

**SB**

**198**

<TARGET><BILL>SB 198</BILL><SUBJECT>SB  
198</SUBJECT><COMM>SJUD27</COMM></TARGET>

# ALASKA STATE LEGISLATURE

## Session

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**Chair**  
State Affairs Committee

**Co-chair**  
Joint Armed Services Committee

**Vice Chair**  
Resources Committee  
Judiciary Committee

**Member**  
Administrative Regulation Review

Senator\_Bill\_Wielechowski@legis.state.ak.us

## SENATE STATE AFFAIRS COMMITTEE

### **SB 198: A Bill Relating to Police Officer Protections and Certifications SPONSOR STATEMENT**

Police officers in Alaska provide some of the most valuable services to our citizens. Their protection and service allows us to enjoy our communities safely and comfortably. SB 198 acknowledges the value of police officers and proposes changes to statute.

SB 198 requires due process hearings to occur before a police officer has a certificate revoked. Currently, statute allows for revocation of a certificate by the Police Standards Council without a hearing. Revocation of a certificate can mean the end of a career and should be the last resort used to punish those worst offenders. SB 198 also sets a standard for clear and convincing evidence before revocation occurs and allows for suspension before revocation.

SB 198 also adds court officers to the definition of police officers. By doing this, court service officers are recognized for the work they perform. Court officers carry weapons, can arrest people, and serve warrants. Including them in the definition for police officers allows for streamlined training and certification by the Police Standards Council. This change also puts court officers under an already existing framework of liability.

SB 198 provides protection for police officers against retaliation for refusing to take a lie detector test. Evidence in Alaska shows a retaliatory tendency against officers who opt out of taking a lie detector test. Several other states have passed similar protections for public safety officers.

Lastly, SB 198 makes the personal information of police officers confidential. This section provides security and assurance to officers that their safety is a priority. Police officers and their families should not be subject to harassment in or out of their work environment. This section provides guarantee that their employment will not compromise their or their families' safety.

**CS FOR SENATE BILL NO. 198(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing procedures relating to issuance, suspension, or revocation of**  
2 **certification of police officers by the Alaska Police Standards Council; making**  
3 **confidential certain information that personally identifies a police officer; relating to**  
4 **requesting or requiring police officers or applicants for employment as peace officers to**  
5 **submit to lie detector tests; and providing for an effective date."**

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

7 **\* Section 1. AS 18.65.240(c) is repealed and reenacted to read:**

8 (c) If a police officer does not meet the standards adopted under (a)(2) of this  
9 section, the council may,

10 (1) before filing an accusation or a statement of issue under  
11 AS 44.62.330 - 44.62.630, suspend a certificate that has been issued to the police  
12 officer;

13 (2) following the filing of an accusation, hearing, and decision under

1 AS 44.62.330 - 44.62.630, revoke the certificate of a police officer;

2 (3) following the filing of a statement of issues, hearing, and decision  
3 under AS 44.62.330 - 44.62.630, refuse to issue a certificate to an applicant.

4 \* **Sec. 2.** AS 18.65.240 is amended by adding a new subsection to read:

5 (d) In a proceeding to determine the outcome of the accusation or statement of  
6 issues, the council shall prove the conduct alleged in the accusation or statement of  
7 issues by clear and convincing evidence.

8 \* **Sec. 3.** AS 18.65 is amended by adding a new section to read:

9 **Sec. 18.65.244. Deference to prior resolutions.** In a proceeding to revoke,  
10 suspend, or refuse to issue a certificate to a police officer, the council may consider  
11 past disciplinary actions against the police officer. However, the council shall give  
12 substantial weight to the significance of a past removal or reversal of the disciplinary  
13 action if the removal or reversal was the result of

14 (1) an arbitration or grievance proceeding under a collective  
15 bargaining agreement;

16 (2) a grievance, hearing, or other proceeding under applicable  
17 personnel rules;

18 (3) a proceeding under AS 44.62 (Administrative Procedure Act); or

19 (4) an appeal to a court.

20 \* **Sec. 4.** AS 23.10.037(b) is amended to read:

21 (b) The provisions of (a) of this section do not apply to the state or a political  
22 subdivision of the state when dealing with an applicant for employment as a police  
23 officer in a position with the state or the political subdivision [POLICE OFFICERS  
24 IN ITS EMPLOY OR WITH PERSONS APPLYING TO BE EMPLOYED AS  
25 POLICE OFFICERS]. In this subsection, "police officer [OFFICERS]" includes an  
26 officer or employee [OFFICERS AND EMPLOYEES] of the Department of  
27 Transportation and Public Facilities who is [ARE] stationed at an international airport  
28 and has [HAVE] been designated to have the general police powers authorized under  
29 AS 02.15.230(a).

30 \* **Sec. 5.** AS 39.90.100(a) is amended to read:

31 (a) A public employer may not discharge, threaten, or otherwise discriminate

1 against an employee regarding the employee's compensation, terms, conditions,  
2 location, or privileges of employment [BECAUSE]

3 (1) because the employee, or a person acting on behalf of the  
4 employee, reports to a public body or is about to report to a public body a matter of  
5 public concern; [OR]

6 (2) because the employee participates in a court action, an  
7 investigation, a hearing, or an inquiry held by a public body on a matter of public  
8 concern; or

9 (3) in the case of an employee who is a police officer, because the  
10 employee refuses under (e) of this section to submit to a test conducted with a lie  
11 detector device after being hired.

12 \* Sec. 6. AS 39.90.100 is amended by adding new subsections to read:

13 (e) A police officer who works for a public employer may, after being hired,  
14 refuse a request by the employer to submit to a test conducted with a lie detector  
15 device. The refusal and the underlying request

16 (1) are confidential;

17 (2) may not be made part of the police officer's personnel file or  
18 employment record.

