

## 2007 SENATE BILL 384

January 14, 2008 – Introduced by Senators SULLIVAN, DARLING and ROESSLER, cosponsored by Representatives JESKEWITZ, GRIGSBY, KESTELL, ZIEGELBAUER, BALLWEG, VOS, ALBERS, HAHN and SINICKI. Referred to Committee on Judiciary, Corrections, and Housing.

1     **AN ACT** *to repeal* 938.396 (2g) (c); *to amend* 48.396 (1), 48.396 (2) (a), 48.396 (2)  
2           (g), 938.396 (1) (a), 938.396 (2), 938.396 (2g) (d) and 938.396 (2g) (gm); and *to*  
3           **create** 48.396 (2m) and 938.396 (2m) of the statutes; **relating to:** disclosure of  
4           juvenile court records to other courts, law enforcement agencies, district  
5           attorneys and other prosecutors, and agencies providing services to a juvenile  
6           court and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, subject to certain exceptions, the records of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) are confidential and may not be opened to inspection or their contents disclosed except by order of the juvenile court. Currently, those exceptions include exceptions that require a juvenile court to disclose its records as follows:

1. On the request of any other juvenile court, a municipal court, or a district attorney, corporation counsel, or city, village, or town attorney (prosecutor) to review juvenile court records for the purpose of any proceeding in that court.
2. On the request of a court of criminal jurisdiction or a district attorney to review the juvenile court's records for the purpose of setting bail or impeaching a witness.
3. On the request of a law enforcement agency to review the juvenile court's records for the purpose of investigating alleged criminal gang activity.

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This bill eliminates the requirement that a juvenile court, municipal court, court of criminal jurisdiction, prosecutor, or law enforcement agency *request* a juvenile court record in order to inspect the record and expands the purposes for which those persons may use and further disclose a juvenile court record. The bill also opens juvenile court records for inspection by the Department of Health and Family Services (DHFS), a county department of human services or social services (county department), or a licensed child welfare agency providing services to a juvenile court.

Specifically, the bill provides that the records of a juvenile court shall be open for inspection by any other juvenile court, a municipal court, a court of criminal jurisdiction, a prosecutor, a law enforcement agency, DHFS, a county department, or a licensed child welfare agency providing services to a juvenile court and that information obtained under the bill shall be kept confidential and may be used and further disclosed as follows:

1. By a juvenile court, municipal court, or court of criminal jurisdiction, only for the purpose of conducting or preparing for a proceeding in that court or as permitted under current law.

2. By a prosecutor, only as necessary for the prosecutor to perform his or her official duties relating to a proceeding in a juvenile court, municipal court, or court of criminal jurisdiction.

3. By a law enforcement agency, only for the purpose of investigating any alleged criminal activity or any activity that may result in a court exercising jurisdiction under the Children's Code or the Juvenile Justice Code or as permitted under current law.

4. By DHFS, a county department, or a licensed child welfare agency providing services to a juvenile court, only for the purpose of providing services to the juvenile court or as permitted under current law.

In addition, the bill provides for a forfeiture of not more than \$5,000 for a person who intentionally discloses information in violation of the bill.

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***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.

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1 (1b), (1d), (2m) (b) 3., (5), or (6) or s. 48.293 or by order of the court. This subsection  
2 does not apply to the representatives of newspapers or other reporters of news who  
3 wish to obtain information for the purpose of reporting news without revealing the  
4 identity of the child or adult expectant mother involved, to the confidential exchange  
5 of information between the police and officials of the school attended by the child or  
6 other law enforcement or social welfare agencies, or to children 10 years of age or  
7 older who are subject to the jurisdiction of the court of criminal jurisdiction. A public  
8 school official who obtains information under this subsection shall keep the  
9 information confidential as required under s. 118.125 and a private school official  
10 who obtains information under this subsection shall keep the information  
11 confidential in the same manner as is required of a public school official under s.  
12 118.125. A law enforcement agency that obtains information under this subsection  
13 shall keep the information confidential as required under this subsection and s.  
14 938.396 (1) (a). A social welfare agency that obtains information under this  
15 subsection shall keep the information confidential as required under ss. 48.78 and  
16 938.78.

