

# Virginia State Crime Commission

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## Consensual Sexual Conduct between School Personnel and Adult Students

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2013

# Consensual Sexual Conduct between School Personnel and Adult Students

## Executive Summary

House Joint Resolution 595 was introduced by Delegate Manoli Loupassi during the 2013 Session of the General Assembly. The resolution incorporated Delegate David Albo's House Joint Resolution 730. Consequently, the resolution had two distinct parts, dealing with different subjects that were combined into one study resolution during the legislative process. The first part of the resolution specifically directed the Crime Commission to review:

- (i) the availability of penalties for sexual conduct between secondary school students 18 years of age and older and teachers;
- (ii) the reasons why sexual conduct between teachers and other school personnel who maintain a custodial or supervisory relationship with students under the age of 18 is subject to criminal penalties while the same conduct with students 18 years of age or older is not;
- (iii) the feasibility of penalizing sexual conduct between teachers or other school personnel and students age 18 or older;
- (iv) the number of cases involving sexual conduct between teachers or other school personnel and students 18 years of age or older each year.

In order to address this part of the study mandate, Crime Commission staff examined literature, statutes, and regulations, collected available data from relevant agencies, and disseminated surveys to public school division superintendents and private school principals. In addition, staff met with various individuals and representatives from multiple organizations and state agencies.

Virginia law currently does not have a criminal penalty for consensual sexual conduct between school personnel and students who are eighteen years of age or older. However, at least 15 other states have made such conduct criminally illegal, including Alabama, Arkansas, Connecticut, Iowa, Kansas, Louisiana, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Washington. Based on survey results disseminated by Crime Commission staff, *at least* 14 incidents of this nature have occurred in Virginia public school divisions over the past 5 years. Furthermore, approximately 25% of responding public school superintendents reported not having a policy that addresses relationships between school employees and students.

The Crime Commission reviewed study findings at its November and December meetings. No motion was made on any legislation pertaining to sexual relationships between school personnel and adult students.

## Background

There are approximately 1.2 million students enrolled in Virginia public schools.<sup>1</sup> The total number of students enrolled that are eighteen years of age and older varies significantly during the course

of the school year. For example, the number of students 18 years of age or older enrolled in public schools in October 2012 was 23,839, as compared to 88,407 enrolled during June 2013.<sup>2</sup>

According to the Virginia Department of Education, there are 132 public school divisions in Virginia, which include approximately 325 high schools. Figures provided by the Virginia Council for Private Education indicated that there are approximately 220 private schools that could potentially enroll students over the age of 17. Within these schools, there are approximately 158,454 individuals with an active Virginia teaching/education license.<sup>3</sup> However, it should be noted that there are many other adult personnel employed by schools, including substitute and student teachers, coaches, administrators, after-school activity instructors and coordinators, and other staff.

## Survey Results

Staff distributed a secure, electronic survey to all public school superintendents and all private school principals that could have students eighteen years of age or older enrolled.<sup>4</sup> All responses were strictly confidential. The response rate for public school division superintendents was 77% (101 of 132) and 44% (98 of 222) for private school principals.

Both surveys asked for the total number of incidents involving school personnel having sexual relations with a student eighteen years of age or older, occurring over the past five academic years. If there was an incident reported, respondents were asked to indicate the year of the reported incident, the type of school employee involved (teacher, substitute teacher, coach, etc.), how the incident was resolved (suspended, forced to resign, fired, etc.), and, whether the individual, if a teacher, lost his license. Schools were also asked if they had a written policy regulating relationships between school personnel and students; whether it was required that such incidents be reported to either a superintendent or principal; and, to what degree they suspected that such incidents were not being reported to them.

None of the responding private school principals reported any incidents of sexual relations between school personnel and students eighteen years of age or older over the past five years. Eleven public school division superintendents reported that at least one such incident occurred in their school division over the past five years. In the 11 public school divisions, there were 14 total incidents of sexual relations involving a school employee and a student eighteen years of age or older. Of the total incidents, 8 the employee was fired, in 3 the employee was forced to resign, in 1 the employee resigned, in 1 the employee retired, and for 1 incident, the survey response did not indicate how the matter was resolved. More specifically:

- 7 involved a teacher
  - 2 were fired, 3 were forced to resign, 1 resigned, and 1 retired.
- 4 involved a coach
  - 3 were fired, 1 did not indicate how resolved.
- 2 involved other staff/employee
  - Both were fired.
- 1 involved a substitute teacher
  - Individual was fired.

When asked whether they had a written policy that regulated relationships between school personnel and students, 74% (73 of 99) of responding public school division superintendents and

87% (81 of 93) of private school principals indicated that they currently had such a policy. Of those with a written policy, results indicated that the policy applied to *all* school personnel.

