalf of certain persons claiming property using any of the powers granted to OVR under this chapter
2. Establishes that the term *crime victim*, as used in this section, includes any person who is the owner of property that is in the custody of a law enforcement agency.

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)