

The Senate Committee on Judiciary offered the following substitute to SB 542:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual
2 offenses, so as to permit clergy members to be charged with certain improper sexual contact
3 offenses; to provide for definitions; to provide for related matters; to repeal conflicting laws;
4 and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

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

10 "16-6-5.1.

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

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

14 (1.1) 'Child-placing agency' shall have the same meaning as set forth in Code Section
15 49-5-3.

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

18 (2.1) 'Clergy member' means any person, whether licensed or unlicensed, who represents
19 himself or herself as a minister, pastor, priest, rabbi, imam, or other spiritual leader of an
20 organization claiming to be a faith based organization in this state or any other state, or
21 any person who provides or purports to provide spiritual guidance, pastoral counseling,
22 religious instruction, or spiritual direction to another person in a relationship of trust,
23 confidence, or dependency.

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 or sole proprietor.

27 (4.1) 'Foster care home' means a private home used by a child-placing agency which has
28 been approved by the child-placing agency to provide 24 hour care, lodging, supervision,
29 and maintenance for one or more children or a private home which has been approved
30 and is directly supervised by the Department of Human Services to provide 24 hour care,
31 lodging, supervision, and maintenance for one or more children.

32 (4.2) 'Foster parent' means the person or persons who provide care, lodging, supervision,
33 and maintenance for one or more children in a foster care home used by a child-placing
34 agency or in a foster care home approved and directly supervised by the Department of
35 Human Services.

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

38 (5.1) 'Pastoral counseling or spiritual authority relationship' means a relationship in
39 which a clergy member provides spiritual guidance, pastoral care, religious instruction,
40 confession, mentoring, or emotional or spiritual support in circumstances where a
41 reasonable person would view the clergy member as exercising influence, trust, or
42 authority over another person's spiritual, emotional, or personal well-being.

43 (5.2) 'Person in a position of trust' means an individual with whom a parent, guardian,
44 or other person standing in loco parentis of a minor has entered into an agreement
45 entrusting such individual with the responsibility of education and supervision of such
46 minor; provided, however, that no such status shall exist when the terms of the agreement
47 have been satisfied or terminated and the minor is no longer under the supervision of such
48 individual.

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

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

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

62 (11) 'Sole proprietor' means an individual who is an owner or operator of a program or
63 facility rendering services or housing to another as a condition of such other person's
64 probation or parole.

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

- 69 (1) Enrolled as a student at a school of which he or she is an employee, clergy member,
70 or agent;
- 71 (2) Under probation, parole, a program or within a facility as a condition of probation or
72 parole, accountability court, or pretrial diversion supervision of the office or court of
73 which he or she is an employee, clergy member, or agent;
- 74 (3) Being detained by or is in the custody of any law enforcement agency of which he
75 or she is an employee, clergy member, or agent;
- 76 (4) A patient in or at a hospital of which he or she is an employee, clergy member, or
77 agent;
- 78 (5) In the custody of a correctional facility, juvenile detention facility, facility providing
79 services to a person with a disability, or a facility providing child welfare and youth
80 services of which he or she is an employee, clergy member, or agent;
- 81 (6) The subject of such ~~employee~~ employee's, clergy member's, or agent's actual or
82 purported psychotherapy treatment or counseling; or
- 83 (7) Admitted for care at a sensitive care facility of which he or she is an employee,
84 clergy member, or agent; or
- 85 (8) The subject of a clergy member's pastoral counseling or spiritual authority
86 relationship.
- 87 (b.1) A person commits the offense of improper sexual contact by a foster parent in the
88 first degree when he or she is a foster parent and knowingly engages in sexually explicit
89 conduct with his or her current foster child.
- 90 (b.2) A person commits the offense of improper sexual contact by a person in a position
91 of trust in the first degree when a person in a position of trust engages in sexually explicit
92 conduct with a minor for whom he or she has entered into an agreement entrusting him or
93 her with the responsibility of education and supervision of such minor.
- 94 (c) A person commits the offense of improper sexual contact by employee, clergy member,
95 or agent in the second degree when such employee, clergy member, or agent knowingly

96 engages in sexual contact, excluding sexually explicit conduct, with another person whom
97 such employee, clergy member, or agent knows or reasonably should have known is
98 contemporaneously:

99 (1) Enrolled as a student at a school of which he or she is an employee, clergy member,
100 or agent;

101 (2) Under probation, parole, a program or within a facility as a condition of probation or
102 parole, accountability court, or pretrial diversion supervision of the office or court of
103 which he or she is an employee, clergy member, or agent;

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

106 (4) A patient in or at a hospital of which he or she is an employee, clergy member, or
107 agent;

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

111 (6) The subject of such ~~employee~~ employee's, clergy member's, or agent's actual or
112 purported psychotherapy treatment or counseling; ~~or~~

113 (7) Admitted for care at a sensitive care facility of which he or she is an employee,
114 clergy member, or agent; or

115 (8) The subject of such clergy member's pastoral counseling or spiritual authority
116 relationship.

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

120 (c.2) A person commits the offense of improper sexual contact by a person in a position
121 of trust in the second degree when a person in a position of trust engages in sexual contact,
122 excluding sexually explicit conduct, with a minor for whom he or she has entered into an

123 agreement entrusting him or her with the responsibility of education and supervision of
124 such minor.

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

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

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

130 (f) A person convicted of improper sexual contact by employee, clergy member, or agent
131 in the first degree, improper sexual contact by a person in a position of trust in the first
132 degree, or improper sexual contact by a foster parent in the first degree shall be punished
133 by imprisonment for not less than one nor more than 25 years and by a fine not to exceed
134 \$100,000.00; provided, however, that:

135 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
136 offense of improper sexual contact by employee, clergy member, or agent, improper
137 sexual contact by a person in a position of trust in the first degree, or improper sexual
138 contact by a foster parent with a child under the age of 16 years shall be punished by
139 imprisonment for not less than ten nor more than 30 years and a fine not to exceed
140 \$100,000.00 and shall, in addition, be subject to the sentencing and punishment
141 provisions of Code Section 17-10-6.2; and

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

147 (B) If at the time of the offense the victim of the offense is under the age of 16 and the
148 act physically injures the victim or involves an act of sodomy, the offense shall be
149 punished by imprisonment for not less than 25 nor more than 50 years and a fine not

150 to exceed \$100,000.00 and shall, in addition, be subject to the sentencing and
151 punishment provisions of Code Section 17-10-6.2.

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

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

165 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
166 less than 21 years of age and the person is 21 years of age or younger and is no more than
167 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
168 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
169 and

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

177 (h)(1) As used in this subsection, the term 'sexual felony' shall have the same meaning
178 as set forth in paragraph (2) of subsection (j) of Code Section 16-5-21.

179 (2) Except as provided in paragraph (3) of subsection (g) of this Code section, any
180 person having been previously convicted of a sexual felony who is convicted of the
181 felony offense of improper sexual contact by employee, clergy member, agent, or foster
182 parent in the first or second degree, shall be punished by imprisonment for life or a split
183 sentence that is a term of imprisonment followed by probation for life. As a condition
184 of probation, the court shall impose the requirement of electronic monitoring as set forth
185 in paragraph (14) of subsection (a) of Code Section 42-8-35."

186

SECTION 2.

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