



WISCONSIN LEGISLATIVE COUNCIL

EXPUNCTION OF CRIMINAL RECORDS

Room 225 Northwest, State Capitol
Madison, Wisconsin

September 28, 2006

10:00 a.m. – 2:45 p.m.

[The following is a summary of the September 28, 2006 meeting of the Special Committee on Expunction of Criminal Records. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Vos called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Robin Vos, Chair; Rep. Tamara Grigsby; Sen. Fred A. Risser; and Public Members Gary Carlson, Tim Costello, Richard Dufour, Bill Dyke, Michelle Litjens, Bill Lueders, Lyn Opelt, Sheila Reiff, Dennis Rome, and Kelli Thompson..

COMMITTEE MEMBERS EXCUSED: Sen. Alan Lasee.

COUNCIL STAFF PRESENT: Don Dyke, Chief of Legal Services; and William Ford, Senior Staff Attorney.

APPEARANCES: Terry C. Anderson, Director, Legislative Council; A. John Voelker, Director of State Courts; Jean Bousquet, Chief Information Officer, Consolidated Court Automation Programs; Mike Roberts, Administrator, Division of Law Enforcement Services, Wisconsin Department of Justice; Gerald Mowris, State Bar of Wisconsin, Criminal Law Section; and Sheila Sullivan, Attorney-at-Law, Legal Action of Wisconsin, Inc.

Opening Remarks

Terry C. Anderson, Director of the Legislative Council, welcomed the members to the first meeting of the Special Committee on behalf of Senator Alan Lasee and Representative Steve Wieckert, Co-Chairs of the Joint Legislative Council. Mr. Anderson thanked the members for serving on the committee, stressed the importance of citizen involvement in the legislative process, and reviewed some procedural and administrative matters.

Introduction of Committee Members

Chair Vos introduced himself and shared his perspective on the issues before the Special Committee. At the invitation of Chair Vos, the committee members briefly introduced themselves and described their interests in the issues to be addressed by the committee.

Description of Material Distributed

William Ford and Don Dyke discussed or described the contents of Memo No. 1, *Laws on Expunction and Removal of Records Relating to Criminal Proceedings* (September 19, 2006) and Memo No. 2, *Selected Initial Background Information* (September 19, 2006).

Invited Speakers

A. John Voelker, Director of State Courts

Mr. Voelker explained the development of the Consolidated Court Automation Programs (CCAP) and the Wisconsin Circuit Court Access (WCCA) website. He explained that the WCCA website, under which free public access is provided to criminal case history information that is a public record, is a subset of the broader universe of information that is in CCAP. Mr. Voelker stated that the easy availability of civil and criminal history information on the WCCA can adversely affect a person's employment opportunities, availability to obtain loans, and even his or her dating relationships.

He explained that he convened the WCCA Oversight Committee to review whether information available on the WCCA website should be maintained and, if so, how to improve it. He stated that the Oversight Committee determined that the information should continue to be available and made a number of recommendations to improve the WCCA website, which are being implemented. He also said that the Oversight Committee had extensive discussions about the expunction statute, but, in the end, decided that it was a more appropriate subject for legislative deliberation. He said that this is the reason he asked for a Legislative Council study of laws relating to expunction.

In response to questions from committee members, Mr. Voelker said that Portage County is currently the only county not participating in CCAP and that Wisconsin is unique among the states in that virtually all circuit court information is gathered in one database; timeliness and accuracy of information available on the WCCA website are, in his opinion, not an issue; and there are currently no plans to include municipal court information in CCAP.

Jean Bousquet, Chief Information Officer, Consolidated Court Automation Programs

Ms. Bousquet said there are approximately three million “hits” on the WCCA website each day. She explained a number of recent revisions to the WCCA website, relating to how long available information remains on the site and how it is presented.

She said a key change involves the length of time certain records remain accessible on the WCCA website. Certain information that would have remained on the site for 10 years in the past will now be retained for shorter periods; for example, traffic and forfeiture cases will appear for five years instead of 10 years. However, cases that involve an outstanding warrant, a pending appeal, or where money is owed will not be removed from the WCCA website until those issues are resolved, even when the retention period for the case has expired.

