

House Bill 911 (COMMITTEE SUBSTITUTE)

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 **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.

H. B. 911 (SUB)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Crime Information Center, is amended by revising division (j)(4)(B)(iii) of Code Section 35-3-37, relating to review of individual's criminal history record information,

definitions, privacy considerations, written application requesting review, and inspection, as follows:

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

SECTION 3.

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

"42-5-56.

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

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

SECTION 4.

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

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

169

SECTION 5.

170

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