

The Senate Committee on Judiciary offered the following substitute to SB 40:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6 of Title 16, Article 1 of Chapter 10 of Title 17, Article 2 of Chapter 3  
2 of Title 35, Title 42, and Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia  
3 Annotated, relating to sexual offenses, procedure for sentencing and imposition of  
4 punishment, the Georgia Crime Information Center, penal institutions, and general provisions  
5 regarding the Department of Human Services, respectively, so as to revise the offenses of  
6 improper sexual contact by employee or agent in the first and second degrees; to provide for  
7 definitions; to provide application for circumstances when improper sexual contact with a  
8 student is by an employee or agent within the same school district; to provide for the offenses  
9 of improper sexual contact by person in a position of trust in the first and second degrees; to  
10 provide for criminal penalties; to revise cross-references; to provide that record restriction  
11 shall not be appropriate for such offenses under certain circumstances; to revise the definition  
12 of "dangerous sexual offense" to include the offense of improper sexual contact by person  
13 in a position of trust in the first and second degrees; to provide for visitation restrictions for  
14 inmates convicted of such offenses; to provide for licensing implications for persons  
15 convicted of such offenses; to provide for related matters; to repeal conflicting laws; and for  
16 other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

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

22 "16-6-5.1.

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

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

- 26 (2) 'Child welfare and youth services' shall have the same meaning as set forth in Code  
 27 Section 49-5-3.
- 28 (3) 'Disability' shall have the same meaning as set forth in Code Section 37-1-1.
- 29 (4) 'Employee' means an individual who works for salary, wages, or other remuneration  
 30 for an employer.
- 31 (5) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of a  
 32 person.
- 33 (6) 'Minor' means an individual who is under the age of 18 years.
- 34 (7) 'Person in a position of trust' means any person holding a position whereby a parent,  
 35 guardian, or other person having immediate charge or custody of a minor has entrusted  
 36 such person with the duty or responsibility for the health, education, or supervision of  
 37 such minor.
- 38 ~~(6)~~(8) 'Psychotherapy' means the professional treatment or counseling of a mental or  
 39 emotional illness, symptom, or condition.
- 40 ~~(7)~~(9) 'School' means any educational institution, public or private, providing elementary  
 41 or secondary education to children at any level, kindergarten through twelfth grade, or  
 42 the equivalent thereof if grade divisions are not used, including extracurricular programs  
 43 of such institution.
- 44 (10) 'School district' means any area, county, independent, or local school district.
- 45 ~~(8)~~(11) 'Sensitive care facility' means any facility licensed or required to be licensed  
 46 under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or ~~who~~ that is required to be licensed  
 47 pursuant to Code Section 31-7-151 or 31-7-173.
- 48 ~~(9)~~(12) 'Sexual contact' means any contact involving the intimate parts of either person  
 49 for the purpose of sexual gratification of either person.
- 50 ~~(10)~~(13) 'Sexually explicit conduct' shall have the same meaning as set forth in Code  
 51 Section 16-12-100.
- 52 (b) An employee or agent commits the offense of improper sexual contact by employee  
 53 or agent in the first degree when such employee or agent knowingly engages in sexually  
 54 explicit conduct with another person whom such employee or agent knows or reasonably  
 55 should have known is contemporaneously:
- 56 (1) Enrolled as a student at a school or within the school district of which he or she is an  
 57 employee or agent, including, but not limited to, a volunteer;
- 58 (2) Under probation, parole, accountability court, or pretrial diversion supervision of the  
 59 office or court of which he or she is an employee or agent;
- 60 (3) Being detained by or is in the custody of any law enforcement agency of which he  
 61 or she is an employee or agent;
- 62 (4) A patient in or at a hospital of which he or she is an employee or agent;

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

66 (6) The subject of such ~~employee~~ employee's or agent's actual or purported  
 67 psychotherapy treatment or counseling; or

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

70 (c) A person commits the offense of improper sexual contact by person in a position of  
 71 trust in the first degree when he or she is a person in a position of trust and engages in  
 72 sexually explicit conduct with such minor.

73 ~~(c)(d)~~ An employee or agent ~~A person~~ commits the offense of improper sexual contact by  
 74 employee or agent in the second degree when such employee or agent knowingly engages  
 75 in sexual contact, excluding sexually explicit conduct, with another person whom such  
 76 employee or agent knows or reasonably should have known is contemporaneously:

77 (1) Enrolled as a student at a school or within the school district of which he or she is an  
 78 employee or agent, including, but not limited to, a volunteer;

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

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

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

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

87 (6) The subject of such ~~employee~~ employee's or agent's actual or purported  
 88 psychotherapy treatment or counseling; or

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

91 (e) A person commits the offense of improper sexual contact by person in a position of  
 92 trust in the second degree when he or she is a person in a position of trust and engages in  
 93 sexual contact, excluding sexually explicit conduct, with such minor.

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

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

97 (2) This Code section shall not apply to a student who is enrolled at the same school or  
 98 within the same school district as the victim.

99 ~~(f)~~(h) A person convicted of improper sexual contact by employee or agent in the first  
 100 degree or improper sexual contact by person in a position of trust in the first degree shall  
 101 be punished by imprisonment for not less than one nor more than 25 years or by a fine not  
 102 to exceed \$100,000.00, or both; provided, however, that:

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

109 (2) If at the time of the offense the victim of the offense is at least 14 years of age but  
 110 less than 21 years of age and the person is 21 years of age or younger and is no more than  
 111 48 months older than the victim, such person;

112 (A) When convicted of the offense of improper sexual contact by employee or agent  
 113 in the first degree shall be guilty of a misdemeanor and shall not be subject to the  
 114 sentencing and punishment provisions of Code Section 17-10-6.2; or

115 (B) When convicted of the offense of improper sexual contact by person in a position  
 116 of trust in the first degree shall be guilty of a misdemeanor of a high and aggravated  
 117 nature and shall not be subject to the sentencing and punishment provisions of Code  
 118 Section 17-10-6.2.

119 ~~(g)~~(i) A person convicted of improper sexual contact by employee or agent in the second  
 120 degree or improper sexual contact by person in a position of trust in the second degree shall  
 121 be punished as for a misdemeanor of a high and aggravated nature and shall not be subject  
 122 to the sentencing and punishment provisions of Code Section 17-10-6.2; provided,  
 123 however, that:

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

130 (2) If at the time of the offense the victim of the offense is at least 14 years of age but  
 131 less than 21 years of age and the person is 21 years of age or younger and is no more than  
 132 48 months older than the victim, such person;

133 (A) When convicted of the offense of improper sexual contact by employee or agent  
 134 in the second degree shall be guilty of a misdemeanor and shall not be subject to the  
 135 sentencing and punishment provisions of Code Section 17-10-6.2; or

136 (B) When convicted of the offense of improper sexual contact by person in a position  
 137 of trust in the second degree shall be guilty of a misdemeanor of a high and aggravated  
 138 nature and shall not be subject to the sentencing and punishment provisions of Code  
 139 Section 17-10-6.2; and

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

146 **SECTION 2.**

147 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the  
 148 procedure for sentencing and imposition of punishment, is amended by revising  
 149 paragraph (7) of subsection (a) of Code Section 17-10-6.2, relating to punishment for sexual  
 150 offenders, as follows:

151 "(7) Improper sexual contact by employee or agent and improper sexual contact by  
 152 person in a position of trust, as provided in Code Section 16-6-5.1;"

153 **SECTION 3.**

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

159 "(iii) Improper sexual contact by employee or agent and improper sexual contact by  
 160 person in a position of trust in violation of Code Section 16-6-5.1;"

161 **SECTION 4.**

162 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended  
 163 in paragraph (10) of subsection (a) of Code Section 42-1-12, relating to the State Sexual  
 164 Offender Registry, by revising subparagraph (B.3) and by adding a new subparagraph to read  
 165 as follows:

166 "(B.3) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30,~~  
 167 ~~2019~~ between July 1, 2019 and June 30, 2020, means any criminal offense, or the  
 168 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph

169 or any offense under federal law or the laws of another state or territory of the United  
 170 States which consists of the same or similar elements of the following offenses:

