



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0917/P6
TKK:wlj&amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 115.38 (1) (b) 2., 118.125 (3), 118.164 (3) (a)
2 4. and 118.21 (1); *to amend* 118.125 (1) (a), 118.127, 120.13 (1) (b) 2. (intro.),
3 120.13 (1) (b) 4. and 938.396 (1) (a); and *to create* 115.28 (54t), 118.125 (3) (b)
4 2., 118.129, 118.164 (3) (am) 1., 118.164 (3) (am) 2., 118.164 (3) (am) 3., 118.21
5 (1) (b), 118.40 (4) (ar) 3., 119.16 (16), 120.12 (24m), 120.12 (29), 120.13 (1) (a) 5.
6 and 938.396 (1) (cm) of the statutes; **relating to:** rights of and protections for
7 teachers.

Analysis by the Legislative Reference Bureau

Duty to report

This bill requires a law enforcement agency to report to the administrator of a school district, charter school, or private school certain information related to a felony or certain misdemeanors by a pupil who is enrolled in the school or when a pupil who is enrolled in the school is taken into custody in connection with a felony or certain misdemeanors. The law enforcement agency must provide this information to the school prior to the beginning of the school day immediately following the incident. The bill requires the school board of a school district and the governing body of a private or charter school to notify a teacher who is working directly with a pupil who is the subject of such a record as soon as practicable and, if possible, prior to the pupil attending the teacher's class. Finally, the bill requires

the principal or administrator of a public, private, or charter school to notify a law enforcement agency within 24 hours after learning of a physical assault or violent crime towards a person by a pupil that takes place at school or at a school-sponsored activity if requested by a witness to or adult victim of the incident.

Notice of teacher rights and protections

This bill creates and modifies certain rights and protections for teachers and requires the Department of Public Instruction to include on its Internet site a summary of the laws governing these rights and protections, which include the following:

1. The right of a teacher to remove a pupil from a classroom under certain circumstances for a period of two consecutive days.

2. The right of a teacher to receive information from a school board about a pupil who committed a felony or violent misdemeanor or who was taken into custody based upon a law enforcement officer's belief that the pupil was committing or had committed a felony or violent misdemeanor.

3. The right of a teacher to use reasonable and necessary force under certain circumstances.

4. The right of a teacher to request a school board to schedule a suspension hearing when that teacher has requested that a pupil be suspended and the administrator of the school has denied the request. Under current law, no hearing is required to suspend a pupil.

5. The right of a school district employee or teacher to receive assistance and leave benefits if the teacher is injured as a result of a physical assault or violent crime while performing work duties.

6. The right of a teacher to terminate his or her contract without penalty if the teacher is a victim of a physical assault or violent crime while performing work duties.

7. Civil immunity provided to a teacher under state and federal laws for certain discretionary acts.

Records and reporting

The bill requires each school board to maintain pupil behavioral records until the pupil has graduated from high school and for one year after graduation. If the pupil is no longer enrolled in a school in the school district and if the school district has not received a request to transfer the pupil's records to another school, the school district must retain the records until the pupil attains the age of 21. Current law prohibits a school board from maintaining such records for more than one year.

The bill also requires DPI to include additional information about suspensions and expulsions in the school district report it creates for each school district, including the number of physical assaults by pupils on teachers and other school district employees, on other pupils, and on adults not employed by the school district.

For further information see the *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:

1 **SECTION 1.** 115.28 (54t) of the statutes is created to read:

2 115.28 (54t) NOTICE OF TEACHER RIGHTS AND PROTECTIONS. Include on the
3 department's Internet site a summary of laws governing the rights and protections
4 afforded to a public school teacher under state and federal law. The state
5 superintendent shall include in the summary all of the following, and shall annually
6 provide electronic notice to each school board of the summary described in this
7 subsection:

8 (a) The right of a teacher, under s. 118.164 (2), to remove a pupil from the
9 classroom under certain circumstances.

