By Supervisor Holloway

A RESOLUTION

Stating opposition to Assembly Bill 329 relating to changing the Milwaukee County Treasurer to an elected Comptroller position

WHEREAS, Assembly Bill 329 renames the office of Treasurer only in Milwaukee County as Comptroller, makes it an elective office in the fall with a four year term, mandates certain education requirements for the position, assigns certain duties to the position including preparing fiscal notes for all legislation, performing all audit functions, countersigning all contracts, reporting on the condition of county funds, and related financial responsibilities; and

WHEREAS, AB 329 is patterned to some extent on the City of Milwaukee Comptroller although that position earns $141,000 a year, about $54,000 more than the Milwaukee County Treasurer; and

WHEREAS, although AB 329 imposes new educational requirements for an overhauled Treasurer / Comptroller position, it does not address compensation for the position and, although the bill mandates the appointment of a Deputy Comptroller position, whose salary is to be set by the Board of Supervisors, it does not provide any funding for these changes or the other responsibilities of the office, thereby creating an additional unfunded mandate; and

WHEREAS, AB 329 transfers certain legislative and executive functions to this new elected position, including audit functions (currently under the legislative branch) and accounting and finance functions (currently under the executive branch), thereby entangling Treasurer and other financial functions and disrupting and confusing the separation of powers – and creating a different structural division of functions than the State of Wisconsin itself has with its Legislative Audit Bureau; and

WHEREAS, by placing auditing functions in the same office with accounting and finance functions, a situation is created whereby the Comptroller would be auditing his own department, thereby violating generally accepted auditing standards; and

WHEREAS, Milwaukee County currently has a Controller who provides many of the functions that AB 329 would place under the Comptroller, and the current Controller is a certified public accountant with over 20 years of financial experience; and

WHEREAS, Milwaukee County has already taken various proactive steps to protect the independence of the Controller, including making removal of the incumbent contingent on agreement of both the County Executive and County Board, or a two-thirds vote of the County Board, and making it a Civil Service position upon vacancy by the present long-term incumbent; and

WHEREAS, as presently drafted, AB 329 would place the new elected Comptroller on the fall election ballot, where only partisan offices are elected, thereby turning a professional position into a political, partisan position; and

WHEREAS, Milwaukee County's current financial challenges are not due to not having a political position of Comptroller, but rather to the pressures of certain financial liabilities and severe reductions in State revenues, and AB 329 does nothing to address these matters; and

WHEREAS, as presently drafted, AB 329 would result in there being no Treasurer in Milwaukee County, as prescribed in the Wisconsin Constitution, and replacing it with an elected Comptroller, thereby raising concerns of whether such legislation can go into effect without a change to the State Constitution; and

WHEREAS, AB 329 relates only to Milwaukee County, does not address any of the key issues that need to be addressed in Milwaukee County, and creates an additional political and potentially costly layer of Milwaukee County government that is not in the best interests of the citizens of Milwaukee County; now, therefore,

BE IT RESOLVED that the Milwaukee County Board of Supervisors does hereby state its opposition to Assembly Bill 329 and hereby directs the Division of Intergovernmental Relations to exert all efforts opposing this legislation; and

BE IT FURTHER RESOLVED, that the County Clerk is hereby directed to forward copies of this resolution to the Governor of Wisconsin and to all members of the Milwaukee delegation in the Wisconsin Legislature.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 10/24/11

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Stating opposition to Assembly Bill 329 relating to changing the Milwaukee County Treasurer to an elected Comptroller position.

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. This resolution states opposition to Assembly Bill 329 relating to changing the Milwaukee County Treasurer to an elected Comptroller position and directs the Division of Intergovernmental Relations to exert all efforts opposing this legislation.

B. There are no direct costs or savings related to this resolution, other than staff time expended in opposition to AB 329.

