

**HB**

**317**

<TARGET><BILL>HB 317</BILL><SUBJECT>HB  
317</SUBJECT><COMM>HFIN29</COMM></TARGET>

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# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 5, 2016

FURTHER REFERRALS:

Date of Committee Action: 4.12.16

The FINANCE Committee considered:

HB 317

**HOUSE BILL NO. 317**

"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

**HB 317-FORFEITURE:NO CIVIL IN REM; ONLY CRIMINAL**

Recommends it be replaced with [ ] HCS or [X] CS for HB 317 (FIN)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [X] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.:
- ADM
  - AJS
  - CED
  - COR
  - EED
  - DEC
  - DFG
  - GOV
  - DHS
  - LWF
  - LAW
  - LEG
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<u>NEW FISCAL NOTES</u>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	ADM			X
	ADM			X
	LAW			X
	DPS			X

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

(8) (1)

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Murray				X
	Pruitt	X			
	Gattis	X			
	Wilson	X			
	Edgmon	X			
Chair:	Thompson	X			
Chair:					

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 317  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB317CS(JUD)-DOA-OPA-04-04-2016  
Title: FORFEITURE:NO CIVIL IN REM; ONLY  
CRIMINAL  
Sponsor: WILSON  
Requester: House 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)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Fund Source (Operating Only)

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### Positions

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) 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:

Updated for CS.
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Prepared By: Richard Allen, Director  
Division: Office of Public Advocacy  
Approved By: Sheldon Fisher, Commissioner  
Agency: Department of Administration

Phone: (907)269-3504  
Date: 04/04/2016 02:10 PM  
Date: 04/04/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB317

**Analysis**

Reforms Alaska's statutes concerned with forfeiture proceedings.

Per the sponsor, the bill is needed to correct long-standing, widespread, unconstitutional abuse by state agencies of the property and due process rights of persons targeted in civil and criminal forfeiture proceedings. The bill would implement statutory reforms and procedures, codified within the code of criminal procedure, (AS 12.36) with legally enforceable standards of accountability, reporting, and due process with regard to criminal forfeiture proceedings. The courts would be required to conduct forfeiture proceedings in criminal cases according to specific procedures and standards. Civil in rem forfeiture authority and jurisdiction of state agencies would be curtailed or eliminated. Forfeiture against a defendant in a criminal case could only proceed if the defendant has first been convicted of a crime.

The bill would likely not specifically impact the mission or operations of the Office of Public Advocacy (OPA) as such, but could, on a case-by-case basis, affect clients represented by agency attorneys in criminal cases. OPA submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 317  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB317CS(JUD)-DOA-PDA-04-04-16  
Title: FORFEITURE:NO CIVIL IN REM; ONLY  
CRIMINAL  
Sponsor: WILSON  
Requester: House 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)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) 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? No.

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Quinlan Steiner  
Division: Public Defender Agency  
Approved By: Sheldon Fisher, Commissioner  
Agency: Department of Administration

Phone: (907)334-4414  
Date: 04/04/2016 12:00 AM  
Date: 04/05/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 317

**Analysis**

This legislation eliminates in rem forfeiture actions.

This bill is not expected to have a significant fiscal impact on the Public Defender Agency, therefore the agency submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 317  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB317CS(JUD)-LAW-ASD-04-04-16  
Title: FORFEITURE:NO CIVIL IN REM; ONLY  
CRIMINAL  
Sponsor: WILSON  
Requester: House Judiciary

Department: Department of Law  
Appropriation: Administration and Support  
Allocation: Office of the Attorney General  
OMB Component Number: 2162

**Expenditures/Revenues**

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

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) 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:**

This fiscal note differs from the original in that it reflects the changes made in the committee substitute adopted by House Judiciary.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services Division	Date: 04/04/2016 02:19 PM
Approved By: Craig W. Richards, Attorney General	Date: 04/05/16
Agency: Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 317

Analysis

HB 317 eliminates civil in rem forfeiture. This will have no fiscal impact on the Department of Law.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version: HB 317  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: CSHB317(JUD)-DPS-COMM-04-04-16  
Title: FORFEITURE:NO CIVIL IN REM; ONLY  
CRIMINAL  
Sponsor: WILSON  
Requester: Judiciary

Department: Department of Public Safety  
Appropriation: Statewide Support  
Allocation: Commissioner's Office  
OMB Component Number: 523

**Expenditures/Revenues**

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

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) 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:**

Updated to reflect changes made by the House Judiciary committee substitute.

Prepared By: Kelly Howell, Director  
Division: Administrative Services  
Approved By: Gary Folger, Commissioner  
Agency: Public Safety

Phone: (907)465-4336  
Date: 04/04/2016 01:20 PM  
Date: 04/04/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

BILL NO. HB 317

**Analysis**

The committee substitute for this bill amends AS 09.55 by adding a new section that abolishes common law civil in rem forfeiture actions.

This version of the bill has no fiscal impact to the Department of Public Safety. Therefore, a zero fiscal note is being submitted.

**CS FOR HOUSE BILL NO. 317(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES WILSON, Kreiss-Tomkins, LeDoux, Claman

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to civil in rem forfeiture actions; and providing for an effective date."**

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

3 \* **Section 1.** AS 09.55 is amended by adding a new section to read:

4 **Article 10. Civil in rem Forfeiture.**

5 **Sec. 09.55.700. In rem civil forfeiture actions.** Common law civil in rem  
6 forfeiture is prohibited except by court order.

7 \* **Sec. 2.** This Act takes effect July 1, 2016.

# 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

April 12, 2016

**SUBJECT:** In rem civil forfeiture  
(CSHB 317(FIN); Work Order No. 29-LS1380\N)

**TO:** Representative Steve Thompson  
Co-Chair House Finance Committee  
Attn: Jane Pierson

**FROM:** Megan A. Wallace   
Legislative Counsel

Enclosed please find the above-referenced bill. I wanted to make you aware that the change in law proposed in this bill, as conceptually amended by the committee, may have little legal consequence. A civil forfeiture, including those brought under the common law, do not occur absent court order. Indeed, the examples of potential common law civil forfeiture matters cited by the Department of Law in their e-mail dated April 11, 2016, that was presented to the committee, would require a court order before the forfeiture was executed. As such, this bill may not change the law as it relates to common law civil in rem forfeiture.

It is really a policy decision to determine whether to abolish common law civil in rem forfeiture altogether and therefore require the state to use statutory remedies for property related civil actions -- as drafted in CSHB 317(JUD) -- or to do nothing and continue to allow persons to bring common law civil in rem forfeiture actions. Please note that this bill, even as written, would do nothing to change statutory criminal or civil forfeiture procedures. Furthermore, even if common law civil in rem forfeitures were abolished, in rem forfeiture actions could still be brought by statute. This would still allow the state to forfeit property where the property owner could not be located, a concern raised by the Department of Law. *See Davis v. Municipality of Anchorage*, 945 P.2d 307, 309 (Alaska Ct. App. 1997) (discussing *in personam* and *in rem* statutory forfeiture).

Please feel free to contact me if you have any questions.

MAW:lem  
16-344.lem

Enclosure

## Helen Phillips

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**From:** Jane Pierson  
**Sent:** Tuesday, April 12, 2016 1:04 PM  
**To:** Helen Phillips  
**Subject:** FW: HB 317 - Department of Law's Concerns and Suggested Language

**From:** Mills, Cori M (LAW) [mailto:cori.mills@alaska.gov]  
**Sent:** Tuesday, April 12, 2016 11:31 AM  
**To:** Joan Brown <Joan.Brown@akleg.gov>  
**Cc:** Jane Pierson <Jane.Pierson@akleg.gov>; Brodie Anderson <Brodie.Anderson@akleg.gov>; Rex Shattuck <Rex.Shattuck@akleg.gov>  
**Subject:** FW: HB 317 - Department of Law's Concerns and Suggested Language

Joan, as I mentioned yesterday, I spoke with Rep. Wilson yesterday evening and her staffer this morning. Below is the email I just sent to her encapsulating the concerns/questions we have had and providing suggested amendment language that would avoid the unintended consequences we have identified.

Assistant Attorney General Kent Sullivan from our Civil Division and Criminal Division Director John Skidmore will be at the hearing and will put the concerns on the records as well as provide the suggested language. However, if there is a decision ahead of time to include the suggested language, we can just be available for questions. I cannot be at the hearing because I have to be in Senate Finance.

If you have any questions, please feel free to contact me or Kaci Schroeder.

Thank you.

Cori Mills

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**From:** Mills, Cori M (LAW)  
**Sent:** Tuesday, April 12, 2016 11:27 AM  
**To:** Barnes, Barbara A (LAA) (barbara.barnes@akleg.gov); Wilson, Tammie (LAA)  
**Cc:** Sullivan, Kent (LAW) (kent.sullivan@alaska.gov); Skidmore, John B (LAW); darwin.peterson@alaska.gov; Schroeder, Kaci K (LAW)  
**Subject:** HB 317 - Department of Law's Concerns and Suggested Language

Rep. Wilson and Barbara, as I mentioned yesterday and today, the Department of Law's Civil Division has some concerns that there could be unintended consequences with the current version of HB 317. We understand that you received feedback from the Criminal Division that the current version of the bill is acceptable, but Director Skidmore was evaluating the bill in the criminal proceeding context, since that is what the bill has been targeted at. The provision in the bill uses the term "common law civil in rem forfeiture." The following are the examples of areas where we are unsure whether the bill would be applied. We understand it is not the intent to cover these areas, but based on the current wording, there could be confusion.