Nearly all, 93% (90 of 97), of responding public school division superintendents, indicated that principals are required to report such incidents to them. Similarly, 89% (79 of 89) of private school principals indicated that school employees are required to report such incidents to them. The vast majority of responding superintendents (97%) and all private school principals believed that it was “unlikely” to “very unlikely” that such incidents were not being reported to them.

## Legal Overview

Virginia Code § 18.2-370.1 punishes as a Class 6 felony the taking of indecent liberties with a minor under the age of eighteen by a person who maintains a custodial or supervisory relationship over the child. Under Virginia law, there is no criminal penalty for consensual sexual conduct that takes place between school personnel and students eighteen years of age and older.

However, 15 states were identified that have made such conduct criminally illegal: Alabama,<sup>5</sup> Arkansas (if student is less than 21),<sup>6</sup> Connecticut,<sup>7</sup> Iowa,<sup>8</sup> Kansas,<sup>9</sup> Louisiana (if student is under 21 and offender is more than 4 years older),<sup>10</sup> Michigan (if student is special needs and less than 26),<sup>11</sup> Missouri,<sup>12</sup> North Carolina,<sup>13</sup> Ohio,<sup>14</sup> Oklahoma (if student is less than 20),<sup>15</sup> Pennsylvania (if offender has direct care, supervision, guidance or control over the student),<sup>16</sup> South Carolina,<sup>17</sup> Texas (if more than a 3 year age difference or relationship started after teacher began job),<sup>18</sup> and Washington (if student is less than 21 and offender is more than 5 years older).<sup>19</sup>

In all cases where these criminal statutes have been challenged, they have been upheld. The exception was Arkansas’ statute, where the original statute was struck down, but has since been re-written by the legislature and not yet challenged.<sup>20</sup>

## Summary and Conclusion

This study focused on consensual sexual conduct between school personnel and students who are 18 years of age and older. Such conduct is not illegal under current Virginia law. At least 15 other states, however, have been identified where such conduct has been made illegal. Based on survey results, *at least* 14 incidents have occurred in Virginia public school divisions over the past 5 years. Approximately 25% of superintendents reported not having a policy that addresses relationships between school personnel and students.

There were two policy options considered by the Crime Commission:

- Should sexual conduct between school employees and students who are 18 years of age and older be made illegal?
- Should schools be required to have a written policy that regulates relationships between school employees and students?

The Crime Commission made no motion to endorse either option at its December meeting.

## Acknowledgements

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Private School Principals

Public School Division Superintendents

Virginia Council for Private Education

Virginia Department of Education

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<sup>1</sup> Virginia Department of Education, Fall Membership, 2013.

<sup>2</sup> Virginia Department of Education, October 2012 and June 2013 figures.

<sup>3</sup> Virginia Department of Education, Figure as of May 30, 2013.

<sup>4</sup> Copies of the Public School Division Superintendent and Private School Principal Survey are available upon request.

<sup>5</sup> ALA. CODE § 13A-6-81 (West 2013).

<sup>6</sup> ARK. CODE ANN. § 5-14-125 (a)(6) (West 2013).

<sup>7</sup> CONN. GEN. STAT. ANN. § 53a-71(a)(8) (West 2013).

<sup>8</sup> IOWA CODE ANN. § 709.15(3)(a) (West 2013).

<sup>9</sup> KAN. STAT. ANN. § 21-5512(a)(9) (West 2013).

<sup>10</sup> LA. REV. STAT. ANN. § 14:81.4 (2013).

<sup>11</sup> MICH. COMP. LAWS ANN. § 750.520d(1)(f)(i)-(ii) (West 2013).

<sup>12</sup> MO. ANN. STAT. § 566.086 (West 2013).

<sup>13</sup> N.C. GEN. STAT. ANN. §§ 14-27.7(b), 14-202.4 (West 2013).

<sup>14</sup> OHIO REV. CODE ANN. § 2907.03(7) (West 2013).

<sup>15</sup> OKLA. STAT. ANN. tit. 21, § 1111(A)(8) (West 2013).

<sup>16</sup> 18 PA. STAT. ANN. § 3124.2(a.2) (West 2013).

<sup>17</sup> S.C. CODE ANN. § 16-3-755(C)-(D) (2013).

<sup>18</sup> TEX. PENAL CODE ANN. § 21.12 (West 2013).

<sup>19</sup> WASH. REV. CODE ANN. § 9A.44.093(1)(b) (West 2013).

<sup>20</sup> Paschal v. State, 388 S.W.3d 429 (2012).