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## Exclusionary rule change sought

by Steve Hansen  
Times Writer

A Senate resolution aimed at amending the so-called exclusionary rule received a strong endorsement from several prosecutors, law enforcement officials and citizens who testified before a Senate Judiciary Subcommittee public hearing here Friday.

If the resolution receives similar support from at least two-thirds of the state House and Senate, the amendment will appear on the ballot in the 1984 general election.

Under the rule, if a judge decides that evidence has been gathered illegally by law enforcement officials, it is inadmissible in court. And if a defendant is brought to trial based on evidence gathered in an illegal search, the charges can be dismissed.

The exclusionary rule is based primarily on the U.S. Constitution's prohibition of illegal search and seizure by the government. But many states have the same type of prohibition either in their constitutions, or in their statutes.

Opponents of the rule say it often allows criminals to go free on legal technicalities.

The resolution, co-sponsored by Sen. Bill Ray, D-Juneau, and Sen. Fritz Pettyjohn, R-Anchorage, would modify the rule.

Under the provisions of the resolution, even if officers did not follow correct consti-

titutional procedures in gathering evidence, it would be admissible if the state could prove the police acted in "good faith."

Pettyjohn called the resolution "the most significant piece of criminal legislation this legislature will address."

Alaska law currently guarantees the right of citizens to be "secure in their persons, houses and other property, papers, and effects" and against "unreasonable" searches and seizures.

It also states that warrants must be issued based on probable cause, must describe the place to be searched, and the persons or things to be seized.

If the resolution is approved by the legislature and voters, the following amendment will be added:

"A person whose rights under this section are violated has a cause of action for civil damages against the peace officer who violates this section. Evidence seized in violation of this section shall not be suppressed in a criminal prosecution if it is discovered by a peace officer acting in the good-faith belief that the officer's conduct is constitutional and if there is a reasonable basis for that belief."

District Attorney Victor Crumm, Municipal Prosecutor Allen Bailey and U.S. Attorney Michael Spaan were among those who

testified in favor of the "good-faith" resolution at Friday hearing.

Sens. Joe Josephson and Pat Rodey, both D-Anchorage, and Pettyjohn hosted the hearing.

Crumm said the charges against some suspects are now being reduced or amended if he thinks the evidence would not be admitted by the court.

Bailey repeated Crumm's statement, adding, "But in my opinion if one rapist walks (away free) then that's too many."

Bailey was making reference to a case he handled in which a conviction against a rapist was thrown out because the evidence was ruled inadmissible.

Spaan said the exclusionary rule should be amended because it "doesn't benefit an innocent party but it benefits the guilty."

He said the alternative to allowing a judge to decide whether evidence was obtained in a "good-faith" mistake was "worth letting a guilty person go unpunished."

After the hearing, Pettyjohn said he felt confident the proposal would receive the required two-thirds majority in both legislative bodies.

"I doubt it will have that much trouble because it is such a common-sense proposition," he said.

And if it goes before the voters?

"I think it will sail," Pettyjohn said.

HB 75  
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# Police support easing evidence regs for court

By CHRIS JARVIS 1/28/83  
Empire Staff Reporter

The Board of Directors of the Alaska Peace Officers Association has recommended easing the "fruit of the poisoned tree" doctrine, which prohibits admitting evidence in court if it was obtained illegally.

In its annual winter meeting the board unanimously supported a bill introduced by Sen. Fritz Pettyjohn, R-Anch., which would allow evidence to be admitted even if it was obtained illegally if the officer acted in good faith and believed a search was proper.

"It's bad to put a potentially dangerous person back on the street just because of a technical error," said board chairman Warren Suddock.

Suddock is a captain in the Uniformed Field Services Division of the Anchorage Police Department.

If evidence is obtained illegally out of negligence or malice, however, the officer should be liable for criminal, civil or internal discipline, Suddock said.

Lawmakers should also make assaulting a police officer and causing injury that requires minor medical treatment third degree assault, which is a felony, said Suddock. Currently, assaulting a police officer is considered resisting arrest, a misdemeanor.

Suddock also called for clarification of penalties for drunk driving convictions.

"For a myriad of reasons," such as lack of space in the jails, "a lot of people don't pay the penalty," he said.

The Legislature should clarify the law to prevent the "set-up of some ludicrous bookkeeping systems to keep people guessing what three days is," he said, referring to judges who sentence drunk drivers to three days in jail without specifying three 24-hour days.

Southeast judges seem to know three days means 72 hours, Suddock said.

# Pettyjohn seeks to tighten state's exclusionary rule

by Hal Spencer  
Associated Press

Juneau — An Anchorage police officer spots what he suspects is a getaway car moments after an armed robbery. He stops the vehicle, but its driver flees. The policeman discovers a loaded pistol in a paper bag under the seat.

It is possible, says Sen. Fritz Pettyjohn, that the hypothetical driver, later charged with armed robbery, would "walk free" because the car was searched without a warrant.

It's called the "exclusionary rule," and it's firmly rooted in the U.S. Constitution's Fourth Amendment protections against unreasonable searches and seizures.

Pettyjohn, an Anchorage Republican and former prosecutor, is leading a fight to tighten Alaska's statute on the rule so that often-inadmissible evidence can be used in court.