1. Float houses, of unknown origins, illegally located on State-owned tidelands without proper leases, permits, documentation, etc. Due to the lack of being able to identify the owner, civil in rem forfeiture may provide a means by which the float houses and their contents may be addressed.

2. A private landowner with a large property that they wish to subdivide contains abandoned mining equipment incapable of identification. Civil in rem forfeiture may provide a means by which the mining equipment may be addressed.
3. A person passes away, intestate (without a Will), and without apparent heirs. They possess numerous parcels of high-value real property in their name. Civil in rem forfeiture may provide the rules and authority for that property to be dealt with and ultimately resolved.
4. A landowner in a municipality owns derelict real property (for instance, a run-down motel) used by third-parties for criminal activity. The owner has fled the country. Civil in rem forfeiture may provide a means by which the municipality can obtain ownership and/or control of the property.
5. There are many civil actions that have some basis in statute, however, it is often common law rather than statutes that provide the working parameters for how the various proceedings apply and occur. Depending on how civil in rem forfeiture is interpreted, it could be deemed applicable to such things as various aspects of probate proceedings, lost property, abandoned property, salvaging of property, derelict vessels (including boats and autos), escheating of real and personal property, nuisance property issues, condemnation, quiet title actions, etc

We have drafted the following suggested additional language that we believe would likely clarify the intent and ensure the bill applies in the context of potential criminal proceedings/charges and not to purely civil matters.

#### AMENDMENT

**Sec. 09.55.700. In rem civil forfeiture actions abolished.** Common law civil in rem forfeiture actions are abolished **if used instead of a criminal proceeding**.

Civil Division Assistant Attorney General Kent Sullivan and Criminal Division Director John Skidmore will be attending the hearing today and plan on discussing these examples and offering the language. If you are ok with the language and want to add it in, we can also just attend and be available to answer questions on it. I have to be in a Senate Finance hearing at the same time, so I will not be available to attend. If you would like to speak with Director Skidmore and AAG Sullivan in advance, we can arrange that.

I apologize for the lateness of this email and the suggested language. We have been working the past week on identifying whether there are areas this could cover that were unintended and what we could suggest to avoid any unintended consequences.

Rep. Neuman had some questions on the legislation so I am going to send this to his office as well and give the co-chairs a head's up that Kent Sullivan and John Skidmore will be available at the hearing.

Thank you.

Cori Mills  
Assistant Attorney General  
Department of Law  
(907) 465-2132  
[cori.mills@alaska.gov](mailto:cori.mills@alaska.gov)

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	CSHB 317(JUD)
Fiscal Note Number:	2
(H) Publish Date:	4/5/2016

Identifier: HB317-DPS-COMM-03-29-16  
 Title: FORFEITURE:NO CIVIL IN REM; ONLY  
 CRIMINAL  
 Sponsor: WILSON  
 Requester: Judiciary

Department: Department of Public Safety  
 Appropriation: Statewide Support  
 Allocation: Commissioner's Office  
 OMB Component Number: 523

**Expenditures/Revenues**

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

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>	<b>FY 2017</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	0.0	***	***	***	***	***

**Fund Source (Operating Only)**

None							
<b>Total</b>	***	0.0	***	***	***	***	***

**Positions**

Full-time	1.0						
Part-time							
Temporary							

<b>Change in Revenues</b>	***		***	***	***	***	***
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) 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.
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Prepared By: Kelly Howell, Director  
 Division: Administrative Services  
 Approved By: Gary Folger, Commissioner  
 Agency: Public Safety

Phone: (907)465-4336  
 Date: 03/29/2016 03:00 PM  
 Date: 03/29/16

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

## Analysis

This bill amends statutes related to asset forfeiture and associated court rules.

This bill will affect the revenue received by the state through civil asset forfeiture and the amount received by the Department of Public Safety (DPS) and other law enforcement agencies through federal asset forfeitures. These amounts can vary significantly from year to year and cannot be estimated. Therefore, the change in revenue received is listed as indeterminate.

A new section, AS 12.36.610, requires all law enforcement agencies, including the Department of Public Safety (DPS), to track all items seized and forfeited along with the demographic information regarding persons whose property was seized or forfeited. DPS is then required to compile the annual reports of seizures and forfeitures submitted from all law enforcement agencies and publish the report on the department's website. To meet these new requirements, DPS would need one additional Criminal Justice Technician I position to perform this work at an annual cost of \$69,700.

Passage of this bill could potentially increase costs to the Alaska Wildlife Troopers with respect to managing illegally taken fish and game statewide. Currently, fish or game taken in violation of statutes and regulations belongs to the state. Though illegally taken fish or game may sometimes be stored in chest freezers in AWT offices as evidence, the vast majority is given to charity groups across the state. If the bill requires that AWT retain the illegally taken fish and game until the case is disposed of, there will be additional costs to store the fish or game (estimated to be in excess of 100 thousand pounds annually). This may include costs for freezer vans, renting space at fish processing plants or other unforeseen costs. If the bill allows the defendant to keep these items, DPS would not incur these storage costs.

Finally, under this bill DPS is required to attend additional court proceedings, evidentiary hearings, and forfeiture hearings which could increase costs if a trooper is required to come in on their day off or outside of regular duty hours.

Because the fiscal impact of this legislation cannot be accurately determined at this time, an indeterminate fiscal note is being submitted.

Alaska State Legislature  
House of Representatives  
Representative Tammie Wilson

*Interim*  
301 Santa Claus Lane 3B  
North Pole, Alaska 99705  
Phone - (907) 451-2723

*Session*  
State Capitol Rm 412  
Juneau, AK 99801  
Phone - (907) 465-4797



Rep.Tammie.Wilson@akleg.gov

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**SPONSOR STATEMENT**

**HB 317**

*“An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date.”*

House Bill 317 protects the private property rights of innocent citizens by requiring that Alaska’s revered and dedicated law enforcement agencies, convict individuals of a crime before permanently seizing private property.

Alaska’s “civil asset forfeiture” laws have been reported to be among the worst in the country, allowing private property to be permanently taken from individuals suspected of crimes, even if they are never charged, much less found guilty.

Across the nation, civil asset forfeiture laws have gained notoriety in recent years for rampant abuse and deliberate circumvention of due process. Well-documented cases of policing for profit have sparked a wave of reform nationwide.

In Alaska, local law enforcement only need to show probable cause to seize property. Failure to challenge a seizure within a given timeframe results in an automatic and permanent forfeiture. These problems are compounded by an incentive for law enforcement to seize as much as possible, since 75-100% of the revenues generated from civil forfeitures flow back to the local agency. Moreover, there is no requirement that Alaska authorities collect or report data on their forfeitures.

While assets may be reclaimed, civil asset forfeitures places the burden on individuals to fight the bureaucracy to prove that their assets were not gotten through ill means, or that they did not consent to using their property for an illegal purpose. Civil cases do not provide for free legal assistance, so for individuals that cannot afford private representation, the process is intimidating at best, and ill-fated at worst.

HB 317 would require that an individual be convicted of an actual crime before forfeiture proceedings can take place, and would protect guiltless spouses and family members from property loss as a result of the process. The bill would also impose transparency and accountability for civil asset seizures and reduce financial incentives for abuse, by

**Alaska State Legislature  
House of Representatives  
Representative Tammie Wilson**

*Interim*  
301 Santa Claus Lane 3B  
North Pole, Alaska 99705  
Phone - (907) 451-2723

*Session*  
State Capitol Rm 412  
Juneau, AK 99801  
Phone - (907) 465-4797



Rep.Tammie.Wilson@akleg.gov

providing that any revenues that do flow back to the state as a result of federalized proceedings, are deposited in the General Fund.

This bill reaffirms our confidence in local law enforcement, as well as the most basic tenets of Constitutional law and values. Convicted criminals will still see the fruits of their crime confiscated by the state, but innocent Alaskans can rest easy knowing they will no longer be deprived of property without due process.

**Alaska State Legislature  
House of Representatives  
Representative Tammie Wilson**

*Interim*  
1292 Sadler Way Ste. 304  
Fairbanks, Alaska 99701  
Phone - (907) 451-2723  
Fax - (907) 452-3430



Rep.Tammie.Wilson@akleg.gov

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Juneau, AK 99801  
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**CSHB 317  
EXPLANATION OF CHANGES**

**Section 09.55 was amended to add a new subsection to abolish in rem forfeiture actions and provide for an effective date.**

**All other sections have been deleted.**



March 2, 2016

The Honorable Tammie Wilson  
Alaska State House of Representatives  
State Capitol Rm 412  
120 4th Street  
Juneau, AK 99801-1185

Dear Representative Wilson:

On behalf of the Alaska Peace Officers Association (APOA), I am writing with concerns regarding HB 317, "An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

The APOA legislative committee recently reviewed this proposed legislation and is opposed to HB 317. This bill would severely hamper the state's ability to manage civil asset forfeiture when appropriate, such as when prosecution is waived for an informant who has property which constitutes proceeds from criminal activity or is deceased. This would allow the person or their estate to retain potentially significant amounts of property that were used in or are proceeds from criminal activity. Under current law, seized property can be returned through processes already in place. Requiring that an individual be convicted of an actual crime before forfeiture proceedings can take place may allow criminals to dispose of valuable evidence before a conviction can be made.

Please contact the APOA office in Anchorage at 277-0515, if you would like to discuss HB 317 in greater detail. We appreciate the work you do for our state.

Sincerely, \_

President  
Alaska Peace Officers Association

PO Box 240106  
Anchorage, AK 99524-0106  
[apoa@gci.net](mailto:apoa@gci.net)

## Response to Alaska Peace Officer Association Concerns:

This bill would severely hamper the state's ability to manage civil asset forfeiture when appropriate, such as when prosecution is waived for an informant who has property which constitutes proceeds from criminal activity or is deceased. This would allow the person or their estate to retain potentially significant amounts of property that were used in or are proceeds from criminal activity.

- *This is a very narrow case. If the committee believes it is appropriate to carve informants out as an exception, we would be comfortable with that.*

Under current law, seized property can be returned through processes already in place.

- *We recognize that seized property can be returned to its owner if law enforcement so chooses. However, we believe that this should be required if no charges are ever brought.*

Requiring that an individual be convicted of an actual crime before forfeiture savings can take place may allow criminals to dispose of valuable evidence before a conviction can be made.

- *This is not accurate. The bill has a few provisions that would protect against that happening. The bill allows law enforcement to seize assets without a court order if the officer "has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property . . .". Further, Section 12.36.350 of this bill allow law enforcement to seize and retain property that is reasonably required to be held for investigatory reasons. If the property is needed as evidence, the court would allow law enforcement to retain the property until the conclusion of the criminal case.*

Submitted by Sponsor



# AMERICANS for TAX REFORM

Honorable Gabrielle LeDoux  
State Capitol Building  
Juneau, Alaska 99801-1182

March 21, 2015

Dear Representative LeDoux,

**On behalf of Americans for Tax Reform and taxpayers everywhere, I am writing to you to express my strong support of House Bill 317.** This bill would reform Alaska's civil asset forfeiture laws to add additional protections for law-abiding citizens.

**Currently, the police can take an Alaskan's cash, car, or firearm based solely on a suspicion of a crime. In some cases, the agency performing the forfeiture can keep 100 percent of the proceeds.** In America, the Fourth and Fifth Amendments are supposed to protect our due process and property rights, this status quo is unacceptable.

Alaska has a long tradition of responsible stewardship over the rights of its residents, it is time to end a regime that divides communities from their policemen and women.

HB 317 would provide crucial constitutional protections by requiring that a defendant be convicted of the underlying crime before cash or property can be permanently seized. This provides the necessary due process to ensure fairness while maintaining asset forfeiture as a tool for law enforcement. Standards of proof would also be raised to reflect the criminal nature of forfeitures.

Transparency requirements would also be bolstered in addition to removals of profit incentives to ensure legislative oversight over the state's police budgets. Police departments should not self-fund outside of the legislature: its common sense.

Across the United States, asset forfeitures have ballooned year after year. In 2014 alone, \$5 billion were seized by law enforcement, and because of the nature of asset forfeiture much of that came as a result of seizures without convictions. Voters and legislators across the states have come to realize the problem and are taking steps towards reform.

Wyoming, Michigan, Maryland, New Mexico, and Florida are just some of the many states that have taken asset forfeiture seriously. Alaska should join the growing club of states that put their citizens' rights first.

I implore your colleagues to extend their personal support for this important legislation. For more information, please contact Jorge Marin in my office at [jmarin@atr.org](mailto:jmarin@atr.org).

Regards,

Grover G. Norquist  
President  
Americans for Tax Reform

722 12<sup>th</sup> Street N.W.

Fourth Floor

Washington, D.C.

20005

T:(202)785-0266

F:(202)785-0261

[www.atr.org](http://www.atr.org)

# ALASKA

## PROFESSIONAL HUNTERS ASSOCIATION, INC.

P.O. Box 240971 ~ Anchorage, AK 99524

Phone: (907) 929-0619 ~ (907)-868-1562

Email: [office@alaskaprohunter.org](mailto:office@alaskaprohunter.org) ~ [www.alaskaprohunter.org](http://www.alaskaprohunter.org)

March 28<sup>th</sup>, 2016

House Judiciary Committee  
Chairman Representative Gabrielle LaDoux  
Vice Chairman Wes Keller  
Representative Neal Foster  
Representative Bob Lynn  
Representative Charisse Millett  
Representative Matt Claman

House Judiciary Committee,

The Alaska Professional Hunters Association is contacting you today in Support of House Bill 317, Civil Asset Forfeiture Reform Bill, sponsored by Representative Tammie Wilson and Co-sponsored by Representative Kreiss – Tomkins.

We are aware of several situations where assets have been seized, often right before the start of hunting season, for several months and even years prior to any charges being issued. Often those assets are used to try to broker plea agreements. Private property has been permanently taken from individuals suspected of crimes, even if they are never charged or found guilty. In several other cases, pleas are made because to pursue acquittal is cost prohibitive.

We feel that a uniform standard is needed and that a person should be first convicted before forfeiture proceedings should take place, also that guiltless spouses and family members should be protected from resulting property loss. We support working towards transparency and accountability. We agree that any revenues generated from forfeiture, should be deposited to the general fund to reduce financial incentives for abuse.

Thank you for your consideration.

Sincerely,

Wayne Kubat  
Vice President, Alaska Professional Hunters Association

*Dedicated to the conservation of our wildlife resources.*

March 22, 2016

The Honorable Gabrielle LeDoux  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 317 Civil Asset Forfeiture Reform

Dear Representative LeDoux:

I understand that House Bill 317 will soon be in front of the House Judiciary Committee. I wish to convey my support for this bill and for reforming civil asset forfeiture policy in the state. In my opinion this bill is absolutely necessary to protect fundamental property rights of Alaska residents and restore their faith in the justice system.

Civil asset forfeiture is a little known tool that allows the government to permanently seize cash, cars, real estate, or other property suspected of being connected to criminal activity, even if no criminal charge is ever filed. This practice does more than violate our basic precepts of American justice and civil liberties, the potential for misuse of such power is obvious.

HB 317 would reestablish a basic tenet of Constitutional law and values: that a defendant be convicted of a crime before cash or property can be permanently seized. HB 317 would also increase transparency, raise standards of proof, and remove financial incentives for law enforcement abuse. All necessary for an honest and limited government.

Nationally, law enforcement agencies have increasingly turned to asset seizures to compensate for budgetary shortfalls, at the expense of other criminal justice goals. From 2001 to 2014, federal agencies increased their forfeiture deposits by 485 percent, with over \$5 billion seized in 2014 alone. Law enforcement and all professionals who put themselves in harm's way to protect the public must receive appropriate levels of funding through the appropriate channels. However, seizing assets taken from potentially innocent citizens who are never charged with a crime, is no way to fund public safety and erodes the public trust in our justice system.

I urge you to pass HB 317 out of committee, to vote for its passage into law and to continue your work as a protector of the rights of Alaskans.

Thank you for your time,

Thomas Brown  
Communications Manager  
The Salvation Army, Alaska Division  
907-306-2348  
[Thomas.brown@usw.salvationarmy.org](mailto:Thomas.brown@usw.salvationarmy.org)

March 28, 2016

**USPS & Electronic Mail**

Representative Gabrielle LeDoux, *Chair*, House Judiciary Committee

State Capitol, Room 118

Juneau, AK 99801-1182

Email: [Representative.Gabrielle.LeDoux@akleg.gov](mailto:Representative.Gabrielle.LeDoux@akleg.gov)

CC: [Representative.Tammie.Wilson@akleg.gov](mailto:Representative.Tammie.Wilson@akleg.gov)

**Re: HB 317 & Civil Asset Forfeiture:**

Dear Honorable Representative LeDoux:

Thank you for your continued efforts to fight for the rights and justice for our fellow Alaskans. I am writing this correspondence in support of HB 317 and urge the legislature to pass and implement this important piece of legislation.

As you are aware, civil asset forfeiture incentivizes the government to permanently seize cash, vehicles, real estate, family heirlooms, and other property that is suspected, but not yet found guilty of, being connected to criminal activity. This permanent seizure can occur prior to any criminal charges being filed – it is important to note that civil asset forfeiture is an entirely different process than criminal forfeitures. In criminal forfeitures, an individual is found to be guilty and then, and only then, does that person have assets seized as part of the criminal sentencing. Clearly, we can understand the logic with regards to criminal forfeiture processes, but in the case of civil asset forfeitures, there is an incredible disconnect between logic, due process, and the foundational basis of our judicial system – one is not guilty until proven in a court of law. The practice of civil forfeiture is contrary to our Alaskan values and violates the very structure of our National judicial system.

HB 317, in its current form, would protect Alaskans' fundamental property rights as the bill seeks to implement uniform standards for asset forfeitures in Alaska: (1) it would require an individual be convicted of a crime prior to forfeiture; (2) it would protect innocent spouses and family members from losing property they may rely on for shelter and financial support; and (3) it would stop incentivizing the violation of our fundamentally protected due process rights.

