



February 25, 2016

The Honorable Bill Walker
Governor
Alaska State Capitol Building
Third Floor
P.O. Box 110001
Juneau, AK 99811-0001
by email: bill.walker@alaska.gov

**Re: House Bill 11: No Internet Access to Some Criminal Cases
ACLU of Alaska's Letter of Support**

Dear Governor Walker:

We hope that you are well. Thank you for the opportunity to write in support of House Bill 11, which promotes greater individual dignity under Alaska law: it will allow Alaskans who are acquitted of criminal charges, or who have criminal charges against them dismissed, to move on with their lives free from the stigma of entanglement with the criminal justice system. It will remove from CourtView—the state's publicly accessible Internet website for accessing criminal proceedings—any record of acquitted or dismissed cases, 60 days after the date of acquittal or dismissal.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, we are pleased to support House Bill 11 and we hope that you will sign it into law.

Since the founding of our country, stitched into the fabric of our Nation, is the ironclad truth that we are all innocent unless proven guilty. Flowing from Deuteronomy, to Sparta and Athens, to Ancient Rome,¹ this “presumption of innocence” is one of the core principles undergirding American democracy.

1. Giving the public casual access via the Internet to records of dropped criminal charges harms Alaskans.

As this legislation and common experience illustrate, Alaska falls short of the ideal of the presumption of innocence: Alaskans who are arrested or charged with a crime—but not convicted—suffer a stigma that inhibits them from finding jobs, homes, and living a full civic life. Potential employers and landlords commonly ask applicants if they've ever been arrested or charged with a crime. Too often, when one answers, “Yes, but the charges were

¹ *Coffin v. United States*, 156 U.S. 432, 454 (1895) (tracing the history).

dropped,” or “Yes, but I was acquitted,” the boss and landlord don’t hear anything after the “Yes.” This fact of life is harmful enough, but when such information is available to anyone with an Internet connection, without explanation, the harm is magnified. “The mere fact of an arrest may impair or cloud a person’s reputation[.]”²

Apart from rejecting this constitutional presumption of innocence, this prejudice often defies logic: someone who was arrested five years ago, but has since stayed free of arrest, is generally no more likely to commit a crime than someone of the same age and sex without an arrest record.³ And, “[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”⁴

This bias against people with arrests but without convictions not only fails to increase public safety, it in fact *threatens* it. Denying these Alaskans jobs and homes creates a permanent jobless and homeless underclass that diminishes the safety—and dignity—of all Alaskans. House Bill 11, by shielding records without convictions from Internet searches, redresses this prejudice and helps to ensure that Alaskans will be employed, housed, and productive members of our state, not exiled to society’s margins.

2. This law will not eclipse important records from public view.

One objection to this legislation is the concern that it will keep the public from learning about people who are accused of crimes. This worry fails to appreciate the Internet availability of records of relevant criminal proceedings until 60 days after the acquittal or dismissal. In cases that are publicly important, the public and press will have the length of the case—plus an additional two months—to read and study the court file. And, just as “new” is part of “news,” records that are months and years old are rarely interesting and newsworthy, and should not be subject to the publication to the casually curious.

Meanwhile, the public can still avail itself of the benefits of a transparent criminal justice system, by accessing records as they could long before the advent of the Internet—through the offices of the appropriate court clerks.

3. Publicizing Dismissed Records Violates Our Core Constitutional Values.

Our system of constitutional government is rooted in the truths that the government should treat its citizens fairly⁵ and that “innocent until proven guilty” should be more than an empty phrase. Yet, by continuing to publicize records of criminal charges on the Internet

² *Utz v. Cullinane*, 520 F.2d 467, 480 (D.C. Cir. 1975).

³ Alfred Blumstein and Kiminori Nakamura, ‘Redemption’ in an Era of Widespread Criminal Background Checks, 263 NIJ Journal 10, 12 (June 2009), available at <http://www.nij.gov/journals/263/pages/redemption.aspx>.

⁴ *Schwartz v. Bd. of Bar Exam. of State of N.M.*, 353 U.S. 232, 241 (1957).

⁵ U.S. Const. amend. XIV, § 1; Alaska Const. art. I, § 7.

after it has dismissed them or someone has been acquitted, Alaska causes those records, which have “very little, if any, probative value,”⁶ to stigmatize and harm its residents.

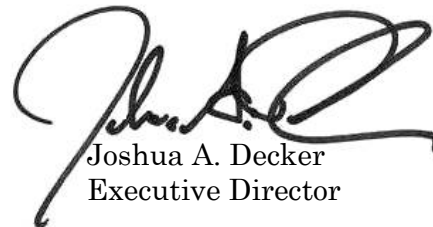
Besides treating its citizens fairly, the government should treat them equally:⁷ electronically publicizing dismissed records counters this constitutional aim. For myriad reasons, besides suffering from racism, Alaska Natives and African-Americans are overrepresented in our criminal justice system: statewide, 15 percent of Alaskans are Alaska Native and 4 percent are African-American; in Alaska’s prisons, 37 percent are Alaska Native and 10 percent are African-American.⁸ Alaska Natives and African-Americans are also disproportionately charged and arrested: if enacted into law, this legislation will limit the compounding of racism with the prejudice against persons with arrest records.

Conclusion

The ACLU of Alaska is pleased to support this legislation: it will bring Alaska in line with the rest of the country, and it will realize the constitutional goals that the government should not tarnish people it does not convict with records of “very little, if any, probative value.”⁹

Please contact us if you have any questions or if you want additional information. Thank you again for considering our testimony.

Sincerely,



Joshua A. Decker
Executive Director

cc: Representative Tammie Wilson, Sponsor, representative.tammie.wilson@akleg.gov

⁶ *Schwabe*, 353 U.S. at 241.

⁷ U.S. Const. amend. XIV, § 1; Alaska Const. art. I, § 1.

⁸ The overall demographics are from the U.S. Census Bureau, *State and County Quick Facts: Alaska*, available at <http://quickfacts.census.gov/qfd/states/02000.html> and the prison demographics are from Alaska Department of Corrections, *2012 Offender Profile*, at 13, available at <http://www.correct.state.ak.us/administrative-services/research-records>.

⁹ *Schwabe*, 353 U.S. at 241.