

Introduced: 1/14/81
Referred: Judiciary

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 75

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of individual constitu-
7 tional rights by government; and amending Rule 26(g)
8 of the Rules of Criminal Procedure."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 12.35 is amended by adding a new section to read:

11 Sec. 12.35.130. LIMITATION OF EXCLUSIONARY RULE. (a) Evidence
12 may not be excluded from a criminal proceeding solely because that evi-
13 dence was obtained in violation of art. I, sec. 14, Constitution of the
14 State of Alaska, or in violation of the Fourth Amendment to the Consti-
15 tution of the United States, unless the court finds, as a matter of
16 law, that the violation was substantial.

17 (b) In determining whether a violation is substantial for the
18 purposes of (a) of this section, the court shall consider all of the
19 circumstances including

20 (1) the extent of deviation from sanctioned conduct;
21 (2) the extent to which the violation was wilful;
22 (3) the extent to which privacy was invaded;
23 (4) the extent to which exclusion will tend to prevent
24 future deviations from sanctioned conduct;

25 (5) whether if, but for the violations, the thing seized
26 would have been discovered; and

27 (6) the extent to which the violation would prejudice the
28 defendant's ability to defend himself in the proceeding in which the
29 thing seized is sought to be introduced in evidence against him.

STATUTE
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1 * Sec. 2. AS 09.50.250 is amended by adding a new subsection to read:

2 (b) Nothing in (a) of this section prevents an individual from
3 bringing an action based on a violation of art. I, sec. 14, or art. I,
4 sec. 22 of the Constitution of the State of Alaska.

5 * Sec. 3. Rule 26(g) of the Alaska Supreme Court Rules of Criminal Pro-
6 cedure is amended to read:

7 (g) Except for evidence admitted under the provisions of AS 12.-
8 35.130, [EVIDENCE] illegally obtained evidence shall not be used for
9 any purpose including the impeachment of a witness.