

House Bill 1006

By: Representatives Setzler of the 35th, Golick of the 40th, Chandler of the 105th, and Cantrell of the 22nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of the Official Code of Georgia Annotated, relating to sexual offenses,
2 so as to revise the crime of sexual assault by persons with supervisory or disciplinary
3 authority; to remove the requirement for supervisory or disciplinary authority; to provide for
4 degrees of the crime; to revise and provide for definitions; to allow consent as a defense
5 under certain circumstances; to change provisions relating to penalties; to amend Code
6 Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and 49-2-14.1 of the Official Code of Georgia
7 Annotated, relating to punishment for sexual offenders, review of individual's criminal
8 history record information, definitions, privacy considerations, written application requesting
9 review, and inspection, the State Sexual Offender Registry, immunity from liability of
10 department, agency, or child advocacy center, and records check requirement for licensing
11 certain facilities, respectively, so as to make conforming cross-references; to provide for
12 related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Chapter 6 of the Official Code of Georgia Annotated, relating to sexual offenses, is amended
16 by revising Code Section 16-6-5.1, relating to sexual assault by persons with supervisory or
17 disciplinary authority, sexual assault by practitioner of psychotherapy against patient, consent
18 not a defense, and penalty upon conviction for sexual assault, as follows:

19 "16-6-5.1.

20 (a) As used in this Code section, the term:

21 (1) 'Actor' means a person accused of sexual assault.

22 (2) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a
23 person.

24 (3) 'Psychotherapy' means the professional treatment or counseling of a mental or
25 emotional illness, symptom, or condition.

26 (4) 'Sexual contact' means any contact ~~between the actor and a person not married to the~~
 27 ~~actor~~ involving the intimate parts of either person for the purpose of sexual gratification
 28 of ~~the actor~~ either person.

29 (5) 'Sexually explicit conduct' means:

30 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
 31 oral-anal, whether between persons of the same or opposite sex;

32 (B) Masturbation;

33 (C) Lewd exhibition of the unclothed genitals or pubic area of any person;

34 (D) Flagellation or torture by or upon a person who is nude;

35 (E) The condition of being fettered, bound, or otherwise physically restrained on the
 36 part of a person who is nude;

37 (F) Physical contact in an act of apparent sexual stimulation or gratification with any
 38 person's unclothed genitals;

39 (G) Defecation or urination for the purpose of sexual stimulation of the viewer; or

40 (H) Penetration of the vagina or rectum by any object except when done as part of a
 41 recognized medical procedure.

42 ~~(5)~~(6) 'School' means any educational program or institution instructing children at any
 43 level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions
 44 are not used in which the attendance of a child satisfies the compulsory attendance
 45 requirements of Code Section 20-2-690.1.

46 (b) A person ~~who has supervisory or disciplinary authority over another individual~~
 47 ~~commits sexual assault in the second degree~~ when that person:

48 (1) Is a teacher, principal, assistant principal, or other ~~administrator~~ employee or agent
 49 of any a school and engages in sexual contact with such other individual who the actor
 50 knew or should have known is enrolled at the same school; ~~provided, however, that such~~
 51 ~~contact shall not be prohibited when the actor is married to such other individual;~~

52 (2) Is an employee or agent of any community supervision office, county juvenile
 53 probation office, Department of Juvenile Justice juvenile probation office, or probation
 54 office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such
 55 other individual who the actor knew or should have known is a probationer or parolee
 56 under the supervision of any such office;

57 (3) Is an employee or agent of a law enforcement agency and engages in sexual contact
 58 with such other individual who the actor knew or should have known is being detained
 59 by or is in the custody of any law enforcement agency;

60 (4) Is an employee or agent of a hospital and engages in sexual contact with such other
 61 individual who the actor knew or should have known is a patient in or is being detained
 62 in the same hospital; or

63 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
 64 providing services to a person with a disability, as such term is defined in Code Section
 65 37-1-1, or a facility providing child welfare and youth services, as such term is defined
 66 in Code Section 49-5-3, who engages in sexual contact with such other individual who
 67 the actor knew or should have known is in the custody of such facility.

68 (c) A person who is an actual or purported medical practitioner or counselor of
 69 psychotherapy commits sexual assault in the second degree when he or she engages in
 70 sexual contact with another individual who the actor knew or should have known is the
 71 subject of the actor's actual or purported medical treatment or counseling or the actor uses
 72 the treatment or counseling relationship to facilitate sexual contact between the actor and
 73 such individual.

74 (d) A person who is an employee, agent, or volunteer at any facility licensed or required
 75 to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be
 76 licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault in the
 77 second degree when he or she engages in sexual contact with another individual who the
 78 actor knew or should have known had been admitted to or is receiving services from such
 79 facility or the actor.

