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The Honorable Wes Keller, Vice-Chair  
House State Affairs Committee  
Alaska State House of Representatives  
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**Re: House Bill 351**  
**ACLU Review of Legal Issues**

Dear Chair Lynn and Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 351, relating to the regulation of police licenses and confidentiality of police officer information.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. While we support some of the aims of the legislation, we have reservations regarding some provisions, and urge amendment of those provisions, as more fully set forth below.

**Police Standards Council Regulations and Certificate Revocations**

Section One of HB 351 would replace the automatic revocation of a police certification with a suspension followed by a hearing. Permitting “notice and an opportunity to be heard in a meaningful, impartial hearing” before the

cancellation of a valuable license is consistent with the due process clause of the Alaska Constitution.<sup>1</sup> Certainly, police officers are owed the benefit of the constitutional rights they are sworn to uphold. A police certificate is a valuable license akin to a fishing license or liquor license, permitting an individual to ply a particular trade and should not be revoked with less consideration.

On the other hand, Section Two imposes the obligation on the council to find the officer's license revocation is justified by "clear and convincing evidence." The ACLU of Alaska has not found any license revocation proceeding elsewhere in the Alaska Statutes where "clear and convincing evidence" is the standard. It should be adequate for justice towards police officers for the council to revoke a license on a "preponderance of the evidence" or "more likely than not" standard. Notably, the Alaska Supreme Court recently found that putting the burden of persuasion on a licensee, rather than the board bringing the action to revoke the license, was consistent with due process.<sup>2</sup> A council finding that a police officer is "more likely than not" unfit to drive an emergency vehicle, carry a firearm, use necessary force, and arrest citizens within the boundary of the laws, would suggest that public safety is best served by a license revocation.

While the officers have compelling due process interests, the citizens of Alaska have compelling interests in being assured that those who serve as law enforcement officers – and may be required to employ deadly force – are unquestionably fit to do so. HB 351 would make police officers the only class of licensees whose unfitness must be shown to a clear and convincing standard in order to revoke a license. While infrequent, serious problems relating to officer fitness have occurred – for example, one officer who was later found to be a serial rapist. Section Two puts an unreasonable and uniquely high bar in the way of revoking the certifications of unfit officers.

### **Polygraphs**

Section Five and Section Six bar the firing of any police officer for any refusal to undergo a polygraph examination.

We recognize the not insignificant evidence that polygraph examinations are faulty and flawed. However, it appears that the proposed legislation singles out one class of public employees for shielding from them. The supporting documentation for HB 351 suggests that polygraphs – as

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<sup>1</sup> *Stevens v. State, Alcoholic Beverage Control Bd.*, 257 P.3d 1154, 1160 (Alaska 2011) (citation omitted).

<sup>2</sup> *Stevens*, 257 P.3d at 1160.

being fundamentally unreliable – are inappropriate for *all* public employees, and thus, in fact, for all persons in the state, to include probationers, prisoners, parolees, etc.

### **Confidentiality of “Personally Identif[ying]” Information Sweeps Too Far**

We have the most concern with the provisions in Section Seven that all information that “personally identifies” an individual officer, including a photograph, shall be made confidential, subject only to release once an officer is actually arrested for a crime. Information such as an officer’s home address may rarely be of public interest, although exceptions may exist to such a general observation.<sup>3</sup> The category of “personally identifying information” sweeps so broadly it could thwart necessary and appropriate public scrutiny of officer behavior.<sup>4</sup>

A person who complains about being beaten by an officer or being subject to an illegal search – assuming the officer declined to give his name before engaging in the alleged conduct – could have a legitimate interest in going to the station to report the conduct and might legitimately seek to review a list of officers on duty and review accompanying photos to verify the identity of the officer. Of course, an officer’s appearance is not typically kept secret; any person who observes an officer walking down the street in uniform can logically connect the officer’s physical appearance to his identity as a police officer.

“Personally identif[ying]” information could sweep as broadly as the officer’s name, which would render obtaining any report with an officer’s name on it unavailable to public scrutiny without a court order. **Basic information, such as an officer’s name, photo, and badge number must remain available to public inspection for the purpose of effectively monitoring law enforcement.** The courts have previously worked hard to balance competing interests, especially with regard to police personnel files.<sup>5</sup> Some information not usually of

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<sup>3</sup> Many municipalities around the country have grown concerned that officers live outside the city where they patrol, or even have policies mandating that officers live in the town they serve. Some concerned citizens, such as those in rural villages that may be served by officers who fly in from the Mat-Su Valley or the Fairbanks area, may have a legitimate wish to document whether officers live in the area or far outside it.

<sup>4</sup> *Booth v. State*, 251 P.3d 369, 374 (Alaska App. 2011) (“[A public employee’s] right to privacy is not absolute.’ This is especially true when the public employee is a police officer, because (as the supreme court stated), ‘[t]he cornerstone of a democracy is the ability of its people to question, investigate[,] and monitor the government’ in its exercise of coercive power.”) (citations omitted).

<sup>5</sup> *Booth*, 251 P.3d at 376; *Jones v. Jennings*, 788 P.2d 732, 738 (Alaska 1997) (“There is perhaps no more compelling justification for public access to documents regarding citizen complaints against police officers than preserving democratic values and fostering the public’s trust in those charged with enforcing the law.”).

public interest, such as home address, social security number, or medical information,<sup>6</sup> may legitimately be made confidential, subject to disclosure for good cause.

Section Seven, as written, sweeps too broadly and fails to distinguish between truly private information and information of interest to the general public. In doing so, Section Seven would significantly thwart the ability of the public to scrutinize the operations of those holding enormous power: the power to arrest. The provision might even come into conflict with basic “effective assistance of counsel” rights if the police reports in a criminal case (containing personally identifying information of an officer, such as a name) could not be shown to the defendant. The provision could also thwart the function of the courts in a civil case, if the identity of the defendant officer could not be ascertained.<sup>7</sup> A narrower provision should be drafted that would adequately protect truly confidential information.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

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<sup>6</sup> *Jones*, 788 P.2d at 739 (upholding a trial court order disclosing a police personnel file, while redacting the officer’s “family’s name and address, as well as his personal financial information”).

<sup>7</sup> *Id.* (holding that “the effective functioning of the judiciary” was a factor weighing in favor of an officer’s personnel file); *id.* (“[T]he state has a strong interest in providing a remedy to one tortiously injured by a public employee in addition to an interest in ‘facilitating the ascertainment of truth in legal proceedings.’”) (citation omitted).