

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1391 Sexual Offenses Against Students  
**SPONSOR(S):** Judiciary Committee; Education Committee; Rodrigues  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Painter	Sumner
2) Education Committee	18 Y, 0 N, As CS	Brink	Hassell
3) Judiciary Committee	21 Y, 0 N, As CS	Painter	Poche

### SUMMARY ANALYSIS

Florida law contains several provisions designed to protect students, maintain safe and ethical school environments, and hold school officials and employees accountable for misconduct. CS/CS/HB 1391 further enhances student safety and increases accountability for school officials and employees by:

- Disqualifying a person from educator certification or employment in a position with a public school or certain private schools that involves direct contact with students if the person has a conviction for an offense against a student;
- Providing that a conviction for an offense against a student disqualifies a person from educator certification or employment in a position with a public school or certain private schools that involves direct contact with students;
- Providing that an employee's resignation or termination of employment does not affect a school district's responsibility to investigate complaints of misconduct;
- Requiring a school district, and an investigator hired or contracted to investigate alleged employee misconduct, to report legally sufficient complaints to the Department of Education (DOE) within 30 days;
- Requiring district school board policies to include mandatory reporting of alleged misconduct that involves engaging in sexual or lewd conduct with a student or soliciting such conduct and to require district school superintendents to report to law enforcement misconduct by school district personnel that would result in disqualification from certification or employment;
- Expanding the reasons a district school board member's or superintendent's salary may be forfeited for 1 year;
- Requiring a district school superintendent to notify, in writing, the parent of a student affected by certain misconduct and requiring the notification to include certain information;
- Expanding the authority of the DOE to deny certification based upon the Education Practices Commission's (EPC) authority to issue disciplinary action against a certified educator;
- Authorizing the EPC to impose conditions upon the award of an educator certificate;
- Requiring school districts and certain schools to notify DOE when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded and requiring the DOE to place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded; and
- Prohibiting a teacher who violates or fails to maintain the security of an industry certification exam from receiving a bonus based on such student certification.

The bill makes it a second-degree felony for an authority figure to solicit or engage in sexual or lewd conduct with a student enrolled at a school, regardless of the student's age.

The bill also amends the definition of school in the trespass on school grounds statute to include a school bus, allowing law enforcement to arrest someone for trespassing on a school bus, after the commission of the crime and without a warrant, if the officer has probable cause to believe the person committed the offense.

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that the bill will have a positive insignificant impact on the prison population.

The bill provides an effective date of July 1, 2018.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1391e.JDC

**DATE:** 2/27/2018

## FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Sexual Conduct by Authority Figures with Students

###### *Offenses against Sexual Conduct with Minors*

There is no prohibition against consensual sexual conduct between a school authority figure and an adult student. However, there are several statutes in Florida law that prohibit adults from engaging or attempting to engage in sexual or lewd conduct with a minor. A "minor" is defined as any person under the age of 18 years.<sup>1</sup> These offenses include:

- It is a third degree felony to use a computer online service, internet service, or any other device capable of electronic data storage, such as a cell phone, to seduce, solicit, lure, or entice, or attempt to do these things, with someone believed to be a minor.<sup>2</sup>
- It is a third degree felony for any person to transmit material harmful to a minor.<sup>3</sup> "Material harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:
  - Predominately appeals to a prurient, shameful, or morbid interest;
  - Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
  - Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.<sup>4</sup>
- It is a second degree felony for a person to travel any distance for the purpose of engaging in any illegal act or otherwise engage in other unlawful sexual conduct with a child, or with another person believed by the person to be a child.<sup>5</sup>
- It is a felony offense for an adult to commit any lewd or lascivious battery, molestation, conduct, or exhibition, upon a child.<sup>6</sup>

###### *Reclassification of Sexual Offenses Committed by an Authority Figure on a Minor*

Section 943.0435(1)(h)1, F.S., includes the following offenses involving minor victims:

- Kidnapping of child under age 13.<sup>7</sup>
- False imprisonment of child under age 13.<sup>8</sup>
- A person over 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling, or conveyance for other than lawful purposes.<sup>9</sup>
- Human trafficking of minors.<sup>10</sup>
- Sexual battery of a minor.<sup>11</sup>
- Unlawful sexual activity with a minor.<sup>12</sup>
- Lewd or indecent exposure involving a minor.<sup>13</sup>

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<sup>1</sup> S. 847.001(8), F.S.

<sup>2</sup> S. 847.0135(3), F.S.

<sup>3</sup> S. 847.0138(2)-(3), F.S.

<sup>4</sup> S. 847.001(6), F.S.

<sup>5</sup> S. 847.0135(4), F.S.

<sup>6</sup> S. 800.04, F.S.

<sup>7</sup> S. 787.01, F.S.

<sup>8</sup> S. 787.02, F.S.

<sup>9</sup> S. 785.025(2)(c), where the victim is a minor.

<sup>10</sup> S. 787.06(3)(b), (d), (f), or (g), F.S.

<sup>11</sup> S. 794.011, F.S.

<sup>12</sup> S. 794.05, F.S.

- Video voyeurism involving a minor.<sup>14</sup>
- Sexual performance by a child.<sup>15</sup>
- Distributing harmful material to a minor.<sup>16</sup>
- Possession or transmission of child pornography.<sup>17</sup>

Florida law enhances any felony offense under s. 943.0435(1)(h)1., F.S., if it is committed by an authority figure of a school upon a student.<sup>18</sup> An authority figure is a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.<sup>19</sup> A student is a person younger than 18 years of age who is enrolled at a school.<sup>20</sup> The offense is reclassified as follows:

- A felony of the third-degree<sup>21</sup> is reclassified to a second-degree felony.
- A felony of the second-degree<sup>22</sup> is reclassified to a first-degree felony.
- A felony of the first-degree<sup>23</sup> is reclassified to a life felony.<sup>24</sup>

### *Teacher-Adult Student Relationship Laws in Other States*

Other states have enacted similar legislation to prohibit teachers from having relationships with adult students. For example, in Connecticut, it is sexual assault in the second degree when a school employee engages in sexual intercourse with a student enrolled in the school, regardless of that student's age.<sup>25</sup>

North Carolina categorizes the offense level based on the age difference between the school personnel and the adult student.<sup>26</sup> If the defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, or other school personnel, is at least four years older than the student and engages in vaginal intercourse or a sexual act with the student, the defendant is guilty of a class G<sup>27</sup> felony. If the defendant is less than four years older than the student, then the defendant is guilty of a lesser degree class I<sup>28</sup> felony.<sup>29</sup>

Georgia makes it sexual assault punishable by up to twenty-five years in prison if a teacher, principal, assistant principal, or other administrator of any school who has supervisory or disciplinary authority over a student engages in sexual contact with the student and knew or should have known the student was enrolled at the same school, regardless of age.<sup>30</sup> Such conduct is not prohibited if the student is married to the other individual.<sup>31</sup>

In *Paschal v. State*, a teacher was convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.<sup>32</sup> Paschal appealed his conviction, arguing that the statute violated his fundamental privacy right to engage in private, consensual, noncommercial acts of sexual intimacy with

<sup>13</sup> S. 800.04, F.S.

<sup>14</sup> S. 810.145(8), F.S.

<sup>15</sup> S. 827.071, F.S.

<sup>16</sup> S. 847.0133, F.S.

<sup>17</sup> S. 847.0135, F.S.

<sup>18</sup> S. 775.0862, F.S.

<sup>19</sup> S. 775.0862(a), F.S.

<sup>20</sup> S. 775.0862(c), F.S.

<sup>21</sup> A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>22</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082(3)(d) and 775.083(1)(b), F.S.

<sup>23</sup> A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082(3)(b)1 and 775.083(1)(b), F.S.

<sup>24</sup> A life felony is punishable by up to a term of imprisonment for life and a \$15,000 fine. ss. 775.082(3)(a)3 and 775.083(1)(a), F.S.