C. There are o direct budgetary impacts related to passage of this resolution.

D. No assumptions were used in preparing this fiscal note.

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By .County Board / Terrence Cooley

Authorized Signature Terrence Cooley

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

COUNTY OF MILWAUKEE
District Attorney's Office
Inter-Office Communication

DATE	:	October 26, 2011
TO	:	District Attorney John Chisholm
FROM	:	Deputy District Attorney Patrick Kenney
SUBJECT	:	2011 Senate Bill 173 (a proposal relating to the disclosure of electronic juvenile court records between law enforcement agencies)

SB-173 was drafted to allow the disclosure of electronic juvenile court records to law enforcement. The intent of the legislation was to provide timely and reliable status information of youth involved in the juvenile court system to improve community safety and promote the well being of the juveniles.

As drafted, the proposal would involve permitting the Director of State Courts to use the Consolidated Court Automation Program (CCAP) to facilitate the transfer of "to be determined information" to a law enforcement agency for the purpose of investigating criminal or delinquent activity. The legislation provides that the Director of State Courts determines what type of information may be transferred under this provision.

The law enforcement agency receiving juvenile court information is required to maintain its confidentiality and any person who intentionally discloses information in violation of the confidentiality provision of the bill may be required to forfeit not more than $5,000.

The legislation is patterned after 2009 Wisconsin Act 338, which was enacted to permit the electronic transfer of certain juvenile court information to the Department of Children and Families to enable county workers, generally performing child welfare services to the juvenile court, access to juvenile court information. As of October, 2011, this process has not been completed and the desired information has not been made available through CCAP. Although there is a benefit to the solution proposed in SB-173 as it would provide for statewide access to this information, state officials have been hampered in their ability to implement an identical law for the Department of Children and Families and it is unclear the extent to which the same difficulties might exist in transferring relevant data to law enforcement.

It might be more helpful to have legislation that would permit law enforcement access to information contained within the juvenile court record and allow any government agency to use their systems to facilitate the exchange of information relevant to the concerns of law enforcement.

Thank you.

PJK:ss

PROPOSED MODIFICATIONS TO 2007 AB 676

Section 4. 48.396 (2m) of the statutes is created to read:

48.396 **(2m)** (a) Notwithstanding sub. (2) (a), records of a court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by:

1. Aany 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, a district attorney, a law enforcement agency,~~ or the department, a county department, or a licensed child welfare agency providing services to a court under s. 48.06, 48.07, 938.06, or 938.07.

2. A person representing the interests of the public under s. 48.09 or 938.09, a district attorney subject to sub. a., and a law enforcement agency subject to sub. b.

a. A district attorney not designated to represent the interests of the public under s. 48.09 shall have access restricted to court records in proceedings under chapter 938.

b. A law enforcement agency shall have access restricted to court records in proceedings under chapter 938.

(b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 938 or a municipal court exercising jurisdiction under s. 938.17 (2) that obtains information under par. (a) shall keep the information confidential as required

under sub. (2) (a) and s. 938.396 (2) and may use and further disclose the information only for the purpose of conducting or preparing for a proceeding in that court or as permitted under sub. (2) (a) or s. 938.396 (2). A court of criminal jurisdiction that obtains information under par. (a) may use and further disclose the information only for the purposes of conducting or preparing for a proceeding in that court.

2. A person representing the interests of the public under s. 48.09 or 938.09 or a district attorney that obtains information under par. (a) shall keep the information confidential and may use and further disclose the information only as necessary for the person or district attorney to perform 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 exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction.

3. A law enforcement agency that obtains information under par. (a) shall keep the information confidential as required under sub. (1) and s. 938.396 (1) (a) and may use and further disclose the information only for the purpose of investigating any alleged criminal activity or any activity that may result in a court exercising jurisdiction under this chapter or ch. 938 or as permitted under sub. (1) or s. 938.396 (1) (a).

4. The department, a county department, or a licensed child welfare agency that obtains information under par. (a) shall keep the information confidential as required under ss. 48.78 and 938.78 and may use and further disclose the

information only for the purpose of providing services to a court under s. 48.06, 48.07, 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.\

(c) Any person who intentionally discloses information in violation of par. (b) may be required to forfeit not more that $5,000.

