

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 1, 2012

9:03 a.m.

**MEMBERS PRESENT**

Senator Bill Wielechowski, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Albert Kookesh  
Senator Kevin Meyer  
Senator Cathy Giessel

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 198

"An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 29

"An Act relating to the reporting and analysis of certain information relating to tax credits, deductions, exclusions, exemptions, deferrals, and other tax expenditures; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 198

SHORT TITLE: POLICE OFFICER PROTECTIONS/CERTIFICATION

SPONSOR(S): STATE AFFAIRS

02/17/12 (S) READ THE FIRST TIME - REFERRALS  
02/17/12 (S) STA, JUD  
03/01/12 (S) STA AT 9:00 AM BUTROVICH 205

**WITNESS REGISTER**

THOMAS PRESLEY, Staff  
Senator Bill Wielechowski  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 198 on behalf of the sponsor.

TOM CLEMONS, Director  
Alaska Association of Chiefs of Police  
Seward, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 198.

DAVE SEXTON, Executive Director  
Alaska Police Standards Council (APSC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 198.

JAKE METCALFE, Executive Director  
Public Safety Employees Association (PSEA), Local 803  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 198.

CHRIS GIFFORD, Municipal Chapter President  
Public Safety Employees Association and  
Sergeant  
Juneau Police Department  
Juneau, Alaska

**POSITION STATEMENT:** Spoke in support of SB 198.

JAY SEARS, Alaska State Trooper and  
Western Vice President  
Public Safety Employees Association (PSEA)  
Nome, Alaska

**POSITION STATEMENT:** Testified in support of SB 198.

MARK MEW, Chief of Police  
Anchorage, Alaska and  
Member  
Alaska Police Standards Council (APSC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 198

THOMAS ROBSON, Court Services Officer (CSO)  
Alaska State Troopers and  
Member  
Public Safety Employees Association (PSEA)  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of SB 198.

JEFFERY MITTMAN  
Executive Director  
American Civil Liberties Union (ACLU) of Alaska  
Anchorage, Alaska  
**POSITION STATEMENT:** Voiced concerns about sections of SB 198.

AARON DANIELSON, President  
Airport Police and Fire Officer (APFO) and  
Vice President  
Public Safety Employees Association (PSEA)  
Fairbanks, Alaska  
**POSITION STATEMENT:** Testified in support SB 198.

#### **ACTION NARRATIVE**

[9:03:27 AM](#)

**CHAIR BILL WIELECHOWSKI** called the Senate State Affairs Standing Committee meeting to order at 9:03 a.m. Present at the call to order were Senators Giessel, Kookesh, Meyer, and Chair Wielechowski. Senator Paskvan arrived shortly thereafter.

#### **SB 198-POLICE OFFICER PROTECTIONS/CERTIFICATION**

[9:03:51 AM](#)

CHAIR WIELECHOWSKI announced that the first bill would be SB 198, which provides police officers with improved due process procedures when faced with disciplinary actions, and provides better protection of their personal information, such as home addresses.

THOMAS PRESLEY, staff, Senator Bill Wielechowski, introduced SB 198 on behalf of the sponsor. He read from the following sponsor statement:

The intent of SB 198 is to ensure that public servants who are entrusted with protecting Alaskans, are afforded due process and protections when facing allegations of misconduct. First, SB 198 allows for suspension of a police officer's certificate. Currently, Alaska law does not provide for the Alaska

Police Standards Council to suspend certificates, only to revoke them. Revocation of a license has severe consequences; officers may no longer practice in the state and, for all intents and purposes, loses their livelihood as a result. Suspension is one way to discipline, yet retain police officers.

Section 2 sets the standard for evidence when considering revocation of an officer's certification. The new standard would be clear and convincing.

Section 3 makes it unlawful to suspend or revoke a certificate or refuse to grant one based on a disciplinary action against the officer that has been reversed or removed.

Section 4 adds court service officers to the definition of "police officer." These court service officers already perform the functions of certified officers. They carry guns, make arrests, and serve warrants. Including these people under the definition of police officers will make for streamlined training and liability coverage.

