



WISCONSIN LEGISLATIVE COUNCIL

EXPUNCTION OF CRIMINAL RECORDS

Room 328 Northwest, State Capitol
Madison, Wisconsin

December 19, 2006
10:00 a.m. – 12:45 p.m.

[The following is a summary of the December 19, 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; Sens. Alan Lasee and Fred Risser; Rep. Tamara Grigsby; and Public Members Gary Carlson, Tim Costello, Richard Dufour, Bill Lueders, Lyn Opelt, Sheila Reiff, Dennis Rome, and Kelli Thompson.

COMMITTEE MEMBERS EXCUSED: Public Members Bill Dyke and Michelle Litjens.

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

<p>*ATTENTION: This was the final meeting of the Special Committee on Expunction of Criminal Records. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>
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Approval of the Minutes of the November 21, 2006 Meeting

The minutes of the November 21, 2006 meeting were approved by unanimous consent.

Discussion of Committee Assignment

WLC: 0015/1, a draft creating a conditional discharge procedure applicable to most misdemeanors and making the current expunction statute inapplicable to future violations.

Don Dyke explained WLC: 0015/1 (“the Draft”). Mr. Dyke asked the committee whether SECTION 1 of the Draft should be revised so that s. 961.47, Stats., rather than being repealed, is made not applicable to offenses committed on or after the effective date of the Draft. Mr. Dyke said there is utility in retaining current s. 961.47 in the statutes. Judge Carlson stated he thought this would be a good revision to the Draft, and there was committee consensus to do so.

The committee next discussed s. 973.016 (2), Stats., as created by the Draft. Mr. Dufour stated that the conditional discharge procedure should not be available to a defendant who is found guilty after a trial. Ms. Opelt agreed, stating that conditional discharge should only be available to persons who accept responsibility for their actions. Ms. Thompson suggested that the judge be allowed to determine whether conditional discharge should be available to a defendant, and that a guilty plea should not be required as a condition for conditional discharge. Mr. Lueders, Professor Rome, and Judge Carlson supported Ms. Thompson’s suggestion.

There ensued considerable committee discussion of whether a guilty plea, a plea of no contest, or some other indication that a defendant accepts responsibility for his or her actions be required in order for conditional discharge to be available. After an informal roll call vote, there did not appear to be committee consensus to restrict the availability of conditional discharge only to persons who, in some manner, are determined to have accepted responsibility for their actions.

The committee next discussed whether there should be a statutorily stated standard for the court to apply when deciding whether, in a particular circumstance, to allow a defendant to use the procedure for conditional discharge. There was consensus to revise the Draft to require the court to determine that the person will benefit and society will not be harmed by the conditional discharge.

There was consensus to revise s. 973.016 (3), Stats., as created by the Draft, relating to the effect of discharge and dismissal, to include in the provision reference to the imposition of terms and conditions or ordering of probation.

There was consensus to revise s. 973.016 (4), Stats., as created by the Draft, to provide that conditional discharge is also not available to a person who previously has been conditionally discharged under current s. 961.47, Stats., or who has had a case record expunged under current s. 973.015, Stats.

There was consensus, at the suggestion of Mr. Dyke, to revise proposed s. 973.016 (5) by deleting the last sentence and substituting “the court” for “the clerk of court” on page 6, line 2.

The committee next discussed whether to exclude misdemeanor operating while intoxicated (OWI) violations relating to all-terrain vehicles, boats, or snowmobiles from the definition of

“misdemeanors” for which conditional discharge is available under the Draft. There was consensus to revise the Draft to do so.

The committee next discussed whether to exclude firearms offenses from the definition of “misdemeanors” for which conditional discharge is available under the Draft. There appeared to be consensus to exclude misdemeanors to which s. 939.63 (1) (a) applies (see proposed subd. 2. on page 3).

Senator Risser argued that the Draft should not statutorily exclude certain misdemeanors from being eligible for conditional discharge but, rather, judicial discretion should be relied on to determine when it is appropriate to offer conditional discharge to a defendant. Judge Carlson supported Senator Risser’s arguments. Mr. Dufour stated that some types of misdemeanors should not be eligible for conditional discharge.

Chair Vos observed that, in his opinion, the Legislature will not authorize an expanded conditional discharge procedure unless certain types of crimes are excluded from eligibility. He mentioned that sex crimes against children are one type of crime for which the Legislature would not authorize conditional discharge.

Chair Vos asked committee members to express their general opinion with respect to whether certain misdemeanors should not be eligible for conditional discharge under the Draft. After an informal roll call vote, there was committee consensus that the Draft should statutorily exclude certain misdemeanors from being eligible for conditional discharge. The committee resumed discussion of which misdemeanors should be excluded.

There appeared to be consensus to revise the Draft to replace the language on page 4, lines 1 to 3 with: “3. A violation of s. 941.20 (1).” [Misdemeanor violation of endangering safety by use of dangerous weapon.]

At the suggestion of Ms. Opelt, there was consensus to revise the Draft to remove violations of s. 944.20, Stats., relating to lewd and lascivious behavior, from the list of misdemeanors not eligible for conditional discharge under the Draft. The committee then began discussing the exclusion of misdemeanors in ch. 948 (crimes against children).

There was general committee discussion concerning whether conditional discharge should result in removal of criminal history information from the WCCA public information website. Representative Grigsby expressed disappointment that the committee had not recommended this and expressed concern that the Draft allowing for conditional discharge would not adequately address many of the concerns shared by invited speakers at the Special Committee’s first meeting. Professor Rome expressed support for Representative Grigsby’s comments.

Judge Carlson and Mr. Dufour responded that the Draft, by allowing defendants to eliminate misdemeanor convictions under certain circumstances, is a substantial change in the law and benefits persons who would otherwise be discriminated against because of their criminal history. Senator Risser said that the committee should recommend legislation that it believes will address problems even if that legislation will not pass the first time it is considered by the Legislature. Mr. Lueders suggested that members of the committee who believe the current version of the Draft goes too far should suggest one or more alternatives that they believe would have a chance of being passed by the Legislature.

The committee again addressed the draft.

Ms. Opelt moved, seconded by Mr. Dufour, that the Draft be revised to include eligibility for conditional discharge for all violations of misdemeanors, except the following offenses: (1) misdemeanor second or subsequent OWI violations and causing injury to another by OWI including violations committed while operating a commercial motor vehicle or while operating all-terrain vehicles, boats, or snowmobiles; (2) violations of s. 941.20 (1), Stats., relating to endangering safety by use of a dangerous weapon; and (3) the following crimes against children: (a) sexual intercourse with a child age 16 or older, where there is more than a three-year age difference between the defendant and the victim; (b) violations of s. 948.10, Stats. (causing a child to expose genitals or pubic area or exposing genitals or pubic area to a child); or (c) violations of s. 948.1 (2) (b), Stats. (possessing material harmful to a child with intent to transfer or exhibit the material to a child.

The motion was approved by a roll call vote of Ayes, 8 (Risser, Grigsby, Carlson, Dufour, Lueders, Opelt, Rome, and Thompson); Noes, 4 (Vos, Lasee, Costello, and Reiff); and Absent, 2 (Dyke and Litjens).

Plans for Future Meetings

Chair Vos informed the committee that he had reservations about the Draft in its current form. He said he intended to adjourn the meeting and would be considering the best course to take with respect to any meetings of the committee in the future.

Subsequent to the meeting, Chair Vos announced that this was the last meeting of the Special Committee.

Adjournment

The meeting was adjourned at 12:45 p.m.

WF:DD:jal