

☛ **13hr_AC-Co_ab0685_pt01**



☛ **02/06/2014 Public Hearing**

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2013-14

(Session)

Assembly

(Assembly, Senate, or Joint)

**Committee on ...
Corrections
(AC-Co)**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (December/2014)

Assembly

Record of Committee Proceedings

Committee on Corrections

Assembly Bill 685

Relating to: restricting information available on the consolidated court automated Internet site.

By Representatives Czaja, Kapenga, Goyke, Hebl, Kessler, Knodl, Krug, Kulp, T. Larson, Murtha, Nygren, Pridemore, Ripp, Spiros, Swearingen, Young and Wright; cosponsored by Senators Grothman, L. Taylor, Schultz, Risser and Harris.

January 29, 2014 Referred to Committee on Corrections

February 06, 2014 **Public Hearing Held**

Present: (9) Representative Bies; Representatives Schraa, Brooks, Krug, Thiesfeldt, Kleefisch, Doyle, Pasch and Zamarripa.
Absent: (0) None.
Excused: (0) None.

Appearances For

- Rep. Mary Czaja - 83rd Assembly District
- Sen. Glenn Grothman - 20th Senate District
- Sheila Sullivan - Legal Action of Wisconsin
- James Gryczewski

Appearances Against

- John Voelker - Director of State Courts
- Ross Kinzler - Wisconsin Housing Alliance
- Carlo Esqueda - Dane County Clerk of Courts
- Sheila Reiff - Clerk of Circuit Courts
- Bill Lueders - WI Freedom of Information Council

Appearances for Information Only

- None.

Registrations For

- Rep. Chris Kapenga - 99th Assembly District
- Linda Gryczewski
- Jennifer Mikulic

Registrations Against

- Beverly Speir - WI Democracy Campaign

- Gary Goyke - Wisconsin Rental Housing Legislative Council
- David Callender - Wisconsin Counties Association
- Beth Bennett - Wisconsin Newspapers Association
- Wisconsin Broadcasters Association
- Nancy Rottier - Leg. Committee of Judicial Conference and Director of State Courts
- Rep. Steve Nass - 33rd Assembly District
- J.B. Van Hollen - Wisconsin Attorney General

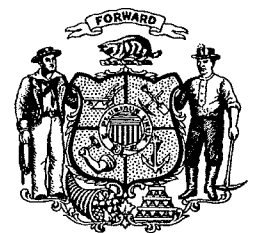
Registrations for Information Only

- None.

April 08, 2014

Failed to pass pursuant to Senate Joint Resolution 1

Cory Bruce
Committee Clerk





February 5, 2014

TO: Members of Assembly Committee on Corrections

FROM: Ross Kinzler, Executive Director

RE: AB 685/SB 526

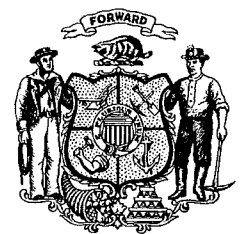
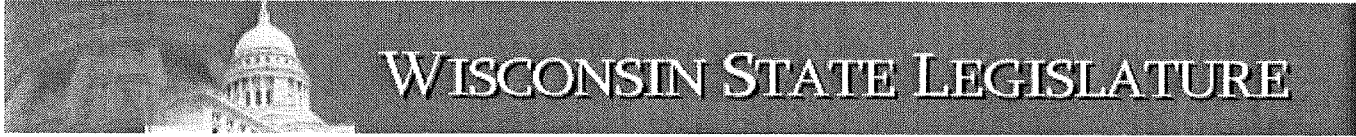
The Wisconsin Housing Alliance represents a wide range of companies in the manufactured and modular housing industries. Regarding CCAP, the Alliance has a simple philosophy – Protect the Truth. CCAP is a publicly available version of circuit court records. It is not a “lite” version, but AB 685 will have that effect because the State Director is ordered to add simple notations to CCAP version of records. No links subsequent court actions are required that would clarify why a charge was overturned or dismissed. Thus the context of the records is lost.

CCAP has notices for employers on the use of CCAP records in employment decisions. However, there is no requirement in Wisconsin law that landlords (Section 106.50), creditors (Section 138.20) or ordinary citizens must ignore criminal activity when making decisions whether to engage with individuals with arrest or conviction records.

Changes to CCAP in the past to limit information on CCAP have made the situation worse for those with criminal records. Limiting the use of birth dates has created confusion over which John Smith or Jane Jones is listed. A simple google search often finds arrest records without consulting CCAP. An attempt to narrow the question over which person was arrested is now more difficult using CCAP. Rather than clearing names, confusion is expanded.

Finally, at some point CCAP users will turn to paid background services to do a review of actual court records which will remain unchanged by AB 685. We urge the committee to support the truth – if an arrest occurred list it. If a conviction occurred - list it. If an appeal is successful - list it.

In Wisconsin’s small towns everyone knows about arrests but as time goes on, the end result being a conviction or dismissal is not always so clear. CCAP has long served as the arbiter of those debates often to the advantage of the person arrested.



**Glenn
Grothman**
STATE SENATOR
20TH SENATE DISTRICT

Office:
Post Office Box 7882 • Madison, Wisconsin 53707-7882
(608) 266-7513 • Toll-Free: (800) 662-1227
Sen.Grothman@legis.state.wi.us
www.legis.state.wi.us/senate/sen20/sen20.html

Home:
111 South 6th Avenue
West Bend, Wisconsin 53095
(262) 338-8061

February 6, 2014

To: Members of the Assembly Committee on Corrections
From: Senator Glenn Grothman
Re: Assembly Bill 685

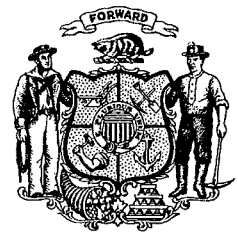
I have been contacted by many constituents and other individuals about the negative impact that the Consolidate Court Automation Program (CCAP) and the Wisconsin Circuit Court Access (WCCA) site has had on their lives or lives of their loved ones when they have not been found guilty for the accused charges.

Under current law, when a case did not result in a conviction the site includes a statement that says that the charges were not proven and have no legal effect, and that the defendant in that case is presumed innocent. The charges though still are publicly available for all to see.

This legislation would require a case or charge involving a civil forfeiture or misdemeanor from WCCA within ninety days after being notified the case or charge has been dismissed, overturned on appeal and dismissed or the defendant has been found not guilty of the charge. It would also remove a case or charge involving a felony from WCCA within 120 days after being notified of any of the preceding situations.

There is a concern by many citizens that in these situations their personal privacy is being invaded for charges that have been dismissed or not substantiated. This bill strikes the right balance between disclosure and personal privacy.

Please join me in supporting this legislation that will help individuals and their families move past any charges that were incorrectly brought against these individuals.



Legal Action of Wisconsin
Testimony on 2013 Assembly Bill 685
February 6, 2013

My name is Sheila Sullivan and I am an attorney with Legal Action of Wisconsin, Inc. (LAW). I am the managing attorney for LAW's Road to Opportunity Program. I want to thank the Committee for the opportunity to testify today in support of Assembly Bill 685.

LAW is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. As an attorney with LAW's Road to Opportunity Program, one of my jobs is to help remove or lower legal barriers to employment for individuals who have a criminal background or who are at high risk of entering the criminal justice system. Steady consistent employment is critical to reducing recidivism and discouraging future criminal behavior. In combination with education, regular employment can both decrease crime and increase the economic health of even the poorest communities in Wisconsin.

One barrier Wisconsin residents face in obtaining employment and accessing education and job training is the misuse of information contained on CCAP. This bill would go a long way to preventing the most common forms of information misuse thereby decreasing the likelihood of unlawful discrimination. This bill will also, and this makes sense both as a matter of public policy and simple fairness, will bring CCAP practices in line with the practices of the CIB. *See* Wis. Stat. 165.84(1) ("Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request."). Right now anyone who has an arrest that does not lead to a conviction can, as long as there is no conviction in that arrest cycle, "expunge" the record of that arrest from his or her CIB by simply sending in a simple form verifying identity and disposition of the case.

