

SB

110

<TARGET><BILL>SB 110</BILL><SUBJECT>SB
110</SUBJECT><COMM>HJUD28</COMM></TARGET>

ALASKA STATE SENATE



SENATOR FRED DYSON

Date: March 13, 2014

To: Rep. Wes Keller, Chairman
House Judiciary Committee

From: Senator Fred Dyson

Re: Hearing Request for CSSB 110(JUD) –

An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency.

I respectfully request CSSB 110 (JUD), be scheduled for a hearing.

This legislation advances the rights of crime victims, helping them recover their property from the custody of a law enforcement agency. It gives the Victims' Advocate the authority to request the Court for a hearing on behalf of the crime victim if the law enforcement agency fails to act on a request to return the property.

CSSB 110(JUD) passed the Senate with strong unanimous support, and 15 Senate co-sponsors.

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

ALASKA STATE LEGISLATURE



SENATOR FRED DYSON
SENATE DISTRICT F

SPONSOR STATEMENT **CSSB 110(JUD)**

An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency.

In 2012, the legislature unanimously passed CSSB 30(2d JUD) which placed 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. Governor Parnell signed the bill into law as Chapter 3, SLA 2012.

Prior to passage of this bill into law, crime victims who suffered deprivation of valuable property for protracted periods of time had no ability to appeal to the Court, other than suing the State of Alaska, to make a determination of whether the need of the State, defense or other interested parties to retain the seized property outweighed the right of the crime victim to the return of their property.

The law currently requires that if a request to return property is made by the Victims' Advocate (Office of Victims' Rights) to a law enforcement agency on behalf of a crime victim, the law enforcement agency has 10 days to return the property or to request a hearing before the Court to determine if the property should be released to the crime victim. Unfortunately, the Office of Victim Rights reports that sometimes the law enforcement agency refuses to both return the property, or request a hearing of the Court, leaving the crime victim with no recourse.

CSSB 110(JUD) strengthens crime victim rights by giving the Victims' Advocate the authority to request the Court for a hearing on behalf of the crime victim if the law enforcement agency fails to act on a request to return the property by the deadline established in AS 12.36.070(b).

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

ALASKA STATE LEGISLATURE



SENATOR FRED DYSON
SENATE DISTRICT F

SECTION ANALYSIS – CSSB 110(JUD)

Section 1

Amends AS 12.36.070 *Return of Property by Hearing*, adding new subsection (f) to provide that the Office of Victims' Rights may request a hearing before the court if a law enforcement agency fails to act within 10 days after receipt of a request from the Office of Victims' Rights on behalf of a crime victim who is the owner of property to either a) return the property to the crime victim or b) request a hearing before the court to determine if the property shall be released to the crime victim. Further clarifies that the role of the victims' advocate in the hearing is limited to advocating for the return of the victim's property, unless the court orders otherwise.

Section 2

Amends AS 24.65.115 *Authority to request return of property on behalf of certain persons*, to provide the authority of Office of Victims' Rights to request a hearing before the court under AS 12.36.070(f).

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 110(JUD)
Fiscal Note Number: 1
(S) Publish Date: 2/24/14

Identifier: SB110-LAW-CRIM-02-14-14
Title: RETURN OF SEIZED PROPERTY
Sponsor: DYSON
Requester: (S) JUDICIARY

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By:	<u>Loretta Withington, Division Operations Manager</u>	Phone:	<u>(907)465-5427</u>
Division:	<u>Department of Law</u>	Date:	<u>02/14/2014 11:32 AM</u>
Approved By:	<u>Michael C. Geraghty, Attorney General</u>	Date:	<u>02/14/14</u>
Agency:	<u>Department of Law</u>		

FISCAL NOTE ANALYSIS #1

**STATE OF ALASKA
2014 LEGISLATIVE SESSION**

BILL NO. CSSB 110(JUD)

Analysis

SB 110 clarifies that the victims' advocate may request a hearing on behalf of a victim to address the return of property from the custody of a law enforcement agency.

The bill also makes the same clarification in the law addressing the authority of the Office of Victims' Rights.

