

Alaska Police Standards Council (APSC) Response to Questions Regarding Proposed regulation changes in 13 AAC 85.010 - .900; 13 AAC 87.010 - .090; and 13 AAC 89.010 - .150 of the Alaska Administrative Code, dealing with minimum hiring standards, certificate suspension and revocation, mandatory annual training requirements, and additional levels of professional certification for police, corrections, probation, parole, municipal corrections, and village police officers¹.

Here is a link to the Public Comment Notice:

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=200932>

The following questions were received by APSC prior to February 9, 2021:

Question: Regarding the proposed changes in 13 AAC 85.045, 13 AAC 85.232, and 13 AAC 85.237 (Page 6, 35, & 39) establishing criteria of officer's supervisory and management level certification:

1. Is there a requirement that individuals holding particular ranks must possess the certificates? If so, is there a time frame after promotion to those ranks in which individuals would be required to complete the requirements?
2. What is the purpose of creating supervisory and management certificates?
3. Who does the proposal envision would pay for the costs of and provide the "council approved first-line supervisor course consisting of at least 80 hours of instruction" and the "40 hours of additional council approved training" required for a supervisory certificate?
4. Who does the proposal envision would pay for the costs of and provide the "council approved management level training consisting of at least 80 hours of instruction" and the "40 hours of additional council approved training" required for a management certificate?
5. Are there circumstances under which the possession of a predicate certificate (intermediate or advanced for the supervisory certificate, and supervisory certificate for the management certificate) could be satisfied by possession of an equivalent certificate from another state? If so, what would those circumstances be?

¹ This document is in response to questions raised following publication of the proposed regulations and does not directly address comments received about those changes. Comments are separately published and provided to the council, along with Council staff responses where appropriate.

Answer:

The creation of additional levels of professional certification is intended to promote and encourage ongoing professional development through education and training and to recognize officers who invest in their professional growth. Beyond basic officer certification all advanced levels are voluntary. There is no state requirement to advance, nor does APSC have any authority to dictate what certificate may be required for any rank in any agency. Agency reliance on advanced professional certification is discretionary but could prove useful to prospective employers in assessing an applicant's qualifications for supervisory or management positions. The cost, time, and effort required to obtain the prerequisite training would be the responsibility of the officer and their agency, just as it now is for intermediate and advanced police officer certification levels. Notably, all APSC certified in-service training can be relied upon to meet many of the prerequisite training hours, and APSC customarily sponsors at least two annual management level training courses in the state. APSC currently recognizes training and professional experience from other jurisdictions in determining qualifications for higher officer certification levels. We do not expect that policy to change and will do the same for supervisory and management level certification.

Question: Regarding the proposed changes in 13 AAC 85.090, 13 AAC 85.250 (Pages 13 & 41) adding the requirement that an officer charged with a misdemeanor or felony crime report that fact to their agency no later than three days thereafter, and that the agency has 10 days to notify the Council of the arrest: Does the regulation intend to sweep into its scope traffic offenses? If so, which offenses? And if so, the offenses should be listed in the regulations.

Answer:

Traffic offenses classified as criminal offenses would require reporting. They are already classified within the criminal and traffic code, so we do not think they need to be specifically listed within council regulation.

Question: Regarding proposed changes to 13 AAC 85.100(a)(3)(A), 13 AAC 85.110(a)(4)(A), 13 AAC 85.260(a)(3)(A), and 13 AAC 85.270(a)(5)(A) (Page 14, 17, 42, & 44) adding the provision that after hire as an officer they could be disqualified from certification or have their certification revoked if they "lied or

falsified official written or verbal communications or records.” Does the Council intend that the word “official” in Section A modify the word “records”? If so, the proposal should so explicitly state. If not, the regulation should contain a definition of “records.” It is unclear what an “official verbal communication” might be.

Answer:

“Official written or verbal communications or records” is intended to mean public records generated or maintained by an officer as part of their official duties and responsibilities. (Refer to AS 11.56.820 and AS 46.580 for additional information and definitions.) “Official verbal communications” is intended to reflect material verbal statements made during an officer’s official duties including substantive discussions with supervisors and any verbal statement provided during an administrative investigation.

The council may elect to include this definition in regulation.

The Council has previously addressed “falsification” and “lying” and has consistently applied stringent factors, as clarified in the Lynch case (OAH 14-1644-POC; 2015), to a set of circumstances to determine if the conduct rises to a level mandating council sanction.

Question: Regarding proposed changes to 13 AAC 85.100(a)(3)(C), 13 AAC 85.110(a)(4)(C), 13 AAC 85.260(a)(3)(C), and 13 AAC 85.270(a)(5)(C) (Page 15, 18, 43, & 45) to clarify that an officer’s certification can be denied or revoked if they “negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer”; Shouldn’t the reference ... to “negligently” actually be to “intentionally?”

Answer:

Intentional use of unreasonable force would most likely rise to the level of a criminal assault under AS 11.41. Negligently, in this instance, is intended to have the same definition as AS 11.81.900(a)(4): “a person acts with “criminal negligence” with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.”

The council may elect to include this definition in regulation.

The period for written Questions ended February 9, 2021 to allow time for the agency to answer them prior to the end of the comment period. To be considered, comments must be submitted by 4:29 p.m. on February 19, 2021.