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February 13, 2014

To: Members of the Senate Committee on Judiciary and Labor
From: Senator Glenn Grothman
Re: Senate Bill 526

I have been contacted by many constituents and other individuals about the negative impact that the Consolidate Court Automation Program (CCAP) and the Wisconsin Circuit Court Access (WCCA) site has had on their lives or lives of their loved ones when they have not been found guilty for the accused charges.

Under current law, when a case did not result in a conviction the site includes a statement that says that the charges were not proven and have no legal effect, and that the defendant in that case is presumed innocent. The charges though still are publicly available for all to see.

This legislation would require a case or charge involving a civil forfeiture or misdemeanor from WCCA within ninety days after being notified the case or charge has been dismissed, overturned on appeal and dismissed or the defendant has been found not guilty of the charge. It would also remove a case or charge involving a felony from WCCA within 120 days after being notified of any of the preceding situations.

There is a concern by many citizens that in these situations their personal privacy is being invaded for charges that have been dismissed or not substantiated. This bill strikes the right balance between disclosure and personal privacy.

Please join me in supporting this legislation that will help individuals and their families move past any charges that were incorrectly brought against these individuals.

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Senate Bill 526 – Removal of certain records from CCAP
Senate Committee on Judiciary and Labor
February 13th, 2014

Thank you to the committee members for holding a public hearing on Senate Bill 526 today. This legislation strikes the delicate balance between protecting personal privacy and the public's interest in court records; and at its core, boils down to upholding the principle of "innocent until proven guilty."

We had this bill drafted in response to numerous contacts from constituents in my own Assembly district, as well as folks from all areas of Wisconsin. Each person had unique circumstances and a different story to tell about their experience with our courts system, but one element was the same – **they have all been impacted by dismissed or not-guilty court records that remain** on our Consolidated Court Automation Program (CCAP).

Under SB 526, the director of state courts is required to remove a case or charge involving a civil forfeiture or misdemeanor within 90 days after being notified of one of three instances:

- The case or charge has been dismissed.
- The defendant has been found not guilty of the charge.
- The case or charge has been overturned on appeal.

The same would apply to felony cases or charges, under a 120 day timeline.

CCAP and access to court records are by no means a new issue to the state Legislature. In fact, this bill is similar to 2007 AB 754 which was introduced late in that session with wide bipartisan support. There is one key difference under our current bill; charges that have been read-in at sentencing, which often happens in plea bargins, would remain on CCAP.

(over)

As we worked to draft the bill, I spoke with several Clerks of Circuit Court, both in my home area of Lincoln County along with other counties. A concern they expressed to me is that removal of certain records from CCAP would create "two separate court systems", because clerks would retain the original case records.

As authors of the bill, we needed to weigh two factors: The harm potentially caused to people that have dismissed or not guilty charges listed on their online CCAP record vs. the minimal extra effort for interested parties to obtain that information from their county courthouse or pay a $5 mailing fee. Ultimately, **the potential discrimination and stereotyping that affects these individuals' ability to function in society** caused us to draft SB 526.

I also understand some have advocated for expunction of these types of charges or cases. We are willing to have those conversations, but I will say personally I still believe the fundamental principle of our judicial system applies – innocent until proven guilty. The expunction process would place the burden of proof on the individual/defendant.

In closing, I will ask you to consider for a moment the powers of an online society. The ascent of technology has been so rapid in the last decade that **we as a Legislature are working through issues with personal privacy that couldn't possibly have been foreseen.** CCAP is an excellent system, and I know our dedicated court personnel put a great deal of time and effort into the creation and maintenance of the records system. In today's computer world, information is just a click away and society has the mentality to "judge now, ask questions later". SB 526 will help to ensure the powers of the Internet are not unfairly wielded against an individual.

Supreme Court of Wisconsin

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A. John Voelker
Director of State Courts

Testimony
Of
John Voelker
Director of State Courts

In Opposition to

2013 Senate Bill 526

Committee on Judiciary and Labor
Senator Glenn Grothman, Chair
February 13, 2014

Thank you, Chairperson Grothman and members of the Committee. I am John Voelker, the Director of State Courts. On behalf of the Legislative Committee of the Judicial Conference and my office, I want to express our opposition to Senate Bill 526.

I want to first emphasize that our opposition is not to the goal of the legislation but rather to the means the bill uses to achieve its goal. I am encouraged that bills such as SB 526 are being considered to address the issue of dismissed and not guilty cases. This is an issue my office has actively been working on since June 2005 when I convened the WCCA Oversight Committee to advise me on whether and how to modify the policy that addresses electronic access to circuit court records. I have also testified before the Legislative Council's Special Committee on Review of Access to Circuit Court Records, suggesting the expungement statute be amended to include dismissed and not guilty cases. Unfortunately, the legislation developed by that committee was not passed.

There are four areas of concern we have identified where the approach used in SB 526 could be better addressed by amending the expungement statute.

First, SB 526 would have the courts create, in effect, two sets of books for these cases. One would be the paper record maintained by the Clerks of Circuit Court, who are the official record custodians for the court records. That record would continue to be available to anyone who wishes to view it. But the electronic information available on the court's website would no longer be an electronic "mirror image" of the records maintained by the clerks. Under our proposed amendment to the expungement statute, we continue to have one set of books that remain the same whether viewed in paper form or electronic form.

Second, SB 526 only provides partial relief to the people it seeks to help because it only deals with the information displayed on the Internet. There is no action taken that impacts the

entire court record. We believe people might be misled by the bill into thinking their entire case is being eliminated when that is not true. On the other hand, if you use the expungement statute and a case is expunged, there will be *no* court record available to the public, either at the clerk's office or on the Internet.

Third, SB 526 would be more expensive to implement than amending the expungement statute. It would require CCAP programmers and analysts to rework the CCAP database in order to "mask" the electronic record of these cases. This is concerning to us because SB 526 provides no resources for the programmers and support staff necessary to implement it. We are just completing a similar project within CCAP to implement Act 270 which required $90,000 to initially develop. On the other hand, because the expungement process already exists for certain convictions and is available in our case management system, it would be very simple and inexpensive to allow other types of cases to use that process. We would also amend existing standard petition and order forms to give individuals easy access to the expungement process.

And fourth, SB 526 raises concerns that it may be contrary to the constitutional separation of the branches of government. If adopted, SB 526 would start the Legislature down the path of mandating how the judicial branch, a co-equal branch of government, fulfills its constitutional responsibilities. Specifically, it would mandate how the judicial branch should maintain, display and provide access to the court record. Amending the expungement statute clearly falls under the powers of the Legislature and would not raise this issue.

Recordkeeping is a critical – and we believe core – function of the judicial branch. It is a function we take seriously. We understand the importance of tracking the records of the nearly one million cases that are filed in the circuit courts every year. In our effort to manage the records, we have developed and continue to update key elements, such as Supreme Court Rule Chapter 72 on retention of court records, a Model Recordkeeping Procedures Manual, and our statewide electronic case management system, CCAP.

As an independent and co-equal branch of government, the court system must determine its own course of conduct by which it fulfills its constitutional and statutory responsibilities. SB 526 infringes on the operation of the court system.

The Consolidated Court Automation Programs, or CCAP, is the court system's case management system. The Wisconsin Circuit Court Access (WCCA) website is only one aspect of the CCAP system. The WCCA website was initiated in 1999 partly to reduce the workload demand on clerks of circuit court who were often contacted by litigants, lawyers, representatives of the media, and the public on the status of circuit court cases. We think SB 526 would return some of that work to the staff of the clerk's office.

I have talked extensively on how amending the expungement statute to address dismissed and not guilty cases is a better approach to this issue. To that end, during the last year, the Legislative Committee of the Judicial Conference and my office have been working on a draft of changes to the expungement statute. The draft addresses cases that result in dismissal or in not guilty verdicts. It also gives defendants and judges greater flexibility by eliminating the current requirement that expungement be decided "at the time of sentencing." This provision has led to appellate litigation, including one case recently decided by the Court of Appeals and a case to be heard by the Supreme Court next week. In addition, the draft seeks to clarify and simplify the procedures to be followed in expungement requests. We have been working with Sen. Jerry Petrowski and others to simplify and further refine this legislative draft.

I have attached this draft, LRB 0003/4 to my testimony. I think you will find this draft addresses the four areas of concern I mentioned earlier and provides a better means to reach the important goals the authors of SB 526 seek to achieve.

For these policy and administrative reasons, I urge you to reject SB 526. If you have questions, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you.

AJV:NMR
Attachment

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–0003/4
PJH:jld:jf

2013 BILL

AN ACT ***to amend*** 301.45 (1p) (a), 301.45 (7) (e) 2. and 301.45 (7) (e) 3.; and ***to repeal and recreate*** 973.015 of the statutes; **relating to:** expungement of certain court records relating to criminal proceedings.

Analysis by the Legislative Reference Bureau

Under current law, if a person is convicted of a criminal offense for which the maximum period of imprisonment is not more than six years and the person committed the offense before he or she was 25 years old, the court may order, at the time the person is sentenced, that the person's record of the offense be expunged when the person completes his or her sentence or any period of probation imposed for the offense. Current law excludes certain offenses from expungement and generally requires the court to determine that the person will benefit and society will not be harmed by expungement.

Under this bill, a person who has been convicted of a criminal offense for which the maximum period of imprisonment is not more than six years or who has been ordered to pay a forfeiture related to a criminal charge, except an offense related to a violation of a traffic law, may petition the court for an order expunging the record of his or her offense or forfeiture. The bill retains the requirement that, in order to be eligible for an order of expungement, the person who is convicted of a crime or found to have committed a civil offense be under the age of 25 when he or she committed the offense. Under the bill, the record of a criminal conviction may be expunged when the person completes his or her sentence.

Under the bill, a person who was sentenced to imprisonment or placed on probation has completed his or her sentence if he or she has not been convicted of a

subsequent offense; he or she has completed his or her term of imprisonment or probation; the detaining or probationary authority has issued a certificate of discharge; and the person has been discharged from the custody, control, and supervision of the Department of Corrections. A person who is not sentenced to a term of imprisonment or placed on probation has completed his or her sentence if the person provides sufficient proof to the court that all conditions of his or her sentence have been fulfilled.

Under the bill, if a person was charged with a crime or a violation not related to a traffic law but the person was acquitted of the charge, the charge was dismissed, or the conviction or imposition of a forfeiture was reversed, set aside, or vacated, the person may petition the court at any time to expunge the circuit court record related to the offense. Under the bill, there is no age limit for when the alleged offense was committed for a person who petitions for expungement on these grounds.

Under the bill, a court may order that the record of the case be expunged if the court determines that all charges, orders, or judgments against the person are eligible for expungement, that the person will benefit, and that society will not be harmed by the expungement. The bill requires the clerk of courts to take certain actions upon receiving an order of expungement, including informing the Department of Justice that an order of expungement has been entered, removing electronic records of the case, and sealing the file.

The bill excludes certain violations from expungement, including traffic violations and certain felonies, if the felony is violent, the person has a history of violent offenses, or the felony is for stalking or certain crimes against children.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 301.45 (1p) (a) of the statutes is amended to read:

301.45 **(1p)** (a) If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 ~~(2)~~.

SECTION 2. 301.45 (7) (e) 2. of the statutes is amended to read:

301.45 **(7)** (e) 2. The department issues a certificate of discharge and a court grants expungement under s. 973.015 ~~(2)~~.

SECTION 3. 301.45 (7) (e) 3. of the statutes is amended to read:

301.45 **(7)** (e) 3. The department receives a certificate of discharge issued ~~under s. 973.015 (2)~~ pursuant to s. 973.015 (3) (b) 2. by the detaining authority.

SECTION 4. 973.015 of the statutes is repealed and recreated to read:

973.015 Expungement of circuit court records. (1) ELIGIBILITY; ACQUITTAL, DISMISSAL, OR REVERSAL. A person may petition to have the circuit court record of a case expunged under this subsection if any of the following applies:

(a) The person has been charged with, but acquitted of, a crime.

(b) The person has been charged with a crime but the charge was dismissed.

(c) The person has been convicted of a crime but the conviction was reversed, set aside, or vacated.

(2) ELIGIBILITY; CONVICTION. A person may petition to have the circuit court record of a case expunged under this subsection if, except as provided in sub. (4) (a), (b), or (c), the person has been convicted of a crime for which the maximum period of imprisonment is 6 years or less and the person was under the age of 25 when he or she committed the crime.

(3) PROCEDURE AND EFFECT OF EXPUNGEMENT. (a) A person who is eligible to petition for expungement of a record under sub. (1) may petition the court for expungement after the time for any party to appeal has expired.

(b) 1. A person who is eligible to petition for expungement of a record under sub. (2) may petition the court for an order that the record be expunged upon successful completion of the sentence.

2. a. A person who is sentenced to a term of imprisonment or who is placed on probation has successfully completed his or her sentence if he or she has not been convicted of a subsequent offense, he or she has completed his or her term of

imprisonment or probation, the detaining or probationary authority has issued a certificate of discharge, and the person has paid, in full, the fine, costs, fees, and surcharges and any restitution assessed.

b. A person who is not sentenced to a term of imprisonment or placed on probation has successfully completed his or her sentence if the person provides sufficient proof to the court that all conditions of his or her sentence have been fulfilled. The clerk of circuit court may provide a certification that the person has paid, in full, the fine, costs, fees, and surcharges and any restitution assessed.