Currently, in Alaska, a law enforcement officer only needs to show probable cause in order to seize property – failure to challenge a seizure within a certain timeframe results in an automatic and permanent forfeiture. HB317 would increase the burden of proof required for law enforcement to forfeit assets, and require that assets be returned to their owners if a forfeiture complaint is not filed within 30 days of the seizure. In civil proceedings there is no presumption of innocence and no right to an attorney. Few property owners, especially low-income

individuals, can meet the burdens of civil forfeiture proceedings and often do not challenge seizures of their property because they do not know how or cannot afford to hire an attorney to help them challenge the seizure (often because the seizure of property leaves them illiquid with no funds to defend themselves). HB317 authorizes legal representation in forfeiture proceedings for indigent defendants who have court-appointed counsel in a related criminal matter.

Additionally, many voters are not aware that through the Department of Justice's (DOJ) "equitable sharing" program, state law enforcement can bypass more restrictive state laws and turn over seized assets to the federal government, or they may seize them jointly with federal officers. The property is then subject to federal civil forfeiture law—not state law. Thus, the equitable sharing loophole provides a way for state and local law enforcement to profit from forfeitures that they may not be able to under state law. This type of collusion to deprive Alaskans of their property without due process is unacceptable. Unfortunately, this practice is growing, from 2001 and 2014, federal agencies increased their forfeiture deposits by 485 percent, with over \$5 billion seized in 2014 alone.

HB 317 would institute transparency and accountability in forfeiture proceedings in Alaska and the reform is past due. Again, thank you for continued leadership and passion to fight for Alaskan's rights and quality of life. We urge you and your fellow legislatures to pass this vital piece of legislation.

Sincerely,  
*Jana Weltzin*  
Jana Weltzin, Esq.  
For the Firm  
Principal Owner

Alaska earned among the worst grades in the nation for its civil forfeiture laws. These old laws were made for big time drug dealers back in the day and are now VERY abused by law enforcement .

Mike Jimerson

1638 Murburger dr

Fairbanks Ak 99712 Phone 907-7996143

### **Alaska's Law & Practices**

Alaska earned among the worst grades in the nation for its civil forfeiture laws according to IJ's rankings. Not only does the government merely need to show probable cause to forfeit property, but an innocent owner bears the burden of trying to reclaim his property and prove his innocence. Once a property owner is given notice that his property has been seized, he has 30 days to respond. If he fails to claim the property within that time frame, it is automatically forfeited. These problems are compounded by the fact that law enforcement in Alaska keeps 100 percent of the revenues generated by civil forfeitures, creating a perverse incentive to seize as much property as possible. Moreover, there is no legal requirement that Alaska authorities collect or report data on their forfeitures.

For analysis of Alaska's ranking, visit: <http://ij.org/press-release/alaska-earns-acanadacana-in-acanapolicing-for-profitacana-report/>

To end policing for profit, the Institute for Justice recommends that, first, law enforcement should be required to convict people before taking their property. Law enforcement agencies could still prosecute criminals and forfeit their ill-gotten possessions—but the rights of innocent property owners would be protected. Second, police and prosecutors shouldn't be paid on commission. To end the perverse profit incentive, forfeiture revenue must be placed in a neutral fund, like a state's general fund. It should also be tracked and reported so law enforcement is held publicly accountable. Finally, equitable sharing must be abolished to ensure that when states act to limit forfeiture abuse, law enforcement cannot evade the new rules and continue pocketing forfeiture money.

# NFIB

The Voice of Small Business.®

ALASKA

March 8, 2016

The Honorable Tammie Wilson  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 317 Forfeiture of Property to the State

Dear Representative Wilson:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House Bill 317. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

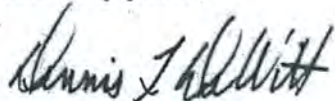
Our current legal process allows the state to seize property based on the basis of probable cause without a person even being charged or convicted of a crime. We believe that Alaskans are entitled better due process than is provided in current law.

Once property is seized, the business owner must appeal within a specified time frame at that person's cost in both time and dollars. The problem for the individual is compounded by the fact that law enforcement generates revenue for itself by disposing of the seized property.

We believe that HB 317 contains provisions that will allow law enforcement the ability to pursue criminal activity while it provides safeguards for individuals and a process for recovering seized property that should not have been seized.

We appreciate your addressing this critical issue to protect innocent Alaskans from unfair seizure of their property.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Judiciary Committee



March 22, 2016

## Comments on HB 317 Civil Asset Forfeiture Reform

To: Rep. Gabrielle LeDoux  
Cc: Rep. Tammie Wilson  
Re: HB 317

Dear Representative LeDoux and members of House Judiciary Committee,

*Resident Hunters of Alaska (RHAK)* **supports** HB 317 to reform our civil asset forfeiture laws.

We are aware of many cases in the hunting realm where hunters have been accused of hunting violations and had assets such as aircraft, weapons, atvs etc. seized by Troopers prior to the case making its way through the court system. In cases where the individual was found innocent, but had assets seized, it often costs thousands of dollars to recover those seized assets. Not to mention the loss of use of those assets while the case goes through the court system.

We understand and respect the need of our law enforcement agencies, in particular Alaska Wildlife Troopers (AWT), to receive adequate funding in order to enforce our laws. However, there has always been a conflict in using seized assets to fund law enforcement agencies in that such a system can clearly be abused and harm innocent individuals. There also needs to be a better process in place so that "probable cause" alone does not result in the seizure of assets, and a process whereby individuals not convicted of a crime, who have had assets seized, can reclaim their property without undue expense and time.

Thank you for your consideration of this bill.

Sincerely,  
Mark Richards  
Executive Director - Resident Hunters of Alaska  
info@residenthuntersofalaska.org



# U.S. JUSTICE ACTION NETWORK

March 17, 2016

The Honorable Tammie Wilson  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 317 Civil Asset Forfeiture Reform

Dear Representative Wilson:

Few issues before state legislatures today can boast near-unanimous levels of support from the left and the right. Smart reforms to civil asset forfeiture practices are one of those rare points of convergence. Our coalition supporting these reforms, the U.S. Justice Action Network, underscores this very point. We are the largest bipartisan coalition working at the state and federal level to reform civil asset forfeiture practices, and our eight partner organizations, which span the ideological spectrum from the left to the right (and rarely agree on anything), all agree on civil asset forfeiture reform. They include: the ACLU, Americans for Tax Reform, Center for American Progress, the Faith and Freedom Coalition, FreedomWorks, the Leadership Conference on Civil and Human Rights, Right on Crime, and the NAACP.

All of these organizations mark civil asset forfeiture reform as one of their top priorities for reasons ranging from protection of property rights and concern over government overreach, to the disproportionate impact this practice has on socioeconomically disadvantaged neighborhoods and communities of color. For these reasons and so many others, I write today to support House Bill 317, which reforms Alaska's civil asset forfeiture policy and protect fundamental property rights of Alaska residents.

We acknowledge that, in certain circumstances, asset forfeiture *can* be a valuable tool for law enforcement to disarm bad actors in our society. But rapid expansion of this practice without proper procedural protections has left innocent property owners at risk, and scattered law enforcement attention and resources away from criminals.

Right now, current civil asset forfeiture practices allow the government to permanently forfeit cash, cars, real estate, or other property suspected of being connected to criminal activity, even if no criminal charge is ever filed. This practice violates the very foundation of our justice system and raises deep constitutional and due process concerns.

House Bill 317 is a strong step forward in addressing these issues. It would retain asset forfeiture as one of the many tools law enforcement has to address criminal bad actors, while protecting innocent property owners by simply requiring a criminal conviction associated with the property before the forfeiture is final. This legislation would also in-



## U.S. JUSTICE ACTION NETWORK

crease transparency, raise standards of proof, and realign the financial components of forfeiture proceedings.

Alaska must take this step of reforming civil asset forfeiture procedures now. Many states across the country are working on similar efforts or have implemented these reforms, including New Mexico, Montana, Nevada, and others. By reinvigorating constitutional ideals in Alaska's statutes, you can restore public trust in these practices and become a national leader on a critical public safety issue.

When the left and the right agree, it is time to act. Please support and continue working toward the passage of House Bill 317 this legislative session.

Sincerely,

A handwritten signature in black ink that reads "Holly Harris". The signature is written in a cursive, flowing style with a large initial 'H'.

Holly Harris  
Executive Director, U.S. Justice Action Network



INSTITUTE FOR JUSTICE

March 21, 2016

**By Email to: Representative.Gabrielle.LeDoux@akleg.gov & U.S. Mail**

The Honorable Gabrielle LeDoux  
State Representative  
State Capitol Room 118  
Juneau AK 99801-1185

Re: HB 317  
Position: Support

Dear Representative LeDoux:

I am writing on behalf of the Institute for Justice to express our support for HB 317, reforming asset forfeiture law in Alaska. As law-enforcement agencies at all levels of government have increasingly relied on civil forfeiture, it is imperative that elected officials give close scrutiny to its use and the effect it has on American property owners, most of whom are never charged with any wrongdoing.

HB317 does several things we believe are essential for forfeiture reform. Most notably, the bill improves the process due every Alaskan by requiring an individual be convicted of a crime before assets can be permanently taken. It also removes financial incentives that harm police and prosecutors' reputations and may distort their priorities. Finally, it imposes reporting and transparency measures so that state legislators can accurately evaluate how these policies are working.

The Institute for Justice is a nonprofit, public-interest law firm dedicated to protecting Americans' rights to private property, economic liberty, free speech, and educational freedom. As a national law firm, IJ engages in cutting-edge litigation and advocacy in the court of law and state and federal legislatures as well as in the court of public opinion.

