

Introduced: 3/13/87  
Referred: Judiciary

5-0670A

1 IN THE SENATE BY RODEY, ABOOD AND BENNETT

2 SENATE BILL NO. 185

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH 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 LIABILITY. If a peace officer is under investigation  
13 instituted by the peace officer's employing agency or as a result of a  
14 complaint having been filed against the peace officer and the peace  
15 officer is interrogated or interviewed by the employing agency for  
16 conduct that may subject the peace officer to criminal liability, the  
17 peace officer may exercise all rights granted the accused under law.

18 Sec. 18.65.535. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-  
19 JECT TO PUNITIVE ACTION. If a peace officer is under investigation  
20 instituted by the peace officer's employing agency or as a result of a  
21 complaint having been filed against the peace officer and the peace  
22 officer is interrogated or interviewed by the employing agency for  
23 conduct that may subject the peace officer to punitive action, but not  
24 criminal liability,

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 who  
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 whether or  
12 not the peace officer is on duty;

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

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

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

29 (8) confidential information or information that is adverse

1 to the peace officer may not be entered in the peace officer's person-  
2 nel file unless the peace officer is first given a copy of the infor-  
3 mation and signs the file copy or notes on the file copy that the  
4 officer will file a response; if the peace officer files a response  
5 within 30 days, the employing agency shall attach the response to the  
6 adverse or confidential information; if the agency determines that the  
7 allegations are unfounded, it shall promptly remove all pertinent  
8 information from the file;

9 (9) the peace officer may not be compelled to submit to a  
10 polygraph examination and the exercise of that right may not be used  
11 to disadvantage the peace officer, or noted in a proceeding involving  
12 the peace officer or in the officer's personnel file;

13 (10) subject to rules of discovery of evidence, the peace  
14 officer may refuse to disclose personal information, including proper-  
15 ty possessed, sources and amounts of income, debts, and personal or  
16 domestic expenditures; however, the employing agency may inquire about  
17 matters representing possible conflicts of interest with respect to  
18 the performance of the peace officer's official duties;

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

22 Sec. 18.65.540. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-  
23 JECT TO DISCIPLINARY ACTION. If a peace officer is under investiga-  
24 tion instituted by the peace officer's employing agency or as a result  
25 of a complaint having been filed against the peace officer and the  
26 peace officer is interrogated or interviewed by the employing agency  
27 for conduct that may subject the peace officer to disciplinary action,

28 (1) the peace officer may exercise the rights specified in  
29 AS 18.65.535;

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

4           (3) the peace officer is presumed to be innocent unless  
5 proven otherwise.

6           Sec. 18.65.545. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-  
7 JECT TO CIVIL LIABILITY. If a peace officer is under investigation  
8 instituted by the peace officer's employing agency or as a result of a  
9 complaint having been filed against the peace officer and the peace  
10 officer is interrogated or interviewed by the employing agency for  
11 conduct that may subject the peace officer to civil liability:

12           (1) the peace officer may exercise the rights set out in  
13 AS 18.65.535; and

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

16           Sec. 18.65.550. REPRISALS AGAINST PEACE OFFICER FOR EXERCISE OF  
17 RIGHTS. A peace officer may not be subjected to a reprisal or in any  
18 way be disadvantaged for exercising the rights set out in AS 18.-  
19 65.530 - 18.65.545. In particular, exercise of these rights may not  
20 be used as

21           (1) evidence in a proceeding involving the peace officer;  
22 or

23           (2) justification for altering the peace officer's work  
24 schedule, wages, or working conditions.

25           Sec. 18.65.555. DEFINITIONS. In AS 18.65.530 - 18.65.555

26           (1) "disciplinary action" means any action taken against a  
27 peace officer by the employing agency that may affect the peace offi-  
28 cer's integrity as a peace officer, working conditions, work schedule,  
29 or salary for purposes of punishing conduct of the peace officer, but

1 does not include a punitive action or a spontaneous admonishment for a  
2 minor infraction including a violation of grooming or dress standards;

3 (2) "punitive action" means any action taken against a  
4 peace officer by the employing agency that may lead to dismissal,  
5 demotion, suspension, written reprimand, or transfer in work assign-  
6 ments for purposes of punishing conduct of the peace officer.

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

8 (b) The provisions of (a) of this section do not apply to the  
9 state or a political subdivision of the state when dealing with [PO-  
10 LICEMEN IN ITS EMPLOY OR WITH] persons applying to be employed as  
11 police officers [POLICEMEN].