

By: Bettencourt, et al.

S.B. No. 7

A BILL TO BE ENTITLED

AN ACT

1
2 relating to improper relationships between educators and students;
3 creating a criminal offense and expanding the applicability of an
4 existing offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 21.12(a), Penal Code, is amended to read
7 as follows:

8 (a) An employee of a public or private primary or secondary
9 school commits an offense if the employee:

10 (1) engages in sexual contact, sexual intercourse, or
11 deviate sexual intercourse with a person who is enrolled in a public
12 or private primary or secondary school at which the employee works;

13 (2) holds a position described by Section 21.003(a) or
14 (b), Education Code, regardless of whether the employee holds the
15 appropriate certificate, permit, license, or credential for the
16 position, [a certificate or permit issued as provided by Subchapter
17 B, Chapter 21, Education Code, or is a person who is required to be
18 licensed by a state agency as provided by Section 21.003(b),
19 Education Code,] and engages in sexual contact, sexual intercourse,

20 or deviate sexual intercourse with a person the employee knows is:

21 (A) enrolled in a public or private primary or
22 secondary school, other than a school described by Subdivision (1)
23 [in the same school district as the school at which the employee
24 works]; or

1 (B) a student participant in an educational
2 activity that is sponsored by a school district or a public or
3 private primary or secondary school, if[+]

4 [~~(i)~~] students enrolled in a public or
5 private primary or secondary school are the primary participants in
6 the activity; [~~and~~

7 [~~(ii) the employee provides education~~
8 ~~services to those participants,~~] or

9 (3) engages in conduct described by Section 33.021,
10 with a person described by Subdivision (1), or a person the employee
11 knows is a person described by Subdivision (2)(A) or (B),
12 regardless of the age of that person.

13 SECTION 2. Article 42.01, Code of Criminal Procedure, is
14 amended by adding Section 12 to read as follows:

15 Sec. 12. In addition to the information described by
16 Section 1, the judgment should reflect affirmative findings entered
17 pursuant to Article 42.0192.

18 SECTION 3. Article 42.018(a), Code of Criminal Procedure,
19 is amended to read as follows:

20 (a) This article applies only to:

21 (1) [~~to~~] conviction or deferred adjudication
22 community supervision granted on the basis of an offense for which a
23 conviction or grant of deferred adjudication community supervision
24 requires the defendant to register as a sex offender under Chapter
25 62; or

26 (2) conviction of[+]

27 [~~(A)~~] an offense under Title 5, Penal Code, [~~+~~ or

1 [~~(B)~~ an offense on conviction of which a
2 defendant is required to register as a sex offender under Chapter
3 ~~62~~, and

4 [~~(2)~~] if the victim of the offense was [~~is~~] under 18
5 years of age at the time the offense was committed.

6 SECTION 4. Chapter ~~42~~, Code of Criminal Procedure, is
7 amended by adding Article 42.0192 to read as follows:

8 Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO
9 PERFORMANCE OF PUBLIC SERVICE. (a) In the trial of an offense
10 described by Section 824.009, Government Code, the judge shall make
11 an affirmative finding of fact and enter the affirmative finding in
12 the judgment in the case if the judge determines that the offense
13 committed was related to the defendant's employment described by
14 Section 824.009(b), Government Code, while a member of the Teacher
15 Retirement System of Texas.

16 (b) A judge who makes the affirmative finding described by
17 this article shall make the determination and provide the notice
18 required by Section 824.009(1), Government Code, as applicable.

19 SECTION 5. Section ~~21.006~~, Education Code, is amended by
20 amending Subsections (b), (b-1), and (c) and adding Subsections
21 (b-2), (c-1), and (i) to read as follows:

22 (b) In addition to the reporting requirement under Section
23 ~~261.101~~, Family Code, the superintendent or director of a school
24 district, district of innovation, open-enrollment charter school,
25 regional education service center, or shared services arrangement
26 shall notify the State Board for Educator Certification if:

27 (1) an educator employed by or seeking employment by

1 the school district, district of innovation, charter school,
2 service center, or shared services arrangement has a criminal
3 record and the school district, district of innovation, charter
4 school, service center, or shared services arrangement obtained
5 information about the educator's criminal record by a means other
6 than the criminal history clearinghouse established under Section
7 [411.0845](#), Government Code;

8 (2) an educator's employment at the school district,
9 district of innovation, charter school, service center, or shared
10 services arrangement was terminated and there is ~~[based on]~~
11 evidence that the educator:

12 (A) abused or otherwise committed an unlawful act
13 with a student or minor;

14 (A-1) was involved in a romantic relationship
15 with or solicited or engaged in sexual contact with a student or
16 minor;

17 (B) possessed, transferred, sold, or distributed
18 a controlled substance, as defined by Chapter [481](#), Health and
19 Safety Code, or by 21 U.S.C. Section 801 et seq.;

20 (C) illegally transferred, appropriated, or
21 expended funds or other property of the school district, district
22 of innovation, charter school, service center, or shared services
23 arrangement;

24 (D) attempted by fraudulent or unauthorized
25 means to obtain or alter a professional certificate or license for
26 the purpose of promotion or additional compensation; or

27 (E) committed a criminal offense or any part of a

1 criminal offense on school property or at a school-sponsored event;

2 (3) the educator resigned and there is evidence that
3 the educator engaged in misconduct described by Subdivision (2); or

4 (4) the educator engaged in conduct that violated the
5 assessment instrument security procedures established under
6 Section 39.0301.

7 (b-1) A superintendent or director of a school district,
8 district of innovation, [or] open-enrollment charter school,
9 regional education service center, or shared services arrangement
10 shall complete an investigation of an educator that involves [~~is~~
11 ~~based on~~] evidence that the educator may have engaged in misconduct
12 described by Subsection (b)(2)(A) or (A-1), despite the educator's
13 resignation from [~~district or school~~] employment before completion
14 of the investigation.

15 (b-2) The principal of a school district, district of
16 innovation, or open-enrollment charter school campus must notify
17 the superintendent or director of the school district, district of
18 innovation, or charter school not later than the seventh day after
19 the date:

20 (1) of an educator's termination of employment or
21 resignation following an alleged incident of misconduct described
22 by Subsection (b); or

23 (2) the principal knew about an educator's criminal
24 record under Subsection (b)(1).

25 (c) The superintendent or director must notify the State
26 Board for Educator Certification by filing a report with the board
27 not later than the seventh day after the date the superintendent or

1 director receives a report from a principal under Subsection (b-2)
2 or otherwise learns [~~knew~~] about an educator's [~~employee's criminal~~
3 ~~record under Subsection (b)(1) or a~~] termination of employment or
4 resignation following an alleged incident of misconduct described
5 by Subsection (b) or an employee's criminal record under Subsection
6 (b)(1).

7 (c-1) The report under Subsection (c) must be:

- 8 (1) in writing; and
9 (2) in a form prescribed by the board.

10 (i) A superintendent or director required to file a report
11 under Subsection (c) commits an offense if the superintendent or
12 director knowingly fails to file the report by the date required by
13 that subsection. A principal required to notify a superintendent
14 or director about an educator's criminal record or alleged incident
15 of misconduct under Subsection (b-2) commits an offense if the
16 principal knowingly fails to provide the notice by the date
17 required by that subsection. An offense under this subsection is a
18 Class A misdemeanor, except that the offense is a state jail felony
19 if it is shown on the trial of the offense that the superintendent,
20 director, or principal intended to conceal an educator's criminal
21 record or alleged incident of misconduct.

22 SECTION 6. Section 21.044(g), Education Code, is amended to
23 read as follows:

24 (g) Each educator preparation program must provide
25 information regarding:

- 26 (1) the skills that educators are required to possess,
27 the responsibilities that educators are required to accept, and the

1 high expectations for students in this state;

2 (2) the effect of supply and demand forces on the
3 educator workforce in this state;

4 (3) the performance over time of the educator
5 preparation program;

6 (4) the importance of building strong classroom
7 management skills; ~~and~~

8 (5) the framework in this state for teacher and
9 principal evaluation, including the procedures followed in
10 accordance with Subchapter H; and

11 (6) appropriate relationships, boundaries, and
12 communications between educators and students.

13 SECTION 7. Sections 21.054(d) and (e), Education Code, are
14 amended to read as follows:

15 (d) Continuing education requirements for a classroom
16 teacher must provide that not more than 25 percent of the training
17 required every five years include instruction regarding:

18 (1) collecting and analyzing information that will
19 improve effectiveness in the classroom;

20 (2) recognizing early warning indicators that a
21 student may be at risk of dropping out of school;

22 (3) integrating technology into classroom
23 instruction; ~~and~~

24 (4) educating diverse student populations, including:

25 (A) students with disabilities, including mental
26 health disorders;

27 (B) students who are educationally

1 disadvantaged;

2 (C) students of limited English proficiency; and

3 (D) students at risk of dropping out of school;

4 and

5 (5) understanding appropriate relationships,
6 boundaries, and communications between educators and students.

7 (e) Continuing education requirements for a principal must
8 provide that not more than 25 percent of the training required every
9 five years include instruction regarding:

10 (1) effective and efficient management, including:

11 (A) collecting and analyzing information;

12 (B) making decisions and managing time; and

13 (C) supervising student discipline and managing
14 behavior;

15 (2) recognizing early warning indicators that a
16 student may be at risk of dropping out of school;

17 (3) integrating technology into campus curriculum and
18 instruction; ~~and~~

19 (4) educating diverse student populations, including:

20 (A) students with disabilities, including mental
21 health disorders;

22 (B) students who are educationally
23 disadvantaged;

24 (C) students of limited English proficiency; and

25 (D) students at risk of dropping out of school;

26 and

27 (5) preventing, recognizing, and reporting any sexual

1 conduct between an educator and student that is prohibited under
2 Section 21.12, Penal Code, or for which reporting is required under
3 Section 21.006 of this code.

4 SECTION 8. The heading to Section 21.058, Education Code,
5 is amended to read as follows:

6 Sec. 21.058. REVOCATION OF CERTIFICATE AND TERMINATION OF
7 EMPLOYMENT BASED ON CONVICTION OF OR PLACEMENT ON DEFERRED
8 ADJUDICATION COMMUNITY SUPERVISION FOR CERTAIN OFFENSES.

9 SECTION 9. Sections 21.058(a), (b), (c), (c-1), and (c-2),
10 Education Code, are amended to read as follows:

11 (a) The procedures described by Subsections (b) and (c)
12 apply only:

13 (1) to conviction of or placement on deferred
14 adjudication community supervision for an offense for which a
15 defendant is required to register as a sex offender under Chapter
16 62, Code of Criminal Procedure; or

17 (2) to conviction of a felony offense under Title 5,
18 Penal Code, [~~or an offense on conviction of which a defendant is~~
19 ~~required to register as a sex offender under Chapter 62, Code of~~
20 ~~Criminal Procedure, and~~

21 [~~2~~] if the victim of the offense was [~~is~~] under 18
22 years of age at the time the offense was committed.

23 (b) Notwithstanding Section 21.041(b)(7), not later than
24 the fifth day after the date the board receives notice under Article
25 42.018, Code of Criminal Procedure, of the conviction or placement
26 on deferred adjudication community supervision of a person who
27 holds a certificate under this subchapter, the board shall:

1 (1) revoke the certificate held by the person; and
2 (2) provide to the person, to the agency, and to any
3 school district or open-enrollment charter school employing the
4 person at the time of revocation written notice of:

- 5 (A) the revocation; and
6 (B) the basis for the revocation.

