

House Bill 462

By: Representatives Boggs of the 145th, Westmoreland of the 86th, Skipper of the 116th,
Bordeaux of the 125th, Smith of the 129th, Post 2, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to require a mandatory prison term; to include depiction of any portion of a
3 minor's body part in the prohibition against sexual exploitation of children; to provide for
4 and change certain penalties; to provide for definitions; to expand the definition of computer
5 pornography; to create the crime of obscene Internet contact with a child; to provide for
6 limitations; to provide for related matters; to provide for an effective date; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
11 amended by striking subsection (b) of Code Section 16-6-4, relating to child molestation and
12 aggravated child molestation, and inserting in lieu thereof the following:

13 "(b) A person convicted of a first offense of child molestation shall be punished by
14 imprisonment for not less than five nor more than 20 years; provided, further, that the first
15 three years of the sentence shall not be suspended, probated, deferred, or withheld. Upon
16 ~~such~~ the first conviction of the offense of child molestation, the judge may probate the
17 ~~sentence; and such probation may~~ remainder of the sentence that exceeds the mandatory
18 three-year prison term, provided that the probation shall be upon the special condition that
19 the defendant undergo a mandatory period of counseling administered by a licensed
20 psychiatrist or a licensed psychologist. ~~However, if the judge finds that such probation~~
21 ~~should not be imposed, he or she shall sentence the defendant to imprisonment; provided,~~
22 ~~further, that upon a defendant's~~ Upon a defendant being incarcerated on a first conviction
23 for ~~such first offense~~ an offense of child molestation, the Department of Corrections shall
24 provide counseling to ~~such~~ the defendant. Upon a second or subsequent conviction of an
25 offense of child molestation, the defendant shall be punished by imprisonment for not less
26 than ten years nor more than 30 years or by imprisonment for life; provided, however, that

1 prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a
 2 punishment of life imprisonment. Adjudication of guilt or imposition of sentence for a
 3 conviction of a second or subsequent offense of child molestation, including a plea of nolo
 4 contendere, shall not be suspended, probated, deferred, or withheld."

5 SECTION 2.

6 Said title is amended further by striking subsections (b) and (g) of Code Section 16-12-100,
 7 relating to sexual exploitation of children and the penalties, and inserting in their respective
 8 places the following:

9 "(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice,
 10 or coerce any minor to engage in or assist any other person to engage in any sexually
 11 explicit conduct for the purpose of producing any visual medium depicting such conduct.

12 (2) It is unlawful for any parent, legal guardian, or person having custody or control of
 13 a minor knowingly to permit the minor to engage in or to assist any other person to
 14 engage in sexually explicit conduct for the purpose of producing any visual medium
 15 depicting such conduct.

16 (3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or
 17 coerce any minor to engage in or assist any other person to engage in any sexually
 18 explicit conduct for the purpose of any performance.

19 (4) It is unlawful for any parent, legal guardian, or person having custody or control of
 20 a minor knowingly to permit the minor to engage in or to assist any other person to
 21 engage in sexually explicit conduct for the purpose of any performance.

22 (5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell,
 23 distribute, give, exhibit, or possess with intent to sell or distribute any visual medium
 24 which depicts a minor engaged in any sexually explicit conduct.

25 (6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or
 26 exchange any medium which provides information as to where any visual medium which
 27 depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct
 28 can be found or purchased.

29 (7) It is unlawful for any person knowingly to bring or cause to be brought into this state
 30 any material which depicts a minor or a portion of a minor's body engaged in any
 31 sexually explicit conduct.

32 (8) It is unlawful for any person knowingly to possess or control any material which
 33 depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct."

34 "(g)(1) Except as otherwise provided in ~~paragraphs (2) and (3)~~ paragraph (2) of this
 35 subsection, any person who violates a provision of this Code section shall be guilty of a
 36 felony and, upon conviction thereof, shall be punished by imprisonment for not less than

1 five years nor more than 20 years and by a fine of not more than \$100,000.00. In the
 2 event, however, that the person so convicted is a member of the immediate family of the
 3 victim, no fine shall be imposed.

