

Senate Bill 40

By: Senators Jackson of the 2nd, Jones of the 10th, Henson of the 41st, Sims of the 12th, Rahman of the 5th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-6-5.1.

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

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

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

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

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

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

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

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

~~(6)~~(8) 'Psychotherapy' means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.

~~(7)~~(9) '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.

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

~~(8)~~(11) '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~~ that is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173.

~~(9)~~(12) 'Sexual contact' means any contact involving the intimate parts of either person for the purpose of sexual gratification of either person.

~~(10)~~(13) '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 or within the school district of which he or she is an employee or agent, including, but not limited to, a volunteer;

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

~~(c)~~(d) An employee or agent ~~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 or within the school district of which he or she is an employee or agent, including, but not limited to, a volunteer;

(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 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 facility providing child welfare and youth services of which he or she is an employee or agent;

(6) The subject of such ~~employee~~ employee's 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.

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

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

~~(e)~~(g)(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 or 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

(B) When convicted of the offense of improper sexual contact by person in a position of trust in the second degree shall be guilty of 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; 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 person in a position of trust 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 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the procedure for sentencing and imposition of punishment, is amended by revising paragraph (7) of subsection (a) of Code Section 17-10-6.2, relating to punishment for sexual offenders, as follows:

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

SECTION 3.

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 person in a position of trust in violation of Code Section 16-6-5.1;"

SECTION 4.

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

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

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

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

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

- (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;
- (v) Sodomy in violation of Code Section 16-6-2;
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- (xi) Improper sexual contact by employee or agent in the first or second degree or improper sexual contact by person in a position of trust in the first or second degree in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code Section 17-10-6.2;
- (xii) Incest in violation of Code Section 16-6-22;
- (xiii) A second or subsequent conviction for sexual battery in violation of Code Section 16-6-22.1;
- (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- (xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;
- (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
- (xviii) A second or subsequent conviction for obscene telephone contact in violation of Code Section 16-12-100.3; or
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor."

SECTION 5.

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 person in a position of trust; 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 6.

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 person in a position of trust;"

SECTION 7.

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