## SENATE BILL 573 (LRB -4284)

An Act to create 19.35 (7) of the statutes; relating to: public access to certain shared law enforcement records.

**2010**

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| 03-02. | S. | Introduced by Senators **Lehman**, **Hansen**, **Olsen** and **Taylor**; cosponsored by Representatives **Bies**, **Hraychuck**, **Brooks**, **Clark**, **Kestell**, **Mursau**, **Nerison**, **A. Ott**, **Petrowski**, **Schneider**, **Townsend**, **Zigmunt** and **Turner**. | |
| 03-02. | S. | Read first time and referred to committee on Rural Issues, Biofuels, and Information Technology | 604 |
| 03-04. | S. | Withdrawn from committee on Rural Issues, Biofuels, and Information Technology and rereferred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, pursuant to Senate Rule 46 (2)(c) | 614 |
| 03-08. | S. | Representative A. Williams added as a cosponsor | 621 |
| 03-17. | S. | Public hearing held. | |
| 03-23. | S. | Executive action taken. | |
| 03-24. | S. | Report passage recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0 | 654 |
| 03-24. | S. | Available for scheduling. | |
| 04-08. | S. | Placed on calendar 4-13-2010 pursuant to Senate Rule 18(1) | 681 |
| 04-13. | S. | Read a second time | 705 |
| 04-13. | S. | Ordered to a third reading | 705 |
| 04-13. | S. | Rules suspended | 705 |
| 04-13. | S. | Read a third time and **passed** | 705 |
| 04-13. | S. | Ordered immediately messaged | 708 |
| 04-15. | A. | Received from Senate | 837 |
| 04-16. | A. | Read first time and referred to committee on Rules | 880 |
| 04-20. | A. | Placed on calendar 4-22-2010 by committee on Rules. | |
| 04-22. | A. | Read a second time. | |
| 04-22. | A. | Ordered to a third reading. | |
| 04-22. | A. | Rules suspended. | |
| 04-22. | A. | Read a third time and **concurred in**. | |
| 04-22. | A. | Ordered immediately messaged. | |
| 04-23. | S. | Received from Assembly concurred in. | |

9MB

# 2009
# ENROLLED BILL

09en S B- 573

**ADOPTED DOCUMENTS:**

☒ Orig ☐ Engr ___ SubAmdt ___ 09 -4284 /1

**Amendments to above (if none, write "NONE"):** None

**Corrections - show date (if none, write "NONE"):** None

**Topic** Rel

4.29.10
**Date**

**Enrolling Drafter**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–4284/1
JTK&RLR:nwn:rs

# 2009 SENATE BILL 573

March 2, 2010 – Introduced by Senators LEHMAN, HANSEN, OLSEN and TAYLOR, cosponsored by Representatives BIES, HRAYCHUCK, BROOKS, CLARK, KESTELL, MURSAU, NERISON, A. OTT, PETROWSKI, SCHNEIDER, TOWNSEND, ZIGMUNT and TURNER. Referred to Committee on Rural Issues, Biofuels, and Information Technology.

1 AN ACT *to create* 19.35 (7) of the statutes; **relating to:** public access to certain
2 shared law enforcement records.

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### *Analysis by the Legislative Reference Bureau*

Currently, state and local governmental records are available for public inspection and copying except as specifically authorized or required by law, and except that if the custodian of a record demonstrates that the public interest in withholding access to information contained in a record outweighs the public interest in providing access to that information, access may be denied. Applying this test, the courts have permitted access to some law enforcement investigative records to be denied. In addition, under current law, law enforcement investigative records are exempted from the right of access whenever federal law or regulations so require or as a condition to receipt of aids by this state so require.

This bill provides that if a local governmental unit whose primary function is information storage, information technology processing, or other information technology usage (information technology unit) receives a request for access to information in a law enforcement record, the information technology unit must deny any portion of the request that relates to information in a law enforcement record. Under the bill, for purposes of access to public records, the information technology unit is not considered to be the custodian of the law enforcement record. For purposes of such access, the custodian is the local governmental unit for which the record is stored, processed, or otherwise used. The bill defines a law enforcement record as any record that is created or received by a law enforcement agency relating to an investigation conducted by a law enforcement agency or a request for a law enforcement agency to provide law enforcement services.

The bill also provides that if the state Office of Justice Assistance (OJA) receives law enforcement investigative information from a law enforcement agency, OJA and any other law enforcement agency with which OJA shares the information are not considered to be the custodians of any record or portion of a record containing that information. For purposes of requests for access to the shared information, the bill provides that the law enforcement agency that provided the information to OJA is considered to be the custodian of all records or portions of records containing that information and the bill directs OJA and any other law enforcement agency with which OJA shares the information to deny access to any record or portion of a record containing that information.

No similar provisions exist currently.

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

1 **SECTION 1.** 16.964 (18) of the statutes is created to read:

2 16.964 **(18)** (a) In this subsection:

3 1. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b) or (e).

4 2. "Law enforcement investigation information" means information that is
5 collected by the office under sub. (1m) consisting of arrest reports, incident reports,
6 and other information relating to persons suspected of committing crimes that was
7 created by a law enforcement agency and provided to the office by that agency for the
8 purpose of sharing with other law enforcement agencies and prosecutors.

9 (b) For purposes of requests for access to records under s. 19.35 (1), if the office
10 has custody of a record containing law enforcement investigation information, the
11 office and any other law enforcement agency with which the office shares the
12 information contained in the record are not the legal custodians of the record as it
13 relates to that information. For such purposes, the legal custodian of the record is
14 the law enforcement agency that provides the law enforcement investigation
15 information to the office. If the office or any other law enforcement agency receives
16 a request under s. 19.35 (1) for access to information in such a record, the office or

1 the other law enforcement agency shall deny any portion of the request that relates
2 to law enforcement investigation information.

3 **SECTION 2.** 19.35 (7) of the statutes is created to read:

4 19.35 **(7)** LOCAL INFORMATION TECHNOLOGY AUTHORITY RESPONSIBILITY FOR LAW
5 ENFORCEMENT RECORDS. (a) In this subsection:

6 1. "Law enforcement agency" has the meaning given s. 165.83 (1) (b).

7 2. "Law enforcement record" means a record that is created or received by a law
8 enforcement agency and that relates to an investigation conducted by a law
9 enforcement agency or a request for a law enforcement agency to provide law
10 enforcement services.

11 3. "Local information technology authority" means a local public office or local
12 governmental unit whose primary function is information storage, information
13 technology processing, or other information technology usage.

14 (b) For purposes of requests for access to records under sub. (1), a local
15 information technology authority that has custody of a law enforcement record for
16 the primary purpose of information storage, information technology processing, or
17 other information technology usage is not the legal custodian of the record. For such
18 purposes, the legal custodian of a law enforcement record is the authority for which
19 the record is stored, processed, or otherwise used.

20 (c) A local information technology authority that receives a request under sub.
21 (1) for access to information in a law enforcement record shall deny any portion of the
22 request that relates to information in a local law enforcement record.

23 **(END)**