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TESTIMONY OF DEAN GUANELI
MARCH 3, 1983

My name is Dean Guaneli, Assistant Attorney General with the Department of law. My initial reaction in listening to the brief overview was that there was some problems with the way the bill was described. I think what I heard was that other states have laws that give peace officers similar rights to other persons and I guess that the suggestion is that this bill does that. I would take strong exception to that. In my view this bill gives peace officers a lot more protection than ordinary citizens have in ways that are completely unappropriate. This bill addresses a number of situations and addresses the situation of when a peace officer is accused of committing a crime, accused of taking some action that might subject him to some putative action, disciplinary action or done something that might subject him to civil liability. Under those circumstances, this bill gives peace officers a lot more rights than the ordinary citizens would have. Particularly as it relates to criminal investigations. There are eleven rights that this bill sets out that gives a peace officer accused of a crime, that ordinary citizens do not have.

The first I suppose would be the written notice of the charges. No defendant is entitled to written notice of the charges before he is interviewed. This gives the peace officer a right to have a witness participate in the interview. Ordinary citizens can have an attorney if they are in custody and other witnesses then can be present at the interview but they cannot participate in the interview. It limits the interviews to reasonable hours. It gives peace officers pay during the time of their interviews. It goes on and on and on. It in fact limits the way in which criminal investigation can be conducted when the subject of that investigation is a peace officer. And I really question whether that was the committee's intent in this legislation. It is completely inappropriate for peace officers to have greater rights as criminal suspects than anybody else in our society and I could envision a criminal defendant coming before a court and saying that I have been denied equal protection of the law, if I was a peace officer this kind of statement wouldn't have been taken from me without being given all these rights. It goes far beyond what ordinary citizens have and it is going to hamstring investigations. Peace officers are in a peculiar situation in our society. They are in a position of trust. They carry weapons, they carry concealed weapons. They are entitled to effect arrests and in some circumstances shoot people when ordinary citizens would not be able to. Under those circumstances, when they are accused of a crime, it's inappropriate to limit the investigation of that crime.

As for the other parts of the bill that relate to internal disciplinary matters. These rights that peace officers would be given, seems to me and I've discussed the matter with the Division of Labor Relations and also the Department of Public Safety, would inappropriately tie the hands of administrators in managing the internal affairs of their police department. In effect it would drive a wedge between employees, peace officers and the chiefs of police in local police departments. In many cases it would put prosecutors in the middle of some kind of dispute between policemen and their managers. Under state personnel rules, if

something goes in a personnel file that is grievable under the contract. But to give a person a right to have all these rights in an internal disciplinary matter, I think is going beyond what ought to be legitimate concern of this legislature. I understand that the Association of Alaska Chiefs of Police has reviewed the bill and is opposed to it. That's understandable, they are managers. They feel that as managers of police departments they have to have control over their officers. They have to be able to take disciplinary action and do it quickly without having to jump through a lot of hoops. For a number of reasons peace departments function as paramilitary organizations. The officers are given orders and they take orders. And like a paramilitary organization they seem to function better that way. And I think that a bill of this sort goes along way towards changing the way a police department functions and for those reasons we strongly oppose this legislation. We being, as far as I know, the Administration, the Department of Law, the Division of Personnel, the Division of Labor Relations and the Department of Public Safety and from that stand point I am not certain what other aspects the Administration would be interested.

PUBLIC EMPLOYEE POLITICAL RIGHTS

CALIFORNIA GOVERNMENT CODE

§ 3201. Legislative finding

The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207.

§ 3202. Application of chapter; Definitions

This chapter applies to all officers and employees of a state or local agency.

(a) "Local agency" means a county, city, city and county, political subdivision, district other than a school district, or municipal corporation. Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency.

(b) "State agency" means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University and Colleges, the University of California, and the Legislature.

§ 3203. Restriction of political activities prohibited

Except as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.

§ 3204. Unlawful use of influence

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

§ 3205. Solicitation from other officers or employees

An officer or employee of a local agency shall not, directly or indirectly, solicit political funds or contributions, knowingly, from other officers or employees of the local agency or from persons on the employment lists of the local agency. Nothing in this section prohibits an officer or employee of a local agency from communicating through the mail or by other means requests for political funds or contributions to a significant segment of the public which may include officers or employees of the local agency.

§ 3206. Participation in political activities while in uniform

No officer or employee of a local agency shall participate in political activities of any kind while in uniform.

§ 3207. Local rules and regulations

Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency.

§ 3208. Further limitations prohibited

Except as provided in Section 19251, the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees.

§ 3209. Solicitation or receipt of funds to promote passage or defeat of ballot measures

Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.

§ 3304. Protection of procedural rights

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

§ 3305. Filing of adverse comments in personnel file

No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

§ 3306. Time for filing response to adverse comment

A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

§ 3307. Polygraph examination

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other reprimand shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

§ 3308. Disclosure of financial status

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

§ 3309. Search of locker

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

§ 3309.5. Proceeding for violations of rights and protections

(a) It shall be unlawful for any local public safety department to deny or refuse to any local public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any local public safety officer against any local public safety department for alleged violations of this section.

(c) In any case where the superior court finds that a local public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the local public safety department from taking any punitive action against the local public safety officer.

(d) This section shall apply only to local public safety officers who are peace officers as defined in Section 830.1 of the Penal Code, and shall not apply to public safety officers who are peace officers as defined in subdivisions (a) and (b) of Section 830.2 of the Penal Code.

§ 3310. Exception as to public agencies providing protections of rights

Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

§ 3311. Mutual aid agreements

Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

§ 3300. Short title

This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

§ 3301. Definition: Legislative finding and declaration

For purposes of this chapter, the term public safety officer means all peace officers, as defined in Section 8301 and subdivisions (a) and (b) of Section 8302 of the Penal Code, including peace officers who are employees of a charter city or county. The term public safety officer also means all persons employed by the State of California and designated by law as peace officers.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

§ 3302. Political activity

(a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

§ 3303. Subjection to interrogation; Temporary reassignment

When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

(f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of

the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. *OFFICIAL CONFIDENTIAL*

No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

(g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

REVISED
CODE OF WASHINGTON
ANNOTATED



Titles 39 to 40

Title 41—Ch. 41.01 to 41.27

unfit person to be employed in the public

LEGISLATIVE HISTORY

§ 8 p 29.

CROSS REFERENCES

cities: RCWA Chapter 41.20.
WA 41.12.090.

LATERAL REFERENCES

§§ 28, 31, 37.
§§ 576-585.

2d, Civil Service, § 57:13 (notice of claim of illegal removal).

bringing or defending action affecting per-

refusal to answer questions asked during an

ment of prisoner as ground for removal).

employee to pay creditors as ground for re-

s ground for discharge).

184, 185.

CASES OF DECISIONS

try of police department, but with longer
ambent combined period of service in
ment to same position in police and fire de-
to ac- partments. State ex rel. George v
ranted Seattle (1936) 184 Wn 560, 52 P2d
Sing v 360.

115 P In cases of tenure under civil
e com- service where policeman shall hold
ion of office until removed or retired, it
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peri- for cause only and then only after
on in due notice and hearing or opportu-
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to posi- deen (1941) 20 Wn 2d 594, 148 P2d
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son in Aberdeen civil service ordinance
contemplated that person was to

removed for cause, and was withstanding that ordinance was
within rule that accused policeman silent as to hearing, notice, or op-
was entitled to hearing on charges portunity to be heard. Luellen v
made against him after reasonable Aberdeen (1941) 20 Wn 2d 594, 148
notice thereof had been given not- P2d 849.

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith [f]or cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement of [or] reemployment of such person* in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, [in] lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an op-

portunity of appearing in person and by counsel, and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: *Provided, however,* That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

LEGISLATIVE HISTORY

Enacted Laws 1937 ch 73 § 9 p 30.
See RRS § 9558a-9.

REVISER'S NOTE

* The enrolled bill is paragraphed at this point.

COLLATERAL REFERENCES

15 Am Jur 2d Civil Service §§ 45 et seq.
CJS Municipal Corporations §§ 579, 580.

Forms:

4 Am Jur Legal Forms 2d, Civil Service, § 57:13 (notice of claim of civil service employee after illegal removal).

5 Am Jur Pl & Pr Forms (Rev ed), Civil Service, Forms 11 et seq. (removal, suspension, demotion or discharge of civil service city police).

