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MAKING SCHOOLS SAFER BY FACILITATING INFORMATION SHARING

PREPARED TESTIMONY OF ATTORNEY GENERAL J.B. VAN HOLLEN BEFORE LEGISLATIVE COUNCIL SPECIAL COMMITTEE ON SCHOOL SAFETY

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One East Main St., Suite 401

Chairman Lehman, Vice-Chairman Pridemore, members and staff of the Special Committee on School Safety, thank you for the invitation to appear here today. As the state's top cop and father of two kids attending Wisconsin public schools, let me thank committee members for volunteering your time and sharing your expertise to study this important public safety and education issue.

Indeed, as I travel throughout the state, meeting with law enforcement officials and other community leaders, school safety issues are often among their primary public safety concerns.

It is a concern of mine as well. Since I've been Attorney General, the Department of Justice has been actively working on issues relating to school safety. For example, I participated in a School and Campus Safety task force with over two dozen state attorneys general. I've heard from school officials, as well. Many were invited to and participated in my annual Law Enforcement summit. And my office participated on the Governor's campus safety task force.

We're helping as lawyers, too. Last October, my office published a school safety legal resource manual, which I understand has been distributed to the committee. This manual is intended to help school officials and others navigate the world of Search and Seizure law; child abuse investigations in schools; questioning of juveniles by law enforcement and school employees; the authority and role of school liaison officers; and, the issue I will discuss most today, the confidentiality of education records.

Schools are not islands separate from society. They are integral parts of communities. The public safety issues that plague communities are present and sometimes intensified at schools. While shootings and other acts of violence at school are rare, they are not rare enough. Just yesterday, we learned the tragic news that a 15-year old Milwaukee schoolgirl

died from wounds suffered last week in an afterschool fight. It is a sober reminder that ***no*** community is immune from violence. ***No*** child is ever completely safe from crime. Wisconsin's schoolchildren are targets for sex predators. Schools can be marketplaces for illicit drugs; kids, buyers and sellers. And high school and even middle school campuses can be recruiting grounds for gangs. Rarely, but not rarely enough, school campuses are stages for horrific acts of mass violence, as exemplified by Columbine, Virginia Tech, and what was averted at Green Bay East.

We all recognize that violence and crime at school can undermine the education of all students. To borrow the motto of Milwaukee School District's Public Safety Division, "Education first, safety always."

Make no mistake, ***parents*** lay the foundation for safe schools; teaching their kids right from wrong, instilling good work habits, instructing them to avoid trouble. Education professionals do their best to reinforce these messages.

Agencies like the Department of Justice, proactively support children's safety through education. Last year, the Wisconsin Internet Crimes Against Children Task Force, led by the Department of Justice, made 299 Internet safety presentations, reaching thousands of Wisconsin parents, children, and professionals.

Parents, educators, and *education* are necessary, but insufficient to create safe schools; insufficient to protect kids.

There will always be times where law enforcement is needed to respond to individual cases or to more regularly work with school officials to maintain safe school environments as best they can.

Law, too, plays an exceptionally important role in safe schools. Law should promote, not impede, the ability of school administrators and law enforcement to develop strategies to *minimize* the possibility of school violence, and to maximize *effective* response to mass violence and other crime at school.

Studying what law ***can*** do better – how our law can be changed to facilitate safer schools – is the reason this committee was created.

The State Attorneys General task force I mentioned earlier was formed to study school safety issues and to stimulate dialogue with policymakers. Our Task Force reviewed numerous documents and heard testimony from a dozen school safety experts. Our work concentrated on threat assessment, issues surrounding mental incompetency, information sharing, and mass incident preparation. Some of the Task Force's recommendations I support were aimed at changing the law. For example, the Task Force recommended states share all relevant information with the federal government so that it may perform gun background checks. A bill to do just that was proposed this session by Representative Gunderson and Senator Darling.

