

House Bill 911 (AS PASSED HOUSE AND SENATE)

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 style="text-align:center">**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.

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 Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 107 less than 21 years of age and the person is 21 years of age or younger and is no more than
 108 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
 109 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

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

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

120 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
 121 less than 21 years of age and the person is 21 years of age or younger and is no more than
 122 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
 123 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
 124 and

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

131 **SECTION 2.**

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

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

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

139 **SECTION 3.**

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

143 "42-5-56.

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

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

162 **SECTION 4.**

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

167 "(J) A violation of Code Section 16-6-5.1, relating to improper sexual contact by
 168 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.