16 Am Jur Pl & Pr Forms, Public Officers, Forms 16:577 et seq. (review of board's discharge of civil service city police).

Modern Legal Forms, § 6181 (preliminary notice of suspension).
See also forms set out below, following Notes of Decisions.

Law Review Articles:

35 Wn LR 220 (due process requirements in suspension of civil service employee).

Annotations:

125 ALR 263 (constitutionality of statute providing for review by court of commission's order).

145 ALR 767 (acquiescence or delay as affecting employee illegally discharged or suspended).

171 ALR 175 (validity of removal or discharge of officer or employee as affected by absence of member from hearing).

16 ALR2d 1126 (power of civil service body of board to give notice or hearing to reconsider or set aside removal of employee).

Key Number Digests:

Municipal Corporations ☞ 185(3-13).

NOTES OF DECISIONS

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| 1. In General. | tions, name |
| 2. Power to Remove, Suspend, Demote, or Discharge; Grounds. | ry, investig |
| 3. Administrative Proceedings. | functions w |
| 4. — Notice and Opportunity to be Heard. | in commiss |
| 5. Judicial Review. | land Police |
| 6. — Specific Instances. | 720, 384 P2d |

2. POWER
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1. IN GENERAL

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. *Yantsin v Aberdeen* (1959) 54 Wn 2d 787, 315 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. *Reynolds v Kirkland Police Com.* (1963) 62 Wn 2d 720, 384 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent func-

Power to municipal governing body cannot be exercised by inferior body unless expressly granted, *Kane city council v Kane city police officer* board of police such board suspend. *Bring* 27 Wn 202, 6

Where police officer to suspended rule provided by number of police pending by approval of board without was invalid. (1902) 27 Wn

In cases of civil service where office until

g in person and by counsel, and presenting judgment or order be concurred in by the majority thereof, the accused may appeal therefrom original and unlimited jurisdiction in civil wherein he resides. Such appeal shall be commission, within thirty days after the error or order, a written notice of appeal, stating and demanding that a certified transcript of papers on file in the office of the commissioning to such judgment or order, be filed by such court. The commission shall, within ten days of such notice, make, certify and file such court. The court of original and unlimited civil suits shall thereupon proceed to hear appeal in a summary manner: *Provided*, hearing shall be confined to the determination of judgment or order of removal, discharge, demotion or order of removal, discharge, demotion made by the commission, was or was not the cause, and no appeal to such court shall be granted on such ground or grounds.

LEGISLATIVE HISTORY

1963 § 9 p 30.

REVISER'S NOTE

Paragraphed at this point.

LATERAL REFERENCES

See §§ 45 et seq.
Sections §§ 579, 580.

§ 2d, Civil Service, § 57:13 (notice of claim of error illegal removal).

Forms (Rev ed), Civil Service, Forms 11 et seq. (demotion or discharge of civil service city police).

Forms, Public Officers, Forms 16:577 et seq. (removal of civil service city police).

§ 6181 (preliminary notice of suspension).
See below, following Notes of Decisions.

Process requirements in suspension of civil service.

Annotations:

125 ALR 263 (constitutionality of statute providing for appeal to or review by court of commission's order).

115 ALR 767 (acquiescence or delay as affecting rights of public employee illegally discharged or suspended).

171 ALR 175 (validity of removal or discharge of governmental officer or employee as affected by absence of member of board or commission from hearing).

16 ALR2d 1126 (power of civil service body on own motion and without notice or hearing to reconsider or set aside order relating to dismissal of employee).

Key Number Digests:

Municipal Corporations ☞ 185(3-13).

NOTES OF DECISIONS

1. In General.
2. Power to Remove, Suspend, Demote, or Discharge; Grounds.
3. Administrative Proceedings.
 1. — Notice and Opportunity to be Heard.
 2. Judicial Review.
 3. — Specific Instances.

tions, namely, appointive, accusatory, investigative, and adjudicative functions with no separation within commission. *Reynolds v Kirkland Police Com.* (1963) 62 Wn 2d 720, 381 P2d 819.

2. POWER TO REMOVE, SUSPEND, DEMOTE, OR DISCHARGE; GROUNDS

1. IN GENERAL

Provision for removals, suspensions, demotions, and discharges is not applicable to cities and towns which prior to date statute was adopted, established civil service in police departments. *Yantsin v Aberdeen* (1959) 54 Wn 2d 787, 345 P2d 178.

Though police officer has no property rights in public employment which are protected by constitutional requirement of due process, his rights as civil service employee include, at least, procedure, prerequisites, and conditions set forth in applicable charter, statute or ordinance. *Reynolds v Kirkland Police Com.* (1963) 62 Wn 2d 720, 381 P2d 819.

Local ordinance attempting to implement provisions of this chapter failed to accomplish its purpose where it established single commission with inconsistent func-

Power to remove or suspend municipal officer rests with governing body of municipality, and cannot be exercised by individual or inferior board unless specifically granted, and hence, under Spokane city charter, providing that police officers may be removed by board of police in certain cases, such board has no power to suspend. *Bringgold v Spokane* (1902) 27 Wn 202, 67 P 612.

Where police board, having power to suspend public officers, passed rule providing that any member of police force might be suspended by chief of police with approval of board, suspension by board without consent of chief was invalid. *Bringgold v Spokane* (1902) 27 Wn 202, 67 P 612.

In cases of tenure under civil service where policeman shall hold office until removed or retired, it

Note 2

is implied that he can be removed for cause only and then only after due notice and hearing or opportunity to be heard. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

Under Seattle Charter, art 16 § 12, permitting removal of officer or employee only on filing with civil service commission of statement of reasons therefor, and providing for review of removal on demand, order of commission, finding that patrolman was not guilty of charge on which he was removed by chief of police ("conduct unbecoming an officer, being in a compromising position with a respectable married woman"), but sustaining removal on ground that patrolman was guilty of conduct unbecoming an officer in cultivating acquaintance of woman, was not improper, as sustaining removal on ground not specified by chief of police. *State v Seattle* (1911) 65 Wn 645, 118 P 821.

3. ADMINISTRATIVE PROCEEDINGS

Any defects as to sufficiency or timeliness of policeman's protest against discharge were waived when civil service commission proceeded to investigate charges made. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

Chief of police and another member of police department, who served city manager's written accusation on certain other police officers who were being discharged by city manager, were not "plaintiffs" in the discharge proceeding as the term is used in RCWA 4.28.070 and civil service statutes and ordinances which require service of process to be made by person other than plaintiff, where persons making service had no right to claim, and did not seek, legal redress from officers being charged

for any reasons stated in the written accusation. *Vancouver v Jarvis* (1969) 76 Wn 2d 110, 455 P2d 591.

4. — NOTICE AND OPPORTUNITY TO BE HEARD

Where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, though irregular in some respects, did not invalidate order of discharge. *State ex rel. Miller v Tacoma* (1934) 177 Wn 689, 33 P2d 88.

"Opportunity to be heard" required to be given civil service employee sought to be discharged consists of right to know reasonably charges preferred, right to meet charges with witnesses and evidence, and right to have aid of counsel. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

If no statement of charges made against police officer are given him, nor any notice of any hearing having been given are accorded him, his removal is illegal and of no force or effect. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

Where mayor wrote registered letter to police officer enclosing accusation and advising him he was suspended, and officer signed delivery receipt therefor, officer was not properly "served" within rules of civil service commission requiring service in manner prescribed for service of civil process. *Schultz v Paseo* (1951) 39 Wn 2d 262, 235 P2d 168.

Special appearance in which accused police officer objects to jurisdiction of civil service commission on ground that there has been no service of accusation on him, is not waived by subsequent defense on merits. *Schultz v Paseo*

co (1951) 39 Wn 2d 262, 235 P2d 168.

5. JUDICIAL REVIEW

Where there is some competent evidence to sustain action of civil service commissioners in discharging policeman, its weight and sufficiency cannot be inquired into on appeal. *State ex rel. Boltin v Cotterill* (1923) 125 Wn 533, 216 P 851.

Where civil service commission exonerates police officer from charge given by chief of police for his discharge, but sustains his dismissal "for the good of the service," courts cannot review action, where there was no arbitrary action in receiving or refusing to receive evidence. *Bridges v Patterson* (1925) 135 Wn 436, 237 P 998.

On removal of police officer within classified civil service, in which appointing power has filed written statement of reasons for removal, on charges that cannot be said to be utterly frivolous, after full opportunity to be heard, and in which there was competent evidence tending to prove charges, courts will not inquire into weight or sufficiency of evidence. *State ex rel. Price v Seattle* (1944) 20 Wn 2d 17, 145 P2d 286.

Neither trial court nor supreme court can substitute its judgment for independent judgment of civil service commission in dismissing policeman. *State ex rel. Perry v Seattle* (1966) 69 Wn 2d 816, 420 P2d 704.

6. — SPECIFIC INSTANCES

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service

removed for any reasons stated in the written accusation. *Vancouver v Jarvis* (1969) 76 Wn 2d 110, 455 P2d 591.

4. — NOTICE AND OPPORTUNITY TO BE HEARD

Where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, though irregular in some respects, did not invalidate order of discharge. *State ex rel. Miller v Tacoma* (1934) 177 Wn 689, 33 P2d 88.

"Opportunity to be heard" required to be given civil service employee sought to be discharged consists of right to know seasonably charges preferred, right to meet charges with witnesses and evidence, and right to have aid of counsel. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

If no statement of charges made against police officer are given him, nor any notice of any hearing having been given are accorded him, his removal is illegal and of no force or effect. *Luellen v Aberdeen* (1944) 20 Wn 2d 594, 148 P2d 849.

Where mayor wrote registered letter to police officer enclosing accusation and advising him he was suspended, and officer signed delivery receipt therefor, officer was not properly "served" within rules of civil service commission requiring service in manner prescribed for service of civil process. *Schultz v Pasco* (1951) 39 Wn 2d 262, 235 P2d 168.

Special appearance in which accused police officer objects to jurisdiction of civil service commission on ground that there has been no service of accusation on him, is not waived by subsequent defense on merits. *Schultz v Pas-*

Note 6

co (1951) 39 Wn 2d 262, 255 P2d 168.

5. JUDICIAL REVIEW

Where there is some competent evidence to sustain action of civil service commissioners in discharging policeman, its weight and sufficiency cannot be inquired into on appeal. *State ex rel. Boltin v Cotterill* (1923) 125 Wn 533, 216 P 851.

Where civil service commission exonerates police officer from charge given by chief of police for his discharge, but sustains his dismissal "for the good of the service," courts cannot review action, where there was no arbitrary action in receiving or refusing to receive evidence. *Bridges v Patterson* (1925) 135 Wn 436, 237 P 998.

On removal of police officer within classified civil service, in which appointing power has filed written statement of reasons for removal, on charges that cannot be said to be utterly frivolous, after full opportunity to be heard, and in which there was competent evidence tending to prove charges, courts will not inquire into weight or sufficiency of evidence. *State ex rel. Price v Seattle* (1944) 20 Wn 2d 17, 145 P2d 286.

Neither trial court nor supreme court can substitute its judgment for independent judgment of civil service commission in dismissing policeman. *State ex rel. Perry v Seattle* (1966) 69 Wn 2d 816, 420 P2d 701.

6. — SPECIFIC INSTANCES

Sufficiency of evidence on which chief of police of city discharged police officer for stated offense of offering to release from custody certain persons, whom he had arrested for gambling, on payment to him of certain sum of money, and evidence on which civil service

commission confirmed act of chief of police, will not be reviewed by court on writ of error, where city vested in such officers exclusive authority to discharge employees, and reason for discharge being sufficient. *Ford v Seattle* (1921) 117 Wn 55, 200 P 568.

On certiorari to review discharge of patrolman by civil service commission of city, superior court had power to reverse discharge for offenses of supplying information to federal secret service agent concerning conduct of federal employee and of violation of rule of police department for which patrolman had been suspended, where record showed that commission acted arbitrarily, though city charter provided that its decision should be final. *State ex rel. Mowre v Civil Service Com.* (1934) 178 Wn 325, 34 P2d 873.

Judgment sustaining action of civil service commission in dismissing police officer will be affirmed, where it appears that he was charged with insubordination and offensive conduct toward his superior officers, he was granted hearing before commission at which time he was represented by counsel, he heard witnesses testify against him and introduced evidence on his own behalf, and evidence sustained charges and justified action of commission in dismissing him. *State ex rel. Schuster v Matthiesen* (1946) 24 Wn 2d 590, 166 P2d 839.

City police officer refusing to take advantage of offer by city's attorney to continue hearing before city civil service commission on charges against officer, so that he could meet new evidence of misconduct not referred to in bill of particulars furnished by city public safety commissioner, waived right to complain of intro-

Note 6

duction of such evidence on appeal rel. Schussler v Matthiesen (1963) 24 Wn 2d 590, 166 P2d 839. from judgment sustaining his dismissal by commission. State ex

FORMS

Complaint to Civil Service Commission Regarding Conduct of Police Department Employee

[Caption]

To: Civil Service Commission, City of ..., State of Washington.

The undersigned, ..., hereby files a complaint with the above entitled Civil Service Commission, regarding the conduct of one ..., a duly appointed member of the police department of the City of ..., State of Washington, in that said ..., committed the following acts: ;

Dated ..., 19... .

...

Notice by Civil Service Commission to Police Department Employee as to His Removal or Suspension from Service

[Caption]

To: ...

A complaint having been filed against you with this commission on ..., 19..., by ..., wherein the said ... accused you of performing the following acts on or about ..., 19... ;

And it appearing that such conduct constitutes a violation of Revised Code of Washington Section 41.12.080 in that ...;

You are hereby notified that you are ... [removed or as the case may be] from the service of the police department of the City of ..., State of Washington.

Dated ..., 19... .

... Chairman

Demand by Police Department Employee Charges Filed Against

[Caption]

To: Civil Service Commission, City of ... ton.

The undersigned, having been removed from the police department of the City of ..., pursuant to an order of the Civil Service Commission on ..., 19..., hereby, pursuant to the Code of Washington Section 41.12.090, demand charges relative to a complaint filed against me by one ...

Dated ..., 19... .

Notice of Hearing on Charges Filed Against

[Caption]

To: ...

You are hereby notified that pursuant to the investigation of the charges filed against you with this Commission on ..., 19..., a public hearing will be held on ... o'clock ... m., in the offices of this Commission on ..., 19... .

Dated ..., 19... .

Order of Commission Affirming or Disaffirming of Police Department Employee

[Caption]

This Commission, after due and proper notice and investigation by public hearing held on ... filed against one ..., a member of the police department of the City of ..., State of Washington, by one ... on ..., 19..., alleging that the said ... committed the following acts: namely: ... and said Commission having affirmed the charges presented by complainant and having heard testimony from ... and having heard argument of ...

**NEW MEXICO
STATUTES
1978**

ANNOTATED

**Chapter 29:
Law Enforcement**

**Pamphlet 49:
29-1-1 through 29-12-4**



1979 REPLACEMENT PAMPHLET

Pamphlet 49 includes laws enacted through the First Regular Session of the Thirty-Fourth Legislature (1979) and annotations through 590 P.2d 1391, 438 U.S. 421, 551 F.2d 1346, 464 F. Supp. 393, 80 F.R.D. 751 and 1979 Op. Att'y Gen. No. 79-13.

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

29-2-9. Probationary period; length; permanent commission; salary.

All new appointments as members of the New Mexico state police shall be for a probationary period of two years. During such probationary period such new members may be removed or suspended at the discretion of the chief of the New Mexico state police. At the end of two years of satisfactory service and upon recommendation of the chief and with concurrence of the New Mexico state police board, the appointee may receive a permanent commission as a member of the New Mexico state police. However, the probationary period may be extended beyond a two-year period upon the recommendation of the chief with the concurrence of the board.

The salaries of all members of the New Mexico state police, probationary and permanent, and that of the chief shall be fixed by the board.

History: 1941 Comp., § 40-209, enacted by Laws 1941, ch. 147, § 9; 1953, ch. 80, § 2; 1953 Comp., § 39-2-9; Laws 1977, ch. 257, § 25; 1979, ch. 202, § 20.

The 1979 amendment substituted "chief" for "director" in three places, inserted "and with concurrence of the New Mexico state police board" and "as

a member of the New Mexico state police" in the third sentence in the first paragraph, added the last sentence in the first paragraph, substituted "board" for "secretary" at the end of the section and made other minor changes.

