SB 108

<TARGET><BILL>SB 108</BILL><SUBJECT>SB 108</SUBJECT><COMM>HJUD28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 31, 2014 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/11/14

The JUDICIARY Committee considered: **CSSB 108(JUD)**

CS FOR SENATE BILL NO. 108(JUD)
"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."
SB 108 CONFIDENTIALITY OF CRIMINAL CASE RECORDS

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*FN# is assigned by Chief Clerk's Office

*FN#	List by Dept(s):	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

FN#	List by Dept(s):	Fiscal	Indet.	Zero
1	LAW			✓
2	ADM+PDA			✓
3	ADM+OPA			✓
5	CRT	✓		
6	DHS			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Robert R. Lee	Lee	X			
Lance Pruitt	Pruitt			X	
Mike Chenault	Chenault			✓	
Norm	LYNN	X			
Chair: Wes Keller	Keller	X			
Chair:					

SENATOR FRED DYSON

Date: March 31, 2014

To: Representative Wes Keller, Chair
House Judiciary Committee

From: Senator Fred Dyson

Re: Committee Hearing Request for CS SB 108(JUD)

I respectfully request a committee hearing for CS SB 108(JUD), "An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

You may contact my staffer Chuck Kopp at 465-2199 if you have any questions regarding this bill

During Session (January - April): Alaska State Capitol, Room #121 • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-3818 FAX
During Interim (May - December): 12641 Old Glenn Highway, Suite 201 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 FAX
Senator_Fred_Dyson@Legis.state.ak.us • www.akrepublicans.org

ALASKA STATE LEGISLATURE

SENATOR FRED DYSON
SENATE DISTRICT F
SPONSOR STATEMENT FOR CSSB 108(JUD)

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

CSSB 108(JUD) seeks to strengthen privacy and liberty interests of persons by designating *confidential* (defined in Administrative Rule of Court 37.5) certain court records associated with dismissed and acquitted charges. CSSB 108(JUD) would make court records of a criminal case *confidential* if 120 days have elapsed from the date of acquittal or dismissal, and 1) the person was acquitted of all charges filed in the case; 2) all criminal charges against the person have been dismissed by the prosecuting authority; or 3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.

CSSB 108(JUD) does not pose a restriction to police or prosecution ability to access arrest records and charging documents. It does not remove information in the federal National Crime Information Center (NCIC) database, or in the Alaska Public Safety Information Network (APSIN) database, and would not render information already in the public domain *confidential*. CSSB 108(JUD) allows state agency employees that protect vulnerable children and adults, and APSIN users to continue to have access to information made *confidential.*

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

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

Staff contact: Chuck Kopp, (907)465-6580

During Session (January - April): Alaska State Capitol • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-4587 (fax)

During Interim (May-December): • 12641 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 (fax)

Sen.Fred.Dyson@akleg.gov

ALASKA STATE LEGISLATURE

SENATOR FRED DYSON
SENATE DISTRICT F

CSSB 108(JUD) – Section Analysis

Section 1
Provides legislative intent directing the Court, to the extent practicable, to treat as *confidential* records of criminal cases disposed of before the effective date of the Act by acquittal of all charges, dismissal of all charges, or acquittal of some charges and dismissal of remaining charges, to the same extent that records are held confidential by this bill, under AS 22.35.030.

Section 2
Amends AS 22.35 by adding a new section, AS 22.35.030. *Records concerning criminal cases resulting in acquittal or dismissal confidential.*

This section establishes that a court record of a criminal case is confidential if 120 days have elapsed from the date of acquittal or dismissal and (1) the person was acquitted of all charges filed in the case; (2) all charges against the person have been dismissed by the prosecuting authority; or (3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.

Provide exceptions for access to information made *confidential* for state agency employees responsible for health, safety, welfare, or placement of a child, a person with a physical or intellectual disability, or a person with a mental illness; employees that protect other vulnerable citizens, and state criminal justice information network users. The Department of Health and Social Services will adopt regulations to administer these exceptions.

Section 3
Establishes the Applicability of the Act to criminal charges concluded on or after the effective date of the Act by dismissal or by acquittal of the defendant.

Section 4
Establishes the effective date of the Act as October 1, 2014.

ALASKA STATE LEGISLATURE

SENATOR FRED DYSON
SENATE DISTRICT F

TO: Senator Kevin Meyer, Co- Chairman
Senator Pete Kelly, Co-Chairman
Senate Finance Committee

FM: Senator Fred Dyson

RE: CSSB 108(JUD) 28-LS0973\R - Senate Judiciary Committee Substitute changes to SB 108

DT: March 11, 2014

1. *Legislative Intent* – (p. 1, lines 6 – 10) New section establishing legislative intent directing the Court, to the extent practicable, to treat as confidential records of criminal cases disposed of before the effective date of the Act by acquittal of all charges, dismissal of all charges, or acquittal of some charges and dismissal of remaining charges, to the same extent that records are held confidential by this bill, under AS 22.35.030.

2. *Time Limit* – (p. 1, line 13) Amended the time limit of "90" days to "120" days for a court record to become confidential following the date of acquittal or dismissal. Per request of Law.

3. *Case records designated as confidential via dismissal limited to those cases dismissed by the prosecuting authority* – (p. 2, line 3) Language added that limits application of *confidential* status to dismissals *by the prosecuting authority*. This will cover the majority of dismissals. Per request of Law.

4. *Exceptions allowing access to confidential records* – (p. 2, lines 6 – 16) Added language per request of DHSS, Law and OPA that would allow state agency child protection workers, employees that protect other vulnerable citizens, and Alaska Public Safety Information Network (APSIN) users to have access to information made *confidential*.

5. *Effective Date* – (p. 2, line 22) Amended the effective date of the Act from July 1, 2014 to October 1, 2014.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 108(JUD)
Fiscal Note Number: 6
(S) Publish Date: 3/18/14

Identifier: SB108CS(JUD)-DHSS-CSM-03-14-14
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
Sponsor: DYSON
Requester: Senate Judiciary Committee

Department: Department of Health and Social Services
Appropriation: Children's Services
Allocation: Children's Services Management
OMB Component Number: 2666

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 10/01/14

Why this fiscal note differs from previous version:

Addresses changes to SB 108 identified in version "R."

Prepared By: Christy Lawton — Phone: (907)451-2096
Division: Office of Children's Services — Date: 03/14/2014 04:15 PM
Approved By: Sarah Woods, Deputy Director, Finance & Management Services — Date: 03/14/14
Agency: Health & Social Services

FISCAL NOTE ANALYSIS #6

STATE OF ALASKA **BILL NO.** CSSB 108(JUD)
2014 LEGISLATIVE SESSION

Analysis

Version "R" of this bill indicates that DHSS will adopt regulations to administer access by appropriate DHSS staff to records made confidential under proposed section 2, AS 22.35.020, *Records concerning criminal cases resulting in acquittal or dismissal confidential*. The section would make confidential records of criminal charges that have been acquitted and/or dismissed, in their entirety.

Currently, all records of dismissed and acquitted charges are available online in the publicly accessible database, CourtView. This bill would provide a protection of privacy to the public, by limiting access to confidential records pertaining to criminal charges, in which all charges are dismissed and/or acquitted; access would be granted only to essential employees in the Department of Health and Social Services, the Department of Public Safety, the Office of Public Advocacy, and prosecutors. Access to such records is essential for employees who are responsible for the health, safety, welfare, or placement of a child, a person with a physical or intellectual disability or a person with mental illness. As written, this bill would provide for the State of Alaska's ability to assess for and provide for safety of children and vulnerable populations.

This bill would not remove information from CourtView, the National Crime Information Center (NCIC), or the Alaska Public Safety Information Network (APSIN) databases.

This bill also identifies the Legislative Intent which would, to the extent possible, make confidential records of criminal cases in which all charges were dismissed and/or acquitted in their entirety, that were disposed before the effective date of this bill.

This bill would have no fiscal impact on DHSS.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 108(JUD)
Fiscal Note Number: 5
(S) Publish Date: 3/18/14

Identifier: CSSB108(JUD)- ACS-TRC-03-17-14
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
Sponsor: DYSON
Requester: Senate Judiciary

Department: Alaska Court System
Appropriation: Alaska Court System
Allocation: Trial Courts
OMB Component Number: 768

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services	25.5		3.5	3.5	3.5	3.5	3.5
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**25.5**	**0.0**	**3.5**	**3.5**	**3.5**	**3.5**	**3.5**
Fund Source (Operating Only)							
1004 Gen Fund	25.5		3.5	3.5	3.5	3.5	3.5
Total	**25.5**	**0.0**	**3.5**	**3.5**	**3.5**	**3.5**	**3.5**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Updated for Judiciary CC that requires the Court to make certain confidential files available to specified state agencies.

Prepared By: Nancy Meade, General Counsel — Phone: (907)465-4736
Division: Alaska Court System — Date: 03/17/2014 09:00 AM
Approved By: Nancy Meade for Christine Johnson, Administrative Director — Date: 03/17/14
Agency: Alaska Court System

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 108(JUD)

Analysis

The Committee Substitute for Senate Bill 108 (JUD) makes certain criminal case records confidential, and therefore not accessible to the general public. Specifically, criminal cases that are fully disposed via dismissal, acquittal, or a combination of dismissal and acquittal would be deemed confidential 90 days after the case is closed.

When a court case is confidential, the court system provides access to the case file only to the parties, the attorneys of record in the case, individuals with a written order from the court authorizing access, and court personnel for case processing purposes only, in accordance with Administrative Rule 37.5(c)(4). Cases that become confidential remain listed on the court's website in its case management system (CourtView), but the names of any party are removed, so that it is anonymous. Under SB 108, for any criminal case that is fully disposed via dismissal, acquittal, or a combination, the Court System would have 90 days to remove the names of the parties in the case from CourtView to make it anonymous, and would make the paper case file confidential.

The Court System can make these cases generally confidential without a fiscal impact, but the exceptions create specific access for agencies, which does carry a cost. The court system would need to create a unique portal, working with the CourtView vendor, and maintain that portal with security features. Creating the portal will cost an intital one-time fee of $22,000; each year the portal is in existence, we would have a cost of $3,000 for maintenance plus $500 for a SSL (security) fee.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 108(JUD)
Fiscal Note Number: 3
(S) Publish Date: 3/7/14

Identifier: SB108-DOA-OPA-02-21-14
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version

Prepared By: Richard Allen, Director — Phone: (907)269-3504
Division: Office of Public Advocacy — Date: 02/21/2014 09:00 PM
Approved By: Curtis Thayer, Commissioner — Date: 02/21/14
Agency: Administration

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA **BILL NO.** CSSB 108(JUD)
2014 LEGISLATIVE SESSION

Analysis

Senate Bill 108, sponsored by Senator Dyson, would bar public access to criminal case records or files in instances where the accused defendant was either acquitted or the prosecution dismissed the case. If enacted as filed, the bill would protect the Office of Public Advocacy (OPA) clients whose criminal cases fit into one or the other of those categories. The bill would also impede the ability of OPA professionals, including attorneys, guardians ad litem and public guardians, from using those court files as a source of information or evidence about witnesses, backgrounds and physical evidence.

The bill, if enacted, would therefore have some impact upon OPA operations, administration and clients. The public and other agencies and companies which may rely upon criminal case records for background and research information would, in such cases, have to seek desired information from other sources. The fiscal impact would likely be slight but could increase with the use of alternative methods and sources for acquiring information and evidence. The Office of Public Advocacy submits a zero impact fiscal note at this time.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 108(JUD)
Fiscal Note Number: 2
(S) Publish Date: 3/7/14

Identifier: SB108-DOA-PDA-02-20-14
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
Sponsor: DYSON
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Quinlan Steiner, Public Defender Phone: (907)334-4414
Division: Public Defender Agency Date: 02/20/2014 04:25 PM
Approved By: Curtis Thayer, Commissioner Date: 02/20/14
Agency: Department of Administration

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 108(JUD)

Analysis

SB108 provides that court records related to criminal cases that do not result in conviction are confidential.

This legislation is not expected to have a fiscal impact on the Public Defender Agency. The agency, therefore, submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 108(JUD)
Fiscal Note Number: 1
(S) Publish Date: 3/7/14

Identifier: SB108-LAW-CRIM-02-21-14
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
Sponsor: DYSON
Requester: (S) JUDICIARY

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By: Loretta Withington, Division Operations Manager Phone: (907)465-5427
Division: Department of Law Date: 02/21/2014 12:00 AM
Approved By: Michael C. Geraghty, Attorney General Date: 02/22/14
Agency: Department of Law

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA **BILL NO.** CSSB 108(JUD)
2014 LEGISLATIVE SESSION

Analysis

SB 108 requires the automatic removal of court records regarding a criminal case within 90 days after the defendant has been acquitted or the charges have been dismissed.

The Department of Law anticipates no fiscal impact from this bill.

Rule 37.5. Access to Court Records.

(a) **Scope and Purposes.**

(1) Public access to court records is governed by Administrative Rules 37.5 through 37.8. These rules are adopted pursuant to the inherent authority of the Alaska Supreme Court and provide for access in a manner that:

(A) maximizes accessibility to court records;

(B) supports the role of the judiciary;

(C) promotes government accountability;

(D) contributes to public safety;

(E) minimizes risk of injury to individuals;

(F) protects individual privacy rights and interests;

(G) protects proprietary business information;

(H) minimizes reluctance to use the courts to resolve disputes;

(I) makes most effective use of court personnel;

(J) provides excellent customer service; and

(K) does not unduly burden the ongoing business of the judiciary.

(2) These rules apply to all court records; however, court personnel need not redact or restrict information that otherwise was public in case records and administrative records created before October 15, 2006.

(b) **Who Has Access to Court Records.**

(1) Every member of the public will have the same access to court records under these rules, except as provided in Administrative Rule 37.8(b)(4) and 37.8(c)(2).

(2) The following persons are not members of the public and may have greater access in accordance with their functions within the judicial system:

(A) court personnel for case processing purposes only;

(B) people or entities, private or governmental, who assist the court in providing court services;

(C) public agencies whose access to court records is defined by another statute, rule, order, or policy; and

(D) the parties to a case or their lawyers regarding access to records in their case.

(c) **Definitions.** For purposes of these rules:

(1) "Court record" means both case records and administrative records, but does not include records that may be in the court's possession that do not relate to the conduct of the court's business.

(2) "Case record" means any document, information, data, or other item created, collected, received, or maintained by the court system in connection with a particular case.

(3) "Administrative record" means any document, information, data, or other item created, collected, received, or maintained by the court system pertaining to the administration of the judicial branch of government and not associated with any particular case.

(4) "Confidential" means access to the record is restricted to:

(A) the parties to the case;

(B) counsel of record;

(C) individuals with a written order from the court authorizing access; and

(D) court personnel for case processing purposes only.

(5) "Sealed" means access to the record is restricted to the judge and persons authorized by written order of the court.

(6) "Remote access" means the ability of a person to inspect and copy information in a court record in electronic form through an electronic means.

(7) "In electronic form" means any information in a court record in a form that is readable through an electronic device.

(d) **General Access Rule.**

(1) Court records are accessible to the public, except as provided in paragraph (e) below.

(2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

(3) If a court record, or portion thereof, is excluded from public access, there must be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subparagraph does not apply to case records or administrative records that are confidential pursuant to law.

(e) **Court Records Excluded from Public Access.**

(1) *Case Records.* The following case records and case-related documents are not accessible to the public:

(A) memoranda, notes, or preliminary drafts prepared by or under the direction of any judicial officer of the Alaska Court System that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue;

(B) legal research and analysis prepared or circulated by judges or law clerks regardless of whether it relates to a particular case and written discussions relating to procedural, administrative, or legal issues that are or may be before the court; and

(C) documents, information, data, or other items sealed or confidential pursuant to statute, court rule, case law, or court order.

(2) *Administrative Records.* The following administrative records are not accessible to the public:

(A) personal information, performance evaluations, and disciplinary matters relating to any past or present employee of the Alaska Court System or any other person who has applied for employment with the Alaska Court System, and personnel records that are confidential under Alaska Court System Personnel Rules C1.07 and PX1.08;

(B) the work product of any attorney or law clerk employed by or representing the Alaska Court System if the work product is produced in the regular course of business or representation of the Alaska Court System;

(C) individual direct work access telephone numbers and email addresses of judges and law clerks;

(D) documents or information that could compromise the safety of judges, court staff, jurors, or the public, or jeopardize the integrity of the court's facilities or the court's information technology or recordkeeping systems;

(E) records or information collected and notes, drafts, and work product generated during the process of developing policy relating to the court's administration of justice and its operations;

(F) email messages that are created primarily for the informal communication of information and that do not set policy, establish guidelines or procedures, memorialize transactions, or establish receipts; and

(G) records that are confidential, privileged, or otherwise protected by law, rule, or order from disclosure.

(f) **Obtaining Access to Public Court Records.** Court records that are accessible to the public shall be open to inspection at all times during the regular office hours of the courts. The administrative director shall establish written guidelines to ensure that all members of the public upon request will be given reasonable access and opportunity to inspect such public records and to ensure the preservation and safekeeping of such public records for such period of time as they may be kept by the Alaska Court System.

Rule 37.6. Prohibiting Access to Public Case Records.

(a) **Limiting Access.** Notwithstanding any other rule to the contrary, the court may, by order, limit access to public information in an individual case record by sealing or making confidential the case file, individual documents in the case file, log notes, the audio recording of proceedings in the case, the transcript of proceedings, or portions thereof. A request to limit access may be made by any person affected by the release of the information or on the court's own motion.

(b) **Standard.** The court may limit public access as described above if the court finds that the public interest in disclosure is outweighed by a legitimate interest in confidentiality, including but not limited to (1) risk of injury to individuals;

(2) individual privacy rights and interests;

(3) proprietary business information;

(4) the deliberative process; or

(5) public safety.

(c) **Least Restrictive Alternative.** In limiting public access the court must use the least restrictive means that will achieve the purposes of these public access rules and the reasonable needs as set out as the basis for the request, without unduly burdening the court.

(d) **Procedure.** Any request to limit access must be made in writing to the court and served on all parties to the case unless otherwise ordered. A request to limit access, the response to such a request, and the order ruling on such a request must be written in a manner that does not disclose non-public information, are public records, and shall not themselves be sealed or made confidential.

Rule 37.7. Obtaining Access to Non-Public Court Records.

(a) **Allowing Access to Non-Public Records.** The court may, by order, allow access to non-public information in a case or administrative record if the court finds that the requestor's interest in disclosure outweighs the potential harm to the person or interests being protected, including but not limited to:

(1) risk of injury to individuals;

(2) individual privacy rights and interests;

(3) proprietary business information;

(4) the deliberative process; or

(5) public safety.

Non-public information includes information designated as confidential or sealed by statute or court rule and public information to which access has been limited under Administrative Rule 37.6. A request to allow access may be made by any person or on the court's own motion as provided in paragraph (b).

(b) **Procedure.** Any request to allow access must be made in writing to the court and served on all parties to the case unless otherwise ordered. The court shall also require service on other individuals or entities that could be affected by disclosure of the information. A request to allow access, the response to such a request, and the order ruling on such a request must be written in a manner that does not disclose non-public information, are public records, and shall not themselves be sealed or made confidential.

Rule 37.8. Electronic Case Information.

(a) **Availability.** The following case-related information maintained in the court system's electronic case management systems will not be published on the court system's website or otherwise made available to the public in electronic form:

(1) addresses, phone numbers, and other contact information for parties, witnesses, and third-party custodians;

(2) names, initials, addresses, phone numbers, and other contact and identifying information for victims in criminal cases;

(3) social security numbers;

(4) driver and vehicle license numbers;

(5) account numbers of specific assets, liabilities, accounts, credit cards, and PINs (Personal Identification Numbers);

(6) names, addresses, phone numbers, and other contact information for minor children in domestic relations cases, paternity actions, domestic violence cases, emancipation cases, and minor settlements under Civil Rule 90.2;

(7) juror information;

(8) party names protected under Administrative Rule 40(b) and (c); and

(9) information that is confidential or sealed in its written form.

(b) **Bulk Distribution of Electronic Case Information.**

(1) Bulk distribution is defined as the distribution of all or a significant subset of the case information in the court system's electronic case management systems, as is, and without modification or compilation.

(2) Bulk distribution of case information is permitted, unless the information is not publicly available in electronic form under subsection (a) of this rule.

(3) Bulk distribution of imaged case records is not allowed, unless the records are already remotely accessible to the public on the court system's website.

(4) The administrative director may allow bulk distribution of case information that is not publicly available and of publicly available imaged case records for scholarly or governmental purposes. The administrative director shall adopt procedures to protect the security of information and records released under this paragraph.

(c) **Distribution of Compiled Information.**

(1) Compiled information is defined as information that is derived from the selection, aggregation, or reformulation of case information in the court system's electronic case management systems.

(2) Information routinely compiled by the court may be made available unless the compiled information is privileged or reveals information that is confidential, sealed, or not available to the public under subsection (a) of this rule. A request from a person outside the court system for other compiled information must be approved by the administrative director. The request may be granted if resources are available to compile the information and if it is an appropriate use of public resources, such as for scholarly, governmental, or any other purpose in the public interest.

(d) **Fees.** The administrative director may establish fees for distribution of information under subsections (b) and (c) of this rule.

STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

Senator Fred Dyson
State Capitol, Room 121
Juneau, AK 99801

February 24, 2014

RE: SB 108 – Limit Public Access to Criminal Records

Dear Senator Dyson:

As the Director of the Alaska Office of Victims' Rights (OVR), I write this letter to express my opposition and non-support of SB 108, Limit Public Access to Criminal Records, introduced on January 22, 2014.

As the victims' advocate and a former prosecutor, I have grave concerns about this proposed law which I have outlined below. I believe this bill will inhibit the ability of our citizens to protect themselves, and potentially create more victims of crime in our state. The government and the criminal justice process is generally reactive rather than of proactive. Generally speaking, it is up to citizens to do what they can to prevent themselves from becoming victims of crime. Your bill will significantly impede the ability of citizens to have access incoming information which could help them protect themselves, their children, their loved ones, their homes and their businesses.

Points in Opposition to the bill:

- **There is a significant difference between being "innocent" and being found "not guilty."** Verdict forms provided to jurors specifically use the phrase "not guilty" because the jury is not finding the person is innocent of the charge(s); only that the government failed to prove the guilt of the person by failing to prove each element of the offense beyond a reasonable doubt (the highest standard of proof in our criminal justice system). A verdict of "not guilty" does not equate to a person being "innocent" of a crime. A "not guilty" verdict can be returned due to suppression of evidence, jury nullification, witness intimidation, loss of witnesses due to death or relocation, etcetera. I have talked to jurors of either "hung" or "not guilty" verdicts who have said they thought the person did the crime but just didn't feel the evidence was sufficient to prove it "beyond a reasonable doubt." "Not Guilty" at trial does not mean innocent of criminal wrongdoing.
- **Cases are dismissed by the Department of Law for a variety of reasons.** Examples include: they can include: dismissal of one case for pleas in another, loss of key evidence due to death or relocation of witnesses, suppression of evidence, loss of evidence, witnesses taking the fifth and no longer available to testify, recanting witnesses, inconclusive lab results, etcetera. These are all components in the prosecution of a case which can lead to a dismissal but do not necessarily mean the accused is innocent. False

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accusations are rare. While there are those who are falsely accused, the general idea that "victims lie" is a sterotype perpetuated by this bill, and which primarily translates into "women lie" given most victims in our state are females.

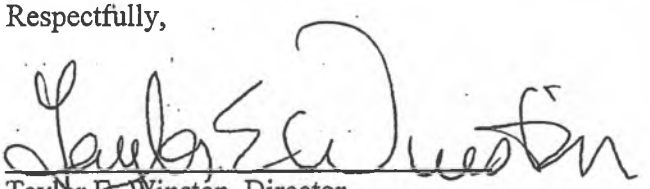
- **No law or measure can prevent false accusations from occurring and this bill sweeps much farther than necessary to address those cases.** I would be the first to encourage the Department of Law to prosecute anyone who makes a false allegation. It is a serious offense to falsely accuse someone of a crime. During my time as a prosecutor, I charged and convicted several women for falsely accusing people of crimes. For those falsely accused, if there is such evidence, a process should be devised in by which they could have their record cleared. There are more precise measures, which could be employed for this. SB 108 is far too broad and should be abandoned. If the legislature wishes to provide a remedy for those falsely accused of a crime, it should draft a more narrowly-worded bill specifically addressing only those who can establish they have been falsely accused of a crime. The government, when considering reducing a citizen's freedom of information, should do so, if at all, in the most limited fashion possible to remedy the harm the law seeks to prevent.
- **In the case of felony charges, those charges and the evidence to support those charges are already vetted in the grand jury process.** Alaska law requires a citizen body, the grand jury, to hear the evidence in felony matters and determine if there is sufficient evidence to proceed with the charge(s). The grand jury is charged with the instruction that it shall find an indictment when all the evidence, including exculpatory evidence, when taken together, if unexplained or uncontradicted, would warrant a conviction at trial. Therefore, there are already protections in the system to make ensure there is evidence supporting indictment.
- **The government cannot protect its citizens day to day; the public should be empowered with access to information it can use to its' protection.** For instance, as a mother should be able to look at a Courtview records and decide whether to entrust a person with my child. I should have the right to have the information and use it as I see appropriate. This bill takes a very paternalistic position that the government knows better than citizens about how to use information. It is the government saying citizens are too stupid or too unsophisticated to understand it. The phrase "knowledge is power" is true. This bill effectively strips citizens of the power to make informed.
- **Courtview presents information in an objective format.** It reflects the charges and the disposition. Moreover, the court system has even gone a step further to emphasize a charge does not mean a person has been found "guilty."
- **Our communities have changed and Courtview reflects those changes we have seen in society, especially the change in how citizens gather information.** In decades past, communities were smaller. People connected face to face. They knew their neighbors' names at a minimum. This type of interpersonal association and communication allow people to "know" who was around them and to protect themselves. Those days are mostly gone. We are a more mobile society so the connections once easily forged in communities is now frayed by citizens on the move from village to village, village to the city and to other states. Instead of being dependent on our neighbors, families and fellow citizens for information, we are reliant upon the media and electronically available data. Our citizens should be given the freedom to collect information to better their lives and in

the case of information from Courtview to allow citizens to be proactive in their own safety.

- **If you follow the logic of this bill, then Courtview should be purged of every traffic ticket issued but unsubstantiated, every dismissed lawsuit, every civil trial finding for the defendant, or any domestic violence protective order or stalking order not issued.** Citizens technically could be negatively affected in these circumstances too. The law should be consistent in its attempt to protect people if it is going to take that path.
- We are bombarded with the concept of transparency these days. I have spent time on committees in which I have heard arguments that transparency of government is important for the citizenry and should be pursued. This bill makes government less transparent. Transparency is important and to now seek to limit information for the entire population to possibly cure an apparent wrong to a very very few seems hypocritical to the goal of transparency.

As the victims' advocate, I believe more citizens will be victimized by curtailing access to this information. All of our citizens should be empowered to learn as much as they can to best protect themselves, especially in a state with such high statistics for domestic violence, sexual assault and sexual abuse. The Office of Victims' Rights vehemently opposes Senate Bill 108 on behalf of the crime victims and potential crime victims in our state.

Respectfully,



Taylor E. Winston, Director
Alaska Office of Victims' Rights

Carmen L. Gutierrez
529 W. 19th Avenue
Anchorage, Alaska 99503

February 27, 2014

To the Honorable Chairman of the Senate Judiciary Committee,
Senator John Coghill
To the Honorable Members of the Senate Judiciary Committee
State Capital
Juneau, AK 99801-1162

Dear Chairman Coghill and Member Senators,

Thank you for the opportunity to comment on SB 108. As a former criminal defense attorney for 25 years followed by the privilege of serving the state as Deputy Commissioner for the Department of Corrections, I have observed first-hand the need for the criminal justice reforms for which this Committee has so tirelessly worked to advance. I thank this Committee for its courageousness in promoting needed revisions aimed at reducing recidivism. Every former offender who is able to successfully return to his or her community means one less victim, one less crime, and one less costly prosecution.

I believe that SB 108 is another step in that direction. As it stands today, every person who is arrested for a criminal offense has a permanent public record of that arrest. In felony cases, a detailed statement of alleged factual detail accompanies the fact of arrest and charge.

The name of the person arrested and then convicted always remains available to the public through the period of prosecution and after conviction. That is fair.

What is not fair and not in keeping with our system of criminal justice is that under current law a person's name and fact of charge remains available to the public even when the prosecutor dismisses the charge, the charge is dismissed by the court or after a jury acquits the person. Despite dismissal of or acquittal on the charge, the fact of arrest and the accompanying documentation forever remains available for public examination.

