

9-1-1990

CRIMES AND OFFENSES Sexual Offenses: Establish Offenses of Sexual Battery and Aggravated Sexual Battery and Revise Definition of the Offense of Sexual Assault Against Persons in Custody

K. Lewis

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

K. Lewis, *CRIMES AND OFFENSES Sexual Offenses: Establish Offenses of Sexual Battery and Aggravated Sexual Battery and Revise Definition of the Offense of Sexual Assault Against Persons in Custody*, 7 GA. ST. U. L. REV. (1990).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol7/iss1/12>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CRIMES AND OFFENSES

Sexual Offenses: Establish Offenses of Sexual Battery and Aggravated Sexual Battery and Revise Definition of the Offense of Sexual Assault Against Persons in Custody

CODE SECTIONS: O.C.G.A. §§ 16-6-22.1 to -.2 (new), 16-6-5.1 (amended)
BILL NUMBER: SB 602
ACT NUMBER: 1243
SUMMARY: The Act creates two new offenses, sexual battery and aggravated sexual battery, and provides penalties for those offenses. The Act also amends the statutory definition of the offense of sexual assault against persons in custody to include assault against persons enrolled in a school.
EFFECTIVE DATE: July 1, 1990

History

SB 602 was introduced to address and penalize the range of sexual offenses which had previously gone unrecognized under Georgia law.¹ Prior to the passage of the Act, sexual offenses ranged from rape and attempted rape at one end of the spectrum to simple battery at the other.² Consequently, crimes of a sexual nature not rising to the level of rape or attempted rape were treated as simple battery.³ The Act creates the offenses of sexual battery and aggravated sexual battery to adequately address sexual offenses.⁴

Additionally, the Act redefines sexual assault against persons in custody, by including "one who is enrolled in a school."⁵ Concern for a lack of an adequate offense for sexual abuse of students in the school setting prompted this amendment.⁶ A Rockdale County case, in which a ROTC instructor was charged with sexual abuse of several female

1. Telephone interview with Senator Charles C. Clay, Senate District No. 37 (Mar. 23, 1990) [hereinafter Clay Interview].

2. *Id.*

3. *Id.*

4. *Id.*

5. O.C.G.A. § 16-6-5.1 (Supp. 1990).

6. Telephone interview with Senator Harrill L. Dawkins, Senate District No. 45 (May 15, 1990) [hereinafter Dawkins Interview].

students, pointed out a loophole in the law.⁷ In *State v. Jennette*,⁸ Jennette had been charged with sexual assault against persons in custody. Under this offense, the convicted is punishable by imprisonment for one to three years.⁹ Although the superior court ruled that "students" fell within the purview of the offense of sexual assault against persons in custody, the court allowed the defendant to argue that the statute did not apply.¹⁰ The jury subsequently found that the statute was inapplicable and found the defendant guilty of simple battery, a misdemeanor.¹¹

SB 602 responded to the need to overrule the interpretation of persons in custody in *State v. Jennette*.¹² The bill provides a penalty of one to three years imprisonment for conviction of sexual assault against a student.¹³ Under previous law, a conviction of sexual assault against a student was governed by the offense of simple battery and, thus, resulted in only misdemeanor penalties.¹⁴

SB 602

The Act establishes two new offenses, sexual battery¹⁵ and aggravated sexual battery.¹⁶ Sexual battery is defined as "intentional physical contact with the intimate parts of the body of another person without the consent of that person."¹⁷ Violation of sexual battery is "a misdemeanor of a high and aggravated nature."¹⁸ Aggravated sexual battery occurs when the offender "intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person."¹⁹ Punishment for aggravated sexual battery is imprisonment for one to twenty years.²⁰

The Act also redefines the offense of sexual assault against persons in custody by adding assault against persons who are enrolled in a school.²¹ Previously, the Act limited sexual assault against persons in

7. *Id.*

8. No. A90A1059 (Ga. Ct. App. filed Mar. 1, 1990).

9. 1983 Ga. Laws 721 (formerly found at O.C.G.A. § 16-6-5.1(b) (1988)).

10. Telephone interview with Robert Mumford, District Attorney of Rockdale County (May 15, 1990) [hereinafter Mumford Interview].

11. *Id.* The defendant was not charged with child molestation because the female students were over the age of fourteen. *Id.*

12. Dawkins Interview, *supra* note 6.

13. O.C.G.A. § 16-6-5.1(b) (Supp. 1990).

14. Mumford Interview, *supra* note 10. O.C.G.A. § 16-5-23(b) (1988).

15. O.C.G.A. § 16-6-22.1(b) (Supp. 1990).

16. O.C.G.A. § 16-6-22.2(b) (Supp. 1990).

17. O.C.G.A. § 16-6-22.1(b) (Supp. 1990).

18. O.C.G.A. § 16-6-22.1(c) (Supp. 1990).

19. O.C.G.A. § 16-6-22.2(b) (Supp. 1990).

20. O.C.G.A. § 16-6-22.2(c) (Supp. 1990).

21. O.C.G.A. § 16-6-5.1(b) (Supp. 1990).

custody to a person "who is in the custody of the law, who is detained in or is a patient in a hospital or other institution."²²

The original bill contained only the provisions creating the offenses of sexual battery and aggravated sexual battery.²³ A House floor amendment was passed that included persons enrolled in a school in the definition of the offense of sexual assault against persons in custody.²⁴ The House floor amendment was originally introduced in the Senate as SB 626.²⁵ SB 626 passed in the Senate, but the House Rules Committee omitted the bill from the rules calendar.²⁶ As a result, SB 626 was offered as a House floor amendment to SB 602.²⁷

Conclusion

The overall effect of the Act is to close the loopholes in Georgia law regarding sexual offenses. The Act adds the offenses of sexual battery and aggravated sexual battery to the list of possible sexual offenses, which previously included only rape, attempted rape, and simple battery. Additionally, the Act redefines assault against persons in custody by including assault against persons who are enrolled in a school. Consequently, felony charges, rather than mere misdemeanor charges, may be brought against a person who commits sexual assault against a student.

K. Lewis

22. 1983 Ga. Laws 721 (formerly found at O.C.G.A. § 16-6-5.1(b) (1988)).

23. SB 602, as introduced, 1990 Ga. Gen. Assem.

24. SB 602 (HFA), 1990 Ga. Gen. Assem.

25. SB 626, as introduced, 1990 Ga. Gen. Assem.

26. Telephone interview with Representative Boyd Pettit, House District No. 19 (Apr. 27, 1990).

27. *Id.*