

Introduced: 2/9/83
Referred: State Affairs and
Judiciary

BY RODEY, KELLY, RAY,
STURGULEWSKI AND KERTTULA

1 IN THE SENATE

2

SENATE BILL NO. 115

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 individual rights of peace offi-
7 cers."

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

9 * Section 1. AS 18.65 is amended by adding new sections to read:

10 ARTICLE 7. INDIVIDUAL RIGHTS OF PEACE OFFICERS.

11 Sec. 18.65.530. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-
12 JECT TO CRIMINAL ACTION. If a peace officer is under investigation
13 instituted by the peace officer's employing agency or as a result of a
14 complaint being filed against the peace officer and the peace officer
15 is interrogated or interviewed by the employing agency for conduct
16 that may subject the peace officer to criminal action, the peace
17 officer may exercise all rights granted the accused under law in
18 addition to the rights specified in AS 18.65.531.

19 Sec. 18.65.531. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-
20 JECT TO PUNITIVE ACTION. (a) If a peace officer is under investiga-
21 tion instituted by the peace officer's employing agency or as a result
22 of a complaint being filed against the peace officer and the peace
23 officer is interrogated or interviewed by the employing agency for
24 conduct that may subject the peace officer to punitive action,

25 (1) before an interrogation or interview is commenced the
26 peace officer shall be provided with a formal written complaint con-
27 taining all essential allegations and signed by the complainant or
28 shall be informed of the nature of the investigation if instituted by
29 the employing agency and advised concerning the rights specified in

1 this section;

2 (2) the peace officer is entitled to select and have pre-
3 sent at each stage of the investigation a witness or other person that
4 may participate on behalf of the peace officer;

5 (3) the interrogation or interview shall be conducted while
6 the employee is on duty or at a reasonable hour unless the seriousness
7 of the investigation requires otherwise, and shall be for a reasonable
8 period of time with opportunity for the peace officer to attend to
9 body functions as necessary;

10 (4) the peace officer shall be compensated at the regular
11 rate of pay for time spent in an interrogation or interview while the
12 peace officer is not on duty;

13 (5) the peace officer may not be subjected to offensive or
14 threatening language or promises of reward for cooperating but shall
15 be informed that failure to answer questions relevant to the investi-
16 gation or complaint can result in punitive action unless the peace
17 officer's alleged conduct would be criminal, in which case the peace
18 officer may exercise the right to remain silent;

19 (6) the peace officer and employing agency may tape record
20 the interrogation or interview after advising that a recording will be
21 made and each shall have access to the other's tape recording, if any
22 is made;

23 (7) the peace officer is entitled to a transcript of any
24 notes made by a stenographer or to a copy of any report made by an
25 investigator or other person relevant to the complaint or investiga-
26 tion, as well as any other information in the peace officer's person-
27 nel file, except for confidential information;

28 (8) information that is adverse to the peace officer or
29 otherwise considered by the employing agency to be confidential may

1 not be entered in the peace officer's personnel file unless the peace
2 officer is first given a copy of that information and signs the file
3 copy or notes on the file copy that a response will be filed; if the
4 response is filed by the peace officer within 30 days the employing
5 agency shall attach the response to the adverse or confidential infor-
6 mation and promptly remove all pertinent information upon determining
7 that the allegations are unfounded;

8 (9) the peace officer may not be compelled to submit to a
9 polygraph examination and the exercise of that right may not be used
10 in any way to disadvantage the peace officer, including but not limit-
11 ed to the use of that fact in a proceeding involving the peace officer
12 or notation of that fact in a personnel file;

13 (10) subject to rules of discovery of evidence, the peace
14 officer may refuse to disclose personal information, including but not
15 limited to property possessed, sources and amounts of income, debts,
16 and personal or domestic expenditures; nothing in this section pro-
17 hibits inquiry by the employing agency as to matters representing
18 possible conflicts of interest with respect to the performance of the
19 peace officer's official duties;

20 (11) the peace officer may exercise the right against unlaw-
21 ful search and seizure with respect to the peace officer's locker or
22 other space assigned to the peace officer by the employing agency.

23 (b) As used in this section, "punitive action" means any action
24 taken against a peace officer by the employing agency that may lead to
25 dismissal, demotion, suspension, written reprimand, or transfer in
26 work assignments for purposes of punishing conduct of the peace offi-
27 cer.

28 Sec. 18.65.532. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-
29 JECT TO DISCIPLINARY ACTION. (a) If a peace officer is under

1 investigation instituted by the peace officer's employing agency or as
2 a result of a complaint being filed against the peace officer and the
3 peace officer is interrogated or interviewed by the employing agency
4 for conduct that may subject the peace officer to disciplinary action,

5 (1) the peace officer may exercise the rights specified in
6 AS 18.65.531;

7 (2) the employing agency shall within one year remove from
8 the peace officer's personnel file all matters pertaining to the
9 disciplinary proceeding;

10 (3) the peace officer is presumed to be innocent unless
11 proven otherwise.

12 (b) As used in this section "disciplinary action" means any
13 action taken against a peace officer by the employing agency that may
14 affect the peace officer's integrity as a peace officer, working
15 conditions, work schedule, or salary for purposes of punishing conduct
16 of the peace officer, but does not include minor infractions such as
17 uniform violations or grooming and dress standards that merit sponta-
18 neous admonishment.

19 Sec. 18.65.533. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-
20 JECT TO CIVIL LIABILITY. If a peace officer is under investigation
21 instituted by the peace officer's employing agency or as a result of a
22 complaint being filed against the peace officer and the peace officer
23 is interrogated or interviewed by the employing agency for conduct
24 that may subject the peace officer to civil liability;

25 (1) the peace officer may exercise the rights specified in
26 AS 18.65.531;

27 (2) the peace officer may, at the peace officer's expense,
28 have an attorney present at all steps of the investigation.

29 Sec. 18.65.534. REPRISALS AGAINST PEACE OFFICER FOR EXERCISE OF

1 RIGHTS. A peace officer may not be subjected to any reprisals or in
2 any way be disadvantaged for exercising the rights set out in AS 18.-
3 65.530 - 18.65.533, including but not limited to the use of the ex-
4 ercise of those rights

5 (1) as evidence in any proceeding involving the peace
6 officer; or

7 (2) as justification for altering the peace officer's work
8 schedule, wages, or working conditions.

9 * Sec. 2. AS 23.10.037(b) is amended to read:

10 (b) The provisions of (a) of this section do not apply to the
11 state or a political subdivision of the state when dealing with
12 [POLICEMEN IN ITS EMPLOY OR WITH] persons applying to be employed as
13 policemen.