

CS FOR HOUSE BILL NO. 287(TRB)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON TRIBAL AFFAIRS

Offered: 3/11/20

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES KOPP, Edgmon, Shaw, Zulkosky, Lincoln, Foster, Story

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring background investigations of village public safety officer applicants**
2 **by the Department of Public Safety; relating to the village public safety officer program;**
3 **and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 12.62.400(a) is amended to read:

6 (a) To obtain a national criminal history record check for determining a
7 person's qualifications for a license, permit, registration, employment, or position, a
8 person shall submit the person's fingerprints to the department with the fee established
9 by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau
10 of Investigation to obtain a national criminal history record check of the person for the
11 purpose of evaluating a person's qualifications for

12 (1) a license or conditional contractor's permit to manufacture, sell,
13 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
14 under AS 04.11;

- 1 (2) licensure as a mortgage lender, a mortgage broker, or a mortgage
2 loan originator under AS 06.60;
- 3 (3) admission to the Alaska Bar Association under AS 08.08;
- 4 (4) licensure as a collection agency operator under AS 08.24;
- 5 (5) a certificate of fitness to handle explosives under AS 08.52;
- 6 (6) licensure as a massage therapist under AS 08.61;
- 7 (7) licensure to practice nursing or certification as a nurse aide under
8 AS 08.68;
- 9 (8) certification as a real estate appraiser under as 08.87;
- 10 (9) a position involving supervisory or disciplinary power over a minor
11 or dependent adult for which criminal justice information may be released under
12 AS 12.62.160(b)(9);
- 13 (10) a teacher certificate under AS 14.20;
- 14 (11) a registration or license to operate a marijuana establishment
15 under AS 17.38;
- 16 (12) admittance to a police training program under AS 18.65.230 or for
17 certification as a police officer under AS 18.65.240 if that person's prospective
18 employer does not have access to a criminal justice information system;
- 19 (13) licensure as a security guard under AS 18.65.400 - 18.65.490;
- 20 (14) a concealed handgun permit under AS 18.65.700 - 18.65.790;
- 21 (15) licensure as an insurance producer, managing general agent,
22 reinsurance intermediary broker, reinsurance intermediary manager, surplus lines
23 broker, or independent adjuster under AS 21.27;
- 24 (16) serving and executing process issued by a court by a person
25 designated under AS 22.20.130;
- 26 (17) a school bus driver license under AS 28.15.046;
- 27 (18) licensure as an operator or an instructor for a commercial driver
28 training school under AS 28.17;
- 29 (19) registration as a broker-dealer, agent, investment adviser
30 representative, or investment adviser under AS 45.56.300 - 45.56.350;
- 31 (20) licensure, license renewal, certification, certification renewal, or

1 payment from the Department of Health and Social Services of an individual and an
 2 entity subject to the requirements for a criminal history check under AS 47.05.310,
 3 including

4 (A) a public home care provider described in AS 47.05.017;

5 (B) a provider of home and community-based waiver services
 6 financed under AS 47.07.030(c);

7 (C) a case manager to coordinate community mental health
 8 services under AS 47.30.530;

9 (D) an entity listed in AS 47.32.010(b), including an owner,
 10 officer, director, member, partner, employee, volunteer, or contractor of an
 11 entity; or

12 (E) an individual or entity not described in (A) - (D) of this
 13 paragraph that is required by statute or regulation to be licensed or certified by
 14 the Department of Health and Social Services or that is eligible to receive
 15 payments, in whole or in part, from the Department of Health and Social
 16 Services to provide for the health, safety, and welfare of persons who are
 17 served by the programs administered by the Department of Health and Social
 18 Services;

19 **(21) employment as a village public safety officer under**
 20 **AS 18.65.672 or certification as a village public safety officer under AS 18.65.682.**

21 * **Sec. 2.** AS 18.65.080 is amended by adding a new subsection to read:

22 (b) The Department of Public Safety shall investigate an individual who
 23 applies to be employed as a village public safety officer under AS 18.65.672 or
 24 certified as a village public safety officer under AS 18.65.682, upon receipt of the
 25 materials listed in AS 18.65.674(a)(1) from a village public safety officer grant
 26 recipient, to determine whether the individual has been convicted of a disqualifying
 27 crime listed in AS 18.65.672(b).