<sup>25</sup> CONN. GEN. STAT. § 53a-71.

<sup>26</sup> N.C. GEN. STAT. ANN. § 14-27.7.

<sup>27</sup> Class G felonies are considered mid-level felonies in North Carolina and punishable by potential prison time. See *North Carolina Structured Sentencing*, available at: [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/sstrainingmanual\\_09.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/sstrainingmanual_09.pdf) (last visited February 19, 2018).

<sup>28</sup> Class I felonies are considered low-level felonies in North Carolina and punishable by probation. Id.

<sup>29</sup> Id.

<sup>30</sup> GA. CODE ANN. § 16-6-5.1.

<sup>31</sup> Id.

<sup>32</sup> *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

an adult. The Arkansas Supreme Court agreed, and held that because the two were adults engaged in a consensual sexual relationship, the statute unconstitutionally infringed on a fundamental right. In reaching this decision, the state Supreme Court stated that the statute<sup>33</sup> was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.<sup>34</sup> Following the Arkansas Supreme Court Decision, the statute was amended to make it a second degree sexual assault for person in a K-12 public or private school, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority to use his or her position of trust or authority over a student enrolled in the school and less than twenty-one years of age to engage in sexual contact with that student.<sup>35</sup>

In *State v. Edwards*,<sup>36</sup> a teacher was convicted of unlawful sexual relations after he engaged in sexual intercourse with one of his 18-year-old high school students.<sup>37</sup> The criminal statute at issue defined unlawful sexual relations to mean:

consensual sexual intercourse . . . with a person who is not married to the offender if the offender is a teacher<sup>38</sup> or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse . . . is a student enrolled at the school where the offender is employed.<sup>39</sup>

Unlike in *Paschal*, the *Edwards* court determined that Kansas's constitution does not provide a teacher a fundamental right to engage in sexual conduct with a student who is of age to consent.<sup>40</sup> Consistent with court decisions from Washington,<sup>41</sup> Connecticut,<sup>42</sup> and Texas,<sup>43</sup> the court applied a rational basis review of the statute, finding that it is a legitimate state interest to keep the school environment safe and free from sexual coercion from persons in positions of authority or trust.

The court noted that, when read in its entirety, the statute was intended to prohibit sexual conduct of persons with authority over other persons where the ability to freely consent is questionable, especially because teachers have constant unsupervised access to students and are in a unique position to groom or coerce students into exploitive or abusive conduct. Because the prohibition on sexual conduct with students was rationally related to the legitimate state interest, the court held the statute to be constitutional and affirmed the defendant's conviction.<sup>44</sup>

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<sup>33</sup> ARK. CODE ANN. § 5-14-125(a)(6).

<sup>34</sup> *Id.*

<sup>35</sup> GA. CODE ANN. § 16-6-5.1.

<sup>36</sup> 288 P.3d 494

<sup>37</sup> *Id.*

<sup>38</sup> "Teacher" includes teachers, supervisors, principals, superintendents, and any other professional employees in any public or private schools offering grades kindergarten through 12." *Id.* at 498.

<sup>39</sup> *Id.* at 498 (citing KAN. STAT. ANN. § 21-3520(a)(8)).

<sup>40</sup> *Id.* at 502.

<sup>41</sup> *State v. Hirschfelder*, 170 Wash. 2d 536, (Wash. 2010) (upholding statute criminalizing sexual intercourse between school employees and students who are at least 16 years old using rational basis review).

<sup>42</sup> *State v. McKenzie-Adams*, 281 Conn. 486 (Conn. 2007) (refusing to apply strict scrutiny review of statute prohibiting a sexual relationship between a teacher and a student because it is "an inherently coercive relationship . . . wherein consent might not easily be refused.") *overruled on other grounds*.

<sup>43</sup> *In re Shaw*, 204 S.W.3d 9 (Tex. App. 2006) (holding that protecting students from the pressures, emotional strain, conflicts, distractions, and other difficulties brought on by sexual conduct with school employees is a legitimate state interest).

<sup>44</sup> *Id.* at 504.

