

Senate Judiciary Committee Hearing Testimony of Katherine J. Hansen related to SB 108

Chair, Senator John Coghill
Vice Chair, Senator Lesil McGuire
Senator Fred Dyson (bill sponsor)
Senator Donald Olson
Senator Bill Wielechowski

Wed. March 5, 2014 @ 1:30pm

My name is Kathy Hansen, and I am a staff attorney and acting director under Taylor Winston at the Alaska Office of Victims' Rights. Thank you for the opportunity to provide information to assist the judiciary committee considering Senate Bill 108.

As you know the Alaska Office of Victims' Rights has written a letter of non-support for SB 108. I want to start by making it clear that I agree that the problem Senator Dyson seeks to address through SB 108 is one that deserves action. A personal example: my husband, many years ago, in his young 20s, gave his credit card to pay for drinks at a bar. The bartender misplaced the card, and my husband had no other card to pay his tab. He was arrested and charged with "defrauding an innkeeper." The bar found his credit card behind the counter the next day. The charges were dismissed. The transaction appears on Courtview. As a business owner, in the 20 years since then, he has always worried about how the information might affect his ability to earn the trust of his residential housekeeping clients. It would be nice if somehow, he could set the record straight.

But I want to tell you a different, more troubling, story. A woman has been beaten by her husband. It's not the first time. But, for some reason, this is the first time she finally worked up the courage to call 911. This time, they were arguing, and he strangled her to the point she almost lost consciousness. She honestly thought she would die. Somehow she survived. She made what she believed would be her final prayer to God. There are slight marks on her neck from her husband's hands. She lost control of her bladder during the strangulation. Two police officers come, and make a full investigation. They determine that a crime has been committed. A written probable cause statement is prepared and filed with the court. A judge separately reviews the document and makes an independent determination that there is probable cause for criminal charges to proceed. Next, a district attorney reviews the police report and criminal complaint. Before the case can go forward, the prosecutor, ethically, must find evidence beyond a reasonable doubt exists to prosecute. The defendant is charged with felony assault. Before the felony case can go forward, the grand jury, a group of public citizens, meets and hears the evidence, and votes to indict, finding again that there is enough evidence for the criminal charges to go forward. Months later, the victim, out of terror if she testifies against her husband, out of financial desperation, emotional turmoil, embarrassment, and a desire to avoid the situation or a public trial, recants her testimony. The prosecutor considers dismissing the case. He might have, if the victim had left the state. He takes the case to trial, and the jury acquits.

In this situation, SB 108 would remove the entire record from public view. By comparison, the civil protective order she filed, ex parte and without notice to her husband, remains on Courtview. In the protective order filing, the victim swears she was strangled, but there is no police officer, no independent investigation, no magistrate, no grand jury and no district attorney to back her up.

I have worked for 19 years in the state criminal justice system; the last 11 years at the Office of Victims' Rights. This is a situation I have seen repeat itself countless times across the state. The victims are not in a position to protect themselves. But the criminal justice system does its best to protect them anyway. SB 108 would jeopardize the safety of every victim of domestic violence, and community safety in general, every time there has been or will be a domestic violence victim who recants her testimony and there was a resulting dismissal or acquittal.

Many of the clients at the Office of Victims' Rights are victims of domestic violence, sexual violence, and child sexual abuse. Sometimes, the victims are very young children, and they have a very difficult time testifying in open court about the sexual abuse committed by a family member. They don't even fully understand, and they don't have the words to explain, what has happened to them. It is the child's testimony against a father, a brother, or a cousin. Sometimes, the jury thinks something happened, but does not feel the state proved the case beyond a reasonable doubt. Perhaps the matter will be resolved by a child custody case, or by the Office of Children's Services, or a private lawsuit. But how do you justify scrubbing all information of a criminal trial from the public record? How do you explain to a victim in this situation, the absence of any public proof that the child ever came forward and testified under oath? What effect will this have on the child?

And there are homicide cases. The victim is deceased and has no voice. The survivors piece together what happened and the defendant, still living, has a right to testify at trial if he chooses. The accused may assert that he acted in self-defense. The jury may acquit because they will never be virtually certain what truly happened. But how would I explain to the victim's extended family why all record of the criminal case is removed from public view? They heard the defense attorney carefully explain to the jurors at trial that a "not guilty" verdict is not the same as voting "innocent."

Often when an accused has more than one open criminal case, a plea agreement is made and the defendant has charges from one case dismissed in exchange for a guilty plea to the charge in another case. There is often more than one victim, but only one guilty plea. For example: for an offender who commits multiple home theft offenses, on different victims, on different dates, but pled to only one theft crime, the dismissals would be erased from public view. It would be unfair to the victims of the cases, and unfair to the public, to wipe the records for the dismissed cases from the docket as if they never occurred.

This committee has heard several individuals testify that information from Courtview is often used in a prejudicial, unfair manner. Courtview information should not be misused. But the legislature should not try to and, practically, cannot control private prejudices, just by removing information from public interest that might be misused. By doing so, a likely result would be that the public mistrust would

increase. Our sense of community would be diminished, and Alaskans would wonder what information the government has that it is not sharing with the public. This is not a feasible solution to the problem presented.

And there are media concerns. The Fairbanks Daily News-Miner printed an editorial, on February 22, 2014, in response to SB 108, and its title reads "More Secrecy? No Thanks." It pointed out that "an acquittal can also mean that prosecutors didn't do a good job presenting their case." Also, that "government agencies make mistakes and misuse their authority at times. Making records confidential in cases of complete acquittals and full dismissals would only cover up those errors and abuses." If SB 108 becomes law, a large number of criminal matters would disappear from public scrutiny. How would the public, concerned citizens, and the media track, point out, and attempt to prevent these errors and abuses? SB 108 would remove the information from access under the freedom of information act, AS 40.25.110, which states a general principal that public records should be open to public inspection. Media information would be published, but citizens would be unable to refer back to the official court records for information.

Once a criminal case has gone to a public trial, it is a matter of public interest. Important statistical information, historical information, and the ability of the public to detect and expose fraud and abuse, would be hampered by SB 108. Even those falsely accused might suffer if they were unable to find other persons who, similarly, had been falsely accused, or to detect and expose trends of fraud and abuse by government officials. Ted Stevens, OJ Simpson, Casey Anthony, and George Zimmerman (who killed Trayvon Martin); there are countless other examples. These cases happened, they are of public interest, and we can learn from them. Removing them from public view and scrutiny would rewrite history to the public's detriment.

Chairman Coghill wisely stated at Monday's committee meeting that the committee is looking for a balance to protect the public and its individual citizens. I urge the committee to achieve that balance by providing more information to the public, not hiding information from the public. A fair solution must promote public trust and preserve each individual's sense of fairness in the criminal justice process, both for crime victims and for those who have been falsely accused of crime. SB 108, in its current form, would cause more harm than it would remedy.

I have one more personal example. I was a prosecutor in Bethel in the 1990s. There was no Courtview and no public sex offender registry then. My next door neighbor, Frank Baker, made me feel uneasy. I did not know him or anything about him. But my instincts led me to inquire. I learned that about two years before I came to Bethel, he had been charged with sexual assault for attempting to rape a young girl by jumping out of the bushes. The case went to jury trial and he was acquitted. Frank Baker, I learned, was a maintenance man who had a key to my rental housing. He would stare from his home window into my living room. It appeared that he was masturbating from his living room window while watching me, but I could not be sure. He came to my door one day pretending to help me. He was crouched for opportunity. I can only describe my fear as instinct—but it was very real. I moved to a different apartment the next day. Courtview shows that, in 2005, Frank Baker was again charged, and

convicted, of new felony sexual offenses. I learned at some point that he had multiple prior convictions for sexual offenses in different states before coming to Alaska. I don't know if things would have been different for me if I hadn't known about the prior sexual assault acquittal. It gave me the confirmation I needed to trust my instincts. It was a necessary piece of the puzzle. I needed this information to decide how to keep myself safe.

Please don't deprive other citizens of this important information. It would be dangerous.

A handwritten signature in black ink, appearing to read "Katherine J. Hansen".