Section 10. 938.396 **(2m)** of the statutes is created to read:

938.396 **(2m)** (a) CONFIDENTIALITY OF COURT RECORDS; OTHER EXCEPTIONS. ~~(a)~~ Notwithstanding sub. (2), records of a court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by:

1. Aany 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, a district attorney, a law enforcement agency.~~ or the department of health and family services, a county department, or a licensed child welfare agency providing services to a court under s. 48.06, 48.07, 938.06, or 938.07.

2. A person representing the interests of the public under s. 48.09 or 938.09, a district attorney subject to sub. a., and a law enforcement agency subject to sub. b.

a. A district attorney not designated to represent the interests of the public under s. 48.09 shall have access restricted to court records in proceedings under chapter 938.

b. A law enforcement agency shall have access restricted to court records in proceedings under chapter 938.

(b) 1. A court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) that obtains information under par. (a) shall keep the information confidential as required under sub. (2) and s. 48.396 (2) (a) and may use and further disclose the information only for the purpose of conducting or preparing for a proceeding in that court or as permitted under sub. (2) or s. 48.396 (2) (a). A court of criminal jurisdiction that obtains information under par. (a) may use and further disclose the information only for the purposes of conducting or preparing for a proceeding in that court.

2. A person representing the interests of the public under s. 48.09 or 938.09 or a district attorney that obtains information under par. (a) shall keep the information confidential and may use and further disclose the information only as necessary for the person or district attorney to perform 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 exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction.

3. A law enforcement agency that obtains information under par. (a) shall keep the information confidential as required under sub. (1) (a) and s 48.396 (1) and may use and further disclose the information only for the purpose of investigating any alleged criminal activity or any activity that may result in a court

exercising jurisdiction under this chapter or ch. 48 or as permitted under sub. (1) (a) or s. 48.396 (1).

4. The department of health and family services, a county department, or a licensed child welfare agency that obtains information under par. (a) shall keep the information confidential as required under ss. 47.78 and 938.78 and may use and further disclose the information only for the purpose of providing services to a court under s. 48.06, 48.07, 938.06, or 938.07 or as permitted under s. 48.78 or 938.78.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3034/1dn
GMM:jld:rs

October 20, 2011

2007 AB-676 was vetoed in its entirety. Subsequently, 2009 Wisconsin Act 338 was enacted to permit the juvenile court to transfer its electronic records to DCF, which then uses its statewide automated child welfare information system (SACWIS) to transfer the information in those records to the counties for purposes of providing child welfare services. Accordingly, this draft embodies the substance of 2007 AB-676, as affected by the changes that you submitted, but structures that substance according to the template created by 2009 Wisconsin Act 338.

Specifically, the draft amends s. 48.396 (3) to permit electronic records of ch. 48 proceedings to be transferred to other juvenile courts, municipal courts, and the prosecutors in proceedings in those courts. The draft then creates a parallel provision in s. 938.396 to permit electronic records of ch. 938 proceedings to be transferred to other juvenile courts, municipal courts, and the prosecutors in proceedings in those courts, as with ch. 48 records, and in addition, permits ch. 938 records to be transferred to criminal courts, district attorneys (who are the prosecutors in criminal proceedings), and law enforcement agencies.

If you have any questions about this draft, please do not hesitate to contact me at the phone number or e-mail address captioned below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

COUNTY OF MILWAUKEE
Department of Health and Human Services
INTER-OFFICE COMMUNICATION

DATE: October 24, 2011

TO: Supervisor James "Luigi" Schmidt, Chairman, Intergovernmental Relations Committee

FROM: Geri Lyday, Interim Director, Department of Health and Human Services
(Prepared by Eric Meaux, Administrator/ Chief Intake Officer – DCSD)

SUBJECT: **Informational Report from the Interim Director of Health and Human Services regarding 2011 Senate Bill 173: proposed legislation relating to the disclosure of electronic juvenile court records to law enforcement agencies, use of such disclosed information and providing a penalty for misuse of the disclosed information.**

Issue

Senate Bill 173 has been introduced to allow for the disclosure of electronic juvenile court records to law enforcement. The Intergovernmental Relations Committee has requested that the Department provide input that would provide guidance relative to the proposed legislation.

