

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
November 17, 2009  
(Draft) Meeting Summary

Present:  
Suzanne Goucher  
Linda Pistner  
Harry Pringle  
Chris Spruce, Acting Chair

Also in attendance:  
Ted Glessner

Staff:  
Peggy Reinsch  
Colleen McCarthy Reid

Chris Spruce chaired the subcommittee meeting in the absence of Subcommittee Chair Shenna Bellows. Mr. Spruce welcomed the participation of Ted Glessner, an Advisory Committee member who serves on another RTK AC subcommittee.

**Title 21-A Confidentiality Provision Relating to Central Voter Registration Database**

Matthew Dunlap, Secretary of State, Julie Flynn, Deputy Secretary of State and Representative Pamela Jabar Trinward, House Chair of the Legal and Veterans Affairs Committee updated the subcommittee on the status of Title 21-A, section 196 relating to information in the Central Voter Registration database (CVR). In 2008, the Advisory Committee recommended no change to the provision with the understanding that the provision would be discussed and reviewed further during the First Regular Session of the 124<sup>th</sup> Legislature by the Legal and Veterans Affairs Committee and the Judiciary Committee because the provision was set to be repealed in March 2009. During the legislative session, the sunset was extended to March 2011 (rather than repealed and the law continued) as the Judiciary Committee expressed concerns that the confidentiality provision was too broad.

Ms. Flynn and Rep. Trinward reported that a bill is being drafted which is intended to clearly identify which information in the CVR may be disclosed publicly and which information should remain confidential. As currently drafted, Title 21-A, section 196 provides that all information contained in the CVR database is confidential except for certain exceptions articulated in the law, including use by election officials in the performance of their duties; use by individuals to review their own records; limited use by political parties, candidate and issue campaigns conducting “get out the vote” efforts; and use of aggregate impersonal statistical data. Although the law as drafted takes a different approach than usually favored by the Advisory Committee (by not presuming that all records are public in the CVR unless designated as confidential), Ms. Flynn articulated the reasons why information in the CVR should be confidential and shared a graphic illustration of the 120 active tables in the CVR database and the approximately 2000 fields of data. Ms. Flynn also explained that the guiding principle being used in the redrafting is to identify which information was public before the CVR was implemented statewide to ensure public access to that information remains. The proposed legislation is still in the drafting process; a draft is not yet ready for distribution. Ms. Flynn stated that she believed a draft would be ready to share with the subcommittee soon.

The subcommittee agreed to table the issue and requested that Ms. Flynn be added to the agenda for the Advisory Committee meeting on December 1<sup>st</sup> so that the full Committee has the opportunity to consider the issue and review the draft proposed legislation (if available).

### **Appropriate standard statutory language for review panels, such as Homicide Review panel; Review of Title 19-A, section 4013, subsection 4**

The subcommittee welcomed Lisa Marchese, Assistant Attorney General, Criminal Division and Chair of the Domestic Abuse Homicide Review Panel and Margo Batsie, Panel Coordinator. Ms. Marchese explained that the review panel's focus is not to assign blame but to encourage systemic change. The review panel looks at several sources of otherwise confidential records, including police reports, forensic reports, DHHS records and information from domestic abuse shelters. Ms. Marchese noted that if review panel proceedings and records were made public, many individuals would not be willing to share information with the review panel and that some of the information is not made available for use by prosecutors involved in related criminal proceedings. In her opinion, the current law (Title 19-A, section 4013) which protects the confidentiality of the proceedings and records of the panel works very well. Ms. Marchese also noted that if someone was interested in the details of a particular homicide information from the Attorney General's Office files may be disclosed to the public pursuant to Title 16, section 614 once the criminal proceedings are concluded.

Linda Pistner asked about the timing of the activities of the review panel and the types of recommendations. Ms. Marchese explained that most reviews are conducted after the conclusion of the criminal case (post-sentencing or acquittal) unless the review panel is reviewing a murder-suicide. She also gave an example of a recommendation to the mental health field for increased training and awareness of domestic abuse and safety planning for couples counselors because of an awareness of information shared during couples counseling being used in domestic abuse cases. Ms. Pistner also asked about the interaction between confidentiality provisions under federal law applicable to mental health or substance abuse counselors and disclosure of certain information to the review panel. Ms. Marchese answered that the make up of the panel itself allows the panel to conduct its work and individual members of the panel share information among the panel at their own discretion.

