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1 IN THE SENATE

BY RODEY, KELLY, RAY,
STURGULEWSKI AND KERTTULA

2 SENATE BILL NO. 115

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE— FIRST SESSION

5 A BILL

6 FOR AN ACT ENTITLED: "AN ACT RELATING TO INDIVIDUAL RIGHTS OF PEACE OFFICERS."
7

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

9 * SECTION 1. AS 18.65 IS AMENDED BY ADDING NEW SECTIONS TO READ:

10 ARTICLE 7. INDIVIDUAL RIGHTS OF PEACE OFFICERS.

11 SEC. 18.65.530. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUBJ
12 JECT TO CRIMINAL ACTION. IF A PEACE OFFICER IS UNDER INVESTIGATION
13 INSTITUTED BY THE PEACE OFFICER'S EMPLOYING AGENCY OR AS A RESULT OF A
14 COMPLAINT BEING FILED AGAINST THE PEACE OFFICER AND THE PEACE OFFICER
15 IS INTERROGATED OR INTERVIEWED BY THE EMPLOYING AGENCY FOR CONDUCT
16 THAT MAY SUBJECT THE PEACE OFFICER TO CRIMINAL ACTION, THE PEACE
17 OFFICER MAY EXERCISE ALL RIGHTS GRANTED THE ACCUSED UNDER LAW IN
18 ADDITION TO THE RIGHTS SPECIFIED IN AS 18.65.531.

19 SEC. 18.65.531. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUBJ
20 JECT TO PUNITIVE ACTION. (A) IF A PEACE OFFICER IS UNDER INVESTIGATI
21 ON INSTITUTED BY THE PEACE OFFICER'S EMPLOYING AGENCY OR AS A RESULT
22 OF A COMPLAINT BEING FILED AGAINST THE PEACE OFFICER AND THE PEACE
23 OFFICER IS INTERROGATED OR INTERVIEWED BY THE EMPLOYING AGENCY FOR
24 CONDUCT THAT MAY SUBJECT THE PEACE OFFICER TO PUNITIVE ACTION,

25 (1) BEFORE AN INTERROGATION OR INTERVIEW IS COMMENCED THE
26 PEACE OFFICER SHALL BE PROVIDED WITH A FORMAL WRITTEN COMPLAINT CONT
27 TAINING ALL ESSENTIAL ALLEGATIONS AND SIGNED BY THE COMPLAINANT OR
28 SHALL BE INFORMED OF THE NATURE OF THE INVESTIGATION IF INSTITUTED BY

1 THIS SECTION;

2 (2) THE PEACE OFFICER IS ENTITLED TO SELECT AND HAVE PREO
3 SENT AT EACH STAGE OF THE INVESTIGATION A WITNESS OR OTHER PERSON THAT
4 MAY PARTICIPATE ON BEHALF OF THE PEACE OFFICER, *Does this not. supervision - } civil or crim*
holly: it was viewed

5 (3) THE INTERROGATION OR INTERVIEW SHALL BE CONDUCTED WHILE
6 THE EMPLOYEE IS ON DUTY OR AT A REASONABLE HOUR UNLESS THE SERIOUSNESS
7 OF THE INVESTIGATION REQUIRES OTHERWISE, AND SHALL BE FOR A REASONABLE
8 PERIOD OF TIME WITH OPPORTUNITY FOR THE PEACE OFFICER TO ATTEND TO
9 BODY FUNCTIONS AS NECESSARY; *(CF AST. CONT. NO MORE THAN 4 HRS IN*
1/2 hr on / 1/2 hr off)

10 (4) THE PEACE OFFICER SHALL BE COMPENSATED AT THE REGULAR
11 RATE OF PAY FOR TIME SPENT IN AN INTERROGATION OR INTERVIEW WHILE THE
12 PEACE OFFICER IS NOT ON DUTY; *read by fed state wage (in 60.*

13 (5) THE PEACE OFFICER MAY NOT BE SUBJECTED TO OFFENSIVE OR
14 THREATENING LANGUAGE OR PROMISES OF REWARD FOR COOPERATING | BUT SHALL
15 BE INFORMED THAT FAILURE TO ANSWER QUESTIONS RELEVANT TO THE INVESTIG
16 GATION OR COMPLAINT CAN RESULT IN PUNITIVE ACTION UNLESS THE PEACE
17 OFFICER'S ALLEGED CONDUCT WOULD BE CRIMINAL, IN WHICH CASE THE PEACE
18 OFFICER MAY EXERCISE THE RIGHT TO REMAIN SILENT; *(which express of the*
to say that they
went bring crim. action

19 (6) THE PEACE OFFICER AND EMPLOYING AGENCY MAY TAPE RECORD
20 THE INTERROGATION OR INTERVIEW AFTER ADVISING THAT A RECORDING WILL BE
21 MADE AND EACH SHALL HAVE ACCESS TO THE OTHER'S TAPE RECORDING, IF ANY
22 IS MADE;

23 (7) THE PEACE OFFICER IS ENTITLED TO A TRANSCRIPT OF ANY
24 NOTES MADE BY A STENOGRAPHER OR TO A COPY OF ANY REPORT MADE BY AN
25 INVESTIGATOR OR OTHER PERSON RELEVANT TO THE COMPLAINT OR INVESTIGAT

27 NEL FILE, EXCEPT FOR CONFIDENTIAL INFORMATION;

what are charges ultimately pursued -

28 (8) INFORMATION THAT IS ADVERSE TO THE PEACE OFFICER OR
29 OTHERWISE CONSIDERED BY THE EMPLOYING AGENCY TO BE CONFIDENTIAL MAY

SB 115

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*-removed from pers. file but kept in internal
affairs -
HP-CADIT we used for add'l discipline.*

1 NOT BE ENTERED IN THE PEACE OFFICER'S PERSONNEL FILE UNLESS THE PEACE
2 OFFICER IS FIRST GIVEN A COPY OF THAT INFORMATION AND ^{given the} ~~SIGNS THE FILE~~
3 ~~COPY OR NOTES ON THE FILE COPY THAT A RESPONSE WILL BE FILED;~~ OPPORTUNITY TO FILE A STATEMENT. IF THE
4 RESPONSE IS FILED BY THE PEACE OFFICER WITHIN 30 DAYS THE EMPLOYING
5 AGENCY SHALL ATTACH THE RESPONSE TO THE ADVERSE OR CONFIDENTIAL INFORO
6 MATION AND PROMPTLY REMOVE ALL PERTINENT INFORMATION UPON DETERMINING
7 THAT THE ALLEGATIONS ARE UNFOUNDED;

8 (9) THE PEACE OFFICER MAY NOT BE COMPELLED TO SUBMIT TO A
9 POLYGRAPH EXAMINATION AND THE EXERCISE OF THAT RIGHT MAY NOT BE USED
10 IN ANY WAY TO DISADVANTAGE THE PEACE OFFICER, INCLUDING BUT NOT LIMITO
11 ED TO THE USE OF THAT FACT IN A PROCEEDING INVOLVING THE PEACE OFFICER
12 OR NOTATION OF THAT FACT IN A PERSONNEL FILE; -

13 (10) SUBJECT TO RULES OF DISCOVERY OF EVIDENCE, THE PEACE
14 OFFICER MAY REFUSE TO DISCLOSE PERSONAL INFORMATION, INCLUDING BUT NOT
15 LIMITED TO PROPERTY POSSESSED, SOURCES AND AMOUNTS OF INCOME, DEBTS,
16 AND PERSONAL OR DOMESTIC EXPENDITURES; NOTHING IN THIS SECTION PROG
17 HIBITS INQUIRY BY THE ENPL YING AGENCY AS TO MATTERS REPRESENTING
18 POSSIBLE CONFLICTS OF INTEREST WITH RESPECT TO THE PERFORMANCE OF THE
19 PEACE OFFICER'S OFFICIAL DUTIES; *(HIGHLIGHTING)*

20 (11) THE PEACE OFFICER MAY EXERCISE THE RIGHT AGAINST UNLAWO
21 FUL SEARCH AND SEIZURE WITH RESPECT TO THE PEACE OFFICER'S LOCKER OR

24 TAKEN AGAINST A PEACE OFFICER BY THE EMPLOYING AGENCY THAT MAY LEAD TO
25 DISMISSAL, DEMOTION, SUSPENSION, WRITTEN REPRIMAND, OR TRANSFER IN
26 WORK ASSIGNMENTS FOR PURPOSES OF PUNISHING CONDUCT OF THE PEACE OFFICER.
27 CER.

28 SEC. 18.65.532. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUBJ
29 JECT TO DISCIPLINARY ACTION. (A) IF A PEACE OFFICER IS UNDER

1 INVESTIGATION INSTITUTED BY THE PEACE OFFICER'S EMPLOYING AGENCY OR AS
2 A RESULT OF A COMPLAINT BEING FILED AGAINST THE PEACE OFFICER AND THE
3 PEACE OFFICER IS INTERROGATED OR INTERVIEWED BY THE EMPLOYING AGENCY
4 FOR CONDUCT THAT MAY SUBJECT THE PEACE OFFICER TO DISCIPLINARY ACTION,

5 (1) THE PEACE OFFICER MAY EXERCISE THE RIGHTS SPECIFIED IN
6 AS 18.65.531;

7 (2) THE EMPLOYING AGENCY SHALL WITHIN ONE YEAR REMOVE FROM
8 THE PEACE OFFICER'S PERSONNEL FILE ALL MATTERS PERTAINING TO THE
9 DISCIPLINARY PROCEEDING;

10 (3) THE PEACE OFFICER IS PRESUMED TO BE INNOCENT UNLESS
11 PROVEN OTHERWISE.

