

18A:40A-7.1

**LEGISLATIVE HISTORY CHECKLIST**  
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(Drug counseling)

**NJSA:** 18A:40A-7.1

**LAWS OF:** 1997 **CHAPTER:** 362

**BILL NO:** S62

**SPONSOR(S):** Cafiero

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:** **ASSEMBLY:** Education

**SENATE:** Women's Issues

**AMENDED DURING PASSAGE:** Yes  
Fourth reprint enacted

**DATE OF PASSAGE:** **ASSEMBLY:** January 8, 1997 Re-enacted 1-12-98

**SENATE:** April 21, 1997 Re-enacted 1-12-98

**DATE OF APPROVAL:** January 19, 1998

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes Also attachedL statement,  
adopted 3-10-97 & 1-27-97

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** Yes

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**  
**REPORTS:** No

**HEARINGS:** No

Federal regulation, referred to in statements: 42CFR2

KBP:pp

§§1,2  
C. 18A:40A-7.1  
&  
18A:40A-7.2

P.L. 1997, CHAPTER 362, *approved January 19, 1998*  
Senate, No. 62 (*Fourth Reprint*)

1 AN ACT concerning school-based drug and alcohol abuse counseling  
2 programs and supplementing chapter 40A of Title 18A of the New  
3 Jersey Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. a. <sup>1</sup>**[If]** Except as provided by section 3 of P.L.1971, c.437  
9 (C.9:6-8.10), if<sup>1</sup> a public or private <sup>2</sup>secondary<sup>2</sup> school pupil who is  
10 participating in a school-based drug and alcohol abuse counseling  
11 program provides information during the course of a counseling  
12 session in that program which indicates that the pupil's parent or  
13 guardian or other person residing in the pupil's household is dependent  
14 upon or illegally using a substance as that term is defined in section 2  
15 of P.L.1987, c.387 <sup>2</sup>**[(C.18:40A-9)] (C.18A:40A-9)<sup>2</sup>**, that information  
16 shall be kept confidential and may be disclosed only under the  
17 circumstances expressly authorized under subsection b. of this section.

18 b. The information provided by a pupil pursuant to subsection a.  
19 of this section may be disclosed:

20 (1) subject to the pupil's written consent, to another person or  
21 entity whom the pupil specifies in writing;

22 (2) pursuant to a court order; <sup>1</sup>**[or]**<sup>1</sup>

23 (3) to a person engaged in a bona fide research purpose, except  
24 that no names or other information identifying the pupil or the person  
25 with respect to whose substance abuse the information was provided,  
26 shall be made available to the researcher <sup>1</sup>; or

27 (4) to the Division of Youth and Family Services <sup>3</sup>**[or <sup>2</sup>to<sup>2</sup> a law**  
28 enforcement agency]<sup>3</sup> <sup>4</sup>**or to a law enforcement agency<sup>4</sup>**, if the  
29 information would cause a person to reasonably suspect that the

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted January 27, 1997.

<sup>2</sup> Senate floor amendments adopted March 10, 1997.

<sup>3</sup> Assembly AED committee amendments adopted December 11, 1997.

<sup>4</sup> Senate amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 <sup>2</sup>secondary school<sup>2</sup> pupil or another child <sup>1</sup>residing in the pupil's  
2 household<sup>2</sup> may be an abused or neglected child as <sup>2</sup>[defined]the  
3 terms are used<sup>2</sup> in R.S.9:6-1, <sup>2</sup>[R.S.9:6-8.9]or as the terms are defined  
4 in section 2 of P.L.1971, c.437(C.9:6-8.9),<sup>2</sup> or section 1 of P.L.1974,  
5 c.119 (C.9:6-8.21)<sup>1</sup>.

6 c. Any disclosure made pursuant to paragraph (1) or (2) of  
7 subsection b. of this section shall be limited to that information which  
8 is necessary to carry out the purpose of the disclosure, and the person  
9 or entity to whom the information is disclosed shall be prohibited from  
10 making any further disclosure of that information without the pupil's  
11 written consent. The disclosure shall be accompanied by a written  
12 statement advising the recipient that the information is being disclosed  
13 from records the confidentiality of which is protected by P.L. ,

14 c. (C. ) (pending before the Legislature as this bill), and  
15 that this law prohibits any further disclosure of this information  
16 without the written consent of the person from whom the information  
17 originated. <sup>1</sup>Nothing in this act shall be construed as prohibiting the  
18 Division of Youth and Family Services <sup>3</sup>[or a law enforcement  
19 agency]<sup>3 4</sup>or a law enforcement agency<sup>4</sup> from using or disclosing the  
20 information in the course of conducting an investigation <sup>3</sup>[or  
21 prosecution]<sup>3 4</sup>or prosecution. Nothing in this act shall be construed  
22 as authorizing the violation of any federal law<sup>4 1</sup>.

23 d. The prohibition on the disclosure of information provided by a  
24 pupil pursuant to subsection a. of this section shall apply whether the  
25 person to whom the information was provided believes that the person  
26 seeking the information already has it, has other means of obtaining it,  
27 is a law enforcement or other public official, has obtained a subpoena,  
28 or asserts any other justification for the disclosure of this information.

29  
30 2. <sup>1</sup>[A] Except as provided by section 6 of P.L.1971, c.437 (C.9:6-  
31 8.13), a<sup>1</sup> person who discloses or willfully permits the disclosure of  
32 information provided by a pupil in violation of the provisions of  
33 section 1 of this act is subject to a fine of not more than \$500 for a  
34 first offense and not more than \$5,000 for a second and each  
35 subsequent offense. The penalty shall be collected and enforced in  
36 summary proceedings under "the penalty enforcement law"  
37 (N.J.S.2A:58-1 et seq.).

38  
39 3. This act shall take effect immediately.

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42  
43 Requires information provided by pupils in school-based drug and  
44 alcohol abuse counseling about substance abuse by family members be  
45 kept confidential.

1 without the written consent of the person from whom the information  
2 originated.

3 d. The prohibition on the disclosure of information provided by a  
4 pupil pursuant to subsection a. of this section shall apply whether the  
5 person to whom the information was provided believes that the person  
6 seeking the information already has it, has other means of obtaining it,  
7 is a law enforcement or other public official, has obtained a subpoena,  
8 or asserts any other justification for the disclosure of this information.

9  
10 2. A person who discloses or willfully permits the disclosure of  
11 information provided by a pupil in violation of the provisions of  
12 section 1 of this act is subject to a fine of not more than \$500 for a  
13 first offense and not more than \$5,000 for a second and each  
14 subsequent offense. The penalty shall be collected and enforced in  
15 summary proceedings under "the penalty enforcement law"  
16 (N.J.S.2A:58-1 et seq.).

17

18 3. This act shall take effect immediately.

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#### 21 STATEMENT

22

23 This bill ensures the confidentiality of any information provided by  
24 a public or private school pupil during a counseling session in a  
25 school-based drug and alcohol abuse counseling program that a family  
26 member is abusing alcohol or drugs. The bill is intended to expand the  
27 protection already provided under federal regulations which ensure the  
28 confidentiality of information provided by a pupil in a program of this  
29 kind regarding the pupil's own substance abuse but not with respect to  
30 substance abuse by others.

31 The bill provides that any person who discloses or willfully permits  
32 the disclosure of information provided by a pupil which violates the  
33 confidentiality restrictions is subject to a fine of not more than \$500  
34 for a first offense and not more than \$5,000 for a second and each  
35 subsequent offense.

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40 Requires information provided by pupils in school-based drug and  
41 alcohol abuse counseling about substance abuse by family members be  
42 kept confidential.

[Passed Both Houses]

[Fourth Reprint]

SENATE, No. 62

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# STATE OF NEW JERSEY

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PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators CAFIERO, KOSCO, Assemblymen Gibson,  
Asselta and LeFevre

1 AN ACT concerning school-based drug and alcohol abuse counseling  
2 programs and supplementing chapter 40A of Title 18A of the New  
3 Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. a. <sup>1</sup>**[If]** Except as provided by section 3 of P.L.1971, c.437  
9 (C.9:6-8.10). if<sup>1</sup> a public or private <sup>2</sup>secondary<sup>2</sup> school pupil who is  
10 participating in a school-based drug and alcohol abuse counseling  
11 program provides information during the course of a counseling  
12 session in that program which indicates that the pupil's parent or  
13 guardian or other person residing in the pupil's household is dependent  
14 upon or illegally using a substance as that term is defined in section 2  
15 of P.L.1987, c.387 <sup>2</sup>**[(C.18:40A-9)]** (C.18A:40A-9)<sup>2</sup>, that information  
16 shall be kept confidential and may be disclosed only under the  
17 circumstances expressly authorized under subsection b. of this section.

18 b. The information provided by a pupil pursuant to subsection a.  
19 of this section may be disclosed:

20 (1) subject to the pupil's written consent, to another person or  
21 entity whom the pupil specifies in writing;

22 (2) pursuant to a court order; <sup>1</sup>**[or]**<sup>1</sup>

23 (3) to a person engaged in a bona fide research purpose, except  
24 that no names or other information identifying the pupil or the person  
25 with respect to whose substance abuse the information was provided,

**EXPLANATION** - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted January 27, 1997.

<sup>2</sup> Senate floor amendments adopted March 10, 1997.

<sup>3</sup> Assembly AED committee amendments adopted December 11, 1997.

<sup>4</sup> Senate amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 shall be made available to the researcher <sup>1</sup>: or

2 (4) to the Division of Youth and Family Services <sup>3</sup>[or <sup>2</sup>to<sup>2</sup> a law  
 3 enforcement agency]<sup>3 4</sup> or to a law enforcement agency<sup>4</sup> , if the  
 4 information would cause a person to reasonably suspect that the  
 5 <sup>2</sup>secondary school<sup>2</sup> pupil or another child <sup>2</sup>[residing in the pupil's  
 6 household]<sup>2</sup> may be an abused or neglected child as <sup>2</sup>[defined]the  
 7 terms are used<sup>2</sup> in R.S.9:6-1. <sup>2</sup>[R.S.9:6-8.9]or as the terms are  
 8 defined in section 2 of P.L.1971, c.437(C.9:6-8.9),<sup>2</sup> or section 1 of  
 9 P.L.1974, c.119 (C.9:6-8.21)<sup>1</sup>.

10 c. Any disclosure made pursuant to paragraph (1) or (2) of  
 11 subsection b. of this section shall be limited to that information which  
 12 is necessary to carry out the purpose of the disclosure, and the person  
 13 or entity to whom the information is disclosed shall be prohibited from  
 14 making any further disclosure of that information without the pupil's  
 15 written consent. The disclosure shall be accompanied by a written  
 16 statement advising the recipient that the information is being disclosed  
 17 from records the confidentiality of which is protected by P.L. ,  
 18 c. (C. )(pending before the Legislature as this bill), and  
 19 that this law prohibits any further disclosure of this information  
 20 without the written consent of the person from whom the information  
 21 originated. <sup>1</sup>Nothing in this act shall be construed as prohibiting the  
 22 Division of Youth and Family Services <sup>3</sup>[or a law enforcement  
 23 agency]<sup>3 4</sup> or a law enforcement agency<sup>4</sup> from using or disclosing the  
 24 information in the course of conducting an investigation <sup>3</sup>[or  
 25 prosecution]<sup>3 4</sup> or prosecution. Nothing in this act shall be construed  
 26 as authorizing the violation of any federal law<sup>4</sup> .<sup>1</sup>

27 d. The prohibition on the disclosure of information provided by a  
 28 pupil pursuant to subsection a. of this section shall apply whether the  
 29 person to whom the information was provided believes that the person  
 30 seeking the information already has it, has other means of obtaining it,  
 31 is a law enforcement or other public official, has obtained a subpoena,  
 32 or asserts any other justification for the disclosure of this information.

33

34 2. <sup>1</sup>[A] Except as provided by section 6 of P.L.1971, c.437  
 35 (C.9:6-8.13), a<sup>1</sup> person who discloses or willfully permits the  
 36 disclosure of information provided by a pupil in violation of the  
 37 provisions of section 1 of this act is subject to a fine of not more than  
 38 \$500 for a first offense and not more than \$5,000 for a second and  
 39 each subsequent offense. The penalty shall be collected and enforced  
 40 in summary proceedings under "the penalty enforcement law"  
 41 (N.J.S.2A:58-1 et seq.).

42

43 3. This act shall take effect immediately.

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3 Requires information provided by pupils in school-based drug and  
4 alcohol abuse counseling about substance abuse by family members be  
5 kept confidential.

# ASSEMBLY EDUCATION COMMITTEE

## STATEMENT TO

### [Second Reprint] **SENATE, No. 62**

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Assembly Education Committee favorably reports Senate Bill No. 62 (2R) with committee amendments.

As amended by committee, this bill provides that if a public or private secondary school student who is participating in a school-based drug and alcohol abuse counseling program provides information during the course of that program that his parent, guardian, or other person living in the household is abusing drugs or alcohol, that information will be considered confidential. The purpose of the bill is to expand the protection already provided under federal regulations on the confidentiality of information provided by a student in a school-based counseling session on his or her own substance abuse to such information provided about other family members.

Under the bill's provisions, information provided by a student could only be disclosed to another person or entity upon the written consent of the student; pursuant to a court order; to a person engaged in a research project, except that no personal identification information may be included with such a release; or, to the Division of Youth and Family Services if the information provided by the student would lead a person to believe that the student or another child may be abused or neglected. The bill also specifies that its provisions shall not be construed as prohibiting the Division of Youth and Family Services from using or disclosing the information in the course of conducting an investigation.

The bill provides that any person who discloses or willfully permits the disclosure of confidential information is subject to a fine of not more than \$500 for a first offense and not more than \$5,000 for a second and each subsequent offense.

The committee amended the bill to delete reference to a law enforcement agency as one of the entities to whom confidential information may be released.

As reported by committee, this bill is identical to Assembly Bill No.169 with committee amendments.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY  
SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 62

**STATE OF NEW JERSEY**

DATED: MARCH 14, 1996

The Senate Women's Issues, Children and Family Services Committee favorably reports Senate Bill No. 62.

This bill ensures the confidentiality of any information provided by a public or private school pupil during a counseling session in a school-based drug and alcohol abuse counseling program that a family member is abusing alcohol or drugs. The bill is intended to expand the protection already provided under federal regulations which ensure the confidentiality of information provided by a pupil in a program of this kind regarding the pupil's own substance abuse but not with respect to substance abuse by others.

The bill provides that any person who discloses or willfully permits the disclosure of information provided by a pupil which violates the confidentiality restrictions is subject to a fine of not more than \$500 for a first offense and not more than \$5,000 for a second and each subsequent offense.

This bill was prefiled for introduction in the 1996-97 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

STATEMENT TO

[First Reprint]

**SENATE, No. 62**

with Senate Floor Amendments  
(Proposed By Senator CAFIERO)

ADOPTED: MARCH 10, 1997

This floor amendment ensures the confidentiality of any information provided by a public or private secondary school pupil during a counseling session in a school-based drug and alcohol abuse counseling program that a family member is abusing alcohol or drugs, except that the information could be disclosed to DYFS or a law enforcement agency when an individual suspects that the secondary school pupil or another child has been abused or neglected.

The amendment clarifies that the provisions of the bill also apply to secondary school pupils or to other children, whether or not they reside in the pupil's household. The amendment also make a technical correction in a statutory cite.

## STATEMENT TO

### **SENATE, No. 62**

with Senate Floor Amendments  
(Proposed By Senator CAFIERO)

ADOPTED: JANUARY 27, 1997

This floor amendment ensures the confidentiality of any information provided by a public or private school pupil during a counseling session in a school-based drug and alcohol abuse counseling program that a family member is abusing alcohol or drugs, except that the information could be disclosed to DYFS or a law enforcement agency when an individual suspects that a pupil or another child in the household has been abused or neglected.

The amendment also provides that any person who discloses or willfully permits the disclosure of information provided by a pupil which violates the confidentiality restrictions would not be subject to a fine, if the disclosure was made pursuant to the provisions of section 6 of P.L.1971, c.437 (C.9:6-8.13).

Finally, under the provisions of the floor amendment, nothing in the bill would prohibit DYFS or a law enforcement agency from using or disclosing the information provided by the pupil, pursuant to the provisions of the bill, in the course of an investigation or prosecution.

SENATE BILL NO. 62  
(THIRD REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 62 (Third Reprint) with my recommendations for reconsideration.

A. Summary of the Bill

This bill ensures the confidentiality of information provided by a public or private secondary school pupil during a counseling session in a school-based drug and alcohol abuse counseling program.

The bill is intended to expand the protection already provided under federal regulations which ensure the confidentiality of information provided by a pupil with respect to the pupil's own substance abuse. Specifically, the bill makes confidential any information revealed by a pupil which indicates that a pupil's family member is abusing alcohol or drugs. Federal regulations do not require that information concerning a pupil's family member be kept confidential.

The bill permits disclosure of the confidential information under the following circumstances:

- (1) subject to the pupil's written consent to a person or entity whom the pupil specifies in writing;
- (2) pursuant to a court order;
- (3) to a person engaged in a bona fide research purpose, except that names or other information identifying the pupil or other person shall be made available; and
- (4) to the Division of Youth and Family Services, if the information would cause a person to suspect that the pupil or another child may be an abused or neglected child.

The bill also permits the Division of Youth and Family Services ("DYFS") or a law enforcement agency to use or disclose

the confidential information for the purposes of conducting an investigation or prosecution.

B. Recommended Action

I commend the sponsors of the bill for seeking to ensure that information disclosed by students in drug and alcohol counseling sessions remains confidential. The bill recognizes, however, that some circumstances may warrant disclosure of otherwise confidential information, including disclosure to DYFS to protect children at risk of abuse or neglect. I am concerned that the bill does not permit a similar exception to law enforcement authorities to enable the State to investigate and prosecute individuals suspected of child abuse.

Senate floor amendments inserted language permitting such disclosure to a law enforcement agency if the information would cause a person to reasonably suspect that the pupil or another child may be an abused or neglected child. That language was removed, however, as a result of Assembly Education Committee amendments.

I recommend that this exception be re-inserted to ensure that law enforcement agencies are able to investigate and prosecute all individuals suspected of child abuse and/or neglect. As the bill presently reads, a counselor or DYFS cannot reveal information to a member of a law enforcement agency even if the counselor or DYFS reasonably suspect that a child is being abused or neglected. I also recommend that language be added to the bill to clarify that it is not intended to conflict with federal law.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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Therefore, I herewith return Senate Bill No. 62 (Third Reprint) and recommend that it be amended as follows:

Page 1, Section 1, Line 27: After "Services" insert "or to a law enforcement agency"

Page 2, Section 1, Line 16: After "Services" insert "or a law enforcement agency"

Page 2, Section 1, Line 18: After "investigation." insert "or prosecution. Nothing in this act shall be construed as authorizing the violation of any federal law."

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor