

## Joint VPSO Working Group

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Alaska State Legislature

TO: Rep. Claman  
Chair, House Judiciary Committee

Sen. Revak  
Chair, Senate State Affairs Committee

FROM: Rep. Chuck Kopp   
Co-Chair, VPSO working group and bill sponsor

Sen. Donny Olson   
Co-Chair, VPSO working group and bill sponsor

RE: Co-Chair's response to March 4, 2020 letter from Commissioner Price on  
HB 287 version K, and SB 231 version U.

DATE: March 12, 2020

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Commissioner Price sent comments to Representative Kopp, Senator Olson, and the other bill co-sponsors to HB 287, version K, and to SB 231, version U. What follows are brief statements on the recommendation contained in that letter. In brief, the co-chair's statements fall into three categories:

1. Recommendations that led to amendments to HB 287 version K and are now incorporate in version O which is currently before the House Judiciary Committee. A blank CS has been prepared to offer the same amendments to SB 231.
2. Recommendations that that the co-chairs disagree with but would be pleased to address further than what is explained below.
3. Recommendations that the co-chairs do not understand because the comments would suggest that a particular bill provision was unclear, or vague or represented some other operational problem. What is confusing is the bill provisions in this category are either currently in statute or the bill language came from the department's VPSO existing regulations.

**Suggestions that questioned the wisdom of bill provisions. The following bill provisions are either from the existing VPSO statute or the department's current VPSO regulations, or functions that VPSOs have performed for many years and the bill is just putting these in statute:**

1. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(3) on conducting investigations and evidence storage for evidence that results with VPSOs now being allowed to investigate felonies.
  - a. Response: The comment from the Department mistakenly asserts that the bill increases the amount of time to 30 months a VPSO may be on the job without being certified. The bill keeps the current standard of 24 months which is in current DPS regulations. Also, VPSOs currently investigate felonies and deal with collected evidence and evidence storage and the bill does nothing but acknowledge the current practice.
2. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(4)(A): On expanding VPSO's to having authority to enforcing municipal ordinances and creating jurisdictional conflicts.
  - a. Response: All certified municipal police and state troopers have statewide jurisdiction with potential "jurisdictional conflicts" but they manage them. Also, VPSOs currently work within municipalities specifically when travel to offer VPSO support to municipalities hosting AFN.
3. On the repealed and reenacted VPSO statute, AS 18.65.670(b): Comment that: "It further expands the eligible applicants to municipalities with less than 10,000 people."
  - a. Response: This particular subsection in the bill is an almost word-for-word reenactment of the existing subsection of the VPSO statute and makes no changes to municipal government eligibility to apply for a VPSO grant.
4. On the repealed and reenacted VPSO statute, AS 18.65.670(c): On this provision being unclear about VPSOs being assigned outside of grant a recipient's region.
  - a. Response: This provision is almost identical to existing regulation and is unclear to the co-chairs why the DPS regulation language is now unclear when it is in a statute instead of regulation.
5. On the repealed and reenacted VPSO statute, AS 18.65.670(h)(3): Comment that it is unclear what is meant by the DPS participating in "monitoring public safety performance."

- a. Response: This is the current statutory language, and only statutory language, that instructs the department how to interact with the VPSO grantees. It is unclear why this language is insufficient now when it is the current statutory language.
6. On the repealed and reenacted VPSO statute, AS 18.65.670(h)(6) asserting the provision is insufficient to deal with potential VPSO use of force issues.
    - a. Response: This provision is word-for-word from existing VPSO regulations. Again, it is unclear why the language was sufficient as a regulation but is now somehow deficient.
  7. On proposed new statute AS 18.65.672(a)(5)(D) dealing with VPSO qualifications, specifically allowing a misdemeanor conviction if less than five years has elapsed since the conviction—the comments suggest adding a waiver process:
    - a. Response: This provision is word-for-word from existing VPSO regulation 13 AAC 96.080(a)(6)(B) and there is no “waiver process” in that regulation. Again, it is unclear why the language was sufficient as a regulation but is now somehow deficient.
  8. On the new VPSO statute, AS 18.65.678, on firearms training, comment being there is no responsibility assigned to this overall section.
    - a. Response: This provision is word-for-word from existing VPSO regulation 13 AAC 96.100.” Again, it is unclear why the language was sufficient as a regulation but is now somehow deficient.
  9. On the new VPSO statute, AS 18.65.684(b)(1)-(3). The comment: “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?”
    - a. Response: This provision is word-for-word from the department’s proposed changes to VPSO regulation 13 AAC 96.120. The bill sponsor pulled this language from what the department provided this office. It is unclear why the language was sufficient as the department drafted it, but now the intent is somehow unclear.

**Suggestions not in amendments because the bill sponsor did not agree with the recommendation:**

1. On the repealed and reenacted VPSO statute, AS 18.65.670(b): Inclusion of “federally recognized tribes” as eligible VPSO grant recipient—on questions about remedies needed

for allowing non-tribal citizens potentially wronged by a VPSO a venue to sue tribes and other state/tribal sovereignty issues.

- a. Response: Some of the issues raised are red herrings as currently a federally recognized tribe is and has been a VPSO operator for many years and apparently the issues DPS raises are being managed.
2. On the repealed and reenacted VPSO statute, AS 18.65.670(k): On the provision that provides more timely grant fund distribution and financial flexibility. Specifically, that the phrase “items reasonably related to public safety” should be defined:
  - a. Response: One of the problems plaguing the VPSO program is restrictive approaches to getting grant funds to the VPSO operators. The phrase was deliberately drafted to be broadly interpreted. Additionally, this provision applies to the department of commerce, not the department of public safety so it is unclear why DPS has a concern when DCCED has expressed no such concern.
3. On the new VPSO statute, AS 18.65.670(1)(1)-(6): The new “tribal consultation” provision vague and unclear.
  - a. Response: The concept of consultation is well established within the federal executive branch and there are many places online to find guidance. For example, many federal agencies have highly developed consultation programs and guidance on their web sites: <https://www.fs.fed.us/spf/tribalrelations/regional/index.shtml>. Additionally, the suggestion that there will be complete turnover in the grantees is not a realistic scenario and is not a reason to disregard best practices on consultation.
4. On the new VPSO statute, AS 18.65.670(m): On creating policies for implementing the consultation provision and compliance measures for them.
  - a. Response: Because much of HB 287 and SB 231 have been drafted by taking current and existing department of public safety VPSO regulations and there were no such metrics in those regulations even though the department had the authority to adopt such measures, the co-chairs of the VPSO working group deem it unnecessary at this time to enact such measures at the statutory level.
5. .672(c): on what constitutes “previously convicted” for purpose of barrier crimes to VPSO employment and potentially being a barrier to access to the criminal justice information systems.
  - a. Response: If this presents the same issue for access to the CJIS system, we will explore modifications to this provision in the bill.

6. On the new VPSO statute, AS 18.65.684, on department denying, revoking, or lapsed VPSO certificates using “shall” instead of “may.”
  - a. Response: This bill section comes from current DPS regulation where “will” is used. The co-chairs believe that keeping revocation of a VPSO certificate to a case-by-case basis provides the ability to examine the circumstances of individual cases and make decisions accordingly are a better public policy than a mandatory revocation scheme.

**Comments that led to amendments to the House bill before the House Tribal Affairs Committee:**

1. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(1)(c) [The expanded powers and duties of VPSOs, specifically “search and rescue.”]
2. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(3) expanded duties to include “conducting investigations”
3. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(4)(A): On VPSOs enforcing “village” law.
4. On the repealed and reenacted VPSO statute, AS 18.65.670(a)(4)(B) regarding VPSOs having authority to enforce “violations”.
5. On the repealed and reenacted VPSO statute, AS 18.65.670(d)(3) on the responsibility of who will be required to purchase liability insurance.
6. On the repealed and reenacted VPSO statute, AS 18.65.670(i) suggested that this section additionally include statutorily required training on domestic violence (12 hours) and sexual assault (12 hours).
7. On the new VPSO statute, AS 18.65.672—the VPSO qualifications statute that we modified from their existing regulation 13 AAC 96.080:
  - a. .672(a)(5)(B):DPS suggests removing this section and make all felony convictions a reason for barring employment as a VPSO.
8. .672(a)(5)(C): On adding a waiver requirement for CJIS access for misdemeanor domestic violence convictions.
9. .672(a)(5)(E): On reducing three (3) DUI convictions back down to two (2) DUI convictions to be consistent with other regulations for peace/police officers.

10. .672(a)(5)(G): technical change on the word “use” of a controlled substance to “possess.”
11. .672(b): On allowing an applicant to work for 24 months without a VPSO certificate.
12. On the new VPSO statute, AS 18.65.674(a)(1) on background checks:

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

13. On the new VPSO statute, AS 18.65.674(b)--same as above amendment is removing DCCED.
14. On the new VPSO statute, AS 18.65.676 on training requirements adding domestic violence and sexual assault trainings. This is a duplicate request to number 6 above.