Background

The impetus behind SB 173 appears to center around the basic following statement/ problem and solution: More timely and reliable availability of status information of juvenile court involved youth will improve community safety and the well-being of our youth. And, allowing the director of state courts the ability to share certain information contained within the Consolidated Court Automation Programs (CCAP) would be the most effective means and result in the greatest benefit.

The proposed means by which such a disclosure would occur involves allowing the director of state courts to use the Consolidated Court Automation Programs (CCAP), to facilitate the transfer of "to be determined information" to a law enforcement agency for the purpose of investigating alleged criminal or delinquent activity. The director of state courts would determine the type of information to be transferred.

Discussion

In responding to this question and more importantly to provide some guidance to the County Board, it is important to understand that there are potentially two main legally sanctioned record sources for the availability of this information to a law enforcement agency.

First, the County or Department (Department of Corrections) may provide relevant information through case records on a case-by-case basis under certain rules of confidentiality or by way of an agreement for routine sharing of information[1], generally in the form of an interagency agreement.

Second, a law enforcement agency may request to view juvenile court record information under certain unique circumstances or by order of the court. On both a practical and functional level, access to the juvenile court record is not practical unless perhaps the restrictions were removed and the information could be made available electronically in a secure manner. It is here that the SB 173 looks toward a solution.

It is worth noting here that 2009 Wisconsin Act 338 was enacted to permit the electronic transfer of certain juvenile court information (CCAP) to the Department of Children and Families information system (SACWIS) to allow county workers, generally performing child welfare and juvenile justice services to the court, access to juvenile court information. As of the writing of this report, this process and functionality has not been completed and the Division is not optimistic that the information that may be made available will be that desired for system improvement and efficiency.

Further, CCAP contains only those cases that actually result in a petition being filed and the ability to identify unique information that local systems may find of benefit in sharing would not be without technological challenges based on the Division's experience. Despite these barriers, there is the benefit that this solution would provide for a State-wide access and would be in likelihood cost neutral to counties.

The statutes and rules pertaining to County and Department records are separate from those of the juvenile court record (CCAP).

This issue is both equally a question of timely access and best practice. The Office of Justice Assistance (OJA) published a report in 2005[2] identifying both the challenges and needs for improved information sharing. While this report generally focused on the need for improved sharing of *case-specific* information among all youth involved agencies, such as: law enforcement, human service workers, prosecutors, courts, schools, and services providers, it is instructive, in that the goal is to have a more meaningful and informed response at initial system contact.

There continues to be a growing body of research that has consistently identified the complexity of youth delinquency and concluded that collaboration, including that of responsible and purposeful information sharing among multiple systems is critical for risk reduction and improved intervention. In other words, to improve community safety and the

---

[1] There exists some differing informal legal opinion regarding the ability of the case record to be shared on a "wholesale" basis.

[2] Wisconsin Office of Justice Assistance, Wisconsin Juvenile Justice Information Sharing Study, 2005, http://oja.state.wi.us/docview.asp?docid=6690&locid=97

well-being of our youth.

In the question presented, providing law enforcement with at least basic information for the purposes of improved decision making in a more efficient manner makes sense.

While not inclusive:

- Identification of which youth are under supervision
- Basic demographics
- Last known address
- Assigned worker and contact information
- Warrant/ awol information
- Unique/ non-standard conditions of supervision

The OJA report identifies two primary principles: Benefit and Privacy as well as secondary principles that fall within one or both of the primary principles. Effective use and sharing of information is generally most effective when the exchange of information has mutual benefit, fulfills the mission and goals of the agencies involved, and involves some type of agreement among the entities to ensure that usage of the information is consistent with the statutory intent. In this case, the Juvenile Justice Code. A copy of these principles, Principles for Information-Sharing in Juvenile Justice is attached for reference.

