



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF RECORDS ACCESS OF CIRCUIT COURT DOCUMENTS

Room 225 Northwest
State Capitol

September 15, 2010
9:30 a.m. – 1:00 p.m.

[The following is a summary of the September 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. Ed Brooks; and Public Members Colin Benedict, Mary Delaney, Keith Findley, Frederic Fleishauer, Robert Kinney, Bill Lueders, Mark Scarborough, Lahny Silva, Jeanine Smith, Adam Stephens, and Mike Tobin.

COMMITTEE MEMBERS EXCUSED: Rep. Donna Seidel, Vice-Chair; and Public Member Sheila Sullivan.

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

APPEARANCES: Sen. Fred A. Risser and Rep. Marlin D. Schneider, Co-Chairs, Joint Legislative Council; Laura D. Rose, Deputy Director, Legislative Council Staff; Jean Bousquet, Chief Information Officer, Consolidated Court Automation Programs; A. John Voelker, Director of State Courts; Carlo Esqueda, Clerk of Circuit Court, Dane County; Erik Guenther, Attorney, on behalf of the State Bar of Wisconsin; and Phil Collins, Deputy Director, Department of Justice (DOJ) Crime Information Bureau.

Opening Remarks

Senator Fred Risser and Representative Marlin Schneider, Co-Chairs, Joint Legislative Council, and Laura Rose, Deputy Director of the Legislative Council Staff, welcomed the members of the Special Committee. Senator Risser explained the history leading to the formation of the Special Committee, how the committee members were selected and the role of the committee. Representative Schneider further emphasized the importance of the committee and the selective nature of its membership. Ms. Rose introduced the Legislative Council Staff members assigned to assist the committee and explained the general rules and guidelines for serving on study committees. Ms. Rose also discussed the process for reimbursement of public member expenses related to committee business.

Introduction of Committee Members

Chair Roys welcomed the committee members and asked that members briefly introduce themselves.

Description of Materials Distributed

Legislative Council described the materials distributed to the committee.

Presentations by Invited Speakers

Jean Bousquet, Chief Information Officer, Consolidated Court Automation Programs

Ms. Bousquet provided an overview of the Circuit Court Automation Project (CCAP). She described the history of CCAP and current operation, including the types of information currently available to the general public via the CCAP website. She clarified that CCAP receives all records from the circuit courts and that CCAP does not alter any records or display any records of confidential cases. Ms. Bousquet's full testimony was distributed to the committee members and is available on the committee website.

A. John Voelker, Director of State Courts

Mr. Voelker discussed the current privacy policy of CCAP and the background related to that policy. He indicated that the Wisconsin Supreme Court is in the midst of considering a new policy on the expunction of dismissed cases from the CCAP database, and will hold an administrative conference regarding the issue on October 4, 2010. Mr. Voelker's full testimony was distributed to the committee and is available on the committee website.

Ms. Delaney asked if it was plausible for the courts to convert CCAP to a paid subscription system to limit the misuse of the data. Mr. Voelker replied that this has been considered, but that administrative cost and complexity were too great, so the courts decided against it.

Mr. Lueders asked if information regarding the number of unique daily users of the Wisconsin Circuit Court Access website (WCCA) was available. Ms. Bousquet replied that they do not track individual users, only total hits, on the website.

Ms. Silva asked whether CCAP was a privately run organization or a state entity. Ms. Bousquet replied that it is a state entity where the information is jointly owned by the state and local courts.

Mr. Findley asked about the relationship between CCAP and private information brokers. Mr. Voelker replied that a private subscription system, simple object access protocol or SOAP, was created after private company inquiries overburdened the individual courts with requests for information.

Mr. Findley then asked whether there was an opportunity to limit access to CCAP data through a subscription charge and privacy agreement. Mr. Voelker replied that this may be a possibility and that if the committee made such a recommendation, he would only ask that the subscription fees go to the courts for the cost of administration.

Mr. Scarborough urged the committee to be mindful of the Wisconsin Open Records Law that establishes a policy of openness and does not require a requestor to identify him or her and only permits charging of reasonable fee for duplication of records.

Ms. Silva asked how inaccurate information is corrected on CCAP. Mr. Voelker replied that the local clerks of courts make the changes which are ultimately uploaded to the WCCA website. He added that people often claim errors that are not actually errors and are angered when they cannot have the records changed.

Mr. Benedict asked how many errors are corrected on an annual basis. Mr. Voelker replied that they do not keep records on the number of corrections but that, to his knowledge, not many corrections are made.

Mr. Fleishauer asked how the courts respond to name errors. Ms. Bousquet replied that name errors are corrected promptly, but that there is little that can be done for people who may have the same name as another person in the database.

Ms. Delaney asked how the courts make corrections with the private information providers who receive the information through SOAP subscriptions. Mr. Voelker replied that periodic updates that include corrections are distributed through the subscription system.

Mr. Scarborough asked whether the records system was explained to defendants as they worked their way through the legal system. Mr. Voelker indicated that this was not done on a widespread basis, but that it may be done if a defendant requests the information.

Ms. Silva asked why the courts allow private information providers to access the records for sales purposes. Mr. Voelker replied that the private information providers were getting information through local requests and this overburdened the system. He also indicated that the subscription service gave the courts some control over the information and the updates offered.

Carlo Esqueda, Clerk of Circuit Court, Dane County

Mr. Esqueda indicated that he was presenting to the committee on behalf of the Wisconsin Clerks of Circuit Court Association (WCCA). He described the statutory authority for maintenance of circuit court records and types of records kept by the clerks. He clarified that WCCA does not contain any court information that is not available from each respective local clerk. He asserted that if the WCCA were to go dark, in-person traffic would overwhelm clerks statewide and the courts would lose

control over the data supplier to for-profit information providers. He stated that the problem is best solved through retention guidelines and expunction of records where authorized.

Mr. Tobin asked if the clerks ever get requests for information on how to prevent adverse decisions based on court records. Mr. Esqueda replied that there are rare occasions where requests are made, but the requestors are rarely satisfied with the results.

Erik Guenther, Attorney, on behalf of the State Bar Association of Wisconsin

Mr. Guenther, speaking on behalf of the State Bar Association of Wisconsin, told the committee about the risks associated with the easy access and misuse of court records, particularly in the case of individuals who have been wrongly accused. He described the Wisconsin Open Records Law and its relationship to court records, and advocated for the committee to consider promoting an expunction option for the courts. Mr. Guenther's full presentation was distributed to the committee and is available on the committee website.

Mr. Tobin indicated that he found Mr. Guenther's argument for expunging records in the case of innocence or dismissal compelling and asked whether Mr. Guenther believed such a policy should apply equally whether the defendant is found factually or legally innocent. Mr. Guenther briefly explained the differences in categories of innocence and indicated that it is up to the committee to decide which categories of innocence should qualify for expunction.

Mr. Lueders asked if there were any circumstances where it would make sense to maintain full court records in order to demonstrate that people have been unfairly charged or tried repeatedly. Mr. Guenther indicated that there are indeed potential circumstances where this could be an issue and that therefore it should be up to a judge to decide whether access to these records is merited.

Ms. Delaney asked if it was possible to search the CCAP database by prosecutor. Mr. Guenther responded that it is done by searching by county within a certain date range or by the prosecutor's State Bar Association number.

Mr. Findley asked how Mr. Guenther's recommendations differ from prior proposals to eliminate records of acquittals and dismissals. Mr. Guenther replied that he proposes that the records be sealed, not eliminated in their entirety.

Mr. Kinney indicated that it is the primary goal of the court system to rehabilitate criminals and CCAP interferes with this by creating a permanent record beyond an individual's rehabilitation. He referred to the Illinois expungement law which provides that an expungement is to be treated as if there was no conviction.

Mr. Lueders indicated that a prior study committee on expunction had put forth a proposal for the treatment of expunged cases.

Phil Collins, Deputy Director, DOJ Crime Information Bureau

Mr. Collins described the records that are available through the DOJ Crime Information Bureau and discussed their similarities and differences when compared to CCAP. Mr. Collins' full presentation was distributed to the committee and is available on the committee website.

Mr. Scarborough asked whether arrest records are removed from the DOJ Transaction Information for Management of Enforcement (TIME) records system if an individual is not charged with a violation. Mr. Collins replied that the removal of arrest events is permitted, upon request of the individual arrested, when no charge is ultimately filed.

Mr. Kinney asked if there were any federal or state laws that make restrictions on the elimination of felony arrest records when no charge is filed. Mr. Collins replied that there were not.

Mr. Fleishauer asked how court-ordered prohibitions on handgun ownership for domestic violence cases are handled. Mr. Collins indicated that such restrictions are kept on paper and not included in electronic format.

Discussion of Committee Assignment

Chair Roys asked the committee to briefly discuss the assignment and how members would like the committee to proceed. She indicated that she would like to hear from the Director of State Courts Office again following the October 4, 2010, meeting regarding the treatment of CCAP records.

Mr. Fleishauer indicated that he thought the committee should consider when a court record should be purged from public record.

Mr. Kinney asked the other members of the committee to consider the fact that individuals who move to Wisconsin from other states are not on the CCAP database unless they commit a violation in Wisconsin even if they have multiple convictions elsewhere. He asked whether this is fair to Wisconsin citizens.

Mr. Tobin recommended that the committee consider hearing from some human resources employees on how they use the WCCA.

Ms. Silva said that she has access to studies and data that demonstrate that criminal recidivism is linked to court record availability and will provide this information to the committee.

Mr. Lueders indicated that he thought the committee should consider hearing presentations from the following individuals who use WCCA: employers; property managers; and private detectives.

Mr. Fleishauer asked the committee to include municipal forfeitures and Governor's pardons when considering types of records for expunction.

Representative Brooks recommended that the committee hear from human resources professionals on their use of court data as well.

Mr. Benedict urged the committee to recognize that it is not a good idea to simply remove the court records from public view because private information providers will fill in where the state does not provide the information and court control of the data will be lost.

Chair Roys stated that the next committee meeting will likely occur in the last week of October.

Other Business

There was no other business brought before the committee.

Adjournment

The meeting was adjourned at 1:00 p.m.

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