10 (b) The right of a teacher, under s. 118.129 (3), to receive information from a
11 school board about a pupil who was involved in a felony or a misdemeanor under s.
12 939.632 (1) (e) 3. or was taken into custody based on a law enforcement officer's belief
13 that the pupil was committing or had committed a felony or a misdemeanor under
14 s. 939.632 (1) (e) 3.

15 (c) The right of a teacher, under s. 118.31 (3), to use reasonable and necessary
16 force under certain circumstances.

17 (d) The right of a teacher, under s. 120.13 (1) (a) 5., to request a school board
18 to schedule a suspension hearing.

19 (e) The right of a school district employee or teacher, under s. 120.12 (24m), and
20 of a charter school employee or teacher, under s. 118.40 (4) (ar) 3., to receive

1 assistance and leave benefits if the employee or teacher is injured as a result of a
2 physical assault or violent crime while performing work duties.

3 (f) The right of a teacher, under s. 118.21 (1) (b) or 119.16 (16), to terminate his
4 or her contract without penalty if the teacher is a victim of a physical assault or
5 violent crime while performing work duties.

6 (g) Civil immunity provided to a teacher by s. 893.80 (4) and by 20 USC 7941
7 to 7948.

8 (h) Any other information the department considers relevant.

9 **SECTION 2.** 115.38 (1) (b) 2. of the statutes is renumbered 115.38 (1) (b) 2. (intro.)
10 and amended to read:

11 115.38 (1) (b) 2. (intro.) The following information about suspensions and
12 expulsions:

13 a. The numbers of suspensions and expulsions; the,

14 b. The reasons for which pupils are suspended or expelled, reported according
15 to categories specified by the state superintendent; and including all of the following
16 categories: physical assaults on teachers; physical assaults on other school district
17 employees; physical assaults on students; and physical assaults on adults not
18 employed by the school district. In this subd. 1. b., "physical assault" has the
19 meaning given in s. 118.129 (1) (b).

20 c. The length of time for which pupils are expelled, reported according to
21 categories specified by the state superintendent; whether, including the categories
22 specified under subd. 2. b.

23 d. Whether pupils return to school after their expulsion; the,

1 e. The educational programs and services, if any, provided to pupils during
2 their expulsions, reported according to categories specified by the state
3 superintendent; including the categories specified under subd. 2. b.

4 f. The schools attended by pupils who are suspended or expelled; and the,

5 g. The grade, sex, and ethnicity of pupils who are suspended or expelled and
6 whether the pupils are children with disabilities, as defined in s. 115.76 (5).

7 **SECTION 3.** 118.125 (1) (a) of the statutes is amended to read:

8 118.125 (1) (a) “Behavioral records” means those pupil records that include
9 psychological tests, personality evaluations, records of conversations, any written
10 statement relating specifically to an individual pupil’s behavior, tests relating
11 specifically to achievement or measurement of ability, the pupil’s physical health
12 records other than his or her immunization records or any lead screening records
13 required under s. 254.162, law enforcement officers’ records obtained under s. 48.396
14 (1) or 938.396 (1) (b) 2. ~~or~~, (c) 3., or (cm), and any other pupil records that are not
15 progress records.

16 **SECTION 4.** 118.125 (3) of the statutes is renumbered 118.125 (3) (a) and
17 amended to read:

18 118.125 (3) (a) Each school board shall adopt rules in writing specifying the
19 content of pupil records and the time during which pupil records shall be maintained.
20 ~~No~~ A school board shall publish rules adopted under this subsection as a class 1
21 notice under ch. 985.

22 **(b) 1.** Except as provided in subd. 2., a school board shall maintain behavioral
23 ~~records may be maintained for more than one year after~~ of a pupil for as long as the
24 ~~pupil ceases to be~~ remains enrolled in a school in the school, unless district and for
25 at least one year after the pupil specifies in writing that his or her behavioral records

1 ~~may be maintained for a longer period~~ has graduated from high school in the school
2 district.

3 (c) A pupil's progress records shall be maintained for at least 5 years after the
4 pupil ceases to be enrolled in a school in the school district.

5 (d) A school board may maintain ~~the~~ pupil records on microfilm, on an optical
6 disc, or in electronic format if authorized under s. 19.21 (4) (c), or in such other form
7 as the school board deems appropriate.

8 (e) A school board shall maintain law enforcement officers' records obtained
9 under s. 48.396 (1) or 938.396 (1) (b) 2. ~~or~~ (c) 3., or (cm) separately from a pupil's other
10 pupil records. ~~Rules adopted under this subsection shall be published by the school~~
11 ~~board as a class 1 notice under ch. 985.~~

12 **SECTION 5.** 118.125 (3) (b) 2. of the statutes is created to read:

13 118.125 (3) (b) 2. A school board shall maintain behavioral records of a pupil
14 until the pupil has attained the age of 21 if all of the following apply:

15 a. The pupil was enrolled in but is not currently enrolled in a school in the school
16 district.

17 b. The pupil has not graduated from a school in the school district.

18 c. Neither the pupil nor the pupil's parent or guardian nor another school or
19 school district nor a court has submitted to the school board the written notice
20 described in sub. (4).

21 **SECTION 6.** 118.127 of the statutes is amended to read:

22 **118.127 Law enforcement agency information.** A school district, private
23 school, or tribal school may disclose information from law enforcement officers'
24 records obtained under s. 938.396 (1) (c) 3. and (cm) only to persons employed by the
25 school district who are required by the department under s. 115.28 (7) to hold a

1 license, to persons employed by the private school or tribal school as teachers, and
2 to other school district, private school, or tribal school officials who have been
3 determined by the school board or governing body of the private school or tribal
4 school to have legitimate educational interests, including safety interests, in that
5 information. In addition, if that information relates to a pupil of the school district,
6 private school, or tribal school, the school district, private school, or tribal school may
7 also disclose that information to those employees of the school district, private school,
8 or tribal school who have been designated by the school board or governing body of
9 the private school or tribal school to receive that information for the purpose of
10 providing treatment programs for pupils enrolled in the school district, private
11 school, or tribal school. A school district may not use law enforcement officers'
12 records obtained under s. 938.396 (1) (c) 3. or (cm) as the sole basis for expelling or
13 suspending a pupil or as the sole basis for taking any other disciplinary action
14 against a pupil, but may use law enforcement officers' records obtained under s.
15 938.396 (1) (c) 3. or (cm) as the sole basis for taking action against a pupil under the
16 school district's athletic code.

17 **SECTION 7.** 118.129 of the statutes is created to read:

18 **118.129 Report to law enforcement agency; notice of violent pupil**
19 **offenders. (1)** In this section:

20 (a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

21 (b) "Physical assault" means the knowing or intentional touching of another
22 person, by the use of any body part or object, with the intent to cause physical harm.
23 "Physical assault" does not include the reasonable and necessary use of force for the
24 purpose of self-defense or the defense of others under s. 939.48.

25 (c) "Violent crime" has the meaning given in s. 939.632 (1) (e).

1 **(2)** The principal or administrator of a public school, including a charter school,
2 or of a private school shall, if requested by an adult who witnessed the incident or
3 a victim of the incident, within 24 hours after being informed about the incident,
4 notify a law enforcement agency of an incident involving a physical assault of or
5 violent crime towards a person by a pupil that takes place on school premises or at
6 or in transit to a school-sponsored activity. The principal or administrator shall
7 include a brief summary of the incident in the pupil's records.

8 **(3)** The school board of a school district, the governing board of a charter school,
9 and the governing body of a private school shall notify a teacher who is working
10 directly, in the current school year, with a pupil who is the subject of a record received,
11 in the current school year, by the school board, charter school, or private school
12 pursuant to s. 938.396 (1) (cm) of the contents of that record as soon as practicable
13 and, if possible, before the pupil next attends the teacher's class.

