



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0312/2
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**SENATE SUBSTITUTE AMENDMENT 2,
TO 2011 SENATE BILL 173**

February 13, 2012 – Offered by Senator DARLING.

1 **AN ACT** *to renumber and amend* 48.396 (3) (b) and 48.396 (3) (c) 1.; *to amend*
2 48.396 (1), 48.396 (2) (a), 48.396 (3) (c) 2., 48.396 (3) (c) 3., 48.396 (3) (d), 48.47
3 (7g), 48.78 (2) (a), 48.78 (2) (h), 938.396 (1) (a), 938.396 (2), 938.396 (2g) (c),
4 938.396 (2g) (d), 938.78 (2) (a) and 938.78 (2) (h); and *to create* 48.396 (2) (e),
5 48.396 (3) (b) 2., 48.396 (3) (c) 1g., 48.396 (3) (c) 1m. and 938.396 (2m) of the
6 statutes; **relating to:** the disclosure of electronic juvenile court records to other
7 juvenile courts, municipal courts, courts of criminal jurisdiction, district
8 attorneys and other prosecutors, defense attorneys, guardians ad litem, and
9 law enforcement agencies and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the director of state courts has established an automated information system, known as the Consolidated Court Automation Programs (CCAP), that contains information about cases filed in the circuit courts in this state, including cases filed in the courts assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile courts).

Records of the juvenile court, however, are confidential and may not be opened to inspection, nor may their contents be disclosed, except under certain statutory exceptions or by an order of the juvenile court. Currently, those exceptions include an exception that requires a juvenile court to disclose its records relating to a proceeding under the Children's Code (generally, a child in need of protection services or a termination of parental rights proceeding) or the Juvenile Justice Code (generally, a delinquency, civil law or ordinance violation, or a juvenile in need of protection or services proceeding) on the request of any other juvenile court, a municipal court, or a district attorney, corporation counsel, or city, village, or town attorney (prosecutor) to review juvenile court records for the purpose of any proceeding in that court. In addition, current law requires the juvenile court to disclose its records relating to a proceeding under the Juvenile Justice Code on the request of a court of criminal jurisdiction or a district attorney to review those records for the purpose of setting bail or impeaching a witness or on the request of a law enforcement agency to review those records for the purpose of investigating alleged criminal gang activity.

This substitute amendment requires the juvenile court to make information relating to proceedings under the Children's Code or the Juvenile Justice Code that is contained in the electronic records of the juvenile court available to any other juvenile court, a municipal court, a court of criminal jurisdiction, a prosecutor of a case in any of those courts, or an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a juvenile court or municipal court (attorney or GAL). The substitute amendment also requires the juvenile court to make information relating to proceedings under the Juvenile Justice Code that is contained in the electronic records of the juvenile court available to a law enforcement agency. The substitute amendment, however, does not authorize disclosure of any information relating to the physical or mental health of an individual or that deals with any other sensitive personal matter of an individual, except with informed consent, by order of the juvenile court, or as otherwise permitted by law. A person to whom information is made available under the substitute amendment must keep that information confidential and may use or allow access to that information only as follows:

1. In the case of a juvenile court, municipal court, or court of criminal jurisdiction or an individual who is allowed access to that information by such a court, only for the purpose of conducting or preparing for a proceeding in that court.
2. In the case of a prosecutor, an attorney, or GAL, or an individual who is allowed access to that information by a prosecutor, attorney, or GAL, only for the purpose of performing the official duties of the prosecutor, attorney, or GAL relating to a proceeding in a juvenile court, municipal court, or court of criminal jurisdiction.
3. In the case of a law enforcement agency or an individual who is allowed access to that information by a law enforcement agency, only for the purpose of investigating any alleged criminal activity or any activity that may result in a court exercising its delinquency jurisdiction.

