

The House Committee on Judiciary Non-Civil offers the following substitute to SB 335:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-5-46 of the Official Code of Georgia Annotated, relating to
2 trafficking of persons for labor or sexual servitude, so as to expand the offense of trafficking
3 an individual for sexual servitude; to change the punishment for a certain type of trafficking
4 an individual for sexual servitude; to amend Chapter 6 of Title 16 of the Official Code of
5 Georgia Annotated, relating to sexual offenses, so as to revise the crime of sexual assault by
6 persons with supervisory or disciplinary authority; to revise and provide for definitions; to
7 provide for degrees of the crime; to revise and provide for definitions; to change provisions
8 relating to punishment; to amend Code Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and
9 49-2-14.1 of the Official Code of Georgia Annotated, relating to punishment for sexual
10 offenders, review of individual's criminal history record information, definitions, privacy
11 considerations, written application requesting review, and inspection, the State Sexual
12 Offender Registry, immunity from liability of department, agency, or child advocacy center,
13 and records check requirement for licensing certain facilities, respectively, so as to make
14 conforming and correct cross-references; to provide for related matters; to repeal conflicting
15 laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **PART I**
18 **SECTION 1-1.**

19 Code Section 16-5-46 of the Official Code of Georgia Annotated, relating to trafficking of
20 persons for labor or sexual servitude, is amended by revising paragraph (3) of subsection (c)
21 and paragraph (5) of subsection (f) as follows:

22 "(3) Solicits or patronizes by any means an individual to perform sexually explicit
23 conduct on behalf of such person when such individual is the subject of sexual servitude."

24 "(5) Any person who violates paragraph (3) of subsection (c) of this Code section shall
25 be guilty of a felony. When such offense is committed against an individual who is 16

26 ~~or 17~~ years of age or older, upon conviction, such person shall be punished by
 27 imprisonment for not less than five nor more than 20 years. When such offense is
 28 committed against an individual who is younger than 16 years of age or an individual
 29 known to have a developmental disability, upon conviction, such person shall be
 30 punished by imprisonment for not less than ten nor more than 20 years."

31 **PART II**

32 **SECTION 2-1.**

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

37 "16-6-5.1.

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

39 (1) ~~'Actor' means a person accused of sexual assault~~ 'Child welfare and youth services'
 40 shall have the same meaning as set forth in Code Section 49-5-3.

41 (2) 'Disability' shall have the same meaning as set forth in Code Section 37-1-1.

42 (3) 'Disciplinary authority' means the authority to determine rule violation consequences.

43 ~~(2)(4)~~ (4) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of
 44 a person.

45 ~~(3)(5)~~ (5) 'Psychotherapy' means the professional treatment or counseling of a mental or
 46 emotional illness, symptom, or condition.

47 ~~(4)(6)~~ (6) 'Sexual contact' means any contact between the actor and a person not married to
 48 the actor involving the intimate parts of either person for the purpose of sexual
 49 gratification of the actor either person.

50 (7) 'Sexually explicit conduct' means:

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

53 (B) Masturbation;

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

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

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

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

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

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

63 ~~(5)~~(8) 'School' means any educational program or institution ~~instructing~~ providing
 64 elementary or secondary education to children at any level, pre-kindergarten kindergarten
 65 through twelfth grade, or the equivalent thereof if grade divisions are not used.

66 (9) 'Supervisory authority' means direct control, oversight, or management.

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

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

74 (2) Is an employee or agent of any community supervision office, county juvenile
 75 probation office, Department of Juvenile Justice juvenile probation office, or probation
 76 office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such
 77 other individual who ~~the actor~~ he or she knew or should have known is a probationer or
 78 parolee under the supervision of any such office;

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

82 (4) Is an employee or agent of a hospital and engages in sexual contact with such other
 83 individual who ~~the actor~~ he or she knew or should have known is a patient in or is being
 84 detained in the same hospital; or

85 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
 86 providing services to a person with a disability, ~~as such term is defined in Code Section~~
 87 ~~37-1-1~~, or a facility providing child welfare and youth services, ~~as such term is defined~~
 88 ~~in Code Section 49-5-3~~, who engages in sexual contact with such other individual who
 89 ~~the actor~~ he or she knew or should have known is in the custody of such facility.

90 (c) A person who is an actual or purported practitioner or counselor of psychotherapy
 91 commits sexual assault in the second degree when he or she engages in sexual contact with
 92 another individual who ~~the actor~~ he or she knew or should have known is the subject of ~~the~~
 93 ~~actor's~~ his or her actual or purported treatment or counseling or ~~the actor~~ such person uses
 94 the treatment or counseling relationship to facilitate sexual contact between ~~the actor~~
 95 himself or herself and such individual.

96 (d) A person who is an employee, agent, or volunteer at any facility licensed or required
 97 to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be

98 licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault in the
 99 second degree when he or she engages in sexual contact with another individual who ~~the~~
 100 ~~actor~~ he or she knew or should have known had been admitted to or is receiving services
 101 from such facility or ~~the actor~~ such person.

102 (e) Consent of the victim shall not be a defense to a prosecution ~~under this Code section~~
 103 of sexual assault in the second degree.

104 (f) A person convicted of sexual assault in the second degree shall be punished by
 105 imprisonment for not less than one year nor more than ~~25 five~~ years ~~or by and~~ a fine not
 106 to exceed ~~\$100,000.00~~ \$25,000.00, ~~or both~~ and shall not be subject to the sentencing and
 107 punishment provisions of Code Section 17-10-6.2, but upon a second or subsequent
 108 conviction of sexual assault in the second degree, the person shall be subject to the
 109 sentencing and punishment provisions of Code Section 17-10-6.2; provided, however, that:

110 (1) If at the time of the offense, the person while serving in his or her official capacity,
 111 did not have supervisory authority over or disciplinary authority for the victim, such
 112 person shall be guilty of a misdemeanor of a high and aggravated nature and shall not be
 113 subject to the sentencing and punishment provisions of Code Section 17-10-6.2;

114 ~~(1)(2)~~ (2) Except as provided in paragraph (2) (3) of this subsection, any person when the
 115 victim of the offense is under 16 years of age, such convicted of the offense of sexual
 116 assault of a child under the age of 16 years person shall be punished by imprisonment for
 117 not less than ~~25 five~~ nor more than 50 20 years and shall, in addition, be subject to the
 118 sentencing and punishment provisions of Code Section 17-10-6.2; and

119 ~~(2)(3)(A)~~ (A) If at the time of the offense, the victim of the offense is at least 14 years of
 120 age but less than 16 years of age and the actor such convicted person is 18 years of age
 121 or younger and is no more than four years older than the victim, such person shall be
 122 guilty of a misdemeanor and shall not be subject to the sentencing and punishment
 123 provisions of Code Section 17-10-6.2.

124 (B) If at the time of the offense, the victim of the offense is at least 16 years of age and
 125 such convicted person is less than 21 years of age, such person shall be guilty of a
 126 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 127 Code Section 17-10-6.2.

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

129 (1) Is a teacher, principal, assistant principal, or other employee or agent of a school and
 130 engages in sexually explicit conduct with such other individual who he or she knew or
 131 should have known is enrolled at the same school;

132 (2) Is an employee or agent of any community supervision office, county juvenile
 133 probation office, Department of Juvenile Justice juvenile probation office, or probation
 134 office under Article 6 of Chapter 8 of Title 42 and engages in sexually explicit conduct

135 with such other individual who he or she knew or should have known is a probationer or
136 parolee under the supervision of any such office;

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

140 (4) Is an employee or agent of a hospital and engages in sexually explicit conduct with
141 such other individual who he or she knew or should have known is a patient in or is being
142 detained in the same hospital; or

143 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
144 providing services to a person with a disability, or facility providing child welfare and
145 youth services who engages in sexually explicit conduct with such other individual who
146 he or she knew or should have known is in the custody of such facility.

147 (h) A person who is an actual or purported practitioner or counselor of psychotherapy
148 commits sexual assault in the first degree when he or she engages in sexually explicit
149 conduct with another individual who he or she knew or should have known is the subject
150 of his or her actual or purported treatment or counseling or such person uses the treatment
151 or counseling relationship to facilitate sexually explicit conduct between himself or herself
152 and such individual.

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

159 (j) Consent of the victim shall not be a defense to a prosecution for sexual assault in the
160 first degree.

