

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

January 24, 2024

2:25 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator James Kaufman
Senator Löki Tobin

MEMBERS ABSENT

Senator Jesse Kiehl, Vice Chair
Senator Cathy Giessel

COMMITTEE CALENDAR

SENATE BILL NO. 100

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 100

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(S): SENATOR(S) TOBIN

03/10/23	(S)	READ THE FIRST TIME - REFERRALS
03/10/23	(S)	JUD, FIN
01/24/24	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

LOUIE FLORA, Staff
Senator Löki Tobin
Alaska State Legislature

POSITION STATEMENT: Presented the sectional analysis for SB 100.

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

POSITION STATEMENT: Answered questions during the discussion of SB 100.

ACTION NARRATIVE

[2:25:41 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 2:25 p.m. Present at the call to order were Senators Tobin, Kaufman, and Chair Claman.

SB 100-ACCESS TO MARIJUANA CONVICTION RECORDS

[2:26:20 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 100 "An Act restricting the release of certain records of convictions; and providing for an effective date."

This is the first hearing of SB 100 in the Senate Judiciary Standing Committee. It continues the conversation that started with House companion bill HB 28, heard on January 19, 2024. He invited Senator Tobin to identify herself for the record and present her bill.

[2:27:01 PM](#)

SENATOR TOBIN, speaking as sponsor, introduced SB 100. She said SB 100 would make confidential the records of individuals who were convicted of minor marijuana crimes when they were [21] years of age or older at the time of the offense and not charged with any other crimes during the incident. She said there are minor differences between SB 100 and the House companion bill. The sectional analysis describes these differences. The intent of this legislation is to decrease barriers to employment, housing, and other opportunities for those who have been charged and punished for low-level crimes involving a substance that is now legal.

[2:28:13 PM](#)

SENATOR TOBIN shared a personal connection to SB 100 with her own family experience. She witnessed her father-in-law struggle with a terminal illness and loss of appetite. The situation was made more difficult due to her and his son's type of employment; they were unable to be with him because of complications associated with their employment. They feared how their participation in his treatment might look and the potential legal ramifications had they participated in his end-of-life care.

SENATOR TOBIN expressed gratitude for Alaska's support of the legal sale, use, and taxation of marijuana. She said this was not the case when her father-in-law's health was declining. Many Alaskans utilize legal marijuana for pain management and other legitimate therapeutic purposes. She expressed hope that SB 100 will help those charged with a crime for using this substance in a manner appropriate for them and their care as it is no longer a crime to do so.

[2:29:34 PM](#)

LOUIE FLORA, Staff, Senator Lōki Tobin, Alaska State Legislature, presented the following sectional analysis for SB 100, on behalf of the sponsor:

[Original punctuation provided.]

Section 1 AS 12.62.160(b)

Provides conforming language that makes the distribution of criminal justice records subject to Section 2 of this act.

Section 2 AS 12.62.160

Creates a new subsection of law in the release and use of criminal justice information statutes that an agency may not release criminal justice information of a criminal case in which the defendant:

1. Was convicted of misconduct involving a controlled substance in the sixth degree, or similar municipal ordinance, for possession of less than one ounce of marijuana.
2. Was 21 years of age or older at the time of the offense.
3. Was not convicted of any other criminal charges in that case; and
4. Requests the agency not release the records.

Section 3 AS 22.35.040

Creates a new section of law with two subsections, AS 22.35.040, entitled Records concerning criminal cases for marijuana possession.

Subsection (a) states the Alaska Court System may not publish on a publicly available internet website the court records of a criminal case subject to section 2 of this act.

Subsection (b) requires the Alaska Court System provide public notice on its publicly available internet website that court records under subsection

(a) have been removed and how to obtain a criminal history record that includes convictions under subsection (a).

Section 4 Uncodified Law

Creates uncodified law stating to the extent practicable, the Alaska Court System shall remove court records that meet the requirements laid out in Section 3 from their publicly available internet website.

Section 5 Uncodified Law

The act takes effect January 1, 2024.

[2:31:43 PM](#)

CHAIR CLAMAN asked how SB 100 differs from the House companion bill heard on January 19.

MR. FLORA explained the differences between the pieces of legislation:

- SB 100 does not contain the legislative intent language found in Section 1 of HB 28, which states: "It is the intent of the legislature to reduce barriers to employment for people who have been convicted of low-level marijuana possession crimes that would be legal on January 1, 2024."

- In Section 4 of SB 100, there is language that requires the Alaska Court System (ACS) to remove court records for marijuana possession offenses existing before the effective date of this Act.

[2:32:45 PM](#)

CHAIR CLAMAN sought confirmation that Section 4 relates to court records as opposed to public safety records.

MR. FLORA replied that is correct.

[2:32:58 PM](#)

CHAIR CLAMAN brought up a broader policy question. While these records may not be available online, the public can access them if a person knows where to look. He said Alaska has never passed an expungement law. The provisions in SB 100 are a step short of expungement. He asked why the bill does not pursue straight expungement for convictions related to low-level marijuana offenses, some of which pre-date legalization, rather than legislation that proposes "hide-the-record" provisions.

[2:33:59 PM](#)

SENATOR TOBIN replied that this was a policy call. She looked to legislation from previous legislatures to craft SB 100 and determined it was more advantageous to use existing language pertaining to hiding records, not necessarily sealing records. She said the threshold for sealing records differs from the threshold for expunging records.

SENATOR TOBIN said helping individuals obtain employment and housing is an important step toward broader considerations of restitution and reconciliation. It may also help address the disproportionate negative impacts of certain criminal records on specific communities. She explained that some interpret simple records so that individuals continue to suffer repercussions for low-level crimes even after they have paid their dues and served their time despite these offenses having been decriminalized. This bill proposes the idea of fostering equity, opportunity, and understanding.

SENATOR TOBIN noted Ms. Meade is available to explain the difference between sealing, expungement, and hiding records.

[2:35:39 PM](#)

CHAIR CLAMAN asked whether SB 100 proposes to seal or hide records, noting that it does not propose to expunge records.

SENATOR TOBIN deferred the question to Mr. Flora to delineate the technical differences between the two terms.

MR. FLORA expressed his understanding that SB 100 proposes a less restrictive provision than sealing. The bill would remove records from CourtView. Alaska rarely undertakes sealing. He said the confidentiality of records happens quite frequently in the Office of Children's Services (OCS) and Child in Need of Aid (CINA) cases. This bill seeks to make the records confidential but not sealed.

[2:36:49 PM](#)

CHAIR CLAMAN expressed his understanding that a sealed court record means public access is prohibited even if an individual personally goes down to the courthouse and asks to see the record. This is certainly true in CINA and juvenile cases, and staff may be prohibited from revealing that the case exists. SB 100 proposes a diligent person could obtain a record unavailable on CourtView by going to the courthouse directly and looking up a marijuana possession conviction of "less than one ounce of a

schedule VIA controlled substance." He said the same would be true of Department of Public Safety (DPS) records.

MR. FLORA agreed, expressing his understanding that is what SB 100 does.

[2:37:54 PM](#)

CHAIR CLAMAN asked whether Alaska has a history of ever sealing records retroactively. He said Alaska seals CINA cases from the outset. However, he wondered whether the legislature ever passed legislation that retroactively sealed civil or criminal records that were once open to public view.

MR. FLORA deferred the question to Ms. Meade.

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System (ACS), Anchorage, Alaska, replied that she is unaware of any statute that retroactively sealed court cases.

[2:39:02 PM](#)

CHAIR CLAMAN asked if this applies to civil or criminal cases.

MS. MEADE replied that it applies to civil and criminal cases. She said there is a provision in the Court Rules where parties to a case may petition a judge to either seal or make that case confidential. The Court Rules have a balancing test. Cases are rarely sealed, and sometimes they are made confidential, but that provision is not often used. She said the legislature has not enacted this type of retroactivity provision to her knowledge.

[2:39:37 PM](#)

CHAIR CLAMAN sought confirmation:

- A provision in the Court Rules allows a party to request the judge seal their case.
- The court could make the case confidential or partially confidential.
- The legislature has never passed legislation that sealed a class of cases.

[2:39:59 PM](#)

MS. MEADE said she is virtually certain that has never happened. She clarified SB 100 affects two entities: DPS and ACS in Sections 3 and 4 of the bill.

