

SB

19

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: 2/10/2009

To: Senator Linda Menard, Chair
Senate State Affairs Committee

From: Senator Hollis French (HFC)

RE: Request for Hearing -- SB 19 Complaints Against Peace
Officers/VPSOs

This is a request that you schedule a hearing on SB 19 "Complaints Against Peace Officers/VPSOs" at the earliest possible date.

I have attached a copy of the bill, a sponsor statement, a zero fiscal note, and some related materials for your use. I appreciate your consideration.

Attachments

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.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 19(CRA)
 (S) Publish Date: 2/6/09

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 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	0.0

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

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	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

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

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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February 17, 2009

Senator Hollis French
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator French:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 19, an act relating to complaints concerning peace officers and village public safety officers and to notification to persons filing complaints.

The APOA State Board and Legislative Committee reviewed this proposed legislation and unanimously support this bill.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Public Safety Employees Association
Position Paper – CSSB 19

Current personnel rules prohibit the public disclosure of personnel actions and the vagueness of CSSB 19 undermines these rules. Nothing in CSSB 19 requires a written complaint signed as a true and correct representation of the complaint. Nothing in CSSB 19 adequately limits the scope and content of information released to complainants and nothing prohibits complainants from publicly releasing any and all information given them by DPS. CSSB 19 would put all involved in a compromised position. The State would be liable for damages to the employee, both in and out of the workplace, caused by public release of confidential information. The employee's ability to effectively perform his/her duties or continue in the profession would likely be adversely affected. The Department would become liable for damages to the employee and/or the citizen complainant which would likely hamper its ability to effectively and confidentially investigate complaints. And, the complainant could be held liable for the release of unfounded information.

It is important that we make it clear that we are not, and never have been, opposed to professionalism and accountability. The greatest evidence of this is the fact that a whole article in our Collective Bargaining Agreement is dedicated to these principles. Article VII of the Collective Bargaining Agreement clearly defines the investigative process as well as the grievance process. Together Article VII, the DPS DPI Manual, and the OPM, clearly define processes, methods, rules, and rights connected with internal investigations generated by complaints from the public and fellow employees. CSSB 19 overturns provisions in the collective bargaining agreement and procedures that have functioned well in the past. The message is not, and never has been, that no process should be in place to properly address complaints. CSSB 19 paints a fictional dilemma and purports that there is a great void concerning citizen complaints. CSSB 19 is clearly misguided and unnecessary. Now, does this mean that the current process has no room for improvement or review? Absolutely not; but, to propose legislation that creates a process or system that already exists is absolute nonsense. Furthermore, the Commissioner is currently putting in place within his office the Office of Professional Standards tasked with establishing greater accountability over procedures such as these.

PSEA believes the subsection concerning notification to the complainant as to status and validity are too board and subjective. We have repeatedly expressed our concern about public disclosure of complaints and would prefer complaints be confidential.

As an illustration, suppose an officer is working in an undercover assignment. If CSSB 19 passes, what is there to keep the officer's identity confidential? To what extent does the officer's name become public fodder; and, what exposure does he or she have in that undercover assignment – not to mention the danger? How effective can an officer continue to be in such an assignment?

Since CSSB 19 only stipulates complaints against state peace officers in general terms, if CSSB 19 passes, what happens when a neighbor complains because they disagree with an

officer's parenting? Is the Department obligated to launch an internal investigation? And, does the complaint against the officer become public even though it is not job related? Does the result of such a frivolous and unnecessary investigation become public also? How does that affect the officers standing in his or her neighborhood or community on and off duty?

In summary, SB 19 is bad public policy

- Statutorily requires that DPS create a complaints procedure thus elevating the significance of complaints against peace officers employed by the state. SB 19 advances a supposition that procedures within DPS do not already exist or for that matter function effectively.
- Does not require the filing of complaints confidentially. Nothing prohibits a person from filing a complaint and then providing a copy to the press or publishing and distributing the complaint on the internet for example.
- Does not require that the person filing the complaint to sign it.
- Makes it unclear as to what information will be open to the public.
- Violates Article VII of the collectively bargained agreement that makes the completed investigation file confidential.
- Provides no statutory recourse to a peace officer who suffers professionally, personally, and publicly as a result of a baseless complaint filed against the officer.
- Uses terms and items subject to public disclosure that are confusing and subjective. A complaint that is valid to one may not be interpreted the same way to another. Many times PSEA has filed "valid" grievances, complaints, positions only to have them criticized as unacceptable.

