



Alaska Police Standards Council
130th Regular Meeting Agenda
May 7, 2018, 0800
Fairbanks, AK

GENERAL SESSION AGENDA

1. Call to Order
2. Roll Call
3. Flag Salute
4. Audience Introductions
5. Approval of agenda
6. Approval of past minutes – February 13, 2018
7. Persons to be heard:
 - a.
8. Council Chair's Report
9. Executive Director's Report - Written
10. Old Business:
 - a. Marijuana in officers' homes and enforcement of 13 AAC 85.110 (b)(2)(C) and 13 AAC 85.270 (b)(2)(C)
 - b. Subcommittee Report - Consideration of Statute Change Police Officers – Definition
11. New Business:
 - a. Hearing for rescission of prior Council decision: Antoni Hoiby, APSC Case 2015-20
 - b. Consideration of Superior Court Ruling in APSC Case 2015-12; Valent Maxwell
12. Adjourn to Executive Session to address subjects that may tend to prejudice the reputation and character of individual(s) and for deliberations on adjudicatory proceedings in APSC Cases: 2017-21, 2017-26, 2017-28, 2017-29, 2018-02, 2018-09, and 2018-16.
13. Call back to order – General Session
14. Roll Call
15. Business arising from Executive Session (Individual decisions voted in open session)
 - a. Action to accept surrendered certification(s) and findings of disqualification
 - b. Council consideration of probable cause to initiate revocation action
16. Persons to be heard and Council comments
17. Determination of next scheduled meeting
18. Adjournment:

STATE OF ALASKA
Alaska Police Standards Council
Minutes of the 130th Regular Meeting
May 7, 2018
Fairbanks, Alaska

CALL TO ORDER

Chair Swihart called the 130th Regular Meeting of the Alaska Police Standards Council to order on May 7, 2018, at 8:00 a.m. A roll call was conducted as follows:

APSC Members Present

Chair Kelly Swihart, Chief, Petersburg PD
Vice Chair Wendi Shackelford, Public Member
Carrie Belden, Director, DOC
Bill Comer, Deputy Commissioner, DPS
Michael Craig, Public Member
Justin Doll, Chief, Anchorage PD
Rebecca Hamon, Public Member
David Knapp, Correctional Officer IV DOC
Shane Nicholson, Sergeant, Kodiak AWT
John Papasodora, Chief, Nome PD
Dean Williams, Commissioner, DOC

APSC Members Absent

Brad Reich, Public Member

APSC Administrative Staff Present

Robert Griffiths, Executive Director
Sarah Hieb, Administrative Investigator
Rob Heide, Training Coordinator
Wendy Menze, Admin Assistant

Department of Law Representatives Present

John Novak, Department of Law
Paul Miovas, Department of Law

FLAG SALUTE

A flag salute was conducted.

AUDIENCE INTRODUCTIONS

Antoni Hoiby	Brad Johnson
Courtney Hoiby	Tom Clemons
John Rhyshek	Greg Russell
Barry Wilson	Ed Mercer
Shannon Watson	Jonathon Taylor
Ian Matthews	Josh Wilson (telephonic)
Jennifer Shockley	Jay Menze

APPROVAL OF PAST MINUTES – February 13, 2018

It was moved by Hamon and seconded by Shackelford to approve the minutes of the 129th Regular Meeting held February 13, 2018. The motion carried unanimously.

PERSONS TO BE HEARD

There were no persons to be heard.

COUNCIL CHAIR'S REPORT

Chair Swihart noted he had no report, other than to mention this will be his last meeting as he is retiring July 1. Executive Director Griffiths thanked him for his service and presented him with an appreciation plaque to the applause of all in attendance.

EXECUTIVE DIRECTOR'S REPORT

The May 1, 2018, Executive Director's Report to Council was provided to Council members prior to the meeting. ED Griffiths noted that Lt. Tim Putney is Kodiak's new chief of police, replacing Ronda Wallace.

He introduced Paul Miovas, who is replacing Andrew Peterson as the Council's attorney from the Department of Law and also head of the Office of Special Prosecutions. Mr. Peterson is now a Superior Court judge in Anchorage. New Council member Sergeant Shane Nicholson was also introduced. He is currently an Alaska Wildlife Trooper in Kodiak.

OLD BUSINESS

a. Marijuana in Officers' Homes and Enforcement of 13 AAC 85.110(b)(2)(C) and 13 AAC 85.270(b)(2)(C)

Following discussion at the February meeting, the Council directed APSC staff to prepare proposed regulation changes that would change revocation

from mandatory to discretionary for marijuana possession. With the assistance of Mr. Novak, proposed regulation changes were drafted, and they were included with the Executive Director's Report previously distributed to the Council.

