

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1391 Sexual Offenses Against Students

SPONSOR(S): Education Committee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		Brink	Hassell

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. The proposed committee substitute (PCS) further enhances student safety and increases accountability for school officials and employees by:

- providing that a conviction for offenses against students 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 and to report legally sufficient complaints to the Florida Department of Education within 30 days;
- requiring district school board policies to include mandatory reporting of alleged misconduct that involves engaging in sexual, romantic, 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 Department of Education (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; and
- requiring school districts and certain 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 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.

The PCS makes it a second-degree felony for an authority figure to solicit or engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student enrolled at a school.

The PCS also amends the definition of school in the trespass on school grounds statute to include 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 had probable cause to believe the person committed the offense.

The PCS has an indeterminate fiscal impact on state government due to the criminalization of a new offense.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Conduct by Authority Figures with Adult 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.¹ 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.²
- It is a third degree felony for any person to transmit material harmful to a minor.³ "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:⁴
 - 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.
- 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.⁵
- It is a felony offense for an adult to commit any lewd or lascivious battery, molestation, conduct, or exhibition, upon a child.⁶

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 13.⁷
- False imprisonment of child under age 13.⁸
- 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.⁹
- Human trafficking of minors.¹⁰
- Sexual battery of a minor.¹¹
- Unlawful sexual activity with a minor.¹²

¹ s. 847.001(8), F.S.

² s. 847.0135(3), F.S.

³ s. 847.0138(2)-(3), F.S.

⁴ s. 847.001(6), F.S.

⁵ s. 847.0135(4), F.S.

⁶ s. 800.04, F.S.

⁷ s. 787.01, F.S.

⁸ s. 787.02, F.S.

⁹ See s. 785.025(2)(c), where the victim is a minor.

¹⁰ s. 787.06(3)(b), (d), (f), or (g), F.S.

¹¹ s. 794.011, F.S.

- Lewd or indecent exposure involving a minor.¹³
- Video voyeurism involving a minor.¹⁴
- Sexual performance by a child.¹⁵
- Distributing harmful material to a minor.¹⁶
- Possession or transmission of child pornography.¹⁷

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.¹⁸ An authority figure is a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.¹⁹ A student is a person younger than 18 years of age who is enrolled at a school.²⁰ The offense is reclassified as follows:

- A felony of the third-degree²¹ is reclassified to a second-degree felony.
- A felony of the second-degree²² is reclassified to a first-degree felony.
- A felony of the first-degree²³ is reclassified to a life felony.²⁴

Teacher-Adult Student Relationship Laws in Other States

Other states have enacted similar legislature to prohibit teachers from having relationships with adult students.

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.²⁵

North Carolina categorizes the offense level based on the age difference between the school personnel and the adult student.²⁶ 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 G²⁷ felony. If the defendant is less than four years older than the student, then the defendant is guilty of a lesser degree class I²⁸ felony.²⁹

Georgia makes it sexual assault punishable by up to twenty-five years 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.³⁰ This is regardless of age.³¹ This conduct is not prohibited if the student is married to the other individual.³²

¹² s. 794.05, F.S.

¹³ s. 800.04, F.S.

¹⁴ s. 810.145(8), F.S.

¹⁵ s. 827.071, F.S.

¹⁶ s. 847.0133, F.S.

¹⁷ s. 847.0135, F.S.

¹⁸ s. 775.0862, F.S.

¹⁹ s. 775.0862(a), F.S.

²⁰ s. 775.0862(c), F.S.

²¹ 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.

²² 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.

²³ 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.

²⁴ 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.

²⁵ CONN. GEN. STAT. § 53a-71.

²⁶ N.C. GEN. STAT. ANN. § 14-27.7.

²⁷ 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/ssstrainingmanual_09.pdf (last visited January 22, 2018).

²⁸ Class I felonies are considered low-level felonies in North Carolina and punishable by probation. *See North Carolina Structured Sentencing*, *supra* note 27.

²⁹ *Id.*

³⁰ GA. CODE ANN. § 16-6-5.1.

In *Paschal v. State*, a teacher was convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.³³ Paschal appealed his conviction, arguing that the statute violated his fundamental privacy right to engage in private, consensual, noncommercial acts of sexual intimacy with 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 statute³⁴ was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.³⁵ 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.³⁶

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.³⁷ An investigation revealed that Resource Officer Milton Arroyo, 50, shared his personal phone number and social media account with female students.³⁸ 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.³⁹ Investigations also showed Arroyo used law enforcement databases to look up information on the students, their parents and staff at the school.⁴⁰ Milton Arroyo joined the Pasco Sherriff's Office in January 2015 after 21 years as a law enforcement officer in New York.⁴¹ 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.⁴²

Trespass

Trespass of a Structure of Conveyance

Trespass of a structure or conveyance is a second degree misdemeanor⁴³ and occurs when an individual willfully enters or remains in any structure⁴⁴ or conveyance,⁴⁵ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of

³¹ *Id.*

³² *Id.*

³³ *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

³⁴ ARK. CODE ANN. § 5-14-125(a)(6).

³⁵ *Id.*

³⁶ GA. CODE ANN. § 16-6-5.1.

³⁷ 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/>.

³⁸ *Id.*

³⁹ 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>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 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/>.

⁴³ 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.

⁴⁴ Section 810.011(1), F.S., defines "structure" as a building of any kind.

⁴⁵ Section 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁴⁶ A conveyance includes a motor vehicle.⁴⁷

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.⁴⁸ 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.⁴⁹ 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.⁵⁰

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 designee, has directed the person to leave or not enter the campus or school facility.⁵¹ School means the grounds or any facility of any public or nonpublic kindergarten, elementary school, middle school, junior high school, or secondary school.⁵²

The statute allows a chief administrative officer of the school, or employee thereof, to take a person into custody if he or she has probable cause to believe that person is trespassing on school grounds.⁵³ If a trespasser is taken into custody, a law enforcement officer must immediately be called to the scene.⁵⁴

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.⁵⁵

Qualifications for Educator Certification and Employment

General Requirements

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).⁵⁶ 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.⁵⁷ The purpose of certification is to require school-based

⁴⁶ s. 810.08, F.S.

⁴⁷ s. 810.011(3), F.S.

⁴⁸ s. 901.15(1), F.S.

⁴⁹ s. 901.02(1), F.S.

⁵⁰ *State v. Betz*, 815 So. 2d 627 (Fla. 2002); *see also Freeman v. State*, 909 So. 2d 965 (Fla. 3d DCA 2005).

⁵¹ s. 810.097(2), F.S.

⁵² s. 810.097(5), F.S.

⁵³ s. 810.097(3), F.S.

⁵⁴ *Id.*

⁵⁵ s. 810.097(4), F.S.

⁵⁶ ss. 1012.55(1) and 1002.33(12)(f), F.S.

⁵⁷ 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.

personnel to “possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools.”⁵⁸

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.⁵⁹

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.⁶⁰ To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the SBE or the Department of Children and Families, except in specific circumstances.⁶¹

Disqualifying Offenses

Under the law, 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.⁶² The specified criminal offenses under s. 1012.315, F.S. are as follows:

- 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.
- 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.

⁵⁸ s. 1012.54, F.S.; *see* rule 6A-4.001(1), F.A.C.

⁵⁹ s. 1012.56(2)(a)-(f), F.S.

⁶⁰ s. 1012.32(2)(a), F.S.

⁶¹ s. 1012.32(1), F.S.

⁶² ss. 1001.42(7), 1012.315(1)-(2), and 1012.32(1), F.S.

- 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 turpitude⁶³ may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.⁶⁴

Education Practices Commission

The State Board of Education (SBE) has adopted in rule standards for educator conduct referred to as the Principles of Professional Conduct for the Education Profession.⁶⁵ The Education Practices Commission (EPC) is established in Florida law to interpret and apply the principles.⁶⁶ At least once each year, the EPC must report to and meet with the SBE.⁶⁷ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.⁶⁸

Specifically, the EPC may revoke or suspend an educator's certificate if a person, among other things:⁶⁹

- has been guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- has been 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
- has been 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.

⁶³ 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.

⁶⁴ s. 1012.32(2), F.S.

⁶⁵ s. 1012.795(1)(j), F.S.; rule 6A-10.081, F.A.C.

⁶⁶ s. 1012.79(7)(a), F.S.

⁶⁷ s. 1012.79(7)(c), F.S.

⁶⁸ s. 1012.79(7)(b), F.S.

⁶⁹ s. 1012.795(1), F.S.

- 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.⁷⁰

The law provides that the DOE may deny certification if the department possesses 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.⁷¹ The decision of the DOE 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.⁷²

Investigations of Alleged Misconduct

The DOE must expeditiously investigate any filed complaint or otherwise called to its attention which, if legally sufficient,⁷³ contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.⁷⁴ Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.⁷⁵ 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.⁷⁶

The law requires each school district to file with the DOE all legally sufficient complaints within 30 days after the date on which the subject matter comes to the attention of the school district.⁷⁷ 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.⁷⁸

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.⁷⁹ 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.⁸⁰

⁷⁰ See s. 1012.798, F.S.

⁷¹ s. 1012.56(12)(a), F.S.

⁷² s. 1012.56(12)(b), F.S.

⁷³ 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.

⁷⁴ s. 1012.796(1)(a), F.S.

⁷⁵ s. 1012.796(1)(b), F.S.

⁷⁶ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited Jan. 23, 2018).

⁷⁷ s. 1012.796(1)(d), F.S.

⁷⁸ *Id.*

⁷⁹ s. 1012.31(3)(a)1., F.S.

⁸⁰ *Id.*

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.⁸¹ 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.⁸²

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.⁸³ 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.⁸⁴

Effect of Proposed Changes

Sexual Conduct by Authority Figures with Adult Students

The proposed committee substitute (PCS) prohibits an authority figure from soliciting or engaging in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student. The PCS 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 PCS 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.

The PCS does not define the terms, "sexual conduct,"⁸⁵ and "lewd conduct." However, other statutes and case law do define these terms.⁸⁶

⁸¹ 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).

⁸² *Id.*

⁸³ s. 1001.42(7)(b), F.S.

⁸⁴ s. 1001.51(12), F.S.

⁸⁵ A mother's breastfeeding of her baby does not constitute "sexual conduct." *See* s. 847.001, F.S.

⁸⁶ 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)).

Trespass on School Property

The PCS amends 810.097, F.S., to include school bus in the definition of school under 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 PCS revises the list of disqualifying criminal offenses to include the newly created prohibition on authority figures engaging or soliciting in sexual, romantic, or lewd conduct with a student. The PCS 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 PCS specifies that the act of having a romantic relationship with or 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.

With respect to the requirement that district school board policies establish the duty to report misconduct affecting the health, safety, or welfare of a student, the PCS specifies that such misconduct includes engaging in or soliciting sexual, romantic, 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 PCS 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 PCS 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 PCS specifies that a school district must file a legally 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 PCS 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 PCS 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 PCS bases the DOE's authority to deny a certification application on the EPC's authority to discipline, rather than to revoke, a certificate. The PCS 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 PCS 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 PCS 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 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 PCS requires persons placed on probation to notify the DOE upon any separation from employment as opposed to only upon termination.

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; arrest.
- Section 3:** Amends s. 1001.42, F.S., relating to powers and duties of district school boards.
- Section 4:** Amends s. 1001.51, F.S., relating to duties and responsibilities of district school superintendent.
- Section 5:** Amends s. 1012.27, F.S., relating to public school personnel; powers and duties of district school superintendent
- Section 6:** Amends s. 1012.31, F.S., relating to personnel files.
- Section 7:** Amends s. 1012.315, F.S., relating to disqualification from employment.
- Section 8:** Amends s. 1012.56, F.S., relating to educator certification requirements
- Section 9:** Amends s. 1012.795, F.S., relating to education practices commission; authority to discipline.
- Section 10:** Amends s. 1012.796, F.S., relating to complaints against teachers and administrators; procedure; penalties.
- Section 11:** 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 bill has an indeterminate fiscal impact on state government due to the criminalization of new offenses.

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.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.