The Department of Law anticipates no fiscal impact from SB 110.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 110(JUD)
Fiscal Note Number: 2
(S) Publish Date: 2/24/14

Identifier: SB110-DOA-PDA-02-14-14
Title: RETURN OF SEIZED PROPERTY
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Quinlan Steiner, Public Defender
Division: Public Defender Agency
Approved By: Curtis Thayer, Commissioner
Agency: Department of Administration

Phone: (907)334-4414
Date: 02/14/2014 02:00 PM
Date: 02/14/14

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 110(JUD)

Analysis

SB110 enables the victim's advocate to request a hearing related to a victim's request for the release of property in some circumstances.

This legislation is not expected to have a fiscal impact on the Agency's budget. The Public Defender Agency, therefore, submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 110(JUD)
Fiscal Note Number: 3
(S) Publish Date: 2/24/14

Identifier: SB110-DOA-OPA-02-14-14
Title: RETURN OF SEIZED PROPERTY
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Richard Allen, Director
Division: Office of Public Advocacy
Approved By: Curtis Thayer, Commissioner
Agency: Department of Administration

Phone: (907)269-3504
Date: 02/14/2014 04:35 PM
Date: 02/14/14

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 110(JUD)

Analysis

This bill provides the right to crime victims to request the Office of Victim's Rights seek return of the crime victim's property under certain circumstances. This bill will require the defense to appear at hearings and respond to litigation if the request is made before a criminal matter is concluded. The Agency cannot reliably predict the fiscal impact.

The Agency is not anticipating a significant impact to the current case load or a fiscal cost increase with the passage of the legislation. However, the Office of Public Advocacy will monitor for a future potential fiscal impact. Therefore, at this time, the Agency submits a zero impact fiscal note.

NFIB

The Voice of Small Business.®

ALASKA

January 21, 2014

The Honorable Fred Dyson
State Capitol Building
Juneau, Alaska 99801-1182

RE: Senate Bill 110

Dear Senator Dyson:

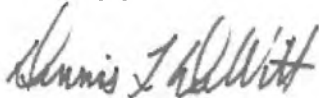
On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for Senate Bill 110. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

We appreciated your efforts in passing SB 30 that was signed into law as Chapter 3, SLA 2012. Establishing a process for business owners and other citizens to retrieve their property being held as evidence by the legal system was an important issue for NFIB members.

It is unfortunate, but necessary to amend that law to permit the Victims' Advocate to request a Court hearing if the law enforce agency will not release the property to its owner. The current law only allows the law enforcement agency to request a court hearing. This change will allow fairness in arbitrating the release of property held as evidence.

Businesses in Alaska are most appreciative of your continued focus and commitment to addressing this most important issue.

Sincerely yours,



Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council



ALASKA STATE HOMEBUILDERS ASSOCIATION

February 22, 2011

Senator Fred Dyson
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: SB 30 in support

Senator

We write you in support of SB-30 (An Act providing for the release of property in the custody of a law enforcement agency to the owner under certain conditions)

We agree to the supporting of SB-30 as representatives of the ASHBA (Alaska State Home Building Association), with a membership of 700 plus professionals operating and working in the construction industry. The organization views this form of legislation as beneficial to those individuals, or companies that are violated through theft, or the court systems as a means to acquire their property, and be able to utilize while the situation is resolved through the legal process.

This legislation will benefit all parties living in the state of Alaska, and will surely be well received through its passing.

If you are in need of any members being available to telephonically testify, or require any additional assistance please do not hesitate to ask.

Thank you for sponsoring SB-30

Dave Owens
President ASHBA

Alan Wilson
Co-Chair ASHBA
Legislative Committee

Paul Michelsohn Jr.
Co-Chair ASHBA
Legislative Committee



8301 SCHOON ST • SUITE 200 • ANCHORAGE, ALASKA • 99518
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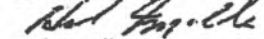
January 5, 2011 one of our employees was involved in a traffic accident on the Sterling Highway. Another driver lost control of her vehicle, crossed the road and ran into our vehicle. She was not wearing a seatbelt, was thrown from her vehicle, and consequently died on scene. The State Troopers confiscated our vehicle and trailer and have kept it in their impound yard in Soldotna since that time.

It has been 13 months since that accident with no police report or indication that we will be able to get our equipment back any time soon, nor are we able to make a settlement with the insurance company. If we were a smaller business than we are, we would be out of business by not having access to our equipment to continue to operate. Renting equipment to replace what is in impound until the case is settled would be a financial burden we would have to incur until the troopers complete their paperwork.

We would like to see this process improved with a timelier turnaround for the parties involved so that life and business can continue. It is just as hard on the deceased family to have to go through this again a year or more later with an insurance claim as it is for the injured parties.

