

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 25, 2022

1:33 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 196

"An Act relating to transparency and compelled speech in public education."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 246 (FIN)

"An Act restricting the release of certain records of convictions; relating to misconduct involving marijuana by persons 18, 19, or 20 years of age; amending Rule 17(h), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 196

SHORT TITLE: PUBLIC ED: SPEECH, DISCLOSE INST MATERIAL

SPONSOR(S): SENATOR(S) REINBOLD

02/15/22	(S)	READ THE FIRST TIME - REFERRALS
02/15/22	(S)	EDC, JUD
03/25/22	(S)	EDC AT 9:00 AM BUTROVICH 205
03/25/22	(S)	Heard & Held
03/25/22	(S)	MINUTE (EDC)
04/04/22	(S)	EDC AT 9:00 AM BUTROVICH 205

04/04/22 (S) Heard & Held
04/04/22 (S) MINUTE(EDC)
04/13/22 (S) EDC AT 9:00 AM BUTROVICH 205
04/13/22 (S) -- MEETING CANCELED --
04/20/22 (S) EDC AT 9:00 AM BUTROVICH 205
04/20/22 (S) Moved CSSB 196(EDC) Out of Committee
04/20/22 (S) MINUTE(EDC)
04/22/22 (S) EDC RPT CS 1DP 1NR 2AM SAME TITLE
04/22/22 (S) DP: HOLLAND
04/22/22 (S) NR: STEVENS
04/22/22 (S) AM: HUGHES, MICCICHE
04/25/22 (S) JUD AT 1:30 PM BUTROVICH 205

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
01/19/22 (H) Heard & Held
01/19/22 (H) MINUTE(JUD)
01/28/22 (H) JUD AT 1:30 PM GRUENBERG 120
01/28/22 (H) Heard & Held
01/28/22 (H) MINUTE(JUD)
01/31/22 (H) JUD AT 1:00 PM GRUENBERG 120
01/31/22 (H) Moved CSHB 246(JUD) Out of Committee
01/31/22 (H) MINUTE(JUD)
02/04/22 (H) JUD RPT CS(JUD) 4DP 2NR
02/04/22 (H) DP: DRUMMOND, KREISS-TOMKINS, SNYDER,
CLAMAN
02/04/22 (H) NR: EASTMAN, VANCE
03/03/22 (H) FIN AT 9:00 AM ADAMS 519
03/03/22 (H) Heard & Held
03/03/22 (H) MINUTE(FIN)
03/11/22 (H) FIN AT 9:00 AM ADAMS 519
03/11/22 (H) Heard & Held
03/11/22 (H) MINUTE(FIN)
03/28/22 (H) FIN AT 1:30 PM ADAMS 519
03/28/22 (H) Moved CSHB 246(FIN) Out of Committee
03/28/22 (H) MINUTE(FIN)
04/04/22 (H) FIN RPT CS(FIN) NEW TITLE 3DP 4NR
04/04/22 (H) DP: ORTIZ, EDGMON, WOOL
04/04/22 (H) NR: LEBON, THOMPSON, JOSEPHSON, MERRICK
04/13/22 (H) FIN CS ADOPTED Y25 N6 E7 A2

04/15/22 (H) TECHNICAL SESSION 4/15 - ON 4/19
CALENDAR
04/19/22 (H) NOT TAKEN UP 4/19 - ON 4/20 CALENDAR
04/20/22 (H) BEFORE HOUSE IN THIRD READING
04/20/22 (H) TRANSMITTED TO (S)
04/20/22 (H) VERSION: CSHB 246 (FIN)
04/25/22 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SENATOR LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 196.

DAVID BOYLE, representing self
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 196.

ED KING, Staff
Senator Roger Holland
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 196 on behalf of the committee.

REPRESENTATIVE JONATHAN KREISS-TOMKINS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 246.

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

POSITION STATEMENT: Answered questions on HB 246 on behalf of the sponsor.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of 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.

ACTION NARRATIVE

[1:33:04 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl and Chair Holland.

SB 196-PUBLIC ED: SPEECH, DISCLOSE INST MATERIAL

[1:33:47 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 196 "An Act relating to transparency and compelled speech in public education."

[CSSB 196(EDC) was before the committee.]

[1:34:19 PM](#)

SENATOR LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of SB 196, introduced the legislation by paraphrasing the following sponsor statement:

[Original punctuation provided.]

[1:34:43 PM](#)

SB 196 is an act related to transparency and compelled speech in public education. Several sections of the bill refer to Title 14 Chapter 18, specifically relating to prohibition against discrimination based on sex or race in public education. The bill adds a new section including transparency of curriculum and Prohibiting Compelled speech, and enforcement.

Transparency: A public school including charter schools shall display on school's website, regularly updated, all training material used for teachers, instructional or curricular material, school procedures, title and author of materials, and any organizations associated with the material, a brief

description and link to the material and identity of a teacher if they produced the material.

[1:35:40 PM](#)

Prohibit Compelled Speech: The classroom may not be a venue for political activism, lobbying efforts. A student or teacher, administrator, or other employee must not be compelled to adhere to the belief or concept that the United States, the state, or individual is fundamentally or irredeemably racist or sexist, that an individual by virtue of sex, race ethnicity religion or color or national origin, an individual's moral character is necessarily determined by their sex, race, ethnicity, religion color or national origin.

Enforcement: The Attorney General may commence civil action in the superior court to enjoin a state agency, school district's governing body, charter school, or public school from violating transparency or compelled speech.

[1:36:12 PM](#)

SENATOR REINBOLD stated the intent of SB 196 is to prevent discriminatory teaching practices. She stated that Florida Governor DeSantis noted in a recent speech that Florida does not want to use tax dollars to teach people to hate the United States or each other. She related some recent news articles, including one about a school district that offered staff leadership programs but excluded one race from participating. The transparency provision in SB 196 ensures that parents have access to the materials that teachers are using in the classroom.

[1:37:52 PM](#)

SENATOR REINBOLD paraphrased the sectional analysis for SB 196:

[Original punctuation provided.]

Section One: AS 14.18.070 is amended to replace the words "this chapter" with the sections 14.18.010-14.18.110 related to affirmative action.

Section Two: AS 14.18.080 Implementation adopted by the board of regents.

[1:38:23 PM](#)

Section Three: AS 14.18.090 (a) The board shall enforce compliance by school districts and regional educational attendance areas. The board shall institute appropriate proceedings to abate the practices found by the board found to be in violation of AS 14.18.010-14.18.110.

1:38:33 PM

Section Four: Remedies: A person aggrieved by a violation of AS 14.18.010-14.18.110 or of a regulation or procedure adopted under the chapter may file the complaint with the board and has independent right of action in superior court for civil damages and for such equitable relief as the court may determine.

Section Five: Effect is supplementary to and does not supersede existing laws relating to unlawful discrimination based on race or sex.

Section Six: Adds a new section to include transparency, prohibiting compelled speech and enforcement.

Section 14.18.150 Transparency: Curriculum and instructional materials used for teacher and other staff training on nondiscrimination, diversity, equity, inclusion, race, ethnicity, sex, bias, or another concept that includes one or more of those concepts will be displayed on the school's website and updated regularly. Instructional material on the website will include the title and author of the material as well as any organization or website associated with the material.

Section 14.18.160 Prohibiting Compelled Speech: A state agency, school districts' governing body, charter school, or public school may not allow a teacher, administrator, or other employee to include in a course or award course grading or extra credit for political activism, lobbying or effort to persuade members of the executive or legislative branch at local, state, or federal level to take specific action, or any practicum or similar activity involving social or public policy advocacy. An individual by virtue of sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior. Students, teachers, administrators, and other

employees have the opportunity to opt out of any speech, training or session.

[1:40:04 PM](#)

SENATOR REINBOLD paraphrased a portion of Sec. 14.18.160 of the bill, which read:

(2) may not direct or otherwise compel a student or a teacher, administrator, or other employee to affirm, adopt, or adhere to the belief or concept that

(A) the United States or the state is fundamentally or irredeemably racist or sexist.

(B) an individual by virtue of sex, race, ethnicity, religion, color, or national origin, is, consciously or unconsciously, inherently racist, sexist, or oppressive;

[1:40:38 PM](#)

SENATOR REINBOLD referred to Sec. 14.18.170 on page 5, lines 25-31, for the enforcement provision.

SENATOR REINBOLD referred to Sec. 14.18.190 on page 6 as the definition section.

[1:40:57 PM](#)

CHAIR HOLLAND turned to invited testimony.

[1:41:15 PM](#)

DAVID BOYLE, representing self, Anchorage, Alaska, paraphrased written remarks, which read:

[Original punctuation provided.]

Chair Holland, committee members, I am David Boyle testifying for myself and thousands of parents and students. Thank you for this opportunity to comment in support of SB196. I believe this is perhaps one of the most important bills in this legislative session because it will determine the futures of our children and our State.

I have provided testimony before to the Senate Education Committee on the various parts of this bill. Today, I will provide testimony regarding the note from Legislative Legal which is in the documents in Basis for this bill.

[1:41:56 PM](#)

MR. BOYLE continued to paraphrase his written testimony, which read:

[Original punctuation provided.]

The first issue LegLegal deals with is TEACHER SPEECH IN K12 PUBLIC SCHOOLS.

At issue is the "compelled speech" portion of the bill.

Leg Legal states that this raises a First Amendment concern because the bill "prohibits a public school from teaching certain concepts." HOWEVER, leg legal then says that in Garcetti v. Ceballos the SCOTUS established a rule that "this First Amendment protection does not apply if an employee is speaking in the performance of their duties. Teachers ARE speaking as government employees so they do NOT have First Amendment protection in the classroom.

When public employees make statements pursuant to their official duties they are not speaking as private citizens for 1st Amendment purposes and they can be disciplined.

I disagree with the statement by Leg Legal that "However, the Court left open the question of whether this holding applied to speech related to scholarship or teaching". The Court clearly stated that public employees, ie teachers, do NOT have protected 1st Amendment rights when they are in the teaching environment.

[1:43:17 PM](#)

Leg Legal clouds the issue on 1st Amendment rights when it discusses the Demers v. Austin case heard in the 9th Circuit Court. This Court applies a 5 step process to determine whether and employee's 1st Amendment rights were violated. (1). Whether the person spoke on a matter of public concern; (2) Whether the person spoke as a private citizen or public employee. It is clear that teachers are public employees when in the classroom. So, Leg Legal concludes that "a professor's teaching and academic writing MAY BE PROTECTED under the 1st Amendment. Note that their conclusion only refers to "professors", not K12 teachers. This Ninth

Circuit Court decision ONLY applied to universities and professors, not K12 teachers.

[1:44:05 PM](#)

MR. BOYLE continued to paraphrase his written testimony, which read:

[Original punctuation provided.]

Then Leg Legal goes on to say that "It is possible the the 9th Circuit Court would find that the teaching and academic writing of a k12 public school teacher is protected under the 1st Amendment if it meets the test established in Pickering V. Board of Education. BUT Pickering ONLY addressed a professor's academic speech, not a K12 teacher. Leg Legal's comment is thus merely conjecture. The Pickering case involved a teacher who wrote a letter to the editor. He was acting in a personal capacity, not an official capacity as a classroom teacher. So the Pickering case is also nonapplicable here.

Finally, Leg Legal concludes that "It is therefore also likely that SB196's speech prohibitions as applied to a K12 public school teacher WOULD SURVIVE a 1st Amendment challenge. I rest my case on the First Amendment challenge.

Now let's take a look at the second part of Leg Legal's discussion. This has to do with a Student's First Amendment Rights. The SCOTUS decided in its Bd of ED vs Pico that the school board did NOT have the right to remove books from the school library. Thus, it said that the right to read and receive ideas is also Free Speech. The issue here is NOT the removal of curriculum material. The real issue in this part of the bill is that the school/teacher CANNOT "require a student to participate in student activism, lobbying or efforts to persuade the executive or legislative branch at any govt level" and be REWARDED with a course grade, extra credit or credit. This is what occurred when former Governor Bill Walker presented his lesson plan to Anchorage students on his budget. He wanted the students to do a survey of friends, parents and neighbors by push polling his budget. Then these students were to provide the survey results

on the former governor's blog. This is what this part of SB196 would prevent.

[1:46:23 PM](#)

MR. BOYLE continued to paraphrase his written testimony, which read:

[Original punctuation provided.]

The final part of Leg Legal's note referred to Vagueness.

I believe that SB196 lays out those subjects that are referred to Leg Legal's discussion of vagueness. Sec.14.18.160.2.A-F clearly lists those areas that are prohibited as compelled speech. They include: The US is fundamentally or irredeemably racist or sexist; See A-F (Page 4)

Finally, remember that the First Amendment and all of the Bill of Rights to the US Constitution were written to PROTECT CITIZENS FROM THE GOVERNMENT, NOT GIVE POWER TO THE FEDERAL GOVERNMENT.

Thank you for the time and please pass this very important bill to the Rules Committee. I will be happy to answer any questions.

[1:47:34 PM](#)

SENATOR SHOWER asked if he could provide his background since it would help members to better understand his point of view.

[1:48:06 PM](#)

MR. BOYLE answered that he served as a communications officer in the US Air Force for 20 years. He said he was a founder of the Alaska Policy Forum (APF) in 2009. He served as the executive director for five of the eight years he volunteered for APF.

[1:48:34 PM](#)

SENATOR SHOWER asked whether school districts have the authority to do what the bill requires or if the bill would compel them to do so.

SENATOR REINBOLD responded that her understanding was that districts must teach non-discriminatory materials. She stated that she was uncertain about school districts' authority but offered to provide examples of what had been happening in the classroom.

[1:49:51 PM](#)

SENATOR SHOWER asked whether a school district could decide to do everything the bill directs it to do without the state mandating the requirements.

[1:50:05 PM](#)

SENATOR REINBOLD answered yes; school districts could do so. She explained that school districts used Zoom and posted their curriculum online during COVID-19 and that transparency informed parents about what was being taught in the classroom.

[1:50:26 PM](#)

SENATOR SHOWER asked for a list of other states with similar legislation. He further asked whether the sponsor was aware of any current or past court cases that might provide guidance on how the courts have viewed similar legislation.

SENATOR REINBOLD responded that three states had enacted similar laws, including Florida. She offered to report to the committee on the court cases.

SENATOR SHOWER expressed curiosity about the court cases.

[1:51:42 PM](#)

SENATOR MYERS referred to the enforcement provision on page 5, lines 25-27 of the bill that would allow the attorney general to bring a civil action in superior court to enjoin a state agency. He wondered whether this was something the attorney general normally does and if it was in their purview to file civil suits against a school district or municipal body or if this was a new provision.

