

The House Committee on Judiciary Non-Civil offers the following substitute to HB 43:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual
2 offenses, so as to revise the crime of sexual assault by persons with supervisory or
3 disciplinary authority; to revise and provide for definitions; to provide for degrees of the
4 crime; to revise and provide for definitions; to change provisions relating to punishment; to
5 amend Code Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and 49-2-14.1 of the Official
6 Code of Georgia Annotated, relating to punishment for sexual offenders, review of
7 individual's criminal history record information, definitions, privacy considerations, written
8 application requesting review, and inspection, the State Sexual Offender Registry, immunity
9 from liability of department, agency, or child advocacy center, and records check
10 requirement for licensing certain facilities, respectively, so as to make conforming and
11 correct cross-references; to provide for effective dates; to provide for related matters; to
12 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 Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,
16 is amended by revising Code Section 16-6-5.1, relating to sexual assault by persons with
17 supervisory or disciplinary authority, sexual assault by practitioner of psychotherapy against
18 patient, consent 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 (1) 'Agent' means an individual authorized to act on behalf of another, with or without
23 compensation or under contract.

24 (2) 'Child welfare and youth services' shall have the same meaning as set forth in Code
25 Section 49-5-3.

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

27 (4) 'Employee' means an individual who works for salary, wages, or other remuneration
 28 for an employer.

29 ~~(2)~~(5) 'Intimate parts' means the tongue, genital area, groin, inner thighs, buttocks, or
 30 breasts of a person.

31 ~~(3)~~(6) 'Psychotherapy' means the professional treatment or counseling of a mental or
 32 emotional illness, symptom, or condition.

33 (7) 'School' means any educational institution, public or private, providing elementary
 34 or secondary education to children at any level, kindergarten through twelfth grade, or
 35 the equivalent thereof if grade divisions are not used, including extracurricular programs
 36 of such institution.

37 (8) 'Sensitive care facility' means any facility licensed or required to be licensed under
 38 Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be licensed pursuant to
 39 Code Section 31-7-151 or 31-7-173.

40 ~~(4)~~(9) 'Sexual contact' means any contact between the actor and a person not married to
 41 the actor involving the intimate parts of either person for the purpose of sexual
 42 gratification of the actor either person.

43 ~~(5) 'School' means any educational program or institution instructing children at any~~
 44 ~~level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions~~
 45 ~~are not used.~~

46 (10) 'Sexually explicit conduct' shall have the same meaning as set forth in Code
 47 Section 16-12-100.

48 ~~(b) A person who has supervisory or disciplinary authority over another individual~~
 49 ~~commits sexual assault when that person~~ An employee, agent, or individual commits the
 50 offense of improper sexual contact by employee or agent in the first degree when such
 51 employee, agent, or individual knowingly engages in sexually explicit conduct with another
 52 person whom such employee, agent, or individual knows or reasonably should have known
 53 is contemporaneously:

54 ~~(1) Is a teacher, principal, assistant principal, or other administrator of any school and~~
 55 ~~engages in sexual contact with such other individual who the actor knew or should have~~
 56 ~~known is enrolled~~ Enrolled as a student at the same a school; provided, however, that
 57 such contact shall not be prohibited when the actor is married to such other individual in
 58 which he or she is an employee or agent;

59 ~~(2) Is an employee or agent of any community supervision office, county juvenile~~
 60 ~~probation office, Department of Juvenile Justice juvenile probation office, or probation~~
 61 ~~office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such~~
 62 ~~other individual who the actor knew or should have known is a probationer or parolee~~
 63 ~~under the supervision of any such office~~ Under probation, parole, accountability court,

64 or pretrial diversion supervision, of the office or court in which he or she is an employee
 65 or agent;

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

70 ~~(4) Is an employee or agent of a hospital and engages in sexual contact with such other~~
 71 ~~individual who the actor knew or should have known is a patient or is being detained in~~
 72 ~~the same hospital~~ A patient in or at a hospital in which he or she is an employee or agent;
 73 ~~or~~

74 ~~(5) Is an employee or agent~~ In the custody of a correctional facility, juvenile detention
 75 facility, facility providing services to a person with a disability, as such term is defined
 76 in Code Section 37-1-1, or a facility providing child welfare and youth services, as such
 77 term is defined in Code Section 49-5-3, who engages in sexual contact with such other
 78 individual who the actor knew or should have known is in the custody of such facility in
 79 which he or she is an employee or agent;-