Chris Spruce stated that he saw no rationale to recommend a change to current law, but reminded the subcommittee about their earlier discussion draft to amend the law to provide discretion to release certain confidential information held by the domestic abuse homicide review panel if materially relevant to a finding, conclusion or recommendation. Suzanne Goucher agreed with Mr. Spruce that no change to current law is needed.

Ms. Goucher moved to recommend no change to Title 19-A, section 4013, subsection 4, and Mr. Pringle seconded the motion. The subcommittee voted 4-0 to recommend no change.

### **Juror confidentiality statutes**

The subcommittee took up the juror confidentiality provisions and Ted Glessner, State Court Administrator and Right to Know Advisory Committee member joined in the discussion. Mr. Spruce reiterated his concern that juror information was previously available to the public for many years and, while he can understand the concerns jurors may have regarding personal safety and privacy, he wondered how the current law came to put in place and why. Ted Glessner pointed out that society has changed over time as have the expectations and concerns of jurors. In

his opinion, there were valid public policy reasons for the Legislature to provide confidentiality protection for juror information. Mr. Glessner reminded the subcommittee that there hasn't been any particular harm identified with the current law. Ms. Pistner stated that she was persuaded by the perspective offered by Justice Mead and the court system; it seems that the court is in the best position to determine if information related to jurors after trial should be released. Harry Pringle agreed with Ms. Pistner. While he understands the concerns of those who seek more disclosure, Mr. Pringle would endorse the recommendation of Justice Mead, a former trial judge, that it is not in the interests of the administration of justice to change the law. Mr. Glessner further remarked that the current law provides a balance in that it protects juror privacy during a court proceeding but allows disclosure after the court proceeding is complete for legitimate purposes.

Mr. Pringle moved that the juror provisions not be changed and Ms. Pistner seconded the motion. Mr. Pringle, Ms. Pistner and Mr. Spruce (initially) voted in favor of the motion. Ms. Goucher voted against the motion and proposed a minority report that the provisions be amended to change the presumption so that juror information following trial is made public unless the court determines that the information should not be released. After hearing Ms. Goucher explain her proposed amendment, Mr. Spruce indicated he would support that proposal.

The subcommittee voted 2-2 on the juror confidentiality provisions; 2 members voted no change and 2 members voted to amend. Staff will provide a draft amendment for review before the December 1<sup>st</sup> Advisory Committee meeting.

### **Appropriate standard statutory language for protected information provided in applications for government funding, technical assistance, etc; Review of Title 10, section 975-A**

The subcommittee reviewed 2 proposals for draft model language—one model addressing the treatment of information submitted by businesses and one addressing the treatment of information submitted by individuals. Based on input received at the last subcommittee meeting, staff developed the model language for individuals to provide broader confidentiality protection for records or information submitted by individuals applying for technical or financial assistance from governmental entities. The drafts are intended as a template to provide consistency in the statutory language and to encourage similar treatment for certain records across state and local government and are based on existing confidentiality provisions included in current law (which were outlined in a chart distributed to the subcommittee).

Chris Spruce noted that many of the provisions in existing law have been previously reviewed by the Advisory Committee and suggested that the subcommittee recommend the draft model language be used as guidance for the Judiciary Committee in reviewing proposed exceptions, rather than recommend that all of the provisions identified by staff be amended as needed to reflect the models. Linda Pistner reminded the subcommittee that the exception in Title 10, section 975-A is part of the subcommittee's current round of exceptions and that the subcommittee had not yet made a final recommendation to continue, amend or repeal that exception.

The subcommittee voted 3-0 to amend Title 10, section 975-A in accordance with the draft model related to information provided by businesses; the subcommittee also agreed to recommend the draft model language as guidance to the Judiciary Committee in reviewing future proposed exceptions or amendments to existing exceptions.

## **Review of the Criminal History Record Information Act**

Staff outlined the issues involved in redrafting the Criminal History Record Information Act, including the definitions used in the Act, the structure and the key provisions related to public disclosure and confidentiality. Because the draft proposal also raises complex issues related to law enforcement, staff recommended that the Criminal Law Advisory Commission (CLAC) be asked to formally review the draft proposal from that perspective and provide comments to the Advisory Committee. Once CLAC has completed its review, the Advisory Committee can properly focus on the issues of access and confidentiality. Staff advised the subcommittee that, if asked, CLAC would likely begin its review early in 2010 and report back to the Advisory Committee sometime in the fall.

The subcommittee agreed to recommend that further review of the Criminal History Record Information Act be tabled and that CLAC be asked to comment on the draft proposal to amend the Act.

The meeting adjourned at 2:20 p.m.

Respectfully submitted by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff