

House Bill 1146

By: Representative Parsons of the 44<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 16-6-5.1 of the Official Code of Georgia Annotated, relating to  
2 improper sexual contact by employee or agent, consent not a defense, and penalty, so as to  
3 revise the offense of improper sexual contact by employee or agent in the first degree; to  
4 revise the offense of improper sexual contact by employee or agent in the second degree; to  
5 provide for definitions; to provide application for circumstances of youth activities at  
6 recreation and scholastic facilities; to provide for related matters; to repeal conflicting laws;  
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 16-6-5.1 of the Official Code of Georgia Annotated, relating to improper  
11 sexual contact by employee or agent, consent not a defense, and penalty, is amended by  
12 revising subsections (a) through (e) as follows:

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

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

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

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

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

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

23 (6) 'Participants' means persons who are being coached or are receiving instruction.

24 (7) 'Psychotherapy' means the professional treatment or counseling of a mental or  
25 emotional illness, symptom, or condition.

26 (8) 'Recreational or scholastic facility' means a public or private facility that conducts  
 27 any youth activity in which a participation fee or registration is required for such youth  
 28 activity.

29 ~~(7)~~(9) 'School' means any educational institution, public or private, providing elementary  
 30 or secondary education to children at any level, kindergarten through twelfth grade, or  
 31 the equivalent thereof if grade divisions are not used, including extracurricular programs  
 32 of such institution.

33 ~~(8)~~(10) 'Sensitive care facility' means any facility that is licensed or required to be  
 34 licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or ~~who~~ that is required to be  
 35 licensed pursuant to Code Section 31-7-151 or 31-7-173.

36 ~~(9)~~(11) 'Sexual contact' means any contact involving the intimate parts of either person  
 37 for the purpose of sexual gratification of either person.

38 ~~(10)~~(12) 'Sexually explicit conduct' shall have the same meaning as set forth in Code  
 39 Section 16-12-100.

40 (13) 'Youth activity' means an activity in which a majority of the participants are 18  
 41 years of age or younger.

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

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

47 (2) Enrolled in any youth activity at a recreational or scholastic facility of which he or  
 48 she is an employee or agent;

49 (3) Under probation, parole, accountability court, or pretrial diversion supervision of the  
 50 office or court of which he or she is an employee or agent;

51 ~~(3)~~(4) Being detained by or is in the custody of any law enforcement agency of which  
 52 he or she is an employee or agent;

53 ~~(4)~~(5) A patient in or at a hospital of which he or she is an employee or agent;

54 ~~(5)~~(6) In the custody of a correctional facility, juvenile detention facility, facility  
 55 providing services to a person with a disability, or a facility providing child welfare and  
 56 youth services of which he or she is an employee or agent;

57 ~~(6)~~(7) The subject of such ~~employee~~ employee's or agent's actual or purported  
 58 psychotherapy treatment or counseling; or

59 ~~(7)~~(8) Admitted for care at a sensitive care facility of which he or she is an employee or  
 60 agent.

61 (c) An employee or agent ~~A person~~ commits the offense of improper sexual contact by  
 62 employee or agent in the second degree when such employee or agent knowingly engages

63 in sexual contact, excluding sexually explicit conduct, with another person whom such  
64 employee or agent knows or reasonably should have known is contemporaneously:

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

66 (2) Enrolled in any youth activity at a recreational or scholastic facility of which he or  
67 she is an employee or agent;

68 (3) Under probation, parole, accountability court, or pretrial diversion supervision of the  
69 office or court of which he or she is an employee or agent;

70 ~~(3)~~(4) Being detained by or is in the custody of a any law enforcement agency of which  
71 he or she is an employee or agent;

72 ~~(4)~~(5) A patient in or at a hospital of which he or she is an employee or agent;

73 ~~(5)~~(6) In the custody of a correctional facility, juvenile detention facility, facility  
74 providing services to a person with a disability, or facility providing child welfare and  
75 youth services of which he or she is an employee or agent;

76 ~~(6)~~(7) The subject of such ~~employee~~ employee's or agent's actual or purported  
77 psychotherapy treatment or counseling; or

78 ~~(7)~~(8) Admitted for care at a sensitive care facility of which he or she is an employee or  
79 agent.

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

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

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

85 (3) This Code section shall not apply to a participant who is enrolled in a youth activity  
86 at the same recreational or scholastic facility."

87 **SECTION 2.**

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