

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 28, 2014

1:34 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Fred Dyson  
Senator Donald Olson

**MEMBERS ABSENT**

Senator Lesil McGuire, Vice Chair  
Senator Bill Wielechowski

**COMMITTEE CALENDAR**

CONFIRMATION HEARINGS

**Select Committee on Legislative Ethics**

Christena Williams  
Janie Leask

- CONFIRMATIONS ADVANCED

SENATE BILL NO. 136

"An Act relating to unmanned aircraft systems; and relating to images captured by an unmanned aircraft system."

- HEARD & HELD

SENATE BILL NO. 108

"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 136

SHORT TITLE: UNMANNED AIRCRAFT SYSTEMS

SPONSOR(s): SENATOR(s) OLSON

01/24/14	(S)	READ THE FIRST TIME - REFERRALS
01/24/14	(S)	JUD
02/21/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

02/21/14 (S) Scheduled But Not Heard  
02/26/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/26/14 (S) Scheduled But Not Heard  
02/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 108

SHORT TITLE: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS  
SPONSOR(S): SENATOR(S) DYSON

01/22/14 (S) PREFILE RELEASED 1/10/14  
01/22/14 (S) READ THE FIRST TIME - REFERRALS  
01/22/14 (S) JUD, FIN  
02/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/24/14 (S) Heard & Held  
02/24/14 (S) MINUTE(JUD)  
02/28/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JANIE LEASK  
Homer, Alaska

**POSITION STATEMENT:** Appointee to the Select Committee on  
Legislative Ethics.

SENATOR DONALD OLSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 136.

JOY DEMMERT, Fellow  
First Alaskans Institute  
Senator Donny Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 136 on behalf of the sponsor.

NANCY MEADE, General Counsel  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Offered comments on SB 108.

SENATOR FRED DYSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 108.

CHUCK KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to SB 108 on behalf of the sponsor.

NORMAN MEANS, MD., representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 108.

MARY GEDDES, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 108.

CARMEN GUTIERREZ, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 108.

DONNA KLECKA, representing herself  
Eagle River, Alaska, testified in support of SB 108.

**POSITION STATEMENT:**

STACIE KRALY, Chief Assistant Attorney General  
Civil Division  
Human Services Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Offered suggestions to amend SB 108.

QUINLAN STEINER, Director  
Public Defender Agency  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Provided supporting testimony for SB 108.

ANNE CARPENETI, Assistant Attorney General  
Criminal Division  
Legal Services Section  
Juneau, Alaska

**POSITION STATEMENT:** Commented on SB 108.

RICHARD ALLEN, Director  
Office of Public Advocacy  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 108.

**ACTION NARRATIVE**

[1:34:45 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Dyson, Olson, and Chair Coghill.

**SB 136-UNMANNED AIRCRAFT SYSTEMS**

[1:35:37 PM](#)

**CHAIR COGHILL** announced the consideration of SB 136. "An Act relating to unmanned aircraft systems; and relating to images captured by an unmanned aircraft system." This was the first hearing

**SENATOR DONALD OLSON**, Alaska State Legislature, Juneau, Alaska, speaking as sponsor said that SB 136 comes with a companion resolution to extend the duties and length of the Legislative Task Force on Unmanned Aircraft Systems (UAS) to coincide with the FAA test site period for UAS in Alaska. He deferred further introduction to Joy Demmert.

[1:36:07 PM](#)

**JOY DEMMERT**, First Alaskans Institute Fellow placed in Senator Donny Olson's office, introduced SB 136. She explained that the Legislative Task Force on Unmanned Aircraft Systems, which was created last session, met several times during the Interim and discussed privacy protections of the citizens of Alaska, economic development, and public safety issues. The task force also concluded that the FAA is adequately addressing the safety concerns of integrating unmanned aircraft into a national aerospace system. It is also noteworthy that the FAA recently announced that the University of Alaska has been selected as one of six public entities nationwide that will develop UAS research and test sites.

MS. DEMMERT reviewed the bill sections as follows:

Section 1 allows the University of Alaska the ability to establish an unmanned aircraft system training program.

