

The House Committee on Judiciary Non-Civil offers the following substitute to SB 9:

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 revise the crime of sexual assault by persons with supervisory or
3 disciplinary authority; to provide for degrees of the crime; to change provisions relating to
4 punishment; to prohibit sexual extortion; to provide for elements of the crime; to provide for
5 an exemption; to provide for penalties; to provide for venue; 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 and correct cross-references; to
12 revise and provide for definitions; to provide for effective dates; to provide for related
13 matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

20 "16-6-5.1.

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

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

23 (1) 'Agent' means an individual authorized to act on behalf of another, with or without
24 compensation.

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

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

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

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

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

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

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

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

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

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

49 ~~(b) A person who has supervisory or disciplinary authority over another individual~~
 50 ~~commits sexual assault when that person~~ An employee or agent commits the offense of
 51 improper sexual contact by employee or agent in the first degree when such employee or
 52 agent knowingly engages in sexually explicit conduct with another person whom such
 53 employee or agent knows or reasonably should have known 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 of
 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 of 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 of 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 of 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 of
 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 or
 83 agent's actual or purported psychotherapy treatment or counseling or the actor uses the
 84 ~~treatment or counseling relationship to facilitate sexual contact between the actor and~~
 85 ~~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 of 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 or agent knowingly engages in sexual contact,
 95 excluding sexually explicit conduct, with another person whom such employee or agent
 96 knows or reasonably should have known is contemporaneously:

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

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

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

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

108 (7) Admitted for care at a sensitive care facility of 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
 140 than 48 months older than the victim, such person shall be guilty of a misdemeanor and
 141 shall not be subject to the sentencing and punishment provisions of Code
 142 Section 17-10-6.2; 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 Said title is further amended by adding a new Code section to read as follows:

150 "16-11-92.

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

152 (1) 'Coerce' means:

153 (A) Exposing or threatening to expose any fact or information that if revealed would
 154 tend to subject an individual to hatred, contempt, ridicule, or economic harm;

155 (B) Exposing or threatening to expose any photograph or video depicting an individual
 156 in a state of nudity or engaged in sexually explicit conduct;

157 (C) Exposing or threatening to expose any fact or information that if revealed would
 158 tend to subject an individual to criminal proceedings or threatening to accuse any
 159 individual of a criminal offense;

160 (D) Threatening to take or withhold action as a public official or cause an official to
 161 take or withhold action; or

162 (E) Threatening to take or withhold action as an employer or cause an employer to take
 163 or withhold action which would cause economic harm to an individual.

164 (2) 'Distribute' means to sell, lend, rent, lease, give, advertise, publish, exhibit, or
 165 otherwise disseminate.

166 (3) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.

167 (4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code
 168 Section 16-12-100.

169 (b)(1) No person shall intentionally coerce orally, in writing, or electronically another
 170 individual who is more than 18 years of age to distribute any photograph, video, or other

171 image that depicts any individual in a state of nudity or engaged in sexually explicit
 172 conduct.

173 (2) The provisions of this subsection shall not apply to the activities of law enforcement
 174 and prosecution agencies in the investigation and prosecution of criminal offenses.

175 (3) The provisions of this subsection shall not apply to requests for disclosures,
 176 production of documents or evidence, or similar discovery actions under the provisions
 177 of Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

178 (c) Any person that violates paragraph (1) of subsection (b) of this Code section shall:

179 (1) Upon the first offense, be guilty of and punished as for a misdemeanor of a high and
 180 aggravated nature; or

181 (2) Upon a second or subsequent offense, be guilty of a felony and upon conviction, be
 182 punished by imprisonment for not less than one year and not more than five years.

183 (d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1
 184 for any conduct made unlawful by this Code section in which the person engages while:

185 (1) Within or outside this state if, by such conduct, the person commits a violation of this
 186 Code section that involves an individual who resides within this state; or

187 (2) Within this state if, by such conduct, the person commits a violation of this Code
 188 section that involves an individual who resides within or outside this state.

189 (e) Each violation of this Code section shall be considered a separate offense and shall not
 190 merge with any other offense."

191 **SECTION 3.**

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

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

196 **SECTION 4.**

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

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

203

SECTION 5.

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

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

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

239 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after
 240 June 30, 2019, means any criminal offense, or the attempt to commit any criminal
 241 offense, under Title 16 as specified in this subparagraph or any offense under federal
 242 law or the laws of another state or territory of the United States which consists of the
 243 same or similar elements of the following offenses:

- 244 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
 245 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 246 is less than 14 years of age, except by a parent;
 247 (iii) Trafficking an individual for sexual servitude in violation of Code
 248 Section 16-5-46;
 249 (iv) Rape in violation of Code Section 16-6-1;
 250 (v) Sodomy in violation of Code Section 16-6-2;
 251 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 252 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 253 of the offense is 21 years of age or older;
 254 (viii) Child molestation in violation of Code Section 16-6-4;
 255 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 256 person was convicted of a misdemeanor offense;
 257 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 258 (xi) Improper sexual contact by employee or agent in the first or second degree in
 259 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
 260 to Code Section 17-10-6.2;
 261 (xii) Incest in violation of Code Section 16-6-22;
 262 (xiii) A second or subsequent conviction for sexual battery in violation of Code
 263 Section 16-6-22.1;
 264 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
 265 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
 266 (xvi) Electronically furnishing obscene material to minors in violation of Code
 267 Section 16-12-100.1;
 268 (xvii) Computer pornography and child exploitation in violation of Code
 269 Section 16-12-100.2;
 270 (xviii) A second or subsequent conviction for obscene telephone contact in violation
 271 of Code Section 16-12-100.3; or
 272 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
 273 minor or an attempt to commit a sexual offense against a victim who is a minor."

274

SECTION 6.

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

278 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 279 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 280 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of ~~sexual~~
 281 ~~assault against a person in custody~~ improper sexual contact by employee or agent; Code
 282 Section 16-6-22, relating to the offense of incest; or Code Section 16-6-22.2, relating to the
 283 offense of aggravated sexual battery, when the victim was under 18 years of age at the time
 284 of the commission of any such offense; or a violation of Code Section 16-6-3, relating to
 285 the offense of statutory rape; Code Section 16-6-4, relating to the offenses of child
 286 molestation and aggravated child molestation; or Code Section 16-6-5, relating to the
 287 offense of enticing a child for indecent purposes, when the victim was under 16 years of
 288 age at the time of the commission of any such offense."

289

SECTION 7.

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

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

296

SECTION 8.

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

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

303

SECTION 9.

304 This Act shall become effective on July 1, 2019; provided, however, that Section 8 of this
 305 Act shall become effective October 1, 2019.

306

SECTION 10.

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