80 (e) Consent of the victim shall not be a defense to a prosecution ~~under this Code section~~
 81 of sexual assault in the second degree; provided, however, that:

82 (1) Such conduct shall not be prohibited when the actor is married to such other
 83 individual;

84 (2) Upon a second or subsequent violation of sexual assault in the second degree, the
 85 actor shall be subject to the sentencing and punishment provisions of Code Section
 86 17-10-6.2; and

87 (3) Consent of the victim who is at least 16 years of age may be considered by the court
 88 in making a determination of the sentence to be imposed.

89 (f) A person convicted of sexual assault in the second degree shall be punished by
 90 imprisonment for not less than one year nor more than ~~25~~ five years or by a fine not to
 91 exceed ~~\$100,000.00~~ \$25,000.00, or both; provided, however, that:

92 (1) Except as provided in paragraph (2) of this subsection, any person convicted of ~~the~~
 93 ~~offense of~~ sexual assault in the second degree of a child under the age of 16 years shall
 94 be punished by imprisonment for not less than ~~25~~ five nor more than ~~50~~ 20 years and
 95 shall, in addition, be subject to the sentencing and punishment provisions of Code Section
 96 17-10-6.2; and

97 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 98 less than 16 years of age and the actor is 18 years of age or younger and is no more than

99 four years older than the victim, such person shall be guilty of a misdemeanor and shall
100 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

101 (g) A person commits sexual assault in the first degree when that person:

102 (1) Is a teacher, principal, assistant principal, or other employee or agent of a school and
103 engages in sexually explicit conduct with such other individual who the actor knew or
104 should have known is enrolled at the same school;

105 (2) Is an employee or agent of any community supervision office, county juvenile
106 probation office, Department of Juvenile Justice juvenile probation office, or probation
107 office under Article 6 of Chapter 8 of Title 42 and engages in sexually explicit conduct
108 with such other individual who the actor knew or should have known is a probationer or
109 parolee under the supervision of any such office;

110 (3) Is an employee or agent of a law enforcement agency and engages in sexually explicit
111 conduct with such other individual who the actor knew or should have known is being
112 detained by or is in the custody of any law enforcement agency;

113 (4) Is an employee or agent of a hospital and engages in sexually explicit conduct with
114 such other individual who the actor knew or should have known is a patient in or is being
115 detained in the same hospital; or

116 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
117 providing services to a person with a disability, as such term is defined in Code Section
118 37-1-1, or a facility providing child welfare and youth services, as such term is defined
119 in Code Section 49-5-3, who engages in sexually explicit conduct with such other
120 individual who the actor knew or should have known is in the custody of such facility.

121 (h) A person who is an actual or purported practitioner or counselor of psychotherapy
122 commits sexual assault in the first degree when he or she engages in sexually explicit
123 conduct with another individual who the actor knew or should have known is the subject
124 of the actor's actual or purported treatment or counseling or the actor uses the treatment or
125 counseling relationship to facilitate sexually explicit conduct between the actor and such
126 individual.

127 (i) A person who is an employee, agent, or volunteer at any facility licensed or required
128 to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be
129 licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault in the first
130 degree when he or she engages in sexually explicit conduct with another individual who
131 the actor knew or should have known had been admitted to or is receiving services from
132 such facility or the actor.

133 (j) Consent of the victim shall not be a defense to a prosecution for sexual assault in the
134 first degree; provided, however, that:

135 (1) Such conduct shall not be prohibited when the actor is married to such other
 136 individual;

137 (2) Unless a similar offense or attempt was committed with another victim, consent of
 138 the victim for a first offense sexual assault in the first degree, the actor shall not be
 139 subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

140 (3) Consent of the victim who is at least 16 years of age may be considered by the court
 141 in making a determination of the sentence to be imposed.

142 (k) A person convicted of sexual assault in the first degree shall be punished by
 143 imprisonment for not less than one year nor more than 25 years or by a fine not to exceed
 144 \$100,000.00, or both; provided, however, that:

145 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
 146 offense of sexual assault in the first degree of a child under the age of 16 years shall be
 147 punished by imprisonment for not less than 25 nor more than 50 years and shall, in
 148 addition, be subject to the sentencing and punishment provisions of Code Section
 149 17-10-6.2; and

150 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 151 less than 16 years of age and the actor is less than 18 years of age and is no more than
 152 four years older than the victim, such person shall be guilty of a misdemeanor and shall
 153 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

154 **SECTION 2.**

155 Code Section 17-10-6.2 of the Official Code of Georgia Annotated, relating to punishment
 156 for sexual offenders, is amended by revising paragraph (7) of subsection (a) as follows:

157 "(7) Sexual assault ~~against persons in custody~~ in the first degree and in the second
 158 degree, in violation of Code Section 16-6-5.1, unless subject to the provisions of
 159 paragraph (2) of subsections (e), (f), (j), and (k) of Code Section 16-6-5.1;"

160 **SECTION 3.**

161 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
 162 individual's criminal history record information, definitions, privacy considerations, written
 163 application requesting review, and inspection, is amended by revising division (j)(4)(B)(iii)
 164 as follows:

165 "(iii) Sexual assault ~~by persons with supervisory or disciplinary authority~~ in the first
 166 or second degree in violation of Code Section 16-6-5.1;"

SECTION 4.

167
168 Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to the State Sexual
169 Offender Registry, is amended by revising subparagraph (a)(10)(B.2) and adding a new
170 subparagraph to read as follows:

171 "(B.2) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
172 2017 between July 1, 2017, and June 30, 2018, means any criminal offense, or the
173 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph
174 or any offense under federal law or the laws of another state or territory of the United
175 States which consists of the same or similar elements of the following offenses:

- 176 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- 177 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
- 178 is less than 14 years of age, except by a parent;
- 179 (iii) Trafficking an individual for sexual servitude in violation of Code Section
- 180 16-5-46;
- 181 (iv) Rape in violation of Code Section 16-6-1;
- 182 (v) Sodomy in violation of Code Section 16-6-2;
- 183 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 184 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
- 185 of the offense is 21 years of age or older;
- 186 (viii) Child molestation in violation of Code Section 16-6-4;
- 187 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
- 188 person was convicted of a misdemeanor offense;
- 189 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 190 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
- 191 (xii) Incest in violation of Code Section 16-6-22;
- 192 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
- 193 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- 194 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 195 (xvi) Electronically furnishing obscene material to minors in violation of Code
- 196 Section 16-12-100.1;
- 197 (xvii) Computer pornography and child exploitation in violation of Code Section
- 198 16-12-100.2;
- 199 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
- 200 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
- 201 minor or an attempt to commit a sexual offense against a victim who is a minor.

202 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
203 2018, means any criminal offense, or the attempt to commit any criminal offense, under

204 Title 16 as specified in this subparagraph or any offense under federal law or the laws
 205 of another state or territory of the United States which consists of the same or similar
 206 elements of the following offenses:

- 207 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
 208 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 209 is less than 14 years of age, except by a parent;
 210 (iii) Trafficking an individual for sexual servitude in violation of Code Section
 211 16-5-46;
 212 (iv) Rape in violation of Code Section 16-6-1;
 213 (v) Sodomy in violation of Code Section 16-6-2;
 214 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 215 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 216 of the offense is 21 years of age or older;
 217 (viii) Child molestation in violation of Code Section 16-6-4;
 218 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 219 person was convicted of a misdemeanor offense;
 220 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 221 (xi) Sexual assault in violation of Code Section 16-6-5.1, unless subject to the
 222 provisions of paragraph (2) of subsection (e) or (j) of Code Section 16-6-5.1;
 223 (xii) Incest in violation of Code Section 16-6-22;
 224 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
 225 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
 226 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
 227 (xvi) Electronically furnishing obscene material to minors in violation of Code
 228 Section 16-12-100.1;
 229 (xvii) Computer pornography and child exploitation in violation of Code Section
 230 16-12-100.2;
 231 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
 232 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
 233 minor or an attempt to commit a sexual offense against a victim who is a minor."

234 **SECTION 5.**

235 Code Section 42-5-56 of the Official Code of Georgia Annotated, relating to immunity from
 236 liability of department, agency, or child advocacy center, by revising subsection (a) as
 237 follows:

238 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 239 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses

240 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of sexual
241 assault against a person in custody; Code Section 16-6-22, relating to the offense of incest;
242 or Code Section 16-6-22.2, relating to the offense of aggravated sexual battery, when the
243 victim was under 18 years of age at the time of the commission of any such offense; or a
244 violation of Code Section 16-6-3, relating to the offense of statutory rape; Code Section
245 16-6-4, relating to the offenses of child molestation and aggravated child molestation; or
246 Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes, when
247 the victim was under 16 years of age at the time of the commission of any such offense."

248 **SECTION 6.**

249 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions,
250 records check requirement for licensing certain facilities, is amended by revising
251 subparagraph (a)(2)(J) as follows:

252 "(J) A violation of Code Section 16-6-5.1, ~~relating to sexual assault against persons in~~
253 ~~custody, detained persons, or patients in hospitals or other institutions;~~"

254 **SECTION 7.**

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