

**COUNTY OF MILWAUKEE**  
**District Attorney's Office**  
*Inter-Office Communication*

DATE : October 26, 2011

TO : District Attorney John Chisholm

FROM : Deputy District Attorney Patrick Kenney

SUBJECT : 2011 Senate Bill 173 (a proposal relating to the disclosure of electronic juvenile court records between law enforcement agencies)

SB-173 was drafted to allow the disclosure of electronic juvenile court records to law enforcement. The intent of the legislation was to provide timely and reliable status information of youth involved in the juvenile court system to improve community safety and promote the well being of the juveniles.

As drafted, the proposal would involve permitting the Director of State Courts to use the Consolidated Court Automation Program (CCAP) to facilitate the transfer of "to be determined information" to a law enforcement agency for the purpose of investigating criminal or delinquent activity. The legislation provides that the Director of State Courts determines what type of information may be transferred under this provision.

The law enforcement agency receiving juvenile court information is required to maintain its confidentiality and any person who intentionally discloses information in violation of the confidentiality provision of the bill may be required to forfeit not more than \$5,000.

The legislation is patterned after 2009 Wisconsin Act 338, which was enacted to permit the electronic transfer of certain juvenile court information to the Department of Children and Families to enable county workers, generally performing child welfare services to the juvenile court, access to juvenile court information. As of October, 2011, this process has not been completed and the desired information has not been made available through CCAP. Although there is a benefit to the solution proposed in SB-173 as it would provide for statewide access to this information, state officials have been hampered in their ability to implement an identical law for the Department of Children and Families and it is unclear the extent to which the same difficulties might exist in transferring relevant data to law enforcement.

It might be more helpful to have legislation that would permit law enforcement access to information contained within the juvenile court record and allow any government agency to use their systems to facilitate the exchange of information relevant to the concerns of law enforcement.

Thank you.

PJK:ss

PROPOSED MODIFICATIONS TO 2007 AB 676

**Section 4.** 48.396 (2m) of the statutes is created to read:

48.396 (2m) (a) Notwithstanding sub. (2) (a), records of a court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by:

1. Any other court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, ~~a person representing the interests of the public under s. 48.09 or 938.09, a district attorney, a law enforcement agency, or the department,~~ a county department, or a licensed child welfare agency providing services to a court under s. 48.06, 48.07, 938.06, or 938.07.

2. A person representing the interests of the public under s. 48.09 or 938.09, a district attorney subject to sub. a., and a law enforcement agency subject to sub. b.

a. A district attorney not designated to represent the interests of the public under s. 48.09 shall have access restricted to court records in proceedings under chapter 938.

b. A law enforcement agency shall have access restricted to court records in proceedings under chapter 938.

(b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 938 or a municipal court exercising jurisdiction under s. 938.17 (2) that obtains information under par. (a) shall keep the information confidential as required

under sub. (2) (a) and s. 938.396 (2) and may use and further disclose the information only for the purpose of conducting or preparing for a proceeding in that court or as permitted under sub. (2) (a) or s. 938.396 (2). A court of criminal jurisdiction that obtains information under par. (a) may use and further disclose the information only for the purposes of conducting or preparing for a proceeding in that court.

2. A person representing the interests of the public under s. 48.09 or 938.09 or a district attorney that obtains information under par. (a) shall keep the information confidential and may use and further disclose the information only as necessary for the person or district attorney to perform his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction.

3. A law enforcement agency that obtains information under par. (a) shall keep the information confidential as required under sub. (1) and s. 938.396 (1) (a) and may use and further disclose the information only for the purpose of investigating any alleged criminal activity or any activity that may result in a court exercising jurisdiction under this chapter or ch. 938 or as permitted under sub. (1) or s. 938.396 (1) (a).

4. The department, a county department, or a licensed child welfare agency that obtains information under par. (a) shall keep the information confidential as required under ss. 48.78 and 938.78 and may use and further disclose the



information only for the purpose of providing services to a court under s. 48.06, 48.07, 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.\

(c) Any person who intentionally discloses information in violation of par. (b) may be required to forfeit not more than \$5,000.

**Section 10.** 938.396 (2m) of the statutes is created to read:

938.396 (2m) (a) CONFIDENTIALITY OF COURT RECORDS; OTHER EXCEPTIONS. ~~(a)~~ Notwithstanding sub. (2), records of a court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by:

1. Any other court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, ~~a person representing the interests of the public under s. 48.09 or 938.09, a district attorney, a law enforcement agency,~~ or the department of health and family services, a county department, or a licensed child welfare agency providing services to a court under s. 48.06, 48.07, 938.06, or 938.07.

2. A person representing the interests of the public under s. 48.09 or 938.09, a district attorney subject to sub. a., and a law enforcement agency subject to sub. b.

a. A district attorney not designated to represent the interests of the public under s. 48.09 shall have access restricted to court records in proceedings under chapter 938.

b. A law enforcement agency shall have access restricted to court records in proceedings under chapter 938.

(b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) that obtains information under par. (a) shall keep the information confidential as required under sub. (2) and s. 48.396 (2) (a) and may use and further disclose the information only for the purpose of conducting or preparing for a proceeding in that court or as permitted under sub. (2) or s. 48.396 (2) (a). A court of criminal jurisdiction that obtains information under par. (a) may use and further disclose the information only for the purposes of conducting or preparing for a proceeding in that court.

2. A person representing the interests of the public under s. 48.09 or 938.09 or a district attorney that obtains information under par. (a) shall keep the information confidential and may use and further disclose the information only as necessary for the person or district attorney to perform his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction.

3. A law enforcement agency that obtains information under par. (a) shall keep the information confidential as required under sub. (1) (a) and s. 48.396 (1) and may use and further disclose the information only for the purpose of investigating any alleged criminal activity or any activity that may result in a court

exercising jurisdiction under this chapter or ch. 48 or as permitted under sub. (1) (a) or s. 48.396 (1).

4. The department of health and family services, a county department, or a licensed child welfare agency that obtains information under par. (a) shall keep the information confidential as required under ss. 47.78 and 938.78 and may use and further disclose the information only for the purpose of providing services to a court under s. 48.06, 48.07, 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.

(c) Any person who intentionally discloses information in violation of par. (b) may be required to forfeit not more than \$5,000.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3034/1dn  
GMM:jld:rs

October 20, 2011

2007 AB-676 was vetoed in its entirety. Subsequently, 2009 Wisconsin Act 338 was enacted to permit the juvenile court to transfer its electronic records to DCF, which then uses its statewide automated child welfare information system (SACWIS) to transfer the information in those records to the counties for purposes of providing child welfare services. Accordingly, this draft embodies the substance of 2007 AB-676, as affected by the changes that you submitted, but structures that substance according to the template created by 2009 Wisconsin Act 338.

Specifically, the draft amends s. 48.396 (3) to permit electronic records of ch. 48 proceedings to be transferred to other juvenile courts, municipal courts, and the prosecutors in proceedings in those courts. The draft then creates a parallel provision in s. 938.396 to permit electronic records of ch. 938 proceedings to be transferred to other juvenile courts, municipal courts, and the prosecutors in proceedings in those courts, as with ch. 48 records, and in addition, permits ch. 938 records to be transferred to criminal courts, district attorneys (who are the prosecutors in criminal proceedings), and law enforcement agencies.

If you have any questions about this draft, please do not hesitate to contact me at the phone number or e-mail address captioned below.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)