

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SENATE BILL 707
RATIFIED BILL**

AN ACT TO ENACT THE SCHOOL VIOLENCE PREVENTION ACT OF 2012; LIMIT PRAYERS FOR JUDGMENT CONTINUED; AND END SUNSET FOR A PROVISION REGARDING AN LEA'S BASIS OF KNOWLEDGE ABOUT A CHILD WITH A DISABILITY.

Whereas, the General Assembly of North Carolina finds that a safe and civil environment in school is necessary in order for students to learn and achieve high academic standards; and

Whereas, bullying and harassment, like other disruptive or violent behaviors, disrupt both a student's ability to learn and a school's ability to educate its students in a safe environment; and

Whereas, bullying and harassing behaviors create a climate that fosters violence in our schools; and

Whereas, it is essential to enact a law that seeks to protect the health and welfare of North Carolina students and improve the learning environment for North Carolina students; and

Whereas, to do so, State and national data and anecdotal evidence have established the need to identify the most vulnerable targets and potential victims of bullying and harassment; and

Whereas, the sole purpose of this law is to protect all children from bullying and harassment, and no other legislative purpose is intended nor should any other intent be construed from passage of this law; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-33 is amended by adding a new subsection to read:

"(c1) No school personnel as defined in G.S. 14-33(c)(6) who takes reasonable actions in good faith to end a fight or altercation between students shall incur any civil or criminal liability as the result of those actions."

SECTION 2. G.S. 14-453(7c) reads as rewritten:

"(7c) "Profile" means (i) a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that ~~computer~~ computer or (ii) a Web site user's personal page or section of a page made up of data, in text or graphical form, which displays significant, unique, or identifying information, including, but not limited to, listing acquaintances, interests, associations, activities, or personal statements."

SECTION 3. G.S. 14-458.1(a) reads as rewritten:

"(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

- ...
- (3) ~~Plant~~ Make any statement, whether true or false, ~~tending~~ intending to immediately provoke, provoke or and that actually provokes that is likely to provoke, any third party to stalk or harass a minor.
- (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).



- (5) Sign up a minor for a pornographic Internet site-site with the intent to intimidate or torment the minor.
- (6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the minor, resulting in intimidation or torment of the minor."

SECTION 4. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-458.2. Cyber-bullying of school employee by student; penalty.

(a) The following definitions apply in this section:

(1) School employee. – The term means any of the following:

- a. An employee of a local board of education, a charter school authorized under G.S. 115C-238.29D, a regional school created under G.S. 115C-238.62, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes.
- b. An independent contractor or an employee of an independent contractor of a local board of education, a charter school authorized under G.S. 115C-238.29D, a regional school created under G.S. 115C-238.62, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, if the independent contractor carries out duties customarily performed by employees of the school.

(2) Student. – A person who has been assigned to a school by a local board of education as provided in G.S. 115C-366 or has enrolled in a charter school authorized under G.S. 115C-238.29D, a regional school created under G.S. 115C-238.62, or a nonpublic school which has filed intent to operate under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes, or a person who has been suspended or expelled from any of those schools within the last year.

(b) Except as otherwise made unlawful by this Article, it shall be unlawful for any student to use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a school employee, do any of the following:

- a. Build a fake profile or Web site.
- b. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a school employee.
- c. Post a real or doctored image of the school employee on the Internet.
- d. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords.
- e. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a school employee.

(2) Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a school employee.

(3) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a school employee for the purpose of intimidating or tormenting that school employee (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(4) Sign up a school employee for a pornographic Internet site with the intent to intimidate or torment the employee.

(5) Without authorization of the school employee, sign up a school employee for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the school employee.

(c) Any student who violates this section is guilty of cyber-bullying a school employee, which offense is punishable as a Class 2 misdemeanor.

(d) Whenever any student pleads guilty to or is guilty of an offense under this section, the court may, without entering a judgment of guilt and with the consent of the student, defer further proceedings and place the student on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the student and dismiss the proceedings against the student. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the student may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146.

(e) Whenever a complaint is received pursuant to Article 17 of Chapter 7B of the General Statutes based upon a student's violation of this section, the juvenile may, upon a finding of legal sufficiency pursuant to G.S. 7B-1706, enter into a diversion contract pursuant to G.S. 7B-1706."

SECTION 5. G.S. 15A-301 is amended by adding new subsections to read:

"(b1) Approval by District Attorney; school personnel. – Notwithstanding any other provision of law, no warrant for arrest, order for arrest, criminal summons, or other criminal process shall be issued by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee. For purposes of this subsection, the term "district attorney" means the person elected to the office of district attorney. This subsection does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. The district attorney may decline to accept the authority set forth in this subsection; in such case, the procedure and review authority shall be as set forth in subsection (b2) of this section.

