



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

## Department of Public Safety

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**Subject: DPS Recommendations and Considerations for Senate Bill 231: Village Public Safety Officer Grants**

Dear Senators Olson, Bishop, Hoffman, Stedman, Gray-Jackson, Stevens, Revak, Kawasaki, and Giessel:

First, I would like to thank you for expanding the dialogue about the future of rural public safety efforts in our state through the introduction of Senate Bill 231. We share a common goal to improve rural public safety and provide the necessary level of resources to meet the myriad of public safety needs in our state. It is on those common grounds that I hope that Department of Public Safety (DPS) is invited into the conversation in a purposeful and meaningful way. The Department of Public Safety looks forward to engaging with the sponsors and members of the legislature to maximize positive impact of the bill and to minimize unintended challenges.

The DPS, after reviewing the bill, would like to provide feedback and recommendations for consideration of the committees working through the bills. Given the complexities of the legislation, I thought I most effective to provide feedback and recommendations in writing and encourage an open dialogue.

The bills move the administration of the VPSO program to the Department of Commerce, Community, and Economic Development (DCCED). The bill leaves the program oversight function with DPS. The DPS supports this change and has had a number of meetings and discussions with DCCED to accomplish this and ensure that this transition occurs in a smooth manner, honoring this recommendation of the VPSO Working Group.

Following, is a discussion of other sections of the proposed legislation which DPS would benefit from additional clarity on. I have included questions on sections where the intent of the sponsor is not clear or where DPS has additional questions about the implementation of the section. I have also included suggestions for possible amendments.

***Sectional Analysis:***

Section 4 Adding new subsections AS 18.65.672 and AS 18.65.674: The new subsections use the term “background investigation” but the description of the information to be provided to DPS to conduct a background investigation indicates only a “fingerprint-based criminal history check.” If only a criminal history record check is required, the term “investigation” should be replaced. Currently the language is vague and unclear, as a law enforcement officer “background investigation,” which is very detailed and time intensive, and a “fingerprint based criminal history check” are different processes.

The section should also specify when in the hiring process the background check must be completed. Currently, the DPS completes investigations on those applicants that meet the minimum regulatory qualifications. In order to conduct full investigations on all candidates submitted to DPS, additional resources will be needed by the department, which will be reflected in the fiscal note.

Section 3: Repealing and reenacting 18.65.670: This section as written does not specify which entity (DPS or the VPSO employer) is responsible to fulfill the purpose of the program, which is stipulated at Page 4, lines 1-3 as to “appoint, train, supervise, and retain persons to serve as village public safety officers”. The DPS could interpret this to mean the department’s only duty will be to provide academy training in addition to the background investigations. Clarification of the intent of the sponsors would be very useful. If the intent is for the employers be responsible for appointing, supervising, and retaining their employees, but the intent is that the DPS and other entities ensure VPSOs receive the required training as outlined in statute, clarification to avoid confusion would be beneficial.

AS 18.65.670(a)(1)(C): Consider amending to “assist in search and rescue efforts.” VPSOs and their employers cannot authorize the use of state funds and resources required to manage search and rescue efforts. Alternatively, appropriate funds required for search and rescue efforts could be budgeted accordingly within the grant application.

AS 18.65.670(a)3: Please clarify if this includes all criminal investigations. 18.65.672(b) permits VPSOs to act in a full law enforcement capacity for up to 30 months with no training. Without clarification on the type of investigations mentioned under (a)(3) – this change in law could be read that an untrained responder could conduct felony level investigations, including homicides and sexual assaults. Current regulations allow VPSOs the same amount of time to complete training, however, they do not have the full scope of authority and responsibility that this bill provides. Additionally, it does not specify how evidence storage and submission processes will work; if reports are being reviewed and submitted to Department of Law by DPS; if VPSOs are required to submit monthly crime statistics reports for federal crime reporting; or, who is responsible for lingering investigations when a VPSO is no longer employed. These issues can be clarified in regulations, but without knowing the intent of the sponsors, the DPS will assume all responsibilities will continue to lay with the DPS and the DPS will budget accordingly for the fiscal note.

18.65.670(a)(4)(A): This does not specify whether a VPSO would only be enforcing village law if their employer is a village. Further, it broadens their scope of authority beyond their community by including municipal law. As DPS reads the bill, it permits a VPSO to enforce municipal laws in Juneau, Anchorage, Fairbanks, etc. This could create jurisdictional conflict and significant liability to the grantees.

18.65.670(a)(4)(B): DPS requests that “violations” in this section omit moving or traffic violations on municipal or state roadways. Again, this could create jurisdictional conflict and lack of clarity on boundaries for response.