19 (f) In this section, "lie detector device" means a polygraph, deceptograph,  
20 voice stress analyzer, psychological stress evaluator, or other similar device,  
21 mechanical or electrical, that is used to obtain data to support a diagnostic opinion  
22 regarding the honesty or dishonesty of a natural person.

23 \* Sec. 7. AS 40.25 is amended by adding a new section to read:

24 **Sec. 40.25.145. Confidentiality of police officer information.** (a) Except as  
25 provided in (b) of this section, information in the possession of a law enforcement  
26 agency that personally identifies a police officer who is employed by the agency,  
27 including the police officer's photographic image or home address, is confidential and  
28 is not subject to inspection under AS 40.25.110 or 40.25.120 unless the police officer  
29 voluntarily authorizes its release in writing.

30 (b) Notwithstanding (a) of this section, information that personally identifies a  
31 police officer may be released for inspection under AS 40.25.110 or 40.25.120 if

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(1) the police officer is lawfully arrested and the information is a photograph of the police officer; or

(2) the police officer is lawfully arrested and the information is included in one or more of the following:

(A) a report or recording that documents a 911 telephone call;

(B) a police or investigative report;

(C) a complaint made to a law enforcement agency;

(D) the statement of a witness in either a criminal matter or a proceeding related to the adjudication of a minor under AS 47.12.110.

\* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version SB198  
 Fiscal Note Number \_\_\_\_\_  
 () Publish Date \_\_\_\_\_

Identifier (file name) SB198-DOA-LR-02-24-12 Dept. Affected Administration  
 Title Police Officer Protections/Certification Appropriation Centralized Administrative Services  
 Allocation Labor Relations

Sponsor State Affairs  
 Requester Senate State Affairs OMB Component Number 58

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>FUND SOURCE</b>		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>POSITIONS</b>							
Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							
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Estimated **SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version

Prepared by Nicki Neal, Director  
 Division Labor Relations  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 465-4429  
 Date/Time 2/24/12 1:10 PM  
 Date 2/24/2012

FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. SB198

**Analysis**

This bill will have no fiscal impact on the Labor Relations.

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version SB198  
Fiscal Note Number \_\_\_\_\_  
( ) Publish Date \_\_\_\_\_

Identifier (file name) SB198-DPS-APSC-02-28-12 Dept. Affected Public Safety  
Title POLICE OFFICER PROTECTIONS/CERTIFICATION Appropriation Alaska Police Standards Council  
Allocation Alaska Police Standards Council  
Sponsor (S) STA  
Requester (S) STA OMB Component Number 519

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	***	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		***	***	***	***	***	***	***

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								
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Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version.

Prepared by David Sexton, Executive Director  
Division Alaska Police Standards Council  
Approved by Joseph A. Masters, Commissioner  
Department of Public Safety

Phone (907) 465-5523  
Date/Time 2/28/12 9:12 AM  
Date 2/28/2012

## FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. SB198

### Analysis

This bill establishes procedures relating to the issuance, suspension, and revocation of certification of police officers by the Alaska Police Standards Council (APSC); makes court services officers subject to certification by the APSC; makes confidential certain information that personally identifies a police officer; and prohibits public employers of police officers from requiring police officer applicants or employees to submit to a lie detector test.

The potential fiscal impact to the Department of Public Safety (DPS) relates to the portions of this bill that make binding on the Alaska Police Standards Council (APSC) decisions issued as a result of arbitration, grievance, or administrative hearing proceedings (to include reversal of disciplinary actions) and that preclude APSC from holding revocations hearings prior to a decision being issued in any of these proceedings.

When DPS terminates a trooper, they make a recommendation to the APSC to revoke the trooper's police officer certification. The APSC takes the recommendation under advisement and makes an independent decision whether to revoke the tooper's certification. This process runs independently from any grievance, arbitration, or administrative hearing and serves to limit the liability of the state to pay back wages to the period of time between when the employee was terminated and when the certification was revoked.

The Public Safety Employees Association (PSEA) may file a grievance on behalf of that former trooper. If the case is not settled between PSEA and the State, it will go to arbitration. The arbitrator will determine either that the termination was justified and uphold the state's action or grant the grievance and impose some lesser level of discipline. When the grievance is granted, DPS is ordered to make the former employee whole.

If the APSC is prohibited from revoking a trooper's certification until a final administrative decision is issued (which can take many years), DPS could potentially be required to pay hundreds of thousands of dollars in back wages to cover the period of time from the date of termination until the date of the decision.

Should this bill become law, APSC will be required to amend their regulations dealing with denial and revocation of certificates. Any costs associated with a regulation project could be absorbed within the APSC's existing budget.

The actual fiscal impact to the department cannot be estimated because it is dependent on the number of terminations where the final administrative decision is in the trooper's favor; therefore, an indeterminate fiscal note is being submitted.

## LIST OF STATES THAT SUSPEND POLICE CERTIFICATES

1. Arizona - R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status
2. Colorado - Title 24-31-305 2 (a) - Suspension
3. Delaware - Title 1-800-7.1.9 - Suspension
4. Georgia -Title 35-8-7.1 - Suspension
5. Michigan - 28.609b Revocation or suspension of certification; judicial review; jurisdiction; subpoena.
6. Montana - 23.13.702 GROUND FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION
7. Nevada - NAC 289.290 Denial, revocation, suspension and reinstatement of certificate. (NRS 289.510)
8. New Hampshire - Pol 402.02 Revocation or Suspension.
9. New Mexico - 10.29.1.11 GROUND FOR DENIAL, REVOCATION OR SUSPENSION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION; REPORTING REQUIREMENTS
10. Texas - Title 37.7.223.15 - Suspension of License
11. Utah - Title 53-6-211. Suspension or revocation of certification

**STATES WITH POLYGRAPH PROTECTION FOR POLICE OFFICERS**

1. Arizona - 38-1101 B
2. California - CALIFORNIA CODES GOVERNMENT CODE SECTION 3300-3311 - (3307)
3. Illinois - 50 ILCS 725/3.11
4. Nevada - NRS 289.050

# Justices Allow Ban on Polygraph Use

*By Joan Biskupic*

Washington Post Staff Writer

Wednesday, April 1, 1998; Page A01

The Supreme Court ruled yesterday that state and federal governments may ban the use of polygraph evidence in court, declaring that doubts and uncertainties remain about the accuracy of the so-called lie-detector tests.