(b2) Magistrate review; school personnel. – A district attorney may decline the authority provided under subsection (b1) of this section by transmitting a letter so indicating to the chief district court judge. Upon receipt of a letter from the district attorney declining the authority provided in subsection (b1) of this section, the chief district court judge shall appoint a magistrate or magistrates to review any application for a warrant for arrest, order for arrest, criminal summons, or other criminal process against a school employee, as defined in G.S. 14-33(c)(6), where the allegation is that the school employee committed a misdemeanor offense while discharging his or her duties of employment. The failure to comply with any of the requirements in this subsection shall not affect the validity of any warrant, order, summons, or other criminal process. The following exceptions apply to the requirements in this subsection:

- (1) The offense is a traffic offense.
- (2) The offense occurred in the presence of a sworn law enforcement officer.
- (3) There is no appointed magistrate available to review the application."

SECTION 6. Article 5 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-46.2. Probation officer visits at school; limitations.

(a) Except as provided in this section, probation officers are not authorized to visit students during school hours on school property.

(b) Probation officers of the Division of Community Corrections, when working as a part of the Division's School Partnership Program, may visit students during school hours on school property with prior authorization by school administrators. For purposes of this section, "authorization" includes requests for assistance from guidance counselors or school resource officers.

(c) Each local board of education shall develop policies and guidelines for coordinating with probation officers of the Division of Community Corrections in the planning and scheduling of school visits as provided in this section, utilizing existing administrative capacity to manage scheduling. Visits shall be conducted in a private area designated for such use and located away from contact with the general student population. The probation officer shall not initiate direct contact with a student while the student is in class or between classes. Initial

contact with the student shall be made by a school administrator or other designated school employee, who shall direct the student to a private area to meet with the probation officer."

SECTION 7. G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement and the Superintendent. – When the principal has personal ~~knowledge, a reasonable belief,~~ knowledge or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency.

~~A principal who willfully fails to make a report to law enforcement required by this subsection may be subject to demotion or dismissal pursuant to G.S. 115C-325.~~

Notwithstanding any other provision of law, the State Board of Education shall not require the principal to report to law enforcement acts in addition to those required to be reported by ~~this subsection law.~~

For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education.

Nothing in this subsection shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 8. Article 19 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-289.1. Supervisor duty to report; intimidation of school employee.

(a) When a supervisor of a school employee has actual notice that the school employee has been the victim of an assault by a student in violation of G.S. 14-33(c)(6) resulting in physical injury, as that term is defined in G.S. 14-34.7, the supervisor shall immediately report to the principal the assault against the school employee. For the purpose of this subsection, the term "supervisor of a school employee" does not include the principal or superintendent.

(b) A principal, superintendent, or supervisor of a school employee shall not, by threats or in any other manner, intimidate or attempt to intimidate that school employee from reporting to law enforcement an assault by a student under G.S. 14-33(c)(6).

(c) Nothing in this section shall be interpreted to interfere with the due process rights of school employees or the privacy rights of students."

SECTION 9. Article 25 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-366.4. Assignment of students convicted of cyber-bullying.

A student who is convicted under G.S. 14-458.2 of cyber-bullying a school employee shall be transferred to another school within the local school administrative unit. If there is no other appropriate school within the local school administrative unit, the student shall be transferred to a different class or assigned to a teacher who was not involved as a victim of the cyber-bullying. Notwithstanding the provisions in this section, the superintendent may modify, in writing, the required transfer of an individual student on a case-by-case basis."

SECTION 10. G.S. 115C-390.3 is amended by adding a new subsection to read:

"(d) No school employee shall be reprimanded or dismissed for acting or failing to act to stop or intervene in an altercation between students if the employee's actions are consistent with local board policies. Local boards of education shall adopt policies, pursuant to their authority under G.S. 115C-47(18), which provide guidelines for an employee's response if the employee has personal knowledge or actual notice of an altercation between students."

SECTION 11. Article 81 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1331B. Prayer for judgment continued for a period of time that exceeds 12 months is an improper disposition of a Class B1, B2, C, D, or E felony.

The court shall not dispose of any criminal action that is a Class B1, B2, C, D, or E felony by ordering a prayer for judgment continued that exceeds 12 months. If the court orders a prayer for judgment continued in any criminal action that is a Class B1, B2, C, D, or E felony, the court shall include as a condition that the State shall pray judgment within a specific period of time not to exceed 12 months. At the time the State prays judgment, or 12 months from the date of the prayer for judgment continued order, whichever is earlier, the court shall enter a final judgment unless the court finds that it is in the interest of justice to continue the order for prayer for judgment continued. If the court continues the order for prayer for judgment continued, the order shall be continued for a specific period of time not to exceed 12 months. The court shall not continue a prayer for judgment continued order for more than one additional 12-month period."

SECTION 11.5. If Senate Bill 724, 2011 Regular Session, becomes law, the lead-in language for Section 5 of that bill is rewritten to read:

"**SECTION 5.** Section 5 of S.L. 2008-90, as amended by Section 1 of S.L. 2010-36, reads as rewritten:"

SECTION 12. Section 5 is effective on and after the date that a magistrate is appointed by the chief district court judge to perform the function set forth in that section. Sections 3, 4, and 11 of this act become effective December 1, 2012, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Sections 6, 7, 8, 9, and 10 apply beginning with the 2012-2013 school year.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2012