

SB

108

<TARGET><BILL>SB 108</BILL><SUBJECT>SB
108</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/7/14

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 108

SB 108 LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

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

and recommends:

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS SB 108 (JVD) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CRT	✓			
DHS			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM			✓	3
ADM			✓	2
LAW			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Hoffman			✓	
	Dunleavy	✓			
Cluk Bishop	Bishop	✓			
Anna J. Fairclough	FAIRCLOUGH			✓	
	Olson			✓	
CO-CHAIR:	Kelly	✓			
CO-CHAIR:	Meyer	✓			

FISCAL NOTE

STATE OF ALASKA
2014 LEGISLATIVE SESSION

Bill Version CSSB108(JUD)
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) CSSB108(JUD)- ACS-TRC-03-17-14 Dept. Affected Alaska Court System
 Title Limit Public Access to Criminal Records Appropriation Trial Courts
 Allocation _____

Sponsor Senator Dyson
 Requester Senate Judiciary OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY15 Appropriation Requested	Included in Governor's FY15 Request	Out-Year Cost Estimates				
			FY16	FY17	FY18	FY19	FY20
OPERATING EXPENDITURES							
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		(Thousands of Dollars)						
		FY15	FY15	FY16	FY17	FY18	FY19	FY20
1002	Federal Receipts							
1003	GF Match							
1004	GF	25.5		3.5	3.5	3.5	3.5	3.5
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)							
1156	Rcpt Svcs (DGF)							
		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 (FY14) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY15) costs _____ (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? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

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

Prepared by Nancy Meade, General Counsel
 Division Alaska Court System
 Approved by Nancy Meade for Christine Johnson, Administrative Director
 Division Alaska Court System

Phone 907-465-4736
 Date/Time 3/17/14 9:00 AM
 Date 3/17/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB108(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 initial 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: SB 108
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB108CS(JUD)-DHSS-CSM-03-14-14 Department: Department of Health and Social Services
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS Appropriation: Children's Services
Sponsor: DYSON Allocation: Children's Services Management
Requester: Senate Judiciary Committee 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					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
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	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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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."
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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

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB108(JUD)

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: 3
(S) Publish Date: 3/7/14

Identifier: SB108-DOA-OPA-02-21-14 Department: Department of Administration
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS Appropriation: Legal and Advocacy Services
Sponsor: DYSON Allocation: Office of Public Advocacy
Requester: Senate Judiciary 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				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
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							
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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: <u>Richard Allen, Director</u>	Phone: <u>(907)269-3504</u>
Division: <u>Office of Public Advocacy</u>	Date: <u>02/21/2014 09:00 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>02/21/14</u>
Agency: <u>Administration</u>	

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 108(JUD)

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 Department: Department of Administration
Title: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS Appropriation: Legal and Advocacy Services
Sponsor: DYSON Allocation: Public Defender Agency
Requester: Senate Judiciary 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					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
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	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							
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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					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
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	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

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

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 108(JUD)

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.

CURRICULUM VITAE

NORMAN D. MEANS, M.D.

WORK ADDRESS: 2421 E. Tudor Rd Suite #108
Anchorage, AK 99507

PHONE (907) 561-6682

EMAIL ADDRESS: norman.means@gmail.com

EDUCATION:
1989-1993 M.D., Indiana University School of Medicine
Indianapolis, IN

1983-1987 A.B. (Biological Sciences), University of Chicago
Chicago, Illinois

POSTGRADUATE TRAINING:

2000-2003 Resident, Family Medicine
Duke/ SRAHEC Family Medicine Residency
1601 Owen Drive
Fayetteville, NC

1998-1999 Fellow, Transfusion Medicine
University of North Carolina Hospitals
Chapel Hill, North Carolina

1994-1998 Resident (AP/CP), Department of Pathology
University of Tennessee Medical Center
Knoxville, Tennessee

1993-1994 Resident (PGY-1), Department of Surgery
University of Tennessee Medical Center
Knoxville, Tennessee

Norman D. Means, M.D.

Curriculum Vitae

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WORK EXPERIENCE

2004-Present	Private practice Anchorage, AK
2013-present	Medical Director of Hospital Laboratories St. Elias Specialty Hospital Anchorage, AK
2008- Present	Chief Medical Officer Blood Bank of Alaska Anchorage, AK
2011-2013	American Hyperbaric Centers Anchorage, AK
2008	Alaska State Medical Examiner
2003-2004	Cordova Community Medical Center Cordova, AK Family Physician; Chief of Medical Staff; Director of Hospital Laboratories
2001-2003	Locum Tenens in Family Medicine SMA Physician Staffing Southern Pines, NC
1998-1999	Consulting Pathologist Cherry State Hospital Goldsboro, NC
1999	Consulting Pathologist Granville Medical Center Oxford, NC
1996-1998	Emergency Physician North Valley Emergency Department Dunlap, TN
1994-1996	Emergency Physician National Emergency Services Toledo, OH

Norman D. Means, M.D.

Curriculum Vitae

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CERTIFICATION AND LICENSURE:

2003	Alaska	Number 5269
2003	Board Certification in Family Medicine (Recertification 2010)	
2002	Montana	Number 10242 (inactive)
1999	Board Certification in Anatomic Pathology	
1999	Board Certification in Clinical Pathology	
1998	North Carolina	Number 2000-00095 (inact.)
1994	Tennessee	Number MD26061 (inactive)
1994	Kentucky	Number 30744 (inactive)
1994	National Board of Medical Examiners	Number 428348

COMMITTEES:

2001-2003	Transfusion Committee, Cape Fear Valley Medical Center, Fayetteville, NC
1998-1999	Transfusion Committee, University of North Carolina Hospitals, Chapel Hill
1996-1998	Transfusion Committee, University of Tennessee Medical Center, Knoxville
1993-1995	Medical Ethics Committee, University of Tennessee Medical Center, Knoxville

MEMBERSHIPS:

Alaska State Medical Association
College of American Pathologists, Fellow (2009)

AWARDS AND HONORS:

1999	Junior Investigator Award, American Society For Apheresis
1992-1993	Charles Meredith Thomas Scholarship, Indiana University School of Medicine
1990	Summer Research Fellow, Department of Medicine, Indiana University School of Medicine
1983-1987	National Merit Scholar, University of Chicago
1983-1987	Disabled American Veterans Scholar

REFERENCES:

Provided on request

Norman D. Means, M.D.

