

CS FOR HOUSE BILL NO. 135(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/7/99

Offered: 5/3/99

Sponsor(s): REPRESENTATIVES KOTT, Mulder, Austerman, Dyson, Rokeberg, Cissna

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to use of eavesdropping and recording devices by peace
2 officers."

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

4 * **Section 1.** FINDINGS AND INTENT. (a) The legislature finds that, in State v. Glass,
5 583 P.2d 872 (Alaska 1978), the Alaska Supreme Court held that a peace officer must obtain
6 a warrant from a judicial officer before monitoring or recording a conversation between an
7 informant and a person being investigated for having committed a crime. In its decision,
8 however, the court acknowledged the possibility of an exception to the warrant requirement
9 under certain circumstances. Glass, supra, at 881, n. 34. The legislature finds that the safety
10 of peace officers conducting undercover investigations is such a circumstance.

11 (b) The legislature finds that, in 1978, undercover peace officers rarely encountered
12 suspects armed with a firearm. However, in the ensuing years, the investigation of certain
13 crimes, particularly drug offenses, has become much more hazardous to peace officers. Drug
14 dealers are usually armed.

(c) The legislature finds that it is not always possible to obtain a warrant to monitor a conversation during the beginning phases of an investigation. An officer may have suspicions that do not rise to the level of probable cause, the standard for obtaining a warrant. In order to collect sufficient evidence to obtain a warrant, the officer may have to go undercover, thereby creating risk of harm to that officer. Currently, peace officers are often required to perform undercover investigations of drug offenses and other crimes without adequate backup protection from fellow officers, and in situations where the persons being investigated are commonly armed with firearms.

(d) The legislature finds that by prohibiting the recording of monitored conversations and prohibiting the testimony of the monitoring officer regarding the fact that the monitoring occurred or the content of the monitored conversation, the intrusion on an individual's privacy is minor. This minimal intrusion to protect the safety and lives of peace officers is one that society acknowledges is reasonable.

(e) It is the intent of this legislation to allow peace officers investigating a crime or making an arrest to wear monitoring devices, so that back-up law enforcement may monitor the investigation and, if a dangerous situation arises, provide help and protection to the undercover officer.

* **Sec. 2.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.215. Immunity of peace officer for use of body wire eavesdropping device. (a) A peace officer who intercepts an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, or who monitors the receiving unit, is not liable for damages to a person whose oral communication is intercepted if

(1) the interception and monitoring occurs

(A) during the investigation of a crime or the arrest of a person for a crime; and

(B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;

(2) the peace officer who intercepts the oral communication is a party

1 to the communication and has consented to the interception; and

2 (3) the communication intercepted is not recorded.

3 (b) In this section,

4 (1) "intercept" has the meaning given in AS 42.20.390;

5 (2) "oral communication" has the meaning given in AS 42.20.390;

6 (3) "peace officer" has the meaning given in AS 11.81.900(b).

7 * **Sec. 3.** AS 12.37 is amended by adding a new section to read:

8 **Article 3A. Police Use of Body Wires.**

9 **Sec. 12.37.400. Police use of body wire.** A peace officer may intercept an
10 oral communication by use of an electronic, mechanical, or other eavesdropping device
11 that is concealed on or carried on the person of the peace officer and that transmits
12 that oral communication by means of radio to a receiving unit that is monitored by
13 other peace officers, if

14 (1) the interception and monitoring occurs

15 (A) during the investigation of a crime or the arrest of a person
16 for a crime; and

17 (B) for the purpose of ensuring the safety of the peace officer
18 conducting the investigation or making the arrest;

19 (2) the peace officer intercepting the conversation is a party to the oral
20 communication and has consented to the interception; and

21 (3) the communication intercepted is not recorded.

22 (b) A peace officer monitoring a receiving unit under (a) of this section or any
23 other person intercepting an oral communication transmitted under (a) of this section,
24 is not competent to testify in a criminal proceeding involving a party to the oral
25 communication about the contents of the oral communication that was intercepted or
26 the fact that the communication occurred.

27 * **Sec. 4.** AS 42.20.320(a) is amended to read:

28 (a) The following activities are exempt from the provisions of AS 42.20.300
29 and 42.20.310:

30 (1) listening to a radio or wireless communications of any sort where
31 the same are publicly made;

(2) hearing conversation when heard by employees of a common carrier by wire incidental to the normal course of their employment in the operation, maintenance, or repair of the equipment of the common carrier by wire, provided the information obtained is not used or divulged in any manner by the hearer;

(3) a broadcast by radio or other means whether it is a live broadcast or recorded for the purpose of later broadcasts of any function where the public is in attendance and the conversations that are overheard are incidental to the main purpose for which the broadcast is then being made;

(4) recording or listening with the aid of any device to an emergency communication made in the normal course of operations by a federal, state, or local law enforcement agency or institutions dealing in emergency services, including hospitals, clinics, ambulance services, fire fighting agencies, a public utility emergency repair facility, civilian defense establishment, or military installations;

(5) inadvertent interception of telephone conversations over party lines;

(6) a peace officer, or a person acting at the direction or request of a peace officer, engaging in conduct authorized by or under AS 12.37;

(7) interception, listening, or recording of communications by a peace officer, or a person acting under the direction or request of a peace officer, in an emergency where the communications are received from a device that intercepts the communications of a person

(A) barricaded and not exiting or surrendering at the direction or request of a peace officer, in circumstances where there is an imminent risk of harm to life or property;

(B) holding another person hostage; or

(C) threatening the imminent illegal use of an explosive;

(8) the interception by a peace officer of an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if

(A) the interception and monitoring occurs

- 1 (i) during the investigation of a crime or the arrest
2 of a person for a crime; and
3 (ii) for the purpose of ensuring the safety of the
4 peace officer conducting the investigation or making the arrest; and
5 (B) the peace officer who intercepts the oral communication
6 is a party to the communication and has consented to the interception; and
7 (C) the communication intercepted is not recorded.