

Pat Malloy: Wild driver shows need for CCAP

By PAT MALLOY | Posted: Sunday, October 3, 2010 7:18 am

I usually don't agree with the State Journal on public records issues.

However, with regard to Monday's editorial on public access to court records, I am in complete agreement.

I would like to share a personal experience to explain why.

In February of 2009 I was in Milwaukee on Capitol Drive when I witnessed a vehicle speeding and weaving in and out of traffic. As the car passed me, I thought the guy was going to kill someone.

It was a Sunday at 3 p.m. with pedestrians and lots of other vehicles present. The vehicle was traveling about 80 mph in a 30 mph zone. After passing me, the vehicle crashed into a vehicle that had been making a left turn across Capitol Drive.

I stopped and saw that the driver who had been speeding appeared to have no serious injuries. The other driver appeared to be very seriously injured. I called 911 twice and helped as best I could while waiting for help to arrive. I thought it was going to be a fatality.

In the days that followed I checked the Milwaukee news but couldn't find any mention of the crash.

Time went by and I received a subpoena for a trial related to the case. The subpoena was for Milwaukee Municipal Court. The name of the offending driver was on the subpoena, so I looked on Wisconsin Circuit Court Access, commonly referred to as CCAP.

I learned the individual had a lengthy traffic record including revocation and suspension issues. I learned that a number of cases against him had been reduced or amended. I also noted that within three months of the crash he had been cited for 29 mph over the limit on the interstate in a different county.

The trial came in mid-July. The defendant did not show up and was found guilty of reckless driving causing injury. I had a chance to meet and talk with the injured driver and other witnesses.

The injured driver was a 43-year-old man on his way to get some soup for his elderly father. He neck was fractured in two places. Both his legs were damaged. He told me he had seven operations related to neck fractures. When I saw him he was wearing a neck collar and could not look right or left or up and down. He walked with a shuffle and needed a cane and a friend's arm for support.

Because of CCAP, I can tell that since 2001 the offending driver has 22 traffic-related cases. Apparently he is still driving. In February, he had a charge reduced for speeding. CCAP indicates he was charged with going between 20-24 mph over the limit. This appears to have been reduced to "Improper Parking."

The offending driver should have been charged with a crime for the crash I witnessed. He is a person who should not be driving. The current system allows him to continue to drive in a reckless and dangerous manner with no real consequences for his behavior. The injured driver suffered an injustice by the way he was treated by the system.

Without access to CCAP, I would not have been able to write this. I urge lawmakers and members of the Supreme Court to not limit access to CCAP.

Malloy retired from the Madison Police Department in 2007 after more than 33 years of service.

Information on complaints alleging bias on the basis of criminal history

The following is taken directly from responses provided by John Dipko, spokesperson for the state Department of Workforce Development.

The Equal Rights Division of the Department of Workforce Development enforces the Wisconsin Fair Employment Law which prohibits discrimination based on conviction record, in addition to other protections. The conviction record portion of the law prohibits discrimination against an employee or applicant for employment, unless the conviction is substantially related to the job. Here is link to the Equal Rights Division fact sheet on arrest and conviction under the law:
http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7609_p.htm

DWD's Equal Rights Division enforces the conviction record portion of the law the same as all other provisions. Here is a link to an on-line discrimination complaint form:
<http://dwd.wisconsin.gov/discriminationcomplaint>

Here is another link to a complaint guide that explains the process used for investigation and hearing of a complaint:
http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_6160_pweb.htm

The Wisconsin Circuit Court Access System / Consolidated Court Automation Program (CCAP) was updated several years ago to include information about the Wisconsin Fair Employment Law's conviction record protections. The following information currently appears on its website:

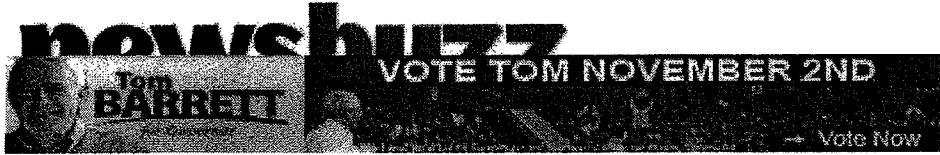
“Notice to employers: It may be a violation of state law to discriminate against a job applicant because of an arrest or conviction record. Generally speaking, an employer may refuse to hire an applicant on the basis of a conviction only if the circumstances of the conviction substantially relate to the particular job. For more information, see Wisconsin statute 111.335 and Department of Workforce Development's Arrest and Conviction Records under the Law publication:
http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7609_p.htm”

DWD's Equal Rights Division enforces the law, and the law stipulates penalties, depending on the seriousness of the violation. That said, an individual must file a complaint and having filed a complaint, has the burden of proving discrimination. Many people say they are denied a job because of the information on CCAP, but it is difficult to prove.

