2003 Assembly Bill 709
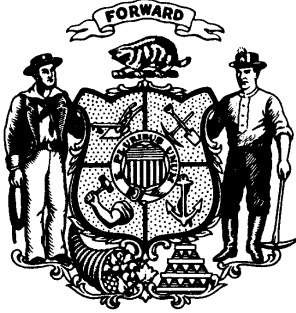
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2003 WISCONSIN ACT 292

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

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

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

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

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

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

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

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

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

118.125 **(2)** CONFIDENTIALITY. (intro.) All pupil records maintained by a public school shall be confiden-

tial, except as provided in pars. (a) to ~~(m)~~ (p) and sub. (2m). The school board shall adopt regulations to maintain the confidentiality of such records.

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

118.125 **(2)** (j) 3. If a school has notified the parent, legal guardian or guardian ad litem of the information that it has designated as directory data with respect to any pupil, has informed the parent, legal guardian or guardian ad litem of the pupil that he or she has 14 days to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem, has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem and the parent, legal guardian or guardian ad litem has not so informed the school, the school district clerk or his or her designee, upon request, shall provide any representative of a law enforcement agency, ~~as defined in s. 165.83 (1) (b),~~ district attorney, city attorney or corporation counsel, county department under s. 46.215, 46.22 or 46.23 or a court of record or municipal court with such information relating to any such pupil enrolled in the school district for the purpose of enforcing that pupil's school attendance, investigating alleged criminal or delinquent activity by the pupil or responding to a health or safety emergency.

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

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

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

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

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

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

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

938.396 **(1m)** (ar) A law enforcement agency, on its own initiative or on the request of the school district administrator of a public school district, the administrator of a private school‗ or the designee of the school district administrator or the private school administrator, may, subject to official agency policy, provide to 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 on a law enforcement officer's belief that the juvenile was committing or had committed ~~an act that is a violation specified in s. 938.34 (4h) (a)~~ a violation of any state or federal criminal law. The information shall be used by the school district or private school as provided in s. 118.127 (2).

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

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

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

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

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

938.396 **(5)** (bm) If the petitioner is seeking access to a record under sub. (1m) (a), (am), (ar), or (b), the court shall, without notice or hearing, make the inspection and determinations specified in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those persons may obtain a hearing on the court's determinations by filing a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been shown for setting aside the order, the law enforcement agency shall disclose the juvenile's record as ordered.

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

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

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

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

SECTION 15. Initial applicability.

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

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