

2003 DRAFTING REQUEST

Bill

Received: **06/05/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Jason Rostan**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters: **pgrant
rryan**

Subject: **Children - juvenile justice
Education - miscellaneous
Criminal Law - law enforcement**

Extra Copies: **MJL**

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sharing of information between juvenile justice system and schools

Instructions:

See Attached--1. Permit schools to share information with juvenile justice system to fullest extent allowed by FERPA, 2. Require law enforcement to notify a pupil's school when pupil is arrested.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 06/26/2003	csicilia 08/26/2003		_____			Local
	mdsida 06/26/2003	csicilia 09/03/2003		_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	rryan 07/02/2003			_____			
	pgrant 07/03/2003			_____			
/1	pgrant 09/22/2003	csicilia 09/30/2003	jfrantze 09/04/2003	_____	sbasford 09/04/2003		Local
/2			jfrantze 10/01/2003	_____	lnorthro 10/01/2003		Local
/3	gmalaise 10/14/2003	csicilia 10/22/2003	pgreensl 10/23/2003	_____	sbasford 10/23/2003		Local
/4	gmalaise 10/23/2003	csicilia 10/29/2003	chaugen 10/29/2003	_____	sbasford 10/29/2003	mbarman 11/26/2003	

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **06/05/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Jason Rostan**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters: **pgrant
rryan**

Subject: **Children - juvenile justice
Education - miscellaneous
Criminal Law - law enforcement**

Extra Copies: **MJL**

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sharing of information between juvenile justice system and schools

Instructions:

See Attached--1. Permit schools to share information with juvenile justice system to fullest extent allowed by FERPA, 2. Require law enforcement to notify a pupil's school when pupil is arrested.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 06/26/2003	csicilia 08/26/2003		_____			Local
	mdsida 06/26/2003	csicilia 09/03/2003		_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	rryan 07/02/2003			_____			
	pgrant 07/03/2003			_____			
/1	pgrant 09/22/2003	csicilia 09/30/2003	jfrantze 09/04/2003	_____	sbasford 09/04/2003		Local
/2			jfrantze 10/01/2003	_____	lnorthro 10/01/2003		Local
/3	gmalaise 10/14/2003	csicilia 10/22/2003	pgreensl 10/23/2003	_____	sbasford 10/23/2003		Local
/4	gmalaise 10/23/2003	csicilia 10/29/2003	chaugen 10/29/2003	_____	sbasford 10/29/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/05/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Jean Hundertmark (608) 266-3794

By/Representing: Jason Rostan

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters: pgrant
rryan

Subject: Children - juvenile justice
Education - miscellaneous
Criminal Law - law enforcement

Extra Copies: MJL

Submit via email: YES

Requester's email: Rep.Hundertmark@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

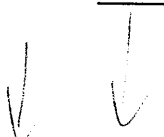
Sharing of information between juvenile justice system and schools

Instructions:

See Attached--1. Permit schools to share information with juvenile justice system to fullest extent allowed by FERPA, 2. Require law enforcement to notify a pupil's school when pupil is arrested.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 06/26/2003	csicilia 08/26/2003		_____			Local
	mdsida 06/26/2003	csicilia 09/03/2003		_____			



<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	rryan 07/02/2003			_____			
	pgrant 07/03/2003			_____			
/1	pgrant 09/22/2003	csicilia 09/30/2003	jfrantze 09/04/2003	_____	sbasford 09/04/2003		Local
/2			jfrantze 10/01/2003	_____	lnorthro 10/01/2003		Local
/3	gmalaise 10/14/2003	csicilia 10/22/2003	pgreensl 10/23/2003	_____	sbasford 10/23/2003		

FE Sent For:

1/4 gjs 10/29/03

CH loza CH loza <END>

2003 DRAFTING REQUEST

Bill

Received: 06/05/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Jean Hundertmark (608) 266-3794

By/Representing: Jason Rostan

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters: pgrant
rryan

Subject: Children - juvenile justice
Education - miscellaneous
Criminal Law - law enforcement

Extra Copies: MJL

Submit via email: YES

Requester's email: Rep.Hundertmark@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sharing of information between juvenile justice system and schools

Instructions:

See Attached--1. Permit schools to share information with juvenile justice system to fullest extent allowed by FERPA, 2. Require law enforcement to notify a pupil's school when pupil is arrested.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	gmalaise 06/26/2003 mnsida 06/26/2003	csicilia 08/26/2003 csicilia 09/03/2003	10/23 p r	10/23 self			Local

