

## Reconciling Multiple Statutory Amendments Made in the Same Session

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How is a statute supposed to read when the General Assembly amends it in May and then amends it again in July without acknowledging the prior amendment? Let me clarify with an example.

In May 2015, S.L. 2015-44 was ratified; it was signed by the Governor in June. That Session Law amended G.S. 14-27.7(b), sexual activity with a student, elevating from a misdemeanor to a felony the version of this offense that occurs when the defendant qualifies as school personnel other than a teacher, etc. and is less than four years older than the victim as follows:

**SECTION 2.** G.S. 14-27.7(b) reads as rewritten:

"(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a ~~Class A1 misdemeanor~~ Class I felony. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

Then in July 2015, S.L. 2015-181 was ratified; it was signed by the Governor in August. This session law re-codified G.S. 14-27.7(b) as G.S. 14-27.32 and broke it into subsections. But the recodified statute, as set out in this Session Law didn't incorporate the prior punishment increase. S.L. 2015-181 set out the recodified statute as follows:

**SECTION 14.(a)** G.S. 14-27.7(b) is recodified as G.S. 14-27.32 under Article 7B of Chapter 14 of the General Statutes as created by Section 1 of this act.

**SECTION 14.(b)** G.S. 14-27.7(b), recodified as G.S. 14-27.32 by subsection (a) of this section, reads as rewritten:

**"§ 14-27.32. Sexual activity with a student.**

(b)(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers.

(b) A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.

(c) This ~~subsection~~ section shall apply unless the conduct is covered under some other provision of law providing for greater punishment.

(d) Consent is not a defense to a charge under this section.

(e) For purposes of this ~~subsection~~ section, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this ~~subsection~~ section, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools."

So the question is: What is the punishment for sexual activity with a student by a defendant who is less than four years older than the victim? Is it as a Class A1 misdemeanor as reflected in the later Session Law? Or does the elevation to a felony in the earlier Session Law apply? It's a head scratcher isn't it? Fortunately I had an easy path to an answer: I called my former mentor and colleague Bob Farb. Notwithstanding the fact that I probably caught him poolside in sunny Florida enjoying his retirement, Bob pointed me to the answer: G.S. 120-20.1 (coded bill drafting). That statute, provides, in relevant part: "In any part of a law enacted in the format provided by this section [with strikethroughs for deleted language and underlining for added language], the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict." Applying this rule, only the underlined and struck through language in the later Session Law is binding; the rest of the language is illustrative only. Thus, the punishment enhancement of the earlier statute applies.

I once saw a student evaluation that referred to Bob as the "The Oracle of Chapel Hill." He may be retired in Florida but the title still holds.