

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 515 Offenses Against Student Safety
SPONSOR(S): Criminal Justice Subcommittee; White, Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Painter	Sumner
2) Education Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 515 addresses two areas of concern related to the safety of students in K-12 educational facilities.

Sexual Conduct by Authority Figures

Currently, there is no prohibition in Florida on employees and volunteers at schools K-12 engaging in consensual romantic relationships with students eighteen years of age or older.

CS/HB 515 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, regardless of the student's age. The bill defines:

- "Authority figure" 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" as a private school, a voluntary prekindergarten education program, early learning program, a public school, the Florida School for the Deaf and the Blind, and the Florida Virtual School. Facilities dedicated exclusively to adult education, such as colleges and universities, are not included.

Trespass on School Grounds

A person commits a second degree misdemeanor trespass of a structure or conveyance if the person willfully enters or remains in the structure or conveyance and refuses to leave when asked. A school bus is considered a conveyance under Florida law. In order to arrest someone for trespass of a structure or conveyance, the crime needs to take place in the presence of a law enforcement officer. If this does not occur, the officer must obtain a warrant before arresting the individual.

If a person trespasses on school grounds, specific statute allows an officer to arrest an individual suspected of the offense, after the offense has been committed and without a warrant, if the officer has probable cause to believe the individual committed the crime.

CS/HB 515 amends the definition of school in the trespass on school grounds statute to include school bus. This amendment allows 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 bill has an indeterminate fiscal impact on state government due to the criminalization of a new offense.

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: h0515a.CRJ

DATE: 1/30/2018

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, defined as person under the age of 18 years.¹ Offenses include:

- 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
- 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.
- 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
- A felony 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
- Lewd or indecent exposure involving a minor.¹³

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 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.

¹² S. 794.05, F.S.

- 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 Reclassification is 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 criminal 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 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.³⁰ This is regardless of age.³¹ Such conduct is not prohibited if the student is married to the other individual.³²

A law passed in 2009 in Arkansas made it sexual assault in the second degree for a teacher in a public school to engage in sexual contact with another person who was a student enrolled in the public

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. Supra, FN 27.

²⁹ Id.

³⁰ GA. CODE ANN. § 16-6-5.1.

³¹ Id.

³² Id.

school and was less than 21 years of age.³³ In *Paschal v. State*, the defendant was a teacher and convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.³⁴ 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 statute was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.³⁵ Following the decision, the state legislature amended the statute to make it second degree sexual assault for a person in a public or private school in grades kindergarten through twelfth grade, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority, to use his or her position to engage in sexual contact with a student enrolled in the school and less than twenty-one years of age.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 female high school students.³⁷ An investigation revealed that 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 An investigation found that 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 Sheriff's Office in January 2015 after 21 years as a law enforcement officer in New York.⁴¹ The Pasco County Sheriff'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 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

³³ ARK. CODE ANN. § 5-14-125(a)(6).

³⁴ *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

³⁵ Id.

³⁶ Supra, FN 30.

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/> (last visited January 24, 2018).

³⁸ Id.

³⁹ Chris Bowling, *Pasco 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> (last visited January 24, 2018).

⁴⁰ Id.

⁴¹ Id.

⁴² Supra, FN 37.

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

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

⁴⁶ S. 810.08, F.S.

⁴⁷ Supra, FN 45.

⁴⁸ S. 901.15(1), F.S.

does not witness the crime, then in order to arrest the offender after the commission of the crime, the law enforcement officer needs an arrest warrant. 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 is defined to exist 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 who does not have legitimate business on the campus or any other authorization to be there, or is a student currently under suspension or expulsion, to enter or remain upon the campus or school facility. 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 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

Effect of Proposed Changes

Sexual Conduct by Authority Figures with Adult Students

HB 515 prohibits an authority figure from soliciting or engaging in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student, regardless of the student's age and 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.

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 public school, a private school, a voluntary prekindergarten education program, early learning programs, 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, such as a college or university.

The bill does not define the term "sexual conduct," or "lewd conduct." However, other statutes and case law do define these terms. Section 847.001(16), F.S., defines "sexual conduct"⁵⁶ to mean:

- Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse;
- Actual lewd exhibition of the genitals;

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 A mother's breastfeeding of her baby does not constitute "sexual conduct."

- 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 licentiousness⁵⁷ and lasciviousness.⁵⁸
- Wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd.⁵⁹

Therefore, although the statute fails to include definitions for these terms, the terms have been established elsewhere in Florida statute and case law.

Trespass on School Property

Section 810.011(3), F.S., defines conveyance to include a motor vehicle. Currently, when an individual trespasses upon a school bus, the person is committing a second degree misdemeanor trespass of a structure or conveyance. In order to arrest someone for this offense, an officer needs to witness the offense being committed.

CS/HB 515 amends 810.097, F.S., to include school bus in the definition of school under trespass on school grounds. The amendment 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.

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; arrest.

Section 3: 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.

⁵⁷ *Holton v. State*, 28 Fla. 303 (1891).

⁵⁸ *McGuire v. State*, 489 So. 2d 729 (Fla. 1986).

⁵⁹ *Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971).

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. The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2018, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added school buses to the definition of school as used in trespass on school grounds. The amendment changed the title from an act related to offenses against students by authority figures to an act related to offenses against student safety.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.