28 * **Sec. 3.** AS 18.65.670 is repealed and reenacted to read:

29 **Sec. 18.65.670. Village public safety officer program.** (a) The village public
 30 safety officer program is created in the Department of Public Safety, with funding
 31 appropriated to the Department of Commerce, Community, and Economic

1 Development and disbursed through grants made under this section. The purpose of
 2 the program is to appoint, train, supervise, and retain persons to serve as village public
 3 safety officers.

4 (b) With funds appropriated for that purpose, the commissioner of commerce,
 5 community, and economic development shall, in coordination with the commissioner
 6 of public safety, provide grants to nonprofit regional corporations, federally
 7 recognized tribes, and Alaska Native organizations for training and employment of
 8 village public safety officers. If a nonprofit regional corporation for a village, federally
 9 recognized tribe, or Alaska Native organization declines a grant under this subsection,
 10 the commissioner may provide the grant to a municipality with a population of less
 11 than 10,000 willing to administer the grant for the village. Before awarding a grant to
 12 a municipality, the commissioner of commerce, community, and economic
 13 development shall consult with the commissioner of public safety and the nonprofit
 14 regional corporation, federally recognized tribe, or Alaska Native organization that
 15 declined the grant.

16 (c) The Department of Commerce, Community, and Economic Development
 17 shall annually accept applications from entities described in (b) of this section for
 18 village public safety officer grants. Grant applicants may apply to employ village
 19 public safety officers in participating villages located in the applicant's region. An
 20 application must include

- 21 (1) a projected budget, including administrative costs;
- 22 (2) a list of villages in which the applicant plans to employ village
 23 public safety officers;
- 24 (3) other information required by the Department of Commerce,
 25 Community, and Economic Development.

26 (d) The Department of Commerce, Community, and Economic Development
 27 shall enter into a written agreement with a grant recipient before providing grant
 28 funding. The agreement must require the grant recipient to

- 29 (1) comply with state and federal law;
- 30 (2) provide a salary and benefit schedule for the village public safety
 31 officer;

1 (3) be named as the employer of the village public safety officer; and
 2 (4) maintain insurance, independently or with the assistance of the
 3 Department of Public Safety, that includes coverage for premiums as follows:

4 (A) workers' compensation insurance as required under
 5 AS 23.30;

6 (B) comprehensive general liability insurance, including
 7 professional practice insurance for police with

8 (i) a limit not less than \$1,000,000; and

9 (ii) the state, including an officer, employee, or agent of
 10 the state, listed as an additional named insured.

11 (e) An award of grant funding must provide for one village public safety
 12 officer for each village included in a grant agreement entered into under (d) of this
 13 section. A grant recipient may assign more than one village public safety officer to a
 14 village and request additional funding for the additional village public safety officer.
 15 The Department of Commerce, Community, and Economic Development may
 16 approve the request for additional funding if the grant recipient provides justification
 17 reasonably related to the duties of a village public safety officer and other public
 18 safety needs.

19 (f) A grant recipient may assign a traveling village public safety officer to
 20 serve multiple villages within the grant recipient's region.

21 (g) A grant recipient shall

22 (1) keep original financial, personnel, and other records relating to a
 23 village public safety officer for at least three years after the officer's termination of
 24 employment and, upon request, provide that information to the Department of
 25 Commerce, Community, and Economic Development or the Department of Public
 26 Safety;

27 (2) provide annual financial audits to the Department of Commerce,
 28 Community, and Economic Development;

29 (3) facilitate site visits by the Department of Public Safety to monitor
 30 public safety officer performance and compliance with state and federal law;

31 (4) notify the Department of Commerce, Community, and Economic

1 Development if the grant recipient fails to comply with state or federal law;

2 (5) timely notify the Department of Public Safety if a village public
3 safety officer resigns or vacates a position; and

4 (6) timely notify and submit a written report to the Department of
5 Public Safety if a village public safety officer points a firearm in the direction of
6 another person or discharges a firearm while on duty.

