

ASSEMBLY BILL 709 (LRB -2810)

An Act to renumber and amend 118.125 (1) (d); to amend 118.125 (2) (intro.), 118.125 (2) (j) 3. and 938.396 (1m) (ar); and to create 118.125 (1) (be), 118.125 (1) (bL), 118.125 (1) (bs), 118.125 (1) (d) 3., 118.125 (1) (e), 118.125 (2) (n), 118.125 (2) (p), 118.125 (7), 938.396 (1p) and 938.78 (2) (b) 1m. of the statutes; relating to: the confidentiality of pupil records and the exchange of information between a pupil's school, the juvenile justice system, and law enforcement agencies. (FE)

2003

- 01-13. A. Introduced by Representatives **Hundertmark, Kreibich, Suder, Olsen, Hahn, Jeskewitz, M. Lehman, Musser, Townsend, Ladwig, Ainsworth, Bies, Lothian, LeMahieu, Hines, Seratti, Van Roy, Owens, Krawczyk, Ott and Albers**; cosponsored by Senator **Roessler**.
- 12-19. A. Read first time and referred to committee on Corrections and the Courts 581

2004

- 01-06. A. Fiscal estimate received.
- 01-13. A. Fiscal estimate received.
- 01-14. A. Public hearing held.
- 01-27. A. Representative Albers withdrawn as a coauthor 644
- 01-28. A. Executive action taken.
- 01-29. A. Report passage recommended by committee on Corrections and the Courts, Ayes 8, Noes 1 653
- 01-29. A. Referred to committee on Rules 653
- 02-03. A. Assembly amendment 1 offered by Representative Albers (**LRB a2039**) 660
- 02-19. A. Placed on calendar 2-25-2004 by committee on Rules.
- 02-25. A. Read a second time 741
- 02-25. A. Assembly amendment 1 **adopted** 741
- 02-25. A. Ordered to a third reading 741
- 02-25. A. Rules suspended 741
- 02-25. A. Read a third time and **passed**, Ayes 96, Noes 0 741
- 02-25. A. Ordered immediately messaged 741
- 02-26. S. Received from Assembly 635
- 02-26. S. Read first time and referred to committee on Judiciary, Corrections and Privacy 636
- 03-05. S. Public hearing held.
- 03-05. S. Executive action taken.
- 03-05. S. Report concurrence recommended by committee on Judiciary, Corrections and Privacy, Ayes 5, Noes 0.
- 03-05. S. Available for scheduling.
- 03-10. S. Placed on calendar 3-11-2004 by committee on Senate Organization.
- 03-11. S. Placed on calendar 3-11-2004 by committee on Senate Organization.
- 03-11. S. Read a second time.
- 03-11. S. Ordered to a third reading.
- 03-11. S. Rules suspended.
- 03-11. S. Read a third time and **concurred in**.
- 03-16. S. Ordered immediately messaged.
- 03-16. A. Received from Senate concurred in 895

2003
ENROLLED BILL

03en AB-209

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

03 2810 / 4

Amendments to above (if none, write "NONE"): AA/

Corrections - show date (if none, write "NONE"): none

Topic relate

3/18/04 [Signature]
Date Enrolling Drafter

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December 19, 2003 – Introduced by Representatives HUNDERTMARK, KREIBICH, SUDER, OLSEN, HAHN, JESKEWITZ, M. LEHMAN, MUSSER, TOWNSEND, LADWIG, AINSWORTH, BIES, LOTHIAN, LEMAHIEU, HINES, SERATTI, VAN ROY, OWENS, KRAWCZYK, OTT and ALBERS, cosponsored by Senator ROESSLER. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to renumber and amend* 118.125 (1) (d); *to amend* 118.125 (2) (intro.),
2 118.125 (2) (j) 3. and 938.396 (1m) (ar); and *to create* 118.125 (1) (be), 118.125
3 (1) (bL), 118.125 (1) (bs), 118.125 (1) (d) 3., 118.125 (1) (e), 118.125 (2) (n),
4 118.125 (2) (p), 118.125 (7), 938.396 (1p) and 938.78 (2) (b) 1m. of the statutes;
5 **relating to:** the confidentiality of pupil records and the exchange of
6 information between a pupil's school, the juvenile justice system, and law
7 enforcement agencies.

Analysis by the Legislative Reference Bureau

Under current law, law enforcement officers' records of juveniles (persons who are less than 17 years of age) are confidential and their contents may not be disclosed, except under certain exceptions. One of those exceptions permits a law enforcement agency to provide to a school district administrator, an administrator of a private school, or a designee of a school district administrator or private school administrator any information in its records relating to an act for which a juvenile enrolled in the school district or private school was taken into custody based on a law enforcement officer's reasonable belief that the juvenile was committing or had committed a violation for which a juvenile may be placed in the Serious Juvenile Offender Program (generally, a violation that would be a Class A, B, or C felony if committed by an adult). That information may be disclosed only to teachers, other school

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officials who have legitimate educational interests, including safety interests, in the information, and employees of the school who provide treatment programs for pupils. That information may not be used as the sole basis for expelling or suspending a pupil or for taking any other disciplinary action, including action under the school's athletic code, against a pupil.

This bill permits a law enforcement agency to provide to a school district administrator, an administrator of a private school, or a designee of that school district administrator or private school administrator any information in its records relating to an act for which a juvenile enrolled in the school district or private school was taken into custody based on a law enforcement officer's reasonable belief that the juvenile was committing or had committed a violation of *any* state or federal criminal law. The bill also permits a law enforcement agency or a social welfare agency, which is defined under current law as a county department of human services or social services, a licensed child welfare agency, or the Department of Corrections, to enter into an interagency agreement with a school board, a private school, or another law enforcement agency or social welfare agency providing for the routine disclosure of information to the school board, private school, or other law enforcement agency or social welfare agency.

Under current law, with certain exceptions, all pupil records maintained by a public school are confidential. This bill allows a school board to disclose pupil records to a law enforcement agency, district attorney, city attorney, corporation counsel, social welfare agency, juvenile intake worker, court, private school, or another school board for the purpose of providing services to the pupil before adjudication if the disclosure is pursuant to an interagency agreement and the person to whom the records are disclosed certifies that the records will not be further disclosed. The bill also allows a school board to disclose pupil records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual. The bill defines "record" for purposes of the pupil records law as any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, thus clarifying that oral communications and information obtained by observation are not covered by the pupil records law.

Finally, the bill provides that records created and maintained by a law enforcement unit of a school district (an office or other component of a school district that is authorized to maintain the physical security or safety of a school or to enforce any law or ordinance, or refer to the appropriate authorities a matter for enforcement of any law or ordinance, against any person) are not treated as pupil records for confidentiality purposes. Instead, the bill directs the school board to treat such records as law enforcement officers' records of juveniles. Such records are more easily accessible by law enforcement agencies.

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For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 118.125 (1) (be) of the statutes is created to read:

2 118.125 (1) (be) “Law enforcement agency” has the meaning given in s. 165.83
3 (1) (b).

4 **SECTION 2.** 118.125 (1) (bL) of the statutes is created to read:

5 118.125 (1) (bL) “Law enforcement unit” means any individual, office,
6 department, division, or other component of a school district that is authorized or
7 designated by the school board to do any of the following:

8 1. Enforce any law or ordinance, or refer to the appropriate authorities a matter
9 for enforcement of any law or ordinance, against any person other than the school
10 district.

11 2. Maintain the physical security and safety of a public school.

12 **SECTION 3.** 118.125 (1) (bs) of the statutes is created to read:

13 118.125 (1) (bs) “Law enforcement unit records” means records maintained by
14 a law enforcement unit that were created by that law enforcement unit for the
15 purpose of law enforcement.