29-2-10. Promotions.

All promotions in the New Mexico state police to the rank of sergeant shall be made after written examinations; provided, however, that on such examination for the rank of sergeant, the record of the party seeking promotion as a member of the New Mexico state police and his length of service shall be given a weight of forty percent in such examination. All promotions above the rank of sergeant shall be made by the chief after concurrence and approval by the New Mexico state police board. The ranks of sergeant, lieutenant and captain shall be permanent unless established as an exempt rank by the chief with the concurrence of the board. All promotions above the rank of captain are by executive appointment of the chief with concurrence of the board and such persons shall serve at the pleasure of the chief with the concurrence of the board.

History: 1941 Comp., § 40-210, enacted by Laws 1941, ch. 147, § 10; 1953 Comp., § 39-2-10; Laws 1979, ch. 202, § 21.

The 1979 amendment added the catchline, inserted "to the rank of sergeant" and "for the rank of ser-

geant" in the first sentence, inserted "New Mexico" preceding "state police" near the middle of the first sentence and added the second, third and fourth sentences.

29-2-11. Disciplinary proceedings.

No member of the New Mexico state police holding a permanent commission shall be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer, and only on specific written charges filed with the New Mexico state police board with timely and adequate notice thereof to the person charged, and after a hearing on such charges by the board. The person so charged has the right to be represented by counsel at such hearings. A complete record of the hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, hearing shall be made and, upon request, a copy thereof shall be furnished to the person charged. Such person may require that the hearing be public. In the event the board determines that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, such person may appeal from the decision of the board to the district court of the district wherein the alleged cause or any one of the alleged causes for the proceeding arose. Such appeal shall be filed within twenty days after the decision of the board is rendered and the court shall determine promptly whether there is substantial

evidence to support the board's action and dispose of the appeal accordingly. Such determination shall be made on the basis of the record except that, for cause shown, the court shall permit either the board or the person charged to introduce new evidence; provided, however, that the chief of the New Mexico state police may suspend members of the New Mexico state police for disciplinary reasons for periods of not to exceed thirty days. Any member holding a permanent commission thus suspended by the chief shall have the right to have such suspension reviewed by the board, but no further review or appeal shall be allowed.

History: 1941 Comp., § 40-211, enacted by Laws 1941, ch. 147, § 11; 1953, ch. 80, § 3; 1953 Comp., § 39-2-11; Laws 1970, ch. 5, § 1; 1977, ch. 257, § 27; 1979, ch. 202, § 22.

The 1979 amendment inserted "New Mexico" preceding, and deleted "division" following, "state police" in the first sentence and preceding "may suspend" in the ninth sentence, substituted "New Mexico state police" for "advisory" preceding, and deleted "and the secretary" following, "board" near the middle of the first sentence, deleted "advisory" preceding, and "and the secretary" following, "board" at the end of the first sentence, substituted "board" for "secretary" in the fifth, seventh, eighth, ninth, and tenth sentences, substituted "chief" for "director" in the ninth and tenth sentences, substituted "New Mexico state police" for "division" preceding "for disciplinary reasons" near the end of the ninth sentence and made other minor changes.

Compiler's note. — The fifth and sixth sentences inadvertently repeat preceding and following provisions and first appeared in Laws 1970, ch. 5, § 1, which amended this section.

Incompetence includes physical inability to perform. — Incompetence includes physical inability to perform, which inclusion fits in with the pattern and purpose of the statutory plan. A termination or removal for physical unfitness is no less final than one for another form of incompetence. *Tafoya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

Physical inability to perform constitutes voluntary resignation not governed by section. — Request by officer injured in line of duty who had used all his sick leave for leave of absence which was improper under Rule 7, regulatory rule promulgated by state police board, issued pursuant to 29-2-22 NMSA 1978, and his physical inability to perform the functions of his job as senior patrolman, constituted a voluntary resignation, not a termination governed by this section. *Budgher v. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

Officer must first pursue administrative remedy. — Police officer who was wrongfully dismissed and who claimed salary and other benefits must first pursue them administratively. *Tafoya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

29-2-12. Oath.

All members of the New Mexico state police and the New Mexico state police board shall take the oath of office required of all state officials.

History: 1941 Comp., § 40-212, enacted by Laws 1941, ch. 147, § 12; 1953 Comp., § 39-2-12; Laws 1977, ch. 257, § 28; 1978, ch. 82, § 3; 1979, ch. 202, § 23.

The 1978 amendment deleted "and bond" at the end of the sentence, and "and the director and such other members of the state police or clerical employees as the state police division may direct shall give bond in such amount as the division shall direct for the

Transcript expense may be incurred by board. — Such expense as is necessary may be incurred to enable the board to make a factual determination in a disciplinary proceeding. It would be absurd to vest disciplinary power in the board and then hamstringing such proceedings by refusing to pay the necessary expenses thereof. For this reason, if in their discretion the board feels a copy of the transcript is necessary, such expenditure is permissible. 1957-58 Op. Atty Gen. No. 58-212.

No moneys expended for transcript expense in appeal. — If a transcript is necessary for the board to weigh disciplinary action, the transcript expense would be expendable in the same fashion as the board might incur a different type of expense for the same purpose. On the other hand, if the expense of the transcript is to be incurred wholly or partially to assist in the appeal of a judgment rendered personally against a state policeman, then and in that event such moneys cannot be expended either from the budgeted line item of "professional services" or from any other public moneys appropriated to the department. 1957-58 Op. Atty Gen. No. 58-212.

Board is required to meet statutory procedures when it desires to terminate office, and if this is not done consequently the severance from service is short of statutory right. *Tafoya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

Where doubts as to right to procedural safeguards. — Any doubt as to the right to procedural safeguards should be resolved in the officer's favor unless the right to remove at will or pleasure is clearly expressed. *Tafoya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

No hearing required when reduction in rank. — The procedures of advancement, not a promotion, and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief to shift key personnel to positions where their interest and ability are used to best advantage, without the necessity of a hearing by New Mexico state police board. *Wimberly v. New Mexico State Police Bd.*, 81 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

C.J.S. reference. — 81A C.J.S. States § 110.

faithful performance of their duties" at the end of the section.

The 1979 amendment inserted "New Mexico" preceding, and "and the New Mexico state police board" following, "state police" near the beginning of the section.

C.J.S. reference. — 81A C.J.S. States § 91.

29-2-21. Details.

The governor of New Mexico may from time to time detail all or any part of the New Mexico state police to such part of the state as in his judgment may be necessary to bring about proper law enforcement in the state to handle disturbances or to investigate specific law violations.

History: 1941 Comp., § 40-220, enacted by Laws 1941, ch. 147, § 20; 1953 Comp., § 39-2-20; Laws 1977, ch. 257, § 36; 1979, ch. 202, § 30.

The 1979 amendment deleted "order the secretary of the criminal justice department to" preceding "detail all or any part" near the beginning of the section.

29-2-22. Rule-making power; rules to establish standards of conduct.

The New Mexico state police board shall have authority to make and promulgate rules and regulations for the purpose of carrying out the provisions of Sections 29-2-1 through 29-2-29 NMSA 1978. The New Mexico state police board shall establish by rules, from time to time, standards of conduct for members of the New Mexico state police and a copy thereof shall be delivered to each such member and displayed at each station of the department. Such rules shall be filed pursuant to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1941 Comp., § 40-221, enacted by Laws 1941, ch. 147, § 21; 1953, ch. 80, § 5; 1953 Comp., § 39-2-21; Laws 1977, ch. 257, § 37; 1978, ch. 82, § 5; 1979, ch. 202, § 31.

The 1978 amendment substituted "state police director, with the approval of the secretary of the criminal justice department" for "state police director" near the beginning.

The 1979 amendment substituted "board" for "director" and "29-2-29" for "29-2-28" in the first sentence, in the second sentence, substituted "board" for "division" preceding "shall establish," substituted "New Mexico state police" for "division" near the middle of the sentence and substituted "department" for "division" at the end of the sentence and made other minor changes.

Board's authority to make rules controlled by statute. — Authority of the police board to promulgate rules and regulations must be found in and is limited by statute. Such authority is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Winston v. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

Agency's authority includes express and implied powers granted. — It is a fundamental principle of administrative law that the authority of an agency is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972).

