WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Access to Personal Information Regarding Victims of Crime

INTRODUCTION

Recent efforts to automate circuit court records by the Wisconsin Circuit Court Automation Project (CCAP) heightened concern over public access to personal information regarding victims of crime. This state has a strong tradition of public access to records, including court records, and a developing tradition of recognizing the interests of crime victims. The greater opportunity for access to court records afforded by electronic access has increased the tension between the general right of access to public records and the privacy concerns of crime victims.

Recent changes made by CCAP in response to crime victim privacy issues may have alleviated concerns about the effect of CCAP on crime victim privacy. However, it is likely that the tensions between crime victim privacy and the general right of access to public records will continue and, possibly, result in measures to address the issue for legislative consideration.

THE CIRCUIT COURT AUTOMATION PROJECT

The CCAP Project was initiated in 1987 by the Director of State Courts Office, under the direction of the Wisconsin Supreme Court. CCAP brought state-of-the-art computer technology and software to the Wisconsin Circuit Court System. In April 1999, CCAP began operating as an Internet-based application.

Currently, CCAP permits anyone with access to the World Wide Web to review the circuit court records of counties with CCAP systems. Until recently, crime victim information available through CCAP could include telephone numbers, addresses or other personal identifying information. The Director of State Courts has indicated that the CCAP Web site receives about 200,000 hits per day. While this more efficient access to court records has simplified the jobs of those directly involved in the court system, it also raised concerns regarding the privacy of victims of crime whose personal data is contained in the court records.

RESPONSE TO VICTIM PRIVACY CONCERNS

As a temporary response to the concern over public access to information about victims of crime in CCAP court records, the Wisconsin Circuit Court Access (WCCA) Oversight Committee removed the data elements which may reveal the personal identifiers of crime victims from the publicly accessible CCAP Web site. A “full disclosure” version of the CCAP data is available to law enforcement officials and other authorized personnel via a separate, secure Web site. The WCCA Oversight Committee has stated that this separate system

will be maintained until "privacy issues can be thoughtfully and comprehensively addressed." The Oversight Committee has requested that the Director of State Courts Records Management Committee develop an alternative procedure which will protect the privacy of crime victims as well as witnesses, jurors and juveniles whose personal identifiers may appear in CCAP court records. The Records Management Committee had not established an alternative procedure as of the date of this memorandum.

GENERAL RIGHT OF ACCESS

Wisconsin law allows individuals to inspect public records. While a number of specific exemptions exist, there is no general statutory exemption to the Wisconsin Open Records Law for victims of crime.

The Open Records Law states that any person has the right to inspect any public record in the custody of a government authority.[1] An exception to the Open Records Law may be contained in a statute or found through a common law determination.[2] One common law determination is a ***balancing test***, made by a record custodian, in which the custodian determines whether the disclosure of a record would result in harm to the public interest that outweighs the public interest in allowing inspection.[3] If a record custodian determines that releasing a record would result in greater harm to the public interest than preventing inspection, the custodian may refuse to release the record. Historically, the courts have maintained a strong presumption of openness when judging the extent of access to government records.[4]

The recent constitutional amendment on crime victims and related legislation may be evidence that a public record custodian might utilize in determining the public interest in withholding personal information about a crime victim. However, the balancing test must be applied on a case-by-case basis; there is no blanket exemption available under the Open Records Law applicable to personal information about crime victims.

A specific exception to general access to public records under the Open Records Law prevents law enforcement agencies from disclosing information that would identify a confidential informant.[5] In circumstances in which a victim qualifies as an "informant" under the exception, the provision affords crime victims a privacy protection.

CURRENT PRIVACY PROTECTIONS FOR CRIME VICTIMS

Wisconsin law does not provide specific protection for the privacy of crime victims. The Wisconsin statutes currently contain a number of general privacy provisions that may apply to victims of crime as well as the general public. A list of these selected provisions is included in Appendix A of this memorandum.[6]

RECENT CRIME VICTIM INITIATIVES

During the 1980s and 1990s, the Wisconsin Legislature enacted legislation demonstrating increasing attention to the treatment of victims of crime. The legislation included a state program awarding the victims of crime compensation under certain circumstances.[7] The interest in victims of crime led to an amendment of the Wisconsin Constitution providing specific privileges and protections for victims of crime.[8]

In 1998, the Legislature enacted 1997 Wisconsin Act 181 which implemented the constitutional amendment on victims of crime. Generally, the act and its corresponding constitutional provisions do not speak directly to the specific issue of access to crime victims' records. The constitutional provision does require that the state treat crime victims with fairness, dignity and respect for their privacy. Moreover, the amendment provides that the state shall ensure the victim reasonable

protection from the accused throughout the criminal justice process. There has been a general recognition that the privacy of crime victims is deserving of protection.

RECENT COURT DEVELOPMENTS CONCERNING PUBLIC RECORDS

In 1999, the Wisconsin Supreme Court held that a public employee has a right to be notified and seek judicial review of a record custodian's decision to disclose information which may implicate the privacy or reputational interests of that employee.[9] The case extended the holding of a previous decision,[10] which involved personal information about a public employee in the custody of a district attorney, to apply to such records in the custody of any public records custodian. It is possible that the right to notification and judicial review will be extended by the courts to apply to information that may implicate the privacy and reputational interests of any person, not just public employees. If that occurs, crime victims will have an additional protection regarding the release of personal information contained in public records.