The reality is that when the fact of arrest after dismissal continues to be made available for public inspection either by an in-person visit to the courthouse or by review on CourtView, the arrest often becomes synonymous with conviction in the

mind of those doing the inspecting. This greatly impedes a person's ability to find employment, rent an apartment and to live a life free of stigmatization for a crime for which the person was never convicted.

Numerous individuals – both men and woman – in Alaska are arrested for the crime of Assault in the Fourth Degree. A person may charged with this offense if a police officer concludes there is probable cause to believe that a person by "words or other conduct recklessly places another person in fear of imminent physical injury." [1]

AS18.65.530 appropriately provides that in a domestic relations context, when a person reports to the police that she/he was placed in fear of imminent physical injury, the police must arrest the alleged offender for Domestic Violence Assault when the officer decides there is probable cause to believe the assault took place.

Needless to say, police officers taxed with a tremendous amount of work have to make snap decisions when deciding if there is probable cause to believe an assault occurred. The soundness of the police officer's decision often depends on the experience of the officer and the officer's perceived need to diffuse a situation.

After the person is arrested and charged, a prosecutor later has more time to review the merits of the case. In some cases, upon more careful review and with the benefit of additional facts, the prosecutor determines the charge doesn't merit prosecution and dismisses it. The individual arrested, however, is forever stigmatized by his arrest. It will forever be a part of the Alaska Court System records available for public inspection.

A good number of cases filed in Alaska are ultimately dismissed. For example, in FY 13, the state filed 6,675 felony cases. Of those, the state dismissed 1,289 cases. Of the 29,562 misdemeanor cases filed, the state dismissed 9,508.[2]

Our constitutional right to due process of law is intended to protect citizens from being treated as convicted persons without first being afforded certain procedural safeguards. That is the way it should be and it is our responsibility to uphold our system of criminal justice, the shining example and envy of other countries.

There are those who would have you believe that their individual judgment is more knowing than the collective wisdom of a jury; that a person's record should forever be stigmatized by an arrest and charge even though the prosecutor dismissed the charge or a jury of his peers acquitted him of the charge. These same individuals would have you believe that an arrest should be equated to conviction of crime. Alaska citizens, judges, prosecutors, and defense attorneys will always have different

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[1] AS 11.41.230, a class A misdemeanor offense.
[2] Data provided by the Alaska Court System on February 26, 2014.

opinions regarding the facts of a case. That is why our system requires due process under the law before someone is convicted of crime and shoulders the burdens associated criminal conviction.

For these reasons, the fact of an arrest and charge without conviction should not forever tarnish the reputation of an Alaskan citizen. SB 108 is intended to rectify these unintended and harmful consequences that in many cases impact a person's ability to successfully live and work in our communities.

Thank you for any consideration you may give my comments.

Sincerely yours,

Carmen L. Gutierrez

I am Dr. Donna Klecka, a podiatrist. The financial senate committee requested I summarize some of my past experiences that would advocate that Bill 108 be passed. I once built and owned the Kenmore Foot and Ankle Clinic in Kenmore WA from 1990 until 1996. My first real hard lesson with litigation occurred when I attempted to sell the practice in 1995 to spend more time with my young children. The contract did include a work agreement to continue working at the office part time. Dennis Noss purchased the practice on a promissory note. Very shortly afterwards, Dr. Noss got a restraining order so I could never access the practice again and began litigation against me in an attempt to avoid payment for the practice. The evidence during the next two years proved he had done this before to multiple other podiatrists and lost his license in multiple other states. In the end between legal costs, corrupt attorneys from the state of Washington, and stress from the fact that my young children were growing up without me, I chose to start a less lucrative practice in Alaska, but one that allowed me more time with my kids. Hence, The Traveling Foot Doctor was born, and I became the only podiatrist to do house calls in the state of Alaska. As such, integrity and reputation is extremely important to me.

My 1st husband caused such financial distress, I asked for a divorce 1997. In retaliation he attempted to get me to pay him child support and alimony, along with the rights to the house and other property. In the end I got the children I so badly desired and paid him half the equity in the house and all we owned. No child support order was written as the judge forgot and I was not aware at the time he was supposed to. My ex husband had been advised by his attorney that if he could get a domestic violence order against me, he could possibly be given the kids and receive child support from me. Consequently two false reports were filed, but were dropped. I married once more very briefly to a military man whom upon marriage became abusive, and I ran back to my own home and quickly filed for a divorce.

Wary of my past mistakes I moved to a smaller home with the hopes of smaller house payments. The home I purchased was from a young woman attorney working as a clerk for the Anchorage courts. She drew up the paperwork, and I admittedly foolishly got caught up in many deceptions she provided. I took her to small claims court for the broken furnace where she immediately "upped the ante" by placing it in civil court and demanding a great deal of money to cover her own time. I then hired an attorney, who failed to attend court and filed for bankruptcy. I lost the case obviously, but not until first learning that the seller/attorney had known about my loss of the business in Washington, and stated unbeknown to me that the case was lost because there was no evidence. The attorney who represented me in Washington told me that the arbitration was not appealable, period, but we had hundreds of pages of evidence that the arbitrator refused to ever look at. Now the time limit had passed to do anything about it.

Another of the many false pieces of info the original owner of my home provided was a dimension of the homes boundaries. I was told I owned 40 feet of along the road behind my home. When I placed a driveway made of gravel back to the road, I was told by the city that I had to remove it as I crossed two feet onto the neighbor's property. The neighbor, an unseen Ms. Jones, called the police and an Officer Weinisky to say I was trespassing. I then went to land records, discovered the error, and removed the gravel driveway. She and her friend made multiple other false statements to Officer Weinisky, who continued to come and threaten my children and myself with prison time. I spoke to her supervisor upon which time Weinisky came and threw me in jail and I was not allowed to make a call for 24 hours.

The public defending attorney explained to me later that there was no arrest warrant so the police held me for a day stating I was suicidal while they scrambled for paperwork. Weinisky left the state that day and as far as I know was never seen again. Shortly after my time in jail, the neighbor next door, sent an email to me stating her six children, and several foster kids were not allowed near me because of my criminal, felony record. She requested I not contact her, or her kids, but her kids contacted my kids when they needed a ride and informed them of my felony record.

July 3, 2012 the kids and I were in Seward preparing for the race up Mt. Marathon, an annual event for the past 11 years. After dinner my kids stayed behind while I drove with my dog to the north end of town to a gravel bar to let the dog run loose. A Soldotna state trooper saw me heading north while he was heading south and wrongly thought I was speeding because he was not aware that the speed limit at mile 3.5 was 45 mph and not 35 mph. He checked my record (evident by follow up discovery) and decided to call in another cop who gratefully recorded the event from his car. They repeatedly asked me to redo tests to assess drunkenness, took a breathalyzer test, and although the tests (visual from the video and breath below the limit) proved I was not drunk, they arrested me. While handcuffing me, both cop each had one of my arms, neither one realized that they were both jerking me back and forth, and the second cop pulled my arm upward so forcefully as to break my elbow. At the hospital records indicated no sign (smell, behavior etc) of alcohol was noted. Because my past record was so bad, the cops assumed I was guilty, and because of my record, I became panicky and talked fast and scared, answering every question and even more so, which the police regarded as more evidence of guilt. No animosity occurred from my mouth, only nervousness. Although all charges have been dropped or found not guilty, I now owe over $20,000 in medical bills and attorney fees because of this last incident.

A close friend in Wyoming is presently a correctional officer who used to live in Alaska. I spoke to her a couple of days ago. Her comments were "I know you didn't do these things, but if I didn't know you and you came into the jail with that record, I would assume, as everyone would, that you were wealthy enough to afford expensive attorneys and were guilty".

As it stands, when I have obtained contracts, like with the Pioneer Home or other assisted living homes, I've had to provide a written statement at a fee from the State Police Department, to prove my innocence.

Please notice the passage below, well-known in this country. Something has gone terribly wrong with the government. Like the bumper sticker says that recently circulated "I love my country, but I fear my government".

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Thank you for your time. Dr. Klecka

February 26, 2014

Dear Senator Coghill and members of the Judiciary Committee,

Thank you for this opportunity to comment on SB 108. I am going to make my comments brief.

This bill provides a simple and sensible answer to an important question. What should happen with the record of a state court criminal case when no convictions were obtained and the case is now closed? In other words, when all charges have either been dismissed or gone to trial, and none of the charges resulted in a criminal conviction.

Under SB 108, the approach is straightforward and simple. Three months after the case is closed, the court file is designated as confidential. This means, simply, that the court record is no longer offered for general public viewing.

In many states, expungement is an available remedy for a nonconviction record but Alaska does not have an expungement statute. SB 108 provides a less drastic remedy than expungement. SB 108 would not require the destruction of court records. Nor does it impede or unnecessarily burden law enforcement. Law enforcement and prosecutors still have access to the records.

Does the court system have an ongoing obligation to provide the general public with access to information which no longer has legal relevance? No. The Legislature has long recognized that not every piece of court-maintained information is accessible by the general public. Not probate records. Not adoption records. Not records of civil commitment proceedings concerning the decision whether to institutionalize mentally ill people.

The reason for making this small number of closed nonconviction records confidential is a good one. It avoids an unnecessary risk of harm to a person. Even though we all know it should not make any difference, just the information that there once was a criminal accusation can limit a person's economic opportunity and severely damage a community reputation. Making such records confidential, by contrast, provides a meaningful end to a criminal process.

Is being merely accused of a crime that much of a hardship? Perhaps there is no better illustration of the personal impact of criminal litigation for us Alaskans than the case of Senator Ted Stevens. After 41 years of faithful service,

he was charged with crimes and convicted. His conviction was later thrown out because of gross prosecutorial misconduct and the case was dismissed. If Sen. Stevens had been charged in state court with state crimes, his public court records would forever tar him as a criminal defendant. Why is that fair? Why should any citizen be treated that way for all time?

