

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 1, 2023

1:00 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 66

"An Act relating to homicide resulting from conduct involving controlled substances; relating to the computation of good time; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 28

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 66

SHORT TITLE: CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/08/23	(H)	READ THE FIRST TIME - REFERRALS
02/08/23	(H)	JUD, FIN
02/27/23	(H)	JUD AT 1:30 PM GRUENBERG 120
02/27/23	(H)	Heard & Held
02/27/23	(H)	MINUTE(JUD)
03/01/23	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 28

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(S): WRIGHT

01/19/23	(H)	PREFILE RELEASED 1/9/23
01/19/23	(H)	READ THE FIRST TIME - REFERRALS
01/19/23	(H)	JUD, FIN
03/01/23	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JOHN SKIDMORE, Director
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Presented information on HB 66, on behalf of the House Rules Standing Committee, sponsor by request of the governor.

MIKE MATTHEWS, Lead Research Analyst
Division of Administrative Services
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 66.

REPRESENTATIVE STANLEY WRIGHT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 28.

ALLAN RIORDIAN-RANDALL, Staff
Representative Stanley Wright
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered introductory information on HB 28, on behalf of Representative Wright, prime sponsor.

VITTORIO NASTASI, Director of Criminal Justice Policy
Reason Foundation
Tallahassee, Florida

POSITION STATEMENT: Provided invited testimony during the hearing on HB 28.

DAVID MORGAN, Government Affairs Associate
Reason Foundation
Atlanta, Georgia

POSITION STATEMENT: Provided invited testimony during the hearing on HB 28.

NANCY MEADE, General Counsel
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 28.

LISA PURINTON, Bureau Chief
Division of Statewide Services
Department of Public Safety
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 28.

ACTION NARRATIVE

[1:00:44 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives C. Johnson, Gray, Groh, and Vance were present at the call to order. Representatives Carpenter, Eastman, and Allard arrived as the meeting was in progress.

HB 66-CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

[1:01:42 PM](#)

CHAIR VANCE announced that the first order of business would be HOUSE BILL NO. 66, "An Act relating to homicide resulting from conduct involving controlled substances; relating to the computation of good time; and providing for an effective date."

[1:02:02 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Department of Law (DOL), referred to a document, titled "Controlled Substance Statutes References Chart" [included in the committee packet]. He directed attention to the state drug classifications on page 2, noting that Fentanyl was a schedule 1A according to Alaska Statutes. He proceeded to provide a summary of the controlled substances found in schedule IA through VIA.

[1:07:11 PM](#)

MR. SKIDMORE returned to page 1 of the document, which summarized the statutory tiers of misconduct involving a controlled substance in the first through fifth degree. He described the presumptive range in addition to the criminal conduct associated with the first degree.

CHAIR VANCE asked why age 19 was chosen [in regard to the conduct classified as misconduct involving a controlled substance in the first and third degree].

MR. SKIDMORE said he did not know the answer. He added that he would need to analyze the legislative history to understand that policy decision.

CHAIR VANCE noted the lack of consistency in statute in terms of the age of minors.

[1:13:02 PM](#)

REPRESENTATIVE GROH referred to the drug classifications on page 2 of the supporting document and asked whether the comprehensive listing of schedule IA through VIA controlled substances included lesser "B" or "C" tiers.

MR. SKIDMORE conveyed that additional subsections were not utilized in this particular classification system.

[1:13:58 PM](#)

MR. SKIDMORE returned to page 1 and resumed his overview of the controlled substances statutes reference chart, detailing misconduct involving a controlled substance in the second through fifth degree. He reiterated that this was not an exhausted listing of the laws.

[1:18:30 PM](#)

REPRESENTATIVE EASTMAN suspected that the bill would give prosecutors added discretion. He asked which schedule Adderall fell under.

MR. SKIDMORE indicated that Adderall was a schedule IIA. He disagreed with Representative Eastman's assertion that the bill would provide prosecutors with greater discretion, adding that HB 66 would simply change the classification of offense.

REPRESENTATIVE EASTMAN remarked:

What I mean by that is currently, you would not be able to charge an individual for second degree murder without the bill, and when the bill passes, if it does, you would then have the discretion of being able to charge some of the same conduct as second degree murder. Is that correct?

MR. SKIDMORE acknowledged that it would change the classification of offense from manslaughter to murder in the second degree; however, he contended that such a change was not providing additional discretion. He defined prosecutorial discretion as deciding whether to charge a person, which would not be impacted by the bill.

