

House Bill 911

By: Representatives Setzler of the 35th, Lott of the 122nd, Martin of the 49th, Caldwell of the 20th, and Dollar of the 45th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 16, Article 2 of Chapter 3 of Title 35, Article 3 of Chapter 5 of
2 Title 42, and Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated,
3 relating to sexual offenses, the Georgia Crime Information Center, conditions of detention
4 generally, and general provisions regarding the Department of Human Services, respectively,
5 so as to provide for the offenses of improper sexual conduct by a foster parent in the first and
6 second degrees; to provide for definitions; to provide for criminal penalties; to revise
7 cross-references; to provide that record restriction shall not be appropriate for such offenses
8 under certain circumstances; to provide for visitation restrictions for inmates convicted of
9 such offenses; to provide for licensing implications for persons convicted of such offenses;
10 to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,
14 is amended by revising Code Section 16-6-5.1, relating to improper sexual contact by
15 employee or agent, consent not a defense, and penalty, as follows:

16 "16-6-5.1.

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

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

20 (1.1) 'Child-placing agency' shall have the same meaning as set forth in Code
21 Section 49-5-3.

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

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

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

27 (4.1) 'Foster care home' shall have the same meaning as set forth in Code
 28 Section 49-5-60.

29 (4.2) 'Foster parent or parents' shall have the same meaning as set forth in Code
 30 Section 49-5-60.

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

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

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

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

42 (9) 'Sexual contact' means any contact involving the intimate parts of either person for
 43 the purpose of sexual gratification of either person.

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

46 (b) An employee or agent commits the offense of improper sexual contact by employee
 47 or agent in the first degree when such employee or agent knowingly engages in sexually
 48 explicit conduct with another person whom such employee or agent knows or reasonably
 49 should have known is contemporaneously:

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

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

53 (3) Being detained by or is in the custody of any law enforcement agency of which he
 54 or she is an employee or agent;

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

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

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

61 (7) Admitted for care at a sensitive care facility of which he or she is an employee or
 62 agent.

63 (b.1) A person commits the offense of improper sexual contact by a foster parent in the
64 first degree when he or she is a foster parent and engages in sexually explicit conduct with
65 his or her foster child.

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

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

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

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

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

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

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

81 (7) Admitted for care at a sensitive care facility of which he or she is an employee or
82 agent.

83 (c.1) A person commits the offense of improper sexual contact by a foster parent in the
84 second degree when he or she is a foster parent and engages in sexual contact, excluding
85 sexually explicit conduct, with his or her foster child.

86 (d) Consent of the victim shall not be a defense to a prosecution under this Code section.

87 (e)(1) This Code section shall not apply to sexually explicit conduct or sexual contact
88 between individuals lawfully married to each other.

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

91 (f) A person convicted of improper sexual contact by employee or agent in the first degree
92 or improper sexual contact by a foster parent in the first degree shall be punished by
93 imprisonment for not less than one nor more than 25 years or by a fine not to exceed
94 \$100,000.00, or both; provided, however, that:

95 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
96 offense of improper sexual contact by employee or agent or improper sexual contact by
97 a foster parent with a child under the age of 16 years shall be punished by imprisonment
98 for not less than 25 nor more than 50 years or a fine not to exceed \$100,000.00, or both,

99 and shall, in addition, be subject to the sentencing and punishment provisions of Code
100 Section 17-10-6.2; and

101 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
102 less than 21 years of age and the person is 21 years of age or younger and is no more than
103 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
104 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

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

109 (1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted
110 of the offense of improper sexual contact by employee or agent in the second degree or
111 improper sexual contact by a foster parent in the second degree with a child under the age
112 of 16 years shall be punished by imprisonment for not less than five nor more than 25
113 years or by a fine not to exceed \$25,000.00, or both, and shall, in addition, be subject to
114 the sentencing and punishment provisions of Code Section 17-10-6.2;

115 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
116 less than 21 years of age and the person is 21 years of age or younger and is no more than
117 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
118 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
119 and

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

126 **SECTION 2.**

127 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
128 Georgia Crime Information Center, is amended by revising division (j)(4)(B)(iii) of Code
129 Section 35-3-37, relating to review of individual's criminal history record information,
130 definitions, privacy considerations, written application requesting review, and inspection, as
131 follows:

132 "(iii) Improper sexual contact by employee or agent and improper sexual contact by
133 a foster parent in violation of Code Section 16-6-5.1;"

134 **SECTION 3.**

135 Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to
 136 conditions of detention generally, is amended by revising Code Section 42-5-56, relating to
 137 visitation with minors by convicted sexual offenders, as follows:

138 "42-5-56.

139 (a) As used in this Code section, the term 'sexual offense' means a violation of Code
 140 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 141 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of
 142 improper sexual contact by employee or agent and improper sexual contact by a foster
 143 parent; Code Section 16-6-22, relating to the offense of incest; or Code Section 16-6-22.2,
 144 relating to the offense of aggravated sexual battery, when the victim was under 18 years
 145 of age at the time of the commission of any such offense; or a violation of Code
 146 Section 16-6-3, relating to the offense of statutory rape; Code Section 16-6-4, relating to
 147 the offenses of child molestation and aggravated child molestation; or Code Section 16-6-5,
 148 relating to the offense of enticing a child for indecent purposes, when the victim was under
 149 16 years of age at the time of the commission of any such offense.

150 (b) Any inmate with a current or prior conviction for any sexual offense as defined in
 151 subsection (a) of this Code section shall not be allowed visitation with any person under
 152 the age of 18 years unless such person is the spouse, son, daughter, brother, sister,
 153 grandson, or granddaughter of the inmate and such person is not the victim of a sexual
 154 offense for which the inmate was convicted. If visitation with a minor is restricted by court
 155 order, permission for special visitation with the minor may be granted only by the court
 156 issuing such order."

157 **SECTION 4.**

158 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to
 159 general provisions regarding the Department of Human Services, is amended by revising
 160 subparagraph (a)(2)(J) of Code Section 49-2-14.1, relating to records check requirement for
 161 licensing facilities, as follows:

162 "(J) A violation of Code Section 16-6-5.1, relating to improper sexual contact by
 163 employee or agent and improper sexual contact by a foster parent;"

164 **SECTION 5.**

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