7 (h) The commissioner of public safety may, in consultation with grant
8 recipients, as provided in (k) of this section, adopt regulations related to village public
9 safety officers, including establishing minimum standards and training, physical
10 fitness requirements, criteria for participation by a community, a municipality, an
11 Alaska Native organization, a federally recognized tribe, or a corporation, and the
12 interaction between the Department of Public Safety and village public safety officers.
13 If the commissioner of public safety adopts regulations regarding training for village
14 public safety officers, the training must be consistent with the standards in
15 AS 18.65.676 and disability training under AS 18.65.220(3). The commissioner of
16 corrections may, in consultation with grant recipients, adopt regulations related to the
17 functions of village public safety officers providing probation and parole supervision.

18 (i) A grant recipient may charge its federally approved indirect costs to the
19 village public safety officer program grant if the statewide average of indirect costs
20 does not exceed 35 percent.

21 (j) The Department of Commerce, Community, and Economic Development
22 may not withhold, without reason, approval of a funding request made under a grant
23 award. The Department of Commerce, Community, and Economic Development shall
24 timely disburse grant funds. A grant recipient may use funding for items reasonably
25 related to public safety and village public safety officer duties under AS 18.65.670 -
26 18.65.688.

27 (k) The commissioner of public safety, commissioner of commerce,
28 community, and economic development, and commissioner of corrections shall

29 (1) ensure all relations with federally recognized tribal governments
30 that are direct grant recipients or the incorporator of a nonprofit regional corporation
31 are conducted on a government-to-government basis;

(2) ensure the Department of Public Safety and the Department of Commerce, Community, and Economic Development consult with a grant recipient

(A) before implementing a policy or regulation that affects the recipient and as early as possible in the development of a new or revised policy or regulation;

(B) on the state policies and regulations the grant recipient considers necessary, as well as the substance of the policies and regulations;

(3) to the extent possible, use consensual mechanisms to develop policies and regulations, including negotiated rulemaking processes;

(4) respect tribal sovereignty in consultations with grant recipients;

(5) ensure consultations with grant recipients are open and candid to enable interested parties to accurately assess potential effects; and

(6) ensure the removal of procedural impediments to working directly and effectively with grant recipients on programs that affect the governmental rights of a tribe.

(l) The commissioner of public safety and the commissioner of commerce, community, and economic development shall designate an official within each department who has the primary responsibility for compliance with this section. The official shall develop and annually review departmental procedures for compliance with this section. The Department of Commerce, Community, and Economic Development and the Department of Public Safety shall provide to all grant recipients the results of the annual review and post the results on the Internet websites of the Department of Public Safety and the Department of Commerce, Community, and Economic Development.

* **Sec. 4.** AS 18.65 is amended by adding new sections to read:

Sec. 18.65.672. Village public safety officer qualifications. (a) A grant recipient may employ a person as a village public safety officer if the individual

(1) is at least 21 years of age;

(2) is a citizen of the United States or a resident alien;

(3) has obtained a high school diploma or a general education development diploma or its equivalent;

1 (4) satisfies the physical requirements established in regulation by the
2 Department of Public Safety;

3 (5) has not been previously convicted

4 (A) of a felony crime against a person under AS 11.41;

5 (B) of a sex offense as defined in AS 12.63.100;

6 (C) of a felony crime, other than a felony under (A) or (B) of
7 this paragraph, unless at least 10 years have passed since the date of the
8 conviction and the Department of Public Safety grants a waiver allowing the
9 individual to access the criminal justice information system;

10 (D) of a misdemeanor crime involving domestic violence
11 unless at least 10 years have passed since the date of the conviction and the
12 Department of Public Safety grants a waiver allowing the individual to access
13 the criminal justice information system;

14 (E) of a misdemeanor if less than five years has elapsed since
15 the individual's date of conviction for the offense;

16 (F) two or more times of

17 (i) misdemeanor operating a vehicle, aircraft, or
18 watercraft while under the influence of an alcoholic beverage, inhalant,
19 or controlled substance under AS 28.35.030;

20 (ii) misdemeanor refusal to submit to a chemical test
21 under AS 28.35.032; or

22 (iii) a combination of the offenses in (i) and (ii) of this
23 subparagraph;

24 (G) of manufacturing, transporting, or delivering an alcoholic
25 beverage in violation of a local option under AS 04.11 or a municipal
26 ordinance or a controlled substance, unless at least 10 years has elapsed; or

27 (H) of possession of a controlled substance as defined in
28 AS 11.71.900, other than marijuana, if less than 10 years has elapsed since the
29 individual's use;

30 (6) has not been denied a village public safety officer certification or
31 had a certification revoked; and

1 (7) has not been denied a police officer certification, had a certification
2 revoked, or surrendered a certification in this state or another jurisdiction.

3 (b) A grant recipient may not use grant money to employ a village public
4 safety officer for a period of more than 24 months unless the officer obtains a village
5 public safety officer certificate from the Department of Public Safety under
6 AS 18.65.682. Upon written application from a grant recipient, the Department of
7 Public Safety may, in its discretion, extend this period up to six months to permit the
8 officer to complete the training required under AS 18.65.676, if the officer is unable to
9 do so in the first 24 months of employment because of an illness, injury, or
10 emergency.

11 (c) In this section, "previously convicted" means having been convicted of a
12 crime described in (a) of this section or a law or ordinance of another jurisdiction with
13 elements similar to the crimes listed in (a) of this section. A conviction for which the
14 person received a suspended entry of judgment, suspended imposition of sentence,
15 expungement, or pardon is a conviction for purposes of this section, unless the
16 conviction was for a misdemeanor crime committed by the individual when the
17 individual was under 21 years of age.

18 **Sec. 18.65.674. Background investigations.** (a) Before employing an
19 individual as a village public safety officer, a grant recipient shall

20 (1) submit to the commissioner of public safety the individual's

21 (A) completed application and personal and medical history, on
22 forms prepared by the Department of Public Safety;

23 (B) proof of age, citizenship status, and education; and

24 (C) fingerprints, the fees required by the Department of Public
25 Safety under AS 12.62.160 for criminal justice information and a national
26 criminal history record check, and other information sufficient to complete a
27 background check consisting of a fingerprint check of national criminal
28 records and criminal records of the state or states in which the individual has
29 resided for the past 10 years; the Department of Public Safety shall conduct a
30 criminal justice information and national criminal history record check under
31 AS 12.62;

1 (2) review the criminal justice information and national criminal
2 history record check completed by the Department of Public Safety; and

3 (3) review the results of the individual's physical examination and
4 physician certification.

5 (b) Personnel and training information that the Department of Public Safety or
6 a grant recipient receives about a village public safety officer is confidential and
7 available only for review by a grant recipient, the Department of Public Safety, or that
8 officer. A village public safety officer or an individual who applies for employment as
9 a village public safety officer may not review information that another individual
10 supplied with the understanding that the information or its source would remain
11 confidential, unless the information serves as the basis for a decision to deny or revoke
12 a certificate under AS 18.65.684.

13 **Sec. 18.65.676. Training.** (a) A village public safety officer basic training
14 program must provide

15 (1) a physical training program that includes instruction in physical
16 methods of arrest, use of batons, use of chemical defensive weapons, and electronic
17 control weapons;

18 (2) at least 826 hours of instruction as follows:

19 (A) 650 hours of instruction in

20 (i) Alaska criminal and procedural law;

21 (ii) the Alaska criminal justice system;

22 (iii) police procedures;

23 (iv) disabilities under AS 18.65.220(3);

24 (v) domestic violence and sexual assault prevention and
25 response procedures; and

26 (B) 176 hours of instruction in

27 (i) emergency trauma technician training;

28 (ii) search and rescue training;

29 (iii) rural fire protection specialist training.