Close to 30 states, including Maryland and Virginia, ban polygraph evidence, and some legal experts said yesterday's 8 to 1 decision may prompt the states that do not have outright prohibitions on polygraphs to consider imposing them.

The ruling marks the first time the high court has taken up the issue of polygraph testing, and it comes at a time when the machines are increasingly being used outside the courtroom. Prosecutors use them to extract confessions from suspects and defense lawyers use them for leverage in plea bargains. The military uses them to safeguard national security and prevent espionage, and companies often rely on them to uncover employee wrongdoing or to monitor workers in sensitive jobs.

Although the test results can still be used for these purposes, the Supreme Court yesterday said they can be banned from courtrooms, and sent a signal that their accuracy is in doubt.

Advocates of polygraphs say the instruments have grown increasingly sophisticated in recent years in their ability to determine whether a person is lying by recording their breathing, blood pressure and skin conditions.

But several justices expressed skepticism about the science and the ability of any examiner using the polygraph device to accurately gauge whether someone is telling the truth.

"There is simply no consensus that polygraph evidence is reliable," Justice Clarence Thomas wrote for the court.

Because "uncertainties plague even the best polygraph exams," the court found that prohibiting a defendant from introducing the results of a polygraph test, to show he is telling the truth, does not violate his right to fully defend himself.

Yesterday's case involved Edward G. Scheffer, a former U.S. airman who was court-martialed for using methamphetamines, passing bad checks and going AWOL. Yet he had passed a polygraph test asking whether he had used illegal drugs. The U.S. Court

of Appeals for the Armed Forces said the military's automatic ban on polygraphs was unconstitutional and that Scheffer had a right to at least try to lay a foundation for the reliability of the polygraph result, as he would other evidence.

But the Supreme Court reversed that decision, ruling that Scheffer was not "significantly impaired" by exclusion of the polygraph evidence.

Although only one justice dissented, the majority spoke with no definitiveness.

Thomas and three other justices sought not only to uphold bans on polygraph evidence, but to discourage states from ever allowing their use in court. "By its very nature, polygraph evidence may diminish the jury's role in making credibility determinations," Thomas said, joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia and David H. Souter.

But the other justices in the majority broke ranks, saying that perhaps in the future another dispute might offer a more compelling case for the introduction of polygraph testimony.

Justice Anthony M. Kennedy wrote in a concurring statement that he agreed with the majority that a defendant does not have a constitutional right to use polygraph evidence, but he doubted that an automatic exclusion of the evidence was "wise." Joined by Justices Sandra Day O'Connor, Ruth Bader Ginsburg and Stephen G. Breyer, Kennedy said some later case may be more compelling to say that defendants have a right to introduce polygraphs.

Justice John Paul Stevens, who was the lone dissenter, emphasized the value of the tests to a defendant and noted that the military gives "hundreds of thousands of such tests and routinely uses their results for a wide variety of official decisions."

Stevens called the government's position inconsistent. While it routinely uses the test and says it is an "effective investigatory tool," the Justice Department said it was not reliable enough to be used in court and, unlike other scientific evidence, could mislead a jury by purporting to show the "truth."

"There will always be critics of the polygraph," said Gordon L. Vaughan, counsel for the American Polygraph Association. "But I think the opinions suggest that there is an ongoing debate about the reliability of the polygraph." Thomas wrote that most states ban polygraph evidence, and Vaughan said that breaks down into 29 states with outright bans, 16 states that allow some test results if both the prosecution and defense agree to it. One state, New Mexico, makes them generally admissible.

Federal courts are split on whether polygraph results may be introduced. "This ruling could have some tendency to discourage the admission of polygraphs," said Charles W. Daniels of the National Association of Criminal Defense Lawyers.

Charles L. Hobson, of the Criminal Justice Legal Foundation, which sided with the government, said the ruling in *United States v. Scheffer* properly gives state and federal governments the ability to limit questionable evidence.

**CS FOR SENATE BILL NO. 198(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

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4 \* **Sec. 2.** AS 18.65 is amended by adding a new section to read:

5 **Sec. 18.65.244. Deference to prior resolutions.** In a proceeding to revoke,  
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7 past disciplinary actions against the police officer. However, the council shall give  
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13 personnel rules;

14 (3) a proceeding under AS 44.62 (Administrative Procedure Act); or

15 (4) an appeal to a court.

16 \* **Sec. 3.** AS 39.90.100(a) is amended to read:

17 (a) A public employer may not discharge, threaten, or otherwise discriminate  
18 against an employee regarding the employee's compensation, terms, conditions,  
19 location, or privileges of employment [BECAUSE]

20 (1) **because** the employee, or a person acting on behalf of the  
21 employee, reports to a public body or is about to report to a public body a matter of  
22 public concern; [OR]

23 (2) **because** the employee participates in a court action, an  
24 investigation, a hearing, or an inquiry held by a public body on a matter of public  
25 concern; **or**

26 **(3) in the case of an employee who is a police officer, because the**  
27 **employee refuses under (e) of this section to submit to a test conducted with a lie**  
28 **detector device after being hired.**

29 \* **Sec. 4.** AS 39.90.100 is amended by adding new subsections to read:

30 (e) A police officer who works for a public employer may, after being hired,  
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1 device. The refusal and the underlying request

2 (1) are confidential;

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26 proceeding related to the adjudication of a minor under AS 47.12.110.

