



Alaska Police Standards Council
Special Meeting Agenda
May 6, 2021 12:00 P.M.
Statewide Teleconference*

SPECIAL MEETING AGENDA

1. Call to Order & Roll Call
2. Audience Introductions – please announce yourself if you have called in.
3. Approval of Agenda
4. Approval of past minutes – March 30, 2020
5. Special Business:
 - a. Council Deliberation on Regulation Change Project Number 2020200735
6. Council Comments & Announcements.
7. Adjournment

RECORD OF PUBLIC COMMENTS RECEIVED DEALING WITH PROPOSED CHANGES IN TITLE 13, PART 6, CHAPTER 85, OF THE ALASKA ADMINISTRATIVE CODE, RELATING TO MINIMUM STANDARDS FOR POLICE,
PROBATION, PAROLE, CORRECTIONAL AND MUNICIPAL CORRECTIONAL OFFICERS
Project Number 2020200735

Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
1	General Comments	Melissa Lampert, Samuel Sullivan, Angelina Fraize, Brian Fuchs, Brian Burton, Renee Oistad	<p>Slow down, the regulations appear to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality. Please consider slowing down this process.</p> <p>The proposed regulations are broad, not well articulated, lacking definitions, and make AK liable for due process violations.</p> <p>These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.</p>	<p>APSC is subject in all proceedings to the Alaska Administrative Procedures Act which dictates due process in and appeal of all agency decisions.</p> <p>The council, through investigation and factfinding hearings, can identify and rule out unfair treatment by employers or peers. The council has a history of weeding out frivolous and discriminatory cases following its review of the facts.</p>	
2	General Comments	Representatives Zack Fields, Calvin Schrage, Andy Josephson, and Kelly Merrick. Senator Tom Begich	<p>We are writing to request that the Alaska Police Standards Council (APSC) consult carefully with public safety officers and their unions regarding proposed changes to regulations governing public safety officers' hiring processes, certifications, notification standards, and other substantive changes affecting officers' daily work. It is important that APSC carefully consider feedback from stakeholders during the development and implementation of regulations.</p> <p>The State of Alaska and local governments face significant recruitment and retention challenges for public safety officers, including State Troopers, police officers, correctional officers, and Village Public Safety Officers. Alaskans strongly support our law enforcement officials, and we should ensure any regulations support their ability to protect the public, and not inadvertently create bureaucratic barriers to recruitment, retention, and efficient administration of law enforcement agencies. Public safety unions have provided extensive feedback and suggested changes to proposed APSC regulations, and we ask that you listen to front-line public safety officials and make necessary changes before implementing substantial changes to APSC regulations</p>	<p>Fortunately, we received considerable constructive comment from public safety officers, officials, and collective bargaining units during this lengthy public process. This document summarizes those comments and makes specific recommendations to the council for them to consider.</p>	1.
3	General Comments	Representatives: David Eastman, Ron Gillham, Ken McCarty,	<p>We, the undersigned members of the Alaska House Republican Caucus, are writing to express our concerns about the proposed suite of sweeping regulatory changes that will have a tremendous impact on how local police agencies manage themselves and internally oversee officer conduct.</p>	<p>The legislature delegated rule-making regarding officer qualifications, hiring standards, and certification qualifications to the council (including revocation and disqualifications). The legislature has the power, through legislation, to narrow or broaden this authority or to impose its own standards. There</p>	

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		Thomas McKay, and Cathy Tilton	<p>We understand that the Alaska Police Standards Council (APSC) plays an essential role in Alaska law enforcement and applaud the mission the agency pursues. However, we are concerned that the proposed regulations are unnecessarily far-reaching and even more concerned that they will have the effect of eroding the local control of local departments and other agencies.</p> <p>Our understanding is that numerous agency employee associations including the Anchorage Police Department Employees Association (APDEA), the Public Safety Employees Association (PSEA), Alaska Correctional Officers Association (ACOA) and the Alaska Peace Officers Association have had expressed formal opposition to this regulatory package while other groups share many same concerns.</p> <p>In the interest of transparency and good public process, we encourage the APSC to either slow down or significantly scale back the scope of this regulatory package.</p>	<p>are multiple bills introduced in this session of the legislature that seek to do just that and will actually expand the authority of the council if they are adopted.</p> <p>This document summarizes detailed analysis and recommendations from state agencies, labor unions, professional associations, agency heads, and members of the public and clearly demonstrates the transparency of the regulatory process and enumerates the council's consideration of the many different recommendations from these groups.</p>	
4	General Comments	APDEA, PSEA, ACOA, APOA	<p>Prefacing the proposed rules is a fiscal note indicating that there will be no fiscal impacts from the proposed rules. We are assuming this is a placeholder as the amended rules will undoubtedly have a substantial fiscal impact.</p>	<p>There will be no fiscal impact to APSC from these changes although there will be increased workload manageable with existing staff. Based on the assumption that agencies are already providing in-service training and requiring regular proficiency testing (qualifications) there will be no increase in training costs for agencies mandated by these changes.</p>	
5	General Comments	AML	<p>Public safety is a priority for the Alaska Municipal League, even as it is a Constitutional obligation of the State. We are appreciative of the Alaska Police Standards Council (APSC) efforts to update standards related to public safety, including through these proposed changes.</p> <p>While these updated certification, communication, and training requirements may be critical to improved public safety in Alaska, we are surprised that support for compliance is not reflected in the State's proposed FY22 budget. In fact, there are no resources allocated to support the additional and necessary requirements. These regulations, then, become unfunded mandates that may further destabilize communities desperately searching for solutions. What we gain in qualifications we may lose in dedicated staff within each community.</p>	<p>The state budget is outside the control of APSC. Efforts have been made with available APSC funding to support officers continued training to allow them to meet the proposed standards. APSC strongly feels most, if not all agencies, are already providing in-service training to their officers; these proposals are intended to standardize minimum elements of basic and ongoing training and proficiency validations and require that training be recorded with APSC.</p>	

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			While we support the State's interest in improving public safety, we are worried that this effort is not sufficiently resourced. For those communities already struggling to afford what they have, we don't want to see them penalized for not having the resources to meet new requirements.		
6	General Comments	ACOA	Staffing shortage severely impacts correctional officers work environment ... We need far more staff. Refer to letter for details. In summary, the Alaska Correctional Officers Association does not support the adoption of the regulatory changes being proposed by the APSC. They appear to be an attempt to broaden the already expansive ability of APSC to subjectively and without oversight remove Officers' certifications. Correctional Officers, and all public employees, rely on due process and just cause. Officers have a property right to protect their jobs and their livelihoods. When it suits the State's needs, the APSC has shown a willingness to circumvent the principles of just cause, due process, and progressive discipline. These principles are paramount to a properly functioning Law Enforcement agency, and they are memorialized in the ACOA Collective Bargaining Agreement and state law. Many of the proposed regulatory changes increase the State's ability to circumvent these principles and therefore ACOA cannot support their adoption.	APSC has a duty to investigate and address reported officer misconduct. Administrative actions are not initiated without an investigation into the facts and the council finding probable cause to initiate action. Officers have due process rights to a fact-finding hearing before an independent ALJ who makes recommendations to the council based on the facts and testimony of both sides. APSC actions are not disciplinary and are entirely independent of any employment action by the officer's employer, adverse influence by another agency, or any collective bargaining agreement. Ultimate oversight over council actions come from the courts, as described in AS 44.62.560.	
7	85.010(b)(1)	AML	Supports disqualification from hire as a police officer an individual who has been convicted of a sex crime. Encourages coordination with local governments and police departments disqualification language that leads to an officer's eligibility, including an appeal mechanism.	APSC has a DQ appeal process in place and affords applicants due process according to the APA.	
8	85.010(c) 85.090(a), (b), &(d)	APDEA, PSEA, ACOA, APOA	The proposal changes from 30 to 10 days the time requirements for a participating police department to confirm that a person hired as a police officer meets the standards of 13 AAC 85.010(a) and (b). We are concerned that a 10-day time frame will pose administrative issues for employers, particularly given the level of documentation required by existing regulations, and that an employer's non-compliance with the regulation could pose employment issues for newly-hired officers. Unless there is a significant history of participating employers hiring individuals	This recommended change is driven by consistent and repeated failures of some agencies to report hiring and separation of officers, sometimes exceeding a year or <i>never</i> reporting the actions. A few agencies repeatedly hire disqualified applicants because they conduct no background investigation. 13 AAC 85.010(a) requires a police officer meets minimum qualification <u>before</u> they are hired. This change shortens the	

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			who do not meet APSC's standards, we recommend retaining the 30-day time frame.	reporting period for documenting the hire or separation from 30 to 10 days to be more consistent with similar requirements in other states and to allow the Council to verify eligibility sooner. RE: 13 AAC 85.090(b)&(d) it is CRITICAL that separations involving sustained allegations of misconduct and terminations/resignations involving such allegations, be timely reported to APSC.	
9		AACOP	Due to the complexity and speed at which police departments hire we believe 15 Business Days would be more reasonable.	See above	
10		AML	Supports timely reporting. Suggest that the 10-day notification period may need to be extended to account for local processes and internal timelines. Encourages amending from 10 days to 15 or 30 days, to follow local procedures and capacity.		
11	85.010(d)	APDEA, PSEA, ACOA, APOA	We are concerned that a 10-day time frame will pose administrative issues for employers, particularly given the level of documentation required by existing regulations, and that an employer's non-compliance with the regulation could pose employment issues for newly-hired officers.	The forms submitted are required to be completed before an officer is hired. Providing them to APSC W/I 10 days seems reasonable and is more consistent with other states. These forms are used by APSC staff to verify officer eligibility and that an agency did their due diligence. There is no adverse impact on officers, this is an agency requirement.	
12		AACOP	allow 15 business days.	See above.	
13	85.020 (d)	AACOP	Regarding prohibition of suspended officers being assigned police duties: Allow duties related to suspension to be performed. This language is too restrictive very broad. Agencies cannot get an officer off suspension if we don't allow "police duties," such as range qualifications, attend law enforcement related classes and other associated training that are "police duties." Recommend changing language to allow for duties other than acting under the "color of law."	The intent of this change is to prohibit suspended officers from engaging in contact with the public and acting in any enforcement capacity. Council may wish to consider alternate language to; "A participating police department may not assign an officer any public law enforcement duty during any period which the officer's certification has been suspended by the council."	

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14		AML	Appreciates that duties may be prohibited while certification is under suspension by the APSC		
15	85.045	APDEA, PSEA, ACOA, APOA	The proposal establishes the criteria for supervisory and management certificates. While we do not necessarily object to the creation of such certificates, the proposal does not answer the following questions, all of which should be addressed in the regulations:	Questions and responses are listed in separate document.	
16		AML	Appreciates the establishment of standards for Supervisory and Management professional certifications levels for police		
17		Chief Heath Scott	I love the supervisory and management certifications, anything that can be done to professionalize this industry is extremely important right now.		
18	85.050(b) 85.060(a)	APDEA, PSEA, ACOA, APOA	The proposal adds to the curriculum at the basic police officer academy the topic of "officer duty to intervene." ... it is critical that the term be defined somewhere in APSC's regulations. ... We recommend that the duty to intervene be phrased in the following terms: "Officers shall have a duty to intervene when another officer is engaged in any act the intervening officer knows or reasonably should know is misconduct, unless the intervening officer cannot intervene safely."	Staff concur with these recommendations; however, these two sections only mandate that 'duty to intervene' be included as a mandatory topic in basic academies. We do not believe this section, or the changes recommended in 13 AAC 85.060 for reciprocity academies require modification from the proposed language, but other sections (below) will.	
19		AML	Supports the inclusion of duty to intervene training within the basic academy instruction, and urges the implementation of this to correspond to additional time made, where possible, and resources allocated to this addition		
20	85.090	APDEA, PSEA, ACOA, APOA	The proposal creates a new obligation on the part of officers to notify their employers within three days "after their arrest or a criminal charge being filed," and imposes on the employer a 10-day time frame to notify the Council "of an officer being arrested or charged with any misdemeanor or felony crime." We have the following observations about the new rule:	Staff remind the council of several cases where officers have been arrested in another jurisdiction (and even convicted) but failed to notify their employer. APSC has also had cases where agencies had an officer charged and APSC only learned of the charges from the AK DOL or local press coverage; in at least one of these cases the officer was still working. We strongly recommend this section be retained.	

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			<p>1. Any requirement that officers notify their employers of events such as these should be handled at the local level, not as a statewide regulatory requirement. While such a “duty to notify” is generally not objectionable, local jurisdictions could well prefer different time frames and different requirements for such notification.</p> <p>2. The two phrases “after their arrest or a criminal charge being filed,” and “of an officer being arrested or charged with any misdemeanor or felony crime” are not identical and could conceivably require notification under one phraseology but not under the other. We recommend that the same language be used in both phrases.</p> <p>3. 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.</p> <p>4. The regulation should contain an exception for instances where notification is not reasonably possible (e.g., where the officer is hospitalized) and where the act of notification would compromise an officer’s right to be free from compulsory self-incrimination.</p>	<p>The suggestion that the council would hold an officer accountable for not reporting due to unforeseen circumstances, such as hospitalization, or for doing so a few days late, disregards that this is a discretionary cause for action, and the Council has always exercised discretion in these matters.</p> <p>The assertion that an "officer’s right to be free from compulsory self-incrimination" should shield him from reporting the public fact they were arrested or charged is legally unsound. Administrative actions are not criminal actions, and the 5th amendment does not apply. The reporting of their being charged with a crime is not self-incriminating nor is it an admission of guilt.</p>	
21		AML	Supports employer notification of arrest or charge.		
22	85.090 (a), (b), (d), & (f)	AACOP	Change reporting deadlines to 15 days	Staff believe the proposed deadlines are reasonable and easily achievable by an agency who is doing their due diligence prior to hiring an officer. We particularly feel the timeframe for reporting an arrest or criminal charge is reasonable, as proposed.	
23	85.100 & 85.110	AML	<p>Suggests defining misconduct so that there are clear expectations to follow and be evaluated by (sic)</p> <p>Supports expanding APSC’s ability to follow through on compliance.</p> <p>Supports definitional actions</p>		

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24	85.100(a)(3)(A)	APDEA, PSEA, ACOA, APOA	<p>The proposal allows the Council to deny a public safety certificate to an individual who has, after hire as a police officer, “lied or falsified official written or verbal communications or records.</p> <p>We recommend that this phrase be modified to read “in the course of his/her job as a police officer.” This modifier would help give definition to the various subsections of Section 3.</p> <p>The use of “falsified” in the phrase “lied or falsified official written or verbal communications or records” is very problematic. We recommend the “falsified” be replaced with some iteration of the phrase “was intentionally dishonest.”</p>	<p>Staff concur with the recommended change of 13 AAC 85.100(a)(3) to "has, in the course of their employment as a police officer;"</p> <p>Staff recommend the language in 13 AAC 85.100(a)(3)(A) also be clarified to read, "lied or falsified public records or official communications;"</p> <p>Definitions should be added: "public records" has the same meaning as in AS 40.25.220(3); and; "official communications" means material communications made during an officer's official duties including substantive discussions with supervisors and any statement provided during an administrative investigation by the employing agency or the council.</p> <p>The Council has addressed “falsification” and “lying” in many cases and has consistently applied stringent factors, as clarified in the <i>Lynch</i> case (OAH 14-1644-POC; 2015), to a set of circumstances to determine if the conduct rises to a level mandating council sanction. Those decisions serve as the standard for the Council and clearly establish a precedent that the council must find the appropriate mens rea to rise to the level of "lying or falsification."</p>	
25	85.100(a)(3)(B)	APDEA, PSEA, ACOA, APOA	<p>We recommend the deletion of the reference to the law enforcement code of ethics in Section B. The code of ethics is outdated and certainly unconstitutional. For example, Section 85.040 would require an officer to keep his/her "private life unsullied as an example to all," a phrase that would surely violate the freedom of association, the right to privacy, and the Fifth Amendment principle that regulations not be “void for vagueness.” As an alternative to the deletion of the reference to the law enforcement code of ethics, 13 AAC Section 85.040 should be revised.</p>	<p>13 AAC 84.040(b)(5) requires every officer to "attest and subscribe to the law enforcement Code of Ethics" before APSC can certify them as an officer. This requirement dates to 1973, as does the Code. Every APSC historic revocation action involves the violation of this code in one area or another. This is not vague nor is it unenforceable; indeed, many other POST agencies specifically list a violation of the code of ethics may be cause for certification action. Misconduct and unethical behavior while off duty, i.e. "in private life," <i>particularly when it reflects poorly upon the agency and profession</i>, has and should continue to be considered by the council as reflecting upon the officer's moral character and continued fitness for</p>	

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				duty. This remains a discretionary cause for action. The council must act reasonably and consistently, based upon the totality of circumstances; they could never act against an officer's certification without substantial cause, nor revoke without a preponderance of evidence.	
26		AACOP	This must be removed all together due to the ambiguous terms and unreasonable expectations used within this oath.	See above.	
27	85.100(a)(3)(C)	APDEA, PSEA, ACOA, APOA	Regarding proposed changes to 13 AAC 85.100(a)(3)(C), (and 13 AAC 85.110(a)(4)(C), 13 AAC 85.260(a)(3)(C), and 13 AAC 85.270(a)(5)(C)) 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?"	Intentional use of unreasonable force would be a criminal assault under AS 11.41 and covered elsewhere in regulation. 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." RECOMMENDATION: amend "negligently" to "with criminal negligence..." and add definition to 13 AAC 85.900 "criminal negligence" has the same meaning as described in AS 11.81.900.	
28		AACOP	These terms like "unreasonable" are being tested and are starting to erode from the standard we have always believed. Recent cases out of the 10th Circuit court are now ignoring Graham v. Conner standards. When will this come to Alaska? The trends coupled with this language spells trouble on the horizon for Alaska Law Enforcement. AACOP issues a cautionary plea to consider defining this in more detail.	CONSIDER: add definition to 13 AAC 85.900 "unreasonable force" is defined as meaning force applied against another that violates the policies of the employing agency or, based upon the totality of circumstances, force that a reasonable person would find substantially exceeded the level of force necessary to overcome resistance or effect a desired outcome.	

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29	85.100(a)(3)(D)	AACOP	RE: "harassed or coerced another person" Define harassed and coerced. LEO's get accused of this all the time but who sets the standard? What protections do line officers have from these terms being used as a "catch all," to decertify an officer? Poor supervision and vengeful command staff can use this regularly to decertify officers. We have to be careful! Recommend the word "unlawfully" be added in front of harassed and coerced.	Recall that based on staff recommendations above this entire phrase would read: "has, in the course of their employment as a police officer, harassed or coerced another person." Adding the term "unlawfully" elevates the language to only allow council action if the officer committed a crime. The intent of this language is to prohibit unprofessional, unreasonable, and unjustifiable harassment or coercion; not to subject an officer to sanctions because they arrested an offender or "coerced" them into handcuffs. The council would never initiate action against an officer for justifiable enforcement or investigative actions.	
30		APDEA, PSEA, ACOA, APOA	The use of the phrase "harassed or coerced" in Section D needs clarification. There are many legitimate actions an individual might take that could fairly be described as either harassment or coercion. For example, a parent grounding a misbehaving 14-year-old son or daughter would likely be described as both harassment and coercion by the child. Adding the word "illegally" as a modifier to "harassed or coerced" would fix the problem.	CONSIDER adding the terms "unreasonable and unjustified" as modifiers so the phrase so that it would read; "has, in the course of their employment as a police officer, unreasonably and unjustifiably harassed or coerced another person;"	
31	85.100(a)(3)(E)	AACOP	RE: engaged in inappropriate sexual activity while on duty: What is "inappropriate sexual activity?" These loose terms need to be defined. Who determines inappropriate? What standard are we using? Recommendation: This must be defined and clarified.	The only foreseeable sexual conduct an agency might allow, subject to strict legal and policy guidelines, might be during undercover vice operations. Staff feel that any departmentally sanctioned activity would be 'appropriate' while non-sanctioned on duty conduct would be inappropriate. Council may CONSIDER alternative language such as: "engaged in any sexual activity while on duty, not specifically sanctioned or authorized by department policy."	
32		CUSP	We encourage you to adopt the proposed changes especially: (E) engaged in inappropriate sexual activity while on duty:		

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33	85.100(a)(3)(F)	AACOP	<p>RE: “participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication;</p> <p>What is “participated,” “inappropriate relationship sexual or otherwise?”</p> <p>What is the otherwise? These loose terms need to be defined</p>	<p>Consider changing “participated” to “solicited or engaged”.</p> <p>An “otherwise inappropriate relationship” would be unethical conduct such as initiating or responding to a personal electronic conversation intended to solicit an off-duty relationship (such as sexting); initiating or engaging in a quid-pro-quo business relationship directly or indirectly related to the public safety activities; offering or agreeing to unauthorized special treatment of a witness, defendant, or informant, in exchange for personal favors or consideration. The intent of this sentence is to help clarify to officers what types of conduct may result in the council finding that a reasonable person would have substantial doubts about an individual’s honest, fairness, and respect for the rights of the others.</p> <p>Obviously, legitimate relationships such as marriage to a victim, witness, informant, or defendant, or conducting business with an established business who may have been victim of a crime are appropriate.</p>	
34		CUSP	<p>We encourage you to adopt the proposed changes especially: (F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication....</p>		
35	85.100(a)(3)(G)	APDEA, PSEA, ACOA, APOA	<p>The phrase “unlawfully converted, or engaged in the unauthorized use of the employing agency’s property, equipment, or funds” in Section G is too broad, as it would encompass actions as trivial as using a stapler on another officer’s desk. We recommend that the phrase be clarified.</p>	<p>“Unlawfully” specifies that the conduct in question rises to the level of theft. Staff recommends that by specifying the conduct be unlawful it is narrowly defined and not overly broad or subject to misinterpretation. Recall that the council would have to find this conduct was sufficiently egregious or clearly outrageous before initiating any administrative action.</p>	

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36		AACOP	This is a department level issue and is already a hot topic issue and in no way has a place in a decertification statute. These policies are ambiguous and almost impossible to write to cover all "exceptions." We cannot place such an ambiguous standard in a statewide statute. Add: If the investigating agency determines or something similar if this must be placed in statute. Would prefer this be removed.	The Council would expect an agency to deal with this conduct through disciplinary actions up to and including termination. This language clarifies that this dishonest and unlawful conduct could call into question an officer's moral character and should subject them to discretionary revocation if the conduct is egregious enough.	
37	85.100(a)(3)(I)	AACOP	RE: "failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or This needs to be changed to 15 days.	APSC staff strongly disagree with 15 days passing before an officer notifies his own agency. He could potentially be working for up to two weeks after being charged and the employer being able to determine if the charge impacts the officer's ability to work pending adjudication.	
38	85.100(a)(3)(J)	APDEA, PSEA, ACOA, APOA	Section J "failed to respond or to respond truthfully to questions related to an investigation or legal proceeding" not only is confusing but violates the <i>Garrity</i> rights of employees by allowing the Council to take action on a certificate for an officer who lawfully exercises his/her right to be free from compulsory self-incrimination in the absence of an order from the employer that a statement be provided. We recommend that the phrase be rewritten to into two separate requirements: (1) "after being ordered to do so as a condition of employment, failed to respond truthfully to questions related to an employer-conducted administrative investigation"; and (2) "who failed to respond or to respond truthfully to questions in a legal proceeding."	Staff agree that this language, which originated from other states' existing regulations, could be more specific, and suggest the following amendment, CONSIDER: "Fails to respond or respond truthfully to questions related to a council or departmental investigation into allegations of misconduct, or to a subsequent administrative or legal proceeding arising from those allegations." An officer does have a right to "remain silent" to protect themselves against self-incrimination in criminal cases, however doing so in a departmental investigation (following Garrity warnings) will not be without consequence. This language is intended to clarify that failing to respond to the council during an investigative or subsequent adjudication process is also not without consequence and that the council can consider the action when considering sanctions.	

