

1 A bill to be entitled
2 An act relating to sexual offenses against students;
3 creating s. 800.101, F.S.; providing definitions;
4 prohibiting certain conduct with students by authority
5 figures; providing penalties; providing exceptions;
6 amending s. 1001.42, F.S.; requiring school districts
7 to adopt certain standards of ethical conduct;
8 expanding the scope of persons subject to
9 disqualification from employment by a school district;
10 requiring the district school superintendent to report
11 certain misconduct to law enforcement agencies;
12 amending s. 1001.51, F.S.; providing for forfeiture of
13 a district school superintendent's salary for a
14 specified period for failure to report certain
15 misconduct to law enforcement agencies; amending s.
16 1012.31, F.S.; specifying that legally sufficient
17 complaints of certain misconduct must be reported to
18 law enforcement agencies even if the district finds no
19 probable cause concerning the complaint; amending s.
20 1012.315, F.S.; expanding the scope of provisions
21 requiring the disqualification of persons convicted of
22 certain offenses to apply to all school district
23 personnel who are required to have contact with
24 students; providing an additional offense that
25 disqualifies such persons from employment; amending s.

26 | 1012.795, F.S.; specifying additional grounds for
 27 | discipline of a person holding an educator
 28 | certificate; amending s. 1012.796, F.S.; requiring a
 29 | school district to file certain complaints with the
 30 | Department of Education even if the subject of the
 31 | complaint is no longer employed by the district;
 32 | requiring that specified notice be provided to parents
 33 | of certain alleged misconduct by an educator;
 34 | providing an effective date.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. Section 800.101, Florida Statutes, is created
 39 | to read:

40 | 800.101 Offenses against students by authority figures.—

41 | (1) As used in this section, the term:

42 | (a) "Authority figure" means a person 18 years of age or
 43 | older who is employed by, volunteering at, or under contract
 44 | with a school, including school resource officers as provided in
 45 | s. 1006.12.

46 | (b) "School" has the same meaning as provided in s.
 47 | 1003.01 and includes a private school as defined in s. 1002.01,
 48 | a voluntary prekindergarten education program as described in s.
 49 | 1002.53(3), early learning programs, a public school as
 50 | described in s. 402.3025(1), the Florida School for the Deaf and

51 the Blind, and the Florida Virtual School established under s.
52 1002.37. The term does not include a facility dedicated
53 exclusively to the education of adults.

54 (c) "Student" means a person who is enrolled at a school.

55 (2) An authority figure shall not solicit or engage in:

56 (a) Sexual conduct;

57 (b) A relationship of a romantic nature; or

58 (c) Lewd conduct

59

60 with a student.

61 (3) A person who violates this section commits a felony of
62 the second degree, punishable as provided in s. 775.082, s.
63 775.083, or s. 775.084.

64 (4) This section does not apply to conduct constituting an
65 offense that is subject to reclassification under s. 775.0862.

66 Section 2. Subsections (6) and (7) of section 1001.42,
67 Florida Statutes, are amended to read:

68 1001.42 Powers and duties of district school board.—The
69 district school board, acting as a board, shall exercise all
70 powers and perform all duties listed below:

71 (6) STANDARDS OF ETHICAL CONDUCT FOR INSTRUCTIONAL
72 PERSONNEL AND SCHOOL ADMINISTRATORS.—Adopt policies establishing
73 standards of ethical conduct for instructional personnel and
74 school administrators. The policies must require all
75 instructional personnel and school administrators, as defined in

76 | s. 1012.01, to complete training on the standards; establish the
77 | duty of instructional personnel and school administrators to
78 | report, and procedures for reporting, alleged misconduct by
79 | other instructional personnel and school administrators which
80 | affects the health, safety, or welfare of a student, including
81 | misconduct that involves gross immorality or moral turpitude
82 | under s. 1012.795(1)(d); require district school superintendents
83 | to report to law enforcement misconduct by school district
84 | personnel that would result in disqualification from educator
85 | certification or employment as provided in s. 1012.315; and
86 | include an explanation of the liability protections provided
87 | under ss. 39.203 and 768.095. A district school board, or any of
88 | its employees, may not enter into a confidentiality agreement
89 | regarding terminated or dismissed instructional personnel or
90 | school administrators, or personnel or administrators who resign
91 | in lieu of termination, based in whole or in part on misconduct
92 | that affects the health, safety, or welfare of a student, and
93 | may not provide instructional personnel or school administrators
94 | with employment references or discuss the personnel's or
95 | administrators' performance with prospective employers in
96 | another educational setting, without disclosing the personnel's
97 | or administrators' misconduct. Any part of an agreement or
98 | contract that has the purpose or effect of concealing misconduct
99 | by instructional personnel or school administrators which
100 | affects the health, safety, or welfare of a student is void, is

101 contrary to public policy, and may not be enforced.

102 (7) DISQUALIFICATION FROM EMPLOYMENT.—Disqualify a school
103 district employee instructional personnel and school
104 administrators, as defined in s. 1012.01, from employment in any
105 position that requires direct contact with students if he or she
106 is the personnel or administrators are ineligible for such
107 employment under s. 1012.315. An elected or appointed school
108 board official forfeits his or her salary for 1 year if:

109 (a) The school board official knowingly signs and
110 transmits to any state official a report of alleged misconduct
111 by instructional personnel or school administrators which
112 affects the health, safety, or welfare of a student and the
113 school board official knows the report to be false or incorrect;
114 or

115 (b) The school board official knowingly fails to adopt
116 policies that require instructional personnel and school
117 administrators to report alleged misconduct by other
118 instructional personnel and school administrators; require the
119 district school superintendent to report misconduct by school
120 district personnel that would result in disqualification from
121 educator certification or employment as provided in s. 1012.315
122 to the law enforcement agencies with jurisdiction over the
123 conduct;~~7~~ or ~~that~~ require the investigation of all reports of
124 alleged misconduct by instructional personnel and school
125 administrators, if the misconduct affects the health, safety, or

126 welfare of a student.

127 Section 3. Subsection (12) of section 1001.51, Florida
128 Statutes, is amended to read:

129 1001.51 Duties and responsibilities of district school
130 superintendent.—The district school superintendent shall
131 exercise all powers and perform all duties listed below and
132 elsewhere in the law, provided that, in so doing, he or she
133 shall advise and counsel with the district school board. The
134 district school superintendent shall perform all tasks necessary
135 to make sound recommendations, nominations, proposals, and
136 reports required by law to be acted upon by the district school
137 board. All such recommendations, nominations, proposals, and
138 reports by the district school superintendent shall be either
139 recorded in the minutes or shall be made in writing, noted in
140 the minutes, and filed in the public records of the district
141 school board. It shall be presumed that, in the absence of the
142 record required in this section, the recommendations,
143 nominations, and proposals required of the district school
144 superintendent were not contrary to the action taken by the
145 district school board in such matters.

146 (12) RECORDS AND REPORTS.—Recommend such records as should
147 be kept in addition to those prescribed by rules of the State
148 Board of Education; prepare forms for keeping such records as
149 are approved by the district school board; ensure that such
150 records are properly kept; and make all reports that are needed

151 or required, as follows:

152 (a) Forms, blanks, and reports.—Require that all employees
153 accurately keep all records and promptly make in proper form all
154 reports required by the education code or by rules of the State
155 Board of Education; recommend the keeping of such additional
156 records and the making of such additional reports as may be
157 deemed necessary to provide data essential for the operation of
158 the school system; and prepare such forms and blanks as may be
159 required and ensure that these records and reports are properly
160 prepared.

161 (b) Reports to the department.—Prepare, for the approval
162 of the district school board, all reports required by law or
163 rules of the State Board of Education to be made to the
164 department and transmit promptly all such reports, when
165 approved, to the department, as required by law. If any reports
166 are not transmitted at the time and in the manner prescribed by
167 law or by State Board of Education rules, the salary of the
168 district school superintendent must be withheld until the report
169 has been properly submitted. Unless otherwise provided by rules
170 of the State Board of Education, the annual report on attendance
171 and personnel is due on or before July 1, and the annual school
172 budget and the report on finance are due on the date prescribed
173 by the commissioner.

174

175 Any district school superintendent who knowingly signs and

176 transmits to any state official a report that the superintendent
177 knows to be false or incorrect; who knowingly fails to
178 investigate any allegation of misconduct by instructional
179 personnel or school administrators, as defined in s. 1012.01,
180 which affects the health, safety, or welfare of a student; or
181 who knowingly fails to report the alleged misconduct to the
182 department as required in s. 1012.796; or who knowingly fails to
183 report misconduct to the law enforcement agencies with
184 jurisdiction over the conduct pursuant to district school board
185 policy under s. 1001.42(6), forfeits his or her salary for 1
186 year following the date of such act or failure to act.

187 Section 4. Paragraph (a) of subsection (3) of section
188 1012.31, Florida Statutes, is amended to read:

189 1012.31 Personnel files.—Public school system employee
190 personnel files shall be maintained according to the following
191 provisions:

192 (3) (a) Public school system employee personnel files are
193 subject to the provisions of s. 119.07(1), except as follows:

194 1. Any complaint and any material relating to the
195 investigation of a complaint against an employee shall be
196 confidential and exempt from the provisions of s. 119.07(1)
197 until the conclusion of the preliminary investigation or until
198 such time as the preliminary investigation ceases to be active.
199 If the preliminary investigation is concluded with the finding
200 that there is no probable cause to proceed further and with no

201 disciplinary action taken or charges filed, a statement to that
202 effect signed by the responsible investigating official shall be
203 attached to the complaint, and the complaint and all such
204 materials shall be open thereafter to inspection pursuant to s.
205 119.07(1). If the preliminary investigation is concluded with
206 the finding that there is probable cause to proceed further or
207 with disciplinary action taken or charges filed, the complaint
208 and all such materials shall be open thereafter to inspection
209 pursuant to s. 119.07(1). If the preliminary investigation
210 ceases to be active, the complaint and all such materials shall
211 be open thereafter to inspection pursuant to s. 119.07(1). For
212 the purpose of this subsection, a preliminary investigation
213 shall be considered active as long as it is continuing with a
214 reasonable, good faith anticipation that an administrative
215 finding will be made in the foreseeable future. An investigation
216 shall be presumed to be inactive if no finding relating to
217 probable cause is made within 60 days after the complaint is
218 made. This subparagraph does not absolve the school district of
219 its duty to provide any legally sufficient complaint to the
220 department within 30 days after the date on which the subject
221 matter of the complaint comes to the attention of the school
222 district pursuant to s. 1012.796(1)(d)1., regardless of the
223 status of the complaint.

224 2. An employee evaluation prepared pursuant to s. 1012.33,
225 s. 1012.34, or s. 1012.56 or rules adopted by the State Board of

226 Education or district school board under the authority of those
 227 sections shall be confidential and exempt from the provisions of
 228 s. 119.07(1) until the end of the school year immediately
 229 following the school year in which the evaluation was made. No
 230 evaluation prepared before July 1, 1983, shall be made public
 231 pursuant to this section.

232 3. No material derogatory to an employee shall be open to
 233 inspection until 10 days after the employee has been notified
 234 pursuant to paragraph (2)(c).

235 4. The payroll deduction records of an employee shall be
 236 confidential and exempt from the provisions of s. 119.07(1).

237 5. Employee medical records, including psychiatric and
 238 psychological records, shall be confidential and exempt from the
 239 provisions of s. 119.07(1); however, at any hearing relative to
 240 the competency or performance of an employee, the administrative
 241 law judge, hearing officer, or panel shall have access to such
 242 records.

243 Section 5. Section 1012.315, Florida Statutes, is amended
 244 to read:

245 1012.315 Disqualification from employment.—A person is
 246 ineligible for educator certification or, ~~and instructional~~
 247 ~~personnel and school administrators, as defined in s. 1012.01,~~
 248 ~~are ineligible for~~ employment in any position that requires
 249 direct contact with students in a district school system,
 250 charter school, or private school that accepts scholarship

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251 students under s. 1002.39 or s. 1002.395~~7~~ if the person~~7~~
252 ~~instructional personnel, or school administrator~~ has been
253 convicted of:

254 (1) Any felony offense prohibited under any of the
255 following statutes:

256 (a) Section 393.135, relating to sexual misconduct with
257 certain developmentally disabled clients and reporting of such
258 sexual misconduct.

259 (b) Section 394.4593, relating to sexual misconduct with
260 certain mental health patients and reporting of such sexual
261 misconduct.

262 (c) Section 415.111, relating to adult abuse, neglect, or
263 exploitation of aged persons or disabled adults.

264 (d) Section 782.04, relating to murder.

265 (e) Section 782.07, relating to manslaughter, aggravated
266 manslaughter of an elderly person or disabled adult, aggravated
267 manslaughter of a child, or aggravated manslaughter of an
268 officer, a firefighter, an emergency medical technician, or a
269 paramedic.

270 (f) Section 784.021, relating to aggravated assault.

271 (g) Section 784.045, relating to aggravated battery.

272 (h) Section 784.075, relating to battery on a detention or
273 commitment facility staff member or a juvenile probation
274 officer.

275 (i) Section 787.01, relating to kidnapping.

- 276 (j) Section 787.02, relating to false imprisonment.
- 277 (k) Section 787.025, relating to luring or enticing a
278 child.
- 279 (l) Section 787.04(2), relating to leading, taking,
280 enticing, or removing a minor beyond the state limits, or
281 concealing the location of a minor, with criminal intent pending
282 custody proceedings.
- 283 (m) Section 787.04(3), relating to leading, taking,
284 enticing, or removing a minor beyond the state limits, or
285 concealing the location of a minor, with criminal intent pending
286 dependency proceedings or proceedings concerning alleged abuse
287 or neglect of a minor.
- 288 (n) Section 790.115(1), relating to exhibiting firearms or
289 weapons at a school-sponsored event, on school property, or
290 within 1,000 feet of a school.
- 291 (o) Section 790.115(2)(b), relating to possessing an
292 electric weapon or device, destructive device, or other weapon
293 at a school-sponsored event or on school property.
- 294 (p) Section 794.011, relating to sexual battery.
- 295 (q) Former s. 794.041, relating to sexual activity with or
296 solicitation of a child by a person in familial or custodial
297 authority.
- 298 (r) Section 794.05, relating to unlawful sexual activity
299 with certain minors.
- 300 (s) Section 794.08, relating to female genital mutilation.

- 301 (t) Chapter 796, relating to prostitution.
- 302 (u) Chapter 800, relating to lewdness and indecent
- 303 exposure.
- 304 (v) Section 800.101, relating to offenses against students
- 305 by authority figures.
- 306 (w)~~(v)~~ Section 806.01, relating to arson.
- 307 (x)~~(w)~~ Section 810.14, relating to voyeurism.
- 308 (y)~~(x)~~ Section 810.145, relating to video voyeurism.
- 309 (z)~~(y)~~ Section 812.014(6), relating to coordinating the
- 310 commission of theft in excess of \$3,000.
- 311 (aa)~~(z)~~ Section 812.0145, relating to theft from persons
- 312 65 years of age or older.
- 313 (bb)~~(aa)~~ Section 812.019, relating to dealing in stolen
- 314 property.
- 315 (cc)~~(bb)~~ Section 812.13, relating to robbery.
- 316 (dd)~~(cc)~~ Section 812.131, relating to robbery by sudden
- 317 snatching.
- 318 (ee)~~(dd)~~ Section 812.133, relating to carjacking.
- 319 (ff)~~(ee)~~ Section 812.135, relating to home-invasion
- 320 robbery.
- 321 (gg)~~(ff)~~ Section 817.563, relating to fraudulent sale of
- 322 controlled substances.
- 323 (hh)~~(gg)~~ Section 825.102, relating to abuse, aggravated
- 324 abuse, or neglect of an elderly person or disabled adult.
- 325 (ii)~~(hh)~~ Section 825.103, relating to exploitation of an

326 elderly person or disabled adult.