(c) Except as provided in sub. (5), a court may order that the record of the case be expunged if the court determines that all charges or convictions are eligible for expungement and the person will benefit and society will not be harmed by the expungement. This paragraph does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).

(d) Upon receiving an order from the court to expunge a court record, the clerk of the court shall do all of the following:

1. Inform the department of justice that the record is being expunged by order of the court.

2. Treat the record in the manner required by SCR 72.06.

(e) Notwithstanding par. (d) 2., the clerk of court shall allow access to the file and the order for expungement to the person who petitioned for expungement or to another person with the petitioner's written permission.

(4) CERTAIN PERSONS MAY NOT APPLY. No person may apply for expungement of the following:

(a) A record of a conviction of a Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2) or (3), or 948.095.

(b) A record of a conviction of a Class I felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

(c) A record of conviction of a violation of chs. 341 to 348, or a local traffic regulation or ordinance in conformity with any statute within chs. 341 to 348.

(5) CERTAIN ORDERS OF EXPUNGEMENT PROHIBITED, ALLOWED, OR REQUIRED. (a) A court may order that a record containing a read–in crime be expunged only if the record of the offense for which the read–in crime was considered is expunged under this section.

(b) A court may order that a record containing multiple charges be expunged only if the records for all of the charges are expunged under this section.

(c) A court shall order, upon application, that a record be expunged upon successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under the age of 18 when he or she committed it.

(d) A court may order that a record of a violation for which a forfeiture may be assessed be expunged under this section if the record is related to, or arises from, a record of a charge or conviction that is eligible for expungement under this section.

(6) EFFECT OF EXPUNGEMENT. An expunged record may not be considered by any person in any matter relating to an application for employment or for the rental, purchase, or financing of housing.

SECTION 5. Effective date.

(1) This act takes effect on first day of the 6th month beginning after publication.

(END)

Wisconsin Freedom of Information Council

DEVOTED TO PROTECTING WISCONSIN'S TRADITION OF OPEN GOVERNMENT

Sen. Glenn Grothman, chairman
Senate Committee on Judiciary and Labor

February 13, 2014

Dear Chairman Grothman, members of the Committee:

Thank you for this opportunity to testify on SB 526. I represent the Wisconsin Freedom of Information Council, a statewide group that seeks to protect public access to meetings and records. Our sponsoring organizations include the Wisconsin Newspaper Association, the Wisconsin Broadcasters Association and the Wisconsin Associated Press.

I have been involved in addressing calls to limit access to online court records since shortly after the system was created in 1999. I have served on several committees established by the state courts system to set policy for WCCA, or CCAP as it's called, as well as on both Legislative Council committees that have studied this issue, the one chaired by Rep. Robin Vos in 2006, and the one chaired by state Rep. Kelda Roys and later Rep. Ed Brooks in 2010.

All of these committees ultimately chose not to curtail public access to these records, as SB 526 would do. Likewise, similar bills — most recently AB 253, which came up in September — have not survived legislative scrutiny. I think that's a good thing.

Without a doubt, some employers and others use the information on this system to unfairly deny opportunities to applicants. But I do not believe this practice is as widespread as the site's critics claim. I have heard credible testimony from representatives of business groups and landlord associations attesting to their commitment to follow the law and use this information in appropriate ways.

Moreover, the Freedom of Information Council fundamentally opposes the idea at the heart of this bill, that the way to deal with a perceived problem regarding the use of public information is to make it harder to obtain that information. More harm than good will come from this approach.

SB 526 would greatly restrict what records are available on WCCA and thus dramatically undercut the site's usefulness. Records showing that charges against an individual were dismissed or led to a finding of not guilty would no longer appear.

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Passage of this bill would be a boon for private providers of court records data, those companies that offer to run background checks on people for, say, $10 a pop or $30 for full access each year. And those private operators do not have the same checks on accuracy as does the state's system.

In fact, under this bill, WCCA would go from being a tool for tracking what happens in our state court system into being a registry of known offenders. Only the names of those found guilty would appear.

If this bill were to pass, WCCA would henceforth give a distorted view of what happens in our courts. For instance, every prosecutor would have a 100 percent conviction rate on every charge, because charges that were dismissed would not appear.

It would mean that most of the charges brought against former members of the Legislature, like Brian Burke and Chuck Chvala, would disappear from view.

The idea driving this bill is that ordinary citizens lack the intelligence or decency to make rational judgments about cases in which charges are dismissed or a defendant has been found not guilty. I think the people of Wisconsin deserve more credit than that.

Best,

Bill Lueders
President