7 (c) A school district or open-enrollment charter school
8 that receives notice under Subsection (b) of the revocation of a
9 certificate issued under this subchapter shall:

10 (1) immediately remove the person whose certificate
11 has been revoked from campus or from an administrative office, as
12 applicable, to prevent the person from having any contact with a
13 student; and

14 (2) if the person is employed under a probationary,
15 continuing, or term contract under this chapter, with the approval
16 of the board of trustees or governing body or a designee of the
17 board or governing body:

- 18 (A) suspend the person without pay;
19 (B) provide the person with written notice that
20 the person's contract is void as provided by Subsection (c-2); and
21 (C) terminate the employment of the person as
22 soon as practicable.

23 (c-1) If a school district or open-enrollment charter
24 school becomes aware that a person employed by the district or
25 school under a probationary, continuing, or term contract under
26 this chapter has been convicted of or received deferred
27 adjudication for a felony offense, and the person is not subject to

1 Subsection (c), the district or school may, with the approval of the
2 board of trustees or governing body or a designee of the board of
3 trustees or governing body:

4 (1) suspend the person without pay;

5 (2) provide the person with written notice that the
6 person's contract is void as provided by Subsection (c-2); and

7 (3) terminate the employment of the person as soon as
8 practicable.

9 (c-2) A person's probationary, continuing, or term contract
10 is void if, with the approval of the board of trustees or governing
11 body or a designee of the board or governing body, the school
12 district or open-enrollment charter school takes action under
13 Subsection (c)(2)(B) or (c-1)(2).

14 SECTION 10. Subchapter B, Chapter 21, Education Code, is
15 amended by adding Section 21.0581 to read as follows:

16 Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED
17 IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend
18 or revoke a certificate held by a person under this subchapter,
19 impose other sanctions against the person, or refuse to issue a
20 certificate to the person under this subchapter if:

21 (1) the person assists another person in obtaining
22 employment at a school district or open-enrollment charter school,
23 other than by the routine transmission of administrative and
24 personnel files; and

25 (2) the person knew that the other person has
26 previously engaged in sexual misconduct with a minor or student in
27 violation of the law.

1 (b) The commissioner may require a school district to revoke
2 or decline to issue a school district teaching permit under Section
3 21.055 issued to or requested by a person subject to board action
4 under Subsection (a).

5 SECTION 11. Section 21.062(a), Education Code, is amended
6 to read as follows:

7 (a) During an investigation by the commissioner of an
8 educator for an alleged incident of misconduct, the commissioner
9 may issue a subpoena to compel:

10 (1) the attendance of a relevant witness; or

11 (2) the production, for inspection or copying, of
12 relevant evidence that is located in this state.

13 SECTION 12. Section 21.355, Education Code, is amended by
14 amending Subsection (a) and adding Subsections (d), (e), and (f) to
15 read as follows:

16 (a) A document evaluating the performance of a teacher or
17 administrator is confidential and is not subject to disclosure
18 under Chapter 552, Government Code.

19 (d) A school district or open-enrollment charter school may
20 give the agency a document evaluating the performance of a teacher
21 or administrator employed by the district or school for purposes of
22 an investigation conducted by the agency.

23 (e) Notwithstanding Subsection (a) and except as otherwise
24 provided by a court order prohibiting disclosure, a document
25 provided to the agency under Subsection (d) may be used in a
26 disciplinary proceeding against a teacher or administrator based on
27 a report submitted under Section 21.006 concerning an alleged

1 incident of misconduct, if permissible under rules of evidence
2 applicable to a contested case, as provided by Section 2001.081,
3 Government Code.

4 (f) A document provided to the agency under Subsection (d)
5 remains confidential unless the document becomes part of the record
6 in a contested case under Chapter 2001, Government Code.

7 SECTION 13. Subchapter A, Chapter 38, Education Code, is
8 amended by adding Section 38.027 to read as follows:

9 Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) In this
10 section, "electronic communication" means any communication
11 facilitated by the use of any electronic device, including a
12 telephone, cellular telephone, computer, computer network,
13 personal data assistant, or pager. The term includes e-mails, text
14 messages, instant messages, and any communications made through an
15 Internet website, including a social media website or a social
16 networking website.

17 (b) A school district shall adopt a written policy
18 concerning electronic communications between a school employee and
19 a student enrolled in the district.

