

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4648 HJUD HB 52

John Hartle
February 10, 1987
Page 2

value would not warrant the exercise.

Although it is always difficult to estimate exactly the amount of additional work that would be created by the proposed amendment, the Public Defender Agency anticipates that at a minimum it would be necessary to add an additional attorney and an additional paralegal in order to compensate for the increased workload. An expenditure for this increased staffing, in addition to the even greater expenditure to the prosecution and to the court system which would be made necessary by the mandatory forfeiture proceeding would be particularly unfortunate in light of the fact that the highly successful D.W.I. Adjudication Project had to be terminated due to lack of funds. It would seem difficult, if not impossible, to justify an expenditure for the institution of a potentially fruitless mandatory forfeiture provision at a time when funding could not be obtained to continue the D.W.I. Adjudication Project, which was very effective in expediting the adjudication process for DWI cases.

The Public Defender Agency believes that the discretionary forfeiture provision of the present law provides the state with a certain flexibility that would not be available under the proposed amendment. In certain instances, the District Attorney and the defense attorney have been able to arrange the sale of a defendant's vehicle, which in turn has enabled the defendant to pay not only the mandatory minimum fine of \$1,000, but additionally has enabled the defendant to make restitution and obtain funding for longterm residential alcohol treatment. The flexibility to make such a disposition could well be destroyed by a mandatory forfeiture provision.

In summary, the Public Defender Agency strongly urges that the proposed amendment not be made, and that the motor vehicle forfeiture provision remain discretionary with the District Attorney's office.

Sincerely,



Michael L. Wolverton
Assistant Public Defender

MLW:sh

STATE OF ALASKA

VE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 10, 1987

The Honorable John Sund
Chairman, Judiciary Committee
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Re: HB 52

Dear Chairman Sund:

This letter is in response to a request from the Judiciary Committee for the department's position on HB 52, an act relating to motor vehicle forfeiture. HB 52 requires the state to move for forfeiture of a motor vehicle upon a third conviction for DWI or refusal to take a breath test. The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (a departmental fiscal note has been prepared showing the costs) and because the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests.

The department believes that, while the primary effect of HB 52 will be to shift the discretion in forfeiture cases from prosecutors to judges, it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. It must be recognized that a forfeiture order is not mandatory, and that the grounds for forfeiture in AS 28.35.036(c) are very similar to the grounds for imposition of a sentence in AS 12.55.005. Under the class A misdemeanor penalties permitted for DWI, a court can impose a jail term of up to one year and fine of up to \$5,000, therefore many judges may feel that the statutory criteria in AS 28.35.036(c) will have already been satisfied by the criminal sentence and no additional purpose will be served by the forfeiture, especially where loss of the car would work a financial hardship.

The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety. The department believes that the present statutory scheme is

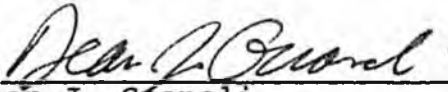
The Honorable John Sund
Chairman, Judiciary Committee

February 10, 1987
Page -2-

adequate and could conceivably be used more frequently by the state without a great deal of additional expense, therefore additional consideration will be given to these cases depending upon subsequent budgetary restraints.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Dean J. Gdaneli
Assistant Attorney General

DJG:so-74

cc: Bob Evans
Legislative Liaison
Office of the Governor

Nadine Winters
Director of Cnstituent Relations
Office of the Governor

The Honorable Niilo Koponen
Alaska State House

B.J. Lewis
Legislative Liaison
Department of Law

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

THE ALASKA STATE LEGISLATURE
JANUARY 30, 1987
RECEIVED

MEMORANDUM

TO: Honorable John Sund
FROM: Representative Niilo Koponen
RE: HB 52 "An Act Relating to Motor Vehicle Forfeiture."
DATE: January 30, 1987

I would appreciate it if you would schedule HB 52 at your earliest convenience.

The purpose of this bill is to strengthen the legislative intent of AS 28.35.036 by stating the "...the state shall [may] move the court to order the forfeiture of the motor vehicle...." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second DWI offense.

After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. Since 1983, only two cars have been confiscated state-wide for second DWI offense. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. This figure increased to 412 accidents for the first 11 months of 1986.

HB 52 has a zero fiscal note. I have enclosed backup material. If you need any further information on this bill, please contact me or my staff.

INDEX FOR DEPARTMENT OF FISH & GAME continued

V.	INSTRUCTIONS FOR SEIZURE WARRANT FORMS	V - 32
FORM NO. 5	WARRANT TO SEIZE	V - 33
FORM NO. 6	RETURN	V - 35
	INSTRUCTIONS FOR NOTICE OF FORFEITURE	V - 36
FORM NO. 7	NOTICE OF FORFEITURE	V - 38
	INSTRUCTIONS FOR RELEASES	V - 40
FORM NO. 8	STIPULATION FOR RELEASE OF AIRCRAFT	V - 41
FORM NO. 9	STIPULATION FOR RELEASE OF VESSEL	V - 48

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State Conservation Department v. Brown, 53 N.W.2d 359 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

3. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

See also, State v. Rice, 626 P.2d 104 (Alaska 1981); U.S. v. Twelve Ermine Skins, 78 F. Supp. 734 (D. Alaska 1948).

Because the in rem action is civil rather than criminal, the case must be filed within two years (AS 09.10.070); in rem civil actions are not bound by the criminal procedure four-month rule.

Most forfeiture statutes, like AS 16.05.195, are silent on the question of whether a jury trial is of right. The opportunity for a jury trial will probably be favored in Alaskan courts, but because of the complexity and nature of civil forfeiture proceedings, judge trials are preferable, as is the practice in admiralty. In general, courts look to admiralty procedures in handling forfeitures, U.S. v. \$5,372.85 U.S. Coin and Currency, 283 F. Supp. 904 (D.N.Y. 1968); One Plymouth Automobile v. U.S., 165 F.2d 136 (5th Cir. 1947). Also see, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L. Ed.2d 284 (1982). As a general rule, admiralty cases are tried by a court, not a jury. The Paolina S., 11 F. 171 (_____ 1880); Clark v. U.S., 5 F. Case No. 2, 837 (C.C. Pa. 18__); see also, Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co., 342 F. Supp. 786 (D. Pa. 1972); American of Puerto Rico, Inc. v. Transocean Tankers Corp., 317 F. Supp. 798 (D. Puerto Rico 1969); Texas Menhaden Co. v. Palermo, 328 F.2d 579 (6th Cir. 1964).

Some courts refuse to apply admiralty procedure that denies a trial by jury in civil forfeitures for state or federal

aircraft that is seized and forfeited, which may be in excess of \$1,000,000. However, many courts, while recognizing the deterrent and remedial aspects, still view forfeitures as primarily a punishment or penalty and not favored in the law. See One Cocktail Glass v. State, 565 P.2d 1265 (Alaska 1977).

Because the value of property subject to forfeiture may be so great, some courts favor granting partial forfeiture of the equipment, or ordering forfeiture of a bond or other security in lieu of the item itself. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ____ U.S. ____ 71 L.Ed.2d 284 (1982).

Neither AS 16.05.195 nor the rules of civil procedure in Alaska provide specific guidelines for the procedure to be followed in an in rem action. The closest rules or guidelines are, as discussed above, the Federal Admiralty Rules that relate to bringing a complaint or libel against a vessel, and Alaska Rules of Civil Procedure 4 and 5; courts will look to these procedures as guidelines for the action.

C. Guidelines for Bringing Civil In Rem Actions.

An action for forfeiture of valuable equipment such as a vessel or airplane is an extreme measure and represents the harshest penalty for a fish and game violation. On the other hand, vessels and airplanes provide a unique opportunity to

3. Is the equipment, vessel, vehicle, or aircraft an integral part of the violation? E.g., spotting from aircraft, using boat for access to closed area.
4. Is this the second or third similar violation by the offender?
5. Is there a significant need to deter the public that necessitates bringing a case to civil trial on evidence that would not support a criminal action? E.g., violation occurring on identified vessels but crewmen now known.
6. What is the value of the equipment, vessel, vehicle, or aircraft relative to the commercial profit or damage to the resource?

If the violation does not fit one or more of these categories, civil forfeiture is probably not appropriate.

D. Relationship Between Civil and Criminal Actions.

A criminal case against an individual for a fish or game violation is an action independent of any in rem proceeding for forfeiture. Haas v. One 1965 Ford Auto, 529 P.2d 410 (Cr. App. 1974). See also State v. Graybill, 545 P.2d 629 (Alaska 1976). A judge in a criminal action has authority to forfeit, as part of the criminal sentencing procedure, the equipment, aircraft, vessels, etc. used in or in aid of a violation of the

and if the criminal case, which will probably be heard first, is dismissed or if the defendants are acquitted, the defendants will not be in a position to argue that the in rem case was brought merely because the criminal case was lost and the state is "out to get" the defendants. Furthermore, it is very helpful for an assistant attorney general to attend a criminal case before trying the same general issues in a subsequent civil in rem action. The criminal court might decline to grant forfeiture, even if the case were won by the district attorney, and the attorney general in that situation would be in a position to continue with the in rem action against the aircraft or vessel itself. This may be particularly appropriate in cases, such as fishing in closed areas, where a maximum criminal penalty is insufficient to deter the conduct, because the value of the harvest far exceeds the criminal fine. In some instances the criminal court may choose not to order forfeiture because of the pending civil action.