18.65.670(b): This section expands available funding to all federally recognized tribes. Will there be a waiver of immunity signed by the tribe for civil action to be brought in the cases of wrongful arrests, use of force, etc.? Is there a remedy for non-tribal members to sue the tribe in these instances? Additionally, it should be clear in the grant process that tribal grant applicants are hiring VPSOs and not tribal police officers, as such, the legalities of sovereignty will have to be thoroughly vetted with the blended approach.

It further expands the eligible applicants to municipalities with less than 10,000 people. This will now include larger communities such as Kenai, Soldotna, etc. This creates jurisdictional concerns. The DPS recommends clarifying that the municipality would be administering the grant for villages under 2000 people and off the road system and not for communities within the municipality that have local law enforcement already.

18.65.670(c): This section should clarify whether the grantee must engage in a written agreement if it is placing a VPSO in location in the region that was not represented by the grant recipient. As currently written, a village grantee can place a VPSO in any other village within the region.

18.65.670(d)(3): There is no assigned responsibility of who will be required to purchase liability insurance. In the past, the DPS has done so as insurance companies have been unwilling to insure non law enforcement entities with coverage for employees conducting law enforcement functions.

There is only one company that is willing to insure VPSOs with the currently complicated employment relationship with the nonprofit regional corporations. Expanding this to an additional possible 229 tribes, and even more municipalities, may cause consternation with the company. There has not been adequate time to meet with the company to review this new scenario. The DPS's fiscal note does not include the possible increases to insurance costs as it is unclear whether the DPS will be expected to, or whether the state will elect to, continue taking responsibility for this coverage without further discussions.

18.65.670(h)(3): It is unclear what is meant by the DPS participating in "monitoring public safety performance." If this is related to grant oversight, DCCED should be solely named as the responsible entity for site visits. The VPSO's employer is responsible for performance as it relates to the job functions. The DPS provides ongoing feedback to the employers and the VPSOs. If there are more specific wishes in terms of oversight and monitoring of public safety performance, the DPS would like to have those discussions with the sponsors so it can either be reflected by definition in the statute or properly clarified in regulation.

18.65.670(h)(6): This section suggests that the DPS would be using its internal policies and procedures to address the use of force actions and investigation on such actions. VPSOs adhere to their employer's policies and procedures. The grant application process should require demonstration that the employer has policies in place to investigate issues, such as use of force complaints, citizen complaints, unlawful arrests, search and seizures, etc., unless VPSOs will be subject to all related DPS policies and employers agree to it.

18.65.670(i): It is suggested that this section additionally includes the statutorily required training on domestic violence (12 hours) and sexual assault (12 hours).

18.65.670(k): "items reasonably related to public safety" should be defined.

18.65.670(l)(1)-(6): This entire section is vague and would be difficult to implement without added clarity. Further, it will be difficult to comply with the requirement to consult with grantees to introduce new regulations or policy changes. Consultation could occur with the current grantees the year new regulations are introduced, and three years later, there could be a 100% turnover in the grantees with the expanded eligible applicants. Is there an expectation of revisiting policies, procedures, and regulations as new grantees filter in and out?

18.65.670(m): Consider adding "The DPS and the DCCED will provide results of annual reviews on the performance of the grantees on their respective websites based on performance measures identified by DPS, DCCED, regulations, and generally accepted base level measures." (e.g. number hired, trained, turnover rate, number of criminal investigations conducted, etc.). Accountability and transparency should be a shared goal amongst all the partners.

18.65.672(a): Consider adding "is of good moral character" in order to be consistent.

18.65.672(a)(5)(B): DPS suggests removing this section and make all felony convictions a reason for barring employment as a VPSO. VPSOs need access to various systems that contain criminal justice information to perform their functions. That access is determined by federal law and that access cannot be granted to those with felony convictions. If this section remains, DPS will not permit any VPSO to retain access to any DPS records management systems due to federal Criminal Justice Information Systems (CJIS) compliance concerns. It will be difficult to have divergent processes of completing case reports depending on the type of criminal history of a VPSO. If VPSOs are removed from the system, grantees will have to create their own internal system for managing case reports, develop policies and procedures for tracking and storing evidence and maintaining chain of custody, and submit all reports directly to the Department of Law.

18.65.672(a)(5)(C): Consider adding “unless 10 years has passed since and a waiver is granted by the DPS.” Due to CJIS requirements, access to systems with criminal history information cannot be granted without a waiver if there is a misdemeanor criminal conviction. Additionally, consider adding that regardless of hire, the VPSO would never be permitted to be armed if he/she is prohibited by federal law, such as having a disqualifying domestic violence conviction or felony conviction. Finally, it should be noted that a VPSO who is federally prohibited from carrying a firearm would also be in violation of federal law if, in the course of an investigation, they seized a firearm. Seizing firearms when required, is an expectation of law enforcement conducting criminal investigations.

18.65.672(a)(5)(D): Add waiver process

18.65.672(a)(5)(E): Please consider reducing three (3) DUI convictions back down to two (2) DUI convictions to be consistent with other regulations for peace/police officers.

18.65.672(a)(5)(G): Change “use” to “possess” to be technically correct according to statute.

18.65.672(b): Please consider reducing 24 months to 12 months to be consistent with regulations for other peace officers. It should be clarified by the employer what the VPSO will be doing during the time they are employed but not trained. Municipal police departments have the internal resources to utilize on-the-job training, field training, etc., which ensures the safety of the officer and the public while reducing liability when deploying an officer that has not been fully trained to perform their duties. As aforementioned, DPS acknowledges the current regulation is 24 months, however, that is under a significantly different scope of work than what this bill proposes.

18.65.672(c): Just as a point of clarification, a suspended entry of judgment is not considered a conviction. Additionally, the last sentence could be interpreted as a misdemeanor conviction not being considered as a conviction for hiring purposes if the individual was under 21 at the time. If this is the intent, this raises a public safety issue and it is in conflict with federal requirements regarding access to criminal justice information.

18.65.674: As stated before, AS 18.65.672 (b) and 18.65.674 use the term “background investigation” but the description of the information provided to the DPS to conduct a background investigation indicates only a fingerprint based criminal history check. If only a criminal history record check is required, the term “investigation” should be replaced. Currently the language conflicts. Much more detailed information is required from candidates to conduct a background investigation.

18.65.674(a)(1): This section states that the fingerprints go to the DPS while the remaining background information goes to the DCCED implying that the DCCED makes eligibility determinations on employment using DPS regulations and laws outside the department’s expertise. All applicant information should be provided to the DPS. Further, the DPS may not be able to reveal the detailed results of the background investigation to the grantee or to the DCCED as it may violate federal and state law. Releasing the results of even just a criminal history record background check to the grantees will require the establishment of a Criminal Justice Information Systems (CJIS) User Agreement in which the recipient must agree to comply with all laws and policies pertaining to the receipt, storage, dissemination, and destruction of the CJIS information. It will also require the DPS to provide training to each recipient of the data as well as conduct biennial audits of each recipient. Each recipient of the data, both with the DCCED and all employees of the grantees that would have access to the information, could also be subject to a fingerprint based criminal history check. Depending on the results of the check, not all employees may be permitted to have access to the information.

18.65.674(b): Please clarify that all forms provided by the DPS back to any other entity are confidential and cannot be shared with the candidate. Sharing results of interviews or other information from references could create risk to those sharing it (e.g. interviews of ex-partners when domestic violence was present). As a standard, the DPS does not share records of the background investigations with the candidates. It is also suggested the sponsors clarify that these are not public records under the public records act and introduce legislation to address that under the statute as well.

18.65.676: The DPS considers the number of hours of training to be a barrier to hiring, though responsibilities for recruitment and retaining efforts will be placed on the employer. This bill proposes more than the minimum requirement in statute for any other law enforcement officer. Additionally, the DPS suggests removing the number of hours from the list of specialized topics as standards for those courses can change over time. The required training under the 650 hours should also include the statutory requirement of 12 hours of sexual assault investigation and 12 hours of domestic violence that is required of all other officers and currently being provided to VPSOs. Also consider clarifying that portions of the training could be provided by other certified entities. For example, the DPS does not provide emergency trauma technician training nor is there the capacity or expertise to do so, but there are other entities that can.

18.65.678: There is no responsibility assigned to this overall section. Additionally, it should clarify that those disqualified by federal law from possessing a firearm shall never be approved to carry a firearm.

18.65.684: Please change "may" to "shall" on line 16; all other crimes not listed should be evaluated on a case-by-case basis; *arrest* for *any* offense should be evaluated for possible revocation. The expectation of the public should be that law enforcement in its community is held to the highest standard.

18.65.684(b)(1)-(3): The intent of this section is unclear. Intent of the section that VPSOs who are convicted of domestic violence, while employed as VPSOs, not have their certification revoked? Why are the considerations in place for domestic violence but not other misdemeanors?

Thank you for your time and dedication to the issue of public safety. I look forward to working closely with the sponsors and members of the Legislature to address requests for further clarity. I want to offer any assistance to ensure that legislation put forth prepares the VPSOs to safely and effectively execute their duties as proposed in the legislation, supports the rights of crime victims, and enhances safety in our rural communities as the DPS is committed to providing rural communities, and all Alaskans, with the highest level of public safety service. The DPS does not, however, support lowering the standards, particularly in the most vulnerable and high risk communities in Alaska.

Very respectfully,



Amanda Price  
Commissioner, Department of Public Safety