20 (c) The policy adopted under this section must:

21 (1) include provisions designed to prevent improper
22 electronic communications between a school employee and a student;

23 (2) allow a school employee to elect to not disclose to
24 students the employee's personal telephone number or e-mail
25 address; and

26 (3) include provisions instructing a school employee
27 about the proper method for notifying appropriate local

1 administrators about an incident in which a student engages in
2 improper communications with the school employee.

3 SECTION 14. Section 39.057(a), Education Code, is amended
4 to read as follows:

5 (a) The commissioner may authorize special accreditation
6 investigations to be conducted:

7 (1) when excessive numbers of absences of students
8 eligible to be tested on state assessment instruments are
9 determined;

10 (2) when excessive numbers of allowable exemptions
11 from the required state assessment instruments are determined;

12 (3) in response to complaints submitted to the agency
13 with respect to alleged violations of civil rights or other
14 requirements imposed on the state by federal law or court order;

15 (4) in response to established compliance reviews of
16 the district's financial accounting practices and state and federal
17 program requirements;

18 (5) when extraordinary numbers of student placements
19 in disciplinary alternative education programs, other than
20 placements under Sections 37.006 and 37.007, are determined;

21 (6) in response to an allegation involving a conflict
22 between members of the board of trustees or between the board and
23 the district administration if it appears that the conflict
24 involves a violation of a role or duty of the board members or the
25 administration clearly defined by this code;

26 (7) when excessive numbers of students in special
27 education programs under Subchapter A, Chapter 29, are assessed

1 through assessment instruments developed or adopted under Section
2 39.023(b);

3 (8) in response to an allegation regarding or an
4 analysis using a statistical method result indicating a possible
5 violation of an assessment instrument security procedure
6 established under Section 39.0301, including for the purpose of
7 investigating or auditing a school district under that section;

8 (9) when a significant pattern of decreased academic
9 performance has developed as a result of the promotion in the
10 preceding two school years of students who did not perform
11 satisfactorily as determined by the commissioner under Section
12 39.0241(a) on assessment instruments administered under Section
13 39.023(a), (c), or (l);

14 (10) when excessive numbers of students eligible to
15 enroll fail to complete an Algebra II course or any other advanced
16 course as determined by the commissioner;

17 (11) when resource allocation practices as evaluated
18 under Section 39.0821 indicate a potential for significant
19 improvement in resource allocation;

20 (12) when a disproportionate number of students of a
21 particular demographic group is graduating with a particular
22 endorsement under Section 28.025(c-1);

23 (13) when an excessive number of students is
24 graduating with a particular endorsement under Section
25 28.025(c-1);

26 (14) in response to a complaint submitted to the
27 agency with respect to alleged inaccurate data that is reported

1 through the Public Education Information Management System (PEIMS)
2 or through other reports required by state or federal law or rule or
3 court order and that is used by the agency to make a determination
4 relating to public school accountability, including accreditation,
5 under this chapter; ~~[or]~~

6 (15) when a school district for any reason fails to
7 produce, at the request of the agency, evidence or an investigation
8 report relating to an educator who is under investigation by the
9 State Board for Educator Certification; or

10 (16) as the commissioner otherwise determines
11 necessary.

12 SECTION 15. Subchapter A, Chapter 824, Government Code, is
13 amended by adding Section 824.009 to read as follows:

14 Sec. 824.009. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE
15 FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

16 (a) In this section, "qualifying felony" means an offense that is
17 punishable as a felony under the following sections of the Penal
18 Code:

19 (1) Section 21.02 (continuous sexual abuse of young
20 child or children);

21 (2) Section 21.12 (improper relationship between
22 educator and student); or

23 (3) Section 22.011 (sexual assault) or Section 22.021
24 (aggravated sexual assault).

25 (a-1) In this section, a "qualifying felony" includes any
26 federal offense that contains elements that are substantially
27 similar to the elements of a felony offense described in Subsection

1 (a).