Publications

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PUBLICATIONS

PAPERS

1. Likelihood of D heterozygosity in Mestizo Mexicans and Mexican Americans. **N.D. Means**, N. Bandarenko, K.J. Moise, Jr., M.E. Brecher
Immunohematology 2001: 17:22-23
2. Evaluation of an automated culture system for detecting bacterial contamination of platelets: an analysis with 15 contaminating organisms. M.E. Brecher, **N Means**, C.S. Jere, D. Heath, S. Rothenberg, L.C. Stutzman
Transfusion. 2001 Apr;41(4):477-82
3. Intramural pregnancy in a cesarean section scar. A case report. Neiger R, Weldon K, **Means N. J Reprod Med**. 1998 Nov;43(11):999-1001.
4. Severe thrombocytopenia complicating acute Epstein-Barr virus infection. M.L. Pipp, **N.D. Means**, J.W. Sixbey, K.L. Morris, C.L. Gue, L.M. Baddour.
Clin. Infect. Dis. (1997), 25:1237-9.
5. The effect of LPS on cytokine synthesis and lung neutrophil influx after hepatic ischemia/reperfusion injury in the rat. J. Carrick, O. Martins, Jr., C. Snider, **N. Means**, B. Enderson, S. Frame, S. Morris, M. Karlstad. **J. Surg. Res.** (1997), Vol. 68, No. 1: 16-23.
6. Well-differentiated adenocarcinoma and atypical endometrial hyperplasia associated with noncommunicating rudimentary uterine horns. K.D. Childs, **N.D. Means**, P.R. Copas. **J. Pelvic Surg.** (1996), Vol. 2, No. 6: 320-322.

ELECTRONIC PUBLICATIONS

1. Anemia and thrombocytopenia in a 46 yo female with metastatic carcinoma. **N.D. Means**, M.E. Brecher, and N. Bandarenko; on "**Bloodline, 1998 ASH SpecialEdition**":
Address: <http://www.cjp.com/blood/> (No longer available online)

Norman D. Means, M.D.
Publications
-Page 2-

ABSTRACTS AND POSTERS

1. Optimizing PBSC yield using circulating CD34+ cell counts. **N.D. Means**, M.E. Brecher, H.G. Owen, S.D. Sparks, I Shah, T. Shea, N. Bandarenko. Abstract. **J. Clin. Apheresis** (1999) Vol. 14, (Plenary Presentation, American Society For Apheresis, San Antonio, TX, April, 1999)
2. A unique form of primary (AL) amyloid associated with cutis laxa. **N.D. Means**, J. Fitzgibbon, T. Niewold, R. Hrcic, J. Bell, A. Solomon. Abstract. **J. Cutan. Pathol.** (1997), Vol. 24, No. 2: 111.
3. Effect of phospholipase-D-produced phosphatidylethanol on n-formyl-methionyl-leucylphenylalanine-induced superoxide production in human neutrophils. **N.D. Means**, G. Taylor, D. English. Medical Student Research Symposium Indiana University School of Medicine Fall 1990.
4. TRH stimulates inositol phosphate release in rat hippocampal slices. A. Sattin, **N.D. Means**, and M.J. Kubek. **Soc. Neuroscience Abstracts** (1988) Vol. 15:92.19.

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 

DT: March 11, 2014

RE: Request for Waiver of Hearing - CSSB 108(JUD) *An Act relating to the confidentiality of certain records of criminal cases*

I respectfully request a Senate Finance Committee waiver of hearing for CSSB 108(JUD). All fiscal notes from Law, Office of Public Advocacy, Courts and Public Defender Agency are zero. Thank you.

Staff Contact - Chuck Kopp (907)465-2199

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.

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 February 24, 2014

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

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

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

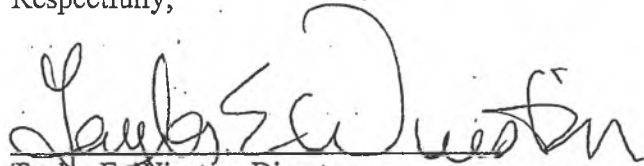
- **No law or measure can prevent false accusations from occurring and this bill sweeps much farther than necessary to address those cases.** I would be the first to encourage the Department of Law to prosecute anyone who makes a false allegation. It is a serious offense to falsely accuse someone of 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,

A handwritten signature in cursive script, appearing to read "Taylor E. Winston". The signature is written in dark ink and is positioned above the printed name and title.

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

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 expungement 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=>

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

¹ AS 11.41.230, a class A misdemeanor offense.

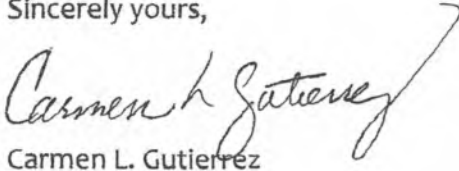
² Data provided by the Alaska Court System on February 26, 2014.

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,

A handwritten signature in cursive script that reads "Carmen L. Gutierrez". The signature is written in black ink and is positioned to the right of the typed name.

Carmen L. Gutierrez

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 its 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.

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.

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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.