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

	rryan			_____			
	07/02/2003			_____			
	pgrant			_____			
	07/03/2003			_____			

/1	pgrant	csicilia	jfrantze	_____	sbasford		Local
	09/22/2003	09/30/2003	09/04/2003	_____	09/04/2003		

/2			jfrantze	_____	lnorthro		
			10/01/2003	_____	10/01/2003		

FE Sent For:

13 - js 10/22/03

<END>

2003 DRAFTING REQUEST

Bill

Received: 06/05/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Jean Hundertmark (608) 266-3794

By/Representing: Jason Rostan

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters: pgrant
rryan

Subject: Children - juvenile justice
Education - miscellaneous
Criminal Law - law enforcement

Extra Copies: MJL

Submit via email: YES

Requester's email: Rep.Hundertmark@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sharing of information between juvenile justice system and schools

Instructions:

See Attached--1. Permit schools to share information with juvenile justice system to fullest extent allowed by FERPA, 2. Require law enforcement to notify a pupil's school when pupil is arrested.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	gmalaise 06/26/2003	csicilia 08/26/2003	Jb 10/11	Jb / Rs 10/11			Local
	mdsida 06/26/2003	csicilia 09/03/2003					

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

rryan
07/02/2003 _____
pgrant
07/03/2003 _____

/1
jfrantze
09/04/2003 _____
sbasford
09/04/2003 _____

FE Sent For:

1/2 jfs 9/30
03

<END>

FE Sent For:

<END>

PROPOSED LEGISLATION

1. AMEND

PG Wis. Stat. § 118.125. Pupil Records.

= Conform s. 118.125 to permit schools to share info w/ law enforcement, prosecutors, courts to fullest extent permitted under FERPA.

Comment :

(The education code should be reexamined. State law on privacy of education records was prompted primarily to comply with the requirements for federal funding. The 1974 law – the Federal Educational Rights and Privacy Act, , 20 U.S.C. § 1232g (also known as the Buckley Amendment after one of its sponsors), has been amended several times over the years. Wisconsin law is now more restrictive than FERPA in many respects. The Wisconsin Attorney Generals report on safe schools notes in one respect on page 19; “Wisconsin law is more restrictive than federal law.”

The scope of the federal law generally allows educators to:

- Participate under an interagency agreement with other agencies in their juvenile justice system and **receive** information from these agencies on juveniles with whom they share a common interest;
- * • Share information with other agencies verbally that reflects personal knowledge or knowledge obtained from others, **PROVIDING**, the information does not come from the education record.
See next page
- Share information with other agencies in their juvenile justice system after obtaining prior consent by the parent or guardian;
- Share information without obtaining prior consent under at least the following circumstances:
 1. When the disclosure is made in compliance with court orders and lawfully issued subpoenas;
 2. if the educational agency is initiating legal action against the student or the parent (and the educator has made reasonable efforts to give prior notice);

3. when providing information to other schools that have a legitimate interest in the behavior of the student;
4. when authorized by state law (providing the agency to whom the records are disclosed certifies in writing that the information will not be disclosed to any other party, except as provided under state law without prior written consent of the parent of the student);
5. when the records disclosed are law enforcement records kept by a law enforcement records unit of the educational agency or institution for the purposes of law enforcement;
6. in connection with an emergency if the disclosure is necessary to protect the health or safety of the student or other individual.

The reassessment of Wis Stat section 118.125 should include the matter of whether or not the rigidity of its current provisions serves a modern purpose independent of FERPA. Where feasible the provisions of state law should be brought into conformity with federal law. The following proposal suggests one approach in this regard.

2. PROPOSED AMENDMENT

Section 118.125 of Wisconsin Statutes is amended to read:

[NOTE: proposed changes in brackets and BOLD, underlined print]

[ADD: It does not apply to information known to an educator that is obtained by observation or oral communication with others independent of and not previously made apart of any record maintained by the school to which this section applies.]

Add paragraph to 118.125 to allow for interagency information sharing by agreement or Memorandum of Understanding:

[(6) INTERAGENCY DISSEMINATION

(c) Notwithstanding any other provision of law, any school district, including any county office of education or superintendent of schools, may

permit sharing of info
not reduced to record

no

participate in an interagency data information system that permits access to a computerized data base system within and between governmental agencies or districts as to information or records, as long as each of the following requirements are met:

(1) Each agency and school district shall develop security procedures or devices by which unauthorized personnel cannot access data contained in the system.

(2) Each agency and school district shall develop procedures or devices to secure privileged or confidential data from unauthorized disclosure.

(3) Each school district shall comply with the access log requirements of this section.

(4) The right of access granted shall not include the right to add, delete, or alter data without the written permission of the agency holding the data.

(5) No agency or school district may make public or otherwise release information on an individual contained in the data base where the information is protected from disclosure or release as to the requesting agency by state or federal law or regulation.]

* PROPOSED AMENDMENT

Comment:

(This legislation will bring Wisconsin into the growing number of states that require that educators receive information on student arrests in a timely manner. The notice will assist educators in making risk factor assessments and the adjustments, if any, that may be needed.)

[ADD

(2n)

If any person who is at least seven years of age but less than twenty-one years of age and an enrolled student is arrested for a violation of criminal law, ~~misdemeanor or a felony~~, the police department or Division of State Police that made such arrest shall, not later than the end of the weekday following such arrest, orally notify the superintendent of schools of the school district in which such person resides of the identity of such person and the offense or offenses for which he was arrested and shall, within seventy-two hours of such arrest, provide written notification of such arrest, containing a brief description of the incident, to such superintendent. The superintendent shall maintain such written report in a secure location and the information in such report shall be maintained as confidential in accordance with section 118.125. The superintendent may disclose such information only to the principal of the school in which such person is a student or to the principal or supervisory agent of any other school in which the superintendent knows such person is a student. The principal or supervisory agent may disclose such information only to special services staff or a consultant, such as a psychiatrist, psychologist or social worker, for the purposes of assessing the risk of danger posed by such person to himself, other students, school employees or school property in accordance with section 118.128. and effectuating an appropriate modification of such person's educational plan or placement, and for disciplinary purposes.]

Require law enforcement to notify school when student pupil is arrested

NS

3. ADD:

Serious Habitual Offender Program

Comment:

(This legislation will codify existing efforts in the state to coordinate interagency programs to serve known delinquent youth – currently a haphazard enterprise from county-to-county. It also will set a standard for information sharing that will promote greater comfort with existing policies of each participating agency.)

PROPOSED

SERIOUS HABITUAL OFFENDER COMPREHENSIVE ACTION PROGRAM (SHOCAP) ACT

SECTION § 1 Title

This chapter is known as the "Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act."

SECTION § 2. Creation -- Purpose -- Administration -- Access

(1) There is created the Serious Habitual Offender Comprehensive Action Program (SHOCAP) to establish a SHOCAP Database to identify and track youthful offenders in order to assist agencies in providing collaborative and comprehensive services to them.

(2) The database shall be administered by the Administrative Office of the Courts with information contributed by the following agencies:

(a) the State Office of Education, including all school districts;

(b) the Department of Health;

(c) the Department of Human Services, including all county mental health agencies;

(d) the Department of Public Safety;

(e) all county and municipal law enforcement agencies; and

(f) all county and district attorney offices.

(3) The database shall be maintained in accordance with guidelines established by the Administrative Office of the Courts so that the agencies listed in Subsection (2) can efficiently access the database.

(4) Information provided by schools in compliance with the provisions of this chapter is authorized under the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.

(5) Any person who knowingly releases or discloses information from the database for a purpose other than authorized by this chapter or to a person who is not entitled to it is guilty of a class B misdemeanor.

(6) Neither the state nor the courts are liable to any person for gathering, managing, or using the information in the database as provided in this chapter.

SECTION § 3. Establishment of local oversight committees

(1) Counties or municipalities implementing SHOCAP shall form a local oversight committee composed of the following persons, or their designees:

(a) the district juvenile court administrator;

(b) the superintendent of the local school district;

(c) the local county attorney;

- (d) a member of the local county or municipal legislative body;**
- (e) the local county sheriff;**
- (f) a local chief of police;**
- (g) the local chief of probation for the Juvenile Court;**
- (h) the regional director of the Division of Youth Corrections;**
- (i) the regional director of the Division of Child and Family Services;**
- (j) a representative of a local public mental health provider; and**
- (k) any additional members considered appropriate by the local oversight committee.**

(3) The local oversight committee shall develop, implement, and periodically review the following:

- (a) standardized criteria for determining who is a serious habitual offender (SHO);**
- (b) what information is needed on each offender for inclusion in the program;**
- (c) who will have access to the database;**
- (d) who will maintain the database and manage the information in the program;**
- (e) what the information in the database is to be used for; and**
- (f) penalties for improper use of the information in the database.**

(4) The local oversight committee shall develop a written interagency

information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:

(a) all records pertaining to a SHO be kept confidential;

(b) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and

(c) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.

(5) Notwithstanding any other statutory provision, staff members of signatory agencies who provide direct services or supervision to SHOCAP youth may distribute photographs of SHOCAP youth to other staff members of signatory agencies who provide direct services or supervision to SHOCAP youth.

(6) The local oversight committee shall develop a program which shall be capable of maintaining the information determined to be necessary under Subsection (3).

(7) As used in this section, "a serious habitual juvenile offender" means a juvenile who has been adjudicated delinquent and who meets one or more of the following criteria:

1. Is arrested for a capital, life, or first degree felony offense or sexual battery.

2. Has five or more arrests, at least three of which are for felony offenses. Three of such arrests must have occurred within the preceding 12-month period.

3. Has 10 or more arrests, at least 2 of which are for felony offenses. Three of such arrests must have occurred within the preceding 12-month period.

4. Has four or more arrests, at least one of which is for a felony offense and occurred within the preceding 12-month period.

5. Has 10 or more arrests, at least 8 of which are for any of the following offenses:

- a. Petit theft;
- b. Misdemeanor assault;
- c. Possession of a controlled substance;
- d. Weapon or firearm violation; or
- e. Substance abuse.

Four of such arrests must have occurred within the preceding 12-month period.

SECTION § 4 Policies for programs

Notwithstanding any other statutory provision, each jurisdiction shall adopt and pursue the following policies in addition to others deemed necessary to compliment this section:

(a) Each participating law enforcement agency shall do all of the following:

- (1) Gather data on identified serious habitual offenders.
- (2) Compile data into usable format for law enforcement, prosecutors, probation officer, schools, and courts pursuant to interagency agreement.

(3) Regularly update data and disseminate data to juvenile justice system agencies, as needed.

(4) Establish local policies in cooperation with the prosecutor, the probation officer, schools, and the juvenile court regarding data collection, arrest, and detention of serious habitual offenders.

(5) Provide support and assistance to other agencies engaged in the program.

(b) Each participating district attorney's office shall do all of the following:

(1) File petitions based on the most serious provable offenses of each arrest of a serious habitual offender.

(2) Use all reasonable prosecutorial efforts to resist the release, where appropriate, of the serious habitual offender at all stages of the prosecution.

(3) Seek an admission of guilt on all offenses charged in the petition against the offender. The only cases in which the prosecutor may request the court to reduce or dismiss the charges shall be cases in which the prosecutor decides there is insufficient evidence to prove the people's case, the testimony of a material witness cannot be obtained or a reduction or dismissal will not result in a substantial change in sentence. In those cases, the prosecutor shall file a written declaration with the court stating the specific factual and legal basis for such a reduction or dismissal and the court shall make specific findings on the record of its ruling and the reasons therefor.

(4) Vertically prosecute all cases involving serious habitual offenders, whereby the prosecutor who makes the initial filing decision or appearance on such a case shall perform all subsequent court appearances on that case through its conclusion, including the disposition phase.

(5) Make all reasonable prosecutorial efforts to persuade the court to impose the most appropriate sentence upon such an offender at the time

of disposition. As used in this paragraph, "most appropriate sentence" means any disposition available to the juvenile court.

(6) Make all reasonable prosecutorial efforts to reduce the time between arrest and disposition of the charge.

(7) Act as liaison with the court and other criminal justice agencies to establish local policies regarding the program and to ensure interagency cooperation in the planning and implementation of the program.

(8) Provide support and assistance to other agencies engaged in the program.

(c) Each participating probation department shall do all of the following:

(1) Cooperate in gathering data for use by all participating agencies pursuant to interagency agreement.

(2) Detain minors in custody who meet the detention criteria set forth in Section 628.

(3) Consider the data relating to serious habitual offenders when making all decisions regarding the identified individual and include relevant data in written reports to the court.

(4) Use all reasonable efforts to file violations of probation pursuant to Section 777 in a timely manner.

(5) Establish local policies in cooperation with law enforcement, the district attorney, schools, and the juvenile court regarding the program and provide support and assistance to other agencies engaged in the program.

(d) Each participating school district shall do all of the following:

(1) Cooperate in gathering data for use by all participating agencies pursuant to interagency agreement. School district access to records and data shall be limited to that information that is otherwise authorized by law.

(2) Report all crimes that are committed on campus by serious habitual offenders to law enforcement.

(3) Report all violations of probation committed on campus by serious habitual offenders to the probation officer or his or her designee.

(4) Provide educational supervision and services appropriate to serious habitual offenders attending schools.

(5) Establish local policies in cooperation with law enforcement, the district attorney, probation and the juvenile court regarding the program and provide support and assistance to other agencies engaged in the program.

SECTION § 5. Inspection of records by agency charged with compilation of data

The judge of the juvenile court shall authorize the inspection of juvenile court records, probation and protective services records, district attorney records, school records, and law enforcement records by the participating law enforcement agency charged with the compilation of the data relating to serious habitual offenders into the format used by all participating agencies.

SECTION § 6. Interagency agreements

Within three months of implementation of the program, all participating agencies in a county shall execute a written interagency agreement outlining their role in the program, including the duties they will perform, the duties other agencies will perform for and with them, and the categories of information to be collected and the plan for its distribution and use. All participating agencies will meet no less than once each month to plan, implement, and refine the operation of the program and to exchange information about individuals subject to the program or other related topics.]

-----Original Message-----

From: Grant, Peter
Sent: Tuesday, May 01, 2001 2:36 PM
To: Phillips, Matt
Cc: Malaise, Gordon
Subject: Pupil records

Matt -

These are the relevant sections of the Code of Federal Regulations (34 CFR 99.31 and 34 CFR 99.38). The pertinent language is italicized.

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(5)(i) *The disclosure is to State and local officials or authorities to whom this information is specifically--*

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) *Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Sec. 99.38.*

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

Sec. 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?

(a) *If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Sec. 99.31(a)(5)(i)(B).*

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

There is one other possibility that you might be interested in. 34 CFR 99.8 provides that records of a law enforcement unit of an educational institution are not subject to FERPA; i.e., they are not considered education records and the restrictions that apply to the disclosure of education records do not apply to them. Under state law, the disclosure of law enforcement officers' records of juveniles is regulated, but, in general, not as strictly as pupil records. (See s. 938.396.) Below is the federal regulation on law enforcement unit records:

Sec. 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of Sec. 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

If you're thinking of a possible bill, I suggest these two approaches:

1. Provide that a school board may disclose pupil records to a DA, law enforcement agency, social services agency, etc., for the purpose of providing services to the pupil prior to adjudication.
2. Provide that if a school district has a law enforcement unit, the unit's records must be treated as law enforcement officers' records of juveniles are treated under s. 938.396.

If you have questions or need more information, please let me know. I have asked our attorney on our staff, to give you a call to discuss law enforcement records of juveniles.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-28107
GMM/PG/MD:.....
RR
js

THUR
9/4

DN

new SA ✓
old SA ✓
Stat comp ✓
X-ref ✓
new CR ✓

generate

the confidentiality of
pupil records and
and law enforcement
agencies

(persons who are
less than 17
years
of age)

1 AN ACT ... relating to: the exchange of information between a pupil's school and
2 the juvenile justice system.

Analysis by the Legislative Reference Bureau

Under current law, law enforcement officers' records of juveniles 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 ~~the~~ 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 only be disclosed to teachers, other school 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.

STET:
leave as
typed

INS ANAL 1

This bill requires a law enforcement agency that takes into custody a pupil who is enrolled in a school district or a private school based on a law enforcement officer's reasonable belief that the pupil is committing or has committed an act that is a violation of any state or federal criminal law, to notify the school district administrator of the school district in which the pupil is enrolled, the administrator of the private school in which the pupil is enrolled, or a designee of that school district administrator or private school administrator of the identity of the pupil, the

INS ANAL 2

violation for which the pupil was taken into custody, and a description of the incident from which the violation arose. As under current law, any information provided to a school district or private school under the bill may only be disclosed to teachers, other school officials who have legitimate educational interests, including safety interests, in the information, and employees of the school who provide treatment programs for pupils, and 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.

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

INS.
ANAL
3

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

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

938.396 (1m) (ar) -A- If a juvenile who is enrolled in a school district or a private school is taken into custody under s. 938.19 based on a law enforcement officer's reasonable belief that the juvenile is committing or has committed an act that is a violation of a state or federal criminal law, the law enforcement agency, on its own initiative or on the request of that took the juvenile into custody shall, within 24 hours after the end of the day on which the juvenile was taken into custody, not including Saturdays, Sundays, and legal holidays, orally notify the school district administrator of a the public school district in which the juvenile is enrolled, the administrator of a the private school in which the juvenile is enrolled, or the designee of the school district administrator or the private school administrator, may, subject to official agency policy, provide to of the identity of the juvenile and the violation for which the juvenile was taken into custody and shall, within 72 hours after the juvenile was taken into custody, not including Saturdays, Sundays, and legal holidays, provide the school district administrator, private school administrator, or designee 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 under s. 938.19 based

INS
2-1

or arrested

public

For

juvenile
was taken
into custody

✓

1 ~~on a law enforcement officer's belief that the juvenile was committing or had~~
2 ~~committed an act that is a violation specified in s. 938.34 (4h) (a). The information~~
3 ~~with a written description of the incident from which the violation arose. Any~~
4 ~~information provided to a school district or private school under this paragraph shall~~
5 be used by the school district or private school as provided in s. 118.127 (2).

INS
3-5

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95.

6 **SECTION 2. Initial applicability.**

7 (1) NOTIFICATION TO SCHOOL WHEN PUPIL IS TAKEN INTO CUSTODY FOR CRIMINAL
8 VIOLATION. The treatment of section 938.396 (1m) (ar) of the statutes first applies to
9 a juvenile who is taken into custody on the effective date of this subsection.

INS
3-9

10

(END)

the taking into
custody of

✓

Enset 1-1 to Enset 2-1

①

Section #. 118.125 (1) (a) of the statutes is amended to read:

↑ or 968.073 ✓

118.125 (1) (a) "Behavioral records" means those pupil records which include psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an individual pupil's behavior, tests relating specifically to achievement or measurement of ability, the pupil's physical health records other than his or her immunization records or any lead screening records required under s. 254.162, law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) or (1m) and any other pupil records that are not progress records.

↑

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149.

INS Alpha

↘

Enset 1-1 to Enset 2-1

2

Section #. 118.125 (2) (d) of the statutes is amended to read:

or 968.073

118.125 (2) (d) Pupil records shall be made available to persons employed by the school district which the pupil attends who are required by the department under s. 115.28 (7) to hold a license and other school district officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. Law enforcement officers' records obtained under s. 938.396 (1m) shall be made available as provided in s. 118.127 (2). A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton or intentional misconduct in failing to disclose the information.

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149.



Insert 1-1 to Insert 2-1

3

Section #. 118.125 (2) (e) of the statutes is amended to read:

or 968.073

118.125 (2) (e) Upon the written permission of an adult pupil, or the parent or guardian of a minor pupil, the school shall make available to the person named in the permission the pupil's progress records or such portions of the pupil's behavioral records as determined by the person authorizing the release. Law enforcement officers' records obtained under s. 48.396 (1) ~~or~~ 938.396 (1) or (1m) may not be made available under this paragraph unless specifically identified by the adult pupil or by the parent or guardian of a minor pupil in the written permission.

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149.

INS
Beta



Enst 1-1 to Enst 2-1 (4)

Section #. 118.125 (3) of the statutes is amended to read:

118.125 (3) MAINTENANCE OF RECORDS. Each school board shall adopt rules in writing specifying the content of pupil records and the time during which pupil records shall be maintained. No behavioral records may be maintained for more than one year after the pupil ceases to be enrolled in the school, unless the pupil specifies in writing that his or her behavioral records may be maintained for a longer period. A pupil's progress records shall be maintained for at least 5 years after the pupil ceases to be enrolled in the school. A school board may maintain the records on microfilm, optical disk or in electronic format if authorized under s. 19.21 (4) (c), or in such other form as the school board deems appropriate. A school board shall maintain law enforcement officers' records obtained under s. 48.396 (1) ~~or~~ 938.396 (1) or (1m) separately from a pupil's other pupil records. Rules adopted under this subsection shall be published by the school board as a class 1 notice under ch. 985.

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149

↑ or 968.073

Insert 1-1 to Insert 2-1

5

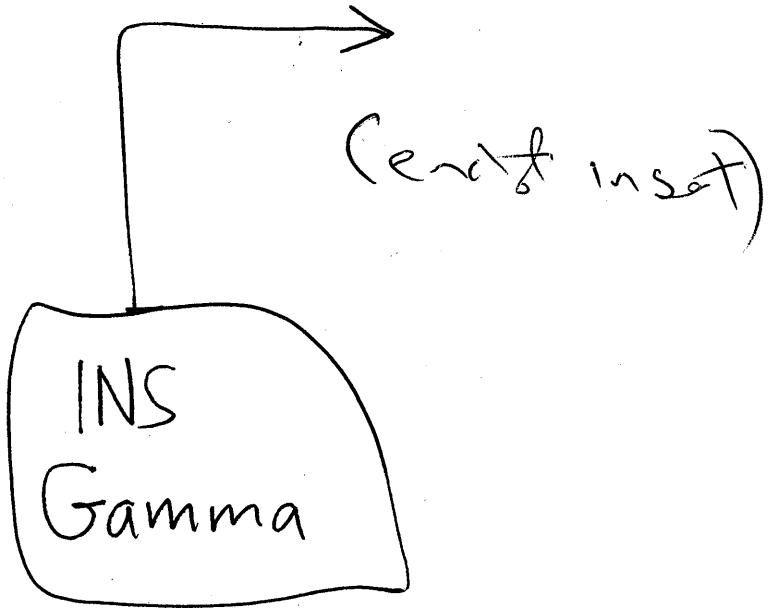
Section #. 118.125 (5) (b) of the statutes is amended to read:

for 968.073

1

118.125 (5) (b) Law enforcement officers' records obtained under s. 48.396 (1) ~~or~~ 938.396 (1) or (1m) and records of the court assigned to exercise jurisdiction under chs. 48 and 938 obtained under s. 938.396 (7) may not be used by a school district as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action, including action under the school district's athletic code.

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149.



ANAL 3

2001 BILL

1 ~~AN ACT to renumber and amend 118.125 (1) (d); to amend 118.125 (2) (intro.)~~
 2 ~~and 118.125 (2) (j) 3., and to create 118.125 (1) (be), 118.125 (1) (bL), 118.125~~
 3 ~~(1) (bs), 118.125 (1) (d) 3., 118.125 (2) (n) and 118.125 (7) of the statutes;~~
 4 ~~relating to: the confidentiality of pupil records.~~

Analysis by the Legislative Reference Bureau

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, county department of social or human services, juvenile intake worker, or ~~county~~ ^{court} for the purpose of providing services to the pupil before adjudication, ~~or in connection with an emergency if knowledge of the information in the records is necessary to protect human health or safety,~~ if the person to whom the records are disclosed certifies that the records will not be further disclosed. ✓

The bill also 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



2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2810/r/rins
RLR:.....

Ins Anal 1:

Unlike records of juveniles, law enforcement records pertaining to adults are generally subject to public inspection unless the custodian of the records determines that the harm to the public interest resulting from public inspection of the records outweighs the public interest in access to the records. ✓

Ins Anal 2:

not either takes a pupil who is a juvenile into custody for violating any state or federal criminal law or that arrests a pupil who is 17 years of age or older ✓

INS 1-1
To
INSERT
2-1

Ins 2-1:

SECTION 1. 118.127 of the statutes is amended to read:

3 **118.127 Law enforcement agency information.** (1) Upon receipt of
4 information from a law enforcement agency under s. 48.396 (1) or, 938.396 (1) or
5 (1m), or 968.073, the school district administrator or private school administrator
6 who receives the information shall notify any pupil named in the information, and
7 the parent or guardian of any minor pupil named in the information, of the
8 information.

9 (2) A school district or private school may disclose information from law
10 enforcement officers' records obtained under s. 938.396 (1m) or 968.073 only to
11 persons employed by the school district who are required by the department under
12 s. 115.28 (7) to hold a license, to persons employed by the private school as teachers
13 and to other school district or private school officials who have been determined by
14 the school board or governing body of the private school to have legitimate
15 educational interests, including safety interests, in that information. In addition, if
16 that information relates to a pupil of the school district or private school, the school
17 district or private school may also disclose that information to those employees of the

1 school district or private school who have been designated by the school board or
 2 governing body of the private school to receive that information for the purpose of
 3 providing treatment programs for pupils enrolled in the school district or private
 4 school. A school district may not use law enforcement officers' records obtained
 5 under s. 938.396 (1m) or 968.073 as the sole basis for expelling or suspending a pupil
 6 or as the sole basis for taking any other disciplinary action, including action under
 7 the school district's athletic code, against a pupil.

8 **History:** 1991 a. 39; 1995 a. 77, 173, 352; 1997 a. 27, 205.

9 **Ins 3-5:**

10 **SECTION 2.** 968.073 of the statutes is created to read:

11 **968.073 Notifying school of arrest of pupil.** If a law enforcement officer
 12 arrests a person who is enrolled in a school district or a private school, the law
 13 enforcement agency that employs the officer shall, within 24 hours after the end of
 14 the day on which the person is arrested, not including Saturdays, Sundays, and legal
 15 holidays, orally notify the school district administrator of the public school district
 16 in which the person is enrolled, the administrator of the private school in which the
 17 person is enrolled, or the designee of the school district administrator or the private
 18 school administrator of the identity of the person and the violation for which the
 19 person was arrested and shall, within 72 hours after the person is arrested, not
 20 including Saturdays, Sundays, and legal holidays, provide the school district
 21 administrator, private school administrator, or designee with a description of the
 22 incident for which the person was arrested.

23 *written*

✓

24 **Ins 3-9:**

LPS: this is an Init app subsection. -3-
The subsection number should be an autonumber and there should be no point after it. Please fix

1
2

(2) The treatment of section 968.073 of the statutes first applies to arrests made on the effective date of this subsection.

CS

CS NOTIFICATION TO SCHOOL WHEN PUPIL IS ARRESTED.

BILL

ins
anal 3 - 2 -
(cont.)

records as law enforcement officers' records of juveniles. Such records are more easily accessible by law enforcement agencies.

stat comp ✓

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

INS Alpha

PLEASE SORT w/ REST OF DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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

118.125 (1) (be) "Law enforcement agency" has the meaning given in s. 165.83 ✓

(1) (b).

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

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

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

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

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

118.125 (1) (bs) "Law enforcement unit records" means records maintained by a law enforcement unit that were created by that law enforcement unit for the purpose of law enforcement.

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

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

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


BILL

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 (2) (intro.) of the statutes is amended to read:

8 118.125 (2) CONFIDENTIALITY. (intro.) All pupil records maintained by a public
9 school shall be confidential, except as provided in pars. (a) to ~~(m)~~ (n) and sub. (2m).
10 The school board shall adopt regulations to maintain the confidentiality of such
11 records. *<send INS Alpha>*

12 **SECTION 7.** 118.125 (2) (j) 3. of the statutes is amended to read:

INS Beta

13 118.125 (2) (j) 3. If a school has notified the parent, legal guardian or guardian
14 ad litem of the information that it has designated as directory data with respect to
15 any pupil, has informed the parent, legal guardian or guardian ad litem of the pupil
16 that he or she has 14 days to inform the school that such information may not be
17 released without the prior consent of the parent, legal guardian or guardian ad litem,
18 has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil
19 to inform the school that such information may not be released without the prior
20 consent of the parent, legal guardian or guardian ad litem and the parent, legal
21 guardian or guardian ad litem has not so informed the school, the school district clerk
22 or his or her designee, upon request, shall provide any representative of a law
23 enforcement agency, ~~as defined in s. 165.83 (1) (b),~~ district attorney, city attorney or
24 corporation counsel, county department under s. 46.215, 46.22 or 46.23 or a court of
25 record or municipal court with such information relating to any such pupil enrolled



BILL

1 in the school district for the purpose of enforcing that pupil's school attendance,
2 investigating alleged criminal or delinquent activity by the pupil or responding to a
3 health or safety emergency.

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

5 118.125 (2) (n) ^a ~~the~~ school board may disclose pupil records to a law enforcement
6 agency, district attorney, city attorney, corporation counsel, county department
7 under s. 46.215, 46.22, or 46.23, intake worker under s. 48.067 or 938.067, court of
8 record, or municipal court for ~~either of the following purposes~~ if the person to whom
9 the records are disclosed certifies in writing that the records will not be disclosed to
10 any other person except as permitted under this subsection.

11 ~~1. For the purpose of providing services to the pupil before adjudication.~~

12 ~~2. In connection with an emergency if knowledge of the information in the~~
13 ~~records is necessary to protect the health or safety of any individual.~~

<end
INS
Beta>

14 **SECTION 9.** 118.125 (7) of the statutes is created to read:

INS Gamma

15 118.125 (7) DISCLOSURE OF LAW ENFORCEMENT UNIT RECORDS. A school board shall
16 treat law enforcement unit records ~~as~~ law enforcement officers' records of juveniles
17 under s. 938.396 (1) to (1x) and (5).

(END)

of juveniles in the same manner
as a law enforcement agency is
required to treat ~~this~~

(DN)

Hundertmark:
Representative Hundertmark:

I made ^{a couple of} ~~some~~ changes ^{to} the pupil records law ^{in order to} ~~was~~ allow schools to share information with law enforcement officials ~~in~~ in circumstances that are ~~not~~ ^{currently} ~~addressed~~ ~~under~~ ~~state law~~ although permitted under FERPA but not ~~explicitly~~ under state law. However, I did explicitly ^{from} exempt the pupil records law information that ^{has} ~~is~~ not ^{been} reduced to written or electronic ^{form} because I believe that ~~the~~ such information is already exempt.

PLS

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2810/1dn
PG:cjs:jf

September 4, 2003

Representative Hundertmark:

I made a couple of changes to the pupil records law in order to allow schools to share information with law enforcement officials in circumstances that are permitted under FERPA but not under state law. However, I did not explicitly exempt from the pupil records law information that has not been reduced to written or electronic form because I believe that such information is already exempt.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.state.wi.us