



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF RECORDS ACCESS OF
CIRCUIT COURT DOCUMENTS

FROM: Dan Schmidt, Senior Analyst

RE: Proposals Limiting Access to Consolidated Court Automation Programs Information
Considered During the 2009 Legislative Session

DATE: September 7, 2010

INTRODUCTION

The Consolidated Court Access Program (CCAP) was established by the Director of State Courts in 1999, with the intent to simplify public access to circuit court documents. CCAP is an electronic repository for information regarding civil and criminal cases filed in circuit courts throughout Wisconsin. Access is available to the general public at no charge via the Wisconsin Circuit Court Access website (WCCA) at <http://wcca.wicourts.gov/>. The website permits any user to search all civil and criminal cases to which a person may be a party. CCAP filings generally include information regarding the parties to a case, their attorneys, as well as filings, deadlines, decisions, and outcomes related to the case. The filings also include information regarding family court proceedings, probate proceedings, John Doe proceedings, reviews of administrative proceedings, tax warrants, various liens, eviction proceedings, civil lawsuits, and restraining orders or injunctions. Information regarding certain types of confidential cases is not available on the WCCA. Such cases include: adoptions, juvenile delinquency, child protection, termination of parental rights, guardianship, and civil commitments.

WCCA users are provided with a number of warnings prior to conducting a search. These include the following:

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 the Department of Workforce Development's [Arrest and Conviction Records under the Law](#) publication.

Accuracy: *The official recordkeepers for the circuit courts are the clerk of circuit court, the register in probate, and the juvenile court clerk in each county. The information contained on the WCCA website has been entered by the official recordkeepers in each county. CCAP staff cannot modify the court data on the WCCA website. If you believe data displayed on this website is incorrect, please click here for instructions on how to request an error correction. You may also contact the circuit court where the case is filed.*

In addition, the Director of State Courts provides a detailed policy statement regarding the courts' disclosure of public information on the Internet, a copy of which is enclosed with this Memo.

During the 2009 Legislative Session, there were a number of proposals introduced with the intention of restricting public access and limiting the information contained on the WCCA. These proposals and the amendments to these proposals are described in the remainder of this Memo.

2009 ASSEMBLY BILL 340

2009 Assembly Bill 340 prohibits the Director of State Courts from including information on the WCCA website about any case or charge until a court does one of the following:

1. Enters a finding of guilty in a criminal matter.
2. Enters a finding of liability in a civil matter.
3. Enters an order of eviction.
4. Issues a restraining order or an injunction against a person.

Under the bill, if a court has not made one of these findings, a person may request that the Director of State Courts remove information relating to a charge or case against him or her and the Director of State Courts must do so.

The bill also permits free access to the WCCA for the following individuals:

1. Justices, judges, magistrates, court commissioners, and other employees of state, federal, and municipal courts in Wisconsin who require access to court documents and records in the course of their employment.
2. Law enforcement officers as defined in s. 941.299 (1) (c), Stats., and other employees of state, federal, and municipal law enforcement agencies in Wisconsin who require access to court documents and records in the course of their employment.
3. Attorneys licensed to practice law in Wisconsin and their employees who require access to court documents and records in the course of their employment.

4. Members of the Wisconsin Newspapers Association, the Wisconsin Broadcasters Association, and any other Wisconsin media organization designated by the Director of State Courts.

An individual who does not fit into any of these categories may still have access to the information on the WCCA if he or she provides his or her full name and address and pays an annual fee of \$10 to the Director of State Courts. The Director of State Courts must maintain a record of the name and address of each person that has paid access to the WCCA, as well as the name and address for each person about whom the person with paid access has made a request.

Finally, the bill requires any person who requests information from the WCCA to notify the subject of the request that he or she sought information about the subject of the search if he or she denies that person employment, housing, or any public accommodation. An intentional failure to comply with this requirement is subject to a forfeiture of \$1,000.

ASSEMBLY AMENDMENT 1 TO 2009 ASSEMBLY BILL 340

Assembly Amendment 1 requires the Director of State Courts to maintain a database for individuals who must pay to receive access and to maintain a separate database for the individuals who qualify for free access.

The database that is accessible by the provision of name, address, and payment of \$10 may contain information about a case or criminal charge only after a court has entered a finding of guilty in a criminal matter, entered a finding of liability in a civil matter, entered an order of eviction, or issued a restraining order or an injunction against a person. If a finding or order related to a case or criminal charge is reopened, vacated, set aside, or overturned on appeal, the Director of State Courts must remove all information relating to that case that is contained in the database or databases. If a new finding, judgment, or order is subsequently entered on the case, the Director of State Courts may enter the information into the database or databases as authorized by the bill.

The amendment adds municipal agencies and licensed debt collectors to the category of individuals who may access the database for free. In addition, the amendment provides that a person may request that the Director of State Courts remove information relating to a case or charge made against him or her if the finding of guilt or liability was reopened, vacated, set aside, or overturned on appeal and the Director must do so if the case or charge does not meet the requirements of the amendment.

ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 2009 ASSEMBLY BILL 340

Similar to Assembly Amendment 1 to 2009 Assembly Bill 340, Assembly Substitute Amendment 1 directs the Director of State Courts to maintain a database that is accessible to judges, law enforcement, attorneys, media members, and debt collectors (limited) and a separate database that is available to those who do not fit these categories (public). The limited database may contain all public records of the circuit courts. The public database must be filtered to ensure that only records where the court has done the following are available:

1. Entered a finding of guilty in a criminal matter.

2. Entered a finding of liability in a civil matter.
3. Entered an order of eviction.
4. Issued a restraining order or an injunction against a person.

The substitute amendment also permits access to the public database without a fee.

A person may also make a written request to the Director of State Courts to remove all information regarding a case or charge made against the person and the Director of State Courts must do so if the courts have not entered a finding of guilty in a criminal matter, entered a finding of liability in a civil matter, entered an order of eviction, or issued a restraining order or an injunction against a person, or if a finding or order related to a case or criminal charge is reopened, vacated, set aside, or overturned on appeal.

2009 ASSEMBLY BILL 663

2009 Assembly Bill 663 is a new bill draft of Assembly Substitute Amendment 1 to 2009 Assembly Bill 340. They both contain the same provisions.

ASSEMBLY AMENDMENT 1 TO 2009 ASSEMBLY BILL 663

Assembly Amendment 1 clarifies that the Director of State Courts is only to remove the information from the public database following a person's written request for the removal of information relating to a case or a charge. Records in the limited database remain intact.

ASSEMBLY AMENDMENT 2 TO 2009 ASSEMBLY BILL 663

Assembly Amendment 2 adds the following individuals to the list of persons who may access the limited access database maintained under the bill:

1. Licensed real estate brokers or real estate salespeople.
2. Employees or agents of financial institutions.
3. Employees or agents of licensed mortgage bankers or mortgage brokers.
4. Employees or agents of sales finance companies.
5. Employees or agents of certain other licensed lenders.
6. Landlords.
7. Employees or agents of a company that provides services related to the preparation of a title report in connection with the purchase or sale of real property.

OUTCOME

None of the proposals described in this Memo were enacted.

2009 Assembly Bill 340 and its accompanying amendments were not reported out of the Assembly Committee on Criminal Justice.

Assembly Amendments 1 and 2 to 2009 Assembly Bill 663 were adopted and 2009 Assembly Bill 663 was reported as amended without the recommendation of the Assembly Committee on State Affairs and Homeland Security. The bill was not scheduled for a floor vote prior to the end of the final Assembly floor period.

DWS:wu
Enclosure



WISCONSIN
COURT SYSTEM



**Director of State Courts
Policy on Disclosure of Public Information Over the Internet**

Wisconsin Circuit Court Access

1. Definitions:

- a. The definitions contained in the Open Records Law, Wis. Stats. §§ 19.21-.39, shall apply to this policy.
- b. *Consolidated Court Automation Programs (CCAP)*. The case management system created by the Wisconsin Director of State Courts consisting of a database of case information from Wisconsin circuit courts. References in this policy to actions to be taken by CCAP refer to the CCAP Steering Committee or the Director of State Courts.
- c. *Circuit court*. All offices and branches of a circuit court, including but not limited to judges, the clerk of circuit court, the clerk's deputy, or deputies; probate court; juvenile court; or other specialized court or court office that uses CCAP as a case management system.
- d. *Open records*. Those records that are by law accessible to an individual making a records request in the circuit court.
- e. *Confidential records*. Those records that are not by law accessible to an individual making a records request in the circuit court.
- f. *Wisconsin Circuit Court Access (WCCA)*. A public-access Internet website containing open record information compiled by CCAP. References in this policy to actions to be taken by WCCA refer to the WCCA Oversight Committee.

2. Information on WCCA available to the general public:

- a. WCCA shall contain information from only those portions of the case files generated by the Consolidated Court Automation Programs (CCAP) that are open records and otherwise accessible by law to an individual.
- b. WCCA shall not contain information from closed records that would not otherwise be accessible by law to an individual because of specific statutory exceptions, such as juvenile court records, guardianship proceedings, and other such case types or records.
- c. CCAP shall not be required to make available on WCCA all information in a case file that may be public record, nor is CCAP required to generate new records or create new programs for extracting or compiling information contained on WCCA.
- d. The Open Records Law does not allow record custodians to demand either the identity of a requester or the use to which a requester intends to put the information gathered [Wis. Stats. § 19.35(1)(i)]. Accordingly, WCCA shall not require identification or an intended purpose before allowing public access to the WCCA website.
- e. WCCA shall not charge for accessing information through the website. However, WCCA may impose a service charge or assess user fees for requests for bulk distribution or for data in a specialized format.
- f. WCCA may limit the number of records searched on any single request.

- g. WCCA contains information as it exists at a specific point in time in the CCAP database. Because information in the CCAP database changes constantly, WCCA is not responsible for subsequent entries that update, modify, correct or delete data. WCCA is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained previously from WCCA is still accurate, current and complete.
- h. WCCA shall not contain:
 - a. the record of any criminal conviction expunged by the circuit court
(Note: When a court orders expunction of a record, the underlying CCAP database is modified to remove the record. When database updates are transferred to WCCA, the previous record will no longer appear. WCCA makes no reference to records that have been expunged (or otherwise altered). Requests for such records report only that no record has been found, in the same manner that WCCA would otherwise report "null" searches. WCCA is not responsible for the fact that requests made before the expunction will show the conviction, while requests made after the expunction will not show the conviction.)
 - b. the "day" from the date of birth field for non-criminal cases
 - c. the driver's license number in traffic cases
 - d. "additional text" fields for data entered before July 1, 2001, in all cases.
- i. WCCA contains only information from the CCAP database from those counties using all or part of the CCAP system. Because extraneous actions are not normally reflected in the CCAP database or the circuit court files, WCCA does not include information on them. Examples of extraneous actions are gubernatorial pardons, appellate decisions, and administrative agency determinations.

3. Correcting information on WCCA:

- a. Neither CCAP nor WCCA creates the data on WCCA. Circuit court employees in counties using CCAP create the data. Neither CCAP nor WCCA is responsible for any errors or omissions in the data found on WCCA.
- b. An individual who believes that information on WCCA is inaccurate may contact the office of the clerk of circuit court in the county in which the original case file is located to request correction.
- c. The clerk of circuit court in the county in which the original case file is located shall review requests for corrections and make any appropriate corrections so that records on WCCA reflect the original case records.
- d. Corrections shall be entered on CCAP and will be made available on WCCA in the same manner in which information is otherwise transmitted to WCCA.

4. Privacy for victims, witnesses and jurors:

- a. The data fields that contain the names of victims, witnesses and jurors are not available on WCCA.
- b. Various documents completed by court personnel using CCAP occasionally require the insertion of names of victims, witnesses or jurors. Examples include:
 - 1. court minutes that provide the names of witnesses called to testify or jurors who have been considered for jury duty;
 - 2. judgments of conviction that may provide "no-contact" provisions concerning victims;
 - 3. restitution orders that may contain the name of a victim;
 - 4. restraining orders/injunctions that may provide victim identities.

These data elements are normally inserted into "additional text" fields by circuit court personnel based on the individual county's policies and procedures on the amount, detail, or type of data inserted. CCAP and WCCA recommend that court personnel entering information concerning crime victims into court documents use initials and dates of birth rather than full names whenever doing so would not defeat the purpose of the court document.

- c. Because the "additional text" fields contain information critical to the understanding of many of the court record entries, denying access to those fields because of the occasional inclusion of the name of a victim, witness or juror would be contrary to the public interest in providing meaningful access to open court records.
5. Public access to electronically filed documents, scanned documents or imaged documents contained in circuit court files:
 - a. WCCA shall evaluate whether to provide access to documents that have been filed electronically, scanned or otherwise imaged by the circuit court so long as those documents would otherwise be fully accessible under this policy.
 - b. The electronic filing, scanning or imaging of some documents in a court file does not require that all other documents in that file be scanned or imaged.
 - c. The electronic filing, scanning or imaging of some documents in files in a case type does not require that all documents in all other files in the same case type must be scanned or imaged.
 6. Non-public access to closed records available on CCAP:
 - a. CCAP may maintain a non-public website that contains information that would otherwise be a closed record.
 - b. CCAP may authorize an appropriate law enforcement agency, prosecutor's office or other individual or agency electronic access to those closed records to which they would otherwise be entitled to access.
 - c. CCAP may require an appropriate security screening mechanism that limits the accessibility to closed records to those who are lawfully entitled to such access.
 - d. Authorization to access closed records for legitimate purposes is not authorization for redisclosure beyond that which is lawfully allowed. The individual or agency to which disclosure has been allowed is solely responsible to ensure that no further unauthorized redisclosure of closed records occurs.