Section 2 has several subsections that pertain to law enforcement's use of the unmanned aircraft systems. It addresses the retention of images by a law enforcement

agency and the images retained are subject to public record disclosure and confidentiality laws found in AS 40.25. It addresses the use of unmanned aircraft systems used to gather evidence in a criminal investigation. This can only be done under the express terms of a search warrant or in accordance with a judicially recognized exception to the warrant requirement in AS 12.35. Section 2 further requires law enforcement agencies to adopt procedures for use of unmanned aircraft systems. These procedures must, at minimum, obtain permission from the FAA to operate the unmanned aircraft system, allow the unmanned aircraft system only to be operated by trained and certified pilots and crewmembers, have an approved flight plan by the chief administrative officer of the law enforcement agency, ensure that the flight is for a public purpose, maintain records of the flight, establish a method of notifying the public unless notifying the public would endanger the safety of a person, and the procedures must provide for community involvement in the development of policies.

Sections 3 and 4 prohibit municipalities from releasing images in a manner inconsistent with Section 2.

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CHAIR COGHILL thanked Ms. Demmert and stated he would hold SB 136 for further consideration.

**CONFIRMATION HEARING**  
**Select Committee on Legislative Ethics**

[1:40:10 PM](#)

CHAIR COGHILL announced the next order of business would be a confirmation hearing for Janie Leask to the Select Committee on Legislative Ethics. He asked Ms. Leask to discuss her interest in serving on this committee.

[1:40:25 PM](#)

JANIE LEASK, Appointee, Select Committee on Legislative Ethics, Homer, Alaska, said she believes in public service and is happy to do her part.

CHAIR COGHILL noted that her resume indicates she was once found to be one of the top 25 most powerful women in Alaska. He thanked her for being willing to serve.

SENATOR OLSON asked when she last served on this committee.

MS. LEASK replied she served as an alternate last year.

CHAIR COGHILL asked her to consider that there is tension between the deliberations of the ethics committee and the policy calls legislators have to make when the laws are ambiguous.

MS. LEASK said she appreciates that.

CHAIR COGHILL opined that Ms. Leask is well suited to serve on the ethics committee.

MS. LEASK said ethics can be grey in some instances and common sense in others.

CHAIR COGHILL commented that sometimes the rules are clear but the motives have to be discerned. Finding no further comments or questions, he informally polled the committee and found no objection to forwarding Ms. Leask's name to the full body for confirmation.

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At Ease

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CHAIR COGHILL stated that the names Christena Williams and Janie Leask were being forwarded to the full body for further consideration.

**SB 108-LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS**

[1:47:09 PM](#)

CHAIR COGHILL announced the consideration of SB 108. "An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date." This was the second hearing.

[1:47:20 PM](#)

SENATOR DYSON, Alaska State Legislature, Juneau, Alaska, sponsor of SB 108, introduced the legislation speaking to the following sponsor statement:

SB 108 seeks to strengthen privacy and liberty interests of persons by designating *confidential* (as defined in Administrative Rule of Court 37.5) certain

court records associated with dismissed and acquitted charges. SB 108 would make court records of a criminal case *confidential* if 90 days have elapsed from the date of acquittal or dismissal, and 1) the person was acquitted of all charges filed in the case; 2) all criminal charges against the person have been dismissed; or 3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.

SB 108 does not pose any restriction to police and prosecution ability to access arrest records and charging documents. It does not remove information in the federal National Crime Information Center (NCIC) database, or in the Alaska Public Safety Information Network (APSIN) state database, and would not render information already in the public domain *confidential*.

CourtView, the Alaska Trial Courts online publicly accessible database, provides exceptional access for persons seeking information on the status of criminal and civil cases, the nature of criminal charges filed against persons, and the final outcome of litigation. CourtView indefinitely shows arrest and charging documents for persons who were never convicted or incarcerated, and is an unrestricted site allowing anyone to use the database to screen any person, for any reason. In spite of CourtView user warnings that a charge is not to be considered a conviction, this public posting of a person's name and charges has had significant deleterious effects on employment prospects, ability to find housing, and other professional and personal opportunities of many Alaskans.