SENATOR REINBOLD deferred to Legislative Legal Services. She said she wanted to ensure that the attorney general had the enforcement authority to hold school districts violating the policies accountable.

[1:53:11 PM](#)

SENATOR MYERS asked why the attorney general was selected instead of leaving it up to parent groups or other groups within the community who might be more familiar with what is happening in the school.

SENATOR REINBOLD responded that the attorney general was someone all Alaskans could turn to, plus the office has ample resources available to pursue legal actions. She indicated that she wanted

a governmental entity to act as an advocate rather than depending on parents whose students were negatively affected.

[1:54:13 PM](#)

SENATOR HUGHES said it seemed as though the attorney general would want to file a lawsuit. However, if the attorney general decided not to file, nothing in the bill would prevent parents or community members from filing a lawsuit.

SENATOR REINBOLD agreed.

[1:55:14 PM](#)

SENATOR KIEHL asked whether the bill provides the authority for the attorney general to file lawsuits because the cost of litigation for a private citizen is so high.

SENATOR REINBOLD reiterated that she wanted to ensure that people had a governmental agency or person to turn to who had the authority to investigate matters.

[1:56:28 PM](#)

SENATOR HUGHES referred to page 5, line 28, and noted that the only ones who can request an advisory opinion from the attorney general would be a state agency, school districts, governing body, charter school, or public school. She wondered if concerned parents could request an advisory opinion indicating whether a proposed act or omission violates AS 14.18.150 or 14.18.160 if the state agencies do not request one.

SENATOR REINBOLD responded that it might be a good amendment.

CHAIR HOLLAND suggested the committee ask Legislative Legal Services to address the points that have been raised.

[1:57:35 PM](#)

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, advised that the attorney general and Legislative Legal Services both were unavailable today due to the budget proceedings. He referred to the enforcement mechanism provided in current law, AS 14.18.090. It provides for an appeal to the Board of Education to enforce the regulations and the chapter. He referred to AS 14.18.100, which provides remedies if a person is aggrieved. He paraphrased subsection (a), which read, in part:

(a) A person aggrieved by a violation of this chapter or of a regulation or procedure adopted under this

chapter as to primary or secondary education may file a complaint with the board....

MR. KING explained that this language provides the authority for parents to go directly to the Board of Education and file a complaint. He informed members that moving these duties to the attorney general would be a departure from current law. He advised that using the Board of Education to enforce education statutes would provide consistency. He suggested that could be accomplished by removing one of the earlier sections.

[1:59:01 PM](#)

SENATOR MYERS referred to page 4, lines 23-27, to the language in subparagraph (3)(A), which read:

- (3) may not use public funds to contract with, hire, or otherwise engage a speaker, consultant, diversity trainer, or other person to
 - (A) encourage, direct, or otherwise compel a student or a teacher, administrator, or other employee to affirm, adopt, or adhere to a specific belief or concept.

[1:59:26 PM](#)

SENATOR MYERS directed attention to page 5, lines 15-18, allowing voluntary participation. He stated that it is prohibited on the one hand, but on the other hand, it says it is allowable. In response to Senator Reinbold, he referred to the language on page 4, lines 23-27, and page 5, lines 15-18.

[1:59:57 PM](#)

SENATOR REINBOLD responded that page 4 uses the language "may not direct or compel," which relates to using public funds to contract, hire, or otherwise engage a speaker, consultant, diversity trainer, or other person to adopt a specific belief or concept. However, the language on page 5, subsection (4), and subsection (a) would allow students, teachers, administrators, and employees to voluntarily participate in training, seminars, continuing education, orientations, or therapy that promotes a concept, but they cannot be forced to do so.

SENATOR REINBOLD added that subsection (b) does not prohibit speech protected by the Constitution of the State of Alaska or the Constitution of the United States.

SENATOR MYERS stated that his concern was the language on page 4, line 25, which begins with "encourage." However, a speaker

would be encouraging something. He suggested that the committee consider removing "encourage" for clarity. If the point is to have a seminar after school or on Saturday morning, but the speaker cannot encourage anything, the language on page 5, paragraph (2) would not apply.

[2:02:23 PM](#)

CHAIR HOLLAND remarked that he benefitted from hearing this bill in the Senate Education Committee. He referred to the language in subparagraph (A) on page 4, line 25, which read:

- (A) encourage, direct, or otherwise compel a student or a teacher, administrator, or other employee to affirm, adopt, or adhere to a specific belief or concept.

CHAIR HOLLAND stated that this language says that it is allowable to encourage students to reach out to a political organization or entity and espouse their beliefs. Still, it prohibits encouraging them to take a specific side on a belief.

[2:03:03 PM](#)

SENATOR REINBOLD acknowledged his point. She emphasized that the significant language in subparagraph (A) is that someone cannot "compel" a student, teacher, administrator, or employee to affirm, adopt, or adhere to a specific belief or concept. However, it applies to a very specific and narrow set of beliefs outlined in paragraph (2).

SENATOR REINBOLD referred to page 5, which she said is different because it allows voluntary participation. She stated that the prior committee changed it from an absolute prohibition by adding in allowable actions. She recalled that Senator Hughes amended the bill in the Senate Education Committee.

[2:04:11 PM](#)

SENATOR HUGHES noted that page 4 refers to the requirements and page 5 refers to optional participation. She offered her view that the word encourage was added on page 4 because once a school staff encourages something, they imply that it is a good thing, which could influence someone. She pointed out that the language on page 5 does not encourage optional participation. Instead, the language allows informing students of speakers or seminars as optional choices, but it does not allow teachers or school staff to influence them to attend. She offered her view that encourage does not mean force, but it does express an

opinion. She acknowledged that an adult could influence students.

[2:06:15 PM](#)

SENATOR KIEHL acknowledged that adults have the ability to influence students. He stated that the US Supreme Court was considering whether teachers can lead prayer for the reasons Senator Hughes mentioned. He said that the use of the word encourages also struck him. He offered his belief that it was impossible to understand 20th Century history without reading Karl Marx and Friedrich Engels, who developed Marxism. However, that doesn't mean that reading it meant believing a word of it.

SENATOR KIEHL wondered about some language in the bill, including the language in subsection (2) on page 4, line 5, "affirm, adopt, or adhere to the belief or concept that" followed by a list of things that were suspect under the bill. Subparagraph (B) lists sex, race, ethnicity, and religion, but it does not mention class. He asked whether class was excluded so that schools were free to teach communism.

[2:08:07 PM](#)

SENATOR REINBOLD referred to paragraph (3), which read, "may not use public funds to contract with, hire, or otherwise engage a speaker, consultant, diversity trainer, or other person to"

SENATOR REINBOLD stated that it would be hiring someone to encourage students and school personnel. She offered her view that the language was acceptable as written, given the context used. She said she is uncertain what Senator Kiehl meant by class.

[2:08:52 PM](#)

CHAIR HOLLAND offered his view that Senator Kiehl was speaking to the list [in subparagraph (B)] that included sex, race, ethnicity, religion, and omitted economic class or social class. He had asked whether she excluded class to allow teachers to teach communism.

SENATOR KIEHL agreed that economic or social class was omitted from the list.

SENATOR REINBOLD responded that this bill does not address communism. She offered her view that because communism is a form of government, teachers could teach about capitalism and communism. She highlighted that [AS 14.18.160 subparagraph (1)] indicates that a teacher cannot compel a student, teacher,

administrator, or other employee to affirm, adopt, or adhere to the belief or concept that

[A] the United States or the state is fundamentally or irredeemably racist or sexist;

(B) an individual by virtue of sex, race, ethnicity, religion, color or national origin is, consciously or unconsciously, inherently racist, sexist, or oppressive;

(C) an individual, by virtue of sex, race, ethnicity, religion, color, or national origin, is blameworthy for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin;

(D) an individual's moral character is necessarily determined, in whole or in part, by the individual's sex, race, ethnicity, religion, color, or national origin;

(E) a sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior; or

(F) an individual should be adversely treated based on sex, race, ethnicity, religion, color, or national origin;

[2:10:47 PM](#)

SENATOR REINBOLD emphasized that this is a nondiscrimination bill, so someone could not force a person to believe a concept, including that someone was inherently one way based on the color of their skin.

[2:11:31 PM](#)

SENATOR KIEHL referred to subparagraph (2) (A):

(A) the United States or the state is fundamentally or irredeemably racist or sexist;

SENATOR KIEHL said he was unsure what fundamentally means in this context. The US Constitution, America's fundamental law, had in its origin, protections for chattel slavery or black slavery. He asked whether teaching that fact of history would violate this law.

SENATOR REINBOLD answered that schools could teach about the US Civil War and things that were excluded or included in the US Constitution. SB 196 prohibits directing or compelling a student, administrator, teacher, or other employee to affirm, adopt, or adhere to a belief or concept that the US, in general, is fundamentally or irredeemably racist or sexist. Thus, teaching about the holocaust or the Civil War would be fine.

[2:13:06 PM](#)

SENATOR KIEHL related that the practical application question was whether a school may teach that the fundamental original law of the US had racist pieces in it. He wondered if asking that question on a test would be compelling the student and, if not, what fundamental meant.

[2:13:39 PM](#)

CHAIR HOLLAND opined that Senator Kiehl was confusing the idea that the United States is fundamentally racist versus the notion that some of the fundamental origins of the United States were racist.

[2:14:30 PM](#)

SENATOR REINBOLD pointed out that many countries had slavery and racism, which still exists in some places today. This bill states that schools can't teach people to hate the United States or one another strictly based on sex, race, ethnicity, religion, color, or national origin. For example, schools can talk about the people who hated slavery so much in this country that they were willing to die to prevent it. She emphasized that discrimination was creeping into the school curriculum and activities. She stated that the intent of SB 196 was to prevent horrific and hateful concepts from taking root in Alaska's schools.

[2:17:05 PM](#)

SENATOR HUGHES highlighted that the Education Committee wanted to be sure that discussions could occur on historical events. She stated that Legislative Legal Services indicated that nothing in the bill would prevent teaching about the Holocaust, the Civil War, or Martin Luther King, Jr. in the schools, so teaching civics would not be prohibited.

[2:19:38 PM](#)

SENATOR HUGHES stated support for SB 196. She encouraged people to read the flyer posted to BASIS for an anti-racist workshop offered by the University of Alaska Anchorage that was marketed to school district educators. The workshop was entitled, "The

Anti-Racist Writing Workshop; How to decolonize the creative classroom." She viewed this as an indicator that critical race theory was creeping into the K-12 system.

SENATOR HUGHES expressed concern about parental rights and having students exposed at the high school level. She said she also read an article on the math curriculum in Florida. She noted that many elements would not be allowed under this bill since they were attempting to influence children on some matters. She offered her belief that the transparency provision in the bill was excellent. She urged members to consider what type of curriculum schools should be teaching.

[2:20:39 PM](#)

SENATOR SHOWER stated that fundamentally parents have the right to teach their children, and teachers do not have the right to teach concepts that parents disagree with, depending on the topic and court rulings. He referred to subparagraph (A) on page 4, line 7. He offered his view that fundamentally means foundation. He stated that although many founding fathers owned slaves, they did not like it and foresaw that it would change. He noted the three-fifths compromise [art. II, sec. I was an agreement reached during the 1787 US Constitutional Convention over counting enslaved people in determining a state's total population. It counted any enslaved person as three-fifths of an individual.] Today racism is illegal, but legislation doesn't change someone's heart.

SENATOR SHOWER referred to line 8 to the term "irredeemably," which he viewed as the most important word in the bill. He offered his belief that the United States is not irredeemably racist or bad. Instead, the United States represents a self-correcting experiment that should get better over time. He agreed that teachers should not teach that the United States or the state is fundamentally or irredeemably racist or sexist.

[2:24:00 PM](#)

SENATOR KIEHL agreed that the United States is not irredeemably racist. The bill uses the language fundamentally or irredeemably. He stated that the definition of fundamentally includes "an essential part of" and "a foundation or basis." He agreed with Chair Holland's description. He stated that the University of Alaska offered the course Senator Hughes mentioned. It is not a course taught to school district students. The flyer does not indicate that it is required attendance for teachers, counselors, or district contractors. He asked how the bill would cancel the workshop.

[2:25:35 PM](#)

SENATOR HUGHES noted that the University of Alaska's space was used for the class. It turns out the Municipality of Anchorage funding was from a prior administration. She stated that her point was that this provided an example that this thinking is infiltrating the schools. For instance, in July 2021, NEA discussed the topic, encouraging teachers to incorporate these teachings in the K-12 classroom.

[2:26:43 PM](#)

CHAIR HOLLAND said the flyer targets K-12 teachers. He expressed concern that the flyer illustrated that it instructs teachers to teach a certain way. This bill does not address that, but it tries to ensure that teachers teach students fairly and impartially.

[2:27:31 PM](#)

SENATOR KIEHL stated that he shares Senator Shower's concern that the university was offering training designed to ensure that teachers are not using racist methods or racism in the classroom.

CHAIR HOLLAND offered his view that the bill was not specifically targeting UAA training.

[2:28:19 PM](#)

SENATOR REINBOLD suggested potential amendments, including one from Florida that would set curriculum standards that ensure curriculum and teacher professional development align with required instruction and state standards, including no critical race theory or common core standards. She offered her view that common core allowed this type of crud to creep in. She referred to an article from the Alaska Watchman, which read, in part:

The Anchorage School District is offering a staff leadership program this summer that excludes white people from participating.

Open to teachers, counselors, or nurses, the Minority Leadership Program aims to "empower staff of Color to ascend through the ranks of leadership within the Anchorage School District."

In order to participate in the program, employees must be "staff of color," the notice states. It fails to clarify, however, exactly what this encompasses or how

the district will determine whether an applicant is a person of sufficient color.

SENATOR REINBOLD emphasized that this bill would unify and uphold the US Constitution, aligning with current AS 14 and 18. She stated her preference for CSSB 196(EDC), Version D of the bill.

[2:30:02 PM](#)

CHAIR HOLLAND held SB 196 in committee.

[2:30:12 PM](#)

At ease

HB 246-ACCESS TO MARIJUANA CONVICTION RECORDS

[Contains discussion of SB 207.]

[2:30:55 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of CS FOR HOUSE BILL NO. 246(FIN) "An Act restricting the release of certain records of convictions; relating to misconduct involving marijuana by persons 18, 19, or 20 years of age; amending Rule 17(h), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

[2:31:29 PM](#)

CHAIR HOLLAND noted that HB 246 was the companion bill to SB 207, which the committee heard on 4/6/2022 and 4/11/2022.

[2:31:30 PM](#)

REPRESENTATIVE JONATHAN KREISS-TOMKINS, Alaska State Legislature, Juneau, Alaska, sponsor of HB 246, introduced himself.

CHAIR HOLLAND asked the sponsor to highlight the differences between SB 207 and HB 246.

[2:32:07 PM](#)

REPRESENTATIVE KREISS-TOMKINS explained the main difference between the two bills was an amendment the House Finance Committee added that related to underage possession of marijuana for persons 18, 19, or 20 years of age. He noted that the legal age for possession of marijuana is 21 years of age. Currently, those persons 18, 19, or 20 years of age possessing marijuana are subject to class A misdemeanor charges, punishable by up to 90 days in jail and a fine of up to \$2,000. The amendment the House Finance Committee adopted, changed underage possession of

marijuana for persons 18, 19, or 20 years of age to a violation, effectively mirroring the charges for a minor charged with possessing alcohol. He noted that SB 207 also contained legislative intent, which was not in the House version. He expressed his willingness to accept the language in either bill.

[2:33:46 PM](#)

SENATOR MYERS referred to subsection (b) on page 3, lines 27-30. He asked for the rationale to charge violations as a separate case. He read:

(b) A violation of this section must be charged and filed with the court as a separate case and may not be combined or joined with any other minor offense or criminal charge in one action at the time of filing.

[2:34:17 PM](#)

REPRESENTATIVE KREISS-TOMKINS answered that it was due to the joinder limit, mirroring underage alcohol violations. He stated that the CourtView system must keep cases separate so the conviction would not appear on CourtView. The joinder limit makes that possible. Suppose a 19-year-old was charged with possessing marijuana, but the person was also charged for reckless driving or vandalism. The Alaska Court System could remove all of the charges or none of the charges due to its database limitations. Thus, it was important to separate the violation for underage possession of marijuana from other crimes so that the court system can treat the marijuana conviction on its own in CourtView. The same would be true for underage possession of alcohol.

[2:36:01 PM](#)

CLAIRE GROSS, Staff, Representative Kreiss-Tomkins, Alaska State Legislature, Juneau, Alaska, added that both bills primarily addressed protecting records of marijuana crimes for those 21 years of age and older. However, one stipulation in Sections 4 and 7 was that the person must not have been convicted of any other criminal charges in that case. She noted that these same CourtView database limitations apply to adults charged with possessing marijuana under one ounce.

MS. GROSS clarified that those cases were being reviewed retroactively. The bill sets up the crime of misconduct in the second degree. Again, the case must be set up separately so it can be removed from CourtView. She explained that an officer from the Department of Law would issue the citation, but prosecutors would be involved in rare instances. It was similar

to how the department handles minor consuming cases by setting them up as a separate cases even if the person had other charges in the case. DOL advised the sponsor that it should not be a disincentive for officers to separate the charges filed in these cases; in fact, it could be helpful to combine cases that require prosecutor involvement stemming from other charges.

[2:38:41 PM](#)

SENATOR MYERS asked the sponsor if the goal was to direct the Alaska Court System at some future point to pull the minor convictions from CourtView. He said it appeared as though that would be the point of the joinder prohibition.

REPRESENTATIVE KREISS-TOMKINS answered no, and apologized if he had added some confusion to the conversation.

[2:39:35 PM](#)

SENATOR MYERS referred to page 3, lines 27-29 of HB 246, which read:

(b) A violation of this section must be charged and filed with the court as a separate case and may not be combined or joined with any other minor offense or criminal charge in one action at the time of filing.

SENATOR MYERS stated that during discussions on SB 207, Ms. Meade explained that the court system could only remove the posting from CourtView if the marijuana possession charge were the sole charge in the case. He wondered if the sponsor wanted to make it easy to remove the charges for a minor's use of marijuana at a later date since that charge would be separated from other charges.

[2:40:35 PM](#)

REPRESENTATIVE KREISS-TOMKINS stated that was not the intent.

[2:41:13 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, responded that she was unsure of Senator Myer's question. She stated that per Version I, cases for misconduct involving marijuana for those 18, 19, and 20 years of age would not appear on CourtView. She referred to page 4, lines 20-22 of HB 246, which addresses the new offense created by Section 5 for those individuals not under 18 or over 21 years of age. She clarified that the misconduct involving marijuana must not include charges for other crimes since the court system must remove all or none of the case. For example,

if a person were charged with possession of marijuana and had committed another crime, such as theft or murder, the court would need to remove all of the charges, which was not the legislature's intent.

SENATOR MYERS related his understanding that the point of subsection (b) was for the court system to shield the marijuana charges by not posting them to CourtView.

[2:42:41 PM](#)

REPRESENTATIVE KREISS-TOMKINS cautioned members about using the term, minor, because the definition of a minor was an individual [under] 18 years of age; however, this provision applied to possession of marijuana charges for individuals 18, 19, and 20 years of age. He indicated that there was not any intent for the bill to apply to minors.

CHAIR HOLLAND asked if the Alaska Court System had anything to add.

[2:43:23 PM](#)

MS. MEADE said the Alaska Court System was neutral on the bill. She indicated that the court system would be able to identify those cases for misconduct involving marijuana for those 18, 19, and 20 years of age. She stated that the court system would not post the charges to CourtView if the legislature directs the agency not to do so. She related that the court system already handles minor consuming of alcohol cases in the same manner. She appreciated that the bill had an extended effective date because it would allow the court system to create a new case number, so the process would happen automatically.

[2:44:10 PM](#)

SENATOR KIEHL stated that the drafters may have created an unintended glitch related to the offense of using or displaying more than an ounce of marijuana.

CHAIR HOLLAND referred to page 3, line 26 of Version I, which read "less than one ounce of marijuana."

SENATOR KIEHL responded that he might need to review it further. He stated that it was a class B misdemeanor if a juvenile knowingly used or displayed more than an ounce, which did not change under the bill. It was also a class B misdemeanor for anyone 21 years of age or older to possess more than an ounce. However, he believed that possession of more than an ounce for

those ages 18, 19, and 20 would be a violation. He asked whether the intent was to lower that penalty.

[2:45:42 PM](#)

MS. GROSS agreed it appeared to be a drafting mistake. She referred to page 3, lines 24-26, which read:

- (a) A person 18, 19, or 20 years of age commits the offense of minor misconduct involving marijuana if the person knowingly uses or displays any amount of marijuana or possesses less than one ounce of marijuana.

MS. GROSS agreed that was not the sponsor's intention. That provision would allow someone to be charged with possessing three ounces of marijuana and have their record shielded. The sponsor intended it to shield records on CourtView for those possessing less than one ounce of marijuana, as specified in the other sections of the bill related to AS 11.71.060. She noted that would also match the scope of convictions for those 21 years and older.

[2:47:00 PM](#)

SENATOR MYERS related his understanding that other criminal offenses were blocked from CourtView. He asked which offenses were shielded.

MS. MEADE responded that the other violations not posted on CourtView were minor in possession of alcohol or control of alcohol, commonly called minor consuming or minor on unlicensed premises. In addition, three statutes cited in court rules in AS 28 would also be shielded from view in CourtView, including minor driving after receiving a minor consuming citation. She clarified that this offense was not for driving while under the influence (DUI) of alcohol. Further, two traffic-related violations would not be posted to CourtView.

[2:48:26 PM](#)

SENATOR SHOWER stated that the committee discussed removing possession of marijuana charges prior to legalizing marijuana through the initiative process. He asked whether anything changed in the House version that would affect posting on CourtView any current and future charges for possession of marijuana rather than clearing up prior charges.

[2:49:29 PM](#)

MS. MEADE responded that the intent of HB 246 was to remove possession of marijuana charges of less than an ounce for those over the age of 21 on CourtView and shield them from certain criminal history records checks by the Department of Public Safety. Theoretically, no one over the age of 21 would be charged going forward. This bill does not touch anyone charged with possession of less than an ounce of marijuana who is under 18 years of age. It will still be a misdemeanor. Currently, the penalty for possession of less than an ounce of marijuana for those ages 18, 19, and 20 is a class B misdemeanor, which would be reduced to a violation under the bill. The person would receive a citation and not need to appear in court. She stated that going forward the court system would not post the citation on CourtView. She summarized the effect of the changes. She stated that possession of less than an ounce of marijuana for adults was permissible; those ages 18-20 would receive a violation that would not appear on CourtView; and those [under] 18 years of age would be subject to a class B misdemeanor and not be posted to CourtView because the Division of Criminal Justice handles juvenile crimes.

[2:50:47 PM](#)

MS. GROSS added that removing the misdemeanor conviction from CourtView would not happen retroactively for those ages 18, 19, and 20. She stated that reducing the crime from a misdemeanor to a violation or the removal from CourtView would only happen going forward for those ages 18, 19, and 20.

CHAIR HOLLAND invited Ms. Howell to comment on behalf of the Department of Public Safety.

[2:51:34 PM](#)

KELLY HOWELL, Special Assistant, Office of the Commissioner, Department of Public Safety, Anchorage, Alaska, stated that DPS supports the changes in HB 246. The bill would help ensure that those encountering housing or employment difficulties due to convictions for possession of marijuana don't incur those challenges in the future.

[2:52:22 PM](#)

REPRESENTATIVE KREISS-TOMKINS stated that House Finance amended the bill after seeing how alcohol and marijuana were treated differently. He offered his view that the Finance Committee wanted to treat alcohol and marijuana offenses similarly in a regulatory and legal manner.

[2:53:27 PM](#)

CHAIR HOLLAND held HB 246 in committee.

2:53:49 PM

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:53 p.m.