

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

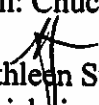
State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM

February 26, 2014

SUBJECT: CSSB 108(): Court Records (Work Order No. 28-LS0973\O)

TO: Senator Fred Dyson
Attn: Chuck Kopp

FROM:  Kathleen Strasbaugh
Legislative Counsel

Please find enclosed a draft committee substitute that increases the time period that must elapse before a court record of a criminal case becomes confidential, from 90 days to 120 days.

The request originally raised the question of whether the terms "confidential" and "court record" should be defined.¹ As Mr. Kopp and I discussed, it is probably not necessary and it may be wiser to allow the court to do so in its own rules, if it is indeed necessary.

First, the law's purpose is to create a category of confidential information and identify the records to which it applies. It does not seem to need additional explanation.

Second, the law applies to the court, which is a separate branch of government with constitutionally based rulemaking authority. Art. IV, sec. 15, Constitution of the State of Alaska. If the legislature enacts the law, which it arguably does in its capacity to create substantive rights,² the court has the constitutional authority to adopt rules to carry it out. Further, its existing rules already define "confidential" and "court record," and allow for confidential treatment of any record declared confidential by law. *See* Alaska Rules of Court, Rules of Administration 37.5(c)(1),(c)(2) and (e)(2)(G).

Finally, I understand from Mr. Kopp that there was an inquiry about making a specific reference to "CourtView" in the bill. "CourtView" is the name of a system designed to

¹ There is no existing statutory definition of "court record," and the statutes defining "confidential information" are not useful here. The word "confidential" is widely used but not defined.

² Please see the November 18, 2013, memo that accompanied an earlier version of the bill, outlining the constitutional concerns the bill raises as to the separation of powers between the legislative and judicial branches, and the problems that might arise because the bill does not expressly adopt a court rule change.

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display court records -- it is not a legal term. If the court were at some time to use a different product to display its records, questions might arise as to whether the statute covered the new system, or a clarifying amendment may be required. I believe Mr. Kopp and I are in agreement that this change was not warranted. Please let me know if I am mistaken.

If I may be of further assistance, please advise.

KJS:ray

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Enclosure