

House Bill 43

By: Representatives Setzler of the 35th and Turner of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual
2 offenses, so as to revise the crime of sexual assault by persons with supervisory or
3 disciplinary authority; to revise and provide for definitions; to provide for degrees of the
4 crime; to revise and provide for definitions; to change provisions relating to punishment; to
5 amend Code Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and 49-2-14.1 of the Official
6 Code of Georgia Annotated, relating to punishment for sexual offenders, review of
7 individual's criminal history record information, definitions, privacy considerations, written
8 application requesting review, and inspection, the State Sexual Offender Registry, immunity
9 from liability of department, agency, or child advocacy center, and records check
10 requirement for licensing certain facilities, respectively, so as to make conforming and
11 correct cross-references; to provide for effective dates; to provide for related matters; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

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

19 "16-6-5.1.

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

21 (1) ~~'Actor' means a person accused of sexual assault~~ 'Child welfare and youth services'
22 shall have the same meaning as set forth in Code Section 49-5-3.

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

24 (3) 'Disciplinary authority' means the authority to determine rule violation consequences.

25 ~~(2)(4)~~ (4) 'Intimate parts' means the genital area, groin, inner thighs, buttocks, or breasts of
26 a person.

27 ~~(3)~~(5) 'Psychotherapy' means the professional treatment or counseling of a mental or
28 emotional illness, symptom, or condition.

29 ~~(4)~~(6) 'Sexual contact' means any contact ~~between the actor and a person not married to~~
30 ~~the actor~~ involving the intimate parts of either person for the purpose of sexual
31 gratification of ~~the actor~~ either person.

32 (7) 'Sexually explicit conduct' means:

33 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
34 oral-anal, whether between persons of the same or opposite sex;

35 (B) Masturbation;

36 (C) Lewd exhibition of the unclothed genitals or pubic area of any person;

37 (D) Flagellation or torture by or upon a person who is nude;

38 (E) The condition of being fettered, bound, or otherwise physically restrained on the
39 part of a person who is nude;

40 (F) Physical contact in an act of apparent sexual stimulation or gratification with any
41 person's unclothed genitals;

42 (G) Defecation or urination for the purpose of sexual stimulation of the viewer; or

43 (H) Penetration of the vagina or rectum by any object except when done as part of a
44 recognized medical procedure.

45 ~~(5)~~(8) 'School' means any educational program or institution ~~instructing~~ providing
46 elementary or secondary education to children at any level, ~~pre-kindergarten~~ kindergarten
47 through twelfth grade, or the equivalent thereof if grade divisions are not used.

48 (9) 'Supervisory authority' means direct control, oversight, or management.

49 (b) A person ~~who has supervisory or disciplinary authority over another individual~~
50 ~~commits sexual assault in the second degree~~ when that person:

51 (1) Is a teacher, principal, assistant principal, or other ~~administrator~~ employee or agent
52 of any a school and engages in sexual contact with such other individual who ~~the actor~~
53 he or she knew or should have known is enrolled at the same school; ~~provided, however,~~
54 ~~that such contact shall not be prohibited when the actor is married to such other~~
55 ~~individual;~~

56 (2) Is an employee or agent of any community supervision office, county juvenile
57 probation office, Department of Juvenile Justice juvenile probation office, or probation
58 office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such
59 other individual who ~~the actor~~ he or she knew or should have known is a probationer or
60 parolee under the supervision of any such office;

61 (3) Is an employee or agent of a law enforcement agency and engages in sexual contact
62 with such other individual who ~~the actor~~ he or she knew or should have known is being
63 detained by or is in the custody of any law enforcement agency;

- 64 (4) Is an employee or agent of a hospital and engages in sexual contact with such other
 65 individual who ~~the actor~~ he or she knew or should have known is a patient in or is being
 66 detained in the same hospital; or
- 67 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
 68 providing services to a person with a disability, ~~as such term is defined in Code Section~~
 69 ~~37-1-1~~, or a facility providing child welfare and youth services, ~~as such term is defined~~
 70 ~~in Code Section 49-5-3~~, who engages in sexual contact with such other individual who
 71 ~~the actor~~ he or she knew or should have known is in the custody of such facility.
- 72 (c) A person who is an actual or purported practitioner or counselor of psychotherapy
 73 commits sexual assault in the second degree when he or she engages in sexual contact with
 74 another individual who ~~the actor~~ he or she knew or should have known is the subject of ~~the~~
 75 ~~actor's~~ his or her actual or purported treatment or counseling or ~~the actor~~ such person uses
 76 the treatment or counseling relationship to facilitate sexual contact between ~~the actor~~
 77 himself or herself and such individual.
- 78 (d) A person who is an employee, agent, or volunteer at any facility licensed or required
 79 to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be
 80 licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault in the
 81 second degree when he or she engages in sexual contact with another individual who ~~the~~
 82 ~~actor~~ he or she knew or should have known had been admitted to or is receiving services
 83 from such facility or ~~the actor~~ such person.
- 84 (e) Consent of the victim shall not be a defense to a prosecution ~~under this Code section~~
 85 of sexual assault in the second degree.
- 86 (f) A person convicted of sexual assault in the second degree shall be punished by
 87 imprisonment for not less than one year nor more than ~~25~~ five years ~~or by~~ and a fine not
 88 to exceed ~~\$100,000.00~~ \$25,000.00, ~~or both~~ and shall not be subject to the sentencing and
 89 punishment provisions of Code Section 17-10-6.2, but upon a second or subsequent
 90 conviction of sexual assault in the second degree, the person shall be subject to the
 91 sentencing and punishment provisions of Code Section 17-10-6.2; provided, however, that:
- 92 (1) If at the time of the offense, the person while serving in his or her official capacity,
 93 did not have supervisory authority over or disciplinary authority for the victim, such
 94 person shall be guilty of a misdemeanor of a high and aggravated nature and shall not be
 95 subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
- 96 ~~(1)~~(2) Except as provided in paragraph ~~(2)~~ (3) of this subsection, ~~any person when the~~
 97 victim of the offense is under 16 years of age, such convicted ~~of the offense of sexual~~
 98 assault of a child under the age of 16 years person shall be punished by imprisonment for
 99 not less than ~~25~~ five nor more than ~~50~~ 20 years and shall, in addition, be subject to the
 100 sentencing and punishment provisions of Code Section 17-10-6.2; and

101 ~~(2)~~(3)(A) If at the time of the offense, the victim of the offense is at least 14 years of
 102 age but less than 16 years of age and ~~the actor~~ such convicted person is 18 years of age
 103 or younger and is no more than four years older than the victim, such person shall be
 104 guilty of a misdemeanor and shall not be subject to the sentencing and punishment
 105 provisions of Code Section 17-10-6.2.

106 (B) If at the time of the offense, the victim of the offense is at least 16 years of age and
 107 such convicted person is less than 21 years of age, such person shall be guilty of a
 108 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 109 Code Section 17-10-6.2.

110 (g) A person commits sexual assault in the first degree when that person:

111 (1) Is a teacher, principal, assistant principal, or other employee or agent of a school and
 112 engages in sexually explicit conduct with such other individual who he or she knew or
 113 should have known is enrolled at the same school;

114 (2) Is an employee or agent of any community supervision office, county juvenile
 115 probation office, Department of Juvenile Justice juvenile probation office, or probation
 116 office under Article 6 of Chapter 8 of Title 42 and engages in sexually explicit conduct
 117 with such other individual who he or she knew or should have known is a probationer or
 118 parolee under the supervision of any such office;

119 (3) Is an employee or agent of a law enforcement agency and engages in sexually explicit
 120 conduct with such other individual who he or she knew or should have known is being
 121 detained by or is in the custody of any law enforcement agency;

122 (4) Is an employee or agent of a hospital and engages in sexually explicit conduct with
 123 such other individual who he or she knew or should have known is a patient in or is being
 124 detained in the same hospital; or

125 (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility
 126 providing services to a person with a disability, or facility providing child welfare and
 127 youth services who engages in sexually explicit conduct with such other individual who
 128 he or she knew or should have known is in the custody of such facility.

129 (h) A person who is an actual or purported practitioner or counselor of psychotherapy
 130 commits sexual assault in the first degree when he or she engages in sexually explicit
 131 conduct with another individual who he or she knew or should have known is the subject
 132 of his or her actual or purported treatment or counseling or such person uses the treatment
 133 or counseling relationship to facilitate sexually explicit conduct between himself or herself
 134 and such individual.

135 (i) A person who is an employee, agent, or volunteer at any facility licensed or required
 136 to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be
 137 licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault in the first

138 degree when he or she engages in sexually explicit conduct with another individual who
 139 he or she knew or should have known had been admitted to or is receiving services from
 140 such facility or such person.

141 (j) Consent of the victim shall not be a defense to a prosecution for sexual assault in the
 142 first degree.

143 (k) A person convicted of sexual assault in the first degree shall be punished by
 144 imprisonment for not less than one year nor more than 25 years and a fine not to exceed
 145 \$100,000.00, and shall be subject to the sentencing and punishment provisions of Code
 146 Section 17-10-6.2; provided, however, that:

147 (1) When the victim was at least 16 years of age and consented to the conduct, the person
 148 shall not be subject to the sentencing and punishment provisions of Code Section
 149 17-10-6.2 unless the state has shown by a preponderance of evidence that the person has
 150 engaged in a similar offense or has attempted a similar offense with another victim;

151 (2) If at the time of the offense, the person while serving in his or her official capacity,
 152 did not have supervisory authority over or disciplinary authority for the victim, such
 153 person shall be guilty of a felony and shall be punished by imprisonment for not less than
 154 one year nor more than ten years and a fine not to exceed \$50,000.00, and shall not be
 155 subject to the sentencing and punishment provisions of Code Section 17-10-6.2;

156 (3) Except as provided in paragraph (4) of this subsection, when the victim of the offense
 157 is under 16 years of age, such convicted person shall be punished by imprisonment for
 158 not less than 25 nor more than 50 years and shall, in addition, be subject to the sentencing
 159 and punishment provisions of Code Section 17-10-6.2; and

160 (4)(A) If at the time of the offense, the victim of the offense is at least 14 years of age
 161 but less than 16 years of age and such convicted person is 18 years of age or younger
 162 and is no more than four years older than the victim, such person shall be guilty of a
 163 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 164 Code Section 17-10-6.2.

165 (B) If at the time of the offense, the victim of the offense is at least 16 years of age and
 166 such convicted person is less than 21 years of age, such person shall be guilty of a
 167 misdemeanor and shall not be subject to the sentencing and punishment provisions of
 168 Code Section 17-10-6.2.

169 (l) This Code section shall not apply to sexual contact or sexually explicit conduct between
 170 individuals who are married to each other."

171 **SECTION 2.**

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

174 "(7) Sexual assault ~~against persons in custody~~ in the first degree and in the second
 175 degree, in violation of Code Section 16-6-5.1, except as excluded in subsections (f) and
 176 (k) of Code Section 16-6-5.1;"

177 **SECTION 3.**

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

182 "(iii) Sexual assault ~~by persons with supervisory or disciplinary authority~~ in the first
 183 or second degree in violation of Code Section 16-6-5.1;"

184 **SECTION 4.**

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

188 "(B.2) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30,~~
 189 ~~2017~~ between July 1, 2017, and June 30, 2019, means any criminal offense, or the
 190 attempt to commit any criminal offense, under Title 16 as specified in this subparagraph
 191 or any offense under federal law or the laws of another state or territory of the United
 192 States which consists of the same or similar elements of the following offenses:

- 193 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
 194 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 195 is less than 14 years of age, except by a parent;
 196 (iii) Trafficking an individual for sexual servitude in violation of Code Section
 197 16-5-46;
 198 (iv) Rape in violation of Code Section 16-6-1;
 199 (v) Sodomy in violation of Code Section 16-6-2;
 200 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
 201 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 202 of the offense is 21 years of age or older;
 203 (viii) Child molestation in violation of Code Section 16-6-4;
 204 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 205 person was convicted of a misdemeanor offense;
 206 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 207 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
 208 (xii) Incest in violation of Code Section 16-6-22;

- 209 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
- 210 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- 211 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 212 (xvi) Electronically furnishing obscene material to minors in violation of Code
213 Section 16-12-100.1;
- 214 (xvii) Computer pornography and child exploitation in violation of Code Section
215 16-12-100.2;
- 216 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
- 217 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
218 minor or an attempt to commit a sexual offense against a victim who is a minor.
- 219 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after June 30,
220 2019, means any criminal offense, or the attempt to commit any criminal offense, under
221 Title 16 as specified in this subparagraph or any offense under federal law or the laws
222 of another state or territory of the United States which consists of the same or similar
223 elements of the following offenses:
- 224 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- 225 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
226 is less than 14 years of age, except by a parent;
- 227 (iii) Trafficking an individual for sexual servitude in violation of Code Section
228 16-5-46;
- 229 (iv) Rape in violation of Code Section 16-6-1;
- 230 (v) Sodomy in violation of Code Section 16-6-2;
- 231 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 232 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
233 of the offense is 21 years of age or older;
- 234 (viii) Child molestation in violation of Code Section 16-6-4;
- 235 (ix) Aggravated child molestation in violation of Code Section 16-6-4;
- 236 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 237 (xi) Sexual assault in the first degree in violation of Code Section 16-6-5.1, unless
238 the punishment imposed was not subject to Code Section 17-10-6.2;
- 239 (xii) Incest in violation of Code Section 16-6-22;
- 240 (xiii) A second conviction for sexual battery in violation of Code 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 Section
244 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 sexual offense against a victim who is
 248 a minor or an attempt to commit a sexual offense against a victim who is a minor."

249 **SECTION 5.**

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

253 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
 254 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
 255 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of sexual
 256 assault against a person in custody; Code Section 16-6-22, relating to the offense of incest;
 257 or Code Section 16-6-22.2, relating to the offense of aggravated sexual battery, when the
 258 victim was under 18 years of age at the time of the commission of any such offense; or a
 259 violation of Code Section 16-6-3, relating to the offense of statutory rape; Code Section
 260 16-6-4, relating to the offenses of child molestation and aggravated child molestation; or
 261 Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes, when
 262 the victim was under 16 years of age at the time of the commission of any such offense."

263 **SECTION 6.**

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

267 "~~(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in~~
 268 ~~custody, detained persons, or patients in hospitals or other institutions;"~~

269 **SECTION 7.**

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

273 "~~(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in~~
 274 ~~custody, detained persons, or patients in hospitals or other institutions;"~~

275 **SECTION 8.**

276 This Act shall become effective on July 1, 2019; provided, however, that Section 7 of this
 277 Act shall become effective October 1, 2019.

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SECTION 9.

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