2 (b) This section applies only to a person who is a member or
3 an annuitant of the retirement system.

4 (c) Except as provided by Subsection (e), a person is not
5 eligible to receive a service retirement annuity from the
6 retirement system if the person is convicted of a qualifying felony
7 the victim of which is a student.

8 (d) The retirement system shall suspend payments of an
9 annuity to a person who is not eligible to receive a service
10 retirement annuity under Subsection (c), as determined by the
11 retirement system, on receipt by the retirement system of:

12 (1) notice of a conviction for a qualifying felony
13 under Subsection (f) or (l);

14 (2) notice of a conviction for a qualifying felony
15 from a district court or district attorney; or

16 (3) any other information the retirement system
17 determines by rule is sufficient to establish a conviction for a
18 qualifying felony.

19 (e) A person whose conviction is overturned on appeal or who
20 meets the requirements for innocence under Section 103.001(a)(2),
21 Civil Practice and Remedies Code:

22 (1) is entitled to receive an amount equal to the
23 accrued total of payments and interest earned on the payments
24 withheld during the suspension period; and

25 (2) may resume receipt of annuity payments on payment
26 to the retirement system of an amount equal to the contributions
27 refunded to the person under Subsection (g).

1 (f) Not later than the 30th day after the date of a person's
2 conviction for a qualifying felony, the school at which the person
3 was employed shall provide written notice of the conviction to the
4 retirement system. The notice must comply with rules adopted by the
5 board of trustees under Subsection (k).

6 (g) A person who is not eligible to receive a service
7 retirement annuity under Subsection (c) is entitled to a refund of
8 the person's retirement annuity contributions, including interest
9 earned on those contributions.

10 (h) Benefits payable to an alternate payee under Chapter 804
11 who is recognized by a domestic relations order established before
12 September 1, 2017, are not affected by a person's ineligibility to
13 receive a retirement annuity under Subsection (c).

14 (i) On conviction of a person for a qualifying felony, a
15 court may, in the interest of justice and in the same manner as in a
16 divorce proceeding, award half of the service retirement annuity
17 forfeited by the person as the separate property of an innocent
18 spouse if the annuity is partitioned or exchanged by written
19 agreement of the spouses as provided by Subchapter B, Chapter 4,
20 Family Code. The amount awarded to the innocent spouse may not be
21 converted to community property.

22 (j) Ineligibility for a retirement annuity under this
23 section does not impair a person's right to any other retirement
24 benefit for which the person is eligible.

25 (k) The board of trustees of the retirement system shall
26 adopt rules and procedures to implement this section.

27 (l) A court shall notify the retirement system of the terms

1 of a person's conviction of a qualifying felony.

2 SECTION 16. The change in law made by this Act to Section
3 21.12, Penal Code, applies only to an offense committed on or after
4 the effective date of this Act. An offense committed before the
5 effective date of this Act is governed by the law in effect on the
6 date the offense was committed, and the former law is continued in
7 effect for that purpose. For purposes of this section, an offense
8 was committed before the effective date of this Act if any element
9 of the offense was committed before that date.

10 SECTION 17. Section 12, Article 42.01, Code of Criminal
11 Procedure, and Article 42.0192, Code of Criminal Procedure, as
12 added by this Act, apply only to a judgment of conviction entered on
13 or after the effective date of this Act.

14 SECTION 18. Not later than December 31, 2017, the board of
15 trustees of the Teacher Retirement System of Texas shall adopt the
16 rules necessary to implement Section 824.009, Government Code, as
17 added by this Act.

18 SECTION 19. Section 824.009, Government Code, as added by
19 this Act, applies only to an offense committed on or after the
20 effective date of rules adopted in accordance with that section. An
21 offense committed before that date is governed by the law in effect
22 on the date the offense was committed, and the former law is
23 continued in effect for that purpose. For purposes of this section,
24 an offense was committed before the effective date of rules adopted
25 in accordance with 824.009, Government Code, as added by this Act,
26 if any element of the offense occurred before that date.

27 SECTION 20. This Act takes effect September 1, 2017.