



WISCONSIN LEGISLATIVE COUNCIL

EXPUNCTION OF CRIMINAL RECORDS

Room 225 Northwest, State Capitol
Madison, Wisconsin

November 21, 2006
10:00 a.m. – 1:45 p.m.

[The following is a summary of the November 21, 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; 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: Sens. Alan Lasee and Fred Risser.

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

Approval of the Minutes of the September 28, 2006 Meeting

The minutes of the September 28, 2006 meeting were approved by unanimous consent.

Discussion of Committee Assignment

Chair Vos asked Judge Carlson to explain his proposal to: (1) repeal s. 973.015, Stats. (the state expunction statute), and replace it with a statute that provides for a conditional discharge of offenses under certain circumstances; and (2) after a certain period of time, remove (“sunset”) information pertaining to certain criminal records from the Wisconsin Circuit Court Access (WCCA) public website.

(This proposal is detailed in a letter, dated November 14, 2006, to Chair Vos from Special Committee member Judge Gary Carlson, which had been distributed prior to the meeting.)

Judge Carlson explained his proposal. In response to a question from Mr. Lueders, Judge Carlson said that, under his proposal, information removed from the WCCA public website would still be available at the circuit court that handled the criminal proceeding. In response to a question from Chair Vos, Judge Carlson said that a condition of participating in the Consolidated Court Automation Program (CCAP) is that a local computer terminal for access to local circuit court records is required.

Chair Vos expressed concern that, if a person received a conditional discharge of an offense and the record of the conditional discharge were removed from the WCCA public website under the sunset provisions in Judge Carlson's proposal, it would not be possible to determine from the WCCA website that the person is a repeat offender if the person commits a subsequent offense. Ms. Opelt said that a sunset provision should not apply in situations where a person is found not guilty or is not prosecuted but where he or she has a previous offense for which a conditional discharge was granted.

Mr. Lueders said that Judge Carlson's proposal was a good starting point but that he had a number of concerns. These include the necessity to go to each county's courthouse to get information that would no longer be on the WCCA public website, and the development of private databases to "fill the gap" if too much information is removed from the WCCA public website. He also asked whether it is appropriate to assume that people will discriminate against persons with a criminal record and that the only way to prevent this is to deny public access to the information.

In response to Mr. Lueder's comments, Judge Carlson said that there are two components in his proposal, one for a conditional discharge of certain offenses and a second component under which information on the WCCA public website would be removed after a certain period ("sunsetting") with respect to conditional discharges and with respect to cases where a person is not prosecuted or is found not guilty. He said that each of the components could be considered separately by the committee.

Mr. Dufour commented that a person should be required to plead guilty to an offense in order for conditional discharge to be available. He said that this would restrict the use of conditional discharge to situations where the individual takes responsibility for his or her behavior.

Mr. Costello said he finds the concept of denying public records that would otherwise be on the WCCA public website troublesome. Judge Dyke said that neither he nor Judge Carlson are advocates of sunsetting information on the WCCA public website but, rather, are responding to a perceived desire on the part of the committee to offer a proposal to replace the current expungement statute.

Ms. Thompson said that the experience of public defenders is their clients are unable to get jobs because their criminal history effectively precludes them from competing against persons with no criminal history. With respect to the provision in Judge Carlson's proposal that sex crimes against children not be eligible for conditional discharge, she said that some of these cases involve young people involved in a relationship where one of the parties is just under the age of consent. She also asked that the committee consider allowing conditional discharge for persons who commit crimes at any age, not just youthful offenders.

Judge Dyke expressed concern that information on the WCCA public website is based on the initial charge, not the final disposition.

Discussion of Conditional Discharge

Chair Vos said that the committee should first discuss and develop a proposal for conditional discharge and, after this proposal is developed, discuss whether sunseting information on the WCCA public website should be a recommendation of the committee. He said that the first issue is what misdemeanors should be covered by the conditional discharge procedure.

Judge Carlson said his proposal for conditional discharge would apply to all first-time misdemeanors except second and subsequent offense OWI/BAC or causing injury by intoxicated use of a motor vehicle, misdemeanor crimes of domestic violence and misdemeanor sexual offenses against children. In response to a suggestion from Ms. Opelt, there appeared to be committee consensus to not allow conditional discharge with respect to any charged offenses against children under ch. 948, Stats., or to misdemeanor lewd and lascivious charges. The committee deferred taking action on whether charges involving weapons violations should be eligible for conditional discharge.

The next issue considered by the committee was whether conditional discharge should be available only where a person was less than a certain age when he or she committed the offense. The committee appeared to reach consensus that no age limit should be imposed but that conditional discharge be available only for first offenses.

The next issue considered by the committee was whether a person must plead guilty in order for conditional discharge to be available, or whether it should also be available when a person is found guilty. Judge Carlson expressed concern that requiring a guilty plea “stacks the deck” so that persons may plead guilty just so conditional discharge is available. He said that, since conditional discharge is discretionary with the judge, a guilty plea should not be made a statutory requirement for conditional discharge to be available. Ms. Opelt, Mr. Dufour, and Ms. Reiff expressed support for making conditional discharge available only where a person pleads guilty to the offense. The committee appeared to reach consensus not to require a guilty plea in order for conditional discharge to be available.

Discussion of Sunseting

Professor Rome said that the only way to make the conditional discharge proposal effective is to also provide for sunseting of information on the WCCA public website after a certain period. Judge Carlson commented that conditional discharge has value with or without sunseting because conditional discharge is not a criminal conviction and enables a person to respond to questions from potential employers and others that he or she has not been convicted of a crime.

The committee engaged in a lengthy discussion of the sunseting component of Judge Carlson’s proposal. Concern was expressed that if too much information is removed from the WCCA public website, this will encourage the development of private websites that provide the same information that would have been provided by the WCCA public website. Representative Grigsby said she thought the goal of the committee was to develop a “second chance” process under which certain first offenders can have information related to criminal charges brought against them removed from easy public access. She acknowledged that there are difficulties in doing this, but said that the committee should try to deal with them. Chair Vos questioned whether there is a legitimate public interest in removing open records from the WCCA public website so that landlords, employers, and others have to go to the courthouse

where the charges were brought in order to obtain this information. Ms. Thompson commented that, from the viewpoint of defendants, it is better that landlords and employers go to the courthouse because more complete information is available there than on the WCCA website.

Chair Vos asked whether there is consensus on the committee to attempt to develop a sunset proposal. Committee members were divided on the issue.

Chair Vos next asked whether there is any minimum amount of time that information related to criminal case history information would remain available on the WCCA public website prior to sunseting that might be acceptable to those generally opposed to developing a sunset proposal. Judge Dyke suggested the committee consider a 10-year period, reasoning that this is the period after which court reporters destroy their records. Judge Carlson said that a sunset that does not take effect until five to 10 years after disposition of the case is not helpful to affected individuals. He said that old criminal charges and convictions do not mean as much to employers, landlords, and others and it is only in the years immediately following disposition of charges that sunsets will have much effect.

Plans for Future Meetings

The next meeting of the Special Committee is scheduled for *Tuesday, December 19, 2006, at 10:00 a.m., in Room 328 Northwest, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 1:45 p.m.

WF:jal