161 (k) A person convicted of sexual assault in the first degree shall be punished by
162 imprisonment for not less than one year nor more than 25 years and a fine not to exceed
163 \$100,000.00, and shall be subject to the sentencing and punishment provisions of Code
164 Section 17-10-6.2; provided, however, that:

165 (1) When the victim was at least 16 years of age and consented to the conduct, the person
166 shall not be subject to the sentencing and punishment provisions of Code Section
167 17-10-6.2 unless the state has shown by a preponderance of evidence that the person has
168 engaged in a similar offense or has attempted a similar offense with another victim;

169 (2) If at the time of the offense, the person while serving in his or her official capacity,
170 did not have supervisory authority over or disciplinary authority for the victim, such
171 person shall be guilty of a felony and shall be punished by imprisonment for not less than

172 one year nor more than ten years and a fine not to exceed \$50,000.00, and shall not be
 173 subject to the sentencing and punishment provisions of Code Section 17-10-6.2;

174 (3) Except as provided in paragraph (4) of this subsection, when the victim of the offense
 175 is under 16 years of age, such convicted person shall be punished by imprisonment for
 176 not less than 25 nor more than 50 years and shall, in addition, be subject to the sentencing
 177 and punishment provisions of Code Section 17-10-6.2; and

178 (4)(A) If at the time of the offense, the victim of the offense is at least 14 years of age
 179 but less than 16 years of age and such convicted person is 18 years of age or younger
 180 and is no more than four years older than the victim, such person shall be guilty of a
 181 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 182 Code Section 17-10-6.2.

183 (B) If at the time of the offense, the victim of the offense is at least 16 years of age and
 184 such convicted person is less than 21 years of age, such person shall be guilty of a
 185 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 186 Code Section 17-10-6.2.

187 (l) This Code section shall not apply to sexual contact or sexually explicit conduct between
 188 individuals who are married to each other."

189 **SECTION 2-2.**

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

192 "(7) Sexual assault against persons in custody in the first degree and in the second
 193 degree, in violation of Code Section 16-6-5.1, except as excluded in subsections (f) and
 194 (k) of Code Section 16-6-5.1;"

195 **SECTION 2-3.**

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

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

202 **SECTION 2-4.**

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

206 "(B.2) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30,~~
 207 ~~2017~~ between July 1, 2017, and June 30, 2018, means any criminal offense, or the
 208 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph
 209 or any offense under federal law or the laws of another state or territory of the United
 210 States which consists of the same or similar elements of the following offenses:

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

237 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
 238 2018, means any criminal offense, or the attempt to commit any criminal offense, under
 239 Title 16 as specified in this subparagraph or any offense under federal law or the laws
 240 of another state or territory of the United States which consists of the same or similar
 241 elements of the following offenses:

- 242 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

- 243 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 244 is less than 14 years of age, except by a parent;
 245 (iii) Trafficking an individual for sexual servitude in violation of Code Section
 246 16-5-46;
 247 (iv) Rape in violation of Code Section 16-6-1;
 248 (v) Sodomy in violation of Code Section 16-6-2;
 249 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 250 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 251 of the offense is 21 years of age or older;
 252 (viii) Child molestation in violation of Code Section 16-6-4;
 253 (ix) Aggravated child molestation in violation of Code Section 16-6-4;
 254 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 255 (xi) Sexual assault in the first degree in violation of Code Section 16-6-5.1, unless
 256 the punishment imposed was not subject to Code Section 17-10-6.2;
 257 (xii) Incest in violation of Code Section 16-6-22;
 258 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
 259 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
 260 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
 261 (xvi) Computer pornography and child exploitation in violation of Code Section
 262 16-12-100.2;
 263 (xvii) A second or subsequent conviction for obscene telephone contact in violation
 264 of Code Section 16-12-100.3; or
 265 (xviii) Any conduct which, by its nature, is a sexual offense against a victim who is
 266 a minor or an attempt to commit a sexual offense against a victim who is a minor."

267 **SECTION 2-5.**

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

271 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 272 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 273 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of sexual
 274 assault ~~against a person in custody~~; Code Section 16-6-22, relating to the offense of incest;
 275 or Code Section 16-6-22.2, relating to the offense of aggravated sexual battery, when the
 276 victim was under 18 years of age at the time of the commission of any such offense; or a
 277 violation of Code Section 16-6-3, relating to the offense of statutory rape; Code Section
 278 16-6-4, relating to the offenses of child molestation and aggravated child molestation; or

279 Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes, when
280 the victim was under 16 years of age at the time of the commission of any such offense."

281 **SECTION 2-6.**

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

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

287 **PART III**

288 **SECTION 3-1.**

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