For fiscal 2010 (July 1, 2009 - June 30, 2010), the Division of Equal Rights received 3,238 employment discrimination complaints. Of these, 316 complaints alleged discrimination based on criminal conviction. During the same year, resolution activity for this category of complaints included 67 findings of probable cause and another 42 settlements. Please note that the resolutions involve complaints filed during any point in time and are not a pure subset of the complaints filed that year. Additionally, the Division does not specifically track whether CCAP references are included in complaints.

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Criminal records getting amended online

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By Matt Hrodey

Many criminal defendants would like to see their arrests or original charges removed from the publicly available Wisconsin Circuit Court Access online database of court records. It turns out this is already happening in some counties, where officials are removing charges from the site that were dismissed in plea deals. Milwaukee County is not among them. Some critics are questioning this movement.

A special committee of the state legislature is now studying how long these records should remain on the [WCCA website](#) and whether those that were dismissed or remain pending should even be posted at all. The committee will make its report to the new legislature in January.

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milwaukee county courthouse (photo by adrian palomo)

Meanwhile, in certain counties, “Some defendants have serious charges wiped away from the online database if they are dismissed under plea deals and some do not, depending on where they are prosecuted,” reports the Associated Press. In some counties in the state – and the number is not yet known – prosecutors file new charges as part of plea agreements, causing county clerks to remove the previous charges from the online database in favor of the new ones, which are generally less severe.

Yet another committee, the WCCA Advisory Committee, will consider this issue at its Nov. 18 meeting, says Court Information Officer Tom Sheehan. “We’re trying to find out how often this occurs,” he says. “The question might be whether or not (WCCA) is being used the way it was intended to be used.” The committee makes recommendations to A. John Voelker, director of the Wisconsin Court System, the agency that hosts the database.

The practice of filing new charges in plea deals and erasing the old ones has become more common “in the last year for reasons that are unclear,” says AP. The result is a disparity between counties. In many, prosecutors don’t erase the old charges after a plea deal but simply amend or dismiss the existing ones, so there is still a record of both the original and amended charges.

This disparity between counties has stirred up controversy. “The original charges should remain online even if some later plea deal is struck. I think it’s obnoxious that certain criminal defendants are being allowed to essentially rewrite the history of their cases as part of plea deals.” says Bill Lueders, president of the Wisconsin Freedom of Information Council. Sheehan notes that no matter what a county’s procedures for online records, the original charges are still kept in paper form.



According to the Milwaukee County Clerk's office, a record of the original charges remains online no matter if they are later amended or dismissed. For example, Anthony J. Peters, the man who pleaded guilty to assaulting Mayor Tom Barrett outside the Wisconsin State Fair last year, had a felony theft charged dropped as part of his plea deal, but it remains on his WCCA record, marked as dismissed.

In another case, Chuong Thanh Truong of Milwaukee admitted earlier this year to damaging a nail salon's window in a plea agreement. The more severe of his two charges, one based on allegations that he threatened to hurt people who owed him money from football bets, was dropped in the deal, but it remains on his online record, labeled as dismissed.

Sometimes, finding the original charges requires a record-seeker to click through to a "charging history" page. In the case of Joshua D. Wollinger, who pleaded guilty to stabbing a man in South Milwaukee earlier this year, his charge was downgraded from 1st degree intentional homicide to 2nd degree *reckless* homicide, a less severe charge, in a deal. To find the original charge, one must click the "view history and details of charges" link on the site.

But in other counties, not even that page contains the original charges. AP cites the case of James Trentin, a former prison guard charged in Crawford County with both sexually assaulting inmates and smuggling contraband in to them. The sex crimes were dismissed in the plea agreement as he pleaded guilty to three felony counts of delivering illegal articles to an inmate. But the WCCA record contains no trace of the alleged sex crimes.

Some argue that unless a defendant is tried for a crime or admits guilt to it, it shouldn't appear on the website where it could influence future employers or landlords. Two bills introduced in the State Assembly in the 2009 session sought to limit the posting of cases until after a criminal defendant was found guilty. Neither of them passed. The bills would also have required clerks to hold off on posting civil, eviction or restraining order cases unless the defendant had lost the case.

The State Bar has pushed for the state Supreme Court or the state Legislature to expand the powers of judges to expunge old cases. The state Department of Justice has opposed those efforts along with others limiting WCCA records. "Government should not paternalistically prevent or delay the dissemination of truthful information about court actions simply because the information might be misused," Deputy Attorney General Raymond Taffora wrote in a letter to the legislature earlier this year.

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