



Alcohol & Marijuana Control Office MEMORANDUM

TO: Members of the Marijuana Control Board

FROM: AMCO Staff

DATE: October 15, 2021

RE: Marijuana Handler Permit applicants under preindictment and other related issues.

Currently several matters related to Marijuana Handler Permits are being studied by staff.¹ In the course of this review the topic of applicants in a preindictment status has come up, primarily from staff members that process applications and issue the permits regularly. Particularly the question if preindictment status should also bar an applicant from obtaining permit. While staff makes no recommendation at this time, it is helpful to explain the topic with one typical case example that illustrates why it would not be a good practice to do so.

A current Marijuana Handler Permit holder applied for renewal of his permit while in a preindictment status for one pending Class C Felony charge: Assault 3- Cause Fear of Injury with Weapon. The individual also had two pending misdemeanor charges. A felony conviction for a five-year period prior to application (or currently on probation or parole for that felony) or currently under indictment² is an automatic bar to obtaining a permit. The applicant was issued a permit as the applicant had not been convicted and was not currently under indictment. The permit holder was eventually convicted of two misdemeanor crimes. The felony charge had been reduced to a Class A Misdemeanor and the other original Class A Misdemeanor to a non-classified Misdemeanor. The last Class A Misdemeanor, an additional weapons charge, was dismissed on a plea agreement in another case.

Again, neither of the two convictions in this case example would bar a person from being issued a permit under 3 AAC 306.700. Similarly, neither of these convictions could serve for revocation of

¹ Preindictment status; other barrier crimes, self-reporting of crimes occurring after issuance; backgrounds; duration and cost; design of the permit card; and, the application form and sharing of information with other jurisdictions.

² While an indictment is a formal, written accusation issued by a grand jury charging someone with a crime after considering evidence presented by the State of Alaska it is not a conviction or proof of a crime. It is instead a determination by a majority of grand jurors of probability of guilt, a standard of proof which is less than would be required to convict.

the permit under 3 AAC 306.812. Nevertheless, while this case example reflects current practice and the permit holder was not indicted/convicted, this case like others, could have easily resulted in an indictment and even a conviction. Any detection after an issuance of a permit that this occurred is unlikely although noting the applicants that are in preindictment status and checking on that status on a regular schedule until the case is closed would be a good way. An additional way is to also require permit holders to self-report any barrier crime or status to AMCO in a set period of time.

Staff requests that the Chair survey the sense of the members as it relates to preindictment status and a self-reporting requirement by permit holders of barrier crimes they are charged with. It would be the proposal of staff to take the sense of the members and come back with a comprehensive research memo on handler permit topics knowing that some changes would require a regulations project at a later date.

Regulations for reference

3 AAC 306.700. Marijuana handler permit

(f) The board will not issue a marijuana handler permit to a person who

(1) has been convicted of a felony in the state and either

(A) less than five years have elapsed from the time of the person's conviction; or

(B) the person is currently on probation or parole for that felony,

(2) has within the two year period immediately preceding submission of an application, been convicted of a class A misdemeanor in the state involving a controlled substance other than a Schedule VIA controlled substance, under AS 11.71.190,

(3) has within the two year period immediately preceding submission of an application, been convicted of a class A misdemeanor in the state relating to selling, furnishing, or distributing marijuana; or,

(4) is currently under indictment for an offense listed in this section.