This bill would achieve a parallel result with a similarly simple and inexpensive method. In both cases the underlying public records, the police arrest records and the court records, remain the same: true and untouched and available through ordinary statutory procedures for requesting open or court records.

In human terms, the impact of passing this bill would be profound.

It would affect a young man whose teenaged conviction for rape was eventually overturned by Wisconsin Innocence Project. That young man has tried to turn 10 years of pain and loss into something positive, completing college and getting a scholarship to law school. But he lives everyday with the knowledge that anyone who CCAPS him will see the dismissed charges against him and speculate about how he "got out" of his conviction. His CCAP entry, lengthy, complex, and difficult to unravel, keeps his story of loss and pain, shame, and fear alive.

Passage of this bill would affect another young man who was charged in his teens with involvement in a murder. He was offered a variety of plea bargain options, but always insisted on

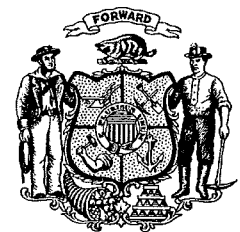
fighting the charges against him. With full knowledge of the risks he was taking, he insisted on going to trial and, after a two year struggle to clear his name, was acquitted by a jury. What he found after that struggle was his name was not cleared. He recently contacted LAW to see if we could represent him because he is desperate to find work and believed he is being denied employment because of the seriousness of the charge and because the case actually went to trial.

Those two examples are dramatic versions of stories LAW attorneys and circuit court judges hear over and over again. We regularly receive calls from individuals denied employment because a potential employer has “read” into a dismissed retail theft or theft case a narrative about “getting a break.” I have spoken repeatedly to people who have been denied access another to housing or training programs based on the CCAP records of several dismissed forfeitures: those dismissed cases, they were told, indicated “a pattern.”

These are the kinds of individuals who come to LAW for help because CCAP’s continued publication of dismissed cases has created a legal barrier to economic stability. Sometimes we are been able to craft legal solutions by convincing judges to exercise their discretion in certain ways. But that is a long and sometimes resource intensive process. It makes judges uncomfortable. Many see the injustice, but want to be clear about their authority. Others see this as a problem created by CCAP that should be fixed at the CCAP level.

This bill would help solve the kinds of problems I have described in my examples. It would also eliminate demands, and ever increasing demands, on scarce judicial resources. It would align the policies of the two state-sponsored providers of criminal and court record information in the state—CAP and the CIB—and it would leave the publics’ statutory rights to access public and court records intact. In short, it is a good bill.

There are those who will say that people who want information about dismissed cases can always find that information—and that is true. But individuals who really want to know about arrest history can still obtain that information through a data vendor or a public records search if this bill passes. The only thing that will change is that those who want the information will have to ask for it explicitly, creating a trail or record of that request. If they choose to make unlawful use of that information, discrimination will be easier to prove. If they seek information about arrest records for lawful purposes, a clear record will also make that easier to prove.





Shirley S. Abrahamson
Chief Justice

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

16 East State Capitol
Telephone 608-266-6828
Fax 608-267-0980

A. John Voelker
Director of State Courts

Testimony
Of
John Voelker
Director of State Courts

In Opposition to

2013 Assembly Bill 685

Assembly Committee on Corrections
Rep. Garey Bies, Chair
February 6, 2014

Thank you, Chairperson Bies and members of the Committee. I am John Voelker, the Director of State Courts. On behalf of the Legislative Committee of the Judicial Conference and my office, I want to express our opposition to Assembly Bill 685.

I want to first emphasize that our opposition is not to the goal of the legislation but rather to the means the bill uses to achieve its goal. I am encouraged that bills such as AB 685 are being considered to address the issue of dismissed and not guilty cases. This is an issue my office has actively been working on since June 2005 when I convened the WCCA Oversight Committee to advise me on whether and how to modify the policy that addresses electronic access to circuit court records. I have also testified before the Legislative Council's Special Committee on Review of Access to Circuit Court Records, suggesting the expungement statute be amended to include dismissed and not guilty cases. Unfortunately, the legislation developed by that committee was not passed.

There are four areas of concern we have identified where the approach used in AB 685 could be better addressed by amending the expungement statute.

First, AB 685 would have the courts create, in effect, two sets of books for these cases. One would be the paper record maintained by the Clerks of Circuit Court, who are the official record custodians for the court records. That record would continue to be available to anyone who wishes to view it. But the electronic information available on the court's website would no longer be an electronic "mirror image" of the records maintained by the clerks. Under our proposed amendment to the expungement statute, we continue to have one set of books that remain the same whether viewed in paper form or electronic form.

Second, AB 685 only provides partial relief to the people it seeks to help because it only deals with the information displayed on the Internet. There is no action taken that impacts the entire court record. We believe people might be misled by the bill into thinking their entire case is being eliminated when that is not true. On the other hand, if you use the expungement statute and a case is expunged, there will be *no* court record available to the public, either at the clerk's office or on the Internet.

Third, AB 685 would be more expensive to implement than amending the expungement statute. It would require CCAP programmers and analysts to rework the CCAP database in order to "mask" the electronic record of these cases. This is concerning to us because AB 685 provides no resources for the programmers and support staff necessary to implement it. We are just completing a similar project within CCAP to implement Act 270 which required \$90,000 to initially develop. On the other hand, because the expungement process already exists for certain convictions and is available in our case management system, it would be very simple and inexpensive to allow other types of cases to use that process. We would also amend existing standard petition and order forms to give individuals easy access to the expungement process.

And fourth, AB 685 raises concerns that it may be contrary to the constitutional separation of the branches of government. If adopted, AB 685 would start the Legislature down the path of mandating how the judicial branch, a co-equal branch of government, fulfills its constitutional responsibilities. Specifically, it would mandate how the judicial branch should maintain, display and provide access to the court record. Amending the expungement statute clearly falls under the powers of the Legislature and would not raise this issue.

Recordkeeping is a critical – and we believe core – function of the judicial branch. It is a function we take seriously. We understand the importance of tracking the records of the nearly one million cases that are filed in the circuit courts every year. In our effort to manage the records, we have developed and continue to update key elements, such as Supreme Court Rule Chapter 72 on retention of court records, a Model Recordkeeping Procedures Manual, and our statewide electronic case management system, CCAP.

As an independent and co-equal branch of government, the court system must determine its own course of conduct by which it fulfills its constitutional and statutory responsibilities. AB 685 infringes on the operation of the court system.

The Consolidated Court Automation Programs, or CCAP, is the court system's case management system. The Wisconsin Circuit Court Access (WCCA) website is only one aspect of the CCAP system. The WCCA website was initiated in 1999 partly to reduce the workload demand on clerks of circuit court who were often contacted by litigants, lawyers, representatives of the media, and the public on the status of circuit court cases. We think AB 685 would return some of that work to the staff of the clerk's office.

I have talked extensively on how amending the expungement statute to address dismissed and not guilty cases is a better approach to this issue. To that end, during the last year, the Legislative Committee of the Judicial Conference and my office have been working on a draft of changes to the expungement statute. The draft addresses cases that result in dismissal or in not guilty verdicts. It also gives defendants and judges greater flexibility by eliminating the current

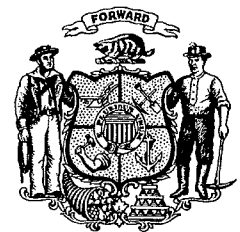
requirement that expungement be decided "at the time of sentencing." This provision has led to appellate litigation, including one case decided by the Court of Appeals earlier this week and a case to be heard by the Supreme Court next week. In addition, the draft seeks to clarify and simplify the procedures to be followed in expungement requests. We have been working with Sen. Jerry Petrowski and others to simplify and further refine this legislative draft.

I have attached this draft, LRB 0003/4 to my testimony. I think you will find this draft addresses the four areas of concern I mentioned earlier and provides a better means to reach the important goals the authors of AB 685 seek to achieve.