By very definition, a person is not a criminal if acquitted at trial, or if their case is dismissed by the prosecution and not refiled in a timely manner. In American jurisprudence, we are all to be considered innocent until proven guilty. SB 108 strengthens this maxim of presumption of innocence by treating as *confidential* court records associated with dismissed and acquitted charges.

SENATOR DYSON noted that at the request of the Department of Law he would probably bring a committee substitute to modify the 90-day timeline to 120 days.

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CHAIR COGHILL opened public testimony.

1:51:41 PM

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, said the court has no position on SB 108 but the court could implement the legislation. She began her testimony by distinguishing between "confidential" records and "sealed" records as defined by court rule. She explained that confidential records are restricted to the parties to the case, the counsel of record, people with a written court order authorizing access, and court staff for case processing purposes. She further explained that sealed records are less common and extremely restrictive; access is limited to the judge and somebody authorized by written court order.

She said that SB 108 will make certain records confidential after they have been public for a time period. They will have been posted on CourtView and then removed after the case is dismissed or the person is acquitted. The paper record will be designated confidential and the person's name will be removed from CourtView. She discussed how these cases are different from juvenile cases and child in need of aid (CINA) cases that are confidential by statute. Cases that are confidential by statute are never posted on CourtView or available to the public in paper form.

MS. MEADE addressed an earlier question from Senator McGuire about cases where somebody is arrested but there isn't a subsequent charging document. The process when somebody is arrested, in the middle of the night for example, is that the arresting officer has discretion to take the person to a 24-hour court that has a magistrate to have bail set or to take the person to jail. Anyone who enters jail at night is arraigned the next day and, for administrative purposes, the court assigns a case number before the person is transported for arraignment. That next day it could be that the Department of Law decides not to file a charging document.

MS. MEADE said she believes that is the case that Senator McGuire referenced and SB 108 does not directly address those situations. However, the Alaska Supreme Court is currently considering a draft court rule to remove from CourtView those cases that have no charging document but had a case number assigned for administrative purposes. She reported that the court is also considering another situation for removal from

CourtView by administrative rule. These are cases involving domestic violence protective orders where a judicial officer finds at the initial hearing that the petitioner either was not a victim of domestic violence as defined in the statute or was not a household member so that it could be a domestic violence case as defined in the statute.

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SENATOR DYSON asked her to share the data regarding felony and misdemeanor cases and the numbers that were dismissed.

MS. MEADE cited statistics for the last fiscal year that represent the number of cases that would be covered by SB 108. About 20 percent of the 6,000 some felony case filings were completely disposed by dismissal or acquittal: 1,289 cases were dismissed and 39 cases were acquitted. About 32 percent of the nearly 30,000 misdemeanor case filings were disposed by dismissal or acquittal: 9,508 cases were dismissed and 57 cases were acquitted. She recapped that those cases would be made confidential in paper and electronic form. They would not be visible on CourtView, but because of the definition of "confidential" they would be available to the parties and counsel. She added that her understanding is that they would still be in the Alaska Public Safety Information Network (APSIN).

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CHUCK KOPP, Staff, Senator Fred Dyson, sponsor of SB 108, clarified that the exact language in the bill says that those charges would not be on CourtView if a person in a case was acquitted of all the charges. If a person pled to any one of a number of charges, the person's name and all the charges would be on CourtView.

MS. MEADE agreed.

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NORMAN MEANS, MD., representing himself, said he was speaking as the father of Nancy Means. He related her story, which Senator McGuire described in the 2/24/14 judiciary committee meeting. In late 2011 his then 18-year-old daughter borrowed his van to go with younger friends to do some Black Friday shopping in Anchorage. On the way home at about 3:30 a.m. the van became disabled in the middle of Tudor Road. An Anchorage police officer stopped and after Ms. Means explained the situation he used his car to push the van onto a side street. He then began to conduct a traffic stop. She provided the license, insurance,

and registration documents that were all in order. When the officer asked Ms. Means for her personal phone number she balked, and he became more aggressive in his questioning. She asserted her constitutional right to remain silent and have an attorney. She was subsequently arrested, handcuffed, and taken to the jail. Search of her person and vehicle found no illicit items, but the vehicle was impounded. She was tested at the Anchorage jail and the officer at the jail reported that Ms. Means did not appear to be under the influence of any legal or illegal drugs or alcohol. The Data Master blood alcohol content (BAC) meter yielded a .000 reading. The testing officer at the jail contacted the arresting officer and asked if he wanted to "unarrest" Ms. Means, but he declined to do so. The magistrate released her on her own recognizance.

DR. MEANS reported that five separate departments of the Municipality of Anchorage have reviewed the circumstances surrounding the situation and have found fault with the officer's actions. He said the municipal prosecutor's office dropped the case without filing formal charges, but his daughter still has a record on CourtView showing that she was arrested for a criminal act. To right this and similar wrongs Senator McGuire introduced SB 180, and it led to his approaching Senator Dyson to discuss the situation.

DR. MEANS relayed that with the two-year statute of limitations approaching, his daughter approached municipal attorney Wheeler, through counsel, to try to get her records sealed. The response from the municipal attorney shows how damaging an arrest can be, he said. In a letter sent to counsel, Mr. Wheeler said, "While the officer may not have had probable cause to arrest her for DUI, he had probable cause to arrest her for some crime." Dr. Means said he is speaking in support of SB 108 because it will address wrongs and hopefully restore justice to a system that hasn't treated his daughter very fairly.

SENATOR DYSON asked if he got his van back.

DR. MEANS said yes.

[2:12:38 PM](#)

MARY GEDDES, representing herself, Anchorage, Alaska, testified in support of SB 108. She said the bill provides a simple answer to the question of what should happen to the record of a state court criminal case if none of the criminal charges resulted in a criminal conviction and the case is closed. The court file is designated as confidential three months after the case is

closed. Making these records confidential avoids an unnecessary risk of harm to a person, she said. Even though it shouldn't make any difference, just the information that there was a criminal accusation can limit a person's economic opportunity and damage their reputation. By contrast, making these records confidential provides a meaningful end to a criminal process. She cited the case of U.S. Senator Ted Stevens as evidence of the harm of criminal charges and refuted the opposing position of Taylor Winston with the Office of Victims' Rights.

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CARMEN GUTIERREZ, representing herself, Anchorage, Alaska, testified in support of SB 108. She described the bill as an important step in reducing recidivism. She said it's fair that the name of a person who has been arrested and convicted should be available to the public and posted on CourtView. What is not fair is that a person's name and the fact of charge remains available to the public and on CourtView even when the charge has been dismissed or the person has been acquitted. When these charges remain open to the public, the arrest often becomes synonymous with conviction. This impedes a person's ability to find employment, rent an apartment, and live a life free of stigmatization for a crime for which the person was not convicted. SB 108 is intended to rectify these unintended and harmful consequences, she said.

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DONNA KLECKA, representing herself, Eagle River, Alaska, testified in support of SB 108. She said a history of snowballing issues is affecting her reputation and therefore her private business. She described a number of charges that were filed against her through the years, and pointed out that even though all the charges were dismissed her name is still on CourtView as a felon.

CHAIR COGHILL expressed sympathy that the chain of events created such a trial.

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STACIE KRALY, Chief Assistant Attorney General Civil Division, Human Services Section, Department of Law and Emily Wright, Assistant Attorney General, Civil Division, Child Protection Section, Department of Law, introduced themselves.

MS. KRALY said she was speaking on behalf of both the Department of Law and the Department of Health and Social Services (DHSS). She said she understands the purpose and policy behind SB 108,

but limiting access to this information raises some concerns. The primary concern is that it limits access of this information to DHSS. Specifically, the Office of Children's Services, Senior Disability Services, Division of Behavioral Health, certification of licensing within the Division of Health Care Services all use this information for purposes of achieving statutory obligations for health, safety, and welfare for vulnerable adults, children (including disabled) and elderly people for placement, services, resources, and licensing. The Department of Law supports DHSS in these endeavors and thus has concerns about limiting access to this information, she said.