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39		AACOP	<p>“fail to respond to questions related to an investigation,” Whose investigation? Does this include a third-party investigation, a news reporter’s investigation? This needs to be defined and written better. If not APSC then who is going to protect the right not to self-incriminate in a non-administrative process? We cannot make a rule that compels officers to incriminate themselves in a matter not related to law enforcement.</p> <p>An officer should be required to respond, in an administrative department investigation, or other authorized law enforcement investigations but not ALL investigation</p>	An officers’ refusal to provide a statement to the council (or within an agency investigation) can, <i>given other sufficient evidence supporting the allegations of misconduct</i> , be considered by the council as discretionary grounds for sanction. Unlike the employing agency, APSC does not have authority to “order” an officer to provide a statement, even after advisal of Garrity rights.	
40	85.100(b)(1)	AACOP	<p>RE: “has been convicted of any felony, a misdemeanor crime of domestic violence ...”</p> <p>Every jurisdiction has different Felony definitions. Concerning for some, Alaska standard is not always a Seattle standard. Current trends make this statue concerning. The evolution of morality and selective prosecution in some jurisdictions can make this problematic.</p> <p>Recommend: Language be added that requires APSC to analyze whether the conduct is a felony in Alaska.</p>	<p>“Felony Conviction” is carefully described in 13 AAC 85.900 and concerns about different state standards are addressed in the definition.</p> <p>This change is simply a restructuring of an existing sentence in regulation to remove the current qualifier that the felony conviction had to be <i>after</i> an officer was hired as a police officer. The council’s prior intent was for a felony conviction to always disqualify any applicant.</p>	
41	85.110	CUSP	We are especially concerned about the lack of enforceability of 13 AAC 85.110, the revocation process. In our experience with the Alaska Police Standards Council, it has ignored evidence (including charging documents and audio recordings) of officers engaging in inappropriate sexual activity while on duty as well as participating in inappropriate relationships, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication in prostitution and sex trafficking investigations. We would like to see additional language assuring that this loophole is closed so that those officers cannot continue to get away with this egregious behavior as its goes against the public’s safety.		
42	85.110(a) & (b)	AACOP	This is reference to the police certification revocation repeal and readoption: the above concerns are repeated in the suspension section 13 AAC 85.110(a) – (b), and 13 AAC 85.260(a) – (b), 13 AAC85.270.	See above and below for specific sectional comments and responses	

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43	85.110(a)(2)	APDEA, PSEA, ACOA, APOA	<p>The proposal is for new language that allows the suspension or revocation of a certificate for a variety of reasons. In particular, Section (a)(2) of the proposal permits the Council to take action if the officer “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.” We believe this language is far too broad and uses terms that are much too general. An officer’s “inefficiency” and “incompetence” – and those terms can be defined in too many ways to be acceptable – do not rise to the level where suspension or revocation should even be a possibility. Suspension and revocation should be reserved for the most serious of cases where the officer’s conduct is such that s/he should be disqualified from service as a law enforcement officer. Also, the phrase “some other reason that adversely affects the ability and fitness of the police officer to perform job duties” is broad enough that it could sweep within its purview an officer who suffers a workers’ compensation injury or who suffers from a disability protected by the Americans With Disabilities Act. Just as troubling is the proposal that revocation or suspension could occur if the officer has been terminated for conduct that is “detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.” Nothing in this phrase requires that the officer’s conduct be wrong; it would suffice to meet the requirements of the rule if the officer engaged in perfectly legitimate conduct that was misunderstood by the public in a way that harm resulted to the employer’s reputation. Several other difficulties exist with the proposed rule.</p>	<p><u>This language is the existing language of our current regulations</u>, simply renumbered as part of the “repeal/readopt” process. See current 13 AAC 85.110(a)(2). The language has been interpreted in countless prior decisions by the courts, Administrative Law Judges, and the Council, and is far from vague.</p>	
44	85.110 (a)(4)	APDEA, PSEA, ACOA, APOA	<p>Section (a)(4) suffers from the same “after hire as a police officer” problem as does the proposal for 13 AAC 85.100(a).</p>	<p><u>This is the existing language in 13 AAC 85.110(b)(2)</u> and staff feel no need to change it in this section.</p>	

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45	85.110(a)(5)	APDEA, PSEA, ACOA, APOA	Section (a)(5) should specify that it is the employer's obligation to provide the necessary opportunities for on-duty training to allow officers to meet any Council-required minimum training requirements.	APSC lacks authority to proscribe member agencies' policy or procedures. It is understood that agencies will continue to invest in their officers and the practice they currently follow of providing and supporting officers' training and proficiency qualifications.	
46	85.110 (b)(2)	APDEA, PSEA, ACOA, APOA	The Council "will" revoke the certificates of officers who have "used marijuana" needs to be reevaluated in light of the fact that marijuana possession and use are both statutorily and constitutionally protected in Alaska and given the mounting evidence that marijuana has some beneficial medical uses.	<u>Existing language in current regulation</u> , MJ is still a federally controlled substance and the council has previously addressed this restriction on multiple occasion and chosen to continue prohibition for police officers using marijuana.	
47	85.110(b)(3)	APDEA, PSEA, ACOA, APOA	Section (b)(3) suffers from the same problem as Section (a)(2) in that it would mandate the revocation or suspension of an officer's certificate if the officer was discharged "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." An officer could act entirely appropriately and yet a reasonable person could have a substantial doubt – albeit an incorrect substantial doubt – about the officer's fitness.	<u>This is existing language in current regulation 13 AAC 85.110(b)(3)</u> and staff feel no need to change it in this section.	
48	85.110(d)(3)	APDEA, PSEA, ACOA, APOA	Section (d)(3) allows the Executive Director to immediately suspend the certificate of an officer if the Executive Director determines that the officer "presents a clear and present danger to the public health or safety if authorized to exercise police authority." Much is problematic about this provision. There seems little doubt that such a suspension would violate the due process rights of the suspended officer. The furthest the Supreme Court has been willing to go in the area is to allow a short-term temporary suspension of an officer facing felony charges where the suspension did not have a significant economic impact. <i>See Gilbert v. Homar</i> , 520 US 924 (1997). Also, the phrases "clear and present danger," "public health," and "safety" are terms that demand definition. Finally, if the Executive Director is to have any discretion to suspend a certificate –	This is a key provision of the proposed changes and, as described, this authority will be reserved to only the most egregious circumstances. Actions taken by the Executive Director must follow the administrative procedures act which mandates that an officer has a right to a hearing to appeal any action proposed by the council. While the regulation states "immediately suspend," to be compliant with APA the actual process would require written service of an accusation on the officer and providing a 15-day period for the officer to request a hearing before the council could take formal action. Due to the timely nature of the	

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			something we believe is inadvisable – the rules should provide clear, specific standards that must be met, an immediate hearing before an ALJ following the suspension, and the provision of back pay if the suspension is determined to be inappropriate.	issue, the matter would be referred to OAH along with a request for an expedited fact finding hearing and decision. All actions taken by the Executive Director are subject to review and ratification by the council. Reference to <i>See Gilbert v. Homar</i> is irrelevant as the case involves employment action taken by an employer. APSC’s actions are an administrative professional licensing action unrelated to employment and only related to the best interests of health, safety, and welfare of the public.	
49		OAH	13 AAC 85.110(d) and 85.270(d) each provide a mechanism for summary suspension of a license, “subject to the provisions of the Administrative Procedure Act.” OAH notes that multiple occupational licensing boards have statutes authorizing summary license suspension and setting out associated procedural requirements for expedited appeals of such actions. As the APA itself is silent on the details of such proceedings, OAH suggests that the Council consider identifying in these regulations the procedures and timelines that will apply to a hearing challenging a summary suspension. Details commonly addressed in summary suspension statutes include timeframes for holding a hearing following a summary suspension, and a timeline for final decision by the Council after such a hearing. OAH respectfully suggests that the Council consider addressing these details in the summary suspension provisions.	All actions of the council are subject to the APA, regardless of it being referenced in regulation. With that in mind and to address constructive comments, Staff make the following recommended language change: (d) Subject to an expedited fact-finding hearing before the council within ten days of the officer being served with a formal written accusation, the executive director shall have cause to temporarily suspend the certification of any officer who: (1) is under indictment for, is charged with, or who has been convicted of the commission of any felony; (2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking a certificate or license; or (3) presents a clear and present danger to the public health or safety if authorized to exercise police authority.	
50	85.110(e)	APDEA, PSEA, ACOA, APOA	Section (e) of the proposed rule requires a one-year waiting period post-revocation before the impacted officer may petition the Council for rescission of the revocation. The proposal lists three reasons for rescission: “(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.” Given that all three of the reasons indicate	<u>This is existing regulatory language from 13 AAC 85.110(d)</u> Note OAH’s comments below. NOTE in the APA: AS 44.62.550. Petition for reinstatement or reduction of penalty. A person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice	

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			that revocation is no longer necessary, we see no reason why there should be a one-year waiting period before a petition for rescission can be filed. For example, if the revocation was based on a “mistake of fact” or “fraudulent evidence,” the officer’s certificate should be restored as soon as possible.	to the attorney general of the filing of the petition, and the attorney general and the petitioner shall be given an opportunity to present either oral or written argument before the agency. The agency shall decide the petition, and the decision must include the reasons for the decision. This section does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. [APSC regulations specify the grounds upon which they will consider a rescission but statutes do not differ from the above]	
51	85.110(f)	APDEA, PSEA, ACOA, APOA	Section (f) of the proposed rule should specify who decides whether the Council or a hearing officer should preside over a rescission hearing. Also, Section (f) requires an officer whose revocation has been rescinded to serve a full probationary period. Again, as the gravamen of most of the reasons for rescission is that the revocation was wrongful, there should be no requirement that an officer whose revocation is rescinded serve another probationary period. In addition, the last sentence of Section (f) implies that such an officer must apply for reinstatement of the officer’s certificate. We believe that the Council’s decision rescinding a revocation automatically restores the officer’s certification and that the application requirement is unnecessary.	<p><u>This is existing regulatory language from 13 AAC 85.110(e).</u> AS 44.62.340 provides that an agency may delegate the power to act, to hear, and to decide, unless expressly prohibited by law.</p> <p>As a practice, the council has always presided over rescission request hearings themselves; this is consistent with AS 44.62.550 although the council will need to assure these requests are conducted in the open meeting rather than in executive session and to formally document the facts supporting their decisions in writing.</p> <p>The council has delegated revocation and disqualification appeal hearings to OAH, but continues to retain the final decision making authority. Staff recommend this process be continued.</p>	
52		OAH	OAH is unclear from the language on rescission hearings whether the council intends that these proceedings also be conducted under the Administrative Procedure Act (“APA”). As the Council is required under its own statute (AS 18.65.270) and the APA itself (AS 44.62.330(a)(18)) to follow the APA’s administrative adjudication procedures, including procedures for license reinstatement (see AS 44.62.330(a)), OAH suggests clarifying the rescission hearing provisions to address application of the APA. OAH notes that the APA provides a procedure for deciding “petitions for reinstatement [of a license] or reduction of penalty” (AS	<p>Staff Recommend:</p> <p>(f) If a petition for rescission is based on one or more of the reasons set out in (e) of this section, a hearing on the petition for rescission will be held before the council subject to the provisions of AS 44.62.550. 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</p>	

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			44.62.550) and suggests that the rescission hearing language could be modified to cite to this provision if that is the Council's intent. Otherwise, OAH suggests that the Council seek the advice of the Department of Law as to the procedural requirements that would apply to these "rescission" hearings	serve the full probationary period required under 13 AAC 85.040(b)(3) before applying for reinstatement of a public safety certificate.	
53	85.110(g)	APDEA, PSEA, ACOA, APOA	We very much oppose Section (g) of the proposed rule, which allows the Council to disregard the results of a successful appeal of the officer's termination. A fully litigated appeal that results in the reversal of a termination should be binding upon the Council, and an officer inappropriately disciplined by an employer should not have to face the prospect of litigation in two separate forums.	This is existing regulatory language from 13 AAC 85.110(f) and staff strongly recommend it be retained. The council and courts have long held that employment actions are separate and distinct from administrative professional licensing actions.	
54	85.210(c), (d), & (f)	ACOA	Reduces from 90 to 30 days DOC's timeframe for submitting confirmation that an Officer meets the basic employment standards and other information to APSC: DOC does not have the current administrative capacity to adequately hire enough Officers. If the DOC does not confirm that Officers meet the standards within the reduced timeframe, Officers' employment will be negatively impacted causing more difficulties with retention and recruitment. We ask APSC to reconsider these reduced timeframes in light of the negative impact on the employing agency and affected Officers.	Aware of DOC's clerical staffing problems, APSC extended the time to complete background investigations to 90 days in 2016. DOC consistently fails to meet this extended deadline. Since taking this action, DOC misconduct cases with APSC have dramatically increased and the turnover rate from "non-retained" COs has significantly increased. Staff believe this is largely due to incomplete background checks. APSC cannot dictate staffing levels or operational policies to DOC, but we can continue to reinforce regulations and attempt to influence agency compliance with reporting deadlines. Staff compromised with this recommended change by moving it back to 30 days rather than the 10 days proposed for police departments which must complete their check before hire.	
55	85.230 85.232 85.235 85.237	AML	Regarding additional levels of certification for probation, parole, corrections, and municipal corrections officers: Appreciate the addition of intermediate and advanced levels of professional certification		

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56		ACOA	<p>ACOA supports opportunities for Correctional Officers to voluntarily obtain advanced professional certification. Should DOC choose to rely upon certification for promotional decisions, ACOA is concerned that all Officers be given equal opportunity to obtain the requisite training for advanced certification. Due to staffing shortages Officers may not have the ability to obtain additional training during their regular working days and overtime may be required to facilitate the training.</p> <p>An Officer, through no fault of his or her own, may not have the time or financial means to obtain the certification. On-line training should be made available to reduce travel costs and meet the needs of Officers with full schedules during the normal business day.</p> <p>There is no provision in the proposed regulation to recognize relevant training received in the United States Armed Forces. Former military members often seek and are hired into jobs in Law Enforcement. It would be equitable to recognize the relevant training former military personnel have received if they lack an Associate's or Bachelor's degree.</p>	<p>Advanced certification levels are voluntary on the part of the officer.</p> <p>APSC currently recognizes all professional training and related experience in evaluating an officer's qualifications for higher certification levels. This training and experience often predate an officer's current position.</p>	
57	85.250(f)	ACOA	<p>Requires notification within three days after arrest or charge of any misdemeanor or felony crime being filed:</p> <p>On its face, this proposed regulation raises questions regarding an officer's duty to report. The duty to report to an employing agency arises "three days after their arrest <u>or</u> three days after a criminal charge being filed." <i>Emphasis Added</i>. Clarification of the reporting expectation could prevent Officers from inadvertently failing to timely report.</p> <p>APSC should recognize that there is already a duty to report to the employing agency under the DOC's Policies and Procedures. Placing an additional and arbitrary timeline on this reporting period unnecessarily burdens an Officer, i.e., what if the Officer is unable to report within the three-day period but reports at day four or five? An Officer should not lose their APSC Certificate because they are unable to report within this shortened timeframe.</p> <p>If APSC adopts this regulation as written, which states "regardless of their certification status," the duty to report should be provided by APSC as part of the application process for all incoming Officers. As part of the</p>	<p>See response to 13 AAC 85.090.</p> <p>A collective bargaining agreement or DOC policy should not supplant a regulation nor should they be relied upon to assure reporting compliance.</p> <p>All criminal offenses do need to be reported, regardless of the section of state or municipal code they fall into: reporting does NOT automatically initiate APSC administrative action or investigation, nor does every criminal conviction mandate revocation. This change requires an officer report to their agency, regardless of who they work for, and the agency to report to APSC. This change is far broader than just DOC corrections officers.</p> <p>We have previously addressed the council's discretion to address situations where reporting was unavoidably delayed, but our expectation is that this will be rare.</p>	

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			notification of applicants, and existing Officers, clarification or examples of type of offenses included within the regulation should be provided. APSC’s response to questions received dated February 10, 2021 indicates that this regulation includes “traffic offenses classified as criminal offenses.” Presumably, fishing or hunting violations classified as criminal offenses are also included. It is difficult to determine which offenses must be reported under the language as drafted.	It is necessary to include the language “regardless of certification status” to assure we include probationary employees who have not yet achieved their certification. We agree that including instructions on the F-3 and F-7 would assure every officer is aware of their duty to report and that they need to keep APSC informed of their current contact information.	
58	85.260(a)(3) & 85.270	ACOA	The scope of these proposed regulations is unreasonably broad. As written, the proposed changes to the regulations would provide APSC far greater authority to pursue the denial, suspension, or revocation of Correctional Officers’ certificates. If all of these regulatory changes expanding the reasons Officers can lose certification are adopted, Officers will be further disadvantaged when APSC decides to proceed with certificate revocation. The APSC should rely on the employing agency’s determination for disciplinary action and not revoke certificates when termination is not determined necessary by the employing agency. Officers only recourse has been to try to defend against certificate revocation in a hearing before the Office of Administrative Hearings (“OAH”). While some factual situations may clearly indicate that a certificate revocation proceeding is appropriate, others are much less clear. Many Officers cannot afford legal representation before the OAH and will be disadvantaged if they are unable to effectively represent themselves.	Most of this section is existing language. The proposed changes articulate some of the specific misconduct previously found by the council to justify revocation in an effort to more clearly communicate to officers prohibited conduct. Staff do recommend some changes consistent with those recommended in sections 13 AAC 85.100 and 110 regarding denial and revocation of police certifications. Professional certification was established by the legislature in 1972 because; “The administration of criminal justice affects the health, safety, and welfare of the people of this state...” State standards rise above agency interests and should never rely upon the outcome of employment related actions.	
59	85.260(a)(3)(A) & 85.270(5)(A)	ACOA	Prohibition against officers: lied or falsified official written or verbal communications or records. ... Written reports or statements from multiple individuals about the same event may contain inconsistencies. Since inconsistencies occur, the question then becomes when will an inconsistency be categorized as a “falsified official written or verbal communication or record”? Officers are required to conduct security checks and welfare checks at certain intervals, varying them to avoid setting a pattern, but, under the broad language of 13 AAC 85.260 and 13 AAC 85.270, recording these	As with staff recommended changes to 13 AAC 85.100(a)(3) and 85.110(a) regarding police officers, Staff recommend the wording of 85.260.(a)(3) be changed to "has, in the course of their employment as a probation, parole, correctional, or municipal correctional officer;" Staff recommend the language in 13 AAC 85.260(a)(3)(A) be clarified to read, "lied or falsified public records or official communications;"	

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			<p>checks in official logbooks could be construed as making a false entry if a check did not get completed when it was entered. Historically, some Officers have been trained to log the check when the Officer starts to perform the check. Others have been trained to log the check when it is completed. Many events can occur while an Officer is conducting these checks that interfere with their completion... almost any number of scenarios can and do occur that prevent an Officer from completing a security check at the time it was entered. This should not result in an Officer losing APSC certification and being banned from a Law Enforcement career based on a determination that the official record was falsified because a check was not completed as logged. Other Law Enforcement personnel do not have to contend with these constraints. With the DOC's chronic understaffing, it can be difficult for Correctional Officers to timely complete every aspect of their job. An Officer who may not have time to complete a record or make a correction in a record would then be subject to suspension or revocation of their certificate for failing to complete the task or to make a correction in the record if the task were not completed as originally recorded. A good faith error should not be the basis for the loss of a certificate. Unfortunately, the Department of Corrections has shown over the years that when it wants to target a particular Officer it will go to extreme lengths to try to find that Officer doing something contrary to policies and procedures. With the broad regulatory language that the APSC is proposing, good Officers will lose their careers if they have been targeted and if the DOC can find any evidence of an incomplete or inconsistent entry in a written record or contradiction in a verbal conversation.</p> <p>In addition, unlike other Law Enforcement agencies, Corrections Human Resources employs individuals who have not worked in a correctional setting to investigate Correctional Officers' actions. This leads to flawed investigations and disciplinary actions being overturned once the actions are considered within the appropriate context.</p>	<p>Definitions should be added: "public records" has the same meaning as in AS 40.25.220(3); and; "official communications" means material communications made during an officer's official duties including substantive discussions with supervisors and any statement provided during an administrative investigation by the employing agency or the council.</p> <p>The Council has addressed "falsification" and "lying" in many cases 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. Those decisions serve as the standard for the Council and clearly established that the council must find the appropriate mens rea to rise to the level of "lying or falsification."</p> <p>DOC formerly had a group of trained investigators who were skilled at assessing facts and circumstances before initiating any disciplinary action. Unfortunately, based largely on the efforts of ACOA, this section was eliminated with the new administration, pushing these types of investigations back upon civilian human resource managers.</p> <p>As previously addressed, APSC is an independent administrative agency. The council takes administrative action with the facts and circumstances dictate, not when another agency feels it is necessary.</p>	

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60	85.260(a)(3)(B) & 85.270(5)(B)	ACOA	<p>Disqualification and revocation for violation the correctional, probation, and parole code of ethics, ...)</p> <p>Correctional Officers can make mistakes during their careers that can result in a violation of the DOC Code of Ethics. Some investigations and disciplinary matters involving a Correctional Officer could fall under a Code of Ethics violation. However, there are degrees of severity of any potential violation. Under this proposed change, the APSC would have the authority to remove the certificate of an Officer who has made an ASPIN inquiry that was unnecessary for the performance of the Officer's duties, whereas loss of ASPIN access and renewed instructions may be sufficient to correct the problem. Again, the broad language of 13 AAC 85.260(3)(B) and 270(5)(B) does not provide reasoned criteria that will be used to revoke certification of a Correctional Officer if there is a violation of the Code of Ethics. Instead, it allows for extremely broad discretion to remove certificates, even for low level violations of policy.</p>	Previously addressed in the police section.	
61	85.260(a)(3)(C) & 85.270(5)(C)	ACOA	<p>Officers negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another Officer:</p> <p>APSC's response to questions dated February 10, 2021 state that "negligently" is "intended to have the same definition as AS 11.81.900(a)(4)." Under that same reasoning, one presumes that APSC intends to define "knowingly" as AS 11.81.900(a)(2). Clarification of the term "knowingly" would be of assistance. Correctional Officers work in an environment in which physical attacks from inmates occur in institutions on a frequent basis. Unlike members of the public, inmates are known to Officers and Officers are aware of certain inmates' propensity for violence. Officers who work with the same inmates over time are relied upon to anticipate when a situation can erupt toward violence and to take the actions that are necessary to maintain control. A person who does not work in that mod, that institution, or in corrections does not have the same understanding and the sense of what is necessary to prevent additional problems, including injury or even the loss of a life.</p>	<p>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."</p> <p>RECOMMENDATION: amend "negligently" to "with criminal negligence..." and add definition to 13 AAC 85.900 "criminal negligence" has the same meaning as described in AS 11.81.900.</p> <p>CONSIDER: add definition to 13 AAC 85.900 "unreasonable force" is defined as meaning force applied against another that violates the policies of the employing agency or, based upon the totality of circumstances, force that a reasonable</p>	

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			A "reasonable person," who may not have Law Enforcement experience, making the determination after the fact of whether the use of force was negligent will not have the same knowledge of an inmate, will not have been present to understand the circumstances of the event, and will not understand the danger an Officer felt he or she, other inmates, or other Correctional Officers were in at the time the force was applied or viewed by another Officer. Officers must react instantaneously to circumstances they are suddenly confronted with, and they do not have the luxury of reviewing security tapes after the fact from various angles to determine if a different action could have been taken that might also have controlled the situation. They must react to preserve their life and health, and that of the inmates, and they use their best judgment at the time when they are suddenly confronted with the need to act.	person would find substantially exceeded the level of force necessary to overcome resistance or effect a desired outcome.	
62	85.260(a)(3)(D) & 85.270(5)(D)	ACOA	RE: harassed or coerced another person: This provision is extremely broad and the terms "harassed" and "coerced" are not defined. There is a subjective element in whether someone is feeling harassed or coerced. There is also a subjective element present when any third party reviews the facts of a situation to determine if another person was being harassed or coerced by an Officer. How those persons' perceptions and biases may impact whether harassment or coercion occurred should not result in the loss of an Officer's APSC certification. We recommend that 13 AAC 85.260(a)(3)(D) and 270(5)(D) be eliminated from the proposed regulations as written.	Addressed in police regulation, see 13 AAC 85.100 The intent of this language is to prohibit unprofessional, unreasonable, and unjustifiable harassment or coercion; not to subject an officer to sanctions because they coerced an offender into a cell or into handcuffs. The council would never initiate action against an officer for justifiable enforcement or inmate management actions. CONSIDER adding the terms "unreasonable and unjustified" as modifiers so the phrase would read; "has, in the course of their employment as a probation, parole, correctional, or municipal correctional officer, unreasonably and unjustifiably harassed or coerced another person;"	
63	85.260(a)(3)(E) & (F) and 85.270(a)(5)(F)	CUSP	We at the Community United for Safety and Protection have reviewed the proposed regulation changes and encourage you to adopt the proposed changes especially: (E) engaged in inappropriate sexual activity while on duty; (F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who		

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			was formerly or is presently in the custody of the Alaska Department of Corrections.		
64		ACOA	<p>This is an ambiguous regulation. As written, the phrase “knows or should have known” appears to not qualify “who was formerly or is presently in the custody of the Alaska Department of Corrections.” APSC should clarify its proposed regulation. Further the phrases “should have known” and “inappropriate relationship” are not defined. As drafted, it is not clear if the prohibited activity is the inappropriate relationship or if it is just knowing someone who was formerly or is presently in the custody of the DOC.</p> <p>Correctional Officers have limited access to ACOMS and therefore cannot always know if someone they are in a relationship with was formerly in the custody of the DOC. Additionally, Officers may have no knowledge that a person was arrested, spent the night in custody, and then was released on bail and had charges dismissed. As written, it appears an Officer’s certification could be at risk if they are in a relationship with someone who was arrested 10 years ago and spent the night in a DOC facility.</p> <p>APSC should clarify whether someone “who was formerly or is presently in the custody of the Alaska Department of Corrections” also refers to people who are or were in halfway houses. If so, this should be clearly disclosed to applicants for Correctional Officer positions. For those with limited experience with the criminal justice system, the halfway house distinction may not be clear.</p>	<p>As addressed in police regulations: Consider changing “participated” to “solicited or engaged” Also consider a definition of inappropriate relationship in 13 AAC 85.900. “Otherwise inappropriate relationship” would be unethical conduct such as initiating or responding to a personal electronic conversation intended to solicit an off-duty relationship (such as sexting); initiating or engaging in a quid-pro-quo business relationship directly or indirectly related to the public safety activities; offering or agreeing to unauthorized special treatment of an inmate, witness, defendant, or informant, in exchange for personal favors or consideration. The intent of this sentence it to help clarify to officers what types of conduct may result in the council finding that a reasonable person would have substantial doubts about an individual’s honest, fairness, and respect for the rights of the others. Obviously, legitimate relationships such as marriage to a victim, witness, informant, or defendant, or conducting business with an established business who may have been victim of a crime are appropriate. The intent of the language about “who was formerly or is presently in the custody of the Alaska Department of Corrections includes all facilities and those under pre-trial or probationary supervision.” Staff believe this is clear.</p>	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
65	85.260(a)(3)(G) & 85.270(5)(G)	ACOA	<p>RE: unlawfully converted, or engaged in the unauthorized use of employing agencies' property, equipment, or funds: This regulation is overly broad. A dollar value for the property or equipment only should be assigned so that de minimis use of the employing agencies' property or equipment is not covered by this regulation. It is understandable that a pen may not be returned to the Officer's workstation at the end of the shift, and inadvertently it may remain in the Officer's pocket upon leaving the facility, whereas it would not be understandable that an Officer would deliberately take any amount of funds from an account belonging to the employer, even if the amount was less than a dollar.</p> <p>Inadvertent unauthorized use of an employer's property can occur. For example, there are undoubtedly instances where an employee has an agency credit card, as well as his or her personal credit cards, and mistakenly uses the agency card for a personal purchase. The employee may realize the error shortly after the card is used, or s/he may not realize the error until asked by the employing agency, at which point s/he promptly reimburses the employer for the amount charged erroneously. An incident such as this should not result in the loss of APSC certification, but under the regulation as written could be considered an unauthorized use of the employing agencies' [sic] property or funds.</p> <p>There are multiple other scenarios that could exist within the realm of unauthorized use of the employing agencies' [sic] property, equipment, or funds, none of which should result in the loss of an Officer's APSC certification.</p>	<p>"Unlawfully" specifies that the conduct in question rises to the level of theft. Staff recommends that by specifying the conduct be unlawful it is narrowly defined and not overly broad or subject to misinterpretation. Recall that the council would have to find this conduct was sufficiently egregious or clearly outrageous before initiating any administrative action.</p>	
66	85.260(a)(3)(H) and 85.270(5)(H)	ACOA	<p>RE: knowingly disclosed confidential information or information that may compromise an official investigation: APSC should clarify whether the term "knowingly" is intended to have the same definition as AS 11.81.900(a)(2). Additionally, what information is considered confidential to the Department of Corrections is subjective and has changed with different Administrations. For example, images or video from inside institutions were considered confidential. Then the</p>	<p>Staff feel this proposed regulation language is clear and easily interpreted by officers, council members, and the courts.</p>	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
			Walker Administration released "confidential" video and imagery from within institutions.		
67	85.260(a)(3)(I) & 85.270(5)(J)	ACOA	RE reporting and officer's arrest within 3 days: See the comments to 13 AAC 85.250(f) set forth above.	See response to 13 AAC 85.090 and 85.250(f). A collective bargaining agreement or DOC policy should not be relied upon to assure compliance with an administrative regulation. All criminal offenses do need to be reported, regardless of the section of state or municipal code they fall into: reporting does NOT automatically initiate APSC administrative action or investigation, nor does every criminal conviction mandate revocation.	
68	85.260(a)(3)(J) & 85.270(a)(5)(J)	ACOA	RE: failed to respond or to respond truthfully to questions related to an investigation or legal proceeding: An Officer, like any other citizen and Law Enforcement employee, has a right to remain silent if they are given a Miranda warning. This section appears to ignore Correctional Officers' rights.	See also 85.100(a)(3)(J) and 85.110(a)(2)(4)(J) Staff agree that this language, which originated from other states' existing regulations, could be more specific, and suggest the following amendment, CONSIDER: "Fails to respond or respond truthfully to questions related to a council or departmental investigation into allegations of misconduct, or to a subsequent administrative or legal proceeding arising from those allegations." An officer does have a right to "remain silent" to protect themselves against self-incrimination in criminal cases, however doing so in a departmental investigation (following Garrity warnings) will not be without consequence. This language is intended to clarify that failing to respond to the council during an investigative or subsequent adjudication process is also not without consequence; council will consider the officer's action when assessing the evidence in a case.	
69	85.220, 85.250(d), & 85.270	ACOA	Regarding: Expands authority to both suspend and revoke correctional officers' certificates and prevents an agency from employing a correctional officer with a suspended certificate. ACOA opposes APSC authority to suspend Officers' certifications for a variety of reasons. This regulatory change is overly broad, subjective, and	Certification suspension is defined "suspension" of certification means the <u>temporary</u> or <u>conditional</u> termination of an officer's authority to act in their official capacity. Suspension may be for a set time-period or may be	

