

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 223

Judiciary I/Constitution Committee Substitute Adopted 3/14/95

Short Title: School Employee Record Checks.

(Public)

Sponsors:

Referred to:

February 16, 1995

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF PUBLIC SCHOOL  
EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 115C of the General Statutes is amended by  
adding a new Part to read:

**"PART 6. CRIMINAL HISTORY CHECKS.**

**"§ 115C-332. School personnel criminal history checks.**

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious

1 Injury or Damage by Use of Explosive or Incendiary Device or  
2 Material; Article 14, Burglary and Other Housebreakings; Article 15,  
3 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;  
4 Article 18, Embezzlement; Article 19, False Pretense and Cheats;  
5 Article 19A, Obtaining Property or Services by False or Fraudulent Use  
6 of Credit Device or Other Means; Article 20, Frauds; Article 21,  
7 Forgery; Article 26, Offenses Against Public Morality and Decency;  
8 Article 26A, Adult Establishments; Article 27, Prostitution; Article 28,  
9 Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office;  
10 Article 35, Offenses Against the Public Peace; Article 36A, Riots and  
11 Civil Disorders; Article 39, Protection of Minors; and Article 60,  
12 Computer-Related Crime. Such crimes also include possession or sale  
13 of drugs in violation of the North Carolina Controlled Substances Act,  
14 Article 5 of Chapter 90 of the General Statutes, and alcohol-related  
15 offenses such as sale to underage persons in violation of G.S. 18B-302  
16 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-  
17 138.5. In addition to the North Carolina crimes listed in this  
18 subparagraph, such crimes also include similar crimes under federal law  
19 or under the laws of other states.

20 (2) 'School personnel' means any:

- 21 a. Employee of a local board of education whether full-time or part-  
22 time, or  
23 b. Independent contractor or employee of an independent contractor  
24 of a local board of education, if the independent contractor  
25 carries out duties customarily performed by school personnel,  
26 whether paid with federal, State, local, or other funds, who has  
27 significant access to students. School personnel includes substitute  
28 teachers, driver training teachers, bus drivers, clerical staff, and  
29 custodians.

30 (b) Each local board of education shall adopt a policy on whether and under what  
31 circumstances an applicant for a school personnel position shall be required to be  
32 checked for a criminal history before the applicant is offered an unconditional job. Each  
33 local board of education shall apply its policy uniformly in requiring applicants for  
34 school personnel positions to be checked for a criminal history. A local board of  
35 education that requires a criminal history check for an applicant may employ an applicant  
36 conditionally while the board is checking the person's criminal history and making a  
37 decision based on the results of the check.

38 A local board of education shall not require an applicant to pay for the criminal  
39 history check authorized under this subsection.

40 (c) The Department of Justice shall provide to the local board of education the  
41 criminal history from the State and National Repositories of Criminal Histories of any  
42 applicant for a school personnel position in the local school administrative unit for which  
43 a local board of education requires a criminal history check. The local board of education

1 shall require the person to be checked by the Department of Justice to (i) be fingerprinted  
2 and to provide any additional information required by the Department of Justice to a  
3 person designated by the local board, or to the local sheriff or the municipal police,  
4 whichever is more convenient for the person, and (ii) sign a form consenting to the check  
5 of the criminal record and to the use of fingerprints and other identifying information  
6 required by the repositories. The local board of education shall consider refusal to  
7 consent when making employment decisions and decisions with regard to independent  
8 contractors.

9 The local board of education shall not require an applicant to pay for being  
10 fingerprinted.

11 (d) The local board of education shall review the criminal history it receives on a  
12 person. The local board shall determine whether the results of the review indicate that  
13 the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has  
14 demonstrated that he or she does not have the integrity or honesty to fulfill his or her  
15 duties as public school personnel and shall use the information when making employment  
16 decisions and decisions with regard to independent contractors. The local board shall  
17 make written findings with regard to how it used the information when making  
18 employment decisions and decisions with regard to independent contractors.

19 (e) The local board of education shall provide to the State Board of Education the  
20 criminal history it receives on a person who is certificated, certified, or licensed by the  
21 State Board of Education. The State Board of Education shall review the criminal history  
22 and determine whether the person's certificate or license should be revoked in accordance  
23 with State laws and rules regarding revocation.

24 (f) All the information received by the local board of education through the  
25 checking of the criminal history or by the State Board of Education in accordance with  
26 subsection (d) of this section is privileged information and is not a public record but is for  
27 the exclusive use of the local board of education or the State Board of Education. The  
28 local board of education or the State Board of Education may destroy the information  
29 after it is used for the purposes authorized by this section after one calendar year.

30 (g) No action for civil or criminal liability shall be brought against a local board of  
31 education, or its employees, or the State Board of Education, or its employees, as a result  
32 of actions taken to carry out its duties under this section if the local board of education, or  
33 its employees, or the State Board of Education, or its employees, were acting in good  
34 faith and in accordance with this section and the rules established pursuant to it."

35 Sec. 2. G.S. 114-19.2(a) reads as rewritten:

36 "(a) The Department of Justice may provide a criminal record check to the local  
37 board of education of a person who is employed in a public school in that local school  
38 district or of a person who has applied for employment in a public school in that local  
39 school district, if the employee or applicant consents to the record check. The  
40 Department may also provide a criminal record check of school personnel as defined in  
41 G.S. 115C-332 by fingerprint card to the local board of education from National  
42 Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information

1 shall be kept confidential by the local board of education as provided in Article 21A of  
2 Chapter 115C."

3           Sec. 3. The State Board of Education, in consultation with the Division of  
4 Criminal Information of the Department of Justice, shall adopt rules to implement this  
5 act.

6           Sec. 4. This act becomes effective July 1, 1995.