27 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

**CS FOR SENATE BILL NO. 198( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**  
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19 location, or privileges of employment [BECAUSE]

20 (1) because the employee, or a person acting on behalf of the  
21 employee, reports to a public body or is about to report to a public body a matter of  
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1 device. The refusal and the underlying request

2 (1) are confidential;

3 (2) may not be made part of the police officer's personnel file or  
4 employment record.

5 (f) In this section, "lie detector device" means a polygraph, deceptograph,  
6 voice stress analyzer, psychological stress evaluator, or other similar device,  
7 mechanical or electrical, that is used to obtain data to support a diagnostic opinion  
8 regarding the honesty or dishonesty of a natural person.

9 \* **Sec. 5.** AS 40.25 is amended by adding a new section to read:

10 **Sec. 40.25.145. Confidentiality of police officer information.** (a) Except as  
11 provided in (b) of this section, information in the possession of a law enforcement  
12 agency that personally identifies a police officer who is employed by the agency,  
13 including the police officer's photographic image or home address, is confidential and  
14 is not subject to inspection under AS 40.25.110 or 40.25.120 unless the police officer  
15 voluntarily authorizes its release in writing.

16 (b) Notwithstanding (a) of this section, information that personally identifies a  
17 police officer may be released for inspection under AS 40.25.110 or 40.25.120 if

18 (1) the police officer is lawfully arrested and the information is a  
19 photograph of the police officer; or

20 (2) the police officer is lawfully arrested and the information is  
21 included in one or more of the following:

22 (A) a report or recording that documents a 911 telephone call;

23 (B) a police or investigative report;

24 (C) a complaint made to a law enforcement agency;

25 (D) the statement of a witness in either a criminal matter or a  
26 proceeding related to the adjudication of a minor under AS 47.12.110.

27 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

**CS FOR SENATE BILL NO. 198( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing procedures relating to issuance, suspension, or revocation of**  
 2 **certification of police officers by the Alaska Police Standards Council; making**  
 3 **confidential certain information that personally identifies a police officer; relating to**  
 4 **requesting or requiring police officers to submit to lie detector tests; and providing for**  
 5 **an effective date."**

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

7 **\* Section 1. AS 18.65.240(c) is repealed and reenacted to read:**

8 (c) If a police officer does not meet the standards adopted under (a)(2) of this  
 9 section, the council may,

10 (1) before filing an accusation or a statement of issue under  
 11 AS 44.62.330 - 44.62.630, suspend a certificate that has been issued to the police  
 12 officer;

13 (2) following the filing of an accusation, hearing, and decision under

1 AS 44.62.330 - 44.62.630, revoke the certificate of a police officer;

2 (3) following the filing of a statement of issues, hearing, and decision  
3 under AS 44.62.330 - 44.62.630, refuse to issue a certificate to an applicant.

4 \* Sec. 2. AS 18.65.240 is amended by adding a new subsection to read:

5 (d) In a proceeding to determine the outcome of the accusation or statement of  
6 issues, the council shall prove the conduct alleged in the accusation or statement of  
7 issues by clear and convincing evidence.

8 \* Sec. 3. AS 18.65 is amended by adding a new section to read:

9 **Sec. 18.65.244. Deference to prior resolutions.** In a proceeding to revoke,  
10 suspend, or refuse to issue a certificate to a police officer, the council may consider  
11 past disciplinary actions against the police officer. However, the council shall give  
12 substantial weight to the significance of a past removal or reversal of the disciplinary  
13 action if the removal or reversal was the result of

14 (1) an arbitration or grievance proceeding under a collective  
15 bargaining agreement;

16 (2) a grievance, hearing, or other proceeding under applicable  
17 personnel rules;

18 (3) a proceeding under AS 44.62 (Administrative Procedure Act); or

19 (4) an appeal to a court.

20 \* Sec. 4. AS 39.90.100(a) is amended to read:

21 (a) A public employer may not discharge, threaten, or otherwise discriminate  
22 against an employee regarding the employee's compensation, terms, conditions,  
23 location, or privileges of employment [BECAUSE]

24 (1) because the employee, or a person acting on behalf of the  
25 employee, reports to a public body or is about to report to a public body a matter of  
26 public concern; [OR]

27 (2) because the employee participates in a court action, an  
28 investigation, a hearing, or an inquiry held by a public body on a matter of public  
29 concern; or

30 (3) in the case of an employee who is a police officer, because the  
31 employee refuses under (e) of this section to submit to a test conducted with a lie

1            **detector device after being hired.**

2            \* **Sec. 5.** AS 39.90.100 is amended by adding new subsections to read:

3                    (e) A police officer who works for a public employer may, after being hired,  
4                    refuse a request by the employer to submit to a test conducted with a lie detector  
5                    device. The refusal and the underlying request

6                            (1) are confidential;

7                            (2) may not be made part of the police officer's personnel file or  
8                    employment record.

9                    (f) In this section, "lie detector device" means a polygraph, deceptograph,  
10                    voice stress analyzer, psychological stress evaluator, or other similar device,  
11                    mechanical or electrical, that is used to obtain data to support a diagnostic opinion  
12                    regarding the honesty or dishonesty of a natural person.

13            \* **Sec. 6.** AS 40.25 is amended by adding a new section to read:

14                    **Sec. 40.25.145. Confidentiality of police officer information.** (a) Except as  
15                    provided in (b) of this section, information in the possession of a law enforcement  
16                    agency that personally identifies a police officer who is employed by the agency,  
17                    including the police officer's photographic image or home address, is confidential and  
18                    is not subject to inspection under AS 40.25.110 or 40.25.120 unless the police officer  
19                    voluntarily authorizes its release in writing.

20                    (b) Notwithstanding (a) of this section, information that personally identifies a  
21                    police officer may be released for inspection under AS 40.25.110 or 40.25.120 if

22                            (1) the police officer is lawfully arrested and the information is a  
23                    photograph of the police officer; or

24                            (2) the police officer is lawfully arrested and the information is  
25                    included in one or more of the following:

26                                    (A) a report or recording that documents a 911 telephone call;

27                                    (B) a police or investigative report;

28                                    (C) a complaint made to a law enforcement agency;

29                                    (D) the statement of a witness in either a criminal matter or a  
30                    proceeding related to the adjudication of a minor under AS 47.12.110.

31            \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

WORK  
OF THE

**Good afternoon. I would first like to reintroduce you to the Council.**

**The Mission of the Alaska Police Standards Council:**

*Is to produce and maintain highly trained and positively motivated professional officers, capable of meeting contemporary law enforcement standards of performance.*

**The Core Services we provide the citizens of the State of Alaska:**

- In cases of misconduct by a certified police officer, we make a determination whether certification should be revoked.
- We monitor compliance with current regulations and legislation.
- We develop, monitor, and revise law enforcement training.
- We assist academies and departments with funding for academy training.
- We fund specialized and advanced training for departments.
- We determine certification eligibility for all police, probation, and correctional officers and issue appropriate level of certificate.
- We provide pre-employment polygraph and psychological testing for smaller agencies across the state.

Senate Bill 198 directly affects, or more honestly cuts, to the heart of several of our core services. Please keep our ability to provide these services to the people of Alaska in mind as you contemplate this proposed bill.

Let's talk first about certification. In this state, as in most states, you need to earn a certificate in order to possess and wield police powers. Our process certifies that you have the education, training, and moral fiber to do the job as legislation has seen fit to define it.

At any one time we have about 3,000 sworn officers in this state. This bill wants to inhibit and intervene with our ability to, if necessary, decertify an officer. While we consider the ability to decertify an errant officer **critical** to our mission and goals, revoking a certificate is but a scalpel in our tool belt.

I'm assuming that the changes this bill proposes are actions taken in response to a perceived current problem. I'm not sure what this problem is however. In the past 5 years only 6 officers have lost their certificate due to Council revocation. Let me repeat that – 3,000 sworn officers in the state – 6 of them had their certificates “**taken**” away from them by council action over a five year period! These certificates were revoked after charges of sexual assault of a minor, sexual assault, harassment, official misconduct and dishonesty were leveled.

In our world, possible misconduct is reported to APSC staff, which fully investigates the matter, and only if we find it appropriate is the matter given to the full council which **again** reviews all of the facts before taking action. Council action can be further appealed through the court system if the officer so desires.

The council is made up of 13 members, hand picked by the governor and affirmed by the legislature. They are police and correctional management, line officers and union members, and citizens at large. You could not ask for a more balanced, knowledgeable, trustworthy board whose primary mission is the protection of the citizen of Alaska.

Clearly, this bill is a solution in search of a problem.

Our legal counsel from the Department of Law wishes to speak to two proposed changes, the necessity to give “**substantial weight**” to prior decisions in our deliberations, and the changing of the burden of proof for our investigations from the preponderance of evidence to clear and convincing evidence. I have no doubt he will express himself more eloquently than I concerning these legal matters, suffice it to say the Council has grave concerns to being **singled out and held to different standards** than the four dozen other boards and commissions required to uniformly operate under the requirements of the state Administrative Procedures Act. (AS 44.62).

Our next concern revolves around the use of polygraphs and other truth verification devices. We appreciate the work done on an earlier version of this bill, and the cooperation that resulted in not prohibiting pre-employment polygraphs. Right now, both Alaska and federal labor law recognizes the special relationship and trust between the citizens and their law enforcement officers, and allows the use of polygraphs in both pre-employment, and investigative situations. The Council is asking, if it's a good idea to take a polygraph to get a job – what changes that you can't take a polygraph to keep a job? It takes a lot to earn police powers...not everyone is up to the challenge. We request the bar not be lowered, and the standards held to be employed remain the same to stay employed.

WE WILL FIND OURSELVES WAY OUTSIDE THE  
ALASKA SHOULD WE BECOME ONE OF THE 10  
10 RECOGNIZING THIS EXCEPTION.

In fact, 9 out of 10 states allow for investigative polygraph use in matters concerning law enforcement officer's behavior. As not a single recent Council revocation action hinged on polygraph results, the Council is again at a loss why this section of the bill is being introduced, ~~to clip our member's wings.~~

Next, this bill demands that departments cease supplying photographs of our officers in action, in the performance of their duties.

The language in this bill goes against every tenant of Community Policing we have tried to put in place for the last two decades. If adopted, I can no longer show pictures of my officers receiving a check from the local Rotary to go toward Special Olympics, and I can no longer hang the photos of my officers in the lobby of my police department or city hall.

I **want** my community to know who my officers are. That is how you build community support, trust, and cooperation. These images are important to recruitment. AS 39.25.080 already makes it unlawful to disseminate state personnel records information, including a home address. Obviously we have no objection to following current state law. We do object to giving away management rights to run progressive, modern, community orientated departments.

Finally, It would mean a great deal to the Council if we could discuss changes to the definition of police officer, which you will find under section 4. It has been a long time goal of the Council to remove the words "full-time" from the definition of police officer. Removing these two words not only bring part-time, seasonal and reserve officers under our oversight, but protects cities and jurisdictions who are trying to do the right thing by hiring on additional help, only to find their employees are operating outside of regulations.