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			<p>contains undefined terms. Additionally, the regulations do not provide for a maximum amount of time for a suspension, signifying that a suspension could be indefinite if the APSC fails to reinstate the Officer. This too broadly expands APSC's authority, without any counter-balancing protections for Officers to ensure that they will have an opportunity for a fair and complete investigation before actions are taken which remove their ability to provide for themselves and their families. Earlier in 13 AAC 85.260(a), ACOA addressed some of its concerns with overly broad and undefined reasons for certificate revocation that apply to 13 AAC 85.270(a) (5) (A), (B), (C), (D), (F), (G), (H), (I), (J), and (K). Inadequate protections are in place for Officers if their only recourse is to ask for a hearing before the Office of Administrative Hearings after the council has already decided to move forward with revocation or suspension proceedings.</p>	<p>conditioned upon the officer's compliance with conditions established by the council." Suspension is expected to be used as a regulatory enforcement tool not rising to the level of permanent revocation of a certificate; it provides the council and accused officers with a path toward alternative resolution. These proposed regulatory changes do NOT <i>expand</i> the authority of the council, they clarify more specifically the nature of misconduct the council has previously found demonstrates lack of good moral character. All actions initiated by the council require a finding of probable cause by the council before administrative action is initiated. The council provides full due process rights to those accused. Recommendation based upon Comment 13: 13 AAC 85.220(d) A participating agency may not assign any probation, parole, correctional, or municipal correctional duties involving the supervision, care, or custody of inmates, nor allow an officer to perform those duties, during any period which the officer's certification has been suspended by the council.</p>	
70	85.270(d)(3)	ACOA	<p>RE: executive director provided authority to immediately suspend certification of any Officer who presents a clear and present danger to the public health or safety if authorized authority as a probation, parole, correctional, or municipal correctional officer ACOA opposes this provision of the regulations as it violates an Officer's due process rights by circumventing the investigatory process memorialized in the ACOA Collective Bargaining Agreement with the State of Alaska. The Administrative Procedures Act does not provide for an expedited hearing. The terms "clear and present danger," "public health," and "safety" are not defined.</p>	<p>See also 85.110(d)(3) and the recommended language in comment 49. This is an important provision of the proposed changes and, as described, this authority will be reserved to only the most egregious of circumstances. Actions taken by the Executive Director must follow the administrative procedures act which mandates that an officer has a right to a hearing to appeal any action proposed by the council. While the regulation states "immediately suspend," to be compliant with APA the actual process would require written service of an accusation on the officer and providing a 15-day period for the officer to request a hearing before the council</p>	

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				<p>could take formal action. Due to the timely nature of the issue, the matter would be referred to OAH along with a request for an expedited fact finding hearing and decision. All actions taken by the Executive Director are subject to review and ratification by the council.</p> <p>APSC's actions are an administrative professional licensing action unrelated to employment and only related to the best interests of health, safety, and welfare of the public. Staff feel that the language is clear and requires no additional definitions.</p>	
71	87.040(e)(4)	AACOP	Regarding an instructor reporting their arrest or criminal charge: This does have 5 business days. No objections to this language.		
72		AML	Supports notification of an instructor's arrest or charge to the council, and suggests including employer.		
73		ACOA	See, ACOA comments above regarding 13 AAC 85.250(f). This section begs for clarification as to whether the revocation of the instructor certification means that the employee can no longer work as a Correctional Officer in any capacity or has some other intended or unintended consequence.	<p>Should APSC have cause to pursue administrative action against an officer's certification, that action will impact all professional certifications held by the officer.</p> <p>This provision is primarily to address the non-officer instructors certified by APSC. Should a certified officer who also is an instructor comply with 85.090(f) or 85.250(f), the council would regard the officer as having complied with notice requirements of this section.</p> <p>Recommendation: consider changing the language to: "(4) the instructor fails to report to the council within five business days of being arrested or charged with any criminal offense in Alaska or any other jurisdiction unless they previously complied with the provisions of 13 AAC 85.090(f) or 13 AAC 85.250(f)."</p>	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
74	87.084	AACOP	<p>Mandatory training requirements, funding, tracking, and costs to departments.</p> <p>AACOP found this issue to be very controversial. The Board of Directors, although not unanimously, voted to oppose the MANDATORY training requirements to be enforced by APSC, especially the 8 hours of “current trends.”</p> <p>The “current trends,” is extremely problematic in that it isn’t defined and is open ended. Each jurisdiction is governed by the citizens, and it is the citizens of those jurisdictions, that may not believe in the “current trends,” occurring throughout our nation or in certain parts of our state. To enshrine a statute with such ambiguous language is extremely concerning to some on the BOD of AACOP.</p> <p>Although we understand the intent of these requirements, there does not appear to be systemic failure throughout our state on this topic. We do not support such an extremely vague guideline like this. Most of the requirements seem appropriate but the consensus of the BOD, is these decisions be left to the department and the cultural and community norms of the locals not the “trend setters,” in other parts of the country. Some feel this, ambiguous mandate, infringes on the local communities ability to regulate their ideals and standards. Local agencies should not be forced to adopt training which they feel may not suit their community objectives. National and state “trends,” can change with each administration and some feel this can cause inconsistent training requirements within the law enforcement that are contrary to the local culture.</p>	<p>12 hours of in-service training annually is a VERY low standard compared to the rest of the country. Alaska’s failure to mandate ANY level of mandatory training currently has led to a widely disparate professional workforce. This language allows the council to annually select 8 hours of important topics it feels should be addressed within the profession across the state. Staff feel this is key in assuring the entire workforce is trained in critical topics; however, if the council wishes to lower the number of hours to 4 this language may still have a positive impact on improving statewide professionalism.</p> <p>The language objected to: “In addition to continuing training and education directed by participating agencies, this training must include a combined minimum of eight (8) hours of <u>council-approved continuing law enforcement training in topics selected annually by the council based upon current issues and professional trends.</u> The council may provide this training at no cost to participating agencies or an agency administrator may elect to provide their own council approved training to their officers on the required topics. Selected topics may include:</p> <ul style="list-style-type: none"> (A) Recognizing and addressing implicit bias; (B) Code of ethics and professional conduct; (C) De-escalation, use of force, duty to Intervene; (D) Recognizing patterns of behavior that may be related to mental or behavioral health issues or other disabilities; (E) First aid and cardiopulmonary resuscitation; (F) Statutory changes and court decisions impacting public safety; (G) Cultural awareness and diversity; or (H) Prison Rape Elimination Act (PREA) and other federally mandated programs. 	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
75		AML	Expects the State to appropriately fund this new requirement of 12 hours of annual in-service training.	APSC will provide access to distance learning for officers to help them meet training requirements.	
76		Chief Heath Scott	<p>I like the idea of the 8 hours mandated by APSC as well as the subject areas listed are wise areas to address. I do think we need agencies to do more to focus on officer development. I have outlined subjects I find useful to approach annually with training blocks I find realistic.</p> <p>Law Enforcement In-Service Training Topics:</p> <ul style="list-style-type: none"> • Firearms (8 hours) minimum twice annually, one range day should be focused on familiarization and qualification of all weapons systems, the other range day should be addressing skills improvement and scenario based response. • Less-Lethal (4 Hours) – OC, Taser, LL Shotgun, ETC • Ethics (2 hours) • Annual Legal Updates (4 hours/credits) – I believe you addressed this as (Statutory changes and court decision impacting public safety) <ul style="list-style-type: none"> a. Case law updates b. I would add Search and Seizure refreshers to this block • Officer Awareness: Responding to Victims of Trauma (4 hours) • Physical and Mental Wellness: Building & Implementing a Plan for Improvement (8 hours) • Arrest Procedures (4 hours) <ul style="list-style-type: none"> a. Cuffing b. Control Techniques <p>Detention In-Service Training Topics:</p> <ul style="list-style-type: none"> • Detention Legal Update (4 hours) • Inmate Mental Health (4 hours) • Cell Management and Control (2 hours) • Physical and Mental Wellness: Building & Implementing a Plan for Improvement (8 hours) • Control Techniques (2 hours) 	<p>Recommendation to provide for adequate time to develop courses, establish process, and educate officers and agencies:</p> <p>13 AAC 87.084. In-Service Training Requirements. (a) Effective January 1, 2022, to retain certification, every police, corrections, municipal corrections, and probation/parole officer must complete a minimum of twelve (12) hours of council-approved continuing law enforcement training related to law enforcement each calendar year beginning January 1 following the date the officer was certified. And (b) Except as otherwise provided, effective January 1, 2022, in addition to completing the agency in-service training requirement in section (a), an officer must: ...</p> <p>See also comment 79.</p>	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
77	87.084(d)(1) & (3)	AACOP	Regarding an officer being absent from work for a period between 4-24 months being required to review use of force policy, qualify with their weapon, and demonstrate proficiency with less lethal weapons and control tactics: For a variety of reasons related to medical leave, seasonal workers, unexpected issues we would request this be changed to 6 months.	This requirement dictates that upon return to duty after an absence of 4 months or longer an officer must review policy (for changes), and demonstrate proficiency with their weapons systems and control tactics. Staff feel this is critical for community safety and agency liability protection.	
78	87.084(f)	AACOP	Regarding period of time following agency notice that an officer did not meet their mandatory training requirements before suspending certification: We would like this changed to 90 days? Works a little better.	Officers will likely be fully aware of their missing training; this “notice” refers to formal notice by the council and staff feel that the 60 days proposed is more than adequate to make up 12 hours of training, particularly if up to 8 hours of it is provided by the council as on-line training.	
79	89.055	AML	Regarding VPO training requirements: Expects the State to fund (time and travel) this new mandatory training for village police officers, and to produce an implementation plan prior to enacting this regulation, which should take into account the ability of the APSC to deliver this training.	The state currently does not fund the basic training for municipal police officers or VPO’s. When funding allows APSC supports advanced training and would provide access to distance learning for officers at no cost. Recommended language change to allow time for implementation and education: 13 AAC 89.055. Village police officer in-service training program. (a) Effective January 1, 2022, to retain certification, every village police officer must complete a minimum of eight (8) hours of council-approved continuing law enforcement training related to law enforcement every calendar year beginning January 1 following the date the officer was certified. Training will be made available to officers, at no cost, by the council under 13 AAC 87.090(a)(1)	

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Ref. #	Proposed Regulation 13 AAC	Written Comments Received From	Summary of Comment	Staff comments and recommendations	Agency Decision After Review
80	89.070	AML	<p>Regarding denial, suspension, revocation, and lapse of certificates for VPO's:</p> <p>Supports the APSC's role in ensuring compliance of village police officers, and expects the APSC -or appropriate State agency with that authority – to produce an implementation plan that addresses any gaps if its actions result in no public safety officer in a community.</p>	<p>When communities incorporate, the city assumes responsibility for the public safety and welfare of its citizens, including providing public safety. While APSC and other state agencies can assist these communities and troopers can provide emergency LE response when necessary, it is the local city which must implement their own plan to provide for public safety, with the assistance and support of APSC and other agencies.</p>	

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13 AAC 85.010(b) is amended to read:

(b) A participating police department may not hire as a police officer a person

(1) who has been convicted of any felony or a misdemeanor crime of domestic violence **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction** by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) who has been convicted, during the 10 years immediately before the date of hire as a police officer, of a crime of dishonesty or crime of moral turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses, by a civilian court of this state, the United States, or another state or territory, or by a military court;

(3) who

(A) has been denied certification, has had the person's **public safety** [BASIC] certification revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.110 or by the responsible certifying agency of the issuing jurisdiction; or

(B) is under suspension of a **public safety** [BASIC] certification in this state or another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction; or

(4) who

(A) has illegally manufactured, transported, or sold a controlled substance, unless the person was under the age of 21 at the time of the act and the act occurred more than 10 years before the date of hire;

(B) within the five years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(i) the person was under the age of 21 at the time of using the controlled substance; or

(ii) 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) within the one year before the date of hire, has used marijuana, unless the person was under the age of 21 at the time of using marijuana.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____ / ____ / ____ , Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.010(c) is amended to read:

(c) A participating police department has **10** [30] days after the date of hire to confirm that a person hired as a police officer meets the standards of (a) and (b) of this section. The council may grant an extension of the **10-day** [30-DAY] period if the council determines that the person will probably be able to meet the standards by the end of the extension period. The chief administrative officer of the police department where the person is employed shall make a written request for the extension, and shall explain the reason the extension is necessary. If a police department concludes at the end of the investigation that the person does not meet the required standards, the department shall immediately discharge the person from employment as a police officer. When deciding whether a person meets the standards of (a) and (b) of this section, the department shall

(1) obtain proof of age, citizenship status, and education;

(2) obtain fingerprints on two copies of FBI Applicant Card FD-258 and forward both cards to the automated fingerprint identification section of the Department of Public Safety;

(3) obtain a complete personal history of the person on a form supplied by the council;

(4) conduct a thorough personal-history investigation of the person to determine character traits and habits indicative of moral character and fitness as a police officer;

(5) obtain a complete medical history report of the person; the report must be given to a licensed physician, advanced practice registered nurse, or physician assistant to use as a basis in conducting a physical examination of the person;

(6) require the person to undergo an examination by a licensed psychiatrist or psychologist; and

(7) determine whether the person

(A) has been denied certification, has had the person's **public safety** [BASIC] certification revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.110 or by the responsible certifying agency of the issuing jurisdiction; or

(B) is under suspension of a **public safety** [BASIC] certification in this state or in another jurisdiction, for the period of the suspension, and whether the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____.

Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.010(d) is amended to read:

(d) All information, documents, and reports obtained by a participating police department under (c) of this section must be placed in the permanent files of the police department and must be available for examination at any reasonable time by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council **not later than 10** [WITHIN 30] days after the date of each hire:

(1) the medical examination report;

(2) the health questionnaire;

(3) the personal history statement;

(4) the psychological record form; and

(5) the compliance form to record an agency's compliance with (c)(1) - (7) of this section.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____ / ____ / ____.

Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.020 is amended by adding a new subsection to read:

(d) A participating police department may not assign an officer any public law enforcement duty during any period which the officer's certification has been suspended by the council.

Eff. 8/19/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 8/16/2000, Register 155; am 9/24/2016, Register 219; am ____ / ____ / _____, Register ____)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85 is amended by adding a new section to read:

Section

45. Supervisory and management certification

13 AAC 85.045. Supervisory and management certification. (a) The council will issue a supervisory or management certificate to a police officer meeting the standards set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.010(d) are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

(1) be a full-time paid police officer of a police department in this state;

(2) possess an intermediate or advanced certificate;

(3) have been employed full-time as the direct supervisor of at least one other police officer for twelve (12) months, or longer;

(4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and

(5) have completed at least 40 hours of additional council approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

(1) be a full-time paid police officer of a police department in this state;

(2) possess a supervisory certificate;

(3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;

(4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and

(5) have completed at least 40 hours of additional council approved training in addition to those previously relied upon for prior certification.

(Eff. ___/___/___, Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.050(b) is amended to read:

(b) The basic police officer academy must include the following topics of instruction:

(1) disability awareness in compliance with the requirements of AS 18.65.220;

- (2) bloodborne pathogens;
- (3) ethics;
- (4) constitutional law, [AND] civil rights, **and officer duty to intervene;**
- (5) control tactics;
- (6) cardiopulmonary resuscitation (CPR), basic first aid, and use of an automated external defibrillator (AED);
- (7) criminal investigation, including;
 - (A) controlled substances;
 - (B) crimes against minors; and
 - (C) sex crimes and human trafficking;
- (8) the criminal justice system;
- (9) criminal law and procedure;
- (10) crime scene investigation;
- (11) cultural diversity;
- (12) domestic violence;
- (13) driving under the influence, field sobriety training, and use of a scientific instrument to analyze a sample of a person's breath and determine the breath alcohol content in that sample;
- (14) electronic evidence and identity theft;

(15) classroom and practical emergency vehicle operations;

(16) emotional survival, police stress, and trauma;

(17) mental health issues;

(18) firearms, including;

(A) classroom instruction;

(B) handguns, practical instruction;

(C) handguns, practical instruction, low-light operations;

(D) long guns, practical instruction; and

(E) long guns, practical instruction, low-light operations;

(19) hazardous materials;

(20) interview and interrogation;

(21) juvenile law and procedures;

(22) patrol procedures;

(23) police tools, including TASER, oleoresin capsicum, baton, handcuffs, and

radar;

(24) professional communication;

(25) radio procedures;

(26) report writing;

(27) search-and-seizure and search warrants;

(28) social media;

(29) traffic law and stops, including practical scenarios and accident investigation;

and

(30) use of force.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ____ / ____ / _____, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.240

13 AAC 85.060(a) is amended to read:

(a) The council may waive part or all of the basic police officer academy requirements if an applicant furnishes satisfactory evidence that the applicant has successfully completed

(1) an equivalent basic police officer academy;

(2) a 12-consecutive-month probationary period with the police department the applicant is employed within this state at the time of the waiver request;

(3) a council-certified, department-supervised field training program; and

(4) a council-certified recertification police training academy that consists of a minimum of 80 hours of classroom and practical training and that includes the following topics of instruction:

(A) criminal laws in this state;

(B) control tactics;

(C) domestic violence;

(D) ethics;

(E) firearms;

(F) use of force **and officer duty to intervene;**

(G) juvenile law and procedures in this state;

(H) laws of arrest in this state;

(I) traffic law in this state;

(J) laws in this state regarding detection of driving under the influence and enforcement; and

(K) recognizing and working with disabled persons in compliance with the requirements of AS 18.65.220.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 10/24/92, Register 124; am 8/5/95, Register 135; am 8/16/2000, Register 155; am 3/31/2005, Register 173; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ____ / ____ / _____, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.240

13 AAC 85.090(a) is amended to read:

(a) Within **10**[30] days after the date that a police officer is appointed by a participating police department, the police department's chief administrative officer, or the chief administrative officer's designee, shall notify the council in writing, on a form provided by the council, of the appointment of the police officer, unless a public record of the appointment would jeopardize the police officer or the police officer's assignment.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.090(b) is amended to read:

(b) A participating police department shall notify the council within **10**[30] days after the date that a police officer is no longer employed by the police department. The notification to the council must state the reason the person is no longer employed as a police officer by the police department, including layoff of the officer, death of the officer, termination of the officer by the police department, or the officer's voluntary resignation. If the reason for the termination of employment is the voluntary resignation of the officer, the police department must disclose in the notification if the resignation was to avoid an adverse action by the police department. The police department must also disclose in the notification if any resignation or termination involved a finding or allegation of dishonesty, misconduct, or lack of good moral character.

Register ____, _____ 20____ DEPARTMENT OF PUBLIC SAFETY

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.090(d) is amended to read:

(d) Within **10**[30] days after the allegation being sustained by administrative review, a participating police department shall notify the council of an allegation of misconduct by an officer employed by that department if the misconduct alleged may be cause for revocation under 13 AAC 85.110.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.090 is amended by adding a new subsection to read:

(f) A participating police department shall notify the council within 10 days of an officer being arrested or charged with any misdemeanor or felony crime. Any police officer, regardless of their certification status, who is arrested or charged with any misdemeanor or felony crime in this state or any other jurisdiction shall notify their employing agency no later than three days after their arrest or a criminal charge being filed.

Register ____, _____ 20 ____ DEPARTMENT OF PUBLIC SAFETY

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.100(a) is amended to read:

(a) The council may deny a **public safety** [BASIC] certificate or find a police officer job applicant or training applicant ineligible for certification upon a finding that the applicant

(1) falsified or omitted information required to be provided on the application for certification or on supporting documents; or

(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) has, in the course of their employment as a police officer,

(A) lied or falsified public records or official communications;

(B) violated the law enforcement code of ethics;

(C) with criminal negligence, used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) unreasonably and unjustifiably harassed or coerced another person;

(E) engaged in any sexual activity while on duty, not specifically sanctioned or authorized by department policy;

(F) solicited or engaged in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication;

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agency's property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or

(J) Fails to respond or respond truthfully to questions related to a council or departmental investigation into allegations of misconduct, or to a subsequent administrative or legal proceeding arising from those allegations.

(Eff. 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.100(b) is amended to read:

(b) The council will deny a **public safety** [BASIC] certificate or find a police officer job applicant or training applicant ineligible for certification upon a finding that the applicant

(1) has been convicted of **any felony**, a misdemeanor crime of domestic violence [OR, AFTER HIRE AS A POLICE OFFICER, HAS BEEN CONVICTED OF ANY FELONY], or [OF] a misdemeanor crime listed in 13 AAC 85.010(b)(2);

(2) has, after hire as a police officer,

(A) used marijuana;

(B) illegally used or possessed a 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;

(3) does not meet the standards in 13 AAC 85.010(a) or (b); or

(4) 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.

Register ____, _____ 20____ DEPARTMENT OF PUBLIC SAFETY

(Eff. 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.110 is repealed and readopted to read:

13 AAC 85.110. **Suspension or revocation of certificates.** (a) The council may suspend or revoke a public safety 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;

(3) does not meet the standards in 13 AAC 85.010(a) or (b);

(4) has, after hire as a police officer,

(A) lied or falsified official written or verbal communications or records;

(B) violated the law enforcement code of ethics;

(C) negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) harassed or coerced another person;

(E) engaged in inappropriate sexual activity while on duty;

(F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication;

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agency's property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or,

(J) failed to respond or to respond truthfully to questions related to an investigation or legal proceeding; or

(5) fails to complete minimum annual training requirements in compliance with 13 AAC 87.084.

(b) The council will revoke a 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);

(2) has, after hire as a police officer,

(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 medication not specifically prescribed to the person; or

(C) illegally purchased, sold, cultivated, transported, manufactured, or distributed a 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 suspension or revocation of a certificate issued by the council when the suspension or revocation complies with AS 18.65.130 - 18.65.290 and 13 AAC 85.005 - 13 AAC 85.120.

(d) Subject to an expedited fact-finding hearing before the council within ten days of the officer being served with a formal written accusation, the executive director shall have cause to temporarily suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking a certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized to exercise police authority.

(e) If a public safety 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.

(f) If a petition for rescission is based on one or more of the reasons set out in (e) of this section, a hearing on the petition for rescission will be held before the council subject to the provisions of AS 44.62.550. 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 public safety certificate.

(g) 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 suspending or revoking the police officer's public safety certificate under this section.

(h) 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).

(Eff. 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.210(b) is amended to read:

(b) A person may not be hired as a probation, parole, or correctional officer if that person

(1) has been convicted of any felony or a misdemeanor crime of domestic violence, **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction**, by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the 10 years immediately before the date

of hire as a probation, parole, or correctional officer, of a crime of dishonesty or crime of moral turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses;

(3) has illegally manufactured, transported, or sold a controlled substance, unless the person was under the age of 21 at the time of the act and the act occurred more than 10 years before the date of hire;

(4) within the five years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(A) the person was under the age of 21 at the time of using the controlled substance; or

(B) 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;

(5) within the one year before the date of hire, has used marijuana, unless the person was under the age of 21 at the time of using marijuana;

(6) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction;
or

(7) is under suspension of a **public safety** [BASIC] certificate in **this state or in** another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am _____/_____/_____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.210(c) is amended to read:

(c) A person hired as a probation, parole, or correctional officer may not remain employed in that position without written confirmation from the Department of Corrections, submitted within **30** [90] days after the date of hire, that the person meets the standards of (a) and (b) of this section. The council will grant an extension of the **30-day** [90-DAY] period, upon a written request by the Department of Corrections that explains the reason the extension is necessary, and if the council determines that the person will probably be able to meet the standards by the end of the extension period. If the Department of Corrections concludes at the end of an investigation that a person does not meet the required standards, the person may not continue employment as a probation, parole, or correctional officer and the Department of Corrections shall notify the council on a form provided by the council. For purposes of determining whether a person meets the standards of (a) and (b) of this section,

(1) the following information must be provided:

(A) proof of age, citizenship status, and applicable education;

(B) fingerprints on two copies of FBI Applicant Card FD-258; both cards must be forwarded to the automated fingerprint identification section of the Department of Public Safety;

(C) a complete personal history of the person on a form supplied by the council;

(D) a complete medical history report of the person; the report must be provided to a licensed physician, advanced practice registered nurse, or physician assistant for use in conducting a physical examination of the person;

(E) information as to whether the person

(i) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction; or

(ii) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, and whether the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction;

(2) a thorough personal-history investigation of the person must be conducted to determine character traits and habits indicative of moral character and fitness as a probation, parole, or correctional officer; the investigation must include a check of

(A) criminal history;

(B) wants and warrants;

(C) job references from at least three previous employers unless the person has had less than three previous jobs;

(D) job references from all previous law enforcement or criminal justice system employers in the preceding 10 years; and

(E) at least two personal references; and

(3) the person must take the Department of Corrections' psychological screening examination and the person must undergo an examination by a licensed psychiatrist or psychologist.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.242

AS 18.65.248

13 AAC 85.210(d) is amended to read:

(d) All information, documents, and reports provided or developed under (c) of this section must be placed in the permanent files of the Department of Corrections and must be available for examination, at any reasonable time, by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council within **30** [90] days after the date of each hire:

- (1) the medical examination report;
- (2) the health questionnaire;
- (3) the personal history statement;
- (4) the psychological screening report;
- (5) verification of a psychological or psychiatric examination report; and
- (6) the compliance form to record an agency's compliance with (c)(1) - (3) of this

section.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.210(f) is amended to read:

(f) The information in the council's files regarding an applicant or a probation, parole, or correctional officer is confidential, and available only for use by the council in carrying out the requirements of AS 18.65.130 - 18.65.290 and the regulations adopted under AS 18.65.130 - 18.65.290. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a probation, parole, or correctional officer may be reviewed by the applicant or officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer may be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files that was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to deny, **suspend**, or revoke certification will be revealed to the officer or applicant.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.215(b) is amended to read:

(b) A person may not be hired as a municipal correctional officer if that person

(1) has been convicted of any felony or a misdemeanor crime of domestic violence, **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction**, by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the three years immediately before the date of hire as a municipal correctional officer, of a crime of dishonesty or crime of moral turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses;

(3) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, of the sale, manufacture, transport, or possession for purposes of sale, manufacture, or transport of a controlled substance;

(4) within the three years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(A) the person was under the age of 21 at the time of using the controlled substance; or

(B) 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;

(5) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction;
or

(6) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.215(c) is amended to read:

(c) A person hired as a municipal correctional officer may not remain employed in that position without written confirmation from the municipality, submitted within 30 days after the date of hire, that the person meets the standards of (a) and (b) of this section. The council will grant an extension of the 30-day period, upon a written request by the municipality that explains the reason the extension is necessary, and if the council determines that the person will probably be able to meet the standards by the end of the extension period. If a municipality concludes at the

end of an investigation that a person does not meet the required standards, the person may not continue employment as a municipal correctional officer. For purposes of determining whether a person meets the standards of (a) and (b) of this section,

(1) the following information must be provided:

(A) proof of age, citizenship status, and applicable education;

(B) fingerprints on two copies of FBI Applicant Card FD-258; both cards must be forwarded to the automated fingerprint identification section of the Department of Public Safety;

(C) a complete personal history of the person on a form supplied by the council;

(D) a complete medical history report of the person; the report must be provided to a licensed physician, advanced practice registered nurse, or physician assistant for use in conducting a physical examination of the person;

(E) information as to whether the person

(i) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction; or

(ii) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, and whether

the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction; and

(2) a thorough personal-history investigation of the person must be conducted to determine character traits and habits indicative of moral character and fitness as a municipal correctional officer; the investigation must include a check of

(A) criminal history;

(B) wants and warrants;

(C) job references from at least three previous employers unless the person has had less than three previous jobs; and

(D) at least two personal references.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.215(f) is amended to read:

(f) Except if the employing municipality by ordinance makes that information public, the information in the council's files regarding an applicant or a municipal correctional officer is confidential, and available only for use by the council in carrying out the requirements of AS

18.65.130 - 18.65.290 and 13 AAC 85.200 - 13 AAC 85.280. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a municipal correctional officer may be reviewed by the applicant or the officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer may be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files that was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to **suspend**, deny, or revoke certification will be revealed to the officer or applicant.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.220 is amended by adding a new subsection to read:

(d) A participating agency may not assign any probation, parole, correctional, or municipal correctional duties involving the supervision, care, or custody of inmates, nor allow an officer to perform those duties, during any period which the officer's certification has been suspended by the council.

