

1 SB315
2 150178-1
3 By Senators Fielding and Ward
4 RFD: Judiciary
5 First Read: 12-MAR-13

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8 SYNOPSIS: Existing law does not provide procedures
9 for issuing an arrest warrant for a public
10 education employee concerning official duties of
11 the employee.

12 This bill would provide procedures for
13 issuing an arrest warrant for an employee
14 concerning actions performed in the official duties
15 of the employee.

16 This bill would provide for certain
17 exceptions.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to public education; to provide procedures
24 for issuing an arrest warrant for a public education employee
25 concerning actions performed in the official duties of the
26 employee; and to provide for exceptions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. For the purposes of this act, the
2 following words have the following meanings:

3 (1) PUBLIC EDUCATION. All public schools, public
4 two-year postsecondary institutions, public four-year colleges
5 and universities, the Alabama Institute for Deaf and Blind,
6 the Alabama School of Fine Arts, the Alabama High School for
7 Mathematics and Science, and the Department of Youth Services
8 School District.

9 (2) PUBLIC EDUCATION or PUBLIC SCHOOL EMPLOYEE. Any
10 full-time or part-time employee of the public schools or
11 public education.

12 (3) PUBLIC SCHOOLS. All public schools, grades
13 prekindergarten through 12, inclusive.

14 Section 2. (a) Before an arrest warrant for a felony
15 is issued against any public education or public school
16 employee for a criminal act which is alleged to have occurred
17 while the employee was in the performance of official duties,
18 the district attorney, or his or her designee, or the Attorney
19 General shall evaluate the probable cause for the issuance of
20 a warrant and present the probable cause to a court of
21 competent jurisdiction to approve or deny the issuance of the
22 warrant. The district attorney or Attorney General may ask the
23 employee to appear for a review to determine if adequate
24 probable cause exists for the issuance of the warrant.

25 (b) Before an arrest warrant for a misdemeanor
26 offense or a municipal ordinance violation is issued against
27 any public education or public school employee for a criminal

1 act which is alleged to have occurred while the employee was
2 in the performance of official duties, the charge shall be
3 reviewed by the law enforcement agency having jurisdiction
4 where the alleged offense occurred. The law enforcement agency
5 or a prosecutorial entity on the behalf of the law enforcement
6 agency may present evidence of the offense to a magistrate or
7 a district or municipal judge having jurisdiction before a
8 warrant is issued. A warrant or complaint for a misdemeanor
9 offense shall be issued to the law enforcement agency only
10 after a finding of probable cause by the magistrate or a
11 district or municipal judge.

12 (c) The district attorney, in the alternative, may
13 present any alleged charge against any public education or
14 public school employee for a criminal act which is alleged to
15 have occurred while the employee was in the performance of
16 official duties to a grand jury to determine if adequate
17 probable cause exists for the issuance of an indictment. No
18 notice, pre-warrant, pre-indictment, or post-indictment
19 procedure set forth in this act regarding any public education
20 or public school employee shall apply to an investigation or
21 presentment to a grand jury of the jurisdiction by the
22 district attorney.

23 (d) Nothing in this act shall preclude a law
24 enforcement officer from making a warrantless arrest against a
25 public education or public school employee where the offense,
26 violation of law, or unlawful act occurred in his or her
27 presence and he or she has probable cause to make an arrest.

1 (e) If the alleged offense occurred during the
2 administration of discipline in any form, including corporal
3 punishment, the keeping of order in the schools, the reporting
4 of drug abuse, or the reporting of child abuse, the magistrate
5 or district court or circuit court, having approved the
6 warrant of arrest, upon motion of the district attorney,
7 Attorney General, or other prosecuting authority or a public
8 education or public school employee, may enter specific
9 findings of fact and conclusions of law on the record as to
10 why the immunities of Title 16, Chapter 28A, Section 13A-3-24,
11 and Section 26-14-9 of the Code of Alabama 1975, do not make
12 the employee immune from prosecution.

13 (f) This act shall prohibit the issuance of an
14 arrest warrant by a magistrate or a circuit, district, or
15 municipal judge against any public education or public school
16 employee for a criminal act which is alleged to have occurred
17 while the employee was in the performance of official duties
18 upon presentation of probable cause if adequate evidence is
19 presented to satisfy the magistrate that there is a
20 significant risk that the accused will flee the jurisdiction
21 or that the accused poses a threat to the safety or well-being
22 of any person.

23 (g) Rule 1101(b)(3) of the Alabama Rules of Evidence
24 shall apply to any probable cause proceeding pursuant to this
25 act.

26 Section 3. All laws or parts of laws which conflict
27 with this act are repealed.

1 Section 4. This act shall become effective on July
2 1, 2013, following its passage and approval by the Governor,
3 or its otherwise becoming law.