



State of Wisconsin
2011 – 2012 LEGISLATURE



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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 173**

January 19, 2012 – Offered by Senator DARLING.

1 **AN ACT** *to renumber and amend* 48.396 (3) (c) 1.; *to amend* 48.396 (1), 48.396
2 (2) (a), 48.396 (3) (b), 48.396 (3) (c) 2., 48.396 (3) (c) 3., 48.396 (3) (d), 48.47 (7g),
3 48.78 (2) (a), 48.78 (2) (h), 938.396 (1) (a), 938.396 (2), 938.396 (2g) (c), 938.396
4 (2g) (d), 938.78 (2) (a) and 938.78 (2) (h); and *to create* 48.396 (2) (e), 48.396 (3)
5 (c) 1g., 48.396 (3) (c) 1m. and 938.396 (2m) of the statutes; **relating to:** the
6 disclosure of electronic juvenile court records to other juvenile courts,
7 municipal courts, courts of criminal jurisdiction, district attorneys and other
8 prosecutors, and law 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 relating to a proceeding under the Children's Code (generally, a child in need of protection services or a termination of parental rights proceeding) or the Juvenile Justice Code (generally, a delinquency, civil law or ordinance violation, or a juvenile in need of protection or services proceeding) 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. In addition, current law requires the juvenile court to disclose its records relating to a proceeding under the Juvenile Justice Code on the request of a court of criminal jurisdiction or a district attorney to review those records for the purpose of setting bail or impeaching a witness or on the request of a law enforcement agency to review those records for the purpose of investigating alleged criminal gang activity.

This substitute amendment requires the juvenile court to transfer information relating to proceedings under the Children's Code or the Juvenile Justice Code that is contained in the electronic records of the juvenile court to any other juvenile court, a municipal court, a court of criminal jurisdiction, or a prosecutor of a case in any of those courts. The substitute amendment also permits the juvenile court to transfer information relating to proceedings under the Juvenile Justice Code that is contained in the electronic records of the juvenile court to a law enforcement agency. A person to whom information is transferred under the substitute amendment must keep that information confidential and may use or allow access to that information only as follows:

1. In the case of a juvenile court, municipal court, or court of criminal jurisdiction or an individual who is allowed access to that information by such a court, only for the purpose of conducting or preparing for a proceeding in that court.
2. In the case of a prosecutor or an individual who is allowed access to that information by a prosecutor, only for the purpose of performing the prosecutor's official duties relating to a proceeding in a juvenile court, municipal court, or court of criminal jurisdiction.
3. In the case of a law enforcement agency or an individual who is allowed access to that information 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.

The substitute amendment permits the director of state courts to use CCAP to facilitate the transfer of electronic records under the substitute amendment, and provides for a forfeiture of not more than \$5,000 for any person who intentionally discloses information in violation of the substitute amendment.

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:

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

1 under this subsection shall keep the information confidential as required under ss.
2 48.78 and 938.78.

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

4 48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this
5 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be
6 entered in books or deposited in files kept for that purpose only. ~~They~~ Those records
7 shall not be open to inspection or their contents disclosed except by order of the court
8 assigned to exercise jurisdiction under this chapter and ch. 938 or as required or
9 permitted under this subsection, sub. (3) (b) or (c) 1. 1g., 1m., or 1r. or (6), or s. 48.375
10 (7) (e).

11 **SECTION 3.** 48.396 (2) (e) of the statutes is created to read:

12 48.396 (2) (e) Upon request of a court of criminal jurisdiction to review court
13 records for the purpose of conducting or preparing for a proceeding in that court or
14 upon request of a district attorney to review court records for the purpose of
15 performing his or her official duties in a proceeding in a court of criminal jurisdiction,
16 the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open
17 for inspection by authorized representatives of the requester the records of the court
18 relating to any child who has been the subject of a proceeding under this chapter.

19 **SECTION 4.** 48.396 (3) (b) of the statutes is amended to read:

20 48.396 (3) (b) The court ~~may~~ shall transfer to ~~the department~~ information
21 relating to proceedings under this chapter that is contained in the electronic records
22 of the court to any other court assigned to exercise jurisdiction under this chapter and
23 ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), a court of
24 criminal jurisdiction, a person representing the interests of the public under s. 48.09
25 or 938.09, a district attorney prosecuting a criminal case, or the department,

1 regardless of whether that other court, municipal court, or person or the department
2 is a party to or is otherwise involved in the proceedings in which the electronic
3 records containing that information were created, ~~and the~~. The director of state
4 courts may use the circuit court automated information systems established under
5 s. 758.19 (4) to facilitate the transfer of electronic records under this paragraph.