Section 5 prohibits an employer from discriminating against police officers in the case that an officer refuses to take a lie detector test. Studies have shown that the results of a polygraph can vary greatly based on environment. One study by the Office of Technology found that although the polygraph instrument itself is essentially the same for all applications, the purpose of the examination, type of individual tested, examiner training, setting of the examination, and type of questions asked, among other factors, can differ substantially. The instrument cannot itself detect deception.

Section 6 allows for a police officer to refuse taking a lie detector test. It makes that decision confidential. It may not be recorded on the police officer's personnel file or employment record.

Section 7 makes photographs and home addresses confidential unless an office voluntarily authorizes their release. Instances of police being stalked because of the public availability of this information

have been recorded. This section would make it harder for those seeking to harm officers and their families.

Section 8 repeals a section in current statute that exempts police officers from protections against taking a lie detector test.

[9:07:38 AM](#)

CHAIR WIELECHOWSKI asked if other states allowed for suspension rather than revocation of a police certificate.

MR. PRESLEY said there were 11 states that allow for suspension of a certificate.

CHAIR WIELECHOWSKI asked how many states provided polygraph protection for police officers.

MR. PRESLEY said that four states did.

SENATOR GIESSEL asked if the bill provided for additional training for court service officers.

MR. PRESLEY did not know if it would require more training; SB 198 allows court service officers to receive training that is already in place.

SENATOR GIESSEL asked if the court officers would be eligible for a pay increment.

MR. PRESLEY said he could not address that issue.

SENATOR GIESSEL asked if other public servants have similar protection of personal information.

MR. PRESLEY offered to find out.

CHAIR WIELECHOWSKI noted the arrival of Senator Paskvan.

[9:10:21 AM](#)

SENATOR KOOKESH asked if a polygraph was done pre-employment.

MR. PRESLEY said he thought pre-employment polygraphs would be allowed under the bill.

SENATOR KOOKESH asked if University of Alaska campus security personnel were covered under the legislation.

MR. PRESLEY said they were.

SENATOR KOOKESH asked if there was any opposition to SB 198.

MR. PRESLEY spoke of concerns from the Department of Public Safety regarding termination issues and back pay.

[9:11:53 AM](#)

TOM CLEMONS, Director of Alaska Association of Chiefs of Police, testified in opposition to SB 198. He shared his background and the history of the Alaska Police Standards Council (APSC). He related that APSC provides training, high professional standards, and help with liability insurance qualification. He stated that APSC has no history of being an outside influence trying to tell police how to do their job. APSC maintains high standards for public safety officers and wishes to maintain an honorable standard in order to provide professional police officers to the state and keep the public's respect. Officers were not decertified unless they reached a level that warranted that action. He shared a story about trusting police officers.

[9:17:49 AM](#)

SENATOR KOOKESH asked what process was used to enable Mr. Clemons to represent his organization and testify against the bill.

MR. CLEMONS said there was informal communication amongst the board members.

SENATOR KOOKESH requested more information.

MR. CLEMONS reiterated that an informal process was used.

CHAIR WIELECHOWSKI asked if Mr. Clemons had had a change to read all nine sections of the bill. He asked if there were certain sections Mr. Clemons particularly disagreed with.

CHAIR WIELECHOWSKI summarized Section 1 of the bill. He suggested it gives the option of suspension rather than revocation, which he termed the "death penalty" for an officer. He stated that Section 1 provided options.

MR. CLEMONS agreed that it would provide APSC with more options; however, most decertifications are for more serious offenses. He pointed out that there were reciprocal agreements with other states that recognize Alaska's decertification program.

CHAIR WIELECHOWSKI urged Mr. Clemons to rethink his opposition to Section 1. He maintained that it did not require suspension.

He addressed Section 2, which deals with the standard of "clear and convincing evidence." He asked Mr. Clemons if he thought that standard should not apply.

MR. CLEMONS said he believed the council does that now. He related his experience on the review committee that made decisions on decertification. He emphasized that if an officer has violated the trust of the public he or she should be decertified.

CHAIR WIELECHOWSKI agreed. He argued that he does not want to take away licenses unless there is a standard of proof. He explained three standards of proof: preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt. He wondered why putting this standard into statute would be a bad thing.

MR. CLEMONS opined that unless the violation reached the level of decertification it was not undertaken.

