



HOUSE BILL 142: Protect Our Students Act.

2023-2024 General Assembly

Committee:		Date:	December 7, 2023
Introduced by:		Prepared by:	Samantha Yarborough Staff Attorney
Analysis of:	S.L. 2023-128		

OVERVIEW: S.L. 2023-128 does the following:

- *Effective December 1, 2023, makes the crimes of sexual activity with a student and taking indecent liberties with a student Class G felonies.*
- *Effective December 1, 2023, modifies the definition of sexual activity with a student and taking indecent liberties with a student to include individuals who were in school within six months of the violation.*
- *Effective December 1, 2023, requires superintendents, assistant superintendents, associate superintendents, personnel administrators, and principals to report certain misconduct to the State Board of Education (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 or during an investigation, the misconduct is presumed to have resulted in the resignation. Failure to report is a Class I felony.*
- *Requires the Center for Safer Schools to develop and produce age-appropriate videos on child abuse and neglect, including age-appropriate information on sexual abuse. The SBE must adopt a rule that requires that students in grades 6-12 view the video no more than 5 days after the first day of the school year, beginning with the 2024-2025 school year.*
- *Effective July 1, 2023, forfeits the retirement benefits for school employees as a result of conduct directly related to the office or employment, which is the following:*
 - *An offense that would lead to an automatic revocation of a professional educator license without a hearing, 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.*
 - *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.*
 - *Conduct that was directly related to the member's employment or office as determined by the Board of Trustees of the Retirement System.*
- *Requires the Buncombe County Board of Education and Asheville City Board of Education to jointly study the feasibility of merging the two local school administrative units, including the potential economic and educational impact of merging the school units and any other relevant information. The Boards must report their findings and recommendations to the standing committees of the General Assembly hearing elections matters no later than February 15, 2025.*

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Except as otherwise provided, this act became effective September 29, 2023.

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
- 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 1 through grade 12 in any school.

BILL ANALYSIS: Section 1 does 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, modifies the definition of student to include individuals who were in school within six months of the violation.

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

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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 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 requires superintendents, assistant superintendents, associate superintendents, personnel administrators, and principals to report certain misconduct to the SBE. These individuals are 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 is presumed to have resulted in the resignation.

Misconduct includes 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.

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

The SBE has 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 is required to adopt permanent rules by July 1, 2024.

This section became effective December 1, 2023, and applies 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 6 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 can 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 requires 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 6 through 12. The SBE must adopt a rule that

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requires those students to be shown the video no more than five days after the first day of the school year. This section applies beginning with the 2024-2025 school year.

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

CURRENT LAW: Current law provides for the forfeiture of retirement benefits for certain felonies related to employment or holding office. The Board of Trustees of the Retirement System cannot 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: (i) the offense is committed while the member is in service and (ii) the conduct resulting in the member's conviction is directly related to the member's office or employment.

BILL ANALYSIS: Section 3A adds 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) and results in forfeiture of retirement benefits for school employees for "conduct directly related to the office or employment".

The definition for "conduct directly related to the office or employment" is 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 became effective July 1, 2023, and applies to offenses committed on or after that date.

PART IV. BUNCOMBE COUNTY BOARD OF EDUCATION ELECTORAL DISTRICTS AND STUDY OF MERGING THE BUNCOMBE COUNTY SCHOOL ADMINISTRATIVE UNIT AND THE CITY OF ASHEVILLE SCHOOL ADMINISTRATIVE UNIT

BILL ANALYSIS: Section 4 requires the Buncombe County Board of Education to establish the boundaries of the six electoral districts by June 30, 2024, to be used in the 2024 elections and thereafter. The filing period for the Buncombe County Board of Education will run from noon on the third Friday in July until noon on the first Friday in August in 2024.

Section 4 also requires the Buncombe County Board of Education and the Asheville City Board of Education to jointly study the feasibility of the merger of the Buncombe County School Administrative Unit and the City of Asheville School Administrative Unit, including the potential economic and educational impact of merging the school units and any other relevant information. The Boards must report the findings and recommendations to the standing committees of the General Assembly hearing elections matters no later than February 15, 2025.

EFFECTIVE DATE: Except as otherwise provided, this act became effective September 29, 2023.

**Drupti Chauhan, Brian Gwyn, Theresa Matula, and Rob Ryan, Legislative Analysis Division, substantially contributed to this summary.*