

**WISCONSIN CIRCUIT COURT ACCESS (WCCA)
OVERSIGHT COMMITTEE**

MINUTES

November 11, 2005
12:30 p.m.

G.A.R. Room
Wisconsin State Capitol
Madison, WI

MEMBERS PRESENT: A. John Voelker, Director of State Courts; John Barrett, Milwaukee County Clerk of Circuit Court; Jean Bousquet, CIO CCAP; Attorney Mary Burke, Department of Justice; Judge Gary Carlson, Taylor County; Carole Doepfers, Government Privacy Consultant; Attorney Richard Dufour, Marquette County District Attorney; Carolyn Evenson, Waukesha County Clerk of Circuit Court; Peter Fox, Wisconsin Newspaper Association; Sheryl Gervasi, Deputy Director for Court Operations; Judge Charles Kahn Jr., Milwaukee County; John Laabs, President Wisconsin Broadcasters Association; Bill Lueders, President Wisconsin Freedom of Information Council; Gregg Moore, District Court Administrator; Kathleen Murphy, District Court Administrator; Judge Dale Pasell, La Crosse County; Judge Ralph Ramirez, Waukesha County; Sheriff Randy Roderick, Green County; Jeffrey Schmidt, Ozaukee County Clerk of Circuit Court; and Attorney Kelli Thompson, State Public Defenders Office.

OTHERS PRESENT: Robbie Brooks, CCAP; and Lori Irmen, Director of State Courts Office.

MEMBERS ABSENT: Atty. Larry Bensky; Representatives Donald Friske and Marlin Schneider; Atty. Gerald Mowris; and Chief Rick Myers.

1. **Approval Of Minutes**

Ms. Murphy made a motion that the minutes be approved as submitted. Judge Ramirez seconded the motion. The motion carried unanimously.

2. **Subcommittee Reports**

a. **Retention/Accuracy**

Ms. Murphy said they tried to mainly focus on items that have an immediate need versus the long-term strategic issues. She said they briefly discussed the history of records retention and she volunteered Judge Carlson to meet with her prior to the next meeting to further discuss SCR 72. She said he was involved in an earlier petition to the Supreme Court and the experience could be helpful to the subcommittee's deliberations. Ms. Murphy said the subcommittee compared the current retention set in SCR 72 to the retention period on WCCA. She said the subcommittee did reach a consensus on the retention periods for a number of case types. She

said they intend to point out that there may be legal retention values beyond SCR in certain cases, such as Chapter 980 sexually violent offenders and operating while under the influence of intoxicants (OWI).

Atty. Dufour said to calculate the number of offenses, convictions for OWI are now considered for the lifetime. He said problems also occur because court reporter notes are kept for 10 years. Ms. Murphy said the retention of court reporter's notes is outside the mission of this committee. Atty. Dufour said if the number of offenses is challenged, it is difficult to prove proper colloquy and from a prosecution stand point, the records should be kept as long as possible. Judge Carlson said he has ordered that all OWI colloquies be transcribed. Ms. Murphy noted that other groups, such as the Planning and Policy Advisory Committee (PPAC), are addressing issues pertaining to colloquy.

Ms. Murphy said they briefly discussed conservation ordinances and traffic ordinances. She said ordinances adjudicated in municipal courts are not on WCCA and retention is 5 years in accordance with SCR. She said the previous committee recommended 10 years and the subcommittee will be discussing how to reconcile those positions. She said the subcommittee is concerned about cases being on WCCA without the paper file being available because it would be difficult to verify any corrections that might be needed. She said they will be attempting to reach a consensus.

Ms. Murphy said they reviewed the website with an eye to accuracy, error correction and creating the correct impression. She said at the next meeting they plan to begin with error corrections. She said they also plan to finish discussions on retention including small claims, family, civil and non-joinder situations. She said next on the list will be clarity and consistency issues and eventually they will discuss the longer-term strategic issues. Ms. Murphy said it is possible that they may have items ready for the full committee's discussion and approval at the next meeting.

b. Content/Access

Mr. Moore said the subcommittee reviewed drafts of three different case summaries for criminal case types, each addressing a particular situation. He said the purpose of the summaries is to display basic information, including the final disposition, more prominently.

Mr. Moore said the first situation involves instances where all of the charges were dismissed. Ms. Bousquet displayed the draft on the overhead screen.

All charges against defendant "name inserted" in this case have been **dismissed**. These charges were not proven and have no legal effect. "Name inserted" is presumed innocent.

Notice to Employers: It may be a violation of state law to discriminate against a job applicant because of an arrest record where charges are no longer pending. For more information, see Wis. Stats. 111.335 and the Department of Workforce Development publication Arrest and Conviction records under the Law.

Mr. Moore reviewed the language and noted that the notice to employer appears in this summary and will be displayed consistently throughout all of the summaries. Mr. Laabs asked if there are other illegal discriminations, such as housing, and if so, should notices be directed at those discriminations. Ms. Thompson said there might be discrimination laws pertaining to subsidized housing. Judge Carlson said a general notice indicating that it may be illegal to discriminate might be an option. Mr. Moore asked members to e-mail him any suggestions they may have about what the notice might consist of.

Mr. Moore said the next example is the situation where multiple charges were filed and resulted in some convictions and some dismissals.

The defendant “name inserted” was found guilty of the following charge(s) in this case.

