



1995 ASSEMBLY BILL 207

March 17, 1995 - Introduced by Representatives GOETSCH, WOOD, KAUFERT, OWENS, WARD, OTTE, UNDERHEIM, AINSWORTH, HOVEN, PORTER, ZIEGELBAUER, FOTI, LEHMAN, F. LASEE, SCHNEIDERS, BRANDEMUEHL, DUFF, RYBA, GARD, MUSSER, GREEN, DOBYNS, LADWIG, JENSEN, HANDRICK, SERATTI, SILBAUGH, LORGE, FREESE, ALBERS, URBAN, VRAKAS, OTT, OURADA, GROTHMAN and SKINDRUD, cosponsored by Senators DRZEWIECKI, FITZGERALD, HUELSMAN, SCHULTZ and DARLING. Referred to Committee on Criminal Justice and Corrections.

- 1 **AN ACT to amend** 19.32 (3), 19.35 (5) and 19.37 (2) (a); and **to create** 19.32 (1e)
2 and 19.37 (1m) of the statutes; **relating to:** access to public records.

Analysis by the Legislative Reference Bureau

Under current law, any person generally has the right to inspect and copy a public record, unless access to the record is specifically limited or prohibited by law or unless the custodian of the record demonstrates that the public interest in nondisclosure outweighs the strong public interest in providing access.

This bill provides that any person who is incarcerated in a penal facility or placed on probation and given confinement as a condition of placement is not covered by that law, except with respect to a record that contains specific references to that person or to his or her minor children for whom he or she has not been denied physical placement (similar to visitation rights), if the record is otherwise accessible to the person by law.

Currently, if the requester of a public record prevails in whole or in substantial part in a lawsuit to require production of a public record, the court must award damages of at least \$100 to the requester, in addition to reasonable attorney fees and other actual costs. Under the bill, the court may award damages to the requester in any amount.

The bill also imposes a 90-day time limit for commencing a lawsuit to require the production of a public record after a request for production is denied. Currently, there is a 3-year time limit for commencing a lawsuit against certain county and town officials. In other cases, there is no time limit.

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

- 3 **SECTION 1.** 19.32 (1e) of the statutes is created to read:

1 19.32 (1e) "Penal facility" means a state prison under s. 302.01, county jail,
2 county house of correction or other state, county or municipal correctional or
3 detention facility.

4 **SECTION 2.** 19.32 (3) of the statutes is amended to read:

5 19.32 (3) "Requester" means any person who requests inspection or copies of
6 a record, except a person who is incarcerated in a penal facility or placed on probation
7 and given confinement under s. 973.09 (4) as a condition of placement, during the
8 period of confinement for which the person has been sentenced, unless the person
9 requests inspection or copies of a record that contains specific references to that
10 person or his or her minor children for whom he or she has not been denied physical
11 placement under ch. 767, and the record is otherwise accessible to the person by law.

12 **SECTION 3.** 19.35 (5) of the statutes is amended to read:

13 19.35 (5) RECORD DESTRUCTION. No authority may destroy any record at any
14 time after the receipt of a request for inspection or copying of the record under sub.
15 (1) until after the request is granted or until at least ~~60~~ 90 days after the date that
16 the request is denied. If an authority receives written notice that an action is relating
17 to a record has been commenced under s. 19.37, the requested record may not be
18 destroyed until after the order of the court in relation to such record is issued and the
19 deadline for appealing that order has passed, or, if appealed, until after the order of
20 the court hearing the appeal is issued. If the court orders the production of any record
21 and the order is not appealed, the requested record may not be destroyed until after
22 the request for inspection or copying is granted.

23 **SECTION 4.** 19.37 (1m) of the statutes is created to read:

24 19.37 (1m) TIME FOR COMMENCING ACTION. No action for mandamus under sub.
25 (1) to challenge the denial of a request for access to a record or part of a record may

1 be commenced later than 90 days after the date that the request is denied by the
2 authority having custody of the record or part of the record.

3 **SECTION 5.** 19.37 (2) (a) of the statutes is amended to read:

4 19.37 (2) (a) The court shall award reasonable attorney fees, ~~damages of not~~
5 ~~less than \$100,~~ and other actual costs, and may award damages to the requester if
6 the requester prevails in whole or in substantial part in any action filed under sub.
7 (1) relating to access to a record or part of a record under s. 19.35 (1) (a). Costs and
8 fees shall be paid by the authority affected or the unit of government of which it is
9 a part, or by the unit of government by which the legal custodian under s. 19.33 is
10 employed and may not become a personal liability of any public official.

11 **SECTION 6. Initial applicability.**

12 (1) This act first applies to records access requests made on the effective date
13 of this subsection.

14 (END)