Recommendation (Guidance)

It would appear that the most practical approach at this time that considers and satisfies most of the benefit and privacy principles would be to remove any legal barriers that would restrict the ability of the County Probation Department to routinely share information with law enforcement by some efficient method other than that contained in SB 173. There remains some ambiguity among the legal community as to whether or not the current statutes pertaining to the routine sharing, "...providing for the routine disclosure of information...", s. 938.78(2)(b)1m, is allowable under the current statutes. While placing the burden on local systems to develop more efficient and purposeful means of sharing critical information may shift the burden from the State to local systems, the overarching benefit is improved multi-system collaborations recognizing that one system does not have the ability to improve these complex issues alone. This should not suggest that other State operated information systems cannot assist in facilitating this information sharing.

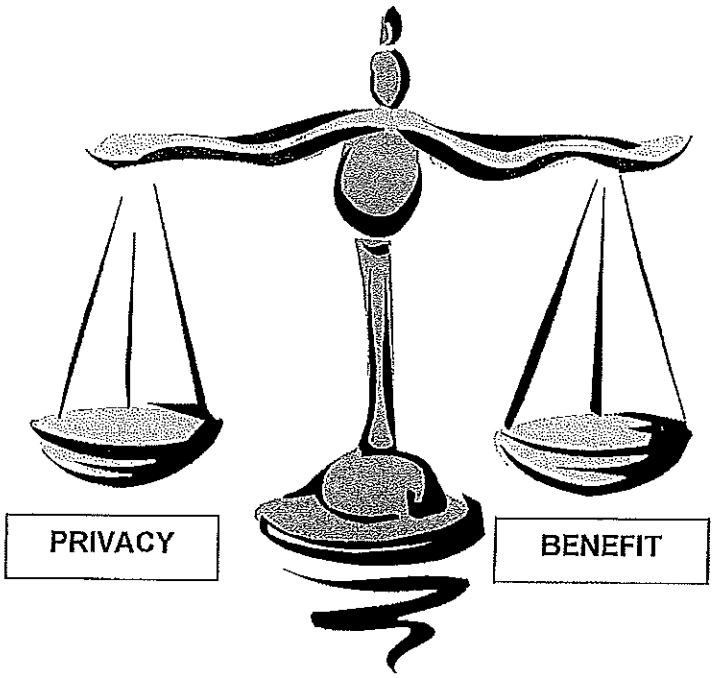
In addition, should this committee recommend that a communication or resolution is appropriate in this matter, it is worth noting that the Division and other entities have advocated over the years for direct user access to the CCAP juvenile court information by those staff performing intake functions for the courts to allow for improved information access security, accuracy, and efficiencies with the Division. Should such changes in State law not be deemed feasible then consideration should be given toward expanded user access granted by the local Clerk of Courts.

Geri Lyday, Interim Director
Department of Health and Human Services

cc: County Executive Chris Abele
George Aldrich, Chief of Staff – Count Executive Staff
Supervisor Lee Holloway, Chairman County Board
Patrick Farley, Administrator - DAS
CJ Pahl, Interim Assistant Fiscal and Budget Administrator - DAS
Antoinette Thomas-Bailey, Fiscal & Management Analyst - DAS
Steve Cady, Analyst, County Board Staff
Jodi Mapp, Committee Clerk, County Board Staff
Honorable Marshall Murray, Presiding Children's Court Judge

Appendix C

The Wisconsin Governor's Juvenile Justice Commission



Principles for Information-Sharing In Juvenile Justice

February, 2006

Background

One of the most complex issues in the Juvenile Justice system is the challenge of providing key decision-makers with sufficient, accurate, and timely information that will enable them to make a proper decision while at the same time balancing the privacy and confidentially rights and expectations of children and families. This challenge is further complicated by a multitude of overlapping and sometimes conflicting state and federal regulations and statutes.

At the same time, significant changes in how records are created, stored, and utilized have occurred over the last decade. For example, both the e-SACWIS and CCAP systems have been implemented at the state/local level to document child welfare and court related activities. Law enforcement jurisdictions, the Department of Corrections, the Department of Public Instruction, local school districts, and many other public and private entities have developed and maintain electronic files and records on a host of issues that affect children and families. This advancement in electronic record systems of public and private institutions provides both an opportunity and a danger to the children and families involved with the juvenile justice system.

Governor Jim Doyle has asked the Governor's Juvenile Justice Commission to help the juvenile justice system respond meaningfully at the first contact with a child. In implementing that directive, the GJJC has focused on the issue of information sharing in hopes that we can present recommendations for legislative and/or administrative consideration and/or action. With that overall goal in mind, the Commission endorses the following principles to provide guidance for future work of the Commission as well as for other policy-makers who may consider various legislative or policy changes related to information-sharing.

Primary Principles Related to Information Sharing in Juvenile Justice

Consideration of two primary principles or perspectives can help "frame" the dialogue for decision-makers when considering questions about whether or not to support or authorize various forms of information-sharing across the many systems and professions that may be involved in the life of a child, youth or family: (1) The Benefit Principle, and (2) The Privacy Principle. While not necessarily opposite ends of a continuum, it can be helpful in making decisions about information sharing to understand the importance of balancing these two over-arching principles.

Principle 1: The Benefit Principle

When relevant information exists that would enable decision-makers in the juvenile justice system to make better decisions that are consistent with statutory intent and improve the lives of children, youth, families, and our communities, including victims, that information should be made available in a timely and responsible manner to the decision-maker(s).

Discussion: This principle contains several points of interest, including:

- The most important goal of sharing information is to better serve children, youth, families, and our communities. Proposed policy changes must first demonstrate some appreciable benefit.
- Information is "relevant" depending on the role and types of decision(s) to be made. Who has access to which systems and which information contained in that system must be guided by two things: first, understanding the nature of the decisions to be made, and second, determining the necessity of having access to various types of information in order to make good decisions.
- "Decision-makers" are the various "actors" in the juvenile justice system who make decisions related to children/juveniles and families. This includes law enforcement, intake and other human service workers, judges, district attorneys, public defenders, school personnel, and service providers.
- The access to and use of information should be consistent with the purpose of the juvenile justice system as expressed in Chapter 48 (primarily focused on protection of children) and Chapter 938 (a balanced approach in which there is equal consideration given to offenders, victims, and the community).
- Information is "timely" if it is available so that decision-makers can act as efficiently as possible in order to protect the safety of the community and/or the youth. The ability of decision-makers to access information in a timely way helps ensure that they use their time efficiently and that children/juveniles, families, victims and other system partners need not wait needlessly for those decisions Timeliness of access to information also is important when key decisions need to be made that are necessary to protect the safety and welfare of the community and/or the youth/child.
- Information is used "responsibly" when it promotes accuracy of the information, recognizes the sensitive nature of the information, and helps promote its continued confidential use through the process.

Principle 2: The Privacy Principle

The privacy rights of individuals must also be a primary consideration in any discussion of policy and/or practice change. The rights of individual citizens, as granted by statute, case law, or constitutional right, should be specifically analyzed as part of the consideration of any proposal or policy related to the sharing of personal information about youth and families across systems in Juvenile Justice.

Discussion: The first "hurdle" any proposed policy change must overcome is whether and to what extent the change infringes upon, intentionally or otherwise, the expected freedoms and privacy rights of individuals.

The first level of scrutiny should be to identify the relevant statute, case law or administrative procedure that governs the potential change. For changes to policies and procedures that are not covered by specific statute, case law or administrative procedure, the principles in this document can guide the analysis surrounding untested policies and procedures.

Secondary Principles Related to Information Sharing in Juvenile Justice

The following secondary principles to consider can apply to either the Benefit Principle and/or the Privacy Principle. However, for purposes of guiding the discussion these secondary principles will be categorized as noted below.

Principle 3: The Impact Principle (Benefit)

The greater impact the decision has on the safety and welfare of the child, juvenile, family, or community, including victims, and the more urgent the decision , the more important it is for the decision-maker to have access to relevant information that exists.

Discussion: This principle recognizes that some decisions in the juvenile justice system have a greater impact on families than others.

It is those decisions that policy makers should be most attentive to when analyzing information-sharing policy and procedural changes. In the child welfare system, these decisions relate to the safety of children, the protection of parental rights and responsibilities, the placement of children, and conditions of supervision and/or return of children. In the juvenile justice/delinquency system, these decisions relate to the safety of the juvenile as well as victims and the community. Those considerations translate into actual physical custody orders, placement (both long-term and short-term,) and rules of supervision, which dictate how families must actually act. They are the critical decision points that policy makers should address most closely.