80 ~~(c)(6) A person who is an actual or purported practitioner of psychotherapy commits~~
 81 ~~sexual assault when he or she engages in sexual contact with another individual who the~~
 82 ~~actor knew or should have known is the~~ The subject of the actor's such employee, agent,
 83 or individual's actual or purported psychotherapy treatment or counseling ~~or the actor~~
 84 ~~uses the treatment or counseling relationship to facilitate sexual contact between the actor~~
 85 ~~and such individual; or-~~

86 ~~(d)(7) A person who is an employee, agent, or volunteer at any facility licensed or~~
 87 ~~required to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is~~
 88 ~~required to be licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual~~
 89 ~~assault when he or she engages in sexual contact with another individual who the actor~~
 90 ~~knew or should have known had been admitted to or is receiving services from such~~
 91 ~~facility or the actor~~ Admitted for care at a sensitive care facility in which he or she is an
 92 employee or agent.

93 (c) A person commits the offense of improper sexual contact by employee or agent in the
 94 second degree when such employee, agent, or individual knowingly engages in sexual
 95 contact, excluding sexually explicit conduct, with another person whom such employee,
 96 agent, or individual knows or reasonably should have known is contemporaneously:

97 (1) Enrolled as a student at a school in which he or she is an employee or agent;

98 (2) Under probation, parole, accountability court, or pretrial diversion supervision of the
 99 office or court in which he or she is an employee or agent;

100 (3) Being detained by or is in the custody of a law enforcement agency in which he or she
 101 is an employee or agent;

102 (4) A patient in or at a hospital in which he or she is an employee or agent;

103 (5) In the custody of a correctional facility, juvenile detention facility, facility providing
 104 services to a person with a disability, or facility providing child welfare and youth
 105 services in which he or she is an employee or agent;

106 (6) The subject of such employee, agent, or individual's actual or purported
 107 psychotherapy treatment or counseling; or

108 (7) Admitted for care at a sensitive care facility in which he or she is an employee or
 109 agent.

110 ~~(e)~~(d) Consent of the victim shall not be a defense to a prosecution under this Code
 111 section.

112 (e) This Code section shall not apply to sexually explicit conduct or sexual contact
 113 between individuals lawfully married to each other.

114 (f) A person convicted of improper sexual assault contact by employee or agent in the first
 115 degree shall be punished by imprisonment for not less than one nor more than 25 years or
 116 by a fine not to exceed \$50,000.00, or both, and shall, in addition, be subject to the
 117 sentencing and punishment provisions of Code Section 17-10-6.2; provided, however, that:

118 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
 119 offense of improper sexual assault of contact by employee or agent with a child under the
 120 age of 16 years shall be punished by imprisonment for not less than 25 nor more than 50
 121 years or a fine not to exceed \$100,000.00, or both, and shall, in addition, be subject to the
 122 sentencing and punishment provisions of Code Section 17-10-6.2; and

123 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 124 less than 16 years of age and the ~~actor~~ person is 18 years of age or younger and is no
 125 more than ~~four years~~ 48 months older than the victim, 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 convicted of improper sexual contact by employee or agent in the second
 129 degree shall be punished as for a misdemeanor of a high and aggravated nature and shall
 130 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
 131 provided, however, that:

132 (1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted
 133 of the offense of improper sexual contact by employee or agent in the second degree with
 134 a child under the age of 16 years shall be punished by imprisonment for not less than five
 135 nor more than 25 years or by a fine not to exceed \$25,000.00, or both, and shall, in

136 addition, be subject to the sentencing and punishment provisions of Code
 137 Section 17-10-6.2;

138 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 139 less than 16 years of age and the person is 18 years of age or younger and is no more than
 140 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
 141 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
 142 and

143 (3) Except as provided in paragraph (2) of this subsection, upon a second or subsequent
 144 conviction of the offense of improper sexual contact by employee or agent in the second
 145 degree, the person shall be guilty of a felony and shall be punished by imprisonment for
 146 not less than one year nor more than five years and shall be subject to the sentencing and
 147 punishment provisions of Code Section 17-10-6.2."

148 SECTION 2.

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

151 "(7) Sexual assault against persons in custody, in violation of Improper sexual contact
 152 by employee or agent, as provided in Code Section 16-6-5.1;"

153 SECTION 3.

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

158 "(iii) Sexual assault by persons with supervisory or disciplinary authority Improper
 159 sexual contact by employee or agent in violation of Code Section 16-6-5.1;"

160 SECTION 4.

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

164 "(B.2) 'Dangerous sexual offense' with respect to convictions occurring after
 165 June 30, 2017 between July 1, 2017, and June 30, 2019, means any criminal offense,
 166 or the attempt to commit any criminal offense, under Title 16 as specified in this
 167 subparagraph or any offense under federal law or the laws of another state or territory
 168 of the United States which consists of the same or similar elements of the following
 169 offenses:

- 170 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
 171 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 172 is less than 14 years of age, except by a parent;
 173 (iii) Trafficking an individual for sexual servitude in violation of Code
 174 Section 16-5-46;
 175 (iv) Rape in violation of Code Section 16-6-1;
 176 (v) Sodomy in violation of Code Section 16-6-2;
 177 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 178 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 179 of the offense is 21 years of age or older;
 180 (viii) Child molestation in violation of Code Section 16-6-4;
 181 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 182 person was convicted of a misdemeanor offense;
 183 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 184 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
 185 (xii) Incest in violation of Code Section 16-6-22;
 186 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
 187 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
 188 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
 189 (xvi) Electronically furnishing obscene material to minors in violation of Code
 190 Section 16-12-100.1;
 191 (xvii) Computer pornography and child exploitation in violation of Code
 192 Section 16-12-100.2;
 193 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
 194 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
 195 minor or an attempt to commit a sexual offense against a victim who is a minor.
- 196 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after
 197 June 30, 2019, means any criminal offense, or the attempt to commit any criminal
 198 offense, under Title 16 as specified in this subparagraph or any offense under federal
 199 law or the laws of another state or territory of the United States which consists of the
 200 same or similar elements of the following offenses:
- 201 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
 202 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 203 is less than 14 years of age, except by a parent;
 204 (iii) Trafficking an individual for sexual servitude in violation of Code
 205 Section 16-5-46;
 206 (iv) Rape in violation of Code Section 16-6-1;

- 207 (v) Sodomy in violation of Code Section 16-6-2;
 208 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 209 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 210 of the offense is 21 years of age or older;
 211 (viii) Child molestation in violation of Code Section 16-6-4;
 212 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 213 person was convicted of a misdemeanor offense;
 214 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 215 (xi) Improper sexual contact by employee or agent in the first or second degree in
 216 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
 217 to Code Section 17-10-6.2;
 218 (xii) Incest in violation of Code Section 16-6-22;
 219 (xiii) A second or subsequent conviction for sexual battery in violation of Code
 220 Section 16-6-22.1;
 221 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
 222 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
 223 (xvi) Electronically furnishing obscene material to minors in violation of Code
 224 Section 16-12-100.1;
 225 (xvii) Computer pornography and child exploitation in violation of Code
 226 Section 16-12-100.2;
 227 (xviii) A second or subsequent conviction for obscene telephone contact in violation
 228 of Code Section 16-12-100.3; or
 229 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
 230 minor or an attempt to commit a sexual offense against a victim who is a minor."

231 **SECTION 5.**

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

235 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 236 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 237 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of ~~sexual~~
 238 ~~assault against a person in custody~~ improper sexual contact by employee or agent; Code
 239 Section 16-6-22, relating to the offense of incest; or Code Section 16-6-22.2, relating to the
 240 offense of aggravated sexual battery, when the victim was under 18 years of age at the time
 241 of the commission of any such offense; or a violation of Code Section 16-6-3, relating to
 242 the offense of statutory rape; Code Section 16-6-4, relating to the offenses of child

243 molestation and aggravated child molestation; or Code Section 16-6-5, relating to the
 244 offense of enticing a child for indecent purposes, when the victim was under 16 years of
 245 age at the time of the commission of any such offense."

246 **SECTION 6.**

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

250 "(J) A violation of Code Section 16-6-5.1, relating to ~~sexual assault against persons in~~
 251 ~~custody, detained persons, or patients in hospitals or other institutions~~ improper sexual
 252 contact by employee or agent;"

253 **SECTION 7.**

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

257 "(J) A violation of Code Section 16-6-5.1, relating to ~~sexual assault against persons in~~
 258 ~~custody, detained persons, or patients in hospitals or other institutions~~ improper sexual
 259 contact by employee or agent;"

260 **SECTION 8.**

261 This Act shall become effective on July 1, 2019; provided, however, that Section 7 of this
 262 Act shall become effective October 1, 2019.

263 **SECTION 9.**

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