

HB

42

<TARGET><BILL>HB 42</BILL><SUBJECT>HB
42</SUBJECT><COMM>HJUD30</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



Session
State Capitol Rm 422
Juneau, AK 99801
Phone - (907) 465-4797

Rep.Tammie.Wilson@akleg.gov

MEMORANDUM

To: The Honorable Matt Claman
Fr: Representative Tammie Wilson
Re: Hearing Request HB 42
Date: January 19, 2017

Dear Chair Claman,

I respectfully request HB 42 be considered in the House Judiciary committee at your earliest convenience. My staff on this piece of legislation is Barbara Barnes. She can be reached at (907) 465-4797.

Sincerely,

Tammie

Rep. Tammie Wilson

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE WILSON

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

8 (b) Property subject to forfeiture under this section may be **forfeited to the**
 9 **state under AS 12.36.300 - 12.36.490** [ACTUALLY OR CONSTRUCTIVELY
 10 SEIZED UNDER AN ORDER ISSUED BY THE SUPERIOR COURT UPON A
 11 SHOWING OF PROBABLE CAUSE THAT THE PROPERTY IS SUBJECT TO
 12 FORFEITURE UNDER THIS SECTION. CONSTRUCTIVE SEIZURE IS
 13 EFFECTED UPON POSTING A SIGNED NOTICE OF SEIZURE ON THE ITEM

1 TO BE FORFEITED, STATING THE VIOLATION AND THE DATE AND PLACE
2 OF SEIZURE. SEIZURE WITHOUT A COURT ORDER MAY BE MADE IF

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

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

7 (3) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
8 PROPERTY IS SUBJECT TO FORFEITURE UNDER (a) OF THIS SECTION;
9 EXCEPT FOR ALCOHOLIC BEVERAGES POSSESSED ON VIOLATION OF
10 AS 04.11.501 OR AN ORDINANCE ADOPTED UNDER AS 04.11.501,
11 PROPERTY SEIZED UNDER THIS PARAGRAPH MAY NOT BE HELD OVER
12 48 HOURS OR UNTIL AN ORDER OF FORFEITURE IS ISSUED BY THE
13 COURT, WHICHEVER IS EARLIER].

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

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

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

21 (2) the court shall order the board to suspend the guide license or
22 transporter license of a person who commits a misdemeanor offense set out in (a)(2) or
23 (9) - (14) of this section for a specified period of not less than one year and not more
24 than five years;

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

29 (4) all guns, fishing tackle, boats, aircraft, automobiles, or other
30 vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a
31 violation of (a) of this section may be seized by persons authorized to enforce this

1 chapter and may be forfeited to the state as provided under AS 12.36.300 - 12.36.490
2 [AS 16.05.195].

3 * **Sec. 3.** AS 11.41.468(a) is amended to read:

4 (a) Property used to aid a violation of AS 11.41.410 - 11.41.458 or to aid the
5 solicitation of, attempt to commit, or conspiracy to commit a violation of
6 AS 11.41.410 - 11.41.458 may be forfeited to the state under AS 12.36.300 -
7 12.36.490 upon the conviction of the offender.

8 * **Sec. 4.** AS 11.46.487 is amended to read:

9 **Sec. 11.46.487. Forfeiture of property upon conviction.** Firearms and other
10 personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460,
11 11.46.462, or 11.46.484(a)(5) may be forfeited to the state under AS 12.36.300 -
12 12.36.490 upon conviction of the offender for the crime.

13 * **Sec. 5.** AS 11.61.129(a) is amended to read:

14 (a) Property used to aid a violation of AS 11.61.123 - 11.61.128 or to aid the
15 solicitation of, attempt to commit, or conspiracy to commit a violation of
16 AS 11.61.123 - 11.61.128 may be forfeited to the state under AS 12.36.300 -
17 12.36.490 upon the conviction of the offender.

18 * **Sec. 6.** AS 11.66.145 is amended to read:

19 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
20 received or derived from, a violation of AS 11.66.100(e) or 11.66.110 - 11.66.135 may
21 be forfeited to the state under AS 12.36.300 - 12.36.490 [AT SENTENCING].

22 * **Sec. 7.** AS 11.66.270 is amended to read:

23 **Sec. 11.66.270. Forfeiture.** If used in violation of AS 11.66.200 - 11.66.280,
24 the following property shall be forfeited to the state under AS 12.36.300 - 12.36.490:

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

30 * **Sec. 8.** AS 11.73.060(a) is amended to read:

31 (a) Property used during or in aid of a violation of this chapter may be

1 forfeited to the state under AS 12.36.300 - 12.36.490 [TO THE EXTENT
2 PERMITTED UNDER AND IN ACCORDANCE WITH THE PROVISIONS OF
3 AS 17.30.110 - 17.30.126].

4 * **Sec. 9.** AS 12.36.020(a) is amended to read:

5 (a) A law enforcement agency may

6 (1) not return property in its custody to the owner or the agent of the
7 owner, except as provided in AS 12.36.200 or 12.36.300 - 12.36.490, if

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

11 (B) the property in custody is subject to forfeiture under the
12 laws of the

13 (i) state; or

14 (ii) United States, and the United States has commenced
15 forfeiture proceedings against the property or has requested the transfer
16 of the property for the commencement of forfeiture proceedings; and

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

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

22 (B) is

23 (i) not needed as evidence; or

24 (ii) needed as evidence, and the property is fungible or
25 the property's evidentiary value can otherwise be preserved without
26 retaining the property within the jurisdiction of the court.

27 * **Sec. 10.** AS 12.36.060(a) is amended to read:

28 (a) A deadly weapon, other than a firearm or ammunition, forfeited to the state
29 under AS 12.36.300 - 12.36.490 [AS 12.55.015(a)(9), UNLESS REMITTED UNDER
30 AS 12.36.050,] shall be disposed of by the commissioner of public safety under this
31 section. Under this subsection, the commissioner of public safety

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

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

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

8 * **Sec. 11.** AS 12.36.060(c) is amended to read:

9 (c) A firearm or ammunition forfeited to the state under AS 12.36.300 -
10 12.36.490 [AS 12.55.015(a)(9), UNLESS REMITTED UNDER AS 12.36.050,] shall
11 be disposed of as provided in AS 18.65.340.

12 * **Sec. 12.** AS 12.36 is amended by adding new sections to read:

13 **Article 03. Forfeiture.**

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

16 (1) person is arrested for an offense listed in AS 12.36.310;

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

18 (3) state establishes by clear and convincing evidence that the property
19 is subject to forfeiture under (c) of this section.

20 (b) A court may waive the conviction requirement in (a)(2) of this section if
21 the state proves by clear and convincing evidence that the person has been arrested
22 and charged with a criminal offense listed in AS 12.36.310 and the person wilfully
23 fails to appear as required, intentionally flees to evade prosecution, or is deceased. The
24 property remains subject to claims by innocent owners, creditors, and other third
25 parties as provided under AS 12.36.300 - 12.36.490.

26 (c) Following conviction for an offense listed in AS 12.36.310, 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 (d) Notwithstanding (c) of this section, the following property is exempt from
5 forfeiture:

6 (1) homestead real property;

7 (2) a motor vehicle worth less than \$10,000 market value; and

8 (3) United States currency totaling \$1,000 or less.

9 (e) Nothing in this section prevents property from being forfeited by the terms
10 of a plea agreement that is approved by a court or by other agreement of the parties to
11 a criminal proceeding.

12 (f) The state may not seek a personal money judgment or other remedy against
13 a person not provided for under AS 12.36.300 - 12.36.490.

14 (g) Except as provided in (h) of this section, at any time, at the request of the
15 state, a court may issue a preliminary order to seize property that is subject to
16 forfeiture and for which forfeiture is sought and to provide for the custody of the
17 property. Before granting an order to seize property under this subsection, the court
18 shall give any putative interest holder in the property the right to be heard with regard
19 to the seizure. The execution on the order to seize the property and the return of the
20 property, if applicable, are subject to this chapter and other state laws. Before issuing
21 an order under this subsection, the court shall make a finding that

22 (1) there is a substantial probability that the

23 (A) property is subject to forfeiture;

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

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

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

31 (h) Personal property subject to forfeiture under this section may be seized at

1 any time, without a previous court order, if the

2 (1) seizure is incident to a lawful arrest for an offense or to a search
3 lawfully conducted under a search warrant and the law enforcement officer making the
4 arrest or executing the search has probable cause to believe the property is subject to
5 forfeiture and that the subject of the arrest or search warrant is an owner of the
6 property;

7 (2) property subject to forfeiture is the subject of a previous judgment
8 in favor of the state; or

9 (3) law enforcement officer making the seizure has probable cause to
10 believe the property is subject to forfeiture and that the delay occasioned by the need
11 to obtain a court order would result in the removal or destruction of the property or
12 otherwise frustrate the seizure.

13 (i) The mere presence or possession of United States currency, without
14 evidence of criminal conduct, is not probable cause for seizure under (h) of this
15 section.

16 (j) A court may issue an order to seize or secure real property for which
17 forfeiture is sought only after notice and a hearing for the property owner to determine
18 the sufficiency of probable cause for the seizure. Nothing in this subsection prohibits
19 the state from seeking a court order to prohibit the sale or destruction of the real
20 property.

21 **Sec. 12.36.310. Offenses subject to forfeiture.** (a) Forfeiture to the state is
22 permitted following the conviction of a criminal offense under

23 (1) AS 04.11.010, 04.11.499, 04.11.501, or an ordinance adopted
24 under AS 04.11.501;

25 (2) AS 04.16.205;

26 (3) AS 04.21.060;

27 (4) AS 08.54;

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

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

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

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

4 (9) AS 11.61.140;

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

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

8 (12) AS 11.71;

9 (13) AS 11.73;

10 (14) AS 16.05;

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

12 (16) an ordinance adopted under AS 28.01.015;

13 (17) AS 28.35.030 or 28.35.032;

14 (18) AS 43.50.640;

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

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

22 (b) In this section,

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

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

25 **Sec. 12.36.320. Seizure of property; motion for return of property.** (a)

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

30 (b) Following the seizure of property, the defendant in the related criminal
31 matter or another person who claims an interest in seized property may, not later than

1 60 days before a related criminal trial, claim an interest in seized property or request
2 return of seized property by a motion to the court. A motion filed under this subsection
3 must include facts to support the person's alleged interest in the property.

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

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

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

12 (1) it is likely that the final judgment will require the state to return the
13 property to the claimant;

14 (2) the property is not reasonably required to be held for investigatory
15 reasons; or

16 (3) the property is the only reasonable means for a defendant to pay for
17 legal representation in a related criminal or forfeiture proceeding.

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

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

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

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

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

29 **Sec. 12.36.330. Ancillary forfeiture.** (a) Within 30 days after making a
30 seizure of property or simultaneously upon filing a related criminal indictment, the
31 state shall file a complaint of ancillary forfeiture proceedings or return the property to

1 the person from whom it was seized. A complaint of ancillary forfeiture proceedings
2 shall include the following:

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

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

21 **Sec. 12.36.340. Forfeiture proceedings.** (a) A person who claims an interest
22 in seized property shall file an answer to the complaint of forfeiture within 30 days
23 after the date of service of the complaint. The answer must include facts to support the
24 claimant's alleged interest in the property.

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

27 (c) A forfeiture proceeding shall begin after the conclusion of the trial for the
28 related criminal matter in an ancillary proceeding that relates to a defendant's property
29 before the same judge and jury, if applicable, and the court, and the jury, if applicable,
30 may consider the forfeiture of property seized from other persons at the same time or
31 in a later proceeding. If the criminal defendant in the related criminal matter is

1 represented by a public defender, conflict counsel, or other appointed counsel for
2 indigent defendants, the chief public defender, the district public defender, or the court
3 shall authorize representation of the defendant in the forfeiture proceeding.

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

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

8 (f) If the state fails to prove, by clear and convincing evidence, that the
9 property is subject to forfeiture,

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

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

15 (g) The court shall enter a judgment of forfeiture, and the seized property shall
16 be forfeited to the state, if the state proves by clear and convincing evidence that the

17 (1) property is subject to forfeiture;

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

20 (3) value of the property to be forfeited does not unreasonably exceed
21 the

22 (A) pecuniary gain derived or sought to be derived by the
23 offense;

24 (B) pecuniary loss caused or sought to be caused by the
25 offense; or

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

27 (h) In determining the value of property subject to forfeiture, the court may
28 consider relevant factors, including the

29 (1) fair market value of the property;

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

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

3 **Sec. 12.36.350. Forfeiture of property to another state or the federal**
4 **government.** A law enforcement agency may transfer property in custody that is
5 subject to forfeiture to another state or federal law enforcement agency for forfeiture
6 proceedings by that agency upon approval of a court. The court having jurisdiction
7 shall grant the approval under this section if the person is convicted of a crime with
8 elements similar to the crimes listed in AS 12.36.310 and the property

9 (1) will be retained within the jurisdiction of the court by the agency to
10 which the property is being transferred;

11 (2) is

12 (A) not needed as evidence; or

13 (B) needed as evidence, and the property is fungible or the
14 property's evidentiary value may otherwise be preserved without retaining
15 property within the jurisdiction of the court.

16 **Sec. 12.36.360. Forfeiture of substitute property.** Following a person's
17 conviction, the state may make a motion for forfeiture of substitute property owned by
18 the person that is equal to but does not exceed the value of property that is subject to
19 forfeiture but that the state is unable to seize. The court shall order the forfeiture of
20 substitute property only if the state proves by clear and convincing evidence that the
21 person intentionally transferred, sold, or deposited property with a third party to avoid
22 the court's jurisdiction and the forfeiture of the property, and the substitute property is
23 owned in full by the convicted person.