16 **SECTION 4.** 118.125 (1) (d) of the statutes is renumbered 118.125 (1) (d) (intro.)
17 and amended to read:

18 118.125 (1) (d) (intro.) “Pupil records” means all records relating to individual
19 pupils maintained by a school but does not include notes any of the following:

20 1. Notes or records maintained for personal use by a teacher or other person
21 who is required by the state superintendent under s. 115.28 (7) to hold a certificate,

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1 license, or permit if such records and notes are not available to others, ~~nor does it~~
2 ~~include records.~~

3 2. Records necessary for, and available only to persons involved in, the
4 psychological treatment of a pupil.

5 **SECTION 5.** 118.125 (1) (d) 3. of the statutes is created to read:

6 118.125 (1) (d) 3. Law enforcement unit records.

7 **SECTION 6.** 118.125 (1) (e) of the statutes is created to read:

8 118.125 (1) (e) “Record” means any material on which written, drawn, printed,
9 spoken, visual, or electromagnetic information is recorded or preserved, regardless
10 of physical form or characteristics.

11 **SECTION 7.** 118.125 (2) (intro.) of the statutes is amended to read:

12 118.125 (2) CONFIDENTIALITY. (intro.) All pupil records maintained by a public
13 school shall be confidential, except as provided in pars. (a) to ~~(m)~~ (p) and sub. (2m).
14 The school board shall adopt regulations to maintain the confidentiality of such
15 records.

16 **SECTION 8.** 118.125 (2) (j) 3. of the statutes is amended to read:

17 118.125 (2) (j) 3. If a school has notified the parent, legal guardian or guardian
18 ad litem of the information that it has designated as directory data with respect to
19 any pupil, has informed the parent, legal guardian or guardian ad litem of the pupil
20 that he or she has 14 days to inform the school that such information may not be
21 released without the prior consent of the parent, legal guardian or guardian ad litem,
22 has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil
23 to inform the school that such information may not be released without the prior
24 consent of the parent, legal guardian or guardian ad litem and the parent, legal
25 guardian or guardian ad litem has not so informed the school, the school district clerk

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1 or his or her designee, upon request, shall provide any representative of a law
2 enforcement agency, ~~as defined in s. 165.83 (1) (b)~~, district attorney, city attorney or
3 corporation counsel, county department under s. 46.215, 46.22 or 46.23 or a court of
4 record or municipal court with such information relating to any such pupil enrolled
5 in the school district for the purpose of enforcing that pupil's school attendance,
6 investigating alleged criminal or delinquent activity by the pupil or responding to a
7 health or safety emergency.

8 **SECTION 9.** 118.125 (2) (n) of the statutes is created to read:

9 118.125 (2) (n) For the purpose of providing services to a pupil before
10 adjudication, a school board may disclose pupil records to a law enforcement agency,
11 district attorney, city attorney, corporation counsel, agency, as defined in s. 938.78
12 (1), intake worker under s. 48.067 or 938.067, court of record, municipal court,
13 private school, or another school board if disclosure is pursuant to an interagency
14 agreement and the person to whom the records are disclosed certifies in writing that
15 the records will not be disclosed to any other person except as permitted under this
16 subsection.

17 **SECTION 10.** 118.125 (2) (p) of the statutes is created to read:

18 118.125 (2) (p) A school board may disclose pupil records to appropriate parties
19 in connection with an emergency if knowledge of the information is necessary to
20 protect the health or safety of any individual.

21 **SECTION 11.** 118.125 (7) of the statutes is created to read:

22 118.125 (7) **DISCLOSURE OF LAW ENFORCEMENT UNIT RECORDS.** A school board shall
23 treat law enforcement unit records of juveniles in the same manner as a law
24 enforcement agency is required to treat law enforcement officers' records of juveniles
25 under s. 938.396 (1) to (1x) and (5).