Mr. Novak reviewed the proposed regulation changes with the Council, noting that they would change revocation from mandatory to discretionary for possession, purchase, sale, cultivation, transportation, manufacture, and/or distribution of marijuana or marijuana extract. The proposed changes make explicit APSC's past consistent and uniform interpretation that possession necessarily is inherent as a legal matter in consumption, sale, cultivation, transportation, manufacture, and/or distribution. The proposed changes do not alter the mandatory revocation currently in effect for consumption of marijuana or a marijuana extract since it is a felony offense under federal law for a user of marijuana or a marijuana extract to possess any firearm or any ammunition.

Mr. Novak went on to explain that the question presented to the Council is whether it is sound public policy to depart from APSC's longstanding position that conduct in violation of drug laws, whether state or federal, is inconsistent with the standards of the law enforcement profession and demonstrates a "lack of good moral character," which is defined in APSC regulations and past APSC rulings as causing "a reasonable person to have substantial doubts about an individual's honesty, fairness, respect for the rights of others, or the laws of this state or the United States."

Mr. Novak then discussed the possible ramifications of adopting the proposed regulation changes, including an increased number of legal challenges to APSC certification revocations and the overall ambiguity involved in permitting certified officers to violate current federal drug laws. Discussion followed concerning the challenges presented with differing state and federal laws regarding marijuana and what options would be available to the Council, if the proposed regulation changes were adopted, in handling cases involving marijuana being in the possession of an officer's household members, particularly for medical use. ED Griffiths noted that there is a formal statutory process required for regulation changes, which includes publishing them and obtaining public comment; at this point the council was merely deciding whether or not to proceed with this process.

It was moved by Hamon and seconded Craig to move forward with the regulatory changes proposed in the 4/26/2018 Memorandum from Mr. Novak. A roll call vote was taken, and the motion failed six(6) No votes (Comer, Doll, Knapp, Nicholson, Shackelford, Swihart); five (5) Yes votes (Belden, Craig, Hamon, Papasodora, Williams).

b. Subcommittee Report – Consideration of Statute Change Police Officers – Definition

Chair Swihart recommended this matter be tabled indefinitely. There was no objection.

NEW BUSINESS

a. Hearing for rescission of prior Council decision: Antoni Hoiby, APSC Case 2015-20

Mr. Hoiby thanked the Council for giving him the opportunity to present his request for rescission of the prior Council decision to revoke his APSC certification. He explained the circumstances surrounding his failure to keep accurate time records at the Kittitas County Police Department and subsequent charges involving his failure to pay restitution, apologizing for his poor choices and emphasizing the valuable lessons he learned in the process. He expressed his strong desire to regain his certification so that he may continue to serve his community, the Council, and his fellow law enforcement officers.

Chief Rhyshek of the Bristol Bay Borough Police Department spoke on behalf of reinstating Mr. Hoiby's certification, noting his outstanding work performance at BBBPD and the recognition Mr. Hoiby received when he attended the Sitka ALET Academy. He also pointed out several flaws in the investigation conducted by APSC staff that led to erroneous conclusions. He respectfully requested the Council reconsider their prior decision, noting that Mr. Hoiby is the kind of individual that he wants on his team and that APSC should want on theirs.

b. Consideration of Superior Court Ruling in APSC 2015-12, Valent Maxwell

ED Griffiths noted that while serving as a police officer in Klawock, Mr. Maxwell was criminally charged with three counts involving his application

for PFD benefits. He was later acquitted in the criminal trial. The Council, however, revoked his APSC certification. The matter then went on to an appeal before the Superior Court in Ketchikan. Judge Stephens ruled in favor of Mr. Maxwell, stating the Council hadn't proved its case. It is now up to the Council to decide whether to pursue an appeal to the Supreme Court or let Judge Stephens' ruling stand.

Discussion followed regarding the potential future consequences of allowing a Superior Court judge to substitute his interpretation of factual issues for the Council's, and also the costs of an appeal. Mr. Miovas expressed his opinion that he felt the Council would prevail in an appeal to the Supreme Court. Mr. Novak noted that even if the Council did not prevail in the appeal, the cost exposure would be minimal.

It was moved by Papasodora and seconded by Doll to proceed with an appeal of the Superior Court decision in Mr. Maxwell's case. A roll call vote was taken, and the motion passed unanimously.

ADJOURN TO EXECUTIVE SESSION

Following a unanimous voice vote, the General Meeting was adjourned to Executive Session to address the cases listed on the agenda, with the addition of case 2015-20, and subjects that may tend to prejudice the reputation and character of individuals and for deliberations on adjudicatory proceedings. Motion to adjourn made by Doll, seconded by Shackelford. Adjourned to Executive session at 9:54 am.

