

Introduced: 1/19/83
Referred: Judiciary

1 IN THE HOUSE

BY PESTINGER, FURNACE,
UEHLING, BARNES AND LISKA

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HOUSE BILL NO. 75

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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THIRTEENTH LEGISLATURE - FIRST SESSION

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A BILL

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For an Act entitled: "An Act relating to the exclusionary rule; changing Rule 37(c), Rules of Criminal Procedure, and Rule 412, Alaska Rules of Evidence, by limiting application of the exclusionary rule when a good faith search only results in technical violations of the constitutional guarantee against unlawful search and seizure."

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

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* Section 1. AS 12.45 is amended by adding a new section to read:

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Sec. 12.45.015. LIMITATION ON APPLICATION OF THE EXCLUSIONARY RULE. (a) If the defendant in a criminal action seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the judge may not grant the request if the prosecution satisfies the judge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact, if otherwise admissible, because the conduct resulted in only a technical violation of the defendant's right to be protected from unlawful searches and seizures.

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(b) A peace officer is considered to act in good faith for purposes of (a) of this section if the peace officer has completed a law enforcement academy or other approved prerequisite curriculum and any mandatory subsequent training or instruction in constitutional law and criminal procedure required by the Alaska Police Standards Council

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1 (AS 18.65.130) and obtains evidence

2 (1) based on a search warrant obtained from a neutral and
3 detached magistrate or judge, which warrant is free from obvious
4 defects other than unintentional errors in preparation and is reason-
5 ably believed by the peace officer to be valid;

6 (2) in a warrantless search, when the peace officer

7 (A) reasonably believes there is probable cause to
8 make the search;

9 (B) possesses a reasonable suspicion that the person
10 or premises searched possesses or contains items of an
11 evidentiary nature; and

12 (C) reasonably believes there are circumstances that
13 excuse the procurement of a search warrant;

14 (3) in a search incident to an arrest, when the peace
15 officer

16 (A) reasonably believes that there is probable cause
17 to make the arrest and that there are circumstances that excuse
18 the procurement of an arrest warrant; or

19 (B) procures or executes an invalid arrest warrant
20 that the peace officer reasonably believes to be valid; or

21 (4) based on a statute, local ordinance, judicial precedent
22 or court rule that is later declared unconstitutional or otherwise
23 invalid.

24 * Sec. 2. AS 12.45.015, added by sec. 1 of this Act, has the effect of
25 amending Rule 37(c), Rules of Criminal Procedure, and Rule 412, Alaska
26 Rules of Evidence, by limiting the application of the exclusionary rule
27 when a good faith search only results in technical violations of the con-
28 stitutional guarantee against unlawful search and seizure.