

HB

317

<TARGET><BILL>HB 317</BILL><SUBJECT>HB
317</SUBJECT><COMM>HJUD29</COMM></TARGET>

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

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



Rep.Tammie.Wilson@akleg.gov

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

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

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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.

HB 317 Sectional Analysis

Section 1: Amends AS 04.16.220(b) to repeal reference to forfeiture remedy specific to that statute and provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 2: Amends AS 08.54.720(f) to repeal reference to forfeiture remedy specific to that statute and provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 3: Adds new section AS 09.55.700 to clarify that in rem civil forfeiture proceedings are prohibited and subject to the Forfeiture Act.

Section 4: Amends AS 11.41.468(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 5: Amends AS 11.46.487 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 6: Amends AS 11.61.129(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 7: Amends AS 11.66.145 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 8: Amends AS 11.66.270 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 9: Amends AS 11.73.060 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 10: Amends AS 12.36.020(a) to provide that property may be returned pursuant to the Forfeiture Act.

Section 11: Amends AS 12.36.060(a) to repeal forfeiture language specific to that statute and provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 12: Amends AS 12.36.060(c) to repeal forfeiture language specific to that statute and provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

HB 317 Sectional Analysis

Section 13:

- A) Adds AS 12.36.300, which describes when a person's property is subject to forfeiture.
- B) Adds AS 12.36.320, which defines the offenses for which forfeiture is permitted under the Forfeiture Act.
- C) Adds AS 12.36.350, which requires law enforcement to issue an itemized receipt for items seized and sets the requirements for requesting the return of the property.
- D) Adds AS 12.36.400, which provides the requirements for an ancillary forfeiture claim.
- E) Adds AS 12.36.450, which provides the requirements for forfeiture proceedings. These include 1) that the proceeding occur immediately after a conviction in the underlying criminal trial, 2) that it be governed by the clear and convincing evidence standard, and 3) the factors relevant to the forfeiture proceeding.
- F) Adds AS 12.36.460, which prevents the imposition of a sentence requiring the donation of property to a charitable organization.
- G) Adds AS 12.36.475, which sets the standard for when forfeiture of property not actually used in the commission of the crime may be forfeited.
- H) Adds AS 12.36.490, which prohibits joint and several liability for forfeiture.
- I) Adds AS 12.36.500, which allows petitions for unconstitutionally excessive forfeiture and sets the standards for their consideration.
- J) Adds AS 12.36.520, which allows for appeals of forfeiture proceedings.
- K) Adds AS 12.35.550, which provides for when title to forfeited property vests and that the proceeds from forfeited property must be deposited in the state's general fund.
- L) Adds AS 12.36.580, which provides for protections for innocent owners of property for which forfeiture is sought.

HB 317 Sectional Analysis

- M) Adds AS 12.36.600, which provides for where and how seized property will be stored pending a forfeiture proceeding.
- N) Adds AS 12.36.610, which requires law enforcement agencies that engage in seizures or forfeitures to submit an annual report to the Department of Public Safety and for the Department to compile the information and issue a statewide report.
- O) Adds AS 12.36.625, which sets the timeframe for the return of seized property.
- P) Adds AS 12.36.635, which governs the transfer of seized property to other jurisdictions or agencies.
- Q) Adds AS 12.36.700, which provides definitions for AS 12.36.300-.700.

Section 14: Amends AS 16.05.190 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 15: Amends AS 16.05.722(b) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 16: Amends AS 16.05.723(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 17: Amends AS 16.05.782(b) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 18: Amends AS 16.05.783(c) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 19: Amends AS 16.05.905(b) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 20: Amends AS 16.43.970(g) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 21: Amends AS 17.30.110 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

HB 317 Sectional Analysis

Section 22: Amends AS 18.60.148(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 23: Amends AS 22.07.020(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 24: Amends AS 22.15.240 to add the right to appeal to the Superior Court a District Court decision under the forfeiture act.

Section 25: Amends AS 28.15.291(b) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 26: Amends AS 28.35.030(b) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 27: Amends AS 28.35.030(n) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 28: Amends AS 28.35.032(g) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 29: Amends AS 28.35.032(g) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 30: Amends AS 43.50.620 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 31: Amends AS 43.50.625(a) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 32: Amends AS 43.50.625(d) to repeal reference to forfeiture remedy specific to that statute and provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 33: Repeals the piecemeal forfeiture procedures applicable across the various statutes that have been amended to provide that forfeiture proceedings must be subject to the Forfeiture Act.

Section 34: Adds uncodified law explaining the indirect effects on the Alaska Rules of Criminal Procedure and evidence.

HB 317 Sectional Analysis

Section 35: Adds uncodified law explaining the applicability of the Forfeiture Act to all forfeiture proceedings.

Section 36: Adds uncodified law providing that the passage of the law is conditional on a two-thirds vote of each house for Section 34 of the bill.

Section 37: Provides an effective date of 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

February 15, 2016

SUBJECT: Forfeiture: drafting issues (Work Order No. 29-LS1380\A)

TO: Representative Tammie Wilson
Attn: Barbara Barnes

FROM: Megan A. Wallace *MAW*
Legislative Counsel

Attached please find the draft bill you requested.

Please note the following drafting issues based on the materials you sent:

- 1) Please be advised that this bill has a major impact on forfeiture law and procedures currently enacted in various chapters of the Alaska Statutes. Given the volume of statutes affected by the draft bill, and the time constraints placed on this office during an active legislative session, I cannot provide a thorough legal analysis of each and every area of law affected by the draft bill. I would recommend that you consult with the Department of Law (DOL) regarding the contents of this bill, as DOL handles the majority of forfeiture proceedings under existing law.
- 2) In sec. 1 of the bill, a conforming change to AS 04.16.220(b) was necessary. As part of the conforming change, constructive seizure was repealed. Is this consistent with your intent?
- 3) Your initial materials stated that property was only subject to forfeiture if "the value of the property to be forfeited exceeds one thousand dollars (\$1,000)." Per your second request, I removed the \$1,000 value threshold requirement contained in your original materials. In addition, your materials state that you want to "ensure that only criminal forfeiture is allowed in this state." Accordingly, I have provided that all common law civil forfeiture proceedings be abolished.
- 4) In the materials provided, you requested that the court be permitted to issue a "writ of replevin" Most common law writs, including the "writ of replevin" have been eliminated by the Supreme Court. Accordingly, in AS 12.36.350, I have removed any reference to a "writ of replevin" and replaced it with a reference to a motion to return property. In addition, AS 09.10.070(a) provides a two-year statute of limitations for forfeiture proceedings. Please advise if this provision needs to be revised.

5) As I discussed with Ms. Barnes in your office several times, the materials you provided describing offenses for which forfeiture is to apply contain a series of incorrect citations on pages 11 - 12, sec. 17(4), of the materials provided. Some of the citations at issue appear to relate to motor vehicle offenses. Because I have not been provided with correct citations, I merely included all offenses under AS 28 to which forfeiture is currently permitted, which are offenses under AS 28.15.291, AS 28.35.030, and AS 28.35.032. These offenses were already included in the materials you provided at sec. 17(10), so I do not know what you meant to include in sec. 17(4). Similarly, in sec. 17(4)(d) of the materials provided, you requested to include language stating "[i]f charged with violation AS 08.65.030(C) or another law or ordinance with substantially similar elements within ten years preceding the date of the present offense." AS 08.65.030 relates to direct-entry midwives. As such, all the citations in sec. 17(4) of the materials provided are incorrect. Accordingly, I could not include these in the draft bill.

6) Please review AS 12.36.320 in the draft bill to ensure I have captured your intent as it relates to offenses to which forfeiture may apply. You requested that the bill include all forfeitures currently permitted under law. I did my best to identify all areas where forfeitures are currently permitted throughout the Alaska Statutes. As stated above, you may want to consult with DOL to ensure all forfeiture proceedings are captured in the draft bill. If you are aware of any forfeiture related proceedings not included in the draft bill, please advise. Also, the bill only includes offenses under Alaska law, did you want to include crimes from other jurisdictions?

7) You may want to consult the Alaska Court System regarding the procedures for filing a motion for return of property under AS 12.36.350, ancillary forfeiture under AS 12.36.400, and forfeiture proceedings under AS 12.36.450. In addition, these sections, and several others, will result in court rule changes. Court rule changes require a two-thirds vote in order to pass the measure under art. IV, sec. 15 of the Constitution of the State of Alaska, which reads:

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Rule 39(e) of the Uniform Rules requires:

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to

receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

For this reason, I have noted indirect court rule amendments in the draft bill. You may also want to consult the Alaska Court System to identify any additional court rules that may be affected by the draft bill, as given the scope of the draft bill, I may not have identified each court rule that could be affected by this bill.

8) I do not understand what you mean in AS 12.36.460 relating to "responsibility established in the court's proceedings." I recommend that this section be revised to clarify.

9) I recommend defining "substitute property" in AS 12.36.475. Please advise what should be included in the definition of "substitute property" or how the term should otherwise be defined.

10) What do you mean by "unconstitutionally excessive" in AS 12.36.500? What do you mean by "at any time"? Is there no statute of limitations for this section? It is my opinion that this provision is overly vague and should be revised for clarification.

11) In AS 12.36.450(g), should (g)(3) be modified to state that the "value of the property is not disproportional to the seriousness of the criminal offense," as used in AS 12.36.500?

12) The materials you provided stated in sec. 10 that "A party to a forfeiture proceeding may appeal a district court's decision . . . pursuant to the Forfeiture Act." However, the remainder of the materials did not address appeals. I presume you intend forfeiture matters to be appealed like the underlying criminal matters? And I presume you also intend to include decisions rendered in superior court? Please review AS 12.36.520 to ensure I have captured your intent regarding appeals.

13) In AS 12.36.700 you requested that to define "conveyance" as "a device used for transportation." This does not seem appropriate in the context used. I would recommend revising for clarification.

14) You did not request to repeal AS 12.55.015(c), so that provision is retained. Please let me know if this is not your intent.

15) You requested an effective date "90 days after this bill becomes law." We do not provide for effective dates in this manner. As such, I have included a July 1, 2016, effective date. If you would like to change this date, please advise.



AMERICANS for TAX REFORM

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

March 23, 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.

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.

Regards,

Grover G. Norquist
President
Americans for Tax Reform

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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.

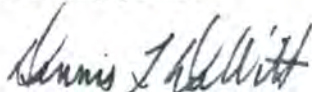
Our current legal process allows the state to seize property based on the basis of probable cause without a person even being charged or convicted of a crime. We believe that Alaskans are entitled better due process than is provided in current law.

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

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



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-



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 style with a large, sweeping initial "H" and a long, horizontal flourish extending to the right.

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



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

Alaska small businesses support civil asset forfeiture reform

Mike Miller
03/21/16

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.

INGALDSON FITZGERALD, P.C.

Lawyers

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April 1, 2016

Gabrielle LeDoux,
House Judiciary Chair

I have had an opportunity to review the Committee Substitute for HB 317 ("CSHB 317") and I believe that, if passed, it would address all of the concerns that I and others have raised regarding standardizing and centralizing forfeiture law in Alaska. In spite of the fact that various witnesses have claimed that forfeiture is not an ongoing problem in Alaska, I believe that it is clear from the testimony that it is, in fact, a very real problem. As Chair LeDoux pointed out, we are aware of no other area of law where a person's property can be taken away from them preemptively in spite of the fact that it has no evidentiary value for proving the case. Yet, as the committee heard yesterday, this is exactly what is happening now in Alaska.

Compounding this problem is the fact that there currently exists no effective or adequate avenue for addressing pre-charge, and even post-charge, seizures of substantial assets. There was a claim that Criminal Rule 37(c) provides such a mechanism. It does not. Criminal Rule 37(c) does not provide any mechanism for challenging warrantless seizures of assets. As a practical matter it also does not address pre-charge seizures. Further, as noted, the Rule provides no real protections to citizens of seizures "per" a warrant. Once the prosecutor alleges the item is "evidence" the judicial inquiry of the executive ceases. We heard first hand yesterday how expansive law enforcement views items of "evidence." This bill not only establishes a procedure, but requires the government to prove the merits of the seizure. And, why isn't that good policy when we're discussing the seizure of items like vehicles and aircraft from private citizens, some of whom haven't even been charged.

Gabrielle LeDoux,
House Judiciary Chair
April 1, 2016
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CSHB 317 would provide an avenue for people who have had their property taken to argue that it should be given back and to get it back promptly when they believe they have been wronged. Sec. 12.36.350 is absolutely necessary to prevent what amounts to legal limbo as people who have had their property seized for forfeiture purposes wait, at times, months and even years to find out if they will even be charged. Contrary to what appear to be predictions of doom from the Department of Law, this should not put any more burden on the Court system than any other set of pre-trial motions, which abound in both the criminal and civil law.

At the same time, the dual aim of CSHB 317 is not to undermine law enforcement's ability to either seize or ultimately forfeit property. And it doesn't. If law enforcement proves their case, they will still get the forfeiture. The deterrent value still exists when people can still lose their property. All CSHB 317 requires is that law enforcement not seize non-evidentiary property in the hopes that they will own it later. Similarly, law enforcement testimony indicated that the reason they need to seize and hold property that will be subject to forfeiture is that the owner may abscond with it. But, Sec. 12.36.475 addresses this by allowing forfeiture of substitute property in the event that this occurs and by allowing a law enforcement officer who actually had probable cause to believe this will happen to seize the property pursuant to Sec. 12.36.300(e). The only difference is that with the legislation they cannot hold it without court review, often without any arrest, until after the trial, if there is one.

I would also like to address some of the points raised by the letter we received yesterday from DPS. First, the example of computers containing child pornography having to go back to the perpetrators is a pure scare tactic. This presumes a criminal defense attorney would assert such a meritless motion. Computers containing child pornography would be held as *necessary evidence* of the crime. Similarly, no court anywhere would order that child pornography be returned. It is contraband that would not be returned in the same way that a kilo of cocaine would not be returned. This is an argument that the sky will fall, pure and simple.

Second, the fact that statements made at a pretrial hearing cannot be used against the claimant at the later criminal trial

Gabrielle LeDoux,
House Judiciary Chair
April 1, 2016
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is simply intended to allow a person to testify regarding their "forfeited" items to have them returned without the hearing turning into an opportunity for a wide-ranging inquiry or waiving their constitutional right not to testify at their trial. In this same way we currently allow defendants to assert "standing" relating to search challenges without inculpatory consequence.

Third, law enforcement complains about the burdens of the identifying or reporting requirements of the legislation. Again, this is exaggerated. As it is, most property is seized per a warrant. The warrant requires a "return" wherein the property seized is identified. The other provisions address providing notice of what property the government seeks to forfeit. Why shouldn't the government be required to identify what they have seized and what they intend to forfeit? This is called due process. It is also called good public policy.

Fourth, law enforcement is critical of the "safe-haven" provided by the innocent owner provision, apparently unaware that the same procedure exists at common law. See State v. Rice, 626 P.2d 104 (Alaska 1981) (wherein the Court ruled that not to allow innocent owners an avenue for relief violated the State's constitutional due process provision despite the absence of any statutory scheme for the same).

Fifth, like the Department of Law, law enforcement trumpets that the legislation will require many more hearings, cutting into the time it would otherwise utilize to catch bad guys. But, as it currently stands, the only additional hearing contemplated by the legislation is a potential and timely pre-trial hearing to address the issue of seizure/forfeiture head on. And since law enforcement claims that Criminal Rule 37(c) affords an adequate mechanism already, there wouldn't be any new hearings. There would also be the potential that a trial may last several more hours to address forfeiture before the same jury and judge in much the same way as the existing procedure for proving some aggravators post-Blakley.

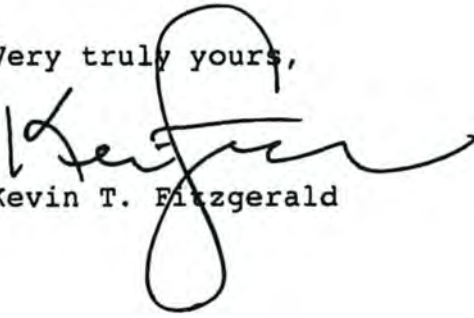
Finally, law enforcement claims without evidence or support that the proposed legislation "would effectively make forfeiture illegal in all fish and game cases." This is a ridiculous claim. Rather, what the legislation does is to protect the due process rights of Alaska citizens from whom substantial assets

Gabrielle LeDoux,
House Judiciary Chair
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have been seized. It unquestionably provides a standardized and centralized process following the seizure. And it ensures that if the government is going to seize items that it be prepared to explain and prove why under the Bill.

Further, despite the protestations to the contrary, the legislation does not undermine government's ability to either seize or forfeit assets. Instead, the legislation requires no more than the due process guarantees the constitution otherwise demands,¹ but which are largely unknown or ignored. The legislation also requires of law enforcement no more than what they should be doing in any event. On balance, this seems like a small price to pay for constitutional protections that ensure that if the government seizes and/or forfeits substantial assets from private citizens and/or deprives them of their livelihoods that there exist an adequate, appropriate and timely avenue for citizens to challenge the action. This legislation undeniably so provides.

Very truly yours,



Kevin T. Fitzgerald

jj
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¹See F/V American Eagle v. State, 620 P.2d 657, 666-67 (Alaska 1980) ("However, when the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent.").



Alaska Association of Chiefs of Police

April 1, 2016

The Honorable Gabrielle LeDoux
State Capitol Room 118
Juneau AK, 99801
Representative.Gabrielle.LeDoux@akleg.gov

Dear Representative LeDoux,

In my capacity as President of the Alaska Association of Chiefs of Police, I am writing to express our strong opposition of House Bill 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." Our Association is comprised of more than 100 law enforcement executives from all across Alaska, who strongly believe that this bill attempts to address issues that are not present and abuses that have not occurred in Alaska, and would result in significant degradation to law enforcement resources and criminal prosecutions across the state.

Requiring a criminal prosecution for all forfeitures will significantly inhibit 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. While the vast majority of civil asset forfeitures are affected through criminal prosecution already, requiring that an individual be convicted of a crime before forfeiture proceedings can take place may allow criminals to dispose of valuable and criminal proceeds before a conviction can be made. Additionally, all civil asset forfeitures must already be submitted to and approved by the court, following due process procedures, ensuring that individual rights and legal process is followed.

Secondly, United States Code¹ mandates that all funds obtained through federal civil asset forfeiture and equitable sharing be used by law enforcement agencies for law enforcement purposes only. Federal law mandates that state and local law enforcement agencies must implement standard accounting procedures and internal controls (e.g., tracking share requests and receipts, electronically depositing shares into a separate revenue account or accounting code) to track equitably shared monies and tangible property. Requiring that these funds be deposited to the state's general fund would violate federal law, or in effect prohibit law enforcement agencies in the state from participating in the federal equitable sharing program.

We want to thank you and your committee for your dedication to the people of Alaska and your continued interest in public safety issues. We encourage you to reach out to us should you wish to further discuss this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson", written in a cursive style.

Brad Johnson, President

¹ 21 U.S.C. § 881(e)(1)(A) and (e)(3), and 18 U.S.C. § 981(e)(2)

From: Jesse and Annette Davis
Sent: Thursday, March 31, 2016 6:02 PM
To: Rep. Gabrielle LeDoux <Rep.Gabrielle.LeDoux@akleg.gov>
Subject: HB317

Ms. Ledoux,

I am shocked by Tami Wilson's sponsorship of HB317 and suggestion that our law enforcement are not to be trusted.

Law Enforcement Officers in Alaska are some of the best in the nation, and I am insulted by her accusation that officers will violate citizen rights by seizing property for their own gain.

In full transparency, I am the Chief of the Anchorage Airport Police, the 3rd largest police agency in Alaska.

More importantly, I am a long-time resident of this state with family ties that date over 50 years and with a very strong and personal interest in the future of Alaska.

Asset forfeitures are strictly controlled processes that do not violate citizen rights and that money does not line our pockets.

This type of mistrust from our government leaders does nothing to benefit our citizenry.

One of the biggest benefits to our agency is to provide training to our officers – something that is difficult to obtain in Alaska.

We often use that money to send officers to training or fund outside experts to come to Alaska to provide that training to us. We also often make that training available to other agencies to maximize the benefit and in order to be effective and responsible stewards of the funds available to us.

This money is also used to fund the ballistic vests and other equipment that our officers use to protect them in the line of duty.

Our citizens have high expectations of our law enforcement and we selfishly give of ourselves. We need the support of our politicians, not the fiery emotional and unfounded claims of its sponsors.

I hope you will take the time to fully comprehend the requirements and benefits of asset forfeitures and that due process and probable cause are at the core of the program.

I openly invite you to visit and audit our asset forfeiture program or discuss the program at any time.

You can contact my office at 907-266-2407, or email me directly at jesse.davis@alaska.gov.

Please let me know if I can be of service.

Very Respectfully,

Jesse Davis
Anchorage

ALASKA

PROFESSIONAL HUNTERS ASSOCIATION, INC.

P.O. Box 240971 ~ Anchorage, AK 99524

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

Email: office@alaskaprohunter.org ~ www.alaskaprohunter.org

March 28th, 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.

JDW, LLC

Jana D. Weltzin
3003 Minnesota Drive, Suite 201
Anchorage, Alaska 99503
Phone 630-913-1113
Janaweltzin@gmail.com
jana@jdwcounsel.com
jdwcounsel.com

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
CC: 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.

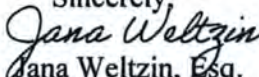
HB 317, in its current form, would protect Alaskans' fundamental property rights as the bill seeks to implement uniform standards for asset forfeitures in Alaska: (1) it would require an individual be convicted of a crime prior to forfeiture; (2) it would protect innocent spouses and family members from 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, Esq.
For the Firm
Principal Owner

Alaska State Troopers/ Alaska Wildlife Troopers HB 317 Summary

DPS Concerns with HB 317

- This bill appears to confuse state **civil** asset forfeiture and state **criminal** asset forfeiture. DPS, in consultation with DOL has been unable to identify a single case where civil asset forfeiture actions resulted in the civil forfeiture of an item. In criminal forfeiture cases, property is ordered forfeited by the courts during the criminal proceedings and due process occurs.
- This bill appears to confuse seized items and forfeited items.
- This bill appears to require a person be arrested before items can be subject to forfeiture. Many investigations result in formal charges by way of issuance of a summons rather than a physical arrest.
- This bill suggests that DPS directly receives proceeds from state forfeitures. While that may be the case in very limited occasions pursuant to applicable statutes pertaining to firearms, vessels, and aircraft, most forfeited items are either destroyed or sold by DOA and the proceeds go to the general fund. In drug cases, DPS is not allowed to retain forfeited money. That money is either deposited in the general fund or some portions may be shared with local law enforcement who participates in taskforces or we're actively involved in the criminal case.
- On its surface, the abolishment of civil in rem Forfeiture may seem appropriate due to the infrequency of its use however an alternative process for obtaining a forfeiture order should be considered. For example, if law enforcement investigates a distributing or manufacturing child porn case in which child porn and computers are seized, and the case is not prosecuted, perhaps due to an evidentiary issue, the state may have an interest in not returning the computer equipment back to the alleged offender despite the lack of a conviction. Civil in rem would be an option but if abolished, another alternative should be available to protect the public from future offenses.
- This bill appears to require additional hearings for property, separate from the criminal proceeding that currently deals with seized items that will likely have a fiscal impact on the court system, DOL, DPS, and DOA (public defender?) for court appearances and litigation. As it is currently written HB 317 would force litigation on the seizure of evidence by lawful warrant in what amounts to a second trial on a shortened timeline. This bill (specifically proposed section 12.36.400) would materially affect DPS's and DOL's ability to investigate and prosecute crimes of child sexual exploitation. Section 12.36.400 would require DOL to file a so-called "complaint of ancillary forfeiture" within 30 days of seizure of any item of evidence or indictment. In the specific context of an ongoing child exploitation investigation, it is not always possible to complete forensic examination of all suspect devices within 30 days. In effect, this bill would require the DOL and DPS to litigate the appropriateness of the seizure of every item of evidence seized in the course of a child exploitation investigation at the very outset of the investigation. In a recent case the suspect devices were so large (several terabytes of images of child sexual exploitation) that the forensic imaging process itself took several weeks of uninterrupted computer analysis. Similarly, in another recent case ABI TCU seized dozens of devices in a case where the defendant set up his own illicit server while acting as an IT administrator in Bethel and downloaded terabytes of child pornography. There are a number of similar investigations from recent investigations that uncovered not only serious offenses

Alaska State Troopers/ Alaska Wildlife Troopers HB 317 Summary

involving the possession and distribution of child pornography, but the hands-on sexual abuse of minors as well. It is the belief that the legislature cannot be aware of the potential implications of this bill for complex and resource-intensive child exploitation investigations and the fact that imposing a requirement to litigate civilly within 30 days the appropriateness of the seizure of every item of evidence seized pursuant to a lawful warrant would expose additional children in our community to the risk of harm by impairing the ability of law enforcement and prosecutors to investigate and charge these offenses.

- In addition, during the newly established hearing, any “inculpatory” evidence presented cannot be used in the criminal action. How does the criminal justice system un-ring that bell? 12.36.50(h) provides that statements made during a preliminary forfeiture hearing cannot be used against the person in subsequent proceedings. This appears to invite perjuriously statements.
- The section regarding ancillary forfeiture appears to add another layer of bureaucratic process when the criminal complaint and associated police reports already describe the required information.
- The purposed AS 12.36.400 limits law enforcement’s ability to engage in long-term investigations. This section requires the state to file an ancillary proceeding within 30 days of the seizure. Complex investigations routinely last longer than 30 days.
- This bill appears to attempt to abolish Alaska’s participation in the Department of Justice Asset Sharing program by requiring assets to be deposited in the general fund, an action prohibited by the DOJ asset sharing program. This would effectively end the task-force participation both at the federal and local level, and contradicts AS 17.30.100. It would also severely hamper Alaska law enforcement’s ability to expand drug investigations beyond Alaska’s borders that included source states and countries because Alaska law enforcement relies on federal agency partnerships to work collaboratively with various agencies such as the DEA, FBI, HIS, USPI, USCGIS and others. For the most part, Alaska is a consumer state of controlled substances, not a producing state.
- HB317 repeals 28.35.036 and 28.35.037. Forfeiture of DUI vehicles now are subject to 12.36.300. Changes: Jury trials now required for DUI vehicle forfeiture (previously was just bench trial); Quantum of proof raised to clear and convincing; Court now required to consider the defendant’s “hardship”. Regarding forfeiture, general deterrence is an important tool in DUI enforcement – i.e., “drive drunk, lose your car.”
- The Innocent owner provision provides a safe-haven alternative for someone engaged in a criminal act to simply refrain from registering property in their name so as to protect the asset from forfeiture. The current criminal process already provides ample due process for an innocent third-party to be heard by the court.
- This bill requires an onerous reporting requirement for all law enforcement to report on both seizures and forfeitures, despite the fact that the property is already tracked throughout the criminal justice process by police agencies chain of custody and subsequent court judgment. In order to consolidate all of that information into the required report will require additional administration that will need to work with the law enforcement agencies, DOL, the court

Alaska State Troopers/ Alaska Wildlife Troopers HB 317 Summary

system, and DOA. Although such a report does not currently exist and there is no current mechanism to produce such a report, if an inquiry is made about any item that has come into law enforcement's custody, it can be traced to its final disposition, just not in an all-inclusive report as described by this bill.

- Regarding federal asset sharing reporting, this information is already published by the DOJ.
- The requirement for seized currency to be deposited with the clerk of court creates an unnecessary link to the chain of custody for a criminal case and as it relates to drug investigations. Drug odors on currency are often identified by sent detection K9s and is potential evidence in a drug prosecution that will become unusable in court.
- The Alaska Wildlife Troopers are the primary enforcement agency for all fish and wildlife laws in the state. Hunting and fishing is extremely important to the citizens of Alaska and violations are taken seriously. The value of Alaska's resources are in excess of 5 Billion dollars annually. There are many reasons why it is difficult to enforce fish and game laws in the state. The huge area, multiple seasons, lack of manpower and difficulty in detecting violations all play into this this issue. Forfeiture of items used in commission of the crime is a primary deterrent against fish and game violations. Deterrence of fish and game violations is sometimes the only substitute for situations where Alaska Wildlife Troopers cannot be there to effectively catch violators. This bill will directly affect how law enforcement conducts business. There are many examples of things that we "seize" with due process in our daily work. This bill will require additional paperwork to be completed, additional affidavits to be filed in court and additional time spent prosecuting cases. We read this bill to mean that an additional affidavit will need to be filed in court for all applicable items seized. This list will vary from vehicles, money, fingerprints, clothing, fish/game and many others. State and local law enforcement cooperate with our federal partners on a regular basis. This bill appears to hinder the cooperation between federal and state/local agencies. We have very limited resources in Alaska and cooperation with other agencies is essential. The ability to charge within the State or Federal system is inherently a good thing.
- This bill will undoubtedly add increased operation costs to multiple agencies. Because this bill has so many parts and its effect will be so far reaching, we do not have estimates on the overall cost. However, we can say that the cost will be measured in multiple ways; new money needed from the legislature, more time spent on forfeiture cases resulting in less time in other areas of law enforcement, more time spent in court for these cases, additional motions filed by the state and others. The fiscal impact is such that we will likely not be able to meet our existing mandates without adding additional PCNs. A good example of this can be found in their new section AS 12.36.450 (c) [page 10 lines 13-20]. This will burden the entire criminal justice system. . Additionally, it would effectively make forfeiture illegal in all fish and game cases. The proposed law states in pertinent part that a person's property is subject to forfeiture to the state if the "1) person is arrested for an offense listed in AS 12.36.320..." In fish and game matters defendants are seldom arrested, rather they are summonsed to a district court arraignment. It can be virtually guaranteed that fish and game populations will suffer as the primary legal deterrent will have been dismantled.

Alaska State Troopers/ Alaska Wildlife Troopers HB 317 Summary

- This bill would require a civil trial in any case where items are forfeit. As such, any commercial big game guide case that goes to trial will be accompanied by another civil trial regarding forfeiture and all the accompanying motions, appeals, habeas writs and the newly created 12.36.500 petition for unconstitutionally excessive forfeiture. This will, quite simply, double the amount of work in prosecuting a commercial big game guiding crime, as instrumentalities of the crimes are seized in virtually every proceeding. It also requires that there be a “trial” before the trial to determine the likelihood that the item will be forfeited to the state. This will require additional court appearances by DPS and DOL, require additional paperwork to be filed and create additional cost to an already burdened criminal justice system. This bill additionally requires that the court return the property if the property is not held for investigatory reasons. This is a problem for all fish and wildlife crimes. Items are sometimes seized for investigatory reasons, but often they are seized because they were used in commission of the crime or the item is fish or game and cannot be legally possessed if taken illegally. This is provided for in AS 16.05.190, AS 16.05.195, 5 AAC 75.010, 5 AAC 92.140, 5 AAC 92.220(h) and several other regulations. This bill amends AS 16.05.190 and requires that items seized follow the new statutory requirements. There is extensive existing criminal case law with respect to fish and wildlife crimes and forfeiture in Alaska. This will hamper enforcements ability to seize items in the field and increase court hearings and court time for DPS and DOL.
- If the idea of this bill is to do away with forfeiture all together, it may be better to submit a bill that states that specifically. There are lots of reasons why forfeiture of any item is a good thing for the citizens of the state:
 - Deterrence of the convicted person from the commission of future offenses.
 - Protection of the safety and welfare of the public.
 - Deterrence of other persons who are potential offenders.
 - Expression of public condemnation of the seriousness or aggravated nature of the convicted persons conduct.
 - Keeping the offender from benefiting in any way from ill-gotten gains.
 - Preventing the ill-gotten gains from being used to promote or build criminal enterprises.

29-LS1380\W
Wallace/Martin
3/31/16

CS FOR HOUSE BILL NO. 317()

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

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4,**
2 **11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules**
3 **501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules**
4 **of Appellate Procedure; and providing for an effective date."**

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

6 *** Section 1.** AS 04.16.220(b) is amended to read:

7 (b) Property subject to forfeiture under this section may be **forfeited to the**
8 **state under AS 12.36.300 - 12.36.700** [ACTUALLY OR CONSTRUCTIVELY
9 SEIZED UNDER AN ORDER ISSUED BY THE SUPERIOR COURT UPON A
10 SHOWING OF PROBABLE CAUSE THAT THE PROPERTY IS SUBJECT TO
11 FORFEITURE UNDER THIS SECTION. CONSTRUCTIVE SEIZURE IS
12 EFFECTED UPON POSTING A SIGNED NOTICE OF SEIZURE ON THE ITEM
13 TO BE FORFEITED, STATING THE VIOLATION AND THE DATE AND PLACE
14 OF SEIZURE. SEIZURE WITHOUT A COURT ORDER MAY BE MADE IF

1 (1) THE SEIZURE IS INCIDENT TO A VALID ARREST OR
2 SEARCH;

3 (2) THE PROPERTY SUBJECT TO SEIZURE IS THE SUBJECT OF
4 A PRIOR JUDGMENT IN FAVOR OF THE STATE; OR

5 (3) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
6 PROPERTY IS SUBJECT TO FORFEITURE UNDER (a) OF THIS SECTION;
7 EXCEPT FOR ALCOHOLIC BEVERAGES POSSESSED ON VIOLATION OF
8 AS 04.11.501 OR AN ORDINANCE ADOPTED UNDER AS 04.11.501,
9 PROPERTY SEIZED UNDER THIS PARAGRAPH MAY NOT BE HELD OVER
10 48 HOURS OR UNTIL AN ORDER OF FORFEITURE IS ISSUED BY THE
11 COURT, WHICHEVER IS EARLIER].

12 * **Sec. 2.** AS 08.54.720(f) is amended to read:

13 (f) In addition to the penalties set out in (b) - (e) of this section and a
14 disciplinary sanction imposed under AS 08.54.710,

15 (1) the court may order the board to suspend the guide license or
16 transporter license of a person who commits a misdemeanor offense set out in (a)(1),
17 (3) - (5), (7), (8), (17), (18), or (19) of this section for a specified period of not more
18 than three years;

19 (2) the court shall order the board to suspend the guide license or
20 transporter license of a person who commits a misdemeanor offense set out in (a)(2) or
21 (9) - (14) of this section for a specified period of not less than one year and not more
22 than five years;

23 (3) the court shall order the board to suspend the guide license or
24 transporter license for a specified period of not less than three years, or to permanently
25 revoke the guide license or transporter license, of a person who commits an offense set
26 out in (a)(15) or (16) of this section; and

27 (4) all guns, fishing tackle, boats, aircraft, automobiles, or other
28 vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a
29 violation of (a) of this section may be seized by persons authorized to enforce this
30 chapter and may be forfeited to the state as provided under AS 12.36.300 - 12.36.700
31 [AS 16.05.195].

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

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

3 **Sec. 09.55.700. In rem civil forfeiture actions abolished.** Common law civil
4 in rem forfeiture actions are abolished. Forfeiture actions and proceedings must be
5 conducted in the manner provided under AS 12.36.300 - 12.36.700.

6 * **Sec. 4.** AS 11.41.468(a) is amended to read:

7 (a) Property used to aid a violation of AS 11.41.410 - 11.41.458 or to aid the
8 solicitation of, attempt to commit, or conspiracy to commit a violation of
9 AS 11.41.410 - 11.41.458 may be forfeited to the state under AS 12.36.300 -
10 12.36.700 upon the conviction of the offender.

11 * **Sec. 5.** AS 11.46.487 is amended to read:

12 **Sec. 11.46.487. Forfeiture of property upon conviction.** Firearms and other
13 personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460,
14 11.46.462, or 11.46.484(a)(5) may be forfeited to the state under AS 12.36.300 -
15 12.36.700 upon conviction of the offender for the crime.

16 * **Sec. 6.** AS 11.61.129(a) is amended to read:

17 (a) Property used to aid a violation of AS 11.61.123 - 11.61.128 or to aid the
18 solicitation of, attempt to commit, or conspiracy to commit a violation of
19 AS 11.61.123 - 11.61.128 may be forfeited to the state under AS 12.36.300 -
20 12.36.700 upon the conviction of the offender.

21 * **Sec. 7.** AS 11.66.145 is amended to read:

22 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
23 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135 may
24 be forfeited to the state under AS 12.36.300 - 12.36.700 [AT SENTENCING].

25 * **Sec. 8.** AS 11.66.270 is amended to read:

26 **Sec. 11.66.270. Forfeiture.** If used in violation of AS 11.66.200 - 11.66.280,
27 the following property shall be forfeited to the state under AS 12.36.300 - 12.36.700:

- 28 (1) a gambling device or gambling record;
- 29 (2) money, not found on the person, used as a bet or stake;
- 30 (3) money used as a bet or stake which is found on the person of one
31 who conducts, finances, manages, supervises, directs, or owns all or part of an

1 unlawful gambling enterprise.

2 * **Sec. 9.** AS 11.73.060 is amended to read:

3 **Sec. 11.73.060. Forfeitures.** (a) Property used during or in aid of a violation
4 of this chapter may be forfeited to the state under AS 12.36.300 - 12.36.700 [TO THE
5 EXTENT PERMITTED UNDER AND IN ACCORDANCE WITH THE
6 PROVISIONS OF AS 17.30.110 - 17.30.126].

7 (b) In [FOR PURPOSES OF] this section, [THE TERMS] "controlled
8 substance" and "this chapter,"[,] as used in AS 17.30.110 [AS 17.30.110 - 17.30.126],
9 shall be construed as "imitation controlled substance" and "AS 11.73," respectively.

10 * **Sec. 10.** AS 12.36.020(a) is amended to read:

11 (a) A law enforcement agency may

12 (1) not return property in its custody to the owner or the agent of the
13 owner, except as provided in AS 12.36.200 or 12.36.300 - 12.36.700, if

14 (A) the property is in custody in connection with a children's
15 court proceeding, a criminal proceeding, or an official investigation of a crime;
16 or

17 (B) the property in custody is subject to forfeiture under the
18 laws of the

19 (i) state; or

20 (ii) United States, and the United States has commenced
21 forfeiture proceedings against the property or has requested the transfer
22 of the property for the commencement of forfeiture proceedings; and

23 (2) with the approval of the court, transfer the property to another state
24 or federal law enforcement agency for forfeiture proceedings by that agency; the court
25 having jurisdiction shall grant the approval under this paragraph if the property

26 (A) will be retained within the jurisdiction of the court by the
27 agency to which the property is being transferred; or

28 (B) is

29 (i) not needed as evidence; or

30 (ii) needed as evidence, and the property is fungible or the property's
31 evidentiary value can otherwise be preserved without retaining the property within the

1 jurisdiction of the court.

2 * **Sec. 11.** AS 12.36.060(a) is amended to read:

3 (a) A deadly weapon, other than a firearm or ammunition, forfeited to the state
4 under AS 12.36.300 - 12.36.700 [AS 12.55.015(a)(9), UNLESS REMITTED UNDER
5 AS 12.36.050,] shall be disposed of by the commissioner of public safety under this
6 section. Under this subsection, the commissioner of public safety

7 (1) may declare a weapon surplus and transfer it to the commissioner
8 of administration;

9 (2) may, if the weapon is suitable for law enforcement purposes,
10 training, or identification, retain the weapon for use by the Department of Public
11 Safety or transfer the weapon to the municipal law enforcement agency making the
12 arrest that led to the forfeiture;

13 (3) shall destroy a weapon that is unsafe or unlawful.

14 * **Sec. 12.** AS 12.36.060(c) is amended to read:

15 (c) A firearm or ammunition forfeited to the state under AS 12.36.300 -
16 12.36.700 [AS 12.55.015(a)(9), UNLESS REMITTED UNDER AS 12.36.050,] shall
17 be disposed of as provided in AS 18.65.340.

18 * **Sec. 13.** AS 12.36 is amended by adding new sections to read:

19 **Article 03. Forfeiture.**

20 **Sec. 12.36.300. Property subject to forfeiture.** (a) A person's property is
21 subject to forfeiture to the state if the

22 (1) person is arrested for an offense listed in AS 12.36.320;

23 (2) person is convicted of the offense; and

24 (3) state establishes beyond a reasonable doubt that the property is
25 subject to forfeiture under (b) of this section.

26 (b) Following conviction for an offense listed in AS 12.36.320, a court may
27 order a person to forfeit

28 (1) property the person acquired through commission of the offense;

29 (2) property directly traceable to property acquired through the
30 commission of the offense;

31 (3) any instrumentality the person used in the commission of the

1 offense;

2 (4) any item set out in AS 04.16.220, AS 17.30.110, AS 43.50.620, or
3 43.50.625.

4 (c) Nothing in this section prevents property from being forfeited by the terms
5 of a plea agreement that is approved by a court or by other agreement of the parties to
6 a criminal proceeding.

7 (d) Except as provided in (e) of this section, at any time, at the request of the
8 state, a court may issue a preliminary order to seize property that is subject to
9 forfeiture and for which forfeiture is sought and to provide for the custody of the
10 property. Before granting an order to seize property under this subsection, the court
11 shall give any putative interest holder in the property the right to be heard with regard
12 to the seizure. The execution on the order to seize the property and the return of the
13 property, if applicable, are subject to this chapter and other state laws. Before issuing
14 an order under this subsection, the court shall make a finding that

15 (1) there is a substantial probability that the

16 (A) property is subject to forfeiture;

17 (B) state will prevail on the issue of forfeiture; and

18 (C) failure to enter the order will result in the property being
19 destroyed, removed from the state, or otherwise made unavailable for
20 forfeiture; and

21 (2) the need to preserve the availability of the property through the
22 entry of the requested order outweighs the hardship to the owner and other parties
23 known to be claiming interests in the property.

24 (e) Property subject to forfeiture under this section may be seized at any time,
25 without a prior court order, if the law enforcement officer making the seizure has
26 probable cause to believe the property is subject to forfeiture and that the delay
27 occasioned by the need to obtain a court order would result in the removal or
28 destruction of the property or otherwise frustrate the seizure.

29 **Sec. 12.36.320. Offenses subject to forfeiture.** (a) Forfeiture to the state is
30 permitted following the conviction of a criminal offense under

31 (1) AS 04.11.010, 04.11.499, 04.11.501, or an ordinance adopted

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under AS 04.11.501;

(2) AS 04.16.205;

(3) AS 04.21.060;

(4) AS 08.54;

(5) AS 11.41, AS 11.46, AS 11.56, or AS 11.61, if a deadly weapon was in the actual possession of or used by the defendant during the commission of the offense;

(6) AS 11.41.410 - 11.41.458, as set out in AS 11.41.468;

(7) AS 11.46.460, 11.46.462, or 11.46.484(a)(5), if personal property, other than a motor vehicle, is used in aid of the offense;

(8) AS 11.61.123 - 11.61.128, as set out in AS 11.61.129;

(9) AS 11.61.140;

(10) AS 11.66.100(c) or 11.66.110 - 11.66.135, as set out in AS 11.66.145;

(11) AS 11.66.200 - 11.66.280, as set out in AS 11.66.270;

(12) AS 11.71;

(13) AS 11.73;

(14) AS 16.05;

(15) AS 16.43.140(a), as set out in AS 16.43.970(g);

(16) an ordinance adopted under AS 28.01.015;

(17) AS 28.15.291;

(18) AS 28.35.030 or 28.35.032;

(19) AS 43.50.640;

(20) any applicable law if a motor vehicle, weapon, electronic communication device, or money or other valuable was used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang; or

(21) any applicable law if a deadly weapon was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(b) In this section,

1 (1) "criminal street gang" has the meaning given in AS 11.81.900;

2 (2) "deadly weapon" has the meaning given in AS 11.81.900.

3 **Sec. 12.36.350. Seizure of property; motion for return of property.** (a)

4 When a law enforcement officer seizes property that is subject to forfeiture to the
5 state, the officer shall provide an itemized receipt to the person possessing the
6 property or, in the absence of a person to whom the receipt could be given, shall leave
7 the receipt in the place where the property was found, if possible.

8 (b) Following the seizure of property, the defendant in the related criminal
9 matter or another person who claims an interest in seized property may, not later than
10 60 days before a related criminal trial, claim an interest in seized property or request
11 return of seized property by a motion to the court. A motion filed under this subsection
12 must include facts to support the person's alleged interest in the property.

13 (c) If a person makes a timely motion under this section, the court shall hold a
14 hearing on the motion within 30 days of the date on which the motion is filed, or
15 before the resolution of any related criminal matter or forfeiture proceeding,
16 whichever is earlier.

17 (d) At least 10 days before a hearing on a motion filed under this section, the
18 state shall file an answer or responsive motion that shows probable cause for the
19 seizure.

20 (e) A court shall grant a claimant's motion if the court finds that

21 (1) it is likely that the final judgment will require the state to return the
22 property to the claimant; and

23 (2) the property is not reasonably required to be held for investigatory
24 reasons.

25 (f) In its discretion, the court may order the return of funds or property
26 sufficient to obtain legal counsel but less than the total amount seized, and the court
27 may require an accounting.

28 (g) In lieu of ordering the return of funds or property, a court may order

29 (1) the state to give security or written assurance for satisfaction of any
30 judgment, including damages, that may be rendered in a related forfeiture action; or

31 (2) any other relief the court considers to be just.

1 (h) When a claimant is not represented by an attorney, any inculpatory
2 statements made or inculpatory evidence presented to support the claim in a motion or
3 during a hearing under this section may not be admitted as evidence against the
4 claimant in a subsequent criminal proceeding.

5 **Sec. 12.36.400. Ancillary forfeiture.** (a) Within 30 days after making a
6 seizure of property or simultaneously upon filing a related criminal indictment, the
7 state shall file a complaint of ancillary forfeiture proceedings or return the property to
8 the person from whom it was seized. A complaint of ancillary forfeiture proceedings
9 shall include the following:

- 10 (1) a description of the property seized;
- 11 (2) the date and place of seizure of the property;
- 12 (3) the name and address of the law enforcement agency making the
13 seizure;
- 14 (4) the specific statutory and factual grounds for the seizure;
- 15 (5) whether the property was seized under an order of seizure or
16 forfeiture, and, if the property was seized without an order of seizure or forfeiture, an
17 affidavit from a law enforcement officer stating the legal and factual grounds for why
18 an order of seizure or forfeiture was not required; and
- 19 (6) in the complaint caption and in the complaint, the names of persons
20 known to the state who may claim an interest in the property and the basis for each
21 person's alleged interest.

22 (b) The complaint shall be served on the person from whom the property was
23 seized, the person's attorney of record, and all persons known or reasonably believed
24 by the state to claim an interest in the property. If some or all of those persons cannot
25 be served, a copy of the complaint must also be published at least three times in a
26 newspaper of general circulation in the district of the court having jurisdiction until the
27 forfeiture proceeding is resolved.

28 **Sec. 12.36.450. Forfeiture proceedings.** (a) A person who claims an interest
29 in seized property shall file an answer to the complaint of forfeiture within 30 days
30 after the date of service of the complaint. The answer shall include facts to support the
31 claimant's alleged interest in the property.

1 (b) Jurisdiction and venue for a forfeiture proceeding are in the same court in
2 which jurisdiction and venue lie for the criminal matter related to the seized property.

3 (c) A forfeiture proceeding shall begin after the conclusion of the trial for the
4 related criminal matter in an ancillary proceeding that relates to a defendant's property
5 before the same judge and jury, if applicable, and the court, and the jury, if applicable,
6 may consider the forfeiture of property seized from other persons at the same time or
7 in a later proceeding. If the criminal defendant in the related criminal matter is
8 represented by a public defender, conflict counsel, or other appointed counsel for
9 indigent defendants, representation of the defendant shall continue through the
10 forfeiture proceeding.

11 (d) Discovery conducted in an ancillary forfeiture proceeding is subject to the
12 Alaska Rules of Criminal Procedure.

13 (e) An ancillary forfeiture proceeding that relates to the forfeiture of property
14 valued at less than \$20,000 shall be held before a court sitting without a jury.

15 (f) If the state fails to prove, beyond a reasonable doubt, that a person from
16 whom property is seized is an owner of the property,

17 (1) the forfeiture proceeding shall be dismissed and the property shall
18 be delivered to the owner, unless the owner is unknown or the owner's possession of
19 the property is illegal; and

20 (2) the owner is not subject to any charges by the state for storage of
21 the property or expenses incurred in the preservation of the property.

22 (g) The court shall enter a judgment of forfeiture, and the seized property shall
23 be forfeited to the state, if the state proves beyond a reasonable doubt that the

24 (1) property is subject to forfeiture;

25 (2) criminal prosecution of the owner of the seized property resulted in
26 a conviction; and

27 (3) value of the property to be forfeited does not unreasonably exceed
28 the

29 (A) pecuniary gain derived or sought to be derived by the
30 offense;

31 (B) pecuniary loss caused or sought to be caused by the

1 offense; or

2 (C) value of the convicted owner's interest in the property.

3 (h) Within 90 days of a judgment entered under (g) of this section, the person
4 whose property was forfeited may petition the court to determine whether the
5 forfeiture was unconstitutionally excessive or disproportionate under the state or
6 federal constitution. At a hearing on the petition, the petitioner has the burden of
7 establishing by a preponderance of the evidence that the forfeiture was
8 disproportionate to the seriousness of the criminal offense for which the person was
9 convicted. The hearing shall be held before a court sitting without a jury. In
10 determining whether the forfeiture is unconstitutionally excessive or disproportionate
11 under this subsection, the court may consider all relevant factors, including

12 (1) the seriousness of the criminal offense and of its effect on the
13 community, the duration of the criminal activity, and the harm caused by the
14 defendant;

15 (2) the extent to which the defendant participated in the offense;

16 (3) the extent to which the property was used in committing the
17 offense;

18 (4) the sentence imposed for the commission of the offense that relates
19 to the property that is subject to forfeiture; and

20 (5) whether the criminal offense was completed or attempted.

21 (i) The court may not consider the value of the property to the state when it
22 determines whether the forfeiture of property is unconstitutionally excessive or
23 disproportionate under (h) of this section.