[9:24:28 AM](#)

CHAIR WIELECHOWSKI explained Section 3 which says in an arbitration case that has been reversed, deference to that decision must be given. He asked if there was a problem with that.

MR. CLEMONS talked about collective bargaining decisions which might not be related to the violation. APSC is only interested in what the officer did.

DAVE SEXTON, Executive Director, Alaska Police Standards Council (APSC), testified in opposition to SB 198, which he said impacts the current policies and procedures of APSC and the current hiring and retention practices of some law enforcement agencies. He summarized the mission statement of APSC; to produce and maintain highly trained and positively motivated professional officers capable of meeting contemporary law enforcement standards of performance. He listed the core services provided by APSC. In cases of misconduct by a certified police officer, APSC makes a determination whether certification should be revoked. APSC monitors compliance with current regulations and legislation, develops, monitors, and revises law enforcement training, and assists academies and departments with funding for academy training. It funds specialized and advanced training for

police departments, determines certificate eligibility for all police, probation, and correctional officers, and issue the appropriate level of certification. APSC provides pre-employment polygraph and psychological testing for smaller agencies across the state.

MR. SEXTON emphasized that SB 198 directly affects APSC specifically by neutering several of the core services. He voiced three main concerns. The first was regarding certification. SB 198 would inhibit APSC's ability to decertify an officer. He stated that in the last ten years, only 63 officers have been decertified, a third of which were voluntary surrendered by the officer. He stressed that out of 3,000 only 40 had their certificate taken. He detailed the decertification process the council uses. The council is made of 13 members selected by the governor and affirmed by the legislature. He termed the board's makeup as balanced and trustworthy, whose primary mission is the protection of Alaskan citizens. He took issue with the bill's removing the board's independence and autonomy.

MR. SECTON described the second area of concern - the use of polygraphs. Currently, the use of polygraphs is found in pre-employment and in investigative situations. The bill attempts to regulate this. He said he was not aware of a single decertification decision that hinged on a polygraph test.

MR. SEXTON addressed a third concern in SB 198, the requirement to cease providing photographs of officers in action. Mr. Sexton held up a picture of officers who rescued a 12-year-old boy. If the language passes, such pictures could not be shared. The language in the bill prohibits showing photos of officers in positive situations. He concluded by stating that APSC opposes the legislation in its entirety.

[9:33:28 AM](#)

CHAIR WIELECHOWSKI thanked Mr. Sexton for his service on the council. He referred to Section 1 and asked if there was a specific problem.

MR. SEXTON agreed that Section 1 talks about suspension rather than revocation. He noted the part APSC is opposed to is having to follow the recommendation of a decision made in a separate employment hearing. Under this bill, APSC is forced to make decisions consistent with that decision. A strength of the council is that it is autonomous. Currently, APSC is required to take a termination recommendation into account, but is not

required to follow it. He gave an example of an officer who was sleeping on duty and the recommendation was for decertification. The council disagreed and did not follow up on it. He listed the types of decisions APSC takes under recommendations when making decisions.

SENATOR PASKVAN referred to Section 1, line 11, and pointed out that the wording is "may". It does not mandate anything.

MR. SEXTON agreed, but read, "may follow the filing of an accusation hearing or decision under Alaska statute and revoke the certificate of a police officer." He argued, "if revocation is consistent with that decision."

SENATOR PASKVAN disagreed. He used the example of the officer sleeping on the job. The language says you may have revoked the certification if it was consistent with the decision, but you didn't have to do it. He did not think the word "may" would have changed any of the past decertifications.

MR. SEXTON said he understands that the second part of the section negates the first part.

SENATOR PASKVAN reiterated that he reads it as being discretionary.

[9:39:57 AM](#)

CHAIR WIELECHOWSKI questioned Mr. Sexton's opposition to polygraph tests not being used, when they have not been used in recent cases.

MR. SEXTON clarified that polygraph's are being used, but have not been crucial to council decisions regarding revocation. They have been used for pre-employment and investigation reasons.

SENATOR KOOKESH asked if an arbitrator or a judge reinstates a police officer, can APSC still revoke the officer's certificate.

MR. SEXTON replied that APSC could still revoke the certificate; however, it considers broader standards beyond employment.

