

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 515 Offenses Against Student Safety

**SPONSOR(S):** Education Committee; Criminal Justice Subcommittee; White; Mariano and others

**TIED BILLS:** None **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	18 Y, 0 N, As CS	Brink	Hassell
3) Judiciary Committee			

### SUMMARY ANALYSIS

The bill addresses two areas of concern related to the safety of students.

#### Sexual Conduct by Authority Figures

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

The bill 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, the Florida Virtual School, and, with respect to a student participating in a dual enrollment program, the postsecondary institution in which the student is enrolled.
- "Student" as a person who is enrolled at a school or participating in a dual enrollment program.

#### 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.

The bill 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:** h0515c.EDC

**DATE:** 2/8/2018

## 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.<sup>1</sup> 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.<sup>2</sup>
- 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:<sup>4</sup>
  - 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.<sup>5</sup>
- A felony 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>

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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> Section 785.025(2)(c), F.S., 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.

- Lewd or indecent exposure involving a minor.<sup>13</sup>
- 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 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.<sup>25</sup>

North Carolina categorizes criminal 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

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

<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 January 22, 2018).

<sup>28</sup> Class I felonies are considered low-level felonies in North Carolina and punishable by probation. *Supra*, FN 27.

<sup>29</sup> *Id.*

was enrolled at the same school.<sup>30</sup> This is regardless of age.<sup>31</sup> Such conduct is not prohibited if the student is married to the other individual.<sup>32</sup>

In *Paschal v. State*, a teacher was convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.<sup>33</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 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>34</sup> was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.<sup>35</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>36</sup>

In *State v. Edwards*,<sup>37</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>38</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>39</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>40</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>41</sup> Consistent with court decisions from Washington,<sup>42</sup> Connecticut,<sup>43</sup> and Texas,<sup>44</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 abuse conduct. Because the prohibition on sexual conduct

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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

<sup>34</sup> ARK. CODE ANN. § 5-14-125(a)(6).

<sup>35</sup> *Id.*

<sup>36</sup> GA. CODE ANN. § 16-6-5.1.

<sup>37</sup> 288 P.3d 494

<sup>38</sup> *See id.*

<sup>39</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>40</sup> *Id.* at 498 (citing KAN. STAT. ANN. § 21-3520(a)(8)).

<sup>41</sup> *Id.* at 502.

<sup>42</sup> *See 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>43</sup> *See 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 students because it is “an inherently coercive relationship . . . wherein consent might not easily be refused.”) *overruled on other grounds.*

<sup>44</sup> *See 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).

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>45</sup>

### *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.<sup>46</sup> An investigation revealed that Officer Milton Arroyo, 50, shared his personal phone number and social media account with female students.<sup>47</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>48</sup> An investigation found that Arroyo used law enforcement databases to look up information on the students, their parents and staff at the school.<sup>49</sup> Milton Arroyo joined the Pasco Sheriff's Office in January 2015 after 21 years as a law enforcement officer in New York.<sup>50</sup> 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.<sup>51</sup>

### Trespass

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

Trespass of a structure or conveyance is a second degree misdemeanor<sup>52</sup> and occurs when an individual willfully enters or remains in any structure<sup>53</sup> or conveyance,<sup>54</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>55</sup> A conveyance includes a motor vehicle.<sup>56</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>57</sup> If a law enforcement officer 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.<sup>58</sup> 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.<sup>59</sup>

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<sup>45</sup> See *id* at 504.

<sup>46</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/> (last visited January 24, 2018).

<sup>47</sup> *Id.*

<sup>48</sup> 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).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</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>52</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>53</sup> s. 810.011(1), F.S., defines "structure" as a building of any kind.

<sup>54</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>55</sup> s. 810.08, F.S.

<sup>56</sup> s. 810.011(3), F.S.

<sup>57</sup> s. 901.15(1), F.S.

<sup>58</sup> s. 901.02(1), F.S.

<sup>59</sup> *State v. Betz*, 815 So. 2d 627 (Fla. 2002); see also *Freeman v. State*, 909 So. 2d 965 (Fla. 3d DCA 2005).

## *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.<sup>60</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>61</sup>

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.<sup>62</sup> If a trespasser is taken into custody, a law enforcement officer must immediately be called to the scene.<sup>63</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>64</sup>

## **Effect of Proposed Changes**

### Sexual Conduct by Authority Figures with Adult Students

The bill 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.,<sup>65</sup> and includes a public school, a private school, a voluntary prekindergarten education program, early learning programs, the Florida School for the Deaf and Blind, the Florida Virtual School, and, with respect to a student participating in a dual enrollment program,<sup>66</sup> the postsecondary institution in which the student is enrolled. The term school does not include a facility dedicated exclusively to adult education. Student is defined to mean a person who is enrolled at a school or participating in a dual enrollment program.

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"<sup>67</sup> 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

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<sup>60</sup> s. 810.097(2), F.S.

<sup>61</sup> s. 810.097(5), F.S.

<sup>62</sup> s. 810.097(3), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> s. 810.097(4), F.S.

<sup>65</sup> Section 1003.01(2), F.S., defines "school" to mean "an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education."

<sup>66</sup> Dual enrollment programs are authorized under s. 1007.271, F.S., and may be offered by state universities, Florida College System institutions, career centers, and private postsecondary institutions.

<sup>67</sup> A mother's breastfeeding of her baby does not constitute "sexual conduct." *See* s. 847.001, F.S.

- 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<sup>68</sup> and lasciviousness.<sup>69</sup>
- Wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd.<sup>70</sup>

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

The bill 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.

#### 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.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

<sup>68</sup> *Holton v. State*, 28 Fla. 303 (1891).

<sup>69</sup> *McGuire v. State*, 489 So. 2d 729 (Fla. 1986).

<sup>70</sup> *Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971).

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.

On February 7, 2018, the Education Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revises the criminal offense for an authority figure to engage in or solicit sexual, romantic, or lewd conduct with a student to include a student enrolled in a dual enrollment program.

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