



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF RECORDS ACCESS OF CIRCUIT COURT DOCUMENTS

Room 328 Northwest
State Capitol

December 15, 2010
9:00 a.m. – 12:45 p.m.

[The following is a summary of the December 15, 2010 meeting of the Special Committee on Review of Records Access of Circuit Court Documents. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Roys called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Kelda Roys, Chair; Rep. Donna Seidel, Vice Chair; Rep. Ed Brooks; and Public Members Colin Benedict, Keith Findley, Frederic Fleishauer, Robert Kinney, Bill Lueders, Mark Scarborough, Lahny Silva, Jeanine Smith, Adam Stephens, Sheila Sullivan, and Mike Tobin.

COMMITTEE MEMBER EXCUSED: Public Member Mary Delaney.

COUNCIL STAFF PRESENT: Dan Schmidt, Senior Analyst; Don Salm, Senior Staff Attorney; and Melissa Schmidt, Staff Attorney.

Approval of the Minutes of the Committee's November 4, 2010 Meeting

Judge Kinney moved, seconded by Representative Seidel, that the minutes of the committee's November 4, 2010 meeting be approved. The motion passed by unanimous voice vote.

Description of Materials Distributed

Dan Schmidt, Senior Analyst, described the materials distributed to the committee.

Review of Committee Options Memorandum and Discussion of Committee Assignment

Clarify the Definition of “Expunge” and “Expungement” Under Wisconsin Law

Mr. Schmidt described this option and explained how expungement is defined under Illinois law. He said that the committee had heard testimony that under current Wisconsin law, it is unclear how a person is to report an expunged criminal court record when applying for a job.

Judge Kinney requested that the committee consider including in the bill draft a legislative finding that there is a problem that expungement is currently not defined. Mr. Tobin stated that part of the problem is that when a criminal court record is expunged, the law enforcement records still exist.

Ms. Sullivan and Mr. Findley stated that there is a need for expunged records to be preserved so that an individual can prove that expungement was in fact ordered by a judge. Mr. Lueders requested that the bill draft include a standard providing when others would be allowed to review expunged court records.

Chairperson Roys requested that Legislative Council staff draft legislation related to this option for the committee’s review.

Prohibit Private Data Vendors from Making Expunged Records Available

Mr. Schmidt explained this option. Mr. Lueders raised First Amendment concerns if the state were to prohibit private data vendors from referencing expunged cases. Mr. Findley agreed that there may be a First Amendment problem but thought there may be a way to narrowly tailor the law.

Chairperson Roys stated that instead of including this option in a bill draft, the committee could include in its report a statement expressing its concern that private data vendors of court records make expunged cases available to the public.

Require or Permit Judges to Expunge Misdemeanor or Ordinance Violation Records Resulting in a Dismissal or Acquittal, or Create a Presumption That These Records Should be Expunged

Melissa Schmidt, Staff Attorney, briefly described current law related to this option and outlined some questions for the committee to consider if it decided to request a bill draft for this option.

Judge Kinney stated that he thought it is a mistake to not allow a court to expunge dismissed criminal court cases.

Mr. Lueders stated that prior to this committee, a great deal of thought has gone into how dismissed criminal court cases should be handled by other committees and groups. He reminded the committee that the primary reason for not allowing dismissed cases to be expunged is so that there is a check on prosecutorial power.

Chairperson Roys stated that the issue regarding this option is whether or not judges should have the authority or discretion to order the expungement of dismissed criminal court records, not mandate that they be expunged. Ms. Silva stated that this option made sense.

Judge Kinney stated that it was an anomaly in the law to allow the expungement of convictions, but not dismissed cases. Mr. Lueders said that the notion that this is an anomaly assumes that there is discrimination and pointed out that the committee had not heard testimony from a victim who had been injured by Wisconsin Circuit Court Access (WCCA). Mr. Scarborough suggested that victims be invited to testify to the committee. Mr. Lueders stated that he has heard people claiming to be victims of WCCA testify in the past and does not believe their testimony.

Chairperson Roys reminded the committee that the Legislative Council convened this committee because it recognized that there was a problem with WCCA and appointed committee members who had experience with dealing with the problem.

Mr. Benedict stated that he did not think there was a problem with WCCA. Ms. Sullivan stated that she could provide a list of cases where people were unable to find employment if it would help the committee. Mr. Findley stated that the committee has already received testimony in the form of statistical data relating to this issue.

Judge Kinney suggested as an alternative that the committee draft a bill that would alter the retention period of court records under ch. SCR 72. Don Salm, Senior Staff Attorney, pointed out that the committee should keep in mind that the Wisconsin Supreme Court has the authority to change any statute that would alter court retention periods by court order. He cited an example where a Legislative Council study committee in 1990, which changed the jury selection process and within one year, by court order, the Wisconsin Supreme Court reversed the legislation.

Mr. Findley requested that judges also be granted the authority to expunge criminal court records where the defendant was exonerated.

Chairperson Roys requested that Legislative Council staff draft legislation related to this option for the committee's review.

Permit Judges to Expunge all Criminal Court Records, Subject to Judicial Discretion

Because no committee members expressed interest, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Expunge Law Enforcement Records in Addition to WCCA Records

Chairperson Roys stated that this option was beyond the scope of the committee and instructed Legislative Council staff not to draft a bill related to this option.

Prohibit Law Enforcement From Disclosing the Historical Fact of a Conviction in an Expunged Case to Non-Law Enforcement Entities Unless Otherwise Required to do so Under Federal or State Law

Because there was sufficient interest among committee members to draft legislation related to this option, Chairperson Roys requested that Legislative Council staff draft legislation related to this option for the committee's review.