30 (b) An individual seeking village public safety officer certification under
31 AS 18.65.682 shall attend all sessions of the basic training required under (a) of this

1 section, unless the director of the training program approves an absence. An individual
 2 who is absent for more than 10 percent of the total hours of instruction has not
 3 successfully completed basic training.

4 (c) An individual who fails to comply with the attendance and performance
 5 requirements of the training program may be dismissed from the training. The
 6 Department of Public Safety may not consider a dismissed individual to have
 7 successfully completed basic training.

8 (d) If a village public safety officer receives training that the Department of
 9 Public Safety did not provide and the entity conducting the training provides a
 10 description of the training to the department, the department may take that training
 11 into account in determining the completion of basic training and accept other police
 12 officer or firefighter training and experience that equals or exceeds the hours and
 13 covers the subject matter required under (a) of this section.

14 **Sec. 18.65.678. Firearms training.** (a) A village public safety officer may not,
 15 except in an emergency, carry a firearm in the performance of the officer's duties until
 16 the officer has successfully completed

17 (1) a basic firearms training program that is certified by the Alaska
 18 Police Standards Council or substantially similar training as determined by the
 19 Department of Public Safety;

20 (2) a psychological examination conducted by a mental health
 21 professional; and

22 (3) all annual firearm qualification requirements.

23 (b) In determining the successful completion of basic firearms training, the
 24 Department of Public Safety may consider previous training and experience that is
 25 substantially similar to the training required under (a) of this section.

26 **Sec. 18.65.682. Village public safety officer certification.** The Department of
 27 Public Safety shall issue a village public safety officer certificate to an individual who

28 (1) has satisfactorily completed 12 months as a full-time paid village
 29 public safety officer without a break in service longer than 90 consecutive days or
 30 nonconsecutive breaks in service totaling 120 or more days;

31 (2) meets the standards in AS 18.65.672;

1 (3) has successfully completed

2 (A) a basic training program that meets the requirements under
3 AS 18.65.676; and

4 (B) a background information check under AS 18.65.674(a);
5 and

6 (4) attests to the law enforcement code of ethics.

7 **Sec. 18.65.684. Denial, revocation, or lapse of certificate.** (a) The
8 Department of Public Safety may deny an individual's application for a village public
9 safety officer certificate or revoke a village public safety officer certificate in
10 accordance with AS 44.62 (Administrative Procedure Act) if

11 (1) the individual knowingly makes a false statement in an application
12 or other document required for employment or certification; or

13 (2) after the date of hire, has

14 (A) been convicted of a

15 (i) felony;

16 (ii) misdemeanor crime involving domestic violence; or

17 (iii) misdemeanor crime of dishonesty, a crime that
18 resulted in serious physical injury to another person, or of operating a
19 vehicle, aircraft, or watercraft while under the influence of an alcoholic
20 beverage, inhalant, or controlled substance two or more times;

21 (B) illegally used, possessed, manufactured, transported, or
22 delivered an alcoholic beverage in violation of a local option under AS 04.11
23 or a municipal ordinance or a controlled substance; or

24 (C) used, sold, cultivated, transported, manufactured, or
25 distributed marijuana.

26 (b) The commissioner of public safety is not required to deny an individual's
27 application for certification or revoke a certification if the individual or holder of the
28 certificate establishes by clear and convincing evidence that, in connection with a
29 conviction for a misdemeanor crime involving domestic violence, the individual or
30 holder of the certificate

31 (1) was not represented by counsel and did not, by guilty plea or

1 otherwise, knowingly waive the right to counsel;

2 (2) was entitled to a jury trial, did not receive a jury trial, and did not,
3 by guilty plea or otherwise, knowingly waive the right to a jury trial; or

4 (3) is not subject to a court order that expressly prohibits the officer
5 from shipping, transporting, possessing, or receiving firearms, and the underlying
6 conviction

7 (A) has been expunged or set aside;

8 (B) is for an offense for which the officer has been pardoned;

9 or

10 (C) is for an offense for which the officer has had civil rights
11 restored that were lost upon the conviction.

12 (c) The holder of a certificate shall immediately return the certificate to the
13 Department of Public Safety upon notification of the revocation.

14 (d) An individual who is denied a certificate or a holder whose certificate is
15 revoked may appeal to the commissioner of public safety for reversal of the denial or
16 revocation. The appeal must be received in writing within 30 days after the date of the
17 notice of denial or revocation and must set out the reasons for the appeal. The
18 commissioner of public safety or the commissioner's designee shall issue a written
19 decision within 45 days after receipt of the appeal.

20 (e) A certificate lapses if the holder is not employed as a full-time village
21 public safety officer for a period of 12 consecutive months.

22 (f) An individual may request reinstatement of a lapsed certificate after
23 undergoing additional training as determined by the Department of Public Safety and
24 serving an additional probationary period of up to 12 months, at the discretion of the
25 commissioner of public safety in consultation with the grant recipient. A certificate
26 that lapses for more than 10 years may not be reinstated.

27 **Sec. 18.65.686. Powers and duties of village public safety officers.** A village
28 public safety officer who is certified under AS 18.65.682 has the power of a peace
29 officer of the state or a municipality and is charged with

30 (1) the protection of life and property in the state, including through

31 (A) fire prevention and suppression;

1 (B) provision of emergency medical services; and

2 (C) participation in and coordination of search and rescue
3 efforts for missing or injured persons;

4 (2) providing probation and parole supervision to persons under
5 supervision by communicating with and monitoring the activities and progress of these
6 persons at the direction of probation and parole officers;

7 (3) conducting investigations;

8 (4) enforcing

9 (A) the criminal laws of the state or a municipality;

10 (B) statutes or ordinances of the state or municipality
11 punishable as a violation if the certified village public safety officer has
12 completed training in that field of violation enforcement;

13 (5) providing local training programs on public safety; and

14 (6) the powers usually and customarily exercised by a peace officer.

15 **Sec. 18.65.688. Definitions.** In AS 18.65.670 - 18.65.688,

16 (1) "Alaska Native organization" means an organization listed in
17 AS 47.27.070(a);

18 (2) "crime involving domestic violence" has the meaning given in
19 AS 18.66.990;

20 (3) "for cause" means for inefficiency, incompetency, dishonesty, or
21 some other reason that adversely affects the ability and fitness of the village public
22 safety officer to perform job duties;

23 (4) "marijuana" has the meaning given in AS 11.71.900;

24 (5) "village" means a community with a population less than 2,500
25 based on the most recent federal census.

26 * **Sec. 5.** AS 44.33.020(a) is amended by adding a new paragraph to read:

27 (45) administer the village public safety officer grant program under
28 AS 18.65.670 through grant application review, compliance monitoring, and
29 consultation and mediation of disputes between grant recipients.

30 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION. Notwithstanding the requirements in AS 18.65.672 and 18.65.676,
2 enacted by sec. 4 of this Act, a person employed as a village public safety officer on the day
3 before the effective date of sec. 4 of this Act may continue to be employed as a village public
4 safety officer without meeting the requirements.

5 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION. In implementing AS 18.65.670(h), added by sec. 3 of this Act, the
8 Department of Public Safety shall continue to comply with regulations adopted under
9 AS 18.65.670(c) regarding interactions between the Department of Public Safety and the
10 village public safety officers.

11 * **Sec. 8.** AS 18.65.670(b) - (g), as repealed and reenacted by sec. 3 of this Act, take effect
12 July 1, 2020.

13 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect immediately under
14 AS 01.10.070(c).