



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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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."<sup>1</sup> This policy is a recognition that "representative government is dependant on an informed electorate."<sup>2</sup> 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.<sup>3</sup>

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

<sup>1</sup> Wis. Stat. § 19.31 (public records law) (emphasis added).

<sup>2</sup> *Id.*

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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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<sup>4</sup> Director of State Courts, “Policy on Disclosure of Public Information Over The Internet.”

<sup>5</sup> 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).*

<sup>6</sup> Legislative Audit Bureau, “An Evaluation of Prosecutor Positions.”