REPRESENTATIVE EASTMAN asked what the bill would accomplish. He considered a hypothetical scenario in which a parent shared his/her Adderall prescription with a child. He asked whether that conduct could be prosecuted as murder in the second degree if the bill were to pass.

MR. SKIDMORE said the proposed legislation did not address prescription sharing with a child. Nonetheless, he emphasized that the conduct was illegal under current law, regardless of the outcome of HB 66.

[1:22:15 PM](#)

REPRESENTATIVE EASTMAN asked whether the bill would change the classification for that conduct.

MR. SKIDMORE answered no.

CHAIR VANCE directed attention to Section 1, paragraph (2) of the bill, which read as follows [original punctuation provided]:

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life;

CHAIR VANCE asked whether "indifference to the value of human life" should be referenced in paragraph (6) on page 2 of the bill.

MR. SKIDMORE supposed one could argue the theory that the distribution of drugs could be considered an extreme

indifference to the value of human life given the unregulated increased use of Fentanyl. Ultimately, he opined that the element of extreme indifference belonged under the provision for murder in the second degree, as drafted. He remarked, "In order for the state to get to a murder two, we would need to move the subsection, as the bill proposes, from manslaughter to murder two."

[1:26:51 PM](#)

REPRESENTATIVE GRAY asked how good behavior was determined by the Department of Corrections (DOC).

[1:27:23 PM](#)

MIKE MATTHEWS, Lead Research Analyst, Division of Administrative Services, DOC, offered to follow up with the requested information, adding that the determination of "good time" was a process that occurred within each individual institution.

REPRESENTATIVE GRAY asked how much a sentence could be reduced for good behavior.

MR. MATTHEW answered one third.

REPRESENTATIVE GRAY asked which offenses were excluded from receiving good time.

MR. MATTHEW offered to follow up with the requested information.

MR. SKIDMORE, in response to Representative Gray, cited AS 33.20.010(a)(1)-(4), which read as follows [original punctuation provided]:

- (1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;
- (2) to a definite term under AS 12.55.125(1);
- (3) for a sexual felony under AS 12.55.125(i)
 - (A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4); or
 - (B) that is an unclassified or a class A felony;
- or
- (4) for an unclassified felony under AS 11.41.100 or 11.41.110.

REPRESENTATIVE GRAY asked whether removing eligibility for a good time deduction would remove a tool for encouraging good behavior while incarcerated.

MR. MATTHEW offered to follow up with the requested information.

1:30:25 PM

REPRESENTATIVE GRAY inquired about the percentage of drug dealers that were also drug users.

MR. SKIDMORE was unsure of the answer. He anecdotally reported that there was significant overlap between those that use drugs and distribute drugs to support their own addiction.

REPRESENTATIVE GRAY asked how to reduce recidivism.

CHAIR VANCE asked Representative Gray to narrow the question.

REPRESENTATIVE GRAY asked how recidivism could be reduced for individuals struggling with substance abuse issues.

MR. SKIDMORE indicated that one tool available to the courts was rehabilitation, such as substance abuse treatment, which could be received either in or out of custody. Additionally, he cited educational programs and stipulations of probation or parole.

REPRESENTATIVE GRAY asked whether there was evidence that longer sentences lead to lower rates of crime.

MR. SKIDMORE indicated that it was possible; however, the notion behind the proposed legislation was to consider appropriate criteria for individuals who were distributing "poison" to Alaskans, which was resulting in their death. He listed the five components of the Chaney Criteria as follows: rehabilitation, general deterrents, specific deterrents, community condemnation, and isolation. He submitted that isolation and community condemnation should be imposed on more egregious offenses, such as the one in question.

1:34:28 PM

REPRESENTATIVE GRAY directed attention to the added provision under good time exclusions on page 3, lines 10-12, of HB 66. He shared his understanding that the provision, which removed the possibility of good time deduction for those charged with a felony under AS 11.71.010 - 11.70.040, would remove good time

eligibility for all drug offenses, not just those that resulted in death.

MR. SKIDMORE confirmed that the bill would exclude anyone distributing drugs from receiving a good time deduction, the rationale being that all drug dealers were participating in the larger industry that was responsible for the substantial increase in overdose deaths.

1:36:48 PM

REPRESENTATIVE CARPENTER asked why Section 1 of the bill expressly focused on schedule IVA controlled substances.

MR. SKIDMORE stated that the reference to schedule IVA controlled substances was a policy decision that was made previously when the manslaughter provision was initially adopted.

REPRESENTATIVE CARPENTER shared his understanding that the bill would not apply to a person who died from consuming a schedule IA or IIA drug, such as heroin or PCP. He suggested that HB 66 would only apply to a person who overdosed from consuming a schedule IVA controlled substance.

MR. SKIDMORE answered no. He directed attention to page 2, line 21, of HB 66, which referred to a person who knowingly manufactures or delivers a controlled substance in violation of AS 11.71.010 - 11.71.030. He clarified that AS 11.71.010 - 11.71.030 covered misconduct involving a controlled substance for schedule IA - IVA drugs.

1:41:00 PM

REPRESENTATIVE C. JOHNSON asked for verification that, unlike bath salt, a loophole could not be created by altering the synthetic composition of fentanyl to make it legal.

MR. SKIDMORE confirmed that fentanyl had a definitive chemical composition that could not be easily changed. He explained that now, the attorney general (AG) had the ability to add altered chemical compositions of synthetic controlled substances to the statutory schedules, pending approval by the legislature, based on recommendations from the Controlled Substance Advisory Committee - an option that was not available to the state during the bath salt wars referenced by Representative C. Johnson.

[1:43:08 PM](#)

MR. SKIDMORE, in response to a question from Representative Eastman, disagreed with his analysis of Section 2 of the bill, explaining that the restriction [of good time eligibility] was based upon the sentence imposed on the prisoner for a particular crime. Therefore, if a person were convicted of both misconduct involving a controlled substance, for which a good time deduction would not be permitted per HB 66, and a DUI, the individual could receive a good time deduction for the DUI sentence.

REPRESENTATIVE EASTMAN asked where that was specified in statute. He contended that, per his reading of the language, an offender would not be eligible for a good time deduction if he/she had been sentenced.

MR. SKIDMORE deferred the question to the Department of Corrections (DOC). He shared his understanding that the intent of restricting good time for specific crimes was not so that a person would be ineligible from receiving good time for additional offenses.

REPRESENTATIVE EASTMAN considered a scenario in which a person committed suicide with a controlled substance. He asked whether the person who sold or delivered that controlled substance could be charged with second degree murder if HB 66 were to pass.

MR. SKIDMORE confirmed that the bill would allow the prosecutor to hold the distributor of the controlled substance responsible for causing another person's death, regardless of whether the death was intentional suicide.

REPRESENTATIVE EASTMAN asked Mr. Skidmore to opine on a scenario in which a substance was altered between distribution and ingestion.

MR. SKIDMORE said he would need to follow up after further analysis of the question.

[1:49:51 PM](#)

REPRESENTATIVE GRAY inquired about the daily cost of keeping someone incarcerated.

MR. MATTHEW answered \$176 per day.

REPRESENTATIVE GRAY inquired about the costs associated with extending sentences and asked why the fiscal note was zero.

MR. MATTHEW said the fiscal note was zero because there was a current capacity of 750 beds [in DOC facilities]. He estimated that the bill would increase the prison population by a maximum of 38-39 people per day.

REPRESENTATIVE GRAY inferred that the cost remained at zero because there were extra beds available in the DOC facilities. He asked whether that was correct.

MR. MATTHEW said, generally speaking, yes. He said additional money would not be requested unless maximum capacity was exceeded.

REPRESENTATIVE GRAY sought to confirm that as long as there were available beds, housing the incarcerated population was free.

MR. MATTHEW answered, "Yes and no." He explained that DOC charged federal agencies a daily bed rate of \$176 for holding their prisoners.

REPRESENTATIVE GRAY asked whether state prisoners were held free of charge.

MR. MATTHEW remarked:

It's a mathematical formula based on how many people we have per day and how much the costs are for that at a given period of time. In a sense, yes, it is free in that context but of course there are costs any time you have additional people. But we are budgeted for a certain amount of people and right now, our budget is under that many people.

[1:53:29 PM](#)

REPRESENTATIVE GRAY surmised that it would cost money to increase the prison population, which would require a fiscal note. He asked whether that was wrong.

MR. MATTHEW asked Representative Gray to repeat the question.

REPRESENTATIVE GRAY declined. He maintained his belief that a zero fiscal note inaccurately reflected the bill.