6 (bm) The department may transfer to the court information contained in the
7 electronic records of the department that are maintained in the statewide automated
8 child welfare information system under s. 48.47 (7g). The director of state courts may
9 use the circuit court automated information systems established under s. 758.19 (4)
10 to facilitate the transfer of those electronic records ~~between~~ from the department to
11 the court and the department. The director of state courts and the department shall
12 specify what types of information may be transferred from the department to the
13 court under this paragraph and from the court to the department under par. (b).

14 **SECTION 5.** 48.396 (3) (c) 1. of the statutes is renumbered 48.396 (3) (c) 1r. and
15 amended to read:

16 48.396 **(3)** (c) 1r. The department ~~may allow access to~~ shall keep any
17 information transferred to the department under par. (b) confidential and may use
18 or allow access to that information only for the purpose of providing services under
19 s. 48.06, 48.067, 48.069, 938.06, ~~938.067~~ 938.067, or 938.069. The department may
20 allow that access regardless of whether the person who is allowed that access is a
21 party to or is otherwise involved in the proceedings in which the electronic records
22 containing that information were created.

23 **SECTION 6.** 48.396 (3) (c) 1g. of the statutes is created to read:

24 48.396 **(3)** (c) 1g. A court assigned to exercise jurisdiction under this chapter
25 and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), or a court

1 of criminal jurisdiction shall keep any information transferred to that court under
2 par. (b) confidential and may use or allow access to that information only for the
3 purpose of conducting or preparing for a proceeding in that court. That court may
4 allow that access regardless of whether the person who is allowed that access is a
5 party to or is otherwise involved in the proceedings in which the electronic records
6 containing that information were created.

7 **SECTION 7.** 48.396 (3) (c) 1m. of the statutes is created to read:

8 48.396 **(3)** (c) 1m. A person representing the interests of the public under s.
9 48.09 or 938.09 or a district attorney prosecuting a criminal case shall keep any
10 information transferred to that person under par. (b) confidential and may use or
11 allow access to that information only for the purpose of performing his or her official
12 duties relating to a proceeding in a court assigned to exercise jurisdiction under this
13 chapter and ch. 938 or a municipal court. That person may allow that access
14 regardless of whether the person who is allowed that access is a party to or is
15 otherwise involved in the proceedings in which the electronic records containing that
16 information were created.

17 **SECTION 8.** 48.396 (3) (c) 2. of the statutes is amended to read:

18 48.396 **(3)** (c) 2. The court or the director of state courts may allow access to any
19 information transferred to the court under par. (b) (bm) only to the extent that the
20 information may be disclosed under this chapter or ch. 938.

21 **SECTION 9.** 48.396 (3) (c) 3. of the statutes is amended to read:

22 48.396 **(3)** (c) 3. ~~The department, a court, the director of state courts, and any~~
23 An individual who is allowed under subd. 1g., 1m., 1r., or 2. to have access to any
24 information transferred under par. (b) or (bm) shall keep the information
25 confidential and may use and further disclose the information only for the purpose

1 purposes described in subd. ~~1.~~ 1g., 1m., or 1r. or to the extent permitted under subd.
2 2.

3 **SECTION 10.** 48.396 (3) (d) of the statutes is amended to read:

4 48.396 **(3)** (d) Any person who intentionally uses or discloses information in
5 violation of par. (c) may be required to forfeit not more than \$5,000.

