

1-1 By: Bettencourt , et al. S.B. No. 7  
 1-2 (In the Senate - Filed November 18, 2016; January 24, 2017,  
 1-3 read first time and referred to Committee on Education;  
 1-4 March 6, 2017, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 6, 2017,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9			X	
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 7 By: Bettencourt

1-21 A BILL TO BE ENTITLED  
 1-22 AN ACT

1-23 relating to improper relationships between educators and students;  
 1-24 creating a criminal offense and expanding the applicability of an  
 1-25 existing offense.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Section 21.12(a), Penal Code, is amended to read  
 1-28 as follows:

1-29 (a) An employee of a public or private primary or secondary  
 1-30 school commits an offense if the employee:

1-31 (1) engages in sexual contact, sexual intercourse, or  
 1-32 deviate sexual intercourse with a person who is enrolled in a public  
 1-33 or private primary or secondary school at which the employee works;

1-34 (2) holds a position described by Section 21.003(a) or  
 1-35 (b), Education Code, regardless of whether the employee holds the  
 1-36 appropriate certificate, permit, license, or credential for the  
 1-37 position, [a certificate or permit issued as provided by Subchapter  
 1-38 B, Chapter 21, Education Code, or is a person who is required to be  
 1-39 licensed by a state agency as provided by Section 21.003(b),  
 1-40 Education Code,] and engages in sexual contact, sexual intercourse,  
 1-41 or deviate sexual intercourse with a person the employee knows is:

1-42 (A) enrolled in a public or private primary or  
 1-43 secondary school, other than a school described by Subdivision (1)  
 1-44 [in the same school district as the school at which the employee  
 1-45 works]; or

1-46 (B) a student participant in an educational  
 1-47 activity that is sponsored by a school district or a public or  
 1-48 private primary or secondary school, if [+

1-49 [(i)] students enrolled in a public or  
 1-50 private primary or secondary school are the primary participants in  
 1-51 the activity; [and

1-52 [(ii) the employee provides education  
 1-53 services to those participants,] or

1-54 (3) engages in conduct described by Section 33.021,  
 1-55 with a person described by Subdivision (1), or a person the employee  
 1-56 knows is a person described by Subdivision (2)(A) or (B),  
 1-57 regardless of the age of that person.

1-58 SECTION 2. Article 42.018(a), Code of Criminal Procedure,  
 1-59 is amended to read as follows:

1-60 (a) This article applies only to:

2-1 (1) ~~to~~ conviction or deferred adjudication  
2-2 community supervision granted on the basis of an offense for which a  
2-3 conviction or grant of deferred adjudication community supervision  
2-4 requires the defendant to register as a sex offender under Chapter  
2-5 62; or

2-6 (2) conviction of  
2-7 [~~(A)~~] an offense under Title 5, Penal Code, [~~or~~  
2-8 [~~(B)~~ an offense on conviction of which a  
2-9 defendant is required to register as a sex offender under Chapter  
2-10 62; and

2-11 [~~(2)~~] if the victim of the offense was [~~is~~] under 18  
2-12 years of age at the time the offense was committed.

2-13 SECTION 3. Section 21.006, Education Code, is amended by  
2-14 amending Subsections (b), (b-1), and (c) and adding Subsections  
2-15 (b-2) and (i) to read as follows:

2-16 (b) In addition to the reporting requirement under Section  
2-17 261.101, Family Code, the superintendent or director of a school  
2-18 district, district of innovation, open-enrollment charter school,  
2-19 regional education service center, or shared services arrangement  
2-20 shall notify the State Board for Educator Certification if:

2-21 (1) an educator employed by or seeking employment by  
2-22 the school district, district of innovation, charter school,  
2-23 service center, or shared services arrangement has a criminal  
2-24 record and the school district, district of innovation, charter  
2-25 school, service center, or shared services arrangement obtained  
2-26 information about the educator's criminal record by a means other  
2-27 than the criminal history clearinghouse established under Section  
2-28 411.0845, Government Code;

2-29 (2) an educator's employment at the school district,  
2-30 district of innovation, charter school, service center, or shared  
2-31 services arrangement was terminated and there is [~~based on~~]  
2-32 evidence that the educator:

2-33 (A) abused or otherwise committed an unlawful act  
2-34 with a student or minor;

2-35 (A-1) was involved in a romantic relationship  
2-36 with or solicited or engaged in sexual contact with a student or  
2-37 minor;

2-38 (B) possessed, transferred, sold, or distributed  
2-39 a controlled substance, as defined by Chapter 481, Health and  
2-40 Safety Code, or by 21 U.S.C. Section 801 et seq.;

2-41 (C) illegally transferred, appropriated, or  
2-42 expended funds or other property of the school district, district  
2-43 of innovation, charter school, service center, or shared services  
2-44 arrangement;

2-45 (D) attempted by fraudulent or unauthorized  
2-46 means to obtain or alter a professional certificate or license for  
2-47 the purpose of promotion or additional compensation; or

2-48 (E) committed a criminal offense or any part of a  
2-49 criminal offense on school property or at a school-sponsored event;

2-50 (3) the educator resigned and there is evidence that  
2-51 the educator engaged in misconduct described by Subdivision (2); or

2-52 (4) the educator engaged in conduct that violated the  
2-53 assessment instrument security procedures established under  
2-54 Section 39.0301.