REPORT FROM EXECUTIVE SESSION

Following deliberations during Executive Session, Chair Swihart called the General Session back to order at 11:55 am. A roll call was conducted, and all members present at the start of the meeting remained in attendance. The following actions were taken:

2018-09 Brian Karnes: It was moved by Papasodora and seconded by Craig to adopt the finding of disqualification for certification as a police officer by the Executive Director. The motion passed unanimously.

2018-16 John Repasky: It was moved by Hamon and seconded by Papasodora to adopt the finding of disqualification for certification as a police officer by the Executive Director. The motion passed unanimously.

2017-28 Caitlyn Price: It was moved by Shackelford and seconded by Doll to accept the surrender of her certification. A roll call vote was conducted. The motion passed unanimously with three recusals: Belden, Knapp, and Williams.

2017-26 KC Tillery: It was moved by Papasodora and seconded by Nicholson to revoke his APSC certification. A roll call vote was conducted. The motion passed unanimously with three recusals: Belden, Knapp, and Williams.

2017-29 Bruce Busby: It was moved by Shackelford and seconded by Papasodora to revoke his APSC certification. A roll call vote was conducted. The motion passed 7-1 (Comer), with three recusals: Belden, Knapp, and Williams.

2015-20 Antoni Hoiby: It was moved by Papasodora and seconded by Shackelford to rescind the disqualification in the matter of Hoiby, as the conditions or circumstances have changed that formed the basis for the original denial of his certification. The motion passed unanimously with one recusal: Hamon.

2017-21 Curt Hamilton: It was moved by Belden and seconded by Doll that there was probable cause to move forward to his revoke APSC certification. A roll call vote was conducted. The motion passed unanimously.

2018-02 Angela Worhatch: It was moved by Papasodora and seconded by Doll that there was probable cause to move forward to revoke her APSC certification. A roll call vote was conducted. The motion passed unanimously with one recusal: Swihart.

PERSONS TO BE HEARD AND COUNCIL COMMENTS

There were no persons to be heard. Chair Swihart expressed his deep appreciation for his opportunity to serve on the Council.

ADJOURNMENT AND NEXT SCHEDULED MEETING

The next regularly scheduled meeting of the APSC will be conducted as a statewide teleconference the morning of August 21, 2018.

There being no further business to come before the Council, it was moved and seconded to adjourn the meeting. The motion passed unanimously.

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Minutes approved and adopted on August 21, 2018 at the 131'st regular meeting of the Alaska Police Standards Council.



Executive Director's Report to Council

May 1, 2018

Activities:

After our February 13th, council meeting, your APSC staff:

- Testified before the legislature several times and networked with staffers and legislators to educate them regarding our legislative proposal to require, and authorize APSC to take, fingerprints for police officer and academy applicants. SB 148 passed both houses on Saturday, April 14th. We believe that Governor Walker may choose to sign this bill during our Council meeting on May 7th, in Fairbanks.
- Shepherded the packet of regulatory changes adopted by the council on December 5, 2017, through the final stages of approval by the DOL and acceptance by the Lt. Governor's office. The changes finally became effective on April 9, 2018.
- Updated and released the latest version of the *APSC Users Guide* reflecting statutory and regulatory changes through April 9th. The guide is available on our website.
- Completed processing and approving 36 applications for training in the ALET 2018-01 class (February 25 – June 4, 2018). Twelve of these are municipal officers and 11 were VPSOs (six of which remain in the academy as of this date).
- Enrolled and approved (thus far) the attendance of four municipal, four airport, and 14 DPS trooper recruit attendees to the ALET 18-02 (July 29-November 16, 2018).
- Processed Fairbanks CTC Academy session #33 (July 9 – October 12, 2018) enrollees, thus far: APSC has approved three municipal officers and three self-pay attendees, thus far. CTC has advised us they are processing 15 additional self-pay attendee applications that we should expect soon.
- Began processing and approving academy applicants for the May 25-June 8, 2018, VPO academy. This is a laborious process as most of the applications are incomplete. We have already identified three proposed attendees who are disqualified from serving as VPOs due to their criminal history, and have initiated new cases, in response.
- Continued our many ongoing misconduct investigations; in the time since our last meeting we opened nine new cases and closed three existing cases. In our upcoming meeting, several cases will be presented to the Council for your consideration, discussion, and findings.
- Responded to 19 formal records requests, up to and including national media organizations. Addressed and responded to seven formal complaints against officers and/or agencies received from the public, other state agencies, or legislators.
- Finalized the redesign of the APSC F-3 Personal History Statement. The new F-3 was distributed at the beginning of April, and is now available on our website. Agencies using old forms are being directed to resubmit any form prepared after that date, but we are not requiring officers to re-do forms submitted or begun before then.
- Taught another Methods of Instruction Course in Juneau, at the Juneau PD.
- Continued day to day operations; reviewing certification applications and validating course

- curriculum; responding to reciprocity and other information requests.
- Coordinated with DPS and DOC on expansion of APSC’s ACADIS training management system to address DPS and DOC training and documentation needs.
- Engaged in ongoing discussions with AK DOL on Tribal Police and Tribal justice agencies.