12 (B) AS USED IN THIS SECTION "DISCIPLINARY ACTION" MEANS ANY
13 ACTION TAKEN AGAINST A PEACE OFFICER BY THE EMPLOYING AGENCY THAT MAY
14 AFFECT THE PEACE OFFICER'S INTEGRITY AS A PEACE OFFICER, WORKING
15 CONDITIONS, WORK SCHEDULE, OR SALARY FOR PURPOSES OF PUNISHING CONDUCT
16 OF THE PEACE OFFICER, BUT DOES NOT INCLUDE MINOR INFRACTIONS SUCH AS
17 UNIFORM VIOLATIONS OR GROOMING AND DRESS STANDARDS THAT MERIT SPONTANEOUS
18 ADMONISHMENT.

20 JECT TO CIVIL LIABILITY. IF A PEACE OFFICER IS UNDER INVESTIGATION
21 INSTITUTED BY THE PEACE OFFICER'S EMPLOYING AGENCY OR AS A RESULT OF A
22 COMPLAINT BEING FILED AGAINST THE PEACE OFFICER AND THE PEACE OFFICER
23 IS INTERROGATED OR INTERVIEWED BY THE EMPLOYING AGENCY FOR CONDUCT
24 THAT MAY SUBJECT THE PEACE OFFICER TO CIVIL LIABILITY;

25 (1) THE PEACE OFFICER MAY EXERCISE THE RIGHTS SPECIFIED IN
26 ~~AS~~ 18.65.531; *Q-civil damages?*

27 (2) THE PEACE OFFICER MAY, AT THE PEACE OFFICER'S EXPENSE,
28 HAVE AN ATTORNEY PRESENT AT ALL STEPS OF THE INVESTIGATION.

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

SB 115

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1 RIGHTS. A PEACE OFFICER MAY NOT BE SUBJECTED TO ANY REPRISALS OR IN
2 ANY WAY BE DISADVANTAGED FOR EXERCISING THE RIGHTS SET OUT IN AS 18.0
3 65.530[- 18.65.533, INCLUDING BUT NOT LIMITED TO THE USE OF THE EXD
4 ERCISE OF THOSE RIGHTS

5 (1) AS EVIDENCE IN ANY PROCEEDING INVOLVING THE PEACE
6 OFFICER; OR

7 (2) AS JUSTIFICATION FOR ALTERING THE PEACE OFFICER'S WORK
8 SCHEDULE, WAGES, OR WORKING CONDITIONS.

9 * SEC. 2. AS 23.10.037(B) IS AMENDED TO READ:

10 (B) THE PROVISIONS OF (A) OF THIS SECTION DO NOT APPLY TO THE
11 STATE OR A POLITICAL SUBDIVISION OF THE STATE WHEN DEALING WITH
12 ~~PO~~ POLICEMEN IN ITS EMPLOY *delete* ~~OR WITH PERSONS APPLYING TO BE EMPLOYED AS~~
13 ~~PO~~ POLICEMEN.

April 5-1983

Written Testimony

To. Sen Fischer

Chairman:

Police Officer Bill ?

Back in 1959 or 1960 in Juneau
as a citizen living in Juneau
the Juneau Police Dept had
forms to fill out on any complaints
of their Police Officers,

I signed two complaints with
them charging two officers
with (Conduct unbecoming a
police officer)

These were two different charges
2 week apart.

Results:

1- The two officers resigned
immediately.

2- Comments:

The Juneau Police Officers never,
I repeat never harassed me in
anyway.

Yours
Fred A Lund
Box 122
Haines AK
99827

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 115 Date on Bill: 2-23-83
 Title: An Act relating to individual rights of peace officers
 Sponsor: Rodey
 Requestor: SENATE STATE AFFAIRS

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				
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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 therefore 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

COMMITTEE REPORT

SENATE

2/9/83

FURTHER: Judiciary

Date:

5-10-83

Mr. President:

The Committee on State Affairs has had SB 115

An Act relating to individual rights of peace officers.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

do pass do not pass

do pass with attached amendments(s)

replace with CS for SB 115 same title new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Kelly - Do Not Pass at this time.
Bill Ray DO NOT PASS

V. Fisher - no rec

CHAIRMAN

ROCKY
BY BUSSELL, LISKA, BARNES
SZYMANSKI AND LINDAUER

1 IN THE HOUSE

SENATE BILL NO. 115
~~HOUSE BILL NO. 200~~

2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to individual rights of peace offi-

7

cers."

8

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

9

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

10

ARTICLE 7. INDIVIDUAL RIGHTS OF PEACE OFFICERS.

11

Sec. 18.65.530. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-

12

JECT TO CRIMINAL ACTION. If a peace officer is under investigation

13

~~instituted by the peace officer's employing agency or as a result of a~~

14

~~complaint being filed against the peace officer and the peace officer~~

15

~~is interrogated or interviewed by the employing agency for conduct~~

16

that may subject the peace officer to criminal action, the peace

17

officer may exercise all rights ^{TO ANY OTHER CITIZEN} granted ~~the accused~~ ^{THE} under ^A law, in

18

~~addition to the rights specified in AS 18.65.531.~~

19

Sec. 18.65.531. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUB-

20

JECT TO PUNITIVE ACTION. (a) If a peace officer is under investiga-

21

tion instituted by the peace officer's employing agency or as a result

22

of a complaint being filed against the peace officer and the peace

23

officer is interrogated or interviewed by the employing agency for

24

conduct that may subject the peace officer to punitive action,

25

(1) before an interrogation or interview is commenced the

26

peace officer ~~shall be provided with a formal written complaint con-~~

27

~~taining all essential allegations and signed by the complainant or~~

28

shall be informed of the nature of the investigation if ~~instituted by~~

29

~~the employing agency~~ and advised concerning the rights specified in

*Levin,
As we discussed -
fincher HP*

1 this section;

2 (2) the peace officer is entitled to select and have pre-
3 sent ~~at each stage of the investigation~~ ^{at each interview} a witness, ~~or other person that~~ ^{INCLUDING AN ATTORNEY, WHO}
4 may participate on behalf of the peace officer;

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

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

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

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

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

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

(12) THE PEACE OFFICER IS TO BE PRESUMED INNOCENT UNLESS PROVEN OTHERWISE.

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

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

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

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

23 (b) As used in this section, "punitive action" means any action
24 taken against a peace officer by the employing agency that may lead to
25 dismissal, demotion, suspension, written reprimand, or transfer in
26 work assignments for purposes of ^{PUNISHMENT, OR THAT MAY AFFECT THE} ~~punishing conduct of the peace offi-~~
27 ~~cer.~~ ^{PEACE OFFICER'S INTEGRITY AS A PEACE OFFICER, BUT DOES NOT}
28 ^{INCLUDE SPONTANEOUS ADMONISHMENT FOR MINOR INFRACTIONS,} ~~See 18.65.532. INVESTIGATION OF CONDUCT OF PEACE OFFICER, SUB-~~
29 ~~JECT TO DISCIPLINARY ACTION. (a) If a peace officer is under~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 18.65.534. DEFINITIONS. AS USED IN
AS 18.65.530 - 533,

(1) "PEACE OFFICER" HAS THE MEANING ASCRIBED
TO IT IN AS 18.65.290(b), BUT DOES NOT INCLUDE
THE COMMISSIONER OF PUBLIC SAFETY, ANY DEPUTY
COMMISSIONERS OF PUBLIC SAFETY, THE DIRECTOR OF
THE DIVISION OF HERITAGE STATE TREASURES AND ANY
POLICE CHIEF OF A LOCAL LAW ENFORCEMENT AGENCY.

4/19/83

STATE AFFAIRS COMMITTEE MEMBERS

RE: SB 115

PLEASE NOTE THAT THIS FILE DOES NOT CONTAIN THE MINUTES
OF THE LAST MEETING ON THIS BILL.
THE SENATE RECORDS OFFICE IS FAR BEHIND ON PRODUCING THESE
MINUTES, AND THE INFORMATION THEY HAVE IS TOO ROUGH TO BE
OF MUCH UTILITY.

DAVID DYE

4/19 11.45A

VICTOR/DAVID

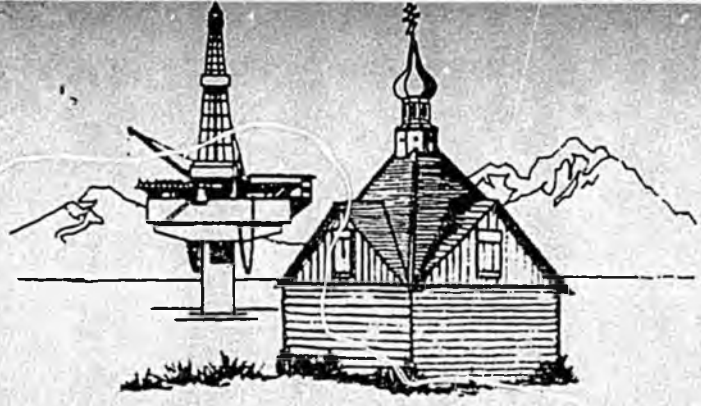
HOLLY PLOOG JUST CALLED. SHE SAYS THAT SHE'S WELL SATISFIED WITH THE RE-WRITE OF SB115 AND ASKES IF WE'LL SCHEDULE IT FOR A HEARING.