Temporary rank adjustments within scope of powers. — Where New Mexico state police board has adopted a regulation providing that "all ranks above captain will be appointments and not permanent," and the officers who hold these ranks are given additional salary and emoluments, but these ranks, according to the record, are considered by the board and the department to be temporary, plaintiff's adjustments in rank from captain to major and major to lieutenant colonel were not promotions as such but

were temporary advancements within the framework of administration of the New Mexico state police and both chief of police and the board acted within the scope of their authority under the laws of the state of New Mexico in adjusting plaintiff's rank from lieutenant colonel to major and from major to captain. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

As well as regulation allowing director to shift key personnel. — The procedures of advancement and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief of police to shift key personnel to positions where their interest and ability are used to best advantage. *Wimberly v. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

No authority for rule requiring mandatory retirement after 30 years. — There is no delegated authority for the state police board to promulgate a rule requiring mandatory retirement after 30 years of service; such rule would be unreasonable, arbitrary and conflict with the retirement by age requirement of 29-2-6 B NMSA 1978. 1967 Op. Att'y Gen. No. 67-72.

And such rule is invalid. — State police board regulation providing for involuntary retirement of all police officers who had completed 30 years of service, even where such officers had not reached mandatory retirement age, exceeded statutory authority of the board and therefore was invalid. *Winston v. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

Effect of using all of sick leave. — Rule 7 of regulation promulgated by state police board filed pursuant to this section makes it clear that under no circumstances can an officer who was injured in line of duty but who has used up all of his sick leave be granted a leave of absence from the police department, and request for such leave constitutes a voluntary resignation. *Budagher v. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

29-2-23. Repealed.

Repeal. — Laws 1975, ch. 202, § 53, repeals 29-2-23 NMSA 1978, relating to the transfer of powers and

duties in the bureau of identification of the department of justice to the technical services bureau of the

STATE OF ALASKA
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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1983

SUBJECT: Individual rights of peace officers
(HB 200)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel *JHL*

Steve Cramer of your staff has asked our office for a sectional analysis of HB 200 ("An Act relating to individual rights of peace officers").

HB 200 addresses the rights of a peace officer when subjected to an investigation that can result in four different types of sanctions. Those sanctions are set out in descending order of severity starting with conduct of a peace officer which would subject the peace officer to criminal prosecution (sec. 18.65.530); followed by sanctions in the form of punitive action (sec. 18.65.531) and disciplinary action (sec. 18.65.532) against a peace officer by the employer of the peace officer instead of criminal prosecution; and a final sanction in the form of civil liability of the peace officer (sec. 18.65.533).

The rights of a peace officer during an investigation with those four different possible outcomes may vary slightly according to the severity of the outcome. For example, under sec. 18.65.530, a peace officer subject to criminal action is entitled to all of the rights granted the accused under law, but is also granted specific rights set forth for the benefit of a peace officer subjected to punitive action.

Sec. 18.65.531 establishes specific rights for a peace officer subject to punitive action that might not otherwise be available because the peace officer would not be charged with a criminal offense entitling him to the full panoply of constitutional rights. The specific rights are set out in eleven paragraphs as follows:

March 18, 1983

(1) The peace officer has a right to be informed of the nature of the investigation if instituted by the employing agency, or a formal written complaint if instigated by a complainant. The peace officer must also be informed of his rights under this section.

(2) The peace officer is entitled to have a witness or other person present to participate on behalf of the peace officer.

(3) This paragraph ensures that the interrogation or interview would not be an extreme imposition on the peace officer.

(4) Under this paragraph the peace officer would be entitled to compensation if interviewed while not on duty.

(5) This paragraph ensures that the peace officer would be free from harrassment during the interview and establishes that punitive action may not be taken against the peace officer for failure to answer questions unless he is informed that such failure could result in punitive action. The peace officer can exercise the right to remain silent if the peace officer's alleged conduct would be criminal.

(6) The peace officer may record the interrogation or interview and have access to the employer's tape recording, if any is made.

(7) This paragraph guarantees access to transcripts and other relevant information, including information in the peace officer's personnel file, if not confidential.

(8) This paragraph addresses the right of the peace officer to review adverse material before it is placed in the peace officer's personnel file and affords the peace officer an opportunity to respond to such material and have the response included in the peace officer's personnel file.

(9) The peace officer may not be compelled to submit to a polygraph examination.

(10) Certain personal information may not be coerced from a peace officer.

(11) The peace officer's locker space or other space assigned to the peace officer is free from unlawful search and seizure.

Under sec. 18.65.532 a peace officer subjected to disciplinary action has the same rights specified for a peace officer subject to more severe penalties in the form of punitive action, as outlined in the above eleven paragraphs. In addition, the peace officer has the right to have the personnel file purged of disciplinary proceeding matters within one year and is presumed to be innocent unless proven otherwise.

Under sec. 18.65.533 if a peace officer is subject to possible civil liability, the peace officer may exercise those same rights set out in the above eleven paragraphs and is entitled to have an attorney present at the peace officer's expense during the investigation.

Under sec. 18.65.534 a peace officer may not be subjected to any reprisals for exercising rights specified in this bill.

Section 2 of HB 200 amends AS 23.1(.037(b) to provide that a police department may polygraph an applicant for employment but may not require a polygraph of an employee.

JHL:ljb
10/010

M E M O R A N D U M

March 15 , 1983

TO: Committee on Judiciary File
FROM: Staff
SUBJ: Requested Amendment to HB 200, "An Act relating to individual rights of peace officers."

A M E N D M E N T # 1

page one (1); line seventeen (17) and eighteen (18);
delete:

" in addition to the rights specified in AS 18.65.531"

ANALYSIS OF SB 115 AND HB 200

- Sec. 18.65.531(1) (a) When a person is arrested by warrant or summons, a copy of the complaint is given to suspect.
- (b) If not, arraignment is held within 24 hours and at that time he/she is advised of charges against him/her.
- (c) At a minimum, when placed under arrest, an individual is informed verbally of charges.
- (d) At a bail hearing, immediately after arrest, circumstances surrounding alleged offense are told to a magistrate/judge in front of the accused and on tape.
- (e) If suspect is being interviewed prior to arrest, person is advised of the nature of the offense which promulgated the interview.
- (2) (a) Right to have an attorney as per mirandar.
- (b) Right of an employee to have a representative present in an interview which could lead to punitive action as per Weingarten, 420 VS 251 (1975) and Material Research Corporation, 262 NLRB 122 (1982).
- (3) (a) Unless seriousness of offense requires otherwise, it is standard procedure to conduct an interview with suspect during the day or directly after work.
- (4) Any employer that calls an employee in to work is required to compensate him/her under the Federal and State Wage and Hour Laws (although the state and political subdivisions are currently exempt).
- (5) All suspects are allowed to take the fifth amendment and employees are not required to answer questions put to them by an employer in an interview. This section gives peace officers less rights in that it allows for punitive action to be taken if the peace officer fails to answer questions unless the conduct would be criminal.

- (6) Same as criminal rules of discovery of evidence.
- (7) Same as criminal rules of discovery of evidence.
- (8) If a person is a suspect in a case and is found to be innocent, no record is kept in the state law enforcement computer. A peace officer, on the other hand, can have allegations put into his/her personnel file before it is determined that he/she is innocent.
- (9) No other persons are required to take a polygraph and polygraph results, if voluntarily given, are not admissible in court.
- (10) A peace officer is granted less rights than an other person with regard to potential conflict of interests, otherwise, the rights are subject to rules of discovery of evidence, the same as any other individual.
- (11) These rights for all other persons exist and cannot be abridged unless a valid search warrant is obtained.

Sec. 18.65.532 (3) All persons are presumed innocent until proven guilty.

TAX RULINGS

With Pocketbook Impact—

IRS powers. Taxpayers who take a "who will ever know" attitude in filling out tax returns need to note the awesome powers granted the Internal Revenue Service to protect federal income.

When the IRS denied many deductions claimed by Daniel Leimel and demanded \$2,287 in added taxes, Leimel petitioned his case to the Tax Court. The IRS then proposed a conference to let him present his evidence. Leimel appeared but offered only a few miscellaneous receipts. He ignored other IRS requests for evidence and spurned a Tax Court order setting a deadline for production of proof. At trial recently, he tried to present evidence allegedly substantiating his deduction claims. Now, in a brief decision, the court has excluded that evidence and sided with the IRS.