She emphasized that SB 100 does not pertain to expunging or sealing, nor does the bill make the case that the records are confidential. The bill merely removes the records from CourtView. She said one can access those records at the courthouse; therefore, the records are not confidential. No one has access to a CINA or any other confidential case. SB 100 merely removes the case from CourtView, an action shy of the other three steps.

[2:40:51 PM](#)

CHAIR CLAMAN sought confirmation:

- it is currently possible to look up persons with marijuana convictions on CourtView,
- if SB 100 passed, certain convictions would not be available on CourtView but
- the public can find these conviction records through an index available at the courthouse.

[2:41:29 PM](#)

MS. MEADE replied that this is correct with one modification: ACS has already removed these cases from CourtView because of the court rule. However, a person could go to any courthouse and look up "unpublished" cases. She said that she testified about this previously [on January 19, 2024, in the Senate Judiciary Committee] in connection with the House companion bill. There are about 15 categories of unpublished cases which are not confidential.

[2:42:02 PM](#)

CHAIR CLAMAN asked how a person would find an unpublished case and its details.

MS. MEADE replied that if a person were at the courthouse, the paper file and public access to the file would be available onsite.

[2:42:20 PM](#)

SENATOR KAUFMAN wondered if a past controlled substance conviction would be more relevant in the vetting process for a job that involves controlled substances and whether SB 100 affects the extent of the background check required for such positions.

[2:43:13 PM](#)

MS. MEADE responded in two parts:

1. She explained that the database of cases for the Alaska Court System (ACS) is called CourtView. Sections 3 and 4 of SB 100 deal with CourtView, which is not where one would go to get an official criminal history record. Sections 1 and 2 detail the provisions under which criminal justice information for low-level marijuana possession crimes may be provided. DPS generates these records through its Alaska Public Safety Information Network (APSIN). She repeated that these cases would not appear on CourtView; however, a motivated person could find the records at the courthouse. She drew attention to a previous expungement question. The legislature tossed about expungement ideas in the past, but the notion was that some people might have a legitimate need for that information. That is why the legislature did not choose expungement years ago. While the legislature could change this, SB 100 proposes making these records more obscure and not readily available.

[2:44:28 PM](#)

2. She said the second part of her response has to do with the Department of Public Safety (DPS). Entities that require background checks get them from DPS by paying a nominal fee and asking for a criminal history check. She said that there are different levels of criminal history checks. Law enforcement is entitled to everything in the check, including an old marijuana possession conviction. The level of detail depends on the entity making the request. If the entity deals with vulnerable populations, the report will include a more detailed history check than those that do not. SB 100 would remove certain marijuana [records] from the DPS "any person" report; however, they would remain on a criminal history check for individuals who deal with the care of the elderly, children, or drug-related matters. She said that she did not want to overstep her bounds in the area of DPS background checks, but she concluded by stating that DPS has different levels of checks.

[2:45:55 PM](#)

CHAIR CLAMAN followed up on the previous question with a supposition that involved DPS running a criminal history check on one of its job applicants. The department would learn about an old marijuana conviction through its criminal history check under SB 100. At that point, the department could decide whether the conviction presents a barrier to hiring the applicant. In contrast, information about the conviction would be unavailable to the department if the state had an expungement law. He said that to the extent DPS questioned the job applicant about the

conviction, the applicant could deny it, leaving DPS with no means of verification absent an admission. He sought confirmation that DPS would have no knowledge of the conviction if the record had been expunged.

[2:47:18 PM](#)

MS. MEADE agreed, but expressed her belief that a lot of the supposition hinges on whether there was an expungement law or bill and how expungement was defined. She supposed there could be expungement "lite" where law enforcement would have access, but nobody else. She said, however, that her understanding of expungement means the record is gone, so the supposition would be accurate in her opinion.

[2:47:56 PM](#)

CHAIR CLAMAN said that is the policy question the committee needs to ponder. The committee needs to consider the value of allowing individuals to clear their records of certain convictions while ensuring that relevant information remains accessible.

CHAIR CLAMAN thanked Ms. Meade. He said he appreciated the discussion about the distinctions between the various forms of record relief.

CHAIR CLAMAN held SB 100 in committee.

[2:48:38 PM](#)

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:48 p.m.