24 (j) In determining the value of property subject to forfeiture, the court may
25 consider relevant factors, including the

26 (1) fair market value of the property;

27 (2) value of the property to the defendant, including hardship that the
28 defendant will suffer if the forfeiture is realized; and

29 (3) hardship from the loss of a primary residence, motor vehicle, or
30 other property to the defendant's family members or others if the property is forfeited.

31 **Sec. 12.36.460. Plea agreements and forfeiture.** A court may not accept a

1 plea agreement or other arrangement by which a defendant contributes or donates
2 property to a person, charity, or other organization. This provision does not apply to
3 restitution or other compensation under other state law for victims of crimes.

4 **Sec. 12.36.475. Forfeiture of substitute property.** Following a person's
5 conviction, the state may make a motion for forfeiture of substitute property owned by
6 the person that is equal to but does not exceed the value of property that is subject to
7 forfeiture but that the state is unable to seize. The court shall order the forfeiture of
8 substitute property only if the state proves beyond a reasonable doubt that the person
9 intentionally transferred, sold, or deposited property with a third party to avoid the
10 court's jurisdiction and the forfeiture of the property, and the substitute property is
11 owned in full by the convicted person.

12 **Sec. 12.36.490. Joint and several liability prohibited.** A person is not jointly
13 and severally liable for orders for forfeiture of another person's property. When
14 ownership of property is unclear, a court may order each person to forfeit the person's
15 property on a pro rata basis or by another means the court considers to be equitable.

16 **Sec. 12.36.520. Appeal.** A party to a forfeiture proceeding under this chapter
17 may appeal an order regarding the seizure, forfeiture, or distribution of property under
18 AS 22.07.020 or AS 22.15.240.

19 **Sec. 12.36.550. Forfeited property.** (a) The state acquires provisional title to
20 seized property at the time the property was used or acquired in connection with an
21 offense that subjects the property to forfeiture. Provisional title authorizes the state to
22 hold and protect the property. Title to the property vests with the state when a trier of
23 fact renders a final forfeiture verdict, and the title relates back to the time when the
24 state acquired provisional title, if the title is subject to claims by third parties that are
25 adjudicated under this chapter.

26 (b) Unless possession of the property is illegal, or a different disposition is
27 specifically provided for by law, except as provided in this section, forfeited property
28 that is not currency shall be delivered along with any abandoned property to the state
29 treasurer for disposition at a public auction. All forfeited currency and all sale
30 proceeds of the sale of forfeited or abandoned property shall be deposited in the
31 general fund.

1 (c) Proceeds from the sale of forfeited property received by the state from
2 another jurisdiction shall be deposited in the general fund. If federal law prohibits
3 compliance with this section, law enforcement agencies may not seek forfeited
4 property or proceeds from the sale of forfeited property shared or transferred under
5 federal law.

6 (d) A property interest forfeited to the state under AS 12.36.300 - 12.36.700 is
7 subject to the interest of a secured party, unless, in the forfeiture proceeding, the state
8 proves beyond a reasonable doubt that the secured party consented to the use of the
9 property with knowledge that it would be used in connection with the offense that
10 relates to the seizure of the property.

11 **Sec. 12.36.580. Innocent owner.** (a) The property of an innocent owner may
12 not be forfeited to the state.

13 (b) A person is an innocent owner if the person

14 (1) holds a legal right, title, or interest in the property seized and held
15 the ownership interest in the seized property at the time the illegal conduct that gave
16 rise to the seizure of the property occurred; or

17 (2) was a bona fide purchaser for fair value.

18 (c) A person claiming to be an innocent owner has the burden to prove the
19 facts set out in (b) of this section.

20 (d) The state shall return property immediately to an established innocent
21 owner who has an interest in homesteaded property, a motor vehicle valued at less
22 than \$10,000, or a conveyance that is encumbered by a security interest that was
23 perfected under state law or that is subject to a lease or rental agreement, unless the
24 secured party or lessor consented to the use of the property with knowledge that it
25 would be used for a purpose for which forfeiture is permitted.

26 (e) If a person establishes that the person is an innocent owner under this
27 section, and the state pursues a forfeiture proceeding against the person's property, the
28 state shall prove by clear and convincing evidence that the innocent owner consented
29 to the use of the property with knowledge that it would be used for a purpose for
30 which forfeiture is permitted.

31 (f) A person who acquired an ownership interest in property subject to

1 forfeiture after the commission of an offense that gave rise to the forfeiture, and who
2 claims to be an innocent owner, has the burden of production to show that the person
3 is an innocent owner under (b) of this section.

4 (g) If a person establishes that the person is an innocent owner under (f) of this
5 section, and the state pursues a forfeiture proceeding against the person's property, the
6 state shall prove by clear and convincing evidence that, at the time the person acquired
7 the property, the person had

- 8 (1) actual knowledge that the property was subject to forfeiture; or
- 9 (2) notice of a defect in title.

10 (h) If the state fails to meet its burdens as provided in (e) and (g) of this
11 section, the court shall find that the person is an innocent owner and shall order the
12 state to relinquish all claims of title to the innocent owner's property.

13 **Sec. 12.36.600. Seized property.** (a) Seized currency alleged to be subject to
14 forfeiture shall be deposited with the clerk of the court in an interest-bearing account.

15 (b) Seized property, other than currency or real property, that is not required
16 by federal or state law to be destroyed shall be

- 17 (1) placed under seal and removed to a place designated by the court;
- 18 or
- 19 (2) held in the custody of a law enforcement agency.

20 (c) Seized property shall be kept by the custodian in a manner to protect it
21 from theft or damage and, if ordered by the court, insured against those risks.

22 (d) A law enforcement agency may not retain forfeited or abandoned property.

23 **Sec. 12.36.610. Annual report.** (a) Every law enforcement agency that
24 engaged in seizures or forfeitures in the previous year shall prepare an annual report of
25 the agency's seizures and forfeitures conducted under AS 12.36.300 - 12.36.700 and
26 under federal forfeiture law, and the report must include the following:

- 27 (1) the total number of seizures of currency and the total amount of
28 currency seized in each seizure;
- 29 (2) the total number of seizures of property and the number and types
30 of items seized in each seizure;
- 31 (3) the market value of each item of seized property;

1 (4) aggregate demographic information about the persons whose
2 property has been seized or forfeited, including race, ethnicity, and sex; and

3 (5) the total number of occurrences of each class of offenses that
4 resulted in the agency's seizure of property.

5 (b) A law enforcement agency shall submit its annual report to the Department
6 of Public Safety and to the district attorney's office in the law enforcement agency's
7 district. A law enforcement agency that did not engage in seizure or forfeiture under
8 AS 12.36.300 - 12.36.700 or federal forfeiture law, or both, shall report that fact in its
9 annual report.

10 (c) The Department of Public Safety shall compile the reports submitted by
11 each law enforcement agency and issue an aggregate report of all forfeitures in the
12 state.

13 (d) By April 1 of each year, the Department of Public Safety shall publish on
14 its Internet website the department's aggregate report and individual law enforcement
15 agency reports submitted for the previous year.

16 **Sec. 12.36.625. Holding seized property.** (a) A law enforcement agency that
17 holds seized property shall return the seized property to the owner of the property
18 within a reasonable time that does not exceed five days after

19 (1) a court finds that a person had a bona fide security interest in the
20 property;

21 (2) a court finds that the owner is an innocent owner;

22 (3) the acquittal of or dismissal of related criminal charges against the
23 owner of the property; or

24 (4) dismissal of the criminal charge that was the basis of the forfeiture
25 proceedings.

26 (b) A law enforcement agency that holds seized property is responsible for any
27 damage, storage fees, and related costs applicable to property that is returned to an
28 owner under this section.

29 **Sec. 12.36.635. Property transfer; joint investigations.** (a) A law
30 enforcement agency may not refer or otherwise transfer property seized under state
31 law to a federal agency seeking the adoption of the seized property by the federal

1 agency. Nothing in this section shall be construed to prohibit the federal government,
2 or any of its agencies, from seeking federal forfeiture.

3 (b) A law enforcement agency participating in a joint investigation or task
4 force with a federal agency may not transfer property to the federal government unless
5 the court enters an order, upon petition of the prosecuting attorney, authorizing the
6 property to be transferred. The court may enter an order authorizing a transfer to the
7 federal government if the transfer is actually necessary for an active criminal case or
8 criminal investigation brought by the federal government. The court may enter an
9 order declining the transfer if the transfer would circumvent the protections provided
10 under AS 12.36.300 - 12.36.700 or that would otherwise be available to a putative
11 interest holder in the property.

12 (c) In the event of an intended transfer of seized property to the federal
13 government, the state or local agency intending to facilitate the transfer shall provide
14 all property owners with notice of the intended transfer at least 60 days before the
15 transfer is to take place.

16 (d) A property owner who believes that the intended transfer of property under
17 this section is in violation of (a) of this section may file a request for a hearing with
18 the court having jurisdiction over the underlying property under AS 12.36.450(b) at
19 least five days before the date of the intended transfer as stated in the notice required
20 under (c) of this section.

21 (e) Property may not be transferred under this section until the state court
22 having jurisdiction over the underlying property under AS 12.36.450(b) determines
23 that the transfer will not circumvent the protections provided under AS 12.36.300 -
24 12.36.700 or that would otherwise be available to a putative interest holder in the
25 property and that the transfer is actually necessary for an active criminal case or
26 criminal investigation brought by the federal government.

27 (f) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft is
28 subject to the conditions specified in AS 18.60.148(a).

29 **Sec. 12.36.700. Definitions.** In AS 12.36.300 - 12.36.700,

30 (1) "abandoned property" means personal property the rights to which
31 and the control of which an owner has intentionally relinquished;

1 (2) "actual knowledge" means a direct and clear awareness of
2 information, a fact or a condition;

3 (3) "conveyance" means a motor vehicle, trailer, snowmobile, airplane,
4 vessel, or any other equipment or device used for transportation, but does not include
5 property that is stolen or taken in violation of a law;

6 (4) "conviction" or "convicted" means that a person has been found
7 guilty of an offense in a trial court, whether by a plea of guilty or nolo contendere or
8 otherwise, and whether the sentence is deferred or suspended;

9 (5) "instrumentality" means land, a building, a container, a
10 conveyance, equipment, materials, a product, a computer, computer software, a
11 telecommunications device, a firearm, ammunition, a tool, money, a security, a
12 negotiable instrument, other devices used for exchange of property, or other property
13 lawful to possess that is used in the furtherance or commission of an offense to which
14 forfeiture applies;

15 (6) "law enforcement agency" has the meaning given in AS 12.36.090;

16 (7) "law enforcement officer"

17 (A) means a state or municipal peace officer or another person
18 granted the powers of a peace officer under state law to enforce criminal
19 statutes;

20 (B) does not mean a correctional officer;

21 (8) "owner" means a person who has a legal or equitable ownership
22 interest in property;

23 (9) "property" means tangible or intangible personal property or real
24 property;

25 (10) "property subject to forfeiture" means property or an
26 instrumentality described and declared to be subject to forfeiture under AS 12.36.300 -
27 12.36.700 or other state law; and

28 (11) "secured party" means a person with a security or other protected
29 interest in property, whether the interest arose by mortgage, security agreement, lien,
30 lease, or otherwise, the purpose of which security or interest is to secure the payment
31 of a debt or protect a potential debt owed to the secured party.

1 * **Sec. 14.** AS 16.05.190 is amended to read:

2 **Sec. 16.05.190. Seizure and disposition of equipment.** Guns, traps, nets,
3 fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other
4 paraphernalia used in or in aid of a violation of this chapter or a regulation of the
5 department may be seized under a valid search, and all fish and game, or parts of fish
6 and game, or nests or eggs of birds, taken, transported, or possessed contrary to the
7 provisions of this chapter or a regulation of the department shall be seized **under**
8 **AS 12.36.300 - 12.36.700** by any peace officer designated in AS 16.05.150. Upon
9 conviction of the offender or upon judgment of the court having jurisdiction that the
10 item was taken, transported, or possessed in violation of this chapter or a regulation of
11 the department, all fish and game, or parts of them are forfeited to the state **under**
12 **AS 12.36.300 - 12.36.700** and shall be disposed of as directed by the court. [IF SOLD,
13 THE PROCEEDS OF THE SALE SHALL BE TRANSMITTED TO THE PROPER
14 STATE OFFICER FOR DEPOSIT IN THE GENERAL FUND.] Guns, traps, nets,
15 fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized
16 under the provisions of this chapter or a regulation of the department, unless forfeited
17 by order of the court, shall be returned **as provided under AS 12.36.300 - 12.36.700,**
18 after completion of the case and payment of the fine, if any.