Commuting. A worker may manage to deduct some of his cost incurred in driving to work in order to carry the tools of his trade, but only if he can prove costs that he would not have without the need to transport tools.

Alonzo McLaughlin, Jr., obviously needed to drive his car in order to take 75 pounds of tools. And in court he argued that, otherwise, he would have taken the Long Island Railroad to work. So he deducted the difference in cost. But now the Tax Court has ruled that McLaughlin failed to show that he drove to work only because of his need to carry tools.

Note: Even if he had convinced the court, his deduction would be limited to the difference between his driving cost with the tools and driving without them.

Pregnancies. Sick-leave pay during normal pregnancies is no longer exempt from Social Security payroll taxes, the IRS points out in a new ruling that implements tax amendments recently enacted by Congress. Effective January 1 of last year, such payments during the first six months of absence from work are taxable.

Requests for citations should be addressed to Reader Service, 2300 N Street, N.W., Washington, D.C. 20037.

NEWS-LINES®

Court and Government Decisions With Impact on Business, Employees, Consumers

CHEMICAL HAZARDS to unborn children must be amply demonstrated before fertile women can be barred from certain jobs, decides a U.S. appeals court in remanding a case for further consideration. The policy of the Olin Corporation in excluding women of childbearing capacity from areas where hazards to fetuses may exist must be objectively justified, says the court. The company must show, it concludes, that support for its view is so considerable within the scientific community that an informed employer could not responsibly fail to believe that its opinion might be the accurate one.

A SEX-BIAS finding does not entitle a victim to automatic back pay or promotion, finds a U.S. appeals court. A female school administrator, not considered for an opening because of her sex, is denied back pay and promotion, because the Greenwood, S.C., school district shows that two other women would have been selected over her.

A COURT ORDER specifying how the Labor Department must carry out an affirmative-action program is denied because a U.S. district court says it cannot second-guess the department's discretionary conduct. The order was sought by black workers unhappy with government handling of an affirmative-action program for the Philadelphia construction industry. While not enforced to the degree the workers would have wished, the record does not justify judicial intrusion, holds the court.

DISABILITY BENEFITS may not be ended because an employee's union goes on strike, decides the National Labor Relations Board. Conoco's contract with employees ruled out disability payments during strikes. But the NLRB rejects this, determining that employees on disability before the strike are entitled to payments until their disability ends or benefits are exhausted.

DISCLOSURE LAWS requiring public access to family finances of non-policymaking city employees are unconstitutional, holds a U.S. district court. A challenge to a New York City disclosure law by firefighters and police officers is upheld. The court finds that "Americans do not lose their right to privacy by accepting public employment." It adds that at times reasons for the public to know may exist, but these must be stated before information is dispensed.

FAILURE TO REPORT that a hospital patient took the wrong medicine is not ground for a nurse's dismissal, finds an arbitrator. A patient nearly died after a nurse, who knew he had been given the wrong medication, failed to mention the mix-up. Noting favorable endorsements from three doctors, the arbitrator rules that the nurse be reinstated but that any subsequent serious error will justify her discharge.

PUNITIVE DAMAGES are recoverable from the estate of a dead person, decides the West Virginia Supreme Court of Appeals. While traditionally courts deny such damages because "the dead cannot be punished by earthly judgment," the state court finds punitive damages serve other important functions, for example, providing benefits to injured parties and serving as a deterrent to others.

REVISED PAY and work rules at federal projects are struck down by a U.S. district court. The changes ordered by the administration would have allowed 2 semiskilled "helpers" for every 3 journeymen at federal projects and excluded wage rates at federal work sites or adjacent metropolitan areas as factors in determining rates for rural areas. The court, however, allows a change in the criteria for "prevailing wage rates"—from wages being paid to at least 30 percent of workers to wages being paid to a majority of workers. The revisions had been designed to save 600 million dollars annually.

Conclusions expressed here are based on decisions of courts, government agencies and Congress. For reasons of space, these decisions cannot be set forth in detail. On written request, U.S. News & World Report will refer readers to the basic material.

HB 200 or SB 115

AS 18.65.530
AS 18.65.531 a1
AS 18.65.531 a2
AS 18.65.531 a3
AS 18.65.531 a4
AS 18.65.531 a5
AS 18.65.531 a6
AS 18.65.531 a7
AS 18.65.531 a8
AS 18.65.532 a2
AS 18.65.532 a3
AS 18.65.533 1&2
AS 18.65.534 1&2

CURRENT A.P.D. CONTRACT

Article V Sec. 1 & 1g7
Article V Sec. 1g3
Article V Sec. 1b
Article V Sec. 1g1
Article V Sec. 1g2
Article V Sec. 1g5
Article V Sec. 1g6
Article V Sec. 1g6
Article V Sec. 1h
Article V Sec. 1h
Article V Sec. 1b
Article V Sec. 1g5(a)
Article V Sec. 1e

- Sec 18.65.530 If the complaint against the officer causes criminal action, the officer has all the rights afforded any other defendant in a criminal investigation
- Sec 18.65.531a When the investigation is internal or criminal charges could evolve and punitive action may be taken then the following shall apply:
- (1) The officer shall be informed of the allegation or given a copy of the complaint when first interviewed.
 - (2) The officer can have a person of their choice present at each state of the investigation.
 - (3) Interview will be during the officer's on duty time unless the seriousness demands otherwise.
 - (4) If the officer is called in when off duty, compensation will be given at the regular rate.
 - (5) If the allegation is criminal in nature the officer has the right to remain silent. If the allegation is not criminal and if founded would result in employing agency internal punitive action; days off, written letter, etc., the officer will be informed that to not cooperate with the investigation in itself could result in punitive action, but the officer will not be subject to adverse language.
 - (6) Either party has the right to tape record any interview and both will have access to those tapes.
 - (7) The officer can have a copy of all material within the investigation except that of confidential nature.
 - (8) Adverse information must be signed by the officer and a copy provided to the officer prior to that being placed in the officer's personnel file. The officer has 30 days to file a response. All unfounded complaints or information must be promptly removed from the officer's personnel file.
 - (9) If the officer declines a polygraph examination in any investigation, this cannot be used or held against the officer and no record of that can be kept.
 - (10) Personal matters of the officer's will remain so unless the employing agency is looking into possible conflict of interest with respect to official duties and all matters are subject to rules of discovery of evidence.
 - (11) The right of privacy and the expectation of such with regards to assigned lockers, briefcases and sole use areas is the same as assigned school lockers, gym lockers, and a student's book bag.
- Sec 18.65.532b Action taken by the employing agency which is noncriminal in nature; days off, dismissal, reprimand, etc.

Sec 18.65.532a When a complaint filed if found to be true will result in only disciplinary action. No criminal.

- (1) The officer has all the rights in Sec 18.65.531.
- (2) Any record of disciplinary action must be removed after one year.
- (3) The officer is presumed innocent until guilt is proven.
- (3b) If the complaint is founded, disciplinary action may be taken by the employing agency against the officer but does not apply to minor on the spot admonishments.

Sec 18.65.533 If the officer under investigation may be subject to civil liability the officer can:

- (1) Exercise the rights in Sec 18.65.531.
- (2) Have at the officer's expense, an attorney present in all investigative steps.

Sec 18.65.534 No officer will suffer reprisals or be in anyway disadvantaged for exercising any rights in Sec 18.65.531 thru 18.65.533:

- (1) As evidence against the officer in any proceedings.
- (2) Cannot be used to change the officers work schedule, wages or working conditions.

Sec 2 AS 23.10.037b Excludes peace officers from polygraph examinations after being hired and employed by any agency. Still allows for preemployment polygraph examinations.

Individual Rights
Under

SB115/HB200

SEC 18.65.531a1

SEC 18.65.531a2

SEC 18.65.531a3

SEC 18.65.531a4

SEC 18.65.531a5

SEC 18.65.531a6

SEC 18.65.531a7

SEC 18.65.531a8

SEC 18.65.531a9

SEC 18.65.531a10

SEC 18.65.531a11

SEC 18.65.532.3

SEC 18.65.533.2

SEC 18.65.534

Prisoner Rights
Under

7AAC 60.400-505

7AAC 60.410C

7AAC 60.420 b4C

7AAC 60.415 Uses working days

7AAC 60.425 Uses working days

Prisoner is not compelled to
answer questions.

