

SB

19

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/21/09

FURTHER: State Affairs
 Judiciary

Date of 5-Day Notice: Thurs. Jan 29, 2009
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/5/09

Community and Regional Affairs Committee considered SENATE BILL NO. 19

SB 19 COMPLAINTS AGAINST PEACE OFFICERS/VPSOS

"An Act relating to complaints concerning peace officers and village public safety officers and to notification to persons filing complaints concerning peace officers and village public safety officers."

and recommends:

- be replaced with SCS or CS SB 19 (CRA)
- adopt previous SCS or CS _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input type="checkbox"/> Same Title
<input checked="" type="checkbox"/> New Title
<hr/>
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DPS	2/3/09			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	✓			
	Thomas	✓			
	KOOKER	✓			
	MENARD	✓			
CHAIR:	OLSON				✓

Alaska State Legislature



Senator Hollis French

SB 19 - Complaints Against Peace Officers/VPSOs

Senate Bill 19 establishes a framework that allows the Department of Public Safety to provide investigation status updates to complainants about grievances they file against peace officers. The legislation protects personnel information and the confidentiality of investigative processes while also allowing the department to provide evidence that a complaint is being taken seriously and getting reviewed for potential disciplinary action.

When a citizen files a complaint against a peace officer, the law must balance the confidentiality of the process with the legitimate need to inform the complainant about the status of the department's investigation. In instances where wrong doing has actually occurred, silence by the department may result in greater mistrust of the system, particularly if it lasts for months.

This legislation provides citizens with more information about how their government responds to their concerns, without reducing protections on confidential personnel files or hindering the objective of completing unbiased investigation processes. I ask for your support on this important piece of legislation.

Relevant Statutes:

Sec. 39.25.080. Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;
- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt, or exempt service;
- (5) the dates of appointment and separation of a state employee;
- (6) the compensation authorized for a state employee; and

(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.


(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

(c) The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter. [Emphasis added].

It appears that this statute is inartfully drafted because it does not require a "governmental agency" that wishes to obtain an employee's medical records to establish any showing of necessity for the records. This issue arose in the present case when it was thought that someone in Governor Palin's office may have obtained copies of Trooper Michael Wooten's workers' compensation file. As drafted, any state governmental agency may obtain medical records of an injured employee by simply making the request. No showing of necessity is required. The problem is compounded because AS 23.30.395, the statute that defines terms of use for Chapter 30, does not define the term "governmental agency."

For this reason, the legislature should consider amending AS 23.30.107 (b)(1) to require that a "governmental agency" that seeks to acquire medical or rehabilitation records of an employee first establish a reasonable relationship between the request for the records and the purpose for obtaining the records.

THE SECOND RECOMMENDATION

The legislature should consider amending AS 39.25.080 to permit those who file complaints against peace officers to receive some feedback about the status and outcome of their complaint. 

Sec. 39.25.080 Personnel records confidential; exceptions.

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(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;
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- (3) prior positions held by a state employee;
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- (5) the dates of appointment and separation of a state employee;
- (6) the compensation authorized for a state employee; and
- (7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160(1) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

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AS 39.25.900. is captioned "Penalties" and provides as follows:

(a) A person who wilfully violates a provision of this chapter or of the personnel rules adopted under this chapter is guilty of a misdemeanor.

(b) A state employee who is convicted of a misdemeanor under this chapter or the personnel rules adopted under this chapter immediately forfeits the employee's office or position.

Discussion

In this case, there has been much said about the level of frustration that existed on the part of Sarah Palin's father Chuck Heath who filed the original complaint against Trooper Michael Wooten, and on the part of Sarah and Todd Palin, who attempted to learn the status of the investigation only to be told by Colonel Grimes that the matter was confidential by reason of AS 39.25.080. I believe their frustration was real as was their skepticism about whether their complaints were being zealously investigated. The irony is that the complaints were taken very seriously, and a thorough investigation was underway. However, the law prevented the Troopers from giving them any feedback whatsoever.

When a citizen files a complaint against a peace officer, there should be a balance in our law that on the one hand seeks to protect the confidentiality of the investigative process, but on the other recognizes that someone may have been aggrieved. At the very least, the law should provide for the release of some information to the complainant regarding the status of the case. When citizens are told no information can be released, it has the potential of engendering skepticism about whether the complaint

was taken seriously. There is likewise a great potential that the confidence we need to have in our law enforcement agencies will be undermined, and respect for those institutions will be eroded. This is especially so because in most instances, as was the case here, the officer is an employee of the very same agency that was conducts the investigation.

In sum, AS 39.25.080 should be studied to determine whether some relaxation of the law is possible to allow some feedback to a person who files a complaint against a law enforcement officer.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 19
 () Publish Date: _____

Identifier (file name): SB019-DPS-DET-02-02-09 Public Safety
 Title COMPLAINTS AGAINST PEACE OFFICERS/VPSOS RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Senator French
 Requester Senate Community and Regional Affairs Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 18.65 by adding a new section (AS 18.65.120) requiring the department to provide procedures for filing complaints against peace officers employed by the department and VPSO's. It also requires the department to notify the complainant of the status or completion of the investigation and whether the complaint was found to be valid. This bill also amends AS 39.25.080 by adding a subsection which states that the disclosures made to a complainant under AS 18.65.120 are not confidential.

 Passage of this legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial Phone 907-247-4480
 Division Alaska State Troopers Date/Time 2/3/09 9:10 AM
 Approved by: Joseph Masters, Commissioner Date _____
Department of Public Safety