Thank you for your consideration of these reasons to oppose CSSB 19.

Rob Cox
President of the Public Safety Employees Association

ARTICLE 7 - MEMBER RIGHTS AND DISCIPLINARY PROCEDURE

Section 1 - Definition of Discipline

Discipline is defined as any action taken against a member by the Employer that may affect working conditions, hours or wages. Terminations, suspensions, demotions, written reprimands, or written warnings are considered discipline. A copy of all disciplinary actions and any materials used to justify the discipline taken shall be forwarded to the Association at 4300 Boniface Parkway, Suite 116, Anchorage, Alaska 99504 within two (2) working days.

Section 2 - Rights of Members

Members are entitled to a fair and impartial investigation when in the course of the member's scope of employment, the Employer deems an investigation is necessary. The member may request and receive an Administrative Investigation after receipt of notification of an Inquiry. The member shall be presumed innocent unless a complaint or allegation is sustained and the burden of proof shall be on the Employer.

Egregious misconduct which may result in discharge includes, but is not limited to, gross disobedience or insubordination, dishonesty, chemical or alcohol intoxication at the workplace, physical misconduct, criminal conduct, abusive or lewd behavior, or abandonment of duties. Nothing in this paragraph shall abridge the member's rights under the Collective Bargaining Agreement.

If it becomes necessary for the Employer to initiate disciplinary actions against any member for just cause, such actions shall be administered in a fair and impartial manner with due regard for the circumstances of the individual case.

Upon receipt of an allegation, except criminal, against a member, the Employer shall notify the member and the Association that a complaint has been received within two (2) days. When a complaint is received against a member that 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/her own with regard to the complaint. A copy of the signed statement or the complaint shall be furnished to the member and Association at the time of notification that there is an investigation initiated.

Association representation is mandatory at any disciplinary employee conference and the employee interview unless the member specifically waives his or her rights to representation in writing. However, the member continues to have all appeal rights provided in the CBA in order to contest any disciplinary action that may be taken, excluding Letters of Warning or Reprimand.

Section 3 – Types of Investigation

Investigation of disciplinary actions is separated into three types.

Criminal Investigations. The State of Alaska has the authority to authorize a criminal investigation on any person in the State of Alaska. It is not the intent of this Article to prohibit the State of Alaska's authority in these matters. Therefore, when the State of Alaska authorizes the initiation or continuation of a criminal investigation on a member of the Association, said investigation can proceed as any similar case involving persons in the State who are not members of the Association. In those instances where the State is conducting an investigation as they would against any nonmember, the Employer/Employee relationship shall be nonexistent and this Article shall not apply until a conclusion of said investigation is reached. If upon reaching a conclusion of the criminal investigation the State determines that the possibility of discipline may exist, the State shall conduct one of the three procedures listed below. If the State determines discipline is appropriate the decision shall not be based solely upon the criminal investigation.

Administrative Investigation: An AI can result in discipline up to and including termination. When details surrounding the complaint or allegation are not readily apparent and the details are complex the Employer may conduct an administrative investigation. The Employer will engage in this type of investigation when an Administrative Inquiry cannot be completed by the below listed timeframe or if the Employer believes, at the onset, that it will be unable to conclude a thorough investigation within five (5) of the subject member's working days.

Administrative Inquiry: An inquiry can result in discipline up to and including termination. When details surrounding the complaint or allegation are not readily apparent and the details are not complex the Employer may conduct an administrative inquiry. The Employer will engage in this type of investigation if expected to conclude the investigation within five (5) of the subject member's working days.

Known & Obvious: An Administrative Investigation or Inquiry is not warranted when the details of the complaint or allegation are readily apparent and not in dispute. Discipline from a Known and Obvious circumstance will not result in termination.

Section 4 – Investigative Process

Administrative Investigation (AI):

1. The member is notified of the complaint or allegation in the manner described under Section 2. The member shall also be notified of the employee

interview and shall have at least five (5) of the subject member's working days to prepare for the interview. The name of the investigator will be identified in the notification. In no case shall the investigating officer be in the member's chain of command with the exception of DOT/PF in which case the investigative officer will not be the member's direct supervisor.

