

SENATE SUBSTITUTE TO HB 156:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against minors generally, so as to modernize provisions of the Code relating to sexual conduct and technology; to provide reduced punishment of certain crimes committed by children; to clarify certain acts as the elements of unlawfully seducing, soliciting, luring, or enticing a child through use of a computer, Internet service, or similar service; to revise definitions; to provide reduced punishment of certain crimes committed by children; to clarify certain acts as the elements of unlawfully seducing, soliciting, luring, or enticing a child through use of a computer, Internet service, or similar service; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against minors generally, is amended by revising subsections (d) and (g) of Code Section 16-12-100, relating to sexual exploitation of children, as follows:

"(d) The provisions of subsection (b) of this Code section shall not apply to:

(1) The ~~the~~ activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;

(2) Legitimate ~~or to legitimate~~ medical, scientific, or educational activities; or

(3) Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct."

"(g)(1) Except as otherwise provided in ~~paragraph~~ paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. ~~In the event;~~ provided, however, that if the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates paragraph (1), (5), (7), or (8) of subsection (b) of this Code section shall be guilty of a misdemeanor if:

(A) The minor depicted was at least 14 years of age at the time the visual medium was created;

(B) The visual medium was created with the permission of the minor depicted; and

(C) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose."

SECTION 2.

Said part is further amended in Code Section 16-12-100.1, relating to electronically furnishing obscene materials to minors, by revising paragraphs (1) and (3) of subsection (a) and subsection (c) and by adding a new subsection to read as follows:

"(1) 'Bulletin board system' means a computer data and file service that is accessed wirelessly or by telephone line physical connection to store and transmit information."

"(3) 'Electronically furnishes' means:

(A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board system."

"(c) Except as provided in subsection (d) of this Code section, any ~~Any~~ person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(d) Any person who violates this Code section shall be guilty of a misdemeanor if:

(1) At the time of the offense, the minor receiving the obscene materials was at least 14 years of age;

(2) The receipt of the materials was with the permission of the minor; and

(3) The defendant was 18 years of age or younger."

SECTION 3.

Said part is further amended by revising subsections (c), (d), and (e) of Code Section 16-12-100.2, relating to computer or electronic pornography and child exploitation prevention, as follows:

"(c)(1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

(A) Compiles, enters into, or transmits by computer or other electronic device;

(B) Makes, prints, publishes, or reproduces by other computer or other electronic device;

(C) Causes or allows to be entered into or transmitted by computer or other electronic device; or

(D) Buys, sells, receives, exchanges, or disseminates

any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Except as provided in paragraphs (3) and (4) of this subsection, any ~~Any~~ person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than \$10,000.00 and by imprisonment for not less than one nor more than 20 years.

(3) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor if:

(A) At the time of the offense, any identifiable child visually depicted was at least 14 years of age when the visual depiction was created;

(B) The visual depiction was created with the permission of such child;

(C) The defendant possessed the visual depiction with the permission of such child; and

(D) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant did not distribute the visual depiction to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation involved the distribution of such visual depiction to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.

(4) The prohibition contained in paragraph (1) of this subsection shall not apply to any person who creates or possesses a visual depiction of only himself or herself.

(d)(1) It shall be unlawful for any person intentionally or willfully to utilize a computer ~~on-line~~ wireless service or Internet service, including, but not limited to, a local bulletin

board service, Internet chat room, e-mail, ~~on-line~~ instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child ~~or, another person believed by such person to be a child,~~ any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act ~~by, with, or against a child as~~ described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than \$25,000.00; provided, however, that, if at the time of the offense the victim was at least 14 or 15 years of age and the defendant was ~~no more than three years older than the victim~~ 18 years of age or younger, then the defendant shall be guilty of a misdemeanor ~~of a high and aggravated nature~~.

(e)(1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer ~~on-line~~ wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, or ~~on-line~~ instant messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than \$10,000.00; provided, however, that, if at the time of the offense the victim was at least 14 or 15 years of age and the defendant was ~~no more than three years older than the victim~~ 18 years of age or younger, then the defendant shall be guilty of a misdemeanor ~~of a high and aggravated nature."~~

SECTION 4.

Said part is further amended by revising Code Section 16-12-105, relating to penalties for violating Code Sections 16-12-103 and 16-12-104, as follows:

132 "16-12-105.

133 ~~(a) Except as provided in subsection (b) of this Code section, any~~ Any person who violates
134 any provision of Code Section 16-12-103 or 16-12-104 shall be guilty of a misdemeanor
135 of a high and aggravated nature.

136 ~~(b) Any person who violates subsection (a) of Code Section 16-12-103 shall be guilty of~~
137 ~~a misdemeanor if:~~

138 ~~(1) The person depicted was at least 14 years of age;~~

139 ~~(2) The items described in subsection (a) of Code Section 16-12-103 were furnished or~~
140 ~~disseminated with the permission of the minor depicted; and~~

141 ~~(3) The defendant was 18 years of age or younger at the time of the offense."~~

142 **SECTION 5.**

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