



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/14/2006 (Per: PJK)



## Appendix A

 The 2005 drafting file for LRB 05-5088

has been transferred to the drafting file for

# **2007 LRB 07-0210**

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## 2005 DRAFTING REQUEST

### Bill

Received: 07/26/2006

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Workforce Development 267-7295

By/Representing: Connie Chesnik

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - paternity

Extra Copies:

Submit via email: YES

Requester's email: connie.chesnik@dwd.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Allowing child support enforcement program access to pending paternity case information

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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>
/?	pkahler 07/28/2006	jdye 07/31/2006		_____			S&L
/P1			jfrantze 07/31/2006	_____	sbasford 07/31/2006		

FE Sent For:

<END>

## 2005 DRAFTING REQUEST

### Bill

Received: **07/26/2006**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Workforce Development 267-7295**

By/Representing: **Connie Chesnik**

This file may be shown to any legislator: **NO**

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/?	pkahler	PI 7/31 jld	7/31	7/31 PG			

FE Sent For:

<END>

① Connie Chesnut : s 767.53 access to  
paternity info.

4 77295  
for ag's op  
for bill draft

②

any child support <sup>program</sup> established —  
for purposes related  
to administration  
DWD & child support agencies general access to  
pending paternity action  
records for to  
be able to administer program  
under s. 49.22 more  
efficiently

not allowed access to website now —  
limited to calling clerk of court  
on phone  
(see s. 767.53 — access only  
of a party)


**OFFICE OF THE SECRETARY  
FAX COVER SHEET**

State of Wisconsin

Department of Workforce Development

<b>Date:</b> 7/26/07	<b>Number of Pages (including this cover):</b> 7
<b>TO:</b> Pam Yabler LRB	<b>From:</b> Connie Chasnik
<b>Fax Number:</b> 264-6948	<b>Fax Number:</b> 266-1784
<b>Phone Number:</b>	<b>Phone Number:</b> 267-7295

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DEPARTMENT OF JUSTICE

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March 8, 2006

Mr. A. John Voelker  
Director of State Courts  
16 East, State Capitol  
Madison, WI 53702

Dear Mr. Voelker:

Attorney General Peg Lautenschlager has asked me to respond to your letter requesting further guidance on the ~~extent to which confidential court records may be electronically shared with certain agencies through a restricted area of the Wisconsin Circuit Court Access (WCCA) website.~~ You provide the following information.

WCCA is the web-based version of the Wisconsin Supreme Court's Circuit Court Automation Project ("CCAP") case management system. ~~In addition to the public website, the court has a restricted site that can be accessed only by persons having passwords.~~ The restricted site, like the public site, contains case names, numbers, charges, court record events and dispositions. Access to each county and each case type (juvenile delinquency, CHIPS, termination of parental rights, etc.) is granted separately. ~~The state site cannot be programmed in a way that would permit an agency access only to its own cases. Once inside the site, users may browse and search all of the cases for that case type and that county, irrespective of which agency or attorney filed them.~~

CCAP received a request from the Dane County Corporation Counsel for access to several types of cases on the WCCA restricted site. In particular the corporation counsel asked for access to juvenile delinquency, child in need of protective services ("CHIPS"), termination of parental rights, paternity, juvenile guardianship and mental commitment cases.

~~The CCAP steering committee concluded that corporation counsel had to be denied access to CHIPS, termination of parental rights, juvenile guardianship and paternity cases because those cases also included privately represented cases.~~ The committee did allow access for mental commitments because corporation counsel represents the public interest in all mental commitments.

Mr. A. John Voelker  
March 8, 2006  
Page 2

You ask whether the steering committee reached the correct conclusion with respect to access by corporation counsel to the various case types.

You also ask whether a county child support enforcement agency may have access to the restricted site for paternity cases filed in that county. You state that six county child support agencies currently have access to the restricted site by arrangement with the clerk of circuit court and other counties have inquired about access. *Milwaukee, Waubesa, Brown,*

Wisconsin Stat. § 938.396(2)(a) provides in relevant part:

*Kenosha, Oshkosh,  
Walworth)*

Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17(2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as permitted under this section.

