



HOUSE BILL 142: Protect Our Students Act.

2023-2024 General Assembly

Committee:		Date:	March 29, 2023
Introduced by:	Reps. Torbett, K. Baker, Johnson, Kidwell	Prepared by:	Brian Gwyn*
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *The 4th edition of House Bill 142 would do the following:*

- *Modify penalties and definitions for certain sex offenses against a student.*
- *Increase penalties for failing to report misconduct toward children.*
- *Require the Center for Safer Schools to produce and distribute an informational video related to child abuse and neglect.*
- *Require public school units to show students in grades six through 12 the informational video on child abuse and neglect created by the Center for Safer Schools.*
- *Define conduct directly related to the office or employment as it pertains to the forfeiture of retirement benefits.*

PART I. MODIFY PENALTIES AND DEFINITIONS FOR CERTAIN SEX OFFENSES AGAINST STUDENT

CURRENT LAW: G.S. 14-27.32(a) makes it a Class G felony for any of the following to engage in vaginal intercourse or a sexual act with a victim who is a student at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student (unless the defendant is lawfully married to the student):

- Teacher
- School administrator
- Student teacher
- School safety officer
- Coach
- Other school personnel who is at least four years older than the victim

For an individual who is (i) school personnel other than a teacher, school administrator, student teacher, school safety officer, or coach and (ii) less than four years older than the victim, G.S. 14-27.32(b) makes it a Class I felony to engage in vaginal intercourse or a sexual act with a victim who is a student.

G.S. 14-202.4 makes it a Class I felony for any of the following to take indecent liberties with a victim who is a student at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student (unless the defendant is lawfully married to the student):

- Teacher
- School administrator
- Student teacher

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- School safety officer
- Coach
- Other school personnel who is at least four years older than the victim

"Indecent liberties" is defined as:

- Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or
- Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

"Indecent liberties" does not include vaginal intercourse or a sexual act.

For the purposes of G.S. 14-27.32 and G.S. 14-202.4, "student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school.

BILL ANALYSIS: Section 1 would do the following:

- Make all crimes of sexual activity with a student and taking indecent liberties with a student Class G felonies.
- For the crimes of sexual activity with a student and taking indecent liberties with a student, modify the definition of student to include individuals who were in school within six months of the violation .

This section would be effective December 1, 2023, and would apply to offenses committed on or after that date.

PART II. INCREASE PENALTIES FOR FAILING TO REPORT MISCONDUCT TOWARD CHILDREN

CURRENT LAW: Article 17E of Chapter 115C of the General Statutes establishes the statutory licensing requirements for professional educators, including administrators, teachers, and student services personnel.

G.S. 115C-270.35(b) requires the State Board of Education (SBE) to automatically revoke the license of a professional educator without the right to a hearing if the professional educator has entered a plea of guilty or nolo contendere or has been finally convicted of certain crimes, including sexual activity with a student and taking indecent liberties with a student.

BILL ANALYSIS: Section 2 would require superintendents, assistant superintendents, associate superintendents, personnel administrators, and principals to report certain misconduct to the SBE. These individuals would be required to report to the SBE if they know, have reason to believe, or have actual notice of a complaint that an employee licensed under Article 17E of Chapter 115C of the General Statutes engaged in misconduct that resulted in dismissal, disciplinary action, or resignation. If the employee resigns within 30 days of a complaint for misconduct or during an ongoing investigation of a complaint, the misconduct would be presumed to have resulted in the resignation.

Misconduct would include any of the following:

- Conduct that justifies automatic revocation of a license under G.S. 115C-270.35(b).
- The infliction of a physical injury against a child other than by accident or in self-defense.

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Failure to report the misconduct to the SBE would be a Class I felony. School personnel would be prohibited from threatening, harassing, or retaliating against any person for making a required report.

The SBE would have the authority to adopt temporary rules to (i) implement the requirements of this section, (ii) address disciplinary actions against professional educator licenses, and (iii) modify 16 NCAC 06C .0602 (Standards of Professional Conduct). The SBE would be required to adopt permanent rules by July 1, 2024.

This section would become effective December 1, 2023, and would apply to offenses committed on or after that date.

PART III. PRODUCE AND DISTRIBUTE CFSS TRAINING VIDEO

CURRENT LAW: G.S. 115C-12(47) requires the SBE, in consultation with the Superintendent of Public Instruction, to adopt a rule requiring information on child abuse and neglect, including age-appropriate information on sexual abuse, to be provided by public school units to students in grades six through 12. The information must be provided to students in the form of a document and a display posted in a high traffic area within each public secondary school, including at least the following information:

- Likely warning signs that a child may be a victim of abuse or neglect.
- The telephone number used for reporting abuse and neglect to the local department of social services.
- A statement that information reported to the local department of social services will be held in the strictest confidence, to the extent permitted by law.
- Resources available, including the anonymous safety tip line application developed pursuant to G.S. 115C-105.51.

BILL ANALYSIS: Section 3 would require the Center for Safer Schools (CFSS) to develop and produce age-appropriate videos on child abuse and neglect, including age-appropriate information on sexual abuse. The videos must include the same information currently required by G.S. 115C-12(47) to be provided in the form of a document and a display for students in grades six through 12. The SBE must adopt a rule that requires those students to be shown the video no more than 5 days after the first day of the school year.

PART IIIA. DEFINE CONDUCT DIRECTLY RELATED TO THE OFFICE OR EMPLOYMENT AS IT PERTAINS TO THE FORFEITURE OF RETIREMENT BENEFITS

CURRENT LAW: S.L. 2012-193 enacted statutes providing for the *forfeiture of retirement benefits for certain felonies related to employment or holding office*. The current law provides that the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to *any member who is convicted of any felony under federal law or the laws of the state if all of the following apply:*

- (1) *The offense is committed while the member is in service.*
- (2) *The conduct resulting in the member's conviction is directly related to the member's office or employment.*

The 2012 law included language providing that item (2) above applies to felony convictions where the court finds under a specified statute (G.S. 15A-1340.16(d)(9)) or other State or federal procedure that the member's conduct is directly related to the member's office or employment. This language was removed by S.L. 2020-48.

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BILL ANALYSIS: Section 3A would add a definition for the Local Governmental Employees' Retirement System (LGERS) in Section 3A(a), and for the Teachers' and State Employees' Retirement System (TSERS) in Section 3A(b).

The definition for "conduct directly related to the office or employment" would be as follows:

- (1) Is an offense identified in G.S. 115C-270.35(b), and the commission of the offense occurred while the member was employed in a public school or working in a public school subject to a memorandum of understanding.
- (2) Is an offense which required the revocation of the member's licensure or certification required for the member's employment or office at the time of the commission of the offense.
- (3) Is conduct that was directly related to the member's employment or office as determined by the Board of Trustees.

This section would be effective July 1, 2023, and would apply to offenses committed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.

**Theresa Matula, Legislative Analyst with the Legislative Analysis Division, substantially contributed to this summary.*