

**LEGAL MEMORANDUM**  
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**Senate Bill 199: Act to Protect Children from Sexual Abuse (SL 2019-245)**

On November 7, 2019, Governor Cooper signed into law Senate Bill 199, An Act to Protect Children from Sexual Abuse and to Strengthen and Modernize Sexual Assault Laws. The law includes two new provisions which apply to local boards of education: (1) a new requirement, **effective December 1, 2019**, that adults report potential violent or sexual offenses against child victims to law enforcement; and (2) a requirement that **by January 1 2020**, LEAs adopt a child sexual abuse and sex trafficking training program for school personnel who work directly with students, with implementation of the training in the 2020-2021 school year. More information about these requirements is outlined below.

**New Mandatory Reporting Requirement (§ 14-318.6)**

SB 199 requires that “[a]ny person 18 years of age or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse [must] immediately report the case of that juvenile to the appropriate local law enforcement agency.” “Juvenile” is defined as someone under 18 years of age who is not married, emancipated, or a member of the U.S. Armed Forces. For purposes of SB 199, the age of the juvenile at the time of the abuse or offense governs.

**Offenses to be Reported**

1. **Violent offense** – A “violent offense” is defined as any offense that inflicts on a juvenile by other than nonaccidental means (1) serious bodily injury, which creates a substantial risk of death or causes serious permanent disfigurement, or (2) serious physical injury, which can include serious mental injury. The definition also includes an attempt, solicitation or conspiracy to commit or aid and abet any of these offenses.

2. Misdemeanor child abuse – Misdemeanor child abuse occurs when a parent or person providing care to a child 15 or younger inflicts or allows to be inflicted physical injury to the child or creates or allows to be created substantial risk of physical injury to the child by nonaccidental means.
  
3. Sexual offense – Although the meaning of “sexual offense” is not 100% clear in the text of the law, our interpretation is that the term is meant to include rape, attempted rape or sexual offense, sexual offenses, sexual activity, sexual battery, human trafficking, incest, employing or permitting a minor to assist in offenses against public morality and decency, sexual exploitation of minors, felonious indecent exposure, indecent liberties with children/student, solicitation of a child by computer/electronic devices to commit an unlawful sex act, and a parent or guardian committing or allowing a sexual act upon a juvenile.

Exceptions

SB 199 does not require reporting by adults who have a statutory privilege that covers knowledge of the applicable offense. Relevant to school system employees, the reporting requirement would not apply to (1) information acquired by a psychologist while practicing psychology services (§ 8-53.3); or (2) information acquired by a social worker while performing social work services (§ 8-53.7).

Relationship to Other Mandated Reporting Requirements

The mandatory requirement in SB 199 to report to law enforcement violent offenses, sexual offenses, and misdemeanor child abuse is **separate and in addition to** the mandatory requirement to report suspected child abuse, neglect, or dependency to the local department of social services pursuant to N.C. Gen Stat. § 7B-301. Depending on the facts, an individual may be required to make a report to DSS, law enforcement, or both.

Scenario	Statute that Applies	Report to
Adult has <b>cause to suspect</b> abuse, neglect, or dependency.	§ 7B-301	DSS
Adult <b>knows or has reason to know</b> that child has been a victim of a violent or sexual offense, but has no cause to suspect abuse, neglect or dependency.	§ 14-318.6	law enforcement
Adult has <b>cause to suspect</b> abuse, neglect, or dependency AND <b>knows or has reason to know</b> child has been a victim of a violent offense, sexual offense, or child abuse that rises to the level of misdemeanor child abuse.	§ 7B-301 and § 14-318.6	DSS and law enforcement

## Contents of the Report

The report to law enforcement can be made orally or by telephone and should include any information known to the reporter, including:

- the name, address, and age of the juvenile;
- the name and address of the juvenile's parent, guardian, custodian, or caretaker;
- the name, address, and age of the person who committed the offense against the juvenile;
- the location where the offense was committed;
- the names and ages of other juveniles present or in danger;
- the present whereabouts of the juvenile, if not at the home address;
- the nature and extent of any injury or condition resulting from the offense or abuse; and
- any other information which the person making the report believes might be helpful in establishing the need for law enforcement involvement.

Additionally, the person making the report must give his or her name, address, and telephone number.

