



OHIO NEWS MEDIA ASSOCIATION | 1335 DUBLIN ROAD, SUITE 216-B | COLUMBUS OH 43215  
DENNIS R. HETZEL, PRESIDENT & EXECUTIVE DIRECTOR

**Ohio Senate Local Government, Public Safety and Veterans Affairs  
Testimony of Dennis Hetzel, President & Executive Director  
Ohio News Media Association  
House Bill 8 – Records Exemption | September 19, 2017**

Chairman Uecker, Vice Chair Wilson, Ranking Minority Member Thomas and other members, thank you for this opportunity to testify today to share our concerns about House Bill 8. As president and executive director of the Ohio News Media Association, I represent Ohio's newspapers and several hundred local news websites. I'm also speaking on behalf of our colleagues at the Ohio Association of Broadcasters. First of all, I apologize for this length of testimony, but we felt it is important to carefully address some of the issues and misconceptions surrounding this bill and satisfy you as to why we think it is so important that what superficially seems like a common-sense measure not go forward.

Our members are parents, too. My wife and I raised three children, and I understand the concern any parent would have in the situations Rep. Hambley, Rep. Rezabek and others have outlined in their testimony. No one would choose to have their child involved in a bus accident and then deal with the extra stress that can be added when reporters, lawyers, doctors and others may come calling, though it must be stated that there also numerous situations in which news coverage, lawyers and doctors help families cope. We understand the fears parents have of identity theft or pedophiles stalking their kids. We appreciate the opportunity to address each of the specific rationales expressed for this bill.

**The role of the news media**

Specific, credible, accurate information is critical to the practice of the kind of journalism that citizens have a right to expect. Incident and accident reports are foundational documents. Ohio's news media outlets need access to specific information to report the news. Few stories are of more local interest in any community than ones involving school-bus accidents.

A misunderstood aspect of journalism is that the information-gathering process and the act of publishing, broadcasting or posting are two different things. Reporters examine information. They sift and winnow. Then they distill it all into a meaningful report. Every newsroom I managed, and all responsible media outlets, know the appropriate ways to handle stories involving young accident victims. We know that elementary and middle-school students are not miniature adults. However, it is necessary at times to know names in order to reach families and request interviews. If families decline, reporters move on. Meanwhile, the community is entitled to specific, credible information about the incident. Times change, but good journalism still is about "who, what, when, where, why and how."

The starkest example in recent months happened in Chattanooga, Tennessee, where a bus driver has been indicted on six counts of manslaughter related to alleged speeding and use of a cell phone. On Nov. 21 last year, his bus swerved into a tree with 37 elementary school students aboard, killing six and injuring others. The driver and the bus company face more than a dozen lawsuits. Grieving parents and students spoke openly to the news media in the aftermath, with some noting that they had been complaining about the driver but calls weren't returned.

Rep. Hambley's testimony stated that there were more than 1,500 school bus accidents in Ohio during 2014 and 2015 suggested to me as a former editor that there should be more reporting, not less, about school-bus accidents. Again, good journalism requires access to information. Journalists also know that it's not enough to cite government statistics. Meaningful stories must be about real people to help citizens understand what's at stake.

The news media has another role that keeps growing in importance – to debunk rumors and provide credible information. The most accurate, authoritative information in these situations comes from law enforcement. Today's reality is that names fly rapidly into social media. Often, much of this is incorrect. The children themselves will be texting, tweeting and using other social media tools before the police even arrive in many cases. Neighborhood Facebook pages fill with information, discussion and speculation from amateur Web posters that may or may not be true. It is impossible to keep such information "quiet" in these times. Journalists ensure that accurate information is available.

There also is a larger point. Ohio has a fundamentally sound open records law that suffers today from ever-expanding secrecy. We are up to exemption "ff" in 149.43 (our open records law) with many more scattered throughout the Code. We could reach exemption "ii" or "jj" in the current General Assembly, based on recently introduced and enacted legislation. This particular bill concerns us greatly because it has a "camel's nose" potential to undermine a long-settled point of Ohio law that initial incident reports created by law enforcement are open records.

I hope we all agree that in our open records laws, exemptions should be rare and, when they are needed, written as narrowly as possible. There should be documentation or actual evidence of a problem, as well as an exploration of other alternatives, before we create new exemptions. If all that is required is a preference that certain information not be released, we are in trouble. Accountability and transparency gets lost. Accuracy and precision in reporting suffers. No such evidence has been offered for HB 8.

### **The role of the schools**

Both state and federal statutes are crystal clear: School bus accidents on public highways are police matters, not school matters. In addition, school districts have an inherent conflict of interest in attempting to restrict public access to this information, as I will explain in a moment.

In preparing this testimony, I discussed HB 8 with several attorneys, including one of the country's leading experts on student privacy and related issues – Frank LoMonte, the former executive director of the Student Press Law Center in Washington D.C. He is now the head of the Brechner Center for Freedom of Information at the University of Florida. Frank is an attorney whose articles about First Amendment and media-law topics have been widely published in Education Week, the Chronicle of Higher Education, the American University Law Review and other outlets. In particular, we discussed the "in loco parentis" doctrine in which schools legally substitute for the parental role as well as a related matter -- the application of FERPA, the federal Family Education Rights and Privacy Act.

According to legal experts we have consulted, there is no nexus with "in loco parentis" and public records laws here. The primary purpose of "in loco parentis" is really quite narrow – giving schools the right to act as parents in situations such as health emergencies when the parents cannot be reached. It is not, to quote LoMonte, "a secrecy or confidentiality doctrine." There are other cases and statutes that

demonstrate that schools cannot somehow claim general, over-arching authority to act as substitutes with full parental authority in all cases. The use of corporal punishment is one example.

This is obvious in the context of a school-bus accident. If there is any chance that the school district or its driver might have contributed in any way to the accident, the school district has an immediate conflict-of-interest situation in balancing the need for transparency and accountability versus potential liability. For example, what if bus maintenance or driver screening was a possible factor? Non-disclosure of this information limits the ability of journalists, parents and the public in general to assess if there was any culpability.

FERPA also is frequently misinterpreted. FERPA's clear intent is to protect release of educational records. It was amended in 1992 to explicitly state that records maintained by law enforcement agencies are not educational records, including accident reports. FERPA also allows the schools to release basic identifying information of students, and you can see this demonstrated just by looking at any number of school district websites. School districts frequently release the names of students in their public communications in news releases, Web postings and other media. If the concern is pedophiles, this is where bad actors are far likelier to go, which we will cover in our next point.

The following is from the FAQ that can be found at this link on the FERPA website: (<http://familypolicy.ed.gov/faq-page?src=ferpa>):

*Law enforcement unit records are not protected by FERPA because they are specifically excluded from the definition of "education records" and thus, from the privacy protections afforded to parents and eligible students by FERPA. Therefore, investigative reports and other records created and maintained by these law enforcement units that meet this definition are not considered "education records" subject to FERPA.*

*Accordingly, under FERPA, schools may disclose information from law enforcement unit records to anyone, including outside law enforcement authorities, without consent from parents or eligible students.*

In short, neither the "in loco parentis" doctrine nor FERPA are germane to this discussion. Plus, school districts have a built-in conflict if they restrict access to this information.

### **Identity theft and pedophiles**

We agree that it is important to address the concerns related to identity thieves and pedophiles having access to this information. While even one incident offends any moral person, it is not hard to understand why such abuse of public records is isolated and rare at worst.

Experts say that when pedophiles use the Internet, they will most likely make use of social media, publicly available profiles, chat rooms, instant messaging and even email. It is also worth noting and well-documented that most predators do not target random children but go through an elaborate process of identifying and grooming. While it is feasible bad people can find basic information in Web-available public records without revealing themselves, they have far-more likely sources there as well – starting with social media outlets where parents and kids routinely reveal identifying information.

Still, there are random predators. Digital identity thieves commonly get information through hacking and phishing techniques as well as GPS tracking and social media profiles. Anyone who has typed a name into Google knows there is ready access to lists created by legal and dubious means for pennies a name. Meanwhile, millions of Americans have voluntarily surrendered their privacy in order to utilize the Web for shopping, socializing and information. The Equifax scandal of the past week brings this point home in a compelling way.

Given multiple other sources of such information, a police accident report is one of the last and riskiest places a predator is likely to go. It is particularly unlikely that a child predator would stroll into a police station and seek a record under the scrutiny of police and cameras. Nor would a predator send a traceable email asking for a report. We are aware of no documented cases in which a predator accessed accident reports available on the Internet for such purposes either.

HB 8 cannot and will not prevent the actions of child predators, but it will block legitimate, appropriate use of information.

### **Fiscal note**

According to the LSC fiscal analysis, the Department of Public Safety estimates a one-time expense of up to \$100,000 for database reprogramming and an ongoing expense of \$100,000 or more per year to review reports. Local law enforcement agencies also will incur new expenses.

### **Conclusion**

The question we pose to you is this: Is there is a compelling, fact-based rationale here to overturn settled law, the need for public access to this information and the strong presumption of openness that must attach to public records in Ohio? We believe that House Bill 8 fails this test decisively and should not become law. Thank you for your consideration, and I would be glad to answer any questions that committee members may have.

Contact information:

*Dennis R. Hetzel*

*President and Executive Director*

*Ohio News Media Association*

*1335 Dublin Road - Suite 216-B*

*Columbus OH 43215*

*(o) 614-486-6677 | (c) 614-940-5067*

*dhetzel@ohionews.org*