Senate Bill 9
By: Senators Jones II of the 22nd, Parent of the 42nd, Rhett of the 33rd, James of the 35th, Butler of the 55th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, so as to revise the crime of sexual assault by persons with supervisory or disciplinary authority; to provide for degrees of the crime; to change provisions relating to punishment; to prohibit sexual extortion; to provide for elements of the crime; to provide for an exemption; to provide for penalties; to provide for venue; to amend Code Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and 49-2-14.1 of the Official Code of Georgia Annotated, relating to punishment for sexual offenders, review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, the State Sexual Offender Registry, immunity from liability of department, agency, or child advocacy center, and records check requirement for licensing certain facilities, respectively, so as to make conforming and correct cross-references; to revise and provide for definitions; to provide for effective dates; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising Code Section 16-6-5.1, relating to sexual assault by persons with supervisory or disciplinary authority, sexual assault by practitioner of psychotherapy against patient, consent not a defense, and penalty upon conviction for sexual assault, as follows:

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

(1) 'Actor' means a person accused of sexual assault.

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

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

(4) '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) '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 between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor either person.

(10) 'School' means any educational program or institution instructing children at any level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions are not used.

(b) A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person 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) Is a teacher, principal, assistant principal, or other administrator of any school and engages in sexual contact with such other individual who the actor knew or should have known is enrolled Enrolled as a student at the same a school; provided, however, that such contact shall not be prohibited when the actor is married to such other individual of which he or she is an employee or agent;

(2) Is an employee or agent of any community supervision office, county juvenile probation office, Department of Juvenile Justice juvenile probation office, or probation office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee 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) Is an employee or agent of a law enforcement agency and engages in sexual contact
with such other individual who the actor knew or should have known is being detained by or is in the custody of any law enforcement agency of which he or she is an employee or agent;

(4) Is an employee or agent of a hospital and engages in sexual contact with such other
individual who the actor knew or should have known is a patient or is being detained in the same hospital A patient in or at a hospital of which he or she is an employee or agent;

(5) Is an employee or agent in the custody of a correctional facility, juvenile detention
facility, facility providing services to a person with a disability, as such term is defined
in Code Section 37-1-1; or a facility providing child welfare and youth services, as such term is defined in Code Section 49-5-2, who engages in sexual contact with such other
individual who the actor knew or should have known is in the custody of such facility of
which he or she is an employee or agent;

(6) A person who is an actual or purported practitioner of psychotherapy commits
sexual assault when he or she engages in sexual contact with another individual who the
actor knew or should have known is the subject of the actor's actual or purported psychotherapy treatment or counseling or the actor uses the treatment or counseling relationship to facilitate sexual contact between the actor and such individual;

(7) A person who is an employee, agent, or volunteer at 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 commits sexual
assault when he or she engages in sexual contact with another individual who the actor
knew or should have known had been admitted to or is receiving services from such
facility or the actor 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 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.

(e)(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.

(e)(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 assault contact by employee or agent 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 $50,000.00 $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 assault of contact by employee or agent 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 16 years of age and the actor person is 18 years of age or younger and is no more than four years 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 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 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, 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.
Said title is further amended by adding a new Code section to read as follows:
"16-11-92.
(a) As used in this Code section, the term:
(1) 'Coerce' means:
(A) Exposing or threatening to expose any fact or information that if revealed would
tend to subject an individual to hatred, contempt, ridicule, or economic harm;
(B) Exposing or threatening to expose any photograph or video depicting an individual
in a state of nudity or engaged in sexually explicit conduct;
(C) Exposing or threatening to expose any fact or information that if revealed would
tend to subject an individual to criminal proceedings or threatening to accuse any
individual of a criminal offense;
(D) Threatening to take or withhold action as a public official or cause an official to
take or withhold action; or
(E) Threatening to take or withhold action as an employer or cause an employer to take
or withhold action which would cause economic harm to an individual.
(2) 'Distribute' means to sell, lend, rent, lease, give, advertise, publish, exhibit, or
otherwise disseminate.
(3) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.
(4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code
Section 16-12-100.
(b) (1) No person shall intentionally coerce orally, in writing, or electronically another
individual who is more than 18 years of age to distribute any photograph, video, or other
image that depicts any individual in a state of nudity or engaged in sexually explicit conduct.

(2) The provisions of this subsection shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

(3) The provisions of this subsection shall not apply to requests for disclosures, production of documents or evidence, or similar discovery actions under the provisions of Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

(c) Any person that violates paragraph (1) of subsection (b) of this Code section shall:

(1) Upon the first offense, be guilty of and punished as for a misdemeanor of a high and aggravated nature; or

(2) Upon a second or subsequent offense, be guilty of a felony and upon conviction, be punished by imprisonment for not less than one year and not more than five years.

(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section in which the person engages while:

(1) Within or outside this state if, by such conduct, the person commits a violation of this Code section that involves an individual who resides within this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section that involves an individual who resides within or outside this state.

(e) Each violation of this Code section shall be considered a separate offense and shall not merge with any other offense.

SECTION 3.

Code Section 17-10-6.2 of the Official Code of Georgia Annotated, relating to punishment for sexual offenders, is amended by revising paragraph (7) of subsection (a) as follows:

"(7) Sexual assault against persons in custody, in violation of Improper sexual contact by employee or agent, as provided in Code Section 16-6-5.1;"

SECTION 4.

Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, is amended by revising division (j)(4)(B)(iii) as follows:

"(iii) Sexual assault by persons with supervisory or disciplinary authority Improper sexual contact by employee or agent in violation of Code Section 16-6-5.1;"
SECTION 5.

Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to the State Sexual Offender Registry, is amended by revising subparagraph (a)(10)(B.2) and adding a new subparagraph to read as follows:

"(B.2) 'Dangerous sexual offense' with respect to convictions occurring after June 30, 2017 between July 1, 2017, and 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) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second 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) 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.3) '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 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 6.

Code Section 42-5-56 of the Official Code of Georgia Annotated, relating to immunity from liability of department, agency, or child advocacy center, is amended by revising subsection (a) as follows:

“(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 sexual assault against a person in custody improper sexual contact by employee or agent; 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.”

SECTION 7.

Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions and records check requirement for licensing certain facilities, is amended by revising subparagraph (a)(2)(J) as follows:

“(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions improper sexual contact by employee or agent;”

SECTION 8.

Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions and records check requirement for licensing certain facilities, is amended by revising subparagraph (a)(2)(J) as follows:

“(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions improper sexual contact by employee or agent;”

SECTION 9.

This Act shall become effective on July 1, 2019; provided, however, that Section 8 of this Act shall become effective October 1, 2019.
SECTION 10.

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