

**2001 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB55)**

Received: 06/15/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Correctional System - prisons

Extra Copies:

Submit via email: NO

Requester's email:

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**Pre Topic:**

SDC:.....Keckhaver - CN5518,

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**Topic:**

Public access to department of corrections records.

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 06/16/2001	hhagen 06/16/2001	haueca 06/16/2001	_____	lrb_docadmin 06/16/2001		

FE Sent For:

<END>

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*OK*

OB

Senator Moore

**CORRECTIONS -- ADULT CORRECTIONAL FACILITIES**

NI.

**Access To Inmate Records**

CROSSER

**Motion:**

Move to require the Department of Corrections to provide public access to records that do not compromise institutional security, including final mortality reviews. Specify that inmate privacy can be protected by redacting the name and number of the inmate.

~~4460~~ RPN

duplicate flag: Other reference numbers: LFB Sum #:  
duplicate with: FM 982  
bill number/amendment number:  
LRB draft # LRB P-draft:

description: Require corrections to immediately comply with the federal Death in Custody Reporting Act (including inmates out of state) and require that information to be sent to U.S. AG and WI AG

**other notes**

drafting instructions:  
more instructions:  
GPR: \$0.00 PR: \$0.00 SEG: \$0.00 Other: *rpn*  
FED: \$0.00 TANF: \$0.00 All Funds: \$0.00  
GPR-REV: \$0.00 SEG-REV: \$0.00 PR-REV: \$0.00  
no fiscal impact: x unknown impact:

duplicate flag: Other reference numbers: LFB Sum #:  
duplicate with: FM 1256  
bill number/amendment number:  
LRB draft # LRB P-draft:

description: Require corrections to offer same level of AODA services to female inmates as to male inmates and require report on this to JFC

**other notes**

drafting instructions:  
more instructions:  
GPR: \$0.00 PR: \$0.00 SEG: \$0.00 Other: *md*  
FED: \$0.00 TANF: \$0.00 All Funds: \$0.00  
GPR-REV: \$0.00 SEG-REV: \$0.00 PR-REV: \$0.00  
no fiscal impact: unknown impact: x

duplicate flag: Other reference numbers: LFB Sum #:  
duplicate with: FM 986  
bill number/amendment number:  
LRB draft # LRB P-draft:

description: Require corrections to provide public access to records that do not compromise institutional security, including final mortality reviews. Specify that inmate privacy can be protect by redacting name and number

**other notes**

drafting instructions:  
more instructions:  
GPR: \$0.00 PR: \$0.00 SEG: \$0.00 Other: *rpn*  
FED: \$0.00 TANF: \$0.00 All Funds: \$0.00  
GPR-REV: \$0.00 SEG-REV: \$0.00 PR-REV: \$0.00  
no fiscal impact: x unknown impact:



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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April 13, 2000

Mr. Jon E. Litscher  
Secretary  
Department of Corrections  
149 East Wilson  
Madison, WI 53702

Re: *Public Records Request for Mortality Review Committee Reports*

Dear Mr. Litscher:

The Milwaukee Journal Sentinel has made a request under Wisconsin's public records law for copies of the Mortality Review Committee reports for several years. The Mortality Review Committee is a Department of Corrections ("Department") committee established for the purpose of reviewing the deaths of inmates in Department custody in order to evaluate the medical care the inmates received or did not receive so as to improve the health care given to inmates. The Mortality Review Committee meets quarterly.

The Department denied the request for records on the grounds that the Mortality Review Committee is a peer review committee and that, pursuant to section 146.38 of the Wisconsin Statutes, reports of peer review committees are confidential. The Department also concluded that the public policy behind sections 146.37 and 146.38 is to encourage confidentiality of the peer review process and that releasing the reports would adversely affect the significant public interest in health care treatment for inmates being reviewed and improved by health care providers sharing opinions in a full and frank manner.

Section 146.38 does provide for the confidentiality of the peer review process. Section 146.38(3)(b), however, provides that information acquired in connection with the review and evaluation of health care services

shall be disclosed and records of such review and evaluation shall be released, with the identity of any patient whose treatment is reviewed being withheld unless the patient has granted permission . . . .

(b) To any person with the consent of the health care provider or facility whose services are being reviewed or evaluated[.]

Under the law, therefore, a public or even a private facility is free to release any or all peer review committee reports.

TOTAL P.02

Mr. Jon E. Litscher

Page 2

Wisconsin's public records law creates a presumption of complete public access to agency records and provides "[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." Sec. 19.31, Wis. Stats. Of course, the presumption of public access can be overcome if a statute or the common law requires confidentiality or the public interest in denying access outweighs the presumption that public records should be available to the public.

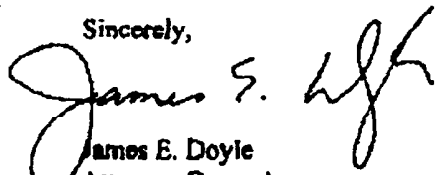
Section 146.38 does not at all prohibit the release of peer review committee reports; it specifically gives the facility, private or public, the discretion to release the reports. But when a public facility is involved that discretion must be exercised consistent with the presumption of public access under the public records law.

Although the public has an interest in fostering free and frank discussion among peer review committee members, and an interest in encouraging the committees to provide the Department with complete, frank reports, I must conclude that those interests do not overcome the presumption of public access to public records. If the Legislature thought that absolute confidentiality of peer review committee discussions and reports was essential, it would not have provided the private or public facilities with the ability to choose to release reports. There is little to suggest that professional health care providers would not freely and professionally participate in peer review committee discussion and reports if they knew that those reports might become public. Furthermore, the identity of the peer review committee members can be at least in part protected by redacting the member's names from the reports. The law requires that the inmates' names be redacted. Sec. 146.38(3), Wis. Stats.

The public has a right to know how the Department has responded to inmate deaths. The public has a right to know what recommendations were made and whether the Department followed those recommendations, and if not, why it chose not to follow the recommendations. The Mortality Review Committee reports are the only source of this information.

Having carefully considered the matter, I must conclude that the public records law requires the Department to release copies of the Mortality Review Committee reports redacted to remove information which would identify the individual inmates, and redacted to remove the identity of any of the peer review committee members.

I advise the Department to provide the redacted records to the requester. If the Department chooses to ignore this advice I would decline to represent the Department if the decision to deny access is challenged.

Sincerely,  
  
James E. Doyle  
Attorney General

JED:AL:cla

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBb0976/1

RPN:hmk

SDC:.....Keckhaver – CN5518, Public access to department of corrections records.

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1069, line 25: after that line insert:

3 "SECTION 3330h. 301.03 (35) of the statutes is created to read:

4 301.03 (35) When complying with s. 19.35, provide access to all records that do  
5 not compromise institutional security, including final mortality review committee  
6 reports. The department may protect inmate privacy by redacting the name and  
7 number of an inmate in appropriate cases."

8 (END)

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