For these policy and administrative reasons, I urge you to reject AB 685. If you have questions, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you.

AJV:NMR
Attachment

This Draft
was not "introduced"
so it was not
included here.





MARY CZAJA

STATE REPRESENTATIVE • 35th ASSEMBLY DISTRICT

(608) 266-7694
Toll-Free: (888) 534-0035
Rep.Czaja@legis.wi.gov

P.O. Box 8952
Madison, WI 53708-8952

Assembly Bill 685 – Removal of certain records from CCAP Assembly Committee on Corrections February 6th, 2014

Thank you, Chairman Bies and members of the Corrections Committee for holding a public hearing on Assembly Bill 685 today. This legislation strikes the delicate balance between protecting personal privacy and the public's interest in court records; and at its core, boils down to upholding the principle of "innocent until proven guilty."

We had this bill drafted in response to numerous contacts from constituents in my own Assembly district, as well as folks from all areas of Wisconsin. Each person had unique circumstances and a different story to tell about their case experience with our courts system, but one element was the same – **they have all been impacted by dismissed or not-guilty court records that remain** on our Consolidated Court Automation Program (CCAP).

Under AB 685, the director of state courts is required to remove a case or charge involving a civil forfeiture or misdemeanor within 90 days after being **notified of one of three instances:**

- The case or charge has been dismissed.
- The defendant has been found not guilty of the charge.
- The case or charge has been overturned on appeal.

The same would apply to felony cases or charges, under a 120 day timeline. CCAP and access to court records are by no means a new issue to the state Legislature. In fact, this bill is similar to 2007 AB 754 which was introduced late in that session with wide bipartisan support.

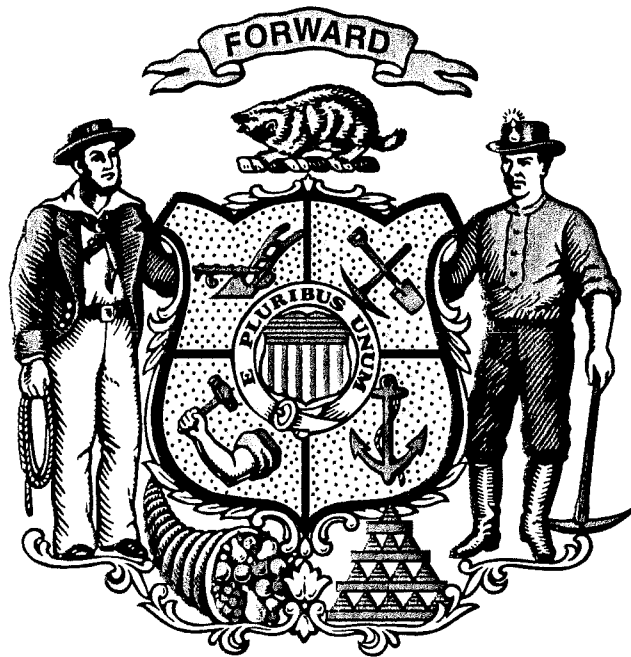
(over)

There is one key difference under our current bill; charges that have been read-in at sentencing, which often happens in plea bargains, would remain on CCAP.

As we worked to draft AB 685, I spoke with several Clerks of Circuit Court, both in my home area of Lincoln County along with other counties. A concern they expressed to me is that removal of certain records from CCAP would create “two separate court systems”, because clerks would retain the original case records. As authors of the bill, we needed to weigh two factors: The harm potentially caused to people that have dismissed or not guilty charges listed on their online CCAP record vs. the minimal extra effort for interested parties to obtain that information from their county courthouse or pay a \$5 mailing fee. Ultimately, the **potential discrimination and stereotyping that affects these individuals’ ability to function in society** caused us to draft AB 685.

I also understand some have advocated for expunction of these types of charges or cases. We are willing to have those conversations, but I will say personally I still believe the fundamental principle of our judicial system applies – innocent until proven guilty, whereas the expunction process would place the burden of proof on the individual/defendant.

In closing, I will ask you to consider for a moment the powers of an online society. The ascent of technology has been so rapid in the last decade, that we as a Legislature are **working through issues with personal privacy that couldn’t possibly have been foreseen**. CCAP is an excellent system, and I know our dedicated court personnel put a great deal of time and effort into the creation and maintenance of the records system. In today’s computer world, information is just a click away and society has the mentality to “judge now, ask questions later”. AB 685 will help to ensure the powers of the Internet are not unfairly wielded against an individual.



Wisconsin State Justice Committee hearing, Feb. 6, 2014 2013 Wisconsin State Assembly Bill 685

Outline:

1. Introduction
2. Who Am I?
3. The Accusation
4. The Outcome
5. Impact of CCAP (Wisconsin court access)
6. Continued Reform

1. Introduction

I, James Gryczewski, am speaking today not only on behalf of my wife and children but also for the dozens ... no, hundreds ... rather, thousands of people who find themselves in my position.

Ladies, as you listen to me today, think of me as your brother ... your uncle ... or another loved one.

Gentlemen, as you listen, think of me as YOU!

2. Who Am I?

I am a highly educated, responsible, self-employed man who has been happily married to the lady of my dreams for close to 25 years.

I am the treasurer of our church, have been a volunteer teacher of reading classes to grammar school students, and have transported men from the Milwaukee Rescue Mission to our Sunday church service.

In my 55 years on this Earth, my one encounter with the law produced a speeding ticket.

3. The Accusation

On Wednesday, Feb. 8, 2012, at approximately 5 p.m. (two years ago this Saturday), my life changed forever!

I was arrested at my office, handcuffed, and escorted into a waiting squad car. All this took place in full view of my employees and clients.

I was charged with sexual assault of a minor—a family member—and was facing 126 years in prison ... essentially, the rest of my life.

The minor had recently received some devastating news, we were to later learn, and it became quite apparent she was screaming out for help. She looked at me as a convenient sacrifice.

On the night of my arrest, as I was driven from my office to the county jail, some of the emotions racing through my body were humiliation, embarrassment, confusion, and fear.

After the booking, as I sat in jail, the presence of God, love for my wife and family, and knowledge of my total innocence were the only things providing me comfort and keeping me whole.

At my preliminary hearing, the assistant district attorney requested \$150,000 in bail due to the extreme charges and her distorted view of my potential flight risk. The judge reviewed my background and promptly reduced the bail to \$10,000.

On Friday, Feb. 10, I was released. Part one of our nightmare was over.

4. The Outcome

After my arrest, our system of jurisprudence swung into action.

We hired an attorney and a private investigator to interview individuals and investigate all claims. This is what they compiled [hold up book].

In less than five months, our team presented evidence, claims, and character witnesses to the district attorney's office.

After reviewing this book, along with statements from the two trained interrogators expressing disbelief in the minor's story, the district attorney's office dismissed all charges on July 31, 2012, less than six months after my arrest.

To put this result in perspective, most of the time when someone is facing the charges I was facing—85 percent of the time, to be exact—the charges would result, at a minimum, in a trial.

So, for my charges to be dismissed so quickly demonstrates how overwhelmingly false the accusations were.

Part two of our nightmare was over.

5. Impact of CCAP (Wisconsin court access)

The public disclosure of my "dismissed" charges has affected me in the following ways:

- a) Loss of a potential business acquisition due to a client reading about the allegations.
- b) Having a record on file with the FBI.
- c) Loss of a business opportunity with a tutoring company.
- d) Sufficient client loss that ultimately resulted in the sale of our business.
- e) Inability to find a securities firm willing to allow me to join the firm.

6. Continued Reform

The need to reform is now!

My wife, family, and I will continue the fight to level the playing field for the falsely accused. Moreover, today, together, we can take a major step to help the many individuals in my position to start healing and reclaiming our lives. This bill would help the falsely accused whose charges are dismissed or who are otherwise exonerated to regain their confidentiality and remove the stain on their reputation.

Until this bill is passed, our nightmare will continue.

I implore you ...

I beg you ...

I pray ...

... that you will give serious consideration to passing Bill 685.

Thank you!