MS. KRALY suggested that DOL work with the sponsor and his staff to look at ways for DHSS to continue to have access to relevant information to meet the statutory obligations identified above.

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SENATOR DYSON asked if there already is a procedure for somebody with the appropriate credentials to access that information on behalf of DHSS.

MS. KRALY replied that is what DOL is trying to achieve on behalf of DHSS. She clarified that the request is not for unfettered access. For example, a licensing worker who is trying to emergency license a foster care on a weekend would have access to that limited information, but not everybody in the Office of Children's Services.

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CHAIR COGHILL observed that it still begs the question that OCS will be assessing someone's reputation based on charges that were dropped. He asked the value of the information if the charge has been dropped.

MS. KRALY replied the value is in looking at an individual in a pattern of conduct or services. If there is a pattern of behavior, that information becomes qualitatively important to evaluating the safety of placing a child or individual.

SENATOR DYSON assured Ms. Kraly that if she would come up with a fix, it would be incorporated in a [committee substitute].

MS. KRALY committed to work with his staff on proposed language.

CHAIR COGHILL asked if the term "confidential" would be redefined.

MS. KRALY replied it would probably require a new section to provide limited and statutorily authorized access to the confidential information.

CHAIR COGHILL reiterated his concern and said he'd try to rethink the balance.

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QUINLAN STEINER, Director, Public Defender Agency, Department of Administration, commented on the impacts of the bill. He said that allegations and charges that are brought and later dismissed can have a significant and lifelong impact. The charges and allegations continue to travel with the individual and it can be assumed that they're guilty. It's hard not to leap to that conclusion, he said.

MR. STEINER commented on the letter from the Office of Victims' Rights. He said it suggests that SB 108 is perpetuating the stereotype that victims lie and, in particular, women lie. That aspect is not contained in the bill, and it ignores the fact that the law is neutral on gender, he said. The letter goes on to suggest that a procedure ought to be set up to prove a person's innocence before their name can be removed [from CourtView]. But as a prior speaker suggested, it's difficult to prove a negative. He also refuted the suggestion that the grand jury process somehow justifies leaving the name posted on CourtView as proof of some level of culpability. Mr. Steiner concluded his comments stating that he sees SB 108 as protecting people who are not guilty of crimes but have allegations against them.

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ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Juneau, Alaska, referenced the statistics that Ms. Meade provided and highlighted that a lot of dismissed cases are the result of a plea agreement. She observed that the bill appears to look for a balanced approach and she was happy to work with the sponsor and Ms. Kraly to achieve that. She suggested that the sponsor look at the procedure in Title 12. It is supposedly to address clear cases of mistaken identification or false accusation, but it obviously didn't work in Ms. Mean's case.

MS. CARPENETI said she wanted to clarify that the bill applies to all records in the court system, not just the documents that are electronically accessible. She suggested that if the sponsor likes the definitions of "confidential" and "records" that

currently are in the court rules, he should consider putting them into the statute. She also suggested on page 1, inserting "by the prosecution" at the end of paragraph (2). The reason is that courts sometimes dismiss cases for reasons that have nothing to do with guilt or innocence.

CHAIR COGHILL asked her to think about prospective application.

MS. CARPENETI agreed.

2:55:48 PM

RICHARD ALLEN, Director, Office of Public Advocacy, Department of Administration, Anchorage, Alaska, testified in support of SB 108. He said the bill would impact different parts of OPA in different ways. First, the public guardians and guardian ad litem might find it more challenging to get certain information, but he suspects that the amendment that's been discussed will take care of that. He opined that SB 108 could provide a real benefit for OPA clients that have been charged with crimes. He pointed out that the presumption of innocence and the right to due process are fundamental to the American justice system, and the founding fathers recognized that police and prosecutors don't always get it right. He described SB 108 as a common sense approach to limit the negative consequences for citizens who have been cleared of wrongdoing.

CHAIR COGHILL said the point is well taken.

SENATOR DYSON expressed appreciation that the court was working with him and urged the stakeholders to bring suggestions forward by Monday.

CHAIR COGHILL held SB 108 in committee.

3:00:05 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.