19 * **Sec. 15.** AS 16.05.722(b) is amended to read:

20 (b) In addition, the court shall order forfeiture **to the state under**
21 **AS 12.36.300 - 12.36.700** of any fish, or its fair market value, taken or retained as a
22 result of the commission of the violation. For purposes of this subsection, it is a
23 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
24 a violation, or found at the fishing site, were taken or retained in violation of
25 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
26 Fisheries or the department. It is the defendant's burden to show by a preponderance of
27 the evidence that fish on board or at the site were lawfully taken and retained.

28 * **Sec. 16.** AS 16.05.723(a) is amended to read:

29 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
30 regulation of the Board of Fisheries or the department governing commercial fishing,
31 is guilty of a misdemeanor and in addition to punishment under other provisions in

1 this title, including AS 16.05.710 [AS 16.05.195 AND 16.05.710], is punishable upon
2 conviction by a fine of not more than \$15,000 or by imprisonment for not more than
3 one year, or by both. In addition, the court shall order forfeiture to the state under
4 AS 12.36.300 - 12.36.700 of any fish, or its fair market value, taken or retained as a
5 result of the commission of the violation, and the court may order forfeiture to the
6 state of [FORFEIT] any vessel and any fishing gear under AS 12.36.300 - 12.36.700,
7 including any net, pot, tackle, or other device designed or employed to take fish
8 commercially, that was used in or in aid of the violation. [ANY FISH, OR ITS FAIR
9 MARKET VALUE, FORFEITED UNDER THIS SUBSECTION MAY NOT ALSO
10 BE FORFEITED UNDER AS 16.05.195.] For purposes of this subsection, it is a
11 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
12 a violation, or found at the fishing site, were taken or retained in violation of
13 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
14 Fisheries or the department, and it is the defendant's burden to show by a
15 preponderance of the evidence that fish on board or at the site were lawfully taken and
16 retained.

17 * **Sec. 17.** AS 16.05.782(b) is amended to read:

18 (b) In addition to the penalty imposed by law under (a) of this section, the
19 court shall order forfeiture to the state under AS 12.36.300 - 12.36.700 of the hide
20 and skull of the bear, but if the hide and skull are not salvaged and delivered to the
21 department then the court shall impose an additional fine of up to \$10,000.

22 * **Sec. 18.** AS 16.05.783(c) is amended to read:

23 (c) A person who violates this section is guilty of a misdemeanor, and upon
24 conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not
25 more than one year, or by both. In addition, the court may order the aircraft and
26 equipment used in or in aid of a violation of this section to be forfeited to the state
27 under AS 12.36.300 - 12.36.700.

28 * **Sec. 19.** AS 16.05.905(b) is amended to read:

29 (b) An alien person who violates (a) of this section is guilty of a misdemeanor,
30 and upon conviction is punishable by a confiscation and forfeiture to the state under
31 AS 12.36.300 - 12.36.700 of the fishing vessel used in the violation, or by

1 imprisonment for not more than one year, or by fine of not more than \$10,000, or by
2 all or any two of the foregoing punishments.

3 * **Sec. 20.** AS 16.43.970(g) is amended to read:

4 (g) A person who violates the provisions of AS 16.43.140(a) is

5 (1) upon a first conviction, guilty of a class B misdemeanor and may
6 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture
7 **to the state under AS 12.36.300 - 12.36.700** of the person's fishing vessel, or both,
8 and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss
9 of commercial fishing privileges under (i) of this section;

10 (2) upon a second conviction, guilty of a class A misdemeanor and
11 may be sentenced to a definite term of imprisonment of not more than one year, and
12 shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture
13 **to the state under AS 12.36.300 - 12.36.700** of the person's fishing vessel, and loss of
14 commercial fishing privileges under (i) of this section;

15 (3) upon a third or subsequent conviction, guilty of a class A
16 misdemeanor and may be sentenced to a definite term of imprisonment of not more
17 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than
18 \$50,000, forfeiture **to the state under AS 12.36.300 - 12.36.700** of the person's
19 fishing vessel, and loss of commercial fishing privileges under (i) of this section.

20 * **Sec. 21.** AS 17.30.110 is amended to read:

21 **Sec. 17.30.110. Items subject to forfeiture.** The following may be forfeited to
22 the state **under AS 12.36.300 - 12.36.700**:

23 (1) a controlled substance that has been manufactured, distributed,
24 dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

25 (2) raw materials, products, and equipment that are used or intended
26 for use in manufacturing, distributing, compounding, processing, delivering,
27 importing, or exporting a controlled substance that is a felony under this chapter or
28 AS 11.71;

29 (3) property that is used or intended for use as a container for property
30 described in (1) or (2) of this section;

31 (4) a conveyance, including but not limited to aircraft, vehicles, or

1 vessels, that has been used or is intended for use in transporting or in any manner in
2 facilitating the transportation, sale, receipt, possession, or concealment of property
3 described in (1) or (2) of this section in violation of a felony offense under this chapter
4 or AS 11.71; however,

5 (A) a conveyance may not be forfeited under this paragraph if
6 the owner of the conveyance establishes, by a preponderance of the evidence,
7 at a hearing before the court as the trier of fact, that use of the conveyance in
8 violation of this chapter or AS 11.71 was committed by another person and
9 that the owner was neither a consenting party nor privy to the violation;

10 (B) a forfeiture of a conveyance encumbered by a valid security
11 interest at the time of seizure is subject to the interest of the secured party if the
12 secured party establishes, by a preponderance of the evidence, at a hearing
13 before the court as the trier of fact, that use of the conveyance in violation of
14 this chapter or AS 11.71 was committed by another person and that the secured
15 party was neither a consenting party nor privy to the violation;

16 (5) books, records, and research products and materials, including
17 formulas, microfilm, tapes, and data, that are used in violation of this chapter or
18 AS 11.71;

19 (6) money, securities, negotiable instruments, or other things of value
20 used in financial transactions derived from activity prohibited by this chapter or
21 AS 11.71; and

22 (7) a firearm that is visible, carried during, or used in furtherance of a
23 violation of this chapter or AS 11.71.

24 * **Sec. 22.** AS 18.60.148(a) is amended to read:

25 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under
26 AS 12.36.300 - 12.36.700 [AS 16.05.195(f), AS 17.30.122,] or another state law or
27 regulation is subject to the following conditions:

- 28 (1) the transfer shall be made without cost to the Civil Air Patrol;
29 (2) the aircraft becomes a corporate Civil Air Patrol aircraft;
30 (3) the aircraft may only be used for Civil Air Patrol search and rescue,
31 civil defense, and training purposes;

1 (4) the aircraft may not be transferred to another wing of the Civil Air
2 Patrol unless

3 (A) the aircraft has been corporate aircraft of the Alaska Wing,
4 Civil Air Patrol for at least 36 months after the date of transfer to the Alaska
5 Wing; or

6 (B) the aircraft is being exchanged for another Civil Air Patrol
7 corporate aircraft of equivalent or greater value;

8 (5) if the Civil Air Patrol determines that the aircraft should be
9 disposed of as surplus property, the disposition shall first be approved by the
10 Department of Administration.

11 * **Sec. 23.** AS 22.07.020(a) is amended to read:

12 (a) The court of appeals has appellate jurisdiction in actions and proceedings
13 commenced in the superior court involving

14 (1) criminal prosecution;

15 (2) post-conviction relief;

16 (3) matters under AS 47.12, including waiver of jurisdiction over a
17 minor under AS 47.12.100;

18 (4) extradition;

19 (5) habeas corpus;

20 (6) probation and parole; [AND]

21 (7) bail;

22 **(8) forfeiture proceedings under AS 12.36.300 - 12.36.700.**

23 * **Sec. 24.** AS 22.15.240 is amended by adding a new subsection to read:

24 (e) Any party may appeal to the superior court a judgment of the district court
25 in a forfeiture proceeding under AS 12.36.300 - 12.36.700.

26 * **Sec. 25.** AS 28.15.291(b) is amended to read:

27 (b) Upon conviction under (a) of this section, the court

28 (1) shall impose a minimum sentence of imprisonment

29 (A) if the person has not been previously convicted, of not less
30 than 10 days with 10 days suspended, including a mandatory condition of
31 probation that the defendant complete not less than 80 hours of community

1 work service;

2 (B) if the person has been previously convicted, of not less than
3 10 days;

4 (C) if the person's driver's license, privilege to drive, or
5 privilege to obtain a license was revoked under circumstances described in
6 AS 28.15.181(c)(1), if the person was driving in violation of a limited license
7 issued under AS 28.15.201(d) following that revocation, or if the person was
8 driving in violation of an ignition interlock device requirement following that
9 revocation, of not less than 20 days with 10 days suspended, and a fine of not
10 less than \$500, including a mandatory condition of probation that the
11 defendant complete not less than 80 hours of community work service;

12 (D) if the person's driver's license, privilege to drive, or
13 privilege to obtain a license was revoked under circumstances described in
14 AS 28.15.181(c)(2), (3), or (4), if the person was driving in violation of a
15 limited license issued under AS 28.15.201(d) following that revocation, or if
16 the person was driving in violation of an ignition interlock device requirement
17 following that revocation, of not less than 30 days and a fine of not less than
18 \$1,000;

19 (2) may impose additional conditions of probation;

20 (3) may not

21 (A) suspend execution of sentence or grant probation except on
22 condition that the person serve a minimum term of imprisonment and perform
23 required community work service as provided in (1) of this subsection;

24 (B) suspend imposition of sentence;

25 (4) shall revoke the person's license, privilege to drive, or privilege to
26 obtain a license, and the person may not be issued a new license or a limited license
27 nor may the privilege to drive or obtain a license be restored for an additional period
28 of not less than 90 days after the date that the person would have been entitled to
29 restoration of driving privileges; and

30 (5) may order that the motor vehicle that was used in commission of
31 the offense be forfeited under AS 12.36.300 - 12.36.700 [AS 28.35.036].

1 * **Sec. 26.** AS 28.35.030(b) is amended to read:

2 (b) Except as provided under (n) of this section, driving while under the
3 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
4 misdemeanor. Upon conviction,

5 (1) the court shall impose a minimum sentence of imprisonment of

6 (A) not less than 72 consecutive hours, require the person to
7 use an ignition interlock device after the person regains the privilege, including
8 any limited privilege, to operate a motor vehicle for a minimum of six months,
9 and impose a fine of not less than \$1,500 if the person has not been previously
10 convicted;

11 (B) not less than 20 days, require the person to use an ignition
12 interlock device after the person regains the privilege, including any limited
13 privilege, to operate a motor vehicle for a minimum of 12 months, and impose
14 a fine of not less than \$3,000 if the person has been previously convicted once;

15 (C) not less than 60 days, require the person to use an ignition
16 interlock device after the person regains the privilege, including any limited
17 privilege, to operate a motor vehicle for a minimum of 18 months, and impose
18 a fine of not less than \$4,000 if the person has been previously convicted twice
19 and is not subject to punishment under (n) of this section;

20 (D) not less than 120 days, require the person to use an ignition
21 interlock device after the person regains the privilege, including any limited
22 privilege, to operate a motor vehicle for a minimum of 24 months, and impose
23 a fine of not less than \$5,000 if the person has been previously convicted three
24 times and is not subject to punishment under (n) of this section;

25 (E) not less than 240 days, require the person to use an ignition
26 interlock device after the person regains the privilege, including any limited
27 privilege, to operate a motor vehicle for a minimum of 30 months, and impose
28 a fine of not less than \$6,000 if the person has been previously convicted four
29 times and is not subject to punishment under (n) of this section;

30 (F) not less than 360 days, require the person to use an ignition
31 interlock device after the person regains the privilege, including any limited

1 privilege, to operate a motor vehicle for a minimum of 36 months, and impose
2 a fine of not less than \$7,000 if the person has been previously convicted more
3 than four times and is not subject to punishment under (n) of this section;

4 (2) the court may not

5 (A) suspend execution of sentence or grant probation except on
6 condition that the person

7 (i) serve the minimum imprisonment under (1) of this
8 subsection;

9 (ii) pay the minimum fine required under (1) of this
10 subsection;

11 (B) suspend imposition of sentence; or

12 (C) suspend the requirement for an ignition interlock device for
13 a violation of (a)(1) of this section involving an alcoholic beverage or
14 intoxicating liquor, singly or in combination, or a violation of (a)(2) of this
15 section;

16 (3) the court shall revoke the person's driver's license, privilege to
17 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
18 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
19 forfeited under AS 12.36.300 - 12.36.700 [AS 28.35.036]; and

20 (4) the court may order that the person, while incarcerated or as a
21 condition of probation or parole, take a drug or combination of drugs intended to
22 prevent the consumption of an alcoholic beverage; a condition of probation or parole
23 imposed under this paragraph is in addition to any other condition authorized under
24 another provision of law.

25 * **Sec. 27.** AS 28.35.030(n) is amended to read:

26 (n) A person is guilty of a class C felony if the person is convicted under (a) of
27 this section and either has been previously convicted two or more times since
28 January 1, 1996, and within the 10 years preceding the date of the present offense, or
29 punishment under this subsection or under AS 28.35.032(p) was previously imposed
30 within the last 10 years. For purposes of determining minimum sentences based on
31 previous convictions, the provisions of (u)(4) of this section apply. Upon conviction,

1 the court

2 (1) shall impose a fine of not less than \$10,000, require the person to
3 use an ignition interlock device after the person regains the privilege to operate a
4 motor vehicle for a minimum of 60 months, and impose a minimum sentence of
5 imprisonment of not less than

6 (A) 120 days if the person has been previously convicted twice;

7 (B) 240 days if the person has been previously convicted three
8 times;

9 (C) 360 days if the person has been previously convicted four
10 or more times;

11 (2) may not

12 (A) suspend execution of sentence or grant probation except on
13 condition that the person

14 (i) serve the minimum imprisonment under (1) of this
15 subsection;

16 (ii) pay the minimum fine required under (1) of this
17 subsection;

18 (B) suspend imposition of sentence; or

19 (C) suspend the requirement for an ignition interlock device for
20 a violation of (a)(1) of this section involving an alcoholic beverage or
21 intoxicating liquor, singly or in combination, or a violation of (a)(2) of this
22 section;

23 (3) shall permanently revoke the person's driver's license, privilege to
24 drive, or privilege to obtain a license subject to restoration of the license under (o) of
25 this section;

26 (4) may order that the person, while incarcerated or as a condition of
27 probation or parole, take a drug or combination of drugs intended to prevent the
28 consumption of an alcoholic beverage; a condition of probation or parole imposed
29 under this paragraph is in addition to any other condition authorized under another
30 provision of law;

31 (5) shall order forfeiture under AS 12.36.300 - 12.36.700

1 [AS 28.35.036] of the vehicle, watercraft, or aircraft used in the commission of the
2 offense [, SUBJECT TO REMISSION UNDER AS 28.35.037]; and

3 (6) shall order the department to revoke the registration for any vehicle
4 registered by the department in the name of the person convicted under this
5 subsection; if a person convicted under this subsection is a registered co-owner of a
6 vehicle or is registered as a co-owner under a business name, the department shall
7 reissue the vehicle registration and omit the name of the person convicted under this
8 subsection.

9 * **Sec. 28.** AS 28.35.032(g) is amended to read:

10 (g) Upon conviction under this section,

11 (1) the court shall impose a minimum sentence of imprisonment of

12 (A) not less than 72 consecutive hours, require the person to
13 use an ignition interlock device after the person regains the privilege to operate
14 a motor vehicle for a minimum of six months, and impose a fine of not less
15 than \$1,500 if the person has not been previously convicted;

16 (B) not less than 20 days, require the person to use an ignition
17 interlock device after the person regains the privilege to operate a motor
18 vehicle for a minimum of 12 months, and impose a fine of not less than \$3,000
19 if the person has been previously convicted once;

20 (C) not less than 60 days, require the person to use an ignition
21 interlock device after the person regains the privilege to operate a motor
22 vehicle for a minimum of 18 months, and impose a fine of not less than \$4,000
23 if the person has been previously convicted twice and is not subject to
24 punishment under (p) of this section;

25 (D) not less than 120 days, require the person to use an ignition
26 interlock device after the person regains the privilege to operate a motor
27 vehicle for a minimum of 24 months, and impose a fine of not less than \$5,000
28 if the person has been previously convicted three times and is not subject to
29 punishment under (p) of this section;

30 (E) not less than 240 days, require the person to use an ignition
31 interlock device after the person regains the privilege to operate a motor

1 vehicle for a minimum of 30 months, and impose a fine of not less than \$6,000
2 if the person has been previously convicted four times and is not subject to
3 punishment under (p) of this section;

4 (F) not less than 360 days, require the person to use an ignition
5 interlock device after the person regains the privilege to operate a motor
6 vehicle for a minimum of 36 months, and impose a fine of not less than \$7,000
7 if the person has been previously convicted more than four times and is not
8 subject to punishment under (p) of this section;

9 (2) the court may not

10 (A) suspend execution of the sentence required by (1) of this
11 subsection or grant probation, except on condition that the person

12 (i) serve the minimum imprisonment under (1) of this
13 subsection;

14 (ii) pay the minimum fine required under (1) of this
15 subsection;

16 (B) suspend imposition of sentence; or

17 (C) suspend the requirement for an ignition interlock device;

18 (3) the court shall revoke the person's driver's license, privilege to
19 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
20 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
21 forfeited under AS 12.36.300 - 12.36.700 [AS 28.35.036];

22 (4) the court may order that the person, while incarcerated or as a
23 condition of probation or parole, take a drug or combination of drugs intended to
24 prevent the consumption of an alcoholic beverage; a condition of probation or parole
25 imposed under this paragraph is in addition to any other condition authorized under
26 another provision of law; and

27 (5) the sentence imposed by the court under this subsection shall run
28 consecutively with any other sentence of imprisonment imposed on the person.

29 * **Sec. 29.** AS 28.35.032(p) is amended to read:

30 (p) A person is guilty of a class C felony if the person is convicted under this
31 section and either has been previously convicted two or more times since January 1,

1 1996, and within the 10 years preceding the date of the present offense, or punishment
2 under this subsection or under AS 28.35.030(n) was previously imposed within the
3 last 10 years. For purposes of determining minimum sentences based on previous
4 convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

5 (1) the court shall impose a fine of not less than \$10,000, require the
6 person to use an ignition interlock device after the person regains the privilege to
7 operate a motor vehicle for a minimum of 60 months, and impose a minimum sentence
8 of imprisonment of not less than

9 (A) 120 days if the person has been previously convicted twice;

10 (B) 240 days if the person has been previously convicted three
11 times;

12 (C) 360 days if the person has been previously convicted four
13 or more times;

14 (2) the court may not

15 (A) suspend execution of the sentence required by (1) of this
16 subsection or grant probation, except on condition that the person

17 (i) serve the minimum imprisonment under (1) of this
18 subsection;

19 (ii) pay the minimum fine required under (1) of this
20 subsection;

21 (B) suspend imposition of sentence; or

22 (C) suspend the requirements for an ignition interlock device;

23 (3) the court shall permanently revoke the person's driver's license,
24 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
25 this section;

26 (4) the court may order that the person, while incarcerated or as a
27 condition of probation or parole, take a drug, or combination of drugs intended to
28 prevent consumption of an alcoholic beverage; a condition of probation or parole
29 imposed under this paragraph is in addition to any other condition authorized under
30 another provision of law;

31 (5) the sentence imposed by the court under this subsection shall run

1 consecutively with any other sentence of imprisonment imposed on the person;

2 (6) the court shall order forfeiture to the state under AS 12.36.300 -
3 12.36.700 [UNDER AS 28.35.036,] of the motor vehicle, aircraft, or watercraft used
4 in the commission of the offense [, SUBJECT TO REMISSION UNDER
5 AS 28.35.037]; and

6 (7) the court shall order the department to revoke the registration for
7 any vehicle registered by the department in the name of the person convicted under
8 this subsection; if a person convicted under this subsection is a registered co-owner of
9 a vehicle, the department shall reissue the vehicle registration and omit the name of
10 the person convicted under this subsection.

11 * **Sec. 30.** AS 43.50.620 is amended to read:

12 **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes
13 seized under AS 43.50.500 - 43.50.700 are forfeited to the state under AS 12.36.300 -
14 12.36.700. After notice and an opportunity for a hearing, the commissioner shall
15 destroy the cigarettes forfeited under this section.

16 * **Sec. 31.** AS 43.50.625(a) is amended to read:

17 (a) Upon a showing of probable cause that a person has committed the crime
18 of misconduct involving unstamped cigarettes or stamps in the first degree under
19 AS 43.50.640, the following are subject to forfeiture to the state under AS 12.36.300
20 - 12.36.700:

21 (1) material and equipment used in the manufacture, sale, offering for
22 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
23 43.50.640 or 43.50.660 - 43.50.700;

24 (2) aircraft, vehicles, or vessels used to transport or facilitate the
25 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale
26 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

27 (3) money, securities, negotiable instruments, or other things of value
28 used in financial transactions derived from activity prohibited under AS 43.50.500 -
29 43.50.640 or 43.50.660 - 43.50.700.

30 * **Sec. 32.** AS 43.50.625(d) is amended to read:

31 (d) Property subject to forfeiture under (a) of this section may be forfeited to

1 **the state under AS 12.36.300 - 12.36.700**

2 [(1) UPON CONVICTION OF A PERSON FOR A VIOLATION OF
3 AS 43.50.640; OR

4 (2) UPON JUDGMENT BY THE SUPERIOR COURT IN A
5 PROCEEDING IN REM THAT THE PROPERTY WAS USED IN A MANNER
6 SUBJECTING IT TO FORFEITURE UNDER (a) OF THIS SECTION].

7 * **Sec. 33.** AS 04.16.220(c), 04.16.220(d), 04.16.220(e), 04.16.220(f), 04.16.220(g),
8 04.16.220(h), 04.16.220(i), 04.16.220(j), 04.16.220(k); AS 12.36.050; AS 12.55.015(a)(9),
9 12.55.015(a)(11), 12.55.015(f); AS 16.05.195; AS 17.30.112, 17.30.114, 17.30.116,
10 17.30.118, 17.30.120, 17.30.122, 17.30.124, 17.30.126; AS 28.35.036, 28.35.037;
11 AS 43.50.625(b), 43.50.625(c), 43.50.625(e), 43.50.625(f), 43.50.625(g), 43.50.625(h),
12 43.50.625(i), and 43.50.625(j) are repealed.

13 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 INDIRECT COURT RULE AMENDMENTS. The provisions of AS 12.36.300 -
16 12.36.700, added by sec. 13 of this Act, have the effect of changing Rules 3, 4, 11, 12, 16, 32,
17 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803,
18 Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate
19 Procedure, by establishing requirements for forfeiture proceedings and appeals and relating to
20 admissible evidence in those proceedings and appeals.

21 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 APPLICABILITY. This Act applies to offenses, seizures, or forfeitures occurring on
24 or after the effective date of this Act.

25 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 CONDITIONAL EFFECT. This Act takes effect only if sec. 34 of this Act receives
28 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
29 State of Alaska.

30 * **Sec. 37.** This Act takes effect July 1, 2016.

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

Session
State Capitol
Juneau, AK 99801
Phone - (907) 465-4797
Fax - (907) 465-3884

CS for HB 317
Explanation of Changes

1. Sec. 12.36.300(3) - Line 24 is change to require a higher standard of "beyond a reasonable doubt".
2. Sec. 12.36.300 (e) - Numbers (1) and (2) were deleted which narrows the scope by which property subject to forfeiture under this section may be seized at any time without a prior court order.
3. Sec. 12.36.350 (e)(1) - after claimant, "and" was added for clarity.
4. Sec. 12.36.350 (e) - Deleted no. (3) - excludes the ability of a person to request the return of property in order to pay for legal representation under this section.
5. Sec. 12.36.450 – Deleted "Chief Public Defender" and "the District Public Defender". This is a cleanup.
6. Sec. 12.36.450 (f) - Deleted "clear and convincing evidence" and inserted "beyond a reasonable doubt" to require a higher standard.

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7. 12.36.450 (g) - Added language clarifying that forfeiture proceedings after conviction isn't necessary in cases where forfeitures is by statute not challengeable or illegal, for example felony DUI.

8. Sec. 12.36.460 - Delete "in full or partial fulfillment of responsibility established in the court's proceeding." It is not necessary.

9. Sec. 12.36.500 - Delete "At any time" and added within 90 day to establish a specific timeline under this section.

10. Sec. 12.36.500 – was roll into section 12.36.450 (g) to prevent duplication and additional cost.

11. Sec. 12.36.600 - Delete "district". This was a cleanup.

12. Sec. 12.36.625 - Delete "by abandonment of the prosecution". This was deleted for clarity.

Fiscal Note

State of Alaska
2016 Legislative Session

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

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

Fund Source (Operating Only)

None							
Total	***	0.0	***	***	***	***	***

Positions

Full-time	1.0						
Part-time							
Temporary							

Change in Revenues	***		***	***	***	***	***
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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.

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

BILL NO. HB 317

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.

