

SB

198

<TARGET><BILL>SB 198</BILL><SUBJECT>SB
198</SUBJECT><COMM>SSTA27</COMM></TARGET>

ALASKA STATE LEGISLATURE

Session

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State Affairs Committee

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Judiciary Committee

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Administrative Regulation Review

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.

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
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

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)							
TOTAL		***	***	***	***	***	***	***

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 trooper'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.

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
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Prgm (DGF)							
37 GF/MH (UGF)							
1178 temp code (UGF)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

	FY13	FY13	FY14	FY15	FY16	FY17	FY18

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.

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.

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



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



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

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

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

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.



Public Safety Employees Association, Inc.
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A.F.S.C.M.E. Local 83

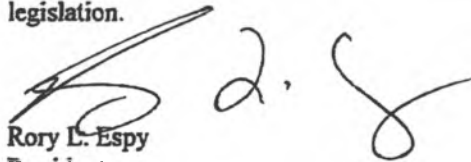


February 29, 2012

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