24 **Sec. 12.36.370. Joint and several liability prohibited.** A person is not jointly
25 and severally liable for orders for forfeiture of another person's property. When
26 ownership of property is unclear, a court may order each person to forfeit the person's
27 property on a pro rata basis or by another means the court considers to be equitable.

28 **Sec. 12.36.380. Petition for unconstitutionally excessive forfeiture.** (a) At
29 any time following the conclusion of a forfeiture proceeding, the person whose
30 property was forfeited may petition the court to determine whether the forfeiture was
31 unconstitutionally excessive under the state or federal constitution.

1 (b) At a hearing on the petition, the petitioner has the burden of establishing
2 by a preponderance of the evidence that the forfeiture was disproportionate to the
3 seriousness of the criminal offense for which the person was convicted. The hearing
4 shall be held before a court sitting without a jury.

5 (c) In determining whether the forfeiture is unconstitutionally excessive under
6 (a) of this section or disproportionate under (b) of this section, the court may consider
7 all relevant factors, including

8 (1) the seriousness of the criminal offense and of its effect on the
9 community, the duration of the criminal activity, and the harm caused by the
10 defendant;

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

12 (3) the extent to which the property was used in committing the
13 offense;

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

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

17 (d) The court may not consider the value of the property to the state when it
18 determines whether the forfeiture of property is unconstitutionally excessive under (a)
19 of this section or disproportionate under (b) of this section.

20 **Sec. 12.36.390. Appeal.** A party to a forfeiture proceeding under this chapter
21 may appeal an order regarding the seizure, forfeiture, or distribution of property under
22 AS 22.07.020 or AS 22.15.240.

23 **Sec. 12.36.400. Forfeited property.** (a) The state acquires provisional title to
24 seized property at the time the property was seized or a restraining order was entered
25 in connection with an offense that subjects the property to forfeiture. Provisional title
26 authorizes the state to hold and protect the property. Title to the property vests with
27 the state when a trier of fact renders a final forfeiture verdict, and the title relates back
28 to the time when the state acquired provisional title, if the title is subject to claims by
29 third parties that are adjudicated under this chapter.

30 (b) Unless possession of the property is illegal, or a different disposition is
31 specifically provided for by law, except as provided in this section, forfeited property

1 that is not currency shall be delivered along with any abandoned property to the state
2 treasurer for disposition at a public auction. All forfeited currency and all sale
3 proceeds of the sale of forfeited or abandoned property shall be deposited in the
4 general fund.

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

10 (d) A property interest forfeited to the state under AS 12.36.300 - 12.36.490 is
11 subject to the interest of a secured party, unless, in the forfeiture proceeding, the state
12 proves by clear and convincing evidence that the secured party consented to the use of
13 the property with knowledge that it would be used in connection with the offense that
14 relates to the seizure of the property.

15 (e) When forfeiting property under AS 12.36.300 - 12.36.490, a court may
16 award to a municipal law enforcement agency that participated in the arrest or
17 conviction of the defendant, the seizure of property, or the identification of property
18 for seizure, (1) the property if the property is worth \$5,000 or less and is not money or
19 some other thing that is divisible, or (2) up to 75 percent of the property or the value of
20 the property if the property is worth more than \$5,000 or is money or some other thing
21 that is divisible. In determining the percentage a municipal law enforcement agency
22 may receive under this subsection, the court shall consider the municipal law
23 enforcement agency's total involvement in the case relative to the involvement of the
24 state.

25 **Sec. 12.36.410. Innocent owner.** (a) The property of an innocent owner may
26 not be forfeited to the state.

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

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

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

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

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

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

14 (f) A person who acquired an ownership interest in property subject to
15 forfeiture after the commission of an offense that gave rise to the forfeiture, and who
16 claims to be an innocent owner, has the burden of production to show that the person
17 is an innocent owner under (b) of this section.

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

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

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

27 **Sec. 12.36.420. Seized property.** (a) Seized currency alleged to be subject to
28 forfeiture shall be deposited with the clerk of the court in an interest-bearing account.

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

- 31 (1) placed under seal and removed to a place designated by the court;

1 or

2 (2) held in the custody of a law enforcement agency.

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

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

6 **Sec. 12.36.430. Annual report.** (a) Every law enforcement agency that
7 engaged in forfeitures in the previous year shall prepare an annual report of the
8 agency's forfeitures conducted under AS 12.36.300 - 12.36.490 and under federal
9 forfeiture law, and the report must include the following:

10 (1) the total number of seizures of currency and the total amount of
11 currency forfeited;

12 (2) the total number of seizures of property and the number and types
13 of items forfeited;

14 (3) the market value of each item of forfeited property;

15 (4) aggregate demographic information about the persons whose
16 property has been forfeited, including race, ethnicity, and sex; and

17 (5) the total number of occurrences of each class of offenses that
18 resulted in the forfeiture of property.

19 (b) A law enforcement agency shall submit its annual report to the Department
20 of Public Safety and to the district attorney's office in the law enforcement agency's
21 district. A law enforcement agency that did not engage in forfeiture under
22 AS 12.36.300 - 12.36.490 or federal forfeiture law, or both, shall report that fact in its
23 annual report.

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

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

30 **Sec. 12.36.440. Holding seized property.** (a) A law enforcement agency that
31 holds seized property shall return the seized property to the owner of the property

1 within a reasonable time that does not exceed five days after

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

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

5 (3) the acquittal of or dismissal of related criminal charges against the
6 owner of the property; or

7 (4) dismissal of the criminal charge that was the basis of the forfeiture
8 proceedings by abandonment of the prosecution.

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

12 **Sec. 12.36.450. Property transfer; joint investigations.** (a) A law
13 enforcement agency may not refer or otherwise transfer property seized under state
14 law to a federal agency seeking the adoption of the seized property by the federal
15 agency. Nothing in this section shall be construed to prohibit the federal government,
16 or any of its agencies, from seeking federal forfeiture.

17 (b) A law enforcement agency participating in a joint investigation or task
18 force with a federal agency may not transfer property to the federal government unless
19 the court enters an order, upon petition of the prosecuting attorney, authorizing the
20 property to be transferred. The court may enter an order authorizing a transfer to the
21 federal government if the transfer is actually necessary for an active criminal case or
22 criminal investigation brought by the federal government. The court may enter an
23 order declining the transfer if the transfer would circumvent the protections provided
24 under AS 12.36.300 - 12.36.490 or that would otherwise be available to a putative
25 interest holder in the property.

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

30 (d) A property owner who believes that the intended transfer of property under
31 this section is in violation of (a) of this section may file a request for a hearing with

1 the court having jurisdiction over the underlying property under AS 12.36.340(b) at
2 least five days before the date of the intended transfer as stated in the notice required
3 under (c) of this section.

4 (e) Property may not be transferred under this section until the state court
5 having jurisdiction over the underlying property under AS 12.36.340(b) determines
6 that the transfer will not circumvent the protections provided under AS 12.36.300 -
7 12.36.490 or that would otherwise be available to a putative interest holder in the
8 property and that the transfer is actually necessary for an active criminal case or
9 criminal investigation brought by the federal government.

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

12 **Sec. 12.36.490. Definitions.** In AS 12.36.300 - 12.36.490,

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

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

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

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

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

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

30 (7) "law enforcement officer"

31 (A) means a state or municipal peace officer or another person

1 granted the powers of a peace officer under state law to enforce criminal
2 statutes;

3 (B) does not mean a correctional officer;

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

6 (9) "property" means tangible or intangible personal property or real
7 property;

8 (10) "property subject to forfeiture" means property or an
9 instrumentality described and declared to be subject to forfeiture under AS 12.36.300 -
10 12.36.490 or other state law; and

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

15 * **Sec. 13.** AS 16.05.190 is amended to read:

16 **Sec. 16.05.190. Seizure and disposition of equipment.** Guns, traps, nets,
17 fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other
18 paraphernalia used in or in aid of a violation of this chapter or a regulation of the
19 department may be seized under a valid search, and all fish and game, or parts of fish
20 and game, or nests or eggs of birds, taken, transported, or possessed contrary to the
21 provisions of this chapter or a regulation of the department shall be seized under
22 AS 12.36.300 - 12.36.490 by any peace officer designated in AS 16.05.150. Upon
23 conviction of the offender or upon judgment of the court having jurisdiction that the
24 item was taken, transported, or possessed in violation of this chapter or a regulation of
25 the department, all fish and game, or parts of them are forfeited to the state under
26 AS 12.36.300 - 12.36.490 and shall be disposed of as directed by the court. [IF SOLD,
27 THE PROCEEDS OF THE SALE SHALL BE TRANSMITTED TO THE PROPER
28 STATE OFFICER FOR DEPOSIT IN THE GENERAL FUND.] Guns, traps, nets,
29 fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized
30 under the provisions of this chapter or a regulation of the department, unless forfeited
31 by order of the court, shall be returned as provided under AS 12.36.300 - 12.36.490,

1 after completion of the case and payment of the fine, if any.

2 * **Sec. 14.** AS 16.05.722(b) is amended to read:

3 (b) In addition, the court shall order forfeiture **to the state under**
4 **AS 12.36.300 - 12.36.490** of any fish, or its fair market value, taken or retained as a
5 result of the commission of the violation. For purposes of this subsection, it is a
6 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
7 a violation, or found at the fishing site, were taken or retained in violation of
8 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
9 Fisheries or the department. It is the defendant's burden to show by a preponderance of
10 the evidence that fish on board or at the site were lawfully taken and retained.

11 * **Sec. 15.** AS 16.05.723(a) is amended to read:

12 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
13 regulation of the Board of Fisheries or the department governing commercial fishing,
14 is guilty of a misdemeanor and in addition to punishment under other provisions in
15 this title, including **AS 16.05.710** [AS 16.05.195 AND 16.05.710], is punishable upon
16 conviction by a fine of not more than \$15,000 or by imprisonment for not more than
17 one year, or by both. In addition, the court shall order forfeiture **to the state under**
18 **AS 12.36.300 - 12.36.490** of any fish, or its fair market value, taken or retained as a
19 result of the commission of the violation, and the court may **order forfeiture to the**
20 **state of** [FORFEIT] any vessel and any fishing gear **under AS 12.36.300 - 12.36.490**,
21 including any net, pot, tackle, or other device designed or employed to take fish
22 commercially, that was used in or in aid of the violation. [ANY FISH, OR ITS FAIR
23 MARKET VALUE, FORFEITED UNDER THIS SUBSECTION MAY NOT ALSO
24 BE FORFEITED UNDER AS 16.05.195.] For purposes of this subsection, it is a
25 rebuttable presumption that all fish found on board a fishing vessel used in or in aid of
26 a violation, or found at the fishing site, were taken or retained in violation of
27 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
28 Fisheries or the department, and it is the defendant's burden to show by a
29 preponderance of the evidence that fish on board or at the site were lawfully taken and
30 retained.

31 * **Sec. 16.** AS 16.05.782(b) is amended to read:

1 (b) In addition to the penalty imposed by law under (a) of this section, the
2 court shall order forfeiture **to the state under AS 12.36.300 - 12.36.490** of the hide
3 and skull of the bear, but if the hide and skull are not salvaged and delivered to the
4 department then the court shall impose an additional fine of up to \$10,000.

5 * **Sec. 17.** AS 16.05.783(c) is amended to read:

6 (c) A person who violates this section is guilty of a misdemeanor, and upon
7 conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not
8 more than one year, or by both. In addition, the court may order the aircraft and
9 equipment used in or in aid of a violation of this section to be forfeited to the state
10 **under AS 12.36.300 - 12.36.490.**

11 * **Sec. 18.** AS 16.05.905(b) is amended to read:

12 (b) An alien person who violates (a) of this section is guilty of a misdemeanor,
13 and upon conviction is punishable by a confiscation and forfeiture **to the state under**
14 **AS 12.36.300 - 12.36.490** of the fishing vessel used in the violation, or by
15 imprisonment for not more than one year, or by fine of not more than \$10,000, or by
16 all or any two of the foregoing punishments.

17 * **Sec. 19.** AS 16.43.970(g) is amended to read:

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

19 (1) upon a first conviction, guilty of a class B misdemeanor and may
20 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture
21 **to the state under AS 12.36.300 - 12.36.490** of the person's fishing vessel, or both,
22 and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss
23 of commercial fishing privileges under (i) of this section;

24 (2) upon a second conviction, guilty of a class A misdemeanor and
25 may be sentenced to a definite term of imprisonment of not more than one year, and
26 shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture
27 **to the state under AS 12.36.300 - 12.36.490** of the person's fishing vessel, and loss of
28 commercial fishing privileges under (i) of this section;

29 (3) upon a third or subsequent conviction, guilty of a class A
30 misdemeanor and may be sentenced to a definite term of imprisonment of not more
31 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than

1 \$50,000, forfeiture to the state under AS 12.36.300 - 12.36.490 of the person's
2 fishing vessel, and loss of commercial fishing privileges under (i) of this section.

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

4 **Sec. 17.30.110. Items subject to forfeiture.** The following may be forfeited to
5 the state under AS 12.36.300 - 12.36.490:

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

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

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

14 (4) a conveyance, including but not limited to aircraft, vehicles, or
15 vessels, that has been used or is intended for use in transporting or in any manner in
16 facilitating the transportation, sale, receipt, possession, or concealment of property
17 described in (1) or (2) of this section in violation of a felony offense under this chapter
18 or AS 11.71; however,

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

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

30 (5) books, records, and research products and materials, including
31 formulas, microfilm, tapes, and data, that are used in violation of this chapter or

1 AS 11.71;

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

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

7 * **Sec. 21.** AS 18.60.148(a) is amended to read:

8 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under
9 AS 12.36.300 - 12.36.490 [AS 16.05.195(f), AS 17.30.122,] or another state law or
10 regulation is subject to the following conditions:

11 (1) the transfer shall be made without cost to the Civil Air Patrol;

12 (2) the aircraft becomes a corporate Civil Air Patrol aircraft;

13 (3) the aircraft may only be used for Civil Air Patrol search and rescue,
14 civil defense, and training purposes;

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

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

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

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

25 * **Sec. 22.** AS 22.07.020(a) is amended to read:

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

28 (1) criminal prosecution;

29 (2) post-conviction relief;

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

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- (4) extradition;
- (5) habeas corpus;
- (6) probation and parole; [AND]
- (7) bail;
- (8) forfeiture proceedings under AS 12.36.300 - 12.36.490.**

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

(e) Any party may appeal to the superior court a judgment of the district court in a forfeiture proceeding under AS 12.36.300 - 12.36.490.

* **Sec. 24.** AS 28.35.030(b) is amended to read:

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

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

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

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

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

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of 24 months, and impose a fine of not less than \$5,000 if the person has been previously convicted three

1 times and is not subject to punishment under (n) of this section;

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

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

12 (2) the court may not

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

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

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

19 (B) suspend imposition of sentence; or

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

24 (3) the court shall revoke the person's driver's license, privilege to
25 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
26 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
27 forfeited under AS 12.36.300 - 12.36.490 [AS 28.35.036]; and

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

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another provision of law.

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

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

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

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

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

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

(2) may not

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

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

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

(B) suspend imposition of sentence; or

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

(3) shall permanently revoke the person's driver's license, privilege to

1 drive, or privilege to obtain a license subject to restoration of the license under (o) of
2 this section;

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

8 (5) shall order forfeiture under AS 12.36.300 - 12.36.490
9 [AS 28.35.036] of the vehicle, watercraft, or aircraft used in the commission of the
10 offense [, SUBJECT TO REMISSION UNDER AS 28.35.037]; and

11 (6) shall order the department to revoke the registration for any vehicle
12 registered by the department in the name of the person convicted under this
13 subsection; if a person convicted under this subsection is a registered co-owner of a
14 vehicle or is registered as a co-owner under a business name, the department shall
15 reissue the vehicle registration and omit the name of the person convicted under this
16 subsection.

17 * **Sec. 26.** AS 28.35.032(g) is amended to read:

18 (g) Upon conviction under this section,

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

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

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

28 (C) not less than 60 days, require the person to use an ignition
29 interlock device after the person regains the privilege to operate a motor
30 vehicle for a minimum of 18 months, and impose a fine of not less than \$4,000
31 if the person has been previously convicted twice and is not subject to

1 punishment under (p) of this section;

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

7 (E) not less than 240 days, require the person to use an ignition
8 interlock device after the person regains the privilege to operate a motor
9 vehicle for a minimum of 30 months, and impose a fine of not less than \$6,000
10 if the person has been previously convicted four times and is not subject to
11 punishment under (p) of this section;

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

17 (2) the court may not

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

20 (i) serve the minimum imprisonment under (1) of this
21 subsection;

22 (ii) pay the minimum fine required under (1) of this
23 subsection;

24 (B) suspend imposition of sentence; or

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

26 (3) the court shall revoke the person's driver's license, privilege to
27 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
28 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
29 forfeited under AS 12.36.300 - 12.36.490 [AS 28.35.036];

30 (4) the court may order that the person, while incarcerated or as a
31 condition of probation or parole, take a drug or combination of drugs intended to

1 prevent the consumption of an alcoholic beverage; a condition of probation or parole
2 imposed under this paragraph is in addition to any other condition authorized under
3 another provision of law; and

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

6 * **Sec. 27.** AS 28.35.032(p) is amended to read:

7 (p) A person is guilty of a class C felony if the person is convicted under this
8 section and either has been previously convicted two or more times since January 1,
9 1996, and within the 10 years preceding the date of the present offense, or punishment
10 under this subsection or under AS 28.35.030(n) was previously imposed within the
11 last 10 years. For purposes of determining minimum sentences based on previous
12 convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

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

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

18 (B) 240 days if the person has been previously convicted three
19 times;

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

22 (2) the court may not

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

25 (i) serve the minimum imprisonment under (1) of this
26 subsection;

27 (ii) pay the minimum fine required under (1) of this
28 subsection;

29 (B) suspend imposition of sentence; or

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

31 (3) the court shall permanently revoke the person's driver's license,

1 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
2 this section;

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

8 (5) the sentence imposed by the court under this subsection shall run
9 consecutively with any other sentence of imprisonment imposed on the person;

10 (6) the court shall order forfeiture to the state under AS 12.36.300 -
11 12.36.490 [UNDER AS 28.35.036,] of the motor vehicle, aircraft, or watercraft used
12 in the commission of the offense [, SUBJECT TO REMISSION UNDER
13 AS 28.35.037]; and

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

19 * **Sec. 28.** AS 43.50.620 is amended to read:

20 **Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.** Cigarettes
21 seized under AS 43.50.500 - 43.50.700 are forfeited to the state under AS 12.36.300 -
22 12.36.490. After notice and an opportunity for a hearing, the commissioner shall
23 destroy the cigarettes forfeited under this section.

24 * **Sec. 29.** AS 43.50.625(a) is amended to read:

25 (a) Upon a showing of probable cause that a person has committed the crime
26 of misconduct involving unstamped cigarettes or stamps in the first degree under
27 AS 43.50.640, the following are subject to forfeiture to the state under AS 12.36.300
28 - 12.36.490:

29 (1) material and equipment used in the manufacture, sale, offering for
30 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
31 43.50.640 or 43.50.660 - 43.50.700;

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

4 (3) money, securities, negotiable instruments, or other things of value
5 used in financial transactions derived from activity prohibited under AS 43.50.500 -
6 43.50.640 or 43.50.660 - 43.50.700.

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

8 (d) Property subject to forfeiture under (a) of this section may be forfeited **to**
9 **the state under AS 12.36.300 - 12.36.490**

10 [(1) UPON CONVICTION OF A PERSON FOR A VIOLATION OF
11 AS 43.50.640; OR

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

15 * **Sec. 31.** AS 04.16.220(c), 04.16.220(d), 04.16.220(e), 04.16.220(f), 04.16.220(g),
16 04.16.220(h), 04.16.220(i), 04.16.220(j), 04.16.220(k); AS 11.73.060(b); AS 12.36.050;
17 AS 12.55.015(a)(9), 12.55.015(a)(11), 12.55.015(f); AS 16.05.195; AS 17.30.112, 17.30.114,
18 17.30.116, 17.30.118, 17.30.120, 17.30.122, 17.30.124, 17.30.126; AS 28.35.036, 28.35.037;
19 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),
20 43.50.625(i), and 43.50.625(j) are repealed.

21 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **INDIRECT COURT RULE AMENDMENTS.** The provisions of AS 12.36.300 -
24 12.36.490, added by sec. 12 of this Act, have the effect of changing Rules 3, 4, 11, 12, 16, 32,
25 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803,
26 Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate
27 Procedure, by establishing requirements for forfeiture proceedings and appeals and relating to
28 admissible evidence in those proceedings and appeals.

29 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **APPLICABILITY.** This Act applies to offenses, seizures, or forfeitures occurring on

1 or after the effective date of this Act.

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

4 CONDITIONAL EFFECT. This Act takes effect only if sec. 32 of this Act receives
5 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
6 State of Alaska.

7 * **Sec. 35.** This Act takes effect July 1, 2017.

Alaska State Legislature House of Representatives

Representative Tammie Wilson

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



Session
State Capitol Rm 422
Juneau, AK 99801
Phone - (907) 465-4797

Rep.Tammie.Wilson@akleg.gov

SPONSOR STATEMENT

HB 42

“An Act relating to seizure of property; 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 42 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.

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 42 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 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 42
Sectional Analysis Ver D

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

Section 5: 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 6: Amends AS 11.66.145 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 7: Amends AS 11.66.270 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 8: Amends AS 11.73.060 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 9: Amends AS 12.36.020(a) to provide that property may be returned pursuant to the Forfeiture Act.

Section 10: 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 11: 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.

Section 12:

- A) Adds AS 12.36.300, which describes when a person's property is subject to forfeiture.
- B) Adds AS 12.36.310, which defines the offenses for which forfeiture is permitted under the Forfeiture Act.
- C) Adds AS 12.36.320, which provides a method for requesting the return of seized property.
- D) Adds AS 12.36.330, which provides the requirements for an ancillary forfeiture claim.
- E) Adds AS 12.36.340, 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 12.36.350, which governs the transfer of seized property to other state or federal entities.
- G) Adds AS 12.36.360, which provides the conditions upon which the State may seek the forfeiture of substitute property.
- H) Adds AS 12.36.370, which prohibits joint and several liability regarding the forfeiture of property.
- I) Adds AS 12.36.380, which provides a method by which the party from whom forfeiture is sought may claim that the forfeiture violates his or her constitutional rights.
- J) Adds AS 12.36.390, which prescribes the method of appeal for forfeiture orders under the Act.
- K) Adds 12.36.400, which prescribes how forfeited property and/or the revenue derived from forfeited property will be handled by the State and subdivisions of the State.

- L) Adds 12.36.410, which prohibits the forfeiture of the property of innocent owners and provides a method by which innocent owners may seek the return of property for which forfeiture is sought.
- M) Adds 12.36.420, which defines the procedures for holding seized property that is not required by law to be destroyed.
- N) Adds 12.36.430, which requires law enforcement agencies to track forfeitures along with the revenue derived therefrom and to provide an annual report regarding the same.
- O) Adds 12.36.440, which provides for when seized property must be returned.
- P) Adds 12.36.450, which sets out the procedures by which seized property may be transferred to other law enforcement agencies.
- Q) Adds AS 12.36.490, which provides definitions for AS 12.36.300-.490.

Section 13: Amends AS 16.05.190 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 14: 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 15: 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 16: 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 17: 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 18: 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 19: 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 20: Amends AS 17.30.110 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 21: 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 22: 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 23: Amends AS 22.15.240 to add the right to appeal to the Superior Court a District Court decision under the forfeiture act.

Section 24: 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 25: 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 26: 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 27: Amends AS 28.35.032(p) to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 28: Amends AS 43.50.620 to provide that forfeiture may be made in proceedings only to the extent consistent with the Forfeiture Act.

Section 29: 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 30: 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 31: 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 32: Adds uncodified law explaining the indirect effects on the Alaska Rules of Criminal Procedure and evidence.

Section 33: Adds uncodified law explaining the applicability of the Forfeiture Act to all forfeiture proceedings.

Section 34: 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 35: Provides an effective date of July 1, 2017.

Opinion

Ohio Now Requires Criminal Convictions For Many Civil Forfeiture Cases



Institute For Justice

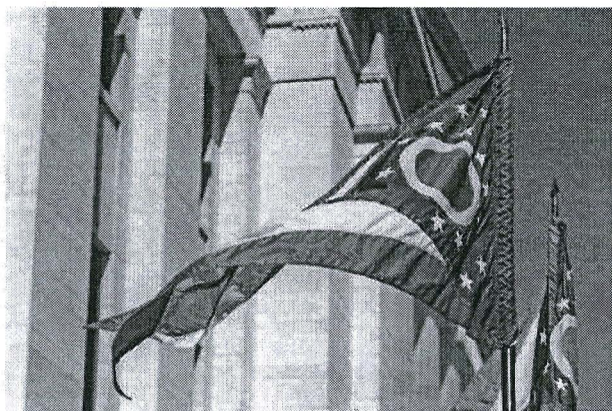
Ohio Gov. John Kasich signed a bill today that will require a criminal conviction before law enforcement can permanently confiscate property for many civil forfeiture cases. Only 11 other states have similar or stricter requirements.

“Civil forfeiture is one of the most serious assaults on due process and private property rights in the United States today,” Institute for Justice Legislative Counsel Lee McGrath said in a statement. “Ohio’s new law should protect many from this abuse of power.”

Under the legislation, HB 347, Ohio will set a new threshold for civil forfeiture.



To forfeit properties valued at under \$15,000, the government must first convict the property's owner in criminal court.



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Speaking on the floor of the Ohio Senate, Sen. Kris Jordan said that while abolishing civil forfeiture would be “ideal,” the bill still “moves us in the right direction.” Although data for Ohio is spotty (the state gutted a forfeiture reporting requirement in 2012), records from other states suggest Ohio’s threshold should protect many property owners. According to a 2015 report by the Institute for Justice, half of all forfeitures in Illinois and Minnesota were under \$530 and \$451, respectively. Those relatively small sums are a far cry from targeting drug kingpins or dismantling criminal enterprises.

HB 347 also enacts better safeguards to protect private property rights. The legislation shifts the burden of proof from innocent owners onto the state—where it belongs. Ohioans will no

longer have to prove their innocence. Moreover, HB 347 will raise the standard of proof to forfeit property in civil court from “preponderance of the evidence” to the tougher standard of “clear and convincing evidence.”

Ohio lawmakers also had the foresight to close a pernicious loophole to prevent law enforcement from bypassing the new reform. Through “equitable sharing,” local and state agencies that cooperate with the federal government can forfeit property under federal law and receive up to 80% of the proceeds. Since 9/11, Ohio agencies seized cash, “without warrants or indictments,” from more than 1,900 people, a blockbuster *Washington Post* investigation into equitable sharing found. Collecting nearly \$140 million in equitable-sharing funds from the U.S. Department of Justice, Ohio law enforcement has spent federal forfeiture funds on salaries, overtime, even a face-painting clown.

Policing for Profit Visualized: Ho...





unapologetically **FOR ALASKAN RESIDENTS**

PO Box 60095, Fairbanks, Alaska 99706 (907) 371-7436
email info@residenthuntersofalaska.org web www.residenthuntersofalaska.org

January 23, 2017

To: House Judiciary Committee

Re: HB 42 – FORFEITURE & SEIZURE: PROCEDURE; LIMITS

Dear Chairman Claman, Vice-chair Fansler, and members of the House Judiciary Committee,

Resident Hunters of Alaska (RHAK) supports HB 42 to reform our civil asset forfeiture laws. We are aware of cases where hunters have been accused of hunting violations and had assets such as aircraft, weapons, boats, all-terrain vehicles etc., seized by law enforcement agencies prior to the case making its way through the court system. The loss of the use of those assets while the case makes its way through the courts is punitive, and in those cases where the individual was found innocent it still often costs thousands of dollars to recover those seized assets.

We understand and respect the need of our law enforcement agencies, in particular the Alaska Wildlife Troopers, 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 be abused and end up harming innocent individuals.

We need 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


Backgrounder #3132 on [Legal Issues \(/issues/legal\)](#)

August 23, 2016

An Overview of Recent State-Level Forfeiture Reforms


By [Jason Snead \(/about/staff/s/jason-snead\)](#)

Civil asset forfeiture laws allow for the seizure of property suspected of having been involved in, or derived from, criminal activity. In most states and at the federal level, no criminal charges or convictions are necessary because the resulting civil proceeding targets the property, not its owner. Civil forfeiture laws grant individuals challenging forfeiture cases considerably fewer legal protections than they would enjoy if they were defendants in criminal cases, and allow the law enforcement agencies that execute the seizures to retain the proceeds of successful forfeitures, creating a significant incentive to seize property. For decades, states have expanded the scope and reach of civil forfeiture, but within the past few years—driven by a growing number of accounts of abusive forfeitures and a recognition of the power of the forfeiture funding mechanism to distort the priorities of law enforcement organizations—many have reevaluated their civil forfeiture laws, scaling back or totally abolishing the tool. The message is clear: outside the law enforcement community, there is little support for the forfeiture status quo.

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Civil asset forfeiture is a law enforcement tool that enables the seizure and eventual forfeiture of real and personal property that may have been involved in criminal activity. States are beginning to scale back their civil forfeiture laws, and with good reason. Today's expansive forfeiture laws, rather than relieving drug kingpins and criminal organizations of their ill-gotten gains (as was their original purpose), instead allow for—and even incentivize—the seizure of property and currency from ordinary Americans based on little or no evidence of actual criminality.^[1]

An Overview of Civil Forfeiture

Modern civil forfeiture laws hold that property can be guilty of a crime, and therefore may be seized and forfeited even if that property's owner never faces criminal charges. For two centuries, American civil forfeiture law was largely restrained to admiralty and customs enforcement. In the 1980s, Congress and the states turned to civil forfeiture to combat rampant drug distribution and organized crime. Civil forfeiture became a mainstream law enforcement tool and Congress and the states encouraged its use by allowing law enforcement agencies to retain the proceeds of successful property forfeitures.

KEY POINTS

1. Civil asset forfeiture laws were ramped up in the 1980s to target the illicit proceeds of drug kingpins and criminal organizations.
2. Today, hundreds of state and federal laws authorize the seizure of property for all manner of alleged criminal activity.
3. Many states allow law enforcement organizations to retain the proceeds of successful forfeitures, and spend this revenue without oversight, creating a powerful incentive to seize property even when there is little evidence of criminality.
4. Driven by concern over the fundamental fairness of the process and the ability of law enforcement agencies to self-finance, states have begun to reform their civil forfeiture laws.
5. Some states have abolished civil forfeiture entirely, while others have pursued more modest reforms to bring

Once authorities seize private property, the resulting civil proceeding differs dramatically from the customary standards of American criminal law.

First, the proceeding targets the *property* rather than the *owner*. Under forfeiture law at the federal level and in most states, the evidentiary standard requires “a preponderance of the evidence,” not the criminal law standard of “beyond a reasonable doubt.” Thus, prosecutors need prove only that it is more likely than not that the property is tied to crime and is thus forfeitable.

Second, the prosecution need not prove that an owner used the property to commit a crime or was willfully blind to its use, as is the case in ordinary criminal trials. In a forfeiture proceeding, the burden falls on the owner to disprove these facts by demonstrating that he neither knew of, nor consented to, the property’s illicit use.

Third, property owners in forfeiture cases, unlike defendants in criminal cases, have no guaranteed right to counsel. Consequently, if an owner cannot afford an attorney, he must navigate a tortuous legal landscape alone. Oftentimes, the cost of hiring a lawyer exceeds the value of the seized property or currency; hence, a large number of defendants opt not to retain counsel even if they can afford the expense.^[2]

With such low odds of victory in forfeiture cases, many innocent property owners simply walk away: A vast majority of federal civil forfeiture cases—88 percent by some estimates—never see the inside of a courtroom.^[3] In these “administrative forfeiture” cases, the agency that originally seized the property, and stands to gain financially from keeping it, acts as investigator, prosecutor, judge, and jury all in one.^[4]

Forfeiture and the Equitable Sharing Link

Once a federal forfeiture is completed, federal law enforcement agencies may retain and spend the proceeds or, through a program known as “equitable sharing,” transfer a portion of the proceeds—in practice, up to 80 percent—to any state and local agency “which participated directly in any of the acts which led to the seizure or forfeiture of the property.”^[5]

The Treasury and Justice Departments operate equitable sharing programs. Since 2000, both have doled out more than \$5 billion in forfeiture revenues.^[6] This money may be spent only by the seizing agency, and then only for law enforcement purposes. The funds are not subject to control by state and local legislatures. As a result, federal law allows, and even financially incentivizes, state and local law enforcement agencies to bypass state laws that attempt to curtail or ban civil forfeiture. This loophole blunts the force of state-law forfeiture reforms and flies in the face of federalism, government transparency, and accountability.

Comprehensive Forfeiture Reforms

Over the past few years, a number of states have enacted broad forfeiture reform bills incorporating restrictions on the ability of state and local law enforcement authorities to transfer property to the federal government or receive the consequent revenues.

New Mexico

On April 10, 2015, New Mexico Governor Susana Martinez (R) signed into law H.B. 560, a sweeping

transparency and greater due process protections to civil forfeiture.

6. The pace of the reform movement at the state level is indicative of the lack of support for the forfeiture status quo.

ABOUT THE AUTHOR

[Jason Snead \(/about/staff/s/jason-snead\)](#)
Policy Analyst
Edwin Meese III Center for Legal and Judicial Studies

forfeiture reform bill passed unanimously by the legislature.^[7]

H.B. 560 abolished civil forfeiture in the state. As of July 1, 2015, prosecutors must obtain a criminal conviction before property may be forfeited. However, a conviction alone does not automatically result in the forfeiture of property. The state must also prove by clear and convincing evidence that the owner of the property had "actual knowledge of the underlying crime giving rise to the forfeiture." Now innocent owners whose property was used to commit a crime without their knowledge or consent will not find themselves unjustly penalized for the conduct of others.^[8]

H.B. 560 also abolished the forfeiture funding mechanism. Now any proceeds derived from the seizure and forfeiture of property must be deposited in the state's general fund, available for appropriation by elected legislators. H.B. 560 also curtails the ability of New Mexico's law enforcement agencies to circumvent state laws by transferring property to the federal government in exchange for payments under the equitable sharing program. State agencies may transfer property only when:

- Its value exceeds \$50,000;
- The underlying criminal conduct is interstate in nature or sufficiently complex to justify the transfer; or
- The property may only be forfeited under federal law.

Even in these situations, no property transfer may take place "if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property."^[9]

New Mexico's efforts have been hailed by many as the gold standard for how to reform forfeiture law. Brad Cates, who headed the Asset Forfeiture Office at the Department of Justice between 1985 and 1989 and was an early architect of the federal forfeiture ramp-up, has publicly decried what civil forfeiture has become, writing that while the "program began with good intentions [], having failed in both purpose and execution, it should be abolished."^[10] In his capacity as counsel to New Mexico's House Judiciary Committee, Cates was able to help craft and advocate for the bill that did just that in his home state.

Nebraska

Just over a year after New Mexico's forfeiture bill was passed, Nebraska Governor Pete Ricketts (R) signed L.B. 1106, a forfeiture bill similar to its counterpart in New Mexico.^[11]

Like New Mexico's H.B. 560, the Nebraska act requires a criminal conviction, essentially abolishing civil forfeiture in the state. Property may still be forfeited, but only after the state first obtains a criminal conviction on drug, child pornography, or illegal gambling charges, and then only after demonstrating by clear and convincing evidence that the property sought for forfeiture was used or intended to be used to commit the crime, or represents the proceeds of the offense.

L.B. 1106 also restricts the ability of Nebraska law enforcement agencies to circumvent the new law by transferring property to the federal government. Such transfers may take place only if the property or cash seized exceeds \$25,000 in value; if the property was physically seized by an agent who is actually employed by the federal government (thereby preventing a local officer who has been deputized by a federal agency from skirting the restriction); or if the person from whom the property was seized is the subject of a federal prosecution.

However, a financial incentive to seize property in the state remains in place. Article VII-5 of the Nebraska Constitution preserves 50 percent of forfeiture revenues for use by law enforcement agencies for drug enforcement efforts, with the remainder preserved to finance public education. Because the profit incentive is enshrined in the state's constitution, only a constitutional amendment can change this.

Maryland

The Old Line State has adopted two significant pieces of forfeiture reform legislation in the span of just a few months. The first, S.B. 528,^[12] became law in January 2016 after the state legislature overrode Governor Larry Hogan's (R) veto.^[13] On May 19, 2016, Governor Hogan signed a second reform bill, H.B. 336, into law.^[14]

Under these reforms, the standard of proof has been raised from a mere "preponderance of the evidence"—a low standard given the quasi-criminal nature of the proceeding and what is often at stake for the property owner—to "clear and convincing" evidence, and places the burden of proof squarely on the state.

Furthermore, Maryland law enforcement agencies may forfeit cash only in connection with the illegal manufacture, distribution, or dispensing of controlled substances. Cash seizures based on simple possession are no longer allowed. Agencies will also be subjected to a host of reporting requirements designed to increase transparency, including documenting how they spend "any funds appropriated to the [agency] as a result of forfeiture," the disposition of any related criminal proceedings, demographic data, and the reporting of proceeds received via an equitable sharing agreement. H.B. 336 also mandates that 20 percent of all forfeiture revenues deposited into the general fund be spent on drug abuse treatment and education programs.^[15]

Property transfers to the federal government now face new limits, with transfers only taking place if:

- The property owner consents to the transfer;
- There is an ongoing federal criminal case related to the seizure;
- The property is \$50,000 or more in cash; or
- The transfer is the result of a federal seizure warrant.

In other words, like New Mexico and Nebraska, Maryland is not preventing cooperation between state and federal agencies, but is restricting it to preserve the authority of state law over state institutions, and to refocus joint forfeiture activities on ongoing criminal cases and the targeting of major sources of drug funds.

Washington, D.C.

With the passage of Bill 20-48, the Civil Asset Forfeiture Amendment Act of 2014, Washington, D.C., became an early leader in the forfeiture reform movement.^[16] At the time, Washington's legislation was the most comprehensive forfeiture package in the nation since the initial ramp-up of civil forfeiture powers in the 1980s; in fact, Heritage Foundation scholars identified it as a model for states to follow.^[17]

Bill 20-48 made several monumental shifts in District forfeiture law. The burden of proof in forfeiture cases was shifted squarely to the government to prove that an owner either knew his property was being used for an illicit purpose or was willfully blind to its use. In cases dealing with the forfeiture of vehicles or real property, the evidentiary standard was raised from a "preponderance of the evidence" to the much higher standard of "clear and convincing." In cases

where District officials seek forfeiture of an owner's primary residence, the homeowner must first be convicted. Should the city prevail in a forfeiture case, Bill 20-48 mandates that all forfeiture revenues be returned to the city's general fund rather than be retained by law enforcement agencies.

Before Bill 20-48, city law allowed for the confiscation of any amount of cash found in proximity to a controlled substance, regardless of any direct connection between the drugs and the money. As a result, fully half of all cash seizures between 2009 and 2014 were for amounts less than \$141—hardly the “kingpin” money that is purportedly the main target of civil forfeiture. Under the new law, any amount of money below \$1,000 in value is not forfeitable, ending commonplace petty cash seizures. Bill 20-48 also ended the practice of requiring vehicle owners to pay a “penal sum” of up to \$2,500 merely for the right to challenge the seizure of their car. These challenges could take months or even years, forcing owners to undergo the dual hardship of being without both their vehicle and a significant sum of money.

City Councilmembers also took aim at District law enforcement's participation in the equitable sharing program. As noted by the committee report accompanying the city's legislation, the Metropolitan Police Department had budgeted for \$2.7 million in *future* forfeiture earnings derived from equitable sharing payments through 2018. Such expectations only serve to incentivize the seizure of property, and on increasingly dubious grounds as fiscal years wear on and concerns about hitting quotas arise. This is the reason “anticipating” future proceeds is strictly prohibited by federal officials. It is telling that such a blatant disregard for the rules went unnoticed and unchallenged right under the Justice Department's nose. While law enforcement officials protested the loss of funds, the City Council directed that District law enforcement agencies deposit federal equitable sharing payments into the city's general fund beginning on October 1, 2018. This mandate runs directly afoul of equitable sharing rules that require money be retained and spent *only* by a law enforcement agency. It is expected that the move will force an end to property transfers at that time.

Forfeiture Procedural Reforms

Other states have enacted forfeiture reform legislation which, despite not addressing the equitable sharing loophole or forfeiture funding mechanism, are significant steps toward a more fair and balanced forfeiture system.

Florida

On April 1, 2016, Governor Rick Scott (R) signed S.B. 1044, which had passed unanimously out of both chambers of the state legislature.^[18]

In forfeiture proceedings, under S.B. 1044, the state must prove its case beyond a reasonable doubt—the same standard required in criminal cases, a significant hike from the prior “clear and convincing” standard. Moreover, the state must prove that an owner had “actual knowledge of the criminal activity,” preventing innocent third parties from being stripped of their possessions.

S.B. 1044, while not requiring a criminal conviction, does mandate that, in most cases, an arrest be made before property may be seized. Exceptions to this are if the owner is a fugitive, deceased, or becomes a confidential informant, or if the property that is seized is cash. Cash seizures qualifying as an exception to the arrest requirement ignores the fact that currency is the most commonly seized type of property. Most jurisdictions report that the value and volume of seized currency far exceeds any form of real or personal property.^[19] Indeed, many law enforcement officials consider that possession of large amounts of U.S. currency is sufficient evidence to justify a seizure, despite

the absence of any law which makes the mere possession of currency, in any amount, illegal.^[20] Exempting cash seizures from the arrest requirement provides a significant loophole for law enforcement agencies to continue seizing property based on little evidence of actual illegality.

To take a forfeiture case to court, the seizing agency must pay a \$1,000 filing fee and post a \$1,500 bond which is payable to the property owner if he prevails. Taken together, these provisions raise the cost and risk to agencies seeking forfeiture, thereby deterring agencies from targeting small amounts of cash or bringing cases based on dubious evidence. However, this requirement could result in agencies resorting to pressuring property owners to “voluntarily” forfeit their property by settlement in order to avoid going to court.

Florida policymakers are to be commended for their novel approach to curbing forfeiture abuses. However, the legislature sadly neglected to address the principal reason for abusive forfeitures: the incentive to generate revenue. Under Florida law, agencies may retain up to 85 percent of their forfeiture revenues, and are still authorized to transfer property to federal authorities in exchange for payouts via the equitable sharing program. Florida has made progress with these reforms, but there is room for improvement.

Minnesota

In May, 2014, Governor Mark Dayton (D) signed S.F. 874 into law. Under state law, a criminal conviction is necessary for seized property to be forfeited.^[21] Once a conviction is obtained, the state must prove by clear and convincing evidence “that the property is an instrument or represents the proceeds of the underlying offense.”^[22] While certainly positive in nature, the reform is limited in scope. For example, if an individual other than the property’s owner is convicted, the burden is still on the innocent owner to prove he neither knew of, nor consented to, its illegal use.^[23]

However, even in cases where an innocent owner can meet this burden, the defense may be unavailable. In *Laase v. 2007 Chevrolet Tahoe*, the Minnesota Supreme Court held that in a drunk driving case where one owner of a jointly owned vehicle is convicted, the vehicle may be forfeited, and the second owner is not entitled to raise an innocent owner defense.^[24] Since drunk driving is just one of several offenses contained in the state statute allowing for vehicular forfeiture,^[25] the Court’s reasoning may extend to cases beyond just drunk driving, making an innocent owner’s defense difficult to assert.

Minnesota chose not to stop the practice of financing its law enforcement agencies via either state-law forfeiture or federal equitable sharing payments. In most cases, law enforcement agencies are entitled to retain 90 percent of the proceeds of successful forfeitures, and may spend this money with little outside oversight. Since 2000, state agencies have generated more than \$62 million in proceeds.^[26] In addition to this sum, state agencies have received more than \$26 million in equitable sharing payments from both the Justice and Treasury Departments.^[27] The financial incentive to seize property is alive and well in Minnesota.

Montana

On July 1, 2015, H.B. 463 took effect in Montana.^[28] Property forfeitures now must pass through a two-part process:

1. Property owners must first be convicted of a criminal offense specifically providing for property forfeiture.
2. The state must prove by clear and convincing evidence that the property was either an instrumentality of the criminal offense or constitutes the illicit proceeds of the offense.

There are exceptions to this process, including cases in which the seized property is a controlled substance or in which the property owner “dies, is deported, or is unknown or if the owner of the property flees after the prosecution is commenced and is not apprehended within 12 months.”

Under H.B. 463, the burden of proof in innocent owner cases is shifted to the state, which must prove that an “owner or person with an ownership interest in the property had actual knowledge of the crime associated with a forfeiture proceeding.”

However, Montana’s reform bill, like Minnesota’s, fails to address the financial incentives in forfeiture law. At present, local law enforcement agencies may retain the full value of seized and forfeited property and currency, and state agencies may keep 100 percent of proceeds up to \$125,000 (with any amount above that split evenly between the state’s general fund and the seizing agency’s coffers). Furthermore, Montana law enforcement authorities can still transfer property to federal authorities in exchange for equitable sharing payments. Since 2000, these payments have totaled in excess of \$6.5 million—all of which is beyond the control of state and local legislators.^[29] In sum, while H.B. 463 makes it more difficult to seize property from innocent people, the lingering presence of financial incentives greatly diminishes accountability and transparency in law enforcement funding.

Michigan

On October 20, 2015, Michigan Governor Rick Snyder (R) signed seven forfeiture reform bills into law.^[30] While the number of bills is impressive, the actual substance of the reform package is much more modest.

The reforms impose strict new forfeiture reporting requirements on law enforcement agencies throughout the state. Prior to these reforms, Michigan law required reporting only in drug forfeiture cases. Now, for the first time, Michigan agencies will have to track in all cases what they seize, the final disposition of forfeited property (including currency), the underlying offense giving rise to the forfeiture, and whether the property’s owner was ever charged with or convicted of that crime. This does not mean that law enforcement authorities must either charge or convict property owners to forfeit their property. The new bills do, however, raise the standard of proof in forfeiture cases to “clear and convincing” evidence, the standard that seems to be taking shape as the new normal in state forfeiture laws.

As is the case with Florida, Montana, and Minnesota, Michigan still retains a significant financial incentive to seize property under both state and federal law, which promise, respectively, returns of 100 percent and 80 percent of the value of the forfeited property. State-law forfeitures have generated more than \$270 million for Michigan law enforcement agencies since 2001.^[31] Federal equitable sharing payments totaled nearly \$150 million between 2000 and 2013.^[32] Improving the transparency of law enforcement agencies’ forfeiture funding mechanism will no doubt provide legislators and the public with useful data, but as long as the question of forfeiture revenues is unanswered, the pressure to seize property remains.

New Hampshire

On June 1, 2016, the New Hampshire legislature adopted S.B. 522, requiring a criminal conviction in most cases before the state can forfeit property.^[33] If the law is signed by Governor Maggie Hassan (D), New Hampshire will become the 11th state with such a requirement.

Under S.B. 522, once a conviction is obtained, the state will bear the burden of proving that a property owner “was a consenting party to the crime.” Thus, a property owner will no longer be compelled to prove his own innocence in court. Meanwhile, the standard of proof in forfeiture cases has been raised to “clear and convincing,” a significant hike from the current “preponderance of the evidence” standard.

S.B. 522 eliminates the financial incentive to seize property by requiring that all forfeiture proceeds be returned to the state’s general fund. However, this only affects state-law forfeitures. Property transfers to federal officials and the receipt of the resulting equitable sharing payments are still permitted. Under the former law, law enforcement organizations were only entitled to 45 percent of funds resulting from state forfeitures; consequently, New Hampshire law enforcement organizations exhibited a preference for the equitable sharing route, which promises up to 80 percent of proceeds. In fact, since 2000, New Hampshire agencies generated only \$1.15 million via forfeiture under state law^[34] but more than \$17 million in equitable sharing payments have been made to state and local agencies. Given the recent change in the law, it is reasonable to assume that state law enforcement authorities will take even greater advantage of the federal equitable sharing program. To better protect property owners, New Hampshire lawmakers should close this loophole.

Additional, but Limited, Reforms

While the states discussed above have enacted the most comprehensive reforms, other states have enacted meaningful, albeit more limited, reforms.

Georgia

In Georgia, the Georgia Uniform Civil Forfeiture Procedure Act (H.B. 233), was signed into law in 2015.^[35] While the Act did not address the profit motive or raise the standard of proof in forfeiture cases, it does improve transparency by creating a standardized reporting system which state and local authorities must use when disclosing their forfeiture activities.

Virginia

In Virginia, H.B. 771 also focuses on transparency.^[36] Signed into law in March 2016, H.B. 771 requires the state Department of Criminal Justice Services to provide the governor and General Assembly with an annual report detailing “the amount of all cash, negotiable instruments, and proceeds from sales” of forfeited property. H.B. 771 also prohibits law enforcement officials from attempting to “induce” an owner to waive his interest in seized property if “an information naming that property has not been filed,” an apparent effort to end the practice of pressuring property owners to give up their property at the moment of seizure.

Mississippi

In Mississippi, H.B. 1410 creates a “Forfeiture Transparency Task Force” responsible for “review [ing] all civil asset forfeiture laws and mak[ing] recommendations to the Legislature for amendments to Mississippi civil asset forfeiture laws.”^[37] The year-long Task Force is empowered to collect forfeiture data from state and local agencies and propose reforms aimed at improving the protections guaranteed to innocent property owners and provide for greater transparency “while ensuring that assets used or obtained through unlawful practices are removed from the possession of criminals.”

A Bright Future for Reform Efforts

The reforms outlined here vary in breadth and depth. Some states have elected to abolish civil forfeiture altogether, while others prefer a more incremental approach that focuses on procedural protections or reporting and transparency requirements.

The fact that these reforms have been adopted within the past three years is remarkable. Only a few short years ago America’s civil forfeiture system was skewed at both the state and federal levels, seemingly invulnerable to public criticism and legal attack. Yet, with widespread support in their legislatures, states continue to enact significant forfeiture reform measures, often over the alarmist and overblown objections of police, sheriffs, and prosecutors. The message is clear: Outside the law enforcement community, support for the forfeiture status quo is remarkably thin.

—Jason Snead is a Policy Analyst in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.

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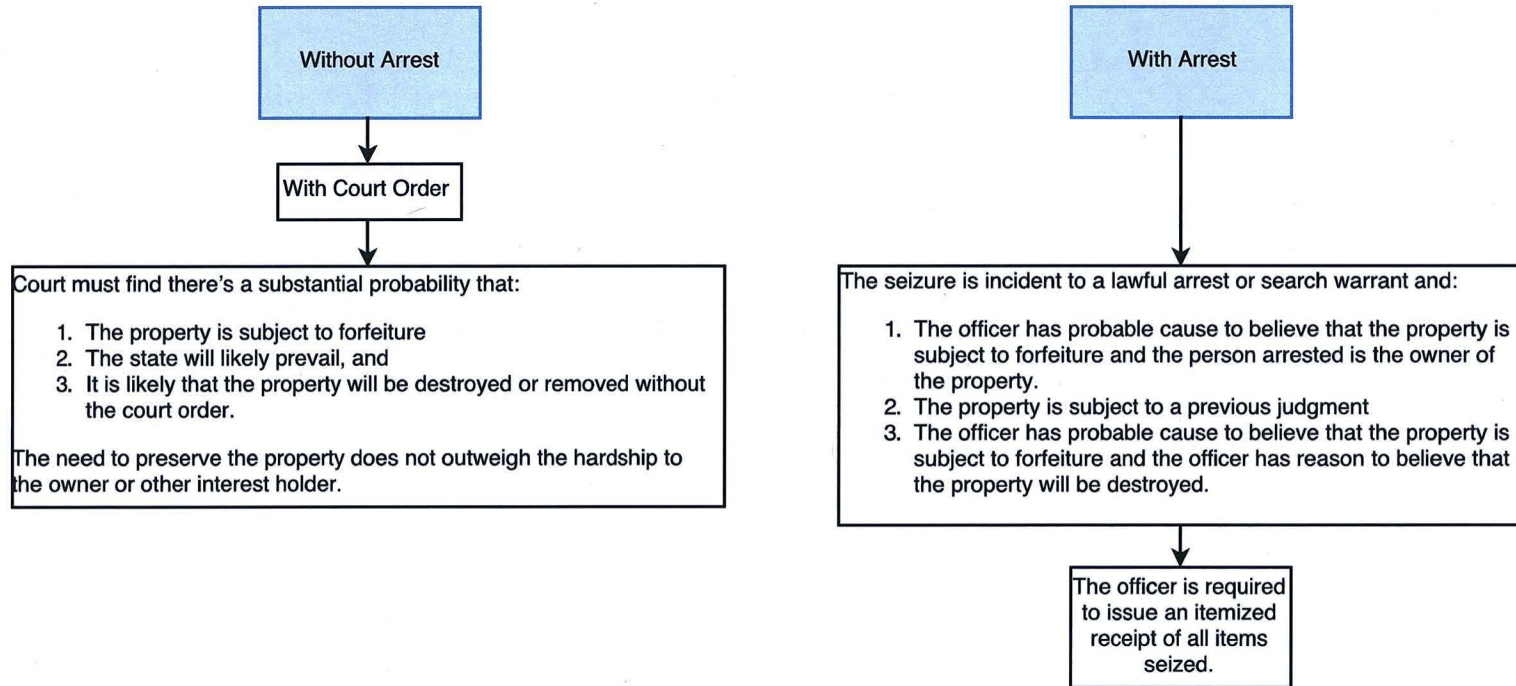
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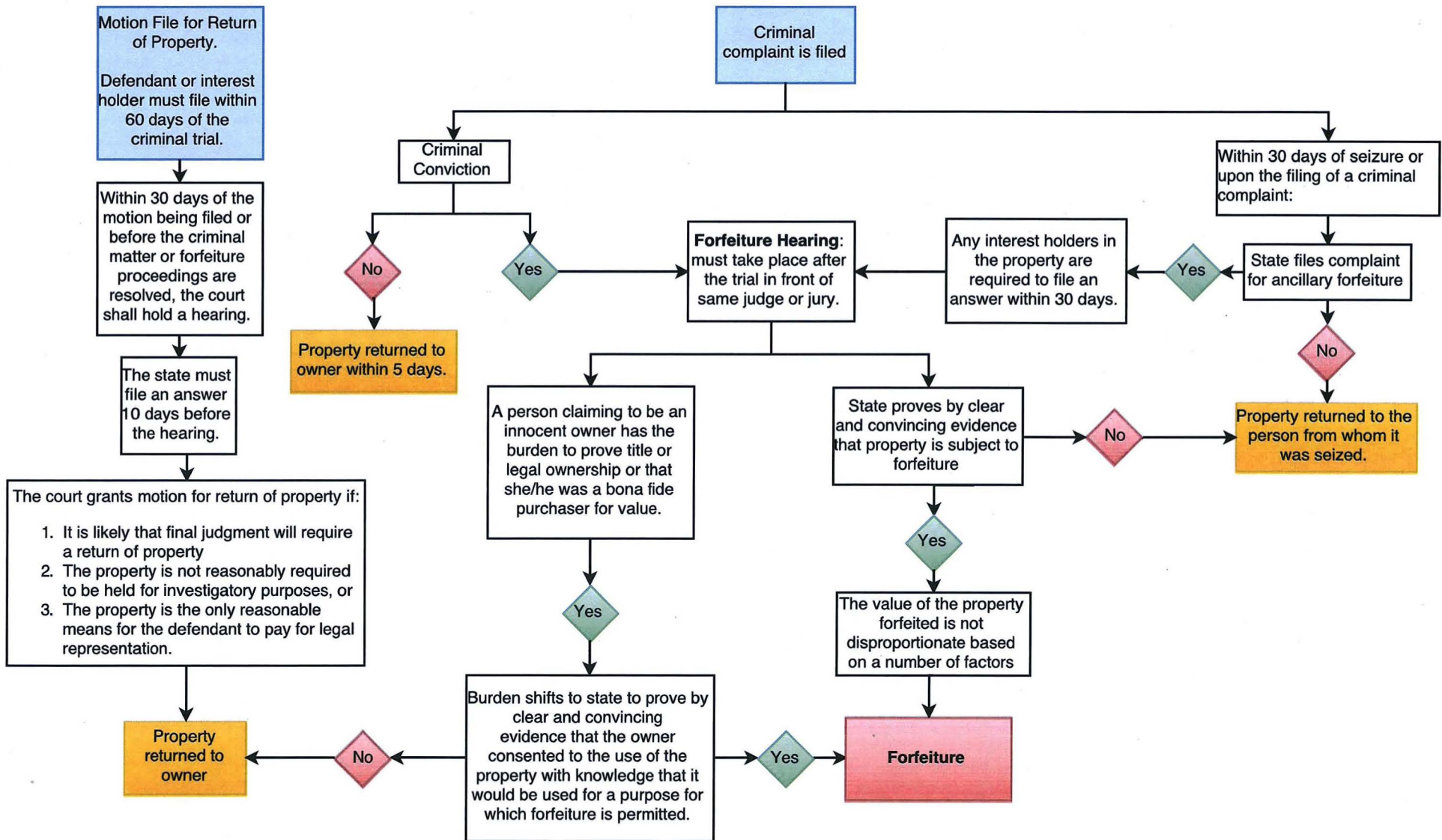
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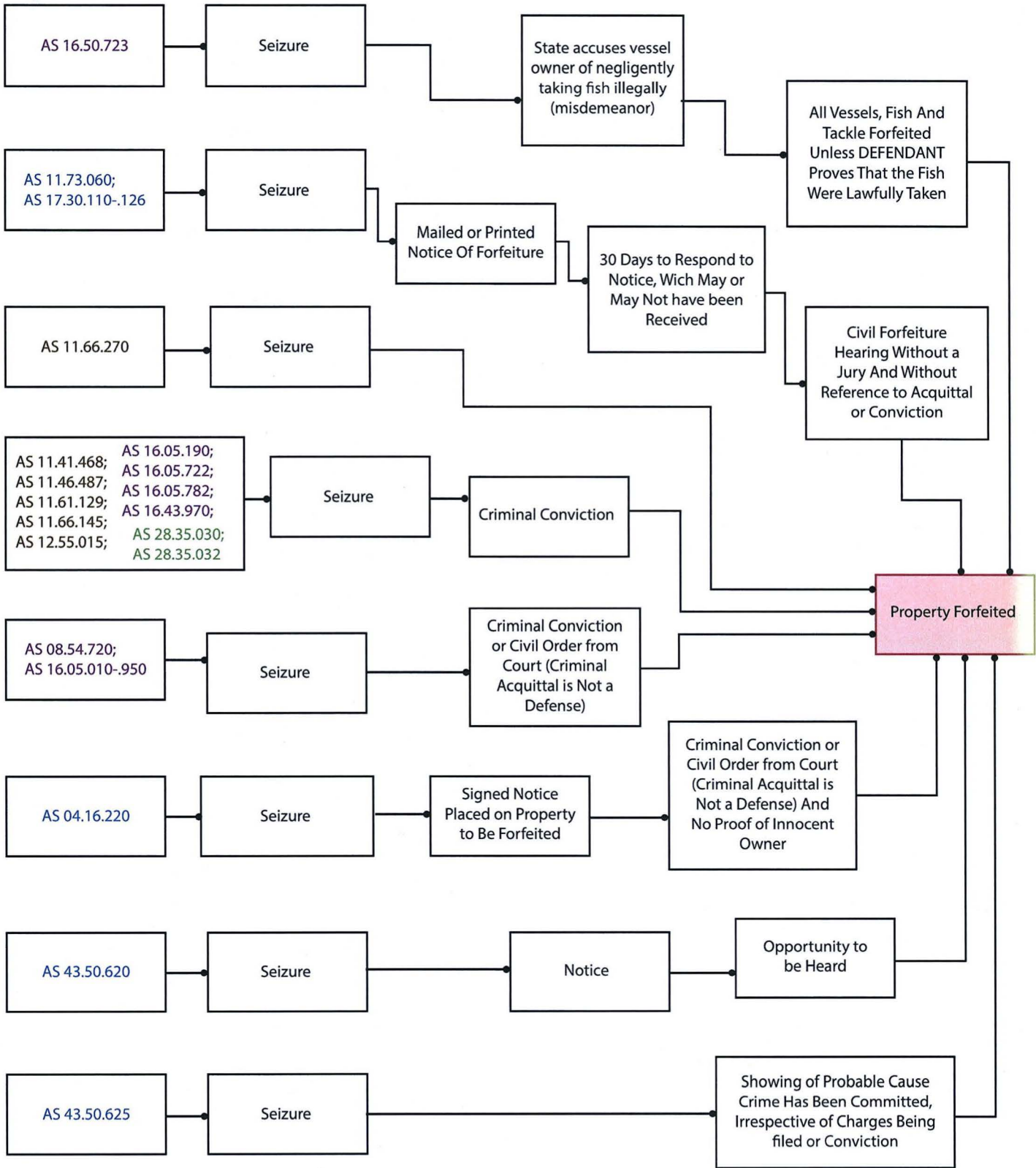
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Seizure Authorized



After Seizure





- Wildlife
- Bootlegging, Drugs & Cigarettes.
- Miscellaneous
- Intoxication (DUI, etc.),

NFIB

The Voice of Small Business.®

ALASKA

January 19, 2017

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

RE: House Bill 42 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 42. 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 42 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. In our NFIB Membership ballot this past fall; our membership voted 79% in favor of supporting this bill.

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

January 23, 2017

The Honorable Matt Claman,
State Capitol Building
Juneau, Alaska 99801-1182

RE: House Bill 42 Civil Asset Forfeiture Reform

Dear Representative Claman:

I understand that House Bill 42 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 42 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 42 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

Department of Law

Office of the Attorney General

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
Main: 907.269.5100
Fax: 907.269.5110

Amendment to HB 42 v. D

Page 1, lines 2-3

Following “**criminal law;**”:

Delete all material.

Page 1, line 4

Delete “**Rules 202, 209, and 217, Alaska Rules of Appellate Procedure;**”

Page 1, line 9

Delete “AS 12.36.300 – 12.36.490”

Insert “this section and the procedure authorized under AS 12.35 and 12.36.”

Page 3, line 1-2

Delete “AS 12.36.300 – 12.36.490 [AS 16.05.195]”

Insert “AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36”

Page 3, line 6-7

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35” and 12.36”

Page 3 lines 11-12

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 3, lines 16-17

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 3, line 21

Delete “AS 12.36.300 – 12.36.490 [AT SENTENCING]”

Insert “AS 12.36, at sentencing”

Page 3, line 22-29

Delete all material.

Page 4, line 1

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 4, line 7

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 4, line 27-31

Delete all material.

Page 5, lines 1-11

Delete all material.

Page 5, line 12 – page 16, line 5

Delete all material.

Insert:

* **Sec. 12.** AS 12.35 is amended by adding a new sections to read:

Sec. 12.35.022 Issuance of an order to seize property subject to forfeiture.

(a) Except has provided in AS 12.35.020, a court may issue an order to seize property that is subject to forfeiture if the court finds that

(1) property being seized is subject to forfeiture; and

(2) there is probable cause to believe that:

(A) the state will prevail on the issue of forfeiture;

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

(C) the item to be seized is otherwise illegal to possess

(b) Property subject to forfeiture under this section may be seized at any time, without a prior court order, if the

(1) seizure is incident to a lawful arrest or citation for an offense or to a search lawfully conducted under a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture;

(2) property subject to forfeiture is the subject of a previous judgment in favor of the state; or

(3) law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.

(c) The execution on the order to seize the property and the return of the property, if applicable, are subject to this chapter and other state laws.

Sec. 12.35.030. Seized property

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

Sec. 12.35.035. Post seizure hearing

(a) Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may request return of the seized property. The request must be made to the court, identify the court case or search warrant number, and include facts to support the person's interest in the property. Except upon a showing of good cause, the post seizure hearing shall occur within 45 days of the moving party's request.

(b) The court may order the return of the property in the custody of law enforcement to the moving party if

(1) the moving party proves by a preponderance of the evidence that:

- (i.) they are the lawful owner of the property;
- (ii.) the property is not subject to forfeiture under AS 12.36.025;
- (iii.) the property is not otherwise illegal to possess; and

(2) the party that objects to the return of the property fails to prove by a preponderance of the evidence that the property must be retained for evidentiary purposes under the provisions of AS 12.36 or another law.

(c) The court may order the return of property subject to forfeiture upon the finding that the item has no evidentiary value and establishing that the property owner has posted a secured monetary bond equal to the fair market value of the property.

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

Sec. 12.36.025. Property subject to forfeiture

(a) A person's property is subject to forfeiture to the state if the

- (1) person is convicted of the offense listed in AS 12.36.027; and
- (2) the state establishes by clear and convincing evidence that the property is subject to forfeiture under (b) of this section;

(b) Following conviction for an offense listed in AS 12.36.027, a court may order a person to forfeit

- (1) property the person acquired through commission of the offense;
 - (2) property directly traceable to property acquired through the commission of the offense;
- or
- (3) any instrumentality the person used in the commission of the offense.

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

Sec. 12.36.027. Offenses subject to forfeiture

(a) Forfeiture to the state is permitted following the conviction of an offense under

- (1) AS 04.11.010, 04.11.499, 04.11.501, or an ordinance adopted under AS 04.11.501;
- (2) AS 04.16.205;
- (3) AS 04.21.060;
- (4) AS 08.54;
- (5) AS 11.41;

- (6) AS 11.46
- (7) AS. 11.56
- (8)AS 11.61
- (9) AS 11.66.
- (10) AS 11.71;
- (11) AS 11.73;
- (12) AS 16, or any regulation adopted under AS 16;
- (13) an ordinance adopted under AS 28.01.015;
- (14) AS 28.15.291;
- (15) AS 28.35.030 or 28.35.032;
- (16) AS 43.50.640;
- (17) 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;
- (18) 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;
- (19) wherever specifically authorized by statute, regulation or municipal ordinance; or
- (20) any property that is illegal to possess under state law.

*** Sec. 14. AS 12.36.050 is amended to read:**

(a) A claimant seeking remission of the claimant's interest in [A WEAPON ORDERED FORFEITED UNDER AS 12.55.015(A)(9)] **property ordered forfeited under this chapter** shall prove to the court by a preponderance of evidence that the claimant

(1) holds a [VALID INTEREST IN THE WEAPON] **legal right, title, or interest in the property seized**, acquired in good faith;

(2) did not knowingly participate in the commission of the crime in which the [WEAPON] **property** was used; and

(3) did not know or have reasonable cause to believe that the [WEAPON] **property** was used or would be used to commit a crime; **and**

(4) **was a bona fide purchaser for fair value.**

(b) Upon a showing that a claimant is entitled to relief under (a) of this section, the court may order that the [WEAPON] **property** be released to the claimant.

(c) A claim may not be filed under this section more than 120 days after the entry of the last final judgment in the case in which the [WEAPON] property was ordered forfeited.

Sec. 12.36.055. Forfeiture of substitute property

Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by clear and convincing evidence that the person intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property, and the substitute property is owned in full by the convicted person.

Sec. 12.36.080 Disposition of seized property

(a) Within 30 days after receipt of a court order directing the return of property or of notification the declination, acquittal, or dismissal of criminal charges, a law enforcement agency that holds seized property shall return the seized property to the owner of the property. The court may extend the 30 day period upon a showing of good cause.

(b) The Department of Law or the law enforcement agency that holds the seized property may petition the court to return or dispose of seized property at any time.

Renumber bill sections accordingly.

Page 16, lines 6 – 31

Delete all material.

Insert:

Sec. 12.36.085. Annual report. (a) By February 1 of each year, each law enforcement agency that initiates a case resulting in items being forfeited by the court under this chapter shall prepare a report itemizing property that has been forfeited to that law enforcement agency and transmit that report to the Department of Public Safety. The report must include all items forfeited as they are listed in the judgment.

(b) By April 1 of each year, the Department of Public Safety shall compile the reports submitted by each law enforcement agency under (a) of this section and publish an aggregate report on its Internet website.

(c) The report prepared and transmitted under (a) of this section shall comply with the format requirements developed by the Department of Public Safety.

Page 17, lines 1-31

Delete all material.

Page 18, lines 1-31

Delete all material.

Page 19, lines 1-14

Delete all material.

Page 19, line 22

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 12.35 and 12.36"

Page 19, line 26

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 12.35 and 12.36"

Page 19, line 31

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 12.35 and 12.36"

Page 20, line 4

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 12.35 and 12.36"

Page 20, line 15

Delete "AS 16.05.710 [AS 16.05.195 AND 16.05.710]"

Insert "AS 16.05.195, 16.05.710, and the procedure authorized under AS 12.35 and 12.36."

Page 20, line 18

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36"

Page 20, line 20

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 16.05.195 and the procedure authorized under AS 12.35 and 12.36"

Page 20, line 22-24

Delete "[ANY FISH, OR ITS FAIR MARKET VALUE, FORFEITED UNDER THIS SUBSECTION MAY NOT ALSO BE FORFEITED UNDER AS 16.05.195]"

Insert "Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under as 16.05.195."

Page 21, line 2

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 16.05.195 and the procedure required under AS 12.35 and 12.36"

Page 21, line 10

Delete "AS 12.36.300 – 12.36.490"

Insert "AS 16.05.195 and the procedure required under AS 12.35 and 12.36"

Page 21, line 14

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 21

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 21, line 27

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 22, line 1

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 16.05.195 and the procedure required under AS 12.35 and 12.36”

Page 22, line 5

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 23, line 9

Delete “AS 12.36.300 – 12.36.490 [AS 16.05.195(f), AS 17.30.122]”

Insert “AS 16.05.195(f), AS 17.30.122, and the procedure required under AS 12.35 and 12.36”

Page 24, line 5

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 24, line 8

Delete “AS 12.36.300 – 12.36.490”

Insert “AS 12.35 and 12.36”

Page 25, line 27

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 27, line 8-9

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 27, line 10

Delete “[, SUBJECT TO REMISSION UNDER AS 28.35.037]”

Insert “,subject to remission under as 28.35.037”

Page 28, line 29

Delete “AS 12.36.300 – 12.36.490 [AS 28.35.036]”

Insert “AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 30, line 10-11

Delete “AS 12.36.300 – 12.36.490 [UNDER AS 28.35.036]”

Insert “under AS 28.35.036 and the procedure required under AS 12.35 and 12.36”

Page 30, lines 12-13

Delete “[, SUBJECT TO REMISSION UNDER AS 28.35.037]”

Insert “, subject to remission under AS 28.35.037”

Page 30, line 21-22

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 30, line 27-28

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 31, line 9

Delete “AS 12.36.300 – 12.36.490”

Insert “this chapter and the procedure required under AS 12.35 and 12.36”

Page 31, line 10-14

Delete “[(1) UPON CONVICTION OF A PERSON FOR A VIOLATION OF AS 43.50.640; OR

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

Insert “(1) upon conviction of a person for a violation of as 43.50.640; or

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section”

Page 31, lines 15-28

Delete all material.

Insert “The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to offenses, seizures, or forfeitures described and declared to be subject to forfeiture by the laws referenced herein. It specifically excludes application to in rem civil court actions initiated against real, personal or intangible property outside of a criminal context, including but not limited to, actions to quiet title, condemnation, abandoned or nuisance property, probate, and trespass.”

Page 32, lines 2-6

Delete all material

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

March 20, 2017

SUBJECT: Forfeitures (CSHB 42(JUD);
Work Order No. 30-LS0193\U)

TO: Representative Matt Claman
Chair of the House Judiciary Committee
Attn: Lizzie Kubitz

FROM: Hilary V. Martin 
Legislative Counsel

Attached is the Judiciary CS you requested, making changes proposed by the Department of Law.

I have changed bill sec. 12.36.310 to remove the list of offenses that subject a person to forfeiture. The section now reads that forfeiture is permitted following conviction of an offense that provides for forfeiture by law, regulation, or ordinance. In bill sec. 12.36.300, a person's property is subject to forfeiture if the person is convicted of an offense under bill sec. 12.36.310. Now that bill sec. 12.36.300 states that forfeiture is permitted following conviction of an offense that is subject to forfeiture, this leads to a nonsensical result. The purpose of the list of statutes was to make it clear which offenses subjected a person to forfeiture. Now, there seems to be no reason to direct people to sec. 12.36.310 since that section no longer identifies the offenses that provide for forfeiture. It would be clearer to simply delete bill sec. 12.36.310 and in sec. 12.36.300, state that forfeiture is permitted following conviction of an offense that provides for forfeiture.

If I may be of further assistance, please advise.

HVM:mlp
17-133.mlp

Attachment

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

March 21, 2017

SUBJECT: Sectional summary of CSHB 42(JUD)
(Work Order No. 30-LS0193\U)

TO: Representative Matt Claman
Chair of the House Judiciary Committee
Attn: Lizzie Kubitz

FROM: Hilary V. Martin 
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

Sections 1 - 7: Makes conforming amendments to statutes containing forfeiture language to refer to the new forfeiture sections, AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350.

Section 8: Adds a new article to AS 12.35 relating to seizure of property:

Sec. 12.35.200: Allows the court to issue an order to seize property that is subject to forfeiture if the court makes certain findings. Allows seizure without a prior court order under certain circumstances.

Sec. 12.35.210: Requires seized property to be kept by the custodian in a manner to protect it from theft or damage and insured against those risks if required by the court.

Sec. 12.35.220: Sets out the requirements for a post-seizure hearing and allows another person who claims an interest in the seized property to request return of the property.

Section 9: Amends AS 12.36.020(a) to add references to new bill secs. 12.35.220 and AS 12.36.320.

Section 10: Adds a new article to AS 12.36 relating to forfeiture:

Sec. 12.36.300: States that a person's property is subject to forfeiture if the person is convicted of an offense under AS 12.36.310 and if the state establishes by clear and convincing evidence that the property is subject to forfeiture. Sets out the type of property that can be forfeited. States that property that is illegal to possess is subject to

forfeiture to the state. Provides that nothing in the section limits or prevents civil forfeiture under other state law or authority outside of criminal proceedings.

Sec. 12.36.310: Permits forfeiture for conviction of an offense that provides for forfeiture by law, regulation, or ordinance.

Sec. 12.36.320: Provides a process for a person to seek remission of the person's interest in forfeited property. Requires a claim under this section to be filed within 120 days after the entry of the last final judgment in the case in which property was ordered forfeited.

Sec. 12.36.330: Allows for the forfeiture of substitute property that is equal to but does not exceed the value of property that is subject to forfeiture that the state is unable to seize.

Sec. 12.36.340: Requires a law enforcement agency that holds seized property within 30 days of receipt of a court order or of a notification of the declination, acquittal, or dismissal of criminal charges to return the property. Allows the Department of Law or a law enforcement agency that holds seized property to petition the court to return or dispose of seized property at any time or to extend the period for return.

Sec. 12.36.350: Requires each law enforcement agency that initiates a case resulting in items being forfeited under AS 12.36.300 - 12.36.340 to prepare a report by February 1 of each year itemizing the forfeited property and transmit the report to the Department of Public Safety. Requires the Department of Public Safety to compile the reports by April 1 of each year and publish the aggregate report on the Department of Public Safety's Internet website.

Sections 11 - 19: Makes conforming amendments to statutes containing forfeiture language to refer to the new forfeiture sections, AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350.

Section 20: Gives the court of appeals appellate jurisdiction over forfeiture proceedings.

Section 21: Allows a party to appeal to the superior court a judgment of the district court in a forfeiture proceeding.

Sections 22 - 28: Makes conforming amendments to statutes containing forfeiture language to refer to the new forfeiture sections, AS 12.35.200 - 12.35.220 and AS 12.36.300 - 12.36.350.

Section 29: States that this Act applies to forfeitures occurring on or after the effective date of this Act.

Section 30: Provides an effective date of July 1, 2017.

AMENDMENT #1 *Adopted*

OFFERED IN THE HOUSE

BY REPRESENTATIVE CLAMAN

TO: CSHB 42(JUD), Draft Version "U"

1 Page 5, lines 8 - 10:

2 Delete all material and insert:

3 "(c) Before ordering the return of seized property subject to forfeiture, the
4 court

5 (1) must find that

6 (A) the item has no evidentiary value; or

7 (B) the parties have reached an agreement or stipulation that
8 preserves the evidentiary value of the property or maintains the evidentiary
9 integrity of the property; and

10 ~~(2) may require the property owner to post cash or a secured monetary~~
11 bond in an amount up to the fair market value of the property."

AMENDMENT # 2 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE CLAMAN

TO: CSHB 42(JUD), Draft Version "U"

1 Page 6, following line 2:

2 Insert new bill sections to read:

3 ** Sec. 10. AS 12.36.060(a) is amended to read:

4 (a) A deadly weapon, other than a firearm or ammunition, forfeited to the state
5 under AS 12.55.015(a)(9), unless remitted under AS 12.36.320 [AS 12.36.050], shall
6 be disposed of by the commissioner of public safety under this section. Under this
7 subsection, the commissioner of public safety

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

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

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

15 * Sec. 11. AS 12.36.060(c) is amended to read:

16 (c) A firearm or ammunition forfeited to the state under AS 12.55.015(a)(9),
17 unless remitted under AS 12.36.320 [AS 12.36.050], shall be disposed of as provided
18 in AS 18.65.340."
19

20 Renumber the following bill sections accordingly.

21

22 Page 20. following line 22:

23 Insert a new bill section to read:

- 1 "* **Sec. 31.** AS 12.36.050 is repealed."
- 2
- 3 Renumber the following bill sections accordingly.

AMENDMENT #3 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE CLAMAN

TO: CSHB 42(JUD), Draft Version "U"

- 1 Page 6, line 7:
 - 2 Delete "under AS 12.36.310"
 - 3 Insert "that provides for forfeiture by law, regulation, or ordinance"
 - 4
 - 5 Page 6, line 10:
 - 6 Delete "under AS 12.36.310"
 - 7 Insert "that provides for forfeiture by law, regulation, or ordinance"
 - 8
 - 9 Page 6, lines 24 - 26:
 - 10 Delete all material.
-

AMENDMENT #4 Failed

OFFERED IN THE HOUSE

BY REPRESENTATIVE CLAMAN

TO: CSHB 42(JUD), Draft Version "U"

- 1 Page 7, line 5, following "fair":
2 Insert "market"
3
4 Page 7, following line 8:
5 Insert a new subsection to read:
6 "(c) The court may order the remission of property conveyed by
7 (1) inheritance to an individual who was not a party to the offense
8 resulting in forfeiture; or
9 (2) gift from a person other than the defendant."
10
11 Reletter the following subsection accordingly.

AMENDMENT

#5

Withdrawn

OFFERED IN THE HOUSE

BY REPRESENTATIVE KOPP

TO: CSHB 42(JUD), Draft Version "U"

1 Page 5, lines 8 - 10:

2 Delete all material and insert:

3 "(c) The court may impose reasonable conditions on the return of property to
4 the owner, including a requirement that the owner

5 (1) post a secured monetary bond equal to the fair market value of the
6 property;

7 (2) retain and store the property so that the property is available for
8 future court hearings;

9 (3) allow photographs of the property to be taken; or

10 (4) meet other conditions the court considers necessary to maintain the
11 evidentiary integrity of the property."

AMENDMENT

#6 Withdrawn

OFFERED IN THE HOUSE

BY REPRESENTATIVE KOPP

TO: CSHB 42(JUD), Draft Version "U"

- 1 Page 7, line 5, following "value":
- 2 Insert "or otherwise legally received the property before the commission of the crime"

AMENDMENT

#7 Withdrawn

OFFERED IN THE HOUSE

BY REPRESENTATIVE EASTMAN

TO: CSHB 42(JUD), Draft Version "U"

1 Page 4, line 23, following "property.":

2 Insert "(a)"

3

4 Page 4, following line 25:

5 Insert new subsections to read:

6 "(b) If a law enforcement agency has possession of seized property belonging
7 to a victim of a crime or to an innocent owner, the law enforcement agency shall
8 return the property to the victim or innocent owner not later than 120 days after a
9 defendant has been charged in the underlying criminal case.

10 ~~(c) When a law enforcement agency has seized property but a suspect has not~~
11 ~~been identified or charged within 120 days after the seizure, the law enforcement~~
12 ~~agency shall inform the owner of the property that a suspect has not yet been charged~~
13 ~~and return the property to the owner if the owner requests the return of the property.~~
14 ~~The law enforcement agency shall, before returning the property to the owner, require~~
15 ~~the owner to sign a waiver acknowledging that return of the property might affect a~~
16 ~~future prosecution if a suspect is later identified.~~

17 (d) In this section, "innocent owner" means a person who

18 (1) holds a legal right, title, or interest in the property seized, acquired
19 in good faith;

20 (2) did not knowingly participate in the commission of the crime in
21 which the property was used;

22 (3) did not know or have reasonable cause to believe that the property
23 was used or would be used to commit a crime; and

1 (4) was a bona fide purchaser for fair value."

2

3 Page 6, following line 23:

4 Insert a new subsection to read:

5 "(f) Unless a defendant requests inspection or testing of property not later than
6 120 days after the defendant has been charged, the defendant's right to inspect or test
7 the property is waived."

AMENDMENT

8 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE CLAMAN

TO: CSHB 42(JUD), Draft Version "U"

1 Page 7, line 5:

2 Delete all material and insert:

3 "(4) obtained the property

4 (A) as a bona fide purchaser for fair market value;

5 (B) by inheritance before the date of the offense resulting in

6 forfeiture;

7 (C) as a gift from a person other than the defendant; or

8 (D) lawfully in a manner the court considers just."

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 42
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB042-DCCED-CBPL-01-20-17
Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS
Sponsor: WILSON
Requester: (H) Judiciary Committee

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

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

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) 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? N/A

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: <u>Janey Hovenden, Director</u>	Phone: <u>(907)465-2538</u>
Division: <u>Corporations, Business, and Professional Licensing</u>	Date: <u>01/20/2017 12:50 PM</u>
Approved By: <u>Catherine Reardon, Director</u>	Date: <u>01/20/17</u>
Agency: <u>Division of Administrative Services, DCCED</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 42

Analysis

HB 42 amends forfeiture laws in Alaska. This legislation amends statutes relating to the Division of Corporations, Business and Professional Licensing (CBPL) Big Game Commercial Services Board and tobacco sales licenses. These technical changes adjust the forfeiture statutes referenced in those statutes, but do not change the function of the statutes as they relate to Corporations, Business, and Professional Licensing.

Corporations, Business and Professional Licensing (CBPL) Investigations does not fall under the definition of a law enforcement agency within the bill as defined under AS 12.36.090 and AS 12.36.490. Neither the enforcement of criminal laws, nor the prevention, reduction or abatement of crime falls within our principal duties. CBPL enforces violations of licensing laws and in those cases where there are violations of criminal statutes. CBPL may operate in support of a law enforcement agency that would bear primary responsibility for the seizures and forfeitures detailed in the bill.

The Division of Corporations, Business and Professional Licensing does not anticipate fiscal impact from this legislation.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 42
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB042-DCCED-AMCO-01-20-17
Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS
Sponsor: WILSON
Requester: (H) Judiciary Committee

Department: Department of Commerce, Community and
Economic Development
Appropriation: Alcohol and Marijuana Control Office
Allocation: Alcohol and Marijuana Control Office
OMB Component Number: 3119

Expenditures/Revenues

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

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) 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? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 12/31/17

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By:	<u>Sara Chambers, Director</u>	Phone:	<u>(907)269-0351</u>
Division:	<u>Alcohol and Marijuana Control Office</u>	Date:	<u>01/20/2017 10:44 AM</u>
Approved By:	<u>Catherine Reardon, Director</u>	Date:	<u>01/20/17</u>
Agency:	<u>Division of Administrative Services, DCCED</u>		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 42

Analysis

This bill reduces the existing conditions in which law enforcement may seize property for forfeiture when used in commission of a crime and expands the procedural requirements—particularly clarifying and tightening those pertaining to arrest, conviction, notice, hearing, and burden of proof of probable cause—in the seizure or forfeiture of property used in the commission of a crime.

The Alcohol and Marijuana Control Office does not anticipate fiscal impact from this legislation. Any regulations required of the Alcoholic Beverage Control Board will be included in existing regulations projects.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 42
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB042-JUD-ACS-1-22-17
Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS
Sponsor: WILSON
Requester: House Judiciary Committee
Department: Judiciary
Appropriation: Alaska Court System
Allocation: Trial Courts
OMB Component Number: 768

Expenditures/Revenues

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

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services	660.0		610.9	610.9	610.9	610.9	610.9
Travel							
Services							
Commodities	48.0		16.0	16.0	16.0	16.0	16.0
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	708.0	0.0	626.9	626.9	626.9	626.9	626.9

Fund Source (Operating Only)

1005 GF/Prgm (DGF)	708.0		626.9	626.9	626.9	626.9	626.9
Total	708.0	0.0	626.9	626.9	626.9	626.9	626.9

Positions

Full-time	7.0		7.0	7.0	7.0	7.0	7.0
Part-time	1.0		1.0	1.0	1.0	1.0	1.0
Temporary	1.0						

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

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

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Nancy Meade, General Counsel	Phone:	(907)463-4736
Division:	Alaska Court System	Date:	01/22/2017 04:00 PM
Approved By:	Nancy Meade for Christine Johnson, Administrative Director	Date:	01/22/17
Agency:	Alaska Court System		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 42

Analysis

House Bill 42 makes significant changes to the state's seizure and forfeiture laws, and will affect a great percentage of all the roughly 30,000 criminal cases that are annually filed in the court system. Under the bill, hearings will be available to defendants or others with interests in the property that can occur before a case is disposed, immediately after a person is convicted, or at any time thereafter if the person alleges that the seizure was unconstitutionally harsh.

Additionally, the bill repeals the mandatory forfeiture provisions that apply to cases such as felony DUI and felony refusal to submit to a breath test, and replaces those mandatory forfeitures with the opportunity for hearings both before and after conviction.

Because of these changes, the court would hold many more hearings in nearly all criminal cases; the added steps would add complexity and paperwork, and would lengthen the time it takes to resolve cases. The court system anticipates that it would need seven new deputy clerks to handle the new filings and accompanying workload in the trial courts, one half-time appellate attorney to handle the appeals from these new proceedings, and one temporary full-time implementation attorney in the administrative office.

Holding the hearings as described in the bill will be new and additional work for the trial court's clerical staff. Though difficult to predict the precise number of new hearings, the court anticipates that it would need two new Range 12A deputy clerks in Anchorage, plus one each in Palmer, Fairbanks, Kenai, Southeast (Juneau or Ketchikan), and the Bethel region. These clerks are required to handle the document intake, file the pleadings, calendar the hearings, work in the courtrooms to record and log the hearings, distribute the orders, and ensure consistent statewide tracking of the new proceedings. The total cost for the 7 new positions would be \$541,234.

The bill also provides a right to appeal any decisions that result from the new hearings. The court system anticipates that many cases will be appealed, because the existing body of case law will not be controlling given that all the existing seizure and forfeiture statutes would be repealed. Therefore, the court would require one new half-time appellate attorney at Range 23A for a position cost of \$69,641.

In addition, HB 42 changes 11 court Rules of Criminal Procedure, 3 Rules of Evidence, and 3 Rules of Appellate Procedure. It will require the court's administrative office to create new court forms to standardize the incoming filings from the Department of Law and municipal prosecuting authorities; doing this will require meetings with and coordination with those various prosecuting offices. We would also create other forms such as Property Disposition and Judgment forms, and coordinate with affected agencies on efficient distribution and follow-up after the hearings. The administrative office would draft clerical instructions and instructions for judicial officers, and revise CourtView procedures to account for these new proceedings. Given the implementation tasks, we would hire one full-time temporary attorney, at a Range 24A, for six months. That person would work on court rule revisions, forms creation and revision, training for judges and clerks, and drafting the lessons and instructions for trial and appellate court staff. The total cost of this temporary, six-month attorney is \$49,138.

Finally, for eight of the nine new positions, the court would supply a desk, computer, legal materials, software licenses, etc. for a one-time cost of \$6,000 for each of the eight positions, and a recurring annual cost for future years of \$2,000 per position. (For the temporary attorney, the court would be able to locate a computer and desk, etc. that was available for the six-month duration of employment.) This amounts to \$48,000 in FY 18, and \$16,000 in future years.

The court system therefore anticipates a fiscal impact of \$541,234 + \$69,641 + \$49,138 [temporary] + \$48,000 [one-time] for a total of **\$708,013 for FY 18**, and an ongoing cost of **\$626,875 for future years**.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 42
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB042-LAW-CRIM-01-21-17
Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS
Sponsor: WILSON
Requester: (H) Judiciary Committee

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)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
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 (UGF)	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

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) 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?
If yes, by what date are the regulations to be adopted, amended or repealed? No

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: Valerie Rose, Budget Analyst Phone: (907)465-3674
Division: Administrative Services Date: 01/21/2017 08:26 AM
Approved By: Jahna Lindemuth, Attorney General Date: 01/21/17
Agency: Department of Law

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 42

Analysis

This legislation makes significant changes to the process by which evidence is collected in criminal cases and items subject to forfeiture are taken into custody.

HB 42 will affect most criminal cases including, but not limited to, murder, drug, child-sexual exploitation, sex trafficking, fish and wildlife, and alcohol interdiction cases. Under HB 42, before law enforcement may collect most evidence or take an item subject to forfeiture into custody, the court must make a preliminary finding. The state must file a request to seize the evidence or property to be forfeit. Under HB 42, the owner of the property has a right to be heard on that request before the court grants the request. The state must show substantial probability that (1) the property is subject to forfeiture, (2) that the state will prevail on the issue of forfeiture (which includes convicting the owner of a crime), (3) that property will be destroyed, removed from the state or otherwise unavailable for forfeiture, and (4) that the need to preserve outweighs the hardship on the owner of the property.

Once the property is seized, a party from whom evidence or property subject to forfeiture was collected may request another hearing before the trial to seek the return of the property. While the right to this additional hearing already exists under the law, HB 42 changes the criteria and burden of proof for not releasing the property. This changed criteria includes allowing the property to be released to be used to pay for an attorney if needed.

Finally, for property subject to forfeiture, a person convicted of a crime may request a jury trial (after the jury trial on guilt) to determine if the property should be forfeited. Under current law this would be decided by a judge at the sentencing hearing.

The additional hearings and changes to the burdens of proof imposed by HB 42 could significantly increase the amount of attorney and staff time in all cases, including fish and wildlife cases. Numerous pieces of physical evidence are collected in the course of a criminal investigation, to further the investigation and to offer as proof at trial. Under the law, many items are subject to forfeiture upon conclusion of the criminal case. The additional hearings mandated by HB 42 would slow the course of criminal investigations and increase the number, length, and complexity of criminal trials.

HB 42 would increase the number of hearings the Department of Law must prepare for and attend, and the number of appeals it must process. 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 technician I to track the items seized and handle the corresponding financial transactions. Additionally, the department would need seven support staff to support the additional work of the eight 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 42, these additional staff members will ensure that the property is disposed consistent with the bill.

The eight attorneys mentioned above would be spread across the state. Six 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 appeals relating to the collection of evidence or the retention of property under HB 42. The regional attorneys will be required to travel significantly to cover hearings in all court locations.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 42
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB042-DPS-AST-01-22-17
Title: FORFEITURE & SEIZURE: PROCEDURE; LIMITS
Sponsor: WILSON
Requester: (H) Judiciary Committee

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

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

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services	73.5		73.5	73.5	73.5	73.5	73.5
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	73.5	0.0	73.5	73.5	73.5	73.5	73.5

Fund Source (Operating Only)

1004 Gen Fund (UGF)	73.5		73.5	73.5	73.5	73.5	73.5
Total	73.5	0.0	73.5	73.5	73.5	73.5	73.5

Positions

Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

Change in Revenues

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

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) 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: <u>Kelly Howell</u>	Phone: (907)465-4336
Division: <u>Administrative Services</u>	Date: 01/22/2017 11:30 AM
Approved By: <u>Walt Monegan</u>	Date: 01/22/17
Agency: <u>Public Safety</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 42

Analysis

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

Passage of this bill would impact the revenue received by the Department of Public Safety (DPS) through federal asset forfeiture. These amounts can vary significantly from year to year. Therefore, the change in revenue is listed as indeterminate.

A new section, AS 12.36.430, requires DPS to maintain and track all seizures and forfeitures, prepare an annual report of forfeitures, and compile the annual reports of forfeitures submitted from all law enforcement agencies in Alaska. This will require at least one Criminal Justice Technician I position to perform this work at a cost of \$73,515.