

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 118.127 (1), 118.128 and 120.12 (26) (title); *to renumber*
2 118.127 (2); *to renumber and amend* 118.125 (2) (n) and 120.12 (26); *to*
3 **amend** 118.07 (2) (a), 118.125 (2), 118.125 (2) (d), 119.04 (1) and 938.396 (1) (c)
4 3. (intro.); and *to create* 118.02 (9t), 118.07 (4) (a) 2., 118.07 (4) (b) to (d), 118.125
5 (2) (n) 2., 118.46 and 950.08 (2w) of the statutes; **relating to:** school safety
6 plans, pupil records, and school bullying.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on School Safety.

School safety plans

Under current law, school boards of common or union high school districts must have in place a school safety plan. Wisconsin law does not provide specific details as to

what components should be in the school safety plan. Wisconsin law does not have minimum standards for the plan's training or practice drills. The statutes also do not direct school boards to create or review plans with any specific party.

Current law also requires public, as well as private schools, to conduct fire and tornado or other hazard drills. There is no requirement for either public or private schools to practice school safety plans. Only public schools are required, however, to have safety plans.

This bill expands current statutory requirements by providing specific details regarding school safety plans. The bill requires both public and private schools to do all of the following:

1. Create a school safety plan with active participation from appropriate parties such as local law enforcement officers, fire fighters, school administrators, teachers, pupil service professionals, and mental health professionals.
2. Specify the process for reviewing the plan.
3. Include general guidelines specifying procedures for emergency prevention and mitigation, preparedness, response, and recovery as well as methods for conducting drills required to comply with the plan.
4. Determine who shall receive the school safety plan training, which is based upon the school district's prioritized needs, risks, and vulnerabilities.
5. Drill school safety plan procedures twice a year or substitute a school safety drill for a fire, tornado, or other hazard drill.
6. Have the school safety plan in place within 3 years after this bill goes into effect and review it at least once every 3 years following implementation.

School Bullying

The bill requires the Department of Public Instruction (DPI) by 2010 to develop a model school policy on bullying by pupils. The policy must include all of the following:

1. A definition of bullying.
2. A prohibition on bullying.
3. A procedure for reporting bullying that permits reports to be made confidentially.
4. A prohibition against pupil retaliation against another pupil for reporting an incident of bullying.
5. A procedure for investigating reports of bullying.
6. A requirement that school district officials and employees report incidents of bullying and identify the persons to whom the reports must be made.
7. A list of disciplinary alternatives for pupils that engage in bullying.
8. An identification of the school-related events to which the policy applies.
9. An identification of the property owned, leased, or used by the school district on which the policy applies.
10. An identification of the vehicles used for pupil transportation on which the policy applies.

DPI is also directed to develop a model education and awareness program on bullying and to post the model policy and the model program on its Internet site. The bill further directs each school board, by August 15, 2010, to adopt a policy prohibiting bullying by pupils. The bill permits the school board to adopt the model policy developed by the department. The school board, under the bill, must provide a copy of the policy to any person who requests it and annually distribute the policy to all pupils enrolled in the school district and their parents and guardians.

The bill also designates the Wednesday of the fourth week in September as Bullying Awareness Day for purposes of school recognition. Finally, the bill includes a section to make the provisions of the bill applicable to a first-class city school district and board.

Provisions Relating to Pupil Records

The bill includes a series of provisions dealing with the confidentiality and disclosure of pupil records. The following provisions are included in the bill:

1. The bill retains current law, which requires school boards to adopt regulations maintaining the confidentiality of pupil records. However, it adds the additional authority for school boards to adopt regulations designed to promote the disclosure of pupil records and information permitted by law for school safety purposes.

2. The bill amends the statutes to require that pupil records be made available to law enforcement officers on the same basis as other school employees or officials, provided that law enforcement officers are individually designated by the school board and assigned to the school district.

3. The bill contains a provision relating to the release of pupil records by school districts for juvenile justice purposes. The bill amends current law to require school boards to disclose pertinent pupil records to an investigating law enforcement agency or district attorney. Disclosure shall be made only if the requesting person certifies in writing that the records concern the juvenile justice system and the system's ability to serve the pupil, relate to an ongoing investigation or pending delinquency petition and will not be disclosed to any other person except as otherwise authorized by law.

4. The bill repeals a statute currently requiring a school district administrator or private school administrator who receives information regarding a law enforcement action to notify any pupil named in the information and the pupil's parent or guardian of any minor pupil named in the information of that information. The repeal is designed to encourage law enforcement agencies to share information with schools in situations where they might otherwise withhold information out of concern that notification could undermine an investigation. The repeal does not preclude a school district from notifying students and parents when it is deemed appropriate.

