



2011 SENATE BILL 173

August 30, 2011 - Introduced by Senators DARLING, LAZICH, OLSEN and WANGGAARD, cosponsored by Representatives VOS, BERNIER, BROOKS, JACQUE, KAUFERT, KESTELL, KNODL, PETERSEN, STRACHOTA, STROEBEL and ZIEGELBAUER. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to amend* 48.396 (1), 48.396 (2) (a), 938.396 (1) (a), 938.396 (2) and
2 938.396 (2g) (c); and *to create* 938.396 (2m) of the statutes; **relating to:** the
3 disclosure of electronic juvenile court records to law enforcement agencies and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the director of state courts has established an automated information system, known as the Consolidated Court Automation Programs (CCAP), that contains information about cases filed in the circuit courts in this state, including cases filed in the courts assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile courts). Records of the juvenile court, however, are confidential and may not be opened to inspection, nor may their contents be disclosed, except under certain statutory exceptions or by an order of the juvenile court. Currently, those exceptions include an exception that requires a juvenile court to disclose its records on the request of a law enforcement agency to review those records for the purpose of investigating alleged criminal gang activity.

This bill permits the juvenile court to transfer to a law enforcement agency the electronic records of the juvenile court, permits the director of state courts to use CCAP to facilitate that transfer of those electronic records, and requires the director of state courts to determine what types of information from those electronic records may be transferred to a law enforcement agency. In addition, the bill requires a law enforcement agency to keep any information from those records transferred to the agency confidential and permits a law enforcement agency to use or allow access to

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that information only for the purpose of investigating alleged criminal or delinquent activity. Also, the bill requires an individual who is allowed access to any information from those electronic records to keep the information confidential and to use and further disclose the information only for the purpose of investigating alleged criminal or delinquent activity. Finally, the bill provides for a forfeiture of not more than \$5,000 for any person who intentionally discloses information in violation of the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 48.396 (1) of the statutes is amended to read:

2 48.396 (1) Law enforcement officers' records of children shall be kept separate
3 from records of adults. Law enforcement officers' records of the adult expectant
4 mothers of unborn children shall be kept separate from records of other adults. Law
5 enforcement officers' records of children and the adult expectant mothers of unborn
6 children shall not be open to inspection or their contents disclosed except under sub.
7 (1b), (1d), (5), or (6) or s. 48.293 or 938.396 (2m) (c) or by order of the court. This
8 subsection does not apply to the representatives of newspapers or other reporters of
9 news who wish to obtain information for the purpose of reporting news without
10 revealing the identity of the child or adult expectant mother involved, to the
11 confidential exchange of information between the police and officials of the public or
12 private school attended by the child or other law enforcement or social welfare
13 agencies, or to children 10 years of age or older who are subject to the jurisdiction of
14 the court of criminal jurisdiction. A public school official who obtains information
15 under this subsection shall keep the information confidential as required under s.
16 118.125, and a private school official who obtains information under this subsection
17 shall keep the information confidential in the same manner as is required of a public

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1 school official under s. 118.125. This subsection does not apply to the confidential
2 exchange of information between the police and officials of the tribal school attended
3 by the child if the police determine that enforceable protections are provided by a
4 tribal school policy or tribal law that requires tribal school officials to keep the
5 information confidential in a manner at least as stringent as is required of a public
6 school official under s. 118.125. A law enforcement agency that obtains information
7 under this subsection shall keep the information confidential as required under this
8 subsection and s. 938.396 (1) (a). A social welfare agency that obtains information
9 under this subsection shall keep the information confidential as required under ss.
10 48.78 and 938.78.

11 **SECTION 2.** 48.396 (2) (a) of the statutes is amended to read:

12 48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this
13 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be
14 entered in books or deposited in files kept for that purpose only. ~~They~~ Those records
15 shall not be open to inspection or their contents disclosed except by order of the court
16 assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under
17 this subsection, sub. (3) (b) or (c) 1. or (6), or s. 48.375 (7) (e) or 938.396 (2m) (b) or
18 (c).

19 **SECTION 3.** 938.396 (1) (a) of the statutes is amended to read:

20 938.396 (1) (a) *Confidentiality*. Law enforcement agency records of juveniles
21 shall be kept separate from records of adults. Law enforcement agency records of
22 juveniles may not be open to inspection or their contents disclosed except under par.
23 (b) or (c), sub. (1j), (2m) (c), or (10), or s. 938.293 or by order of the court.

24 **SECTION 4.** 938.396 (2) of the statutes is amended to read:

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1 938.396 (2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to
2 exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising
3 jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for
4 that purpose only. Those records shall not be open to inspection or their contents
5 disclosed except by order of the court assigned to exercise jurisdiction under this
6 chapter and ch. 48 or as permitted under sub. (2g), (2m) (b) or (c), or (10) or s. 48.396
7 (3) (b) or (c) 1.

8 **SECTION 5.** 938.396 (2g) (c) of the statutes is amended to read:

9 938.396 (2g) (c) *Law enforcement agencies.* ~~Upon A law enforcement agency,~~
10 ~~upon request of a the law enforcement agency to review court records or as permitted~~
11 ~~under sub. (2m) (b), for the purpose of investigating a crime that might constitute~~
12 ~~criminal gang activity, as defined in s. 941.38 (1) (b), the court shall open for~~
13 ~~inspection by authorized representatives of the law enforcement agency the records~~
14 ~~of the court relating to any juvenile who has been found to have committed a~~
15 ~~delinquent act at the request of or for the benefit of a criminal gang, as defined in s.~~
16 ~~939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed~~
17 ~~by an adult alleged criminal activity or activity that may result in a court exercising~~
18 ~~jurisdiction under this chapter.~~

19 **SECTION 6.** 938.396 (2m) of the statutes is created to read:

20 938.396 (2m) ELECTRONIC COURT RECORDS. (a) In this subsection, “court” means
21 the court assigned to exercise jurisdiction under this chapter and ch. 48.

22 (b) The court may transfer to a law enforcement agency information contained
23 in the electronic records of the court, regardless of whether the law enforcement
24 agency is a party to or is otherwise involved in the proceedings in which the electronic
25 records containing that information were created. The director of state courts may

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1 use the circuit court automated information systems established under s. 758.19 (4)
2 to facilitate the transfer of those electronic records from the court to a law
3 enforcement agency. The director of state courts shall determine what types of
4 information may be transferred under this paragraph.

5 (c) 1. A law enforcement agency shall keep any information transferred to the
6 law enforcement agency under par. (b) confidential and may use or allow access to
7 that information only for the purpose of investigating alleged criminal activity or
8 activity that may result in a court exercising jurisdiction under this chapter. A law
9 enforcement agency may allow that access regardless of whether the person who is
10 allowed that access is a party to or is otherwise involved in the proceedings in which
11 the electronic records containing that information were created.

12 2. An individual who is allowed access to any information transferred under
13 par. (b) shall keep the information confidential and may use and further disclose the
14 information only for the purpose described in subd. 1.

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

17 (END)