Another important change is the addition of an executive summary that will appear when a person accesses a criminal, traffic, forfeiture or a civil case filed with a restraining order. Ms. Bousquet stated that this executive summary should help to ensure that persons who use the website interpret the information correctly. For example, the executive summary will clearly identify when charges have been dismissed and state that they have no legal effect. She showed the committee examples of the new format.

Mike Roberts, Administrator, Division of Law Enforcement Services, Wisconsin Department of Justice

Mr. Roberts described the purpose and mechanics of the Crime Information Bureau database. He stated that all information maintained on the database is tied to fingerprint records of persons and that the database is primarily used for criminal investigation purposes and background checks (for a fee).

Mr. Roberts stated that, in 2005, 6,500 requests for criminal history background checks were received by the Crime Information Bureau. Mr. Roberts also said that he frequently receives complaints about situations where criminal history records have been expunged from the WCCA but are still available from the Crime Information Bureau. He also said that the Department of Justice cannot remove records from the Crime Information Bureau database without statutory authority.

Mr. Roberts said that he personally would support some consistency between the WCCA website and the Crime Information Bureau database relating to when information can be expunged or removed.

Gerald Mowris, State Bar of Wisconsin, Criminal Law Section

Mr. Mowris told the committee that the easy public availability of criminal background information can have a great impact upon people. He said, for example, that even though employment discrimination is illegal, it is very difficult to change human nature and that persons are in fact discriminated against because of their criminal history.

Mr. Mowris explained to the committee how s. 973.015, Stats., which is Wisconsin’s expunction statute, affects the advice he gives to criminal defendants. For example, the statute can influence individuals against whom charges would otherwise be dismissed to plead guilty so that their record may be expunged.

Mr. Mowris suggested a number of possible revisions to Wisconsin law relating to expungement. These included giving judges more authority to seal records, allowing expunction following a period of time after criminal charges have been dismissed, and looking at the laws of other states for ideas on how to improve Wisconsin's expunction laws.

Mr. Mowris stated that the Criminal Law Section of the Wisconsin State Bar Association recommends some changes in state expunction laws but does not have specific recommendations as to what those changes should be.

In response to a question from Mr. Dufour, Mr. Mowris said he personally believes expunction should apply only to first offenses. Judge Carlson commented that perhaps expunction should result in dismissal of a case so that a person whose record is expunged does not have to answer "yes" to a prospective employer's question as to whether he or she has ever been convicted of the crime. Representative Grigsby said that expunction should also be available after sentencing.

Sheila Sullivan, Attorney-at-Law, Legal Action of Wisconsin, Inc.

Ms. Sullivan described the Legal Intervention For Employment, or LIFE, project which helps people who have brushes with the law obtain and keep jobs. She also discussed a number of statistics relating to crime, arrests, and imprisonment.

Ms. Sullivan suggested that the state open records laws should be reviewed, because it was created prior to the development of the Internet. She said that the high numbers of persons with criminal records and the increased availability of public access to these records have created a class of people whose rights have been jeopardized.

Ms. Sullivan recommended that the committee consider a system where the availability of criminal background information varies according to the public purpose for the availability. For example, she said, law enforcement officials and the courts could continue to have full access to criminal background information, but that such information can be more limited to the general public.

Discussion of Committee Assignment

In response to a question from Judge Carlson, Chairperson Vos said that the charge to the Special Committee from the Legislative Council is to concentrate on revising state laws relating to the expunction or removal of criminal (and civil offense) information rather than broader questions such as what information should be publicly available. Mr. Lueders said it would be helpful to look at the laws of a few other states that have well crafted expunction laws.

Mr. Dufour said that expunction should be limited to first offenses and should be viewed as a way of giving certain offenders a second chance. There was also discussion of whether expunction should extend to municipal ordinance and state forfeiture violations. In addition, there appeared to be consensus that criminal background information should be available to law enforcement officers and the courts even where the information is expunged and is not publicly available.

Plans for Future Meetings

After conferring with the committee, Chair Vos set the next meeting of the committee for **Tuesday, November 21, 2006, at 10:00 a.m., in Room 225 Northwest, State Capitol, Madison.**

Adjournment

The meeting was adjourned at 2:45 p.m.

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