

Senate Bill 117

By: Senators Miller of the 49th, Cowser of the 46th, Anavitarte of the 31st, Payne of the 54th, Kennedy of the 18th and others

AS PASSED SENATE

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:

S. B. 117

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

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

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

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

33 (4.1) 'Foster care home' means a private home used by a child-placing agency which has
34 been approved by the child-placing agency to provide 24 hour care, lodging, supervision,
35 and maintenance for one or more children or a private home which has been approved
36 and is directly supervised by the Department of Human Services to provide 24 hour care,
37 lodging, supervision, and maintenance for one or more children.

38 (4.2) 'Foster parent' means the person or persons who provide care, lodging, supervision,
39 and maintenance for one or more children in a foster care home used by a child-placing
40 agency or in a foster care home approved and directly supervised by the Department of
41 Human Services.

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

44 (5.1) 'Minor' means an individual who is under the age of 18 years.

45 (5.2) 'Person in a position of trust' means any person holding a position whereby a
46 parent, guardian, or other person having immediate charge or custody of a minor has
47 entrusted such person with the duty or responsibility for the health, education, or
48 supervision of such minor.

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

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

55 (7.1) 'School district' means any area, county, independent, or local school district.

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

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

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

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

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

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

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

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

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

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

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

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

84 (b.2) A person commits the offense of improper sexual contact by person in a position of
85 trust in the first degree when he or she is a person in a position of trust and engages in
86 sexually explicit conduct with such minor.

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

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

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

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

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

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

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

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

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

107 (c.2) A person commits the offense of improper sexual contact by person in a position of
 108 trust in the second degree when he or she is a person in a position of trust and engages in
 109 sexual contact, excluding sexually explicit conduct, with such minor.

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

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

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

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

120 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
 121 offense of improper sexual contact by employee or agent, ~~or~~ improper sexual contact by
 122 a foster parent, or improper sexual contact by person in a position of trust with a child
 123 under the age of 16 years shall be punished by imprisonment for not less than 25 nor

124 more than 50 years or a fine not to exceed \$100,000.00, or both, and shall, in addition,
125 be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

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

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

135 (1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted
136 of the offense of improper sexual contact by employee or agent in the second degree, ~~or~~
137 improper sexual contact by a foster parent in the second degree, or improper sexual
138 contact by person in a position of trust in the second degree with a child under the age of
139 16 years shall be punished by imprisonment for not less than five nor more than 25 years
140 or by a fine not to exceed \$25,000.00, or both, and shall, in addition, be subject to the
141 sentencing and punishment provisions of Code Section 17-10-6.2;

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

147 (3) Except as provided in paragraph (2) of this subsection, upon a second or subsequent
148 conviction of the offense of improper sexual contact by employee or agent in the second
149 degree, ~~or~~ improper sexual contact by a foster parent in the second degree, or improper
150 sexual contact by person in a position of trust in the second degree, the person shall be

151 guilty of a felony and shall be punished by imprisonment for not less than one year nor
152 more than five years and shall be subject to the sentencing and punishment provisions of
153 Code Section 17-10-6.2."

154 **SECTION 2.**

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

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

161 **SECTION 3.**

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

167 "(viii) Improper sexual contact by employee or agent, ~~and~~ improper sexual contact
168 by a foster parent, and improper sexual contact by person in a position of trust in
169 violation of Code Section 16-6-5.1;"

170 **SECTION 4.**

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

175 "(B.3) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30,~~
176 ~~2019~~ between July 1, 2019 and June 30, 2021, means any criminal offense, or the
177 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph
178 or any offense under federal law or the laws of another state or territory of the United
179 States which consists of the same or similar elements of the following offenses:

- 180 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
181 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
182 is less than 14 years of age, except by a parent;
183 (iii) Trafficking an individual for sexual servitude in violation of Code
184 Section 16-5-46;
185 (iv) Rape in violation of Code Section 16-6-1;
186 (v) Sodomy in violation of Code Section 16-6-2;
187 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
188 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
189 of the offense is 21 years of age or older;
190 (viii) Child molestation in violation of Code Section 16-6-4;
191 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
192 person was convicted of a misdemeanor offense;
193 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
194 (xi) Improper sexual contact by employee or agent in the first or second degree in
195 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
196 to Code Section 17-10-6.2;
197 (xii) Incest in violation of Code Section 16-6-22;
198 (xiii) A second or subsequent conviction for sexual battery in violation of Code
199 Section 16-6-22.1;
200 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
201 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;

202 (xvi) Electronically furnishing obscene material to minors in violation of Code
203 Section 16-12-100.1;

204 (xvii) Computer pornography and child exploitation in violation of Code
205 Section 16-12-100.2;

206 (xviii) A second or subsequent conviction for obscene telephone contact in violation
207 of Code Section 16-12-100.3; or

208 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
209 minor or an attempt to commit a sexual offense against a victim who is a minor.

210 (B.4) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
211 2021, means any criminal offense, or the attempt to commit any criminal offense, under
212 Title 16 as specified in this subparagraph or any offense under federal law or the laws
213 of another state or territory of the United States which consists of the same or similar
214 elements of the following 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;

227 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

- 228 (xi) Improper sexual contact by employee or agent in the first or second degree or
 229 improper sexual contact by person in a position of trust in the first or second degree
 230 in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
 231 to Code Section 17-10-6.2;
- 232 (xii) Incest in violation of Code Section 16-6-22;
- 233 (xiii) A second or subsequent conviction for sexual battery in violation of Code
 234 Section 16-6-22.1;
- 235 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- 236 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 237 (xvi) Computer pornography and child exploitation in violation of Code
 238 Section 16-12-100.2;
- 239 (xvii) A second or subsequent conviction for obscene telephone contact in violation
 240 of Code Section 16-12-100.3; or
- 241 (xviii) Any conduct which, by its nature, is a felony sexual offense against a victim
 242 who is a minor or an attempt to commit a felony sexual offense against a victim who
 243 is a minor."

244 **SECTION 5.**

245 Said title is further amended by revising Code Section 42-5-56, relating to visitation with
 246 minors by convicted sexual offenders, as follows:

247 "42-5-56.

248 (a) As used in this Code section, the term 'sexual offense' means a violation of Code
 249 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 250 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of
 251 improper sexual contact by employee or agent, ~~and~~ improper sexual contact by a foster
 252 parent, and improper sexual contact by person in a position of trust; Code Section 16-6-22,
 253 relating to the offense of incest; or Code Section 16-6-22.2, relating to the offense of

254 aggravated sexual battery, when the victim was under 18 years of age at the time of the
255 commission of any such offense; or a violation of Code Section 16-6-3, relating to the
256 offense of statutory rape; Code Section 16-6-4, relating to the offenses of child molestation
257 and aggravated child molestation; or Code Section 16-6-5, relating to the offense of
258 enticing a child for indecent purposes, when the victim was under 16 years of age at the
259 time of the commission of any such offense.

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

267

SECTION 6.

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

272 "(J) A violation of Code Section 16-6-5.1, relating to improper sexual contact by
273 employee or agent, ~~and improper sexual contact by a foster parent, and improper sexual~~
274 contact by person in a position of trust;"

275

SECTION 7.

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