

# Sex Crimes: Definitions and Penalties Georgia

*Last Updated: March 2020*

## Rape

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Carnal knowledge of:               <ul style="list-style-type: none"> <li>• A female forcibly and against her will; or</li> <li>• A female who is less than 10 years of age.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Defendant will be punished by:               <ul style="list-style-type: none"> <li>• Death; or</li> <li>• Imprisonment for life without parole; or</li> <li>• Imprisonment for life; or</li> <li>• Split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life.</li> </ul> </li> <li>• Any person convicted under this section shall also be subject to the sentencing and punishment provisions of §§ 17-10-6.1, 17-10-7.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Carnal knowledge”</b>: any penetration of the female sex organ by the male sex organ.</li> <li>• <b>Note</b>: The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape. (§ 16-6-1)</li> <li>• <b>Note</b>: When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.</li> </ul>
Statutory citation(s):	Ga. Code Ann. § 16-6-1

## Statutory Rape

Question	Answer
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<p>How is it defined?</p>	<ul style="list-style-type: none"> <li>• <b>Statutory Rape:</b> Engaging in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.</li> <li>• <b>Child Molestation:</b> Defendant commits (or by means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in) any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person</li> <li>• <b>Aggravated Child Molestation:</b> Defendant commits child molestation which act leads to physical injuries to the child or involves an act of sodomy</li> <li>• <b>Enticing a Child for Indecent Purposes:</b> Defendant solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.</li> </ul>
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> <li>• <b>Statutory Rape:</b> <ul style="list-style-type: none"> <li>• Defendant will be punished by imprisonment for not less than one nor more than 20 years.</li> <li>• If defendant is 21 years of age or older, such person will be punished by imprisonment for not less than 10 or more than 20 years.</li> <li>• Any person convicted under this subsection of the offense of statutory rape shall also be subject to sentencing and punishment provisions of 17-10-6.2.</li> <li>• If the victim is at least 14 but less than 16 years of age and the defendant is 18 years of age or younger, and is no more than 4 years older than the victim, defendant will be guilty of a misdemeanor.</li> </ul> </li> <li>• <b>Child Molestation:</b> <ul style="list-style-type: none"> <li>• Defendant will be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of § 17-10-6.2 and 17-10-7.</li> <li>• Upon a second conviction of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of § 17-10-6.2 and 17-10-7.</li> <li>• If the victim is at least 14 but less than 16 years of age and the defendant is 18 years of age or younger, and is no more than 4 years older than the victim, defendant will be guilty of a misdemeanor.</li> </ul> </li> <li>• <b>Aggravated Child Molestation:</b> <ul style="list-style-type: none"> <li>• Defendant will be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of § 17-10-6.1 and 17-10-7.</li> <li>• If the victim is at least 13 but less than 16 and the defendant is 18 or younger and is no more than four years older than the victim, and the basis for the charge of aggravated child molestation involves an act of sodomy, the defendant shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of 17-10-6.1.</li> </ul> </li> <li>• <b>Enticing a child for indecent purposes:</b></li> </ul>

	<ul style="list-style-type: none"> <li>• Defendant shall be punished by imprisonment of not less than 10 nor more than 30 years.</li> <li>• Defendant shall also be subject to the sentencing and punishment provisions of § 17-10-6.2.</li> </ul> <p><b>Note:</b> If the victim is at least 14 but less than 16 years of age and the defendant is 18 years of age or younger and is no more than four years older than the victim, the defendant will be guilty of a misdemeanor and not subject to the sentencing and punishment provisions of § 7-10-6.2.</p>
Anything else I should know?	<ul style="list-style-type: none"> <li>• The following definitions are relevant to this crime:</li> <li>• See Rape for relevant definitions.</li> </ul>
Statutory citation(s):	Ga. Code Ann. §§ 16-6-3, 16-6-4, 16-6-5

## Improper Sexual Contact (Formerly Sexual Assault)

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• 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: <ul style="list-style-type: none"> <li>• Enrolled as a student at a school of which he or she is an employee or agent;</li> <li>• Under probation, parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;</li> <li>• Being detained by or is in the custody of any law enforcement agency of which he or she is an employee or agent;</li> <li>• A patient in or at a hospital for which he or she is an employee or agent;</li> <li>• In the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;</li> <li>• The subject of such employee or agent's actual or purported psychotherapy treatment or counseling; or</li> <li>• Admitted for care at a sensitive care facility of which he or she is an employee or agent.</li> </ul> </li> <li>• An employee or agent 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: <ul style="list-style-type: none"> <li>• Enrolled as a student at a school of which he or she is an employee or agent;</li> <li>• Under probation, parole, accountability court, or pretrial diversion supervision of the office or court of which he or she is an employee or agent;</li> <li>• Being detained by or is in the custody of any law enforcement agency of which he or she is an</li> </ul> </li> </ul>

- employee or agent;
- A patient in or at a hospital for which he or she is an employee or agent;
- In the custody of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services of which he or she is an employee or agent;
- The subject of such employee or agent's actual or purported psychotherapy treatment or counseling; or
- Admitted for care at a sensitive care facility of which he or she is an employee or agent.
- A person who has supervisory or disciplinary authority over another individual and:
  - 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 at the same school; provided, however, that such contact shall not be prohibited when the actor is married to such other individual; or
  - Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of any such probation or parole office; or
  - 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; or
  - 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; or
  - Is an employee or agent of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, or a facility providing child welfare and youth services, who engages in sexual contact with such other individual who the actor knew or should have known is in the custody of such facility.
- 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 treatment or counseling or the actor uses the treatment or counseling relationship to facilitate sexual contact between the actor and such individual.
- A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under § 31-7-3 (hospitals and healthcare facilities), § 31-7-12 (personal care facilities), or § 31-7-12.2 (assisted living communities) or who is required to be licensed pursuant to § 31-7-151 (home health agency) or § 31-7-173 (hospice) 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.