- “Name inserted” was found guilty of 943.10(1)(a) Burglary-Building or Dwelling, a class F Felony.

One or more other charges were dismissed. The dismissed charge(s) were not proven and have no legal effect. “Name inserted” is presumed innocent of the dismissed charge(s).

Notice to Employer: same language as above example.

Mr. Lueder asked Atty. Dufour if the language relating to the presumption of innocence would be concerning to prosecutors in cases that are plea-bargained. Atty. Dufour said he would not be concerned with it and noted that charging decisions should be not based on how they appear on WCCA. He did mention that the language could be confusing in companion cases such as OWI and operating with a prohibited alcohol concentration (PAC) because sentencing is made on one of the charges. Judge Pasell suggested the presumed innocent language be removed on those cases or a reference to the law could be made. Ms. Bousquet will check with CCAP staff to find out what programming options may be available.

Mr. Brooks said it might read more clearly if the statute number is located after the description of the charge. He also suggested the words Wis. Stats. be added before the number to clarify what they are referring to. The committee agreed with those suggestions.

Mr. Moore said the next example is the situation where read-ins are made for sentencing purposes.

The charges in this case were read in to other charges on this case or others. A “read-in” charge is a charge that is dismissed as part of a plea agreement, but that the defendant agrees to have the court consider when sentencing for another crime, under Wis. Stats. 973.20(1g)(b).

Mr. Moore explained the subcommittee discussed listing cross-referenced cases in the summary but opted not to pursue that approach. He said there are many reasons for cross-referencing, such as for scheduling or referencing co-defendants and that the subcommittee thought it would be confusing. He said the cross-referenced case information will be available in the detailed case

information. Mr. Moore said the subcommittee also discussed a link or a pop-up that would provide a detailed definition of a read-in. Judge Carlson asked the members if they thought a read-in was an admission of guilt. Most of the members felt that it was an agreement but stopped short of an admission. Atty. Burke agreed to do some legal research and draft language geared toward the layperson. Judge Ramirez said it is his opinion the defendant agrees to accept responsibility for the charges and suggested those words be added to the language. The group agreed with the suggestion.

Mr. Moore said the subcommittee also agreed on language for pending cases:

This case has not been concluded. Unless a judgment of conviction is entered, the defendant is presumed innocent of all charges. The prosecutor must prove these charges beyond a reasonable doubt.

Mr. Moore said at the next meeting the subcommittee will discuss deferred prosecution situations. Mr. Lueders noted that language for not guilty findings should also be drafted. It also was mentioned that the subcommittee should discuss if it should be differentiated between not guilty and not guilty because of mental disease or defect.

Ms. Murphy said the Content/Access Subcommittee has addressed many of the accuracy concerns cited by the Retention/Accuracy Subcommittee. She said she will recommend that those issues be removed from the Retention/Accuracy Subcommittee's issues list.

Mr. Moore said the subcommittee also discussed whether or not dismissed cases should be removed from WCCA. He said after some debate, the subcommittee reached a consensus that the current policy should be maintained. Mr. Moore said the subcommittee also discussed if family cases should be restricted or if a case summary should be developed. He said the subcommittee concluded the current policy should be maintained. He said the subcommittee noted some of the concerns could be addressed through retention and encouraged the other subcommittee to look at the retention of dismissed cases, including dismissed family.

Mr. Moore said the last item they discussed pertains to mistaken identity. He said they discussed removing those cases completely but opted not to pursue that approach. He said they discussed recordkeeping methods and concluded that a uniform procedure was needed to ensure cases are being processed consistently among the counties. Mr. Moore said the procedure they are recommending is that the caption is changed, removing the incorrect person's name and replacing it with the correct person's name. However, since that process creates an alias for the incorrect person's name, the subcommittee agreed a programming code should be created to differentiate that the alias is because of mistaken identity. He said aliases coded with mistaken identity will not be brought up on name case searches. Mr. Moore said they will be recommending that the Records Management Committee develop the procedure.

Mr. Moore said at the next meeting, the subcommittee will be discussing expunction, how should additional or future information be made available, and the risk/benefit analysis of bulk data subscribers.

Mr. Fox mentioned that a substitute amendment to AB280 has been introduced, approved by the Committee on Corrections and the Courts, and is available for calendaring. AB280 is a bill that would make expunction options available for all offenders regardless of their age at the time of the offense. The assembly substitute amendment describes the timing of when a court may enter an expunction order as well as outlines other criteria that need to be met. The subcommittee noted several concerns with the legislation including the time when requests for expunction can be filed; the option is available only once in a lifetime but there would not be any records to verify that; there is a two year waiting period unless it is done immediately at sentencing; there is no mention of victim notification; access to the records are only allowed to the defendant and his attorney but the records are destroyed so there would be no records to access; records maintained by other agencies are not destroyed; and it does not vacate the conviction. Mr. Voelker said it is not the role of the committee to take a position on the bill but he would relate these concerns to the Legislative Committee of the Judicial Conference.

3. **December 8 Meeting Location**

Mr. Voelker said because meeting rooms at the Capitol on December 8 are limited, the next WCCA Oversight Committee meetings will be held at the Tenney Building.

4. **Future Meetings**

December 8 at the Tenney Building and January 20 with the location to be announced.

With all matters being discussed, the meeting was adjourned.