If a criminal case is won and forfeiture is granted but the judgment is appealed, the attorney general may wish to proceed with an action in rem on the theory that if the criminal conviction were overturned on appeal, the in rem action would still be valid. Although the attorney general need not wait for the final outcome of a criminal action before proceeding in rem, strategy may favor staying action in the civil case until the criminal action is over. The primary advantage of this sequence is that it will preclude the criminal defendant's resort to the

3. Seizure and Service of Process.

A.S. 16.05.195 provides: "Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action." At least one superior court judge in Anchorage has ruled that, notwithstanding this language, the state must actually or constructively seize the equipment in order to bring it within the court's jurisdiction; merely filing a notice of lis pendens was held insufficient to obtain jurisdiction. State v. One Blue and White PA-18 Airplane, No. 3AN-78-900 Civ. (Super. Ct. Third Jud. Dist. Alaska, Sept. 1978). There are several other reasons why actual seizure may be appropriate. First, looking to the Rules of Admiralty for guidance in bringing an in rem action, seizure is the means for bringing the action, and the libel must be posted on the vessel. (Supplemental Rule C, FRCP provides that the clerk of court issue an arrest warrant when a verified complaint is filed.) Since an action in rem is brought against the item itself, it may be necessary to "serve" the aircraft or vessel while it is within the jurisdiction of the court; due to the high mobility of aircraft and vessels, seizure may be the only way to assure that the res will be within or remain within the jurisdiction of the court. It would be pointless to bring a forfeiture action against an aircraft or vessel that may subsequently disappear from the jurisdiction of the court or be sold or otherwise encumbered.

promissory note or at least insurance coverage for the value of the vessel or aircraft. If a bond is secured, it should cover at least the full value of the vessel, with a provision for alteration of the stated value in the event that the property increases in value during the pendency of the litigation. It may be impossible to accomplish this as a practical matter. In that event, it is best to establish the security or bond in much the same manner as bail. Any stipulation for release should also include a provision that the owner not sell or otherwise encumber the property, and that the owner will produce the item upon demand.

D. Service and Parties.

In accordance with admiralty procedure, service on a ship (or airplane) can be effected by posting a copy of the complaint on the property and leaving a copy with the person having control of it, and by publication of a notice of filing a forfeiture complaint.

Alaska courts may require personal service of the notice of filing a forfeiture action on all ascertainable owners or claimants, so a title search should be made in connection with service of process. The U.S. Supreme Court has ruled that where the government knew that the owner of a forfeited car was not at the address to which notice was sent, the service was inadequate. Robinson v. Harahan, 409 U.S. 38 (1972).

(Alaska 1981) held that where a third party (in that case, a financial institution) had done all it reasonably could be expected to do to avoid illegal use of equipment in which it had an interest, it was entitled to remission of its interest in the forfeited equipment.

OPERATOR'S
SEIZURE INFORMATION
(AIRCRAFT)

1. Make of aircraft _____
2. Model of aircraft _____
3. Official F.A.A. Registration No. _____
4. Engine Serial No(s). _____
5. Airframe Serial No. _____
6. Floats (Skiis) type _____
7. Floats (Skiis) - Serial No. _____
8. Floats (Skiis) - Estimated value today _____
9. Description of aircraft, (wheels, STOL kits, stall fences,
types of fabric, color scheme, etc.)

10. Value when purchased \$ _____
11. a. Date of last reappraisal _____, 19____
b. Value at last reappraisal \$ _____
c. Name and address of appraiser _____

12. Estimated value today \$ _____
13. Place and date of most recent overhauls or repairs
_____, 19____
_____, 19____
14. a. Name of owner(s) _____
b. Address of owner _____

Tele. () _____

OPERATOR'S
SEIZURE INFORMATION
(VESSEL)

1. Name of vessel _____
2. Kind of vessel _____
3. Official U.S.C.G. No. _____
4. Port of Registry _____
5. ADF&G No. AK _____
6. Value when purchased \$ _____
7. a. Date of last reappraisal _____, 19__
 b. Value at last reappraisal \$ _____
 c. Name and address of appraiser _____
8. Estimated value today _____
9. Place and date of most recent overhauls or repairs
 _____, 19__
 _____, 19__
10. a. Name of owner _____
 b. Address of owner _____
 Tele. () _____

11. Names of others with a right, title or interest in vessel
 (e.g. Banks, NOAA, state, materialmen, supplies, crews
 wages, etc.)

Name & Address	Balance	Date Incurred	Payment Schedule
a. _____	_____	_____, 19__	\$ _____ per mo.

b. _____	_____	_____, 19__	\$ _____ per mo.

regulations. This action is brought under AS 16.05.195, which provides that an action for damages may be joined with an action for forfeiture of aircraft and equipment used in or in aid of a violation of an Alaska fish and game statute or regulation.

3. The defendants _____ are, and at all times relevant to this action have been, residents of _____, Alaska, _____ Judicial District.

4. On or about _____, 19____, in the vicinity of _____, _____ Judicial District, State of Alaska, defendant _____

[describe violation]
in violation of Alaska Fish and Game regulation _____

- the offense being [describe]

5. As a result of the actions of defendants _____ described above, the State of Alaska has been irreparably damaged by the illegal appropriation of _____ in an amount no less than \$ _____.

WHEREFORE the State of Alaska prays for relief as follows:

- I. Damages in an amount not less than \$ _____ said damages to be proven more specifically at trial.
- II. Costs, attorney fees and such further relief as

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

INDEX FOR DEPARTMENT OF FISH & GAME continued

V.	INSTRUCTIONS FOR SEIZURE WARRANT FORMS	V - 32
FORM NO. 5	WARRANT TO SEIZE	V - 33
FORM NO. 6	RETURN	V - 35
	INSTRUCTIONS FOR NOTICE OF FORFEITURE	V - 36
FORM NO. 7	NOTICE OF FORFEITURE	V - 38
	INSTRUCTIONS FOR RELEASES	V - 40
FORM NO. 8	STIPULATION FOR RELEASE OF AIRCRAFT	V - 41
FORM NO. 9	STIPULATION FOR RELEASE OF VESSEL	V - 43

INDEX FOR DEPARTMENT OF FISH & GAME

I	GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS: FISH, GAME AND GUIDING	V - 3
A.	Statutory Authority: Forfeiture in Fish and Game and Guiding Violations.	V - 3
B.	Civil <u>In Rem</u> Actions <u>In rem</u> action - burden of proof, right to jury, discovery procedure.	V - 6
C.	Guidelines for Bringing Civil <u>In Rem</u> Actions.	V - 10
D.	Relationship between Civil and Criminal Actions Separate actions; when both civil and criminal may be filed; timing of civil and criminal cases.	V - 11
II	MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS	V - 14
A.	Notification	V - 14
B.	Seizure and Service of Process	V - 15
C.	Release - Stipulations for release of property	V - 16
D.	Service and Parties	V - 17
III	DISPOSITION OF FORFEITED EQUIPMENT	V - 19
	Rights of innocent owners and lienors; Remission	V - 19
	Forfeiture checklist	V - 21
IV	FORMS	
	INSTRUCTIONS FOR SEIZURE INFORMATION FORM	
FORM NO. 1	OPERATOR'S SEIZURE INFORMATION FORM (AIRCRAFT)	V - 22
FORM NO. 2	OPERATOR'S SEIZURE INFORMATION FORM (VESSEL)	V - 24
FORM NO. 3	COMPLAINT FOR FORFEITURE AND DAMAGES	V - 26
FORM NO. 4	DIRECTIONS FOR SERVICE	V - 30

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

I GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS :
FISH, GAME AND GUIDING

A. Statutory Authority: Forfeiture in Fish, Game and Guiding Violations

Several statutes provide authority for forfeiture of equipment and illegally taken fish and game; these include AS 16.05.190, AS 16.05.195, and AS 08.54.210. The statute primarily used as a basis for in rem forfeiture of illegally used equipment is AS 16.05.195, enacted in 1974. That statute provides, in relevant part:

(a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding
...or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or regulation promulgated under it.