5. Current statutes require all pupil records to be made available to teachers and other designated school officials who have legitimate educational interests, including safety interests. However, a different section, s. 118.128, stats., implies that school districts may not share information that a student is a physical risk to others with teachers and law enforcement units within schools, unless the school district has "reasonable cause" to believe, based only on past acts, that the student presents a physical risk of harming others. Section 118.128, stats., also limits the use and disclosure of such information. By repealing s. 118.128, stats., the school district can continue to disclose records under s. 118.125 (2) (d), stats. When information is shared, school personnel can better assess risk and the educational needs of both students presenting a risk of harm to others and to other children.

The bill requires that a district attorney issuing criminal charges against a pupil make a reasonable attempt to notify the pupil's school that criminal charges have been filed and the final disposition of those charges. A similar requirement currently applies to noncriminal juvenile cases but notification is currently not required when a juvenile attends an independent charter school, or where the pupil is either charged as an adult or waived into adult court. The bill would require the district attorney to notify the school district, private school or independent charter school whenever a pupil is criminally charged as an adult and the district attorney reasonably believes the person charged is an enrolled pupil.

1 **SECTION 1.** 118.02 (9t) of the statutes is created to read:

2 118.02 **(9t)** Wednesday of the 4th week in September, Bullying Awareness Day.

3 **SECTION 2.** 118.07 (2) (a) of the statutes is amended to read:

4 118.07 **(2)** (a) Once each month, without previous warning, the person having
5 direct charge of any public or private school shall drill all pupils in the proper method
6 of departure from the building ~~as if~~ in case of a fire, except when the person having
7 direct charge deems that the health of the pupils may be endangered by inclement
8 weather conditions. At least twice annually, without previous warning, the person
9 having direct charge of any public or private school shall drill all pupils in the proper
10 method of evacuation to a safe location ~~as if in the case of a tornado or other hazard.~~
11 At least twice annually, without previous warning, the person having direct charge
12 of any public or private school shall drill all pupils in the proper method of evacuation
13 or other appropriate action in case of a school safety incident. The public and private
14 school safety drill shall be based on the school safety plan adopted under s. 118.07
15 (4). A safety drill may be substituted for any other drill required under this
16 paragraph. The school board or governing body of the private school shall maintain
17 for at least 7 years a record of each fire drill ~~and~~, tornado or other hazard drill, and
18 school safety drill conducted.

NOTE: SECTION requires the person in charge of both public and private schools to conduct 2 school safety drills each school year in addition to monthly fire drills and 2 tornado or other hazard drills. A school safety drill may be substituted for a fire, tornado, or other hazard drill.

19 **SECTION 3.** 118.07 (4) (a) 2. of the statutes is created to read:

20 118.07 **(4)** (a) 2. If a school district is created or a public or private school opens
21 after the effective date of this paragraph [LRB inserts date], the school board or
22 governing body of the private school shall have in effect a school safety plan for each
23 public or private school within 3 years of its creation or opening.

NOTE: The bill provides that if a school district is created or a public or private school opens after the effective date of the bill, the school board or governing body of the private school must have a safety plan in effect within 3 years of the creation or opening.

1 **SECTION 4.** 118.07 (4) (b) to (d) of the statutes are created to read:

2 118.07 (4) (b) A school safety plan shall be created with the active
3 participation of appropriate parties, as specified by the school board or governing
4 body of the private school. The appropriate parties may include local law
5 enforcement officers, fire fighters, school administrators, teachers, pupil services
6 professionals, as defined in s. 118.257 (1) (c), and mental health professionals. A
7 school safety plan shall include general guidelines specifying procedures for
8 emergency prevention and mitigation, preparedness, response, and recovery. The
9 plan shall also specify the process for reviewing the and methods for conducting drills
10 required to comply with the plan.

NOTE: SECTION requires a school board and the governing body of a private school to create a school safety plan, within 3 years of the effective date of this bill, with participation from appropriate parties specified by the school board or private school governing body. The suggested list includes law enforcement officers, fire fighters, school administrators, teachers, school social workers, and mental health professionals. Under the bill, school safety plans are required to specify the procedures for prevention and mitigation, preparedness, response, and recovery. The plan must also specify the plan's review process and methods for conducting drills.

11 (c) The school board or governing body of the private school shall determine
12 which persons are required to receive school safety plan training and the frequency
13 of the training. The training shall be based upon the school district's or private
14 school's prioritized needs, risks, and vulnerabilities.

NOTE: This provision allows public school boards and governing bodies of private schools to determine who receives school safety plan training and how often the training must occur. There is also discretion as to what the training includes, as it is based upon the school district or private school's prioritized needs, risks, and vulnerabilities.

15 (d) Each school board and the governing body of each private school shall
16 review the school safety plan at least once every 3 years after the plan goes into effect.

NOTE: Paragraph (d) requires school safety plans to be reviewed at least once every 3 years after the plan goes into effect.