2-55 (b-1) A superintendent or director of a school district,  
2-56 district of innovation, [~~or~~] open-enrollment charter school,  
2-57 regional education service center, or shared services arrangement  
2-58 shall complete an investigation of an educator that involves [~~is~~  
2-59 based on] evidence that the educator may have engaged in misconduct  
2-60 described by Subsection (b)(2)(A) or (A-1), despite the educator's  
2-61 resignation from [~~district or school~~] employment before completion  
2-62 of the investigation.

2-63 (b-2) The principal of a school district, district of  
2-64 innovation, or open-enrollment charter school campus must notify  
2-65 the superintendent or director of the school district, district of  
2-66 innovation, or charter school not later than the seventh day after  
2-67 the date the principal knew or should have known about an educator's  
2-68 criminal record under Subsection (b)(1) or a termination of  
2-69 employment or resignation following an alleged incident of

3-1 misconduct described by Subsection (b).

3-2 (c) The superintendent or director must notify the State  
3-3 Board for Educator Certification by filing a report with the board  
3-4 not later than the seventh day after the date the superintendent or  
3-5 director knew or should have known about an educator's [~~employee's~~]  
3-6 criminal record under Subsection (b)(1) or a termination of  
3-7 employment or resignation following an alleged incident of  
3-8 misconduct described by Subsection (b). The report must be:

3-9 (1) in writing; and

3-10 (2) in a form prescribed by the board.

3-11 (i) A superintendent or director required to file a report  
3-12 under Subsection (c) commits an offense if the superintendent or  
3-13 director knowingly fails to file the report by the date required by  
3-14 that subsection. A principal required to notify a superintendent  
3-15 or director about an educator's criminal record or alleged incident  
3-16 of misconduct under Subsection (b-2) commits an offense if the  
3-17 principal knowingly fails to provide the notice by the date  
3-18 required by that subsection. An offense under this subsection is a  
3-19 Class A misdemeanor, except that the offense is a state jail felony  
3-20 if it is shown on the trial of the offense that the superintendent,  
3-21 director, or principal intended to conceal an educator's criminal  
3-22 record or alleged incident of misconduct.

3-23 SECTION 4. Sections 21.054(d) and (e), Education Code, are  
3-24 amended to read as follows:

3-25 (d) Continuing education requirements for a classroom  
3-26 teacher must provide that not more than 25 percent of the training  
3-27 required every five years include instruction regarding:

3-28 (1) collecting and analyzing information that will  
3-29 improve effectiveness in the classroom;

3-30 (2) recognizing early warning indicators that a  
3-31 student may be at risk of dropping out of school;

3-32 (3) integrating technology into classroom  
3-33 instruction; [~~and~~]

3-34 (4) educating diverse student populations, including:  
3-35 (A) students with disabilities, including mental  
3-36 health disorders;

3-37 (B) students who are educationally  
3-38 disadvantaged;

3-39 (C) students of limited English proficiency; and  
3-40 (D) students at risk of dropping out of school;

3-41 and

3-42 (5) understanding appropriate relationships,  
3-43 boundaries, and communications between educators and students.

3-44 (e) Continuing education requirements for a principal must  
3-45 provide that not more than 25 percent of the training required every  
3-46 five years include instruction regarding:

3-47 (1) effective and efficient management, including:

3-48 (A) collecting and analyzing information;

3-49 (B) making decisions and managing time; and

3-50 (C) supervising student discipline and managing  
3-51 behavior;

3-52 (2) recognizing early warning indicators that a  
3-53 student may be at risk of dropping out of school;

3-54 (3) integrating technology into campus curriculum and  
3-55 instruction; [~~and~~]

3-56 (4) educating diverse student populations, including:  
3-57 (A) students with disabilities, including mental  
3-58 health disorders;

3-59 (B) students who are educationally  
3-60 disadvantaged;

3-61 (C) students of limited English proficiency; and

3-62 (D) students at risk of dropping out of school;  
3-63 and

3-64 (5) preventing, recognizing, and reporting any sexual  
3-65 conduct between an educator and student that is prohibited under  
3-66 Section 21.12, Penal Code, or for which reporting is required under  
3-67 Section 21.006 of this code.