(Eff. 8/8/90, Register 115; am 8/16/2000, Register 155; am 4/12/2001, Register 158; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.245 AS 18.65.285
AS 18.65.242 AS 18.65.248

13 AAC 85.230 is retitled to **Basic, intermediate, and advanced certification for probation, parole, and correctional officers** and is amended by adding new subsections to read:

(f) To be eligible for an intermediate certificate, a probation, parole, or correctional officer must

(1) be a full-time paid probation, parole, or correctional officer in this state;

(2) possess a basic certificate; and

(3) have acquired either or both of the following, subject to (j) of this section, and

except that training hours earned while attending a basic academy do not count towards an intermediate certificate:

(A) the following minimum number of years of experience as a probation, parole, or correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	two	Four	five	six
Minimum education points in college credit	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	100	120

(B) seven or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(g) To be eligible for an advanced certificate, an applicant must

(1) be a full-time paid probation, parole, or correctional officer in this state;

(2) possess a basic and intermediate certificate; and

(3) have acquired either or both of the following, subject to (j) of this section, and except that training hours earned while attending a basic academy do not count towards an advanced certificate:

(A) the following minimum number of years of experience as a probation, parole, or correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	Four	Six	Nine	11	13
Minimum education points in college credit	Master's degree	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	140	180	220

(B) 14 or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(h) College credits or degrees awarded by an institution of higher learning accredited by a regional or national accrediting agency recognized by the United States Secretary of Education will be recognized by the council. College credits awarded for advanced, supervisory,

management, executive, or specialized law enforcement courses may be recognized by the council for either training or education points. Education points will be awarded on the following basis:

(1) one-quarter college credit equals two-thirds of an education point;

(2) one semester college credit equals one education point.

(i) All training must be documented, and the course must have been completed successfully by the applicant.

(j) After a basic certificate is awarded, an officer must achieve the prescribed training hours towards the next level of certification. After an intermediate certificate is awarded, an officer must achieve the prescribed training hours for an advanced certificate. The officer may not count the same hours towards each subsequent level of certification.

(Eff. 8/8/90, Register 115; am 6/13/2002, Register 162; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.242

AS 18.65.248

13 AAC 85 is amended by adding a new section to read:

Section

232. Supervisory and management certification

13 AAC 85.232. **Supervisory and management certification.** (a) The council will issue a supervisory or management certificate to a probation, parole, or correctional officer meeting the

standards set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.210 are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

- (1) be a full-time paid a probation, parole, or correctional officer in this state;
- (2) possess an intermediate or advanced certificate;
- (3) have been employed full-time as the direct supervisor of at least one other a probation, parole, or correctional officer for twelve (12) months, or longer;
- (4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

- (1) be a full-time paid a probation, parole, or correctional officer in this state;
- (2) possess a supervisory certificate;
- (3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;
- (4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for prior certification.

(Eff: __/__/__, Register)

Authority: AS 18.65.220 AS 18.65.242

13 AAC 85.235 is retitled to **Basic, intermediate, and advanced certification for municipal correctional officers** and is amended by adding new subsections to read:

(e) To be eligible for an intermediate certificate, a municipal correctional officer must

(1) be a full-time paid municipal correctional officer in this state;

(2) possess a basic certificate; and

(3) have acquired either or both of the following, subject to (i) of this section, and

except that training hours earned while attending a basic academy do not count towards an intermediate certificate:

(C) the following minimum number of years of experience as a municipal correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	two	Four	five	six
Minimum education points in college credit	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	100	120

(D) seven or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(f) To be eligible for an advanced certificate, an applicant must

(1) be a full-time paid municipal correctional officer in this state;

(2) possess a basic and intermediate certificate; and

(3) have acquired either or both of the following, subject to (i) of this section, and

except that training hours earned while attending a basic academy do not count towards an advanced certificate:

(A) the following minimum number of years of experience as a municipal correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	Four	Six	Nine	11	13
Minimum education points in college credit	Master's degree	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	140	180	220

(B) 14 or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(g) College credits or degrees awarded by an institution of higher learning accredited by a regional or national accrediting agency recognized by the United States Secretary of Education will be recognized by the council. College credits awarded for advanced, supervisory, management, executive, or specialized law enforcement courses may be recognized by the

council for either training or education points. Education points will be awarded on the following basis:

(1) one-quarter college credit equals two-thirds of an education point;

(2) one semester college credit equals one education point.

(h) All training must be documented, and the course must have been completed successfully by the applicant.

(i) After a basic certificate is awarded, an officer must achieve the prescribed training hours towards the next level of certification. After an intermediate certificate is awarded, an officer must achieve the prescribed training hours for an advanced certificate. The officer may not count the same hours towards each subsequent level of certification.

(Eff: ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85 is amended by adding a new section to read:

Section

237. Supervisory and management certification

13 AAC 85.237. **Supervisory and management certification.** (a) The council will issue a supervisory or management certificate to a municipal correctional officer meeting the standards

set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.215 are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

- (1) be a full-time paid municipal correctional officer in this state;
- (2) possess an intermediate or advanced certificate;
- (3) have been employed full-time as the direct supervisor of at least one other municipal correctional officer for twelve (12) months, or longer;
- (4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

- (1) be a full-time paid municipal correctional officer in this state;
- (2) possess a supervisory certificate;
- (3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;
- (4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for prior certification.

Register ____, _____ 20____ DEPARTMENT OF PUBLIC SAFETY

(Eff: __/__/__, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285

AS 18.65.242

13 AAC 85.250(d) is amended to read:

(d) Within 30 days after the allegation being sustained by administrative review, a correctional agency shall notify the council of an allegation of misconduct by an officer employed by that agency if the misconduct alleged may be cause for **suspension or** revocation under 13 AAC 85.270.

(Eff. 8/8/90, Register 115; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am __/__/__, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285

AS 18.65.245

13 AAC 85.250 is amended by adding a new subsection to read:

(f) A participating agency shall notify the council within 10 days of an officer being arrested or charged with any misdemeanor or felony crime. Any probation, parole, correctional, or municipal correctional officer, regardless of their certification status, who is arrested or charged with any misdemeanor or felony crime in this state or any other jurisdiction shall notify their employing agency no later than three days after their arrest or a criminal charge being filed.

Register ____, _____ 20 ____ DEPARTMENT OF PUBLIC SAFETY

(Eff. 8/8/90, Register 115; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.245

13 AAC 85.260(a) is amended to read:

(a) The council may deny a basic certificate or find a probation, parole, correctional, or municipal correctional officer job applicant ineligible for certification upon a finding that the applicant

(1) falsified or omitted information required to be provided on the application for certification or on supporting documents; or

(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) has, in the course of employment a probation, parole, correctional, or municipal correctional officer,

(A) lied or falsified public records or official communications;

(B) violated the correctional, probation, and parole officer code of ethics, or the municipal correctional officer code of ethics;

(C) with criminal negligence, used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) unreasonably and unjustifiably harassed or coerced another person;

(E) engaged in sexual activity while on duty not specifically sanctioned or authorized by department policy;

(F) solicited or engaged in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who was formerly or is presently in the custody of the Alaska Department of Corrections;

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agencies property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or

(J) fails to respond or respond truthfully to questions related to a council or departmental investigation into allegations of misconduct, or to a subsequent administrative or legal proceeding arising from those allegations.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.245 AS 18.65.270
AS 18.65.242 AS 18.65.248 AS 18.65.285

13 AAC 85.270 is repealed and readopted to read:

13 AAC 85.270 **Suspension or revocation of certification.** (a) The council may suspend or revoke a public safety 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);

(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,

(A) lied or falsified public records or official communications;

(B) violated the correctional, probation, and parole officer code of ethics, or the municipal correctional officer code of ethics;

(C) with criminal negligence used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) unreasonably and unjustifiably harassed or coerced another person;

(E) engaged in sexual activity while on duty, not specifically sanctioned or authorized by department policy;

(F) solicited or engaged in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who was formerly or is presently in the custody of the Alaska Department of Corrections.

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agencies property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense;

(J) failed to respond or respond truthfully to questions related to a council or departmental investigation into allegations of misconduct, or to a subsequent administrative or legal proceeding arising from those allegations; or

(K) failed to complete meet minimum annual training requirements proscribed by the council pursuant to 13 AAC 87.084.

(b) The council will revoke a public safety 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) used marijuana;

(B) illegally used or possessed a 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; 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 suspension or revocation of a certificate issued by the council when the action complies with AS 18.65.130 - 18.65.290 and 13 AAC 85.200 - 13 AAC 85.280 or 13 AAC 87.084.

(d) Subject to an expedited fact-finding hearing before the council within ten days of the officer being served with a formal written accusation, the executive director shall have cause to temporarily suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking the officer's probation, parole, correctional, or municipal correctional officer certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized authority as a probation, parole, correctional, or municipal correctional officer.

(e) If a public safety 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.

(f) If a petition for rescission is based on one or more of the reasons set out in (e) of this section, a hearing on the petition for rescission will be held before the council subject to the provisions of AS 44.62.550. 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 public safety certificate.

(g) 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 suspending or revoking the officer's public safety certificate under this section.

(h) 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).

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ___/___/___, Register)

Authority:	AS 18.65.220	AS 18.65.245	AS 18.65.270
	AS 18.65.242	AS 18.65.248	AS 18.65.285

13 AAC 85.900 is amended by adding the definitions:

(30) "criminal negligence" has the same mean as in AS 11.81.900.

(31) "official communications" means material communications made during an officer's official duties including substantive discussions with supervisors and any statement provided during an administrative investigation to the employing agency or the council.

(32) "public records" has the same meaning as in AS 40.25.220

(33) "public safety certificate" means a certificate issued by the council or an equivalent certification issued by another jurisdiction.

(34) "suspension" of certification means the temporary or conditional termination of an officer's authority to act in their official capacity. Suspension may be for a set time-

period or may be conditioned upon the officer’s compliance with conditions established by the council.

(35) "unreasonable force" is defined as force applied against another that violates the policies of the employing agency or, based upon the totality of circumstances, force that a reasonable person would find substantially exceeded the level of force necessary to overcome resistance or effect a desired outcome.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.290
AS 18.65.240 AS 18.65.285

13 AAC 87.040(e) is amended to read:

(e) The council may **suspend or** revoke instructor certification whenever an instructor is found by the council to be no longer qualified. The executive director of the council may initiate proceedings under the Administrative Procedure Act (AS 44.62) for the revocation of a certificate issued by the council when the revocation complies with AS 18.65.130 - AS 18.65.290 and 13 AAC 85.005 - 13 AAC 89.150. The council will consider **suspension or** revocation of instructor certification if

(1) an instructor is terminated or asked to resign, or resigns instead of discharge for cause by his employer;

(2) there is a recommendation to revoke certification by the director of a training program certified by the council under 13 AAC 87.010 or 13 AAC 87.020 or by the instructor's employer for failure to provide adequate instruction; or

(3) the holder of the instructor certificate falsified or omitted information required to be provided on an application for certification or on supporting documents.

(4) the instructor fails to report to the council within five business days of being arrested or charged with any criminal offense in Alaska or any other jurisdiction unless they previously complied with the provisions of 13 AAC 85.090(f) or 13 AAC 85.250(f).

(Eff. 11/25/77, Register 64; am 10/18/81, Register 80; am 8/8/90, Register 115; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 87.060(a) is amended to read:

(a) The basic training program of instruction for correctional officers must include

(1) an initial program of instruction that is provided by the Department of Corrections and that a correctional officer must complete within 30 days after the date of hire; the program consists of a minimum of 40 hours of instruction and must include the following topics of instruction:

(A) cardiopulmonary resuscitation (CPR), bloodborne pathogens, and first aid instruction sufficient to qualify the correctional officer for a council-approved basic first aid certificate;

(B) professional code of conduct, including prohibition of sexual harassment and core values of a correctional professional;

(C) use-of-force policy overview;

(D) avoiding offender set-ups;

(E) incident command system;

(F) the federal Prison Rape Elimination Act (PREA);

(G) suicide awareness; and

(H) authorized employee property; and

(2) a correctional officer academy that a correctional officer must complete before completing the correctional officer's probationary period; the correctional officer academy consists of a minimum of 200 hours of instruction and must include the following topics of instruction:

(A) security procedures, custody, and supervision of inmates;

(B) use of force, firearms certification, other less lethal weapons certifications, and use of restraints;

(C) communication skills and techniques, report writing, and record keeping;

(D) officer safety and security, control techniques. mental health and suicide prevention, and emergency procedures;

(E) diversity and disability awareness in compliance with the requirements of AS 18.65.220;

(F) constitutional law, civil rights, and officer duty to intervene; and

(G) reentry and supervision standards.

(Eff. 8/8/90, Register 115; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.242

13 AAC 87.060(b) is amended to read:

(b) The basic training program of instruction for probation and parole officers must include

(1) an initial program of instruction that is provided by the Department of Corrections and that a probation or parole officer must complete within 30 days after the date of hire; the program consists of a minimum of 40 hours of instruction and must include the following topics of instruction:

(A) cardiopulmonary resuscitation (CPR), bloodborne pathogens, and first aid instruction sufficient to qualify the probation or parole officer for a council-approved basic first aid certificate;

(B) professional code of conduct, including prohibition of sexual harassment and core values of a correctional professional;

(C) use-or-force policy overview;

(D) avoiding offender set-ups;

(E) incident command system;

(F) the federal Prison Rape Elimination Act (PREA); and

(G) suicide awareness; and

(H) authorized employee property; and

(2) a probation and parole officer academy that a probation or parole officer must complete before completing the probation or parole officer's probationary period; the probation and parole officer academy consists of a minimum of 200 hours of instruction and must include the following topics of instruction:

(A) risk assessment;

(B) interviewing and counseling techniques;

(C) firearms familiarization and safety;

(D) overview of the criminal justice system;

(E) use of force, other less lethal weapons certifications, and use of restraints;

(F) communications skills and techniques, report writing, and record keeping;

(G) officer safety and security, control techniques, mental health and suicide prevention, and emergency procedures;

(H) diversity and disability awareness in compliance with the requirements of AS 18.65.220;

(I) **constitutional law, civil rights, officer duty to intervene,** legal issues, reentry, and supervision standards; and

(J) techniques of supervision.

(Eff. 8/8/90, Register 115; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.242

13 AAC 87.080(a) is amended to read:

(a) The basic program of instruction for municipal correctional officers must include a minimum of 120 hours of instruction and must include the following topics of instruction:

(1) security and search procedures;

(2) supervision of inmates;

(3) use of force and methods of self-defense;

(4) diversity and disability awareness in compliance with the requirements of AS 18.65.220;

(5) report writing;

- (6) rights and responsibilities of inmates;
- (7) fire and emergency procedures;
- (8) domestic violence;
- (9) communication skills and interpersonal relations;
- (10) special needs inmates;
- (11) recognition of the signs and symptoms of mental illness and cognitive disability;
- (12) substance abuse;
- (13) physical deficiencies;
- (14) suicide-prone behavior and suicide prevention;
- (15) the federal Prison Rape Elimination Act (PREA);
- (16) cross-cultural awareness;
- (17) **constitutional law, civil rights, officer duty to intervene**, legal issues and liability;
- (18) cardiopulmonary resuscitation (CPR); and
- (19) first aid instruction sufficient to qualify students for a standard Red Cross first aid certificate or a council-approved equivalent.

(Eff. 4/12/2001, Register 158; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.242

13 AAC 87 is amended by adding a new section to read:

Article

1. Certification of training programs (13 AAC 87.010 - 13 AAC 87.040)
2. Basic Requirements of Probation, Parole, and Correctional Officer Training Programs (13 AAC 87.050 - 13 AAC 87.070)
3. Basic Municipal Correctional Officer Academy Requirements (13 AAC 87.075 – 13 AAC 87.080) [(13 AAC 87.075 - 13 AAC 87.085)]
- 4. Officer In-Service Training Requirements (13 AAC 87.084 – 13 AAC 87.085)**
- 5.** [4.] General Provisions (13 AAC 87.090 - 13 AAC 87.090)

Article 4. Officer In-Service Training Requirements

Section

84. In-Service Training Requirements

13 AAC 87.084. In-Service Training Requirements. (a) Effective January 1, 2022, to retain certification, every police, corrections, municipal corrections, and probation/parole officer must complete a minimum of twelve (12) hours of council-approved continuing law enforcement training related to law enforcement each calendar year beginning January 1 following the date the officer was certified.

(1) In addition to continuing training and education directed by participating agencies, this training must include a combined minimum of eight (8) hours of council-approved continuing law enforcement training in topics selected annually by the council based upon current issues and professional trends. The council may provide this training at no cost to participating agencies or an agency administrator may elect to provide their own council approved training to their officers on the required topics. Selected topics may include:

- (A) Recognizing and addressing implicit bias;
- (B) Code of ethics and professional conduct;
- (C) De-escalation, use of force, duty to Intervene;
- (D) Recognizing patterns of behavior that may be related to mental or behavioral health issues or other disabilities;
- (E) First aid and cardiopulmonary resuscitation;
- (F) Statutory changes and court decisions impacting public safety;
- (G) Cultural awareness and diversity; or
- (H) Prison Rape Elimination Act (PREA) and other federally mandated programs.

(b) Except as otherwise provided, effective January 1, 2022, in addition to completing the agency in-service training requirement in section (a), an officer must:

(1) Review annually each policy of the employing agency which addresses the use of force in any situation in which the agency or the officer may become involved;

(2) If the officer is authorized to use a firearm, at least biannually demonstrate a minimum level of proficiency in the use of each type of firearm they are authorized to use in compliance with the standards of agency policy. An officer who does not demonstrate a minimum level of proficiency with the use of any type of firearm they are authorized to use they may not carry or use that type of firearm until they participate in a remedial course established by the employing agency to ensure that the officer achieves and maintains a satisfactory level of proficiency;

(3) If the officer is authorized to use an impact weapon, chemical weapon, electronic incapacitating device, or other less-lethal weapon, at least annually demonstrate a minimum level of proficiency in the use of each such weapon or device they are authorized to use in compliance with the standards of agency policy. An officer who does not demonstrate a minimum level of proficiency with the use of any such weapon they are authorized to use may not carry or use that weapon until they participate in a remedial course established by the employing agency to ensure that the officer achieves and maintains a satisfactory level of proficiency

(4) If the duties of an officer require him or her to use arrest and control tactics, demonstrate annually a minimum level of proficiency in the use of arrest and control tactics, including, without limitation, techniques related to applying handcuffs, taking down suspects, self-defense and retention of weapons in compliance with the standards of agency policy.

(c) Each employing agency shall establish and provide the applicable courses set forth in section (b) to its officers and establish the minimum level of proficiency that an officer must demonstrate in each course. Each course must be certified by the council as outlined in 13 AAC

87.020. Not later than 30 days from course completion each employing agency will report an officer's course completion to the council on a form provided by the council.

(d) An officer:

(1) Who voluntarily leaves their employment as an officer for at least four (4) consecutive months but not more than twenty-four (24) consecutive months;

(2) Whose employment as an officer is suspended or terminated for any reason for at least four (4) consecutive months but not more than twenty-four (24) consecutive months;

(3) Who, during a period of continuous employment as an officer, is absent from their duties as an officer because of medical leave, military leave, or other approved leave for at least four (4) consecutive months; or

(4) Who is hired, rehired, or reinstated on or after July 1 of a reporting year, must satisfy the requirements of paragraphs 1-4 of section (b) before commencing or resuming their duties as an officer.

(e) The employing agency shall ensure that its officers comply with the requirements of sections (a-b). After an officer completes the requirements of sections (a-b), the employing agency shall submit verification that the officer has completed the requirements to the council on a form provide by the council. Verification must be submitted on or before December 31 of the year in which the officer was required to complete the requirements of sections (a-b). The employing agency shall notify each officer of the requirements of this section and the penalties set forth in section (f-g) for failure to comply with this section.

(f) If the council has not received verification that an officer has complete the requirements of sections (a-b) on or before December 31 of the year in which the officer was required to complete those requirements, the council shall notify the officer and administrator of the employing agency that the council has not received the verification required by section (e) and that if the verification is not received within sixty (60) days of notification, the council will immediately suspend the officer’s certification until the officer or employing agency can provide the required verification.

(g) Upon request of the council or its designee, the employing agency shall make available for inspection the records of all officers to verify that they have complied with the requirements of sections (a-b).

(Eff __/__/__, Register ____).

Authority:	AS 18.65.220	AS 18.65.240	AS 18.65.245
	AS 18.65.230	AS 18.65.242	AS 18.65.248

Editor’s note: The forms required in 13 AAC 87.084 are available from the Alaska Police Standards Council, Department of Public Safety, P.O. Box 111200, Juneau, AK 99811-1200 or on the council's website at <https://dps.alaska.gov/APSC/Agency-Forms>.

13 AAC 89.020 is amended by adding a new subsection to read:

(d) A participating village may not assign any police duties, nor allow a village police officer to perform law enforcement duties, during any period which the officer's certification has been suspended by the council.

(Eff. 10/18/81, Register 80; am 1/15/95, Register 133; am 6/17/2020, Register 234; am 8/28/2020, Register 236; am ____ / ____ / ____ , Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 89.040(a) is amended to read:

(a) A village police officer basic training program must consist of at least 80 hours of instruction and include instruction regarding

- (1) alcohol and drug interdiction;
- (2) arrest procedures;
- (3) constitutional rights and administration of justice;
- (4) crime scene investigation;
- (5) criminal complaints;
- (6) criminal law and procedure;
- (7) defensive tactics and use of force, **and duty to intervene**;
- (8) disability awareness, in compliance with the requirements of AS 18.65.220;

- (9) domestic violence, in compliance with the requirements of AS 18.65.240;
- (10) procedures regarding persons suspected of driving under the influence;
- (11) ethics and cultural diversity;
- (12) fire prevention and fire extinguishers;
- (13) first aid;
- (14) interview techniques;
- (15) juvenile procedures;
- (16) patrol procedures;
- (17) police tools such as oleoresin capicum, baton, and handcuffs;
- (18) report writing and police notebooks;
- (19) search and rescue;
- (20) search-and-seizure and evidence procedures; and
- (21) sexual assault, in compliance with the requirements of AS 18.65.240.

(Eff. 10/18/81, Register 80; am 4/6/2018, Register 226; am 6/17/2020, Register 234; am _____ /____ /____ , Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 89 is amended by adding a new section to read:

Section

55. Village police officer in-service training program

13 AAC 89.055. **Village police officer in-service training program.** (a) Effective January 1, 2022, to retain certification, every village police officer must complete a minimum of eight (8) hours of council-approved continuing law enforcement training related to law enforcement every calendar year beginning January 1 following the date the officer was certified. Training will be made available to officers, at no cost, by the council under 13 AAC 87.090(a)(1)

(b) Except as otherwise provided, in addition to completing the agency in-service training requirement in section (a), an officer must:

(1) Review annually each policy of the employing village which addresses the use of force in any situation in which the agency or the officer may become involved;

(2) If the officer is authorized to use a firearm, at least biannually demonstrate a minimum level of proficiency in the use of each type of firearm they are authorized to use in compliance with the standards of village policy. An officer who does not demonstrate a minimum level of proficiency with the use of any type of firearm they are authorized to use they may not carry or use that type of firearm until they participate in a remedial course established by the employing village to ensure that the officer achieves and maintains a satisfactory level of proficiency;

(3) If the officer is authorized to use an impact weapon, chemical weapon, electronic incapacitating device, or other less-lethal weapon, at least annually demonstrate a

minimum level of proficiency in the use of each such weapon or device they are authorized to use in compliance with the standards of village policy. An officer who does not demonstrate a minimum level of proficiency with the use of any such weapon they are authorized to use may not carry or use that weapon until they participate in a remedial course established by the employing village to ensure that the officer achieves and maintains a satisfactory level of proficiency; and

(4) If the duties of an officer require them to use arrest and control tactics, demonstrate annually a minimum level of proficiency in the use of arrest and control tactics, including, without limitation, techniques related to applying handcuffs, taking down suspects, self-defense and retention of weapons in compliance with the standards of village policy.

(c) Villages shall report officer training to the council not later than 30 days after completion on a form provided by the council.

(Eff. ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

Editor's note: The forms required in 13 AAC 89.055 are available from the Alaska Police Standards Council, Department of Public Safety, P.O. Box 111200, Juneau, AK 99811-1200 or on the council's website at <https://dps.alaska.gov/APSC/Agency-Forms>.

13 AAC 89.070 is repealed and readopted to read:

13 AAC 89.070. **Denial, suspension, revocation, and lapse of certificates.** (a) The council will, in its discretion, deny, suspend, or revoke a village police officer certificate upon a finding that the officer

(1) falsified or intentionally omitted information on an application or other document required to be filed for certification;

(2) has been discharged, has been asked to resign, or has resigned in place of discharge from a police department; or

(3) does not meet the requirements of 13 AAC 89.010(a).

(b) Subject to an expedited fact-finding hearing before the council within ten days of the officer being served with a formal written accusation, the executive director shall have cause to temporarily suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking a public safety certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized police authority.

(4) failed to complete minimum annual training requirement established by the council.

(c) The holder of a certificate shall immediately return the certificate to the council upon notification of revocation.

(d) A certificate lapses if the holder is not employed as a full-time village police officer for 12 consecutive months.

(e) A person may request reinstatement of a lapsed certificate after serving an additional probationary period as required by the council. The council will, in its discretion, require supplemental training as a condition of reinstatement.

(Eff. 10/18/81, Register 80; am 1/15/95, Register 133; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 89.150 is amended by adding a new definition:

(16) “public safety certificate” means a certificate issued by the council or an equivalent certification issued by another jurisdiction.

(17) “suspension” of certification means the temporary or conditional termination of an officer’s certification and authority to act in their official capacity. Suspension may be for a set time-period or may be conditioned upon the officer’s compliance with conditions established by the council.

(Eff. 10/18/81, Register 80; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.240

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 11.46.580 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.

