

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 223

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

Judiciary I/Constitution Committee Substitute No. 2 Adopted 4/6/95

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,

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

21 (2) 'School personnel' means any:

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

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

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

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

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

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

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

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

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

31 (g) There shall be no liability for negligence on the part of a local board of  
32 education, or its employees, or the State Board of Education, or its employees, arising  
33 from any act taken or omission by any of them in carrying out the provisions of this  
34 section. The immunity established by this subsection shall not extend to gross  
35 negligence, wanton conduct, or intentional wrongdoing that would otherwise be  
36 actionable. The immunity established by this subsection shall be deemed to have been  
37 waived to the extent of indemnification by insurance, indemnification under Articles 31A  
38 and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is  
39 waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the  
40 General Statutes."

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

42 "(a) The Department of Justice may provide a criminal record check to the local  
43 board of education of a person who is employed in a public school in that local school

1 district or of a person who has applied for employment in a public school in that local  
2 school district, if the employee or applicant consents to the record check. The  
3 Department may also provide a criminal record check of school personnel as defined in  
4 G.S. 115C-332 by fingerprint card to the local board of education from National  
5 Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information  
6 shall be kept confidential by the local board of education as provided in Article 21A of  
7 Chapter 115C."

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

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