MAY 3 IS THE BEST POSSIBLE DATE FOR HER.

I DON'T SEE ANY REASON WHY WE SHOULDN'T HOLD A HEARING ON IT THAT DATE. I'LL PHONE UP THE OPPOSITION AND GIVE THEM PLENTY OF NOTICE. YOU MIGHT WANT TO CHECK W/ RODEY, THOUGH.

LEWIS

55115



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

February 22, 1983

Kenai Police Department
P. O. Box 3173
Kenai, Alaska 99611

The Honorable Vic Fischer
ALASKA STATE SENATE
Pouch V
Juneau, Alaska 99811

Dear Mr. Fischer:

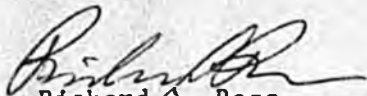
This letter is submitted to request that you oppose the enactment of Senate Bill 115. This Bill should not be enacted into law for the following reasons:

1. Proposed Sec. 18.65.530: Peace officers presently have all rights of any other citizen when accused under law in a criminal action.
2. Proposed Sec. 18.65.531-33: Most of the legislation in these sections is, or should be dealt with through municipal personnel ordinances. Enactment of a special State Law that supercedes Municipal Ordinances for one class of employee, peace officers, would appear unnecessary, and even divisive to each municipalities personnel system.
3. Proposed Sec. 18.65.531(9): In the matter of Polygraph examinations the police officer is presently treated substantially different than other citizens as a matter of law. Is it not justifiable through that in this one area that the greater benefit of society is placed ahead of the individual rights of the officer? This in view of the responsibilities and authorities of a police officer, and the importance of credibility in the law enforcement function.
4. Proposed Sec. 18.65.531(11): In contrast, this section provides a "right" that is beyond that provided to any other governmental worker or worker in private industry. Patrol cars, desks, and other assigned "spaces" would no longer be the property of the agency, for purposes of compliance inspections and review on which administrative actions could be taken, but would become the protected private space of the employee.

This Bill attempts to address a problem that may exist primarily in rumor and conjecture. If in fact it is a reaction to specific incidents, it is submitted they have been isolated and should not be the subject of Statutory over kill. On the

other hand, Statutory enactment of some of the "rights" could be counterproductive to law enforcement in the State of Alaska. In extreme applications it could prevent effective handling of occasional police misconduct. This would eventually erode public confidence in law enforcement in our State.

Respectfully,



Richard A. Ross
Chief of Police
Kenai Police Department

RAR/ga

3

Holly

representative - ~~part~~ at interviews
stage.

vic - P² L² - PARTICIPATE.

BRIAN POTTER

* → what AIC police officers ASSOC

Things not in the contract -

polygraph.

PIL 25 - complaint - counterproductive

All reports - WAD deal

#10A3 113 - Rules of discovery -
locker not in contract.

Personnel file. Just had a
ruling - discard of evidence. Vic
request case.

RICK POTTER:

opposed to compelled use of
polygraph.

Chief Bernardino -

budget prob.

Attorney's reviewed -

Jean Krause -

DEA - AIC supports. money
shouldn't determine rights. written
statement.

Get statement from public
Safety

Carillo

Rep S.E. chiefs -
531(a)(2) - witness - what about
excuse

A-11, locker or office search,
inquest.

Polygraph

perjury from file -

written statement.

11001 police only.

John Stotko - Sgt Arch PD -

Ridgway Ross - Kenji chief -
city & union at present.

Ed Martin - Kodiak -

- complaint problem is
unreasonable - "rigged" is chilling.

- formal advice is awkward

Ghermany case is compelling

- when does ~~anyone~~ TAKE office

- source of other income - should
be OK TO ASK.

- transfer as a punitive action.

- RECORDS.

- written notice -

- only want written copy of written cit. compl, or just oral statements

NO prosecutors for crimes in AOC P.D.

Skelly v. Or. Pers Bd.
Amette v. Kennedy (74)

(72) 539 P2 774
416 US 134

P 9/6 #9 does not apply to pre-employed exams.

Polysyll -

- no criteria for who to take
- ~~personnel not issued~~
- not examiners (most in AOC) competent but not highly experienced - (12-15 yrs exp) need 3-5 yrs 300-500 exam to pt of reliability. Application of training is selective.
- P has more credibility in other places - where licensed poly examiners
- some people do pre-employment tests & not believed in that situation

no problem w/ pre-employment
tests.

WITNESSES

Chiefs of Police
AND -
APEA - correctional
Red Hertzogson
Palmer Chief
- now new F&W -



NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Jean Krause, President

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Juneau, Alaska 99801

Graham Ward
Region II Director
Box 23
Glennallen, Alaska 99588

Frank Parker
Region III Director
Box 2533
Kodiak, Alaska 99615

Jean Robb
Region IV Director
Box 103
Kolzebue, Alaska 99752

Ray Virgin
Region IV Director
Russian Mission, Alaska 99057

Gayle Harbo
Region V Director
Box 80522
Fairbanks, Alaska 99701

Pat Abney
Region VI Director
Box 481 SRA
Anchorage, Alaska 99507

Lee Wilson
Region VI Director
8410 Pioneer Drive
Anchorage, Alaska 99504

Lori Sears
Region VI Director
SRA Box 3110
Anchorage, Alaska 99511

Peg Stout
Region VI Director
6208 E. 34th Avenue
Anchorage, Alaska 99504

Frank Holmes
Director at Large
Box 103
Haines, Alaska 99827

March 31, 1983

Senate State Affairs Committee
Vic Fischer, Chair
Pouch V
Juneau, Alaska 99811

MEMORANDUM OF SUPPORT

Dear Members of the Senate State Affairs Committee:

The NEA-Alaska Board of Directors has taken a position in support of SB 115 "An Act relating to individual rights of peace officers." We took this position because we believe that all workers, including public employees, should be guaranteed due process rights in investigation, and interrogation procedures and in determination of changes in status related to the performance of duties. In extending this guarantee to peace officers this bill is consistent with the philosophy that helped shape this country - that we have the right to respond to those accusations, that we are innocent until proven guilty, that lawful, written procedures should replace the whims of powerfully placed individuals. Peace officers, sworn to uphold the law and promote public order should enjoy an orderly process, complete with rights protections, in questions related to their jobs.

We urge your support for Senate Bill 115.

Respectfully submitted:

Jean Krause
Jean Krause
President
JK:jc



Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN RESOURCES COMMITTEE

401E EVERGREEN
FAIREANKS ALASKA 99701
907-475-3550



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
RESOURCES COMMITTEE
907-465-3834
HOME 907-789-9182

March 8, 1983

Mr. Richard A. Ross
Chief of Police
Kenai Police Department
P.O. Box 580
Kenai, Alaska 99611

Dear Richard:

Thank you for your letter stating your concerns regarding ~~SB 115~~. This bill is presently in the State Affairs Committee and I am taking the liberty of forwarding a copy of your letter on to them.

I know your comments will be of interest as the committee is in the process of trying to get this legislation in a form that will be acceptable to those that are in favor of the legislation as well as those opposed. To date it has not been scheduled for hearing.

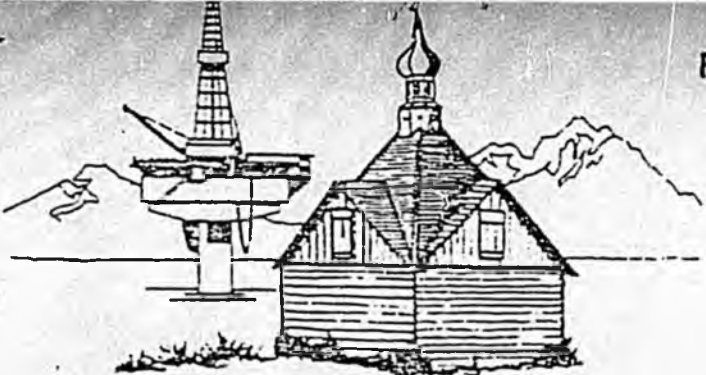
Thanks again for writing and sending your concerns along.

Sincerely,

Bettye Fahrenkamp
Alaska State Senator

BF/ab

✓ cc: Senate State Affairs Committee w/encl.



FEB 28 1983

AM LOOKING
CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

February 22, 1983

Kenai Police Department
P. O. Box 3173
Kenai, Alaska 99611

The Honorable Bettye Fahrenkamp
ALASKA STATE SENATE
Pouch V
Juneau, Alaska 99811

Dear Ms. Fahrenkamp:

This letter is submitted to request that you oppose the enactment of Senate Bill 115. This Bill should not be enacted into law for the following reasons:

1. Proposed Sec. 18.65.530: Peace officers presently have all rights of any other citizen when accused under law in a criminal action.
2. Proposed Sec. 18.65.531-33: Most of the legislation in these sections is, or should be dealt with through municipal personnel ordinances. Enactment of a special State Law that supercedes Municipal Ordinances for one class of employee, peace officers, would appear unnecessary, and even divisive to each municipalities personnel system.
3. Proposed Sec. 18.65.531(9): In the matter of Polygraph examinations the police officer is presently treated substantially different than other citizens as a matter of law. Is it not justifiable through that in this one area that the greater benefit of society is placed ahead of the individual rights of the officer? This in view of the responsibilities and authorities of a police officer, and the importance of credibility in the law enforcement function.
4. Proposed Sec. 18.65.531(11): In contrast, this section provides a "right" that is beyond that provided to any other governmental worker or worker in private industry. Patrol cars, desks, and other assigned "space" would no longer be the property of the agency, for purposes of compliance inspections and review on which administrative actions could be taken, but would become the protected private space of the employee.

This Bill attempts to address a problem that may exist primarily in rumor and conjecture. If in fact it is a reaction to specific incidents, it is submitted they have been isolated and should not be the subject of Statutory over kill. On the

other hand, Statutory enactment of some of the "rights" could be counterproductive to law enforcement in the State of Alaska. In extreme applications it could prevent effective handling of occasional police misconduct. This would eventually erode public confidence in law enforcement in our State.

Respectfully,



Richard A. Ross
Chief of Police
Kenai Police Department

RAR/ga

BRIAN POTTER - telcom -

first time he saw word at
a labor relations seminar 9-10
WA 490 IACOP

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states

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to be used.

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of the ppl's unions that exist
of civil rights no viol of civil
rights.

The State Police Chiefs Assoc
met & voted -
'I offered opposed -

3/4/83

SB 115

MEMO TO FILE:

THERE WAS A HEARING HELD ON THIS BILL IN THE HOUSE LAST WEEK _
WITH NO NOTICE TO THE PROPONANTS.

HOLLY AND HER CLIENTS WILL BE DOWN IN JUNEAU ON MARCH 14,
AND WE WILL HAVE SUBSTANTIVE DISCUSSIONS ON THE BILL WITH HER.

DEAN G. OF THE PROSECUTORS OFFICE HAS JOINED BRIAN PORTER
IN OPPOSITION TO THIS BILL.

lewis

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



February 28, 1983

Dan Hickey
Chief Prosecutor

RE: SB115

Dear Dan:

This bill is rapidly coming up before the State Affairs Committee.

I'm curious about the comparison between the protections that this bill provides to policemen as compared with the protections that have been mandated by the courts for those under investigation in a criminal prosecution.

Could you please take a moment and mark up a copy of this bill with comparisons with the rights of someone under criminal investigation.

Thanks. If there are any questions please contact Lewis Schnaper of my staff.

A handwritten signature in cursive script that reads "Vic".

Vic Fischer

CHAPTER = 23.10
SECTION = 23.10.037
TITLE = 23

HEADINGS TITLE 23.

Labor and Workers' Compensation.
CHAPTER 10.
Employment Practices and Working Conditions.
ARTICLE 1.
Coercion and Fraud.

CITATION Sec. 23.10.037.

CATCH LINE

LIE-DETECTOR TESTS.

TEXT

(a) No person either personally or through an agent or representative may request or suggest to a person in his employ or to a person who has an application for employment pending before him or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing

AS23.10.037 DOCUMENT= 1 OF 1 PAGE = 2 OF 2

with policemen in its employ or with persons applying to be employed as policemen.

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

HISTORY (Sec. 1 ch 36 SLA 1964)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

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 mira da.
- (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 at 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.

ANALYSIS SUPPLIED BY APDEA

- (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 court, his deduction would be tied to the difference between driving cost with the tools and going without them.

ncies. Sick-leave pay during pregnancies is no longer exempt from Social Security taxes, the IRS points out. A new ruling that implements 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-policy-making 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 60.46) 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 Frit 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

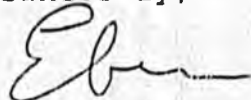
permit any reference to the polygraph in any circumstances, and then, only under the most stringently controlled limitations. It is never allowed as evidence against a criminal defendant. Interpretation of polygraph results is a highly subjective matter with the individual operator, subject to widely 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,

A handwritten signature in cursive script, appearing to read "Clifford A. Black".

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

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 3, 1983

Senator Vic Fischer, Chairman
Senate State Affairs Committee
Pouch V
Juneau, Ak 99811

RE: SB 115

Dear Senator Fischer:

In response to your letter of February 28, we have prepared the attached chart which makes a comparison between the rights that a police officer under investigation for a criminal offense would have under SB 115, with the comparable rights that any other citizen would have. As you can see, a police officer would be entitled to many more rights, which we believe would improperly hinder criminal investigations.

We found it difficult to make these comparisons for a variety of reasons. First, the bill as a whole is poorly drafted and difficult to understand in parts. More importantly, one must keep in mind that no person is required to answer questions if the answers would tend to incriminate them, therefore any citizen, including a police officer, can simply refuse to be interviewed on that basis.

We hope this brief analysis answers your questions.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Dan Hickey

Daniel W. Hickey
Chief Prosecutor

DWH/DJG/gb-49

Enclosure

CRIMINAL INVESTIGATIONS UNDER SB 115 and HB 200

RIGHTS OF A
POLICE OFFICER UNDER
SB 115 (HB 200)

RIGHTS OF A
DEFENDANT IN
CUSTODY

RIGHTS OF A
SUSPECT NOT IN
CUSTODY

18.65.531(a)(1)
WRITTEN NOTICE OF
CHARGES BEFORE
INTERVIEW

Notice of charges
Within 24 hours
AS 12.25.150

No such right

(a)(2)
WITNESS WHO CAN
PARTICIPATE IN
INTERVIEW

Attorney can be
present, but may
not "participate"

No such right

(a)(3)
REASONABLE HOURS

No such right

No such right

(a)(4)
PAID DURING OFF-
DUTY INTERVIEW

No such right

No such right

(a)(5)
NO OFFENSIVE LANGUAGE
OR THREATS OR PROMISES

No such right

No such right

(a)(6)
TAPE RECORDING ONLY
UPON NOTICE

There is no expectation of privacy in a police station therefore there are no such rights for defendants or suspects Cf., State v. Glass, 583 P.2d 872 (Alaska 1978).

(a)(7)
TRANSCRIPT OF
INTERVIEW OR REPORT

Transcripts and police reports are available to defendants and suspects if charges are ultimately pursued

(a)(8)
LIMITATIONS TO
PERSONNEL FILE

Not applicable

Not applicable

(a)(9)
LIMITATION ON
POLYGRAPH

Defendants and suspects may not be compelled to take a polygraph

(a)(10)
MAY REFUSE PERSONAL
INFORMATION INQUIRIES

Defendants and suspects may refuse to answer any question

(a)(11)
SEARCH & SEIZURE
RIGHTS TO POLICE
LOCKER

Defendants and suspects have search and seizure rights only where there is an expectation of privacy that society is willing to recognize as reasonable. This provision probably means that the legislature has declared that a police officer's locker in the police station, which is provided by his employer, cannot be searched without a warrant.

CALIFORNIA PUBLIC SAFETY OFFICERS'**BILL OF RIGHTS**

A Short Analysis (Calif. Gov't. Code Sec. 3300-3311 et seq.)

Effective January 1, 1977, peace officers employed in California will have expanded rights in the fields of internal investigation, administration appeal, review of personnel files, the use of the polygraph, privacy of personal finances and assigned storage spaces, among others.

A. WHO IS INCLUDED:

The provisions of AB301 apply to all peace officers (full time police and sheriffs) as defined in Penal Code Sections 830.1 and 830.2, subdivisions (a) and (b), whether probationary or permanent. Generally, the provisions apply to county sheriffs, city policemen and California Highway Patrolmen. Additionally, the provisions apply whether the policeman or sheriff is employed by a general law or charter city or county (excludes police reserves).

B. SPECIFIC RIGHTS:

1. When a public safety officer is (a) under investigation and (b) subjected to interrogation by his department (c) which could lead to punitive action as defined below, the interrogation shall be conducted under conditions listed in this section.

Internal Investigations. Punitive action is defined in the Bill as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for the purposes of punishment. Note, an oral reprimand is not within the meaning of punitive action.

a) **Reasonable Hour.** The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, unless the seriousness of the investigation requires otherwise.

b) **Off-duty Compensation.** The employee shall be compensated if the interrogation occurs off duty.

c) **Names of Interrogators.** 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 and all others who will be present at the interrogation.

d) **Nature of Interrogation.** The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

e) **Reasonable Period.** The interrogating session shall be for a reasonable period, taking into consideration the gravity and complexity of the issue being investigated.

f) **Personal Necessities.** The person under interrogation shall be allowed to attend to his own personal, physical necessities.

g) **Absence of Threats, Promises of Reward and Publicity.** The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action. However, an officer 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 questions.

h) **Record of Interrogation.** The interrogation may be recorded, and if it is, 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.

i) **Own Recording.** 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.

j) **Notes by Stenographer.** 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. No notes or reports which are deemed to be confidential may be entered in the officer's personnel file.

k) **Constitutional Rights.** 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.

1. **Exclusions.** Excluded from the above are interrogations of public safety officers in the normal course of duty, counseling, instruction, informal, verbal admonishment, routine or unplanned contact with a supervisor.

This section shall not apply to an investigation concerned solely and directly with alleged criminal activity.

2. **Rights of Representation Upon Request.**

a. A public safety officer is entitled to a representative of his choice present at a disciplinary hearing under the following circumstances:

i) Upon the filing of a formal, written statement of charges;

ii) Whenever an interrogation focuses on matters which are likely to result in punitive action (as defined in 1., above) against any public safety officer; and

iii) The right of representation appears to be extended to a Skelly hearing.

b. **Who:**

i) The public safety officer has the right to be represented by a representative of his choice.

ii) The representative shall not be a person subject to the same investigation.

iii) **Request Required.**

The public safety officer must request representation.