Statistics:

Fiscal year 2018:

Training Events Sponsored	4	Except Academies (all planned or held)
Officers Attending Sponsored Courses	43	APSC Sponsored and hosted Courses
Sponsored Training Hours Delivered	1,720	Excluding Basic Academies
Sponsored Academy Attendees	33	ALET 1801, CTC 13,
Total Municipal Academy Training Hours Delivered	40,808	Municipal, reciprocity, MCO Academy
Non-APSC Sponsored Municipal Academy Attendees	74	ALET 18-01 & 2, CTC #32, Reciprocity, MCO, and APD
Non-sponsored training hours	13,708	APSC Reciprocity, ALET 18-02, and municipal corrections – excludes APD
Certificates issued	527	All Certifications
Officer Certifications	235	Basic-Intermediate & Advanced
Instructor Certifications	98	Including Renewals
Course Certifications	194	Including Renewals and online courses
Reciprocity Evaluations	55	For training waivers and lateral hires
New Investigations Initiated	35	23 Cases closed or resolved
OAH Hearing Events Held	0	Reported Quarterly

Administrative Hearings/Appeals:

Case Status:

- Anthony Henry, APD; APSC 2015-07, OAH No. 16-0315-POC. By agreement, this case was suspended pending the outcome of a related federal civil case between Henry and the MOA.
- Valent Maxwell: APSC #2015-12, OAH#16-0134-POC; Alaska Court # 1KE-17-00069CI. The Council’s decision was overruled by the Superior Court. Council must determine in this meeting whether to pursue an appeal or allow the decision to stand.
- Antoni Hoiby: APSC #2015-20, OAH #16-0545-POC; Alaska Court # 3AN-17-06838CI. Appeal of Council’s decision filed with Superior Court. Council is being represented by Carole Holley.
- David N. Johnson: APSC #2015-11, OAH #16-0383-POC; Alaska Court #3HO-17-00345CI. Appeal of Council’s decision filed with Superior Court. Council’s Representation is now John Darnall.

Council and Command Changes across the state:

- The Alaska Police Standards Council welcomes AWT Sgt. Larry “Shane” Nicholson of Kodiak to the Council, replacing Sgt. Luis Nieves.
- Assistant Attorney General Andrew Peterson, who served as the head of Office of Special Prosecutions and as the Council’s attorney, was appointed by the governor to the Anchorage Superior Court. We wish him luck in the new and challenging position.
- Sadly, Chief Ronda Wallace (Kodiak) has left the Council; she retired, effective May 2, 2018. Her Council position remains unfilled at this time. Lt. Tim Putney was appointed acting

chief.

- Council Chair Chief Kelly Swihart (Petersburg) has announced he will be stepping down from the Council, effective after our meeting on May 7. He is also retiring effective July 1, 2018.
- Named to replace Judge Peterson as both the Council's attorney and the head of the Office of Special Prosecutions is Paul Miovas (pronounced "My-O-Vis"). Paul has been with the Department of Law, Criminal Division since 2007 and has held multiple roles within the Division, including unit supervisor within the Anchorage District Attorney's Office, the statewide cold-case prosecutor, and, most recently, the director of the Medicaid Fraud Control Unit. We welcome Paul to the council.
- Chief Stan Swetzof, Bristol Bay Borough PD has stepped down and Sergeant John Rhyshek is serving as acting chief.
- Chief Dave McKillican, Hoonah, accepted a chief's position in Idaho and Lt. Billy Mills is serving as Interim Chief.
- Whittier Chief Dave Schofield left the department; Officer in Charge is Mark Hagar.
- Chief Chase Bresnehan has left the Fort Yukon Police Department. No acting chief has been identified.
- APD Lt. Julie Shank has been promoted to Captain and assumed command of the Anchorage Police Department Patrol Division.
- Ryan Browning was promoted to Lieutenant with the Homer Police Department to replace retiring Lt. Will Hutt. Browning is now second in command of the department.

Issues:

No new issues this reporting period

Regulations:

Changes Under Consideration:

Possession of Marijuana by Officers: Following the council's direction in our last meeting, APSC staff worked closely with the department of law to provide the council with alternative regulatory language for discussion and consideration. This draft language addresses allowing the council discretion in the revocation of officers' certificates for possession of marijuana by certified officers; it does **not** relax the long-standing prohibition against officers using marijuana. Included with meeting materials is a memorandum from AAG John Novak which presents draft language for your consideration.