A mandatory reporter who knowingly or willingly fails to report in accordance with SB 199's new requirement will be guilty of a Class 1 misdemeanor. This requirement becomes effective December 1, 2019 and applies to offenses committed on or after that date. The statute appears to impose a duty on every person knows or should know about a designated offense; therefore, multiple school employees may each have a duty to report the same incident.

### When is there a duty to report?

SB 199 imposes a duty to report to law enforcement when an adult "knows or reasonably should have known" that a child is or has been a victim of a violent offense, sexual offense, or misdemeanor child abuse. While the standard of "knows or reasonably should have known" does not appear elsewhere in the reporting statutes, in the criminal law context, it allows for culpability "based on objective evidence without the necessity of proving subjective knowledge." *See State v. Beary*, 794 S.E.2d 561 (N.C. Ct. App. 2016). In other words, if the objective facts would lead a reasonable person to know that a child has been a victim of a designated crime, SB 199 imposes on the person a duty to report to law enforcement whether or not that person has actual knowledge.

Similarly, § 7B-301 imposes a duty to report to DSS when there is "cause to suspect" abuse, dependency or neglect. The North Carolina Supreme Court has held that the "cause to suspect" standard gives "wide margin to whatever prompts the reporter to notify DSS" and the phrase does not call for "scrutiny, analysis, or judgment." *Dobson v. Harris*, 352 N.C. 77, 84, 530 S.E.2d 829, 836 (2000).

Under both standards, we recommend staff err on the side of protecting children and report to law enforcement when they have "reason to know" a child has been the victim of a designated

crime and to DSS when they have “cause to suspect” a parent/guardian is abusing or neglecting their child.

### Immunity

A person who makes a report to law enforcement under SB 199 in good faith, cooperates with law enforcement in an investigation, or testifies in any judicial proceeding resulting from a law enforcement report or investigation is immune from any civil or criminal liability.

### **Training Program on Child Sexual Abuse and Sex Trafficking (§ 115C-375.20)**

SB 199 requires local boards of education to adopt and implement a child sexual abuse and sex trafficking training program for school personnel who work directly with students in grades K-12 by January 1, 2020. “School personnel” is defined as teachers, instructional support, principals, and assistant principals. At the discretion of the superintendent, the term may also include others who work directly with students (i.e., TAs, bus drivers). All school personnel should receive two hours of training every other year, beginning in the 2020-2021 school year. The training should include:

- best practices from the field of prevention;
- the grooming process of sexual predators;
- the warning signs of sexual abuse and sex trafficking;
- how to intervene when sexual abuse or sex trafficking is suspected or disclosed;
- legal responsibilities for reporting sexual abuse or sex trafficking; and
- available resources for assistance.

The law proposes that the training may be provided by local nongovernmental organizations with expertise in these areas, local law enforcement officers, or other officers of the court.

### **Recommendations**

Considering the rapidly approaching effective dates of SB 199’s requirements, we recommend the following measures:

1. Authorize implementation of training program. As each LEA must adopt a training program by January 1, 2020, we recommend that boards add an agenda item to their December board meetings authorizing the superintendent to adopt and implement a child sexual abuse and sex trafficking training program as required by § 115C-375.20.
2. Assess and develop required training program. The Department of Public instruction has not yet endorsed a training program, and therefore district staff will need to research and assess available programs. Training materials and online training modules are available from various state and local organizations including UNICEF; National Human Trafficking Resource Center; U.S. Department of Health & Human Services, Child Welfare Information

Gateway; National Center for Homeless Education; U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention; and Prevent Child Abuse North Carolina.

3. Inform staff of the new mandatory reporting requirement. We recommend that districts send an email or memo to school personnel informing them of the new legal requirement, i.e., that anyone who knows or has reason to believe that a child under 18 is the victim of a violent offense, sexual offense, or misdemeanor child abuse should report this information to law enforcement, such as the School Resource Officer, and the school principal.
4. Review and/or develop procedures to document reporting efforts. We recommend establishing internal procedures to ensure that (1) schools submit documentation of any reports under the law to the superintendent or designee; and (2) the superintendent or designee maintains a copy of the report to law enforcement as well as any investigative materials related to the incident.
5. Review board policy. The North Carolina School Boards Association staff is currently reviewing their model policies to determine whether any updates are necessary. Districts are also encouraged to review their policies on child abuse and reporting and consult us with any questions.

We are happy to advise on these requirements and answer any specific questions you might have about ongoing compliance with SB 199.