

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1539

Short Title: Required Record Checks/Sch. Emp'ees.

(Public)

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Sponsors: Senator Winner of Mecklenburg.

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Referred to: Judiciary II.

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May 25, 1994

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL HISTORY CHECKS OF PUBLIC SCHOOL PERSONNEL.

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. Mandatory 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 a crime includes the following North Carolina crimes defined in 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 Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit

1 Device or Other Means; Article 20, Frauds; Article 21, Forgery;  
2 Article 26, Offenses against Public Morality and Decency; Article  
3 26A, Adult Establishments; Article 27, Prostitution; Article 28,  
4 Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office;  
5 Article 35, Offenses Against the Public Peace; Article 36A, Riots and  
6 Civil Disorders; Article 39, Protection of Minors; and Article 60,  
7 Computer-Related Crime. Such a crime also includes possession or  
8 sale of drugs in violation of the North Carolina Controlled Substances  
9 Act, Chapter 90, Article 5 and alcohol-related offenses such as sale to  
10 underage persons in violation of G.S. 18B-302 or driving while  
11 impaired in violation of G.S. 20-138.1 through 138.5.

12 (2) 'School personnel' means any:

- 13 a. Employee of a local board of education whether full-time or  
14 part-time, or  
15 b. Independent contractor or employee of an independent  
16 contractor of a local board of education, if the independent  
17 contractor carries out duties customarily performed by school  
18 personnel,

19 whether paid with federal, State, local, or other funds, who has  
20 significant access to students. School personnel includes substitute  
21 teachers, driver training teachers, bus drivers, clerical staff, and  
22 custodians.

23 (b) A local board of education shall require each applicant for a school personnel  
24 position to be checked for a criminal history. A local board of education may employ  
25 an applicant conditionally while the board is checking the person's criminal history and  
26 making a decision based on the results of the check.

27 (c) The Department of Justice shall provide to the local board of education the  
28 criminal history from the State and National Repositories of criminal histories of any  
29 applicant for a school personnel position in the local school administrative unit. The  
30 local board of education shall require the person to be checked by the Department of  
31 Justice to (i) be fingerprinted by the local sheriff or the municipal police, whichever is  
32 more convenient for the person, (ii) provide to the local sheriff or the municipal police  
33 any additional information required by the Department of Justice, and (iii) sign a form  
34 consenting to the check of the criminal record and to the use of fingerprints and other  
35 identifying information required by the repositories. The local board of education shall  
36 consider refusal to consent when making employment decisions and decisions with  
37 regard to independent contractors.

38 (d) The local board of education shall investigate the criminal history it receives  
39 on a person and shall consider and make written findings with regard to the information  
40 when making employment decisions and decisions with regard to independent  
41 contractors.

42 (e) The local board of education shall provide to the State Board of Education the  
43 criminal history it receives on a person who is certificated, certified, or licensed by the

1 State Board of Education. The State Board of Education shall investigate the criminal  
2 history and determine whether the person's certificate or license should be revoked.

3 (f) All the information received by the local board of education through the  
4 checking of the criminal history or by the State Board of Education in accordance with  
5 subsection (d) of this section is privileged information and for the exclusive use of the  
6 local board of education or the State Board of Education. The local board of education  
7 or the State Board of Education may destroy the information after it is used for the  
8 purposes authorized by this section after one calendar year.

9 (g) No action for civil or criminal liability shall be brought against a local board  
10 of education or the State Board of Education as a result of actions taken to carry out its  
11 duties under this section if the local board of education or the State Board of Education  
12 was acting in good faith and in accordance with this section and the rules established  
13 pursuant to it."

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

15 "(a) The Department of Justice may provide a criminal record check to the local  
16 board of education of a person who is employed in a public school in that local school  
17 district or of a person who has applied for employment in a public school in that local  
18 school district, if the employee or applicant consents to the record check. The  
19 Department may also provide a criminal record check to the local board of education  
20 from National Repositories of Criminal histories, in accordance with G.S. 115C-295.1.  
21 The information shall be kept confidential by the local board of education as provided in  
22 Article 21A of Chapter 115C."

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

26 Sec. 4. There is appropriated from the General Fund to the State Board of  
27 Education the sum of five hundred seventy thousand dollars (\$570,000) for the 1994-95  
28 fiscal year to pay for criminal record checks required by Section 1 of this act and the  
29 sum of seventy-five thousand dollars (\$75,000) for the 1994-95 fiscal year to pay local  
30 law enforcement agencies five dollars (\$5.00) each for taking fingerprints as required by  
31 Section 1 of this act.

32 Sec. 5. This act becomes effective July 1, 1994.