To further its mission to protect property rights, IJ has launched a nationwide initiative to reform forfeiture laws through strategic litigation, advocacy, and original research. On the litigation front, IJ represents individuals whose property has been threatened with civil forfeiture in both state and federal courts across the country.<sup>1</sup> IJ has also filed friend-of-the-court briefs on issues related to forfeiture.<sup>2</sup>

On the advocacy side, IJ has been involved in legislative efforts to reform civil-forfeiture laws across the nation.<sup>3</sup> In part, due to IJ's efforts, Minnesota,<sup>4</sup> New Mexico,<sup>5</sup> and Washington, D.C.<sup>6</sup> have passed comprehensive forfeiture reform, while Georgia,<sup>7</sup> Michigan,<sup>8</sup> Montana,<sup>9</sup> and Utah<sup>10</sup> have enacted reporting requirements aimed at increasing transparency on the use of forfeiture. IJ is also actively involved in ongoing forfeiture reform efforts in Florida, Maryland, Minnesota, and Texas. And IJ has been consulting with state legislators and advocates on forfeiture reform in Arizona, Arkansas, California, Colorado, Iowa, Nebraska, Nevada, Oklahoma, Pennsylvania, Tennessee, and Virginia.

IJ has also produced original research documenting the problem of civil forfeiture. IJ published the first comprehensive nationwide study, titled *Policing for Profit*, which evaluates each jurisdiction's civil-forfeiture laws.<sup>11</sup>

In it, Alaska earned a grade of D+ for its civil-forfeiture laws. IJ also studied how a particular federal forfeiture program—the Equitable Sharing Program—that encourages local police and prosecutors to evade state civil-forfeiture laws to pad their budgets.<sup>12</sup>

IJ also commissioned a study using experimental economics to test the incentives of civil forfeiture.<sup>13</sup> The results demonstrated that the financial incentives of civil forfeiture create a strong temptation for law enforcement agencies to seize property to pad their own budgets.<sup>14</sup>

As these studies confirm, state and federal forfeiture programs must be reformed to end the distorted incentives for law enforcement and strengthen protections for property owners.

#### **I. CIVIL FORFEITURE IS PREMISED ON AN ARCHAIC LEGAL FICTION.**

Civil forfeiture is the power of law enforcement to seize and keep property suspected of being involved in criminal activity. With civil forfeiture—unlike criminal forfeiture—law enforcement can take and keep cash, vehicles, homes, or other property without so much as charging the owners with a crime, let alone convicting them of one. Because these are civil proceedings, most of the constitutional protections afforded to criminal defendants do not apply to property owners in civil-forfeiture cases.

Civil forfeiture is based on the legal fiction that the property itself is “guilty” of a crime. Under this fiction, the proceeding is brought *in rem* (“against a thing”), or against the property itself, not *in personam*, or against the owner, as in criminal proceedings. This is why civil-forfeiture cases have unusual names like:

- *United States v. 434 Main Street, Tewksbury, Massachusetts*;
- *State of Texas v. One 2004 Chevrolet Silverado*; and
- *Commonwealth of Pennsylvania v. \$520 in U.S. Currency*.

Of course, inanimate objects such as property, cars, and cash do not act or think, and therefore cannot possess the required criminal intent to be guilty. The doctrine of *in rem* forfeiture originally arose from the medieval law of deodand under which chattel that caused death was forfeit to the King.<sup>15</sup> Deodand was premised on the superstitious belief that objects acted independently to cause death.<sup>16</sup>

In the United States, civil forfeiture traces its roots to the British Navigation Acts of the mid-17th century during England’s vast expansion as a maritime power.<sup>17</sup> The Acts required imports and exports from England to be carried on British ships. If those Acts were violated, the ships and the cargo on board could be seized and forfeited to the Crown regardless of the guilt or innocence of the owner. Using these British statutes as a model, the first United States Congress passed forfeiture statutes to aid in the collection of customs duties, which provided 80 to 90 percent of the finances for the federal government during that time.<sup>18</sup> Civil forfeiture was introduced in American law through these early customs statutes.

#### **II. MODERN CIVIL FORFEITURE LAWS HAVE BECOME UNMOORED FROM THEIR ORIGINAL JUSTIFICATION ENVISIONED BY THE FOUNDING GENERATION, LEADING TO AN EXPLOSION OF FEDERAL FORFEITURE ACTIVITY.**

Forfeiture at the time of our nation’s founding was limited in justification and scope, in stark contrast to today’s civil-forfeiture programs. For example, early laws authorizing forfeiture were based on the unquestioned ability of the government to seize contraband, in which no property rights existed.

Contraband included not only *per se* illegal goods and stolen goods, but also goods that were concealed to avoid paying required customs duties.<sup>19</sup>

Forfeiture was justified only by the practical necessities of enforcing admiralty, piracy, and customs laws. As an *in rem* proceeding, civil forfeiture allowed courts to obtain jurisdiction over property when it was virtually impossible to seek justice against property owners guilty of admiralty or piracy violations because they were overseas or otherwise outside the court's jurisdiction.<sup>20</sup> With civil forfeiture, the government could ensure that customs and other laws were enforced even if the owner of the ship or the cargo was outside the court's jurisdiction.

Throughout most of the 20th century, civil forfeiture remained a relative backwater in American law, with one exception. During the Prohibition Era, the federal government expanded the scope of its forfeiture authority beyond contraband to cover automobiles or other vehicles transporting illegal liquor.<sup>21</sup> However, the forfeiture provision of the National Prohibition Act was considered "incidental" to the primary purpose of destroying the contraband itself—"the forbidden liquor in transportation."<sup>22</sup>

Even then, the Supreme Court observed that these "forfeiture acts are exceedingly drastic."<sup>23</sup> Consequently, the Court cautioned that "forfeitures are not favored; they should be enforced only when within both the letter and spirit of the law."<sup>24</sup> As "drastic" as forfeiture laws may have appeared during Prohibition, they are quite limited in comparison to the forfeiture laws today, which trace their origins to the "War on Drugs."<sup>25</sup>

Today's state and federal forfeiture laws are much broader in scope, covering not only illegal drugs, contraband, and any conveyance used to transport them, but all manner of real and personal property involved in the alleged criminal activity.

Additionally, in contrast to most of American history, during which the proceeds from civil forfeitures went to a general fund to benefit the public at large, current federal forfeiture laws allow law-enforcement agencies responsible for seizing the property to keep proceeds from forfeiture. In 1984, Congress amended parts of the Comprehensive Drug Abuse and Prevention Act of 1970 to allow federal law-enforcement agencies to retain forfeiture proceeds in a newly created Assets Forfeiture Fund.<sup>26</sup> Initially, any forfeiture proceeds exceeding \$5 million that remained in the Assets Forfeiture Fund at the end of the fiscal year were to be deposited in the Treasury's General Fund.<sup>27</sup>

Moreover, the government's use of proceeds in the Assets Forfeiture Fund was restricted to a relatively limited number of purposes, such as paying for forfeiture expenses like storing the property or giving awards for information that led to forfeitures.<sup>28</sup> However, subsequent amendments eliminated both the \$5-million cap and dramatically broadened the scope of expenses the government could pay for with the Assets Forfeiture Fund, including purchasing vehicles and paying overtime salaries.<sup>29</sup> In short, after the 1984 amendments, federal agencies were able to retain and spend forfeiture proceeds—subject only to very loose restrictions—giving them a direct financial stake in generating revenue from forfeiture.<sup>30</sup>

By allowing law-enforcement officials to retain forfeiture proceeds, state and federal forfeiture laws create a perverse financial incentive to maximize the seizure of forfeitable property. Consequently, unlike its early relatives in the Prohibition Era when forfeiture was merely incidental, with today's forfeiture laws, forfeiture of property is often the primary purpose of the seizure. As the former chief of the federal government's Asset Forfeiture and Money Laundering Offices observed, "We had a situation in which the desire to deposit money into the asset forfeiture fund became the reason for being of forfeiture, eclipsing in certain measure the desire to effect fair enforcement of the laws."<sup>31</sup>

Indeed, according to a July 2012 report by the United States Government Accountability Office, one of the three primary goals of the Asset Forfeiture Fund is "to produce revenues in support of future law enforcement investigations and related forfeiture activities."<sup>32</sup>

**III. ALASKA EARNS A GRADE OF D+ FOR ITS FORFEITURE LAWS AND EQUITABLE-SHARING PRACTICES.**

Under the metrics used by IJ's Policing for Profit study, Alaska earns a grade of D for its forfeiture laws and the extent to which it circumvents stricter state laws and profits by referring forfeitures to the federal government under the equitable-sharing program.

Alaska's civil forfeiture laws leave much to be desired. As in all other states, state and local governments only need probable cause to seize property. Once the property is seized, owners then must enter into court and show by a preponderance of the evidence that their property is not related to criminal activity in order to get it back. This means that the property owner must carry the burden and prove a negative—that the property was not involved in or derived from an alleged crime

Further, an individual making an innocent owner claim, such as a spouse, parent or neighbor, bears the burden of proving that she did not know about or consent to the alleged criminal activity giving rise to the property's seizure. Here again, the burden is on the citizen to make the case as to why she should be get back her property.

