

State of Wisconsin



2011 Senate Bill 173

Date of enactment:
Date of publication*:

2011 WISCONSIN ACT

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

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

SECTION 1. 48.396 (1) of the statutes is amended to read:

48.396 (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (5), or (6) or s. 48.293 or 938.396 (2m) (c) 1p. or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the public or private school attended by the child or other law enforcement or social welfare agencies, or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school offi-

cial who obtains information under this subsection shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. This subsection does not apply to the confidential exchange of information between the police and officials of the tribal school attended by the child if the police determine that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1) (a). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

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

48.396 (2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be

* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

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

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

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

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

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

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

48.396 (3) (c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction shall keep any information made available to that court under par. (b) 1. confidential and may use or allow access to that information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

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

48.396 (3) (c) 1m. A person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 938 or a municipal court, or a district attorney prosecuting a criminal case shall keep any information made available to that person under par. (b) 1. confidential and may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court, or a court of criminal jurisdiction. That person may allow that access regardless of whether the

person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

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

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

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

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

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

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

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

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

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

48.78 (2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.396 (3) ~~(b)~~ (bm) or (c) ~~1.~~ 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m), 48.93, 48.981 (7), 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the court.

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

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

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

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

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

938.396 (2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), ~~(2m) (b) or (c),~~ or (10) ~~or s. 48.396 (3) (b) or (c) 1.~~

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

938.396 (2g) (c) *Law enforcement agencies.* Upon request of a law enforcement agency to review court records for the purpose of investigating ~~a crime that might constitute criminal gang activity, as defined in s. 941.38 (1) (b), the court shall open for inspection by authorized representatives of the law enforcement agency the records of the court relating to any juvenile who has been found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed by an adult~~

alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

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

938.396 (2g) (d) ~~*Bail; impeachment; firearm possession*~~ *Criminal and civil proceedings.* Upon request of a court of criminal jurisdiction ~~or a district attorney to review court records for the purpose of setting bail under ch. 969, impeaching a witness under s. 906.09, or investigating and determining whether a person has possessed a firearm in violation of s. 941.29 (2) or body armor in violation of s. 941.291 (2) to review court records for the purpose of conducting or preparing for a proceeding in that court, upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction,~~ or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

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

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

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

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

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

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

1p. A law enforcement agency shall keep any information made available to the law enforcement agency under par. (b) 1. confidential and may use or allow access to that information only for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12). A law enforcement agency may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1r. The department shall keep any information made available to the department under par. (b) 1. confidential and may use or allow access to that information only for the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or 938.069. The department may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise

involved in the proceedings in which the electronic records containing that information were created.

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

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

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

938.78 (2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) ~~(b)~~ (bm) or (c) ~~1.~~ 1r., 938.371, 938.38

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

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

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