The decision whether to have the representative present during the interrogation shall be made by the officer rather than the employer.

assignment, a public safety officer if:

- a. A sworn member of his department would not normally be sent to that location;
 - b. Would not normally be given that duty assignment under similar circumstances.
4. **Right of Administrative Appeal.** The right of administrative appeal is extended to all public safety officers, including those public agencies without an existing grievance procedure or administrative appeal.
- A public agency must provide a public safety officer with an opportunity for administrative appeal under the following circumstances:
- a. Before punitive action is imposed, as defined in 1., above;
 - b. Where a public safety officer is denied promotion on grounds other than merit.
5. **Personnel Files.**

- a. Before an adverse comment can be entered into a safety officer's personnel file, or any other file used by personnel purposes by the employer, the public safety officer must be made aware of the comment by:
 - i) Having read the instrument containing the adverse comment, and
 - ii) Signing the instrument containing the adverse comment.
- b. The safety officer has the right to refuse to sign the comment after reading it, and the fact that the officer refused to sign the comment shall be noted in the document.
- c. **Right to Respond.** The safety officer must be given 30 days within which to file a written response to the adverse comment entered into his personnel file. The employer must attach the employee's written response to the adverse comment.

6. **Right to Refuse to Undergo Polygraph Examination.**
- a. No public safety officer can be compelled to submit to a polygraph examination against his will. Thus, polygraph examinations must be voluntary.
 - b. No disciplinary action, or other recrimination, can be taken against public safety officer for refusing to submit to a polygraph examination.
 - c. No record of the fact that a safety officer refused to take a polygraph examination can be taken.
 - d. The fact that a public safety officer refused to take a polygraph examination is inadmissible at any subsequent trial, hearing or other judicial or administrative proceeding.
 - e. A safety officer who is a lateral transfer from another department would not have to take a polygraph examination as a condition of employment. However, all other applicants could be required to take a polygraph examination as a condition of employment.

7. **Right of Privacy.**
- a. Except as noted hereinafter, no safety officer can be required or requested to disclose any item of his property, income, assets, sources of income, debts or personal or domestic expenditures. This right includes all members of a safety officer's family or household.
 - b. Such information is discoverable if:
 - i) Obtained or required under state law;
 - ii) Obtained or required under proper legal procedure;
 - iii) It tends to indicate a conflict of interest with respect to the performance of his official duties;
 - iv) It 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;
 - v) Such information is unrelated to a job assignment or other personnel action.
 - c. It appears that such information can be required to be disclosed as a condition of employment at the time that the safety officer is hired, assuming that the applicant is not already a safety officer.

8. **Right of Privacy Extended to Storage Space.**
- a. A public safety officer's locker or other space for storage that is assigned to him, can be searched if one of the following conditions exists:
 - i) He is present;
 - ii) He consents;
 - iii) A valid search warrant is obtained;
 - iv) He has been notified that a search will be conducted.

Thus, it appears that a search can be conducted of a public safety officer's storage space upon reasonable notice of the date and time that the search will be conducted.

- b. The provisions apply only to lockers or other space for storage which is owned or leased by the employing agency.

9. **Miscellaneous Provisions.**
- a. The Bill allows a public agency to adopt rights and protections that are greater than those provided in AB301. However, an employing agency is prohibited from adopting provisions below the minimum rights and protections afforded by AB301.
 - b. The provisions of the Bill cannot be construed to limit the use of a public safety agency or officer from fulfilling mutual aid agreements with other jurisdictions or agencies.
 - c. 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. Thus, no punitive action can result from the exercise by safety officer's of their rights under AB301 or under the existing grievance procedure.

SECTION 1. Section 3309.5 is added to the Government Code, to read:

- 3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any 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 public safety officer against any public safety department for alleged violations of this section.
- (c) In any case where the superior court finds that a 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 public safety department from taking any punitive action against the public safety officer.



San Francisco Police Officers' Association

510 SEVENTH STREET

SAN FRANCISCO, CALIFORNIA 94103

(415) 861-5060



INTERNAL AFFAIRS INVESTIGATION CHECK LIST

1. Date/Time/Method of notification
2. Statement of complaint/nature of complaint
3. Date/time of interrogation
4. Interrogator
5. Representative or attorney notified
6. Documents at interrogation
 - a. incident/crime report
 - b. intradepartmental report
 - c. booking card
 - d. communications slips/tapes
 - e. injury reports (officer/complainant)
 - f. log books
 - g. personal notebook
 - h. photographs/tape recordings
 - i. accident report/sketches
 - j. property involved
 - k. 849b PC slips
7. Other officers/police employees/witnesses involved
 - a. interview
 - b. notification of interrogation
 - c. conflicts in facts
8. Complainant
 - a. criminal record
 - b. reputation in department
 - c. other complaints
 - d. was he arrested?
 - e. is he represented?
9. Inspection of scene of incident
 - a. photographs
 - b. sketch
10. Problem areas/further investigation
11. Evaluation of complaint
 - a. rule/procedure/policy/order violation
 - b. seriousness of complaint
 - c. likely outcome
 - d. interrogation strategy
12. Bring to interrogation
 - a. tape recorder/tapes (is recorder functioning)
 - b. all relevant documents
 - c. prepared statement (opening/closing)
 - d. representative/attorney if needed
 - e. names/addresses/phone numbers of favorable witnesses
13. Interrogation critique
 - a. need for further interrogation
 - b. other officers involved
 - c. attitude of interrogator
 - d. length/depth of interrogation
 - e. was your story told
 - f. weaknesses/conflicts/contradictions
 - g. any violations of law/contract/MOU/by interrogator
14. Polygraph
 - a. the law
 - b. tricks of the trade
15. Interrogator: civilian or police
16. Publicizing the department's actions

APD embro

ANCHORAGE P.D. CONTRACT

To insure this, the following shall represent the Employee's Bill of Rights:

a. An employee shall be entitled to Association representation or its designee at each and every step of the Grievance Procedure set forth in this Agreement.

b. An employee shall be entitled to Association representation or its designee at each stage of a disciplinary proceeding brought against an Association member. Disciplinary proceeding is defined as any action taken against an employee by a superior officer that may affect his integrity, working conditions, hours or wages. Minor infractions such as uniform violations or personal appearance are excepted where on-the-spot admonishments are warranted.

c. No employee shall be required by the Municipality to submit to an interrogation in a disciplinary proceeding unless he is afforded the opportunity of having an Association representative or his designee present.

d. In all disciplinary hearings, the employee shall be presumed innocent until proven guilty.

e. An employee shall not be coerced or intimidated or suffer any reprisals either directly or indirectly that may adversely affect his hours, wages or working conditions as the result of the exercise of his rights under this agreement.

f. When an employee is, (a) under investigation, and (b) subjected to interview by his department, (c) which could lead to punitive action, the interview shall be conducted under conditions listed in this Section.

g. The following provisions shall apply to such interviews:

1. Interviews shall be conducted at a reasonable hour, preferably the time when the employee is on duty, unless the seriousness of the investigation requires otherwise.

2. Employees shall be compensated if the interview occurs off duty, at the appropriate overtime rate of pay.

3. Employees under investigation shall be informed of the nature of the investigation prior to any interview. If a formal written complaint has been filed, a copy shall be given to the employee. Otherwise, where known, employees shall be advised of the name of the complainant. Employees shall be informed of the nature of other investigations instituted at the Department's own request.

4. Interview sessions shall be for a reasonable period and under reasonable conditions.

5. Employees being interviewed shall be informed that failure to answer questions directly related to the investigation can result in punitive action, unless, the incident is being investigated as a criminal act, in which case, no employee shall be required to answer any questions and no disciplinary action can be taken for failure to answer under these circumstances. No promise of reward shall be made as an inducement to answering questions.

a. If the incident may result in either a civil suit and/or a criminal action, the employee may have an attorney at his own cost, in addition to an Association Representative, be present at all steps of the investigation, provided the attorney does not obstruct the course of the investigation.

6. The interview may be recorded, and if it is, the employee shall have access to the tape, if any further proceedings are contemplated, or prior to any further interviews at a subsequent time. The employee that is being interviewed shall also have the right to bring his own recording device and record any and all aspects of the interview and, if he does, the employee shall provide access to the tape to the Municipality. No recording device may be used by any party unless the Association and the Municipality are made aware of the fact prior to such interview. Employees shall be entitled to a transcribed copy of any notes made by a stenographer.

7. If prior to or during the interview of an employee, it is determined that he may be charged with a criminal offense, he shall be immediately informed of this fact.

h. Before an adverse comment can be put into an employee's personnel file, or a completed staff inspection file, the employee must be made aware of the comment by having read the instrument containing the adverse comment and signing a statement of acknowledgment. The employee has the right to refuse to sign the comment after reading it. The fact that the employee refused to sign the comment shall be noted in the document. The employee may file a written response to the adverse comment entered into his personnel file. Employer must attach the employee's written response to the adverse comment. All formal disciplinary actions, except oral admonitions, shall be recorded in the employee's personnel file and shall constitute the official record to be utilized in disciplinary proceedings. All disciplinary matters will be removed from the personnel file after one (1) year if no subsequent report of similar violations has been made.

i. Unless otherwise described herein, all investigations will be conducted in accordance with State and Federal law.

2. Grievance Procedure

a. Nothing contained herein shall be construed to prevent any individual employee from informally discussing a complaint with his immediate supervisor.

Trooper Contract

(i) To determine the location, methods, means and personnel by which operations are to be conducted, including the right to determine whether goods or services are to be made, provided or purchased;

(j) To establish, modify, combine or abolish job positions and classifications;

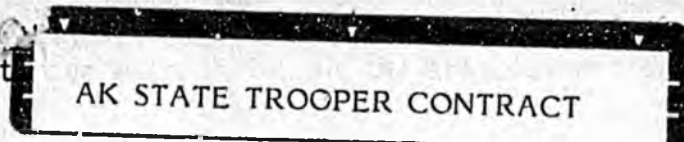
(k) To change or eliminate existing methods of operation, equipment or facilities;

(l) To continue and improve an effective physical security program and maintain the Internal Affairs Unit;

(m) To create, modify or delete departmental rules and regulations.

Those inherent managerial functions, prerogatives and policy-making rights, whether listed above or not, which the Employer has not expressly modified or restricted by a specific provision of this Agreement are not in any way, directly or indirectly, subject to the grievance and arbitration procedures contained herein.

Nothing in the rights granted to the Trooper under this Agreement.



reserving those amendments of this Agreement.

ARTICLE 7

MEMBER RIGHTS

Section 1 - Administrative Investigations

(a) Members shall be entitled to a fair and impartial investigation when in the course of the member's scope of employment, the Employer or member deems an investigation is necessary. The members shall assist and expedite administrative investigations and, when requested by investigative officers, furnish information or give statements as witnesses within the guidelines specified below.

(b) Association representation is mandatory at each stage of any investigation, whether formal or informal, unless the member specifically waives in writing to the representative such representation. "Disciplinary Proceeding" is defined as any action taken against a member by a superior officer that may affect his working conditions, hours or wages, including written reprimands. Minor infractions such as uniform violations or personal appearance are excepted where on-the-spot admonishments are warranted.

(c) The member shall be presumed innocent until proven guilty and the burden of proof shall be on the Employer.

(d) Definition of "Administrative Investigation" shall be construed as: Any time the Employer initiates an investigation to determine the possibility of, or to establish a basis for discipline, suspension or dismissal, whether such investigation or interrogation is initiated by an internal, external, formal or informal complaint.

(e) When a complaint is received against any member which is likely to result in an investigation, the Department shall normally require a written, signed statement by the complainant. In the event no signed statement can be obtained from the complainant, the individual receiving the complaint shall prepare a full signed statement of his own with regard to the complaint. The Department shall promptly notify the member and the Association of such complaints. Said notification shall be followed by written notification including such written signed statements. The notification shall include the names of all complainants in the matter.

(f) A member and the Association, after being notified, will have at least twenty-four (24) hours to prepare for an interview.

(g) The interview will take place at a location mutually agreed to.

(h) The member and the Association shall be informed of the rank, name and command of any officer involved in conducting the investigation, as well as the rank, name and command of any officer who is conducting the interview and the identity of all persons present during the interview.

(i) With the exception of patrol car crashes, discharge of firearms, personal injury accidents, Workers' Compensation claims, death or serious injuries caused by the members or other situations as may be mutually agreed to by the Employer and the Association, and subsequent to identification of: 1) complaint, 2) complainant, 3) subject member in an expeditious manner, a member and the Association shall be given a maximum of two (2) days to respond to a complaint prior to initiation of the investigation. In case of an anonymous complaint, the individual receiving the complaint shall be considered the complainant for purpose of this Article.

(j) A member's immediate family shall not be interviewed unless parties to the complaint or at the specified request of the member.

(k) A member may request and receive an administrative investigation pertaining to any allegations or rumors which may adversely affect his credibility, integrity or reputation.

(l) A member shall be required to answer only those questions specifically relating to such member's duties and responsibilities within the scope of his employment.

(m) At the member's option, he may be accompanied by an Association representative(s). One (1) Association representative to be identified by the Association at the start of the interview shall be allowed to question the member during the interview. Questioning shall be conducted in no more than one-half ($\frac{1}{2}$) hour segments for no more than four (4) hours per day. Each one-half ($\frac{1}{2}$) hour segment shall be followed by a one-half ($\frac{1}{2}$) hour rest period. The rest period can be waived by the member.

(n) The complete interview shall be recorded mechanically or stenographically. The member shall be given the exact copy of all written statements executed. The member shall be provided an exact copy of all recordings within seven (7) days of the interview and a certified transcript within twelve (12) days of the interview, unless extended by mutual agreement.

(o) There shall be no off-the-record questions asked of the member.

(p) Submission to polygraph examination shall not be mandatory. Refusal to submit to such examination shall not be grounds for disciplinary action.

(q) Should information be obtained during the course of an administrative investigation which would tend to lead an investigator to believe that a criminal violation of the law has been committed by a member, the member shall be immediately advised of his constitutional rights.

(r) If during any investigation, the Employer determines it is necessary to relieve a member of regularly-assigned duties, the member shall be temporarily reassigned to "administrative" duties with full pay, benefits and retention of his classification until the investigation has been concluded and a course of action determined. This temporary reassignment will not be considered as a disciplinary measure, and shall not exceed thirty (30) days unless mutually agreed to.

(s) No materials or reports involving the allegations shall be entered into any personnel file of the member where the investigation has exonerated the member and/or the allegations were determined to be unfounded.

(t) A member who has been under investigation and the Association shall be informed by the most expeditious method available when the investigation has been completed and course of action has been determined. If the original notification is other than written, a follow-up communication to the member and Association will be provided by certified mail.

(u) Member's rights under this Article shall be extended to probationary employees after completion of six (6) months of their initial probationary period with the exception of dismissals. Upon successful completion of their initial probationary period, full member's rights shall be extended to the member.

Section 2 - Voting

The Employer shall provide reasonable and necessary time for members to vote in local, municipal, borough, state and federal elections when the member is, in the view of the Employer, unable to vote outside of working hours.

Section 3 - Examination of Personnel Files

A member shall have the right to examine his/her own personnel file or files. At the time any material is placed in the member's personnel file

or files by the Employer, a copy shall be forwarded to the member unless originated by the member.

Anecdotal records are records not contained in the member's personnel file or files. The parties agree that anecdotal records may be kept in preparation for completing performance evaluations. The member will initial, or be provided, a copy of each anecdotal note at the time it is originated, or as soon as practical thereafter. If the note is not initialed or provided to the member, it shall be considered to be meaningless. All such notes will be given to the member at the time the subsequent performance evaluation report is completed.

ARTICLE 8

TRAVEL AND PER DIEM

Section 1 - Per Diem Allowance

While traveling on official business and overnight lodging is obtained, employees are paid a per diem allowance instead of actual expenses for subsistence. The locations where overnight lodging is obtained and the circumstances of travel determine the per diem rate that is applicable.

Several basic per diem allowances have been established in Alaska. The basic allowances vary from area to area because of significant differences in the cost of living throughout the State. In addition, a basic per diem allowance has been established for outside travel to and from the continental United States, Hawaii and Canada.

The established per diem allowance is also referred to as the short-term rate. In addition to the short-term rate there is a long-term rate and a noncommercial rate. The circumstances of travel determine which rate will apply.

(1) Short-term Rate: A short-term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of good and moderately priced establishments catering to the general public. The short-term per diem rate is intended for trips of such duration that monthly rates are not obtainable. The short-term per diem rate may not be used after the thirtieth (30th) consecutive day in one (1) location, unless a continuation has been approved in advance by the Commissioner of Administration.

(2) Long-term Rate: A long-term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of establishments catering to the long-term visitor. The long-term per diem rate may not be used after six (6) consecutive months in one (1) location, unless a continuation has been approved in advance from the Commissioner of Administration.

New York

NEW YORK CITY POLICE DEPARTMENT

PATROL GUIDE

PROCEDURE No.

118-9



INTERROGATION OF
MEMBERS OF THE SERVICE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
6-25-82	7-2-82	82-5	1 of 3

PURPOSE

To protect the rights of the member of the service (uniformed or civilian) in an official department investigation.

PROCEDURE

Prior to questioning a member of the service (uniformed or civilian) who is the subject or a witness in an official investigation:

INTERROGATING
OFFICER

1. Permit member to obtain counsel if:
 - a. A serious violation is alleged or
 - b. Sufficient justification is presented although the alleged violation is minor.
2. Notify member concerned two (2) business days prior to date of hearing to permit member to obtain and confer with counsel.
3. Inform member concerned of:
 - a. Rank, name and command of person in charge of investigation.
 - b. Rank, name and command of interrogating officer.
 - c. Identify of all persons present.
 - d. Whether he is subject or witness in the investigation, if known.
 - e. Nature of accusation.
 - f. Identities of witnesses or complainants (address need not be revealed) except those of confidential source or field associate unless they are witnesses to the incident.
 - g. Information concerning all allegations.
4. Permit representative of department line organization to be present at all times during interrogation.
5. Conduct interrogation at reasonable hour, preferably when member is on duty during daytime hours.
6. Insure that interrogation is recorded either mechanically or by a department stenographer.
 - a. The Department Advocate will determine if a transcript is required in non-criminal or minor violation cases.
7. Do not use:
 - a. "Off the record" questions.
 - b. Offensive language or threats (transfer, dismissal or other disciplinary punishment).
 - c. Promises of reward for answering questions.
8. Regulate duration of question periods with breaks for meal, personal necessity, telephone call, etc.
9. Record all recesses.

PATROL GUIDE

PROCEDURE No.

118-9



INTERROGATION OF MEMBERS OF THE SERVICE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
6-25-82	7-2-82	82-5	2 of 3

NOTE

Interrogations may be conducted before or after CHARGES AND SPECIFICATIONS (PD468-121) have been served. An interrogation conducted after service of charges must be completed at least 10 days prior to the date of department trial except as directed by the Deputy Commissioner-Trials.

10. Conduct interrogation within a reasonable time after disposition of criminal matter, when member was arrested, indicated or under criminal investigation.

11. Furnish member with copy of tape of interrogation no later than twenty (20) days after service of charges.

a. If interrogation was conducted after service of charges, tape must be furnished to member no later than (5) days after interrogation.

b. Furnish transcript, if one was prepared, by 1000 hours on trial date, in all cases.

NOTE

When the department trial date is scheduled immediately after CHARGES AND SPECIFICATIONS are served, the Deputy Commissioner-Trials will grant the department reasonable time to conduct an interrogation. In any event, a copy of the tape and a copy of the transcript must be furnished as indicated above, if appropriate.

COMMANDING OFFICER OF MEMBER

12. Assign member to 2nd Platoon, if possible.

MEMBER OF THE

13. Answer questions specifically directed and narrowly related to official duties. (Refusal shall result in member's suspension from duty.)

14. Submit OVERTIME REPORT (PD138-064) if lost time accrues as result of investigation.

SUPERVISOR IN CHARGE OF INVESTIGATION

15. Notify the station house officer immediately when member of the service is directed to leave his post or assignment to report for an official investigation.

16. Insure that notifications concerning official investigations are properly recorded in appropriate department records when made to or recorded from:

- a. Complainants
- b. Witnesses
- c. lawyers
- d. Respondents
- e. Other interested parties.

PATROL GUIDE

PROCEDURE No.

118-9



INTERROGATION OF MEMBERS OF THE SERVICE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
6-25-82	7-2-82	82-5	3 of 3

S.H. OFFICER

17. Record in appropriate department records and notify the investigating command immediately of notifications or messages received from:
- Lawyers
 - Witnesses
 - Complainants
 - Other interested parties involved in the subject investigation.

ADDITIONAL DATA

If a member of the service (uniformed or civilian) is under arrest or is the subject of a criminal investigation or there is a likelihood that criminal charges may result from the investigation, the following warnings shall be given to the member concerned prior to commencement of the interrogation:

"I wish to advise you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statement may be used against you in relation to subsequent departmental charges".

The questions and answers resulting from the interrogation conducted pursuant to this procedure are confidential. They are not to be revealed nor released to any person or agency outside the department without prior written approval of the Deputy Commissioner-Legal Matters. If a subpoena duces tecum is received for any such questions and answers, the Legal Bureau should be contacted immediately.


POSITION PAPER
SENATE BILL 115

This bill would provide, in great detail, individual rights for peace officers facing investigation which might lead to criminal action or civil liability, discipline, or "punitive action". Areas dealt with include written complaints, scheduling and conduct of interrogations, transcripts and recordings, polygraphs, personnel files and the right to representation or assistance.

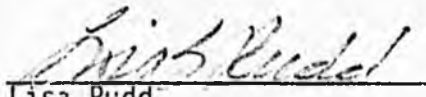
We oppose this bill. Peace officers by definition are public employees, with rights to collectively bargain. Much of this bill deals with "personnel policies affecting the working conditions of employees" [AS 23.40.250(7)], which are subject to collective bargaining. In one State employee bargaining unit, extensive negotiations have occurred on the subjects addressed by the bill, and agreement has been reached on most of them (see Article 7 of the attached contract).

Prepared by:

Approved by:



Guy Stringham
Director
Division of Labor Relations



Lisa Rudd
Commissioner
Department of Administration

24 March '83
Date

4/7/83
Date

LETTER OF UNDERSTANDING #1
between
STATE OF ALASKA
and
PUBLIC SAFETY EMPLOYEES ASSOCIATION

Re: ARTICLE 7

It is understood and agreed between the parties that the provisions of Article 7 do not necessarily apply to all situations or incidents which may result in the discipline of a member of the bargaining unit. The Employer may immediately discipline any member if the Employer, after considering the circumstances of each individual case, deems it necessary that prompt disciplinary action be administered. When it becomes necessary for the Employer to initiate disciplinary actions against any member, such actions shall be administered in a fair and impartial manner, with due regard for the circumstances of the individual case.

Article 7 shall apply only to investigations or interrogations of a member conducted by the Commissioner or his authorized representatives, and which is for the purpose specified in Section 1(d). The Article shall not apply to communications between the member and his/her present chain of command (up to and including the level of Detachment Commander), unless such communications are a direct result of an administrative investigation authorized by the Commissioner.

It is further agreed that information which is obtained in the course of a criminal investigation of a member may be used in the disciplining of a member, whether or not an administrative investigation has been conducted. However, any discipline resulting from the use of such information must meet the test of just cause, and the member shall be entitled to Association representation in any meetings between the Employer and the member regarding discipline which has, or is to be, administered.

Article 7, Section 1(m), shall mean that no more than two (2) Association representatives may be present at such interviews.

This Letter of Understanding will be effective from January 1, 1983 through December 31, 1983, after which the Agreement language once again will become the sole authority of the collective bargaining application of this procedure.

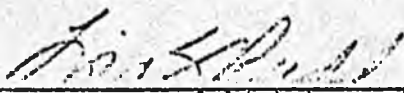
Pia S. Rudd
Commissioner of Administration
State of Alaska
Date: 1/25/83
1983

Edward J. Hirt
President
Public Safety Employees Association
Date: Jan 25 1983

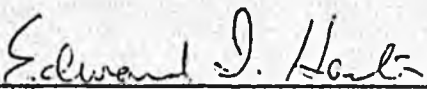
Robert M. Pezja
Spokesperson
Public Safety Employees Association
Date: Jan 25, 1983

LETTER OF UNDERSTANDING #5
BETWEEN
STATE OF ALASKA
AND
PUBLIC SAFETY EMPLOYEES ASSOCIATION
Re: ARTICLE 38

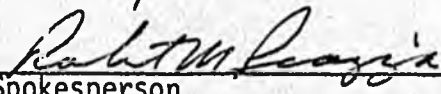
It is understood and agreed between the parties that, except as it is modified by the attached Letters of Understanding, the 1982 Agreement shall be extended and shall remain in effect from January 1, 1983 until December 31, 1983. Except for this modification of effective dates, all existing terms of Article 38 shall remain in effect during the period from January 1, 1983 until December 31, 1983.



Commissioner of Administration
State of Alaska
Date: 1/25/83



President
Public Safety Employees Association
Date: Jan 25, 1983



Spokesperson
Public Safety Employees Association
Date: Jan 25, 1983

Attachments: Letter of Understanding #1, Re: Article 7
Letter of Understanding #2, Re: Article 15, Section 2
Letter of Understanding #3, Re: Article 15, Section 11
Letter of Understanding #4, Re: Article 20

STATE OF ALASKA
FISCAL NOTE

Revision Date: _____, 1983

I. REQUEST

Bill/Resolution No.: SB 115
 Title: Indiv. Rights of Peace Officers
 Sponsor: dey, Kelly, Ray, Sturgulewski
 Requestor: _____ & Kerttula

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Gen Admin Svcs
 BRU, Program of Subprogram(s) Affected:
Labor Relations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: *Bey Sturgeon*
 Division: Labor Relations

Phone: 465-4404
 Date: March 31, 1983

Approved by Commissioner: Lisa Rudd
 Department: Administration

Date: 4/7/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 3, 1983

Senator Vic Fischer, Chairman
Senate State Affairs Committee
Pouch V
Juneau, Ak 99811

RE: SB 115

Dear Senator Fischer:

In response to your letter of February 28, we have prepared the attached chart which makes a comparison between the rights that a police officer under investigation for a criminal offense would have under SB 115, with the comparable rights that any other citizen would have. As you can see, a police officer would be entitled to many more rights, which we believe would improperly hinder criminal investigations.

We found it difficult to make these comparisons for a variety of reasons. First, the bill as a whole is poorly drafted and difficult to understand in parts. More importantly, one must keep in mind that no person is required to answer questions if the answers would tend to incriminate them, therefore any citizen, including a police officer, can simply refuse to be interviewed on that basis.

We hope this brief analysis answers your questions.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Dan Hickey

Daniel W. Hickey
Chief Prosecutor

DWH/DJG/gb-49

Enclosure

CRIMINAL INVESTIGATIONS UNDER SB 115 and HB 200

RIGHTS OF A POLICE OFFICER UNDER SB 115 (HB 200)	RIGHTS OF A DEFENDANT IN CUSTODY	RIGHTS OF A SUSPECT NOT IN CUSTODY
18.65.531(a)(1) WRITTEN NOTICE OF CHARGES BEFORE INTERVIEW	Notice of charges Within 24 hours AS 12.25.150	No such right
(a)(2) WITNESS WHO CAN PARTICIPATE IN INTERVIEW	Attorney can be present, but may not "participate"	No such right
(a)(3) REASONABLE HOURS	No such right	No such right
(a)(4) PAID DURING OFF- DUTY INTERVIEW	No such right	No such right
(a)(5) NO OFFENSIVE LANGUAGE OR THREATS OR PROMISES	No such right	No such right
(a)(6) TAPE RECORDING ONLY UPON NOTICE	There is no expectation of privacy in a police station therefore there are no such rights for defendants or suspects Cf., <u>State v. Glass</u> , 583 P.2d 872 (Alaska 1978).	
(a)(7) TRANSCRIPT OF INTERVIEW OR REPORT	Transcripts and police reports are available to defendants and suspects if charges are ultimately pursued	
(a)(8) LIMITATIONS TO PERSONNEL FILE	Not applicable	Not applicable
(a)(9) LIMITATION ON POLYGRAPH	Defendants and suspects may not be compelled to take a polygraph	
(a)(10) MAY REFUSE PERSONAL INFORMATION INQUIRIES	Defendants and suspects may refuse to answer any question	
(a)(11) SEARCH & SEIZURE RIGHTS TO POLICE LOCKER	Defendants and suspects have search and seizure rights only where there is an expectation of privacy that society is willing to recognize as reasonable. This provision probably means that the legislature has declared that a police officer's locker in the police station, which is provided by his employer, cannot be searched without a warrant.	

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

BY RODEY, KELLY, RAY,
STURGULEWSKI AND KERTTULA

1 IN THE SENATE

2

SENATE BILL NO. 115

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to individual rights of peace officers."

7

8

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

9

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

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ARTICLE 7. INDIVIDUAL RIGHTS OF PEACE OFFICERS.

11

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

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Sec. 18.65.531. INVESTIGATION OF CONDUCT OF PEACE OFFICER SUBJECT TO PUNITIVE ACTION. (a) If a peace officer is under investigation instituted by the peace officer's employing agency or as a result of a complaint being filed against the peace officer and the peace officer is interrogated or interviewed by the employing agency for conduct that may subject the peace officer to punitive action,

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

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agst minorities / "chilling effect" / could be damaging to invest.

SB 115

inter

1 this section;

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

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

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

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

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

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

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

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be present
Problem for
Seaward

? *not usual*
reads
reads
distinct
subject

*if not sign or response,
so note + file.*

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

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

*conf. info do
subject*

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

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

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

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

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

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

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

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

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

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

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

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

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

Chief
- 2/28 *H*

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

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

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

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

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

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 5, 1983
3:00pm

Butrovich Room
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair
Senator Tim Kelly
Senator Arlis Sturgulewski
Senator Pat Rodey

SB 27--Toll free telephone calls

Held over pending House State Affairs Committee action on new proposal.

SB 115--Individual rights of police officers

Senator Rodey (prime sponsor) explained the provisions of the bill. He said that police officers support the bill but that police chiefs oppose it.

Chief Joe Ciraulo, Juneau Police Department (also representing other police chiefs in S.E. Alaska) spoke against the bill. He felt that having a representative of an officer present at each stage of a disciplinary hearing was unnecessary. He also opposed having to get a search warrant to search an officer's locker.

Senator Rodey said that management policies which address some of these problems can change over time. This bill offers uniform rights for all officers.

Senator Sturgulewski asked if this bill would change present policies regarding disciplinary investigations. Chief Ciraulo answered "yes".

Senator Kelly asked if this bill would apply to only local police departments. Senator Rodey responded that the bill would apply to all peace officers in the state.

Senator Fischer stated that this bill requires a written complaint pursuant to a disciplinary action and asked if that is current practice in the Juneau Police Department. Chief Ciraulo said that he thought so.

John Strutko, an Anchorage police officer, spoke in favor of the bill. He felt that it was a good management tool and that officers should not have to give up their civil rights when they put on a badge.

Senator Kelly asked if there was anything in this bill which is not already covered in the negotiated contract with the Anchorage Police Department. Mr. Strutko stated that the provisions prohibiting involuntary polygraph tests were not in the contract.

Richard Ross, Kenai Police Chief, spoke against the bill. He felt it would be a statutory interference with his municipal personnel system. He felt this system works well. He saw some merit to the polygraph provisions.

Senator Fischer asked if police officers have full fifth amendment rights under the present system. Mr. Ross answered "yes". Senator Fischer then asked if officers would lose their jobs for refusing to answer questions relating to a disciplinary investigation. Mr. Ross said "no".

Ed Martin, Kodiak Chief of Police, spoke against the bill. He said that most of the procedures in this bill are now covered in current state and federal statutory and constitutional law as well as most personnel systems.

Holli Ploog, Attorney for the Anchorage Police Officers Association, spoke for the bill. She stated that current laws limiting polygraph tests exempt police officers. She favors the use of a polygraph exam as a hiring tool but opposes its use as an investigatory tool during employment. She said that locker searches without permission were probably unconstitutional. She said that the Fairbanks Police Officers Association also supports this bill as do many officers in other departments.

Brian Porter, Anchorage Police Chief, spoke against the bill. He said that the bill is a special interest of the Anchorage Police Officers Association but is not supported by other police organizations. He felt that it was inappropriate to use a criminal law standard of proof in a personnel disciplinary matter.

Senator Rodey commented that various blue ribbon commissions have recommended approaches similar to this bill.

Rick Potter, an Anchorage police officer, spoke for the bill. He said that thirteen states have similar legislation. He opposes compulsory use of polygraphs.

Louis Bencardino, Seward Chief of Police, spoke against the bill. He said the bill would cause unneeded expenditures in overtime and other costs.

Senator Kelly commented that he is in favor of police rights but that he does not favor putting provisions into state law that are already incorporated into labor contracts.

Jean Krause, President of N.E.A. Alaska, spoke for the bill. N.E.A. believes that all employees should have full due process rights.

It was the consensus of the committee to hold the bill over.

SB 153--Punishment for obstructing a private citizen who assists a peace officer

Senator Rodey (prime sponsor) explained the bill.

Senator Kelly moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

SB 218--Disclosure of information

Senator Kelly asked that the bill be held over.

SB 227--Alaska Council on Science and Technology

Senator Fischer said that this bill is the product of the extensive hearing the committee held on the sunset of the council and that it addressed all the concerns identified at that hearing.

Senator Rodey moved and asked unanimous consent to pass the bill from committee with individual recommendations. There was no objection.

SJR 13--Urging repeal of the Jones Act

Greg O'Cleary, Maritime Trades, testified against the resolution. He said the Jones Act is a bill of rights for American Seamen. Repeal would affect 2000 workers.

Senator Fischer stated that the Administration has problems with the timing of this measure. There are political problems with related federal issues.

Greg Olsen, FOSS Alaska Lines, said that repeal would only decrease freight rates for a short time and reduce the overall quality of service.

The resolution was held over.

Meeting adjourned at 5:00 pm.

by
David Dye
Committee Aide

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



May 10, 1983
3:00 p.m.

Butrovich Room
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair
Senator Bill Ray, Vice-Chair
Senator Pat Rodey
Senator Tim Kelly
Senator Arliss Sturgulewski

Agenda

SB 115 Rights of Peace Officers

SCR 24 Competitive bidding for travel

Drunk driving and related issues (SB 61, SB 226, HB 17)

SB 115 Rights of Peace Officers

Teleconference with Anchorage

Holli Ploog, representing the Anchorage Police Officers Association, testified in support of the committee substitute prepared by staff.

Senator Ray stated his opposition to the committee substitute. He felt that this bill is inappropriate given the nature and responsibilities of this type of occupation.

Officer Sterling, Anchorage Police Officers Association, testified for the committee substitute.

Brian Porter, Anchorage Chief of Police testified against the committee substitute. He thinks it is a special interest bill which doesn't have wide support.

Robert Henderson, Alaska Chiefs of Police Association, testified against the committee substitute.

Senator Rodey moved and asked unanimous consent to pass the bill from committee with individual recommendations. There was no objection.

SCR 24--Competitive bidding for travel

Senator Jan Faiks, prime sponsor, spoke for the bill. She said that the state travel budget is approximately \$43 million, 60% of which is airfare. She sees an opportunity for substantial savings if air travel were subject to competitive bidding procedures.

Senator Ray was of the opinion that one of the unintended consequences of such a change would be to drive air carriers out of the Juneau market.

Senator Faiks stated that the federal government has successfully used competitive bidding for travel for some years now.

Anselm Staack, Deputy Commissioner of the Department of Administration, said that some savings should be achievable but that more study was needed to select among the various options. In the past the state put out requests for bids for travel and did not receive a single bid.

Senator Kelly moved and asked unanimous consent that the bill pass from committee with individual recommendations. There was no objection.

Drunk driving and related issues (SB 61, SB 226, HB 17)

This was an informal work session to consider CSSB 61 [which is identical to CSHB 6(Jud)] along with a series of amendments agreed upon by the committee. The committee was joined at the table by Gayle Horetski, Department of Law, Peggy Berck, Public Defender Agency, Russ Josephson, Legislative Legal Services, and Karla Forsythe, Alaska Court System.

Six of the proposed seven amendments were adopted by the committee (see attached). Two other changes were considered and added to the bill. Senator Rodey wanted to have "sobriety check points" included as a purpose clause to the bill as he didn't think that a letter of intent would have enough impact. Karla Forsythe of the Alaska Court System related the concerns of the court system about the impact of having the license revocation hearing under the court system. She said that one of the most important aspects of the administrative license revocation process is the swiftness in which the hearing could be done.

She said that this hearing would bog down the court system, and that the purpose of the administrative license revocation process would not be accomplished. She suggested that the hearing be done administratively under the Department of Public Safety. The committee agreed to put the administrative under the Department of Public Safety.

Some questions were raised about the impoundment provision that was in the original HB 6. Senator Rodey agreed to look into impoundment and come back * the committee with conclusions about its feasibility.

The meeting adjourned at 5:12pm.

by
David Dye
Committee Aide