Other recommendations I support do not necessarily involve legal changes at the state level, but might be implemented by local officials. These include the recommendation that schools create, maintain, keep up-to-date, and practice incident response plans. The report also recommended that schools establish systems whereby disturbing behavior is reported to an individual or team with expertise in risk assessment. *Only by having all relevant information get to the right people can appropriate proactive responses be developed.*

And that brings me to the one recommendation involving legal change that I believe can have the greatest effect on school safety:

- **State and federal lawmakers should examine privacy laws in an effort to remove barriers to effective information sharing.**

Information sharing is a key public safety tool. The contrary, information silos, are rightly seen as major impediments to safety. In the school context, it is a lesson taught by Columbine, where confidentiality restrictions arguably impaired officials from sharing certain information with law enforcement about Dylan Klebold and Eric Harris before they took the lives of 13 innocent people. But when information ***is*** shared and incident response plans ***are*** executed, as at Green Bay East two years ago, mass violence can be averted, kids can be protected.

Increasing our ability to share information is a virtually no-cost common-sense way to make our schools safer. I was pleased to hear the Deputy State Superintendent of Public Instruction, Tony Evers, testify that DPI supports removing barriers to information-sharing. I believe this is indicative of broad agreement among educators, administrators, and public safety professionals that information silos should not interfere with safe schools.

Law should permit the sharing of information, at the very least, with those who have a need for that information to make informed decisions and undertake informed actions. In the school safety context, this means educators, administrators and law enforcement that are charged with protecting kids and the school community.

But our law does not live up to this simple standard.

Let me provide an example. I participate in the Milwaukee Homicide Review Commission, a forward-thinking multi-jurisdictional action team comprised of agencies at all levels of government. The Homicide Review Commission exists to develop long-term strategies for homicide reduction in Milwaukee. It was initially created by Mayor Tom Barrett, former Milwaukee Police Chief Nan Hegerty, and former Milwaukee County District Attorney Michael McCann. Hegerty and McCann's successors, Chief Flynn and District Attorney Chisholm, continue to be leading participants and strong supporters. Shortly after I took office and became aware of the Milwaukee Homicide Review Commission's goals, structure, and approach, I enthusiastically became a member. Other participants include federal agencies, such as the US Attorney's Office, other state agencies, such as the Department of Corrections, and other local agencies, such as the Milwaukee City Attorney's Office. And importantly, another participant is the Milwaukee Public Schools -- Public Safety Division.

The Commission examines each Milwaukee homicide to provide not only immediate investigative assistance, but to gather data to develop strategies for reducing homicide. This is accomplished primarily by extensive idea- and information-sharing among participants.

Sadly, many Milwaukee homicides have a nexus to Milwaukee Public Schools, because the victim, a witness, or a suspect attends or recently attended a public school, or has a gang-affiliation with a pupil or recent pupil. In many of these reviews, it is clear that school safety might be at risk. But as information is shared among law enforcement that could crack a case, by and large, MPS School Safety representatives must remain silent, only disclosing the most basic of directory information. To be sure, I believe that school officials having knowledge of particular investigations can use this knowledge to enhance school safety. But I also believe that information known to the school district that can not be shared with the Commission would help solve crimes – and protect schools, children, and communities.

They can't say more, in part, because of the law.

We are limited practically by federal law. Under the *Family Educational Rights and Privacy Act*, known as FERPA, the disclosure of school records that would allow professional agencies to assist schools with protecting kids is substantially regulated, and at times, prevented. If states don't follow FERPA and its regulation of information-sharing, they place at risk federal education dollars.

According to U.S. Department of Education Secretary Margaret Spellings, "FERPA is not intended to be an obstacle to school safety." To some degree, she is right. Critical records can be accessed at critical times. But put simply, there are some occasions where the federal law – and our dependency on federal education dollars – does not maximize our ability to minimize threats to school safety.

