WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Corrections and Courts (AC-CC)

(Form Updated: 07/24/2009)

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** **07hr_ab0418_AC-CC_pt01**

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**

( )

Nowlan, Andrew

From: Minser, Edward
Sent: Monday, July 16, 2007 4:04 PM
To: Nowlan, Andrew
Subject: AB 418

Hello Andrew,

I spoke with you on the phone about Marlin's bill, AB 418, which is in the Committee on Corrections and Courts. This e-mail is to request that AB 418 be placed on the docket to be scheduled for a hearing. I would greatly appreciate it.

Thank you,

Ed Minser
Office of Representative Marlin Schneider
204 North, State Capitol
(608) 266-0215 Office
(888) 529-0072 Toll Free
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FORWARD

Don't hide court records Ordinary people in Wisconsin deserve easy access to court information online.

A Wisconsin State Journal editorial
October 2, 2007

The opponents of open records are at it again.

This time, four Democratic state lawmakers are trying to stop ordinary citizens from viewing Wisconsin court records online.

Rep. Marlin Schneider of Wisconsin Rapids, along with Reps. Fred Kessler, Tamara Grigsby and Annette Williams of Milwaukee, have won a public hearing for their secrecy plan, Assembly Bill 418. The hearing is set for Thursday at 9:30 a.m. in room 225 Northwest at the state Capitol.

The Assembly Committee on Corrections and Courts should quickly reject the bill, which would violate Wisconsin 's long-standing presumption that government records should be easily accessible to everyone.

AB 418 would needlessly restrict most people from viewing the state 's popular Web site for court records. The site -- wcca.wicourts.gov -- describes basic information about civil and criminal charges and convictions in courts across Wisconsin.

The Web site is like a warning system for many citizens. It helps parents, for example, vet people who interact with their children, such as child-care providers and coaches. It helps employers screen job seekers for sensitive positions.

News reporters use the Web site to keep track of all manner of criminals for the public -- including some politicians.

AB 418 would maintain access to the online records for news reporters, judges and other court officials, law enforcement and attorneys.

But ordinary people would be shut out.

Schneider says the Web site caters to busybodies. Maybe. But it also caters to a huge number of good citizens who want to protect their children, property and neighborhoods -- maybe even their lives.

Those who commit crimes should be punished and expect their court records to stick with them. If the offense is minor -- say, a speeding ticket -- it is pulled off the Web site after several years. And when someone is charged but not convicted of a crime, the Web site makes it clear that that person is now presumed innocent.

The Web site also features a disclaimer for employers who might try to use the site to check on the background of potential hires. The site warns employers that criminal records cannot be used against a prospective hire if the crime does not substantially relate to the duties of the job.

Under AB 418, the only way ordinary people could gain even limited access to the online court records would be to submit a written request to the clerk of courts or district attorney in their home county. AB 418 would intimidate some requesters by demanding their full name and address, whom they are seeking information on, their relationship to that person or entity and the purpose of the request.

Rather than trying to scare ordinary people away from public records, lawmakers should be encouraging people to scour public records to become informed citizens and voters.

The state 's Web site for court records makes searching court records easy, useful and free. Wisconsin lawmakers should keep it that way by rejecting AB 418.

Return to story


FORWARD

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 4, 2007

TO: State Representative Garey Bies, Chair of the Assembly Committee on Corrections and Courts

FR: Attorney General J.B. Van Hollen

CC: The Honorable Members of the Assembly Committee on Corrections and Courts

RE: 2007 Assembly Bill 418

Dear Representative Bies and Committee Members:

As Attorney General, I have special responsibility for interpreting and enforcing the public records law. As the state's chief law enforcement official, I have a unique interest in ensuring the proper functioning of the criminal justice system. In that capacity, I am writing in opposition to Assembly Bill 418, which would exclude the general public from accessing information about court proceedings now available over the Internet absent special permission granted by government agents. I believe that the proposed legislation would unnecessarily burden public access to public information while simultaneously creating substantial additional obligations on public officials in the justice system who play key roles in the proper functioning of the criminal justice system.

It is "the public policy of this state that *all persons* are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them."[1] This policy is a recognition that "representative government is dependant on an informed electorate."[2] Records of court proceedings are not an exception to this policy. Indeed, the public nature of criminal proceedings has long been recognized as an essential component of liberty.[3]

The Wisconsin Circuit Court Access ("WCCA") program—records compiled by the consolidated court automated programs ("CCAP") and made available on the Internet—is a model for the distribution of public information. It furthers the state's strong public policy in favor of public access to information. Using WCCA, information can be gathered nearly instantaneously, and without direct cost. Significantly, WCCA "contain[s] information from

[1] Wis. Stat. § 19.31 (public records law) (emphasis added).
[2] Id.
[3] U.S. Const. Amend. VI (guaranteeing individuals public trials); Wis. Const. art. I, sec. 7 (same); *In re Oliver*, 333 U.S. 257, 266-272 (1948)(discussing history of and policy supporting public trials).

only those portions of the case files generated by [CCAP] that are open records and otherwise accessible by law to an individual."[4] Assembly Bill 418 restricts the general public's access to information, and frustrates the state's public policy. By restricting the general public's access to WCCA, this bill does not change the fact that the underlying records from which CCAP information is compiled are public records, legally accessible by the public. This bill would only increase a public record requester's costs and delay a requester's access to critical information about significant government acts. It would also increase the costs to clerks of court who would have to spend additional time producing records for requesters that are now compiled free of charge on the Internet.

The bill's allowance for specially granted access to CCAP upon a clerk of courts or district attorney's finding that a requester demonstrate a "reasonable need for disclosure" creates additional problems unrelated to the public records law.[5] Recently, a Legislative Audit Bureau study evaluating state prosecutor positions provided data confirming a phenomena that many of us in the criminal justice system already recognized to be true: that state prosecutor offices are significantly understaffed given current workload.[6] If even the smallest fraction of the approximately one million hits a day WCCA receives become requests to district attorneys for special CCAP access, then the workload strain on state prosecutors will be exacerbated. Prosecutors would have even less time to undertake their core functions of assisting in the investigation of crime, evaluating complaints, and prosecuting criminal charges.

I acknowledge that Wisconsin's public records law does not require Internet access to court records. Given the sometimes competing public interests in access, privacy, safety, and fairness, there might be discrete categories of court information that should properly be excluded from public dissemination over the Internet. Historically, the Department of Justice has played an active role in the discussion of these issues by participating in the Wisconsin Circuit Court Access Oversight Committee. And if asked, we will continue to lend our perspective to similar efforts in the future. But I firmly believe that the exclusion of the general public from access to WCCA is not appropriate and frustrates the state's compelling interest in accessible government. Thus, I respectfully oppose Assembly Bill 418.

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[4] Director of State Courts, "Policy on Disclosure of Public Information Over The Internet."

[5] To be sure, the intent of the public records law is not restored by the bill's allowance that a member of the general public may apply for special access to CCAP on a case-by-case basis. The bill requires requesters state their purpose for making a specific request, and further requires that they show a "reasonable need for disclosure." Consistent with the policy that all persons are entitled to the greatest possible information, the public records law imposes no such requirements. *See* Wis. Stat. § 19.35(1)(h) and (i).

[6] Legislative Audit Bureau, "An Evaluation of Prosecutor Positions."


FORWARD

Supreme Court of Wisconsin

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A. John Voelker
Director of State Courts

October 4, 2007

The Honorable Garey Bies
Chair, Assembly Committee on Corrections and the Courts
Room 125 West, State Capitol
Madison, WI 53702

RE: Assembly Bill 418, Relating to Expunging Criminal Records for Misdemeanors

Dear Representative Bies:

I regret that I will be unable to personally testify before your committee today, but I ask that you accept this written testimony. I oppose Assembly Bill 418, and I hope you will consider the following information and concerns as you discuss this bill further.

AB 418 seeks to limit the availability of Internet access to court records, particularly to circuit court records currently made available through the Wisconsin Circuit Court Access (WCCA) website. I would first like to address a basic but common error contained in the way the bill defines this Internet access. If this bill is to move forward, I would request that you work with my office to accurately portray this program.

Although most people continue to refer to this Internet site as "CCAP" and the bill seeks to define this system as CCAP, that name is not a correct portrayal of this important court program. The Consolidated Court Automation Programs, or CCAP, is in charge of all court technology systems. Beginning in 1987, the Director of State Courts' Office, under the direction of the Supreme Court, started the process of automating the paper-based processes of the trial court system. Currently 71 counties use the CCAP system to manage the courts, and Portage County is currently working on its plan to fully implement the CCAP system in 2008.

CCAP is a case management system that includes multiple applications to allow the circuit courts to efficiently handle the more than one million cases that are filed each year. Its software integrates case filing information, calendaring information, jury management, document imaging and financial management functions into an easy-to-use system available to both state and county court personnel. I have attached to my testimony a document further explaining the many applications of CCAP.

WCCA is only one aspect of the CCAP system. Since WCCA was first implemented in April 1999, it has steadily grown into a site receiving considerable traffic. Currently the site averages about a million data requests a day. As a result, the site also continues to generate privacy concerns.

The Wisconsin court system follows the traditional policy that court records are presumptively open to public access. That is the policy that governed the records shown on WCCA since it was established.

In late 2005 I reconvened the WCCA Oversight Committee to review and possibly modify the comprehensive policy that addresses electronic access to circuit court records. Over the course of several months the Oversight Committee developed 31 recommendations for possible changes in WCCA. I have attached the current "Policy on Disclosure of Public Information Over the Internet."

The Oversight Committee reaffirmed its adoption of the Guidelines for Public Access to Court Records of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) as general principles to guide policy development. The guidelines were developed to assist states in developing record access policies. Under the guidelines, as a general rule, access should not change depending upon whether the court record is in paper or electronic form, although the manner of access may vary.

One of the committee's recommendations involved developing an Executive Case Summary as the first screen that a user would see when accessing a criminal case record. The summary prominently displays the outcome of the case to increase the clarity and reduce the potential for abuse. Another recommendation was to request the Legislative Council to study the issue of expunction of court records. The Legislative Council did create that study committee in 2006, although the committee did not recommend any new legislation on this issue.

There are two other concerns about AB 418 that I would like to bring to the committee's attention. One is the likely increased workload for the Clerk of Courts offices. If Internet access is not available, it is logical that businesses (title companies, landlords, etc) and members of the general public will seek to access records at the clerks office. They will need to provide more public access terminals and also have their staffs available to answer inquiries. They will also need to process the request forms mandated by the bill.

The second concern is the impact on the workload of the CCAP staff in complying with proposed s. 758.20(3) of the bill. That section requires me "to remove the consolidated court automation programs system from general Internet access and to implement restrictions on accessing that information." This section will require CCAP staff to set up user accounts and passwords for those allowed access to WCCA records. AB 418 provides no resources for the programmers and support staff necessary to comply with this requirement.

For reasons of public policy and of increased workload for state and county court personnel, I believe your committee should not recommend passage of AB 418.

I hope these comments will assist your committee in its deliberations. If you have questions, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you.

Respectfully submitted,

A. John Voelker

A. John Voelker
Director of State Courts

AJV:NMR
Attachments
cc: Members, Assembly Committee on Corrections and the Courts

Wisconsin Court System

Consolidated Court Automation Programs

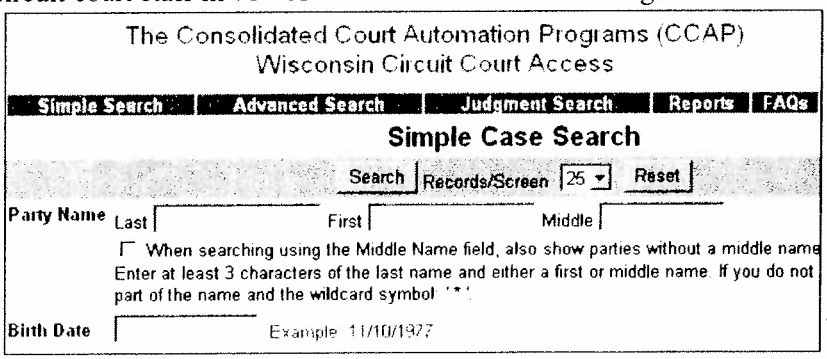
The Consolidated Court Automation Programs (CCAP) were created by merging two court system computer departments – the Circuit Court Automation Program and the Office of Information Technology Services – in July 2001. The merger united court technology systems to allow for a more efficient, cost effective use of resources.

The CCAP is one of the state's earliest and, as measured by its users, most successful efforts to provide automation in county trial courts. Started in 1987, CCAP represents a major undertaking by the Director of State Courts' Office, under the direction of the Wisconsin Supreme Court, to automate the labor-intensive and paper-based processes in the county trial courts. It brings state-of-the-art computer technology and software to Wisconsin's circuit courts by developing hardware and software solutions and providing training and technical support. Key to the program's success is that users are involved in the design process, ensuring the custom developed applications are easy to use, functional, and innovative. CCAP is a state-initiated and funded program that supports joint state/county responsibility for the court system.

Circuit Court Users and Growth

In 2004, Wisconsin's circuit courts handled 1,070,769* contested and uncontested cases. The heavy workload has made technology increasingly critical for helping individuals resolve legal issues and allowing the criminal justice system to operate efficiently.

Clerks of circuit court, registers in probate, juvenile clerks, circuit court judges, and circuit court staff in 71* of Wisconsin's 72 counties* use CCAP computers in their offices and chambers as well as in the court-rooms. Access to the Internet, the court system Intranet, and Internet e-mail is also provided.



The new WCCA "simple search" window.

In all 72 CCAP counties, public access terminals are available where anyone can access information on circuit court cases without staff assistance and without compromising the security and integrity of court records.

Anyone with access to the Internet can obtain information on state-wide circuit court cases in the CCAP system through Wisconsin Circuit Court Access Website at http://wcca.wicourts.gov. For those who may not have Internet access via a computer, the public access terminals in each county also provide access to this state-wide circuit court case information.

CCAP Applications for Circuit Court Users

- **Case Management:** CCAP's case management software integrates case file and court calendar information to help the courts function smoothly. Case records and court calendars are easily accessed and can be printed in a variety of formats such as court notices, summonses, judges' calendars, minutes sheets, judgments of conviction, suspension letters, orders for financial disclosure and warrant lists – all critical documents in legal proceedings.

CCAP has enhanced the case management application to include an integrated document imaging component. The ability to scan and integrate documents within the case management system

** Because Portage County is not included in the statewide statistical reports, this number does not include Portage County.*

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reduces the amount of staff time spent managing and retrieving paper files.

Additionally CCAP has created and installed calendar kiosks. These kiosks allow the public to use touch-screen monitors to easily access their court calendar information in a specific courthouse. These kiosks offer the public easy access to information without needing to locate clerk staff for assistance.

- **Automated Civil, Criminal, and Juvenile Jury Instructions:** CCAP, working with the University of Wisconsin, provides semiannual jury instruction updates to the circuit courts. Because these are automated, judges can quickly and easily adapt jury instructions to each individual case.

- **Legal Research Tools:** CCAP provides legal research tools to circuit court and appellate court judges throughout the state. The tools are updated on a quarterly basis.

- **Jury Management:** Jury management is a major responsibility of clerks of circuit court and requires receiving and processing prospective juror names from the Division of Motor Vehicle's driver information database. CCAP software automates the entire jury process, from entering prospective jurors' names to recording juror questionnaires to selecting jury panels, assigning jurors to cases, recording juror service and initiating payment of juror expenses. In addition, prospective jurors may complete their juror questionnaire on-line via the Internet. Information entered on the website is automatically updated in the Clerk of Circuit Court's jury management system.

- **Financial Management:** The financial management software is a bookkeeping system that tracks money received by and owed to the Clerk of Circuit Court Office. Clerks receive court fees, fines, forfeitures, filing fees, copy fees, guardian ad litem fees and other money. The financial management application integrates financial and case information and provides daily and monthly data for preparation of state and county financial reports and to reconcile trust funds to bank statements.

- **Court Information Repository:** The court information repository (CIR) stores a copy of each circuit court's case, financial, and jury management data on a central database located in Madison. The repository is kept up to date through a data transfer program that updates CIR records in real-time. This information is used to measure judicial caseload, document the need for new judge-ships and provide information for court management reports that are used to help allocate resources within the court system.

Interagency Cooperation and Interfaces

CCAP is continually working to improve efficiency, both internally and with other Wisconsin justice agencies that share information, including law enforcement and district attorneys. CCAP works with a number of agencies to automate the exchange of data so that manual re-entry of shared data is not necessary. All of these electronic interfaces have streamlined recordkeeping and improved the timeliness and accuracy of case information for the agencies involved. The following interfaces with various justice agencies are currently functioning statewide or being implemented.

- **Tax Warrant Interface with the Department of Revenue:** CCAP and the Department of Revenue (DOR) have been exchanging tax warrant information electronically on a statewide basis since 1997. Each week, DOR supplies CCAP with information on tax warrants that have been issued, satisfied or withdrawn. CCAP then transfers this to the case management system in each CCAP county. CCAP also transfers the circuit court case information to CIB.

- **Tax Intercept Interface with the Department of Revenue:** Since 2003, CCAP and DOR have been exchanging information that allows the Clerk of Circuit Court to register unpaid fines and forfeitures with DOR. The registered debtor information from CCAP allows DOR to intercept the debtor's individual Wisconsin Income Tax return to pay off the outstanding debt. DOR sends accepted, rejected and tax intercept information to CCAP, which is forwarded to the Clerks of Circuit Court, along with payment. In 2005 the circuit courts intercepted over $4, 236,766 of outstanding debt owed to the clerk of circuit courts' offices.

- **Criminal and Forfeiture Case Disposition/Sentencing Interface with Crime Information Bureau:** CCAP has been exchanging criminal and forfeiture case disposition and sentence information with the Department of Justice's Crime Information Bureau (CIB) electronically on a statewide basis since 1999. When a criminal or forfeiture case is closed in the case management system in a CCAP county, the disposition and sentence information is exported to CIB and stored in the state's criminal history database.

- **Criminal and Juvenile Case Interface with the District Attorney's PROTECT software application:** CCAP has been exchanging criminal and juvenile circuit court case information with the District Attorney IT Program electronically since 2001. When a criminal or juvenile case is filed in the PROTECT case management system, this information is received electronically and transferred to the CCAP case management system in the appropriate county. While the case is active in the circuit court, CCAP exports case information (e.g. case activities, events, dispositions, and sentences) to the PROTECT case management system for use by the district attorney in the filing county. This interface is currently being implemented throughout the state.

- **Traffic Case Interface with State Patrol, Local Law Enforcement Agencies, and the Department of Transportation:** CCAP has been exchanging traffic case information with State Patrol and the Department of Transportation (DOT) electronically since 2001. State Patrol officers issue citations using laptop computers in their squad cars and export the electronic citations to a floppy disk, which is delivered to a CCAP county clerk of circuit court office. The citation information is then transferred electronically to the State Patrol and the CCAP case management system. When the case is closed, the disposition and license suspension/ revocation information is exported to the DOT. This interface has been implemented statewide and is currently being expanded for use with local law enforcement agencies. Additionally, disposition information for all citations (e.g. electronic and paper citations), is now electronically provided to DOT. Over 500,000 traffic and forfeiture cases are filed in the circuit courts each year. The electronic reporting of disposition information relieves DOT of the intensive manual keying of this information.

- **Juvenile Case Interface with the Milwaukee County District Attorney's Office:** CCAP has been exchanging juvenile circuit court case information with the Milwaukee County District Attorney's Office electronically since 2000. When juvenile case is filed in the district attorney's case management system, this information is received electronically and transferred to the CCAP case management system in Milwaukee county. While the case is active in the circuit court, CCAP exports case information (e.g. case activities, events, dispositions, and sentences) to the district attorney's case management system.

- **Forfeiture/Traffic Citation Interface with Milwaukee County Criminal Justice Information Systems:** CCAP has been exchanging forfeiture and traffic citation court case information with the Milwaukee County Criminal Justice Information Systems (CJIS) electronically since 1998. When a forfeiture or traffic citation is entered into the CJIS database, this information is received electronically and transferred to the CCAP case management system in Milwaukee county. While the case is active in the circuit court, CCAP exports case information (e.g. case activities, events, dispositions, and sentences) to the CJIS system.

- **Criminal Case Interface with Milwaukee County District Attorney's Office:** CCAP has been exchanging criminal circuit court case information with the Milwaukee County District Attorney's Office electronically since 1998. When a criminal case is filed in the district attorney's case management system, this information is received electronically and transferred to the CCAP case management system in Milwaukee county. While the case is active in the circuit court, CCAP exports case information (e.g. case activities, events, dispositions, and sentences) to the district attorney's case management system.

- **Criminal Case Interface with State Public Defender's Office:** CCAP has been exchanging criminal circuit court case information with the State Public Defender's Office electronically since 2004. When a criminal case is filed in the circuit courts, CCAP exports case information (e.g. case activities, events, dispositions, and sentences) to the central State Public Defender's Office case management system.

- **Unemployment Insurance Warrants Interface with Department of Workforce Development (DWD):** CCAP has been exchanging unemployment insurance warrant information with DWD since 2006. Using this interface, DWD electronically files unemployment compensations cases in the circuit courts. These cases are automatically created in the CCAP case management system and do not require clerk intervention. CCAP exports case number and filed date information to DWD. Additionally, DWD sends warrant release information to CCAP when the debtor has settled with DWD.

- **Web Services and Applications:** CCAP provides the Wisconsin court system and the public with a number of web services and applications designed to provide greater efficiencies and access.

- **Wisconsin Circuit Court Access (WCCA) http://wcca.wicourts.gov:** Anyone with access to the

Internet can obtain information on statewide circuit court cases in the CCAP case management system through WCCA. This website handles between two and three million requests for data each day. CCAP recently completed a rewrite of the Supreme Court/ Court of Appeals Access website (http://wicourts.gov/wscca), which provides information about appellate court cases to the public.

- **On-line Jury Questionnaire:** CCAP has created a web-based application that allows prospective jurors to complete the juror qualification questionnaire on-line at http://wicourts.gov/services/juror/online.htm. This service allows a potential juror to respond to the questionnaire easily while eliminating the need for court staff to manually key information into the CCAP jury management system. Over 25,000 questionnaires were electronically submitted by potential jurors to the circuit courts, from April 2004 through April 2005.

- ***Pro Se* Family Website:** The number of litigants filing family court matters in the circuit courts without an attorney continues to increase. CCAP has developed an on-line application for pro se filers. This web application guides pro se filers through their case filing step-by-step. The on-line application includes easy-to-understand questions and automatically enters a filer's responses on standardized filing forms for submission to the circuit courts. This website has been available since March 2006 and will be expanded to include post-judgment family case activity as well as small claims cases throughout the next year.

- **Electronic Case Filing:** CCAP is piloting an electronic case filing (e-filing) system which allows designated attorneys and *pro se* filers to file cases, access documents and file new documents for small claims money judgment case filings in the circuit courts. This website has been available since 2005.

Circuit Court Software Updates

To maintain its case, jury, and financial management applications, CCAP produces software updates every year. These updates accommodate changes in the laws, fix bugs and add features such as statistical reporting to improve court management at both the state and county levels by providing information on the nature of the caseload.

CCAP continues to implement counties with its various systems, a process that often involves converting existing data onto CCAP databases. For example, in 2003, Walworth County began using CCAP case, financial, and jury management software. This addition greatly increased the number of cases CCAP handles. In addition, Portage County is planning to convert the Clerk of Circuit Court's Office from a county maintined system to CCAP.

In 1998, CCAP also produced software that reduces the amount of paper produced in the courtroom and eliminates the need for clerks to take hand-written minutes in court and then key the information into a computer. The software is used in criminal cases and in traffic cases, where it also enables clerks to process payment of fines online.

CCAP Personnel

In CCAP's first two years, it developed plans and a pilot project for four small counties, while operating with a small, project-based staff supplemented by contract programmers.

Today, CCAP's staff supports approximately 2,800 users in over 80 locations throughout the state. Approximately 75 percent of the staff function as support staff at least part of the time, for a very modest ratio of one support staff for every sixty users.

CCAP's growth is due to its ability to provide useful applications and excellent user support. CCAP's effective staff training allows it to respond to more than 1,900 support calls per month. In addition, CCAP also provides support services via e-mail for lower priority calls. In 2005, staff also responded to over 800 requests for hardware service or repair.

The support staff is cross-trained and rotated through all user support functions, including help desk, training, softward development testing, and hardware and software implementation. Each staff member trains on all CCAP applications as well as e-mail, word processing, and spreadsheet software, and spends time answering phone questions from users calling the help desk.

In addition, staff conducts on-site and central training for users and travels to counties to install software and hardware. As a result, when users call CCAP's toll-free number for help, the person answering the call is experienced with CCAP hardware and software, familiar with the applications and court environment in which they are used and capable of solving the majority of problems immediately.

* Portage County currently uses CCAP in the Register in Probate's office. The county is planning to implement CCAP in the Clerk of Circuit Court's office in 2008.

WISCONSIN COURT SYSTEM

Director of State Courts
Policy on Disclosure of Public Information Over the Internet

Wisconsin Circuit Court Access

1. Definitions:
   a. The definitions contained in the Open Records Law, Wis. Stats. §§ 19.21-.39, shall apply to this policy.
   b. *Consolidated Court Automation Programs (CCAP).* The case management system created by the Wisconsin Director of State Courts consisting of a database of case information from Wisconsin circuit courts. References in this policy to actions to be taken by CCAP refer to the CCAP Steering Committee or the Director of State Courts.
   c. *Circuit court.* All offices and branches of a circuit court, including but not limited to judges, the clerk of circuit court, the clerk's deputy, or deputies; probate court; juvenile court; or other specialized court or court office that uses CCAP as a case management system.
   d. *Open records.* Those records that are by law accessible to an individual making a records request in the circuit court.
   e. *Confidential records.* Those records that are not by law accessible to an individual making a records request in the circuit court.
   f. *Wisconsin Circuit Court Access (WCCA).* A public-access Internet website containing open record information compiled by CCAP. References in this policy to actions to be taken by WCCA refer to the WCCA Oversight Committee.

2. Information on WCCA available to the general public:
   a. WCCA shall contain information from only those portions of the case files generated by the Consolidated Court Automation Programs (CCAP) that are open records and otherwise accessible by law to an individual.
   b. WCCA shall not contain information from closed records that would not otherwise be accessible by law to an individual because of specific statutory exceptions, such as juvenile court records, guardianship proceedings, and other such case types or records.
   c. CCAP shall not be required to make available on WCCA all information in a case file that may be public record, nor is CCAP required to generate new records or create new programs for extracting or compiling information contained on WCCA.
   d. The Open Records Law does not allow record custodians to demand either the identity of a requester or the use to which a requester intends to put the information gathered [Wis. Stats. § 19.35(1)(i),]. Accordingly, WCCA shall not require identification or an intended purpose before allowing public access to the WCCA website.
   e. WCCA shall not charge for accessing information through the website. However, WCCA may impose a service charge or assess user fees for requests for bulk distribution or for data in a specialized format.
   f. WCCA may limit the number of records searched on any single request.
   g. WCCA contains information as it exists at a specific point in time in the CCAP database. Because information in the CCAP database changes constantly, WCCA is not responsible for subsequent entries that update, modify, correct or delete data. WCCA is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained previously from WCCA is still accurate, current and complete.
   h. WCCA shall not contain:
      a. the record of any criminal conviction expunged by the circuit court
      (Note: When a court orders expunction of a record, the underlying CCAP database is modified to remove the record. When database updates are transferred to WCCA, the previous record will no longer appear. WCCA makes no reference to records that have been expunged (or otherwise altered). Requests for such records report only that no record has been found, in the same manner that WCCA would otherwise report "null" searches. WCCA is not responsible for the fact that requests made before the expunction will show the conviction, while requests made after the expunction will not show the conviction.)
      b. the "day" from the date of birth field for non-criminal cases
      c. the driver's license number in traffic cases
      d. "additional text" fields for data entered before July 1, 2001, in all cases.
   i. WCCA contains only information from the CCAP database from those counties using all or part of the CCAP system. Because extraneous actions are not normally reflected in the CCAP database or the circuit court files, WCCA does not include information on them. Examples of extraneous actions are gubernatorial pardons, appellate decisions, and administrative agency determinations.

3. Correcting information on WCCA:
   a. Neither CCAP nor WCCA creates the data on WCCA. Circuit court employees in counties using CCAP create the data. Neither CCAP nor WCCA is responsible for any errors or omissions in the data found on WCCA.
   b. An individual who believes that information on WCCA is inaccurate may contact the office of the clerk of circuit court in the county in which the original case file is located to request correction.
   c. The clerk of circuit court in the county in which the original case file is located shall review requests for corrections and make any appropriate corrections so that records on WCCA reflect the original case records.
   d. Corrections shall be entered on CCAP and will be made available on WCCA in the same manner in which information is otherwise transmitted to WCCA.

4. Privacy for victims, witnesses and jurors:
   a. The data fields that contain the names of victims, witnesses and jurors are not available on WCCA.
   b. Various documents completed by court personnel using CCAP occasionally require the insertion of names of victims, witnesses or jurors. Examples include:
      1. court minutes that provide the names of witnesses called to testify or jurors who have been considered for jury duty;
      2. judgments of conviction that may provide "no-contact" provisions concerning victims;
      3. restitution orders that may contain the name of a victim;
      4. restraining orders/injunctions that may provide victim identities.

      These data elements are normally inserted into "additional text" fields by circuit court personnel based on the individual county's policies and procedures on the amount, detail, or type of data inserted. CCAP and WCCA recommend that court personnel entering information concerning crime victims into court documents use initials and dates of birth rather than full names whenever doing so would not defeat the purpose of the court document.
   c. Because the "additional text" fields contain information critical to the understanding of many of the court record entries, denying access to those fields because of the occasional inclusion of the name of a victim, witness or juror would be contrary to the public interest in providing meaningful access to open court records.

5. Public access to electronically filed documents, scanned documents or imaged documents contained in circuit court files:
   a. WCCA shall evaluate whether to provide access to documents that have been filed electronically, scanned or otherwise imaged by the circuit court so long as those documents would otherwise be fully accessible under this policy.
   b. The electronic filing, scanning or imaging of some documents in a court file does not require that all other documents in that file be scanned or imaged.
   c. The electronic filing, scanning or imaging of some documents in files in a case type does not require that all documents in all other files in the same case type must be scanned or imaged.

6. Non-public access to closed records available on CCAP:
   a. CCAP may maintain a non-public website that contains information that would otherwise be a closed record.
   b. CCAP may authorize an appropriate law enforcement agency, prosecutor's office or other individual or agency electronic access to those closed records to which they would otherwise be entitled to access.
   c. CCAP may require an appropriate security screening mechanism that limits the accessibility to closed records to those who are lawfully entitled to such access.
   d. Authorization to access closed records for legitimate purposes is not authorization for redisclosure beyond that which is lawfully allowed. The individual or agency to which disclosure has been allowed is solely responsible to ensure that no further unauthorized redisclosure of closed records occurs.

7. Retention of records on WCCA:
   a. WCCA shall retain records for a minimum of 10 years, or the minimum Supreme Court Rule Chapter 72 date, whichever is longer.

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TO: Assembly Committee on Corrections and Courts

FROM: Bob Andersen Bob Andersen

RE: Assembly Bill 418, Relating to: restricting access to the consolidated court automated programs.

DATE: October 4, 2007

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. As part of its delivery of services, LAW administers a program, Legal Intervention for Employment (LIFE), that helps people with criminal and ordinance violation records overcome barriers to obtain employment.

1. Restrictions on CCAP are Important Safeguards Against Employment and Housing Discrimination and are Vitally Important for Our Right to Privacy.

Society has not been able to keep pace with the galloping pace of developments in information technology and with the consequences that those developments portend. The unbridled proliferation of CCAP threatens to cause wide spread employment and housing discrimination. It also threatens our right to privacy. In the end, AB 418 is as much about our right not to have the details of our personal lives – which can be found in ordinary civil actions, from contracts to divorces to probate cases – on display for every person in the community. Almost everyone has some connection with the judicial system in one way or another in their lives. These are not cases involving somebody who has done something wrong. They are just routine affairs of people that require judicial action.

The public has always had a right to gain access to court records. They have always been able to do this by traveling to the courthouse. They can look up the records on the computers located there. But this does not mean that every nosey person in the community has the right to have their neighbors' personal affairs posted on the internet, so that they can easily gain access by the push of a button – any more than they have a right to have the information posted on a billboard in a public place.

2. **The Debate on Legislation Prohibiting Discrimination in Employment Based on Criminal Records Over the Past Several Sessions is Now Dwarfed by a New Development – the Creation of CCAP for Easy Internet Access for Anybody to Check Up on Anybody Else's Arrest or Conviction Record.**

The existence of CCAP has overshadowed the debate that has taken place over the past several years, regarding discrimination in employment based on criminal records. The existence of this new system underscores the reality that employers can easily discriminate against current and prospective employees, notwithstanding the prohibition against discrimination, because they simply can find out about these records and refuse to hire or fire employees without giving any reason or without identifying the real reason for their actions.

Section 111.321 of the statutes prohibits discrimination in employment based on conviction record, unless the circumstances of the offense substantially relate to the circumstances of the job. Discrimination based on arrest record is completely prohibited, unless it involves a pending charge, where the circumstances substantially relate to the circumstances of the job. ***Yet CCAP maintains records on individuals even though charges have been dropped. And the prohibition against discrimination based on conviction record is meaningless, where employers find out about the records through CCAP and refuse to hire or fire employees, without specifying the real reason for doing so – the conviction record.***

Current law stems from the U.S. Supreme Court decision in Griggs v. Power Co., 401 U.S. 424 (1971), that discrimination based on circumstances which have a "disparate effect" on persons because of their race or national origin, ***is in fact*** discrimination based on ***race or national origin*** and is prohibited by Title VII of the Civil Rights Act of 1964, ***in the absence of a showing of "business necessity"*** in a particular case. This decision was followed by a number of federal and state court decisions, and decisions of the EEOC and ERD, in ruling that discrimination based on criminal record for minorities is in fact discrimination based on race or national origin, in violation of Title VII of the Civil Rights Act of 1964. This is so, because minorities have a greatly disproportionate record of convictions. The logic, then, is that to refuse employment or to take other adverse job treatment of a minority because of a record of conviction, without an adequate business reason, is in fact an adverse treatment of an employee because of race or national origin. It is racial discrimination in violation of Title VII and in violation of Wisconsin's statutory prohibition against discrimination based on race.

Yet the reality presented by broad access to CCAP short circuits this federal and state protection.

CCAP is a public domain created by the Wisconsin court system that now allows anybody access to the records of their fellow citizens at the touch of a button on their own personal computers. It has been recorded that there are over 1,000,000 hits per day on CCAP, according to the Director of State Courts, John Voelker. Employers checking out potential employees, landlords checking out potential tenants, parents checking out the backgrounds of boys who want to go out with their daughters, young people checking out others that they may want to date, neighbors checking out the background of their neighbors.

Details about the growing CCAP system emerged from the testimony and discussions recently created Legislative Council Committee on Expunction of Criminal Records. The system is far from perfect. Once a criminal charged is dropped against a defendant, the records are not taken off the internet. There is a parallel system for recording records in Wisconsin operated by the Crime Information Bureau. For that system, once a District Attorney drops a charge, the records have to be taken off the system altogether. So, for CCAP, even innocent people are stigmatized.

CCAP claims to have improved its system by providing a summary of what has happened in each case. The problem with this is that readers either never get past the first message that someone is being prosecuted or, if they do, they don't fully understand what follows. Their overall impression for someone whose charges have been dropped or who were found innocent, is likely to be that the individual got off on a technicality. As a result, people who are innocent are wrongly stigmatized.

3. The WCCA Oversight Committee Recognized the Issues that are Involved Under CCAP and Recommended Turning Over Those Policy Considerations to the Legislature.

The Director of State Courts, John Voelker, told the Legislative Council Committee on Expunction of Criminal Records that the WCCA oversight committee initially approached the legislature to address [1] whether CCAP information should be continued (because of its profound effect on employment, housing, "nosey neighbors," etc.); [2] whether information could be made to be more accurate (again with the same considerations in mind); and [3] whether a new mechanism should be created to allow information to be removed from the data base.

4. Effect on Employment

It is remarkable how often during the course of a legislative session, and in how many legislative committees, the problem is raised about how many low income people suffer unemployment due to their lack of driver's licenses and due to the existence of criminal convictions in their past. Recently, the Legislative Council on Strengthening Families heard from organizers of a "Fatherhood Summit" in Milwaukee, sponsored by a Nurturing Fathers association. Twelve thousand men attended, and, by far, the most attended workshop was one directed at the impediments imposed by driver's license suspensions. The Department of Workforce Development and legislative oversight committees have for years struggled with how to remove

the barriers of driver's license suspension and convictions from the employment of custodial parents ***and non custodial*** parents. This is one of their highest priorities. These barriers have a profound effect on employment, the success of W-2, housing, child support, the integration of the family, and the maintenance of the role of fathers in the lives of their children.

650,000 people are released from prisons and over 7 million people are released from jails each year nationally, according to the Re-Entry Policy Council. Virtually every person incarcerated in a jail in this country – and 97 percent of those incarcerated in prisons – will eventually be released. The Re-Entry Policy Council was established in 2001 by The Council of State Governments to assist state government officials grappling with the increasing number of people leaving prisons and jails to return to the communities they left behind.

In 2004, 500 felons were released from prison to Dane County, according to an article by Phil Brinkman for the Wisconsin State Journal (WSJ – September 27 2005).

According to the Bureau of Justice Statistics of the U.S. Department of Justice, there were ***8,107 inmates released from prison in 2003*** in Wisconsin. According to the Wisconsin Office of Justice Assistance, there were ***266,343 estimated adult admissions to jails in Wisconsin in 2003***. In addition, there were an estimated ***11,075 admissions of 17 year olds in 2003***. Because jail inmates are in jail for only a relatively short period of time, ***they will almost all be released within the year***.

The state's inmate population has tripled in 15 years, from less than 7,000 in 1989 to more than 22,000 today, according to a January 17, 2005 WSJ article by Brinkman. The incarceration rate has also nearly tripled.

National studies indicate as many as 60 percent of inmates remain unemployed one year after release, while two in three are re-arrested within three years and nearly one-half will end up back in prison, according to a January 16, 2005 WSJ article by the same author. The cost to taxpayers can be enormous. It costs Wisconsin taxpayers $28,088 on average per year to keep each of the estimated 22,000 men and women in prison and $2,041 a year supervising more than 67,700 people on probation or parole, according to the same article.

These and other statistics have led the Wisconsin State Journal to editorialize that we need to be effective, not soft on crime (January 28,2005). We need to "recruit employers to hire former inmates. Many offenders have poor work histories but those under close supervision will have a compelling incentive to show up on time and ready for work."

These articles of the Wisconsin State Journal are part of a series that may be found at http://www.madison.com/wsj/spe/prison. They are a series of 15 articles exhorting the public and policy makers to make sensible decisions about treating crime and the rehabilitation of ex-convicts.

A January 22, 2005 WSJ article summed up the shift in direction that has been occurring among

policy makers by quoting former State Senator Bob Welch, in remarks he made about creating halfway houses for the reintegration of offenders. The article said that "Welch had been one of the strongest supporters during the 1990's for longer prison terms and abolishing parole."

It quoted Welch as saying, "As far as I am concerned, I was on the winning side of that and got my way. . . Now, I am circling back and saying, 'OK, now that I know we're going to lock up the bad guys for a sufficient length of time, now we've got to look at what happens when they get out."

5. **Employment is Critical in the Rehabilitation of Ex-Offenders and the Treatment of Ex-Offenders has a Profound Effect on African Americans.**

Numerous studies conducted in the past show the importance of meaningful employment in the rehabilitation of ex-offenders. In a recent study, Princeton University Department of Economics Professors Bruce Western, Jeffrey Kling, and David Weiman, in their January 2001 publication entitled, "The Labor Consequences of Incarceration," found that the treatment of ex-offenders has a profound effect on African-American males. ***On a typical day two years ago, Professor Western was quoted as saying, 29% of young African American male high school dropouts ages 22-30, were employed, while 41% (up from 26% in 1990) were in prison. He said that ex-offenders who do get jobs start work making 10-30% less than other African American high school dropouts.***

Professor Western also said that, without adequate jobs, these ex-offenders are unable to pay court costs that come out of their convictions, restitution to victims, and child support for their families. Professor Western was quoted to say that "we know that employment discourages crime, and because their employment opportunities are poor, they're more likely to commit crime again."

6. **Records of Criminal Cases and Municipal Ordinance Violations Must be Removed, Once the Charges are Dropped**

As for a criminal case or a municipal forfeiture case that is being conducted in circuit court, when charges are dropped or cases are closed, a report must be required to be made to CCAP to have the case removed from the system. That report would probably be required of the district attorneys or the municipal attorneys who are conducting the cases, but they could come from law enforcement or the clerks offices too. The statutes must require that this be done.

The reason for this recommendation is first, of course, that one of the fundamentals of our society is that a person is presumed innocent until proven guilty. That is not just a criminal law concept. It is a notion in our civil society as well. We ought not to be held accountable for something we did not do. Now some will say that, well if you read the record on CCAP you will find out that the charges were dismissed. There are several answers to this: (1) few people read the text; (2) few people understand the text; (3) the text will probably not really tell you what happened; and (4) people who do read the text will think the person got off on a technicality, but

the person really did commit the act.

But none of this matters anyway. A ***presumption*** of innocence is not "maybe he did do it, maybe he didn't". It's the law. A person ***is*** innocent, until he is proven to be guilty. The reason that your name or our names are not in CCAP for having done something wrong is that we are innocent. The same applies to a person whose charges have been dropped. The person is innocent.

Secondly, s. 111.31 and the administrative rules make it illegal for an employer to ***ask about an arrest record***, unless the charge on the arrest is still pending. Several states have the same restrictions. Why? Because a person is presumed to be innocent until proven guilty.

Proponents of CCAP have raised an interesting question: "Shouldn't I as a landlord have the right to know about a prospective tenant who was charged with arson, but the charges were dropped?" Well, a landlord certainly would be interested in that. But, what if the accusation was fabricated by a landlord who wanted to get the tenant out of his apartment building so he could rent the unit to his sister? One might say that the exonerating information could be obtained from CCAP. But how much of this is likely to be there? It is doubtful that these records are going to go into a long story about why things turned out the way they did. For the example that we have given, it is very doubtful that any of this information would be in the record about the previous landlord's fabrication. The record will likely only say that the charges were dropped. The reader is going to say, "yeah, but I'll bet he did it."

False arrests probably mostly come from sloppy police work. But they could come from deliberate falsification too – especially in cases that have obtained some celebrity, or in cases where other motives exist for the police.

Employers and landlords may have an interest in knowing this. But, that is offset by one of the fundamental tenets of our society – that a person is innocent until proven guilty. This is not the only area where the public's right to know is offset by the individual's right to privacy or right to be free from defamation. To ignore this fundamental right is to destroy a part of the fabric of our society.

7. <u>The Arguments are Even More Compelling in Civil Cases, Like Eviction Records that are Used Against Tenants</u>.

As far as civil cases are concerned, actions that are dismissed should also be required to be reported by the clerks to CCAP to have the cases removed from CCAP. While there is no presumption of innocence for civil cases, where cases are dropped, the same questions arise. One might say that there is an even greater justification for removing these from CCAP, because, unlike criminal cases and municipal forfeiture cases, any individual can file a civil case for any reason. At least in the case of criminal and municipal forfeitures, there is an elected or appointed official authority involved in the commencement of the case. In a civil action, an individual could even be commencing the case precisely because he or she wants to embarrass the victim by

having the case posted on CCAP. Of course, there are penalties for frivolous actions, but how many times are those applied in Small claims court, for example?

If there is a judgement entered in a case, it has some significance. But, if the case never got past a motion to dismiss because it is so ridiculous – or in the case of certain creditors – because it was meant only to harass a debtor, why should a person have to suffer having that case posted on the internet?

8. There is No Right of the Public to Have Information Posted on the Internet

While the public may have a right to know what is happening in a courtroom in general, there is no constitutional or other right of the public to have records carried on the internet. It has been argued that s. 19.31 of the statutes confers that right on the public. That statute provides that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." This is part of the Open Records Law. The Open Records Law is more concerned about the legislative and administrative acts of its bodies, than it is the judicial. That is why it refers to the "affairs of government." And the open records law is concerned about the public's right to know about the acts of ***public officials. When the public accesses CCAP, they do not do so to check up on the judges. They do so to check up on the people involved in the cases. This is not what the Open Records law is all about.*** It is not directed at the right of the public to know about the acts of their neighbors. This statute makes a vague statement at best. Assuming for the sake of argument, that this applies to the details of cases in court, the public will still have access to these records as they always have – in the courthouse. This legislative statement is far too vague to say that it guarantees a right to the public to have the details of all judicial cases posted on the internet.

And it definitely does not confer upon the public to have false records posted on the internet.

In any event, AB 418 would establish legislation that supercedes any other statutory expression that exists now.

9. Under AB 418, Private Contractors Would Not be Able to Easily Access Records that Can be Sold to Individuals.

It also been argued that limiting public access will only allow private companies to get the information and to sell the information to employers, landlords or others. There is no statutory or constitutional right of private contractors to access to this information nor is there any constitutional or statutory obligation on the part of the courts to sell this information to anyone. And the enactment of AB 418 would preclude these entities from gaining access to this data base. If private contractors want to get this information, they can travel to the courthouses in each of the counties and assemble this information. The cost of doing that would most likely be prohibitive.

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 4, 2007

TO: State Representative Garey Bies, Chair of the Assembly Committee on Corrections and Courts

FR: Attorney General J.B. Van Hollen

CC: The Honorable Members of the Assembly Committee on Corrections and Courts

RE: 2007 Assembly Bill 418

Dear Representative Bies and Committee Members:

As Attorney General, I have special responsibility for interpreting and enforcing the public records law. As the state's chief law enforcement official, I have a unique interest in ensuring the proper functioning of the criminal justice system. In that capacity, I am writing in opposition to Assembly Bill 418, which would exclude the general public from accessing information about court proceedings now available over the Internet absent special permission granted by government agents. I believe that the proposed legislation would unnecessarily burden public access to public information while simultaneously creating substantial additional obligations on public officials in the justice system who play key roles in the proper functioning of the criminal justice system.

It is "the public policy of this state that *all persons* are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them."[1] This policy is a recognition that "representative government is dependant on an informed electorate."[2] Records of court proceedings are not an exception to this policy. Indeed, the public nature of criminal proceedings has long been recognized as an essential component of liberty.[3]

The Wisconsin Circuit Court Access ("WCCA") program—records compiled by the consolidated court automated programs ("CCAP") and made available on the Internet—is a model for the distribution of public information. It furthers the state's strong public policy in favor of public access to information. Using WCCA, information can be gathered nearly instantaneously, and without direct cost. Significantly, WCCA "contain[s] information from

[1] Wis. Stat. § 19.31 (public records law) (emphasis added).
[2] Id.
[3] U.S. Const. Amend. VI (guaranteeing individuals public trials); Wis. Const. art. I, sec. 7 (same); *In re Oliver*, 333 U.S. 257, 266-272 (1948)(discussing history of and policy supporting public trials).

only those portions of the case files generated by [CCAP] that are open records and otherwise accessible by law to an individual."[4] Assembly Bill 418 restricts the general public's access to information, and frustrates the state's public policy. By restricting the general public's access to WCCA, this bill does not change the fact that the underlying records from which CCAP information is compiled are public records, legally accessible by the public. This bill would only increase a public record requester's costs and delay a requester's access to critical information about significant government acts. It would also increase the costs to clerks of court who would have to spend additional time producing records for requesters that are now compiled free of charge on the Internet.

