

## HOUSE SUBSTITUTE TO SENATE BILL 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)(1) This Code section shall not apply to sexually explicit conduct or sexual contact  
 113 between individuals lawfully married to each other.

114 (2) This Code section shall not apply to a student who is enrolled at the same school as  
 115 the victim.

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

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

125 (2) If at the time of the offense the victim of the offense is at least 14 years of age but  
 126 less than ~~16~~ 21 years of age and the ~~actor~~ person is ~~18~~ 21 years of age or younger and is  
 127 no more than ~~four years~~ 48 months older than the victim, such person shall be guilty of  
 128 a misdemeanor and shall not be subject to the sentencing and punishment provisions of  
 129 Code Section 17-10-6.2.

130 (g) A person convicted of improper sexual contact by employee or agent in the second  
 131 degree shall be punished as for a misdemeanor of a high and aggravated nature and shall  
 132 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;  
 133 provided, however, that:

134 (1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted  
 135 of the offense of improper sexual contact by employee or agent in the second degree with  
 136 a child under the age of 16 years shall be punished by imprisonment for not less than five

137 nor more than 25 years or by a fine not to exceed \$25,000.00, or both, and shall, in  
 138 addition, be subject to the sentencing and punishment provisions of Code  
 139 Section 17-10-6.2;

140 (2) If at the time of the offense the victim of the offense is at least 14 years of age but  
 141 less than 21 years of age and the person is 21 years of age or younger and is no more  
 142 than 48 months older than the victim, such person shall be guilty of a misdemeanor and  
 143 shall not be subject to the sentencing and punishment provisions of Code  
 144 Section 17-10-6.2; and

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

150 **SECTION 2.**

151 Said title is further amended by adding a new Code section to read as follows:

152 "16-11-92.

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

154 (1) 'Coerce' means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

193 **SECTION 3.**

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

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

198 **SECTION 4.**

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

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

205 **SECTION 5.**

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

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

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

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

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



276

**SECTION 6.**

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

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

291

**SECTION 7.**

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

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

298

**SECTION 8.**

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

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

305

**SECTION 9.**

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

308

**SECTION 10.**

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