

## PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION CREATING RULES

The scope statement for this rule, [SS 033-24](#), was published in Register No. 819B, on March 25, 2024, and approved by State Superintendent Jill K. Underly on April 8, 2024.

The State Superintendent of Public Instruction hereby proposes an order to create ch. PI 42, relating to incidents of crime and other safety-related incidents.

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### ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** s. 118.124, Wis. Stats.

**Statutory authority:** s. 118.124 (4), Wis. Stats.

**Explanation of agency authority:**

Under s. 118.124 (4), Wis. Stats., the department is required to promulgate rules to administer the statutes governing the reporting of statistics incidents for which charges were filed or citations were issued, including a rule that requires public high schools and private high schools participating in a parental choice program to collect and report statistics of incidents in accordance with the uniform crime reporting system of the Wisconsin Department of Justice for which charges were filed or citations were issued.

**Related statute or rule:**

N/A

**Plain language analysis:**

2023 Wisconsin Act 12 created s. 118.124, Wis. Stats., relating to statistics of incidents for which charges were filed or citations were issued. Section 118.124 (4), Wis. Stats., requires the department to promulgate rules to administer the new section, 118.124, including a rule that requires public high schools and private high schools participating in the parental choice program to collect and report statistics of certain incidents that occurred on school or district property and during a school-sanctioned event, but only if a charge was filed or a citation was issued for the incident.

The proposed rule creates a new administrative code chapter, ch. PI 42, which establishes procedures for administering the statutory changes as a result of 2023 Act 12. Under the proposed rule, reporting schools must collect and maintain statistics on certain incidents involving criminal or delinquency charges or citations when notified of said incidents, using standardized incident categories outlined in s. 118.124 (2) (a), Wis. Stats. Additionally, for potentially reportable incidents, the proposed rule requires schools to request information regarding the factual basis of the charge or citation to confirm that the incident satisfies the criteria under s. 118.124 (2) (b), Wis. Stats. The reporting year is based on when that information is received. For charges and citations confirmed to have met the criteria under s. 118.124 (2), Wis. Stats., the rule requires reporting schools to submit incident data to the department by July 31 annually using an electronic form provided by the department. Finally, the department shall include aggregate incident data in annual school and district report cards required under s. 115.385, Wis. Stats.

**Summary of, and comparison with, existing or proposed federal regulations:**

Since 1968, under 20 U.S.C. § 3413(c)(1), the U.S. Department of Education's (DOE) has conducted the Civil Rights Data Collection (CRDC), which is generally a biennial survey of data from schools that receive federal financial assistance from the DOE. The CRDC gathers information about student access to educational programs, educational activities, and staff and school climate factors, including discipline and harassment or bullying incidents. The data is further disaggregated by race/ethnicity, sex, English learner (EL), and disability. The DOE uses the CRDC data to ensure school compliance with civil rights laws and regulations enforced by the DOE's Office for Civil Rights.

The data elements collected under Wis. Stat. § 118.124 consequentially differ from the data elements collected under the CRDC such that there is no useful overlap. The CRDC generally covers school incidents and the actions of the school in response to certain incidents and allegations. In comparison, Wis. Stat. § 118.124 requires schools to report the actions of other government agencies: citations issued by law enforcement agencies and charges filed by district attorneys' offices. In essence, Wis. Stat. § 118.124 asks high schools to report what happened after a CRDC reported event (e.g., law enforcement referral, school-related arrest, etc.) and sometimes what happened after an event that does not fall under the CRDC.

Due to the differences in the state and federal reporting requirements, some incidents will fall under Wis. Stat. § 118.124 without falling under the CRDC and vice versa. This makes it difficult to draw upon the data of either requirement to report data under the other requirement. For example, Wis. Stat. § 118.124 excludes reporting the discharge of a firearm on school grounds even if a criminal charge was filed for that incident, but the CRDC requires reporting that type of incident regardless of whether a criminal charge was filed. Homicide and allegations of rape or sexual assault are reported under the CRDC even if the perpetrator was never identified. Those incidents would not be reported under Wis. Stat. § 118.124 unless criminal charges had been filed against someone. The CRDC reporting generally includes school-related arrests of K-12 students, even if criminal charges did not result, whereas reporting under § 118.124 excludes arrests that did not result in criminal charges, and it includes charges filed against anyone, not only students, regardless of whether an arrest occurred at school.

Due to the differences described above, it is not possible to reference the data reported under one law to complete the reporting requirements under the other law.

**Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:**

The department held a preliminary public hearing and comment period on April 5, 2024, and received comments on the statement of scope for the proposed rule. A summary of comments and the department's response to those comments are as follows:

- Two respondents provided comment on the statement of scope for the proposed rule, indicating their support for school safety in the spirit of the law, but raised several concerns regarding the implementation of s. 118.124, Wis. Stats., and the proposed administrative rules under ch. PI 42. The respondents requested the department to clarify when incidents must be reported—particularly if charges are dropped, dismissed, or modified—and to streamline the process so that it does not burden reporting schools. They request explicit definitions of reportable offenses, thresholds for reporting minor incidents, and guidance on law enforcement's responsibility to communicate reportable events to schools. The respondents requested assurance that non-school-related incidents on school grounds be categorized appropriately. Finally, the respondents emphasized the need for a user-friendly system with consistent definitions, as private schools have expressed confusion about its applicability.

**Agency Response:** The department acknowledges the respondents' concerns regarding the implementation of s. 118.124, Wis. Stats., and recognizes the specific challenges schools may face in tracking incidents through the legal system. The reporting requirements of s. 118.124, Wis. Stats., make identifying reportable incidents complex, and reporting schools may experience difficulties in obtaining the information necessary to determine whether an

incident falls under the requirements in statute. To ensure consistency and ease of reporting, the department will provide guidance addressing these issues, including communication between reporting schools and sources of necessary information, and will develop a list of incidents under each category.

### **Comparison with rules in adjacent states:**

- **Illinois:** Illinois does not appear to have any comparable rule or statute requiring public or private schools to report to the state education agency, or other state government body, the school incidents for which criminal charges were filed or citations were issued. However, Illinois requires its Department of State Police to provide an annual statistical compilation and related data associated with incidents involving firearms in schools to the State Board of Education. Staff are required to report those incidents to principals, and principals are required to report those incidents to law enforcement. Unlike Wis. Stat. § 118.124, under Illinois law, reports are made to the State Board of Education even if the incident does not lead to criminal charges.
- **Iowa:** Iowa does not appear to have any comparable rule or statute that requires public or private schools to report to the state education agency, or other state government body, the school incidents for which criminal charges were filed or citations were issued. However, Iowa, under Iowa Code § 279.51A, does require school districts to report to the state education agency certain incidents committed by students in a school building, on school grounds, or at a school-sponsored function, and any time a student is referred for the use of or transfer to a therapeutic classroom. The state education agency must annually compile and summarize the reports, categorized by behavior, and submit the summary to the general assembly. Unlike Wis. Stat. § 118.124, the actions of other agencies (such as law enforcement agencies or prosecuting attorneys' offices) do not determine whether the district shall report an incident to the state education agency, and only the actions of students are reported.
- **Michigan:** Michigan does not appear to have any comparable rule or statute requiring public or private schools to report to the state education agency, or other state government body, the school incidents for which criminal charges were filed or citations were issued. However, Michigan, under Mich. Comp. Laws § 380.1230d, requires school employees, contractors, and applicants to notify the state department of education and the applicable school or school district, if the person has been charged with a crime listed in Mich. Comp. Laws § 1535a(1) or 1539b(1) or a violation of a substantially similar law of another jurisdiction. The notice requirement is limited to those certain charges filed against those listed individuals only, but it is not limited to incidents occurring only on school property and during school-sponsored events. Notably, it is the criminal defendant who must report the charge to the state dept. of education and the applicable school/district, and failing to provide notice is a crime.
- **Minnesota:** Minnesota does not appear to have any comparable rule or statute requiring public or private schools to report to the state education agency, or other state government body, the school incidents for which criminal charges were filed or citations were issued. Minnesota, under Minn. Stat. § 121A.06, does require schools to report incidents involving the use or possession of a dangerous weapon in school zones to the commissioner of education. The commissioner of education must compile the information it receives from schools and report it annually to the commissioner of public safety and the state legislature. 121A.06. Minnesota law also requires schools to file an "after-action review report" for active shooter incidents and active shooter threats to the Minnesota Fusion Center. Neither reporting requirement limits reporting to incidents for which charges were filed or citations were issued.