Moreover, the Department of Public Safety is required to keep an inventory of items seized, but other state and local law enforcement agencies are not required to track or report their forfeitures, severely limiting transparency and accountability.

Worst of all, in most cases, law enforcement retains up to 75 percent of forfeiture revenues. Where forfeited property is something other than cash and worth \$5,000 or less, law enforcement keeps 100 percent of the sale proceeds.

While all of this money may sound like a great thing, law enforcement's retention of forfeiture proceeds violates two key constitutional principles: separation of powers and the impartiality requirement of due process. First, funding agencies outside the legislative process violate the separation of powers. Under both the U.S. and Alaska Constitutions, state legislators are responsible for raising and appropriating all funds. With forfeiture funds, police departments and prosecutors' offices—members of the executive branch—become self-financing agencies, unaccountable to members of the Alaska legislature, or the public at large, and state legislators are abdicating their responsibilities over all fiscal matters.

Second, giving law enforcement a direct financial stake in the seizures violates the basic due-process requirement of impartiality. Impartiality in the administration of justice is a bedrock principle of the American legal system, enshrined in the Due Process Clause of the Constitution. By allowing state and local law enforcement to directly benefit from forfeiture proceeds, so-called adoptive seizures and equitable-sharing arrangements dangerously shift law-enforcement priorities from fairly and impartially administering justice to generating revenue.

In light of the deficiencies in Alaska's current forfeiture law described above, HB 317 offers important changes to state policy including:

- Requiring a conviction in criminal court for all crimes as a prerequisite to forfeiture in civil court;
- Ending civil forfeiture and replacing it with criminal forfeiture;
- Neutralizing the financial incentive for transferring seizures to the federal government under programs such as equitable sharing; and
- Ensuring transparency and accountability by improving reporting of seizures and forfeitures.

HB 317 is not unique or unprecedented. Similar legislation is being considered this legislative session in more than 25 states. In fact, New Mexico enacted in 2015 similar reforms that ended civil forfeiture and replaced it with criminal forfeiture. Under the bill signed by Governor Susanna Martinez, all forfeiture proceeds—both from state as well as federal forfeitures—will be deposited in the state's general fund.

In conclusion, HB 317 is a much-needed and proportionate measure that allows civil forfeiture to continue but enacts reforms to better ensure that Alaskans and their property are prosecuted and litigated under the laws you have enacted.

#### CONCLUSION

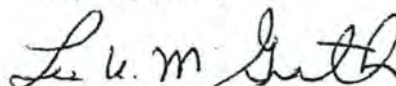
It is beyond dispute that state and federal forfeiture laws have been systematically abused and require comprehensive reform now. Investigative reporters have highlighted this forfeiture abuse in major outlets like the *New Yorker*, the *New York Times*, and the *Washington Post*. In the last ten months, more than 45 different editorial boards have criticized the heavy hand of civil forfeiture. Civil-liberties groups on both sides of the political spectrum have uniformly criticized federal forfeiture programs.

But the call for reform is not merely coming from outsiders. The Defense Bar and members of the judiciary have also joined the clarion call. Even former Justice Department officials, involved in creating the current federal forfeiture regime have called for civil forfeiture to be abolished, opining that forfeiture "has turned into an evil itself, with the corruption it engendered among government and law enforcement coming to clearly outweigh any benefits."<sup>33</sup> The U.S. Justice Department itself has conceded as much by changing its policy and commencing an "internal, top-to-bottom review of its entire asset forfeiture program."<sup>34</sup>

In a similar way, the reforms in HB 317 will go a long way toward restoring our public trust in law enforcement, and the belief—so vital to our republic—that we are a nation ruled by laws and not by men.

Thank you.

Very truly yours,



Lee U. McGrath  
Managing Attorney

<sup>1</sup> See, e.g., *United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars & Fifty-Six Cents*, No. C13-4102-LTS, 2015 WL 134046 (N.D. Iowa Jan. 9, 2015), additional information available at <http://ij.org/iowa-forfeiture>; *Sourovellis v. City of Philadelphia*, No. 2:14-cv-04687 (E.D. Pa. Aug. 11, 2014), additional information available at <http://ij.org/philadelphia-forfeiture>; *In the Matter of the Seizure of \$446,651.11*, No. 2:14-mc-1288 (E.D.N.Y. dismissed Jan. 20, 2015), additional information available at <http://ij.org/long-island-forfeiture>; *Dehko v. Holder*, No. 13-14085, 2014 WL 2605433 (E.D. Mich. June 11, 2014), additional information available at <http://ij.org/mifor>; *United States v. 434 Main St., Tewksbury, Mass.*, 961 F. Supp. 2d 298 (D. Mass. 2013), additional information available at <http://ij.org/massachusetts-civil-forfeiture>; *United States v. 2601 W. Ball Rd.*, No. SACV 12-1345-AG (MLGx) (C.D. Cal. dismissed Oct. 10, 2013); *El-Ali v. State*, 428 S.W.3d 824 (Tex. 2014), additional information available at <http://ij.org/state-of-texas-v-one-2004-chevrolet-silverado>; *State ex rel. Cnty. of Cumberland v. One 1990 Ford Thunderbird*, 371 N.J. Super. 228 (App. Div. 2004), additional information available at <http://ij.org/state-of-new-jersey-v-one-1990-ford-thunderbird>.

<sup>2</sup> See, e.g., *Henderson v. United States*, 2014 U.S. App. LEXIS 1680 (11th Cir. 2014), cert. granted, 83 U.S.L.W. 3234 (U.S. Oct. 20, 2014) (No. 13-1487); *Kaley v. United States*, 134 S. Ct. 1090 (2014), additional information available at [http://ij.org/images/pdf\\_folder/amicus\\_briefs/kaley-amicus-brief\\_final.pdf](http://ij.org/images/pdf_folder/amicus_briefs/kaley-amicus-brief_final.pdf); *Florida v. Harris*, 133 S. Ct. 1050 (2013), additional information available at [http://www.ij.org/images/pdf\\_folder/amicus\\_briefs/fl-v-harris-amicus.pdf](http://www.ij.org/images/pdf_folder/amicus_briefs/fl-v-harris-amicus.pdf); *Alvarez v. Smith*, 558 U.S. 87 (2009), additional information available at <http://ij.org/alvarez-v-smith-amicus>; *Garcia-Mendoza v. 2003 Chevy Tahoe*, VIN No. 1GNEC13V23R143453, Plate No. 235JBM, 852 N.W.2d 659 (Minn. 2014), additional information available at [http://ij.org/images/pdf\\_folder/amicus\\_briefs/danielgarciamendoza\\_2003chevytahoe\\_amicus.pdf](http://ij.org/images/pdf_folder/amicus_briefs/danielgarciamendoza_2003chevytahoe_amicus.pdf).

<sup>3</sup> See *Model Criminal Forfeiture Law* (Inst. for Justice 2013) & *Model Forfeiture Reporting Law* (Inst. for Justice 2013), available at <http://ij.org/cases/legislation>.

<sup>4</sup> 2014 Minn. Sess. Law Serv. Ch. 201 (S.F. 874) (West); see also Abby Simons, *Civil Forfeiture Reform Signed into Law*, STAR TRIB. (Minn.), May 6, 2014, available at <http://www.startribune.com/politics/statelocal/258156241.html>.

<sup>5</sup> Civil Asset Forfeiture Amendment Act of 2014, H.B. 560, 52nd Leg., Reg. Sess. (N.M. 2015).

<sup>6</sup> B20-48, 20th Council (D.C. 2014); See also Robert O'Harrow, Jr., *D.C. Council Votes to Overhaul Asset Forfeiture, Give Property Owners New Rights*, WASH. POST, Nov. 18, 2014, available at [http://www.washingtonpost.com/investigations/dc-council-votes-to-overhaul-asset-forfeiture-give-property-owners-new-rights/2014/11/18/d6945400-6f72-11e4-8808-afaa1e3a33ef\\_story.html](http://www.washingtonpost.com/investigations/dc-council-votes-to-overhaul-asset-forfeiture-give-property-owners-new-rights/2014/11/18/d6945400-6f72-11e4-8808-afaa1e3a33ef_story.html).

<sup>7</sup> Georgia Uniform Civil Forfeiture Procedure Act, H.B. 233, 153rd Gen. Assemb., Reg. Sess. (Ga. 2015).

<sup>8</sup> Michigan House Bill 4504 Gen. Assembly (MI. 2015)

<sup>9</sup> Montana HB 463 65th Legis. Sess. (MT. 2015)

<sup>10</sup> Asset Forfeiture Amendment, S.B. 52, 61<sup>st</sup> Legis., Gen. Sess. (Utah 2015).

<sup>11</sup> Marian R. Williams, Jefferson E. Holcomb, Tomislav V. Kovandzic & Scott G. Bullock, INSTITUTE FOR JUSTICE, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2010), available at [http://www.ij.org/images/pdf\\_folder/other\\_pubs/assetforfeituretoemail.pdf](http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf).

<sup>12</sup> Dick M. Carpenter, Larry Salzman & Lisa Knepper, INSTITUTE FOR JUSTICE, *Inequitable Justice: How Federal Equitable Sharing Encourages Local Police and Prosecutors to Evade State Civil Forfeiture Law for Financial Gain* (Oct. 2011), available at [http://www.ij.org/images/pdf\\_folder/private\\_property/forfeiture/inequitable\\_justice-mass-forfeiture.pdf](http://www.ij.org/images/pdf_folder/private_property/forfeiture/inequitable_justice-mass-forfeiture.pdf).

<sup>13</sup> Bart J. Wilson & Michael Preciado, *Bad Apples or Bad Laws: Testing the Incentives of Civil Forfeiture* (Institute for Justice, 2014), available at [http://ij.org/images/pdf\\_folder/private\\_property/bad-apples-bad-laws.pdf](http://ij.org/images/pdf_folder/private_property/bad-apples-bad-laws.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> Donald J. Boudreaux & A.C. Pritchard, *Civil Forfeiture and the War on Drugs: Lessons from Economics and History*, 33 SAN DIEGO L. REV. 79, 135 (1996).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; Michael Schechter, *Fear and Loathing and the Forfeiture Laws*, 75 CORNELL L. REV. 1150, 1151-1183 (1990); James R. Maxeiner, Note, *Bane of American Forfeiture Law: Banished at Last?*, 62 CORNELL L. REV. 768, 802 (1977).

<sup>18</sup> See *id.* at 782 n.86 (noting that customs provided much of the revenue for the federal government).

<sup>19</sup> See Act of July 31, 1789, 1 Stat. 29, 43 (providing that all "goods, wares and merchandise, on which the duties shall not have been paid or secured, shall be forfeited").

<sup>20</sup> See, e.g., *United States v. The Brig Malek Adhel*, 43 U.S. (2. How.) 210, 233 (1844) (justifying forfeiture of innocent owner's vessel under piracy and admiralty laws because of "the necessity of the case, as the only adequate

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means of suppressing the offence or wrong") (emphasis added); *The Palmyra*, 25 U.S. (12 Wheat.) 1, 14 (1827) (revenue laws); *United States v. The Schooner Little Charles*, 1 Brock. 347, 354 (1819) (Marshall, C.J.) (embargo laws).

<sup>21</sup> Boudreaux & Pritchard, *supra* note 9, at 101.

<sup>22</sup> *Carroll v. United States*, 267 U.S. 132, 155 (1925).

<sup>23</sup> *United States v. One 1936 Model Ford V-8 De Luxe Coach, Commercial Credit Co.*, 307 U.S. 219, 236 (1939).

<sup>24</sup> *Id.* at 226.

<sup>25</sup> Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. Chi. L. Rev. 35, 42-45 (1998).

<sup>26</sup> Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837 (1984).

<sup>27</sup> *Id.* § 310, 98 Stat. at 2053 (previously codified at 28 U.S.C. § 524(c)(7)).

<sup>28</sup> *Id.* § 310, 98 Stat. at 2052 (previously codified at 28 U.S.C. § 524(c)(1)).

<sup>29</sup> 28 U.S.C. §§ 524(c)(1)(F)(i), (c)(1)(I).

<sup>30</sup> Although Congress enacted the Civil Asset Forfeiture Reform Act in 2000, none of those reforms changed how forfeiture proceeds are distributed or otherwise mitigated the direct pecuniary interest law-enforcement agencies have in civil forfeitures. See Pub. L. No. 106-185, 114 Stat. 202 (2000).

<sup>31</sup> Richard Miniter, *Ill-Gotten Gains*, REASON, Aug. 1993, at 32, 34 (quoting Michael F. Zeldin, former director of the Justice Department's Asset Forfeiture & Money Laundering Office), available at <http://reason.com/archives/1993/08/01/ill-gotten-gains>.

<sup>32</sup> U.S. Gov't Accountability Office, GAO-12-736, JUSTICE ASSETS FORFEITURE FUND: TRANSPARENCY OF BALANCES AND CONTROLS OVER EQUITABLE SHARING SHOULD BE IMPROVED 6 (2012), available at <http://www.gao.gov/assets/600/592349.pdf>.

<sup>33</sup> John Yoder and Brad Cates, *Op-Ed: Government Self-Interest Corrupted a Crime-Fighting Tool Into An Evil*, WASH. POST, Sept. 19, 2014, [http://www.washingtonpost.com/opinions/abolish-the-civil-asset-forfeiture-program-we-helped-create/2014/09/18/72f089ac-3d02-11e4-b0ea-8141703bbf6f\\_story.html](http://www.washingtonpost.com/opinions/abolish-the-civil-asset-forfeiture-program-we-helped-create/2014/09/18/72f089ac-3d02-11e4-b0ea-8141703bbf6f_story.html).

<sup>34</sup> Robert O'Harrow Jr., *Lawmakers Urge End to Program Sharing Forfeited Assets With State and Local Police*, WASH. POST, Jan. 9, 2015, [http://www.washingtonpost.com/investigations/lawmakers-urge-end-to-program-sharing-forfeited-assets-with-state-and-local-police/2015/01/09/8843a43c-982f-11e4-8005-1924ede3e54a\\_story.html](http://www.washingtonpost.com/investigations/lawmakers-urge-end-to-program-sharing-forfeited-assets-with-state-and-local-police/2015/01/09/8843a43c-982f-11e4-8005-1924ede3e54a_story.html).

# Alaska small businesses support civil asset forfeiture reform

**By Mike Miller**

The National Federation of Independent Business is the largest small-business advocacy group in Alaska. We have one clear mission — to promote and protect the right of Alaskans to own, operate and grow their businesses.

It's for this reason that we are supporting House Bill 317 this legislative session. HB 317, introduced by Rep. Tammie Wilson, R-North Pole, would provide Alaska small business owners protection from having property seized if they are not being charged with or convicted of a crime.

Our current legal process in Alaska allows the state to seize property based on the basis of probable cause without a person even being charged or convicted of a crime. This practice, known as civil asset forfeiture, violates the ideals we hold as a state. We believe that Alaskans are entitled better due process than is provided in current law and that reform is desperately needed.

Under civil asset forfeiture, once property is seized, the business owner must appeal within a specified time frame at that person's cost in both time and dollars. The problem for the individual is compounded by the fact that law enforcement generates revenue for itself by disposing of the seized property. We agree that law enforcement and all professionals who put themselves in harm's way to protect the public must receive and secure appropriate levels of funding through the appropriate channels. Arbitrary seizure of assets taken from potentially innocent citizens who are never charged with a crime, however, is no way to fund public safety.

As the state deals with a historic budget shortfall and the prospect of significant belt-tightening across state and local agencies and departments, leaving these laws on the books is a recipe for disaster.

This issue is also a federal priority for NFIB, and our members across the country are in strong support of this reform. From 2001-2014, federal agencies increased their forfeiture deposits by 485 percent, with more than \$5 billion seized in 2014 alone. Passing HB 317 will correct Alaska's broken civil forfeiture laws, and it will also send a message to the rest of the country that this practice is wrong and must come to an end.

Rep. Wilson's proposed legislation contains provisions that will allow law enforcement the ability to pursue criminal activity while providing safeguards for individuals and a process for recovering seized property that should not have been seized. We appreciate the Legislature addressing this critical issue to protect innocent Alaskans from unfair seizure of their property and urge the passage of HB 317 this legislative session.

*Mike Miller is the Northern Region Vice Chair of the National Federation of Independent Business Alaska. He lives in North Pole.*

# Law allowing pretrial freeze on assets untainted by crime violates Sixth Amendment, SCOTUS rules

POSTED MAR 30, 2016 09:51 AM CDT

BY [DEBRA CASSENS WEISS](#)

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A federal law that allows courts to order pretrial freezes on assets that are untainted by crime violates the Sixth Amendment rights of defendants who are unable to pay their lawyers, the U.S. Supreme Court has ruled in a 5-3 decision.

The court [ruled](#) (PDF) Wednesday on behalf of Sila Luis, who was charged with Medicare fraud. The government obtained a pretrial order freezing \$2 million in assets in hopes of preserving the money for restitution and penalties. The order was obtained under a law that allows pretrial freezes on assets that are tied to a crime, as well as assets "of equivalent value."

The "equivalent value" provision is unconstitutional to the extent it prevents the defendant from paying her lawyer, the Supreme Court found.

In a plurality opinion, Justice Stephen G. Breyer distinguished Luis' case from two 1989 Supreme Court decisions that allowed asset freezes, *United States v. Monsanto* and *Caplin & Drysdale v. United States*.

"The relevant difference consists of the fact that the property here is untainted; i.e., it belongs to the defendant, pure and simple," Breyer wrote. "In this respect it differs from a robber's loot, a drug seller's cocaine, a burglar's tools, or other property associated with the planning, implementing, or concealing of a crime."

Breyer's opinion finding a Sixth Amendment violation was joined by three other justices—Chief Justice John G. Roberts Jr., Ruth Bader Ginsburg and Sonia Sotomayor. A concurrence by Justice

Clarence Thomas agreed there was a Sixth Amendment violation but said the plurality used an "atextual balancing analysis" in reaching its conclusion.

Justice Anthony M. Kennedy, in a dissent joined by Justice Samuel A. Alito Jr., said the plurality decision ignores precedent. The plurality's "unprecedented holding rewards criminals who hurry to spend, conceal, or launder stolen property by assuring them that they may use their own funds to pay for an attorney after they have dissipated the proceeds of their crime," Kennedy wrote.

A separate dissent by Justice Elena Kagan said she agrees prior precedent is controlling, but she finds *Monsanto* "troubling." But the correctness of that decision is not at issue, Kagan said, because Luis did not ask the court to overrule or modify it.