Finally, the substitute amendment permits the director of state courts to use CCAP to make information contained in the electronic records of the juvenile court

available as provided in the substitute amendment, and provides for a forfeiture of not more than \$5,000 for any person who intentionally discloses information in violation of the substitute amendment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.396 (1) of the statutes is amended to read:
2 48.396 (1) Law enforcement officers' records of children shall be kept separate
3 from records of adults. Law enforcement officers' records of the adult expectant
4 mothers of unborn children shall be kept separate from records of other adults. Law
5 enforcement officers' records of children and the adult expectant mothers of unborn
6 children shall not be open to inspection or their contents disclosed except under sub.
7 (1b), (1d), (5), or (6) or s. 48.293 or 938.396 (2m) (c) 1p. or by order of the court. This
8 subsection does not apply to the representatives of newspapers or other reporters of
9 news who wish to obtain information for the purpose of reporting news without
10 revealing the identity of the child or adult expectant mother involved, to the
11 confidential exchange of information between the police and officials of the public or
12 private school attended by the child or other law enforcement or social welfare
13 agencies, or to children 10 years of age or older who are subject to the jurisdiction of
14 the court of criminal jurisdiction. A public school official who obtains information
15 under this subsection shall keep the information confidential as required under s.
16 118.125, and a private school official who obtains information under this subsection
17 shall keep the information confidential in the same manner as is required of a public
18 school official under s. 118.125. This subsection does not apply to the confidential
19 exchange of information between the police and officials of the tribal school attended
20 by the child if the police determine that enforceable protections are provided by a

1 tribal school policy or tribal law that requires tribal school officials to keep the
2 information confidential in a manner at least as stringent as is required of a public
3 school official under s. 118.125. A law enforcement agency that obtains information
4 under this subsection shall keep the information confidential as required under this
5 subsection and s. 938.396 (1) (a). A social welfare agency that obtains information
6 under this subsection shall keep the information confidential as required under ss.
7 48.78 and 938.78.

8 **SECTION 2.** 48.396 (2) (a) of the statutes is amended to read:

9 48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this
10 chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be
11 entered in books or deposited in files kept for that purpose only. ~~They~~ Those records
12 shall not be open to inspection or their contents disclosed except by order of the court
13 assigned to exercise jurisdiction under this chapter and ch. 938 or as required or
14 permitted under this subsection, sub. (3) (b) or (c) ~~1. 1g., 1m., or 1r.~~ or (6), or s. 48.375
15 (7) (e).

16 **SECTION 3.** 48.396 (2) (e) of the statutes is created to read:

17 48.396 (2) (e) Upon request of a court of criminal jurisdiction to review court
18 records for the purpose of conducting or preparing for a proceeding in that court or
19 upon request of a district attorney to review court records for the purpose of
20 performing his or her official duties in a proceeding in a court of criminal jurisdiction,
21 the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open
22 for inspection by authorized representatives of the requester the records of the court
23 relating to any child who has been the subject of a proceeding under this chapter.

24 **SECTION 4.** 48.396 (3) (b) of the statutes is renumbered 48.396 (3) (b) 1. and
25 amended to read:

1 48.396 (3) (b) 1. The court ~~may transfer to the department~~ shall make
2 information relating to proceedings under this chapter that is contained in the
3 electronic records of the court available to any other court assigned to exercise
4 jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction
5 under s. 938.17 (2), a court of criminal jurisdiction, a person representing the
6 interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for
7 a parent or child who is a party to a proceeding in a court assigned to exercise
8 jurisdiction under this chapter or ch. 938 or a municipal court, a district attorney
9 prosecuting a criminal case, or the department, regardless of whether the
10 ~~department~~ person to whom the information is transferred is a party to or is
11 otherwise involved in the proceedings in which the electronic records containing that
12 information were created, ~~and the.~~ The director of state courts may use the circuit
13 court automated information systems established under s. 758.19 (4) to make
14 information contained in the electronic records of the court available as provided in
15 this subdivision.

16 ~~(bm)~~ The department may transfer to the court information contained in the
17 electronic records of the department that are maintained in the statewide automated
18 child welfare information system under s. 48.47 (7g). The director of state courts may
19 use the circuit court automated information systems established under s. 758.19 (4)
20 to facilitate the transfer of those electronic records ~~between~~ from the department to
21 the court ~~and the department.~~ The director of state courts and the department shall
22 specify what types of information may be transferred from the department to the
23 court under this paragraph and made available by the court to the department under
24 par. (b) 1.

25 **SECTION 5.** 48.396 (3) (b) 2. of the statutes is created to read:

1 48.396 (3) (b) 2. Subdivision 1. does not authorize disclosure of any information
2 relating to the physical or mental health of an individual or that deals with any other
3 sensitive personal matter of an individual, including information contained in a
4 patient health care record, as defined in s. 146.81 (4), a treatment record, as defined
5 in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a report resulting from
6 an examination or assessment under s. 938.295, a court report under s. 938.33, or a
7 permanency plan under s. 938.38, except with the informed consent of a person
8 authorized to consent to that disclosure, by order of the court, or as otherwise
9 permitted by law.

10 **SECTION 6.** 48.396 (3) (c) 1. of the statutes is renumbered 48.396 (3) (c) 1r. and
11 amended to read:

12 48.396 (3) (c) 1r. The department ~~may allow access to~~ shall keep any
13 information ~~transferred~~ made available to the department under par. (b) 1.
14 confidential and may use or allow access to that information only for the purpose of
15 providing services under s. 48.06, 48.067, 48.069, 938.06, ~~938,067~~ 938.067, or
16 938.069. The department may allow that access regardless of whether the person
17 who is allowed that access is a party to or is otherwise involved in the proceedings
18 in which the electronic records containing that information were created.

19 **SECTION 7.** 48.396 (3) (c) 1g. of the statutes is created to read:

20 48.396 (3) (c) 1g. A court assigned to exercise jurisdiction under this chapter
21 and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), or a court
22 of criminal jurisdiction shall keep any information made available to that court
23 under par. (b) 1. confidential and may use or allow access to that information only
24 for the purpose of conducting or preparing for a proceeding in that court. That court
25 may allow that access regardless of whether the person who is allowed that access

1 is a party to or is otherwise involved in the proceedings in which the electronic
2 records containing that information were created.

3 **SECTION 8.** 48.396 (3) (c) 1m. of the statutes is created to read:

4 48.396 (3) (c) 1m. A person representing the interests of the public under s.
5 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party
6 to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch.
7 938 or a municipal court, or a district attorney prosecuting a criminal case shall keep
8 any information made available to that person under par. (b) 1. confidential and may
9 use or allow access to that information only for the purpose of performing his or her
10 official duties relating to a proceeding in a court assigned to exercise jurisdiction
11 under this chapter and ch. 938, a municipal court, or a court of criminal jurisdiction.
12 That person may allow that access regardless of whether the person who is allowed
13 that access is a party to or is otherwise involved in the proceedings in which the
14 electronic records containing that information were created.

15 **SECTION 9.** 48.396 (3) (c) 2. of the statutes is amended to read:

16 48.396 (3) (c) 2. The court or the director of state courts may allow access to any
17 information transferred to the court under par. (b) (bm) only to the extent that the
18 information may be disclosed under this chapter or ch. 938.

19 **SECTION 10.** 48.396 (3) (c) 3. of the statutes is amended to read:

20 48.396 (3) (c) 3. ~~The department, a court, the director of state courts, and any~~
21 An individual who is allowed under subd. 1g., 1m., 1r., or 2. to have access to any
22 information transferred or made available under par. (b) 1. or (bm) shall keep the
23 information confidential and may use and further disclose the information only for
24 the purpose purposes described in subd. 1. 1g., 1m., or 1r. or to the extent permitted
25 under subd. 2.

1 **SECTION 11.** 48.396 (3) (d) of the statutes is amended to read:

2 48.396 (3) (d) Any person who intentionally uses or discloses information in
3 violation of par. (c) may be required to forfeit not more than \$5,000.

4 **SECTION 12.** 48.47 (7g) of the statutes is amended to read:

5 48.47 (7g) STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM. Establish
6 a statewide automated child welfare information system. Notwithstanding ss.
7 46.2895 (9), 48.396 (1) and (2) (a), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30,
8 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and
9 (2), and 938.78 (2) (a), the department may enter the content of any record kept or
10 information received by the department into the statewide automated child welfare
11 information system, and a county department under s. 46.215, 46.22, or 46.23, the
12 department, or any other organization that has entered into an information sharing
13 and access agreement with the department or any of those county departments and
14 that has been approved for access to the statewide automated child welfare
15 information system by the department may have access to information that is
16 maintained in that system, if necessary to enable the county department,
17 department, or organization to perform its duties under this chapter, ch. 46, 51, 55,
18 or 938, or 42 USC 670 to 679b or to coordinate the delivery of services under this
19 chapter, ch. 46, 51, 55, or 938, or 42 USC 670 to 679b. The department may also
20 transfer information that is maintained in the system to a court under s. 48.396 (3)
21 (b) (bm), and the court and the director of state courts may allow access to that
22 information as provided in s. 48.396 (3) (c) 2.