If this is due to the legal system then it needs to change. If it is the political system this needs to change. We need decisions made right away when everything is fresh in people's minds, not six months or one to two years after and the file has sat on someone's desk.

Submitted by:



Hal Ingalls

CEO

Denali Drilling, Inc.

8240 Petersburg Street

Anchorage, AK 99507

907-562-2312

Chuck Kopp

From: Computer Renaissance Soldotna <comprensoldotna@gmail.com>
Sent: Monday, January 30, 2012 5:56 PM
To: Chuck Kopp
Subject: Re: FW: SB 30 - Release of Property to be heard in Senate Finance this Friday, January 20

Hello Chuck,

I was referred to you by Eric Derleth regarding the below mentioned senate bill 30. He said what is happening to me is exactly what this bill will protect against. I would be happy to testify if you think my testimony would make a difference. I know your a busy man so I will keep this as brief as possible.

I am the owner of the Computer Renaissance here in Soldotna. Almost 2 years ago we were defrauded out of a high end \$1200 Sony laptop via a fake business printed check. The same individual wrote almost \$12,000 in fake checks all over the Kenai peninsula. They caught him and his accomplices a week after the fake check was written to us. They would not release the laptop to me because it was evidence and there could be information pertaining to the case on it, so they told me I had to wait till the trial was complete. Here we are 2 years later and the trials still aren't complete. As a retail store that high end \$1200 laptop is now worth about 1/4 what I paid for it all because of the slow wheels of justice. I have contacted the DA pretty consistently every 6 months to get an update. I normally have to leave several messages for the DA handling the case then contact somebody else in the office before I can talk with her. The last time they told me that one of the 4 defendants still hadn't been convicted so they can't release my property yet. About a year ago I suggested they just remove the hard drive in the laptop because any evidence pertaining to the case would be on the hard drive. Then I could install a new hard drive and at least sell the laptop. Eric said they have some Incase software that they can use to copy the existing hard drive as well. The DA said she would look into it and get back to me, she never did. I even spoke with people at the Soldotna police department and the evidence room, none provided any assistance or usefull suggestions.

I don't think that the defendant should have to compensate me through restitution for the depreciation in value on the laptop, because it is the state and court system that has caused the 2 years of depreciation. The 6th amendment to the constitution for the right to a speedy trial was not just put in place to protect the defendants, but also the victims.

I hope my story may be able to help your case and possibly help me get my property back. If you have any questions please feel free to e-mail me here or contact me by phone at 907-420-0483 or on my cell at 907-223-8324. I don't know where your at, but if your local you can even stop into our store, we are on the Sterling Highway right next to Dairy Queen.

Thanks,

Andrew C. Walker - Manager

On Mon, Jan 30, 2012 at 5:31 PM, Eric Derleth <Eric@trialguy.com> wrote:

Computer Renaissance Soldotna
44661-B Sterling Hwy
Soldotna AK 99669
~~Eric Derleth~~
907 420-0483
907 223 8324 cell

ADN.com

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Parnell signs bill to help crime victims recover property

Associated Press March 22, 2012

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JUNEAU – Gov. Sean Parnell has signed into law a bill intended to help crime victims recover property that was confiscated and held as evidence.

SB30, which passed the Senate and House unanimously, is aimed at speeding the return of property, which Parnell's office said can be held for months or even years at the discretion of prosecutors or defense attorneys.

The bill, sponsored by Sen. Fred Dyson, provides a means for crime victims to petition the court to get their property back.

Parnell calls SB30 important legislation. He says the state must protect crime victims and help them get closure.

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

February 4, 2014

Senator Fred Dyson
State Capitol, Room 121
Juneau, AK 99801

RE: SB 110 – Return of Seized Property

Dear Senator Dyson:

As the director of the Alaska Office of Victims' Rights (OVR), I write in support of SB 110, Return of Seized Property, which you introduced on January 22, 2014.

The amended language offered in SB 110, which the OVR supports, reads as follows:

"An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency."

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

* Section 1. AS 12.36.070 is amended by adding a new subsection to read:
(f) If the agency fails to act on a request under (a) of this section within the deadline set in (b) of this section, the victims' advocate may request a hearing under (b) of this section.

* Sec. 2. AS 24.65.115 is amended to read:

Sec. 24.65.115. Authority to request return of property on behalf of certain persons. (a) Notwithstanding another provision of this chapter, the victims' advocate may

(1) file a request under AS 12.36.070 with a law enforcement agency for the return of property to a crime victim after having conducted an investigation and determining that the crime victim is entitled to the return of the property under the factors listed in AS 12.36.070(c);

(2) request a hearing under AS 12.36.070(f).

(b) In fulfilling the requirements of this section, the victims' advocate may use any of the powers granted to the advocate under this chapter.

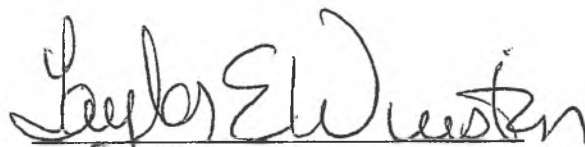
February 4, 2014

Page Two

As the victims' advocate, I have concerns about the functionality of the current statute A.S. 12.36.070 Return of Property by Hearing for victims. The current statute attempts to provide an avenue for crime victims to pursue the return of their property from law enforcement agencies when the property is held in connection with a criminal matter. The current statute, however, allows no recourse for a crime victim if the law enforcement agency fails to return the property or fails to request a hearing, as is required in the current statute. The likelihood that police officers or troopers in law enforcement agencies will file requests for a hearing with the court over evidence they hold and the victim wishes returned is low for several reasons.

The proposed amendment would allow for the OVR to request a hearing before the court when the law enforcement agency has failed to act in accordance with the statute. This is not an option with the current language of the statute because the Alaska Court System will not accept filings from the OVR requesting such a hearing on the behalf of a crime victim. Hence, if a crime victim and the OVR follow the procedure in the current statute, and the law enforcement agency does not do as required by the statute, the victim will be no better off than if the current statute was never enacted. Moreover, in the current statute, there is no consequence or ramification for the law enforcement agency, which fails to follow the requirement of the statute. As it stands now, it is as if the crime victim is saying "Law enforcement agency, please return my property" and when that request falls on deaf ears of the agency, by it neither returning the property or requesting a hearing, the victim is denied their property and denied an opportunity to be heard on the matter before the court. Therefore, the OVR strongly supports SB 110 on behalf of the crime victims in our state.

Respectfully,

A handwritten signature in black ink that reads "Taylor E. Winston". The signature is written in a cursive style with a horizontal line underneath the name.

Taylor E. Winston, Director
Alaska Office of Victims' Rights



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Law

CRIMINAL DIVISION
Criminal Division Central Office

P.O. Box 110300
Juneau, Alaska 99811-0300
Main: 907.465.3600

March 5, 2013

The Honorable Charlie Huggins
President of the Senate
State Capitol, Room 111
Juneau, Alaska 99801

The Honorable Mike Chennault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801

Honorable Members of the Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: Report of the Task Force on Standards & Training of Evidence Technicians

Dear Legislators:

In 2010, when the legislature amended AS 12.36 to require the preservation of certain types of evidence in homicides, first degree sexual assault and first degree sexual abuse cases, the legislature also established a task force to address two issues related to the seizure or retention of this evidence: proper evidence procedures, and practices in cataloging and returning evidence to the proper owner. Chapter 20, SLA 2010. The task force met four times. The group attempted to identify resources from which a "best practices" model for evidence collection and retention might be created for Alaska's diverse communities. This letter constitutes the task force's report to the legislature.¹

The first charge to the task force required devising standards for the "proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions." Chapter 20, SLA 2010. When the task force first met it elected to take guidance from the National Institute of Standards and Technology (NIST) and the National Institute for Justice (NIJ). These federal agencies have

¹ The members of the task force statutorily included representatives of the Department of Law, Department of Public Safety, Public Defender Agency, Office of Public Advocacy, two municipal police departments (one not on the state's road system), Alaska Innocence Project, Alaska State Crime Lab, Alaska Native Justice Center, and three ex-officio members, including a member of the Senate and House Judiciary committees (Senator French and Representative Keller), and the Office of Victims' Rights.

collaborated since August 2010 with the same goal as the Alaska legislature, namely “to establish proper collection, storage and preservation techniques throughout the forensic science disciplines.” To date, these national working groups have not completed their task – to create a “best practices” guide. The task force also determined that there are no national standards, from other sources, for the undertaking contemplated by the legislation. Unfortunately, the work from any national group will necessarily impact Alaska and therefore the task force’s ability to complete the charge of the legislature.

