

The House Committee on Judiciary offers the following substitute to HB 462:

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 change certain punishment relating to sexual battery; to include depiction  
3 of any portion of a minor's body part in the prohibition against sexual exploitation of  
4 children; to provide for and change certain penalties; to provide for definitions; to expand the  
5 definition of computer pornography; to create the crime of obscene Internet contact with a  
6 child; to provide for limitations; to provide for related matters; to provide for an effective  
7 date; to repeal 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 Code Section 16-6-22.1, relating to sexual battery, and inserting in lieu  
12 thereof the following:

13 "16-6-22.1.

14 (a) For the purposes of this Code section, the term 'intimate parts' means the primary  
15 genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a  
16 female.

17 (b) A person commits the offense of sexual battery when he intentionally makes physical  
18 contact with the intimate parts of the body of another person without the consent of that  
19 person.

20 (c) Except as otherwise provided in this Code section, a ~~A~~ person convicted of the offense  
21 of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

22 (d) A person convicted of the offense of sexual battery against any child under the age of  
23 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by  
24 imprisonment for not less than one nor more than five years."

**SECTION 2.**

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

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

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

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

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

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

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

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

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

"(g)(1) Except as otherwise provided in ~~paragraphs (2) and (3)~~ paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five ~~years~~ nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

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

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

### 5 SECTION 3.

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

8 "16-12-100.2.

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

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

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

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

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

17 (B) Who is recognizable as an actual person by the person's face, likeness, or other  
 18 distinguishing characteristic, such as a unique birthmark or other recognizable feature  
 19 or by electronic or scientific means as may be available.

20 The term shall not be construed to require proof of the actual identity of the child.

21 (3) 'Sodomasochistic abuse' has the same meaning as provided in Code Section  
 22 16-12-100.1.

23 (4) 'Sexual conduct' has the same meaning as provided in Code Section 16-12-100.1.

24 (5) 'Sexual excitement' has the same meaning as provided in Code Section 16-12-100.1.

25 (6) 'Sexually explicit nudity' has the same meaning as provided in Code Section  
 26 16-12-102.

27 (7) 'Visual depiction' means any image and includes undeveloped film and video tape  
 28 and data stored on computer disk or by electronic means which is capable of conversion  
 29 into a visual image or which has been created, adapted, or modified to show an  
 30 identifiable child engaged in sexually explicit conduct.

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

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

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

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

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

1 any notice, statement, or advertisement, or any child's name, telephone number, place of  
 2 residence, physical characteristics, or other descriptive or identifying information for the  
 3 purpose of offering or soliciting sexual conduct of or with ~~any~~ an identifiable child or the  
 4 visual depiction of such conduct.

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

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

18 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony  
 19 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor  
 20 more than 20 years and by a fine of not more than \$25,000.00; provided, however, that,  
 21 if at the time of the offense the victim was 14 or 15 years of age and the defendant was  
 22 no more than three years older than the victim, then the defendant shall be guilty of a  
 23 misdemeanor of a high and aggravated nature.

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

33 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony  
 34 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor  
 35 more than ten years or by a fine of not more than \$10,000.00; provided, however, that,  
 36 if at the time of the offense the victim was 14 or 15 years of age and the defendant was

1 no more than three years older than the victim, then the defendant shall be guilty of a  
2 misdemeanor of a high and aggravated nature.

3 ~~(e)~~(f)(1) It shall be unlawful for any owner or operator of a computer on-line service,  
4 Internet service, or local bulletin board service intentionally or willfully to permit a  
5 subscriber to utilize the service to commit a violation of this Code section, knowing that  
6 such person intended to utilize such service to violate this Code section.

7 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a  
8 misdemeanor of a high and aggravated nature.

9 ~~(f)~~(g) The sole fact that an undercover operative or law enforcement officer was involved  
10 in the detection and investigation of an offense under this Code section shall not constitute  
11 a defense to prosecution under this Code section.

12 ~~(g)~~(h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1,  
13 relating to jurisdiction over crimes and persons charged with commission of crimes  
14 generally, for any conduct made unlawful by this Code section which the person engages  
15 in while either within or outside of this state if, by such conduct, the person commits a  
16 violation of this Code section which involves a child who resides in this state or another  
17 person believed by such person to be a child residing in this state.

18 ~~(h)~~(i) Any violation of this Code section shall constitute a separate offense."

19 **SECTION 4.**

20 This Act shall become effective upon its approval by the Governor or upon its becoming law  
21 without such approval.

22 **SECTION 5.**

23 All laws and parts of laws in conflict with this Act are repealed.