(b) Items classified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them...transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State, Conservation Department v. Brown, 53 N.W.2d 859 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

3. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

INDEX FOR DEPARTMENT OF FISH & GAME

I	GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS: FISH, GAME AND GUIDING	V - 3
A.	Statutory Authority: Forfeiture in Fish and Game and Guiding Violations.	V - 3
B.	Civil <u>In Rem</u> Actions <u>In rem</u> action - burden of proof, right to jury, discovery procedure.	V - 6
C.	Guidelines for Bringing Civil <u>In Rem</u> Actions.	V - 10
D.	Relationship between Civil and Criminal Actions Separate actions; when both civil and criminal may be filed; timing of civil and criminal cases.	V - 11
II	MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS	V - 14
A.	Notification	V - 14
B.	Seizure and Service of Process	V - 15
C.	Release - Stipulations for release of property	V - 16
D.	Service and Parties	V - 17
III	DISPOSITION OF FORFEITED EQUIPMENT	V - 19
	Rights of innocent owners and lienors; Remission	V - 19
	Forfeiture checklist	V - 21
IV	FORMS	
	INSTRUCTIONS FOR SEIZURE INFORMATION FORM	
FORM NO. 1	OPERATOR'S SEIZURE INFORMATION FORM (AIRCRAFT)	V - 22
FORM NO. 2	OPERATOR'S SEIZURE INFORMATION FORM (VESSEL)	V - 24
FORM NO. 3	COMPLAINT FOR FORFEITURE AND DAMAGES	V - 26
FORM NO. 4	DIRECTIONS FOR SERVICE	V - 30

INDEX FOR DEPARTMENT OF FISH & GAME continued

V.	INSTRUCTIONS FOR SEIZURE WARRANT FORMS	V - 32
FORM NO. 5	WARRANT TO SEIZE	V - 33
FORM NO. 6	RETURN	V - 35
	INSTRUCTIONS FOR NOTICE OF FORFEITURE	V - 36
FORM NO. 7	NOTICE OF FORFEITURE	V - 38
	INSTRUCTIONS FOR RELEASES	V - 40
FORM NO. 8	STIPULATION FOR RELEASE OF AIRCRAFT	V - 41
FORM NO. 9	STIPULATION FOR RELEASE OF VESSEL	V - 43

I GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS :
FISH, GAME AND GUIDING

A. Statutory Authority: Forfeiture in Fish, Game and Guiding Violations

Several statutes provide authority for forfeiture of equipment and illegally taken fish and game; these include AS 16.05.190, AS 16.05.195, and AS 08.54.210. The statute primarily used as a basis for in rem forfeiture of illegally used equipment is AS 16.05.195, enacted in 1974. That statute provides, in relevant part:

- (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, be forfeited to the state
 - (1) upon conviction of the offender in a criminal proceeding ...or
 - (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or regulation promulgated under it.
- (b) Items classified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.
- (c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them...transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

equipment may be forfeited by court order. AS 16.05.190 differs from AS 16.05.195 in that it does not address civil in rem procedures, and it specifies that illegally taken fish and game shall be forfeited by the court upon conviction; it does not, however, address the disposition of vessels, aircraft or other equipment forfeited by a court. In contrast, AS 16.05.195 establishes that forfeited equipment "shall be disposed of at the discretion of the department" [of Fish and Game].

Generally, when bringing an in rem forfeiture action, AS 16.05.195 is the appropriate statutory authority; use AS 16.05.190 for obtaining a search and seizure warrant or for obtaining a court order disposing of illegally taken fish or game in a criminal proceeding.

In addition to the forfeiture authority provided in Title 16 for fish and game violations, AS 08.54.210(b) provides in pertinent part:

[A] person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter [guiding chapter, Title 8, Alaska Statutes] is guilty of a felony punishable, upon conviction, by a fine or not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. [Emphasis added]

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State. Conservation Department v. Brown, 53 N.W.2d 859 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

3. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

obtained under Alaska Rule of Criminal Procedure 37. See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The registered owner and any known claimants should be notified of the action, but need not be made parties. United States v. Pollastrine, 8 Alaska 104 (D. Alaska 1929); United States v. Bleasby, 257 F.2d 278. (3d Cir. 1958); People v. One 1971 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Secondly, the in rem proceeding is a civil action and therefore the rules of evidence, burden of proof, and discovery provisions for civil cases are applicable. Civil rules provide considerably more expansive discovery than criminal rules, and the civil burden of proof by a preponderance of the evidence applies. Case law shows that in rem forfeitures are considered, although civil actions, "quasi criminal in nature". Gravbill v. State, 545 P.2d 629 (Alaska 1976). This holding does not, however, mean that a criminal burden of proof applies. Judge Madsen, who rendered the superior court decision in F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___, 71, L. Ed.2d 284 (1982), stated in his decision granting forfeiture of a fishing vessel:

The court, after having heard and weighing the testimony of the witnesses and the exhibits, finds that the state has met its burden by clearly and convincingly proving by a preponderance of the evidence.

See also, State v. Rice, 626 P.2d 104 (Alaska 1981); U.S. v. Twelve Ermine Skins, 78 F. Supp. 734 (D. Alaska 1948).

Because the in rem action is civil rather than criminal, the case must be filed within two years (AS 09.10.070); in rem civil actions are not bound by the criminal procedure four-month rule.

Most forfeiture statutes, like AS 16.05.195, are silent on the question of whether a jury trial is of right. The opportunity for a jury trial will probably be favored in Alaskan courts, but because of the complexity and nature of civil forfeiture proceedings, judge trials are preferable, as is the practice in admiralty. In general, courts look to admiralty procedures in handling forfeitures, U.S. v. \$5,372.85 U.S. Coin and Currency, 283 F. Supp. 904 (D.N.Y. 1968); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). Also see, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L. Ed.2d 284 (1982). As a general rule, admiralty cases are tried by a court, not a jury. The Paolina S., 11 F. 171 (_____ 1880); Clark v. U.S., 5 F. Case No. 2, 837 (C.C. Pa. 18__); see also, Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co., 342 F. Supp. 786 (D. Pa. 1972); American of Puerto Rico, Inc. v. Transocean Tankers Corp., 317 F. Supp. 798 (D. Puerto Rico 1969); Texas Menhaden Co. v. Palermo, 328 F.2d 579 (6th Cir. 1964).

Some courts refuse to apply admiralty procedure that denies a trial by jury in civil forfeitures for state or federal

drug violations. This position is based on the argument that although admiralty forfeitures are prosecuted in rem according to admiralty practice, seizures on land are not admiralty cases but "common law informations," in which a jury trial is demandable. People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). The court in People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951) distinguishes between forfeitures of contraband, where there is no right to trial by jury, and forfeitures of otherwise lawful instrumentalities, where trial by jury is a constitutional right. The court in State Conservation Dept. v. Brown, 55 N.W.2d 359 (Mich. 1952) held that forfeiture actions are statutory and not founded in the common law, and claimants therefore are not accorded a right to a jury trial.

Another important distinction between a criminal case and an in rem civil action, is that the in rem civil forfeiture is not considered strictly a punishment or penalty, but rather is a deterrent and remedial, i.e., it is a way to remove an instrumentality from the hands of one using it improperly, in order to protect the state's resources. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Gulp v. U.S., 523 F.2d 557 (3th Cir. 1975). A court may be more willing to order forfeiture in a civil in rem proceeding than in a criminal action where there may be a large disparity between the maximum fine or penalty (generally, the maximum fine for fish and game violations is \$1,000 and one year in jail) and the value of the vessel or

aircraft that is seized and forfeited, which may be in excess of \$1,000,000. However, many courts, while recognizing the deterrent and remedial aspects, still view forfeitures as primarily a punishment or penalty and not favored in the law. See One Cocktail Glass v. State, 565 P.2d 1265 (Alaska 1977).

Because the value of property subject to forfeiture may be so great, some courts favor granting partial forfeiture of the equipment, or ordering forfeiture of a bond or other security in lieu of the item itself. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L.Ed.2d 284 (1982).

Neither AS 16.05.195 nor the rules of civil procedure in Alaska provide specific guidelines for the procedure to be followed in an in rem action. The closest rules or guidelines are, as discussed above, the Federal Admiralty Rules that relate to bringing a complaint or libel against a vessel, and Alaska Rules of Civil Procedure 4 and 5; courts will look to these procedures as guidelines for the action.

C. Guidelines for Bringing Civil In Rem Actions.

An action for forfeiture of valuable equipment such as a vessel or airplane is an extreme measure and represents the harshest penalty for a fish and game violation. On the other hand, vessels and airplanes provide a unique opportunity to

deplete the fish and game populations of the state, and it is for this reason that special consideration has been given to the matter by the legislature, which granted broad authority for forfeiture under AS 16.05.195.

In determining whether to prosecute in rem a boat or aircraft used in a fish and game violation, one should keep in mind that forfeiture actions are difficult and time-consuming to prosecute and may take up to three to five years attorney commitment time. Therefore, the following is an outline of the criteria to assess before bringing a civil forfeiture action:

1. Does the violation involve a substantial commercial benefit to the violator, i.e., a "windfall profit"? E.g., big game guiding, commercial fishing, fish guiding.
2. Is the violation, even if committed by a sport hunter or fisherman, egregious? Is there any intent involved or was the crime a mistake that would be excused if strict liability did not apply to fish and game violations? E.g., herding and harassing game, grossly over limit on fish or game, waste, inhumane kill, destruction of significant breeding stock, hunting in closed area. In particular, is there a likely detriment to the species or stock?