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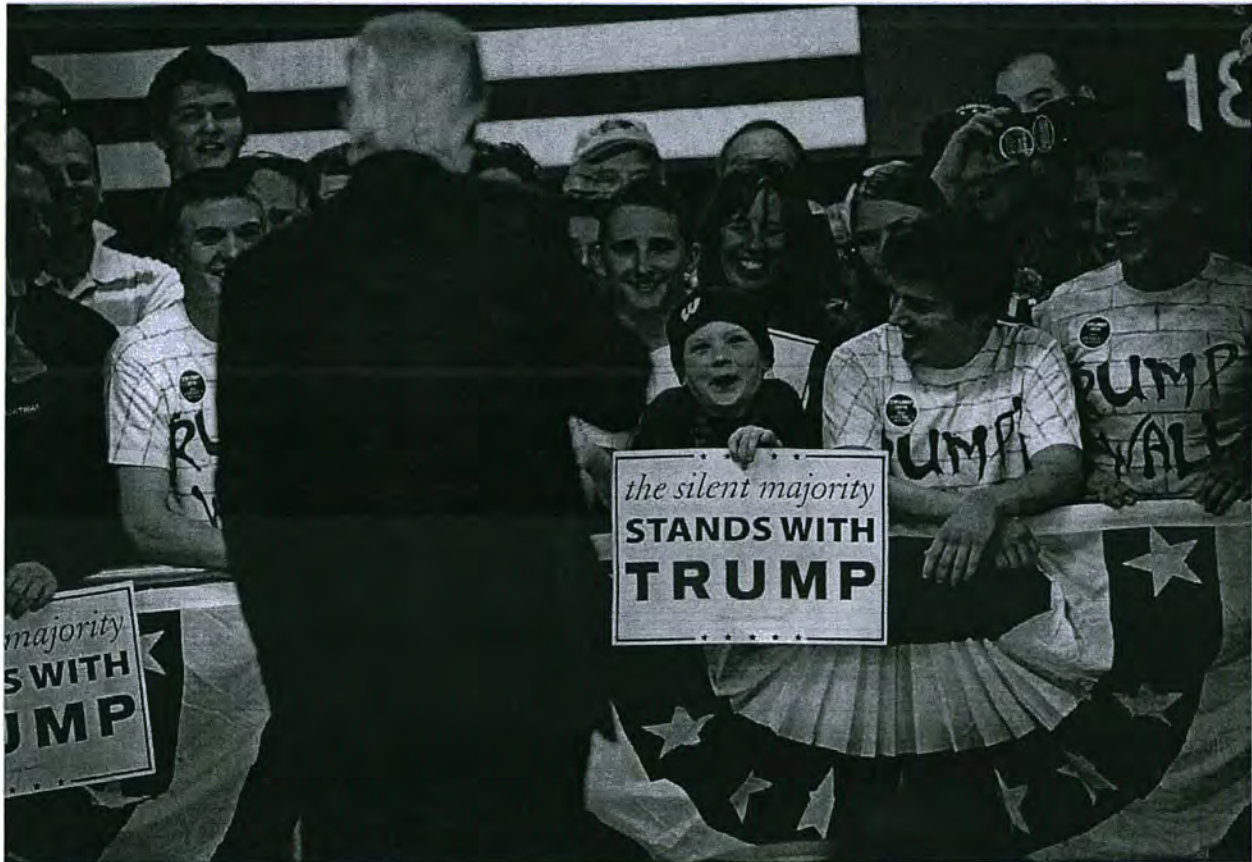
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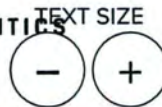
# Civic Education in the Age of Trump

Public schools in the United States aren't teaching students how to engage diverse opinions.



Ben Brewer / Reuters

JONATHAN ZIMMERMAN | APR 9, 2016 | POLITICS



Little hands. A bad tan. And blood coming from wherever.

If you're put off by the crude tone of politics in the Age of Trump, you're not alone. According to a recent poll by Weber Shandwick, Powell Tate, and KRC Research, 70 percent of Americans think that political incivility has reached "crisis" levels.

The poll also found that Americans avoid discussing controversial questions, out

of fear they too will be perceived as uncivil. The findings speak to a flaw with civic education, especially in the main institution charged with delivering it: public schools. Put simply, schools in the United States don't teach the country's future citizens how to engage respectfully across their political differences. So it shouldn't be surprising that they can't, or that that they don't.

Schools have sometimes been blamed for the meteoric rise of Donald Trump, whose legions of supporters allegedly lack the civic knowledge to see through his proposals to ban Muslims from entering the United States or to kill family members of terrorists in the fight against ISIS. But it's hardly clear that Trump supporters are less knowledgeable than anyone else. In six state GOP exit polls, Trump was the most popular candidate among college-educated voters and came in second in another six polls.

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Indeed, the facile dismissal of all Trump enthusiasts as bigots or ignoramuses speaks to the most urgent problem in American civic life: the inability to communicate with people who do not share the same opinion. Trump himself epitomizes that trend, routinely vilifying his opponents as “losers” or “dummies,” or worse. And yet Trump's critics often use similar terms to tar his diverse array of devotees. This isn't a discussion; it's a shouting match.

Public schools aren't merely expected to teach young people the mechanics of government: how a bill is signed into law, what the Supreme Court does, and so on. They're also responsible for teaching the skills and habits of democratic life, especially how to engage civilly with people from a different political camp.

Many districts have written policies promoting the teaching of “controversial issues” in schools. Typically, these policies affirm students' right to discuss such issues as part of their preparation for citizenship. They also warn teachers against imposing their own point of view on students.

But there's an enormous gap between policy and practice. Many teachers say they'd like to address controversial issues but lack the time; in poorer districts, especially, every available minute is devoted to preparing students for high-stakes standardized tests. Others admitted that they were not prepared to lead such discussions, which require deep background knowledge on the issues as well as the skill to manage diverse opinions about them.

Still other teachers said that their districts discouraged or even barred them from addressing controversial issues, particularly if the teacher displayed a liberal or unorthodox bent. After the United States invaded Iraq in 2003, for example, two teachers and a counselor in Albuquerque, New Mexico, were suspended without pay for hanging posters in their classrooms urging "No War Against Iraq." School officials invoked the district's "controversial-issues" policy, which declared that teachers "will not attempt, directly or indirectly, to limit or control the opinions of pupils."

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## **How will children learn to “engage those opinions” unless they do so in the classroom?**

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As later court filings confirmed, however, the district offered no evidence that the teachers were trying to do that; instead, the mere expression of their opinion was taken as proof of their propagandistic intent. Never mind that military recruiting posters festooned other parts of the school, or that one of the suspended teachers had organized a debate between herself and a pro-war colleague. Her poster was an act of indoctrination rather than education, officials said, and it had to be stopped.

Meanwhile, lessons that propagate conservative positions generally go unnoticed. In Morristown, New Jersey, one teacher asked a mostly black group of students to write an essay about “why they should not fear the police.” As an

African American pastor told local school officials, who had established a policy encouraging “open dialogue and discussion” of divisive issues, the assignment took a truly controversial question—whether blacks had reason to fear police—and answered it from the start, before any real dialogue or discussion could begin.

Judicial rulings have also severely limited the free-speech rights of teachers in their classrooms. In 2007, a federal appeals court upheld an Indiana school board that had refused to renew the contract of a teacher who told her fifth-grade class—in reply to a student question—that she had driven by an anti-war protest and honked her horn in support. The Constitution “does not entitle primary and secondary teachers, when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school system,” the court decreed. “Students...ought not to be subject to teachers’ idiosyncratic perspectives.”

To be sure, it’s easy to imagine situations where teachers might impose their views instead of assisting students in formulating their own. But many school leaders simply don’t trust teachers to know the difference. After the Ferguson riots, a superintendent in nearby Edwardsville, Illinois, prohibited teachers from mentioning the subject, lest they sway students in one direction or another. “We all have opinions on what should be done,” the superintendent explained. “We don’t need to voice those opinions or engage those opinions in the classroom.”

But how will children learn to “engage those opinions” unless they do so in the classroom? That’s become even more urgent over the past few decades, when Americans increasingly segregated themselves into communities of the like-minded. In 1976, 27 percent of Americans made their homes in so-called “landslide counties” that voted either Democrat or Republican by 20 percent or more; by 2008, 48 percent of Americans lived in such environments.

When divisive subjects do arise, Americans don’t know how to discuss them. In the same KRC survey that revealed overwhelming concern about the incivility of modern politics, over a third of respondents said they avoid talking about racial inequality, abortion rights, or same-sex marriage for fear of the discussion

turning “uncivil.” And only one-third said that they do not avoid any issues because of worries about incivility.

Trump has played on that anxiety in his frequent broadsides against “political correctness,” encouraging people to follow his lead and say whatever they think. And while there’s a certain attractiveness to that kind of blunt candor, it’s a poor formula for civic discourse. Nearly three-quarters of the people replying to the KRC survey said they supported “civility training” in schools. Let’s hope they prevail on the schools to provide it.

#### **ABOUT THE AUTHOR**

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**JONATHAN ZIMMERMAN** is a professor of education history at New York University and the co-author of the forthcoming book *An Uneasy Quiet: Teaching Controversial Issues in American Schools*.

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