7AAC 60.420 b4C

Right of Appeal

7AAC 60.465a

7AAC 60.480b

No Polygraph in any criminal
or infraction hearing.

Right of Privacy

Right of Privacy

7AAC 60.455

7AAC 60.440e

7AAC 60.480 c & h -- No execution
of punishment until appeals are
complete.

The following items are taken from 7 AAC 60.400 - 480 which governs DISCIPLINE of a prisoner in a state institution:

- 7 AAC 60.400 Prohibited conduct Major infractions are listed as homicide, rioting, etc.
High Moderate infractions are listed as fighting, stealing over \$100 value, sexual acts, etc.
Low Moderate infractions are listed as indecent exposure, stealing more than \$50 less than \$100 value, false statement, etc.
Minor infractions are listed as gambling, stealing or damaging state property under \$50 value.
It should be noted that those infractions contained in Low Moderate and Minor are same as misdemeanor crimes.
- 7 AAC 60.405 States that any infraction must be reported to the superintendent and that those of a Low Moderate or Minor nature may be handled by a staff member informally (non-criminal) or referred to the superintendent for formal action.
- 7 AAC 60.410 If formal disciplinary action is to be taken, a report is to be written citing the rule violated.
- 7 AAC 60.410 (c) A copy of the disciplinary report must be given to the prisoner no later than five working days after the infraction occurred.
- 7 AAC 60.410 (e) If no hearing is scheduled for the infraction, the prisoner is to be treated as not guilty and all reports are to be removed from his institutional file.
- 7 AAC 60.415 A prisoner must have 48 hour notice prior to his disciplinary committee hearing.
- 7 AAC 60.415 (c) After the notice of a hearing, the prisoner must inform the committee in writing of any witnesses or evidence he wishes to introduce.
- 7 AAC 60.420 (b4c) The accused prisoner or his advocate may call witnesses or introduce evidence.
- 7 AAC 60.420 (c2) The disciplinary committee must consider the evidence the prisoner or his advocate present.

- 7 AAC 60.425 (b) The accused prisoner can postpone his appearance before the disciplinary committee for two working days.
- 7 AAC 60.430 (a) The accused prisoner can present witnesses or evidence at any hearing.
- 7 AAC 60.440 (b) The staff advocate may be from correctional offices, institutional counselors or probation officers.
- 7 AAC 60.440 (e) The accused prisoner has a right to counsel in any hearing where felony prosecution may result. The felony prosecution is eliminated if the district attorney indicates in response to an injury under Section 460 of this chapter that no felony complaint will be filed.
- 7 AAC 60.455 A prisoner is presumed innocent of the infraction and the institution has the burden of establishing guilt.
- 7 AAC 60.460 The superintendent will notify the district attorney of any infraction which if found true would constitute a violation of a felony criminal statute.
- 7 AAC 60.465 If the prisoner is found to have not committed the infraction, the disciplinary report and any other documentation which mentions the incident must be removed from the prisoner's file.
- 7 AAC 60.470 Punishment: The disciplinary committee will impose at least one and may impose any or all the penalties in this section. Some examples are:
1. Reprimand
 2. Suspension of activities
 3. Confinement to punitive segregation

The following items are taken from 7 AAC 60.485 - 505 which govern SEGREGATION in a state institution:

- 7 AAC 60.485 A prisoner may be temporarily assigned to administrative segregation under different reasons, one of which is, the prisoner represents a substantial immediate threat to the security of the institution or requires protective custody.
- 7 AAC 60.485 (b) Prisoners assigned administrative segregation must be immediately informed of the reason.

7 AAC 60.485 (c) The prisoner will be granted a hearing no later than three days after he is placed in segregation.

7 AAC 60.485 (e) The prisoner is entitled to written notice at least 24 hours in advance of the hearing, can have a staff advocate at the hearing, offer evidence, present witnesses and cross examine witnesses.

EBEN H. LEWIS

2073 ARLINGTON DRIVE NORTH

ANCHORAGE, ALASKA 99503

February 1, 1983

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of evidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the lines suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

My 15 years on the bench strongly persuaded me that the indispensable component of an effective criminal justice system is a professional police organization. I feel that Anchorage is fortunate in having such an organization serving the community. Like any large organization there are morale and personality problems present in its continuing function, which I feel deserve attention. I have a good friend of many years' standing who is serving on the legislative committee of the Anchorage Police Officers Association, who tells me there is some dispute with management over a policy requiring officers to submit to a polygraph examination under certain circumstances, under pain of discharge from the force if he/she refuses. The Association is supporting a Peace Officers Bill of Rights which, if enacted by the Legislature, would bar such practise.

My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevent. I found that only a few jurisdictions

permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely swinging variations in results. It is patently unfair to require a police officer under investigation to submit involuntarily to a test like this, particularly after a highly stressful incident, such as shooting at a suspect, when the officer's emotions could substantially affect the result. I suspect that the APD policy requiring the test, in fact, may violate the 5th amendment of the U S Constitution. Any bold lawyer who suggests otherwise can't show an Alaska case supporting his position.

The polygraph does have useful functions, when voluntarily taken by suspects to assist in deciding if they should remain under suspicion, and also as a pre-hiring management tool in interviewing applicants for sensitive positions (including police officers). An officer under investigation might even wish to have a polygraph examination to assist with the investigation, and in clearing himself, but such uses involve no due process questions. I hope, if you have an opportunity to consider this question, you will give my comments careful consideration.

There are also other bills pending on other matters of concern to peace officers safety: HB 100 and companion SB 24, which includes causing physical injury to a public safety officer among the acts constituting (felony) third-degree assault. Also, HB 2, a sentence-enhancing proposal, provides for substantially increased sentence, without probation, if a person uses 'armor piercing' ammunition in a gun while committing any crime of violence. Badly needed legislation.

Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,



Eben H. Lewis



March 4, 1983

Mr. Jim Stirling
Anchorage Police Department
Employees Association
701 West 58th Avenue
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Native Caucus supports and endorses HB 200 and SB 115. We believe that no person should be discriminated against because of race, religion, or occupation. Individual protection under the law should be equal for all people.

The above endorsement was passed by vote of our membership on March 2nd, 1983, during a regularly scheduled meeting.

Please keep us informed of the progress of these pieces of legislation and if we can be of further assistance please do not hesitate to call me at 278-4787.

Sincerely,


Clifford A. Black
President

ANCHORAGE FIRE FIGHTERS UNION



LOCAL 1264
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
AFL-CIO

801 W. Fireweed, #102
ANCHORAGE, ALASKA 99503



3-10-83

TO: Members of the House Judiciary Committee

Dear Legislators,

As president of the 270 person Anchorage Firefighters Union I wish to inform you of the total support of our union for House Bill 200.

We believe that Peace Officers and other emergency responders should enjoy the same rights as other citizens, and should not be subjected to interrogations of a type that are not admissible for the very people these officers protect, at great personal risk. It is interesting to note that the Anchorage Fire Department in a current review of their personnel rules and regulations is proposing polygraph examinations for firefighters and paramedics, as well as support personnel working for the department.

In the interest of protecting the rights of all citizens of our state, I would strongly urge your support for the passage of HB 200 into law.

Sincerely,

John Kiewik, President
Anchorage Firefighters Union
Local 1264, IAFF



March 10, 1983

Mr. James Stirling
Anchorage Police Department Employees' Association
701 West 58th
Anchorage, Alaska 99502

Dear Mr. Stirling:

The Anchorage Crime Commission is pleased to inform you that the Board of Directors, at their March 7, 1983 meeting, unanimously voted to support HB200 and SB115, an act relating to individual rights of peace officers.

It is our belief that the constitutional right of due process should be afforded to every citizen and not be denied to peace officers because of their occupation.

You may use this letter of support to communicate the Anchorage Crime Commission's position on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read 'I. Olsonoski'.

I. "Ski" Olsonoski, Chairwoman
Anchorage Chamber of Commerce Crime Commission

cc: Board of Directors)
and) Anchorage Chamber of Commerce
Advisors to the Board) Crime Commission

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill 200 Date on Bill: February 14, 1983
 Title: An Act relating to individual rights of peace officers
 Sponsor: Bussell, Liska, Barnes, Szymanski & Lindauer
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----

2. Source of funds to offset fiscal impact of bill:

N/A

3. Assumptions:

N/A

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Guy Stinson
 Division: Labor Relations

Phone: 465-4404
 Date: February 22, 1983

Approved by Commissioner: Dora S. Rudd
 Department: Administration

Date: 5/14/83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT



Bill No: HB 200 Date on Bill: 2-14-83
 Title: An Act relating to individual rights of peace officers
 Sponsor: Bussell
 Requestor: HOUSE JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operatino				
Total	-0-	-0-	-0-	-0-

b. Revenues:

Revenue				
---------	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It the fore does not represent the final estimate of fiscal impact.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2-23-83

Approved by Commissioner: [Signature] Date: 3/1/83
 Department: Public Safety

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

SPONSOR: Rep. Bossell - H. Judiciary
 leg non-leg pub hear work sess inv hear
 SUBJECT: HB 200 - Rights of Piece
 MAILING ADDRESS: Officers

DATE TAKEN/BY 3/8 QAD
 T/C DATE/DAY Fri - 3/11
 TIME: 1:30-2:30 PM PACIFIC
~~12:30 1:30~~
~~11:30 - 12:30~~ YUKON
~~10:30 - 11:30~~ ALASKA
10:30 - 11:30 BERING

PHONE 4990 CONTACT Catherine Zaleski

SITES PARTICIPATING:

- | | | | | |
|--|--|--|---|--|
| <u>North Slope</u>
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright

ALL ALASKA
ALL LIO's
WASH., D.C. | <u>NANA</u>
* Ambler
* Kotzebue
Noorvik
Selawik

<u>Norton Sound</u>
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet | <u>Bristol Bay</u>
<u>Aleutians</u>
* Bethel
* Dillingham
St. Paul
Sard Point
** Unalaska

<u>Interior</u>
* Delta Junction
* Fairbanks
** Fort Yukon
Galena | <u>South Central</u>
* Anchorage
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez | <u>Southeast</u>
Cordova
Haines
Hoonah
* Juneau *
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat |
|--|--|--|---|--|

Chairing Site/Person JUN - Rep Bossell Special Offnet Location/Phone# NA
Catherine Zaleski
 Signature of Sponsor/Contact Person Date

-----TELECONFERENCE OFFICE USE ONLY-----

- 2-Wire 4-Wire _____
 Bridges: #1 (206)447-3620
 #2 (206)447-1554
 #3 (206)447-3627
 #4 (206)447-3470
 Bridge operator (800)426-3232
 JMU trouble #'s 596-1162
 445-3816
- Publicity:
 _____ Local calls/list attached
 _____ Media/P.S.A. attached
- Can expect:
 _____ Longday back-up
 _____ Bill summary
 _____ Participants list

POST TELECONFERENCE NOTES
 Site/Date: _____
 Local Moderator _____
 T/C Started: _____ T/C Ended _____
 T/C Recorded? _____
 Testified/Participated: _____
 Unable to Testify: _____
 Observers: _____
 Total Number _____

Red Henderson Palmer Police Chief

MSG 83-00014740 PRTY 1 03/11/83 13:27:51 ORIG: LA08 IN= 0007 OUT= 0004
FROM: BARBARA IN ANC TO: TOM IN JNU
TARGET: LJ03 SURJ: (H) JUDICIARY, T/C, 3/11 PAGE 0001

TO TESTIFY IN ANCHORAGE:

1. RICHARD POTTER, ANCHORAGE POLICE DEPT. EMPLOYEES ASSOCIATION
2. R.B. ZAKRZEWSKI, APEA, EPIC
3. JAMES STIRLING, 625 C STREET, ANC.,
4. JOHN R. YARBOR, APEA ANCHORAGE EPIC, CHUGIAK, AK
5. HOLLI FLOOG, APEA, 701 W. 58TH , ANCHORAGE, 99502, 561-1158

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 200 Date on Bill: 2-14-83
 Title: "An Act relating to individual rights of peace officers."
 Sponsor: Representative Bussell
 Requestor: House Finance Committee

1. Estimated fiscal impacts on:

a. Expenditures:

		(Thousands of Dollars)			
		FY 83	FY 84	FY 85	FY 86
Capital					
Operating					
Total					

b. Revenues:

Revenue					
---------	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. ASSUMPTIONS: This bill gives peace officers who are the subject of internal disciplinary investigations broad substantive and procedural rights, even during investigations of conduct which may constitute a crime. Passage of the bill will seriously impair a police agency's ability to conduct investigations of police officers who are accused of criminal behavior. Requirements such as advance written notice of the commencement of an investigation and giving the officer evidence as it is gathered during the course of the investigation would substantially interfere with the course of an investigation. It is estimated that passage of the bill would have little or no fiscal impact on the Department of Law, other than it would preclude criminal investigations in situations where an investigation would be instituted under current law.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Daniel W. Hickey, Chief Prosecutor
 Division: Department of Law, Criminal Division

Phone: 465-3428
 Date: 3-3-83

Approved by Commissioner: Norman C. Gorsuch, Attorney General
 Department: Law

Date: 3-3-83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



43200 JR

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Mr. Michael O'Neill
O'Neill Security Services
3707 Woodland Drive
Anchorage, Alaska 99503

Dear Mr. O'Neill:

Thank you for your letter of March 17, 1983, inquiring about legislation regarding the uses of the polygraph.

During testimony taken at committee hearings in the House Judiciary Committee an operator of a polygraph testified, Richard Potter, Anchorage Police Department, 701 W. 58th Avenue, Anchorage, Alaska 99502, phone 561-1158, regarding the polygraph and its uses in the State of Alaska. He also remarked about its history.

If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charlie Bussell".

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

enclosure: House Bill 200

• O'NEILL
SECURITY
SERVICES

3707 Woodland Dr.
Anchorage, Alaska
99503
907-248-2677 ✓

Prudhoe Bay
Box 6449
Anchorage, Alaska
99502
907-658-5140

Kuparuk
Box 6105
Anchorage, Alaska
99502
907-659-7213



March 17, 1983

Representative Charles Bussell
Chairman - House Judiciary Committee
State House of Representatives
Juneau, Alaska

Dear Representative Bussell:

A recent Anchorage Times article indicates that there is some legislation pending concerning the Polygraph. Would you please send me a copy of the bill and/or any information relating to the Polygraph, Polygraph Examiners and use of the Polygraph.

I would like to be advised when any hearings are set on anything relating to Polygraph and may wish to testify.

Thank you for your attention to this inquiry.

Sincerely,

R. Michael O'Neill

February 1, 1983

E BEN H. LEWIS
2073 ARLINGTON DRIVE NORTH
ANCHORAGE, ALASKA 99503

Done
(Received - Sup. Court Judge)
(Delivered By Jim Sterling)
Anch Police Dept.
625 C Street
Anch 99501
264-4128

Honorable Jan Faiks
Alaska State Senate
State Capitol, Pouch V
Juneau AK 99811

Dear Jan:

A couple of weeks ago I was seated next to Joe Hayes on a flight down from Fairbanks, and had a chance to discuss with him some ideas I have had about reinforcing the criminal justice system in Alaska, which is now in such disarray. I have followed up on the discussion by sending on to Joe some material I had prepared several years back on providing some legislative limitation on the courts' application of the so-called 'exclusionary rule', which bars the use of criminal evidence seized under circumstances which a court may later determine violated a defendant's right against 'unreasonable search and seizure'. The courts have been extremely restrictive in allowing use of evidence taken without a warrant, even though the officer may have been acting in good faith at the time it was taken. The time is long overdue for legislative bodies to take the matter in hand and provide some definition of what a 'reasonable search' is, and I submit that legislation along the line suggested in Fritz Pettyjohn's SB 49 ought to be strongly supported. Since I don't have a copying machine at home, I would hope Joe Hayes could have any of the material I sent him made available for your use and that of other interested legislators.

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My experience judicially with the polygraph dictates my conclusion that the Association's anti-polygraph position is correct. I researched the question thoroughly several years ago when I was assigned for retrial the case of State v. Fageriak, in which refusal of a key witness to submit to a pre-trial polygraph became relevant. I found that only a few jurisdictions

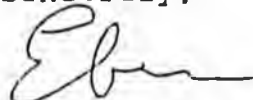
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Shirley and I were delighted that your campaign was successful, and that you have the opportunity to serve our interests in Juneau. Best of luck!

Sincerely,



Eben H. Lewis