14 **SECTION 8.** 118.164 (3) (a) 4. of the statutes is renumbered 118.164 (3) (am)
15 (intro.) and amended to read:

16 118.164 **(3)** (am) (intro.) The school principal or his or her designee may return
17 the pupil to the class from which the pupil was removed if, after weighing the
18 interests of the removed pupil, the other pupils in the class, and the teacher, the
19 school principal or his or her designee determines that readmission to the class is the
20 best or only alternative- and if any of the following applies:

21 **SECTION 9.** 118.164 (3) (am) 1. of the statutes is created to read:

22 118.164 **(3)** (am) 1. The pupil has remained out of the teacher's classroom for
23 one school day following the day on which the pupil was removed from the classroom.

24 **SECTION 10.** 118.164 (3) (am) 2. of the statutes is created to read:

1 118.164 (3) (am) 2. The teacher of the pupil, together with the school principal
2 or his or her designee, has met with the pupil regarding the pupil's conduct.

3 **SECTION 11.** 118.164 (3) (am) 3. of the statutes is created to read:

4 118.164 (3) (am) 3. The teacher has voluntarily waived his or her right to the
5 conditions for return to the classroom under subds. 1. and 2.

6 **SECTION 12.** 118.21 (1) of the statutes is renumbered 118.21 (1) (a) and
7 amended to read:

8 118.21 (1) (a) The school board shall contract in writing with qualified teachers.
9 The school board shall file a contract, with a copy of the teacher's authority to teach
10 attached, ~~shall be filed~~ with the school district clerk. Such contract, in addition to
11 fixing the teacher's wage, may provide for compensating the teacher for necessary
12 travel expense. A teaching contract with any person not legally authorized to teach
13 the named subject or at the named school shall be void. All teaching contracts shall
14 terminate if, and when, the authority to teach terminates.

15 **SECTION 13.** 118.21 (1) (b) of the statutes is created to read:

16 118.21 (1) (b) Beginning on the effective date of this paragraph [LRB inserts
17 date], the school board shall include in each contract under this section a provision
18 authorizing the teacher to terminate his or her contract without penalty, including
19 the penalty of the payment of liquidated damages, if the teacher is the victim of a
20 physical assault, as defined in s. 118.129 (1) (b), or of a violent crime, as defined in
21 s. 939.632 (1) (e), while the teacher is on school premises, at or in transit to a
22 school-sponsored activity, or otherwise engaged in official duties on behalf of the
23 school district. The provision required under this paragraph shall specify that a
24 teacher may terminate his or her contract as provided under this section only if the
25 teacher provides the school board with a law enforcement report documenting the

1 physical assault or violent crime within 2 months of the incident covered in the
2 report.

3 **SECTION 14.** 118.40 (4) (ar) 3. of the statutes is created to read:

4 118.40 (4) (ar) 3. Ensure that a charter school employee or teacher who is
5 injured as a result of physical assault, as defined in s. 118.129 (1) (b), or of a violent
6 crime, as defined in s. 939.632 (1) (e), upon the person of the employee or teacher
7 while the employee or teacher is in the performance of any duties as a charter school
8 employee or teacher is provided with a reasonable paid leave of absence from
9 employment with the governing board without a loss of leave benefits. Where
10 inpatient care involving an overnight stay is required, a reasonable paid leave of
11 absence is the longer of one workweek or the duration of the employee's or teacher's
12 inpatient care. Where inpatient care involving an overnight stay is not required but
13 medical treatment is needed, a reasonable paid leave of absence is the duration of
14 time necessary to receive medical treatment or, if a health care provider certifies in
15 writing that the employee or teacher is unable to return to work due to the injury,
16 the duration of time specified by the health care provider. The governing board is
17 entitled to the right of subrogation for reimbursement to the extent that an employee
18 or teacher who sustains injuries while the employee or teacher is in the performance
19 of his or her duties may recover the reimbursed items in an action or claim in tort
20 against any 3rd party. A repayment made under this subdivision shall be limited to
21 the total sum credited to the injured employee or teacher as damages for pay and
22 fringe benefits actually received in the settlement of any claim caused by the
23 negligence of the 3rd party. The governing board shall designate an employee to
24 provide assistance to the charter school employee or teacher with insurance and
25 benefits questions related to a leave of absence taken under this subdivision.