### **Summary of factual data and analytical methodologies:**

In developing this proposed rule, the department conducted a comprehensive analysis of relevant statutory and regulatory frameworks. This included review of Wisconsin state statutes governing law enforcement agency records and records of juveniles, law enforcement agency access to court records and juvenile court records, exchange of information between law enforcement agencies and schools, court notifications to schools, district attorney's office notifications to schools, criminal procedure, juvenile delinquency procedure, municipal procedure relating to ordinances and citations, municipal procedure for juvenile citations, victim's rights in criminal cases and juvenile cases, victim's rights in law enforcement investigations and non-criminal cases, and confidentiality of education records.

The department also examined state substantive criminal laws, state substantive municipal law, sample municipal ordinances, sample school and law enforcement agency interagency agreements, relevant standard circuit court forms for juvenile cases, federal law regarding confidentiality of education records, and federal law and guidance on the uniform crime reporting system.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

N/A

**Anticipated costs incurred by private sector:**

N/A

**Effect on small business:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person:**

Carl Bryan  
Legislative Policy Coordinator  
Wisconsin Department of Public Instruction  
[adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov)  
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**Place where comments are to be submitted and deadline for submission:**

Comments should be submitted to Carl Bryan, Department of Public Instruction, at [adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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## **RULE TEXT**

### **SECTION 1. PI 42 is created to read:**

#### **CHAPTER PI 42**

#### **REPORTING OF INCIDENTS RESULTING IN CHARGES OR CITATIONS**

**PI 42.01 Purpose and Applicability.** This chapter establishes requirements for school boards of public schools, operators of charter schools under s. 118.40 (2r) or (2x), Stats., and governing bodies of private schools participating in a parental choice program under s. 118.60 or 119.23, Stats., that operate high school grades, to collect and report statistics of incidents for which charges were filed or citations were issued, as required by s. 118.124, Stats. This chapter establishes procedures for collecting and reporting incident statistics and outlines the responsibilities of the department in developing a reporting system pursuant to s. 118.124, Stats.

**PI 42.02 Definitions.** In this chapter:

- (1) "Department" means the department of public instruction.
- (2) "Incident" refers to an occurrence under s. 118.124 (2), Stats., that satisfies all of the following:
  - (a) Is one of the following offenses:
    1. Homicide.
    2. Sexual assault.
    3. Burglary, robbery, or theft.
    4. Battery, substantial battery, or aggravated battery under s. 940.19, Stats.
    5. Arson.

6. Use or possession of alcohol, a controlled substance, as defined in s. 961.01 (4), Stats., or a controlled substance analog, as defined in s. 961.01 (4m), Stats.

7. Possession of a firearm in violation of s. 948.605 (2), Stats.

8. A violation of a municipal ordinance relating to disorderly conduct.

(b) The incident satisfies all of the following:

1. The incident occurred during one of the following:

a. School hours.

b. A school-sanctioned event that occurred before or after school hours.

c. The transportation of pupils to or from school.

2. The incident occurred on one of the following:

a. Property owned or leased by the school district in which the public high school is located, by the operator of the charter school, or by the governing body of the participating private high school.

b. Transportation, including all of the methods of transportation described in ss. 121.55 and 121.555, Stats., provided by the public high school, participating private high school, or school district.

3. The incident was reported to law enforcement, and, as a result of the incident, a charge was filed or a citation was issued.

(3) "Notice of a charge or citation" means any of the following:

(a) For adult criminal charges, notice from a credible source including, but not limited to, the district attorney's office pursuant to s. 950.08 (2w), Stats.

(b) For juvenile delinquency charges, notice from the clerk of courts.

(c) For municipal citations or forfeiture actions under juvenile court jurisdiction, notice from a law enforcement agency per an interagency agreement between the law enforcement agency and the reporting school pursuant to s. 938.396 (1) (c) 4., Stats.

(d) For municipal citations or forfeiture actions under municipal court or circuit court jurisdiction, notice from a law enforcement agency per an interagency agreement between the law enforcement agency and the school.

(4) "Reporting school" means one of the following schools that operate high school grades:

(a) A participating private school, as defined under s. 118.124 (1) (a), Stats., or its governing body.

