

Senate Bill 117

By: Senators Miller of the 49th, Cowser of the 46th, Anavitarte of the 31st, Payne of the 54th, Kennedy of the 18th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15

SECTION 1.

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

19 "16-6-5.1.

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

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

23 (1.1) 'Child-placing agency' shall have the same meaning as set forth in Code Section
24 49-5-3.

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

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

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

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

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

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

41 (5.1) 'Person in a position of trust' means an individual with whom a parent, guardian,
42 or other person standing in loco parentis of a minor has entered into an agreement
43 entrusting such individual with the responsibility of education and supervision of such
44 minor; provided, however, that no such status shall exist when the terms of the agreement
45 have been satisfied or terminated and the minor is no longer under the supervision of such
46 individual.

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

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

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

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

58 (10) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section
59 16-12-100.

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

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

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

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

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

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

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

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

104 (c.2) A person commits the offense of improper sexual contact by a person in a position
 105 of trust in the second degree when a person in a position of trust engages in sexual contact,
 106 excluding sexually explicit conduct, with a minor for whom he or she has entered into an
 107 agreement entrusting him or her with the responsibility of education and supervision of
 108 such minor.

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

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

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

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

119 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
 120 offense of improper sexual contact by employee, improper sexual contact by a person in

121 a position of trust in the first degree, or agent or improper sexual contact by a foster
 122 parent with a child under the age of 16 years shall be punished by imprisonment for not
 123 less than ~~25~~ 10 nor more than ~~50~~ 30 years ~~or and~~ a fine not to exceed \$100,000.00, ~~or~~
 124 ~~both~~, and shall, in addition, be subject to the sentencing and punishment provisions of
 125 Code Section 17-10-6.2; and

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

131 (B) If at the time of the offense the victim of the offense is under the age of 16 and the
 132 act physically injures the victim or involves an act of sodomy, the offense shall be
 133 punished by imprisonment for not less than 25 nor more than 50 years and a fine not
 134 to exceed \$100,000.00 and shall, in addition, be subject to the sentencing and
 135 punishment provisions of Code Section 17-10-6.2.

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

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

148 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
149 less than 21 years of age and the person is 21 years of age or younger and is no more than
150 48 months older than the victim, such person shall be guilty of a misdemeanor and shall
151 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
152 and

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

160

SECTION 2.

161 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
162 procedure for sentencing and imposition of punishment, is amended by revising
163 paragraph (7) of subsection (a) of Code Section 17-10-6.2, relating to punishment for sexual
164 offenders, as follows:

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

167

SECTION 3.

168 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
169 Georgia Crime Information Center, is amended by revising division (j)(4)(B)(viii) of Code
170 Section 35-3-37, relating to review of individual's criminal history record information,
171 definitions, privacy considerations, written application requesting review, and inspection, as
172 follows:

173 "(viii) Improper sexual contact by employee or agent, ~~and~~ improper sexual contact
 174 by a foster parent, and improper sexual contact by person in a position of trust in
 175 violation of Code Section 16-6-5.1;"

176 **SECTION 4.**

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

181 "(B.3) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30,~~
 182 ~~2019~~ between July 1, 2019 and June 30, 2021, means any criminal offense, or the
 183 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph
 184 or any offense under federal law or the laws of another state or territory of the United
 185 States which consists of the same or similar elements of the following offenses:

- 186 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- 187 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 188 is less than 14 years of age, except by a parent;
- 189 (iii) Trafficking an individual for sexual servitude in violation of Code
 190 Section 16-5-46;
- 191 (iv) Rape in violation of Code Section 16-6-1;
- 192 (v) Sodomy in violation of Code Section 16-6-2;
- 193 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 194 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 195 of the offense is 21 years of age or older;
- 196 (viii) Child molestation in violation of Code Section 16-6-4;
- 197 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 198 person was convicted of a misdemeanor offense;

- 199 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
200 (xi) Improper sexual contact by employee or agent in the first or second degree in
201 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
202 to Code Section 17-10-6.2;
- 203 (xii) Incest in violation of Code Section 16-6-22;
204 (xiii) A second or subsequent conviction for sexual battery in violation of Code
205 Section 16-6-22.1;
- 206 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
207 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
208 (xvi) Electronically furnishing obscene material to minors in violation of Code
209 Section 16-12-100.1;
- 210 (xvii) Computer pornography and child exploitation in violation of Code
211 Section 16-12-100.2;
- 212 (xviii) A second or subsequent conviction for obscene telephone contact in violation
213 of Code Section 16-12-100.3; or
- 214 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
215 minor or an attempt to commit a sexual offense against a victim who is a minor.
- 216 (B.4) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
217 2021, means any criminal offense, or the attempt to commit any criminal offense, under
218 Title 16 as specified in this subparagraph or any offense under federal law or the laws
219 of another state or territory of the United States which consists of the same or similar
220 elements of the following offenses:
- 221 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
222 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
223 is less than 14 years of age, except by a parent;
224 (iii) Trafficking an individual for sexual servitude in violation of Code
225 Section 16-5-46;

- 226 (iv) Rape in violation of Code Section 16-6-1;
227 (v) Sodomy in violation of Code Section 16-6-2;
228 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
229 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
230 of the offense is 21 years of age or older;
231 (viii) Child molestation in violation of Code Section 16-6-4;
232 (ix) Aggravated child molestation in violation of Code Section 16-6-4;
233 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
234 (xi) Improper sexual contact by employee or agent in the first or second degree or
235 improper sexual contact by person in a position of trust in the first or second degree
236 in violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
237 to Code Section 17-10-6.2;
238 (xii) Incest in violation of Code Section 16-6-22;
239 (xiii) A second or subsequent conviction for sexual battery in violation of Code
240 Section 16-6-22.1;
241 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
242 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
243 (xvi) Computer pornography and child exploitation in violation of Code
244 Section 16-12-100.2;
245 (xvii) A second or subsequent conviction for obscene telephone contact in violation
246 of Code Section 16-12-100.3; or
247 (xviii) Any conduct which, by its nature, is a felony sexual offense against a victim
248 who is a minor or an attempt to commit a felony sexual offense against a victim who
249 is a minor."

250 **SECTION 5.**

251 Said title is further amended by revising Code Section 42-5-56, relating to visitation with
252 minors by convicted sexual offenders, as follows:

253 "42-5-56.

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

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

273 **SECTION 6.**

274 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to
275 general provisions regarding the Department of Human Services, is amended by revising

276 subparagraph (a)(2)(J) of Code Section 49-2-14.1, relating to records check requirement for
277 licensing facilities, as follows:

278 "(J) A violation of Code Section 16-6-5.1, relating to improper sexual contact by
279 employee or agent, ~~and improper sexual contact by a foster parent, and improper sexual~~
280 contact by person in a position of trust;"

281

SECTION 7.

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