Fiscal Note

State of Alaska
2016 Legislative Session

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

Identifier: HB317-LAW-CRIM-03-25-16
Title: FORFEITURE:NO CIVIL IN REM; ONLY
CRIMINAL
Sponsor: WILSON
Requester: House Judiciary

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

Expenditures/Revenues

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

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services	1,715.8		1,715.8	1,715.8	1,715.8	1,715.8	1,715.8
Travel	39.8		39.8	39.8	39.8	39.8	39.8
Services	267.4		267.4	267.4	267.4	267.4	267.4
Commodities	23.4		23.4	23.4	23.4	23.4	23.4
Capital Outlay	1.0		1.0	1.0	1.0	1.0	1.0
Grants & Benefits							
Miscellaneous							
Total Operating	2,047.4	0.0	2,047.4	2,047.4	2,047.4	2,047.4	2,047.4

Fund Source (Operating Only)

1004 Gen Fund	2,047.4		2,047.4	2,047.4	2,047.4	2,047.4	2,047.4
Total	2,047.4	0.0	2,047.4	2,047.4	2,047.4	2,047.4	2,047.4

Positions

Full-time	16.0		16.0	16.0	16.0	16.0	16.0
Part-time							
Temporary							

Change in Revenues							
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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:

Initial note, not applicable.

Prepared By: Valerie Rose, Budget Analyst
Division: Administrative Services Division
Approved By: Craig W. Richards, Attorney General
Agency: Department of Law

Phone: (907)465-3674
Date: 03/25/2016 10:09 AM
Date: 03/28/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 317

Analysis

This legislation makes significant changes to the forfeiture process in Alaska.

HB 317 provides for a preliminary hearing when items which may be forfeited are seized. Items are seized in a large portion of criminal cases including, but not limited to, drug, child-sexual exploitation, sex trafficking, fish and wildlife, and alcohol interdiction cases. At this preliminary hearing the State would be required to show that there is a substantial probability that the property was subject to forfeiture, it will prevail in the forfeiture, the property is reasonably required to be held for investigatory reasons and the defendant can pay for legal representation without the property being returned. Additionally, the state will be required to file a motion that shows probable cause for the seizure ten days prior to this preliminary hearing. This additional work could occupy a large portion of a full-time attorney's time in all cases, including fish and wildlife cases.

The legislation also mandates a subsequent quasi-civil trial in any case where forfeiture is sought. Numerous items, including most pieces of physical evidence are forfeited in criminal cases. This additional hearing would increase the number, length, and complexity of criminal trials.

HB 317 would increase the number of hearings in which the Department of Law is required to attend and the amount of litigation and trial work conducted. It is estimated that the department would need an additional eight attorneys to cover this work regionally across the state as well as an accounting tech I to track the items seized and sought for forfeiture and handle the corresponding financial transactions. Additionally, the department would need 7 support staff to support the additional work of the 8 attorneys. Staff would be responsible for communicating with the victims, gathering information, explaining the process, preparing court documents, arranging travel and completing data entry. Further, given the significant time limitations imposed by HB 317, these additional staff members will ensure that the property is disposed consistent with the bill.

Seven attorneys would handle the cases in specific regions of the state. The regions would be Southeast, Southwest, Anchorage, Kenai, Palmer and Fairbanks. Additionally, one attorney would be needed in the Office of Special Prosecutions and one attorney would be needed in the Office of Criminal Appeals to handle the appeals that result from decisions made by the court. The regional attorneys will be required to travel significantly to cover hearings in all court locations.

KEY PROVISIONS	TODAY	HB 317
Uniform standard for asset forfeiture proceedings	No	Yes
Requires conviction for law enforcement to permanently keep private assets	No	Yes
Law enforcement allowed to seize assets in the course of an investigation	Yes	Yes
Assets returned to individuals if no charges are filed	Sometimes	Yes
Convicted criminals deprived of the fruits of their crimes	Yes	Yes
Spouses and family members protected from forfeiture proceedings targeting specific individuals	No	Yes
Revenue from liquidated assets directed to the seizing law enforcement	Yes	No. Revenues deposited in General Fund
Law enforcement required to issue itemized receipt for seized items	No	Yes
Legal standard which law enforcement must meet in forfeiture proceeding to permanently seize assets	?? Varies??	Clear and convincing
Standard for storage of seized assets during forfeiture proceeding	No	Yes
Transparent reporting of asset forfeitures by law enforcement	Sometimes	Yes

Equitable Sharing Payments of Cash and Sale Proceeds for Alaska

Fiscal Year 2015

Agency Name	Agency Type	Cash Value	Sales Proceeds	Totals
Airport Police And Fire, Ted Stevens Anchorage International Airport	Local	\$40,298	\$77,138	\$117,436
Anchorage Police Department	Local	\$130,411	\$132,142	\$262,553
Counterdrug Support Program	State	\$0	\$714	\$714
Fairbanks Police Department	Local	\$64,333	\$7,045	\$71,378
Juneau Police Department	Local	\$134	\$2,189	\$2,323
Ketchikan Police Department	Local	\$32,599	\$0	\$32,599
North Pole Police Department	Local	\$88,062	\$0	\$88,062
North Slope Borough Police Department	Local	\$10,396	\$0	\$10,396
State Of Alaska, Department Of Public Safety	State	\$128,546	\$123,097	\$251,643
University Of Alaska Police Department	Local	\$0	\$8,683	\$8,683
Wasilla Police Department	Local	\$7,858	\$0	\$7,858
Alaska Totals		\$502,637	\$351,008	\$853,645



Office of the Attorney General
Washington, D. C. 20530

March 31, 2015

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS
UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL *Eric Holder*

SUBJECT: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

The structuring laws enacted by Congress are critical tools that law enforcement employs to safeguard the integrity, security, and stability of our nation's financial system. Indeed, experience has shown that terrorists, transnational organized crime groups, and other criminal actors frequently structure transactions to hide the proceeds and facilitate the commission of their criminal activity. The compelling law enforcement purpose served by enforcing our nation's structuring laws has been repeatedly affirmed by courts across the country.

As part of the Department's ongoing, comprehensive review of the Asset Forfeiture Program, I directed a review of the use of asset forfeiture authorities to ensure that the Department is allocating its resources to address the most serious structuring offenses. The attached policy directive is the result of that review. In order to maximize the effectiveness of our efforts, the directive will focus the use of our asset forfeiture authorities against actors that structure financial transactions to hide significant criminal activity, and will further other compelling law enforcement interests.

The attached policy directive, developed by the Asset Forfeiture and Money Laundering Section of the Criminal Division and the Attorney General's Advisory Committee of United States Attorneys, is to be implemented by all Department of Justice attorneys.



U.S. Department of Justice

Criminal Division

Asset Forfeiture and Money Laundering Section

Washington, D.C. 20530

POLICY DIRECTIVE 15-3

March 31, 2015

TO: Heads of Department Components
United States Attorneys

FROM: M. Kendall Day, Acting Chief
Asset Forfeiture and Money
Laundering Section

SUBJECT: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Title 31, United States Code, Section 5324(a) prohibits evasion of certain currency transaction-reporting and record-keeping requirements, including structuring schemes. Generally speaking, structuring occurs when, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a domestic financial institution, the violator conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. On October 17, 2014, the Internal Revenue Service-Criminal Investigation (IRS-CI) issued guidance on how it will conduct seizures and forfeitures in its structuring cases, and specifically in what it calls "legal source" structuring cases. Pursuant to the IRS guidance, IRS-CI will not pursue seizure and forfeiture of funds associated only with "legal source" structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

As part of the Department's ongoing review of the federal asset forfeiture program, the Department has conducted its own review of forfeiture in structuring cases, including analysis of the new IRS-CI policy. The guidance set forth in this memorandum, which is the result of that review, is intended to ensure that our investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities. The guidance applies to all federal seizures for civil or criminal forfeiture based on a violation of the structuring statute, except those occurring after an indictment or other criminal charging instrument has been filed.¹

¹ These guidelines apply to all structuring activity whether it constitutes "imperfect structuring" chargeable under 31 U.S.C. § 5324(a)(1) or "perfect structuring" chargeable under 31 U.S.C. § 5324(a)(3). See *Charging Imperfect Structuring: 31 U.S.C. § 5324(a)(1) or (a)(3) or Both?*, Money Laundering Monitor, at 1 (Oct.-Dec. 2014) (available at [AFMLS Online](#)).

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses**1. Link to Prior or Anticipated Criminal Activity**

If no criminal charge has been filed and a prosecutor has not obtained the approval identified below, a prosecutor shall not move to seize structured funds unless there is probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity. For these purposes, “unlawful activity” includes instances in which the investigation revealed no known legitimate source for the funds being structured. Also for these purposes, the term “anticipated unlawful activity” does not include future Title 26 offenses. The basis for linking the structured funds to additional unlawful activity must receive appropriate supervisory approval and be memorialized in the prosecutor’s records.²

Where the requirements of the above paragraph are not satisfied, unless criminal charges are filed, a warrant to seize structured funds may be sought from the court only upon approval from an appropriate official, as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority.³
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney’s Office, approval must be obtained from the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS). The Chief of AFMLS may not delegate this approval authority.

The U.S. Attorney or Chief of AFMLS may grant approval if there is a compelling law enforcement reason to seek a warrant, including, but not limited to, reasons such as: serial evasion of the reporting or record keeping requirements; the causing of domestic financial institutions to file false or incomplete reports; and violations committed, or aided and abetted, by persons who are owners, officers, directors or employees of domestic financial institutions.

If the U.S. Attorney or Chief of AFMLS approves the warrant, the prosecutor must send a completed “Structuring Warrant Notification Form” to AFMLS by e-mail at AFMLS.Structuring@usdoj.gov. A copy of that form is attached.

These requirements are effective immediately. For any case in which seizure was effected prior to the issuance of this memorandum, the forfeiture may continue so long as it otherwise comports with all other applicable law and Department policy.

² In order to avoid prematurely revealing the existence of the investigation of the additional unlawful activity to the investigation’s targets, there is no requirement that the evidence linking the structured funds to the additional unlawful activity be memorialized in the seizure warrant application.

³ Although this authority is ordinarily non-delegable, if the U.S. Attorney is recused from a matter or absent from the office, the U.S. Attorney may designate an Acting United States Attorney to exercise this authority, in the manner prescribed by regulation. See 28 C.F.R. § 0.136.

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

2. No Intent to Structure

There may be instances in which a prosecutor properly obtains a seizure warrant but subsequently determines that there is insufficient admissible evidence to prevail at either civil or criminal trial for violations of the structuring statute or another federal crime for which forfeiture of the seized assets is authorized. In such cases, within seven (7) days of reaching this conclusion, the prosecutor must direct the seizing agency to return the full amount of the seized money. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

3. 150-Day Deadline

Within 150 days of seizure based on structuring, if a prosecutor has not obtained the approval discussed below, a prosecutor must either file a criminal indictment or a civil complaint against the asset.⁴ The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

With the written consent of the claimant, the prosecutor can extend the 150-day deadline by 60 days. Further extensions, even with consent of the claimant, are not allowed, unless the prosecutor has obtained the approval discussed below.

An exception to this requirement is permissible only upon approval from an appropriate official as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority, except as discussed in footnote 3, *supra*.
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of AFMLS. The Chief of AFMLS may not delegate this approval authority.

If additional evidence becomes available after the seized money has been returned, an indictment or complaint can still be filed.

4. Settlement

Settlements to forfeit and/or return a portion of any funds involved in a structuring investigation, civil action, or prosecution, must comply with the requirements set forth in the *Asset Forfeiture Policy Manual* and the *United States Attorneys' Manual*. See *Asset Forfeiture*

⁴ This deadline does not apply to administrative cases governed by the independent time limits specified by the Civil Asset Forfeiture Reform Act.

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Policy Manual (2013), Chap. 3; *United States Attorneys' Manual* § 9-113.000 *et seq.* In addition, settlements must be in writing, include all material terms, and be signed by a federal prosecutor. Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.

This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion, and does not alter in any way the Department's authority to enforce federal law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of 31 U.S.C. § 5324(a). This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution.

Structuring Warrant Notification Form



Target Name(s):

Briefly describe structuring activity:

Basis for approval of seizure warrant:

Approving Official:

USAO for (district)

AFMLS

Submit by Email

29-LS1380\H
Wallace/Martin
4/4/16

CS FOR HOUSE BILL NO. 317()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

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

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 abolished.** Common law civil
6 in rem forfeiture actions are abolished.

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

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

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1292 Sadler Way Ste. 304
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Rep.Tammie.Wilson@akleg.gov

Session
State Capitol
Juneau, AK 99801
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**CSHB 317
EXPLANATION OF CHANGES**

Section 09.55 is amended to abolish in rem forfeiture actions and provides for an effective date.

All other sections have been deleted.

The Department of Law is in agreement with this change and has indicated that this CS will eliminate any fiscal notes.

Helen Phillips

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

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