## *Recent Events Involving Teacher and Adult Student Relationships in Florida*

In Summer 2017, in Pasco County, a former school resource officer was fired for misconduct involving several high school female students.<sup>45</sup> An investigation revealed that Resource Officer Milton Arroyo, 50, shared his personal phone number and social media account with female students.<sup>46</sup> He specifically targeted students 18 years of age or older and asked one female student to send a picture of her bra and another if she'd like to see a picture of his genitals.<sup>47</sup> Investigations also showed Arroyo used law enforcement databases to look up information on the students, their parents and staff at the school.<sup>48</sup> Milton Arroyo joined the Pasco Sherriff's Office in January 2015 after 21 years as a law enforcement officer in New York.<sup>49</sup> The Paso County Sherriff's Office could not charge Arroyo with any criminal offense for sexual misconduct. However, he was charged with offenses against computer networks and systems for his unauthorized use of a law enforcement database.<sup>50</sup>

### Trespass

#### *Trespass of a Structure or Conveyance*

Trespass of a structure or conveyance is a second degree misdemeanor<sup>51</sup> and occurs when an individual willfully enters or remains in any structure<sup>52</sup> or conveyance,<sup>53</sup> without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.<sup>54</sup> A conveyance includes a motor vehicle.<sup>55</sup>

In order to arrest someone for misdemeanor trespass of a structure or conveyance, without a warrant, the crime must be committed in the presence of a law enforcement officer.<sup>56</sup> If a law enforcement officer does not witness the crime, the officer needs an arrest warrant to arrest the offender after the commission of the crime. A judge may issue an arrest warrant if, upon examination of the complaint and proof submitted, he or she is satisfied that probable cause exists that the crime was committed within the judge's jurisdiction.<sup>57</sup> Probable cause exists when the totality of facts and circumstances within one's knowledge would cause a reasonable person to believe that an offense has been or is being committed.<sup>58</sup>

#### *Trespass on School Property*

Section 810.097, F.S., makes it a second degree misdemeanor for any person to enter or remain upon the campus or school facility if the person does not have legitimate business on the campus or any other authorization to be there, or is a student currently under suspension or expulsion. It is a first degree misdemeanor if a person enters or remains on campus or at a school facility after the principal of the school, or his or her designee, has directed the person to leave or not enter the campus or

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<sup>45</sup> WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

<sup>46</sup> Id.

<sup>47</sup> Chris Bowling, *Paso school resource officer fired for inappropriate messages*, Tampa Bay Times (July 7, 2017), available at <http://www.tampabay.com/news/publicsafety/crime/pasco-school-resource-officer-fired-for-inappropriate-messages/2329730>.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

<sup>51</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>52</sup> S. 810.011(1), F.S., defines "structure" as a building of any kind.

<sup>53</sup> S. 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

<sup>54</sup> S. 810.08, F.S.

<sup>55</sup> S. 810.011(3), F.S.

<sup>56</sup> S. 901.15(1), F.S.

<sup>57</sup> S. 901.02(1), F.S.

<sup>58</sup> *State v. Betz*, 815 So. 2d 627 (Fla. 2002); see also *Freeman v. State*, 909 So. 2d 965 (Fla. 3d DCA 2005).

school facility.<sup>59</sup> School means the grounds or any facility of any public or nonpublic kindergarten, elementary school, middle school, junior high school, or secondary school.<sup>60</sup>

The statute allows a chief administrative officer of the school, or an employee, to take a person into custody if he or she has probable cause to believe that person is trespassing on school grounds.<sup>61</sup> If a trespasser is taken into custody, a law enforcement officer must immediately be called.<sup>62</sup>

Unlike trespass of a structure or conveyance, an officer may arrest a person for trespassing on school grounds, without a warrant and after the commission of the offense, if the officer has probable cause to believe that person committed the offense.<sup>63</sup>

## Qualifications for Educator Certification and Employment

### *General Requirements*

To be an educator in a traditional public school, charter school, virtual school, or other publicly operated school, a person must hold a certificate issued by the Florida Department of Education (DOE).<sup>64</sup> Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.<sup>65</sup> The purpose of certification is to require school-based personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”<sup>66</sup>

To be eligible for an educator certificate or appointment in any position in a school district, a person must, among other things, be of good moral character and submit to fingerprinting and background screening and not have a criminal history that requires the applicant’s disqualification from certification or employment.<sup>67</sup>

Instructional personnel and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must undergo background screening, as applicable.<sup>68</sup> To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the State Board of Education (SBE) or the Department of Children and Families, except in specific circumstances.<sup>69</sup>

### *Disqualifying Offenses*

A person is ineligible for educator certification, and employment as an instructional personnel or school administrator with direct student contact in a public school or a private school that accepts McKay or Florida Tax Credit scholarship students, if he or she is convicted of a number of specified criminal offenses<sup>70</sup> under s. 1012.315, F.S.:

- Sexual misconduct with certain developmentally disabled clients, mental health patients, forensic clients, or sexual misconduct in juvenile justice programs.
- Abuse, neglect, or exploitation of aged persons or disabled adults.

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<sup>59</sup> S. 810.097(2), F.S.

<sup>60</sup> S. 810.097(5), F.S.

<sup>61</sup> S. 810.097(3), F.S.

<sup>62</sup> Id.

<sup>63</sup> S. 810.097(4), F.S.

<sup>64</sup> SS. 1012.55(1) and 1002.33(12)(f), F.S.

<sup>65</sup> SS. 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

<sup>66</sup> S. 1012.54, F.S.; Rule 6A-4.001(1), F.A.C.

<sup>67</sup> S. 1012.56(2)(a)-(f), F.S.

<sup>68</sup> S. 1012.32(2)(a), F.S.

<sup>69</sup> S. 1012.32(1), F.S.

<sup>70</sup> SS. 1001.42(7), 1012.315(1)-(2), and 1012.32(1), F.S.

- Murder.
- Manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Aggravated assault.
- Aggravated battery.
- Battery on a detention or commitment facility staff member or a juvenile probation officer.
- Kidnapping.
- False imprisonment.
- Luring or enticing a child.
- Leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody or dependency proceedings.
- Exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of school.
- Possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.
- Sexual battery.
- Sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Unlawful sexual activity with certain minors.
- Female genital mutilations.
- Prostitution.
- Lewdness and indecent exposure.
- Arson.
- Voyeurism.
- Coordinating the commission of theft in excess of \$3,000.
- Theft from persons 65 years or older.
- Dealing in stolen property.
- Robbery.
- Robbery by sudden snatching.
- Carjacking.
- Home-invasion robbery.
- Fraudulent sale of controlled substance.
- Abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.
- Contributing to the delinquency or dependency of a child.
- Sexual performance by a child.
- Resisting arrest with violence.
- Obscenity.
- Causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
- Any drug abuse charges under ch. 893, F.S., if offense was a second degree felony or higher.
- Introduction, removal, or possession of contraband at a correctional facility or juvenile detention facility or commitment program.
- Misdemeanor battery if the victim of the offense was a minor.

Any person who is found ineligible for employment or otherwise found through background screening to have been convicted of any crime involving moral turpitude<sup>71</sup> may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.<sup>72</sup>

<sup>71</sup> Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

<sup>72</sup> S. 1012.32(2), F.S.

## *Education Practices Commission*

The SBE has adopted standards for educator conduct, referred to as the Principles of Professional Conduct for the Education Profession.<sup>73</sup> The Education Practices Commission (EPC) interprets and applies the principles.<sup>74</sup> At least once each year, the EPC must report to and meet with the SBE.<sup>75</sup> The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.<sup>76</sup>

Specifically, the EPC may revoke or suspend an educator's certificate if a person, among other things, has been:<sup>77</sup>

- Guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- Convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation; or
- Disqualified from educator certification based on a conviction for certain criminal offenses.