But while FERPA creates the minimum barriers to information-sharing, states can erect more impenetrable information silos. And in Wisconsin, to some degree, we have. Even where Wisconsin law, *properly* understood, would allow information sharing, the law is a patchwork of confusing and seemingly ambiguous permissions and commands. These messy provisions, which have accrued over time, have the effect of school districts incorrectly believing that they may not share information with law enforcement when they can. And, in practice, there are occasions where school districts ***may*** share information and they are aware that they may share it, but they choose not do so.

If the only factor was school safety, school safety would be enhanced if school districts ***must*** share with law enforcement information that they ***may*** share. Mandatory disclosure of school records is already a well-recognized policy in certain circumstances. For example, the law requires school districts to share pupil records with the teachers they employ. And rightly so. Whether there should be additional areas requiring additional mandatory disclosure is a discussion worth having.

All is not wrong with the law, however. I want to make clear what can always be shared

with law enforcement. First, there is no restriction on sharing personal observation. State law regulates sharing of pupil ***records***, and federal law, information gleaned solely from education records. Second, designated law enforcement units within schools – those individuals, offices, or divisions who exist to maintain physical security and safety – may keep records for law enforcement unit purposes and share those records with law enforcement. By designating law enforcement units and having them maintain appropriate records, information often most significant to law enforcement responding to or following up on a safety issue can be shared. This information can also be used to develop global safety strategies. ***I encourage all school districts to designate law enforcement units, direct law enforcement units to share records with law enforcement, and when appropriate, use school liaison officers***. Third, federal and state law permit the disclosure of any pupil record in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.

But there are places where it would be helpful to school safety – and the education purposes school safety serves – to change the law. We can't change federal law. But we can change Wisconsin law.

I think the simplest starting place is to make Wisconsin law no more restrictive than FERPA.

I have particular suggestions for the committee's consideration that relate to facilitating information sharing:

- ***First, repeal Sec 118.128.*** State law requires all pupil records to be made available to teachers and other designated school officials who have legitimate educational interests, including safety interests. At the same time, state law implies that school districts may *not* share with teachers or law enforcement units within schools information that a student is a physical risk to others, unless the school district has *reasonable* cause to believe, based only on past acts, that the student presents a risk of physically harming others. How these apparently conflicting commands are sorted out is a matter of some uncertainty. How can risks be assessed if information flow is so severely limited? ***The legislature should repeal sec. 118.128***. Repealing this section removes an ambiguity and enables teachers and safety officials to have full information to serve kids and protect all students and teachers.

- ***Second, mechanisms for sharing pupil records with law enforcement should be simplified.*** Federal law permits the disclosure of a student's education records for juvenile justice system purposes prior to an adjudication concerning the student. Under state law, these disclosures take a variety of forms. Judges are entitled to progress records on request, such as transcripts and attendance records. Law enforcement and fire investigators are entitled to attendance records on request. Courts can order any pupil record to be provided to investigating law enforcement, and school districts must comply. State law even permits (but does not command) school districts to make available ***any*** record to ***any*** public officer, a provision in

the law that is too often overlooked or simply not used. And state law specifically permits school districts to enter into agreement with law enforcement officials to share pupil records as they relate to juvenile justice purposes. This last provision demonstrates the legislature's already existing policy preference for information-sharing with law enforcement. But the mechanism chosen – an interagency agreement – is cumbersome and may allow too much discretion. ***A simpler, more effective information-sharing mechanism would require the release of pupil records to law enforcement agencies who make a request and certify it is for juvenile justice purposes.***

- ***Third, school liaison officers should be defined as "school officials" for the purpose of record-sharing.*** Understandably, the most expansive information-sharing permitted by law occurs within the school and within the school district. Simply put, teachers and other designated school officials serving kids' educational interests, including safety interests, can access records. The law doesn't say whether a school liaison officer is a "school official." But as they are integral parts of the school education and safety community, I believe law should specify that, ***with respect to Section 118.125, school liaison officers are "school officials" and permit them any access to records teachers can access.*** It only makes sense. They are there help make schools safe, to make kids safe. They should have maximum information to help them do this.

- ***Fourth, conform the state definition of directory data to federal law.*** Oversimplifying a bit for the sake of understanding, directory data is defined by state law by listing the type of information one might find in a phone book or yearbook. It's the simplest record to disclose. Parents are told, usually at the start of a school year, what types of information constitute directory data, and if they don't object to releasing those types of information, it can be released. While state law is a simple list of category-types, federal law defines directory data as any information "that would not generally be considered harmful or an invasion of privacy if disclosed" and provides a non-exclusive list of category-types. ***State law should be amended to mirror the federal definition of directory data.*** This makes sense. If the purpose of confidentiality protections is to regulate information dissemination about that which one has a reasonable expectation of privacy, then the law shouldn't treat confidential things for which there is no reasonable expectation of privacy.

- ***Fifth, I believe that legislators should seriously consider a mandatory reporting requirement to law enforcement of criminal activities occurring on school grounds.*** In Texas, for example, the principal of a public or private school has a legal duty to notify law enforcement if there are reasonable grounds to believe that criminal activities are taking place or have taken place in school. The principal then must notify teachers who have regular contact with the pupils in question. Mandatory reporting is not foreign to Wisconsin. Today, school officials and teachers *must* report cases of abuse and neglect to authorities when there is reasonable cause to believe it has occurred or has been threatened. ***At a minimum,***

I believe schools should be required to report to law enforcement crimes of violence or acts that constitute a felony when there are reasonable grounds to believe the crime has occurred or will occur on school grounds. This may even be expanded to all cases in which the victim of the crime is a student, whether or not the crime occurs at school.

- ***Sixth, schools should get notification of legal proceedings when a student is tried as an adult.*** Information sharing, of course, should go both ways. Importantly, state law permits law enforcement and the juvenile justice system to keep schools informed. Courts ***must*** notify schools whenever a delinquency petition is filed where the delinquent act would have been a felony if committed by an adult. Courts must also notify schools where a juvenile is adjudged a delinquent. This is a gap, however. When a juvenile who is a student is tried as an adult, or when the student is an adult, there is no mandatory notification to the schools regarding charges and verdicts. ***Schools should be informed of charges filed against their students and the resolution of the case.*** Prosecutors or victim/witness coordinators would likely be the place to put this responsibility.

- ***Seventh, schools should not be compelled to notify students and guardians when they receive information from law enforcement.*** Law enforcement may share certain information in its possession with the school the pupil attends. School districts are *required* by state law to notify the student and the student's parent or guardian of the student-specific information received from law enforcement. This is one mandatory disclosure that should be abolished because it may *deter* the sharing of information with schools. Consider this example. If law enforcement receives information of unknown credibility that a group of identified students are conspiring to bomb and shoot up a school in two weeks, law enforcement will want to share that information with school officials. For the safety of other kids, schools should know. And for the purposes of the investigation, schools may have useful information – which likely they can freely share under the emergency exception. And for safety and investigative purposes, law enforcement may ***not*** want the students to know yet that these claims are being investigated. Under existing law, strictly interpreted, school districts *must* tell students "upon receipt" of the information. This provision simply doesn't protect kids. Though notification is often the right thing to do, when it isn't, it can have terrible consequences. ***Section 118.127(1) should be repealed.***

- ***Eighth, the confidentiality of records provisions should include a statement of purpose that Section 118.125 is not intended to be an obstacle to school safety. Law should also direct school boards*** not only to adopt regulations to maintain the confidentiality of records, as law currently does, but also ***to adopt regulations designed to facilitate information-sharing permitted by law.***

Conclusion

These are just some examples of practical suggestions that will not have a cost, but could *save lives.* The law charges schools with the responsibility of making records confidential; the law should better facilitate the sharing of information where safety is the issue. It's good for schools to do so. It's good for communities. And it's good for the kids schools serve everyday.

I hope that my remarks have helped to guide some of the discussion in this important area. Thank you once again for the opportunity to testify. Please let me know if I or my office can be of any assistance as you continue your study of these and other important school safety issues.