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

18 48.396 **(2)** (a) Records of the court assigned to exercise jurisdiction under this  
19 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be  
20 entered in books or deposited in files kept for that purpose only. ~~They~~ Those records  
21 shall not be open to inspection or their contents disclosed except by order of the court  
22 assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under  
23 ~~this section~~ subsection, sub. (2m), or (6). or s. 48.375 (7) (e).

24 **SECTION 3.** 48.396 (2) (g) of the statutes is amended to read:

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1           48.396 (2) (g) Upon request of the attorney or guardian ad litem for a party to  
2 a proceeding in any court assigned to exercise jurisdiction under this chapter and ch.  
3 938, or in any municipal court exercising jurisdiction under s. 938.17 (2), ~~or a district~~  
4 ~~attorney, corporation counsel, or city, village, or town attorney to review court records~~  
5 ~~for the purpose of any proceeding in that court or upon request of the attorney or~~  
6 ~~guardian ad litem for a party to a proceeding in that court to review court records for~~  
7 the purpose of that proceeding, the court shall open for inspection by any authorized  
8 representative of the requester the records of the court relating to any child who has  
9 been the subject of a proceeding under this chapter.

10           **SECTION 4.** 48.396 (2m) of the statutes is created to read:

11           48.396 (2m) (a) Notwithstanding sub. (2) (a), records of a court assigned to  
12 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by  
13 any other court assigned to exercise jurisdiction under this chapter and ch. 938, a  
14 municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal  
15 jurisdiction, a person representing the interests of the public under s. 48.09 or  
16 938.09, a district attorney, a law enforcement agency, the department, a county  
17 department, or a licensed child welfare agency providing services to a court under  
18 s. 48.06, 48.07, 938.06, or 938.07.

19           (b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 938  
20 or a municipal court exercising jurisdiction under s. 938.17 (2) that obtains  
21 information under par. (a) shall keep the information confidential as required under  
22 sub. (2) (a) and s. 938.396 (2) and may use and further disclose the information only  
23 for the purpose of conducting or preparing for a proceeding in that court or as  
24 permitted under sub. (2) (a) or s. 938.396 (2). A court of criminal jurisdiction that

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1 obtains information under par. (a) may use and further disclose the information only  
2 for the purposes of conducting or preparing for a proceeding in that court.

3 2. A person representing the interests of the public under s. 48.09 or 938.09 or  
4 a district attorney that obtains information under par. (a) shall keep the information  
5 confidential and may use and further disclose the information only as necessary for  
6 the person or district attorney to perform his or her official duties relating to a  
7 proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 938,  
8 a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal  
9 jurisdiction.

10 3. A law enforcement agency that obtains information under par. (a) shall keep  
11 the information confidential as required under sub. (1) and s. 938.396 (1) (a) and may  
12 use and further disclose the information only for the purpose of investigating any  
13 alleged criminal activity or any activity that may result in a court exercising  
14 jurisdiction under this chapter or ch. 938 or as permitted under sub. (1) or s. 938.396  
15 (1) (a).

16 4. The department, a county department, or a licensed child welfare agency  
17 that obtains information under par. (a) shall keep the information confidential as  
18 required under ss. 48.78 and 938.78 and may use and further disclose the  
19 information only for the purpose of providing services to a court under s. 48.06, 48.07,  
20 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.

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

23 **SECTION 5.** 938.396 (1) (a) of the statutes is amended to read:

24 938.396 (1) (a) *Confidentiality.* Law enforcement agency records of juveniles  
25 shall be kept separate from records of adults. Law enforcement agency records of

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1 juveniles may not be open to inspection or their contents disclosed except under, par.  
2 (b) or (c), sub. (1j), (2m) (b) 3., or (10), or s. 938.293 or by order of the court.

3 **SECTION 6.** 938.396 (2) of the statutes is amended to read:

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

10 **SECTION 7.** 938.396 (2g) (c) of the statutes is repealed.