3-68 SECTION 5. The heading to Section 21.058, Education Code,  
3-69 is amended to read as follows:

4-1 Sec. 21.058. REVOCATION OF CERTIFICATE AND TERMINATION OF  
4-2 EMPLOYMENT BASED ON CONVICTION OF OR PLACEMENT ON DEFERRED  
4-3 ADJUDICATION COMMUNITY SUPERVISION FOR CERTAIN OFFENSES.

4-4 SECTION 6. Sections 21.058(a) and (b), Education Code, are  
4-5 amended to read as follows:

4-6 (a) The procedures described by Subsections (b) and (c)  
4-7 apply only:

4-8 (1) to conviction of or placement on deferred  
4-9 adjudication community supervision for an offense for which a  
4-10 defendant is required to register as a sex offender under Chapter  
4-11 62, Code of Criminal Procedure; or

4-12 (2) to conviction of a felony offense under Title 5,  
4-13 Penal Code, ~~for an offense on conviction of which a defendant is~~  
4-14 ~~required to register as a sex offender under Chapter 62, Code of~~  
4-15 ~~Criminal Procedure; and~~

4-16 [~~2~~] if the victim of the offense was [is] under 18  
4-17 years of age at the time the offense was committed.

4-18 (b) Notwithstanding Section 21.041(b)(7), not later than  
4-19 the fifth day after the date the board receives notice under Article  
4-20 42.018, Code of Criminal Procedure, of the conviction or placement  
4-21 on deferred adjudication community supervision of a person who  
4-22 holds a certificate under this subchapter, the board shall:

4-23 (1) revoke the certificate held by the person; and

4-24 (2) provide to the person, to the agency, and to any  
4-25 school district or open-enrollment charter school employing the  
4-26 person at the time of revocation written notice of:

4-27 (A) the revocation; and

4-28 (B) the basis for the revocation.

4-29 SECTION 7. Subchapter B, Chapter 21, Education Code, is  
4-30 amended by adding Section 21.0581 to read as follows:

4-31 Sec. 21.0581. REVOCATION FOR ASSISTING PERSON WHO ENGAGED  
4-32 IN SEXUAL MISCONDUCT OBTAIN EMPLOYMENT. (a) The board may suspend  
4-33 or revoke a certificate held by a person under this subchapter,  
4-34 impose other sanctions against the person, or refuse to issue a  
4-35 certificate to the person under this subchapter if:

4-36 (1) the person assists another person in obtaining  
4-37 employment at a school district or open-enrollment charter school,  
4-38 other than by the routine transmission of administrative and  
4-39 personnel files; and

4-40 (2) the person knew or should have known that the other  
4-41 person has previously engaged in sexual misconduct with a minor or  
4-42 student in violation of the law.

4-43 (b) The commissioner may require a school district to revoke  
4-44 or decline to issue a school district teaching permit under Section  
4-45 21.055 issued to or requested by a person subject to board action  
4-46 under Subsection (a).

4-47 SECTION 8. Section 21.062(a), Education Code, is amended to  
4-48 read as follows:

4-49 (a) During an investigation by the commissioner of an  
4-50 educator for an alleged incident of misconduct, the commissioner  
4-51 may issue a subpoena to compel:

4-52 (1) the attendance of a relevant witness; or

4-53 (2) the production, for inspection or copying, of  
4-54 relevant evidence that is located in this state.

4-55 SECTION 9. Section 21.355, Education Code, is amended by  
4-56 amending Subsection (a) and adding Subsections (d), (e), and (f) to  
4-57 read as follows:

4-58 (a) A document evaluating the performance of a teacher or  
4-59 administrator is confidential and is not subject to disclosure  
4-60 under Chapter 552, Government Code.

4-61 (d) A school district or open-enrollment charter school may  
4-62 give the agency a document evaluating the performance of a teacher  
4-63 or administrator employed by the district or school for purposes of  
4-64 an investigation conducted by the agency.

4-65 (e) Notwithstanding Subsection (a) and except as otherwise  
4-66 provided by a court order prohibiting disclosure, a document  
4-67 provided to the agency under Subsection (d) may be used in a  
4-68 disciplinary proceeding against a teacher or administrator based on  
4-69 a report submitted under Section 21.006 concerning an alleged

5-1 incident of misconduct, if permissible under rules of evidence  
5-2 applicable to a contested case, as provided by Section 2001.081,  
5-3 Government Code.

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

5-7 SECTION 10. Subchapter A, Chapter 38, Education Code, is  
5-8 amended by adding Section 38.027 to read as follows:

5-9 Sec. 38.027. ELECTRONIC COMMUNICATION POLICY. (a) In this  
5-10 section, "electronic communication" means any communication  
5-11 facilitated by the use of any electronic device, including a  
5-12 telephone, cellular telephone, computer, computer network,  
5-13 personal data assistant, or pager. The term includes e-mails, text  
5-14 messages, instant messages, and any communications made through an  
5-15 Internet website, including a social media website or a social  
5-16 networking website.

5-17 (b) A school district shall adopt a written policy  
5-18 concerning electronic communications between a school employee and  
5-19 a student enrolled in the district.

5-20 (c) The policy adopted under this section must:

5-21 (1) include provisions designed to prevent improper  
5-22 electronic communications between a school employee and a student;  
5-23 and

5-24 (2) allow a school employee to elect to not disclose to  
5-25 students the employee's personal telephone number or e-mail  
5-26 address.

5-27 SECTION 11. Section 39.057(a), Education Code, is amended  
5-28 to read as follows:

5-29 (a) The commissioner may authorize special accreditation  
5-30 investigations to be conducted:

5-31 (1) when excessive numbers of absences of students  
5-32 eligible to be tested on state assessment instruments are  
5-33 determined;

5-34 (2) when excessive numbers of allowable exemptions  
5-35 from the required state assessment instruments are determined;

5-36 (3) in response to complaints submitted to the agency  
5-37 with respect to alleged violations of civil rights or other  
5-38 requirements imposed on the state by federal law or court order;

5-39 (4) in response to established compliance reviews of  
5-40 the district's financial accounting practices and state and federal  
5-41 program requirements;

5-42 (5) when extraordinary numbers of student placements  
5-43 in disciplinary alternative education programs, other than  
5-44 placements under Sections 37.006 and 37.007, are determined;

5-45 (6) in response to an allegation involving a conflict  
5-46 between members of the board of trustees or between the board and  
5-47 the district administration if it appears that the conflict  
5-48 involves a violation of a role or duty of the board members or the  
5-49 administration clearly defined by this code;

5-50 (7) when excessive numbers of students in special  
5-51 education programs under Subchapter A, Chapter 29, are assessed  
5-52 through assessment instruments developed or adopted under Section  
5-53 39.023(b);

5-54 (8) in response to an allegation regarding or an  
5-55 analysis using a statistical method result indicating a possible  
5-56 violation of an assessment instrument security procedure  
5-57 established under Section 39.0301, including for the purpose of  
5-58 investigating or auditing a school district under that section;

5-59 (9) when a significant pattern of decreased academic  
5-60 performance has developed as a result of the promotion in the  
5-61 preceding two school years of students who did not perform  
5-62 satisfactorily as determined by the commissioner under Section  
5-63 39.0241(a) on assessment instruments administered under Section  
5-64 39.023(a), (c), or (l);

5-65 (10) when excessive numbers of students eligible to  
5-66 enroll fail to complete an Algebra II course or any other advanced  
5-67 course as determined by the commissioner;

5-68 (11) when resource allocation practices as evaluated  
5-69 under Section 39.0821 indicate a potential for significant

6-1 improvement in resource allocation;  
6-2 (12) when a disproportionate number of students of a  
6-3 particular demographic group is graduating with a particular  
6-4 endorsement under Section 28.025(c-1);

6-5 (13) when an excessive number of students is  
6-6 graduating with a particular endorsement under Section  
6-7 28.025(c-1);

6-8 (14) in response to a complaint submitted to the  
6-9 agency with respect to alleged inaccurate data that is reported  
6-10 through the Public Education Information Management System (PEIMS)  
6-11 or through other reports required by state or federal law or rule or  
6-12 court order and that is used by the agency to make a determination  
6-13 relating to public school accountability, including accreditation,  
6-14 under this chapter; [~~or~~]

6-15 (15) when a school district for any reason fails to  
6-16 produce, at the request of the agency, evidence or an investigation  
6-17 report relating to an educator who is under investigation by the  
6-18 State Board for Educator Certification; or

6-19 (16) as the commissioner otherwise determines  
6-20 necessary.

6-21 SECTION 12. The change in law made by this Act to Section  
6-22 21.12, Penal Code, applies only to an offense committed on or after  
6-23 the effective date of this Act. An offense committed before the  
6-24 effective date of this Act is governed by the law in effect on the  
6-25 date the offense was committed, and the former law is continued in  
6-26 effect for that purpose. For purposes of this section, an offense  
6-27 was committed before the effective date of this Act if any element  
6-28 of the offense was committed before that date.

6-29 SECTION 13. This Act takes effect September 1, 2017.

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