

HOUSE BILL NO. 135

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 3/12/99

Referred: Judiciary

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

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

12 (1) the interception and monitoring occurs

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

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

3 (2) the peace officer who intercepts the oral communication is a party
4 to the communication; and

5 (3) the communication intercepted is not recorded.

6 (b) In this section,

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

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

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

10 * **Sec. 2.** AS 12.37 is amended by adding a new section to read:

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

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

17 (1) the interception and monitoring occurs

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

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

22 (2) the peace officer intercepting the conversation is a party to the oral
23 communication; and

24 (3) the communication intercepted is not recorded.

25 (b) A peace officer monitoring a receiving unit under (a) of this section is not
26 competent to testify in a criminal proceeding involving a party to the oral
27 communication about the contents of the oral communication that was intercepted or
28 the fact that the communication occurred.

29 * **Sec. 3.** AS 42.20.320(a) is amended to read:

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

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

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

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

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

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

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

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

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

26 (B) holding another person hostage; or

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

28 **(8) the making by a uniformed peace officer of an audio recording**
29 **in conjunction with the video recording of traffic and other law enforcement**
30 **patrol contacts;**

31 **(9) the interception by a peace officer of an oral communication by**

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

5 (A) the interception and monitoring occurs

6 (i) during the investigation of a crime or the arrest
7 of a person for a crime; and

8 (ii) for the purpose of ensuring the safety of the
9 peace officer conducting the investigation or making the arrest; and

10 (B) the peace officer who intercepts the oral communication
11 is a party to the communication; and

12 (C) the communication intercepted is not recorded.