I understand that a letter has been submitted by Taylor Winston. I find it interesting that Ms. Winston, a former prosecutor opposing the bill, shows little regard for constitutional basics. She would stigmatize persons for all eternity with the mere fact that criminal charges were once filed. The Founding Fathers disagreed—they prescribed no penalty, no loss of privilege and no loss of privacy for those who had once been charged but not convicted with a crime.

Ms. Winston also thinks that the grand jury has a 'good enough' fact-finding process such that their indictments should forever stand as public monuments. She seems to forget that the grand jury meets in secret with the prosecutor and that the accused and his lawyer aren't allowed in. The Founding Fathers rejected the Star Chamber model as a reliable means of determining guilt.

Finally, she argues the Courtview is objective and provides information the public can use to can protect itself. Her example – she would check Courtview to help make a decision on a babysitter. This is a great example as to why SB 108 should be enacted. Courtview warns the reader as to its unreliability and yet people still rely on it, presumptively, for making important decisions on someone's trustworthiness. [1]

SB 108 should be approved. It is a neat, nifty way to be fair to defendants - like Sen. Stevens- who end up with non-conviction cases, without undermining law enforcement or prosecutorial functions.

Thank you.

Mary Geddes
1113 N Street
Anchorage, AK 99501

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[1] By the way, parents can easily obtain reliable information about a potential babysitter's entire arrest record from the Alaska State Troopers by getting the babysitter's consent and paying $20. SB 108 does not effect this mechanism at all.

To the Senate Judiciary Committee:

Good Afternoon, My name is James Noble and I would like to thank this Committee for giving me the opportunity to voice my opinion in support of Senator Fred Dyson's Senate Bill 108 relating to the "Confidentiality of Certain Records of Criminal Cases".

I will keep my personal testimony as brief as possible to share my experience with (2) Charges that were filed against me from an ex-girlfriend and the repercussions I have experienced following a "Dismissal Ruling" from the Judge on both cases.

I believe to communicate this ordeal in it entirety, I must share some history of these charges; however, I will minimize all of the dramatic-details as I really don't enjoy reliving this situation either. With that said, I do appreciate a few moments of your time to hear my testimony and understand why I am so passionate about supporting Senator Dyson's Bill.

In researching this issue, I have discovered that a majority of cases that are encompassed by this bill, seems to involve the revengeful actions from a "significant other" abusing our Court System.

My (2) cases fall into this category.

Back in 2003 – 2007, I was dating a girl named Monica Fox. For purposes of this testimony, I will continue to refer to her only as Monica.

Toward the end of 2006, she ended our relationship and; as I later discovered, she was also dating a man named Charles Otten, her Front-Line Supervisor. What is most important of this statement, is that I would soon discover they were both very well versed at the interworking's of Alaska State Laws, being that they both worked for the State of Alaska's Juvenile Justice System.

Monica and myself continued to maintain a platonic relationship following our separation, until I discovered she had actually been dating someone else. In 2007, I found the love of my life whom I started dating, and later married. For obvious reasons of the time, I severed all financial and emotional support that I had been offering to Monica following our separation.

Not surprisingly, I soon received a Domestic Violence Protection Order from the Courts on September 17th 2007, while I was at work in Prudhoe Bay. Fortunately, I was able to afford a Lawyer to represent me throughout the court proceedings. During the course of my defense of the DV Order, my Lawyer also discovered that she had previously filed a "Stalking Charge" on September 11th 2007, which was dismissed the next day on September 12th 2007. To this day, I have no idea what happened in that case as the Courts has never notified me with any details of that charge. What I can say about that charge, is that it still appears in my Courtview Website Records for all to see, regardless of the fact that it was dismissed…the day after it was filed.

On October 04th 2007, my Lawyer and I appeared in Court to contest the DV Charge. I had several witnesses who were willing to testify on my behalf, including an Alaska State Trooper who could refute Monica's signed statement under oath.

I proved in a court of law that I was not this person that Monica was trying to portray me as. Many of her lies manifested themselves during the hearing, so much to the point that the Judge declined to hear from any of my witnesses and dismissed the DV case due to "Insufficient Evidence".

Unfortunately, I still have those (2) charges of "Stalking and Domestic Violence" listed on my Courtview Website Record for the public view at any time. It is not fair for my wife and I to have to bear the actions of very "Vicious and Vindictive Ex-Girlfriend" whose sole purpose was to use the court system to tarnish my character and future.

Thankfully, I had previously secured employment in a workplace where my Supervisors have known me for over 20 years, but I fear that if I ever have to re-enter the job market, those (2) listed charges would most definitely effect a recruiters opinion of selecting me for an interview. How do I know this? Because from time to time, I have been asked by my Supervisor's to research potential candidates to work in our department. It is very easy to form a negative opinion of someone based on the Courtview Website, without ever following up to see if the cases were dismissed or acquitted.

Closer to home, my wife has told me that; while we were dating, she had been warned numerous times from her family and friends "Not get involved with James" due to opinions they formed with these (2) charges on Courtview Website Records. Fortunately, these opinions have changed over time, once the family got to know me and I was given the opportunity to explain the situation to them. Based on findings from the Sponsors Statement of this Bill, is my conclusion that for the majority of the time, people never get this chance.

It was very embarrassing to relive this experience all over again and defend my character each time people ask me about it. My response to them, is my same response that I offer the Committee here today: "Please take a moment to read Monica's DV Petition, and compare it to her recorded testimony, before you form an opinion of me, I can offer up a copy of each upon your request."

To this date, nobody has taken me up on this offer, my guess is that an opinion (rather good or bad) has already been formed about me and I have to live with the repercussions.

Let's take a moment to put this more in perspective. I ask that everyone listening here today recall a situation in your life when you were wrongfully accused of something. {Pause} Maybe someone accused you of stealing, or lying? {Pause} Remember how it made you feel to try to defend and explain yourself to your peers? {Pause} Were you able to be vindicated? {Pause}. Now, finally ask yourself, "What would it be like to know that, even though you proved that you were innocent, you would be documented with that charge for all the public to see and for all time?"

In Alaska and in America, we are supposed to be innocent until proven guilty in a court of law, yet my wife and I must continue to bear the label of a "Stalker and DV Assailant", because of the actions from an ex-girlfriends jealous rage.

In closing, I would like to thank everyone here today for listening to my Testimony and Personal Experience regarding the Courtview Website Records of charges that were acquitted or dismissed against me. I understand that the Courts are now considering a rule change for Civil Cases such as mine, to be included and compliment SB108. For obvious reasons, I support that rule change as well. I challenge this committee to support passage of Senator Dyson's SB108 as it is not only the right thing to do, but will offer citizens like myself a final sense of closure and privacy from charges in which the Judges have just cause to dismiss or acquit. I thank you for your time.

Chuck Kopp

From: Ryan Kennedy <asrrk76@yahoo.com>
Sent: Saturday, January 11, 2014 11:20 PM
To: Sen. Fred Dyson; Sen. Hollis French
Subject: SB 108

Dear Senators,

I just want to tell you i think your SB 108 is great. It's something I've thought should be law for a long time. I have two arrests on my record that were never even prosecuted. In both the cases the problem was I was young and had a big mouth. I was under the naive impression that if you mouthed off to a cop it was OK as long as you weren't actually doing anything wrong.

So naive of me. If you are sufficiently rude to a cop he can and most likely will find a way to arrest you. Disorderly conduct is a nice catch-all for a cop to use. Make no mistake, it happens all the time. Cops will be rude hoping you will react and when you react angrily they will arrest you for some made-up nonsense. You'll take a ride downtown and be booked wasting about an hour of your time and have to deal with the charges until they are quietly dropped by the prosecution.

Nowaday it's so easy for prospective employers to check criminal records. When they see, "disorderly conduct" they think "uh oh, trouble-maker" It doesn't even matter they the case was never prosecuted. They have to dig to even find if it was dropped. On the court website, it simply lists the charges. You have to dig to find how it all panned out. Not fair.

If anything, I think your bill doesn't go far enough. I think all misdemeanor convictions should be expunged from a persons public record after seven years. We are all fallen beings and I don't think that a person's stupid and often youthful foibles should follow a person around forever and often preclude employment.

Is there such a thing as redemption?

Chuck Kopp

From: Sen. Fred Dyson
Sent: Tuesday, February 04, 2014 2:53 PM
To: Chuck Kopp
Subject: FW: SB 108 is a step in the right direction, but . . .

From: cb scientific [mailto:akzocolo@yahoo.com]
Sent: Saturday, January 11, 2014 2:03 PM
To: Sen. Fred Dyson
Cc: Rep. Dan Saddler; Rep. Bill Stoltze
Subject: SB 108 is a step in the right direction, but . . .

Mr. Dyson,

Your Senate Bill 108 is a step in the right direction.

However, I am disappointed to find your Senate Bill limits confidentiality to cases where ALL charges were dismissed or resulted in acquittal.

Why not allow all dismissals and acquittals to be made confidential, or at least allow them to be expunged or sealed, like in other states?

It has always been standard procedure by Alaska prosecutors for force a guilty plea to something, anything. Surely you know that most false arrests in Alaska result in vast overcharging by prosecutors to force acceptance of a plea bargain for the lowest misdemeanor, which everyone may know the defendant is not guilty of, including the judge. The Prosecutors say they will take you to trial on felonies they know you didn't commit, unless you plead guilty to a low misdemeanor you are not guilty of. They will sweeten it up with offer of a Suspended Imposition of Sentence, and no fines or jail time, to compel you to plead to the lowest misdemeanor.

To gain confidentiality, your SB 108 will cause people to fight all charges rather than agree to these egregious and unethical plea bargains, which are compelled under duress. Additional trials will add to court backlogs, which are a serious and ongoing problem in Alaska.

A better approach would be to make confidential ALL dismissals and acquittals. This would begin to stem the rampant overcharging that Alaska prosecutors are unethically using as a lever to force pleading "no contest" (guilty) to something. Another approach would be to permit sealing or expungment of records from dismissals and acquittals, as is standard procedure elsewhere.

Limiting confidentiality to new cases (after mid 2014) may not stand.
It may be an expedient approach to avoid massive work and expenses involved with changes in records, but it is a violation of Equal Protection. However, Equal Protection claims might be handled on a case by case basis, so maybe it's not fatal to your bill.

Expungement or sealing of records from dismissals and acquittals would be handled on a case by case basis, so it would avoid the massive work and expense of wholesale records changes. I hope you consider this as a follow-on to your SB 108.

I applaud your bill as a step in the right direction, but I fear you have been hoodwinked by the officials in the Justice System. They seldom completely acquit anyone, even the completely innocent. It has always been their standard procedure to force a plea bargain to something. They knew that. They assumed you didn't know that.

Don Brink Ph.D.
Chugiak, AK

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1.
AS 22.35 is amended by adding a new section to read:

Sec. 22.35.030. Records concerning criminal cases resulting in acquittal or dismissal confidential.
A court record of a criminal case is confidential if 90 days have elapsed from the date of acquittal or dismissal and the defendant was acquitted of all charges filed in the case; (2) all criminal charges against the defendant in the case have been dismissed; or (3) the defendant was acquitted of some of the criminal charges in the case and the remaining charges were dismissed.

On Saturday, January 11, 2014 12:19 PM, cb scientific <akzocolo@yahoo.com> wrote:
Mr. Mauer

I think it was wrong for you to treat Dyson's bill and Higgin's bill as similar in your article ("New bills would make public records off-limits to public"). That was a very misleading and unethical thing for you to do.

Dyson's bill is a good bill. Higgin's bill may be a bad bill - I don't know. I think your article misleads the public, and could have tragic consequences.

Alaska is becoming notorious for police falsely arresting people. The prosecutors overcharge, the charges are dismissed, and people are left with damaging public records that keep them from getting employment, etc.

For a recent example, see the youtube video, "Young woman being arrested for nothing." People who merely irritate police are being given permanent criminal records. Alaska police know they have this power, and they use it.

In other states, records can be expunged or sealed where charges are dismissed, or people are found not guilty. However, this is not the case in Alaska, and it is an injustice.

As you probably are aware, there is currently a civil suit over a blatantly false arrest that besmirches a young girl's record (ADN article, "Woman suing city, APD, claims wrongful arrest).

Previously, in America, you were innocent until proven guilty. In your article you say that if charges were dismissed it doesn't prove innocence. Is that where we are now? Currently, in Alaska, you are guilty until proven innocent. That seems kind of un-American. Dyson's bill would help fix that. Your article may keep Dyson's bill from passing, and then the continued injustice will be your fault. The ADN should be a force for good in the community.

I'm surprised your editor allowed this article into the newspaper.

I have enjoyed your articles in the past, especially on stories like the Jim Wilde case.
I am quite frankly surprised and disappointed by your article on Dyson's bill.

All I can say is "shame on you."

Don Brink Ph.D.
Chugiak, AK

Read more here: http://www.adn.com/2013/12/26/3247336/lawsuit-asserts-that-apd-officer.html#storylink=cpy

more here: http://www.adn.com/2014/01/10/3267834/new-bills-would-make-public-records.html#storylink=

STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

House Representative Wes Keller
House Judiciary Committee Chairman
State Capitol, Room 118
Juneau, AK 99801

April 7, 2014

RE: Opposition to SB 108 – Limit Public Access to Criminal Records

Dear Repreentative Keller:

As the Director of the Alaska Office of Victims' Rights (OVR), I write this letter to express our opposition to and grave concerns about SB 108, Limit Public Access to Criminal Records, introduced on January 22, 2014. The bill is scheduled for a hearing before the House Judiciary Committee on Wednesday, April 9, 2014.

While the content of this letter is lengthy, I feel compelled to provide a further explanation of this opposition within the bolded points presented below. SB 108, if passed, will rewrite history. It will forever remove the factual record of events for many criminal cases from public view. It would have the effect of saying to our citizens that they do not have a right to know what its government and its institutions are doing. It would also send the message to our citizens that their government believes they are intellectually incapable of understanding that a dismissal or a "not guilty" verdict is not the same as a conviction.

The bill will negatively impact more citizens than it benefits. SB 108 will affect the ability of our citizens and businesses to protect themselves, will curtail the abilities of journalists to research and accurately report; will preclude academic research and will potentially aid in the creation of more crime victims in our state. This bill will significantly impede the ability of citizens to access information which could help them protect themselves, their children, their loved ones, their homes and their businesses. The effect of this bill is far-reaching and will have significant negative consequences for a vast number of Alaskans, while merely providing relief to a significantly small number of Alaskans.

OVR recognizes that the criminal justice system is imperfect and public records can and do contain information suggesting a person committed a crime when, in fact, that person was wrongfully charged. Before having the opportunity to serve as the Chief Victims' Advocate, I

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served as an Alaskan state prosecutor for 13 years. During my tenure, I predominantly handled cases of rape, sexual abuse of minors and domestic violence assaults. I have a deep and clear understanding of the criminal justice process and its principles. Having reviewed thousands of cases over my career and having made many though decisions regarding whether or not to charge a case, I understand the importance of charging people only when there is evidence to support the charge. I, however, also understand there is a vast difference between being innocent and having a case disposed of via a dismissal or a "not guilty" verdict. It is a noble goal to try to address this wrong through legislative action, but the action to date the Legislature has not addressed the negative consequences that riddle this bill.

Legislation should be written as narrowly as possible to address the concern but which minimizes the negative effects on citizens. SB 108, as is currently written, is so broad that its application in law would result in many more negative consequences for citizens than benefits. While the OVR strongly opposes SB 108, as written, OVR does not oppose the concept of fashioning a statute which attempts to alleviate the problem this bill tries to address. The OVR believes the bill could be amended to offer relief to some Alaskans who have been wrongfully accused, including Senator Dyson's constituent who, in part, prompted the introduction of the bill. It is paramount that a thoughtful and thorough examination of the bill's consequences and an intellectual discussion on how best to minimize the harm takes place. Below, OVR offers language which would address the issue but not be so broad as to cause the host of negative consequences discussed in the section, Points of Opposition to Current SB 108.

Proposed Amended Language:

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that, to the extent practicable, the Alaska Court System hold confidential records of criminal cases in cases where no charging document is filed by a prosecutor, or no probable cause to support the criminal charge is found by a judicial officer, or when a grand jury returns a "no true bill" on all counts presented to the grand jury to the to the same extent that records are held confidential under AS 22.35.030, enacted by sec. 2 of this Act.

* Sec. 2. AS 22.35 is amended by adding a new section to read:

Sec. 22.35.030. Records concerning criminal cases resulting in acquittal or dismissal confidential.

(a) A court record of a criminal case is confidential if 120 days have elapsed from the date

(1) no charging document is filed by a prosecutor;

(2) no probable cause to support the criminal charge is found by a judicial officer during an initial proceeding or as a result of a preliminary hearing; or

(3) when a grand jury returns a "no true bill" on all counts presented to the grand jury.

(b) Notwithstanding (a) of this section, the following persons may have access to records made confidential under this section:

(1) employees of the Department of Health and Social Services who are responsible for the health, safety, welfare, or placement of a child, a person with a physical or intellectual disability, or a person with a mental illness;

(2) the public guardian under AS 13.26.370 or a guardian ad litem supervised by the office of public advocacy;

(3) a person who is authorized to have access to the criminal justice information network maintained by the Department of Public Safety under AS 12.62.

(c) The Department of Health and Social Services shall adopt regulations to administer (b)(1) of this section.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 22.35.030, enacted by sec. 2 of this Act, applies to criminal cases initiated on or after the effective date of this Act where there is no filing of a charging document, no finding of probable cause or by a finding of no true bill by the grand jury on all counts presented to the grand jury.

* Sec. 4. This Act takes effect October 1, 2014.

Points in Opposition to Current SB 108:

- **The bill is contrary to and significantly undermines a victim's constitutional right to be treated with dignity, fairness and respect.**

  In Alaska, victims have a constitutional right to be treated with dignity, fairness and respect. The removal of a case from the public eye is more like a spit in the victim's eye than respect, dignity or fairness. These words in our constitution should not be hollow words.

  One well-known example of a case that would be purged from public view because of SB 108 are the cases of *State v. Mechele Linehan*, 3AN-06 –10140CR and *State v. John Carlin,* 3AN-06-1-139CR, for the murder of Kent Leppink. Mr. Leppink left a note telling his parents that, if he was found dead, Mechele Linehan should be considered a prime suspect. He changed his life insurance beneficiary so that Mechele Linehan would not benefit from his death. After a criminal investigation, Mechele Linehan and John Carlin were charged with murder. The case garnered national media attention. Both were tried by jury and both were convicted and found guilty beyond a reasonable doubt.

  Linehan's case was reversed on appeal and eventually dismissed. Carlin died in prison while his appeal was pending. The court, relying on an old common law doctrine, called *abatement ab initio*, cancelled or voided the conviction due to Carlin's death before a final appeal decision was issued. The Office of Victims' Rights had the

privilege to work with Kent Leppink's parents, the crime victims, during the criminal justice process. The Leppinks, in their 80s now, were heartbroken that justice was not done for their murdered son. They took some comfort, for a while along the way, that the State Office of Special Prosecutions & Appeals, the Office of Victims' Rights, and the National Crime Victim Law Institute fought in the appellate courts for the court to end the *abatement ab initio* doctrine in Alaska. The Alaska Supreme Court decided, for the first time, to formally recognize the importance of crime victims' legal rights. The court specifically noted that crime victims have a state constitutional right to be treated with "dignity, respect, and fairness during all phases of the criminal justice process." And this constitutional guarantee was the reason that *the abatement ab initio* doctrine was unfair and must be abandoned. *Carlin v. State*, 249 P.3d 752 (Alaska 2001); Alaska Const., art. I, § 24. It was a great victory for crime victims, for the Alaska Office of Victims' Rights, and for the national crime victims' rights movement. Carlin's appeal was reinstated and continued through his estate, so no final disposition has occurred to date.

