

## EDUCATION

# Is there a better way to remove predatory teachers from classrooms? Wisconsin bill seeks to criminalize educator sexual misconduct



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When Green Bay teacher David Villareal was accused of sexually touching one of his second-grade students in 2017, the state's educator licensing agency, the Department of Public Instruction, didn't know.

That's because no one had to tell them. It's the only entity in Wisconsin with the power to remove a teacher's license.

A loophole in state law meant that neither the Green Bay School District nor child protection services were required to notify the licensing agency, which conducts its own, independent investigations into alleged educator misconduct.

Villareal continued teaching for another four years until he was arrested on child sexual abuse charges. He was convicted in April for sexually abusing second-grade students at Green Bay's Baird Elementary.

**More:** A teacher, a sexual abuse allegation and a botched investigation: '4 lives altered forever' by David Villareal in Green Bay School District

A bipartisan group of lawmakers might close that loophole. Senate Bill 333, and its counterpart Assembly Bill 341, would require any child protection agency or police department to notify the DPI of any reports of educator sexual misconduct toward a student.

The bill would make three key changes:

Criminalize educator sexual misconduct, extending protections for private school students,

Expand the crimes, including sexual misconduct, that permanently remove an educator's license,

Require police and child protection to notify the state educator licensing agency of reports of sexual misconduct.

It would fix some key problems with how educator sexual misconduct is handled in the state by relying on the criminal justice system instead of administrative procedures. But some legal experts wonder whether that's the most effective way to get predatory teachers out of classrooms.

## **Bill would fix some problems with reporting educator sexual misconduct, but not all**

While the legislation would fix part of the reporting loophole, it wouldn't change a public school district's reporting requirements or give the state licensing agency more investigatory power.

Wisconsin law requires a school district to report educator misconduct to the DPI only if an educator is fired, arrested or resigns because of that conduct.

In the Villareal case, the Green Bay School District didn't have to report the allegation to the agency because he continued teaching. Educators must follow mandatory reporting laws where they're required to report to either police or child protection when a child has been abused or neglected.

**More:** Knowing grooming behaviors can prevent child sexual abuse. Here's how to spot them.

However, criminal and child protection investigations are separate and serve different purposes than the DPI's educator license investigations. The DPI has the power to remove a teaching license for immoral conduct, even if it's not criminal.

The bill would require that police and child protection notify the DPI when they receive educator misconduct reports. But it does not require the agency to investigate them, according to DPI spokesperson Chris Bucher.

The DPI is required to investigate educator misconduct reports in only four instances:

When an educator is charged with a crime against a child or a felony with sentences of at least five years,

When an educator is convicted of the above crimes,

When an educator is dismissed from their job because of misconduct,

When an educator resigns because of misconduct.

Under the bill, if a local prosecutor doesn't bring charges against a teacher or the teacher remains in their position, the licensing agency wouldn't be required to investigate a report.

This could continue already existing discrepancies.

In 2019, child protection agencies in Wisconsin investigated 34 reports of educator child sexual abuse. That same year, the DPI investigated only 18 reports of educator sexual misconduct, according to investigations data obtained by the USA TODAY NETWORK-Wisconsin.

## **Protections extended to private schools**

The legislation would also criminalize sexual misconduct against students at both public and private schools, which, in many cases, isn't a crime under current law. For example, it's not a crime for a teacher to say sexually explicit things to a student.

Students at schools that receive federal funding have civil protections from sexual harassment under what's known as Title IX.

**More:** If your student is experiencing sexual harassment at school, here's what you need to know about Title IX

While Title IX applies to public schools, it doesn't cover all private schools, and there are no criminal consequences for perpetrators under Title IX.

Reps. Tip McGuire and Tod Ohnstad, both authors of the bill and Democrats from Kenosha, saw the need for the legislation when a private school student told them about how she was sexually harassed by a teacher, without any recourse.

“We want to make sure that we have an avenue of saying there are people who are behaving inappropriately (toward) students, and so that there would be criminal penalties for that,” McGuire told the USA TODAY NETWORK-Wisconsin in May, when the bill first circulated for co-sponsors.

If a teacher is convicted of certain felony crimes or crimes against children, they permanently lose their teaching license through automatic revocation. The bill's authors expanded those crimes to include sexual misconduct.

But conviction is key for a teacher to automatically lose their teaching license.

## **Legal experts wonder whether criminalization is the most effective way to remove predatory teachers**

The legislation relies on the criminal justice system to remove a teacher's license for sexual misconduct instead of the DPI's administrative processes.

Getting a conviction for sexual misconduct requires a higher burden of proof than is needed to remove a teacher's license through a DPI investigation. It's also rare that child sexual abuse, let alone sexual misconduct, is prosecuted.

Of the incidents that do get reported, fewer than one in five child sexual abuse reports are prosecuted, according to a 2014 study funded by the National Institute of Justice.

This raises questions about whether using the criminal justice system will be effective at removing predatory educators from the classroom.

Sexual misconduct is specifically defined by the legislation as sexual advances, requests for sexual favors or physical contact that is sexual in nature.

That definition covers a broad range of behaviors that can be difficult to prove in a court of law, according to Cecelia Klingele, an associate professor of criminal justice at the University of Wisconsin Law School.

She said it's easy to understand wanting to criminalize any kind of sexual misbehavior between a trusted adult and a child, especially because that behavior is immensely harmful.

But she wonders whether a failed criminal prosecution could prove more damaging than removing a teacher from a classroom through the license review process already in place, depending on the egregiousness of the conduct.

"Revoking licensure, and many people's ability to have access to vulnerable populations, may be a quicker and more effective way of weeding out individuals that we think may pose a risk to children than pursuing the formality of a criminal prosecution," she said.

“(Criminal prosecution) has a high burden of proof and is a discretionary decision by the district attorney that may not be pursued in cases that are perceived to be difficult candidates for conviction,” she continued.

In serious cases, prosecution would clearly be appropriate, Klingele said. Yet, in cases where the facts are unclear or the behavior less dangerous, license review may be adequate.

The way sexual misconduct is defined in the bill is akin to workplace sexual harassment, which is typically litigated through civil courts, according to Michael O’Hear, a criminal law professor at Marquette University Law School.

The definition of sexual misconduct in the bill is broad, leaving the courts with the task of figuring out what exactly falls into that category, if the bill passes, he said.

“That strikes me as an interesting policy question, ‘Should we be criminalizing sexual harassment?’” he said.

The courts have decades of experience with civil litigation surrounding sexual harassment, and it can sometimes be difficult to tell when the line has been crossed into liability, according to O’Hear.

## **What’s next for the bill?**

The Senate Committee on Judiciary and Public Safety on Oct. 24 recommended passing the Senate version of the bill. It’s likely to be brought to the Senate floor in November, according to the office of Sen. Jesse James, R-Altoona, who co-authored the bill.

The bill’s sponsors are optimistic that it will get broad support, according to another co-author, Rep. John Spiros, R-Marshfield. It has almost 40 cosponsors across both chambers.

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