

Introduced: 1/18/83
Referred: Judiciary

BY RAY, BENNETT, HALFORD
AND PETTYJOHN

1 IN THE SENATE

2 SENATE BILL NO.49

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the exclusionary rule; changing
7 Rule 37(c), Rules of Criminal Procedure, and Rule
8 412, Alaska Rules of Evidence, by limiting applica-
9 tion of the exclusionary rule when a good faith
10 search only results in technical violations of the
11 constitutional guarantee against unlawful search and
12 seizure."

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

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

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

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

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.