



1997 SENATE BILL 140

March 26, 1997 - Introduced by Senators BUETTNER, DRZEWIECKI, COWLES, ELLIS, FITZGERALD, HUELSMAN, WELCH, FARROW and ZIEN, cosponsored by Representatives GOETSCH, OTTE, DOBYNS, GARD, ZIEGELBAUER, UNDERHEIM, FREESE, GUNDERSON, M. LEHMAN, SERATTI, WASSERMAN, LADWIG, DUFF, F. LASEE, BRANDEMUEHL, OLSEN, SKINDRUD, KREIBICH, PLALE and GROTHMAN. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

- 1 **AN ACT** *to renumber and amend* 19.32 (1c); and *to create* 19.32 (1b) and 19.32
2 (1c) (b) of the statutes; **relating to:** access to public records.

Analysis by the Legislative Reference Bureau

Under current law, any person generally has the right to inspect and copy a public record, unless access to the record is specifically limited or prohibited by law or unless the custodian of the record demonstrates that the public interest in nondisclosure outweighs the strong public interest in providing access. However, a person who is incarcerated in a penal facility or placed on probation and given confinement as a condition of probation does not have the same right as other persons have to inspect and copy most public records, unless the record contains specific references either to the person or to the person's minor children with whom he or she has not been denied physical placement (similar to visitation rights) and the record is otherwise accessible to the person.

In addition, if the requester of a public record other than an incarcerated person prevails in whole or in substantial part in a lawsuit to require production of a public record, the court must award damages of at least \$100 to the requester, in addition to reasonable attorney fees and other actual costs. An incarcerated person may not be awarded the statutory minimum of \$100 in damages for prevailing in a lawsuit to require production of a public record, though a court may award damages to an incarcerated person. Current law also requires an incarcerated person to commence a lawsuit to require production of a public record within 90 days of being denied access to the record; for other persons, there is a 3-year time limit for commencing a lawsuit against certain county and town officials and no time limit for commencing a lawsuit against other public record custodians.

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This bill provides that certain persons who are committed to the department of health and family services (DHFS) for care and treatment are subject to the same limitations on the access to public records that are placed on incarcerated persons under current law. The bill covers a person committed to DHFS because one of the following applies: 1) he or she has been charged with a crime but is incompetent to stand trial; 2) he or she has been found not guilty of a crime by reason of mental disease or defect; 3) he or she has been found to be a sexually violent person; or 4) he or she has been convicted of a sex crime and found to be in need of specialized treatment. A person covered by the bill is subject to the restrictions on access to public records only during the period that he or she is in a placement in certain inpatient treatment facilities, including Mendota and Winnebago Mental Health Institutes and the Wisconsin Resource Center.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 19.32 (1b) of the statutes is created to read:

2 19.32 (1b) "Forensic inpatient treatment facility" includes all of the following:

3 (a) A state treatment facility, as defined in s. 51.01 (15).

4 (b) The Wisconsin resource center established under s. 46.056.

5 (c) A secure mental health unit or facility established under s. 980.065 (2).

6 (d) The Milwaukee county mental health complex established under s. 51.08.

7 **SECTION 2.** 19.32 (1c) of the statutes is renumbered 19.32 (1c) (intro.) and
8 amended to read:

9 19.32 (1c) (intro.) "Incarcerated person" means a any of the following:

10 (a) A person who is incarcerated in a penal facility or who is placed on probation
11 and given confinement under s. 973.09 (4) as a condition of placement, during the
12 period of confinement for which the person has been sentenced.

13 **SECTION 3.** 19.32 (1c) (b) of the statutes is created to read:

14 19.32 (1c) (b) A person who is committed to the department of health and
15 family services under ch. 971, 975 or 980 and who is placed in a forensic inpatient

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1 treatment facility, during the period that the person's placement in the forensic
2 inpatient treatment facility continues.

3 **SECTION 4. Initial applicability.**

4 (1) This act first applies to records access requests made on the effective date
5 of this subsection.

6 (END)