1 **SECTION 15.** 119.16 (16) of the statutes is created to read:

2 119.16 **(16)** TEACHER EMPLOYMENT CONTRACTS. Beginning on the effective date
3 of this subsection [LRB inserts date], the board shall include in any employment
4 contract with a teacher a provision authorizing the teacher to terminate his or her
5 contract without penalty, including the penalty of the payment of liquidated
6 damages, if the teacher is a victim of a physical assault, as defined in s. 118.129 (1)
7 (b), or of a violent crime, as defined in s. 939.632 (1) (e), while the teacher is on school
8 premises, at or in transit to a school-sponsored activity, or otherwise engaged in
9 official duties on behalf of the school district. The provision required under this
10 subsection shall specify that a teacher may terminate his or her contract as provided
11 under this subsection only if the teacher provides the school board with a law
12 enforcement report documenting the physical assault or violent crime within 2
13 months of the incident covered in the report.

14 **SECTION 16.** 120.12 (24m) of the statutes is created to read:

15 120.12 **(24m)** ASSISTANCE AND LEAVE BENEFITS FOR VICTIMS OF PHYSICAL ASSAULT.
16 Ensure that a school district employee or teacher who is injured as a result of
17 physical assault, as defined in s. 118.129 (1) (b), or of a violent crime, as defined in
18 s. 939.632 (1) (e), upon the person of the employee or teacher while the employee or
19 teacher is in the performance of any duties as a school district employee or teacher
20 is provided with a reasonable paid leave of absence from employment with the school
21 district without a loss of leave benefits. Where inpatient care involving an overnight
22 stay is required, a reasonable paid leave of absence is the longer of one workweek or
23 the duration of the employee's or teacher's inpatient care. Where inpatient care
24 involving an overnight stay is not required but medical treatment is needed, a
25 reasonable paid leave of absence is the duration of time necessary to receive medical

1 treatment or, if a health care provider certifies in writing that the employee or
2 teacher is unable to return to work due to the injury, the duration of time specified
3 by the health care provider. The school board is entitled to the right of subrogation
4 for reimbursement to the extent that an employee or teacher who sustains injuries
5 while the employee or teacher is in the performance of his or her duties may recover
6 the reimbursed items in an action or claim in tort against any 3rd party. A repayment
7 made under this subsection shall be limited to the total sum credited to the injured
8 employee or teacher as damages for pay and fringe benefits actually received in the
9 settlement of any claim caused by the negligence of the 3rd party. The school board
10 shall designate a school district employee to provide assistance to the school district
11 employee or teacher with insurance and benefits questions related to a leave of
12 absence taken under this subsection.

13 **SECTION 17.** 120.12 (29) of the statutes is created to read:

14 120.12 (29) NOTICE OF TEACHER PROTECTIONS. Provide to each teacher employed
15 by the school board the summary described in s. 115.28 (54t).

16 **SECTION 18.** 120.13 (1) (a) 5. of the statutes is created to read:

17 120.13 (1) (a) 5. A procedure under which a teacher may submit a request, in
18 writing, to the president of the school board to request that the school board schedule
19 a suspension hearing before the school board or, if applicable, under par. (e) 3. or s.
20 119.25 (2) (b) before an independent hearing panel or independent hearing officer
21 appointed by the school board under par. (e) 1. or s. 119.25 (1). The procedure under
22 this subdivision may be used by a teacher only if the teacher has made a request in
23 writing that a pupil be suspended under par. (b) 2. and the teacher's request has been
24 denied by the school district administrator, principal, or teacher designated by the
25 school district administrator to make the determination under par. (b) 2.

1 Notwithstanding par. (b) 4., the school board shall include in the procedure required
2 under this subdivision a requirement that the school district administrator,
3 principal, or teacher designated by the school district administrator shall approve
4 or deny the suspension request within 24 hours. The school board shall also include
5 in the procedure required under this subdivision a requirement that, if the school
6 district administrator, principal, or teacher designated by the school district
7 administrator denies the request for a suspension, the school board president or, if
8 the president is not available, the vice president of the school board, shall approve
9 or deny the teacher's request to schedule a suspension hearing within 24 hours. The
10 school board shall also include in the procedure required under this subdivision a
11 requirement that, if the school board president agrees to schedule a suspension
12 hearing as requested, the school board may either schedule the suspension hearing
13 at the next regularly scheduled meeting or at a special meeting called for that
14 purpose. The school board shall comply with the provisions under par. (b) 3. and
15 shall, upon the request of the pupil or the pupil's parent or guardian, conduct the
16 suspension hearing in a closed session. If a suspension hearing is held under the
17 procedure established under this subdivision, the school board may suspend a pupil,
18 including through an in-school suspension, for any of the reasons under par. (b) 2.
19 If a school board suspends a pupil following a suspension hearing held under the
20 procedure under this subdivision, the suspension may not exceed 5 school days.

21 **SECTION 19.** 120.13 (1) (b) 2. (intro.) of the statutes is amended to read:

22 120.13 (1) (b) 2. (intro.) The school district administrator or any principal or
23 teacher designated by the school district administrator may suspend a pupil,
24 including through an in-school suspension, for not more than 5 school days or, if a
25 notice of expulsion hearing has been sent under par. (c) 4. or (e) 4. or s. 119.25 (2) (c),

1 for not more than a total of 15 consecutive school days for any of the following
2 reasons:

3 **SECTION 20.** 120.13 (1) (b) 4. of the statutes is amended to read:

4 120.13 (1) (b) 4. The suspended pupil or the pupil's parent or guardian may,
5 within 5 school days following the commencement of the suspension, have a
6 conference with the school district administrator or his or her designee who shall be
7 someone other than a principal, administrator or teacher in the suspended pupil's
8 school. If the school district administrator or his or her designee finds that the pupil
9 was suspended unfairly or unjustly, or that the suspension was inappropriate, given
10 the nature of the alleged offense, or that the pupil suffered undue consequences or
11 penalties as a result of the suspension, reference to the suspension on the pupil's
12 school record shall be expunged. The administrator, or the administrator's designee,
13 shall make a finding within 15 days of the conference. This subdivision does not
14 apply to a pupil suspended by a school board under the procedure established under
15 par. (a) 5.

16 **SECTION 21.** 938.396 (1) (a) of the statutes is amended to read:

17 938.396 (1) (a) *Confidentiality.* Law enforcement agency records of juveniles
18 shall be kept separate from records of adults. Law enforcement agency records of
19 juveniles may not be open to inspection or their contents disclosed except under par.
20 (b) ~~or~~, (c), or (cm), sub. (1j), (2m) (c) 1p., or (10), or s. 938.293 or by order of the court.

21 **SECTION 22.** 938.396 (1) (cm) of the statutes is created to read:

22 938.396 (1) (cm) *Duty to disclose.* Notwithstanding par. (a), a law enforcement
23 agency shall, prior to the commencement of the school day immediately following the
24 incident or act, provide to the administrator of a school district, the administrator
25 of a charter school, as defined in s. 115.001 (1), or the administrator of a private

1 school, as defined in s. 115.001 (3r), for use as provided in s. 118.127, any information
2 in its records relating to an incident involving a felony or a misdemeanor under s.
3 939.632 (1) (e) 3. by a pupil enrolled in the school district, charter school, or private
4 school or an act for which a pupil enrolled in the school district, charter school, or
5 private school was taken into custody under s. 938.19 based on a law enforcement
6 officer's belief that the pupil was committing or had committed a felony or a
7 misdemeanor under s. 939.632 (1) (e) 3., and any other information about the pupil
8 the law enforcement agency considers appropriate.

9 (END)