Even in the absence of a national standard, the main difficulty in implementing the mandates of AS 12.36 is the massive nature of the undertaking. With dozens of police agencies and a wide variety of evidence collection, storage and handling capabilities, there is no one-size-fits-all solution to the requirements of AS 12.36. Devising standards for the proper collection, retention and cataloging of evidence, for ongoing investigations and prosecutions, will require far more resources than the task force had at its disposal. Whether the task force is reconstituted, the Department of Public Safety takes on the responsibility of establishing guidelines, or the legislature designates some other entity to complete the project, there needs to be a comprehensive undertaking to devise the standards contemplated by the legislature. One suggestion is to fund the Alaska Police Standards Council to adopt the standards and devise a training course for certified police officers and evidence custodians employed by police agencies. That training could be done via video link or through a traveling trainer, but the task force agrees that officers and evidence custodians could receive a state certification after satisfactorily completing such a course.²

There is some progress to report on the issues confronting the task force and the broader criminal justice community. Despite the absence of guidelines from the task force, on May 3, 2012, Department of Public Safety Commissioner Joseph Masters issued a directive (C-12-02) to all law enforcement within the Department of Public Safety regarding when to retain or release evidentiary items, including vehicles. The directive included a decision key and a sample motion and court order for release of evidence.

At the behest of the task force, the Department of Public Safety shared the directive and decision key with members of other law enforcement agencies. Anchorage Police Chief Mark Mew indicated his willingness to pass the protocol along to other departments via the Alaska Association of Chiefs of Police. To date, however, the Anchorage Police Department (APD) has not adopted the decision key, instead choosing to retain all evidence in the case types specified by AS 12.36. The Anchorage Police Department feels that the legislation, as written, is problematic. For the APD, the language of AS12.36.200 is not entirely clear and needs further

² As noted previously, one standard will not fit all law enforcement agencies. There are communities in this state with only one person employed to provide police functions. Training on evidence collection standards may not be available until after the law enforcement officer has long been providing police services. Training on standards should not stand in the way of investigating cases under these circumstances.

refinement or definition. Given the perceived lack of clarity, APD has elected to retain all property seized in the referenced crimes.³

APD's evidence rooms are now contained in three warehouses and they store over 140,000 pieces of evidence in over 35,000 square feet of storage space. The Anchorage Police Department dedicates one full warehouse to the storage of the evidence targeted by the current legislation. That department indicates that the warehouse is already filled to capacity. Moreover, collection, storing and retaining the evidence remains an unfunded mandate that is burdensome to the police department. Additionally, although the statute makes provisions for returning property to the owner, those provisions are too onerous.

The Alaska State Troopers report that they maintain 30 evidence retention facilities with additional storage lots for vehicles of all types. They indicate that they have more than 150,000 items of evidence.

As a representative of the smaller police departments, task force member Nome Police Chief, John Papasodora, indicated that Nome has not adopted a procedure like that employed by the Department of Public Safety. Nome simply stores everything seized in the course of the targeted

³ An example of the problem may illustrate the perceived ambiguity in the statute. Take, as an example, a cellular phone that also contains a camera. In this day and age, many (if not most) people have a cellular style phone and many of those devices are smartphones that provide the owner the capability to pay bills, access personal data, or just go about daily tasks of life. If that owner then becomes the victim of a crime, and the police determine that the cell phone might contain information, photos, or texts that ought to be processed in the course of the investigation, the law certainly does not intend to deprive that owner of this essential piece of their life, however, the law, as written, says:

(a)(1) ...[the] law enforcement agency shall preserve all evidence that is obtained in relation to the investigation or prosecution of a [listed crime].

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity or physical character that render preservation impracticable. When preservation of evidence is impracticable, the agency shall remove and preserve...material necessary for DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

The police can make a "mirror image" of the contents of the cell phone, but the question then becomes one of how and when to return the phone to its owner. Some agencies, believing that the contents of the phone are the evidence, return the phone to its owner, after capturing the contents. Other departments take the statute more literally and believe that they must keep the victim's phone even though the evidence (the data) is not capable of being swabbed for DNA. The re-victimization of a person whose lifeline has been taken away is obvious. People need their phones – if not to conduct their personal business, then to make a telephone call. One reading of the statute would say that the "physical character" of the phone "renders preservation impracticable." However, that reading is not as clear as it ought to be in giving guidance to the police agencies about the return of such an item.

