



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 173

**Senate Substitute
Amendment 2**

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2011 Senate Bill 173 relates to disclosure of electronic juvenile court records.

Current Law

The juvenile court is the court assigned to exercise jurisdiction under ch. 48, the Children's Code, and ch. 938, Stats., the Juvenile Justice Code.

Juvenile court records may not be open to inspection or their contents disclosed except by order of the juvenile court or as provided in current statutes. Some of the exceptions to confidentiality in the Children's Code and the Juvenile Justice Code provide that such records may be disclosed as follows:

- Upon request of the child's parent, guardian, or legal custodian or upon request of the child, if he or she is 14 years of age or older, the records must be open for inspection by the parent, guardian, legal custodian, or child unless the court finds, after due notice and hearing, that inspection of those records would result in imminent danger to anyone.
- Upon written permission of the child's parent, guardian, or legal custodian or upon request of the child, if he or she is 14 years of age or older, the court must open the records for inspection by the person named in the permission unless the court finds, after due notice and hearing, that inspection of those records would result in imminent danger to anyone.
- Upon request of any juvenile court, any municipal court exercising jurisdiction under the Juvenile Justice Code, or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding.

The Juvenile Justice Code contains further exceptions, including that juvenile court records may be disclosed as follows.

- Upon request of a law enforcement agency to review court records for the purpose of investigating any crime that might constitute gang activity.
- Upon request of a court of criminal jurisdiction or a district attorney to review court records for the purpose of setting bail, impeaching a witness, or investigating and determining whether a person has possessed a firearm in violation of criminal statutes.
- Upon request of a defense counsel to review court records for the purpose of preparing his or her client's defense to an allegation of delinquency or criminal activity.

[See ss. 48.396 (2) and 938.396 (2g), Stats.]

Current law also permits the juvenile court to transfer to the Department of Children and Families (DCF) information contained in electronic records of the court regardless of whether DCF is a party to the proceedings in which the electronic records containing that information were created. In addition, DCF may transfer to the juvenile court information contained in DCF's electronic records that are maintained in the statewide automated child welfare information system (frequently referred to as SACWIS). Current law specifies that the Director of State Courts may use the Circuit Court Automated Information Systems (CCAP) to facilitate the transfer of those electronic records between the juvenile court and DCF. The Director of State Courts and DCF must specify what types of information may be transferred under this provision. Any person who intentionally discloses information in violation of the confidentiality provisions in this provision may be required to forfeit not more than \$5,000. [s. 48.396 (3), Stats.]

The Substitute Amendment

Senate Substitute Amendment 2 to Senate Bill 173 creates additional exceptions to the confidentiality of juvenile court records.

Court Records

The substitute amendment provides that, upon request of a court of criminal jurisdiction to review court records for the purpose of conducting or preparing for a proceeding in that court or upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction, the juvenile court must open for inspection by authorized representatives of the requester the court records relating to any child who has been the subject of a proceeding under the Children's Code or the Juvenile Justice Code.

The substitute amendment also modifies current law relating to providing juvenile court records to law enforcement agencies. Under the substitute amendment, upon request of a law enforcement agency to review court records for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under the delinquency provisions of the Juvenile Justice Code, the juvenile court must open for inspection by authorized representatives of the requester the court

records relating to any juvenile who has been the subject of a proceeding under the Juvenile Justice Code.

Electronic Court Records

The substitute amendment requires the juvenile court to make information relating to juvenile court proceedings that is contained in the electronic records of the court available to any of the following, regardless of whether the court, DCF, or person is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created:

- Any other juvenile court.
- A municipal court exercising jurisdiction under the Juvenile Justice Code.
- A court of criminal jurisdiction.
- A person representing the interests of the public under the Children's Code or the Juvenile Justice Code (e.g., a district attorney or corporation counsel).
- An attorney or guardian ad litem for a parent or child who is a party to a proceeding in a juvenile court or a municipal court.
- A district attorney prosecuting a criminal case.
- A law enforcement agency (only referenced in the Juvenile Justice Code).
- DCF.

The substitute amendment specifies that the above provision does not authorize the disclosure of any information relating to the physical or mental health of an individual, including information contained in a patient health care record; a treatment record; a report resulting from a physical, psychological, mental, or developmental examination or assessment under the Juvenile Justice Code; a predisposition court report under the Juvenile Justice Code; or a permanency plan, except with the informed consent of a person authorized to consent to that disclosure, by order of the court, or as otherwise permitted by law.

The substitute amendment provides that the Director of State Courts may use CCAP to make information contained in the electronic records of the court available as provided in the above provision.

Under the substitute amendment, a court or person receiving information contained in electronic court records and DCF must keep any information transferred, as described above, confidential and may use or allow access to that information only for the purpose specified in the substitute amendment, as follows:

- DCF may use or allow access to such information only for the purpose of providing specified services under the Children's Code and the Juvenile Justice Code. DCF may allow that access regardless of whether the person who is allowed that access is a party to or is

otherwise involved in the proceedings in which the electronic records containing that information were created.

- A juvenile court, a municipal court exercising jurisdiction under the Juvenile Justice Code, or a court of criminal jurisdiction may use or allow access to such information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.
- A person representing the interests of the public under the Children's Code or the Juvenile Justice Code, an attorney or guardian ad litem for a parent or child who is a party to a juvenile court or municipal court proceeding, or a district attorney prosecuting a criminal case may use or allow access to such information only for the purpose of performing his or her official duties relating to a proceeding in a juvenile court, a court of criminal jurisdiction, or a municipal court. That person may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.
- A law enforcement agency may use or allow access to such information only for the purpose of investigating alleged criminal activity or activity that may result in a juvenile court exercising jurisdiction. A law enforcement agency may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

An individual who is allowed to have access to information, as described above, must keep the information confidential and may use and further disclose it only for the purpose described above. Any person who intentionally uses or discloses information in violation of the above confidentiality provisions may be required to forfeit not more than \$5,000.

Legislative History

Senate Substitute Amendment 2 was offered by Senator Darling. On February 16, 2012, the Senate Committee on Judiciary unanimously recommended adoption of Senate Substitute Amendment 2 and passage of Senate Bill 173, as amended.

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