13 AAC 85.010(b) is amended to read:

(b) A participating police department may not hire as a police officer a person

(1) who has been convicted of any felony or a misdemeanor crime of domestic violence **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction** by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) who has been convicted, during the 10 years immediately before the date of hire as a police officer, of a crime of dishonesty or crime of moral turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses, by a civilian court of this state, the United States, or another state or territory, or by a military court;

(3) who

(A) has been denied certification, has had the person's **public safety** [BASIC] certification revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.110 or by the responsible certifying agency of the issuing jurisdiction; or

(B) is under suspension of a **public safety** [BASIC] certification in this state or another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction; or

(4) who

(A) has illegally manufactured, transported, or sold a controlled substance, unless the person was under the age of 21 at the time of the act and the act occurred more than 10 years before the date of hire;

(B) within the five years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(i) the person was under the age of 21 at the time of using the controlled substance; or

(ii) 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) within the one year before the date of hire, has used marijuana, unless the person was under the age of 21 at the time of using marijuana.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am _____ / _____ / _____ , Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.010(c) is amended to read:

(c) A participating police department has **10** [30] days after the date of hire to confirm that a person hired as a police officer meets the standards of (a) and (b) of this section. The council may grant an extension of the **10-day** [30-DAY] period if the council determines that the person will probably be able to meet the standards by the end of the extension period. The chief administrative officer of the police department where the person is employed shall make a written request for the extension, and shall explain the reason the extension is necessary. If a police department concludes at the end of the investigation that the person does not meet the required standards, the department shall immediately discharge the person from employment as a police officer. When deciding whether a person meets the standards of (a) and (b) of this section, the department shall

(1) obtain proof of age, citizenship status, and education;

(2) obtain fingerprints on two copies of FBI Applicant Card FD-258 and forward both cards to the automated fingerprint identification section of the Department of Public Safety;

(3) obtain a complete personal history of the person on a form supplied by the council;

(4) conduct a thorough personal-history investigation of the person to determine character traits and habits indicative of moral character and fitness as a police officer;

(5) obtain a complete medical history report of the person; the report must be given to a licensed physician, advanced practice registered nurse, or physician assistant to use as a basis in conducting a physical examination of the person;

(6) require the person to undergo an examination by a licensed psychiatrist or psychologist; and

(7) determine whether the person

(A) has been denied certification, has had the person's **public safety** [BASIC] certification revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.110 or by the responsible certifying agency of the issuing jurisdiction; or

(B) is under suspension of a **public safety** [BASIC] certification in this state or in another jurisdiction, for the period of the suspension, and whether the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.010(d) is amended to read:

(d) All information, documents, and reports obtained by a participating police department under (c) of this section must be placed in the permanent files of the police department and must be available for examination at any reasonable time by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council **not later than 10** [WITHIN 30] days after the date of each hire:

(1) the medical examination report;

(2) the health questionnaire;

(3) the personal history statement;

(4) the psychological record form; and

(5) the compliance form to record an agency's compliance with (c)(1) - (7) of this section.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____,

Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.020 is amended by adding a new subsection to read:

(d) A participating police department may not assign any police duties, nor allow an officer to perform law enforcement duties, during any period which the officer's certification has been suspended by the council.

Eff. 8/19/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 8/16/2000, Register 155; am 9/24/2016, Register 219; am ____ / ____ / _____, Register ()

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85 is amended by adding a new section to read:

Section

45. Supervisory and management certification

13 AAC 85.045. Supervisory and management certification. (a) The council will issue a supervisory or management certificate to a police officer meeting the standards set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.010(d) are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

- (1) be a full-time paid police officer of a police department in this state;
- (2) possess an intermediate or advanced certificate;

(3) have been employed full-time as the direct supervisor of at least one other police officer for twelve (12) months, or longer;

(4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and

(5) have completed at least 40 hours of additional council approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

(1) be a full-time paid police officer of a police department in this state;

(2) possess a supervisory certificate;

(3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;

(4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and

(5) have completed at least 40 hours of additional council approved training in addition to those previously relied upon for prior certification.

(Eff. ___/___/___, Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.050(b) is amended to read:

(b) The basic police officer academy must include the following topics of instruction:

- (1) disability awareness in compliance with the requirements of AS 18.65.220;
- (2) bloodborne pathogens;
- (3) ethics;
- (4) constitutional law, [AND] civil rights, **and officer duty to intervene**;
- (5) control tactics;
- (6) cardiopulmonary resuscitation (CPR), basic first aid, and use of an automated external defibrillator (AED);
- (7) criminal investigation, including;
 - (A) controlled substances;
 - (B) crimes against minors; and
 - (C) sex crimes and human trafficking;
- (8) the criminal justice system;
- (9) criminal law and procedure;
- (10) crime scene investigation;
- (11) cultural diversity;
- (12) domestic violence;

(13) driving under the influence, field sobriety training, and use of a scientific instrument to analyze a sample of a person's breath and determine the breath alcohol content in that sample;

(14) electronic evidence and identity theft;

(15) classroom and practical emergency vehicle operations;

(16) emotional survival, police stress, and trauma;

(17) mental health issues;

(18) firearms, including;

(A) classroom instruction;

(B) handguns, practical instruction;

(C) handguns, practical instruction, low-light operations;

(D) long guns, practical instruction; and

(E) long guns, practical instruction, low-light operations;

(19) hazardous materials;

(20) interview and interrogation;

(21) juvenile law and procedures;

(22) patrol procedures;

(23) police tools, including TASER, oleoresin capsicum, baton, handcuffs, and radar;

(24) professional communication;

(25) radio procedures;

(26) report writing;

(27) search-and-seizure and search warrants;

(28) social media;

(29) traffic law and stops, including practical scenarios and accident investigation;

and

(30) use of force.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am _____ / _____ / _____, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.240

13 AAC 85.060(a) is amended to read:

(a) The council may waive part or all of the basic police officer academy requirements if an applicant furnishes satisfactory evidence that the applicant has successfully completed

(1) an equivalent basic police officer academy;

(2) a 12-consecutive-month probationary period with the police department the applicant is employed within this state at the time of the waiver request;

(3) a council-certified, department-supervised field training program; and

(4) a council-certified recertification police training academy that consists of a minimum of 80 hours of classroom and practical training and that includes the following topics of instruction:

(A) criminal laws in this state;

(B) control tactics;

(C) domestic violence;

(D) ethics;

(E) firearms;

(F) use of force **and officer duty to intervene**;

(G) juvenile law and procedures in this state;

(H) laws of arrest in this state;

(I) traffic law in this state;

(J) laws in this state regarding detection of driving under the influence and enforcement; and

(K) recognizing and working with disabled persons in compliance with the requirements of AS 18.65.220.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 10/24/92, Register 124; am 8/5/95, Register 135; am 8/16/2000, Register 155; am 3/31/2005, Register 173; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ____ / ____ / _____, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.240

13 AAC 85.090(a) is amended to read:

(a) Within **10**[30] days after the date that a police officer is appointed by a participating police department, the police department's chief administrative officer, or the chief administrative officer's designee, shall notify the council in writing, on a form provided by the council, of the appointment of the police officer, unless a public record of the appointment would jeopardize the police officer or the police officer's assignment.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/_____, Register)

Authority: AS 18.65.220

AS 18.65.240

13 AAC 85.090(b) is amended to read:

(b) A participating police department shall notify the council within **10**[30] days after the date that a police officer is no longer employed by the police department. The notification to the council must state the reason the person is no longer employed as a police officer by the police department, including layoff of the officer, death of the officer, termination of the officer by the police department, or the officer's voluntary resignation. If the reason for the termination of employment is the voluntary resignation of the officer, the police department must disclose in the notification if the resignation was to avoid an adverse action by the police department. The

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police department must also disclose in the notification if any resignation or termination involved a finding or allegation of dishonesty, misconduct, or lack of good moral character.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/_____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.090(d) is amended to read:

(d) Within 10[30] days after the allegation being sustained by administrative review, a participating police department shall notify the council of an allegation of misconduct by an officer employed by that department if the misconduct alleged may be cause for revocation under 13 AAC 85.110.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/_____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.090 is amended by adding a new subsection to read:

(f) A participating police department shall notify the council within 10 days of an officer being arrested or charged with any misdemeanor or felony crime. Any police officer, regardless of their certification status, who is arrested or charged with any misdemeanor or felony crime in this

state or any other jurisdiction shall notify their employing agency no later than three days after their arrest or a criminal charge being filed.

(Eff. 8/10/73, Register 47; am 9/17/76, Register 59; am 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.100(a) is amended to read:

(a) The council may deny a **public safety** [BASIC] certificate or find a police officer job applicant or training applicant ineligible for certification upon a finding that the applicant

(1) falsified or omitted information required to be provided on the application for certification or on supporting documents; or

(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) has, after hire as a police officer,

(A) lied or falsified official written or verbal communications or records;

(B) violated the law enforcement code of ethics;

(C) negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) harassed or coerced another person;

(E) engaged in inappropriate sexual activity while on duty;

(F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication;

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agency's property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or

(J) failed to respond or to respond truthfully to questions related to an investigation or legal proceeding.

(Eff. 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.100(b) is amended to read:

(b) The council will deny a **public safety** [BASIC] certificate or find a police officer job applicant or training applicant ineligible for certification upon a finding that the applicant

(1) has been convicted of **any felony**, a misdemeanor crime of domestic violence [OR, AFTER HIRE AS A POLICE OFFICER, HAS BEEN CONVICTED OF ANY FELONY], or [OF] a misdemeanor crime listed in 13 AAC 85.010(b)(2);

(2) has, after hire as a police officer,

(A) used marijuana;

(B) illegally used or possessed a 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;

(3) does not meet the standards in 13 AAC 85.010(a) or (b); or

(4) 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.

(Eff. 8/10/80, Register 75; am 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.110 is repealed and readopted to read:

13 AAC 85.110. **Suspension or revocation of certificates.** (a) The council may suspend or revoke a public safety 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;

(3) does not meet the standards in 13 AAC 85.010(a) or (b);

(4) has, after hire as a police officer,

(A) lied or falsified official written or verbal communications or records;

(B) violated the law enforcement code of ethics;

(C) negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) harassed or coerced another person;

(E) engaged in inappropriate sexual activity while on duty;

(F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication;

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agency's property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense; or,

(J) failed to respond or to respond truthfully to questions related to an investigation or legal proceeding; or

(5) fails to complete minimum annual training requirements in compliance with 13 AAC 87.084

(b) The council will revoke a 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);

(2) has, after hire as a police officer,

(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 medication not specifically prescribed to the person; or

(C) illegally purchased, sold, cultivated, transported, manufactured, or distributed a 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 suspension or revocation of a certificate issued by the council when the suspension or revocation complies with AS 18.65.130 - 18.65.290 and 13 AAC 85.005 - 13 AAC 85.120.

(d) Subject to the provisions of the Administrative Procedures Act, the executive director shall have cause to immediately suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking a certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized to exercise police authority.

(e) If a public safety 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.

(f) 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 public safety certificate.

(g) 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 suspending or revoking the police officer's public safety certificate under this section.

(h) 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).

(Eff. 9/23/84, Register 91; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.240 AS 18.65.270

13 AAC 85.210(b) is amended to read:

(b) A person may not be hired as a probation, parole, or correctional officer if that person

(1) has been convicted of any felony or a misdemeanor crime of domestic violence, **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction,** by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the 10 years immediately before the date of hire as a probation, parole, or correctional officer, of a crime of dishonesty or crime of moral

turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses;

(3) has illegally manufactured, transported, or sold a controlled substance, unless the person was under the age of 21 at the time of the act and the act occurred more than 10 years before the date of hire;

(4) within the five years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(A) the person was under the age of 21 at the time of using the controlled substance; or

(B) 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;

(5) within the one year before the date of hire, has used marijuana, unless the person was under the age of 21 at the time of using marijuana;

(6) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction;
or

(7) is under suspension of a **public safety** [BASIC] certificate in **this state or in** another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.210(c) is amended to read:

(c) A person hired as a probation, parole, or correctional officer may not remain employed in that position without written confirmation from the Department of Corrections, submitted within **30** [90] days after the date of hire, that the person meets the standards of (a) and (b) of this section. The council will grant an extension of the **30-day** [90-DAY] period, upon a written request by the Department of Corrections that explains the reason the extension is necessary, and if the council determines that the person will probably be able to meet the standards by the end of the extension period. If the Department of Corrections concludes at the end of an investigation that a person does not meet the required standards, the person may not continue employment as a probation, parole, or correctional officer and the Department of Corrections shall notify the council on a form provided by the council. For purposes of determining whether a person meets the standards of (a) and (b) of this section,

(1) the following information must be provided:

(A) proof of age, citizenship status, and applicable education;

(B) fingerprints on two copies of FBI Applicant Card FD-258; both cards must be forwarded to the automated fingerprint identification section of the Department of Public Safety;

(C) a complete personal history of the person on a form supplied by the council;

(D) a complete medical history report of the person; the report must be provided to a licensed physician, advanced practice registered nurse, or physician assistant for use in conducting a physical examination of the person;

(E) information as to whether the person

(i) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction; or

(ii) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, and whether the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction;

(2) a thorough personal-history investigation of the person must be conducted to determine character traits and habits indicative of moral character and fitness as a probation, parole, or correctional officer; the investigation must include a check of

(A) criminal history;

(B) wants and warrants;

(C) job references from at least three previous employers unless the person has had less than three previous jobs;

(D) job references from all previous law enforcement or criminal justice system employers in the preceding 10 years; and

(E) at least two personal references; and

(3) the person must take the Department of Corrections' psychological screening examination and the person must undergo an examination by a licensed psychiatrist or psychologist.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.242

AS 18.65.248

13 AAC 85.210(d) is amended to read:

(d) All information, documents, and reports provided or developed under (c) of this section must be placed in the permanent files of the Department of Corrections and must be available for examination, at any reasonable time, by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council within **30** [90] days after the date of each hire:

- (1) the medical examination report;
- (2) the health questionnaire;
- (3) the personal history statement;
- (4) the psychological screening report;
- (5) verification of a psychological or psychiatric examination report; and
- (6) the compliance form to record an agency's compliance with (c)(1) - (3) of this

section.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.210(f) is amended to read:

(f) The information in the council's files regarding an applicant or a probation, parole, or correctional officer is confidential, and available only for use by the council in carrying out the requirements of AS 18.65.130 - 18.65.290 and the regulations adopted under AS 18.65.130 - 18.65.290. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a probation, parole, or correctional officer may be reviewed by the applicant or officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer may be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files that was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to deny, **suspend**, or revoke certification will be revealed to the officer or applicant.

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135; am 7/15/98, Register 147; am 2/20/99, Register 149; am 8/16/2000, Register 155; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.215(b) is amended to read:

(b) A person may not be hired as a municipal correctional officer if that person

(1) has been convicted of any felony or a misdemeanor crime of domestic violence, **or a crime that is a sex offense in this state as defined in AS 12.63.100 or a similar law of another jurisdiction,** by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the three years immediately before the date of hire as a municipal correctional officer, of a crime of dishonesty or crime of moral turpitude, of a crime that resulted in serious physical injury to another person, or of two or more DUI offenses;

(3) has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, of the sale, manufacture, transport, or possession for purposes of sale, manufacture, or transport of a controlled substance;

(4) within the three years before the date of hire, has illegally used a Schedule IA, IIA, IIIA, IVA, or VA controlled substance, unless

(A) the person was under the age of 21 at the time of using the controlled substance; or

(B) 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;

(5) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, unless the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction;
or

(6) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, unless the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.215(c) is amended to read:

(c) A person hired as a municipal correctional officer may not remain employed in that position without written confirmation from the municipality, submitted within 30 days after the date of hire, that the person meets the standards of (a) and (b) of this section. The council will grant an extension of the 30-day period, upon a written request by the municipality that explains the reason the extension is necessary, and if the council determines that the person will probably be able to meet the standards by the end of the extension period. If a municipality concludes at the

end of an investigation that a person does not meet the required standards, the person may not continue employment as a municipal correctional officer. For purposes of determining whether a person meets the standards of (a) and (b) of this section,

(1) the following information must be provided:

(A) proof of age, citizenship status, and applicable education;

(B) fingerprints on two copies of FBI Applicant Card FD-258; both cards must be forwarded to the automated fingerprint identification section of the Department of Public Safety;

(C) a complete personal history of the person on a form supplied by the council;

(D) a complete medical history report of the person; the report must be provided to a licensed physician, advanced practice registered nurse, or physician assistant for use in conducting a physical examination of the person;

(E) information as to whether the person

(i) has been denied certification, has had the person's **public safety** [BASIC] certificate revoked, or has surrendered the person's **public safety** [BASIC] certificate, in this state or another jurisdiction, and whether the denial, revocation, or surrender has been rescinded by the council under 13 AAC 85.270 or by the responsible certifying agency of the issuing jurisdiction; or

(ii) is under suspension of a **public safety** [BASIC] certificate in **this state or** another jurisdiction, for the period of the suspension, and whether

the suspension has been rescinded by the responsible certifying agency of the issuing jurisdiction; and

(2) a thorough personal-history investigation of the person must be conducted to determine character traits and habits indicative of moral character and fitness as a municipal correctional officer; the investigation must include a check of

(A) criminal history;

(B) wants and warrants;

(C) job references from at least three previous employers unless the person has had less than three previous jobs; and

(D) at least two personal references.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.215(f) is amended to read:

(f) Except if the employing municipality by ordinance makes that information public, the information in the council's files regarding an applicant or a municipal correctional officer is confidential, and available only for use by the council in carrying out the requirements of AS

18.65.130 - 18.65.290 and 13 AAC 85.200 - 13 AAC 85.280. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a municipal correctional officer may be reviewed by the applicant or the officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer may be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files that was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to **suspend, deny,** or revoke certification will be revealed to the officer or applicant.

(Eff. 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85.220 is amended by adding a new subsection to read:

(d) A participating agency may not assign any probation, parole, correctional, or municipal correctional duties, nor allow an officer to perform those duties, during any period which the officer's certification has been suspended by the council.

(Eff. 8/8/90, Register 115; am 8/16/2000, Register 155; am 4/12/2001, Register 158; am ____/____/____, Register)

Authority: AS 18.65.220 AS 18.65.245 AS 18.65.285
AS 18.65.242 AS 18.65.248

13 AAC 85.230 is retitled to **Basic, intermediate, and advanced certification for probation, parole, and correctional officers** and is amended by adding new subsections to read:

(f) To be eligible for an intermediate certificate, a probation, parole, or correctional officer must

- (1) be a full-time paid probation, parole, or correctional officer in this state;
- (2) possess a basic certificate; and
- (3) have acquired either or both of the following, subject to (j) of this section, and

except that training hours earned while attending a basic academy do not count towards an intermediate certificate:

(A) the following minimum number of years of experience as a probation, parole, or correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	two	four	five	six
Minimum education points in college credit	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	100	120

(B) seven or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(g) To be eligible for an advanced certificate, an applicant must

(1) be a full-time paid probation, parole, or correctional officer in this state;

(2) possess a basic and intermediate certificate; and

(3) have acquired either or both of the following, subject to (j) of this section, and

except that training hours earned while attending a basic academy do not count towards an advanced certificate:

(A) the following minimum number of years of experience as a probation, parole, or correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	Four	Six	Nine	11	13
Minimum education points in college credit	Master's degree	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	140	180	220

(B) 14 or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(h) College credits or degrees awarded by an institution of higher learning accredited by a regional or national accrediting agency recognized by the United States Secretary of Education will be recognized by the council. College credits awarded for advanced, supervisory, management, executive, or specialized law enforcement courses may be recognized by the

council for either training or education points. Education points will be awarded on the following basis:

(1) one-quarter college credit equals two-thirds of an education point;

(2) one semester college credit equals one education point.

(i) All training must be documented, and the course must have been completed successfully by the applicant.

(j) After a basic certificate is awarded, an officer must achieve the prescribed training hours towards the next level of certification. After an intermediate certificate is awarded, an officer must achieve the prescribed training hours for an advanced certificate. The officer may not count the same hours towards each subsequent level of certification.

(Eff. 8/8/90, Register 115; am 6/13/2002, Register 162; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.242

AS 18.65.248

13 AAC 85 is amended by adding a new section to read:

Section

232. Supervisory and management certification

13 AAC 85.232. **Supervisory and management certification.** (a) The council will issue a supervisory or management certificate to a probation, parole, or correctional officer meeting the

standards set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.210 are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

- (1) be a full-time paid a probation, parole, or correctional officer in this state;
- (2) possess an intermediate or advanced certificate;
- (3) have been employed full-time as the direct supervisor of at least one other a probation, parole, or correctional officer for twelve (12) months, or longer;
- (4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

- (1) be a full-time paid a probation, parole, or correctional officer in this state;
- (2) possess a supervisory certificate;
- (3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;
- (4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for prior certification.

(Eff: ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.242

13 AAC 85.235 is retitled to **Basic, intermediate, and advanced certification for municipal correctional officers** and is amended by adding new subsections to read:

(e) To be eligible for an intermediate certificate, a municipal correctional officer must

(1) be a full-time paid municipal correctional officer in this state;

(2) possess a basic certificate; and

(3) have acquired either or both of the following, subject to (i) of this section, and

except that training hours earned while attending a basic academy do not count towards an intermediate certificate:

(C) the following minimum number of years of experience as a municipal correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	two	four	five	six
Minimum education points in college credit	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	100	120

(D) seven or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(f) To be eligible for an advanced certificate, an applicant must

(1) be a full-time paid municipal correctional officer in this state;

(2) possess a basic and intermediate certificate; and

(3) have acquired either or both of the following, subject to (i) of this section, and

except that training hours earned while attending a basic academy do not count towards an advanced certificate:

(A) the following minimum number of years of experience as a municipal correctional officer, minimum education points, and minimum training hours:

Minimum years of experience	Four	Six	Nine	11	13
Minimum education points in college credit	Master's degree	Bachelor of arts (B.A.) or bachelor of science (B.S.) degree	Associate of arts (A.A.) or associate of science (A.S.) degree	45	None
Minimum training hours	40	80	140	180	220

(B) 14 or more years of experience as an officer and a minimum of 20 training hours for each year of officer experience.

(g) College credits or degrees awarded by an institution of higher learning accredited by a regional or national accrediting agency recognized by the United States Secretary of Education will be recognized by the council. College credits awarded for advanced, supervisory, management, executive, or specialized law enforcement courses may be recognized by the

council for either training or education points. Education points will be awarded on the following basis:

(1) one-quarter college credit equals two-thirds of an education point;

(2) one semester college credit equals one education point.

(h) All training must be documented, and the course must have been completed successfully by the applicant.

(i) After a basic certificate is awarded, an officer must achieve the prescribed training hours towards the next level of certification. After an intermediate certificate is awarded, an officer must achieve the prescribed training hours for an advanced certificate. The officer may not count the same hours towards each subsequent level of certification.

(Eff: ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.242

13 AAC 85 is amended by adding a new section to read:

Section

237. Supervisory and management certification

13 AAC 85.237. **Supervisory and management certification.** (a) The council will issue a supervisory or management certificate to a municipal correctional officer meeting the standards

set forth in (b) or (c) of this section. No certificate will be issued unless documents required under 13 AAC 85.215 are submitted to the council.

(b) To be eligible for a supervisory certificate, an applicant must:

- (1) be a full-time paid municipal correctional officer in this state;
- (2) possess an intermediate or advanced certificate;
- (3) have been employed full-time as the direct supervisor of at least one other municipal correctional officer for twelve (12) months, or longer;
- (4) have successfully completed a council approved first-line supervisor course consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for intermediate or advanced officer certification.

(c) To be eligible for a management certificate, an applicant must:

- (1) be a full-time paid municipal correctional officer in this state;
- (2) possess a supervisory certificate;
- (3) have been employed full-time as the direct supervisor of at least one first-line supervisor for twelve (12) months, or longer;
- (4) have successfully completed council approved management level training consisting of at least 80 hours of instruction; and
- (5) have completed at least 40 hours of additional APSC approved training in addition to those previously relied upon for prior certification.

(Eff: ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285

AS 18.65.242

13 AAC 85.250(d) is amended to read:

(d) Within 30 days after the allegation being sustained by administrative review, a correctional agency shall notify the council of an allegation of misconduct by an officer employed by that agency if the misconduct alleged may be cause for suspension or revocation under 13 AAC 85.270.

(Eff. 8/8/90, Register 115; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285

AS 18.65.245

13 AAC 85.250 is amended by adding a new subsection to read:

(f) A participating agency shall notify the council within 10 days of an officer being arrested or charged with any misdemeanor or felony crime. Any probation, parole, correctional, or municipal correctional officer, regardless of their certification status, who is arrested or charged with any misdemeanor or felony crime in this state or any other jurisdiction shall notify their employing agency no later than three days after their arrest or a criminal charge being filed.

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(Eff. 8/8/90, Register 115; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.248 AS 18.65.285
AS 18.65.245

13 AAC 85.260(a) is amended to read:

(a) The council may deny a basic certificate or find a probation, parole, correctional, or municipal correctional officer job applicant ineligible for certification upon a finding that the applicant

(1) falsified or omitted information required to be provided on the application for certification or on supporting documents; or

(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) has, after hire as a probation, parole, correctional, or municipal correctional officer,

(A) lied or falsified official written or verbal communications or records;

(B) violated the correctional, probation, and parole officer code of ethics, or the municipal correctional officer code of ethics;

(C) negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) harassed or coerced another person;

(E) engaged in inappropriate sexual activity while on duty;

(F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who was formerly or is presently in the custody of the Alaska Department of Corrections.

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agencies property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense;

(J) failed to respond or to respond truthfully to questions related to an investigation or legal proceeding; or

(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.245 AS 18.65.270
AS 18.65.242 AS 18.65.248 AS 18.65.285

13 AAC 85.270 is repealed and readopted to read:

13 AAC 85.270 **Suspension or revocation of certification.** (a) The council may suspend or revoke a public safety 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);

(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,

(A) lied or falsified official written or verbal communications or records;

(B) violated the correctional, probation, and parole officer code of ethics, or the municipal correctional officer code of ethics;

(C) negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer;

(D) harassed or coerced another person;

(E) engaged in inappropriate sexual activity while on duty;

(F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who was formerly or is presently in the custody of the Alaska Department of Corrections.

(G) unlawfully converted, or engaged in the unauthorized use of, the employing agencies property, equipment, or funds;

(H) knowingly disclosed confidential information or information that may compromise an official investigation;

(I) failed to report to the employing agency within three days of being arrested or charged with a criminal offense;

(J) failed to respond or to respond truthfully to questions related to an investigation or legal proceeding; or

(K) failed to complete meet annual minimum annual training requirements proscribed by the council pursuant to 13 AAC 87.084.

(b) The council will revoke a public safety 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) used marijuana;

(B) illegally used or possessed a 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; 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 suspension or revocation of a certificate issued by the council when the action complies with AS 18.65.130 - 18.65.290 and 13 AAC 85.200 - 13 AAC 85.280 or 13 AAC 87.084.

(d) Subject to the provisions of the Administrative Procedures Act, the executive director shall have cause to immediately suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking the officer's probation, parole, correctional, or municipal correctional officer certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized authority as a probation, parole, correctional, or municipal correctional officer.

(e) If a public safety 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.

(f) If a petition for rescission is based on one or more of the reasons set out in (e) 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 public safety certificate.

(g) 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 suspending or revoking the officer's public safety certificate under this section.

(h) 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).

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(Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 4/12/2001, Register 158; am 8/8/2007, Register 183; am 9/24/2016, Register 219; am 9/1/2017, Register 223; am ___/___/___, Register)

Authority:	AS 18.65.220	AS 18.65.245	AS 18.65.270
	AS 18.65.242	AS 18.65.248	AS 18.65.285

13 AAC 85.900 is amended by adding the definitions:

(30) “public safety certificate” means a certificate issued by the council or an equivalent certification issued by another jurisdiction.

(31) “suspension” of certification means the temporary or conditional termination of an officer’s authority to act in their official capacity. Suspension may be for a set time-period or may be conditioned upon the officer’s compliance with conditions established by the council.

(Eff. 8/10/73, Register 47; am 8/10/80, Register 75; am 9/23/84, Register 91; am 3/16/89, Register 109; am 8/8/90, Register 115; am 10/24/92, Register 124; am 9/6/96, Register 139; am 7/15/98, Register 147; am 3/25/2001, Register 157; am 4/12/2001, Register 158; am 6/13/2002, Register 162; am 8/8/2007, Register 183; am 2/13/2010, Register 193; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority:	AS 18.65.220	AS 18.65.242	AS 18.65.290
	AS 18.65.240	AS 18.65.285	

13 AAC 87.040(e) is amended to read:

(e) The council may **suspend or** revoke instructor certification whenever an instructor is found by the council to be no longer qualified. The executive director of the council may initiate proceedings under the Administrative Procedure Act (AS 44.62) for the revocation of a certificate issued by the council when the revocation complies with AS 18.65.130 - AS 18.65.290 and 13 AAC 85.005 - 13 AAC 89.150. The council will consider **suspension or** revocation of instructor certification if

(1) an instructor is terminated or asked to resign, or resigns instead of discharge for cause by his employer;

(2) there is a recommendation to revoke certification by the director of a training program certified by the council under 13 AAC 87.010 or 13 AAC 87.020 or by the instructor's employer for failure to provide adequate instruction; or

(3) the holder of the instructor certificate falsified or omitted information required to be provided on an application for certification or on supporting documents.

(4) the instructor fails to report to the council within five business days of being arrested or charged with any criminal offense in Alaska or any other jurisdiction.

(Eff. 11/25/77, Register 64; am 10/18/81, Register 80; am 8/8/90, Register 115; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 87.060(a) is amended to read:

(a) The basic training program of instruction for correctional officers must include

(1) an initial program of instruction that is provided by the Department of Corrections and that a correctional officer must complete within 30 days after the date of hire; the program consists of a minimum of 40 hours of instruction and must include the following topics of instruction:

(A) cardiopulmonary resuscitation (CPR), bloodborne pathogens, and first aid instruction sufficient to qualify the correctional officer for a council-approved basic first aid certificate;

(B) professional code of conduct, including prohibition of sexual harassment and core values of a correctional professional;

(C) use-of-force policy overview;

(D) avoiding offender set-ups;

(E) incident command system;

(F) the federal Prison Rape Elimination Act (PREA);

(G) suicide awareness; and

(H) authorized employee property; and

(2) a correctional officer academy that a correctional officer must complete before completing the correctional officer's probationary period; the correctional officer academy

consists of a minimum of 200 hours of instruction and must include the following topics of instruction:

- (A) security procedures, custody, and supervision of inmates;
- (B) use of force, firearms certification, other less lethal weapons certifications, and use of restraints;
- (C) communication skills and techniques, report writing, and record keeping;
- (D) officer safety and security, control techniques, mental health and suicide prevention, and emergency procedures;
- (E) diversity and disability awareness in compliance with the requirements of AS 18.65.220;
- (F) constitutional law, civil rights, and officer duty to intervene;** and
- (G) reentry and supervision standards.

(Eff. 8/8/90, Register 115; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.242

13 AAC 87.060(b) is amended to read:

(b) The basic training program of instruction for probation and parole officers must include

(1) an initial program of instruction that is provided by the Department of Corrections and that a probation or parole officer must complete within 30 days after the date of hire; the program consists of a minimum of 40 hours of instruction and must include the following topics of instruction:

(A) cardiopulmonary resuscitation (CPR), bloodborne pathogens, and first aid instruction sufficient to qualify the probation or parole officer for a council-approved basic first aid certificate;

(B) professional code of conduct, including prohibition of sexual harassment and core values of a correctional professional;

(C) use-or-force policy overview;

(D) avoiding offender set-ups;

(E) incident command system;

(F) the federal Prison Rape Elimination Act (PREA); and

(G) suicide awareness; and

(H) authorized employee property; and

(2) a probation and parole officer academy that a probation or parole officer must complete before completing the probation or parole officer's probationary period; the probation and parole officer academy consists of a minimum of 200 hours of instruction and must include the following topics of instruction:

(A) risk assessment;

- (B) interviewing and counseling techniques;
- (C) firearms familiarization and safety;
- (D) overview of the criminal justice system;
- (E) use of force, other less lethal weapons certifications, and use of restraints;
- (F) communications skills and techniques, report writing, and record keeping;
- (G) officer safety and security, control techniques, mental health and suicide prevention, and emergency procedures;
- (H) diversity and disability awareness in compliance with the requirements of AS 18.65.220;
- (I) **constitutional law, civil rights, officer duty to intervene**, legal issues, reentry, and supervision standards; and
- (J) techniques of supervision.

(Eff. 8/8/90, Register 115; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.242

13 AAC 87.080(a) is amended to read:

(a) The basic program of instruction for municipal correctional officers must include a minimum of 120 hours of instruction and must include the following topics of instruction:

- (1) security and search procedures;
- (2) supervision of inmates;
- (3) use of force and methods of self-defense;
- (4) diversity and disability awareness in compliance with the requirements of AS 18.65.220;
- (5) report writing;
- (6) rights and responsibilities of inmates;
- (7) fire and emergency procedures;
- (8) domestic violence;
- (9) communication skills and interpersonal relations;
- (10) special needs inmates;
- (11) recognition of the signs and symptoms of mental illness and cognitive disability;
- (12) substance abuse;
- (13) physical deficiencies;
- (14) suicide-prone behavior and suicide prevention;

(15) the federal Prison Rape Elimination Act (PREA);

(16) cross-cultural awareness;

(17) **constitutional law, civil rights, officer duty to intervene**, legal issues and liability;

(18) cardiopulmonary resuscitation (CPR); and

(19) first aid instruction sufficient to qualify students for a standard Red Cross first aid certificate or a council-approved equivalent.

(Eff. 4/12/2001, Register 158; am 9/24/2016, Register 219; am 4/6/2018, Register 226; am ___/___/___, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.242

13 AAC 87 is amended by adding a new section to read:

Article

1. Certification of training programs (13 AAC 87.010 - 13 AAC 87.040)
2. Basic Requirements of Probation, Parole, and Correctional Officer Training Programs (13 AAC 87.050 - 13 AAC 87.070)
3. Basic Municipal Correctional Officer Academy Requirements **(13 AAC 87.075 – 13 AAC 87.080)** [(13 AAC 87.075 - 13 AAC 87.085)]
4. **Officer In-Service Training Requirements (13 AAC 87.084 – 13 AAC 87.085)**

5. [4.] General Provisions (13 AAC 87.090 - 13 AAC 87.090)

Article 4. Officer In-Service Training Requirements

Section

84. In-Service Training Requirements

13 AAC 87.084. In-Service Training Requirements. (a) To retain certification, every police, corrections, municipal corrections, and probation/parole officer must complete a minimum of twelve (12) hours of council-approved continuing law enforcement training related to law enforcement each calendar year beginning January 1 following the date the officer was certified.

(1) In addition to continuing training and education directed by participating agencies, this training must include a combined minimum of eight (8) hours of council-approved continuing law enforcement training in topics selected annually by the council based upon current issues and professional trends. The council may provide this training at no cost to participating agencies or an agency administrator may elect to provide their own council approved training to their officers on the required topics. Selected topics may include:

(A) Recognizing and addressing implicit bias;

(B) Code of ethics and professional conduct;

(C) De-escalation, use of force, duty to Intervene;

(D) Recognizing patterns of behavior that may be related to mental or behavioral health issues or other disabilities;

(E) First aid and cardiopulmonary resuscitation;

(F) Statutory changes and court decisions impacting public safety;

(G) Cultural awareness and diversity; or

(H) Prison Rape Elimination Act (PREA) and other federally mandated programs.

(b) Except as otherwise provided, in addition to completing the agency in-service training requirement in section (a), an officer must:

(1) Review annually each policy of the employing agency which addresses the use of force in any situation in which the agency or the officer may become involved;

(2) If the officer is authorized to use a firearm, at least biannually demonstrate a minimum level of proficiency in the use of each type of firearm they are authorized to use in compliance with the standards of agency policy. An officer who does not demonstrate a minimum level of proficiency with the use of any type of firearm they are authorized to use they may not carry or use that type of firearm until they participate in a remedial course established by the employing agency to ensure that the officer achieves and maintains a satisfactory level of proficiency;

(3) If the officer is authorized to use an impact weapon, chemical weapon, electronic incapacitating device, or other less-lethal weapon, at least annually demonstrate a minimum level of proficiency in the use of each such weapon or device they are authorized to use in compliance with the standards of agency policy. An officer who does not demonstrate a minimum level of proficiency with the use of any such weapon they are authorized to use may not carry or use that weapon until they participate in a remedial course established by the

employing agency to ensure that the officer achieves and maintains a satisfactory level of proficiency

(4) If the duties of an officer require him or her to use arrest and control tactics, demonstrate annually a minimum level of proficiency in the use of arrest and control tactics, including, without limitation, techniques related to applying handcuffs, taking down suspects, self-defense and retention of weapons in compliance with the standards of agency policy.

(c) Each employing agency shall establish and provide the applicable courses set forth in section (b) to its officers and establish the minimum level of proficiency that an officer must demonstrate in each course. Each course must be certified by the council as outlined in 13 AAC 87.020. Not later than 30 days from course completion each employing agency will report an officer's course completion to the council on a form provided by the council.

(d) An officer:

(1) Who voluntarily leaves their employment as an officer for at least four (4) consecutive months but not more than twenty-four (24) consecutive months;

(2) Whose employment as an officer is suspended or terminated for any reason for at least four (4) consecutive months but not more than twenty-four (24) consecutive months;

(3) Who, during a period of continuous employment as an officer, is absent from their duties as an officer because of medical leave, military leave, or other approved leave for at least four (4) consecutive months; or

(4) Who is hired, rehired, or reinstated on or after July 1 of a reporting year, must satisfy the requirements of paragraphs 1-4 of section (b) before commencing or resuming their duties as an officer.

(e) The employing agency shall ensure that its officers comply with the requirements of sections (a-b). After an officer completes the requirements of sections (a-b), the employing agency shall submit verification that the officer has completed the requirements to the council on a form provide by the council. Verification must be submitted on or before December 31 of the year in which the officer was required to complete the requirements of sections (a-b). The employing agency shall notify each officer of the requirements of this section and the penalties set forth in section (f-g) for failure to comply with this section.

(f) If the council has not received verification that an officer has complete the requirements of sections (a-b) on or before December 31 of the year in which the officer was required to complete those requirements, the council shall notify the officer and administrator of the employing agency that the council has not received the verification required by section (e) and that if the verification is not received within sixty (60) days of notification, the council will immediately suspend the officer's certification until the officer or employing agency can provide the required verification.

(g) Upon request of the council or its designee, the employing agency shall make available for inspection the records of all officers to verify that they have complied with the requirements of sections (a-b).

(Eff ___/___/___, Register).

Authority: AS 18.65.220

AS 18.65.240

AS 18.65.245

AS 18.65.230

AS 18.65.242

AS 18.65.248

Editor’s note: The forms required in 13 AAC 87.084 are available from the Alaska Police Standards Council, Department of Public Safety, P.O. Box 111200, Juneau, AK 99811-1200 or on the council's website at <https://dps.alaska.gov/APSC/Agency-Forms>.

13 AAC 89.020(d) is amended by adding a new subsection to read:

(d) A participating village may not assign any police duties, nor allow a village police officer to perform law enforcement duties, during any period which the officer’s certification has been suspended by the council.

(Eff. 10/18/81, Register 80; am 1/15/95, Register 133; am 6/17/2020, Register 234; am 8/28/2020, Register 236; am ____/____/____, Register)

Authority: AS 18.65.220

AS 18.65.230

AS 18.65.240

13 AAC 89.040(a) is amended to read:

(a) A village police officer basic training program must consist of at least 80 hours of instruction and include instruction regarding

- (1) alcohol and drug interdiction;
- (2) arrest procedures;
- (3) constitutional rights and administration of justice;

- (4) crime scene investigation;
- (5) criminal complaints;
- (6) criminal law and procedure;
- (7) defensive tactics and use of force, **and duty to intervene**;
- (8) disability awareness, in compliance with the requirements of AS 18.65.220;
- (9) domestic violence, in compliance with the requirements of AS 18.65.240;
- (10) procedures regarding persons suspected of driving under the influence;
- (11) ethics and cultural diversity;
- (12) fire prevention and fire extinguishers;
- (13) first aid;
- (14) interview techniques;
- (15) juvenile procedures;
- (16) patrol procedures;
- (17) police tools such as oleoresin capsicum, baton, and handcuffs;
- (18) report writing and police notebooks;
- (19) search and rescue;
- (20) search-and-seizure and evidence procedures; and
- (21) sexual assault, in compliance with the requirements of AS 18.65.240.

(Eff. 10/18/81, Register 80; am 4/6/2018, Register 226; am 6/17/2020, Register 234; am _____ /_____/_____, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 89 is amended by adding a new section to read:

Section

55. Village police officer in-service training program

13 AAC 89.055. **Village police officer in-service training program.** (a) To retain certification, every village police officer must complete a minimum of eight (8) hours of council-approved continuing law enforcement training related to law enforcement every calendar year beginning January 1 following the date the officer was certified. Training will be made available to officers, at no cost, by the council under 13 AAC 87.090(a)(1)

(b) Except as otherwise provided, in addition to completing the agency in-service training requirement in section (a), an officer must:

(1) Review annually each policy of the employing village which addresses the use of force in any situation in which the agency or the officer may become involved;

(2) If the officer is authorized to use a firearm, at least biannually demonstrate a minimum level of proficiency in the use of each type of firearm they are authorized to use in compliance with the standards of village policy. An officer who does not demonstrate a minimum level of proficiency with the use of any type of firearm they are authorized to use they may not carry or use that type of firearm until they participate in a remedial course established

by the employing village to ensure that the officer achieves and maintains a satisfactory level of proficiency;

(3) If the officer is authorized to use an impact weapon, chemical weapon, electronic incapacitating device, or other less-lethal weapon, at least annually demonstrate a minimum level of proficiency in the use of each such weapon or device they are authorized to use in compliance with the standards of village policy. An officer who does not demonstrate a minimum level of proficiency with the use of any such weapon they are authorized to use may not carry or use that weapon until they participate in a remedial course established by the employing village to ensure that the officer achieves and maintains a satisfactory level of proficiency; and

(4) If the duties of an officer require them to use arrest and control tactics, demonstrate annually a minimum level of proficiency in the use of arrest and control tactics, including, without limitation, techniques related to applying handcuffs, taking down suspects, self-defense and retention of weapons in compliance with the standards of village policy.

(c) Villages shall report officer training to the council not later than 30 days after completion on a form provided by the council.

(Eff. ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

Editor's note: The forms required in 13 AAC 89.055 are available from the Alaska Police Standards Council, Department of Public Safety, P.O. Box 111200, Juneau, AK 99811-1200 or on the council's website at <https://dps.alaska.gov/APSC/Agency-Forms>.

13 AAC 89.070 is repealed and readopted to read:

13 AAC 89.070. **Denial, suspension, revocation, and lapse of certificates.** (a) The council will, in its discretion, deny, suspend, or revoke a village police officer certificate upon a finding that the officer

(1) falsified or intentionally omitted information on an application or other document required to be filed for certification;

(2) has been discharged, has been asked to resign, or has resigned in place of discharge from a police department; or

(3) does not meet the requirements of 13 AAC 89.010(a).

(b) Subject to the provisions of the Administrative Procedures Act, the executive director shall have cause to immediately suspend the certification of any officer who:

(1) is under indictment for, is charged with, or who has been convicted of the commission of any felony;

(2) is subject to an order of another state, territory, or the federal government or any peace officer licensing authority suspending or revoking a public safety certificate or license; or

(3) presents a clear and present danger to the public health or safety if authorized police authority.

(4) failed to complete minimum annual training requirement established by the council.

(c) The holder of a certificate shall immediately return the certificate to the council upon notification of revocation.

(d) A certificate lapses if the holder is not employed as a full-time village police officer for 12 consecutive months.

(e) A person may request reinstatement of a lapsed certificate after serving an additional probationary period as required by the council. The council will, in its discretion, require supplemental training as a condition of reinstatement.

(Eff. 10/18/81, Register 80; am 1/15/95, Register 133; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.230 AS 18.65.240

13 AAC 89.150 is amended by adding a new definition:

(16) “public safety certificate” means a certificate issued by the council or an equivalent certification issued by another jurisdiction.

(17) “suspension” of certification means the temporary or conditional termination of an officer’s certification and authority to act in their official capacity. Suspension may be for a set time-period or may be conditioned upon the officer’s compliance with conditions established by the council.

(Eff. 10/18/81, Register 80; am 6/17/2020, Register 234; am ___/___/___, Register)

Authority: AS 18.65.220 AS 18.65.240



Alaska Association of Chiefs of Police

PO Box 3734

Seward, Alaska 99664

January 28, 2021

Re: Recommendations for proposed APSC Regulations

The Alaska Association of Chiefs of Police encourages responsible, appropriate, sensible, and necessary police reform, in order to be responsive to the ever-changing landscape we work in every day. We believe our responsibility to the public is to maintain a professional police force and we support APSC in its efforts to make this happen.

In an extensive and time-consuming effort our Board of Directors, and the membership of AACOP, came together to evaluate the proposed Alaska Police Standards Regulations that are currently being proposed and up for public comment. We are hopeful that the Alaska Police Standards Council will consider our recommendations and implement these suggestions. We found most of the proposed changes to be sensible and some we found to be overreaching and ill-defined and unnecessary.

We ask that the Alaska Police Standards Council consider each of these recommendations and we would appreciate feedback on those recommendations. We would like to engage and work on a compromise that suits all those who may be affected by these changes.

- 1) 13AAC 85.010(c) Page 3, We prefer this to be changed to 15 business days.

Due to the complexity and speed at which police departments hire we believe 15 Business Days would be more reasonable.

- 2) 13 AAC85.010(d) same as #1 allow 15 business days.
- 3) 13 AAC 85.020 (d) Allow duties related to suspension to be performed. This language is too restrictive very broad. Agencies cannot get an officer off suspension if we don't allow "police duties," such as range qualifications, attend law enforcement related classes and other associated training that are "police duties."

Recommend changing language to allow for duties other than acting under the "color of law."

- 4) 13 AAC 85.090(a) & (b) & (d) Page 10, 13: Make this 15 business days. Due to the complexity of hiring, speed at which we hire, and all other factors 15 BD seems more reasonable.
- 5) 13 AAC 85.090 (f) Page 13: Make this 15 business days. Reason due to incarceration, delays in arrest, and weekends plus it is more consistent with previous deadlines.
- 6) 13 AAC 85.090 (f) Page 14: No changes
- 7) 13 AAC 85.100(a)(3)(B) “violated the law enforcement code of ethics.” **This must be removed all together due to the ambiguous terms and unreasonable expectations used within this oath.**

AACOP believes in the words and the ideology of the Law Enforcement Code of Ethics and we believe that every police officer should strive to achieve such perfection, but we also understand these words are DESIRED, “values and ideals,” not absolutes. Examples exist throughout this code, like unsullied, a term which has many shades of gray. A priest may view unsullied in a different way than a lawyer, politician, a police chief, or even a body such as the standards council.

The LECOIE even states we “constantly strive to achieve,” meaning we may not always do what it asks. This cannot be used as a standard model of decertification. Of course, we all swear that we will strive to achieve these ideals, but the bottom line is, we will never achieve this level of perfection in spirit.

Ethics are not moral absolutes. We cannot hold anyone to this standard when not a single person can say they have done so with 100% honesty.

- 8) 13 AAC 85.100((a)(3)(C) Page 15: These terms like “unreasonable” are being tested and are starting to erode from the standard we have always believed. Recent cases out of the 10th Circuit court are now ignoring Graham v. Conner standards. When will this come to Alaska? The trends coupled with this language spells trouble on the horizon for Alaska Law Enforcement. AACOP issues a cautionary plea to consider defining this in more detail.
- 9) 13 AAC 85.100(a)(3)(D) Page 15: Define harassed and coerced. LEO’s get accused of this all the time but who sets the standard? What protections do line officers have from these terms being used as a “catch all,” to decertify an officer? Poor supervision and vengeful command staff can use this regularly to decertify officers. We have to be careful!

Recommend the word “unlawfully” be added in front of harassed and coerced.

- 10) 13 AAC 85.100(a)(3)(E) Page 15: What is “inappropriate sexual activity?” These loose terms need to be defined. Who determines inappropriate? What standard are we using?

Recommendation: This must be defined and clarified.

- 11) 13 AAC 85.100(a)(3)(F) Page 15: What is “participated,” “inappropriate relationship sexual or otherwise?” What is the otherwise? These loose terms need to be defined.

Remove “otherwise” and define “inappropriate relationship.”

- 12) 13 AAC 85.100(a)(3)(G) Page 15: This is a department level issue and is already a hot topic issue and in no way has a place in a decertification statute. These policies are ambiguous and almost impossible to write to cover all “exceptions.” We cannot place such an ambiguous standard in a statewide statute.

Add: If the investigating agency determines or something similar if this must be placed in statute. Would prefer this be removed.

- 13) 13 AAC 85.100(a)(3)(I) Page 15: This needs to be changed as stated in #6.

- 14) 13 AAC 85.100(a)(3)(G) Page 15: “fail to respond to questions related to an investigation,” Whose investigation? Does this include a third-party investigation, a news reporter’s investigation? This needs to be defined and written better.

If not APSC then who is going to protect the right not to self-incriminate in a non-administrative process? We cannot make a rule that compels officers to incriminate themselves in a matter not related to law enforcement.

An officer should be required to respond, in an administrative department investigation, or other authorized law enforcement investigations but not ALL investigations.

Not reasonable or fair to just say “investigation.” Define investigation.

- 15) 13 AAC 85.100(b)(1) Page 16: Every jurisdiction has different Felony definitions. Concerning for some, Alaska standard is not always a Seattle standard. Current trends make this statute concerning. The evolution of morality and selective prosecution in some jurisdictions can make this problematic.

Recommend: Language be added that requires APSC to analyze whether the conduct is a felony in Alaska.

- 16) Of course many of these concerns are repeated in the suspension section 13 AAC 85.110(a) – (b), and 13 AAC 85.260(a) – (b), 13 AAC 85.270.

Same issues as listed above. Be consistent with above recommendations.

- 17) 13 AAC 87.040(e)(4) Page 50: This does have 5 business days. No objections to this language.

- 18) 13 AAC 87.084(d)(1) & (3) Page 59: For a variety of reasons related to medical leave, seasonal workers, unexpected issues we would request this be changed to 6 months.

- 19) 13 AAC 87.084(f) Page 60: We would like this changed to 90 days? Works a little better.
- 20) Mandatory training requirements, funding, tracking, and costs to departments. All of these issues need to be answered.

AACOP found this issue to be very controversial. The Board of Directors, although not unanimously, voted to oppose the MANDATORY training requirements to be enforced by APSC, especially the 8 hours of “current trends.”

The “current trends,” is extremely problematic in that it isn’t defined and is open ended. Each jurisdiction is governed by the citizens, and it is the citizens of those jurisdictions, that may not believe in the “current trends,” occurring throughout our nation or in certain parts of our state. To enshrine a statute with such ambiguous language is extremely concerning to some on the BOD of AACOP.

Although we understand the intent of these requirements, there does not appear to be systemic failure throughout our state on this topic. We do not support such an extremely vague guideline like this. Most of the requirements seem appropriate but the consensus of the BOD, is these decisions be left to the department and the cultural and community norms of the locals not the “trend setters,” in other parts of the country.

Some feel this, ambiguous mandate, infringes on the local communities ability to regulate their ideals and standards. Local agencies should not be forced to adopt training which they feel may not suit their community objectives. National and state “trends,” can change with each administration and some feel this can cause inconsistent training requirements within the law enforcement that are contrary to the local culture.

We hope the Alaska Police Standards Council will consider these suggestions and make the appropriate changes. We understand the difficulties in making systemic changes and we all support a consistent and accountable system that is fair and equitable to all. APSC must be the last line of defense for those officers who are falsely accused and not allow regulations that make it easier to decertify someone especially with a lot of ambiguous terms.

We appreciate all the hard work that has gone into these changes and we support the effort to responsible police reform.

Very respectfully,

The Board of Directors of AACOP



February 19, 2021

R.E. Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200
(delivered via email to wendy.menze@alaska.gov)

Re: Comments on Proposed APSC Regulations

Executive Director Griffiths:

On February 8, 2021, Alaska Correctional Officers Association (ACOA) joined with other Alaska Law Enforcement representatives throughout the State of Alaska to provide questions and comments regarding many of the proposed changes to the Alaska Police Standards Council (APSC) regulations. We appreciate your response of February 10, 2021 to the questions posed in that correspondence. In this supplemental letter, ACOA's comments are focused on the anticipated impact the APSC proposed regulations will have specifically on Correctional Officers. However, given the breadth and scope of the proposed changes, there will surely be unanticipated consequences if the proposed regulations are adopted as drafted.

A thorough understanding of the environment in which Correctional Officers work is imperative when considering the proposed changes to the regulations. Correctional Officers' work environment is dynamic, fluid, and ever-changing. The nature of their work demands that they are constantly interacting with inmates. A sole Correctional Officer may be responsible for a mod with 100 inmates. Inmate living quarters often contain a combination of prisoners from opposing prison gangs, inmates running contraband, inmates who may have suicidal thoughts, inmates with serious mental illnesses, weaker inmates being pressured for sex or property by stronger inmates, grudges and animosity carried over from the street, and assorted other dangerous situations. The one Officer assigned to the unit is expected to monitor, observe and maintain a safe environment for staff and prisoners.

Officers must often work numerous four-hour holds¹ that are required due to chronic, staffing shortages. At all times, Officers must be alert, as one never knows when an altercation, fight, riot, or other event will occur. When working multiple, 16-hour shifts, it is difficult for Officers to get

¹ 4-hour holds refer to when an Officer, who normally works a 12-hour shift, is asked or mandated to stay at the institution for an additional 4 hours, making a 16-hour day.

enough rest between shifts. Additionally, Officers are being forced to work multiple days during their week off because the institutions must maintain minimum staffing levels. With COVID-19, their jobs are even more stressful. Inmates are feeling the effects of canceled visitations and other restrictions, and COVID-19 outbreaks² have resulted in nearly half of all inmates in Alaska testing positive for COVID-19.

Regrettably, staff shortages have been a consistent factor in Officers' lives, requiring Officers to do more with less, and overtime has been increasing at alarming rates. According to the FY 2020 Correctional Officer Bargaining Unit Profile, overtime was at an all-time high of \$10,335,184. Overtime has increased significantly over the past four years, reflected in the bargaining unit profiles shown below (copies attached):

- FY 2020 \$10,335,184³ 912 bargaining unit members
- FY 2019 \$8,956,161 884 bargaining unit members
- FY 2018 \$6,981,712 877 bargaining unit members
- FY 2017 \$4,696,782 902⁴ bargaining unit members
- FY 2016 \$3,830,804 949 bargaining unit members

After Palmer Correctional Center closed in 2016, Correctional Officer staffing was kept even lower in FY 2018 and 2019, while unsuccessful attempts were made to privatize the Department of Corrections by sending inmates to private prisons in the Lower 48. Inadequate staffing increases the burden on existing Officers, affecting every aspect of their jobs. Staffing shortages have been prevalent for years, and multiple studies, including the 2016 CGL Study and the 2010 Legislative Audit, have shown that Alaska's facilities have insufficient staffing to meet minimum safety and security standards. The Department of Corrections loses 120 Correctional Officers annually, impacting the number of trained and experienced Officers, and increasing recruitment and training costs for the DOC.

ACOA's comments below will refer to the proposed changes to the regulations both by regulation and the page numbers in the 71-page document containing the proposed regulations.

13 AAC 85.210(c)(d) and (f), pages 23, 26 and 27 (Reduces from 90 to 30 days DOC's timeframe for submitting confirmation that an Officer meets the basic employment standards and other information to APSC)

DOC does not have the current administrative capacity to adequately hire enough Officers. If the DOC does not confirm that Officers meet the standards within the reduced timeframe, Officers' employment will be negatively impacted causing more difficulties with retention and recruitment.

² <https://www.npr.org/transcripts/957141147>

³ The State recently recognized during contract negotiations that DOC's overtime calculation of 11.4 million is more accurate than the FY 2020 published amount of \$10,335,184.

⁴ Palmer Correctional Center closed near the end of 2016, resulting in fewer Officers.

We ask APSC to reconsider these reduced timeframes in light of the negative impact on the employing agency and affected Officers.

13 AAC 85.230 and 13 ACC 85.232, pages 33 and 37 (Establishes criteria for additional certification)

ACOA supports opportunities for Correctional Officers to voluntarily obtain advanced professional certification. Should DOC choose to rely upon certification for promotional decisions, ACOA is concerned that all Officers be given equal opportunity to obtain the requisite training for advanced certification. Due to staffing shortages Officers may not have the ability to obtain additional training during their regular working days and overtime may be required to facilitate the training.

An Officer, through no fault of his or her own, may not have the time or financial means to obtain the certification. On-line training should be made available to reduce travel costs and meet the needs of Officers with full schedules during the normal business day.

There is no provision in the proposed regulation to recognize relevant training received in the United States Armed Forces. Former military members often seek and are hired into jobs in Law Enforcement. It would be equitable to recognize the relevant training former military personnel have received if they lack an Associate's or Bachelor's degree.

13 AAC 250(f), page 41 (Requires notification within three days after arrest or charge of any misdemeanor or felony crime being filed)

On its face, this proposed regulation raises questions regarding an officer's duty to report. The duty to report to an employing agency arises "three days after their arrest or three days after a criminal charge being filed." *Emphasis Added*. Clarification of the reporting expectation could prevent Officers from inadvertently failing to timely report.

APSC should recognize that there is already a duty to report to the employing agency under the DOC's Policies and Procedures. Placing an additional and arbitrary timeline on this reporting period unnecessarily burdens an Officer, i.e., what if the Officer is unable to report within the three-day period but reports at day four or five? An Officer should not lose their APSC Certificate because they are unable to report within this shortened timeframe.

If APSC adopts this regulation as written, which states "regardless of their certification status," the duty to report should be provided by APSC as part of the application process for all incoming Officers. As part of the notification of applicants, and existing Officers, clarification or examples of type of offenses included within the regulation should be provided. APSC's response to questions received dated February 10, 2021 indicates that this regulation includes "traffic offenses classified as criminal offenses." Presumably, fishing or hunting violations classified as criminal offenses are also included. It is difficult to determine which offenses must be reported under the language as drafted.

13 ACC 85.260(a)(3), page 42 and 13 AAC 85.270, page 44 (May deny, suspend, or revoke a certificate “after hire” for expanded reasons)

The scope of these proposed regulations is unreasonably broad. As written, the proposed changes to the regulations would provide APSC far greater authority to pursue the denial, suspension, or revocation of Correctional Officers’ certificates.

If all of these regulatory changes expanding the reasons Officers can lose certification are adopted, Officers will be further disadvantaged when APSC decides to proceed with certificate revocation. The APSC should rely on the employing agency’s determination for disciplinary action and not revoke certificates when termination is not determined necessary by the employing agency. Officers only recourse has been to try to defend against certificate revocation in a hearing before the Office of Administrative Hearings (“OAH”). While some factual situations may clearly indicate that a certificate revocation proceeding is appropriate, others are much less clear. Many Officers cannot afford legal representation before the OAH and will be disadvantaged if they are unable to effectively represent themselves.

13 AAC 85.260(a)(3)(A) and 13 AAC85.270(5)(A), pages 42 and 44 (lied or falsified official written or verbal communications or records)

No one questions that Officers are expected to be truthful in their official verbal and written communications. However, this proposed regulation is particularly troubling when it is applied to all aspects of a Correctional Officer’s multiple responsibilities, which are inherent in the nature of their work.

When writing work-related reports or making work-related verbal statements, people perceive events differently based on their angle of sight, ability to hear and see events that are occurring, and recollection of events, especially when investigations are done months, and even years, after the event occurred. Thus, written reports or statements from multiple individuals about the same event may contain inconsistencies. Since inconsistencies occur, the question then becomes when will an inconsistency be categorized as a “falsified official written or verbal communication or record”?

Officers are required to conduct security checks and welfare checks at certain intervals, varying them to avoid setting a pattern, but, under the broad language of 13 AAC 85.260 and 13 AAC 85.270, recording these checks in official logbooks could be construed as making a false entry if a check did not get completed when it was entered. Historically, some Officers have been trained to log the check when the Officer starts to perform the check. Others have been trained to log the check when it is completed. Many events can occur while an Officer is conducting these checks that interfere with their completion. For example, the Officer may be assaulted by one or more inmates, a fight may break out among inmates that the Officer has to bring under control, an inmate with mental health or other issues may need to talk to the Officer for an extended amount of time to help calm down, an inmate may have a medical issue that requires an escort to the medical part of the facility, the Officer may have to respond for emergency assistance in another part of the

institution, substances may be spilled in hallways or common areas that must be cleaned up promptly to mitigate safety hazards, or almost any number of scenarios can and do occur that prevent an Officer from completing a security check at the time it was entered. This should not result in an Officer losing APSC certification and being banned from a Law Enforcement career based on a determination that the official record was falsified because a check was not completed as logged. Other Law Enforcement personnel do not have to contend with these constraints.

With the DOC's chronic understaffing, it can be difficult for Correctional Officers to timely complete every aspect of their job. An Officer who may not have time to complete a record or make a correction in a record would then be subject to suspension or revocation of their certificate for failing to complete the task or to make a correction in the record if the task were not completed as originally recorded. A good faith error should not be the basis for the loss of a certificate. Unfortunately, the Department of Corrections has shown over the years that when it wants to target a particular Officer it will go to extreme lengths to try to find that Officer doing something contrary to policies and procedures. With the broad regulatory language that the APSC is proposing, good Officers will lose their careers if they have been targeted and if the DOC can find any evidence of an incomplete or inconsistent entry in a written record or contradiction in a verbal conversation.

In addition, unlike other Law Enforcement agencies, Corrections Human Resources employs individuals who have not worked in a correctional setting to investigate Correctional Officers' actions. This leads to flawed investigations and disciplinary actions being overturned once the actions are considered within the appropriate context.

13 AAC 85.260(a)(3)(B) and 270(5)(B), pages 43 and 45 (violated the correctional, probation, and parole code of ethics, ...)

Correctional Officers can make mistakes during their careers that can result in a violation of the DOC Code of Ethics. Some investigations and disciplinary matters involving a Correctional Officer could fall under a Code of Ethics violation. However, there are degrees of severity of any potential violation. Under this proposed change, the APSC would have the authority to remove the certificate of an Officer who has made an ASPIN inquiry that was unnecessary for the performance of the Officer's duties, whereas loss of ASPIN access and renewed instructions may be sufficient to correct the problem. Again, the broad language of 13 AAC 85.260(3)(B) and 270(5)(B) does not provide reasoned criteria that will be used to revoke certification of a Correctional Officer if there is a violation of the Code of Ethics. Instead, it allows for extremely broad discretion to remove certificates, even for low level violations of policy.

13 AAC 85.260(a)(3)(C) and 270(5)(C), pages 43 and 45 (negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another Officer)

APSC's response to questions dated February 10, 2021 state that "negligently" is "intended to have the same definition as AS 11.81.900(a)(4)." Under that same reasoning, one presumes that APSC intends to define "knowingly" as AS 11.81.900(a)(2). Clarification of the term "knowingly" would be of assistance.

Correctional Officers work in an environment in which physical attacks from inmates occur in institutions on a frequent basis. Unlike members of the public, inmates are known to Officers and Officers are aware of certain inmates' propensity for violence. Officers who work with the same inmates over time are relied upon to anticipate when a situation can erupt toward violence and to take the actions that are necessary to maintain control. A person who does not work in that mod, that institution, or in corrections does not have the same understanding and the sense of what is necessary to prevent additional problems, including injury or even the loss of a life.

A "reasonable person," who may not have Law Enforcement experience, making the determination after the fact of whether the use of force was negligent will not have the same knowledge of an inmate, will not have been present to understand the circumstances of the event, and will not understand the danger an Officer felt he or she, other inmates, or other Correctional Officers were in at the time the force was applied or viewed by another Officer. Officers must react instantaneously to circumstances they are suddenly confronted with, and they do not have the luxury of reviewing security tapes after the fact from various angles to determine if a different action could have been taken that might also have controlled the situation. They must react to preserve their life and health, and that of the inmates, and they use their best judgment at the time when they are suddenly confronted with the need to act.

An example is when pepper spray is applied to the face of an inmate. A "reasonable person" without Law Enforcement experience might view this action as negligently using unreasonable force, when in fact, the DOC training academy trains Officers that when it is necessary to utilize OC on an inmate it should be applied towards the face and eyes. Again, unlike other Law Enforcement agencies, where trained Officers conduct investigations and disciplinary hearings, corrections does not have Correctional Officers in Human Resources. In a recent Administrative Investigation, the Human Resources representative chastised the Officer for spraying the inmate in the face, letting the Officer know that it was unreasonable use of force. This obviously was not an improper use of force, yet an Officer could face a revocation of their certificate by individuals unfamiliar with academy trained techniques.

ACOA notes that the concerns set forth above also apply when considering whether an Officer "knowingly failed to intervene in the unreasonable use of force by another officer."

13 AAC 85.260(a)(3)(D) and 270(5)(D), pages 43 and 45 (harassed or coerced another person)

This provision is extremely broad and the terms "harassed" and "coerced" are not defined. There is a subjective element in whether someone is feeling harassed or coerced. There is also a subjective element present when any third party reviews the facts of a situation to determine if another person was being harassed or coerced by an Officer. How those persons' perceptions and biases may impact whether harassment or coercion occurred should not result in the loss of an Officer's APSC certification. We recommend that 13 AAC 85.260(a)(3)(D) and 270(5)(D) be eliminated from the proposed regulations as written.

13 AAC 85.260(a)(3)(F) and 270(5)(F), pages 43 and 45 (participation in an inappropriate relationship)

This is an ambiguous regulation. As written, the phrase “knows or should have known” appears to not qualify “who was formerly or is presently in the custody of the Alaska Department of Corrections.” APSC should clarify its proposed regulation. Further the phrases “should have known” and “inappropriate relationship” are not defined. As drafted, it is not clear if the prohibited activity is the inappropriate relationship or if it is just knowing someone who was formerly or is presently in the custody of the DOC.

Correctional Officers have limited access to ACOMS and therefore cannot always know if someone they are in a relationship with was formerly in the custody of the DOC. Additionally, Officers may have no knowledge that a person was arrested, spent the night in custody, and then was released on bail and had charges dismissed. As written, it appears an Officer’s certification could be at risk if they are in a relationship with someone who was arrested 10 years ago and spent the night in a DOC facility.

APSC should clarify whether someone “who was formerly or is presently in the custody of the Alaska Department of Corrections” also refers to people who are or were in halfway houses. If so, this should be clearly disclosed to applicants for Correctional Officer positions. For those with limited experience with the criminal justice system, the halfway house distinction may not be clear.

13 AAC 85.260(a)(3)(G) and 270(5)(G), pages 43 and 45 (unlawfully converted, or engaged in the unauthorized use of employing agencies’ property, equipment, or funds)

This regulation is overly broad. A dollar value for the property or equipment only should be assigned so that de minimis use of the employing agencies’ property or equipment is not covered by this regulation. It is understandable that a pen may not be returned to the Officer’s workstation at the end of the shift, and inadvertently it may remain in the Officer’s pocket upon leaving the facility, whereas it would not be understandable that an Officer would deliberately take any amount of funds from an account belonging to the employer, even if the amount was less than a dollar.

Inadvertent unauthorized use of an employer’s property can occur. For example, there are undoubtedly instances where an employee has an agency credit card, as well as his or her personal credit cards, and mistakenly uses the agency card for a personal purchase. The employee may realize the error shortly after the card is used, or s/he may not realize the error until asked by the employing agency, at which point s/he promptly reimburses the employer for the amount charged erroneously. An incident such as this should not result in the loss of APSC certification, but under the regulation as written could be considered an unauthorized use of the employing agencies’ [sic] property or funds.

There are multiple other scenarios that could exist within the realm of unauthorized use of the employing agencies’ [sic] property, equipment, or funds, none of which should result in the loss of an Officer’s APSC certification.

13 AAC 85.260(a)(3)(H) and 270(5)(H), pages 43 and 45 (knowingly disclosed confidential information or information that may compromise an official investigation)

APSC should clarify whether the term “knowingly” is intended to have the same definition as AS 11.81.900(a)(2). Additionally, what information is considered confidential to the Department of

Corrections is subjective and has changed with different Administrations. For example, images or video from inside institutions were considered confidential. Then the Walker Administration released "confidential" video and imagery from within institutions.

13 AAC 85.260(a)(3)(I) and 270(5)(J), pages 43 and 45 (failure to report to employing agency within three days of being arrested or charged with a criminal offense)

See the comments to 13 AAC 85.250(f) set forth above.

13 AAC 85.260(a)(3)(J), pages 43 and 45 (failed to respond or to respond truthfully to questions related to an investigation or legal proceeding)

An Officer, like any other citizen and Law Enforcement employee, has a right to remain silent if they are given a *Miranda* warning. This section appears to ignore Correctional Officers' rights.

13 AAC 85.220, 13 AAC 250(d), and 13 AAC 85.270, pages 32, 41 and 44 (Expands authority to both suspend and revoke correctional officers' certificates and prevents an agency from employing a correctional officer with a suspended certificate)

ACOA opposes APSC authority to suspend Officers' certifications for a variety of reasons. This regulatory change is overly broad, subjective, and contains undefined terms. Additionally, the regulations do not provide for a maximum amount of time for a suspension, signifying that a suspension could be indefinite if the APSC fails to reinstate the Officer. This too broadly expands APSC's authority, without any counter-balancing protections for Officers to ensure that they will have an opportunity for a fair and complete investigation before actions are taken which remove their ability to provide for themselves and their families. Earlier in 13 AAC 85.260(a), ACOA addressed some of its concerns with overly broad and undefined reasons for certificate revocation that apply to 13 AAC 85.270(a) (5) (A), (B), (C), (D), (F), (G), (H), (I), (J), and (K).

Inadequate protections are in place for Officers if their only recourse is to ask for a hearing before the Office of Administrative Hearings after the council has already decided to move forward with revocation or suspension proceedings.

13 AAC 85.270(d)(3), page 47 (executive director provided authority to immediately suspend certification of any Officer who presents a clear and present danger to the public health or safety if authorized authority as a probation, parole, correctional, or municipal correctional officer)

ACOA opposes this provision of the regulations as it violates an Officer's due process rights by circumventing the investigatory process memorialized in the ACOA Collective Bargaining Agreement with the State of Alaska. The Administrative Procedures Act does not provide for an expedited hearing. The terms "clear and present danger," "public health," and "safety" are not defined.

13 AAC 87.040(e)(4), page 50 (instructor fails to report to the council within five business days of being arrested or charged with any criminal offense in Alaska or any other jurisdiction.)

See, ACOA comments above regarding 13 AAC 85.250(f). This section begs for clarification as to whether the revocation of the instructor certification means that the employee can no longer work as a Correctional Officer in any capacity or has some other intended or unintended consequence.

In summary, the Alaska Correctional Officers Association does not support the adoption of the regulatory changes being proposed by the APSC. They appear to be an attempt to broaden the already expansive ability of APSC to subjectively and without oversight remove Officers' certifications. Correctional Officers, and all public employees, rely on due process and just cause. Officers have a property right to protect their jobs and their livelihoods. When it suits the State's needs, the APSC has shown a willingness to circumvent the principles of just cause, due process, and progressive discipline. These principles are paramount to a properly functioning Law Enforcement agency, and they are memorialized in the ACOA Collective Bargaining Agreement and state law. Many of the proposed regulatory changes increase the State's ability to circumvent these principles and therefore ACOA cannot support their adoption.

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in blue ink that reads "Randy McLellan". The signature is written in a cursive, flowing style.

SSgt. Randy McLellan
President, Alaska Correctional Officers Association

Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Dear Mr. Griffiths,

Thank you for your service to the State of Alaska and for providing citizens the opportunity to comment on the proposed APSC regulations. I am very familiar with law enforcement and I have several concerns. Our police departments statewide are facing a recruiting and retention crisis, as well as, and potentially related to, nationwide unprecedented and undeserving scrutiny. The Anchorage Police Department is known to have the highest of reputation and employs consummate professionals. Anchorage police employees have multiple sources of oversight including a robust Internal Affairs Unit that investigates every complaint, the Anchorage Public Safety Advisory Committee, the Anchorage Assembly, the Office of Special Prosecution and your own agency, APSC.

These proposed changes seem very rushed and the language is so broad that it seems law enforcement professionals could risk losing their certificate by taking nearly any on or off-duty action at all. Police employees are not robots, they are humans that are entitled to grow, learn, make mistakes, and rebound. To put general phrases like keeping one's "private life unsullied as an example to all" is much too subjective for law. What is "sullied" to one might be very different to another, especially in our modern society.


The proposed legislation goes so far as to threaten to revoke police certification for such broad statements as "lying" after becoming a police officer or failing to respond during an investigation. There may be many legitimate reasons that an officer might lie on or off duty and be well within professional conduct. Additionally, officers should be able to have the same rights as citizens, such as the right to refuse to answer questioning during investigations. Police employees act under high amounts of stress and often their acts and statements in hindsight could be skewed to be unreasonable, neglectful, and even untrue without the benefit of knowledge of the human factors at play or the totality of the situation. I could continue with examples in the proposed language of how these broad and rushed statutes open our police employees up to extreme amounts of risk to their jobs without cause.

I have been in law enforcement in this state for 20 years. As a female police officer, it feels like we are going backward, to times when broad language in laws and policies protected the “good ol’ boy club” from liability when making employment decisions based on discrimination. Taking someone’s livelihood, in this case their certification, should be based on illegal activities and egregious, intentional misconduct. These things are currently defined in the law. The APSC does not need to succumb to the will of a national narrative that has no basis or place in Alaska.

Lastly, I understand that the law has many shades of grey, however, they always have checks and balances and a user-friendly way to grieve. These regulations allow for no public testimony, no public hearing, no oversight, and no procedural justice. The citizens would not stand for their criminal justice system to treat them in such an unjust manner. Why would we treat our public safety professionals worse?

Thank you for your time and attention to this important matter!

Sincerely and with much respect,

A handwritten signature in black ink, appearing to read 'AFraize', with a large, stylized initial 'A'.

Angelina Fraize
Anchorage, Alaska
907-952-3476
ajfraize@gmail.com



ONE SEALASKA PLAZA, SUITE 200 • JUNEAU, ALASKA 99801
TEL (907) 586-1325 • FAX (907) 463-5480 • WWW.AKML.ORG

Member of the National League of Cities and the National Association of Counties

Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200

February 16, 2021

Alaska Municipal League Comments on Proposed Regulatory Changes

In Response to: NOTICE OF PROPOSED CHANGES ON OFFICER STANDARDS, MINIMUM TRAINING STANDARDS & LEVELS OF PROFESSIONAL CERTIFICATION IN THE REGULATIONS OF THE ALASKA POLICE STANDARDS COUNCIL

The Alaska Police Standards Council proposes to adopt 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 officers.

To Whom It May Concern:

Public safety is a priority for the Alaska Municipal League, even as it is a Constitutional obligation of the State. We are appreciative of the Alaska Police Standards Council (APSC) efforts to update standards related to public safety, including through these proposed changes.

AML:

1. Supports disqualification from hire as a police officer an individual who has been convicted of a sex crime, but suggests that the 10-day notification period may need to be extended to account for local processes and internal timelines
2. Appreciates that duties may be prohibited while certification is under suspension by the APSC
3. Appreciates the establishment of standards for Supervisory and Management professional certifications levels for police
4. Supports the inclusion of duty to intervene training within the basic academy instruction, and urges the implementation of this to correspond to additional time made, where possible, and resources allocated to this addition
5. Encourages amending from 10 days to 15 or 30 days, to follow local procedures and capacity
6. Encourages coordination with local governments and police departments disqualification language that leads to an officer's eligibility, including an appeal mechanism
7. Supports expanding APSC's ability to ensure compliance
8. Supports disqualification from hiring individuals with past convictions of sex offenses
9. Supports timely reporting

10. Appreciates the addition of intermediate and advanced levels of professional certification
11. Appreciates the addition of supervisory and management levels of professional certification
12. Supports employer notification of arrest or charge
13. Suggests defining misconduct so that there are clear expectations to follow and be evaluated by
14. Supports expanding APSC's ability to follow through on compliance
15. Supports definitional actions
16. Supports notification of an instructor's arrest or charge to the council, and suggests including employer
17. Expects the State to appropriately fund this new requirement of 12 hours of annual in-service training
18. Expects the State to fund (time and travel) this new mandatory training for village police officers, and to produce an implementation plan prior to enacting this regulation, which should take into account the ability of the APSC to deliver this training
19. Supports the APSC's role in ensuring compliance of village police officers, and expects the APSC - or appropriate State agency with that authority – to produce an implementation plan that addresses any gaps if its actions result in no public safety officer in a community
20. Supports definitional actions

While these updated certification, communication, and training requirements may be critical to improved public safety in Alaska, we are surprised that support for compliance is not reflected in the State's proposed FY22 budget. In fact, there are no resources allocated to support the additional and necessary requirements. These regulations, then, become unfunded mandates that may further destabilize communities desperately searching for solutions. What we gain in qualifications we may lose in dedicated staff within each community.

While we support the State's interest in improving public safety, we are worried that this effort is not sufficiently resourced. For those communities already struggling to afford what they have, we don't want to see them penalized for not having the resources to meet new requirements.

Cordially,



Nils Andreassen
Executive Director

Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Dear Mr. Griffiths,

Thank you for allowing comment on the proposed APSC regulations. In short, the regulations seem to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality. This call could not be farther from the truth. Alaska is proud of the thousands of its public safety employees that serve the residents of Alaska.

Please consider slowing this process down. The regulations are extremely broad, they are not well articulated, many of the terms lack definitions, and they make our beloved State liable for due process violations. Our police officers have multiple layers of oversight to protect citizens. These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.

Please feel free to contact me for more detailed testimony.

Thank you for your service to Alaska and your understanding of my concerns,
Sincerely,

Brian Burton
Chugiak, Alaska
907-240-4151

Griffiths, Bob E (DPS)

From: Brian Fuchs <brianfuchs@gmail.com>
Sent: Thursday, February 11, 2021 12:06 PM
To: Menze, Wendy A (DPS)
Subject: APSC proposed Change to Police certification and minimum criteria for Peace Officers in Alaska

Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Dear Mr. Griffiths,

Thank you for allowing comment on the proposed APSC regulations. In short, the regulations seem to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality. This call could not be farther from the truth. Alaska is proud of the thousands of its public safety employees that serve the residents of Alaska.

Please consider slowing this process down. The regulations are extremely broad, they are not well articulated, many of the terms lack definitions, and they make our beloved State liable for due process violations. Our police officers have multiple layers of oversight to protect citizens. These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.

Please feel free to contact me for more detailed testimony.

Thank you for your service to Alaska and your understanding of my concerns,
Sincerely,

Brian Fuchs
907-947-6078
Wasilla, Alaska



February 17, 2021

Re: Support for PROPOSED CHANGES ON OFFICER STANDARDS, MINIMUM TRAINING STANDARDS & LEVELS OF PROFESSIONAL CERTIFICATION IN THE REGULATIONS OF THE ALASKA POLICE STANDARDS COUNCIL

Dear Alaska Police Standards Council,

We at the Community United for Safety and Protection have reviewed the proposed regulation changes linked here. <https://dps.alaska.gov/getmedia/8e413d84-a523-49c8-9fa6-32bccde68b1e/2021-0104-Regulation-Package-2020200735-for-publication.pdf>

We encourage you to adopt the proposed changes especially:

13 AAC 85.100(a) is amended to read: (a) The council may deny a public safety [BASIC] certificate or find a police officer job applicant or training applicant ineligible for certification..(E) engaged in inappropriate sexual activity while on duty; (F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication....

And

13 AAC 85.260(a) is amended to read: (a) The council may deny a basic certificate or find a probation, parole, correctional, or municipal correctional officer job applicant ineligible for certification upon a finding that the applicant

(E) engaged in inappropriate sexual activity while on duty; (F) participated in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication; or who was formerly or is presently in the custody of the Alaska Department of Corrections.

Furthermore, we are especially concerned about the lack of enforceability of 13 AAC 85.110, the revocation process. In our experience with the Alaska Police Standards Council, it has has ignored evidence (including charging documents and audio recordings) of officers engaging in inappropriate sexual activity while on duty as well as participating in inappropriate relationships, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, informant in an ongoing investigation or adjudication in prostitution and sex trafficking investigations. We would like to see additional language assuring that this loophole is closed so that those officers cannot continue to get away with this egregious behavior as its goes against the public's safety.

Maxine Doogan
Community United for Safety and Protection

Cc Alaska State Senators
Alaska State Representatives

From: [Heath Scott](#)
To: [Griffiths, Bob E \(DPS\)](#)
Subject: Regulation change thoughts
Date: Monday, January 4, 2021 5:57:20 PM
Attachments:

Bob,

In a perfect world I would like to see the annual in-service increased to 30 or even 40 hours. I believe some of the subjects should be reoccurring and I do like the idea of the 8 hours mandated by

APSC as well as the subject areas you cover in 13 AAC 87.084 are wise areas to address. I do think we need agencies to do more to focus on officer development.

I don't an additional 20 to 30 hours is too much to ask for communities to invest in these men and woman they ask so much of.

I have outlined subjects I find useful to approach annually with training blocks I find realistic.