23 **SECTION 13.** 48.78 (2) (a) of the statutes is amended to read:

24 48.78 (2) (a) No agency may make available for inspection or disclose the
25 contents of any record kept or information received about an individual who is or was

1 in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or
2 (5m) (d), 48.396 (3) ~~(b)~~ (bm) or (c) 1. 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m),
3 48.93, 48.981 (7), 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the court.

4 **SECTION 14.** 48.78 (2) (h) of the statutes is amended to read:

5 48.78 (2) (h) Paragraph (a) does not prohibit the department, a county
6 department, or a licensed child welfare agency from entering the content of any
7 record kept or information received by the department, county department, or
8 licensed child welfare agency into the statewide automated child welfare
9 information system established under s. 48.47 (7g) or the department from
10 transferring any information maintained in that system to the court under s. 48.396
11 (3) ~~(b)~~ (bm). If the department transfers that information to the court, the court and
12 the director of state courts may allow access to that information as provided in s.
13 48.396 (3) (c) 2.

14 **SECTION 15.** 938.396 (1) (a) of the statutes is amended to read:

15 938.396 (1) (a) *Confidentiality.* Law enforcement agency records of juveniles
16 shall be kept separate from records of adults. Law enforcement agency records of
17 juveniles may not be open to inspection or their contents disclosed except under par.
18 (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 938.293 or by order of the court.

19 **SECTION 16.** 938.396 (2) of the statutes is amended to read:

20 938.396 (2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to
21 exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising
22 jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for
23 that purpose only. Those records shall not be open to inspection or their contents
24 disclosed except by order of the court assigned to exercise jurisdiction under this

1 chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10)
2 or s. 48.396 (3) (b) or (c) 1.

3 **SECTION 17.** 938.396 (2g) (c) of the statutes is amended to read:

4 938.396 **(2g)** (c) *Law enforcement agencies.* Upon request of a law enforcement
5 agency to review court records for the purpose of investigating ~~a crime that might~~
6 ~~constitute criminal gang activity, as defined in s. 941.38 (1) (b), the court shall open~~
7 ~~for inspection by authorized representatives of the law enforcement agency the~~
8 ~~records of the court relating to any juvenile who has been found to have committed~~
9 ~~a delinquent act at the request of or for the benefit of a criminal gang, as defined in~~
10 ~~s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed~~
11 ~~by an adult~~ alleged criminal activity or activity that may result in a court exercising
12 jurisdiction under s. 938.12 or 938.13 (12), the court assigned to exercise jurisdiction
13 under this chapter and ch. 48 shall open for inspection by authorized representatives
14 of the requester the records of the court relating to any juvenile who has been the
15 subject of a proceeding under this chapter.

16 **SECTION 18.** 938.396 (2g) (d) of the statutes is amended to read:

17 938.396 **(2g)** (d) ~~*Bail; impeachment; firearm possession*~~ *Criminal and civil*
18 *proceedings.* Upon request of a court of criminal jurisdiction ~~or a district attorney~~
19 ~~to review court records for the purpose of setting bail under ch. 969, impeaching a~~
20 ~~witness under s. 906.09, or investigating and determining whether a person has~~
21 ~~possessed a firearm in violation of s. 941.29 (2) or body armor in violation of s. 941.291~~
22 ~~(2) to review court records for the purpose of conducting or preparing for a proceeding~~
23 ~~in that court, upon request of a district attorney to review court records for the~~
24 ~~purpose of performing his or her official duties in a proceeding in a court of criminal~~
25 ~~jurisdiction, or upon request of a court of civil jurisdiction or the attorney for a party~~

1 to a proceeding in that court to review court records for the purpose of impeaching
2 a witness under s. 906.09, the court assigned to exercise jurisdiction under this
3 chapter and ch. 48 shall open for inspection by authorized representatives of the
4 requester the records of the court relating to any juvenile who has been the subject
5 of a proceeding under this chapter.

6 **SECTION 19.** 938.396 (2m) of the statutes is created to read:

7 938.396 (2m) ELECTRONIC COURT RECORDS. (a) In this subsection, “court” means
8 the court assigned to exercise jurisdiction under this chapter and ch. 48.