In sum, the legislature could make its intent clearer and ease the burden on law enforcement.

investigations, including couches, tables, cars and innumerable smaller items frequently seized in an abundance of caution during a criminal investigation.

The task force can additionally report, that on April 26, 2012, the Department of Law notified the Alaska Scientific Crime Detection Laboratory that the laboratory's "DNA Quality Assurance Manual" complies with the requirements of AS 12.36.200, the statute implementing the new preservation of evidence law. This means that the crime laboratory has adopted standards for the retention of forensic evidence once police agencies send the evidence into the crime laboratory. In particular, all SART (sexual assault response team) kits are retained by the laboratory in conformity with forensic community standards.

The second legislative charge for the task force asked the group to "recommend practices, protocols, models and resources for the cataloging and accessibility of preserved evidence, and return of property to owners." Chapter 20, SLA 2010. The task force identified a current challenge faced by criminal justice stakeholders as the absence of a single, common numbering protocol or system to track pieces of evidence collected by the various agencies across Alaska. A police agency in western, interior or southeastern Alaska could submit a piece of evidence to the state crime laboratory for testing and each agency would assign what they believe to be a unique evidence number. The police might, for purposes of this example, give the piece of evidence a number like 13-123 - the year designator "13," followed by a number designated sequentially when the evidence was collected that year. Once at the Crime Lab, the laboratory would, likewise, give the submitted evidence a unique case and item number, perhaps 13-456. Unfortunately, because there are multiple police agencies submitting evidence to the laboratory, there is a risk that more than one police agency will have a piece of evidence with the number 13-123.

The item at the Crime Lab is tracked by both the police agency number and the lab's case number. The risk that an item might be mis-entered or mis-identified is enhanced by the need to enter all identifying data by hand, that is, to type the agency identifiers into a computer. If the agencies used a single, common numbering protocol the risk of lost or mis-identified evidence can be reduce to near zero.⁴ While the task force is not aware of a problem created by the disparate modes of identifying and storing evidence, this is one of the ways in which protocols could be improved and efficiencies enhanced.

⁴ The disconnect between the current numbering systems becomes more apparent when the results of laboratory testing are reported to juries who decide the value of the testing when deliberating about a criminal charge. A jury must now listen to a minimum of two witnesses before it hears about testing results. They first listen to a police witness to say that the evidence was seized, given a (what should be) unique evidence number and transmitted to the state crime laboratory for testing. They then listen to a crime laboratory witness to say that the evidence item was received and given a separate evidence item number within the crime laboratory, then submitted to testing. The witnesses often track the numbering of the evidence to insure that the jury has high confidence that the item tested corresponds to the item seized. These witnesses and the numbering system are the proof of the chain of custody of the evidence item, a process to show the integrity of the evidence item from seizure to the courtroom. Finally, the Alaska Court System gives the evidence item its own exhibit number. It is tedious, but necessary testimony to insure that the integrity of the process is understood and accepted by the jury.

Over the past thirteen months, the Department of Public Safety upgraded its police records management to a system called ARMS (Alaska Records Management System). ARMS includes the capability to uniquely number and catalog evidence. The state crime lab is part of the Department of Public Safety and has plans to integrate with ARMS. Since DPS accounts for about 60% of the lab's work, according to Laboratory Director Orin Dym this integration will create efficiency and speed in the processing of DPS's evidence. The Anchorage Police Department uses a records management system called Tiburon. Both ARMS and Tiburon eliminate the risk of internal duplication of numbers, but the two police agencies are capable of generating the same number for items seized under each system. The problem is compounded if these agencies work together on the same case. If police agencies across Alaska adopt the ARMS record management system, that system eliminates the need for cross-referencing and insures that no duplication or loss occurs.

The Alaska Scientific Crime Laboratory, the Anchorage Police Department, and the Alaska State Troopers also have automated bar coding systems to track each piece of evidence. However, each of these systems comes from separate vendors with proprietary software. Absent integration with the ARMS system, a structure should be established so that any future bar coding system will be able to communicate with existing systems. The use of ARMS would eliminate the need and cost for interface technology to be developed.

An example of the efficiency created by ARMS is the ability to "populate" forms for submitting evidence to the lab. Currently, lab submissions are accomplished by officers who handwrite (or type) their requests for laboratory service. As with anything that requires hand-entries, mistakes (or shortcuts) are possible. A common record management system would eliminate transposed numbers or misidentification of the evidence. It would also speed the process, as those forms would be electronically submitted to the lab rather than the current scan, fax or mail system. Once a copy of a hand-entered request for laboratory services gets to the crime lab, the lab must, likewise, hand-enter the data into its system. The time consumed by this process would be better spent by scientists actually conducting tests on the submitted evidence.

In conclusion, the mandate of the Task Force on Standards and Training of Evidence Technicians expired on December 31, 2012. The task force identified a national source for standards regarding the proper collection, retention, and cataloging of evidence. The Task Force recommends that, once published, the Alaska forensic science community review the standards and modify them so they will work in Alaska. These standards can then be promulgated by the Alaska Police Standards Council.

The task force further recommends that Alaska develop a single, unified standard for electronically cataloging and accessing evidence. The DPS system called ARMS can provide that capability. Otherwise, law enforcement agencies can work together in establishing a single protocol for uniquely identifying evidence. Alternatively, the Alaska Scientific Crime Laboratory can take the lead on this project, since the lab sees a great deal of evidence from the widely disparate police agencies across the state. Laboratory Director Orin Dym already asks police agencies submitting evidence to the lab to place three identifiers on the evidence – agency name, case number and a unique property identifier that includes the year. That protocol, at a minimum, should become required.

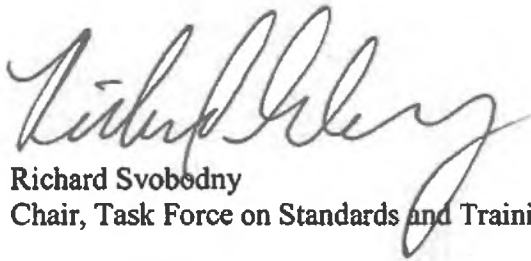
As a final note, the task force also identified a secondary financial and logistical burden that AS 12.36 has imposed on local law enforcement, private citizens, and crime victims by requiring the retention of private property. In this area a comprehensive legislative resolution is necessary. In 2012, the legislature passed Chapter 3, SLA 2012 which was intended to allow the Office of Victims' Rights the ability to file an original application in state court to resolve disputes between law enforcement wanting to preserve evidence and owners who want the evidence returned. This was clearly the intent of the legislature with the director of the Office of Victims' Rights indicating in legislative hearings that the office would be taking on this responsibility. However, the Alaska Court System, in analyzing the language of the statute, AS 12.36.070, has indicated that the law does not allow the Office of Victims' Rights to bring such an action. Either the language of AS 12.36.070 needs to be clarified or a different approach to the problem of returning evidence to its owner must be undertaken by the legislature.

On behalf of the members of the task force, thank you for the opportunity to work on this challenging and evolving area of the law.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:



Richard Svobodny
Chair, Task Force on Standards and Training of Evidence Technicians

cc: Richard Allen, Director, Office of Public Advocacy
Dennis Casanovas, Major, Alaska State Troopers
Orin Dym, Director, Alaska State Crime Laboratory
Senator Hollis French, Senate Judiciary Committee
Jason Hooley, Director, Boards and Commissions
Representative Wes Keller, House Judiciary Committee
Mark Mew, Chief, Anchorage Police Department
Walt Monegan, CEO, Alaska Native Justice Center
Douglas Moody, Deputy Public Defender, Public Defender Agency
Bill Oberly, Executive Director, Alaska Innocence Project
John Papasodora, Chief, Nome Police Department
Taylor Winston, Director, Office of Victims' Rights

Memorandum

Alaska Court System

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TO: Nancy Meade
FROM: Adam Keller
Court Rules Analyst
DATE: June 28, 2012
SUBJ: Senate Bill 30 Testimony

I was asked to review the legislative testimony of Senate Bill 30 (Chapter 3 SLA 12), which become effective on June 19, 2012. Specifically, I was asked to discern what the meaning of the term "agency" is as referred to on page two, line one.

It is my finding that the term "agency" refers to the law enforcement agency that is in custody of the property in question. Below is a summary of the testimony, at each stage of the legislative process, which brought me to this conclusion.