3. Is the equipment, vessel, vehicle, or aircraft an integral part of the violation? E.g., spotting from aircraft, using boat for access to closed area.
4. Is this the second or third similar violation by the offender?
5. Is there a significant need to deter the public that necessitates bringing a case to civil trial on evidence that would not support a criminal action? E.g., violation occurring on identified vessels but crewmen now known.
6. What is the value of the equipment, vessel, vehicle, or aircraft relative to the commercial profit or damage to the resource?

If the violation does not fit one or more of these categories, civil forfeiture is probably not appropriate.

D. Relationship Between Civil and Criminal Actions.

A criminal case against an individual for a fish or game violation is an action independent of any in rem proceeding for forfeiture. Haas v. One 1965 Ford Auto, 529 P.2d 410 (Cr. App. 1974). See also State v. Graybill, 545 P.2d 629 (Alaska 1976). A judge in a criminal action has authority to forfeit, as part of the criminal sentencing procedure, the equipment, aircraft, vessels, etc. used in or in aid of a violation of the

fish and game statutes or regulations, under AS 16.05.190; whether a prosecuting attorney in a criminal case will ask for forfeiture is a decision to be made by the district attorney. Many cases will involve a criminal prosecution only, for example, where a private sport hunter flies his aircraft to an open hunting area where he is then involved in a minor game violation not related to the use of the airplane; here the attorney general would not bring a civil in rem proceeding because the case does not fall within the category of cases outlined above.

Because an action in rem for forfeiture is independent of any criminal prosecution, a forfeiture action may be brought even though the individual defendant in the underlying criminal case was acquitted. United States v. One 1961 Cadillac Hardtop, 207 F. Supp. 693 (D. Tenn. 1962); U.S. v. Three Thousand Two Hundred Thirty Six Dollars, 167 F. Supp. 495 (D. Alaska 1958). Also, there may be situations where no criminal case can be brought, yet where there is sufficient evidence to proceed with a civil in rem action (for example, when there is no positive identification of the pilot or passengers of an aircraft, but there is a clear description of the aircraft used in a violation). Cases resting on circumstantial evidence are particularly appropriate for civil action because the extensive discovery procedures available can identify critical evidence.

If both civil and criminal actions are contemplated, it is best to bring both cases simultaneously, or as near to the same time as possible. If the cases are brought simultaneously,

and if the criminal case, which will probably be heard first, is dismissed or if the defendants are acquitted, the defendants will not be in a position to argue that the in rem case was brought merely because the criminal case was lost and the state is "out to get" the defendants. Furthermore, it is very helpful for an assistant attorney general to attend a criminal case before trying the same general issues in a subsequent civil in rem action. The criminal court might decline to grant forfeiture, even if the case were won by the district attorney, and the attorney general in that situation would be in a position to continue with the in rem action against the aircraft or vessel itself. This may be particularly appropriate in cases, such as fishing in closed areas, where a maximum criminal penalty is insufficient to deter the conduct, because the value of the harvest far exceeds the criminal fine. In some instances the criminal court may choose not to order forfeiture because of the pending civil action.

If a criminal case is won and forfeiture is granted but the judgment is appealed, the attorney general may wish to proceed with an action in rem on the theory that if the criminal conviction were overturned on appeal, the in rem action would still be valid. Although the attorney general need not wait for the final outcome of a criminal action before proceeding in rem, strategy may favor staying action in the civil case until the criminal action is over. The primary advantage of this sequence is that it will preclude the criminal defendant's resort to the

fifth amendment right to remain silent which might hinder evocation of pertinent evidence in the civil suit.

II MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS

A. Notification.

As mentioned above, it is important that the district attorney's office notify the attorney general's office (and vice versa) of any fish and game violation that involves a possible forfeiture, if the violation falls within the guidelines for civil prosecution in rem as outlined above. It is essential for the attorney general's office to become involved in the case from the very beginning, so that the attorney general's office can review the evidence and make a determination as to whether there is sufficient basis to proceed with a civil in rem case.

If there is a stipulation to release the vessel or airplane in the criminal action, the attorney general's office has a strong interest in making sure that the release will cover the subsequent civil in rem action, i.e., the release must provide for a sufficient bond or other security for the equipment, and include an agreement that the vessel or aircraft is properly insured and will not leave the state or be sold or encumbered. The release agreement should also obviate the need to re seize the vessel or aircraft for the civil in rem action in order to "serve" the item.

3. Seizure and Service of Process.

A.S. 16.05.195 provides: "Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action." At least one superior court judge in Anchorage has ruled that, notwithstanding this language, the state must actually or constructively seize the equipment in order to bring it within the court's jurisdiction; merely filing a notice of lis pendens was held insufficient to obtain jurisdiction. State v. One Blue and White PA-18 Airplane, No. 3AN-78-900 Civ. (Super. Ct. Third Jud. Dist. Alaska, Sept. 1978). There are several other reasons why actual seizure may be appropriate. First, looking to the Rules of Admiralty for guidance in bringing an in rem action, seizure is the means for bringing the action, and the libel must be posted on the vessel. (Supplemental Rule C, FRCP provides that the clerk of court issue an arrest warrant when a verified complaint is filed.) Since an action in rem is brought against the item itself, it may be necessary to "serve" the aircraft or vessel while it is within the jurisdiction of the court; due to the high mobility of aircraft and vessels, seizure may be the only way to assure that the res will be within or remain within the jurisdiction of the court. It would be pointless to bring a forfeiture action against an aircraft or vessel that may subsequently disappear from the jurisdiction of the court or be sold or otherwise encumbered.

Seizure for an in rem civil case should be made upon a warrant issued by a superior court judge. Evidence obtained as the result of an illegal search may not be admissible in a civil in rem action. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965). However, as long as the evidence supporting the forfeiture is not tainted, it can be argued that an illegal seizure of the defendant's property is not a basis for dismissal of the case. See, The Ship Richmond v. United States, 9 Cranch 102, 3 L.Ed. 670 (1815); United States v. One Chevrolet Sedan, 7 Alaska 605 (D. Alaska 1927). The court in Bovd v. United States, 116 U.S. 616 (1886) distinguished between a search for and seizure of a man's private books and papers for the purpose of obtaining information or using them as evidence against him, and seizure for the purpose of forfeiture. In United States v. One Ford Coupe Auto, 272 U.S. 321 (1926), the court held that where property declared forfeit by a federal statute is seized by one having no authority to do so, the United States may "adopt" the seizure with the same effect as if it originally had been made by a duly authorized officer.

C. Release.

Depending on the circumstances, it may be desirable to allow the defendant property to be released pending trial.

If an aircraft or vessel is released on stipulation, it is important that the agreement provide either a bond or

promissory note or at least insurance coverage for the value of the vessel or aircraft. If a bond is secured, it should cover at least the full value of the vessel, with a provision for alteration of the stated value in the event that the property increases in value during the pendency of the litigation. It may be impossible to accomplish this as a practical matter. In that event, it is best to establish the security or bond in much the same manner as bail. Any stipulation for release should also include a provision that the owner not sell or otherwise encumber the property, and that the owner will produce the item upon demand.

D. Service and Parties.

In accordance with admiralty procedure, service on a ship (or airplane) can be effected by posting a copy of the complaint on the property and leaving a copy with the person having control of it, and by publication of a notice of filing a forfeiture complaint.

Alaska courts may require personal service of the notice of filing a forfeiture action on all ascertainable owners or claimants, so a title search should be made in connection with service of process. The U.S. Supreme Court has ruled that where the government knew that the owner of a forfeited car was not at the address to which notice was sent, the service was inadequate. Robinson v. Hanrahan, 409 U.S. 38 (1972).

Because the action is in rem, there are no "necessary" parties to the action, other than the "res" and the state. Utah Liquor Control Comm'n. v. Wooras, 93 P.2d 455 (Utah 1939). For a case contra this general rule, see People v. Broad, 12 P.2d 941 (Cal. 1932). The presence of the owner or claimant is not necessary for the action to proceed. The owner of the item, or anyone claiming an interest in it, although not named as a party, may appear and make a defense, either by filing a claim and answer or by moving to intervene. People v. One 1941 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Because of AS 16.05.195(a), a lis pendens giving notice of the forfeiture action must be filed against the ship or aircraft, with the U.S. Coast Guard, FAA, or local recording district, as appropriate. In the case of vessels, the U.S. Coast Guard will file the notice, with the vessels documentation papers.

III DISPOSITION OF FORFEITED EQUIPMENT

AS 16.05.195 provides that equipment, including aircraft and boats, forfeited for a fish and game violation is to be disposed of at the discretion of the Department of Fish and Game. The statute does not require that the department sell the equipment at public auction, nor does it specify that the department pay off liens or mortgages on the forfeited equipment. However, the Alaska Supreme Court, in State v. Rice, 626 P.2d 104

(Alaska 1981) held that where a third party (in that case, a financial institution) had done all it reasonably could be expected to do to avoid illegal use of equipment in which it had an interest, it was entitled to remission of its interest in the forfeited equipment.