This principle also recognizes that priority for change in information sharing policy should be given to decisions that must be made urgently. For example, a decision to remove a child from his/her home as the result of an abuse allegation may have to be made within a very short time frame (within minutes or a few hours). Similarly, a law enforcement officer called to a situation involving a serious delinquent allegation will often need to make virtually instantaneous decisions whether or not to take a youth unknown to them into custody. In neither situation does the decision-maker have the "luxury of time" to search paper records the next day to make a fully informed decision.

Principle 4: The Accuracy Principle (Privacy)

Information systems and user training should be developed to maximize the accuracy of information contained in records.

Discussion: Inaccurate information can have a devastating impact on a child/family.

Accurate information assures decision-makers that they are at least making decisions based on the best information available.

Data and other information systems are only as reliable as the individuals entering the information. While we can rely on the quality of the professionals entering information, errors are inevitable and procedures need to be in place within systems to monitor, audit, and correct errors that occur. Those can include

- Building into information systems a feedback mechanism when erroneous information is identified by anyone.
- Creating incentives for correcting inaccurate information.
- Creating a procedure for the subject of a record to have a record corrected.
- Developing an auditing process for each information system to periodically test its accuracy.
- Building systems in such a way that errors are limited, e.g. drop down boxes instead of open fields.
- Training those who input data on the importance of accuracy.
- Training those who view information from their own or other systems on the importance for accuracy and verification of information.
- Training those who view information from their own or other systems on the nuances of interpretation of data elements to which they have access.
- Through a Memorandum of Understanding or other mechanism, requiring notification of those agencies which receive information electronically from a system, of the correction of information in the transmitting system.

As noted above, each information system is typically developed for use by the lead agency/user and thus contains various types of information that is both familiar to and useful for that agency. Individuals in that agency often understand the nuances and limitations of that data. Users from other systems may not be familiar with any of the limitations of the information contained and/or may not understand how the information is presented. This could lead to misinterpretations of data elements that could then inadvertently be incorporated into other agency's records and presumed to be accurate. Therefore, individuals permitted access to "other" agency systems **must** be trained on how to access, view, and interpret the information contained therein.

Principle 5: The Efficiency Principle (Benefit)

While there may be multiple ways for decision-makers to access information and records, there is some value to the system of permitting "efficient" access.

Discussion: Due to diminishing resources in many public service areas, time spent on accessing necessary information is increasingly a "burden" on decision-makers.

There may be value in policy changes to get information to decision-makers and service-providers more quickly and easily so that they can use their time more efficiently. Conversely, if the information can already be accessed in a timely and efficient manner, there is little to be gained by policy changes that may have potential detrimental effects.

More importantly, efficiency can create opportunities for doing things differently, for the reallocation of time to direct-service opportunities, and for creating new ways for professionals to collaborate in the best interest of youth, families, and the community. New patterns of interaction and collaboration may be developed as the result of increased efficiency in the ability to share relevant information. Since "time is money", it is possible that more efficient information-sharing can free up resources that can be better directed to enhancing services.

Principle 6: The Secondary Use Principle (Privacy)

In order to better ensure the privacy and confidentiality interests of parties (children, juveniles, families) and to help ensure that information is used in a manner consistent with statutory intent, the Commission encourages the development of appropriate inter-agency agreements, memorandums of understanding, or other administrative practices to guide the sharing of information among entities.

Discussion: Agencies or other entities in the juvenile justice system have been and will always be required to share or want to share information about children, youth and families with one another.

Statute or administrative rules often require agencies sharing information across systems to enter into inter-agency agreements and/or memorandums of understanding that guide practice. These agreements do not guarantee that individuals within the respective systems will act responsibly. Nevertheless, there is value in developing protocols among entities for such things as:

- Identification of the information to be shared.
- Amount of information to be shared.
- Requirements for subsequent use of information, such as:
    - The manner in which information can be contained in the subsequent users' systems
    - The consents required for sharing and
    - The protocols for notification of erroneous information. (See further discussion below.)