Policy & Procedure Development:

None currently proposed.

Finances:

Declining Police Training Fund Surcharge Revenues:

As we have discussed in past meetings, there continues to be a precipitous drop in the number of Police Training Court Surcharge Fees being imposed by the courts and in the amount collected. The clear majority of convicted offenders assessed surcharges simply ignore the debt. We continue experiencing revenue levels not seen for 20 years and have instituted drastic reductions to adapt to this challenge. As court surcharge fees are APSC's sole source of funding each year, their reduction has a profound effect on operations and training for officers. APSC's fixed operational costs of personnel, facilities, and our portion of 'shared costs' of state government operations are fixed at nearly \$570K each year. We must raise at least this much surcharge revenue to even maintain operations, much less hold statutorily mandated council meetings and follow through with administrative enforcement action, when required. Our statutory priorities are first to maintain

and support the Council and our regulatory standards for hiring and training. Remaining funds then go to support basic officer academy training and, finally, more advanced in-service training.

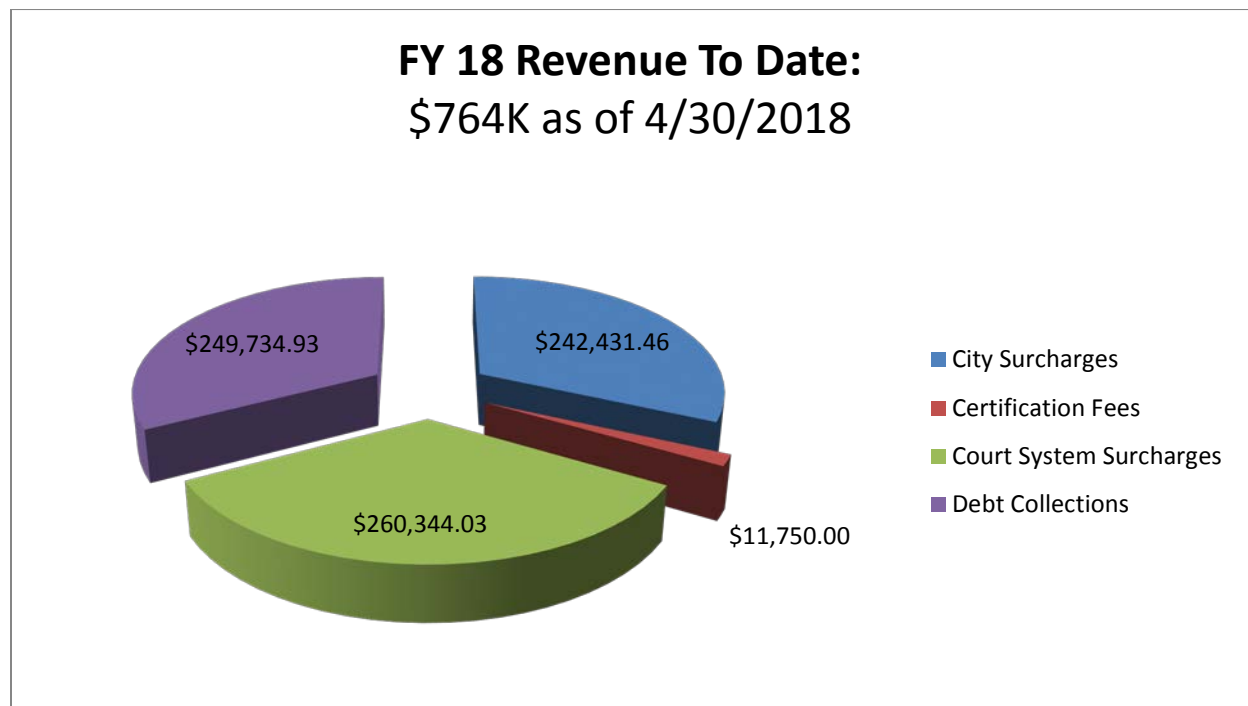
SB 149 and HB 294 were introduced in the legislature to help address this shortfall, but they received no hearings and are, effectively, dead for this session.

Staff recently met with DPS finance personnel and recalculated revenue forecasts, based upon year-to-date and historic revenues. Thus, we lowered budgeted academy training funds even further than they were in February, 2018.

Fiscal Year 2018:

Revenue Sources	Revenue
City Surcharges	\$242,431.46
Certification Fees	\$11,750.00
Court System Surcharges	\$260,344.03
Debt Collections	\$249,734.93
Total Collected Revenue	\$764,260.42
Carry over from FY17	\$53,000.00
Grand Total	\$817,260.42
Projected revenue (Last year's actual revenue)	\$982,199.00
Progress Actual vs projected YTD	78%
Projected actual cash to spend (No remaining carryforward)	\$1,035,199.00
Projected actual cash to spend (retaining \$125K carryforward)	\$910,199.00

Revenue to date (4/30/2018):



Expenses Vs. Budget:

Revenue, to date, is lagging initial projections and has not yet reached the point of paying for our already obligated expenses. Currently, projected revenues do not provide adequate revenue to consider *significant* academy reimbursements to police agencies that were forced to fund their officers' basic academies.