Upon Written Request, Require the Director of State Courts to Remove any Information Relating to the Case if There was an Acquittal or a Finding of no Civil Liability, or if the Case is Dismissed, or Both, From WCCA

There was interest among committee members to draft legislation that would remove the phrase “at the time of sentencing” from s. 973.015, Stats. Chairperson Roys requested that Legislative Council staff draft for the committee’s review, legislation that would remove this language.

Eliminate a Person’s Conviction Record From WCCA if He or She Received Executive Clemency for the Conviction

Judge Kinney stated that at one time he thought that executive clemency would solve any consequences resulting from a person’s criminal background. He said that if the court record for someone who was granted clemency is not expunged, clemency does not really solve the problems. Judge Fleishauer stated that to really pardon someone, the conviction should be expunged.

Mr. Scarborough stated that it was important to keep track of people whom the Governor pardons.

Chairperson Roys took an informal poll to find out whether committee members wanted to review a bill draft related to this option. Seven committee members were in favor of reviewing a bill draft and four members were against. Chairperson Roys stated that she would consider this matter further and may request that Legislative Council staff draft legislation related to this option for the committee’s review.

Permit or Require the Removal of Address Information From WCCA

Mr. Lueders explained the current procedures whereby someone may have his or her address removed for safety reasons. He stated that including address information on WCCA helps identify the court record with the correct person. Because no committee members expressed interest, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Replace Personal Identifying Information With “John/Jane Doe” on WCCA Records for Dismissals and Acquittals

Mr. Findley stated that this option would allow court records to remain in tact, but would prevent “casual discrimination” by people conducting criminal background searches on the Internet. Mr. Benedict stated that he opposed this option. Ms. Smith also raised concerns about whether the volume of search results would crash the WCCA system.

Chairperson Roys took an informal poll to find out whether committee members wanted to review a bill draft related to this option. Four committee members were in favor of reviewing a bill draft and four were against. Because there was not sufficient consensus among the committee, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Create a “Notification” Provision That a Records Search on the WCCA Website was Conducted

Mr. Lueders stated that this option advances fairness and thought that it would receive a broad spectrum of support. He stated that the Freedom of Information Council had talked about this option and supports it. Mr. Benedict stated that he could support this option as well.

Ms. Sullivan noted that the language in the federal Fair Credit Reporting Act requires an employer to notify an employment applicant that a background check was conducted. She explained that therefore, such language in the draft would be familiar and not new.

Judge Kinney raised a concern that this requirement might be another burden on employers and thought there may be a negative reaction to it by employers. Mr. Stephens stated that he thought larger corporations could handle this requirement but questioned whether small businesses would be able to do so. Chairperson Roys stated that she knew that landlords opposed this requirement.

Chairperson Roys took an informal poll to find out whether committee members wanted to review a bill draft related to this option. Seven committee members were in favor of reviewing a bill draft and four were against. Roys requested that Legislative Council staff draft legislation related to this option for the committee’s review.

Require WCCA to Have an Active Button With a User Agreement Whereby the Person Agrees to a Non-Discrimination Policy

Mr. Findley questioned whether legislation requiring an active button would have any effect on employment or housing discrimination based upon a person’s criminal background. Mr. Stevens said that the benefit would be that a WCCA user could not claim ignorance of Wisconsin law.

Chairperson Roys stated that the committee could write a letter to the Wisconsin Supreme Court and the Director of State Courts requesting that another active button be added to the WCCA website and requested that Legislative Council staff write such a draft letter for the committee to review.

Permit Defendants to Submit a Statement of Explanation for Publication on WCCA

Because no committee members expressed interest, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Extend the Records Available on WCCA

Mr. Lueders explained that the reason there is information currently not available in WCCA records is because it would require a lot of work to redact confidential information such as the names of victims or witnesses. Mr. Findley stated that the courts should decide the question of what additional court information should be placed on WCCA records. Because no committee members expressed interest, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Change Wisconsin’s Public Records Law so That Court Records With a Criminal Charge That Resulted in an Acquittal or Dismissal, or Both, are not a Public Record

Because no committee members expressed interest, Chairperson Roys instructed Legislative Council staff not to draft a bill related to this option.

Alter the Retention Times of Certain Court Records

Judge Kinney requested that the committee create a retentions schedule for court records, which would be staggered by the class of the crime. Judge Fleishauer stated that the retention time period should also take into consideration whether the crime is violent.

Ms. Sullivan and Mr. Findley raised concerns that the destruction of paper records would prevent unjust convictions from being overturned.

Roys requested that Legislative Council staff draft legislation related to this option for the committee's review.

Mr. Lueders reminded the committee that there was a WCCA oversight committee that determined that a record on the WCCA website should be the same as the paper file.

Mr. Tobin suggested that the committee include this option in a letter to the Wisconsin Supreme Court and the Director of State Courts.

Chairperson Roys took an informal poll to find out whether committee members wanted to review either a letter or a bill draft related to this option. Seven committee members were in favor of reviewing a letter and eight were in favor of reviewing a bill draft. Chairperson Roys stated that she would consider this matter further and may request that Legislative Council staff meet with her and several committee members, including Judge Kinney, to develop draft legislation related to this option for the committee's review.

Prepare a Letter to the Wisconsin Supreme Court Supporting Transparency in Court Records

Chairperson Roys stated that the committee could write a letter to the Wisconsin Supreme Court and the Director of State Courts requesting that there be more transparency in court records and requested that Legislative Council staff write a draft letter for the committee to review.

Other Business

There was no other business brought before the committee.

Adjournment

The meeting was adjourned at 12:45 p.m.

MS:kms