SENATOR KOOKESH repeated the question.

MR. SEXTON said judges don't rule on the same issues APSC deals with.

SENATOR KOOKESH said he is hearing that APSC feels like the legislature is interfering with APSC's duties. He pointed out that APSC was created by the legislature.

MR. SEXTON agreed that the legislature has the authority to offer SB 198, said he has been happy with past legislation. However, this bill takes away from the current mission and core services of APSC.

[9:44:06 AM](#)

CHAIR WIELECHOWSKI stressed that the bill does not gut what APSC does; it puts sideboards on APSC's mission. He asked if Mr. Sexton opposes the section that calls for higher standards for decertification.

MR. SEXTON addressed the standards of evidence in civil matters. He said he agrees with some things in the bill. However, nothing in current legislation uses "preponderance of evidence". He reiterated the low numbers of certificates taken away. He said he values the ability to keep one class of officers and treat them all the same.

SENATOR PASKVAN said he struggles with APSC's appeal process. He asked if APSC would follow the recommendation of a judge who determined an appeal was flawed.

MR. SEXTON said certainly. He explained how the process works. First, the executive director makes a decision on an individual, which can be appealed to the board if someone disagrees with it. If someone does not agree with the board's decision, then it is appealed to the courts. This bill injects itself into the middle of the process when the decision is related to employment infractions.

SENATOR PASKVAN again referred to the use of the word "may" and questioned how that would hurt APSC's process.

MR. SEXTON agreed with the interpretation of the word "may," but disagreed with the sentence following it, which he said removes APSC's authority.

[9:49:44 AM](#)

SENATOR MEYER requested an opinion on including court officers in the bill.

MR. SEXTON did not have a problem with that.

SENATOR MEYER asked if Village Public Safety Officers (VPSO's) and bailiffs were already included in the bill.

MR. SEXTON said the VPSO's were included, but he did not know about bailiffs.

SENATOR MEYER wondered how the low number of decertifications compares with other states.

MR. SEXTON didn't know. He said there is a nationwide organization that has that information.

9:51:50 AM

JAKE METCALFE, Executive Director, Public Safety Employees Association (PSEA), Local 803, testified in support of SB 198. He listed members in his organization. He maintained that a strong APSC protects all Alaskans. He said he believed suspension or revocation of a police officer's certificate must be based on a high standard of proof and with due process. SB 198 gives the council additional tools, improves their standards, and creates a regulatory system that respects due process.

MR. METCALFE agreed with Senator Paskvan's understanding of Section 1. He spoke to the issue of prior decisions, such as employment or arbitration decisions, and agreed that the council should be involved. He gave an example of the termination process and spoke in support of the council's involvement with the determination. He also agreed that the middle standard of "clear and convincing evidence" be used in revocation process.

He highlighted the court service officers' certification requirements in the bill, and agreed with the bill's interpretation. He addressed the polygraph issue and agreed with the provisions in the bill regarding pre-employment polygraphs. He asked that the committee support the part in Section 5 of the bill where it says agencies can't use the police officer's refusal to submit to a lie detector test in an employment action. In Section 6, PSEA supports the part that makes those requests confidential.

MR. METCALFE addressed Section 7 and gave examples of voluntary photos and information that would be acceptable under this section.

9:59:10 AM

SENATOR MEYER asked if court officers are represented by PSEA and whether or not they were certified and adequately trained.

MR. METCALF explained that court officers are employed by the Department of Public Safety, and through certification provided by the bill, they will receive training. Some have already received training.

SENATOR MEYER asked how many court officers there were.

MR. METCALF thought there were about 90.

SENATOR MEYER asked if court officers could be shown on TV under this legislation.

MR. METCALF explained the requirements under the bill. It is more about the police department submitting photos and the need for an agreement to do so.

CHAIR WIELECHOWSKI said public photos can be put on the news. However, if someone were to request a picture of an arresting officer, the legislation says the officer has an option to say no. He asked if officers have received threats.

MR. METCALF referred to an example about militia members staking out troopers, judges, and other federal officials in Fairbanks. There is concern about protecting the privacy of officers. Small communities present greater risks.

[10:03:55 AM](#)

CHRIS GIFFORD, Municipal Chapter President, Public Safety Employees Association, and Sergeant, Juneau Police Department, spoke in support of SB 198. He said the bill is fair and contains due process. It would raise the standard of revocation. He stated support for the certification of court service officers. He gave a personal example of a police officer who was harassed and photos were not released in order to protect the officer. He thought releasing personal information or photos could be a safety issue for officers.

[10:07:09 AM](#)

JAY SEARS, Alaska State Trooper and Western Vice President, Public Safety Employees Association (PSEA), testified in support of SB 198. He stated support for every part of SB 198 and said it corrects some of the issues facing public safety employees in Alaska. He discussed APSC certification which he termed "the ticket that allows you to become a police officer." It affects

all 50 states. He said PSEA was not in the business of protecting bad officers, but did support a fair process. He spoke of the double jeopardy with the APSC decertification board. He thought APSC's revoking of a certificate after an officer has been through the hearing process and been awarded back the certificate, was double jeopardy. He compared it to the military. He said he was not disputing the competency of APSC.

SENATOR GIESSEL said she was trying to find out what in the decertification process was broken. She summarized what Mr. Sears said about double jeopardy; an officer could have been exonerated by the Supreme Court and could still lose certification due to a decision by APSC.

MR. GIFFORD said that was correct. One such case is coming up in APSC's May meeting.

SENATOR GIESSEL asked if that scenario had ever happened.

MR. GIFFORD did not know. He suggested Senator Giessel ask Mr. Sexton.

CHAIR WIELECHOWSKI agreed with Mr. Gifford's analysis.

[10:13:55 AM](#)

MARK MEW, Anchorage Chief of Police and Member, Alaska Police Standards Council (APSC), testified in opposition to SB 198. He spoke of the importance of keeping the public's trust. Once in a while there are "bad apples" and the police have to have the tools to deal with them. He gave examples of recent cases in Anchorage.

CHIEF MEW did not see a problem with the ability to suspend found in Section 1. He suggested clearing up the language surrounding the word "may." He opined that in Section 2, the burden of proof should remain at the civil level. Using "clear and convincing evidence" raises it to the "reasonable doubt" standard. He said he thought that the existing standard was adequate.

CHIEF MEW addressed Section 3 and compared it other professions, such as medicine, where a physician might be exonerated in court from a crime, but have his or her license revoked by a licensing board of physicians. He maintained that the bill would eliminate the council's ability to decertify police officers in similar instances. He did not think the council should be bound by an

arbitrator's decision. He could think of two examples of when an officer was decertified against the arbitrator's wish.

CHIEF MEW addressed the polygraph issue in Section 5 of the bill and maintained that the ability to compel a polygraph should remain. He opined that it has not been done in Anchorage. He called it a "nuclear deterrent."

10:25:14 AM

THOMAS ROBSON, Court Services Officer (CSO), Alaska State Troopers, and Member, Public Safety Employees Association (PSEA) testified in support of SB 198. He commented on Section 4 regarding certifying court service officers. The training for CSO's has varied greatly over the past 20 years. The bill would ensure that minimum training standards are established. He said there are currently 60 officers stationed in 11 cities in Alaska. He noted that CSO's perform functions that are normally associated with a sheriff's department, but unlike a sheriff's department, these officers operate statewide. In addition CSO's travel to the other 49 states to retrieve Alaskan fugitives. The three primary functions of CSO's are the transportation of prisoners, the service of court orders, and the security of the court facilities.

10:28:22 AM

JEFFERY MITTMAN, Executive Director, American Civil Liberties Union (ACLU) of Alaska, voiced concern about sections of SB 198. He said he had provided written testimony to the committee. He addressed the need for a more narrow definition of the confidentiality issue.

AARON DANIELSON, President, Airport Police and Fire Officer (APFO), Vice President, Public Safety Employees Association (PSEA) testified in support SB 198. He reported about past dealings with the bill in the 90's in order for APFO's to receive APSC certification. He did not believe that pay was a factor in the legislation.

CHAIR WIELECHOWSKI said that SB 198 would be set aside.

10:30:40 AM

There being no further business to come before the committee, Chair Wielechowski adjourned the Senate State Affairs Standing Committee at 10:30 p.m.