

2011 DRAFTING REQUEST

Bill

Received: **07/26/2011**

Received By: **gmalaise**

Wanted: **As time permits**

Companion to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Bob Delaporte**

May Contact:

Drafter: **gmalaise**

Subject: **Children - child welfare
Children - juvenile justice
Children - miscellaneous
Children - abuse and neglect**

Addl. Drafters:

Extra Copies: **MPG**

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Juvenile court records; disclosure to other courts, law enforcement agencies, prosecutors, and agencies providing services to juvenile court

Instructions:

Redraft 2007 AB 676

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>
/?	gmalaise 07/28/2011	kfollett 07/28/2011		_____			S&L
/1			jfrantze 07/29/2011	_____	ggodwin 07/29/2011	lparisi 08/25/2011	

FE Sent For:

*at intro
8-30-11*

<END>

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/?	gmalaise	11/gf 7/28		7/29			

FE Sent For:

<END>

Malaise, Gordon

From: Emerson, James
Sent: Wednesday, July 27, 2011 11:43 AM
To: Malaise, Gordon
Subject: FW:

Here's the article.

From: Delaporte, Bob
Sent: Wednesday, July 27, 2011 11:39 AM
To: Emerson, James
Subject:

<http://www.jsonline.com/watchdog/watchdogreports/126075143.html>



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DANGEROUS AND FREE | A JOURNAL SENTINEL WATCHDOG UPDATE

Access to juvenile records advocated

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Information gap on young offenders can leave authorities in the dark

By John Diedrich of the Journal Sentinel

July 24, 2011 | (46) COMMENTS

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Gary Porter

Markus Evans, 18, appears in court in June. Evans, who has a history of violence, is charged with killing a 17-year-old girl.

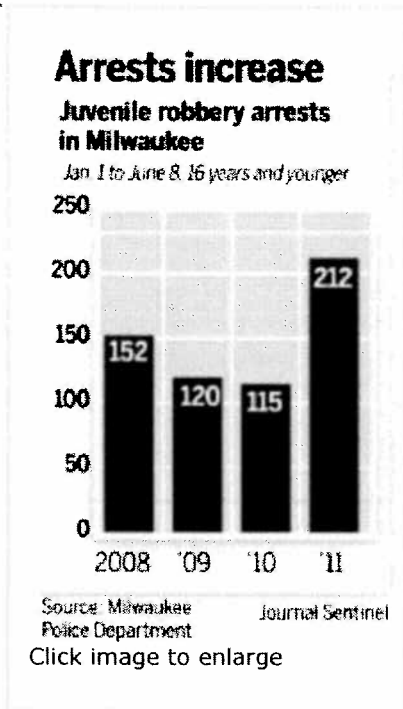
When police officers stop a teenager for smashing a window, stealing a bike or skipping school, one thing they need to know is if the child is on probation for committing an earlier crime.

That information can mean the difference between a ticket, a ride home or a trip to juvenile lockup to see a judge.

But officers do not have direct access to county juvenile probation information, a gap that leaves potentially dangerous offenders free and sends a message that the system can be gamed, according to criminal justice officials.

It is the latest hole in the system uncovered by the Journal Sentinel in an investigation revealing how communication failures, breaks from judges, miscalculations by law enforcement and leniency from prosecutors help offenders elude justice.

The only way police in Milwaukee can check a juvenile probation record is for an officer to call children's court and wait for someone to pull the record - impractical for busy beat officers on the street, officials say. After hours, access can be even slower with just one person handling requests for the entire county. Until last year, the requests from police sometimes went to an answering machine.



Dangerous and Free



The Journal Sentinel has identified a series of cases in which defendants eluded justice because of failures in the system.

Access to juvenile records advocated
(46)

Evans homicide case creeps toward trial

Felons' helpful kin get a pass

[Go to section](#)

This communication gap between police and juvenile probation surfaced in the case of Markus Evans, who received repeated second chances in children's court despite a long, violent history. Evans, 18, now is charged in adult court with killing a teenage girl who was walking home from school in December.

A bill to close the gap and let police quickly check juvenile probation information passed the state Legislature in 2007. It would have allowed police to check a juvenile's probation status electronically, the way they can look up an adult suspect's probation status.

But after lobbying by defense attorneys, Gov. Jim Doyle canceled a bill-signing ceremony and instead vetoed the measure, saying it didn't do enough to keep juvenile records confidential.

Milwaukee's police chief and district attorney said the bill should return, to protect the community and hold juveniles accountable.

"Having one component of the criminal justice system essentially hide information from another component of the system serves neither the community nor the best interests of young people," said Police Chief Edward Flynn.

"If a kid is on probation and violating probation and it is, 'Hee, hee, the cops won't know' - has that kid learned the law means something? No, he has learned the law is not on the level, that he can get away with something."

Following the veto, state officials decided even without a law change they could allow police access to their juvenile probation records. But far more children are on county probation, and checking that system remains cumbersome.

Milwaukee County officials, who maintain probation records, did not respond to interview requests for this article.

A powerful state lawmaker is examining the issue with county probation records, but a new bill has not been proposed.

Christopher Foley, a longtime children's court judge in Milwaukee County, doesn't see a need for a change in the law. He said the law already allows police access to the records, but some people have become overly cautious with juvenile records.

The law requiring confidentiality of juvenile records is intended to prevent a youthful mistake from haunting someone - part of a juvenile system designed to emphasize rehabilitation over punishment.

But confidentiality is not supposed to leave police in the dark when they are investigating crime, Foley said.

"If you want to say confidentiality restricts yourself, you better know what the restriction is because otherwise it will paralyze you," Foley said. "The idea that law enforcement does not

have a right to access county probation records is absolute nonsense. That is a bunch of hooey that has been driving me nuts for 28 years."

Evans case

The Markus Evans case demonstrates the perils of police not having access to juvenile probation information.

Milwaukee police were called in December 2008 after Evans attacked a safety aide at Hamilton High School - at the time the latest in a long history of violence that stretched back to kindergarten when Evans stabbed a teacher with a pencil.

But officers did not have direct access to Evans' records, which would have showed he had been put on probation just a couple months earlier for a nearly identical crime.

Had officers known that, they may have taken Evans to the county's juvenile lockup in Wauwatosa, where his arrest would have come to attention of a judge. Instead, police turned the 15-year-old over to his mother and ordered him to appear in children's court a few weeks later.

Between the time of his arrest and when he was supposed to go to court, Evans' violence dramatically escalated.

He tried to light his mother on fire, after she took away a motorized toy car. And a week later, Evans shot his cousin in the back at a family Christmas party at the Gordon Park pavilion.

Foley said the Evans case shows the need for officers to have the information quickly.

"You don't have current information and you can end up releasing a child who should not be released from custody," he said. "When you have bad information, you make bad decisions."

Evans' cousin wanted him waived to adult court, but a prosecutor did not ask for a waiver. A children's court judge would later sentence Evans to less time than she could have for the shooting - letting Evans walk free by December, when 17-year-old Jonoshia Alexander was killed while walking home from school. He is charged with killing her.

2007 bipartisan bill

For years, police have sought greater access to county juvenile probation records.

Milwaukee Police Lt. Jason Smith said if officers and detectives know that a juvenile is on supervision, they will handle an investigation differently.

"If I have someone on probation for robbery or a shooting, maybe I am going to check the grass 10 feet from where I stopped him," Smith said. "Maybe I will look harder in that car where he was in the back with three other people. This is a guidance piece, for public safety and officer safety."

County authorities have provided police information about juveniles on probation for gun offenses for 12 years under a special anti-gun effort. Officers had to call the probation office to check all other crimes.

In 2007, a bipartisan bill was introduced that would give police, prosecutors, other courts and child welfare case workers faster access to juvenile court records, including probation status. Like police, the others can request the information, but the system was cumbersome.

One author, former state Rep. Sue Jeskewitz (R-Menomonee Falls) said the bill made common sense. Opponents thought the bill would give police too much information.

"The safety of our citizens should be primary," Jeskewitz recently told the Journal Sentinel. "To be worried about a policeman having a little too much information is secondary to the importance of knowing if this person is a criminal at the moment and be able to deal with it."

Sen. Glenn Grothman (R-West Bend) was concerned that too many people would have access to sensitive information under the 2007 bill.

"When you have that many thousands of people with access, no we don't need that," Grothman said recently.

Bill supporters disputed Grothman's interpretation of how widely information would have been available under the bill. They also noted the bill called for a \$5,000 fine for anyone misusing the information.

The bill passed the Legislature, and Doyle's office even invited Milwaukee County District Attorney John Chisholm to attend the bill signing. But the State Bar of Wisconsin was quietly lobbying the Democratic governor for a veto.

In a letter, the Bar Association wrote to Doyle, "Juvenile court records are protected as we do not want to label juveniles as criminals but rather strive to rehabilitate them while still in their youth. . . . It is not difficult to understand why we believe allowing access to the 'juvenile record' is too broad."