Expenses exceeding our original budget estimates include shared “core costs” of state government and personnel costs due to the state’s mandatory Vacancy Factor applied to our legislative budget and a change in job classification of our Secretary’s position to reflect her actual duties and responsibilities.

IRIS Budget Lines	Item	Budgeted	Prelim Costs	% Budget	Actual Costs	% Budget
125003000- 1000	Authorized by Legislature					
Current Budget	Personnel	\$469,700	\$475,307	101%	\$475,307	101%
125003000- 2000	Authorized by Legislature	\$124,700	\$30,965	25%		
Current Budget	Travel TA	\$32,000	\$30,965	97%	\$18,934	59%
125003000- 3000	Authorized by Legislature	\$655,000				
Current Budget	Academies	\$339,000	\$282,901	83%	\$295,761	87%
Current Budget	Hearings	\$30,000	\$30,000	100%	\$8,544	28%
Current Budget	SOA 'Core Services'	\$74,000	\$61,037	82%	\$61,037	82%
Current Budget	Training	\$0	\$1,715		\$1,365	
Current Budget	Total	\$443,000	\$375,653	85%	\$366,707	83%
125003000- 4000	Authorized by Legislature	\$37,500				
Current Budget	Supplies	\$12,000	\$11,636	97%	\$11,636	97%
Totals	Projected real budget	\$956,700	\$893,561	93%	\$872,584	91%
FY18 Authorized Budget	Legislative spending authority.	\$1,286,900				
Total Actual Revenue	Actual Revenue vs Obligated Expenses	\$817,260	-\$76,300		-\$55,324	

APSC FY 2018 Budget and Expenses as of 04/30/2018.

Planned Activities:

No currently set meetings or activities

OAH Hearings Currently Scheduled: None.

MEMORANDUM

STATE OF ALASKA *Department of Law - Criminal Division*

To: Bob Griffiths
APSC Executive Director

Date: April 26, 2018

From: John Novak *JN*
Assistant Attorney General

Subject: Proposed Marijuana Regulation
Changes for Discussion at
5/7/18 APSC Meeting

You submitted the following to Council members for consideration at the February, 2018 APSC meeting:

APSC regulations [13 AAC 85.110 and 13 AAC 85.270] are clear that an officer is subject to MANDATORY revocation (or denial of certification) if; after hire as a police, corrections, municipal corrections, probation, or parole officer; they have:

(A) used marijuana;

(B) illegally used or possessed any Schedule IA, IIA, IIIA, IVA or VA controlled substance, unless an immediate, pressing, or emergency medical circumstance existed to justify the use of a prescription Schedule IA, IIA, IIIA, IVA or VA controlled substance not specifically prescribed to the person; or

(C) illegally purchased, sold, cultivated, transported, manufactured, or distributed a controlled substance;

The Council has set and maintained a strong precedence for strict interpretation of these regulations and publicly ruled that, while the State of Alaska has legalized marijuana for medical and recreational use, the cultivation, possession and use of marijuana or marijuana products remains a federal crime and; therefore, the possession, transportation, distribution, cultivation and/or use of marijuana is inconsistent with the standards of our profession. See press releases from February 26, 2015, and May 18, 2017, attached for your information.

At the request of the Department of Corrections, I present the following for your public discussion and any potential change in policy direction:

DOC has recently identified several cases in which officers have been found to have marijuana growing in their home; in each of these cases the officer claimed that the plants did not belong to them, but to others in the home, and DOC has found little evidence the officer is using the marijuana themselves. Their stories vary from the plants belonging to an officer's terminally ill parent to being cultivated by a spouse in an outbuilding for the purposes of manufacturing medicinal oils for an officer's disabled child. These officers may or may not be subject to disciplinary action by DOC.

APSC staff regards possession of marijuana in the officers' home, or a premise under their control, to be a violation of federal law and our regulations, regardless of the circumstances and legality of the conduct under state law. Lacking direction to pursue a change in regulations by the council, this position will guide our actions in pursuing revocation against these officers and would guide us in all future cases given similar circumstances.

Does the council wish to pursue the modification of regulations to provide for a more lenient approach, or do they wish to reaffirm their prior positions toward marijuana possession, cultivation, transportation, delivery, and/or use by APSC certified officers?

Following discussion at the February meeting, the Council directed APSC staff to prepare proposed regulation changes that would change revocation from mandatory to discretionary for marijuana possession.

The following two additional related issues have come to light since the February APSC meeting:

First, the Alaska Correctional Officers' Association (ACOA) has taken issue with APSC's interpretation of the currently in effect regulations. ACOA asserts that the currently in effect regulations prohibit only marijuana consumption, sale, cultivation, transportation, manufacture, or distribution, but not possession. APSC in the past consistently and uniformly has interpreted the currently in effect regulations as prohibiting possession since possession

necessarily is inherent as a legal matter in consumption, sale, cultivation, transportation, manufacture, and/or distribution.

And second, a number of certified corrections officers have been making inquiries within the Department of Corrections as to whether it is permissible under currently in effect regulations for them to consume or possess marijuana extracts. The adverse or beneficial effects of marijuana extracts is subject to the same debate as the adverse or beneficial effects of marijuana itself, except that it is beyond reasonable debate that certain extracts have significantly higher levels or concentrations of THC than marijuana itself.

In light of the Council's directive to APSC staff and the issues raised by corrections officers since the February APSC meeting, I have prepared in consultation with you the attached proposed regulatory changes for discussion at the upcoming APSC meeting. The proposed changes would change revocation from mandatory to discretionary for possession, purchase, sale, cultivation, transportation, manufacture, and/or distribution of marijuana or marijuana extract. The proposed changes make explicit APSC's past consistent and uniform interpretation that possession necessarily is inherent as a legal matter in consumption, sale, cultivation, transportation, manufacture, and/or distribution. The proposed changes do not alter currently in effect mandatory revocation for consumption of marijuana or a marijuana extract since it is a felony offense under federal law (18 USC 922(g)(3)) for a user of marijuana or a marijuana extract to possess any firearm or any ammunition.

In my evaluation, the question presented to the Council members is whether it is sound public policy to depart from APSC's long standing position that conduct in violation of drug laws, whether state or federal, is inconsistent with the standards of our law enforcement profession. In other words, Council members must decide whether to depart from APSC's long

standing principle that conduct in violation of drug laws demonstrates a “lack of good moral character” which is defined under the text of our regulations and past APSC rulings as causing “a reasonable person to have substantial doubts about an individual's honesty, fairness, respect for the rights of others, or the laws of this state or the United States.” (Emphasis added.)

If the Council determines that violation of federal drug laws should be permissible conduct by certified officers, I recommend that the council go forward with implementing the attached proposed regulations. If the Council remains of the long standing APSC view that violation of drug laws is inconsistent with the standards our law enforcement profession, I recommend against making any changes to the currently in effect regulations.

13 AAC 85.110. Revocation of Certificates.

- (a) The council may revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate
- (1) falsified or omitted information required to be provided on an application for certification at any level, or in supporting documents;
 - (2) has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked; ~~or~~
 - (3) does not meet the standards in 13 AAC 85.010(a) or (b); or
 - (4) has, after hire as a police officer, possessed (solely, jointly, actually, or constructively), purchased, sold, cultivated, transported, manufactured, or distributed marijuana or any marijuana extract.
- (b) The council will revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate
- (1) has been convicted of a misdemeanor crime of domestic violence or, after hire as a police officer, has been convicted of a felony, or of a misdemeanor crime listed in 13 AAC 85.010(b)(2); or
 - (2) has, after hire as a police officer,
 - (A) consumed ~~used~~ marijuana or any marijuana extract;
 - (B) illegally possessed (solely, jointly, actually, or constructively) or consumed, ~~used or possessed~~ any State of Alaska Schedule IA, IIA, IIIA, IVA or VA controlled substance, unless an immediate, pressing or emergency medical circumstance existed to justify the use of a prescription medication not specifically prescribed to the person; or

- (C) illegally purchased, sold, cultivated, transported, manufactured, or distributed any State of Alaska Schedule IA, IIA, IIIA, IVA or VA controlled substance; or
 - (3) has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for conduct that would cause a reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States or that is detrimental to the integrity of the police department where the police officer worked.
- (c) The executive director of the council may initiate proceedings under the Administrative Procedure Act for the revocation of a certificate issued by the council when the revocation complies with AS 18.65.130 18.65.290 and 13 AAC 85.005 13 AAC 85.120.
 - (d) If a basic, intermediate, or advanced certificate was revoked under this section, the former police officer may petition the council for rescission of the revocation after one year following the date of the revocation. The petitioner must state in writing the reasons why the revocation should be rescinded. A revocation may be rescinded for the following reasons:
 - (1) newly discovered evidence that by due diligence could not have been discovered before the effective date of the revocation;
 - (2) the revocation was based on a mistake of fact or law, or on fraudulent evidence; or
 - (3) conditions or circumstances have changed so that the basis for the revocation no longer exists.
 - (e) If a petition for rescission is based on one or more of the reasons set out in (d) of this section, a hearing on the petition for rescission will be held before a hearing officer or the council. Following the hearing, the council will decide whether to rescind the revocation, and will state on the record at the hearing, or in writing, the reasons for the decision. If the revocation is rescinded, the petitioner is eligible for hire by a participating police department, but must serve the full probationary period required under 13 AAC 85.040(b)(3) before applying for reinstatement of a basic, intermediate, or advanced certificate.