- 171 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- 172 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who  
 173 is less than 14 years of age, except by a parent;
- 174 (iii) Trafficking an individual for sexual servitude in violation of Code  
 175 Section 16-5-46;
- 176 (iv) Rape in violation of Code Section 16-6-1;
- 177 (v) Sodomy in violation of Code Section 16-6-2;
- 178 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 179 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted  
 180 of the offense is 21 years of age or older;
- 181 (viii) Child molestation in violation of Code Section 16-6-4;
- 182 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the  
 183 person was convicted of a misdemeanor offense;
- 184 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 185 (xi) Improper sexual contact by employee or agent in the first or second degree in  
 186 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject  
 187 to Code Section 17-10-6.2;
- 188 (xii) Incest in violation of Code Section 16-6-22;
- 189 (xiii) A second or subsequent conviction for sexual battery in violation of Code  
 190 Section 16-6-22.1;
- 191 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- 192 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 193 (xvi) Electronically furnishing obscene material to minors in violation of Code  
 194 Section 16-12-100.1;
- 195 (xvii) Computer pornography and child exploitation in violation of Code  
 196 Section 16-12-100.2;
- 197 (xviii) A second or subsequent conviction for obscene telephone contact in violation  
 198 of Code Section 16-12-100.3; or
- 199 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a  
 200 minor or an attempt to commit a sexual offense against a victim who is a minor.

201 (B.4) 'Dangerous sexual offense' with respect to convictions occurring after June 30,  
 202 2019, means any criminal offense, or the attempt to commit any criminal offense, under  
 203 Title 16 as specified in this subparagraph or any offense under federal law or the laws  
 204 of another state or territory of the United States which consists of the same or similar  
 205 elements of the following offenses:

- 206 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;  
 207 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who  
 208 is less than 14 years of age, except by a parent;  
 209 (iii) Trafficking an individual for sexual servitude in violation of Code  
 210 Section 16-5-46;  
 211 (iv) Rape in violation of Code Section 16-6-1;  
 212 (v) Sodomy in violation of Code Section 16-6-2;  
 213 (vi) Aggravated sodomy in violation of Code Section 16-6-2;  
 214 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted  
 215 of the offense is 21 years of age or older;  
 216 (viii) Child molestation in violation of Code Section 16-6-4;  
 217 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the  
 218 person was convicted of a misdemeanor offense;  
 219 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;  
 220 (xi) Improper sexual contact by employee or agent in the first or second degree or  
 221 improper sexual contact by person in a position of trust in the first or second degree  
 222 in violation of Code Section 16-6-5.1, unless the punishment imposed was not  
 223 subject to Code Section 17-10-6.2;  
 224 (xii) Incest in violation of Code Section 16-6-22;  
 225 (xiii) A second or subsequent conviction for sexual battery in violation of Code  
 226 Section 16-6-22.1;  
 227 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;  
 228 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;  
 229 (xvi) Electronically furnishing obscene material to minors in violation of Code  
 230 Section 16-12-100.1;  
 231 (xvii) Computer pornography and child exploitation in violation of Code  
 232 Section 16-12-100.2;  
 233 (xviii) A second or subsequent conviction for obscene telephone contact in violation  
 234 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

**SECTION 5.**

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

241 "42-5-56.

242 (a) As used in this Code section, the term 'sexual offense' means a violation of Code  
 243 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses  
 244 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of  
 245 improper sexual contact by employee or agent and improper sexual contact by person in  
 246 a position of trust; Code Section 16-6-22, relating to the offense of incest; ~~or~~ Code  
 247 Section 16-6-22.2, relating to the offense of aggravated sexual battery, when the victim was  
 248 under 18 years of age at the time of the commission of any such offense; ~~or a violation of~~  
 249 Code Section 16-6-3, relating to the offense of statutory rape; Code Section 16-6-4, relating  
 250 to the offenses of child molestation and aggravated child molestation; or Code Section  
 251 16-6-5, relating to the offense of enticing a child for indecent purposes, when the victim  
 252 was under 16 years of age at the time of the commission of any such offense.

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

260

#### **SECTION 6.**

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

265 "(J) A violation of Code Section 16-6-5.1, relating to improper sexual contact by  
 266 employee or agent and improper sexual contact by person in a position of trust;"

267

#### **SECTION 7.**

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