Training is a critical component of these agreements. While the original user(s)/creators of the information may understand the data, subsequent users of the information become increasingly likely to misunderstand it. Inter-agency agreements can be a useful tool to spell out what training is required for subsequent users.

In addition, these agreements can have "sunset" clauses which represent a visible and tangible commitment to the seriousness of sharing information across systems; force agencies to re-visit them periodically; and can serve as training tools for staff.

Principle 7: The Confidentiality Principle (Privacy)

Access to information and/or data contained in one information system that would otherwise be prohibited from release should not be available unless proper authorization (via statute or proper release) is obtained.

Discussion: This is one area in which inter-agency agreements of some type may be the most appropriate as a way to "slow down" the actual sharing of information that might otherwise be accessible.

This also would require that for each agency whose records are being shared there must be a careful review of the data contained therein and proper steps taken to prevent access where additional authorization is required. Concurrently, individuals both entering and accessing information need to understand how readily information could be misinterpreted in areas such as mental health, AODA, or physical health and must be trained to understand the importance of how data is entered in the system.

For example, eSACWIS contains mental health and AODA history concerning families receiving child welfare services. That information is covered by HIPPA and other federal confidentiality laws. A delinquency intake worker in another county may want access to that record because of delinquent act by one of the children in the family but not have a right to view the mental health or AODA information. Simply opening up eSACWIS to that intake worker could violate federal law.

Current technology offers ways to help ensure that there are various levels of information accessible by different types of users. In the development of new systems, agencies should consider accessibility even down to the data element level. Inter-agency agreements should specifically address who should have access to information or what process will be used to make those determinations.

Principle 8: The Perpetuation Principle (Privacy)

Agencies receiving information should establish clear procedures and practices related to incorporating dated or "second-hand" information into their records on an on-going basis. These procedures/practices must include proper documentation of the source of the information and some process to review the information before subsequent inclusion.

Discussion: Information contained in records can "take on a life of its own".

Agencies can maintain it or share it even though the reason it was gathered has been resolved long ago. In addition, information can become "third or fourth hand." This tendency requires procedures within an agency that ensure that the information is correct and/or update.

It may be appropriate that information be included in the receiving agency's records in some fashion, but the process of receipt and transmittal of that information should include:

- Proper documentation of the source of the information,
- The purpose for which it was gathered, and
- The time frame in which it was gathered and utilized.

In addition, if information is received from another entity, that information must be reviewed for appropriateness and applicability.

Principle 9: The Inclusion Principle (Benefit and Privacy)

Ultimately, the challenge of changing policy in the area of juvenile justice information-sharing will require a balancing of all of the above principles. To do so properly, policy makers must solicit input and information from a diverse constituency to ensure careful consideration of each change.

Discussion: It is important that policy-makers seek input from diverse constituents and stakeholder groups.

Full consideration of each principle cannot be accomplished without seeking conflicting opinions. Identifying stakeholders and/or those potentially affected by the information-sharing proposal should be done with the broadest scope possible. For instance, it is common to identify the "professionals" in the system as the "stakeholders" because any change affects their ability to perform their particular function. But, often parents, youth, victims, and others who may not be considered "stakeholders" in the traditional way will be affected by how information is shared and used.

Summary

The Commission recognizes that any/all policy changes in the area of information-sharing represent a balancing of the preceding principles and therefore suggests that policy-makers consider all of the principles noted above in developing policy and practice changes. The Governor's Juvenile Justice Commission endorses the idea that no single perspective or a single principle will be sufficient to make future recommendations to the Governor or others. Rather, we submit these principles, as a guide that embodies the ultimate principle that respect for differences is paramount.

Having adopted these principles and in hopes of other entities also adopting these principles, the Governor's Juvenile Justice Commission will commit to using these principles when reviewing policies related to information sharing.

For Information Contact:
Office of Justice Assistance
131 W. Wilson Street, Suite 610
Madison, WI 53702
(608)266-3323