(b) A public high school, as defined under s. 118.124 (1) (b), Stats., or its governing body.

(5) "Potentially reportable," when referring to a charge or citation, means the charge or citation falls within a category listed under sub. (2) (a) and the charge or citation possibly satisfies the sub. (2) (b) criteria.

**Note:** Information about collecting and reporting incident statistics, including guidance on determining whether a charge falls within a category under sub. (2) (a) and meets the criteria under sub. (2) (b), may be obtained at no charge from the Wisconsin department of public instruction's webpage at <https://dpi.wi.gov/sspw/safe-schools/criminal-charges-and-violations-reporting-requirement>. School officials being unaware of a similar offense having occurred on school grounds does not necessarily mean that a charge or citation fails to satisfy the criteria under sub. (2) (b).

### **PI 42.03 Incident data reporting requirements.**

(1) **PROCEDURE FOR REVIEW.** Upon receiving notice of a charge or citation, as notice of a charge or citation is defined in this chapter, a reporting school shall, for each charge or citation that is potentially reportable, as potentially reportable is defined in this chapter, determine whether the potentially reportable charge or citation meets the criteria under s. PI 42.02 (2) (b). To make this determination, the reporting school shall do all of the following:

(a) Not assume that the date, time, or location of the incident underlying the charge or citation meets, or does not meet, the criteria under s. PI 42.02 (2) (b).

(b) Review the factual basis of each potentially reportable charge or citation by consulting any of the following sources, if applicable and available:

1. The criminal complaint.

2. The delinquency petition.

3. The citation alone or in combination with additional information obtained from a law enforcement agency.

4. A credible source with sufficient knowledge of the facts underlying the charge or citation who may lawfully disclose the information.

(2) **REPORTING CONFIRMED INCIDENTS.** For each separate charge or citation that meets the definition of an incident, as confirmed by review of the factual basis pursuant to sub. (1), the reporting school shall include the incident in its annual report in accordance with sub. (3).

**(3) ANNUAL REPORTING.** By July 31 of each year, each reporting school shall submit to the department, using an electronic form provided by the department, statistics on incidents that were confirmed incidents pursuant to sub. (1). The statistics shall be submitted in accordance with all the following:

**(a)** For each separate charge or citation that was a confirmed incident, report one incident for the respective category listed under s. PI 42.02 (2) (a).

**(b)** The reporting year for an incident depends on the date the reporting school receives sufficient information to perform the review under sub. (1) and is determined as follows:

**1.** If sufficient information is received by June 30 of any calendar year, the incident shall be reported no later than July 31 of the same calendar year.

**2.** If sufficient information is received on or after July 1 of any calendar year, the incident shall be reported by July 31 of the following calendar year.

**(c)** No reporting school may include the identity of a pupil in a report made under sub. (3).

**(d)** Notwithstanding pars. (a) and (b), a reporting school shall not disclose personally identifying information about a student in violation of 34 C.F.R. Part 99 when making a report under sub. (3).

**Note:** Criminal complaints and some juvenile delinquency petitions are available upon request from the clerk of courts. Law enforcement agency access to juvenile court records, including the delinquency petition, is limited to specific purposes. *See* ss. 938.396 (2) and (2g), Stats. Information about collecting and reporting incident statistics, including guidance on how to obtain the factual basis of a charge or citation, may be obtained at no charge from the Wisconsin department of public instruction's webpage at <https://dpi.wi.gov/sspw/safe-schools/criminal-charges-and-violations-reporting-requirement>.

#### **PI 42.04 Department responsibilities.**

**(1)** The department shall develop and maintain a reporting system that incorporates the incident categories specified under s. 118.124 (2) (a), Stats., to facilitate the submission of incident statistics in accordance with ss. 118.124 (3), Stats., and PI 42.03.

**(2)** The department shall publish the data listed in ss. 115.385 (1) (e) 1. through 4., Stats., deriving the data from the incidents that were reported to the department pursuant to s. PI 42.03. The data shall be published in the annual school and school district accountability reports issued under s. 115.385, Stats.

**(3)** The department shall not consider the incidents reported to the department under s. PI 42.03 when calculating a school's performance score or a school district's improvement score under s. 115.385, Stats.

#### **SECTION 2. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025

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Jill K. Underly, PhD  
State Superintendent