The statute includes a number of specific exceptions that allow disclosure of records to specified entities under specified circumstances. The exceptions vary in their nature. Some permit specified entities to have access to a broad range of juvenile court records. Cf. Wis. Stat. § 938.396(2)(b). Other exceptions only grant access to records of a specific juvenile and/or records of a specific type. Cf. Wis. Stat. § 938.396(2)(c) (disclosure limited to records of juvenile found to have committed specific delinquent acts) and Wis. Stat. § 938.396(2)(g) (disclosure limited to records relating to paternity of the juvenile). Wisconsin Stat. § 48.396(2)(a) contains virtually identical language. That statute governs access to other juvenile records such as CHIPS, termination of parental rights and guardianship cases.

The steering committee concluded that corporation counsel in Dane County could not be granted access to juvenile delinquency cases. I agree.

The juvenile delinquency case type includes both juvenile delinquency cases and juvenile in need of protective services ("JIPS") cases. Delinquency cases are handled only by the district attorney; JIPS cases may be handled by either the corporation counsel or the district attorney. Wis. Stat. § 938.09(1) and (5). Because in Dane County the district attorney handles both types of cases, the corporation counsel would not be the petitioning agency and would not have an interest in all cases. There is, therefore, no basis for granting the corporation counsel's office access to these cases.

The steering committee concluded that Dane County Corporation Counsel could not be granted access to CHIPS and termination of parental rights cases. I agree.

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In Dane County the district attorney's office is the most frequent petitioner in CHIPS petitions but occasionally a private attorney files a petition on behalf of a relative who wants to protect a relative. The corporation counsel's office, however, is not a petitioner and therefore cannot be provided general access to these cases. To the extent corporation counsel needs information from CHIPS cases when they result in termination of parental rights petitions and adoptions, the corporation counsel must seek access under one of the exceptions in Wis. Stat. § 48.396.

Termination of parental rights petitions and subsequent adoptions are generally filed by corporation counsel in Dane County, but private attorneys also file these petitions. There is no statutory authority for granting corporation counsel access to the privately filed cases. Therefore, unless the system allows cases filed privately to be segregated, corporation counsel cannot be granted general access to termination of parental rights cases.

The steering committee concluded that Dane County Corporation Counsel could not be granted general access to juvenile guardianship cases. I agree.

Juvenile guardianship case files are closed if they are filed under Wis. Stat. ch. 48 or if they relate to findings of incompetency under Wis. Stat. §§ 880.33(6) and 55.06(17). Under Wis. Stat. § 48.977(4), the child, guardian, guardian ad litem, parent, relative, Department of Health and Family Services, county, service agency or other person may file a chapter 48 guardianship petition. In Dane County, the corporation counsel represents the interests of the public. Wis. Stat. § 48.09. Therefore, in Dane County, corporation counsel would be entitled to access as both a petitioner and as a party.

Under Wis. Stat. § 880.07(1), a guardianship petition may be filed by a relative, public official or other person. There is no statutory provision making the county a party. WCCA, however, cannot currently allow access to corporation counsel to chapter 48 cases without creating the potential for allowing corporation counsel to browse through other chapter 880 cases. If access to the cases cannot be separated, therefore, corporation counsel cannot be given access to juvenile guardianship case files.

The steering committee concluded it could not grant corporation counsel access to paternity cases. I agree.

Under Wis. Stat. ~~§ 767.53(1)~~, access to the record of any pending paternity proceeding is ~~provided for counsel, the guardian ad litem and any governmental or social services agency involved in the proceeding under Wis. Stat. ch. 48 or 938.~~ Although paternity cases are usually filed by corporation counsel, there are also a fair number of "private" paternity cases. See Wis. Stat. § 767.45(1). ~~Because granting corporation counsel access to the general paternity cases,~~

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~~would result in the ability to browse private cases, the steering committee's decision to deny access was correct.~~

The steering committee concluded it could grant corporation counsel access to mental commitments case files. I agree.

Under Wis. Stat. § 51.20(4), corporation counsel represents the public interest in mental health commitments. Dane County has informed the committee that the corporation counsel's office is the only petitioning agency in that county. Wisconsin Stat. § 51.30(3)(b) specifically gives corporation counsel access to the files and records of the court proceedings under Wis. Stat. ch. 51.

You also ask whether a county child support enforcement agency may have access to the restricted site for paternity cases filed in that county. Paternity hearings and records are confidential until paternity is established. Wis. Stat. § 767.53. Access to confidential paternity records may be provided to the parties in the case, the parents and their attorneys or representatives under Wis. Stat. § 767.53(1)(b) and to certain persons involved in related chapter 48 or 938 proceedings under certain circumstances. Wis. Stat. § 767.53(1)(c). If one of the parties to the action has applied for child support services or receives public assistance, the state becomes the real party in interest in the paternity action. Wis. Stat. § 767.075(1). The state is represented in these paternity actions by the attorney responsible for county child support enforcement. That attorney may be a child support agency employee or a corporation counsel. Wis. Stat. §§ 767.075(2), 767.45(6)(a) and 59.53(6)(b). Clearly the child support agency must be allowed access to cases where the state is the real party in interest. You state, however, that about 24% of paternity cases are not those types of cases. Rather, they are filed by private attorneys and the restricted WCCA site does not now prevent access to those cases by the child support agency.

Milwaukee County has proposed that two responsibilities justify agency access to paternity case files. The first, under Wis. Stat. § 767.45(6m), requires a county child support agency to begin a paternity action on behalf of a child if no father is named on the birth certificate or if there is no acknowledgement of paternity. In those counties that presently have access to the restricted site, the agency uses the site to see whether any other paternity action has been filed for that child in that county. As you note, however, that would be opening all of the case files to allow the agency to obtain a minimal amount of information that could also be obtained through either a phone call or an e-mail to the clerk of court.

The child support agency must enter all support orders and judgments into KIDS, the child support case management system. See Wis. Stat. §§ 59.53(5)(b) and 767.29(1). Under federal law there is a two-day timeline to receipt and disburse support payments in all actions affecting the family. The agency is also required to process income withholding orders in all

Mr. A. John Voelker  
March 8, 2006  
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cases. There is no doubt that the agency needs access either to the paper case file or CCAP system in order to enter the data into KIDS to process payments and orders. As you note, however, this work occurs after paternity is established at which time the case is no longer confidential under Wis. Stat. § 767.53(3) and the clerk may freely allow access to the file.

At the time you wrote your letter asking for an opinion, paternity cases did not display on the public website even after paternity was established because at the time cases were either open or confidential on the public website. Because paternity cases began as confidential, they were not open to public display even after paternity was established. Your letter of February 15, 2006 notes that you have developed a procedure analogous to the procedure used for paper files. The first phase of the case in which paternity is established and other putative fathers are named will be closed. That part of the case will remain confidential. ~~CCAP will also open a linked file for post-adjudication activity. That procedure will allow the child support agency to exercise its responsibility under KIDS.~~

The Department of Workforce Development recently has provided this office with a letter supporting access by the child support agencies. The department's letter acknowledges that roughly 24% of paternity cases do not involve the state as a party in interest. That means they have been filed by private attorneys and none of the parties are receiving the services of the child support program. The department argues, however, that despite the fact that the statutes do not allow access by the agency under these circumstances, other laws place strict confidentiality requirements on child support agencies "with respect to information received in the course of administering the program." (Letter of January 12, 2006 from Department of Workforce Development). See Wis. Stat. § 49.83 under which any person violating the confidentiality requirements may be fined not less than \$25.00 nor more than \$500.00 or imprisoned in the county jail not less than ten days nor more than one year or both.

That argument ignores the fact that the specific statutes on confidentiality do not allow access to these private filings by the agency and, therefore, this would not be information "received in the course of administering the program." Furthermore, the fact that a person may be punished for disclosing confidential information does not mean that person must be given access to the confidential information in the first place.

The department's letter also questions the suggestion that a phone call to the clerk of court would be sufficient to determine whether a private paternity action had been filed. The department notes that in Milwaukee County alone, nearly 600 paternity cases are filed every month. Fewer than 1% of those cases are filed by private attorneys. Certainly, the clerks of court, especially in Milwaukee, would be greatly helped if CCAP could use more refined case types and other technological means to facilitate access within the constraints of the current law. But if that is not possible, ~~the current law cannot be ignored in the name of efficiency.~~

Mr. A. John Voelker  
March 8, 2006  
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~~There is no doubt that allowing access to restricted websites by appropriate criminal and juvenile justice agencies would contribute significantly to the effective and efficient operation of the agencies and the courts. There is also no doubt that the statutes governing access to these case records are inadequate, out of date and often contradictory.~~ Those inadequacies, however, must be cured by the Legislature. Until the Legislature acts your office and the criminal and juvenile justice agencies are constrained by the inadequate statutes and the limits of technology.

Sincerely,



Alan Lee  
Assistant Attorney General

AL:kh

c: Connie M. Chesnik

lccam\mtivoelker 2.doc  
051208018



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-5088/3

PJK:.....

Handwritten initials and "PI" at top right.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Handwritten note in a circle: "Write SOON (in 7-28)"

Handwritten note: "gen cot" with an arrow pointing to the word "relating" in the title.

Handwritten note: "pending" with an arrow pointing to the word "pending" in the title.

- 1 AN ACT **relating to:** allowing access to paternity proceeding information to the
- 2 child support establishment program for administrative purposes. ✓

**Analysis by the Legislative Reference Bureau**

Under current law, the record of a pending paternity action is confidential, except that the child's parents and the parties to the action and their attorneys may have access to the record, and additional specified persons may have access if the child is the subject of another type of proceeding, such as a juvenile guardianship or delinquency action. Although for purposes related to the child and spousal support and establishment of paternity and medical support liability program, which is administered by (DWD) in conjunction with county child support agencies, DWD and county child support agencies may obtain information from the clerk of circuit court about pending paternity actions on a case-by-case basis, DWD and county child support agencies are not allowed general access to the website that is maintained through the Wisconsin supreme court's Circuit Court Automation Project case management system and that contains information about all pending paternity actions.

This bill authorizes the child and spousal support and establishment of paternity and medical support liability program to have access to the record of any pending paternity action for purposes related to administering the program.

Handwritten note: "The Department of Workforce Development" with an arrow pointing to "DWD" in the text above.

Handwritten symbol: a triangle.



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-5088/7dn

PJK:.....  
Jed

Instead of allowing *the program* access to information, the statute could allow access to *any person*, or to *the department and any child support agency*,<sup>△</sup> for purposes of administering the program. Let me know if you want to make either change.

Please review my analysis carefully and suggest any necessary changes.

Do you think that <sup>△</sup>the proposed language will allow access to the website,<sup>△</sup> or do you think that the website must be explicitly stated? Do you want to place any limits on the access, such as to actions pending in the county in which the child support agency that makes a request is located?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-5088/P1dn  
PJK:jld:jf

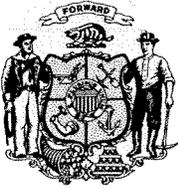
July 31, 2006

Instead of allowing *the program* access to information, the statute could allow access to *any person*, or to *the department and any child support agency*, for purposes of administering the program. Let me know if you want to make either change.

Please review my analysis carefully and suggest any necessary changes.

Do you think that the proposed language will allow access to the Web site, or do you think that the Web site must be explicitly stated? Do you want to place any limits on the access, such as to actions pending in the county in which the child support agency that makes a request is located?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1     **AN ACT** *to create* 767.853 (1) (bm) of the statutes; **relating to:** allowing access  
2             to pending paternity proceeding information to the child support establishment  
3             program for administrative purposes.

---

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

Under current law, the record of a pending paternity action is confidential, except that the child's parents and the parties to the action and their attorneys may have access to the record, and additional specified persons may have access if the child is the subject of another type of proceeding, such as a juvenile guardianship or delinquency action. Although for purposes related to the child and spousal support and establishment of paternity and medical support liability program, which is administered by the Department of Workforce Development (DWD) in conjunction with county child support agencies, DWD and county child support agencies may obtain information from the clerk of circuit court about pending paternity actions on a case-by-case basis, DWD and county child support agencies are not allowed general access to the Web site that is maintained through the Wisconsin Supreme Court's Circuit Court Automation Project case management system and that contains information about all pending paternity actions.

This bill authorizes the child and spousal support and establishment of paternity and medical support liability program to have access to the record of any pending paternity action for purposes related to administering the program.