A portion of the proposal would permit introduction of the evidence "if the prosecution satisfies the judge that the peace officer's

conduct was taken in a reasonable, good-faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact, if otherwise admissible, because the conduct resulted in only a technical violation of the defendant's right to be protected from unlawful searches and seizures."

The bill, sponsored by Pettyjohn and three other senators, reached the Senate Judiciary Committee on Monday and was assigned to Pettyjohn, in his capacity as a member of that committee.

The freshman senator said he expects "heat from civil libertarians" on the measure, but is prepared to devote a lot of energy to its passage.

"The result of this (proposal) would be that if an officer makes a good-faith and reasonable effort to comply with the Fourth Amendment, the evidence he obtained in the course of a search or seizure will not be thrown out of court," Pettyjohn said.

The senator said the exclusionary rule seems to come up most often in drug-related cases, "but it's really the most terrible in violent crime cases."

The measure "is in response to grass roots pressure," said Sen. Bill Ray, D-Juneau, Judiciary Committee chairman.

Sen. Patrick Rodey, D-Anchorage, chairman of the Judiciary Committee last year, attended Monday's meeting and said a study of the exclusionary rule by a former state prosecutor will be completed by the first half of February.

The study, performed by Barry Stern, now a professor of law in Boston, will be made available to the committee, he said.

Pettyjohn said he has strong feelings about what he called shackles placed on police officers by the exclusionary rule and he said he is confident the U.S. Supreme Court soon will tighten the rule.

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CHAIRMAN  
HOUSE JUDICIARY COMMITTEE  
MEMBER  
HOUSE RESOURCES COMMITTEE

## Representative Charlie Bussell

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

February 23, 1983

Juneau Bar Association  
P. O. Box No. 1312  
Juneau, Alaska 99802

ATTENTION: Ms. Kathy Kolkhorst

SUBJECT: Information Request on Status of HB 75 and SB 49

Dear Ms. Kolkhorst:

Enclosed is a copy of a brief report which was made to me by a House Judiciary staff member who attended the first hearing held on SB 49.

As you can see the three Anchorage Senate attorneys gathered precious little information at their hearing. I also understand the Senate intends little or no further action with the bill at this time.

HB 75 is in the House Judiciary at this time and I plan little effort on it at this time. I prefer to give the Feds time to make some changes.

If you have a chance, please stop by Room No. 124 in the Capitol. You may be interested in our regular hearing schedules.

Regards,

  
Representative Charlie Bussell  
Chairman, Committee on Judiciary

CB:lyn

JUNEAU BAR ASSOCIATION

P.O. Box 1312  
Juneau, AK 99802

January 24, 1983

Received  
1/24/83  
2-21-83  
CRB

The Honorable Charlie Bussell, Chairman  
House Judiciary Committee  
Pouch V - Room 126 Capitol  
Juneau, Alaska 99811

Dear Representative Bussell:

The Juneau Bar Association at its Friday meeting discussed, for the first time, Senate Bill 49 and House Bill 75 which would limit the application of the exclusionary rule.

The membership was quite interested in gaining more information about the effects of the two bills and directed me to request that your committee schedule the bills for further hearings to permit reflection and comment.

We appreciate your consideration of this request and would ask to be kept informed of scheduled hearings on these bills.

Sincerely,

Kathy Kolkhorst/9c

Kathy Kolkhorst

17688

FISCAL NOTE

Expenditure Type  
 Revenue Type

I. REQUEST

Bill/Resolution No. HB 75  
Title "An act relating to the exclusionar. rule;..."  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Public Safety  
Program Category Affected Administration of Justice  
ERU, Program, Or Subprogram(s) Affected Alaska State Troopers  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0			

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal impact is anticipated.

RECEIVED

FEB 4 1983

LEGISLATIVE FINANCE

IV. DATE January 25, 1983 PREPARED BY F. C. Allan <sup>G.C.A.</sup> Phone 269-5691

Original: Legislative Finance DIVISION State Troopers Initials \_\_\_\_\_

cc: Budget and Management DEPARTMENT OF PUBLIC SAFETY. mlm Initials \_\_\_\_\_

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Eric Laschever

*Handwritten initials and signatures*

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FROM: WALLY IN BETHEL TO: JUNEAU INFORMATION  
TARGET: LJHL SUBJ: P O M

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TO: CHAIRMAN, HOUSE JUDICIARY COMMITTEE  
CHAIRMAN, SENATE JUDICIARY COMMITTEE

FR: ANGSMAN LAW OFFICES  
PETER ERHARDT  
PO BOX 758  
BETHEL, ALASKA 99559 PHONE: 543-2973

I WOULD LIKE TO SEE A PUBLIC HEARING SCHEDULED ON BOTH HB75 AND SB49. I  
FEEL THESE ARE VERY IMPORTANT BILLS AND INPUT FROM THE PUBLIC AS WELL AS  
THE LEGAL COMMUNITY WOULD BE QUITE HELPFUL, BEFORE PASSING THESE BILLS OUT  
OF COMMITTEE.

THANK YOU FOR YOUR CONSIDERATION.