4 ~~(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall~~
 5 ~~be guilty of a misdemeanor.~~

6 ~~(3)~~(2) Any person who violates subsection (c) of this Code section shall be guilty of a
 7 misdemeanor."

8 SECTION 3.

9 Said title is amended further by striking Code Section 16-12-100.2, relating to computer
 10 pornography and child exploitation prevention, and inserting in lieu thereof the following:

11 "16-12-100.2.

12 (a) This Code section shall be known and may be cited as the 'Computer Pornography and
 13 Child Exploitation Prevention Act of 1999.'

14 (b) As used in this Code section, the term:

15 (1) 'Child' 'child' means any person under the age of 16 years.

16 (2) 'Identifiable child' means a person:

17 (A) Who was a child at the time the visual depiction was created, adapted, or modified
 18 or whose image as a child was used in creating, adapting, or modifying the visual
 19 depiction; and

20 (B) Who is recognizable as an actual person by the person's face, likeness, or other
 21 distinguishing characteristic, such as a unique birthmark or other recognizable feature.

22 The term shall not be construed to require proof of the actual identity of the identifiable
 23 child.

24 (3) 'Visual depiction' means any image and includes undeveloped film and video tape
 25 and data stored on computer disk or by electronic means which is capable of conversion
 26 into a visual image.

27 (c)(1) A person commits the offense of computer pornography if such person
 28 intentionally or willfully:

29 (A) Compiles, enters into, or transmits by means of computer;

30 (B) Makes, prints, publishes, or reproduces by other computerized means;

31 (C) Causes or allows to be entered into or transmitted by means of computer; or

32 (D) Buys, sells, receives, exchanges, or disseminates

33 (i) Any any notice, statement, or advertisement, or any child's name, telephone
 34 number, place of residence, physical characteristics, or other descriptive or identifying
 35 information for the purpose of offering or soliciting sexual conduct of or with any
 36 child or the visual depiction of such conduct; or

1 (ii) Any visual depiction of sexually explicit conduct where the visual depiction has
 2 been created, adapted, or modified to appear that an identifiable child is engaging in
 3 sexually explicit conduct.

4 (2) Any person convicted of violating paragraph (1) of this subsection shall be punished
 5 by a fine of not more than \$10,000.00 ~~or~~ and by imprisonment for not less than one nor
 6 more than 20 years, ~~or both.~~

7 (d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer
 8 on-line service; or Internet service, ~~or~~ including but not limited to a local bulletin board
 9 service, Internet chat room, e-mail, or on-line messaging service to seduce, solicit, lure,
 10 or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed
 11 by such person to be a child; to commit any illegal act described in Code Section 16-6-2,
 12 relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating
 13 to the offense of child molestation or aggravated child molestation; Code Section 16-6-5,
 14 relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8,
 15 relating to the offense of public indecency; or to engage in any conduct that by its nature
 16 is an unlawful sexual offense against a child.

17 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 18 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 19 more than 20 years and by a fine of not more than \$25,000.00; provided, however, that
 20 if at the time of the offense the defendant was 18 years of age or younger and the victim
 21 was at least 14 years of age, the defendant shall be guilty of a misdemeanor of a high and
 22 aggravated nature.

23 (e)(1) A person commits the offense of obscene Internet contact with a child if the person
 24 has contact with a child or someone who that person believes is a child via a computer
 25 on-line service or Internet service, including but not limited to a local bulletin board
 26 service, Internet chat room, e-mail, or on-line messaging service, and the contact involves
 27 any matter containing explicit verbal descriptions or narrative accounts of sexually
 28 explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is
 29 intended to arouse or satisfy the sexual desire of either the child or the person, provided
 30 that no conviction shall be had for a violation of this subsection on the unsupported
 31 testimony of the victim.

32 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 33 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 34 more than ten years or by a fine of not more than \$10,000.00; provided, however, that if
 35 at the time of the offense the defendant was 18 years of age or younger and the victim
 36 was at least 14 years of age, the defendant shall be guilty of a misdemeanor of a high and
 37 aggravated nature.

