



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
EXPUNCTION OF CRIMINAL
RECORDS

May 29, 2007

PRL 2007-14

Special Committee on Expunction of Criminal Records

Prepared by:
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May 29, 2007

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PART I

NO RECOMMENDATION

The Special Committee on Expunction of Criminal Records has permanently adjourned. The Special Committee makes no recommendation.

The Special Committee held three meetings during which it focused on a draft creating a conditional discharge procedure under which a person could, by complying with certain court-ordered requirements, avoid a criminal conviction for most misdemeanors. Because the members of the Special Committee could not reach a consensus regarding the draft legislation, the chairperson permanently adjourned the Special Committee. **Appendix 1** is a memorandum from Chairperson Robin Vos, to committee members, explaining his decision to adjourn the committee.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Expunction of Criminal Records and appointed the chairperson by a June 9, 2006 mail ballot. The committee was directed to: study the circumstances under which records related to civil forfeiture and criminal proceedings may be expunged by Wisconsin courts and other record custodians. The circumstances to be considered include whether a record subject is a first offender, the age of the record subject, the time that has elapsed since the proceeding was commenced or the record subject was convicted, and the nature or seriousness of the crime or violation.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of two Senators, two Representatives, and 10 public members. A list of committee members is included as *Appendix 3* to this report.

Summary of Meetings

The Special Committee held three meetings at the State Capitol in Madison on the following dates:

September 28, 2006
November 21, 2006
December 19, 2006

At the September 28, 2006 meeting, the Special Committee heard testimony from the following invited speakers:

A. John Voelker, Director of State Courts, told the Special Committee why, based upon recommendations of the Wisconsin Circuit Court Access Oversight Committee, he asked that the Legislative Council conduct a study of current state law relating to expunction of criminal records. He also discussed the history and rationale of a number of policy decisions made with respect to the Wisconsin Circuit Court Access (WCCA) program.

Jean Bousquet, Chief Information Officer, Consolidated Court Automation Programs (CCAP), described the mechanics and growing popularity of the WCCA as a tool for free public access to criminal and civil records of adults. She also discussed recent changes made in the WCCA.

Mike Roberts, Administrator, Division of Law Enforcement Services, Wisconsin Department of Justice, described the computerized database maintained by the Crime Information Bureau (CIB) at the Wisconsin Department of Justice. He described the use of this database as a means for law enforcement personnel and the public to obtain criminal histories. In addition, he explained the process under which information may be removed from the CIB and how the circumstances for doing this differ from those under which records may be expunged from CCAP.

Gerald Mowris, State Bar of Wisconsin, Criminal Law Section, told the committee how the easy availability of criminal background information through WCCA and the CIB affects the employment and housing opportunities of persons who have been arrested or convicted. He described a number of possible revisions to current law relating to expunction of criminal records.

Sheila Sullivan, Attorney at Law, Legal Action of Wisconsin, Inc., described the Legal Intervention For Employment, or LIFE, Project that helps people who have had brushes with the law obtain and keep jobs. She also discussed a number of statistics relating to crime, arrests, and imprisonment. In addition, she described a number of specific instances relating to individuals affected by public access to information relating to their prior criminal history.

At the November 21, 2006 meeting, the Special Committee discussed a proposal by committee member Judge Gary Carlson. Judge Carlson's proposal was to create a new statute relating to conditional discharge, under which persons convicted of certain offenses may, by satisfying conditions specified by the court, avoid a criminal conviction. In addition, the proposal included "sunsetting" certain information available to the public relating to criminal proceedings against individuals.

The Special Committee developed a preliminary proposal for draft legislation relating to conditional discharge that was to be further discussed at the next meeting held by the committee, which was on December 19, 2006.

At the December 19, 2006 meeting, the Special Committee discussed WLC: 0015/1, draft legislation that would create a procedure under which, with respect to misdemeanors and under certain conditions, a defendant could avoid a criminal conviction by complying with conditions ordered by a court. The committee discussed possible revisions to the draft, including whether a guilty plea should be required as a condition of conditional discharge. Also discussed was whether conditional discharge should not be available for certain types of misdemeanors and, if so, what misdemeanors should be excluded.



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE SPECIAL COMMITTEE ON EXPUNCTION OF CRIMINAL RECORDS

FROM: Representative Robin Vos, Chair

RE: Special Committee Status

DATE: May 10, 2007

This memorandum is to follow-up on the status of the Special Committee on Expunction of Criminal Records. Efforts have been made to achieve consensus on the issues the committee is considering. However, no common ground between parties can be found. Thus, I have decided not to reconvene the committee for any additional meetings.

While I know some committee members will be disappointed with the decision not to continue, the issues considered by the committee will be before the Legislature during this and future sessions. In fact, I have intentions of introducing some of the ideas from the committee as separate legislation this fall. The issues are numerous, complex, and fundamental and present difficult public policy choices. To adequately deal with these issues, it may ultimately be necessary to consider them in a context much broader than civil and criminal court records.

I want to thank committee members for their time and participation. The committee gathered valuable background information and identified many of the issues that arise from the maintenance and availability of criminal and civil court records. Consequently, the committee has performed a valuable service and laid important groundwork for future consideration of the issues.

Also, please find enclosed the minutes for the Special Committee's December 19, 2006 meeting. 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.

Thank you.

RV:jal
Enclosure

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

Co-Chair

STEVE WIECKERT
Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

RONALD W. BROWN
1112 Violet Avenue
Eau Claire, WI 54701

DAN KAPANKE
1610 Lakeshore Drive
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DALE SCHULTZ
Majority Leader
515 N. Central Avenue
Richland Center, WI 53581

RUSSELL DECKER
6803 Lora Lee Lane
Schofield, WI 54476

MARK MILLER
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Monona, WI 53716

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FRED A. RISSER
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2411 E. Ridge Road
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REPRESENTATIVES

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5440 Willow Road
Waukegan, WI 53597

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Speaker Pro Tempore
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JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

JOHN GARD
Speaker
481 Aubin Street, P.O. Box 119
Peshtigo, WI 54157

ANN NISCHKE
202 W. College Avenue
Waukesha, WI 53186

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

Co-Chair

FRED RISSER

Senate President
5008 Risser Road
Madison, WI 53705

Co-Chair

STEVE WIECKERT

Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

ROGER BRESKE

8800 Hwy. 29
Eland, WI 54427

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President Pro Tempore
2957 South 38th Street
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G. SPENCER COGGS

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Beloit, WI 53511

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MARK POCAN

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Madison, WI 53703

KITTY RHOADES

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Hudson, WI 54016

MARLIN SCHNEIDER

3820 Southbrook Lane
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Expunction of Criminal Records

Representative Robin Vos, Chair
4710 Eastwood Ridge
Racine, WI 53406

Senator Alan Lasee
2259 Lasee Road
De Pere, WI 54115

Judge Gary Carlson
Taylor County
224 South Second Street
Medford, WI 54451

Richard Dufour, District Attorney
Marquette County
77 Park Street, P.O. Box 396
Montello, WI 54939

Michelle Litjens
Land Pride Properties
426 Broad Street
Oshkosh, WI 54901

Lyn Opelt, Assistant District Attorney
Dane County District Attorney's Office
215 South Hamilton, Room 3000
Madison, WI 53703

Professor Dennis Rome
UW-Parkside
Department of Criminal Justice
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Kenosha, WI 53141

Representative Tamara D. Grigsby
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Senator Fred A. Risser
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Madison, WI 53703

Tim Costello, Attorney
Krukowski & Costello
7111 West Edgerton Avenue
Milwaukee, WI 53220

Judge Bill Dyke
Iowa County
222 North Iowa Street
Dodgeville, WI 53533

Bill Lueders
Wisconsin Freedom of Information
Council
101 King Street
Madison, WI 53703

Sheila Reiff, Clerk of Circuit Court
Walworth County
1800 County Trunk NN
Elkhorn, WI 53121

Kelli Thompson
Deputy State Public Defender
P.O. Box 7923
Madison, WI 53707

STUDY ASSIGNMENT: The committee is directed to study the circumstances under which records related to civil forfeiture and criminal proceedings may be expunged by Wisconsin courts and other record custodians. The circumstances to be considered include whether a record subject is a first offender, the age of the record subject, the time that has elapsed since the proceeding was commenced or the record subject was convicted, and the nature or seriousness of the crime or violation.

14 MEMBERS: 2 Senators, 2 Representatives, and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Dyke, Chief of Legal Services; William Ford, Senior Staff Attorney; and Julie Learned, Support Staff.

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

December 19, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • WLC: 0015/1, a draft creating a conditional discharge procedure applicable to most misdemeanors and making the current expunction statute inapplicable to future violations • Memorandum, <i>Proposed Legislation for December 19, 2006 Meeting</i>, to the Special Committee from Bob Anderson and Sheila Sullivan, Legal Action of Wisconsin, Inc. (December 4, 2006) 				
November 21, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Memo No. 3, <i>Initial Issues for Committee Consideration</i> (November 9, 2006) • Memorandum, <i>Survey of State Expungement Statutes</i>, with two enclosed tables, from Lynn Deavers, Aaron Eidelman and Eric Gibson of the law firm of Dow, Lohnes and Albertson (August 3, 2005) <ul style="list-style-type: none"> ○ Enclosure 1 ○ Enclosure 2 • Letter, <i>Regarding Proposed Legislation for the Benefit of Wisconsin's Exonerees</i>, with enclosures, from Attorney Mary C. Delaney (September 26, 2006) • Letter, with enclosures, from Attorney Raymond M. Dall'Osto (October 4, 2006) <ul style="list-style-type: none"> ○ Enclosure 1 ○ Enclosure 2 ○ Enclosure 3 • Memo, <i>Special Committee on Expunction of Criminal Records: Comment and Recommendations</i>, Legal Action of Wisconsin, Inc • Cover letter, enclosing letter to Representative Vos, from Special Committee member Judge Gary Carlson 				
September 28, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Memo No. 1, <i>Laws on Expunction and Removal of Records Relating to Criminal Proceedings</i> (September 19, 2006) • Memo No. 2, <i>Selected Initial Background Information</i> (September 19, 2006) <ul style="list-style-type: none"> ○ Final Report, <i>Wisconsin Circuit Court Access Oversight Committee</i>, March 2006 ○ Information, regarding the Consolidated Court Automation Programs (CCAP), from the Wisconsin Court System website ○ Frequently Asked Questions, Wisconsin Circuit Court Access (WCCA), from the Wisconsin Court System website ○ Chapter SCR 72, <i>Retention and Maintenance of Court Records</i> ○ Information, regarding the Crime Information Bureau's criminal history database, from the State Department of Justice's website • WCCA Action Plan, from A. John Voelker, Director of State Courts • Fingerprint Record Removal Request, and Statutes of Interest, submitted by Mike Roberts, Administrator, Division of Law Enforcement Services, Wisconsin Department of Justice 				