Under SB 108, as written, if Carlin's case is ultimately dismissed, all trial court records of both the Linehan case and the Carlin case will be removed from public view. Respectfully, this result would create a new, separate violation of the crime victim's constitutional right to be treated with dignity, respect, and fairness by taking all official court records, except the appeal decisions themselves—and essentially erasing them. What a slap in the face to Mr. & Mrs. Leppink after they spent their sunset years hoping and waiting for justice. They would be told by the State of Alaska that the rights of the accused are so important that nearly every trace of the criminal process, of history, must be hidden as if it never occurred.

- **The bill contradicts the efforts around the state to end domestic violence and sexual offenses.**

Attending a recent Choose Respect rally highlighted some of the ways that this bill contradicts efforts to stem the tide of interpersonal violence, which is at epidemic levels, in our state. Alaska has one of the highest per capita rates for sexual offenses and domestic violence in the country. The Green Dot Violence Prevention Strategy has been launched as an effort to help reduce this type of violence. One key component of this effort is to encourage every citizen to be involved not just be aware of the problem but to actively try to prevent an incident however possible. The Green Dot Violence Prevention Strategy promotes violence prevention by providing citizens with the skills needed to stop violence before it occurs. There are a hundred different ways to intervene and being able to have access to court records dovetails with the Green Dot initiative.

Alaskans all have a role to play The availability of criminal court records is one tool which can and is used to prevent someone from being a victim of a violent crime. Maybe it is just a friend telling another friend that the man she is seeing has a pattern of violence as seen in his court records. That caution alone could save a life. Perhaps it plays out when a mother checks Courtview to see if a new child care provider has any

concerning history. If her diligence to gather information and follow-through helps prevent her child from being abused or molested, that itself should be enough to say the information should remain open and accessible. The goal should be to keep people as safe as possible. If there is a choice is between whether someone should be kept safe from physical violence versus being made more marketable for employment, it seems like the choice is easy and obvious that the greater societal benefit is keeping a person, especially when it involves our most vulnerable citizens, safe. The bill works against preventing violence, as well as discouraging victims from reporting and participating in the criminal justice process.

- **A dismissal does not equate to an offender being "innocent" of the crime charged.**

As demonstrated with the earlier example of the Linehan and Carlin cases and as discussed more below, dismissals occur for a large variety of reasons, which don't in and of themselves negate the dangerousness of the person nor erase their actions. I will highlight a few examples:

1) Concurrent jurisdictions: In the case of concurrent jurisdiction, where the federal, state and/or military justice systems may all have jurisdiction over a criminal matter, the state may defer prosecution to another jurisdiction. Such an action does not show the state did not have sufficient evidence to prosecute. It often is a decision based on in which jurisdiction prosecution will be most effective or which jurisdiction will offer the greatest judicial efficiency. In a case in which the state charged a defendant then agreed to a federal prosecution of that defendant instead, the state dismissal would cause this record to be removed from the public's eye. One could foresee a case similar to Joshua Wade where the defendant could be charged in either jurisdiction and the discretionary decision later by the state to have it pursued federally would pull that state record from the public. How would this be defended as appropriate or an accurate reflection of the history of what happened? If California had the same rule, none of the OJ Simpson case would be available to citizens, the media, those victims' families or researchers.

2) Global plea agreements: Global plea agreements are common in our state and frankly a necessary component in our criminal justice system due to the strain of the volume of cases in the system. This type of plea agreement occurs when a defendant has more than one pending criminal case. The offer, for example, would allow the defendant to plead out in one case and the other cases would be dismissed. Such plea agreements benefit the criminal justice system as a whole because they provide an effective way for the defendants, courts and prosecutors to resolve a number of cases at the same time and lighten the burden on the criminal justice system. These are seen most frequently in cases involving as burglary, robbery or thefts but also can occur in cases involving domestic violence or sexual offenses. The fact that a defendant pleads to one case, does not mean he was innocent or false accused of the charges in the other pending cases. The prosecutor may have used the other cases to enhance his sentence in the plea case or to support aggravating factors for sentencing purposes. The current version of SB 108 only

preserves dismissals within the same case if a defendant pleads to or is found guilty of other counts in that case. In situations where a defendant has more than one pending criminal case, a plea in one case could result in all the other cases being dismissed and under SB 108 erased from the public's knowledge.

The prosecutor holds the power to dismiss cases. Victims cannot prevent a prosecutor from dismissing a case or cases, nor can the public prevent the dismissal. This is true regardless of the strength of the evidence. While we would hope it would not happen, the discretion to charge, prosecute, negotiate and dismiss lies with the prosecution not the victim, even in cases with confessions by the defendant. SB 108 gives a defendant an extra "reward" for his criminal behavior far beyond the benefits of the global plea agreement which already reduces his liability. With SB 108, the defendant will get to hide the facts of his other criminal acts from the public. At the same time the victim will be left empty, unacknowledged, unsupported and demoralized by the system. There will be no acknowledgement of what they went through emotional, financial or physically. The criminal justice system provides little restoration for the victim and, if SB 108 becomes law even the smallest, yet significant to victims, showing of their victimization will be removed from the public eye.

3)Deceased, recanting or missing key witnesses.

4)Judges decisions to suppress key evidence such as admissions or confessions to the crime(s).

These are all considerations in the prosecution of a case which could lead to a dismissal, but which do not mean the offender is innocent.

- **The bill demoralizes victims and sends the message once again that consequences to an offender far outweigh the harm to a victim, and that victims don't matter.**

For all the good laws put on the books to help victims, the reality is that victims often are forgotten, ignored, or worse vilified in the criminal justice system. False accusations happen, but those cases represent a very small percentage of all the cases entering the criminal justice system. While there are those who are falsely accused, the general idea that "victims lie" is a stereotype victims are confronted with daily whether it's a victim reporting a domestic violence assault or a rape, or a child victim reporting a sexual molestation. This bill perpetuates that myth. During my years as a prosecutor, and handling primarily sexual offense and domestic violence cases, I saw very few cases of where I had any evidence of a false accusation. Passage of this bill into law would send the message that you, as our legislators, don't support victims, and that you too believe that "victims lie." It also sends a message that consequences to an individual defendant related to a public record of charges filed is of more concern to you than the fact of the victim's suffering or the acknowledgement that a victim reported the harm perpetrated against them. To add insult to injury, with this bill, a crime victim of the reported crime who testified at trial would be barred access to her own testimony provided during what had been a public trial.

- **The bill prohibits citizens from having information which can help them protect their children, themselves, their homes and their businesses.**

The government cannot protect its citizens day to day. The public should be empowered with access to information it can use for its own protection. For the most part, it is up to citizens to do what they can to prevent themselves from becoming victims of crime. While the government can make laws and implement policies to assist in the prevention, the most effective prevention requires citizen involvement or citizen policing. In general, the criminal justice system reacts to criminal events rather than prevents those acts.

This bill takes a very paternalistic position that the government knows better than citizens about how to use information. It is lawmakers saying to the citizens that they are too stupid or too unsophisticated to understand the information. Every Alaskan should be empowered with the ability to have information available to them which could help protect them and others from harm and keep them from becoming one of Alaska's embarassing statistics.

- **The bill violates the spirit of the First Amendment and the Freedom of Information Act.**

Historically, courtrooms and related court records have been open to the public. Courts have recognized a presumed right of access to both criminal and civil court records. Where decisions have been made to curtail public access to court records it is done on a case-by-case basis in light of facts and circumstances of that particular case, and rarely, if ever, results in the removal of the entire case from public view.

The U.S. Supreme Court established a two-part test to determine whether the press and public have a First Amendment right of access to criminal proceedings. The first test is whether the place and process have been historically open to the press and public. The second test is whether public access plays a significant positive role in the functioning of the process in question. The answer to both these questions is "yes" in Alaska. Since the two-part test was established, courts have extended this test to establish a constitutional right of access to criminal and civil court proceedings and records. When the First Amendment right of access applies, the Supreme Court has held that a presumption of disclosure requires courts to grant access unless specific, on-the-record findings demonstrate that closure is "necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." Our state's own public records act says that every person has the right to inspect a public record, except in a few limited circumstances. The public has a right that is exercised now. With this bill, the public's right will be snatched away because of SB 108. How schizophrenic is it to say on the one hand "yes" the public has a right to access a court record while pending, however long that is, whether it be 2 weeks or 6 years, but on the other hand that access must be terminated after a dismissal or acquittal. It makes no sense why it is allowed to be seen for a period then banned from the public's eye.

The argument has been made that a presumed is presumed innocent until proven guilty so if not proved guilty it should be removed. If this logic were really applied then no court record would be open to the public or press until after a person is found guilty. The court and its records have been open for the public to see the process. It is as important for the public, whether that means a victim, a journalist, a researcher or anyone else, to see, reflect upon and understand the whole process. Dismissals and acquittals are a component on the criminal justice process and the entire process should be open to public scrutiny.

- **The bill fails to acknowledge the significant difference between being "innocent" and being found "not guilty."**

Verdict forms provided to jurors specifically use the phrase "not guilty" because the jury is not finding the person is innocent of the charge(s); only that the government failed to prove beyond a reasonable doubt each element of an offense charged. A verdict of "not guilty" does not mean a person is "innocent" of a crime, just that it wasn't proven to the jury beyond a reasonable doubt. Such a verdict may be because of the suppression of key evidence by a judge, jury nullification, witness intimidation, loss of witnesses due to death or relocation, or jury confusion. I have talked to jurors who rendered "hung" and "not guilty" verdicts, who have said that they believed the defendant did the crime but they didn't feel the evidence presented proved it to the high degree of beyond a reasonable doubt. "Not Guilty" at trial does not mean innocent of criminal wrongdoing.

Regardless of how the jury comes to its decision, this bill would forever preclude the public, whether a victim, researcher or reporter, from reviewing the case that had been open to the public yet now is cloaked in secrecy.

- **The bill ignores safeguards currently within the criminal justice system and signals to the public that they cannot trust the process because our own law makers neither trust the process nor the public they serve.**

The criminal justice process has numerous safeguards in place to ensure that there must be evidence to support criminal charges against a person. This bill ignores that well-established process. Those safeguards include: 1) an evaluation by an officer, based on specific facts and circumstances, that he has evidence that would lead a reasonable person to believe that the suspect has committed a crime, thus supporting probable cause; 2) a review by a judicial officer to determine if there is probable cause; 3) a review by a prosecutor who is ethically bound not to prosecute a charge not supported by probable cause; 4) a review of the sufficiency of the evidence supporting charge(s) by a grand jury made up of citizens in all felony matters; 5) a requirement that prosecutors must present any evidence which tends to negate guilt to the grand jury; 6) additional judicial review provided by the opportunity for the defendant to file motions with the court based of a lack of sufficient evidence to warrant the charge(s); 7) a trial where the prosecutor must present evidence which will show beyond a reasonable doubt that the defendant committed all the elements of the crime(s); 8) an opportunity at trial for the defendant to

cross-examine state witnesses and present his/her own evidence; and 9) an opportunity for the defendant to ask the judge having heard all the evidence to acquit the defendant prior to the jury receiving the case for deliberations. These aspects of the criminal justice system provide the safeguards to protect against baseless unsubstantiated charges. This bill, in essence, says to the crime victim and the community at large that process is inconsequential, irrelevant, and has no probative value.

- **The bill will make Alaska's children more vulnerable by blocking access to information, within the criminal justice system, that may be of great importance to citizens in their civil actions, especially family law matters or tort claims.**

  As it stands now a citizen can request information from the court system about any criminal case. That information may significantly aid them in evaluating whether or not to pursue a civil action or whether there is enough information to pursue the case. Blocking access to some criminal court records for victims, citizens, or their counsel could harm their ability to develop their case and locate valuable information, which could be key to their civil action.

- **The bills fails to recognize that Courtview presents information in an objective format.**

  Courtview reflects the charges, amendments to charges, hearing and litigation history, bail information and the disposition of a case – in other words just facts. The court system has gone a step further, than just reporting to facts, to emphasize a charge does not mean a person is "guilty" of a crime. Clearly a charge alone does not mean a person is guilty beyond a reasonable doubt but the information contained in the court record and reflected in Courtview is a factual history of the criminal case and provides the only public source where accurate information can be found about that case. It is imperative to have a source where facts can be reviewed, researched and relied upon instead resorting to relying on memory, rumor or the media. Availability of court records is critical to the ability to fact check. That opportunity will be eradicated by this bill.

- **The bill is contrary to the general policy goal of transparency of government institutions.**

  Transparency allows citizens of a democracy to check their government by holding their government accountable, as well as reducing government corruption, bribery and other malfeasance. This is based on the concept that citizens will be more trusting of their government if they can see what the government is doing; that the government exists for the good of the populous, and in a free country the government cannot operate in the shadows. A free and independent press is one a strong guarantor of transparency and perhaps stronger than any legislative checks and balances. With SB 108, not only will our citizens be denied this access and transparency, but so will the press. This bill proposes to hide government functions, which affect the many not just the few.

- **The bill rolls back in time to a place where we will be worse off as a community off.**

In decades past, communities were smaller. People connected face to face. They knew their neighbors' names at a minimum. This type of interpersonal association and communication allow people to "know" who was around them and to protect themselves. Those days are mostly gone. We are a more mobile society so the connections once easily forged in communities is now frayed by citizens on the move from village to village, village to the city and to other states. Instead of being dependent on our neighbors, families and fellow citizens for information, we are reliant upon the media and electronically available data. Our communities are frayed and many connections severed so that traditional methods of gathering information are all but gone. Now this bill threatens the access we once had and should have. It will leave people worse off than before the age of court technology. Our citizens should be given the freedom to collect information to better their lives and, in the case of court records, to allow them to be proactive in their own safety. SB 108 would be an unprecedented denial of public access to criminal records at our courthouses by the Alaska Legislature.

SB 108's consequences are far too broad and it should be abandoned as written. If the legislature wishes to provide a remedy for those falsely accused of a crime, it should draft a more narrowly-defined bill. OVR has offered amendment which would answer many of the concerns SB 108 attempts to cure but which would significantly decrease the ill effects. For those defendants not eligible for their criminal records being made confidential under OVR's suggested amendments to SB 108, A.S. 12.62.180, the statute which provides a process by which defendants can pursue sealing their criminal justice information, still exists. OVR, however, would encourage discussion and possible amendments to A.S. 12.62.180. While there is a process, it is not clearly defined and there is little likelihood of success as currently designed.

If the Legislature passes this bill as is, it is saying those defendants are innocent and any victims in those cases are not actual victims. The government, when considering reducing a citizen's freedom of information, should do so, if at all, in the most limited fashion possible to remedy the harm the law seeks to prevent, not rewrite history.

If you support freedom of information; the First Amendment; transparency of government, keeping our communities as safe as possible and the fair, dignified and respectful treatment of victims, then you cannot support SB 108 as currently written.

Respectfully,

Taylor E. Winston

Taylor E. Winston, Director
Alaska Office of Victims' Rights

Carmen L. Gutierrez
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April 3, 2014

To the Honorable Members of the House Judiciary Committee
State Capital
Juneau, AK 99801-1162

Dear House Judiciary Committee Members,

Thank you for the opportunity to comment on SB 108. As someone who has worked in the criminal justice system for 25 years followed by the privilege of serving the state as Deputy Commissioner for the Department of Corrections for three years, I have observed first-hand the need for the criminal justice reforms, especially with regard to taking appropriate steps to promote successful prisoner reentry. Every former offender who is able to successfully return to his or her community means one less victim, one less crime, and one less costly prosecution.

I believe that SB 108 is another step in that direction. As it stands today, every person who is arrested for a criminal offense has a permanent public record of that arrest. In felony cases, a detailed statement of alleged factual detail accompanies the fact of arrest and charge.

The name of the person arrested and then convicted always remains available to the public through the period of prosecution and after conviction. That is fair.

What is not fair and not in keeping with our system of criminal justice is that under current law a person's name and fact of charge remains available to the public even when the prosecutor dismisses the charge, the charge is dismissed by the court or after a jury acquits the person. Despite dismissal of or acquittal on the charge, the fact of arrest and the accompanying documentation forever remains available for public examination.

The reality is that when the fact of arrest after dismissal continues to be made available for public inspection either by an in-person visit to the courthouse or by review on CourtView, the arrest often becomes synonymous with conviction in the mind of those doing the inspecting. This greatly impedes a person's ability to find employment, rent an apartment and to live a life free of stigmatization for a crime for which the person was never convicted.

For example, numerous individuals – both men and woman – in Alaska are arrested for the crime of Assault in the Fourth Degree. A person may charged with this offense if a police officer concludes there is probable cause to believe that a person by "words or other conduct recklessly places another person in fear of imminent physical injury." [1]

AS18.65.530 appropriately provides that in a domestic relations context, when a person reports to the police that she/he was placed in fear of imminent physical injury, the police must arrest the alleged offender for Domestic Violence Assault when the officer decides there is probable cause to believe the assault took place.

Needless to say, police officers taxed with a tremendous amount of work have to make snap decisions when deciding if there is probable cause to believe an assault occurred. The soundness of the police officer's decision often depends on the experience of the officer and the officer's perceived need to diffuse a situation.

After the person is arrested and charged, a prosecutor later has more time to review the merits of the case. In some cases, upon more careful review and with the benefit of additional facts, the prosecutor determines the charge doesn't merit prosecution and dismisses it. The individual arrested, however, is forever stigmatized by his arrest. It will forever be a part of the Alaska Court System records available for public inspection.

A good number of cases filed in Alaska are ultimately dismissed. For example, in FY 13, the state filed 6,675 felony cases. Of those, the state dismissed 1,289 cases. Of the 29,562 misdemeanor cases filed, the state dismissed 9,508.[2]

Our constitutional right to due process of law is intended to protect citizens from being treated as convicted persons without first being afforded certain procedural safeguards. That is the way it should be and it is our responsibility to uphold our system of criminal justice, the shining example and envy of other countries.

There are those who would have you believe that their individual judgment is more knowing than the collective wisdom of a jury; that a person's record should forever be stigmatized by an arrest and charge even though the prosecutor dismissed the charge or a jury of his peers acquitted him of the charge. These same individuals would have you believe that an arrest should be equated to conviction of crime. Alaska citizens, judges, prosecutors, and defense attorneys will always have different opinions regarding the facts of a case. That is why our system requires due process

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[1] AS 11.41.230, a class A misdemeanor offense.

[2] Data provided by the Alaska Court System on February 26, 2014.

under the law before someone is convicted of crime and shoulders the burdens associated criminal conviction.

For these reasons, the fact of an arrest and charge without conviction should not forever tarnish the reputation of an Alaskan citizen. SB 108 is intended to rectify these unintended and harmful consequences that in many cases impact a person's ability to successfully live and work in our communities.

Thank you for any consideration you may give my comments.

Sincerely yours,

Carmen L. Gutierrez