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

12 938.396 (2g) (d) ~~*Bail; impeachment; firearm possession*~~ *Impeachment*. Upon  
13 request of a court of criminal jurisdiction or a district attorney to review court records  
14 for the purpose of setting bail under ch. 969, impeaching a witness under s. 906.09,  
15 or investigating and determining whether a person has possessed a firearm in  
16 violation of s. 941.29 (2) or body armor in violation of s. 941.291 (2) or upon request  
17 of a court of civil jurisdiction or the attorney for a party to a proceeding in that court  
18 to review court records for the purpose of impeaching a witness under s. 906.09, the  
19 court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for  
20 inspection by authorized representatives of the requester the records of the court  
21 relating to any juvenile who has been the subject of a proceeding under this chapter.

22 **SECTION 9.** 938.396 (2g) (gm) of the statutes is amended to read:

23 938.396 (2g) (gm) ~~*Other Parties to a proceeding in other courts*~~. Upon request  
24 of the attorney or guardian ad litem for a party to a proceeding in any court assigned  
25 to exercise jurisdiction under this chapter and ch. 48, or in any municipal court

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1 exercising jurisdiction under s. 938.17 (2), ~~or a district attorney, corporation counsel,~~  
2 ~~or city, village, or town attorney to review court records for the purpose of any~~  
3 ~~proceeding in that court or upon request of the attorney or guardian ad litem for a~~  
4 ~~party to a proceeding in that court to review court records for the purpose of that~~  
5 proceeding, the court assigned to exercise jurisdiction under this chapter and ch. 48  
6 or the municipal court exercising jurisdiction under s. 938.17 (2) shall open for  
7 inspection by any authorized representative of the requester its records relating to  
8 any juvenile who has been the subject of a proceeding under this chapter.

9 **SECTION 10.** 938.396 (2m) of the statutes is created to read:

10 **938.396 (2m) CONFIDENTIALITY OF COURT RECORDS; OTHER EXCEPTIONS.** (a)  
11 Notwithstanding sub. (2), records of a court assigned to exercise jurisdiction under  
12 this chapter and ch. 48 shall be open for inspection by any other court assigned to  
13 exercise jurisdiction under this chapter and ch. 48 a municipal court exercising  
14 jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person representing  
15 the interests of the public under s. 48.09 or 938.09, a district attorney, a law  
16 enforcement agency, the department of health and family services, a county  
17 department, or a licensed child welfare agency providing services to a court under  
18 s. 48.06, 48.07, 938.06, or 938.07.

19 (b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 48 or  
20 a municipal court exercising jurisdiction under s. 938.17 (2) that obtains information  
21 under par. (a) shall keep the information confidential as required under sub. (2) and  
22 s. 48.396 (2) (a) and may use and further disclose the information only for the purpose  
23 of conducting or preparing for a proceeding in that court or as permitted under sub.  
24 (2) or s. 48.396 (2) (a). A court of criminal jurisdiction that obtains information under

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1 par. (a) may use and further disclose the information only for the purposes of  
2 conducting or preparing for a proceeding in that court.

3 2. A person representing the interests of the public under s. 48.09 or 938.09 or  
4 a district attorney that obtains information under par. (a) shall keep the information  
5 confidential and may use and further disclose the information only as necessary for  
6 the person or district attorney to perform his or her official duties relating to a  
7 proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 48,  
8 a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal  
9 jurisdiction.

10 3. A law enforcement agency that obtains information under par. (a) shall keep  
11 the information confidential as required under sub. (1) (a) and s. 48.396 (1) and may  
12 use and further disclose the information only for the purpose of investigating any  
13 alleged criminal activity or any activity that may result in a court exercising  
14 jurisdiction under this chapter or ch. 48 or as permitted under sub. (1) (a) or s. 48.396  
15 (1).

16 4. The department of health and family services, a county department, or a  
17 licensed child welfare agency that obtains information under par. (a) shall keep the  
18 information confidential as required under ss. 48.78 and 938.78 and may use and  
19 further disclose the information only for the purpose of providing services to a court  
20 under s. 48.06, 48.07, 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.

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

23 **(END)**