

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 19, 2022

1:02 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 246

"An Act restricting the release of certain records of convictions; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 246

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

01/18/22	(H)	PREFILE RELEASED 1/7/22
01/18/22	(H)	READ THE FIRST TIME - REFERRALS
01/18/22	(H)	JUD, FIN
01/19/22	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

CLAIRE GROSS, Staff
Representative Jonathan Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 246 on behalf of Representative Kreiss-Tomkins, prime sponsor.

CLAIRE RADFORD, Legislative Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 246.

KELLY HOWELL, Special Assistant
Office of the Commissioner
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 246.

LISA PURINTON, Chief
Criminal Records and Identification Bureau
Division of Statewide Services - CJIS Programs
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 246.

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

POSITION STATEMENT: Testified during the hearing on HB 246.

LACY WILCOX, President
Alaska Marijuana Industry Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 246.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Kreiss-Tompkins, Eastman, Kurka, Vance, and Claman were present at the call to order. Representatives Snyder (via teleconference) and Drummond arrived as the meeting was in progress.

HB 246-ACCESS TO MARIJUANA CONVICTION RECORDS

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[Due to technical difficulties, the call to order and attendance were not captured on recording but the pertinent information has been provided by the recording secretary.]

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 246, "An Act restricting the release of certain records of convictions; and providing for an effective date."

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REPRESENTATIVE KREISS-TOMKINS, as prime sponsor, introduced HB 246. He stated that the bill had been conceived by the citizen's initiative legalizing marijuana and, if passed, would remove from [the Alaska Court's CourtView Public Access Website] ("CourtView") the display of simple possession of marijuana convictions. He stated that citizens are negatively affected by convictions no longer categorized as criminal behavior, as displayed when an interested party conducts a simple background check. He suggested that affected individuals may suffer harm when seeking employment and establishing their reputation. He stated that decriminalization was taking place in many states across the country and that the passage of HB 246 would progress the state further from its prohibition past.

REPRESENTATIVE KREISS-TOMKINS acknowledged that the underlying issues and laws pertaining to marijuana remain complicated; however, HB 246 is not. He stated that Section 1 of the proposed bill was related to legislative intent. He stated that Section 2 would update AS 12.62.160(b)(8) to allow for an exemption that would be granted under Section 3. He stated that Section 3 provides language pertaining to criminal history information that may not be released and addresses the types of convictions addressed in HB 246. He stated that Section 4 would be a new section and pertained to the Alaska Court System's use of personal information on CourtView and that Section 5 contained the effective date of January 1, 2023.

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REPRESENTATIVE EASTMAN observed that Section 4 referenced a specific criminal case while Sections 2 and 3 did not. He asked whether Section 2 should have described a particular case and whether the decision otherwise was made by the drafter.

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CLAIRE GROSS, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, on behalf of Representative Kreiss-Tomkins, prime sponsor of HB 246, answered that Section 3 [subsection (f)] referred specifically to AS 11.71.060 and the exact type of possession charge that would be affected by the passage of the bill.

REPRESENTATIVE EASTMAN referred to language at the bottom of page 2, on line 30, wherein the agency is directed not to release criminal history records for defendants who qualify [under the proposed bill].

MS. GROSS answered that certain individuals with additional charges would not be exempted from publication of criminal records and that the exemption would apply only to individuals with one simple possession conviction.

REPRESENTATIVE EASTMAN asked how, should an individual have a simple possession case and a murder case, the agency would be instructed to go forward in terms of releasing the information related to the murder case.

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CLAIRE RADFORD, Legislative Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, answered that HB 246 would only allow for an individual who meets all four of the criteria in Section 3 to be eligible to have his/her criminal history information not disclosed. She stated that two separate convictions of two separate crimes [including one for simple possession], only the possession conviction would be subject to be withheld from disclosure.

REPRESENTATIVE KREISS-TOMKINS referred to page 2, lines 30-31, and he asked whether "criminal history record information" was written in a manner so broad that, should an individual meet all four criteria as stated on Page 3, lines 1-7, that individual's criminal history would not be subject to release. He asked Ms. Radford to confirm whether the exemption would apply only to the conviction under AS 11.71.060.

MS. RADFORD answered that it was her belief that page 2, lines 30-31 did capture the intent [to exempt only convictions under AS 11.71.060] and stated her willingness to include more specific language.

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CHAIR CLAMAN referred to Sections 3 and 4 and gave an example wherein a marijuana conviction had occurred in 1990 and a murder conviction in 2000, and an individual requested criminal records that, because the defendant did not qualify by meeting all four criteria in Section 3, both convictions would be released. He offered his understanding that under the provisions in Section 4, the marijuana conviction would not be released but the murder conviction would. He asked Ms. Radford to confirm if his analysis was correct.

MS RADFORD confirmed this as correct.

REPRESENTATIVE VANCE noted that as listed on the sponsor statement, 700 individuals with convictions would be affected by the passage of HB 246, and she asked whether any individual had experienced loss of employment opportunities.

REPRESENTATIVE KREISS-TOMKINS answered that there had been some anecdotes of individuals affected but that no qualitative data exist.

REPRESENTATIVE VANCE expressed her concern over the additional personnel required as listed on the fiscal note and asked whether existing personnel could be used if individuals requested their own records be made private.

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MS. GROSS answered that a petition process had been considered but there exists a potential for automation of the process. She suggested that that distinction [petition and automated] would not be the factor that had resulted in the fiscal note. She stated that the removal of the actual record is [the point in the process] that requires staff time. She offered to verify with the Department of Public Safety (DPS) that her answer was completely correct. In response to a follow-up question from Representative Vance, she said there would not be the potential for the fiscal note to be reduced.

REPRESENTATIVE KREISS-TOMKINS added that, as the prime sponsor of the bill, he would welcome any potential for reduction of the fiscal note.

REPRESENTATIVE DRUMMOND asked whether the fiscal note represented one additional staff in Fiscal Year 2023 (FY 23) and

an additional staff in FY 24 and whether the position would become obsolete in future years.

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KELLY HOWELL, Special Assistant, Office of the Commissioner, Department of Public Safety, stated that the fiscal note had been based on the Alaska Public Safety Information Network (ASPIN) programming costs and a researcher position. She noted that the position would be temporary for two years because the records subject to review would be finite since the activity is no longer a crime.

CHAIR CLAMAN asked whether the fiscal note had been drafted with the understanding that individuals would petition the court but not with consideration of an automated process.

MS. HOWELL confirmed that it had, and that the position's "downtime" between processing petitions would be used to proactively conduct the research on the set of records subject to review since it was unknown the number of individuals petitioning the court for removal of their own record.

REPRESENTATIVE DRUMMOND asked if the programming costs between years one and two were different in the amount of \$63,000 while the staffing cost was the same for both years.

MS. HOWELL estimated the programming costs to be \$56,000 and reductions in year two would be realized in commodities and supplies and consist mainly of personnel costs.

REPRESENTATIVE DRUMMOND stated that ASPIN would be programmed to shield the records from view and asked whether the records may still be obtained outside of CourtView.

MS. HOWELL answered that the information prohibited from disclosure would pertain to background checks and would still exist in an individual's criminal history.

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REPRESENTATIVE EASTMAN asked how individuals convicted of the crimes would become aware of the option that their records may be sealed.

MS. HOWELL postulated that information would be listed on the court's website such as that which exists for individuals to

request correction to criminal justice information, and a request form would likely be developed.

REPRESENTATIVE EASTMAN continued his line of questioning on how an individual would become aware of the exemption.

CHAIR CLAMAN interjected that the bill is drafted so that individuals would not be required to make such a request and the process would be automatic.

REPRESENTATIVE EASTMAN asked the rationale for including the language "requested by" and whether the language could be removed.

MS. GROSS offered that two records removal processes would be enacted should HB 246 pass: the removal of convictions from CourtView, which would be done by the court; and removal of records from background checks known as "any person reports," which would be done by DPS. She noted that the CourtView process would be automatic and the DPS process would be via petition as the bill is currently written.

REPRESENTATIVE EASTMAN asked whether information would be included on a form to notify individuals that they may request [information be shielded on both CourtView and in ASPIN background checks.]

MS. HOWELL allowed that individuals may be informed by means of the website and a form but that the implementation had not yet been developed.

REPRESENTATIVE EASTMAN asked whether there existed the potential for a larger fiscal note.

MS. HOWELL answered that the fiscal note had been based on the petition manner and not an automated manner and it would be unknown how many would initiate a petition and, should the bill pass without any amendment, the potential exists for a change to be made to the fiscal note.

MS. GROSS noted that the fiscal note had been based on approximately 8,000 individuals who would be affected by the passage of HB 246, and discussions had occurred on the basis of considering only about 700 individuals.

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REPRESENTATIVE SNYDER asked whether it was known that other states had passed similar legislation and if there were any lessons to be learned [from those that had].

MS. GROSS asked whether Representative Snyder's question pertained to costs or general policy discussion.

REPRESENTATIVE SNYDER encouraged an answer to both.

MS. GROSS answered that other states had passed legislation pertaining to criminal records and most of them had included sealing of records in the legalization legislation. She added that other states had gone much further to address criminal records and characterized the approach in Alaska as a weak approach.

REPRESENTATIVE VANCE stated that she was not familiar with how a marijuana conviction would appear in a background check and asked how egregious it would be for an individual should such a conviction to appear in a background check.

CHAIR CLAMAN asked whether the current administration had taken a position regarding the proposed bill.

MS. HOWELL answered that she did not have knowledge of the administration's position.

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LISA PURINTON, Chief, Criminal Records and Identification Bureau, Division of Statewide Services - CJIS Programs, Department of Public Safety, in reference to Representative Vance's question, explained that a criminal background check would display the statute, severity level, and description such as "misconduct involving a controlled substance in the sixth degree" and "possession of less than one ounce of a scheduled drug." She added that it would not display information specific to marijuana; it would display reference only to a scheduled substance.

REPRESENTATIVE VANCE asked what other drugs would be categorized in that schedule.

MS. PURINTON answered that the schedule was specific to marijuana.

CHAIR CLAMAN asked whether an ASPIN background check would display the conviction and a background check sent to DPS would not.

MS. PURINTON answered that if HB 246 were to pass, the conviction would not be displayed in a background check.

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REPRESENTATIVE EASTMAN asked whether similar legislation ever had been passed that would conceal any prior convictions.

MS. PURINTON answered that to the best of her knowledge, there had been no recent legislation limiting information that may be displayed on a criminal background check, other than convictions that fall under other records sealing laws.

CHAIR CLAMAN asked whether the conviction of an individual, who was charged, his/her sentence suspended, and the conviction subsequently discharged would appear on a background check.

MS. PURINTON answered that "the entire set-aside" would be withheld from a report.

CHAIR CLAMAN asked whether any discharged suspended imposition of sentence, such as a fishing violation, would appear on a background check.

MS. PURINTON answered that that information would be displayed on a background check.

REPRESENTATIVE EASTMAN asked, if an individual should receive a pardon, whether that conviction would appear in a background check.

MS. PURINTON offered that pardons are unusual; therefore, she would be required to conduct research for the answer.

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NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, suggested that there may exist confusion between DPS and the court regarding HB 246, and that the Alaska Court System and records displayed in CourtView are addressed only in Section 4 of the bill; Sections 2 and 3 pertain to DPS release of criminal background checks.

REPRESENTATIVE KURKA asked whether the DPS and Alaska Court System data systems are linked.

MS. MEADE answered that they are not linked.

REPRESENTATIVE KURKA asked what the rationale would be to remove these records from CourtView when they are still available for the public to view, albeit with more [research] involved.

MS. MEADE answered that the proposed bill would direct the court to keep two separate records, and that the legislature could, in the future, direct the court to keep all the records confidential such as for Child in Need of Aid (CINA) records. She suggested that the language was likely a compromise to shield records from general public view but that they would remain available at the courthouse.

REPRESENTATIVE KURKA asked whether the legislature had designated any other records available at the courthouse but not available on CourtView.

MS. MEADE answered that the legislature had designated retroactive removal of complete acquittal or dismissal of a case from CourtView and that court rules may also direct that certain records are not published on CourtView under Administrative Rule 48.

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REPRESENTATIVE VANCE asked who may have full access to the records.

MS. MEADE answered that HB 246 would remove records solely from CourtView and any person may inquire for records at the court.

REPRESENTATIVE VANCE asked who may access the records housed at DPS.

MS. GROSS explained that the only background checks affected by the bill would be the "any person" background checks. She added that "interested person" reports, such as those requested for individuals seeking employment in child or vulnerable adult care, are accessible records. She added that other reports such as a "full criminal history report" that may be related to overseas travel or immigration remain available. She noted that AS 12.62.400 lists professional licensure occupations that would not allow automatic records sealing.

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CHAIR CLAMAN asked how the seal of records under HB 246 would be distinguished from expungement.

MS. GROSS answered that HB 246 would not [address] expungement, which is complete removal of a record as though it had never happened.

REPRESENTATIVE EASTMAN referred to the word "today", in Section 1, on line 8, and he asked whether it pertained to a specific date and time.

REPRESENTATIVE KREISS-TOMKINS allowed that the language should be more precise and not interpreted as contemporaneous to the time of its reading.

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CHAIR CLAMAN opened public testimony on HB 246.

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LACY WILCOX, President, Alaska Marijuana Industry Association, testified in support of HB 246 and characterized the bill as a very incremental change to further previously convicted individuals to become more productive members of society. She stated that she had conducted research in 20 other states that had stronger protections in state law.

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CHAIR CLAMAN, after ascertaining there was no one else who wished to testify, closed public testimony on HB 246.

CHAIR CLAMAN noted that the topic of expungement had been widely discussed and had been controversial. He noted that CourtView may be widely used by any individual.

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REPRESENTATIVE KURKA asked what the process should be for amendments considering that there exists the possibility of a committee substitute.

CHAIR CLAMAN advised that amendments should be requested and that a committee substitute may pertain to sunset dates of the Criminal Justice Commission.

REPRESENTATIVE EASTMAN asked what implications may exist should no committee substitute be adopted to address the sunset date of the commission.

CHAIR CLAMAN answered that the potential committee substitute had been suggested by the drafter of the statute as a technical issue to be resolved and that the intent of the bill would be unaffected by the question of timing.

[HB 246 was held over.]

[2:07:38 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:07 p.m.