As proposed today, the Alaska Police Standards Council opposes much of this bill. As stated before however we appreciate all of the work that has gone into making the bill more meaningful, and we look forward to the same cooperative working spirit with this committee as we enjoyed with the last. Thank you for the opportunity to present the council's views on this proposed legislation. I am at your service should you have questions.



**Public Safety Employees Association, Inc.**  
**"Representing Alaska's Finest"**  
**A.F.S.C.M.E. Local 83**



February 29, 2012

Dear Senator Wielechowski:

On behalf of the Soldotna Police Department employees represented by PSEA, I wish to express our support for Senate Bill 198. SB 198 will improve the quality of police officers protecting Alaskans by strengthening due process, elevating standards, and providing more tools at the Alaska Police Standards Council. This legislation improves this regulatory body and by doing so improves the quality of police officers in Alaska.

My thanks go out to you and the Senate State Affairs Committee for introducing this important legislation.

Rory L. Espy  
President  
Soldotna Police Bargaining Unit



Dear Senator Wielechowski:

On behalf of the Sitka. Police Department employees represented by PSEA, I wish to express our support for Senate Bill 198. SB 198 will improve the quality of police officers protecting Alaskans by strengthening due process, elevating standards, and providing more tools at the Alaska Police Standards Council. This legislation improves this regulatory body and by doing so improves the quality of police officers in Alaska.

My thanks go out to you and the Senate State Affairs Committee for introducing this important legislation.

Timothy D White  
PSEA Sitka Chapter President  
Sitka Police Department  
907-747-3245

Dear Senator Wielechowski,

I am writing in support of SB198 and ask you to support this bill both in Committee and on the Floor. As an Alaska State Trooper who works regularly with Court Services Officers (CSO), I am concerned with the fact that CSO's are currently serving without any type of State-recognized (APSC) certification. Requiring certification for this position will provide consistent job requirements and increased avenues for accountability on the job. Thank you.

Sincerely,  
Rob Cox  
(907) 350-4656

Dear Senator Wielechowski:

On behalf of the Juneau Police Department employees represented by PSEA, I wish to express our support for Senate Bill 198. SB 198 will improve the quality of police officers protecting Alaskans by strengthening due process, elevating standards, and providing more tools at the Alaska Police Standards Council. This legislation improves this regulatory body and by doing so improves the quality of police officers in Alaska.

My thanks go out to you and the Senate State Affairs Committee for introducing this important legislation.

Lee Phelps

Vice President for the Juneau PSEA chapter/Police Officer  
Juneau Police Department  
6255 Alaway Ave  
Juneau, AK 99801  
907-500-0648



**Public Safety Employees Association, Inc.**  
*"Representing Alaska's Finest"*  
**A.F.S.C.M.E. Local 83**



Alaska Senate  
Chairman Wielechowski  
State Affairs Committee

February 24, 2012

Dear Senator Wielechowski,

My name is Charles Taylor. I am employed as a Court Services Officer (CSO) with the Department of Public Safety, Division of Alaska State Troopers, and I am stationed in Kenai. I ask you to support SB198 both in Committee and on the Floor in its entirety and specifically, as it applies to CSO's (SB 198; Section 4). Alaska Statutes currently require that peace officers be certified. However, there is currently no requirement that CSO's be certified. This bill will correct the issue consistent with current law.

Additionally, I view SB198 as a simple and inexpensive fix that protects the State and its resources. In my employment I am uniformed and equipped similar to State Troopers. Consequently, citizens often mistake me as an Alaska State Trooper. Unlike Troopers, the approximately 60 Court Services Officers serve without any type of State-recognized certification. Without formal recognition of training and qualifications through certification, the State of Alaska may be open to greater liability arising out of actions performed by CSO's. Thank you.

Sincerely,

Charles Taylor

Phone: (907) 252-7356



**Public Safety Employees Association, Inc.**  
*"Representing Alaska's Finest"*  
**A.F.S.C.M.E. Local 83**



Alaska Senate  
Chairman Wielechowski  
State Affairs Committee

February 24, 2012

Dear Senator Wielechowski,

I am employed as a Court Services Officer (CSO) with the Alaska State Troopers. I wish to take this opportunity to request your support of SB198. The passage of this legislation would require that CSO's be certified by the Alaska Police Standards Council (APSC) and standardize the training which CSO's receive. Passage of this legislation would greatly enhance the professionalism of the officers serving the State of Alaska court system and increase the accountability of individual officer performance.

Sincerely,

Thomas Robson

Phone: (907) 243-4440



# ALASKA CORRECTIONAL OFFICERS ASSOCIATION

*"Walking Alaska's Toughest Beat"*

March 1, 2012

Senator Bill Wielechowski  
State Capitol Room 101  
Juneau AK, 99801

Senator Wielechowski,


My supervisor, Brad Wilson, returned from Juneau late last night and probably will not have time before this morning's Senate State Affairs Committee meeting to personally convey his support for the protections Senate Bill 198 would extend to our brothers and sisters serving as Police Officers and Court Service Officers. I know that Brad strongly supports this Bill. I will attempt to speak for him as his subordinate, but also as a retired Correctional Officer. Correctional Officers also fall under Alaska Police Standards' training and certification requirements and they fully understand the need for the protections that SB 198 will afford for our fellow law enforcement agency members.

Correctional Officers know the valuable services that Police Officers and Court Service Officers provide. We know the importance of an Alaska Police Standards certificate and the impact that revocation can have on future employment. We acknowledge that there have been occasions when a certificate needed to be revoked, but we feel **strongly** that a certificate should never be revoked without clear and convincing evidence and due process. SB 198 will provide that protection for Police Officers.

Furthermore, Correctional Officers recognize the very real need to protect members of the law enforcement community from having their personal information publicly released. Most, who have served in this field for any length of time, can recount numerous instances of irate detainees and prisoners defiantly shouting, "*I know where you and your family live and I will get you*". Fortunately, most of the time the person does not know where the Officer lives and the threat is seldom acted upon. However, tragically there have been heartbreaking instances around the nation of just such threats being carried out. Unfortunately, more might have if the officer's personal information had been made public!

We urge the Legislature to quickly pass SB 198.

Thank you,



Jim Lecrone  
Business Agent

P.O. Box 210290 • Anchorage, Alaska 99521  
Phone: 1 (907) 646-2262 • Fax: 1 (907) 646-2286  
Website: [www.acoa.us](http://www.acoa.us)



**Public Safety Employees Association, Inc.**  
*"Representing Alaska's Finest"*  
**A.F.S.C.M.E. Local 83**



March 21, 2012

Senate Judiciary Committee  
Chairperson Hollis French

My name is Meagan Carmichael. I have worked as a business agent with PSEA since October 2009. During that time, employers have relied on polygraph exams to support several terminations of police officer employees. In one case, an employee declined to take a poly during an internal investigation, and the employer punished the officer by immediately placing him on admin leave, even though the CBA prohibits the employer from disciplining employees who decline polygraphs. The employer relied on his refusal to terminate the officer, and as evidence of his guilt. In another case, a citizen filed a complaint against an officer, and the complainant failed a polygraph regarding the truthfulness of his complaint. The employer disregarded the fact that the complainant failed the polygraph, and gave him a second chance by giving him a second polygraph. The internal investigative report omitted the fact that the complainant failed the polygraph, and the employer fired the officer anyway. Eyewitness testimony from five different police officers supported the officer's version of events. In a third case, an officer volunteered for and passed 2 polygraphs about the truthfulness of his statements during an investigation, but the employer ignored the fact that he passed both polygraphs and fired the officer for allegations of dishonesty anyway. He was a veteran officer with over 10 years of experience, with no prior integrity issues or discipline. When officers are fired for dishonesty, they often face losing their police certifications, and hence their livelihoods. The APSC relies on employer's internal investigations to revoke certificates, and they rely on polygraphs to revoke certificates. Officers cannot get hired as police officers in other states if their certificates are revoked in Alaska. Police officers should enjoy the same rights and protections as any other citizen of the state of Alaska, and the US. This bill will not prevent employers from asking police officers to take polygraphs, but it will protect the officer's ability to decline to take polygraphs, because they are inherently unreliable and inadmissible in court.

Thank you for your time. I am available for questions.  
Meagan Carmichael



**FAIRBANKS POLICE**  
911 Cushman Street  
Fairbanks, Alaska 99701-4616  
Phone: (907) 450-6500  
Fax: (907) 450-6595  
Email: fpd@ci.fairbanks.ak.us



March 30, 2012

Re: SB 198/HB 351

As Chief of Police of the Fairbanks Police Department, I ask for this moment of your attention to express my opposition to the above-cited legislation.

I read the concerns that Mr. David Sexton, Executive Director of the Alaska Police Standards Council, provided in testimony, and find my concerns directly overlay his. At point here is the capacity to effectively provide the citizens of Alaska with genuine, effective "quality control" of police applicants through enforcing standards. The degradation of that core function that would come with the passage of this legislation puts in question how seriously we value that level of professionalism. The policing profession inherently calls for certain sacrifices from its members, but the degree of intrusion under current practices is minimal, while the value gained from those same practices has proven great—too great to abandon.

For what worth it might have, let me add this. Over a six year period, I was privileged to represent the United States in various roles generally referred to as international police advising. During that time, I saw and lived the consequences of corruption and compromised standards with the police in many countries. I left that experience nearly phobic of acts that could trigger movement down that proverbial slippery slope. That might help explain my passion in resisting what I see as an unwarranted, rather wholesale degradation of our State's efforts to maintain the highest competence of law enforcement standards that would follow passage of this legislation.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Laren J Zager", with a long, sweeping underline.

Laren J Zager  
Chief of Police

# JUNEAU POLICE DEPARTMENT

6255 ALAWAY AVE. • JUNEAU, ALASKA 99801

GREG BROWNING  
CHIEF OF POLICE

*Alaska's Capital City*

BUSINESS (907) 586-0600  
FAX (907) 463-4808

March 30, 2012

*File*

Greg Browning  
Chief of Police

Page Decker  
Asst. Chief of Police

The Honorable Hollis French  
State Capitol Room 417  
Juneau, Alaska 99801

Dear Senator French,

As the senior administration of the Juneau Police Department, we must tell you that we strongly oppose Senate Bill 198.

Efforts to reduce the authority of the Alaska Police Standards Council should always be scrutinized very carefully.

Although we put together the best hiring practices possible under the law, law enforcement officers are human and are subject to all the frailties of the species.

The experts in law enforcement say that in order to keep graft and corruption out of a police agency, three systems must be in place. First, you have to hire the best possible people. Second, you have to have standards, policies, and procedures in place that provide the best direction possible as officers go about their duties, some of which can have grave consequences for the public. Finally, when officers fail to live up to the standards, there must be a system in place that removes them from the profession.

This bill appears to negatively impact our ability as law enforcement agency administrators to rely on the third requirement to hold our profession to the highest standards; the standards that you as a citizen of Alaska expect.

Finally, the idea of restricting us from displaying photographs of our employees in our workplace or restricting the news media from publishing photographs of officers working newsworthy events seems irrelevant to police certification and seems to be born of unbridled paranoia.

Please reconsider supporting this poorly thought-out bill.

Thank you for your consideration as we work together to make Alaska a place that we can all be proud of.

Sincerely,



Greg Browning  
Chief of Police  
Juneau Police Department



Page Decker  
Assistant Chief of Police  
Juneau Police Department



April 13, 2012

AMERICAN CIVIL  
LIBERTIES UNION OF  
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STUDENT ADVISOR

The Honorable Hollis French, Chair  
The Honorable Bill Wielechowski, Vice-Chair  
Senate Judiciary Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

*via email:* [Senator Hollis French@legis.state.ak.us](mailto:Senator_Hollis_French@legis.state.ak.us)  
[Senator Bill Wielechowski@legis.state.ak.us](mailto:Senator_Bill_Wielechowski@legis.state.ak.us)

**Re: CS for Senate Bill 198 (STA)**  
**ACLU Follow-Up Review of Legal Issues**

Dear Chair French and Vice-Chair Wielechowski:

Thank you for the opportunity to submit further written testimony regarding the Committee Substitute for Senate Bill 198 (State Affairs), relating to the regulation of police licenses and confidentiality of police officer information.

This review supplements our prior testimony of April 2, 2012, provided to the Judiciary Committee even with that date, and addresses continued revisions to the proposed Legislation.

**Section Seven: The Confidentiality Provision for Police  
Officer Information is Overbroad and Would Improperly  
Limit Access to Legitimately Needed Information**

Our previous commentary noted that the broad category of personally identifying information could potentially include an officer's name, badge number, and – as the Bill explicitly states – his photograph. Making all such personally identifying information about a police officer confidential would insulate bad actors from any accountability for their actions. If this Bill were to become law as currently drafted, a woman who had been raped or harassed by an unknown police officer would be unable to even view a photo array of the officers on duty the night she was assaulted in order to provide departmental management with information necessary to identify the

perpetrator. Citizens might be unable to review even the most pedestrian police records if the records contained an officer's name or badge number.

*We trust that the Judiciary Committee will more narrowly tailor these provisions to address this highly problematic drafting issue. As noted, protection of core, private information about officers is a logical and appropriate goal. However, the provision as currently written threatens meaningful public review of law enforcement practices.*

### **Section Two: The "Clear and Convincing" Standard Is Inappropriate for Public Servants Trusted with the Power to Arrest and to Use Deadly Force**

The ACLU wishes to revise previous testimony, and note that the Alaska Bar Rules require a showing of clear and convincing evidence for discipline of an attorney. Alaska Bar Rule 22(e). However, ordinary attorneys do not arrest citizens, search citizens, or shoot firearms in the course of their daily duties.

Given the nature of police officer duties, and their authorization for use of deadly force in the ordinary course of their work, a "clear and convincing" requirement for revocation of police certification is troubling.

Other than attorneys, for other categories of state licensees, a preponderance of the evidence, or "more likely than not," standard applies, as best our review of statutes and case law shows. The State should show the utmost care and caution in certifying a person given the unique privileges to drive an emergency vehicle at high speeds, carry and use a government-issued firearm, search the homes and persons of Alaskan citizens, and arrest Alaskans for alleged criminal activity.

Review of disciplinary action against Alaska police officers does not reveal that they are currently held to unreasonable standards. In fact, several of them have been permitted to retain employment in the face of activity that would leave many Alaskans out of a job.

In one recent case, a police officer told a colleague via e-mail that he wanted to see her breasts and buttocks, using a more vulgar term for both. He also repeatedly and drunkenly told a second colleague in the crude terms that he wanted to have sex with her, even after being repeatedly told by his uninterested colleague to stop. *State v. Alaska Public Safety Employees Ass'n*, 235 P.3d 197, 199 (Alaska 2010). The officer, employed with the Department of Transportation as an airport police officer was fired for the misconduct. An arbitrator reinstated him – not because he was *innocent* of the charges, but because the arbitrator ruled a lesser penalty would suffice. The Alaska Supreme Court upheld the arbitrator's decision in the face of opposition from the state employer.

Similarly, the Alaska Supreme Court also upheld an arbitrator's decision reinstating a trooper who repeatedly lied about his own conduct in training and with civilians, as well as failing to meaningfully investigate several crimes. *State v. Public Safety Employees Ass'n*, 257 P.3d 151,

153 (Alaska 2011). The arbitrator reinstated the trooper – again, not because the claims were false, but because the “State has shown lenience for minor acts of dishonesty in the past.” *Id.* at 161-62. A law enforcement officer cannot serve if he cannot testify credibly in court about criminal activity he observes.

These two cases suggest that changing the standard to “clear and convincing” would make it harder to decertify a rogue officer. No one would want his wife, daughter, or mother to be stopped, handcuffed, searched, or arrested by a police officer with a history of disturbing, sexually harassing activity. No one would want to be stopped or arrested by a police officer with a history of dishonesty (even if “minor”); nor would a prosecutor want such an officer as a witness in a criminal case. We recommend the Committee and the Legislature reject the proposed change.

**Section Three: The Council Should Only Give  
Substantial Weight to an Arbitrator’s Findings of Fact**

Upon review of the outcomes of police disciplinary proceedings described above, the ACLU has further concerns regarding the statement in Section Three that the Council shall give “substantial weight” to the determinations of arbitrators.

It appears that arbitrators may reverse dismissals *not because the department reached an incorrect factual conclusion* as to the truth about the misconduct, but because the arbitrator second-guessed the severity of the punishment or considered the past history of what kind of behavior the agency had tolerated.

In order to protect the public, the Council should be free to set high standards regarding sexual harassment, dishonesty, or other misconduct by officers. The Council – in establishing statewide standards and protecting the public – has a vital role to fill. While the Council should give some deference to *fact-finding* by an arbitrator, it should not be required to give deference to the *scope of a penalty* enforced by an arbitrator.

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. And again, thank you for the opportunity to share further thoughts.

Sincerely,



Jeffrey Mittman  
Executive Director  
ACLU of Alaska

Senate Judiciary Committee  
*CS for S.B. 198 (STA): ACLU Further Review*  
April 13, 2012  
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