Currently, the EPC has final order authority to impose one or more of the following penalties against an educator certificate:

- Denial of an application, including prohibiting reapplication for a period of up to ten years or permanently.
- Revocation or suspension of a certificate.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense
- Probation.
- Restriction of the authorized scope of practice.
- Written reprimand.
- Referral to the recovery network program.<sup>78</sup>

The DOE may deny certification if it has satisfactory evidence that an applicant has committed an act or acts, or that a situation exists, for which the EPC would be authorized to revoke a teaching certificate.<sup>79</sup> The DOE's decision is subject to review by the EPC upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.<sup>80</sup>

## *Investigations of Alleged Misconduct*

The DOE must expeditiously investigate a filed complaint which, if legally sufficient,<sup>81</sup> contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.<sup>82</sup> Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.<sup>83</sup> The DOE's Office of Professional Practice Services administers the state grievance process, investigates alleged misconduct by certified educators, and pursues disciplinary actions against the certificates of educators who are found to have committed acts of misconduct.<sup>84</sup>

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<sup>73</sup> S. 1012.795(1)(j), F.S.; Rule 6A-10.081, F.A.C.

<sup>74</sup> S. 1012.79(7)(a), F.S.

<sup>75</sup> S. 1012.79(7)(c), F.S.

<sup>76</sup> S. 1012.79(7)(b), F.S.

<sup>77</sup> S. 1012.795(1), F.S.

<sup>78</sup> S. 1012.798, F.S.

<sup>79</sup> S. 1012.56(12)(a), F.S.

<sup>80</sup> S. 1012.56(12)(b), F.S.

<sup>81</sup> A complaint is legally sufficient if it contains "ultimate facts that show a violation has occurred" as provided in law and state board rule. S. 1012.796(1)(d), F.S.

<sup>82</sup> S. 1012.796(1)(a), F.S.

<sup>83</sup> S. 1012.796(1)(b), F.S.

<sup>84</sup> Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited February 19, 2018).



Each school district must file with the DOE a legally sufficient complaint within 30 days after the date on which the subject of the complaint comes to the attention of the school district.<sup>85</sup> The report must include all information relating to the complaint known to the school district. Each district school board must adopt policies and procedures for reporting legally sufficient complaints of misconduct to the DOE.<sup>86</sup>

Complaints and materials relating to a school district's investigation of a complaint are confidential and exempt from public records laws until the conclusion of the preliminary investigation or until the investigation is considered inactive.<sup>87</sup> A preliminary investigation is active so long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.<sup>88</sup>

### *Standards of Ethical Conduct for Instructional Personnel and School Administrators*

Florida law requires each district school board to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.<sup>89</sup> Among other things, the policies must establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health safety, or welfare of a student.<sup>90</sup>

A school board member who knowingly fails to adopt policies that require instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators or that require the investigation of all reports of alleged misconduct that affect the health, safety, or welfare of a student forfeits his or her salary for 1 year.<sup>91</sup> Additionally, a district school superintendent who knowingly fails to investigate any allegation of misconduct by instructional personnel or school administrators that affects the health safety, or welfare of a student or who knowingly fails to report the misconduct to the DOE forfeits his or her salary for 1 year.<sup>92</sup>

## **Effect of Proposed Changes**

### Sexual Conduct by Authority Figures with Adult Students

CS/CS/HB 1391 prohibits an authority figure from soliciting or engaging in sexual or lewd conduct with a student. The bill criminalizes this conduct between an authority figure and a student, regardless of the student's age and regardless of whether or not the behavior was consensual. In addition, the bill does not require that the authority figure use his or her position of authority over the student in order to procure the sexual conduct. It is enough that the person is an authority figure and engages in such conduct with a student to violate the prohibition of this bill.

An authority figure is defined as a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including school resource officers. School is given the same meaning as provided in s. 1003.01, F.S. and includes a private school, a voluntary prekindergarten education program, an early learning program, a public school as described in s. 402.3025(1), F.S., the Florida School for the Deaf and Blind, and the Florida Virtual School. The term school does not include a facility dedicated exclusively to adult education.

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<sup>85</sup> S. 1012.796(1)(d), F.S.