6 **SECTION 11.** 48.47 (7g) of the statutes is amended to read:

7 48.47 **(7g)** STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM. Establish
8 a statewide automated child welfare information system. Notwithstanding ss.
9 46.2895 (9), 48.396 (1) and (2) (a), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30,
10 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and
11 (2), and 938.78 (2) (a), the department may enter the content of any record kept or
12 information received by the department into the statewide automated child welfare
13 information system, and a county department under s. 46.215, 46.22, or 46.23, the
14 department, or any other organization that has entered into an information sharing
15 and access agreement with the department or any of those county departments and
16 that has been approved for access to the statewide automated child welfare
17 information system by the department may have access to information that is
18 maintained in that system, if necessary to enable the county department,
19 department, or organization to perform its duties under this chapter, ch. 46, 51, 55,
20 or 938, or 42 USC 670 to 679b or to coordinate the delivery of services under this
21 chapter, ch. 46, 51, 55, or 938, or 42 USC 670 to 679b. The department may also
22 transfer information that is maintained in the system to a court under s. 48.396 (3)
23 ~~(b)~~ (bm), and the court and the director of state courts may allow access to that
24 information as provided in s. 48.396 (3) (c) 2.

25 **SECTION 12.** 48.78 (2) (a) of the statutes is amended to read:

1 48.78 (2) (a) No agency may make available for inspection or disclose the
2 contents of any record kept or information received about an individual who is or was
3 in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or
4 (5m) (d), 48.396 (3) ~~(b)~~ (bm) or (c) ~~1. 1r.~~, 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m),
5 48.93, 48.981 (7), 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the court.

6 **SECTION 13.** 48.78 (2) (h) of the statutes is amended to read:

7 48.78 (2) (h) Paragraph (a) does not prohibit the department, a county
8 department, or a licensed child welfare agency from entering the content of any
9 record kept or information received by the department, county department, or
10 licensed child welfare agency into the statewide automated child welfare
11 information system established under s. 48.47 (7g) or the department from
12 transferring any information maintained in that system to the court under s. 48.396
13 (3) ~~(b)~~ (bm). If the department transfers that information to the court, the court and
14 the director of state courts may allow access to that information as provided in s.
15 48.396 (3) (c) 2.

16 **SECTION 14.** 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) 1p., or (10), or s. 938.293 or by order of the court.

21 **SECTION 15.** 938.396 (2) of the statutes is amended to read:

22 938.396 (2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to
23 exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising
24 jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for
25 that purpose only. Those records shall not be open to inspection or their contents

1 disclosed except by order of the court assigned to exercise jurisdiction under this
2 chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10)
3 or s. 48.396 (3) (b) or (c) 1.

4 **SECTION 16.** 938.396 (2g) (c) of the statutes is amended to read:

5 938.396 **(2g)** (c) *Law enforcement agencies.* Upon request of a law enforcement
6 agency to review court records for the purpose of investigating ~~a crime that might~~
7 ~~constitute criminal gang activity, as defined in s. 941.38 (1) (b), the court shall open~~
8 ~~for inspection by authorized representatives of the law enforcement agency the~~
9 ~~records of the court relating to any juvenile who has been found to have committed~~
10 ~~a delinquent act at the request of or for the benefit of a criminal gang, as defined in~~
11 ~~s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed~~
12 ~~by an adult alleged criminal activity or activity that may result in a court exercising~~
13 ~~jurisdiction under this chapter or ch. 48, the court assigned to exercise jurisdiction~~
14 ~~under this chapter and ch. 48 shall open for inspection by authorized representatives~~
15 ~~of the requester the records of the court relating to any juvenile who has been the~~
16 ~~subject of a proceeding under this chapter. This paragraph does not authorize~~
17 ~~disclosure of any information relating to the physical or mental health of an~~
18 ~~individual, including information contained in a patient health care record, as~~
19 ~~defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1) (b), a report~~
20 ~~resulting from an examination or assessment under s. 938.295, a court report under~~
21 ~~s. 938.33, or a permanency plan under s. 938.38, except with the informed consent~~
22 ~~of a person authorized to consent to that disclosure, by order of the court, or as~~
23 ~~otherwise permitted by law.~~

24 **SECTION 17.** 938.396 (2g) (d) of the statutes is amended to read:

1 938.396 (2g) (d) ~~Bail; impeachment; firearm possession~~ Criminal and civil
2 proceedings. Upon request of a court of criminal jurisdiction ~~or a district attorney~~
3 ~~to review court records for the purpose of setting bail under ch. 969, impeaching a~~
4 ~~witness under s. 906.09, or investigating and determining whether a person has~~
5 ~~possessed a firearm in violation of s. 941.29 (2) or body armor in violation of s. 941.291~~
6 ~~(2) to review court records for the purpose of conducting or preparing for a proceeding~~
7 ~~in that court, upon request of a district attorney to review court records for the~~
8 ~~purpose of performing his or her official duties in a proceeding in a court of criminal~~
9 ~~jurisdiction,~~ or upon request of a court of civil jurisdiction or the attorney for a party
10 to a proceeding in that court to review court records for the purpose of impeaching
11 a witness under s. 906.09, the court assigned to exercise jurisdiction under this
12 chapter and ch. 48 shall open for inspection by authorized representatives of the
13 requester the records of the court relating to any juvenile who has been the subject
14 of a proceeding under this chapter.

15 **SECTION 18.** 938.396 (2m) of the statutes is created to read:

16 938.396 (2m) ELECTRONIC COURT RECORDS. (a) In this subsection, “court” means
17 the court assigned to exercise jurisdiction under this chapter and ch. 48.

18 (b) The court shall transfer information relating to a proceeding under this
19 chapter that is contained in the electronic records of the court to any other court
20 assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court
21 exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person
22 representing the interests of the public under s. 48.09 or 938.09, a district attorney
23 prosecuting a criminal case, a law enforcement agency, or the department, regardless
24 of whether that other court, municipal court, person, district attorney, or law
25 enforcement agency or the department is a party to or is otherwise involved in the

1 proceedings in which the electronic records containing that information were
2 created. The director of state courts may use the circuit court automated information
3 systems established under s. 758.19 (4) to facilitate the transfer of electronic records
4 under this paragraph.

5 (c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 48,
6 a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal
7 jurisdiction shall keep any information transferred to that court under par. (b)
8 confidential and may use or allow access to that information only for the purpose of
9 conducting or preparing for a proceeding in that court. That court may allow that
10 access regardless of whether the person who is allowed that access is a party to or
11 is otherwise involved in the proceedings in which the electronic records containing
12 that information were created.

13 1m. A person representing the interests of the public under s. 48.09 or 938.09
14 or a district attorney prosecuting a criminal case shall keep any information
15 transferred to that person or district attorney under par. (b) confidential and may use
16 or allow access to that information only for the purpose of performing his or her
17 official duties relating to a proceeding in a court assigned to exercise jurisdiction
18 under this chapter and ch. 48, a municipal court, or a court of criminal jurisdiction.
19 That person or district attorney may allow that access regardless of whether the
20 person who is allowed that access is a party to or is otherwise involved in the
21 proceedings in which the electronic records containing that information were
22 created.

23 1p. A law enforcement agency shall keep any information transferred to the law
24 enforcement agency under par. (b) confidential and may use or allow access to that
25 information only for the purpose of investigating alleged criminal activity or activity

1 that may result in a court exercising jurisdiction under this chapter or ch. 48. A law
2 enforcement agency may allow that access regardless of whether the person who is
3 allowed that access is a party to or is otherwise involved in the proceedings in which
4 the electronic records containing that information were created.

5 1r. The department shall keep any information transferred to the department
6 under par. (b) confidential and may use or allow access to that information only for
7 the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or
8 938.069. The department may allow that access regardless of whether the person
9 who is allowed that access is a party to or is otherwise involved in the proceedings
10 in which the electronic records containing that information were created.

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

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

17 **SECTION 19.** 938.78 (2) (a) of the statutes is amended to read:

18 938.78 (2) (a) No agency may make available for inspection or disclose the
19 contents of any record kept or information received about an individual who is or was
20 in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) ~~(b)~~ (bm)
21 or (c) ~~1. 1r.~~, 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51, or
22 938.57 (2m) or by order of the court.

23 **SECTION 20.** 938.78 (2) (h) of the statutes is amended to read:

24 938.78 (2) (h) Paragraph (a) does not prohibit the department of children and
25 families, a county department, or a licensed child welfare agency from entering the

1 content of any record kept or information received by that department, county
2 department, or licensed child welfare agency into the statewide automated child
3 welfare information system established under s. 48.47 (7g) or the department of
4 children and families from transferring any information maintained in that system
5 to the court under s. 48.396 (3) ~~(b)~~ (bm). If the department of children and families
6 transfers that information to the court, the court and the director of state courts may
7 allow access to that information as provided in s. 48.396 (3) (c) 2.

8

(END)