FORFEITURE CHECKLIST: INITIATING THE ACTION

1. Seizure Warrant, Affidavit of Return. (n.b. - separate court number and file for the seizure warrant).
2. Receipt and Inventory of aircraft/floats/skis, or vessel and gear.
3. Civil Complaint for Forfeiture, Summons (post on vessel or airplane), Return.
4. Title Search.
5. Notice of Filing Complaint - send to owner and lienor.
6. Motion for Service by Publication, Affidavit, Order.
7. Notice of Filing Complaint (for publication in newspaper).
8. Affidavit of Publication.
9. Lis Pendens (file in Oklahoma City, for aircraft, or State Recording Office further equipment).
10. Stipulation for Release, bond, insurance coverage, etc.

OPERATOR'S
SEIZURE INFORMATION
(AIRCRAFT)

1. Make of aircraft _____
2. Model of aircraft _____
3. Official F.A.A. Registration No. _____
4. Engine Serial No(s). _____
5. Airframe Serial No. _____
6. Floats (Skiis) type _____
7. Floats (Skiis) - Serial No. _____
8. Floats (Skiis) - Estimated value today _____
9. Description of aircraft, (wheels, STOL kits, stall fences, types of fabric, color scheme, etc.)

10. Value when purchased \$ _____
11. a. Date of last reappraisal _____, 19____
b. Value at last reappraisal \$ _____
c. Name and address of appraiser _____

12. Estimated value today \$ _____
13. Place and date of most recent overhauls or repairs
_____, 19____
_____, 19____
14. a. Name of owner(s) _____
b. Address of owner _____

Tele. () _____

15. Liens. _____

Name & Address	Balance	Date Incurred	Payment Schedule
a. _____	_____	_____, 19__	\$ _____ per mo.

b. _____	_____	_____, 19__	\$ _____ per mo.

c. _____	_____	_____, 19__	\$ _____ per mo.

16. Insurance coverage.

Names of	Insurance Company	Type of Insurance	Amount of Insurance	Premium Amount and Due Date
a. _____	_____	_____	_____	\$ _____ per _____; Due _____
b. _____	_____	_____	_____	\$ _____ per _____; Due _____
c. _____	_____	_____	_____	\$ _____ per _____; Due _____

17. Description of instruments, radios, and appurtenant equipment and other paraphernalia.

Item	Model No.	Serial No.	Date of Purchase	Condition
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____

DATED this ___ day of _____, 19__, at _____, Alaska.

Signature of Operator(Owner)

OPERATOR'S
SEIZURE INFORMATION
(VESSEL)

1. Name of vessel _____
2. Kind of vessel _____
3. Official U.S.C.G. No. _____
4. Port of Registry _____
5. ADF&G No. AK _____
6. Value when purchased \$ _____
7. a. Date of last reappraisal _____, 19__
 b. Value at last reappraisal \$ _____
 c. Name and address of appraiser _____
8. Estimated value today _____
9. Place and date of most recent overhauls or repairs
 _____, 19__
 _____, 19__
10. a. Name of owner _____
 b. Address of owner _____

 Tele. () ____-____

11. Names of others with a right, title or interest in vessel
 (e.g. Banks, NOAA, state, materialmen, supplies, crews
 wages, etc.)

Name & Address	Balance	Date Incurred	Payment Schedule
a. _____	_____	_____, 19__	\$ _____ per mo.

b. _____	_____	_____, 19__	\$ _____ per mo.

12. Insurance coverage.

FORM NO. 2 (cont.)

Names of	Insurance Company	Type of Insurance	Amount of Insurance	Premium Amount and Due Date
a. _____	_____	_____	_____	\$ ___ per ___ ; Due _____
b. _____	_____	_____	_____	\$ ___ per ___ ; Due _____
c. _____	_____	_____	_____	\$ ___ per ___ ; Due _____

13. Description of navigational equipment, fishing gear and other paraphernalia.

Item	Model No.	Serial No.	Date of Purchase	Condition
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____
e. _____	_____	_____	_____	_____
f. _____	_____	_____	_____	_____
g. _____	_____	_____	_____	_____
h. _____	_____	_____	_____	_____
i. _____	_____	_____	_____	_____
j. _____	_____	_____	_____	_____
k. _____	_____	_____	_____	_____
l. _____	_____	_____	_____	_____

Alaska. DATED this _____ day of _____, 19__ at _____,

Signature of Operator

Operator's Printed Name

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ONE RED AND WHITE PIPER)
 airplane, _____, Serial)
 Number _____ and)
 contents thereof, including)
 appurtenant instruments,)
 radios, and floats,)
 Serial No.s _____ and _____,)
 JOHN DOE and JANE DOE,)
)
 Defendants.)
 _____)

Civil No. _____

COMPLAINT FOR FORFEITURE AND DAMAGES
(AS 16.05.195)

The State of Alaska, through its Attorney General,
alleges as follows:

First Cause of Action

1. This is an action for forfeiture of Piper
N _____ [describe] and the contents of the aircraft,
including appurtenant instruments and radios. This action is
brought under AS 16.05.195.

2. On or about _____, 19____, in the
vicinity of _____,
Judicial District, State of Alaska, the above-described aircraft
was used by defendants _____
to [describe violation]

These actions constitute violations of fish and game regulations

3. AS 16.05.195 provides that aircraft and other paraphernalia or gear may be forfeited to the state upon judgment of a court of competent jurisdiction in an action in rem that the aircraft and paraphernalia or gear were used in or in aid of a violation of a fish or game statute or regulation.

4. On _____, 19____, pursuant to a seizure warrant issued on _____, 19____, the above-described aircraft, its floats and equipment were seized at _____, Alaska, _____ Judicial District, and the aircraft, floats and equipment are or will be within the jurisdiction of this court during the pendency of the proceedings in this matter.

WHEREFORE, the State of Alaska prays for:

I. Judgment forfeiting the above-described aircraft, floats, and equipment to and for the use of the State of Alaska.

II. Costs, attorney fees and such further relief as the Court may deem appropriate.

Second Cause of Action

1. The State of Alaska realleges and reaffirms the allegations of paragraphs 1 through 4 above.

2. This is an action for damages, for the value of [describe resource]

taken in violation of Alaska fish and game statutes and

regulations. This action is brought under AS 16.05.195, which provides that an action for damages may be joined with an action for forfeiture of aircraft and equipment used in or in aid of a violation of an Alaska fish and game statute or regulation.

3. The defendants _____ are, and at all times relevant to this action have been, residents of _____, Alaska, _____ Judicial District.

4. On or about _____, 19____, in the vicinity of _____, _____ Judicial District, State of Alaska, defendant _____

[describe violation]

in violation of Alaska Fish and Game regulation _____

- the offense being [describe]

5. As a result of the actions of defendants _____ described above, the State of Alaska has been irreparably damaged by the illegal appropriation of _____ in an amount no less than \$ _____.

WHEREFORE the State of Alaska prays for relief as follows:

I. Damages in an amount not less than \$ _____ said damages to be proven more specifically at trial.

II. Costs, attorney fees and such further relief as

this Court may deem appropriate.

DATED at Anchorage, Alaska this _____ day of
_____, 19____.

ATTORNEY GENERAL

By:

Assistant Attorney General

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

DIRECTIONS FOR SERVICE

STATE OF ALASKA,)	DATE:
)	
Plaintiff,)	COURT NO.:
)	
vs.)	SERVICE NO.:
)	
ONE RED AND WHITE _____)	
airplane, N _____, Serial)	
Number _____ and contents)	
thereof, including appurtenant)	
instruments and radios, and floats,)	
Serial Nos. _____ and _____, and)	
_____)	
)	
Defendants.)	
)	

Nature of Writ: COMPLAINT FOR FORFEITURE AND DAMAGES
(AS 16.05.195) and SUMMONS

SERVE: One red and white _____
airplane, N _____ Serial
Number _____ and contents
thereof, including appurtenant
instruments and radios, and floats,
Serial Nos. _____ and _____, by
posting a copy of this complaint
and summons upon said aircraft,
located at the Fish and Wildlife
Protection hangar, State of Alaska,
Department of Public Safety, Lake
Hood, Anchorage, Alaska.