<sup>86</sup> Id.

<sup>87</sup> S. 1012.31(3)(a)1., F.S.

<sup>88</sup> Id.

<sup>89</sup> S. 1001.42(6), F.S. The terms "instructional personnel" and "school administrators" are defined under s. 1012.01(2) and (3)(c), F.S. See also s. 1012.796(1)(d), F.S. (requiring school district policies to include standards of ethical conduct for instructional personnel and school administrators).

<sup>90</sup> Id.

<sup>91</sup> S. 1001.42(7)(b), F.S.

<sup>92</sup> S. 1001.51(12), F.S.

The bill does not define the terms "sexual conduct"<sup>93</sup> and "lewd conduct." However, other statutes and case law do define these terms.<sup>94</sup>

### Trespass on School Property

The bill amends 810.097, F.S., to include school bus in the definition of school for purposes of trespass on school grounds. This change will allow a chief administrative officer of a school, or an employee designated to maintain order on the campus, to detain someone until law enforcement arrives if they have probable cause to believe the person is trespassing or has trespassed on a school bus. It also allows a law enforcement officer to arrest someone for trespassing on a school bus, after the commission of the offense and without a warrant, if the officer has probable cause to believe the suspected person committed the crime.

### Disqualifications from Employment, Duty to Report, and Disciplinary Authority

The bill revises the list of disqualifying criminal offenses to include the newly created prohibition on authority figures engaging or soliciting in sexual or lewd conduct with a student. The bill specifies that any person is ineligible for educator certification or employment in any position that requires direct contact with students if he or she has been convicted of a disqualifying offense. The current prohibition expressly applies to instructional personnel and school administrators.

The bill amends s. 1011.62, F.S., prohibiting a teacher from receiving a Career and Professional Education (CAPE) industry certification bonus if the teacher fails to maintain the security of any CAPE industry certification examination or otherwise violates the security or administration protocol of any assessment instrument that may result in a potential bonus. Additionally, the bill authorizes the SBE to establish the criteria under which a student's industry certification or grade may be rescinded.

The bill specifies that soliciting or engaging in sexual contact with a student or minor is an act involving moral turpitude for purposes of certified educator discipline and expressly includes such behavior within the jurisdiction of the EPC to suspend or revoke an educator certificate.

The bill requires that district school board policies include the duty to report misconduct of engaging in or soliciting sexual or lewd conduct with a student. Further, district school board policy must require the district school superintendent to report to law enforcement any misconduct by school district personnel that would result in disqualification from educator certification or employment.

The bill provides that a school board member who knowingly fails to adopt a policy requiring the district school superintendent to report disqualifying misconduct forfeits his or her salary for 1 year. A district superintendent who fails to report disqualifying conduct to law enforcement also forfeits his or her salary for 1 year.

With respect to investigations of complaints of misconduct by a school district, the bill provides that the exemption from public records laws for active investigations does not absolve a school district from its duty to provide any legally sufficient complaint to the DOE within 30 days, regardless of the status of the complaint. Further, the bill specifies that a school district, and an investigator employed or contracted by the school district to investigate allegations of employee misconduct, must file a legally

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<sup>93</sup> A mother's breastfeeding of her baby does not constitute "sexual conduct." S. 847.001, F.S.

<sup>94</sup> Section 847.001(16), F.S., defines "sexual conduct" to mean actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, public area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term "lewdness" is defined in case law as: the equivalent of both licentiousness (*Holton v. State*, 28 Fla. 303 (1891)) and lasciviousness (*McGuire v. State*, 489 So. 2d 729 (Fla. 1986)); and wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd (*Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971)).

sufficient complaint with the DOE within 30 days regardless of whether the subject of the complaint is still an employee of the school district.

The bill requires that the resignation or termination of a public school employee before an investigation of misconduct by the employee affecting the health, safety, or welfare of a student is concluded must be clearly indicated in the employee's personnel file.

The bill also requires school districts, charter schools, and private schools participating in a state scholarship program to notify the department immediately when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded. The DOE must then place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded.