- (f) A personnel action or subsequent personnel action regarding a police officer by the police officer's employer, including a decision resulting from an appeal of the employer's action, does not preclude the council from revoking the police officer's basic, intermediate, or advanced certificate under this section.
- (g) In this section, "discharged" includes a termination initiated by the police officer's employer because the officer does not meet the standards in 13 AAC 85.010(a) or (b).

13 AAC 85.270. Revocation of Certificates.

- (a) The council may revoke a basic certificate upon a finding that the holder of the certificate
 - (1) falsified or omitted information required to be provided on an application for certification, or in supporting documents;
 - (2) has been discharged, or resigned under threat of discharge, from employment as a probation, parole, correctional, or municipal correctional officer in this state or any other state or territory for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the correctional agency where the officer worked;
 - (3) is a probation, parole, or correctional officer and does not meet the standards in 13 AAC 85.210 (a) or (b); ~~or~~
 - (4) is a municipal correctional officer and does not meet the standards in 13 AAC 85.215(a) or (b); or
 - (5) has, after hire as a probation, parole, correctional, or municipal correctional officer possessed (solely, jointly, actually, or constructively), purchased, sold, cultivated, transported, manufactured, or distributed marijuana or any marijuana extract.
- (b) The council will revoke a basic certificate upon a finding that the holder of the certificate
 - (1) has been convicted of a misdemeanor crime of domestic violence or, after hire as a

- (A) probation, parole, or correctional officer, has been convicted of any felony, or of a misdemeanor crime listed in 13 AAC 85.210 (b)(2); or
 - (B) municipal correctional officer, has been convicted of any felony, or of a misdemeanor crime listed in 13 AAC 85.215 (b)(2) or (3);
- (2) has, after hire as a probation, parole, correctional, or municipal correctional officer,
- (A) **consumed ~~used~~-marijuana or any marijuana extract**;
 - (B) illegally **possessed (solely, jointly, actually, or constructively) or consumed, ~~used or possessed~~** any **State of Alaska** Schedule IA, IIA, IIIA, IVA or VA controlled substance, unless an immediate, pressing or emergency medical circumstance existed to justify the use of a prescription medication not specifically prescribed to the person; or
 - (C) illegally purchased, sold, cultivated, transported, manufactured, or distributed any **State of Alaska Schedule IA, IIA, IIIA, IVA or VA** ~~or~~ controlled substance; or
- (3) has been discharged, or resigned under threat of discharge, from employment as a probation, parole, correctional, or municipal correctional officer in this state or any other state or territory for conduct that would cause a reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States or that is detrimental to the integrity of the correctional agency where the officer worked.
- (c) The executive director of the council may initiate proceedings under the Administrative Procedure Act for the revocation of a certificate issued by the council when the revocation complies with AS 18.65.130 18.65.290 and 13 AAC 85.200 13 AAC 85.280.
- (d) If a basic certificate was revoked under this section, the former probation, parole, correctional, or municipal correctional officer may petition the council for rescission of the revocation after one year following the date of the revocation. The petitioner must state in writing the reasons why the revocation should be rescinded. The council may rescind a revocation for the following reasons:

- (1) newly discovered evidence that by due diligence could not have been discovered before the effective date of the revocation;
 - (2) the revocation was based on a mistake of fact or law, or on fraudulent evidence; or
 - (3) conditions or circumstances have changed so that the basis for the revocation no longer exists.
- (e) If a petition for rescission is based on one or more of the reasons set out in (d) of this section, a hearing on the petition for rescission will be held before a hearing officer or the council. Following the hearing, the council will decide whether to rescind the revocation, and will state on the record at the hearing, or in writing, the reasons for the decision. If the revocation is rescinded, the petitioner is eligible for hire by a correctional agency, but must serve the full probationary period required under 13 AAC 85.230 or 13 AAC 85.235, as applicable, before applying for reinstatement of a basic certificate.
- (f) A personnel action or subsequent personnel action regarding a probation, parole, correctional, or municipal correctional officer by the officer's employer, including a decision resulting from an appeal of the employer's action, does not preclude the council from revoking the officer's basic certificate under this section.
- (g) In this section, "discharged" includes a termination initiated by the probation, parole, correctional, or municipal correctional officer's employer because the officer does not meet the standards in 13 AAC 85.210(a) or (b).