327 (jj)~~(ii)~~ Section 825.1025, relating to lewd or lascivious
 328 offenses committed upon or in the presence of an elderly person
 329 or disabled person.

330 (kk)~~(jj)~~ Section 826.04, relating to incest.

331 (ll)~~(kk)~~ Section 827.03, relating to child abuse,
 332 aggravated child abuse, or neglect of a child.

333 (mm)~~(ll)~~ Section 827.04, relating to contributing to the
 334 delinquency or dependency of a child.

335 (nn)~~(mm)~~ Section 827.071, relating to sexual performance
 336 by a child.

337 (oo)~~(nn)~~ Section 843.01, relating to resisting arrest with
 338 violence.

339 (pp)~~(oo)~~ Chapter 847, relating to obscenity.

340 (qq)~~(pp)~~ Section 874.05, relating to causing, encouraging,
 341 soliciting, or recruiting another to join a criminal street
 342 gang.

343 (rr)~~(qq)~~ Chapter 893, relating to drug abuse prevention
 344 and control, if the offense was a felony of the second degree or
 345 greater severity.

346 (ss)~~(rr)~~ Section 916.1075, relating to sexual misconduct
 347 with certain forensic clients and reporting of such sexual
 348 misconduct.

349 (tt)~~(ss)~~ Section 944.47, relating to introduction,
 350 removal, or possession of contraband at a correctional facility.

351 (uu) ~~(tt)~~ Section 985.701, relating to sexual misconduct in
 352 juvenile justice programs.

353 (vv) ~~(uu)~~ Section 985.711, relating to introduction,
 354 removal, or possession of contraband at a juvenile detention
 355 facility or commitment program.

356 (2) Any misdemeanor offense prohibited under any of the
 357 following statutes:

358 (a) Section 784.03, relating to battery, if the victim of
 359 the offense was a minor.

360 (b) Section 787.025, relating to luring or enticing a
 361 child.

362 (3) Any criminal act committed in another state or under
 363 federal law which, if committed in this state, constitutes an
 364 offense prohibited under any statute listed in subsection (1) or
 365 subsection (2).

366 (4) Any delinquent act committed in this state or any
 367 delinquent or criminal act committed in another state or under
 368 federal law which, if committed in this state, qualifies an
 369 individual for inclusion on the Registered Juvenile Sex Offender
 370 List under s. 943.0435(1)(h)1.d.

371 Section 6. Paragraph (d) of subsection (1) of section
 372 1012.795, Florida Statutes, is amended to read

373 1012.795 Education Practices Commission; authority to
 374 discipline.—

375 (1) The Education Practices Commission may suspend the

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376 educator certificate of any person as defined in s. 1012.01(2)
377 or (3) for up to 5 years, thereby denying that person the right
378 to teach or otherwise be employed by a district school board or
379 public school in any capacity requiring direct contact with
380 students for that period of time, after which the holder may
381 return to teaching as provided in subsection (4); may revoke the
382 educator certificate of any person, thereby denying that person
383 the right to teach or otherwise be employed by a district school
384 board or public school in any capacity requiring direct contact
385 with students for up to 10 years, with reinstatement subject to
386 the provisions of subsection (4); may revoke permanently the
387 educator certificate of any person thereby denying that person
388 the right to teach or otherwise be employed by a district school
389 board or public school in any capacity requiring direct contact
390 with students; may suspend the educator certificate, upon an
391 order of the court or notice by the Department of Revenue
392 relating to the payment of child support; or may impose any
393 other penalty provided by law, if the person:

394 (d) Has been guilty of gross immorality or an act
395 involving moral turpitude as defined by rule of the State Board
396 of Education, including having a romantic relationship with or
397 soliciting or engaging in sexual contact with a student or
398 minor.

399 Section 7. Paragraphs (d) and (e) of subsection (1) of
400 section 1012.796, Florida Statutes, are amended to read:

401 1012.796 Complaints against teachers and administrators;
402 procedure; penalties.—

403 (1)

404 (d)1.a. Each school district shall file in writing with
405 the department all legally sufficient complaints within 30 days
406 after the date on which subject matter of the complaint comes to
407 the attention of the school district, regardless of whether the
408 subject of the complaint is still an employee of the school
409 district. A complaint is legally sufficient if it contains
410 ultimate facts that show a violation has occurred as provided in
411 s. 1012.795 and defined by rule of the State Board of Education.
412 The school district shall include all information relating to
413 the complaint which is known to the school district at the time
414 of filing.

415 b. The district school superintendent must notify the
416 parent of a student whose health, safety, or welfare is affected
417 by the misconduct of certificated personnel as alleged in a
418 legally sufficient complaint within 30 days after the date on
419 which the subject matter of the complaint comes to the attention
420 of the school district. The notification must inform the parent
421 of:

422 (I) The allegations made in the complaint.

423 (II) Whether the district submitted the report to the
424 department as required by this paragraph.

425 (III) The sanctions imposed against the instructional

426 personnel or school administrator as a result of the
427 investigation, if any.

428 (IV) The support the school district will make available to
429 the student in response to the misconduct.

430 2. Each district school board shall develop and adopt
431 policies and procedures to comply with this reporting
432 requirement. School board policies and procedures must include
433 standards for screening, hiring, and terminating instructional
434 personnel and school administrators, as defined in s. 1012.01;
435 standards of ethical conduct for instructional personnel and
436 school administrators; the duties of instructional personnel and
437 school administrators for upholding the standards; detailed
438 procedures for reporting alleged misconduct by instructional
439 personnel and school administrators which affects the health,
440 safety, or welfare of a student; requirements for the
441 reassignment of instructional personnel or school administrators
442 pending the outcome of a misconduct investigation; and penalties
443 for failing to comply with s. 1001.51 or s. 1012.795. The
444 district school board policies and procedures shall include
445 appropriate penalties for all personnel of the district school
446 board for nonreporting and procedures for promptly informing the
447 district school superintendent of each legally sufficient
448 complaint. The district school superintendent is charged with
449 knowledge of these policies and procedures and is accountable
450 for the training of all instructional personnel and school

451 administrators of the school district on the standards of
452 ethical conduct, policies, and procedures.

453 3. If the district school superintendent has knowledge of
454 a legally sufficient complaint and does not report the complaint
455 as required by law, or fails to enforce the policies and
456 procedures of the district school board, and fails to comply
457 with the requirements of this subsection, in addition to other
458 actions against certificateholders authorized by law, the
459 district school superintendent is subject to penalties as
460 specified in s. 1001.51(12).

461 4. If the superintendent determines that misconduct by
462 instructional personnel or school administrators who hold an
463 educator certificate affects the health, safety, or welfare of a
464 student and the misconduct warrants termination, the
465 instructional personnel or school administrators may resign or
466 be terminated, and the superintendent must report the misconduct
467 to the department in the format prescribed by the department.
468 The department shall maintain each report of misconduct as a
469 public record in the instructional personnel's or school
470 administrators' certification files. This paragraph does not
471 limit or restrict the power and duty of the department to
472 investigate complaints, regardless of the school district's
473 untimely filing, or failure to file, complaints and followup
474 reports.

475 (e) If allegations arise against an employee who is

476 certified under s. 1012.56 and employed in an educator-
477 certificated position in any public school, charter school or
478 governing board thereof, or private school that accepts
479 scholarship students under s. 1002.39 or s. 1002.395, the school
480 shall file in writing with the department a legally sufficient
481 complaint within 30 days after the date on which the subject
482 matter of the complaint came to the attention of the school,
483 regardless of whether the subject of the allegations is still an
484 employee of the school. A complaint is legally sufficient if it
485 contains ultimate facts that show a violation has occurred as
486 provided in s. 1012.795 and defined by rule of the State Board
487 of Education. The school shall include all known information
488 relating to the complaint with the filing of the complaint. This
489 paragraph does not limit or restrict the power and duty of the
490 department to investigate complaints, regardless of the school's
491 untimely filing, or failure to file, complaints and followup
492 reports.

493 Section 8. This act shall take effect July 1, 2018.