The bill bases the DOE's authority to deny a certification application on the EPC's authority to discipline, rather than to revoke, a certificate. The bill also clarifies that the EPC may discipline an educator certificate if the certificateholder has had disciplinary action taken against any professional license either in Florida or in another state. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder must be construed as action against the license or certificate.

The bill expands the EPC's disciplinary authority to include violations of test security and having adjudication withheld for a misdemeanor, felony, or other criminal charge. The bill also clarifies that the EPC may deny the award of a certificate, bar an applicant from reapplying for a certificate, or allow the award of a certificate with one or more of the following conditions:

- Probation for a period of time.
- Restriction on the scope of practice.
- Issuance of a letter of reprimand.
- Referral to the recovery network program provided in s. 1012.798, F.S., under such terms and conditions as the commission may specify.
- Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

The bill requires persons placed on probation to notify the DOE upon any separation from employment as opposed to only upon termination.

The bill provides an effective date of July 1, 2018.

## B. SECTION DIRECTORY:

- Section 1:** Creates s. 800.101, F.S., relating to offenses against students by authority figures.
- Section 2:** Amends s. 810.097, F.S., relating to trespass upon grounds or facilities of a school; penalties; arrests.
- Section 3:** Amends s. 1001.42, F.S., relating to powers and duties of district school board.
- Section 4:** Amends s. 1001.51, F.S., relating to duties and responsibilities of district school superintendent.
- Section 5:** Amends s. 1011.62, F.S., relating to funds for operation of schools.
- Section 6:** Amends s. 1012.27, F.S., relating to public school personnel; powers and duties of district school superintendent.
- Section 7:** Amends s. 1012.31, F.S., relating to personnel files.
- Section 8:** Amends s. 1012.315, F.S., relating to disqualification from employment.
- Section 9:** Amends s. 1012.56, F.S., relating to educator certification requirements.
- Section 10:** Amends s. 1012.795, F.S., relating to Education Practices Commission; authority to discipline.
- Section 11:** Amends s. 1012.796, F.S., relating to complaints against teachers and administrators; procedure; penalties.

**Section 12:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined it will have a positive insignificant impact on the prison population.

Data is not available to determine how many relationships occur between students eighteen years of age and older and authority figures. However, the incarceration rate for a level 4, 2nd degree felony was 30.9% for FY 16-17.<sup>95</sup> Therefore, the bill will have a positive insignificant impact on the prison population due to the criminalization of a new offense.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

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<sup>95</sup> Criminal Justice Impact Conference, January 29, 2018, available at:  
<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB1391wpa.pdf>.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 7, 2018, the Education Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Specified that criminal trespassing on school property includes trespassing on a school bus;
- Required that a public school employee's resignation or termination before an investigation into misconduct affecting the health, safety, or welfare of a student is concluded be clearly indicated in his or her personnel file;
- Required school districts and other schools to notify the department when a teacher or administrator resigns before an investigation of misconduct affecting the health, safety, or welfare of a student is concluded and requiring the department to place an alert on the person's certificate file indicating that he or she resigned or was terminated before such an investigation was concluded;
- Authorized the DOE to discipline or deny a certificate if a person has been disciplined by another licensing body;
- Clarified that the DOE may deny an educator certificate based on the EPC's authority to discipline a certificate;
- Clarified that the commission may impose conditions on the approval of an educator certificate; and
- Required educators placed on probation to notify the DOE upon separation of employment, not only upon termination.

On February 27, 2018, the Judiciary Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed relationship of a romantic nature from the list of prohibited criminal conduct between an authority figure and a student;
- Removed relationship of a romantic nature from list of alleged personnel misconduct that must be reported by instructional personal and school administrators;
- Prevented a teacher who violates or fails to maintain the security of an industry certification exam from receiving a bonus based on students such certification;
- Authorized the SBE to adopt rules establishing criteria for rescinding a student's industry certification; and
- Required an investigator hired by or contracted with the school district to investigate alleged employee misconduct to file a legally sufficient complaint with the state DOE within a certain timeframe.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.