

HOUSE BILL NO. 287

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KOPP, Edgmon, Zulkosky, Lincoln, Foster, Story

Introduced: 2/24/20

Referred: House Special Committee on Tribal Affairs, Judiciary, Finance

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 to administer functions related to

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

5 (A) fire prevention and suppression;

6 (B) provision of emergency medical services; and

7 (C) participation in and management of search and rescue
 8 efforts for missing or injured persons;

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

12 (3) conducting investigations;

13 (4) enforcing

14 (A) the criminal laws of the state, a municipality, or a village;

15 (B) statutes or ordinances of the state, a municipality, or a
 16 village punishable as a violation; and

17 (5) providing local training programs on public safety.

18 (b) With funds appropriated for that purpose, the commissioner of commerce,
 19 community, and economic development shall, in coordination with the commissioner
 20 of public safety, provide grants to nonprofit regional corporations, federally
 21 recognized tribes, and Alaska Native organizations for training and employment of
 22 village public safety officers. If a nonprofit regional corporation for a village, federally
 23 recognized tribe, or Alaska Native organization declines a grant under this subsection,
 24 the commissioner may provide the grant to a municipality with a population of less
 25 than 10,000 willing to administer the grant for the village. Before awarding a grant to
 26 a municipality, the commissioner of commerce, community, and economic
 27 development shall consult with the commissioner of public safety and the nonprofit
 28 regional corporation, federally recognized tribe, or Alaska Native organization that
 29 declined the grant.

30 (c) The Department of Commerce, Community, and Economic Development
 31 shall annually accept applications from entities described in (b) of this section for

1 village public safety officer grants. Grant applicants may apply to employ village
 2 public safety officers in participating villages located in the applicant's region. An
 3 application must include

- 4 (1) a projected budget, including administrative costs;
- 5 (2) a list of villages in which the applicant plans to employ village
 6 public safety officers;
- 7 (3) other information required by the Department of Commerce,
 8 Community, and Economic Development.

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

- 12 (1) comply with state and federal law;
- 13 (2) provide a salary and benefit schedule for the village public safety
 14 officer; and
- 15 (3) be named as the employer of the village public safety officer.

16 (e) A grant recipient shall enter into a written agreement with a village before
 17 using grant money to provide a village public safety officer in that village. The
 18 agreement must

- 19 (1) be similar to other agreements between the grant recipient and
 20 other villages in the region served by the grant recipient;
- 21 (2) require compliance with state and federal law; and
- 22 (3) describe the village public safety officer position.

23 (f) A grant recipient shall provide one village public safety officer for each
 24 village in a grant agreement entered into under (d) of this section unless an application
 25 for a second full-time position is approved by the Department of Commerce,
 26 Community, and Economic Development.

27 (g) A grant recipient may assign a traveling village public safety officer to
 28 serve multiple villages within the grant recipient's region if each village to which the
 29 officer is assigned enters into an agreement with the grant recipient under (e) of this
 30 section.

31 (h) A grant recipient shall

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

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

8 (3) facilitate site visits by the Department of Commerce, Community,
9 and Economic Development or the Department of Public Safety to monitor public
10 safety officer performance and compliance with state and federal law;

11 (4) notify the Department of Commerce, Community, and Economic
12 Development if the grant recipient or village fails to comply with state or federal law
13 or an agreement entered into under (e) of this section;

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

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

19 (i) The commissioner of public safety may, in consultation with grant
20 recipients, as provided in (l) of this section, adopt regulations related to village public
21 safety officers, including establishing minimum standards and training, physical
22 fitness requirements, criteria for participation by a community, a municipality, an
23 Alaska Native organization, a federally recognized tribe, or a corporation, and the
24 interaction between the Department of Public Safety and village public safety officers.
25 If the commissioner of public safety adopts regulations regarding training for village
26 public safety officers, the training must be consistent with the standards in
27 AS 18.65.676 and disability training under AS 18.65.220(3). The commissioner of
28 corrections may adopt regulations related to the functions of village public safety
29 officers providing probation and parole supervision.

30 (j) A grant recipient may charge its federally approved indirect costs to the
31 village public safety officer program grant if the statewide average of indirect costs

1 does not exceed 35 percent.

2 (k) The Department of Commerce, Community, and Economic Development
3 may not withhold, without reason, approval of a funding request made under a grant
4 award. The Department of Commerce, Community, and Economic Development shall
5 timely disburse grant funds. A grant recipient may use funding for items reasonably
6 related to public safety and village public safety officer duties under AS 18.65.670 -
7 18.65.686.

8 (l) The commissioner of public safety, commissioner of commerce,
9 community, and economic development, and commissioner of corrections shall

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

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

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

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

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

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

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

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

28 (m) The commissioner of public safety and the commissioner of commerce,
29 community, and economic development shall designate an official within each
30 department who has the primary responsibility for compliance with this section. The
31 official shall develop and annually review departmental procedures for compliance

1 with this section. The Department of Commerce, Community, and Economic
 2 Development and the Department of Public Safety shall provide to all grant recipients
 3 the results of the annual review and post the results on the Internet websites of the
 4 Department of Public Safety and the Department of Commerce, Community, and
 5 Economic Development.

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

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

9 (1) is at least 21 years of age;

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

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

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

15 (5) has not been previously convicted

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

17 (B) of a felony crime, other than a felony under (A) of this
 18 paragraph, unless at least 10 years have passed since the date of the conviction;

19 (C) of a misdemeanor crime involving domestic violence
 20 unless at least 10 years have passed since the date of the conviction;

21 (D) of a misdemeanor if less than five years has elapsed since
 22 the individual's date of conviction for the offense;

23 (E) three or more times of

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

27 (ii) misdemeanor refusal to submit to a chemical test
 28 under AS 28.35.032; or

29 (iii) a combination of the offenses in (i) and (ii) of this
 30 subparagraph;

31 (F) of manufacturing, transporting, or delivering an alcoholic

1 beverage in violation of a local option under AS 04.11 or a municipal
 2 ordinance or a controlled substance, unless at least 10 years has elapsed; or

3 (G) of use of a controlled substance as defined in
 4 AS 11.71.900, other than marijuana, if less than 10 years has elapsed since the
 5 individual's use;

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

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

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

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

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

27 (1) submit to the commissioner of commerce, community, and
 28 economic development the individual's

29 (A) completed application and personal and medical history, on
 30 forms prepared by the department;

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

(C) fingerprints, the fees required by the Department of Public Safety under AS 12.62.160 for criminal justice information and a national criminal history record check, and other information sufficient to complete a background check consisting of a fingerprint check of national criminal records and criminal records of the state or states in which the individual has resided for the past 10 years; the commissioner shall submit the fingerprints and fees to the Department of Public Safety for a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;

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

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

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

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

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

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

(A) 650 hours of instruction in

(i) Alaska criminal and procedural law;

(ii) the Alaska criminal justice system;

(iii) police procedures;

(iv) disabilities under AS 18.65.220(3);

(B) 40 hours of emergency trauma technician training;

(C) 40 hours of search and rescue training; and

(D) 96 hours of rural fire protection specialist training.

(b) An individual seeking village public safety officer certification under AS 18.65.682 shall attend all sessions of the basic training required under (a) of this section, unless the director of the training program approves an absence. An individual who is absent for more than 10 percent of the total hours of instruction has not successfully completed basic training.

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

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

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

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

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

(3) all annual firearm qualification requirements.

(b) In determining the successful completion of basic firearms training, the

1 Department of Public Safety may consider previous training and experience that is
 2 substantially similar to the training required under (a) of this section.

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

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

8 (2) meets the standards in AS 18.65.672;

9 (3) has successfully completed

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

12 (B) a background information check under AS 18.65.674(a);
 13 and

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

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

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

21 (2) after the date of hire, has

22 (A) been convicted of a

23 (i) felony;

24 (ii) misdemeanor crime involving domestic violence; or

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

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

1 (C) used, sold, cultivated, transported, manufactured, or
 2 distributed marijuana.

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

8 (1) was not represented by counsel and did not, by guilty plea or
 9 otherwise, knowingly waive the right to counsel;

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

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

15 (A) has been expunged or set aside;

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

17 or

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

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

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

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

30 (f) An individual may request reinstatement of a lapsed certificate after
 31 undergoing additional training as determined by the Department of Public Safety and

1 serving an additional probationary period of up to 12 months, at the discretion of the
 2 commissioner of public safety in consultation with the grant recipient. A certificate
 3 that lapses for more than 10 years may not be reinstated.

4 **Sec. 18.65.686. Definitions.** In AS 18.65.670 - 18.65.686,

5 (1) "Alaska Native organization" means an organization listed in
 6 AS 47.27.070(a);

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

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

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

13 (5) "village" means a community with a population less than 2,000
 14 based on the most recent federal census.

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

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

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

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

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

27 **TRANSITION.** In implementing AS 18.65.670(i), added by sec. 3 of this Act, the
 28 Department of Public Safety shall continue to comply with regulations adopted under
 29 AS 18.65.670(c) regarding interactions between the Department of Public Safety and the
 30 village public safety officers.

31 * **Sec. 8.** AS 18.65.670(b) - (h), as repealed and reenacted by sec. 3 of this Act, take effect

1 July 1, 2020.

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