The bill's allowance for specially granted access to CCAP upon a clerk of courts or district attorney's finding that a requester demonstrate a "reasonable need for disclosure" creates additional problems unrelated to the public records law.[5] Recently, a Legislative Audit Bureau study evaluating state prosecutor positions provided data confirming a phenomena that many of us in the criminal justice system already recognized to be true: that state prosecutor offices are significantly understaffed given current workload.[6] If even the smallest fraction of the approximately one million hits a day WCCA receives become requests to district attorneys for special CCAP access, then the workload strain on state prosecutors will be exacerbated. Prosecutors would have even less time to undertake their core functions of assisting in the investigation of crime, evaluating complaints, and prosecuting criminal charges.

I acknowledge that Wisconsin's public records law does not require Internet access to court records. Given the sometimes competing public interests in access, privacy, safety, and fairness, there might be discrete categories of court information that should properly be excluded from public dissemination over the Internet. Historically, the Department of Justice has played an active role in the discussion of these issues by participating in the Wisconsin Circuit Court Access Oversight Committee. And if asked, we will continue to lend our perspective to similar efforts in the future. But I firmly believe that the exclusion of the general public from access to WCCA is not appropriate and frustrates the state's compelling interest in accessible government. Thus, I respectfully oppose Assembly Bill 418.

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[4] Director of State Courts, "Policy on Disclosure of Public Information Over The Internet."

[5] To be sure, the intent of the public records law is not restored by the bill's allowance that a member of the general public may apply for special access to CCAP on a case-by-case basis. The bill requires requesters state their purpose for making a specific request, and further requires that they show a "reasonable need for disclosure." Consistent with the policy that all persons are entitled to the greatest possible information, the public records law imposes no such requirements. *See* Wis. Stat. § 19.35(1)(h) and (i).

[6] Legislative Audit Bureau, "An Evaluation of Prosecutor Positions."

PETER D. FOX
WNA Executive Director
Peter.Fox@WNAnews.com

WISCONSIN NEWSPAPER ASSOCIATION

...world's oldest press association, established 1853.

October 4, 2007

Memorandum to: Assembly Committee on Corrections and Courts

From: Peter D. Fox, executive director, Wisconsin Newspaper Association

Subject: Assembly Bill 418

The Wisconsin Newspaper Association (WNA) appreciates the opportunity to comment on 2007 Assembly Bill 418 that would close now-available public access to the Consolidated Court Automation Programs (CCAP). Our association vigorously opposes this proposal as it needlessly and arbitrarily prevents the public from viewing Wisconsin court records already open to them under long-standing state statutes.

As you know, a multitude of other organizations representing citizens from all walks of life likewise oppose AB 418 for a variety of reasons. Many individual WNA member newspapers have editorialized against this proposal because of the restrictions it places on public access to public records. As I'm sure those points will be repeatedly addressed in testimony today, I wish to focus my comments on three aspects which have not yet received much comment.

First, the Committee certainly is aware of the nine-month review by the Wisconsin Circuit Court Access (WCCA) Oversight Committee completed in March 2006. This exhaustive review examined CCAP, specifically the portion known as WCCA, and focused on both content and access issues and the retention and accuracy of material posted. The committee – comprised of circuit court judges, attorneys in private and public practice, citizens, law enforcement officials, state legislators and state courts officials – concluded: "WCCA is available as a byproduct of recordkeeping in the circuit courts. Maintaining public court records on the Internet provides advantages to the public, to justice system agencies and to the courts."

It should be noted that the 2005-06 oversight committee was the second to be organized by the director of state courts. The first met in 2000, one year after WCCA began in April 1999, and helped create a comprehensive policy governing the site. The most recent committee recommended further improvements for the benefit of both the general public and the individuals involved in the on-line court records. It certainly may be said that the oversight committees studied WCCA

from every angle and made carefully considered recommendations in the public interest.

The changes in WCCA proposed by the primary sponsor of AB 418, who himself was a member of the 2005-06 oversight committee, were considered for inclusion in the group's recommendation report but in point of fact were not adopted. WNA urges this committee to carefully evaluate the final recommendations of the most recent WCCA oversight committee in the context of AB 418.

Second, the portion of the bill that stipulates persons entitled to "unlimited access" of WCCA information would require the wisdom of Solomon to adjudicate, much less the director of state courts. For example, while we appreciate the specific "permission" of access for WNA members we submit that in many cases even a solitary blogger might be a "media organization" but under the provisions AB 418 this individual could be denied. Additionally, I should point out that even among newspaper publishers and editors and our brethren in the broadcast news industry there is debate whether a particular entity is a *bona fide* "media organization." How can the courts director, then, be expected to make that determinations?

Third, I simply wish to point out that bill tramples on the principle that Wisconsin citizens need only ask for public records. There is no reason – indeed, it is unconscionable – to require citizens for justify their requests for public information as detailed in section 4(b).

Sincerely,

Peter D. Fox
Executive Director

WMC
REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

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President

James A. Buchen
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Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

TO: Assembly Committee on Corrections and Courts

FROM: John Metcalf, Director, Human Resources Policy

DATE: October 4, 2007

RE: Assembly Bill 418 – Restricting Employer Access to the Consolidated Court Automated Programs (CCAP) Criminal Conviction Information

Background

Under current Wisconsin law, the director of state courts has established a consolidated electronic system that contains information about cases filed in the circuit courts in the state – both civil and criminal cases. This system, known as the Consolidated Court Automation Programs ("CCAP") contains information about the parties to circuit court cases, their attorneys, and outcomes of cases.

The information contained on the CCAP system is available in an Internet Web site that has no limitations on who can access the information. The CCAP system allows a search for all cases, civil and criminal, in which a person or entity who is the subject of the search has been a party.

Currently, the initial CCAP Web page displayed in each criminal case and in each traffic and other civil forfeiture case contains a statement that employers may not discriminate against persons because of arrest and conviction records except in certain circumstances. Where a case did not result in a conviction, the site also contains a statement that the charges were not proven, have no legal effect, and the defendant in that case is presumed innocent. Cases in which there was a conviction for a traffic or other civil forfeiture offense, but no criminal conviction, there is a statement that the charge or charges in the case are not criminal offenses.

2007-2008 Session Legislation

Assembly Bill 418 restricts the general public's access to the CCAP system from the Internet. However, it permits unlimited access to information in the CCAP system to Wisconsin judges or other court officials, law enforcement personnel, attorneys, and accredited journalists, as well as persons who regularly deal with court documents in the course of their job duties.

AB 418 restricts access to CCAP information for other persons, including employers, who must submit to either the clerk of courts or district attorney in the county where the request for CCAP information is filed, a written request for information that includes: the requester's full name and address; the full name and address of the person or entity subject to the request; the relationship, if any, between the requester and the subject of the request; and the purpose for the request.

The requester must show a reasonable purpose for the request. The requester may be granted limited access to CCAP, subject to the discretion of the clerk of courts or district attorney, for viewing information on the person or entity that is the subject of the request.

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WMC Position – Oppose
All court records currently accessible through the CCAP system are otherwise public documents that all members of the public have a right to access. Further, Wisconsin employers are required by law to maintain safe workplaces for their employees, customers and the general public and the CCAP system assists employers in meeting this legal obligation. Reviewing the CCAP database is part of the due diligence required of employers to provide a safe workplace.

Conclusion
For these reasons, WMC opposes AB 418, and urges the Committee to vote against this legislation.

Access to Online Court Records Should be Limited

By: Representative Frederick P. Kessler

Should your neighbor know that you got into a fistfight when you were 18? Should your fellow church members know your traffic records? What privacy rights should you be entitled to? A recent editorial ("No to Closing Records," 8/21/07), took issue with a bill that I have co-sponsored, Assembly Bill 418.

Assembly Bill 418 is legislation intended to ensure that individuals who have made a mistake in life get a second chance. This is achieved by limiting access to court records, so that the doors are not closed to people who have reformed.

In 2006, the U.S. Department of Justice estimated that 48 million Americans have a record, which is almost one out of every six American citizens. All these people are not "criminals;" they are friends, parents, and sons and daughters.

Individuals who have a record often find it difficult to attain housing, scholarships, loans, or to secure employment. These are some of the very tools that a person needs in order to change their life and become a responsible member of the community. Without a decent job or a place to live, individuals are far more likely to re-offend and cost taxpayers more in court and corrections costs.

Currently, all of Wisconsin's criminal, civil, divorce and traffic court records are available over the internet for anyone to look at on the state's Consolidated Court Automation Programs, or CCAP. CCAP shows all cases that have entered the court system, including many cases where a person was charged but never convicted.

While in an ideal world, employers and landlords would consider that people can mature and overlook a minor offense from years ago, that is not always the case. Studies show that employers and landlords are more than likely to reject an applicant with a record, as evidence of a personality defect that would render them a poor employee or tenant, no matter how long ago it occurred. The stigma of a prior offense can follow individuals like a life sentence.

I acknowledge that there are very important reasons for public access to court records. In certain situations access is appropriate. Day-care centers and schools, for example, need the ability to ensure that potential employees are not sex offenders. Court records would still be readily available should a situation call for access. This bill does not seal any court records, but it allows for court records to be regulated at the local level at the discretion of the district attorney and clerk of courts.

While access would no longer be as simple as clicking on the internet, an individual seeking to obtain specific court records would be required to do little more than fill out a simple form. The requestor would be required to provide the name and address of the person they are interested in accessing information about, as well as their own name, address, and the purpose of the request. Regulation of records at the county level can

ensure that the request is reasonable and that there is in fact some need to view the records.

Records would also remain open to law enforcement and others, such as attorneys and members of the media, who regularly deal with court documents in the course of their job duties or have a substantial need for access.

This bill is not an attempt to limit transparency or place obstacles and barriers to the media. Their ability to act as the public's watchdog is not impaired. However, the right to "snoop" on one's neighbors for no good reason would be limited. Preserving individual privacy is an important consideration. That right is fairly balanced with free speech in this proposal.

Everyone benefits when people who have made mistakes are allowed to pay their debt to society, and then are able to move past their offense, obtain employment and a place to live, and lead a productive, law-abiding life.

Representative Frederick P. Kessler
State Capitol, Room 302 North
PO Box 8952
Madison, WI 53708
608-266-5813

"Residential Housing Specialists"
Ron and Linda Middleton
P.O. Box 66, Bonduel, WI 54107 • Phone: (715) 758-6131 • Fax: (715) 758-6133 • Mobile (715) 853-9696

October 1, 2007

State Representative Garey Bies
P O Box 8958953
Madison WI 53708

Dear Mr. Bies,

We own and operate five manufactured home communities which serve 235 families, families with young children. AB 418 which limits access to CCAP would harm our ability to properly screen prospective tenants. Our residents expect us to screen new people so that they have some measure of safety. CCAP is a valuable tool and we use it daily to review public records related to people seeking to do business with us. People who often falsify their applications to get approved.

Supporters of AB 418 suggest that CCAP allows landlords to discriminate against people with criminal records. Having a criminal record is not a protected class in the Fair Housing Act at either the state or federal level. Discrimination against people with criminal records is prohibited in some circumstances but not all under the Fair Employment Act.

Supporters say that being listed in CCAP only means that the person has been involved as a party in a court proceeding. It means much more than that. CCAP lists arrests, convictions, and judgments. The system already provides warnings about inappropriate use or conclusions from the information shown. No system is perfect. This has been shown to be very reliable. Don't allow a few problems to allow a good system to be thrown out.

CCAP is a valuable state tool that we strongly support. We urge rejection of AB 418.