9 (b) 1. The court shall make information relating to a proceeding under this
10 chapter that is contained in the electronic records of the court available to any other
11 court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal
12 court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a
13 person representing the interests of the public under s. 48.09 or 938.09, an attorney
14 or guardian ad litem for a parent or child who is a party to a proceeding in a court
15 assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, a
16 district attorney prosecuting a criminal case, a law enforcement agency, or the
17 department, regardless of whether the person to whom the information is disclosed
18 is a party to or is otherwise involved in the proceedings in which the electronic
19 records containing that information were created. The director of state courts may
20 use the circuit court automated information systems established under s. 758.19 (4)
21 to make information contained in the electronic records of the court available as
22 provided in this subdivision.

23 2. Subdivision 1. does not authorize disclosure of any information relating to
24 the physical or mental health of an individual or that deals with any other sensitive
25 personal matter of an individual, including information contained in a patient health

1 care record, as defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1)
2 (b), the record of a proceeding under s. 48.135, a report resulting from an examination
3 or assessment under s. 938.295, a court report under s. 938.33, or a permanency plan
4 under s. 938.38, except with the informed consent of a person authorized to consent
5 to that disclosure, by order of the court, or as otherwise permitted by law.

6 (c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 48,
7 a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal
8 jurisdiction shall keep any information made available to that court under par. (b)
9 1. confidential and may use or allow access to that information only for the purpose
10 of conducting or preparing for a proceeding in that court. That court may allow that
11 access regardless of whether the person who is allowed that access is a party to or
12 is otherwise involved in the proceedings in which the electronic records containing
13 that information were created.

14 1m. A person representing the interests of the public under s. 48.09 or 938.09,
15 an attorney or guardian ad litem for a parent or child who is a party to a proceeding
16 in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal
17 court, or a district attorney prosecuting a criminal case shall keep any information
18 made available to that person under par. (b) 1. confidential and may use or allow
19 access to that information only for the purpose of performing his or her official duties
20 relating to a proceeding in a court assigned to exercise jurisdiction under this chapter
21 and ch. 48, a municipal court, or a court of criminal jurisdiction. That person may
22 allow that access regardless of whether the person who is allowed that access is a
23 party to or is otherwise involved in the proceedings in which the electronic records
24 containing that information were created.

1 1p. A law enforcement agency shall keep any information made available to the
2 law enforcement agency under par. (b) 1. confidential and may use or allow access
3 to that information only for the purpose of investigating alleged criminal activity or
4 activity that may result in a court exercising jurisdiction under this chapter or ch.
5 48. A law enforcement agency may allow that access regardless of whether the
6 person who is allowed that access is a party to or is otherwise involved in the
7 proceedings in which the electronic records containing that information were
8 created.

9 1r. The department shall keep any information made available to the
10 department under par. (b) 1. confidential and may use or allow access to that
11 information only for the purpose of providing services under s. 48.06, 48.067, 48.069,
12 938.06, 938.067, or 938.069. The department may allow that access regardless of
13 whether the person who is allowed that access is a party to or is otherwise involved
14 in the proceedings in which the electronic records containing that information were
15 created.

16 2. An individual who is allowed under subd. 1g., 1m., 1p., or 1r. to have access
17 to any information made available under par. (b) 1. shall keep the information
18 confidential and may use and further disclose the information only for the purpose
19 described in subd. 1g., 1m., 1p., or 1r.

20 (d) Any person who intentionally uses or discloses information in violation of
21 par. (c) may be required to forfeit not more than \$5,000.

22 **SECTION 20.** 938.78 (2) (a) of the statutes is amended to read:

23 938.78 (2) (a) No agency may make available for inspection or disclose the
24 contents of any record kept or information received about an individual who is or was
25 in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) ~~(b)~~ (bm)

1 or (c) ~~1r.~~, 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51, or
2 938.57 (2m) or by order of the court.

3 **SECTION 21.** 938.78 (2) (h) of the statutes is amended to read:

4 938.78 (2) (h) Paragraph (a) does not prohibit the department of children and
5 families, a county department, or a licensed child welfare agency from entering the
6 content of any record kept or information received by that department, county
7 department, or licensed child welfare agency into the statewide automated child
8 welfare information system established under s. 48.47 (7g) or the department of
9 children and families from transferring any information maintained in that system
10 to the court under s. 48.396 (3) ~~(b)~~ (bm). If the department of children and families
11 transfers that information to the court, the court and the director of state courts may
12 allow access to that information as provided in s. 48.396 (3) (c) 2.

13 (END)