Law Enforcement In-Service Training Topics:

- Firearms (8 hours) minimum twice annually, one range day should be focused on familiarization and qualification of all weapons systems, the other range day should be addressing skills improvement and scenario based response.
- Less-Lethal (4 Hours) – OC, Taser, LL Shotgun, ETC
- Ethics (2 hours)
- Annual Legal Updates (4 hours/credits) – I believe you addressed this as (Statutory changes and court decision impacting public safety)
 - a. Case law updates
 - b. I would added Search and Seizure refreshers to this block
- Officer Awareness: Responding to Victims of Trauma (4 hours)
- Physical and Mental Wellness: Building & Implementing a Plan for Improvement (8 hours)
- Arrest Procedures (4 hours)
 - a. Cuffing
 - b. Control Techniques

Detention In-Service Training Topics:

- Detention Legal Update (4 hours)
- Inmate Mental Health (4 hours)
- Cell Management and Control (2 hours)
- Physical and Mental Wellness: Building & Implementing a Plan for Improvement (8 hours)
- Control Techniques (2 hours)

Just some thought – additionally I love the supervisory and management certifications, anything that can be done to professionalize this industry is extremely important right now. You're doing a great job sir, keep up the good work.

Heath E. Scott
Chief of Police

Haines Borough Police Department
215 Haines Hwy
PO Box 1209
Haines, Alaska 99827



Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Re: Proposed Regulation Changes

Dear Mr. Griffiths:

We, the undersigned members of the Alaska House Republican Caucus, are writing to express our concerns about the proposed suite of sweeping regulatory changes that will have a tremendous impact on how local police agencies manage themselves and internally oversee officer conduct.

We understand that the Alaska Police Standards Council (APSC) plays an essential role in Alaska law enforcement and applaud the mission the agency pursues. However, we are concerned that the proposed regulations are unnecessarily far-reaching and even more concerned that they will have the effect of eroding the local control of local departments and other agencies.

Our understanding is that numerous agency employee associations including the Anchorage Police Department Employees Association (APDEA), the Public Safety Employees Association (PSEA), Alaska Correctional Officers Association (ACOA) and the Alaska Peace Officers Association have had expressed formal opposition to this regulatory package while other groups share many same concerns.

In the interest of transparency and good public process, we encourage the APSC to either slow down or significantly scale back the scope of this regulatory package.

Respectfully,



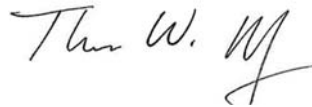
Rep. David Eastman
House District 10



Rep. Ron Gillham
House District 30



Rep. Ken McCarty
House District 13



Rep. Thomas McKay
House District 24



Rep. Cathy Tilton, House Minority Leader
House District 12

ALASKA STATE LEGISLATURE



Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811
<Delivered Electronically>

February 18, 2021

Dear Mr. Griffiths,

We are writing to request that the Alaska Police Standards Council (APSC) consult carefully with public safety officers and their unions regarding proposed changes to regulations governing public safety officers' hiring processes, certifications, notification standards, and other substantive changes affecting officers' daily work. It is important that APSC carefully consider feedback from stakeholders during the development and implementation of regulations.

The State of Alaska and local governments face significant recruitment and retention challenges for public safety officers, including State Troopers, police officers, correctional officers, and Village Public Safety Officers. Alaskans strongly support our law enforcement officials, and we should ensure any regulations support their ability to protect the public, and not inadvertently create bureaucratic barriers to recruitment, retention, and efficient administration of law enforcement agencies. Public safety unions have provided extensive feedback and suggested changes to proposed APSC regulations, and we ask that you listen to front-line public safety officials and make necessary changes before implementing substantial changes to APSC regulations.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to be "Zack Fields".

Representative Zack Fields

A handwritten signature in blue ink, appearing to be "Calvin Schrage".

Representative Calvin Schrage



Representative Andy Josephson



Senator Tom Begich



Representative Kelly Merrick

Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Dear Mr. Griffiths,

Thank you for allowing comment on the proposed APSC regulations. The regulations appear to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality. Alaska is proud of the thousands of its public safety employees that serve the residents of Alaska. While I agree that our citizens should be protected, I also believe law enforcement officers should be protected.

Please consider slowing down this process. These are important changes that should not be rushed. The proposed regulations are broad. They are not well articulated, lacking definitions, and make our State liable for due process violations. Our police officers have multiple layers of oversight to protect citizens. These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.

Thank you for your service to Alaska and reviewing my concerns.

Sincerely,

Melissa Lampert
Anchorage, Alaska
907-787-9142



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Administration

OFFICE OF ADMINISTRATIVE HEARINGS

550 W. 7th Avenue, Suite 1940
Anchorage, AK 99501
Main: 907.269.8170
Fax: 907.269.8172
www.doa.alaska.gov/oah

February 19, 2021

VIA EMAIL TO wendy.menze@alaska.gov

Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200

Re: Proposed Changes to the Regulations at 13 AAC 85, and 15 A 87, and 89

Dear Council Members:

I write on behalf of the Chief Administrative Law Judge to comment on the regulation amendments circulated for public comment on January 4, 2021. One of the statutory duties of the Chief Administrative Law Judge for the state's Office of Administrative Hearings (OAH) is to "review and comment on regulations proposed by state agencies to govern procedures in administrative hearings[.]" See AS 44.64.020(a)(8). My comments are limited to the provisions of the proposed regulations that relates to hearings.

Regarding the proposed rescission hearing provisions of 13 AAC 85.110(e) and .270(e).

OAH notes that the proposed reenacted 13 AAC 85.110 and 85.270 each identify three types of administrative adjudications:

- 13 AAC 85.110(c) and 85.270(c), both authorizing the executive director to initiate a proceeding under the Administrative Procedure Act to seek suspension or revocation of a license.
- 13 AAC 85.110(d) and 85.170(d), both providing a mechanism for summary suspension of a license, but again "subject to the provisions of the Administrative Procedure Act."
- 13 AAC 85.110(f) and 85.270(f), both providing that a former licensee seeking rescission of previously imposed discipline may, upon a petition, have a hearing "held before a hearing officer or the Board."

OAH is unclear from the language on rescission hearings whether the council intends that these proceedings also be conducted under the Administrative Procedure Act ("APA"). As the Council is required under its own statute (AS 18.65.270) and the APA itself (AS 44.62.330(a)(18)) to follow the APA's administrative adjudication procedures, including procedures for license reinstatement (see AS 44.62.330(a)), OAH suggests clarifying the rescission hearing provisions to address application of the APA. OAH notes that the APA provides a procedure for deciding "petitions for reinstatement [of a license] or reduction of penalty" (AS 44.62.550) and suggests that the rescission hearing language could be modified to cite to this provision if that is the Council's intent. Otherwise, OAH suggests

that the Council seek the advice of the Department of Law as to the procedural requirements that would apply to these “rescission” hearings.

Regarding the proposed summary suspension provisions of 13 AAC 85.110(d) and .270(d)

13 AAC 85.110(d) and 85.270(d) each provide a mechanism for summary suspension of a license, “subject to the provisions of the Administrative Procedure Act.” OAH notes that multiple occupational licensing boards have statutes authorizing summary license suspension and setting out associated procedural requirements for expedited appeals of such actions. As the APA itself is silent on the details of such proceedings, OAH suggests that the Council consider identifying in these regulations the procedures and timelines that will apply to a hearing challenging a summary suspension. Details commonly addressed in summary suspension statutes include timeframes for holding a hearing following a summary suspension, and a timeline for final decision by the Council after such a hearing. OAH respectfully suggests that the Council consider addressing these details in the summary suspension provisions.

Thank you for taking the time to consider OAH’s concerns and suggestions. If you have any questions about these comments, please do not hesitate to contact me.

Very truly yours,



Cheryl Mandala
Deputy Chief Administrative Law Judge

cc: Kathleen A. Frederick

Griffiths, Bob E (DPS)

From: Renee Oistad <roistadak@gmail.com>
Sent: Monday, February 8, 2021 4:44 PM
To: Menze, Wendy A (DPS)
Subject: Proposed APSC Regulations

Bob Griffiths

Executive Director

Alaska Police Standards Council

PO Box 111200

Juneau, AK 99811-1200.

(delivered by email through wendy.menze@alaska.gov)

Dear Mr. Griffiths,

Thank you for allowing comment on the proposed APSC regulations.

I have been a proud non-sworn member of the Anchorage Police Department since September 1996. I have been active in our union with over six of those years as an Employees' Association Executive Board Member. As such, I am familiar with disciplinary issues we've had within our department. I am currently assigned to our Community Relations Unit (CRU) where I have been since 2015. The CRU is responsible for publicly disseminating arrest information to include when it involves our own members. Through those experiences, I can tell you this department is a good one. When an employee makes a poor decision, they are held accountable immediately and it is reported to the public by us whenever criminal charges are involved. There is no corruption or collusion; there is no attempt at a coverup.

APD employs people and people are fallible. It's human nature. We have a very rigorous hiring process which allows us to weed out many potential problematic employees. When an employee does make a bad decision, we catch it because we

have fail-safes in place to do so. We all want as clean of a department as our citizens do. All of us here at APD take great pride in the uniform we wear, the duties we perform, and the obligations we owe to the city in which we serve. When one of our own acts in a manner that is irresponsible or otherwise unacceptable, it makes the rest of us very angry. We all work very hard to do the best we can and to ensure our coworkers do the same.

The proposed regulations seem to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality that does not exist here. Please do not take the national anti-police rhetoric and force it upon Alaskan law enforcement where it does not belong.

Consider slowing this process down. The regulations are extremely broad, they are not well articulated, many of the terms lack definitions, and they make our beloved State liable for due process violations. As I stated above, our police officers have multiple layers of oversight to protect citizens. These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.

Thank you for your service to Alaska and your understanding of my concerns.

Respectfully,

Renee Oistad

Anchorage, Alaska

(907) 240-0576

roistadak@gmail.com

Griffiths, Bob E (DPS)

From: Sam Sullivan <samsullivan@gmail.com>
Sent: Monday, February 8, 2021 6:48 PM
To: Menze, Wendy A (DPS)
Subject: APSC changes

Dear Mr. Griffiths,

Thank you for allowing comment on the proposed APSC regulations. In short, the regulations seem to be a rushed response to an unwarranted call to protect the citizens of Alaska from police brutality. This call could not be farther from the truth. Alaska is proud of the thousands of its public safety employees that serve the residents of Alaska.

Please consider slowing this process down. The regulations are extremely broad, they are not well articulated, many of the terms lack definitions, and they make our beloved State liable for due process violations. Our police officers have multiple layers of oversight to protect citizens. These proposed changes provide no due process for officers who may be unfairly targeted due to discrimination by employers and/or peers.

Please feel free to contact me for more detailed testimony.

Thank you for your service to Alaska and your understanding of my concerns,
Sincerely,

Samuel Sullivan
Anchorage, Ak
907-602-2030

Bob Griffiths
Executive Director
Alaska Police Standards Council
PO Box 111200
Juneau, AK 99811-1200.
(delivered by email through wendy.menze@alaska.gov)

Re: Proposed Regulation Changes

Dear Mr. Griffiths:

Thank you for the opportunity to submit comments on the proposed APSC regulations issued on January 4, 2021. Throughout these comments we will refer to the regulations both by regulation number and by the page numbers in the 71-page pdf file we received containing the proposed regulations. In addition, where proposed rules concerning probation officers, correctional officers, and/or village police officers merely repeat proposals to change public safety officer rules, we will not restate the comments made in our discussion of the public safety officer rules.

13 AAC 85.010(c), Page 8

The proposal changes from 30 to 10 days the time requirements for a participating police department to confirm that a person hired as a police officer meets the standards of 13 AAC 85.010(a) and (b). We are concerned that a 10-day time frame will pose administrative issues for employers, particularly given the level of documentation required by existing regulations, and that an employer's non-compliance with the regulation could pose employment issues for newly-hired officers. Unless there is a significant history of participating employers hiring individuals who do not meet APSC's standards, we recommend retaining the 30-day time frame.

As this comment applies to a variety of other regulations (for example, the proposed change to 13 AAC 85.010(d)), we will not repeat it throughout these comments.

13 AAC 85.045, Page 11

The proposal establishes the criteria for supervisory and management certificates. While we do not necessarily object to the creation of such certificates, the proposal does not answer the following questions, all of which should be addressed in the regulations:

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?

13 AAC 85.050(b), Page 13

The proposal adds to the curriculum at the basic police officer academy the topic of “officer duty to intervene.” As the “duty to intervene” is referenced elsewhere in the proposed regulations (for example, in the proposal to amend 13 AAC 85.060(a)), and since the term “duty to intervene” is susceptible to many interpretations, it is critical that the term be defined somewhere in APSC’s regulations.

For example, the duty to intervene only exists if an officer has knowledge of another officer’s activities. There also is a necessary *scienter* requirement in that the intervening officer would only be obligated to intervene if s/he believes the other officer is engaged in misconduct. In addition, there must be an exception to the duty to intervene for circumstances where intervention cannot be safely accomplished.

We recommend that the duty to intervene be phrased in the following terms: “Officers shall have a duty to intervene when another officer is engaged in any act the intervening

officer knows or reasonably should know is misconduct, unless the intervening officer cannot intervene safely."

13 AAC 85.090, Page 18

The proposal creates a new obligation on the part of officers to notify their employers within three days "after their arrest or a criminal charge being filed," and imposes on the employer a 10-day time frame to notify the Council "of an officer being arrested or charged with any misdemeanor or felony crime." We have the following observations about the new rule:

1. Any requirement that officers notify their employers of events such as these should be handled at the local level, not as a statewide regulatory requirement. While such a "duty to notify" is generally not objectionable, local jurisdictions could well prefer different time frames and different requirements for such notification.
2. The two phrases "after their arrest or a criminal charge being filed," and "of an officer being arrested or charged with any misdemeanor or felony crime" are not identical and could conceivably require notification under one phraseology but not under the other. We recommend that the same language be used in both phrases.
3. 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.
4. The regulation should contain an exception for instances where notification is not reasonably possible (*e.g.*, where the officer is hospitalized) and where the act of notification would compromise an officer's right to be free from compulsory self-incrimination.

13 AAC 85.100(a), Page 19

The proposal allows the Council to deny a public safety certificate to an individual who has, after hire as a police officer, "lied or falsified official written or verbal communications or records (Section A), violated the law enforcement code of ethics (Section B), negligently used unreasonable force against another or knowingly failed to intervene in the unreasonable use of force by another officer (Section C), harassed or coerced another person (Section D); unlawfully converted, or engaged in the unauthorized use of, the employing agency's property, equipment, or funds (Section G);

failed to report to the employing agency within three days of being arrested or charged with a criminal offense (Section I), or failed to respond or to respond truthfully to questions related to an investigation or legal proceeding.” (Section J).

As these terms are used elsewhere in the proposed regulations, we will comment on them here and not repeat the comments in subsequent proposed regulations. The following comments apply wherever the terms are used in the proposed regulations:

1. As an initial matter, the list in Section 3 is prefaced with the qualification that the individual must have engaged in the action “after hire as a police officer.” We recommend that this phrase be modified to read “in the course of his/her job as a police officer.” This modifier would help give definition to the various subsections of Section 3.
2. The use of “falsified” in the phrase “lied or falsified official written or verbal communications or records” is very problematic. One dictionary definition of “falsified” is “to prove false,” meaning that the use of “falsified” in the proposal could encompass an officer accurately proving something to be false. We recommend the “falsified” be replaced with some iteration of the phrase “was intentionally dishonest.”
3. 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.”
4. It is unclear what an “official . . . verbal communication” might be. The proposal should clarify this point.
5. We recommend the deletion of the reference to the law enforcement code of ethics in Section B. Presumably, the reference is to 13 AAC Section 85.040, which contains a statement of the code of ethics that is outdated and certainly unconstitutional. For example, Section 85.040 would require an officer to keep his/her “private life unsullied as an example to all,” a phrase that would surely violate the freedom of association, the right to privacy, and the Fifth Amendment principle that regulations not be “void for vagueness.” As an alternative to the deletion of the reference to the law enforcement code of ethics, 13 AAC Section 85.040 should be revised.
6. Shouldn’t the reference in Section C to “negligently” actually be to “intentionally?”

7. While Section C suffers from the same general “duty to intervene” problem described above, the tying of the duty to intervene in Section C to “the unreasonable use of force by another officer” poses a separate problem. The duty to intervene when another officer is using force should be contingent on (1) when, in the reasonable perception of the intervening officer, the other officer is using unreasonable force; and (2) when intervention can be safely accomplished.
8. The use of the phrase “harassed or coerced” in Section D needs clarification. There are many legitimate actions an individual might take that could fairly be described as either harassment or coercion. For example, a parent grounding a misbehaving 14-year-old son or daughter would likely be described as both harassment and coercion by the child. Adding the word “illegally” as a modifier to “harassed or coerced” would fix the problem.
9. The phrase “unlawfully converted, or engaged in the unauthorized use of, the employing agency’s property, equipment, or funds” in Section G is too broad, as it would encompass actions as trivial as using a stapler on another officer’s desk. We recommend that the phrase be clarified.
10. As written, Section J not only is confusing but violates the *Garrity* rights of employees by allowing the Council to take action on a certificate for an officer who lawfully exercises his/her right to be free from compulsory self-incrimination in the absence of an order from the employer that a statement be provided. We recommend that the phrase be rewritten into two separate requirements: (1) “after being ordered to do so as a condition of employment, failed to respond truthfully to questions related to an employer-conducted administrative investigation”; and (2) “who failed to respond or to respond truthfully to questions in a legal proceeding.”

13 AAC 85.110, Page 22

The proposal is for new language that allows the suspension or revocation of a certificate for a variety of reasons. In particular, Section (a)(2) of the proposal permits the Council to take action if the officer “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.”

We believe this language is far too broad and uses terms that are much too general. An officer’s “inefficiency” and “incompetence” – and those terms can be defined in too many ways to be acceptable – do not rise to the level where suspension or revocation should even be a possibility. Suspension and revocation should be reserved for the most serious of cases where the officer’s conduct is such that s/he should be disqualified from service as a law enforcement officer. Also, the phrase “some other reason that adversely affects the ability and fitness of the police officer to perform job duties” is broad enough that it could sweep within its purview an officer who suffers a workers’ compensation injury or who suffers from a disability protected by the Americans With Disabilities Act.

Just as troubling is the proposal that revocation or suspension could occur if the officer has been terminated for conduct that is “detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.” Nothing in this phrase requires that the officer’s conduct be wrong; it would suffice to meet the requirements of the rule if the officer engaged in perfectly legitimate conduct that was misunderstood by the public in a way that harm resulted to the employer’s reputation.

Several other difficulties exist with the proposed rule. First, Section (a)(4) suffers from the same “after hire as a police officer” problem as does the proposal for 13 AAC 85.100(a).

Second, Section (a)(5) should specify that it is the employer’s obligation to provide the necessary opportunities for on-duty training to allow officers to meet any Council-required minimum training requirements.

Third, the mandate in Section (b)(2) that the Council “will” revoke the certificates of officers who have “used marijuana” needs to be reevaluated in light of the fact that marijuana possession and use are both statutorily and constitutionally protected in Alaska and given the mounting evidence that marijuana has some beneficial medical uses.

Fourth, Section (b)(3) suffers from the same problem as Section (a)(2) in that it would mandate the revocation or suspension of an officer’s certificate if the officer was discharged “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.” An officer could act entirely appropriately and yet a reasonable person could have a substantial doubt – albeit an incorrect substantial doubt – about the officer’s fitness.

Fifth, Section (d)(3) allows the Executive Director to immediately suspend the certificate of an officer if the Executive Director determines that the officer “presents a clear and present danger to the public health or safety if authorized to exercise police authority.” Much is problematic about this provision. There seems little doubt that such a suspension would violate the due process rights of the suspended officer. The furthest the Supreme Court has been willing to go in the area is to allow a short-term temporary suspension of an officer facing felony charges where the suspension did not have a significant economic impact. *See Gilbert v. Homar*, 520 US 924 (1997). Also, the phrases “clear and present danger,” “public health,” and “safety” are terms that demand definition. Finally, if the Executive Director is to have any discretion to suspend a certificate – something we believe is inadvisable – the rules should provide clear, specific standards that must be met, an immediate hearing before an ALJ following the suspension, and the provision of back pay if the suspension is determined to be inappropriate.

Sixth, Section (e) of the proposed rule requires a one-year waiting period post-revocation before the impacted officer may petition the Council for rescission of the revocation. The proposal lists three reasons for rescission: “(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.” Given that all three of the reasons indicate that revocation is no longer necessary, we see no reason why there should be a one-year waiting period before a petition for rescission can be filed. For example, if the revocation was based on a “mistake of fact” or “fraudulent evidence,” the officer’s certificate should be restored as soon as possible.

Seventh, Section (f) of the proposed rule should specify who decides whether the Council or a hearing officer should preside over a rescission hearing. Also, Section (f) requires an officer whose revocation has been rescinded to serve a full probationary period. Again, as the gravamen of most of the reasons for rescission is that the revocation was wrongful, there should be no requirement that an officer whose revocation is rescinded serve another probationary period. In addition, the last sentence of Section (f) implies that such an officer must apply for reinstatement of the officer’s certificate. We believe that the Council’s decision rescinding a revocation automatically restores the officer’s certification and that the application requirement is unnecessary.

Eighth, we very much oppose Section (g) of the proposed rule, which allows the Council to disregard the results of a successful appeal of the officer's termination. A fully-litigated appeal that results in the reversal of a termination should be binding upon the Council, and an officer inappropriately disciplined by an employer should not have to face the prospect of litigation in two separate forums.

Fiscal Note

Prefacing the proposed rules is a fiscal note indicating that there will be no fiscal impacts from the proposed rules. We are assuming this is a placeholder as the amended rules will undoubtedly have a substantial fiscal impact.

Respectfully submitted,



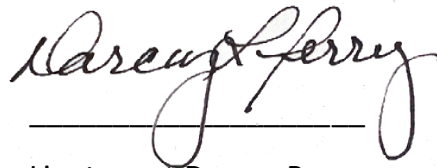
Sergeant Jeremy Conkling
APDEA President



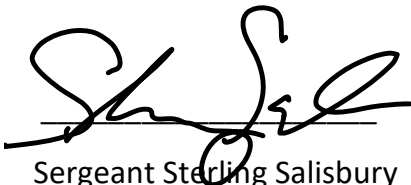
Trooper Shaun Kuzakin
PSEA DPS Chapter President



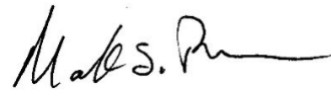
CSO David Jones
PSEA President



Lieutenant Darcey Perry
PSEA APFO Chapter President



Sergeant Sterling Salisbury
PSEA Municipal Chapter President



Sergeant Mark Pearson
APOA President



Sergeant Randy McLellan
ACOA President



Alaska Association of Chiefs of Police

PO Box 3734

Seward, Alaska 99664

March 25, 2021

Re: AACOP Board of Directors response to APSC on proposed guidelines

The Alaska Association of Chiefs of Police encourages responsible, appropriate, sensible, and necessary police reform, in order to be responsive to the ever-changing landscape we work in every day. We believe our responsibility to the public is to maintain a professional police force and we support APSC in its efforts to make this happen.

In an extensive and time-consuming effort our Board of Directors and the membership of AACOP came together to evaluate the proposed Alaska Police Standards Regulations and offer comment on each issue we felt was concerning to our group. The Executive Director and APSC staff responded to our requests, supporting some and ignoring others. We remain thankful for the careful consideration, but we would like to reaffirm, directly to the council, our concerns and ask the council to consider our recommendations on the following issues.

APSC Reference # 25:

- 1) 13 AAC 85.100(a)(3)(B) “violated the law enforcement code of ethics.” **This must be removed all together due to the ambiguous terms and unreasonable expectations used within this oath.**

AACOP believes in the words and the ideology of the Law Enforcement Code of Ethics and we believe that every police officer should strive to achieve such perfection, but we also understand these words are DESIRED “values and ideals,” not absolutes. Examples exist throughout this code, such as “unsullied,” a term which has many shades of gray. A priest may view unsullied in a different way than a lawyer, politician, police chief, or even an administrative body such as the standards council.

The LECO even states we “constantly strive to achieve,” meaning we may not always do what it asks. This cannot be used as a standard model of decertification. Of course, we all swear that we will strive to achieve these ideals, but the bottom line is, we will never achieve this level of perfection in reality.

Ethics are not moral absolutes. We cannot hold anyone to this standard when not a single person can say they have always done so – not with 100% honesty.

We believe strongly the Code of Ethics should be used as it always has been but wdo not support it to be CODIFIED into regulation since there is not a single individual who can “honestly” say, they have always lived by these ethical standards, it simply is unreasonable to expect of any individual.

We are convinced this regulation, as worded, will predictably cause an adverse ruling in case law and further hinder APSC’s ability to regulate behavior.

APSC Reference #29:

- 2) 13 AAC 85.100(a)(3)(D) Page 15: We appreciate the feedback and since the term “unlawfully” will not be considered, we would ask that the investigating agency should “sustain the allegation,” prior to the accusation of someone being “harassed or coerced,” be used as a decertifying element in the process.

APSC Reference #38:

- 3) Reference change 85.100(a)(3)(J) - AACOP debated this topic extensively and we agree that this regulation will set a dangerous precedent in forcing testimony in an administrative process.

“An officers’ refusal to provide a statement to the council (or within an agency investigation) can, *given other sufficient evidence supporting the allegations of misconduct*, be considered by the council as discretionary grounds for sanction. Unlike the employing agency, APSC does not have authority to “order” an officer to provide a statement, even after advisal of Garrity rights.”

AACOP disagrees with this statement. APSC should be very careful about using someone’s “silence” as evidence of guilt. This is contrary to the founding principles of our country and should not be used as damaging evidence. An officer’s failure to cooperate with the agency investigation is insubordination, grounds for termination and likely decertification. Evidence, other than an officer’s silence, should be used to determine de-certifiable behavior.

APSC Reference #74:

- 4) Mandatory training requirements, funding, tracking, and costs to departments. -

AACOP encourages APSC do the following four things if they chose to move forward with MANDATED training requirements.

- 1) Clear guidelines are established with all training demands. No ambiguous guidelines so the training is consistently applied and departments are not left to guess on what fits and what doesn’t.

2) APSC or the State of Alaska offer funding reimbursement for ANY additional training mandates issued under this requirement. Too many departments are strained under the current climate and additional layers of bureaucratic regulations must have funding or be provided free to agencies.

3) APSC be required to track and monitor these requirements rather than adding additional layers of non-department related training demands on to police personnel across the state. The number of APSC reporting requirements over the last decade have skyrocketed and this additional burden should be administered by APSC.

4) Affirmation of need and importance. Maintaining a clear correlation between the need for the training and the impact it has on ALL groups within Alaska, and not just requiring training to suit the “flavor of the day” in the lower 48. Alaska is a unique place with unique differences, and we ask that APSC be very clear as to the reason they are requiring a particular training.

We hope the Alaska Police Standards Council will consider these suggestions and make the appropriate changes. We understand the difficulties in making systemic changes and we all support a consistent, responsive, and accountable system that is fair and equitable to all.

We appreciate all the hard work that has gone into these changes and we support the efforts being made on behalf of police reform.

Very respectfully,

The Board of Directors of AACOP