Sincerely,

Ron Middleton Linda Middleton

Ron and Linda Middleton
Ridgewood Homes, LLC

☐ Brookview Village, LLC	☐ Ridgewood Estates-Phillips, LLC	☐ Leo Street Apartments, LLC	☐ Middleton Bonduel Apartments, LLC
☐ Nordic Lands, LLC	☐ Westwood Meadows, LLC	☐ Green Acres Terrace, LLC	☐ Middleton G.B. Apartments, LLC
☒ Ridgewood Homes, LLC	☐ Leesons MHP, LLC	☐ Middleton Apartments, LLC	

Nowlan, Andrew

From: Nick [nlegros1@new.rr.com]
Sent: Wednesday, October 10, 2007 7:26 AM
To: Rep.Bies
Subject: AB418

Goodmorning:

I am writing today concerning AB418 which I understand thru a newspaper article would restrict access to the Wisconsin Circuit Court Access Web site. As a landlord this website is a valuable tool for a basic background check in screening prospective tenants It is one of several checks we do to ensure the safety of our other tenants. The information on this web site is public knowledge and if not available would lead to delays on rental applications.

I would therefore ask that you vote against this bill and encourage your colleagues to do the same.

Thank you for your attention on this matter.

Nick Le Gros
P.O. BOX 9494
GREEN BAY, WI 54308

Nowlan, Andrew

From: paul witmer [knidrish409@jvlnet.com]
Sent: Friday, October 05, 2007 4:22 PM
To: Rep.Bies
Subject: AB 418

I strongly urge you to pursue passage of AB 418.

I know strong forces opposed it at the recent reading (introduction?) but they were mostly bureaucrats and others who stand to gain from the unfortunate status quo.

The voting public wants their privacy returned. How can you have the pursuit of happiness when you are so greatly exposed to discrimination and gossip, in perpetuity?

I can't speak for all but many other states do not expose their citizens to the likes of WCCA.

The current approach of WCCA allows misanthropes to do great harm to others, annonymously, without accountability and from a dark hidden place. This contributes to the overall
tensions of society.

Arrest and other discrimination (still illegal in Wisconsin with exceptions) is done with impunity because there is no record of access by insurance companies, credit agencies and employers who have legal obligations to those they
scrutinize.

This is particularly impactful because Wisconsin has no record expungement mechanism for adults, short of pardons which are politically risky. After so many years of good behavior public record clearing should be administratively possible.

The arguments in favor of maintaining the current unrestricted access include baby sitter clearance.But this is largely irrelevant because most are too young to have offenses listed in the adult WCCA data base. Juveniles, no matter how criminal, are excluded from the public view. Also the base doesn't include municipal court records.

Also troubling is the fact that sometimes convictions are more the result of inadequate legal representation then actual guilt. Many convictions turn out to be wrong when DNA is finally reviewed. What about cases where there is no DNA, what if they have the same error rate. The prosecution and judicial systems are focused first on getting cases over with. As many as 10% of the people in jail and prison may be acutally innocent despite conviction.

Consider WCCA in the context of driver records which are protected by the DPPA (Driver pricacy protection act). The get a driver record you have to request it in writing and state a permissible purpose, just to see how bad a driver someone is! This extends more protection for minor information then
the major information under WCCA which has no protection.

Did you know currently court files (accessible to the public) include social security numbers which anyone can get without giving their name.

Identity theft is a huge problem and it is fueled by records that are too open.

If we are going to have open records lets make a record of who has checked up on our file too!

paul witmer

Searing, Eric

From: Julie Yelle [jyelle@bchba.org]
Sent: Wednesday, October 03, 2007 1:59 PM
Cc: Rep.Bies; Rep.Lasee; Rep.Ott; Rep.Montgomery; Rep.Nelson; Rep.Soletski; Rep.Nygren; Rep.Van Roy; jyelle@bchba.org
Subject: Letter from the BCHBA opposing Assembly Bill 418
Importance: High

Good afternoon,

We are writing today in opposition of the proposed Assembly Bill 418 which limits access to CCAP unless a written application is approved by a Clerk of Courts or District Attorney. It is our understanding that the proposal will go to public hearing tomorrow, Thursday, October 4th.

Our members of the BCHBA Multifamily Committee, as rental property owners and managers, rely on CCAP to screen potential residential applicants. It is a quick, efficient way to perform a background check to search for criminal records via the internet at no cost. If this bill were to pass it would directly impact our businesses and slowdown the rental application process.

Many of our members are also members of the Institute of Real Estate Management. We have encouraged our business associates and colleagues to contact their State Representatives to oppose this bill. In addition, the Wisconsin Builders Association, our state affiliate, will be registering in opposition on Thursday.

We respectfully request that you vote against this bill in view of the fact that it would affect the multifamily industry in a negative way.

Sincerely,

Michael D. Miller, President
Brown County Home Builders Assn.

Mari Charles, Executive Officer


FORWARD

AB418

No Date

WI Housing Alliance Position Paper

The Wisconsin Housing Alliance is the trade association representing 472 manufactured home communities which house 37,456 Wisconsin families. AB 418 proposes to eliminate a community owner's ability to access the Consolidated Court Automation Program (CCAP). Community owners commonly use CCAP for two purposes.

1. Community owners have a responsibility to their residents to provide a safe and enjoyable living environment. CCAP allows landlords to screen prospective tenants to ensure that they are not putting dangerous criminals in neighborhoods.

2. Community owners are in the business of renting sites to families. These landlords use CCAP to check for judgments, liens and previous evictions which would indicate that renting to an individual would be a very poor business decision.

If passed, AB 418 would cause an immense burden on the clerk of courts office. Under open records law, "any requester has a right to inspect any record" (Section 19.35). Current state law supported by several court decisions make it clear that the records contained in CCAP are public documents available to the general public. The process suggested in AB 418 would not change the ability to receive information; it would only change the process to make it complicated and burdensome. The open records law further states that a request made in writing shall be responded to in writing. If landlords are required to submit requests in writing and wait for a response in writing, the proper screening process will be very lengthy and good citizens would be unnecessarily delayed in renting a home.

The Wisconsin Housing Alliance and their membership strongly oppose the passage of AB 418. Open records law already dictates that these are public records and making it more complicated to access those records serves no useful purpose.

WISCONSIN HOUSING ALLIANCE
THE VOICE OF FACTORY-BUILT HOUSING

Amy Bliss
Assistant Executive Director

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E-mail: amy@housingalliance.us

www.welcomehomewisconsin.com


FORWARD

Sommer

Sommer Property Management, LLC

RICH SOMMER

4224 Janick Circle N.
Stevens Point, WI 54481
www.sommer-rentals.com

Phone: (715) 343-8222
Fax: (715) 341-3174
E-mail: rsommer@wctc.net

Found In AB 418 Packet

No Date

Wilshire Woods
On Harmony Lane

www.sommer-rentals.com
Clean and Quiet
Orphans and Vulnerable Children Sponsorship
www.worldvision.org

and sues you for racial discrimination. To defend yourself, you'll need to be able to explain how an apartment that was available in the afternoon was not available in the morning.

Some communities put apartments on their "available" list as soon as they learn that the current residents aren't renewing. Others wait until the turnover work is completed and the apartment is ready to rerent. Other availability policies fall somewhere in between. Whatever your availability policy is, be sure to explain it in your written rental policy statement [Policy, par. 2].

3) Occupancy guidelines. Many fair housing lawsuits are caused by what applicants perceive to be unfair occupancy standards—that is, the number of people you allow to occupy a particular apartment. The federal Department of Housing and Urban Development (HUD) adopted its policy on determining whether a community's occupancy standards are reasonable. The general rule is that two persons per bedroom is a reasonable limit. But there are several other considerations that may make two persons per bedroom too restrictive. And under certain circumstances you may be able to restrict occupancy to fewer than two persons per bedroom. Talk to your attorney about what the appropriate guidelines should be for your community and incorporate them into your written policy [Policy, par. 3].

4) Application process. Explain the process of evaluating apartment applications. The explanation will shed some light on the evaluation process and help assure applicants that all applications are handled the same way. If applicants understand the purpose of the application fees, why applications take a day or two to evaluate, and how the evaluation is done, they'll be less likely to sue you if you reject them. And investigators will scrutinize their claims more carefully [Policy, par. 4].

5) Rental criteria. When you evaluate apartment applications, you compare them to your rental criteria. Explain what those criteria are:

➤ *Required employment history and minimum allowed income.* A common requirement is that applicants must prove a minimum of one year of continuous employment and have a monthly income of at least three times the rent. Your standard may be more or less stringent, depending on your market.

➤ *Required number of former landlord references and effect of negative reference on application.* For example, our Model Policy states that anyone who has ever been sued for any lease violation is disqualified from renting an apartment. That standard may be too harsh for your community. You'll have to decide what will work best for you.

➤ *Credit standards.* Our Model Policy says that applicants will be rejected if they have any unpaid debts. You need to come up with a standard of your own.

➤ *Criminal history.* If you do a criminal background check, say so and explain what kind of criminal history will result in a rejected application.

➤ *Guarantor policy.* If you allow unqualified applicants to rent apartments with the financial backing of a cosignor or guarantor, explain your guarantor policy [Policy, par. 5].

PRACTICAL POINTER: Every area has its own laws and business customs. So check with your lawyer to see whether your written rental policy statement should include anything else. ◆

LEGAL CITATION

■ Asbury v. Brougham: 866 F.2d 1276 (U.S. Ct. App. 10th Cir. 1989).

Put Rental Policy in Writing to Head Off Discrimination Lawsuits

It's smart to put your community's rental policy in writing. A written policy helps explain the rental process to applicants so that, if you reject them, they'll be less likely to conclude that you've discriminated against them. A written policy also helps show investigators that you treat every applicant the same way. Most communities have set policies on handling apartment applications and making rental decisions, but many of them don't have these policies in writing. We'll tell you why a written policy is so important, and we'll give you a Model Policy to help you get started on your own written rental policy (see p. 2-3).

Why Written Policy Is Crucial

Whenever a government agency investigates a fair housing complaint, one of the first questions they ask the owner or manager is, "What is your policy on this issue?" says Robert P. Hein, a Georgia attorney and fair housing expert. The crux of every fair housing lawsuit is whether the owners or managers treated the complaining residents or applicants the same way as they treated all other residents and applicants. A written rental policy statement is a guideline for your staff to ensure that they do just that, and it can serve as strong evidence that you treat everyone equally.

Without a written rental policy, you could have a hard time proving that you don't discriminate. The investigators may interview every member of your staff, and if each employee gives them a different answer, you could be in trouble. But if each employee points to the written policy and says, "This is our policy, and we follow it," you stand a better chance of proving that you don't discriminate.

A Kansas City owner learned this lesson the hard way. A prospect accused him of discriminating against her because she was black and had a child. The owner denied discriminating against prospects based on their race. He also claimed that renting an apartment to the prospect and her child would violate his occupancy policy, to which he made no exceptions.

The court found that the owner had discriminated against the prospect and ordered him to pay the prospect $50,000 to punish him for his discriminatory conduct. In describing the evidence against the owner, the court noted that the owner's "rental policies, procedures and rules, including criteria for exceptions, were not kept in written form." If the owner had had written rental policies, he might have stood a better chance in court [Asbury v. Brougham].

What Written Rental Policy Should Cover

Your written rental policy, like our Model Policy, should state your:

1) Adherence to all applicable fair housing laws. This is vital, says Terry Jones, a Texas owner. It shows applicants, residents, and investigators that your community is aware of and follows fair housing laws. Just seeing this statement can be enough to discourage frivolous lawsuits. Also, investigators see that fair housing compliance is woven into your community's business philosophy [Policy, par. 1].

2) Availability policy. It's important to explain how you determine when an apartment is "available," says Hein. Say a minority applicant asks for a one-bedroom apartment. You have none available, and the applicant leaves. Later that day an apartment becomes available and you rent it to a nonminority applicant. The minority applicant finds out about it

What to Do with Written Rental Policy

You should post your rental policy in the leasing office, where applicants can see it. Also give a copy of the policy to applicants with the apartment application. They can read the policy before or after they fill out the application and take the copy home with them. That way, no one can claim that he or she doesn't know your policy. And if any part of your policy, such as the screening process or your rental criteria, changes, be sure to update the written policy statement right away.

Recent Court Rulings (continued from p. 11)

➤ Owner May Be Liable for Former Tenant's Gunshot Injury

Facts: A former resident of a small apartment community was shot by another resident and sued the owner for failing to reduce the risk of harm posed by a potentially violent resident. Before the shooting, a third resident had sent a certified letter to the owner, reporting that the violent resident had brandished a shotgun and made threatening remarks. The owner had previously testified that he had believed the letter's account of the brandishing was true.

Ruling: A California appeals court reversed the lower court's ruling that granted judgment without a trial to the owner.

Reasoning: The owner claimed that he owed no duty to take measures to protect his residents, because he had had no notice of the potential danger. The appeals court disagreed. The appeals court ruled that there was a foreseeable risk of harm when a resident brandishes a gun while making threatening remarks in the manner stated in the letter. The owner could have called the police after the brandishing attack, as a simple protective measure. Calling the police would have been reasonable and not too burdensome for the owner [*Barber v. Chang,* June 2007].

➤ Owner Liable for Excessive Construction Noise

Facts: The resident lived in a penthouse apartment that included a large private outdoor patio area. For three months, the owner did major repair and improvement work on other parts of the buildings. The resident sued the owner, seeking compensation for the loud drilling noises that occurred during the day, while he worked from home. The lower court ruled for the owner.

Decision: A Washington, D.C., appeals court ruled for the resident and reversed the lower court's decision.

Reasoning: The lower court had applied the law too narrowly. In its analysis, the lower court did not account for the reasonable contractual expectations of both owner and resident when the lease was signed. The appeals court said that in renting an apartment, a resident may reasonably expect a certain amount of peace and quiet, without unreasonable disturbances from the owner.

The community's rules and regulations—attached to the lease—and the city's regulations include requirements against excessive noise. The city's ordinances include limitations on the time of day in which certain noise levels are permitted [*Sobelsohn v. American Rental Mgmt.,* May 2007].

➤ Owner Not Liable for Dog Bite

Facts: After their son was bitten by a resident's pit bull, a family sued the apartment owner for allowing the resident's dog on the property. The family's son was playing outdoors when the resident parked his van nearby and attempted to unload the dog. The dog broke free and attacked the child, who sustained severe injuries to his leg.

Decision: A Louisiana appeals court ruled for the owner.

Reasoning: The court found that there was no evidence that the owner knew of the dog's vicious tendencies. Without this knowledge, the owner could not be held liable for negligently allowing a vicious dog on her property. Before the resident moved in, the resident had told the owner she had two Staffordshire terriers, and the lease agreement identified the dogs as such.

Prior to the biting incident, neighbors had complained of barking. Animal Control inspected the property and the dogs, and told the owner that no citations were issued. Nothing indicated that the dogs were vicious and prone to attack [*George v. Paffen,* May 2007].

EDITOR'S NOTE: If your apartment community allows pets, using pet applications will be your first line of defense against pet-related lawsuits. It will help you ensure that the pets in your community are properly vaccinated. And it will raise red flags when prospective residents want to bring a pet into the community, and the pet is not suitable for apartment life. For more information and a Pet Application/Registration Form, see "Make Sure Pets Fill Out an Application Too," *Insider,* April 2007, pp. 6–8.

Apartment Building MANAGEMENT insider

AUGUST 2007

INSIDE THIS ISSUE

IN FUTURE ISSUES

- How to Avoid Boiler Breakdowns
- Get Your Community Ready for Fall with 'To Do' Checklist

FEATURES

Fake Cop Shows Phony Badge

A man impersonating a New York City police officer flashed a phony badge to pull over a driver who had cut him off on the highway, as reported recently in the *New York Post*. After arresting the imposter, law enforcement officers searched his apartment and found assault rifles, a shotgun, and drugs. The man was charged with criminal possession of weapons, drugs, and a forged document, and impersonation of a police officer.

If a man comes to your management office, flashes a law enforcement badge, and says he wants to search a resident's apartment, would you let him in? Most managers would. But that's a risky move. The man might not really be a police officer. If you let him into the apartment, the resident could then sue you for damages resulting from the illegal entry. Even if the man really is a police officer, the resident could still sue you if the officer had no warrant or if the search was otherwise improper.

To avoid liability, we will give you a four-step procedure to follow when people who claim to be police officers ask for access to a resident's apartment. We will also give you a Model Form (see p. 3) that you can use to record the information you will need to protect yourself if you are sued.

(continued on p. 2)

Mailbox Rule Offers More Security Against Stolen Mail

The news stories today about identity fraud tend to focus on elaborate technological ways people steal personal information. However, identity thieves still rely on old-fashioned methods, such as stealing mail, to get the information they needed to bilk a victim out of possibly thousands of dollars.

A 2007 Identity Fraud Survey report released by Javelin Strategy and Research reports that there are currently 8.4 million identity fraud victims in the United States. And these victims have lost $49.3 billion to identity thieves. In the 2006 report distributed jointly with the Council of Better Business Bureaus, of the 47 percent of identity fraud victims who knew how the crime was perpetrated, 8 percent cited stolen mail.

Partly in response to the rising rate of identity theft, the United States Postal Service (USPS) implemented Standard 4C, a new standard for wall-mounted, centralized mail receptacles. The new standard is designed to increase apartment mailbox security while accommodating today's larger envelopes and packages.

(continued on p. 4)

Recent Court Rulings

(continued from p. 7)

ever, clauses in the resident's lease included specific warnings about the possible presence of mold, and statements that the owner was not liable for any mold-related illness. The resident sued, claiming that the owner had been negligent in failing to remove the mold or warn her of its presence. The owner asked the court to dismiss the case.

The court refused to dismiss the case, noting that the lease clauses that released the owner from liability regarding mold and other hazardous substances were unenforceable. Clauses allowing an owner to avoid liability for hazardous substance-related negligence violated a public policy that favored protecting residents against such risks.

- Cole v. Wyndchase Aspen Grove Acquisition Corp.: 3:05-0558, 2006 U.S. Dist. LEXIS 70612 (U.S. Dist. Ct. M.D. Tenn., Nashville Div. 9/28/06).

➤ Discrimination Claim Lacked Merit

A Minnesota owner evicted a resident after she had a loud argument with her boyfriend and assaulted him in his apartment, which was also located in the owner's building. The incident required police intervention. The owner subsequently sued the resident to recover unpaid rent, and the resident responded by claiming that the owner discriminated against her because she was black. The owner asked the court to dismiss the resident's claim.

The court dismissed the resident's claim. The court reasoned that the resident didn't present any evidence that the owner treated her any differently than a non-black resident who screamed at and assaulted another resident to an extent that required police intervention.

- Sandy Hills Apts. v. Kudawoo: Civ. No. 05-2327 (PAM/JSM), 2006 U.S. Dist. LEXIS 75229 (U.S. Dist. Ct. D. Minn. 10/16/06).

➤ DHCR Registrations Filed After Base Date for Determining Rent

A New York resident paid a monthly rent of $400 under her 1999 lease. When she renewed her lease in 1999, the owner reduced the rent to $306 and registered the reduced rent with the Division of Housing and Community Renewal (DHCR) as a preferential rent. DHCR registrations from 2002 and 2003 listed the resident's monthly rent as $424.

After a new owner acquired the building in December 2004, the resident refused to pay rent. She argued that the rent was $306, and the owner argued that it was $424—as the 2002 and 2003 DHCR registrations stated. The owner sued the resident for nonpayment of rent.

The court ruled that the legal regulated rent was $400 under the 1999 lease and a 1999 DHCR registration. However, the court said that the resident was liable only for the preferential monthly rent of $306 for the period between the owner's acquisition of the building and the court proceedings. The court determined that there was no evidence of a lease renewal after 1999 or that the resident had ever paid more than $400 per month.

The court also concluded that the 2002 and 2003 DHCR registrations didn't establish that the rent was $424 because they were filed after the "base date" for determining the regulated rent. Finally, the court noted that not renewing the lease after 1999 entitled the resident to continue paying the preferential rent; however, the owner could have offered a renewal lease that increased the rent to the regulated amount of $400. ■

- 2263 LLC v. Zimmerman: Index No. 68624/06 (Civ. Ct. N.Y. Cty. 10/04/06).

PROFESSIONAL APARTMENT MANAGEMENT®

DECEMBER 2006

INSIDE

IN FUTURE ISSUES

- How to Start or Improve a Recycling Program
- Winter Energy Tips for Apartments: Keeping Warm Without Spending More on Utility Bills

Go 'Green' to Save Money, Attract Residents

Bu Laura Starczewski, Esq.

Laura Starczewski, Esq., is an attorney, writer, and editor who writes about employment law and property management. She can be reached at legal.writer@hotmail.com.

"Green" homes and commercial properties are those that, according to the U.S. Green Building Council (USGBC), are designed and built to have a positive impact on the environment and on the health of their occupants. Although some owners balk at the cost of implementing green measures at their apartment communities, they may find that doing so helps them attract and retain residents—and leads to significant cost savings down the road. What's more, as more cities adopt green laws, owners may be forced to take measures to make their buildings greener.

New York City, for example, recently enacted the *Green City Buildings Act*, which will require many new, as well as renovated, buildings in the city to be

(continued on p. 2)

How to Reject Applications Without Violating Fair Housing Law

You are not obligated to rent an apartment to someone who does not meet your apartment community's screening criteria, even if the applicant is a member of a protected class under fair housing law. However, you could run into fair housing trouble if you are not careful about how you or your staff informs applicants that their applications are being rejected.

Your apartment community should have a standard application form and posted screening criteria that are reasonable and that you apply consistently to every application. You should also have a standard rejection letter that you send to applicants, explaining precisely what went into the decision. With the help of fair housing experts Anne Sadovsky and Shirley Robertson, we will tell you how to avoid violating fair housing law when rejecting applications. And we will give you a Model Letter that you can adapt and use (see p. 4).

(continued on p. 4)

Don't Let Fair Housing Fears Compromise Screening Decisions

Do you ever hesitate to reject an applicant who doesn't meet your screening standards because you're afraid you'll be sued for discrimination? Suppose a Hispanic woman doesn't meet your income requirements. But you're worried that if you reject her application, she might sue you for discrimination based on her gender and ethnicity.

Don't Be Afraid to Enforce Your Screening Standards

Recent decisions by the federal Department of Housing and Urban Development (HUD) say that rejecting an applicant who doesn't meet your screening criteria isn't discriminatory—even if the applicant belongs to a group that's legally protected against discrimination.

HUD Decisions Let You Screen Out Bad Residents

We've uncovered five cases in which HUD looked into complaints from rejected rental applicants to see if there was discrimination. In each case, HUD ruled that the owner had rejected the applicant for a legitimate screening concern—such as bad credit or bad references—and that there had been no discrimination. The cases show that owners and managers who make the right screening decisions needn't worry about violating the Fair Housing Act.

Unsatisfactory Credit Reports

A couple claimed they were denied an apartment because they were of mixed races. The owner claimed the couple was rejected because their rental application was unsigned and because their credit reports were unsatisfactory when compared with credit reports for two other applicants who wanted the same unit.

The owner got a complete application from a white couple for the same unit on the same day the mixed-race couple had applied. The white couple's credit reports had no past or present negative entries. So, the owner accepted the white couple and rejected the mixed-race couple.

HUD dismissed the mixed-race couple's complaint. Records showed that heads of households in 57 percent of the owner's other rental units were black and 42 percent were white. And the owner's realtor had rented a unit to a mixed-race couple for the past five years. So there was no reason for HUD to conclude that the Fair Housing Act was violated [Baker and Dawson v. Koontz, et al].

Incomplete Application, Bad References, Police Problems

A rejected applicant claimed the owner wouldn't rent to him because of his mental and physical handicaps. The owner said that the rejection was based on an incomplete application, negative references from the applicant's landlord and sister, and the applicant's past involvement with the police.

HUD Dismissed the Complaint

The applicant's bad references and police problems distinguished him from all the other applicants the owner had approved. Also, the owner had rented apartments to other residents who were mentally and physically disabled. And the owner had rejected another applicant who wasn't disabled because her rental application was incomplete [Flessas v. Hurd/First Baptist Housing Federation, et al].

Negative Court Records and Landlord Reference

Another applicant claimed she was rejected because of her race. The community's resident manager had sent the applicant a form letter, which said that the rejection was based on "adverse court records and an adverse tenant history." The letter told the applicant to contact the owner's tenant screening company in writing for more information.

HUD reviewed the owner's files and found that 20 other applicants were rejected based on information obtained by the same tenant screening company. Of these, 10 were white, three were black, two were Hispanic, and five were of unknown race. HUD also looked at current resident files. All the residents had been screened by the same service, and had good landlord references and court records.

Since all applicants were subjected to the same screening process, and the manager had accepted and rejected applicants who were white, black, and Hispanic, the complaint was thrown out [Brantley v. Southwood Square Apts.].

History of Harassment and Skipping Out on Bills

Another rejected applicant claimed he was denied an apartment because of his mental and physical handicaps. He was an alcoholic, who walked with an "assistive device." The owner's screening procedure required a credit check, a landlord reference, an in-person interview, and proof of income.

HUD ruled that the owner rejected the application because of the applicant's behavior—not because of his handicaps. HUD found that the owner routinely rejected applicants who didn't pay their bills, who harassed or disturbed their neighbors, who were violent, or who didn't keep their apartments in good condition. The applicant's former landlord wrote that he was a "disruptive, abusive, violent tenant," who disturbed and harassed his neighbors and the community's staff. The applicant had moved out without paying his last month's rent and his cable and telephone bills. And former neighbors attested to his violent and disruptive behavior, including threats and harassment with a knife [Kuhns v. Western Catskill Community Revitalization Council].

Applicant Kept Apartment in Slovenly Manner

Another applicant claimed he was denied an apartment on the basis of his religion—Santeria. The owner told HUD that the applicant was rejected on the basis of an unacceptable home interview, which revealed that the applicant kept his apartment in a slovenly manner. The interviewer didn't tell the owner about the applicant's religious beliefs. The owner conducted home interviews of all prospective residents at the community.

HUD dismissed the complaint, finding that the owner's rejection was based on the home interviewer's report on the condition of the applicant's apartment [Stanley v. Finkelstein-Morgan Agency, et al.].

Practical Pointer: Cover yourself against potential claims that you discriminated when enforcing your screening standards against an applicant:

Use the Same Screening Procedures for Every Applicant

Don't require two references, a home interview, and a minimum income from an African-American applicant, while simply requiring a minimum income from a white applicant. If you set different screening requirements for different applicants, you're bound to run into discrimination problems.

Apply Screening Standards Consistently

Don't apply your standards in a haphazard manner. If you reject one applicant based on a credit report indicating that the person doesn't pay bills on time, don't accept another applicant with a similar credit report. ◆

LEGAL CITATIONS

- Baker and Dawson v. Koontz, et al.: HUD Case No. 09-92-1703-1 (Region IX 9/10/93).
- Brantley v. Southwood Square Apts.: HUD Case No. 10-94-0019-8 (Region X 4/8/94).
- Fair Housing Act: 42 USC §3601, *et seq., as amended by* Pub. L. No. 100-430, 120 Stat. 1626 (1988).
- Flessas v. Hurd/First Baptist Housing Federation, et al.: HUD Case No. 07-93-0032-1 (Region VII).
- Kuhns v. Western Catskill Community Revitalization Council: Case No. 02-92-0617-1 (Region II).
- Stanley v. Finkelstein-Morgan Agency, et al.: HUD Case No. 02-92-0278-1 (Region II).

pected to bring to light every detail of a renter's history, landlords should think carefully about developing a process for screening all prospective tenants.

Phone screening—a good call?

Talking to a potential renter over the phone can be a good way to determine if his or her needs are compatible with the rental unit and the landlord's interests. A phone screen can be beneficial to both parties; a renter looking for certain missing amenities may not be interested after hearing more about the unit, and a landlord can usually determine if a prospective tenant is obviously unqualified.

However, certain questions could be construed as discriminatory; clearly, questions related to race, sexual orientation, or religious affiliation are not appropriate and can lead to lawsuits and fines. But the line can be fuzzy as to what *is* appropriate; for example, a landlord may not want to rent his or her apartment to too many tenants or tenants who have a pet. It is best for landlords to have reasonable qualifications and deposit requirements established in advance, include as much of that information in the initial advertisement for the apartment as possible, and repeat the information during a phone screen.

Put the rental application to work

Landlords should make sure that any application for prospective tenants includes a section for collecting references. Ask for multiple references, including employers and previous landlords, and look out for conflicting reports on your applicant's behavior or rental track record. If the applicant leaves information out, a landlord shouldn't be afraid to follow up to request that he or she fills in the blanks. Make sure to ask for references even if the applicant is a friend or family member.

Patience is a virtue

It is in a landlord's best interest to make the most well-informed decision possible about to whom rental property will be entrusted. Don't skip the screening process for the sake of renting a unit quickly; in the long run, renting to an irresponsible tenant could cost more than the price of an apartment remaining vacant for a few weeks while references are checked.

Also, review all information received carefully. Remember that less-than-perfect credit is fairly common, and rejecting an applicant for a single bad mark on his or her credit report may be too hasty a decision. Try to understand as much as possible about the applicant and view the information as a whole. Did he or she fall behind on credit card payments or student loans because of a layoff or other personal circumstance but keep up his or her rental payments on time?

Don't go it alone

There are many resources that can help landlords navigate finding reliable tenants. There are online, professional services that can screen applicants for a fee. In addition, local chambers of commerce can usually connect landlords to organizations for landlords and/or property owners that may be able to provide resources on fair and effective screening practices. HUD can also be a good resource; landlords should visit its website for information on the Fair Housing Law to be sure they understand their responsibilities.

Whether a screening process is already in place or being crafted for the first time, make sure that none of the practices run afoul of the law. Have a local attorney review screening and rental decision policies to identify potential problems and ensure compliance with the Fair Housing Law and local housing and landlord-tenant laws.

Ultimately, screening is not a catchall process that will guarantee a good match between landlords, properties, and tenants. But it is an important step that establishes expectations early on in the landlord-tenant relationship and provides landlords with some measure of confidence in their decisions.

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QUINLAN™

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Landlord Tenant Law Bulletin

in this issue:

THOMSON WEST

Wrongful Lockout

Landlord changes locks before lease expires despite fully paid rent

Citation: *Charette v. Fitzgerald, 2006 WL 3742771 (Tex. App. Houston 14th Dist. 2006)*

Fitzgerald entered into a one-year apartment lease with Charette that ran through July 31, 2004. Fitzgerald paid his rent on time every month of the lease. Two months before it was set to expire, Fitzgerald gave written notice of his intent to leave at the end of the lease.

Charette acknowledged the notice by email, and in her message she asked Fitzgerald to reconsider. However, in June 2004, Fitzgerald paid his last month's rent early, securing good standing through the end of the lease period, forwarded his new address to Charette, and began moving out. Charette began to look for new a tenant.

Although he had not moved all of his personal property out of the apartment, Fitzgerald agreed to let Charette enter the unit to clean and paint. Fitzgerald moved all of his belongings into a sunroom to accommodate the maintenance work and make the apartment more presentable for showings. In addition, Fitzgerald agreed to board his pets while he went on vacation from July 3 to July 10. Neither of these accommodations was required of Fitzgerald under the lease.

Although Charette knew that Fitzgerald was on vacation, she sent him a letter the day after he left stating that he was in default of the lease and demanding the immediate removal of the rest of his personal property. Four days later, while he was still on vacation, she sent another letter, stating that the locks would be changed if he did not retrieve his belongings before noon on July 10. Before he returned and had a chance to respond to the letters, Charette changed the locks—effectively seizing Fitzgerald's remaining possessions—and sent another letter demanding more than $1,600 for damages.

At the date of the letter, Fitzgerald was lawfully in possession of the apartment; he was current on his rent, and the lease had not yet expired. Nonetheless, Charette began eviction proceedings against Fitzgerald in court. Fitzgerald responded, claiming breach of contract, wrongful eviction, wrongful lockout, unlawful removal of personal property, and wrongful refusal to refund his security deposit.

The court ultimately found in Fitzgerald's favor and awarded attorney's fees. Charette appealed the wrongful lockout and attorney's fees decisions.

Decision: Affirmed in part.

The Texas property code established, in part, that a landlord could not intentionally prevent a tenant from entering a leased premises—except by court order—unless the exclusion resulted from: 1) legitimate

We advertise out Rental Homes as CLEAN and QUIET and we look for people who will maintain that atmosphere. We expect our residents to maintain the apartment home in the condition it was when they moved in. It is our policy that our residents spend no more than ONE THIRD of their INCOME on housing, and we expect rent to be paid on time.
Our advertised rent at Wilshire Woods on Harmony Lane is for up to three people in an apartment, with an additional $50 charge for the fourth person.

Applicant Screening Policy

Credit & Rental History Requirements

- All accounts showing 60 days late or greater will be considered as derogatory and management reserves the right to deny any applicant(s), require an increase in security deposit or require a co-signer.
- Applicants with a bankruptcy within the past five(5) years will be automatically denied
- Applicants who have been evicted within the past five(5) years will be automatically denied unless a letter from the eviction landlord is provided showing the account has a zero balance.

Criminal Background Requirements

- Applicants with a felony history may be denied. Any applicant with a history of the following will be automatically denied: (1) Drug Possession with intent to sell, (2) Prostitution, (3) Burglary, (4) Theft, (5) Crime Against Persons.

Minimum Income Requirements

- Gross household income must be a minimum of three (3) times rent.
- Household income may be wages, salary, court ordered funds, savings, retirement, or funds from family members. Verification of income may be required at the discretion of the management.
- Applicants must have one (1) year of stable employment history for wages and salary.

General Regulations & Restrictions

- Incomplete, inaccurate or falsified information will be grounds for denial of the applicant or subsequent termination of tenancy upon discovery of information being falsified.
- All persons over the age of Eighteen (18) must complete an application and must be listed on and sign the Lease Agreement.
- Co-signers may be permitted (at the sole discretion of management) for applicants who do not meet the minimum credit or income requirements or who do not have one (1) year of verifiable employment history.

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Rental Application

APARTMENT AND HOME RENTALS

Last Name_____First_____M initial___

Phone Number_____Date of Birth___/___/___

Present Address_____City_____State___Zip_____

Previous Address_____City_____State___Zip_____

Room #_____Major_____Email_____

Household Income $_____Per Month___Year___Source of Income_____

Present Landlord_____Landlord's Ph_____

Do you have a Car_____Make_____Model_____Color_____Year_____

Drivers License #_____Soc. Sec. #_____

Employed By_____How Long_____

Supervisor_____Supervisor's PH #_____

In Case of Emergency Contact: Parent____Or Other____Relationship_____

Name_____Phone(___)_____

Address_____

City_____State_____Zip_____

Summer Address (If different)_____

City_____State_____Zip_____

I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT. I authorize you to contact previous landlords and employer, and to check credit and court records prior to or after renting.

Date_____Signature_____

We Do Business in Accordance With the Federal, State, and Local Fair Housing Law

(Title VIII of the Civil Rights Act of 1968, as Amended by the Housing and Community Development Act of 1974)

IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN, FAMILIAL OR HANDICAP STATUS

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Case Inquiry

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Birthday 11/15/1943

(D)isplay
(P)rint

	Case No.	Action	Citation	Filed	Closed	Type
_	00SC00651	Small Claims - Eviction		6/22/2000	8/07/2000	PL01
		RICHARD G SOMMER ET AL				
		Vs				
		CRYSTAL A DEWEY ET AL				
_	02TR05520	FAIL/YIELD RIGHT/WAY FROM STOP	C651868	9/10/2002	9/10/2002	DE01
		CITY OF STEVENS POINT				
		Vs				
		RICHARD G SOMMER				

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