Additional information on crime victim privacy is available at the National Center for Victims of Crime (NCVC). The NCVC Web site is located at: www.ncvc.org. An NCVC briefing on crime victim privacy is located at: www.ncvc.org/infolink/info67.htm.

This information memorandum was prepared on December 13, 2000 by ***Dan Schmidt, Analyst***. The information memorandum is not a policy statement of the Joint Legislative Council or its staff.

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[1] See s. 19.35 (1) (a), Stats.

[2] For more information on the Open Records Law and the methods for determining access, see Wisconsin Legislative Council Staff Information Memorandum 99-3, Wisconsin's Open Records Law and Other Statutes Relating to the Disclosure of Public Records (August 19, 1999).

[3] See State ex rel. Youmans v. Owens, 28 Wis. 2d 672, 127 N.W.2d 470 (1965).

[4] See C.L. v. Edson, 140 Wis. 2d 168, 409 N.W.2d 417, 422 (Ct. App. 1987).

[5] See s. 19.36 (8), Stats.

[6] Note that general privacy protections such as legal privileges, universal confidentiality statutes, or other general nondisclosure requirements that are not specific to victims of crime, are not discussed here. For more information on general personal privacy protections in the Wisconsin statutes, see Legislative Council Staff Information Memorandum 00-1, Wisconsin Personal Privacy and Confidentiality Statutes in Table Format (May 9, 2000; revised May 25, 2000), or Legislative Council Staff Information Memorandum 99-3, Wisconsin's Open Records Law and Other Statutes Relating to the Disclosure of Public Records (August 19, 1999).

[7] See, generally, ch. 949, Stats.

[8] Wisconsin Constitution article I, section 9m.

[9] See Milwaukee Teachers' Education Association v. Milwaukee Bd. of School Directors, 227 Wis. 2d 779, 596 N.W.2d 403 (1999).

[10] See Woznicki v. Erickson, 202 Wis. 2d 178, 549 N.W.2d 699 (1996).

APPENDIX A

Subject	***Statute***	***Summary***
Confidentiality of Voter Registration Information Relating to Victims of Domestic Abuse	s. 6.47, Stats.	A victim of domestic abuse may have his or her name withheld from public disclosure on voter registration lists. If an individual qualifies for the protection, he or she is issued a voting identification card with a unique identification number in lieu of having his or her name listed on the standard voter registration list.
Civil Actions Involving Sexual Exploitation by a Therapist	s. 895.70 (2) (a), (b) and (c), Stats.	An individual who suffers physical, mental or emotional injury as a result of sexual contact with a therapist who is treating the individual has a civil cause of action against the therapist. In the interest of protecting the privacy of the victim, a victim who brings a civil action may substitute his or her initials or fictitious initials and other personal identifying information in the place of his or her name and address on court summons and complaint forms. The plaintiff's attorney must then supply the plaintiff's identity to the court. The court is required to maintain the privacy of the plaintiff by supplying the personal information to other parties involved in the suit in a manner that *reasonably protects the information from being disclosed to the public*.
Crime Victim Compensation Proceedings	s. 905.14 (2), Stats.	Generally, legal privileges regarding communications or records relating to the physical, mental or emotional condition of a claimant or victim do not apply in a crime victim compensation proceeding in which that condition is an element. However, the lawyer-client privilege does apply in such proceedings.
Crime Victim Award Proceedings	s. 949.16, Stats.	Generally, the record of a crime victim award proceeding before a hearing examiner or the Department of Justice is considered a public record. However, records or reports used in a victim award proceeding that are confidential under any other law or rule, remain confidential for the purposes of the proceeding.
Notification of Release or Escape of a Juvenile From Correctional Custody or Supervision	s. 938.51 (1) (b) and (2), Stats.	The Wisconsin Juvenile Justice Code requires the Department of Corrections (DOC) to notify victims of delinquent acts of juveniles when the juvenile is released or escapes from a juvenile correction facility. The Juvenile Justice Code also provides that all DOC and county social service department records that relate to the telephone numbers or mailing addresses of the victims to be notified are not subject to disclosure (under the Open Records Law).

Subject	***Statute***	***Summary***
Child Victims and Witnesses	s. 950.055 (1)	The statement of legislative intent regarding child victims and witnesses indicates that these individuals should receive additional services and protections. In light of this, the Legislature has also requested that the news media use restraint in revealing the identity of child victims or witnesses, particularly in sensitive cases.
Rape Shield Law	s. 972.11 (2) (b), Stats.	In cases of sexual assault or child sexual assault, exploitation or incest, evidence of the complaining witness's (the victim's) prior sexual conduct or opinions of the complaining witness's prior sexual conduct and reputation as to prior sexual conduct are not admissible as evidence. The information may not be referred to in the presence of a jury during any hearing or trial. The following exceptions apply in hearings or trials: 1. Evidence of prior untruthful allegations of sexual assault made by the complaining witness. 2. Evidence of the complaining witness's past conduct with the defendant. 3. Evidence of specific instances of sexual conduct showing the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered.