

## MEMORANDUM

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TO: Honorable Justices of the Wisconsin Supreme Court

FROM: David Callender, WCA Legislative Associate *DC*

DATE: September 19, 2012

SUBJECT: Supreme Court Rule Petition 12-05, Relating to Record Retention and Electronically or Optically Stored Records

The Wisconsin Counties Association thanks the Court for holding a public hearing regarding rule petition 12-05.

WCA wishes to express its concern regarding the proposed revision to Section 11, SCR 72.01(46), which would extend the required retention period for exhibits in criminal and juvenile delinquency cases.

Under the proposed rule, the retention period would increase from one year after the time for appeal has expired to "the length of time that the underlying case is retained pursuant to this rule, or, if shorter, until the sentence or juvenile adjudication is completed, if the clerk can confirm the completion."

This language raises a number of questions, such as:

- What items must be retained from a criminal trial: Firearms? Drugs? Cash? Forensic evidence, such as blood and tissue samples? Clothing? Enlarged photographs?
- Do these items require special treatment, i.e., archival preservation, refrigeration or climate-controlled storage? Should they be kept in a secure area accessible only to authorized personnel?
- Under whose authority will these exhibits be kept? The Clerk of Court? The Sheriff's Office? County facilities management?

WCA is concerned about the open-ended nature of the proposed rule and the potential added logistical and financial burden of the rule on counties. If the circuit courts are required to retain exhibits for the length of a criminal defendant's sentence, these items could be in county custody for years and possibly decades.

WCA asks the court to clarify this portion of the proposed rule. In its current form, it is difficult for counties to assess the potential cost of implementing the proposed rule, and its impact could vary widely depending on the volume of criminal cases in each county, the number of exhibits involved, and the available storage space.

WCA respectfully requests the Court to consider both the appellate rights of criminal defendants and the potential impact of the rule on counties during its deliberations on the proposed rule.

Please feel free to contact WCA for additional information.