Please make return of service to:

Clark of the Superior Court
303 K Street
Anchorage, Alaska 99501

FORM NO. 3

with copy to:

Office of the Attorney General
1031 4th Avenue, Suite 200
Anchorage, Alaska 99501

ATTORNEY GENERAL

By: Assistant Attorney General

SEIZURE WARRANT FORMS

A civil forfeiture action must be coupled with actual or constructive seizure of the res. At least one state superior court judge has ruled that filing a notice of seizure and a lis pendens in the appropriate recording office is not sufficient constructive seizure. Physical seizure or chaining or immobilizing the equipment and attaching a copy of the complaint is appropriate. An item may be seized without a warrant under AS 16.05.190, but a subsequent seizure warrant should be obtained even in such a case in order to obtain judicial approval.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

Warrant to Seize

IN THE NAME OF THE STATE OF ALASKA

TO ANY PEACE OFFICER AUTHORIZED TO EXECUTE WARRANTS

Sworn testimony has been given by _____,
Alaska Fish and Wildlife Enforcement Officer, on _____,
19__, that he has reason to believe that a [describe item]
registration number _____, is at this time at or near
_____ Judicial District,
State of Alaska. Pursuant to AS 16.05.170, AS 16.05.190, and
AS 16.05.195, the aircraft:

1. Is evidence of the particular crime of _____
in violation of _____ and _____.
2. Is evidence of the particular crime of _____
in violation of _____.
3. May be forfeited to the State of Alaska under AS 16.05.195, upon determination by a court of competent jurisdiction, in a proceeding in rem, that the aircraft was used in or in aid of a violation of an Alaska Fish and Game statute or regulation.

I am satisfied that there is probable cause to believe that the aircraft so described above was used in or in aid of a violation of _____.

I am satisfied that there are grounds for issuance of a warrant to seize the aircraft described above under AS 16.05.170 et seq., and AS 16.05.195, as well as on the other foregoing grounds.

I am satisfied that seizure of the above-described aircraft is necessary in order to insure that the aircraft will come within the jurisdiction of this court.

FORM NO. 5 (cont.)

YOU ARE HEREBY COMMANDED to seize the aircraft designated in this warrant above, registration number _____, serving this warrant between 7:00 a.m. and 10:00 p.m. Upon seizing said aircraft, you are commanded to hold it secure pending further court order, leaving a copy of this warrant, a copy of the supporting affidavits, if any, and a receipt for the property taken, and to prepare a written inventory of the property seized and to return this warrant and bring the property before me (or a receipt thereof) within ten (10) days of this date, as required by law.

(SEAL)

DATED: _____, 19____. _____
Judge/Magistrate

RETURN

I received the attached Warrant to Seize on _____, 19__, and have executed it as follows:

On _____, 19__, at _____ (a.m.)(p.m.), I seized the property described in the warrant, and I left a copy of the warrant (with) (at) _____.

The following is an inventory of the property taken pursuant to the warrant:

This inventory was made in the presence of _____ and of _____.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

Name and Title

SIGNED and SWORN to before me this _____, day of _____, 19__.

(SEAL)

Judge/Magistrate

NOTICE OF FORFEITURE

Vessels, airplanes, vehicles, fishing gear, hunting equipment, fish and game or parts of fish and game, including aquatic plants subject to civil forfeiture under AS 16.05.190 and .195 are typically subject to various claims of interest. To avoid allegations that persons claiming an interest in objects have been denied due process, a notice of forfeiture should be signed by the clerk of court and served upon all persons known to have an interest in the items. In addition, publication in local or industry newspapers giving notice of the criminal or civil forfeiture action provides further compliance with judicial due process standards of notice. Notice to lienholders or owners of record must also be provided before forfeiture in a criminal action, and the interest of an "innocent" lienholder who has taken all reasonable steps to insure that the item was not used illegally cannot be forfeited, State v. Rice, No. 13969 3E, (Superior Ct, Fairbanks May 16, 1979). A joint venture, however, may not be deemed an "innocent" third party. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The Notice of Forfeiture summarizes the complaint and advises interested parties how to obtain copies of the complaint and how to file a claim to the res. This notice is a substitute for the more costly publication of the entire complaint.

Each Notice of Forfeiture should allow an opportunity for the interested party to obtain a hearing for release of the res. Several state supreme courts have decided the state must

take the initiative to set up this hearing. Other states conclude the hearing is not mandatory. Alaska law does not require such a hearing (the omission is a major point on appeal in the F/V American Eagle v State, 620 P.2d 105 (Alaska 1980) cert denied, and State v. Rice, 626 P.2d 104 (Alaska 1981). Because petitions for release will always be entertained by our courts, the opportunity for a hearing should be confirmed.

FORM NO. 7 (cont.)

before 20 days after service by mail or personal delivery or within 30 days after the last date of publication of this notice whichever is sooner. After filing your claim you must, within twenty (20) days after receiving a copy of the complaint, file with the court and serve on the Office of the Attorney General, State of Alaska, 420 L Street, Suite 100, Anchorage, Alaska, 99501, Telephone (907) 276-3550, your answer. If you fail to do so judgment will be entered for the relief demanded in the Complaint.

DATED this _____ day of _____, 19__ at Anchorage, Alaska.

Clerk of the Courts
303 K Street
Anchorage, Alaska 99501

RELEASES

A. AIRCRAFT.

In general, it is simpler not to release seized aircraft pending litigation unless directed otherwise by the court; however, if the case is likely to take a long time to resolve, or state storage facilities are full, it may be advisable to release under appropriate terms. A bond or other security, preferably in twice the value, should be posted in order to cover unforeseen problems and potential losses or liabilities. If an aircraft is not released, it should be carefully stored with the engine "pickled", and be kept under adequate custodial care.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)

No. 3AN _____ - _____ CIV.

STIPULATION FOR RELEASE OF AIRCRAFT

I

This is an action for forfeiture of the above-described defendant items.

II

The known parties with an interest, right or title to the defendant items are:

1. (State of Alaska) _____
2. (Government bureaus) _____
 - a. Taxes _____
 - b. Loans _____
3. (Owner/Operator) _____
4. (Bank) _____
5. (Lienor or Mortgagor) _____
6. (Materialmen and Mechanics) _____
7. (Other) _____

III

The above-described aircraft was seized on _____, 19____, under (a warrant issued on _____ in the _____ court of _____ Alaska).

IV

It is presently in the best interests of all parties that the defendant items name in Exhibit A to this agreement be provided an opportunity to engage in lawful activities until _____, 19____, (or such time as a [district or superior] court decision on forfeiture is rendered).

THEREFORE the parties agree as follows:

1. Plaintiff, which has limited storage facilities, agrees to release, under the terms and conditions of this stipulation, the described aircraft with appurtenant instruments and radios, to the control and custody of _____, hereinafter referred to as "custodian", or his agent or designated employees. The aircraft is subject to and remains under the state's constructive seizure.

2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments presently known are:

	<u>Lender</u>	<u>Total</u>	<u>Monthly Payments</u>	<u>Due Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

3. Each lender shall confirm receipt of each required payment in writing within five days of due date.

4. Custodian _____ as registered/joint-owner of the aircraft in _____, agrees to keep and maintain the aircraft within the State of Alaska and neither sell, dispose, nor otherwise encumber or diminish his ownership or equity in the aircraft unless specifically authorized by order of the court or upon stipulation with the state.

5. Custodian agrees to hold the state harmless for any damages or obligations which may occur after delivery to custodian under this agreement. Custodian agrees to abide by all orders of this court or any appellate court, interlocutory or final, and will deliver the aircraft to the state at such place and such time as may be directed to this court or any appellate court in the same or better condition as received from the state by virtue of this order, ordinary wear and tear excepted.

6. Custodian agrees to obtain insurance (hull and liability) on the items being delivered in an amount equal to their replacement value and to keep such a policy in force for the full replacement amount at all times.

7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

<u>Date of Seizure</u>	<u>Value \$</u>
_____	_____
_____	_____

8. To secure the state's interest in the aircraft, custodian shall (post a bond in the amount of _____) or (deposit the sum of \$ _____ in cashier's check with the clerk of the court, _____, court, State of Alaska).

9. (Bond/Deposit) shall be increased whenever there is an assessed increase in value of the defendant items equal to twenty percent of the value given in item number 7 above. Custodian agrees that in the event of the accidental loss of the aircraft, or substantial loss to the aircraft, or loss of the aircraft by theft or act of God, or otherwise, or his failure to return the aircraft upon court order forfeiting his interest in the aircraft, the (stipulated value of the aircraft on deposit as set forth in paragraph 7) or (bond) shall be forfeited to the State of Alaska. The state shall retain the accrued interest on the amount deposited. In the event of partial damage to the

aircraft, custodian shall either repair the damage, and restore the aircraft to the same or better condition which existed prior to the damage, to the satisfaction to the state, or forfeit that percent of the stipulated value required to restore the aircraft to the same condition which existed before the damage.

10. Custodian shall be penalized as follows for delay in delivery from the time custodian or his representative receives oral or written notice of a decision of forfeiture.

<u>Delay (Days)</u>	<u>Penalty</u>
a. 0-1	None
b. 2-3	5% of the value of paragraph _____ or the value of the returned items at time of delivery, whichever is higher.
c. 4-5	10%
d. 6-7	50%
e. More than 7	Forfeiture of bond/value on deposit.

11. Custodian shall do no act with the aircraft, nor permit nor allow any act to be done by his agents or employees that could subject it to forfeiture or seizure by this state, any other state, federal or private authorities, and agrees to keep the aircraft current in annual inspections, and to keep and maintain the aircraft in accordance with all Federal Aviation Administration regulations and directives.

12. Custodian absolves the State of Alaska, its agents and employees, of any liability for damage that might have

occurred while the aircraft was in state custody, and further agrees to receive the aircraft as is and where is at the time of release.

13. In the event that improvements are made to the aircraft during the aircraft's release, including but not limited to the addition of avionics, overhauling or replacing the engine(s), repairing or replacing mechanical parts of the aircraft, refabricating, etc., beyond ordinary maintenance including annual and 100 hours inspections, the state will reimburse the custodian for any additional fair market value over that at the time of seizure, which is directly attributable to the improvements in the aircraft at the time of forfeiture, if the aircraft is forfeited in this action. If the parties cannot agree, the fair market value for the improvements shall be determined by the court.

14. This Stipulation and Release of the aircraft becomes effective only upon two days written notice to the undersigned Assistant Attorney General and to the Department of Public Safety, Fish and Wildlife Protection, the two days to be counted excluding legal holidays and weekends. After two days' notice, the aircraft shall be released only between the hours of 3 a.m. and 4 p.m., Monday through Friday.

DATED at _____, Alaska this _____ day of

_____, 19____.

Custodian

Plaintiff

Judicial Representative

Interested Parties

FORM NO. 8 (cont.)

DATED at _____, Alaska this _____ day of
_____, 19__.

Custodian

Plaintiff

Custodian Representative

Interested Parties

- 5. (Crewmember's wage claims) _____
- 6. (Materialmen and suppliers) _____

III

It is presently in the best interest of all parties that the defendant items named in Exhibit A to this agreement have an opportunity to engage in lawful activities until _____, 19__ (or such time as a [district or superior] court decision on forfeiture is rendered).

Therefore the parties agree as follows:

1. The defendant items named in Exhibit "A" are released to the control and custody of _____, hereinafter referred to as "Custodian".

2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments include:

	Lender	Total	Monthly Payment	Due Date
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

3. Each lender shall confirm receipt of each required payment in writing to the state within five days of the due date.

4. No additional obligation may encumber the vessel without written permission of the state.
5. Custodian agrees to hold the state harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
6. Custodian agrees to obtain insurance on the items being delivered in an amount equal to their full replacement value and to keep such a policy in force at all times.
7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

Date of Seizure	Total Value
_____, 19__	\$ _____

8. Custodian posts a bond in the amount of \$ _____ to protect the interests of the state during the period of release.
9. Bond shall be increased whenever there is an increase in value of the defendant items equal to 20% of the value given in No. 7.
10. Upon a superior (district) court decision favorable to the plaintiff, the released items shall be immediately delivered to _____, Alaska within thirty (30) days of the date of the

10. court's decision. If the value of the released items exceeds the value given in paragraph 7, the bond less any penalty shall be exonerated upon delivery. If the value of the returned items is less than the value given in paragraph 7, the bond only in amount equal to the value of the returned items shall be exonerated.
11. Custodian shall be penalized as follows for delays in delivery:
- | | Delay
(days) | Penalty |
|----|-----------------|--|
| a. | 0-3 | None |
| b. | 4-7 | 5% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| c. | 7-14 | 10% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| d. | 14-30 | 50% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| e. | More than
30 | Forfeiture of bond in addition to defendant items. |
12. Upon a judgment in favor of the defendant items, the bond shall be exonerated and any remaining defendant items returned to the custodian.

13. Custodian shall keep, maintain, and preserve the defendant items in accordance with applicable laws, regulations, and ordinances and generally accepted standards of the industry. The items shall be maintained in at least as good a condition as when seized. Improvements made with written approval of the state shall be credited to defendants and the agreed amount shall be paid or credited defendants upon a decision of forfeiture by the court.
14. In the event Custodian fails to maintain the vessel in as good a condition as when seized, the state shall repossess the vessel with or without notice. Custodian shall reimburse state for all repossession costs and maintenance, upkeep, or refurbishing costs.
15. Custodian shall keep the defendant items in the Third Judicial District unless otherwise authorized by order of this court or agreement of the parties.
16. On the first day of every month Custodian shall prepare a monthly summary, stating the location of the vessel and the activities of the defendant items, and deliver the summary to plaintiff and each interested party.

17. On the first day of every month Custodian shall prepare a proposed itinerary for that month and deliver the itinerary to plaintiff and each interested party.
18. The bond securing the release of the defendant items shall be forfeited to the plaintiff upon: 1) failure to deliver in accordance with paragraph 9; 2) loss or destruction or disability to use the defendant items for a period exceeding 30 days.

Forfeiture of bond is not cause for dismissal of the lawsuit.

1(a) _____
Custodian

2. _____
Plaintiff

1(b) _____
Custodian Representative

3(a) _____
Interested Parties

3(b) _____

3(c) _____

3(d) _____

MEMORANDUM

State of Alaska

TO: Susan S. McLean
Assistant District Attorney
Kodiak

DATE: April 26, 1983

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

SUBJECT: Release of Crab
Pots

This is a somewhat tardy response to your February 23, 1983 memo requesting a form for the release of crab pots.

It is difficult to develop a universal agreement for release of crab pots or other gear, because the circumstances of the seizure, the nature of the gear seized and other matters may differ from case to case and require special tailoring. However, the form that is enclosed should be a good general guideline for release of crab pots and other gear (including vessels) seized in connection with district court criminal matters. It could also be modified to address civil seizure and forfeiture actions. A few comments are in order:

1. In general, when we seize a fishing vessel we do not wish to enter into a stipulation "for value" whereby the stipulation would result in substitution of the bond or other security for the vessel itself. This is because the value of a fishing vessel is likely to increase during the pendency of the action. However, crab pots and other gear are likely to depreciate in value, particularly if released and subjected to use and deterioration from the elements. Therefore, we would probably wish to enter into a stipulation for value with respect to depreciating goods such as crab pots so that we would have the benefit of the value of the crab pots when seized, rather than be left with what might be virtually worthless equipment at the end of a criminal trial or appeal. Whether equipment for which you would like to use the stipulation appreciates or depreciates should determine whether to call it a stipulation for value and whether to use the language suggested in paragraph 11.

2. Depending on the nature of the goods, you may or may not need the language in paragraph 13 (that the items will be maintained in as good a condition as when seized.) If we intend to substitute the bond anyway, that language would not be necessary. I have attempted to cover both situations in paragraph 11 by allowing the state to have the option of either retaining the goods or accepting the bond or other security as a substitution.
3. Other paragraphs in this draft may or may not be applicable, given the particular facts of a specific case. For example, there may be no need for paragraph 5 relating to obligations if it is clear that none exist for the equipment. In other cases, there may be very complicated financing, particularly if you have seized expensive gear.

I hope this will be of some use to you, and I reiterate that we would be glad to assist you as necessary in implementing these kinds of release agreements.

You may also be interested to know that the Alaska Board of Fisheries (and also the Alaska Board of Game) adopted regulations during the last regulatory meeting in March and April specifying that fish and game regulations are intended to be strict liability offenses unless otherwise provided by the regulations or statute. The Board of Fisheries regulation should be sent to the Lt. Governor's office for filing sometime within the next week or two, and hence would be in effect 30 days thereafter. We are hopeful that this action by the boards will remedy some of the problems created by the Reynolds decision.

Best regards.

SEM/jmo

cc: John Gissberg
Kathleen McGuire
Larri Spengler /

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

STATE OF ALASKA)

v.)

Case No. _____

STIPULATION FOR VALUE AND AGREEMENT
FOR RELEASE OF [CRAB POTS]

The State of Alaska, through [DA/AG], and
[claimant/defendant] hereby stipulate and agree as follows:

1. [Claimant/defendant] is the owner of the
[vessel/gear/crabpots], ADF&G No. [_____].
2. On or about [_____, 19__], officers of the State
of Alaska, Department of Public Safety, Division of Fish
and Wildlife Protection, (hereinafter F&WP) observed
[describe violation, location, storage depth], a violation
of 5 AAC [___] and AS 16.05.920.
3. On or about [_____, 19__], officers of the F&WP
seized the [crab pots/gear] referenced in paragraph 1 of
this agreement [under authority of a seizure warrant
issued on _____/ under authority of a warrantless
search under AS 16.05.180]. The [crab pots/gear] are
presently in the state's custody at [_____],
Alaska.
4. For the mutual convenience of the parties to this
agreement, the parties desire to release [crab pots/gear,
ADF&G No.] to the care and custody of [_____]
(hereinafter "Custodian") upon the terms and conditions of

this agreement. This release agreement shall become effective when signed by the parties.

5. Custodian shall meet all obligations on the [crab pots/gear], which include:

	<u>Lenders</u>	<u>Total</u>	<u>Monthly Payment</u>	<u>Due Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____

6. Custodian may not further encumber the [crab pots/gear]
7. Custodian shall hold the State harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
8. The stipulated value of the [crab pots/gear] at the date of seizure [_____, 19__], is [_____].
9. Custodian shall post [with the court], at the time this agreement is executed, a [cash bond/other security] in the amount of \$[_____] to protect the State's interests during the period of release.
10. Upon a court judgment forfeiting the [crabpots/gear] to the State, custodian shall deliver the [crab pots/gear] as soon as possible, and in no event more than 30 days after forfeiture is ordered, to [_____], Alaska.
11. If the [crab pots/gear] are returned in substantially the same condition as when released, so that their value is equal to or exceeds that set in paragraph 8 of this agreement, the bond shall be exonerated. If the value of the [crab pots/gear] at the time forfeiture is ordered is

less than the amount set in paragraph 3 of this agreement, the State may, at its option, retain the bond and any interest as a substitution for the [crab pots/gear].

12. Upon judgment [of acquittal/denying forfeiture of crabpots/gear], the bond will be exonerated and the [crab pots/gear] will be returned to custodian.
13. Custodian shall keep, maintain, and preserve the [crabpots/gear] in accordance with all applicable laws, regulations, and ordinances, and generally accepted fishing industry standards. The items shall be maintained in as good a condition as when seized.
14. Custodian shall keep the [crabpots/gear] within the [_____] Judicial District unless otherwise agreed by the State.
15. This agreement is for the purpose of release of [crab pots/gear] only, and does not constitute an admission of liability or wrongdoing by either party.
16. This agreement contains the entire agreement between the parties, and its terms are contractual and not a mere recital.
17. This agreement shall be construed under the laws of the State of Alaska.
18. If custodian breaches the terms of this agreement, the custodian must deliver the items to the State immediately;

any failure to deliver within ten days after the breach of any terms of this agreement will automatically forfeit the bond to the State.

Dated: _____

Assistant District Attorney

Dated: _____

[Claimant/owner]

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary

DATE: 1-26-87

The State Affairs Committee has considered HB 52

"An Act relating to motor vehicle forfeiture."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER

HB 52 "AN ACT RELATING TO MOTOR VEHICLE FORFEITURE."

Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities. After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. In Fairbanks, only one person in three years has been ordered to forfeit their car. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. During the first 11 months of 1986, this figure increased to 412 drunk driving accidents. These alarming statistics have led me to introduce this legislation.

The purpose of HB 52 is to strengthen the legislative intent of AS 28.35.036 by stating that "...the state shall [may] move the court to order the forfeiture of the motor vehicle..." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second time DWI offense.

It is important to realize that under AS 28.35.037 (Remission of Forfeitures) an offender can go to court in order to retrieve his or her car, thereby protecting and third party interests in the motor vehicle. The offender must follow the guidelines within statute and present relevant arguments to the judge. Sec. 28.35.037(c) states that if the person satisfies these requirements, the court shall order that the motor vehicle and title be released.

It is routine practice of Alaska game wardens to immediately confiscate cars, trucks and guns when a hunting violation is charged, prior to completion of the violator's due process proceedings. It is my feeling that the protection of human life should be considered at least as important in state law as a hunting or parking violation.

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

It is no secret that the effects of Driving While Intoxicate (DWI), are a major health problem. Once again 1985 statistics compiled by individual state departments of highway, Alaska has ranked third nationwide for the highest rate per capita of alcohol-related crash fatalities (see attached). Death, injury, and trauma occur to the victims and victim families of DWI crashes. Economically this problem is costing our communities millions annually in lost wages, court costs, unrecoverable medical charges, higher insurance rates, and other related expenses.

Mothers Against Drunk Driving (MADD), is an organization whose primary goal is to reduce the number of deaths and injuries resulting from DWI crashes through our educational, legislative and Victim Assistance programs.

In the past three years, we have asked you, our legislators, to increase the penalties for DWI, and refusal to submit to a breath test, to raise the drinking age to 21, to prohibit Happy Hour sales, to institute mandatory driver insurance, and to allow for vehicle confiscation for second time DWI offenders, and other related legislation.

We are once again faced with making a request that you consider amending AS 28.35.036 Forfeiture of Motor Vehicle.

It has been our observation since the passage of HB-6 which was signed into law in September of 1983 by then Governor Sheffield, that our district attorneys and judges have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date, our district attorney's office in Fairbanks (Fourth Judicial District), have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date our district attorney's office reports that they have only confiscated one (1) vehicle.

We do not feel that the confiscation of one vehicle in nearly three years serves as a deterrent for anyone, and without referenda that lead the public's attention, we can never hope to see a decrease in the conduct. In fact, we have seen a serious rise in the number of people killed and injured in the Fairbanks Northern Star Borough the last year.

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 2

In 1985 ~~seventeen~~ (17) FNSB residents were killed in alcohol-related crashes, one boy was killed Outside and two UAF students (brother and sister) were killed outside of Wasilla. In 1986 fifteen (15) FNSB residents were killed in alcohol-related crases, two were killed in California. Five of the impaired drivers responsible for deaths in 1986 had prior DWI convictions and one was driving with an illegally obtained license at the time he killed a young woman on Farmers Loop Road.

We are told that the reason the district attorney's office in Fairbanks has not requested confiscation of a vehicle is because that most defendants do not have clear title to the vehicle, or that the vehicle is of such poor quality that it would not be cost effective to impound and then later auction older model cars. We feel the philosophy of confiscation as a deterrent to others is being overlooked here.

We do not feel that these are sufficient reasons to fail to exercise the option under HB-6, particularly when there is a risk of further human lives being lost! Both the Fairbanks Police Department and the Alaska State Troopers have higher arrest statistics the past two years for individuals Driving With Suspended Operators Licnese (DWSOL). This is due in part to the fact that our community is painfully aware thrt both law enforcements agencies have experienced labor cutbacks that translates into fewer officerson the road at any given time. In other words like everyone else DWI offenders recognize that their chances for being stopped have been minimized. The magnitude of this problem demands that the DWI offender be refused further access to his or her vehicle to ensure that further lives and injuries are not caused by their continuing to drive without a license.

It is admirable that the judges were given a chance to use discretion to confiscate, by the word "may" being used in the content of HB 15, 16. However, it has become obvious that the justice system is in a bit of a common sense in its discretion to use this power as a deterrent and as a deterrent measure to others, and has therefore...

157

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 3

protect the public. Under the circumstances we would ask that the word "may" be changed to "shall" in AS 28.35.032(a), to ensure that first time DWI offenders realize that if convicted for a second offense they will no longer have a vehicle in their possession with which to jeopardize human loss of life and limb.

To counter the argument of "clear title" we refer you to AS 28.35.037 Remission of Forfeitures which specifically addresses lienholders rights.

Additionally we feel sure that once the public is notified of the amendment to this law, credit companies will request that potential creditors who already have a DWI conviction to increase mandatory SR22 premiums to cover possible forfeiture of vehicles.

To counter the argument of immediate confiscation of vehicles used in the commission of a crime i.e., DWI/refusal to submit to a breath test, we remind you of the routine practice of Alaska Game Wardens in their authority to immediately confiscate not only cars and trucks, but guns, planes, snow-machines, etc., when a hunting violation is charged, prior to due process being completed. We are secure that the precedent set there should certainly extend to the protection of human lives, as opposed to animal life!

In anticipation of the argument that the impaired driver may not be arrested while driving his/her own registered vehicle, consider this option. Upon the first conviction for DWI/Refusal, and upon completion of other requirements made by the court for the return of the offenders license we would suggest color-coded driver's licenses to indicate to car rental agencies, employers, or others who might "loan" vehicles to inform and protect them from possible forfeiture. Remembering that a lienholder must, according to AS 28.35.037, prove that "the petitioner did not know or have reasonable cause to believe that it would be used in the commission of a crime." Obviously insurers would want to inform clients of possible loss of coverage should the insured loan a car to individual prior to inspection and return of license.

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

REQUESTS

page 4

1st CONVICTION DWI/REFUSAL

- * In addition to administrative and court ordered requirements now in place, impound the vehicle until the individual purchases special risk policy (SR22), incorporating leinholders protection from forfeiture for possible future offenses. Insurance must be "term" that cannot be cancelled by vehicle owner. If insurance expires for non-payment, or a refund is requested thereby cancelling the policy, the insurance company is required to inform the State Division of Motor Vehicles within 24 hours.
- * Upon completion of all requirements to reinstate the drivers license the DMV be required to color-code, or otherwise plainly note, the DWI conviction visibly on the license.
- * Accompanying costs to above procedure i.e., impoundment fees, filing fees, record search fees, be paid by the applicant.

2nd CONVICTION DWI/REFUSAL

- * Vehicle used in the commission of the crime DWI/Refusal be confiscated by the state and disposed of at public auction. Proceeds to be returned to the General Fund or designated for compensation to victims of drunk driving. (It might be noted that an increased fleet of cars available to auction are a great resource for non-profit groups who typically might have manpower and in-kind contributions to repair damaged cars at little or no cost, then use them as a raffle item).
- * Ninety (90) days prior to the effective date of this legislation public notification is given to the public informing all of the ramifications of the act.

Attachments:

1985 Alcohol-Related Traffic Fatalities - USA

AS 28.35.037

Effect of Bankruptcy on DWI Judgments