ASSEMBLY BILL 709**SECTION 12**

1 **SECTION 12.** 938.396 (1m) (ar) of the statutes is amended to read:

2 938.396 (1m) (ar) A law enforcement agency, on its own initiative or on the
3 request of the school district administrator of a public school district, the
4 administrator of a private school, or the designee of the school district administrator
5 or the private school administrator, may, subject to official agency policy, provide to
6 the school district administrator, private school administrator, or designee any
7 information in its records relating to an act for which a juvenile enrolled in the school
8 district or private school was taken into custody under s. 938.19 based on a law
9 enforcement officer's belief that the juvenile was committing or had committed an
10 ~~act that is a violation specified in s. 938.34 (4h) (a)~~ a violation of any state or federal
11 criminal law. The information shall be used by the school district or private school
12 as provided in s. 118.127 (2).

13 **SECTION 13.** 938.396 (1p) of the statutes is created to read:

14 938.396 (1p) A law enforcement agency may enter into an interagency
15 agreement with a school board, a private school, a social welfare agency, or another
16 law enforcement agency providing for the routine disclosure of information under
17 subs. (1) and (1m) to the school board, private school, social welfare agency, or other
18 law enforcement agency.

19 **SECTION 14.** 938.78 (2) (b) 1m. of the statutes is created to read:

20 938.78 (2) (b) 1m. An agency may enter into an interagency agreement with
21 a school board, a private school, a law enforcement agency, or another social welfare
22 agency providing for the routine disclosure of information under subd. 1. to the school
23 board, private school, law enforcement agency, or other social welfare agency.

24 **SECTION 15. Initial applicability.**

**ASSEMBLY AMENDMENT 1,
TO 2003 ASSEMBLY BILL 709**

February 3, 2004 - Offered by Representative ALBERS.

1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 18: after that line insert:

3 **SECTION 13d.** 938.396 (5) (b) of the statutes is amended to read:

4 938.396 (5) (b) The If the petitioner is seeking access to a record under sub. (1),
5 (1b), (1d), (1g), (1m) (c) or (d), (1r), or (1t), the court shall notify the juvenile, the
6 juvenile's counsel, the juvenile's parents, and appropriate law enforcement agencies
7 in writing of the petition. If any person notified objects to the disclosure, the court
8 may hold a hearing to take evidence relating to the petitioner's need for the
9 disclosure.

10 **SECTION 13e.** 938.396 (5) (bm) of the statutes is created to read:

11 938.396 (5) (bm) If the petitioner is seeking access to a record under sub. (1m)
12 (a), (am), (ar), or (b), the court shall, without notice or hearing, make the inspection
13 and determinations specified in par. (c) and, if the court determines that disclosure

6-18

6-18 cont

1 is warranted, shall order disclosure under par. (d). The petitioner shall provide a
2 copy of the disclosure order to the law enforcement agency that denied access to the
3 record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those
4 persons may obtain a hearing on the court's determinations by filing a motion to set
5 aside the disclosure order within 10 days after receipt of the order. If no motion is
6 filed within those 10 days or if, after hearing, the court determines that no good cause
7 has been shown for setting aside the order, the law enforcement agency shall disclose
8 the juvenile's record as ordered.

9 **SECTION 13g.** 938.396 (5) (c) 3. of the statutes is created to read:

10 938.396 (5) (c) 3. If the petitioner is a person who was denied access to a record
11 under sub. (1m) (a), (am), (ar), or (b), the petitioner's legitimate educational
12 interests, including safety interests, in the information against society's interest in
13 protecting its confidentiality."

14 ✓ **2.** Page 7, line 3: after that line insert:

15 **(2f) DISCLOSURE OF LAW ENFORCEMENT RECORDS.** The treatment of section
16 938.396 (5) (b), (bm), and (c) 3. of the statutes first applies to a law enforcement record
17 to which access is denied on the effective date of this subsection."

18 (END)

7-3