REPRESENTATIVE ALLARD offered an analogy between the cost of incarceration and the cost of driving a school bus, indicating that the cost would be the same whether there were 10 students or 20 students. She asked whether that was an accurate analogy.

MR. MATTHEW said, "That's a pretty good analogy."

[1:55:26 PM](#)

REPRESENTATIVE GROH calculated that \$176 multiplied by 365 equaled over \$64,000. He asked whether that was correct.

MR. MATTHEW confirmed.

[1:55:58 PM](#)

REPRESENTATIVE C. JOHNSON asked whether DOC's budget was based on capacity or the number of incarcerated individuals.

MR. MATTHEW indicated that the formula was based on the budgeted amount in addition to the number of people incarcerated and the number of days served.

[1:56:49 PM](#)

CHAIR VANCE announced that HB 66 would be held over.

[1:57:25 PM](#)

The committee took a brief at-ease.

HB 28-ACCESS TO MARIJUANA CONVICTION RECORDS

[2:00:41 PM](#)

CHAIR VANCE announced that the final order of business would be HOUSE BILL NO. 28, "An Act restricting the release of certain records of convictions; and providing for an effective date."

[2:00:54 PM](#)

REPRESENTATIVE STANLEY WRIGHT, Alaska State Legislature, prime sponsor, provided introductory remarks on HB 28. He said the bill was an important and necessary step to increasing opportunities and reducing barriers for individuals who were convicted of low-level cannabis possession. He noted that the Alaska Court System had already initiated a process similar to

that of the proposed legislation. With the passage of HB 28, he said, the ruling of the Alaska Court System would be protected and codified.

[2:02:07 PM](#)

ALLAN RIORDIAN-RANDALL, Staff, Representative Stanley Wright, Alaska State Legislature, on behalf of Representative Wright, prime sponsor, paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

Alaskans voted to legalize the cultivation, sale, and possession and recreational use of marijuana for persons 21 years of age or older in 2014. Despite this change in state law, some Alaskans remain blocked from employment and housing and other opportunities due to previous marijuana possession convictions that today are recognized as non-criminal activities.

House Bill 28 would make confidential the records of individuals who were convicted of minor marijuana crimes, were 21 years of age or older at the time of the offense and were not charged with any other crimes in the same incident. These records would automatically be removed from Court View. The records would also be removed from some background checks administered by the Department of Public Safety, if requested by the convicted individual.

According to figures provided by the Alaska Department of Public Safety, not less than 8,000 Alaskans are hindered in day to day life by marijuana convictions that are eligible for the confidentiality protections in this bill.

This bill would recategorize low level marijuana offenses for individuals 18-21 years of age from Class B misdemeanors to minor violations punishable by a fine and eliminate unnecessary use of judiciary resources for court hearings. It would also prohibit the Alaska Court System from publishing records of these violations on Court View, from the effective date of the bill going forward.

With Alaskans having spoken by means of legalization of marijuana this bill would allow those that by

today's standards would not be considered as a criminal offender to move forward with their life without the obstruction that can be incurred by such a conviction on one's record while still allowing provisions for adequate access to background or statistical information for those appropriate agencies.

[2:04:11 PM](#)

REPRESENTATIVE WRIGHT concluded by noting that the bill would grant people who were being held back by a low-level infraction the opportunity to reach their full potential. He conveyed that [people who had been convicted of minor marijuana crimes] were facing employment barriers, which inhibited them from taking care of their families.

[2:04:51 PM](#)

REPRESENTATIVE ALLARD asked the sponsor to define "low level" marijuana convictions and to elaborate on how that was holding people back.

REPRESENTATIVE WRIGHT defined "low level" as infractions that were legal today. He explained that the criminal records of these violations on Court View were barring people from gaining employment.

REPRESENTATIVE ALLARD asked, "If it's personal use that's legal in Alaska, would that be something that would be holding folks back that could be expunged from their record but perhaps stay on federally - but it would allow them to get the jobs that they deserve and they need?"

REPRESENTATIVE WRIGHT agreed. He said it was unfortunate that people were "marked" for life for mistakes they made in their past.

CHAIR VANCE commenced invited testimony.

[2:06:21 PM](#)

VITTORIO NASTASI, Director of Criminal Justice Policy, Reason Foundation, stated that there was not a compelling public safety interest in publicizing [on Court View] minor marijuana crime convictions. He noted that the records in question would still be accessible to law enforcement should HB 28 pass. He added that the question at hand was whether to release those records

to the public upon request or in background checks for job applications. He argued that releasing low level marijuana possession conviction records could actually undermine public safety by making it harder for people to engage in productive activities such as securing housing, obtaining occupational licenses, joining the military, gaining admission to universities, accessing financial services, and maintaining child custody. He reported that 90 percent of employers conduct background checks on job applicants; further, applicants with a criminal conviction were 50 percent less likely to receive a call back. Furthermore, research indicated that employment and community ties were important indicators in ceasing criminal behavior. He summarized the bill, explaining that HB 28 sought to address the problem by prohibiting agencies from releasing criminal records related to cases in which the defendant was convicted of possessing less than one ounce of marijuana upon request of the offender. Additionally, the Alaska Court System would be prohibited from posting records related to low level possession convictions on publicly accessible websites [Court View]. He opined that the proposed reform would provide needed relief to many Alaskans.

[2:09:10 PM](#)

REPRESENTATIVE C. JOHNSON pointed out that there were commercially available background checks. He asked whether the bill would expunge these violations from publicly accessible websites. Additionally, he asked whether the bill was retroactive.

MR. NASTASI said nothing in the bill would directly address private companies with existing databases.

[2:10:39 PM](#)

REPRESENTATIVE CARPENTER asked whether, from an employer's perspective, there was a compelling public interest to know whether a prospective candidate followed the law. He opined that a minor marijuana charge, much like a speeding ticket, represented a violation of the law.

MR. NASTASI emphasized that marijuana possession was legal and no longer considered a criminal offense. He argued that the collateral consequences of having a criminal record released for minor marijuana convictions did more harm than good.

REPRESENTATIVE CARPENTER pointed out that he had been elected to public office despite the speeding tickets on his record. He opined that nothing was stopping someone with a prior marijuana possession charge from gaining employment or seeking elected office. He argued that employers should have the right to know whether an applicant was capable of violating the law.

[2:15:10 PM](#)

REPRESENTATIVE GROH drew a broad distinction between speeding tickets and criminal offenses. He requested real life examples of the hardships faced by individuals convicted of low-level marijuana charges.

MR. WRIGHT said he spoke with many individuals on his path to Juneau who had low level marijuana convictions, which prohibited them from gaining employment.

[2:17:14 PM](#)

REPRESENTATIVE ALLARD said she was struggling with the bill because people were supposed to be held accountable for committing crimes. She considered an example in which heroin was legalized and asked whether it would be fair to expunge felony offenders' records simply because they couldn't get a job.

REPRESENTATIVE WRIGHT shared his belief that people shouldn't be marked for the rest of their life if they paid their debt to society. He reiterated that these individuals don't have a lot of options.

REPRESENTATIVE ALLARD asked how an employer would know whether an applicant had poor judgement and violated the law.

REPRESENTATIVE WRIGHT said after speaking with many employers about this issue, many of them wished that the box [indicating whether an applicant had violated the law] wasn't there.

REPRESENTATIVE ALLARD noted that marijuana was still illegal at the federal level.

REPRESENTATIVE WRIGHT opined that federal law should not dictate what Alaskans do.

[2:21:37 PM](#)

REPRESENTATIVE C. JOHNSON inquired about similar policies in other states. He stressed that this was a serious policy decision. He said he tended to agree with the intent of the legislation; however, it appeared that the courts were formulating policy on behalf of the legislature.

CHAIR VANCE said she shared the same concern. She noted that Nancy Meade was available to speak to the decision made by the Alaska Supreme Court and its implementation.

[2:23:37 PM](#)

DAVID MORGAN, Government Affairs Associate, Reason Foundation, highlighted that approximately seven years after legalization, many Alaskans were marked with criminal records for low level marijuana possession. He stated although an early leader in cannabis reform, Alaska lagged behind 24 other states that had adopted reforms to facilitate the expungement or sealing of marijuana related criminal convictions. He acknowledged that it could sometimes be in the interest of public safety to provide information to the public about an individual's criminal background; however, he argued that a one-size-fits-all approach to lifelong criminal records did not make sense. He reported that there was no evidence that an individual convicted of marijuana possession posed a threat to public safety. He believed that HB 28 was an overdue step towards justice for Alaskans harmed by the war on drugs.

[2:25:03 PM](#)

REPRESENTATIVE GRAY explained that as a member of the military, he would be kicked out if he were to smoke marijuana. He shared a personal anecdote about a young person who wanted to join the military despite being a marijuana user. He indicated that if the individual was honest on his application, he would have been denied acceptance. He believed that teens who smoke marijuana could make good soldiers. He asked whether there was evidence that expunging marijuana conviction records allowed people to join the military.

MR. MORGAN deferred to Mr. Nastasi.

MR. NASTASI said to his knowledge there was no specific research on record expungement and military service. Nonetheless, he cited research that considered the effect of having a criminal record on job applications and university admission. Findings showed that between two people with identical work experience,

the individual with the criminal record was 50 percent less likely to receive a call back.

CHAIR VANCE pointed out that while the legalization of marijuana in Alaska had changed, it was still illegal under federal law. She emphasized that in terms of military service, federal standards remained in effect.

[2:29:03 PM](#)

REPRESENTATIVE ALLARD asked whether a minor marijuana conviction would still show up on a federal record despite being expunged in Alaska if the bill were to pass.

[2:30:05 PM](#)

The committee took a brief at-ease.

[2:30:41 PM](#)

CHAIR VANCE inquired about recent changes made by the Alaska Court System, which mirrored the proposed legislation. Additionally, she asked how the decision would be implemented.

[2:31:22 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, clarified that the bill would not expunge any records, nor would it eliminate or vacate a person's criminal history. She stated that HB 28 would do two things: Firstly, Section 1 and Section 2 of the bill addressed the release of criminal background checks through the Department of Public Safety (DPS), which was the repository for official criminal records in the state of Alaska; secondly, Section 4 and Section 5 would make it so certain records concerning criminal cases for marijuana possession would not appear on the public version of Court View. She reiterated that those records would not be made confidential, expunged, or eliminated. She explained that court rules were often amended periodically, adding that the list of unpublishable criminal cases on Court View was one of the most modified rules to date. She further noted that, per the legislature, all dismissals or acquittals were also removed from Court View. She conveyed that unpublished cases could always be found by an employer if he/she went to the courthouse. In response to Representative Vance, she stated that the Alaska Supreme Court recently decided that [minor marijuana possession charges] was a recent category of offenses that should not appear on the public version of Court

View. For that reason, the technology department would be removing them as of May 1, 2023.

[2:37:51 PM](#)

REPRESENTATIVE CARPENTER asked whether Court View was regulated via statute or whether the court management system was solely decided upon by the Alaska Court System.

MS. MEADE explained that Court View was the court's own case management system. However, legislation like House Bill 11 sponsored by former Representative Tammie Wilson in 2015 directed the courts to exclude from Court View criminal cases that ended in a dismissal or acquittal, thereby effectually regulating Court View by statute. Additionally, in 2016, Senate Bill 165 removed all minor consumption of alcohol cases from Court View.

REPRESENTATIVE CARPENTER asked which court rule expressly provided authority over Court View to the Alaska Court System.

MS. MEADE cited administrative Rule 40 from the Alaska Court Rules [Rules of Administration], which provided that the court system shall maintain a database of all cases and make available to the public a subset of the database with the exclusion of the following cases: confidential cases, legislative directives, dismissed cases, and low-level marijuana convictions.

[2:40:37 PM](#)

REPRESENTATIVE ALLARD sought to verify that HB 28 did not seek to expunge criminal records.

MS. MEADE confirmed.

REPRESENTATIVE ALLARD asked whether applicants would still be required to disclose any criminal convictions by checking a box on employment applications. Additionally, she asked whether that disclosure was required under existing state law.

MS. MEADE said she was not aware of any state law that required the disclosure of criminal history on job applications; however, she indicated that some applications may include that question. She noted that the recent court decision to remove certain cases from Court View should not change a person's answer on the job application, as their criminal history was not being altered. She added, "It still happened from the court's point of view."

REPRESENTATIVE ALLARD asked whether employers could ask applicants to disclose their criminal history without violating anyone's rights.

MS. MEADE answered, "That's my understanding but I'm not exactly that type of lawyer."

[2:42:39 PM](#)

REPRESENTATIVE GROH sought to verify that the rate of dismissals was significantly higher than acquittals in criminal cases.

MS. MEADE answered affirmatively.

[2:43:08 PM](#)

REPRESENTATIVE ALLARD expressed concern that the court system was taking it upon itself to make a legislative decision regarding the sealing of records [from Court View]. She asked whether that was fair.

MS. MEADE explained that the Alaska Court System had authority over Court View, much like the governor had authority over what's displayed on the Office of the Governor's website. She emphasized the public version of Court View was in the purview of the court system.

REPRESENTATIVE ALLARD sought to clarify the difference between Court View and accessing court records from the courthouse. She asked what would happen if the court system decided to dispose of Court View entirely and whether that would affect the public's access to courthouse records.

MS. MEADE conveyed that the Alaska Supreme Court had the authority to dispose of Court View; however, such a scenario was extremely unlikely, as the court system wanted to maintain a system of transparency for the public. She emphasized that the court system adhered to the principle of democracy and practiced an open-door policy in all cases.

REPRESENTATIVE ALLARD recalled that people did not have access to courthouses during the pandemic. She maintained her belief that the court system was making decisions that were beyond its scope.

MS. MEADE acknowledged that there was a short period of time during the COVID-19 pandemic that people were not allowed in the courthouse lobbies; however, during that time, requests for criminal records were being responded to via phone. To further illustrate the court system's desire to keep the public informed, she recalled the effort to stream trials during the pandemic.

[2:47:29 PM](#)

CHAIR VANCE inquired about the nuances between the Alaska Court Rules decision and the proposed legislation.

MS. MEADE indicated that Section 4, lines 5-14 on page 3 of HB 28, was aligned with the court's decision to remove from Court View the conduct that was legalized by voters eight years ago. She noted that to be applicable, the offender must be over 21 and must have been in possession of less than 1 ounce of marijuana; further, the possession charge must not be accompanied by any other convictions in that case. She pointed out that Section 4, subsection (b), was already an existing practice; therefore, she believed that the language was unnecessary. She further noted that per the court decision, the cases were being removed retroactively.

[2:50:23 PM](#)

REPRESENTATIVE CARPENTER asked whether the 2021 rule change went through the rules committee process.

MS. MEADE explained that administrative rules, like the one in question, did not have a rules committee. Rules committee, she explained, was preserved for substantive areas, such as criminal rules, civil rules, appellate rules, child in need of aide rules, and probate rules.

REPRESENTATIVE CARPENTER asked whether the authority to approve administrative rule change belonged to the Alaska Supreme Court.

MS. MEADE answered yes.

CHAIR VANCE asked whether the Alaska Court Rules were available online and whether an updated version could be provided to the House Judiciary Standing Committee.

MS. MEADE acquiesced. She noted that the Alaska Court Rules were also available online via the Alaska Court System's website.

CHAIR VANCE asked whether the DPS was impacted by the court rule change.

[2:53:30 PM](#)

LISA PURINTON, Bureau Chief, Division of Statewide Services, DPS, said the court rule wouldn't impact the state's criminal history repository.

CHAIR VANCE asked Ms. Purinton to speak to the DPS fiscal note.

MS. PURINTON stated that the fiscal note from DPS cited programming costs associated with sealing records in the state repository.

[2:55:19 PM](#)

REPRESENTATIVE C. JOHNSON asked whether the court rule change had a fiscal impact on the department.

MS. PURINTON said the court rule had no impact on the release of information. She explained that the rule change affected the release of records on Court View; however, the information was still available in the state repository and would still be disseminated upon request, as HB 28 was not in effect.

REPRESENTATIVE C. JOHNSON expressed confusion and inquired about the cost associated with the court rule change.

MS. PURINTON reiterated that the court rule was limited to the information available on the court's website, Court View, adding that it had zero impact on the state's official criminal history repository. She reiterated that until there was a statutory law that prevented the dissemination of criminal convictions for marijuana possession under 1 ounce, per AS 11.71.060, the repository would still provide those records upon request. She noted that should HB 28 pass, a one-time cost for programming changes would be required, as referenced in the fiscal note, to seal the necessary records.

REPRESENTATIVE C. JOHNSON said he did not understand the answer.

CHAIR VANCE directed attention to Section 3, on page 2, line 27 of the bill.

REPRESENTATIVE CARPENTER, in response to Representative C. Johnson, explained that there were two different databases: Court View, under the purview of the court system, and the state's repository, which was regulated via state statute.

[2:59:57 PM](#)

CHAIR VANCE announced that the bill would be held over.

[3:00:51 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.