2. The member shall be presumed innocent until proven guilty and the burden of proof shall be on the Employer.
3. The member shall cooperate during any investigative process and, when requested by the investigator, will furnish information or give statements.
4. The member may be accompanied by no more than two (2) representatives at the employee interview. One (1) Association representative to be identified by the Association at the start of the interview) shall be allowed to cross-examine the member at the close of the interview with right of re-examination by Management following the Association questioning. The interview will be recorded. Questioning shall be conducted in not more than one-half (1/2) hour segments for no more than four (4) hours per day. Each one-half (1/2) hour segment shall be followed by a one-half (1/2) hour rest period. The rest period may be waived by the member.
5. A member shall be required to answer only those questions specifically related to the member's duties and responsibilities within the scope of his/her employment and pertaining to the investigation.
6. A member's immediate family shall not be interviewed unless parties to the complaint, or at the specific request of the member.
7. There shall be no off-the-record questions asked of the member.
8. Submission to a polygraph examination or other lie detecting devices shall not be mandatory. Refusal to submit to such examination shall not be grounds for disciplinary action.
9. If, during an investigation, the Employer determines it is necessary to relieve a member of regularly assigned duties, the member may be temporarily reassigned to "administrative" duties or absence with full pay, benefits and retention of his/her classification until the investigation has been concluded and a course of action determined. This temporary reassignment shall not be considered as a disciplinary measure and shall not exceed thirty (30) days unless an extension is agreed to between PSEA and the Employer.
10. During the course of an investigation, the Department may determine that it is not necessary to continue the normal and routine investigation process and procedures. The Department may determine that the investigation can be completed with an Executive Summary or a Memorandum of Findings as

opposed to a full investigative report. In these cases, the Department shall advise the Association of its intent. The Commissioner and/or designee shall meet with the member and an Association Representative within ten (10) working days to discuss the Executive Summary or Memorandum of Findings.

During this meeting, the member and/or the Association may contest the Executive Summary or Memorandum of Findings and the normal and routine investigative process and procedures shall be followed.

11. Prior to determining discipline, a recorded employee conference will be held. In such case, the member shall be notified and be afforded at least five (5) of the subject member's working days to prepare for the conference, unless waived by the member. All investigative material shall be made available to the member and Association five (5) days prior to the employee conference.

12. The member shall be provided an exact copy of any recordings within seven (7) days of the interview(s) and conference if requested, and a certified transcript within twelve (12) days of the interview(s) or conference, if transcribed, unless extended by mutual agreement.

If the member or the Association records either the employee interview or employee conference, the member shall provide an exact copy of these recordings within seven (7) days of the interview and/or conference, if requested, and a certified transcript within twelve (12) days of the interview or conference, if transcribed, unless extended by mutual agreement.

13. A member who is under investigation, and the Association, shall be informed within five (5) days of the investigation having been completed and a course of action has been determined. If the original notification is other than written, a follow-up communication to the member and Association shall be provided by certified mail or fax.

14. If issued, a copy of the disciplinary action shall be forwarded to the Association within two (2) days of the issue.

15. 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 or not sustained.

The completed Investigation file shall be considered a confidential file. Requests for review of these files must be made in writing by the member or Association, on behalf of the member, to the Commissioner's Office.

Administrative Inquiry:

1. The member is notified of the complaint or allegation in the manner described under Section 2. The Employer shall have up to five (5) of the subject

member's working days in which to make inquiries to determine if an Administrative Inquiry is necessary and to notify the member and the Association whether or not an Administrative Investigation shall be conducted. The member shall be presumed innocent until proven guilty and the burden of proof shall be on the Employer.

2. The member shall be notified and may have up to two (2) of the subject member's working days to prepare for an employee interview. The name of the investigator will be identified.

3. The member shall cooperate during any investigative process and, when requested by the investigator will furnish information or give statements. The member may either answer questions or decide not to respond during the inquiry process.

4. The member may be accompanied by no more than two (2) representatives at the employee interview. One (1) Association representative to be identified by the Association at the start of the interview) shall be allowed to cross-examine the member at the close of the interview with right of re-examination by Management following the Association questioning. The interview will be recorded. Questioning shall be conducted in not more than one-half (1/2) hour segments for no more than four (4) hours per day. Each one-half (1/2) hour segment shall be followed by a one-half (1/2) hour rest period. The rest period may be waived by the member.

5. A member shall be asked to answer only those questions specifically relating to such member's duties and responsibilities within the scope of his/her employment and pertaining to the inquiry.

6. A member's immediate family shall not be interviewed unless parties to the complaint, or at the specific request of the member.

7. There shall be no off-the-record questions asked of the member.

8. Submission to a polygraph examination or other lie detecting devices shall not be mandatory. Refusal to submit to such examination shall not be grounds for disciplinary action.

9. If, during an inquiry, the Employer determines it is necessary to relieve a member of regularly assigned duties, the member may be temporarily reassigned to "administrative" duties or absence with full pay, benefits and retention of his/her classification until the investigation has been concluded and a course of action determined. This temporary reassignment shall not be considered as a disciplinary measure and shall not exceed thirty (30) days unless an extension is agreed to between PSEA and the Employer.

10. During the course of an inquiry, the Department may determine that it is not necessary to continue the normal and routine investigation process and

procedures. The Department may determine that the investigation can be completed with an Executive Summary or a Memorandum of Findings as opposed to a full investigative report. In these cases, the Department shall advise the Association of its intent. The Commissioner and/or designee shall meet with the member and an Association Representative within ten (10) working days to discuss the Executive Summary or Memorandum of Findings. During this meeting, the member and/or the Association may contest the Executive Summary or Memorandum of Findings and the normal and routine investigative process and procedures shall be followed.

11. Prior to determining discipline, a recorded employee conference will be held. In such case, the member shall be notified and be afforded at least two (2) of the subject member's working days to prepare for the conference, unless waived by the member. All investigative material shall be made available to the member and Association five (5) days prior to the employee conference.

12. The member shall be provided an exact copy of any recordings within seven (7) days of the interview(s) and conference if requested, and a certified transcript within twelve (12) days of the interview(s) or conference, if transcribed, unless extended by mutual agreement.

If the member or the Association records either the employee interview or employee conference, the member shall provide an exact copy of these recordings within seven (7) days of the interview and/or conference, if requested, and a certified transcript within twelve (12) days of the interview or conference, if transcribed, unless extended by mutual agreement.

13. A member who has been under an Administrative Inquiry, and the Association, shall be informed within five (5) days of the investigation having been completed and a course of action has been determined. If the original notification is other than written, a follow-up communication to the member and Association shall be provided by certified mail or fax.

14. If issued, a copy of the disciplinary action shall be forwarded to the Association within two (2) days of the issue.

15. No materials or reports involving the allegations shall be entered into any personnel file of the member where the Inquiry has exonerated the member and/or the allegations were determined to be unfounded or not sustained. The completed Investigation file shall be considered a confidential file. Requests for review of these files must be made in writing by the member or Association, on behalf of the member, to the Commissioner's Office.

Known & Obvious:

1. Prior to determining discipline, a recorded employee conference will be held. In such case, the member shall be notified and afforded at least two (2) of

the subject member's working days to prepare for the conference, unless waived by the member. The member shall be informed of the name of the person conducting the conference.

2. All investigative material shall be made available to the member and Association at a department office prior to or at the employee conference.

3. The member shall be provided an exact copy of any recordings within seven (7) days of the conference if requested, and a certified transcript within twelve (12) days of the conference, if transcribed, unless extended by mutual agreement.

If the member of the Association records the employee conference, the member shall provide an exact copy of these recordings within seven (7) days of the conference, if requested, and a certified transcript within twelve (12) days of the conference, if transcribed, unless extended by mutual agreement.

4. If issued, a copy of the disciplinary action shall be forwarded to the Association.

5. 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 or not sustained. The complete investigation file shall be considered a confidential file. Requests for review of these files must be made in writing by the member or Association, on behalf of the member, to the Commissioner's Office.

Section 5 - 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 6 - Examination of Personnel Files

A member shall have the right to examine his/her own personnel file or files and to make copies of any document contained therein. 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 shall 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 shall be given to the member at the time the subsequent performance evaluation report is completed.

SENATE COMMITTEE REPORT

DATE: 2/6/09

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 2/24/09

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

SENATE BILL:	
<input checked="" 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#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
Public Safety	2/6/09			<input checked="" type="checkbox"/>	

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Albert Paskvan</i>	KOOLKAN			X	
<i>Joe French</i>	PASKVAN				X
<i>WDSR</i>	French	X			
<i>K. Meyer</i>	Meyer				X
CHAIR: <i>Linda Menard</i>	MENARD	X			