

House Bill 462 (AS PASSED HOUSE AND SENATE)

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 change certain provisions relating to sexual offenses; to change certain
3 provisions relating to pimping; to change certain provisions relating to sexual battery; to
4 include depiction of any portion of a minor's body part in the prohibition against sexual
5 exploitation of children; to provide for and change certain penalties; to provide for
6 definitions; to expand the definition of computer pornography; to create the crime of obscene
7 Internet contact with a child; to provide for limitations; to provide for related matters; to
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
12 amended by striking Code Section 16-6-11, relating to pimping, and inserting in lieu thereof
13 the following:

14 "16-6-11.

15 A person commits the offense of pimping when he or she performs any of the following
16 acts:

- 17 (1) Offers or agrees to procure a prostitute for another;
- 18 (2) Offers or agrees to arrange a meeting of persons for the purpose of prostitution;
- 19 (3) Directs or transports another person to a place ~~knowing~~ when he or she knows or
20 should know that such the direction or transportation is for the purpose of prostitution;
- 21 (4) Receives money or other thing of value from a prostitute, without lawful
22 consideration, knowing it was earned in whole or in part from prostitution; or
- 23 (5) Aids or abets, counsels, or commands another in the commission of prostitution or
24 aids or assists in prostitution where the proceeds or profits derived therefrom are to be
25 divided on a pro rata basis."

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

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

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

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

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

18 ~~(3)~~(2) Any person who violates subsection (c) of this Code section shall be guilty of a
 19 misdemeanor."

20 SECTION 3.

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

23 "16-12-100.2.

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

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

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

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

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

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

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

1 (3) 'Sadomasochistic abuse' has the same meaning as provided in Code Section
 2 16-12-100.1.

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 35 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 36 more than 20 years and by a fine of not more than \$25,000.00; provided, however, that,
 37 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)(1) A person commits the offense of obscene Internet contact with a child if he or she
 4 has contact with someone he or she knows to be a child or with someone he or she
 5 believes to be a child via a computer on-line service or Internet service, including but not
 6 limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging
 7 service, and the contact involves any matter containing explicit verbal descriptions or
 8 narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or
 9 sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the
 10 child or the person, provided that no conviction shall be had for a violation of this
 11 subsection on the unsupported testimony of a child.

12 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
 13 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
 14 more than ten years or by a fine of not more than \$10,000.00; provided, however, that,
 15 if at the time of the offense the victim was 14 or 15 years of age and the defendant was
 16 no more than three years older than the victim, then the defendant shall be guilty of a
 17 misdemeanor of a high and aggravated nature.

18 ~~(e)~~(f)(1) It shall be unlawful for any owner or operator of a computer on-line service,
 19 Internet service, or local bulletin board service intentionally or willfully to permit a
 20 subscriber to utilize the service to commit a violation of this Code section, knowing that
 21 such person intended to utilize such service to violate this Code section. No owner or
 22 operator of a public computer on-line service, Internet service, or local bulletin board
 23 service shall be held liable on account of any action taken in good faith in providing the
 24 aforementioned services.

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

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

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

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

1 **SECTION 4.**

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

4 **SECTION 5.**

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