**Note:** Consent of the victim shall not be a defense.

**Note:** This Code section does not apply to sexually explicit conduct or sexual contact between individuals lawfully married to each other.

**Note:** This Code section does not apply to a student who is enrolled at the same school as the victim.

What are the punishments for this crime?

- **First Degree Offense:**
  - Defendant will be punished by imprisonment for not less than one nor more than 25 years or by a fine not to exceed \$100,000, or both.
  - If the victim is under the age of 16 years, defendant will be punished by imprisonment for not less than 25 nor more than 50 years, and shall also be subject to the sentencing and punishment provisions of § 17-10-6.2.
  - If the victim is at least 14 but less than 21 years of age and defendant is 21 years of age or younger, and is no more than 48 months older than the victim, defendant will be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of § 17-10-6.2.
- **Second Degree Offense:**
  - Defendant 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 also be subject to the sentencing and punishment provisions of § 17-10-6.2.

Anything else I should know?

The following definitions are relevant to this crime:

- **“Agent”**: an individual authorized to act on behalf of another, with or without compensation.
- **“Employee”**: an individual who works for salary, wages, or other remuneration for an employer.
- **“Intimate parts”**: the genital area, groin, inner thighs, buttocks, or breasts of a person.
- **“Psychotherapy”**: the professional treatment or counseling of a mental or emotional illness, symptom, or condition.
- **“Sexual contact”**: contact involving the intimate parts of either person for the purpose of sexual gratification of either person.
- **“Sexually explicit conduct”**: actual or simulated:
  - Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
  - Bestiality;
  - Masturbation;
  - Lewd exhibition of the genitals or pubic area of any person;
  - Flagellation or torture by or upon a person who is nude;
  - Condition of being fettered, bound, or otherwise physically restrained on the part of the person who is nude;
  - Physical contact in an act of apparent sexual stimulation or gratification with any person’s unclothed genitals, pubic area, or buttocks or with a female’s nude breasts;
  - Defecation or urination for the purpose of sexual stimulation of the viewer; or
  - Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
- **“School”**: 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.
- **“Sensitive Care Facility”**: any facility licensed or required to be licensed under § 31-7-3 (institutions

	providing clinical services), 31-7-12 (personal care homes), or 31-7-12.2 (assisted living communities) or who is required to be licensed pursuant to § 31-7-151 (home health agency) or 31-7-173 (hospice).
Statutory citation(s):	Ga. Code Ann. § 16-6-5.1

## (Aggravated) Sexual Battery

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Sexual battery occurs when the defendant intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.</li> <li>• Aggravated sexual battery occurs when the defendant intentionally penetrates the sexual organ or anus of another person with a foreign object without the consent of that person.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• <b>Sexual battery:</b> punished as for a misdemeanor of a high and aggravated nature. <ul style="list-style-type: none"> <li>• A person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.</li> <li>• Upon a second or subsequent conviction under subsection (b) of this Code section, a person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years and, in addition, shall be subject to the sentencing and punishment provisions of § 17-10-6.2.</li> </ul> </li> <li>• <b>Aggravated sexual battery:</b> punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of §§ 17-10-6.1, 17-10-7.</li> </ul>
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> <li>• <b>“Intimate parts”:</b> the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.</li> <li>• <b>“Foreign object”:</b> any article or instrument other than the sexual organ of a person.</li> </ul>
Statutory citation(s):	Ga. Code Ann., §§ 16-6-22.1, 16-6-22.2

## Sodomy/Aggravated Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• <b>Sodomy:</b> Performing or submitting to any sexual act involving the sex organs of one person and the mouth or anus of another.</li> <li>• <b>Aggravated Sodomy:</b> Committing sodomy with force and against the will of the other person or the other person is less than 10 years of age.</li> </ul> <p><b>Note:</b> The fact that the person sodomized is the spouse of a defendant is not a defense to a charge of aggravated sodomy.</p> <p><b>Note:</b> Any state that outright prohibits private consensual sodomy between adults violates the Due Process Clause of the Federal Constitution, and is unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003). See also <i>Green v. Georgia</i>, 51 F. Supp. 3d 1304, 1307 (N.D. Ga. 2014) (noting that the United States Supreme Court overruled <i>Bowers v. Hardwick</i>, 478 U.S. 186 (1986) where O.C.G.A. § 16-6-2 had survived an attack). This section has also been held unconstitutional to the extent it criminalizes the performance of private, unforced, non-commercial acts of sexual intimacy between persons legally able to consent, <i>Powell v. State</i>, 270 G. 327, 510 (1998).</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• <b>Sodomy:</b> Defendant will be punished by imprisonment for not less than one nor more than 20 years. Any person convicted under this subsection of the offense of sodomy shall also be subject to sentencing and punishment provisions of § 17-10-6.2.</li> <li>• <b>Aggravated Sodomy:</b> Defendant will be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this subsection of the offense of sodomy shall also be subject to sentencing and punishment provisions of §§ 17-10-6.1 and 17-10-7.</li> <li>• If the victim is at least 13 but less than 16 years of age and defendant is 18 years of age or younger, and is no more than 4 years older than the victim, defendant will be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of § 17-10-6.2.</li> </ul>
Anything else I should know?	When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the victim, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.
Statutory citation(s):	Ga. Code Ann. § 16-6-2