February 3, 2011

Senate State Affairs Committee Chairman Wielechowski states "the owner of the property may request that the agency return the property. And who would the agency be in that particular case?" To which Chuck Kopp, Chief of Staff to Senator Dyson (who sponsored the bill) responds, "the agency, as defined in the terms under Chapter 36 Disposition of Recovered or Seized Property, includes 'any agency who is responsible for the enforcement or prosecution of the law.' So, that would include, both, the law enforcement agency, be it municipal or state, and the Department of Law.'... [The agency] is required to request a hearing before the court to determine if the property shall be released to the owner." See Audio testimony from Feb. 3, 2011, at 10:14:00 thru 10:15:10.

February 17, 2011

Mr. Kopp explains the process outlined in Senate Bill 30 outlines. The Office of Victims' Rights (OVR), the official State's advocate for victims, will act as an intermediary throughout the process. OVR will determine if the owners of the property can show, through a preponderance of the evidence, that they do own the property. Then OVR will contact the law enforcement agencies, which "include[s] the Department of Law," and see if they are able to show, similarly, that they have a claim on the property in the law that exceeds that of the interest of the property owner in getting their property back. Based on what they learn, OVR would then request that the law enforcement agency return the property to the owner. "Once that request is put into place, that law enforcement agency has 10 days to request that of the court." The bill does require that a law enforcement agency act once the request is filed. See Audio testimony from Feb. 17, 2011, at 09:19:50 through 09:21:08.

Victor Kester, Executive Director of OVR, states the process as he understands it. Mr. Kester explains that OVR is not the agency that requests a hearing from the court, and Chairman Wielechowski agrees that “that is the way I understand the bill as well.” See [Audio testimony from Feb. 17, 2011, at 09:25:18 through 09:26:13.](#)

At this hearing SB 30 was moved to the next committee of referral.

February 28, 2011 – March 21, 2011

SB 30 is heard by the Senate Judiciary Committee. Mr. Kopp and Mr. Kester testified to the process and intent of the bill. The term “agency” is not debated or brought up during any of this testimony.

April 4, 2011

Anne Carpeneti, Assistant Attorney General, Criminal Division, Department of Law, suggested a change to subsection page 2, lines 13-18, subsection (d). This does not change the meaning or the use of the term “agency” in page 2, line 1. Ms. Carpeneti does not object to the meaning of the term “agency” as written.

The proposed change to subsection (d) and Ms. Carpeneti’s explanation can be found at [Audio testimony from Apr. 4, 2011, 01:57:21 through 02:16:03.](#)

April 6, 2011

SB 30 passes through to the next committee of referral.

January 20, 2012

Mr. Kopp testifies to the Senate Finance Committee about the process that SB 30 outlines. Most importantly, Mr. Kopp states that “the law enforcement entity files with the court a request for hearing.” See [Audio testimony from Jan. 20, 2012, 10:50:56 through 10:52:58.](#) The other testimony in front of the Senate Finance Committee makes no mention of the term agency. At the January 27, 2012 hearing, SB 30 moves to the next committee of referral.

February 13, 2012

In front of the House Judiciary Committee, Mr. Kopp explains the process of SB 30, again. Mr. Kopp states that SB 30 “puts into law an avenue for someone to request a hearing through the Office of Victims’ Rights, who then vets the request... then the Office of Victims’ Rights makes the request to the law enforcement agency who then has 10 days from the receipt of that request to ask the court to schedule a hearing.” See [Audio testimony from Feb. 13, 2012, 02:22:00 through 02:23:12.](#) The other testimony in front of the House Judiciary Committee does not touch upon the term agency. At the February 15, 2012 hearing, SB 30 moves to the next committee of referral.

February 27, 2012

Mr. Kopp testifies in front of the House Finance Committee stating that SB 30 “allows a crime victim, who is the owner of property in the custody of a law enforcement agency, may request the agency for the return of their property through the Office of Victims’ Rights. The Office of Victims’ Rights will file a request with the agency after conducting an investigation to make an initial determination if the crime victim is entitled to the return of the property being claimed under the proposed requirements of AS 12.36.070(c)... Once the Office of Victims’ Rights makes a predetermination, they will request on behalf of the crime victim that the agency return the property. Within 10 days after the receipt of the request, and following reasonable notice to prosecution, defense and other interested parties, the agency will request a hearing before the court.” See Audio testimony from Feb. 27, 2012, 02:41:50 through 02:44:05.

In conclusion, at no point in time during any of the testimony on SB 30 did the term “agency” mean anything but a law enforcement agency. It is clear that the law enforcement agency, after being requested by the Office of Victims’ Rights on behalf of the crime victim, must request a hearing with the court within 10 days.