April 8, 2014

Dear Chairman Keller and members of the House Judiciary Committee,

Thank you for this opportunity to comment on a proposed amendment (#17) to SB 64. This amendment integrates the content of SB 108 to SB 64. I support the amendment.

This bill provides a simple and sensible answer to an important question. What should happen with the record of a state court criminal case when no convictions were obtained and the case is now closed? In other words, when all charges have either been dismissed or gone to trial, and none of the charges resulted in a criminal conviction.

Under the current language of SB 108, the approach is straightforward and simple. Three months after the case is closed, the court file is designated as confidential. This means, simply, that the court record is no longer offered for <u>general</u> public viewing.

In many states, expungement is an available remedy for a nonconviction record but Alaska does not have an expungement statute. SB 108 provides a less drastic remedy than expungement. SB 108 would not require the destruction of court records. Nor does it impede or unnecessarily burden law enforcement. Law enforcement and prosecutors still have access to the records.

Does the court system have an ongoing obligation to continually publish the existence of a nonconviction record to the general public access? No. Such fact does not have legal relevance. The fact of an arrest or charge is not evidence and not admissible to prove wrongdoing.

The Legislature has long recognized that not every piece of court-maintained information is accessible by the general public. Not probate records. Not adoption records. Not records of civil commitment proceedings concerning the decision whether to institutionalize mentally ill people.

The reason for making nonconviction court records confidential is a good one. It avoids an unnecessary risk of harm to a person. Even though we all know it should not make any difference, just the information that there

once was a criminal accusation can limit a person's economic opportunity and severely damage a community reputation. Making such records confidential, by contrast, provides a meaningful end to a criminal process.

Perhaps there is no better illustration of the personal impact of criminal litigation for us Alaskans than the case of Senator Ted Stevens. After 41 years of faithful service, he was charged with crimes and convicted. His conviction was later thrown out because of gross prosecutorial misconduct and the case was entirely dismissed. Let's suppose that Sen. Stevens had been charged in state court. Even after dismissal of all charges, public court records would forever list him – really, brand him - as a "criminal defendant." Why is that fair? Why should any citizen be treated that way for all time when the government has seen fit to dismiss the charges or when a defendant has been acquitted?

I understand that a letter opposing the amendment has been submitted by Taylor Winston, an employee of the Office of Victims' Rights. Ms. Winston opposes the idea of making closed nonconviction records confidential. Under Ms. Winston's theory of justice, a person once charged should be forever considered "not innocent," even though the courts make no such determination. Ms. Winston apparently thinks that the grand jury has a 'good enough' fact-finding process such that their indictments should forever stand as public monuments. She seems to forget that the grand jury meets in secret with the prosecutor and that the accused and his lawyer aren't allowed in.

The Founding Fathers would have disagreed. They rejected the Star Chamber model as a reliable means of determining guilt. Moreover, they required no continuing penalty, no loss of privilege and certainly no lifetime loss of privacy for those who had been once charged but not convicted of a crime.

Ms. Winston argues that Courtview is objective and provides information the public can use to can protect itself. She provided an example to the Senate Judiciary Committee of such use: she said she would check Courtview to help make a decision on a babysitter. This is a great example as to why SB 108 should be enacted. Courtview warns the reader as to its

unreliability and yet people still rely on it, presumptively, for divining someone's trustworthiness. [1]

SB 108 should be approved. It is a neat, nifty way to be fair to defendants - like Sen. Stevens- who end up with nonconviction cases, without undermining law enforcement or prosecutorial functions.

Thank you.

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[1] By the way, parents can easily obtain reliable information about a potential babysitter's entire arrest record from the Alaska State Troopers by getting the babysitter's consent and paying $20. SB 108 does not effect this mechanism at all.