Lawyers and law firms strongly supported Doyle during his tenure as governor, giving nearly \$2.3 million between 2002 and 2008 - making them the top contributors to Doyle, according to the Wisconsin Democracy Campaign, a nonpartisan watchdog group.

Doyle canceled the bill signing and announced he would veto the bill.

In his veto message, he said the bill went too far. He suggested legislators craft a more limited bill that provided the information just to child protective services workers, not police officers. The following year, the Legislature did that, and Doyle signed it.

Probation records offline

After the veto, a Milwaukee Homicide Commission report again called for police to have direct access to juvenile probation status. The commission looks for systematic improvements in the criminal justice system.

The State Department of Corrections later agreed to have its juvenile probation information included in background records that police officers run on the street.

But county probation records remained offline to police.

The majority of juveniles adjudicated for a crime end up on county supervision - about 1,400 in Milwaukee at any given time. By contrast, there are just over 100 juveniles in Milwaukee currently on state probation - supervision that kicks in after a child is released from state juvenile prison.

Chisholm said he thinks there could be a bill that would give police and others what they need while not providing access that is too broad. He suggested the same kind of training and consequences for misuse in doing an FBI background check.

"You limit it so everyone doesn't have access and have to understand the consequences," Chisholm said. "I think it is an important one, and I think this is one that wouldn't require reinventing the wheel."

State Rep. Robin Vos (R-Rochester), a co-sponsor of the original bill, said he planned to look again at the issue.

"(Police) have to have a reason to look at the record. They can't go willy-nilly," he said. "I have to have faith in the system. I trust the police. I want to give them all the tools that are necessary."

Retired Milwaukee County Circuit Judge Michael Malmstadt, who served 13 years in children's court, said he was troubled by the lack of communication through the juvenile justice system.

He sees the gap between police and county probation another example of how confidentiality rules - intended to protect children - actually hurt them.

"These kids have to know they have rules and they will be enforced," he said. "When we say, 'You break the rules, there will be consequences' and there are none, we just invited them to break the rules some more.

"It is not harmful for a child to be held accountable for his behavior."

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2461/7
GMM...
kjf

IN 7/28
Wanted Mon 7/31

Gen

1 AN ACT ...; relating to: the disclosure of electronic juvenile court records to law
2 enforcement agencies and 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 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
18 school official under s. 118.125. This subsection does not apply to the confidential
19 exchange of information between the police and officials of the tribal school attended
20 by the child if the police determine that enforceable protections are provided by a

1 tribal school policy or tribal law that requires tribal school officials to keep the
 2 information confidential in a manner at least as stringent as is required of a public
 3 school official under s. 118.125. A law enforcement agency that obtains information
 4 under this subsection shall keep the information confidential as required under this
 5 subsection and s. 938.396 (1) (a). A social welfare agency that obtains information
 6 under this subsection shall keep the information confidential as required under ss.
 7 48.78 and 938.78.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 302, 338.

8 **SECTION 2.** 48.396 (2) (a) of the statutes is amended to read:
 9 48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this
 10 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be
 11 entered in books or deposited in files kept for that purpose only. ~~They~~ Those records
 12 shall not be open to inspection or their contents disclosed except by order of the court
 13 assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under
 14 this subsection, sub. (3) (b) or (c) 1. or (6), or s. 48.375 (7) (e) or 938.396 (2m) (b) or
 15 (c).

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 302, 338.

16 **SECTION 3.** 938.396 (1) (a) of the statutes is amended to read:
 17 938.396 (1) (a) *Confidentiality.* Law enforcement agency records of juveniles
 18 shall be kept separate from records of adults. Law enforcement agency records of
 19 juveniles may not be open to inspection or their contents disclosed except under par.
 20 (b) or (c), sub. (1j), (2m) (c), or (10), or s. 938.293 or by order of the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; s. 13.92 (2) (i).

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

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.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; s. 13.92 (2) (i).

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.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; s. 13.92 (2) (i).

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

1 agency is a party to or is otherwise involved in the proceedings in which the electronic
2 records containing that information were created. The director of state courts may
3 use the circuit court automated information systems established under s. 758.19 (4)
4 to facilitate the transfer of those electronic records from the court to a law
5 enforcement agency. The director of state courts shall determine what types of
6 information may be transferred under this paragraph.

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

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

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

19 (END)

Godwin, Gigi

From: Sen.Darling
Sent: Wednesday, August 24, 2011 2:55 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2461/1 Topic: Juvenile court records; disclosure to other courts, law enforcement agencies, prosecutors, and agencies providing services to juvenile court

Please Jacket LRB 11-2461/1 for the SENATE.