1 **SECTION 5.** 118.125 (2) of the statutes is amended to read:

2 118.125 **(2)** CONFIDENTIALITY AND DISCLOSURE OF PUPIL RECORDS. All pupil
3 records maintained by a public school shall be confidential, except as provided in
4 pars. (a) to (p) and sub. (2m). The school board shall adopt ~~regulations~~ policies to
5 maintain the confidentiality of such records and may adopt policies to promote the
6 disclosure of pupil records and information permitted by law for purposes of school
7 safety.

NOTE: The proposed language retains current law that requires school boards to adopt regulations to maintain the confidentiality of pupil records and also permits (but does not require) school boards to adopt regulations designed to promote the disclosure of pupil records and information permitted by law for school safety. The draft also replaced the term “regulations” with the more appropriate term “policies” to conform to current school board practices and terminology.

8 **SECTION 6.** 118.125 (2) (d) of the statutes is amended to read:

9 118.125 **(2)** (d) Pupil records shall be made available to persons employed by
10 the school district which the pupil attends who are required by the department under
11 s. 115.28 (7) to hold a license, law enforcement officers who are individually
12 designated by the school board and assigned to the school district, and other school
13 district officials who have been determined by the school board to have legitimate
14 educational interests, including safety interests, in the pupil records. Law
15 enforcement officers’ records obtained under s. 938.396 (1) (c) 3. shall be made
16 available as provided in s. 118.127 ~~(2)~~. A school board member or an employee of a
17 school district may not be held personally liable for any damages caused by the
18 nondisclosure of any information specified in this paragraph unless the member or
19 employee acted with actual malice in failing to disclose the information. A school
20 district may not be held liable for any damages caused by the nondisclosure of any
21 information specified in this paragraph unless the school district or its agent acted

1 with gross negligence or with reckless, wanton, or intentional misconduct in failing
2 to disclose the information.

NOTE: This SECTION amends the statutes to require that pupil records be made available to law enforcement officers who are individually designated by the school board and assigned to the school district on the same basis as other school employees or officials.

3 **SECTION 7.** 118.125 (2) (n) of the statutes is renumbered 118.125 (2) (n) (intro.)
4 and amended to read:

5 118.125 (2) (n) (intro.) For the any purpose of providing services to a pupil
6 before adjudication, a concerning the juvenile justice system and the system's ability
7 to effectively serve a pupil, prior to adjudication:

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

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

16 118.125 (2) (n) 2. A school board shall disclose pertinent pupil records to an
17 investigating law enforcement agency or district attorney if the person to whom the
18 records are disclosed certifies in writing that the records concern the juvenile justice
19 system and the system's ability to effectively serve the pupil, relate to an ongoing
20 investigation or pending delinquency petition, and will not be disclosed to any other
21 person except as otherwise authorized by law.

NOTE: SECTION deals with the release of pupil records by school districts for juvenile justice purposes. The SECTION amends current law to require school boards to disclose pupil records that are pertinent to an investigating law enforcement agency or district attorney if that person certifies in writing that the records concern the juvenile justice

system and the system's ability to serve the pupil, relate to an ongoing investigation or pending delinquency petition, and will not be disclosed to any other person except as otherwise authorized by law.

1 **SECTION 9.** 118.127 (1) of the statutes is repealed.

NOTE: This provision repeals s. 118.127 (1), stats., which currently requires a school district administrator or private school administrator who receives information regarding a law enforcement action to notify any pupil named in the information and the parent or guardian of any minor pupil named in the information of that information.

The repeal is designed to encourage law enforcement agencies to share information with schools in situations where they might otherwise withhold information out of concern that notification could undermine an investigation. The repeal does not preclude a school district from notifying students and parents when it is deemed appropriate.

2 **SECTION 10.** 118.127 (2) of the statutes is renumbered 118.127.

3 **SECTION 11.** 118.128 of the statutes is repealed.

NOTE: Section 118.125 (2) (d), stats., currently requires all pupil records to be made available to teachers and other designated school officials who have legitimate educational interests, including safety interests. However, s. 118.128 stats., implies that school districts may not share information that a student is a physical risk to others with teachers and law enforcement units within schools, unless the school district has "reasonable cause" to believe, based only on past acts, that the student presents a risk of physically harming others. Section 118.128, stats., also limits the use and disclosure of such information.

Repeal of s. 118.128, stats., leaves the school district with the discretion to disseminate to school district employees all information the school district believes relates to the harm a pupil may present to others. When information is shared, school personnel can better assess risk and the educational needs of both the student presenting a risk of harm to others and other children. With s. 118.128, stats., repealed, school districts may want to adopt policies that encourage the reporting of information relating to harm posed by a pupil to others. This would be permitted by statutory language contained in SECTION of this draft.

4 **SECTION 12.** 118.46 of the statutes is created to read:

5 **118.46 Policy on bullying. (1)** By March 1, 2010, the department shall do
6 all of the following:

7 (a) Develop a model school policy on bullying by pupils. The policy shall include

8 all of the following:

9 1. A definition of bullying.

10 2. A prohibition on bullying.

11 3. A procedure for reporting bullying that allows reports to be made
12 confidentially.

1 4. A prohibition against a pupil retaliating against another pupil for reporting
2 an incident of bullying.

3 5. A procedure for investigating reports of bullying. The procedure shall
4 identify the school district employee in each school who is responsible for conducting
5 the investigation and require that the parent or guardian of each pupil involved in
6 a bullying incident be notified.

7 6. A requirement that school district officials and employees report incidents
8 of bullying and identify the persons to whom the reports must be made.

9 7. A list of disciplinary alternatives for pupils that engage in bullying or who
10 retaliate against a pupil who reports an incident of bullying.

11 8. An identification of the school-related events at which the policy applies.

12 9. An identification of the property owned, leased, or used by the school district
13 on which the policy applies.

14 10. An identification of the vehicles used for pupil transportation on which the
15 policy applies.

16 (b) Develop a model education and awareness program on bullying.

17 (c) Post the model policy under par. (a) and the model program under par. (b)
18 on its Internet site.

19 **(2)** By August 15, 2010, each school board shall adopt a policy prohibiting
20 bullying by pupils. The school board may adopt the model policy under sub. (1) (a).
21 The school board shall provide a copy of the policy to any person who requests it.
22 Annually, the school board shall distribute the policy to all pupils enrolled in the
23 school district and to their parents or guardians.

Note: This section creates a requirement for school boards to adopt a policy on
bullying. [See PREFATORY NOTE section dealing with school policies on bullying.]

1 **SECTION 13.** 119.04 (1) of the statutes is amended to read:

2 119.04 **(1)** Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),
3 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343,
4 115.345, 115.361, 115.365 (3), 115.38 (2), 115.445, ~~115.445~~, 115.45, 118.001 to 118.04,
5 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15,
6 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c)
7 to (f), (6) and (8), 118.245, 118.255, 118.258, 118.291, 118.30 to 118.43, 118.46, 118.51,
8 118.52, 118.55, 120.12 (5) and (15) to ~~(26)~~ (25), 120.125, 120.13 (1), (2) (b) to (g), (3),
9 (14), (17) to (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and 120.25
10 are applicable to a 1st class city school district and board.

11 **SECTION 14.** 120.12 (26) (title) of the statutes is repealed.

12 **SECTION 15.** 120.12 (26) of the statutes is renumbered 118.07 (4) (a) 1. and
13 amended to read:

14 118.07 **(4)** (a) 1. ~~Have~~ Each school board and the governing body of each private
15 school shall have in effect a school safety plan for each public or private school in the
16 school district within 3 years of the effective date of this paragraph [LRB inserts
17 date].

NOTE: SECTION requires a public or private school to have a safety plan in effect
within 3 years of the effective date of the bill.

18 **SECTION 16.** 938.396 (1) (c) 3. (intro.) of the statutes is amended to read:

19 938.396 **(1)** (c) 3. (intro.) A law enforcement agency, on its own initiative or on
20 the request of the school district administrator of a public school district, the
21 administrator of a private school, or the designee of the school district administrator
22 or the private school administrator, may, subject to official agency policy, provide to
23 the school district administrator, private school administrator, or designee, for use

1 as provided in s. 118.127 ~~(2)~~, any information in its records relating to any of the
2 following:

3 **SECTION 17.** 950.08 (2w) of the statutes is created to read:

4 **950.08 (2w)** INFORMATION TO BE PROVIDED BY DISTRICT ATTORNEYS TO SCHOOLS IN
5 CRIMINAL CASES. If a criminal complaint is issued under s. 968.02 or if a petition for
6 waiver is granted pursuant to s. 938.18, and the district attorney reasonably believes
7 the person charged is a pupil enrolled in a school district, a private school, or a
8 charter school established pursuant to 118.40 (2r), the district attorney shall make
9 a reasonable attempt to notify the school board, private school governing body, or
10 charter school governing body of the charges pending against the pupil. The district
11 attorney shall also notify the school board, private school governing body, or charter
12 school governing body of the final disposition of the charges.

NOTE: SECTION requires that a district attorney issuing criminal charges against a pupil make a reasonable attempt to notify the pupil's school that criminal charges have been filed and the final disposition of the charges. A similar requirement currently applies in juvenile cases, see s. 938.396 (2g) (m), stats., but no notification is currently required where a juvenile attends a (2r) charter school or where the pupil is charged as an adult or is waived into adult court. This provision would require the district attorney to notify the school district, private school, or (2r) charter school whenever a pupil is criminally charged as an adult and the district attorney reasonably believes the person charged is an enrolled pupil.

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(END)