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**By: Chairman, Judicial Proceedings Committee (Departmental - Public Safety and Correctional Services)**

Requested: October 12, 1995

Introduced and read first time: January 10, 1996

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Fourth Degree Sexual Offense - Correctional Facilities and Community**  
3 **Supervision**

4 FOR the purpose of providing that a fourth degree sexual offense includes sexual activity  
5 between an individual who works in a correctional facility or supervises offenders in  
6 the community and someone who is incarcerated or supervised in the community;  
7 defining certain terms; and generally relating to sexual activity between custodial  
8 employees and individuals in custody.

9 BY repealing and reenacting, with amendments,  
10 Article 27 - Crimes and Punishments  
11 Section 461 and 464C  
12 Annotated Code of Maryland  
13 (1992 Replacement Volume and 1995 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 27 - Crimes and Punishments**

17 461.

18 (a) In this subheading, the following words have the meanings indicated.

19 (B) (1) "CUSTODIAL EMPLOYEE" MEANS AN EMPLOYEE OF ANY  
20 GOVERNMENTAL AGENCY OF THE STATE, ANY COUNTY, OR ANY MUNICIPAL  
21 CORPORATION WHICH HAS BY STATUTE, ORDINANCE, OR COURT ORDER THE  
22 RESPONSIBILITY FOR:

23 (I) THE CARE, CONTROL, AND SUPERVISION OF PRETRIAL OR  
24 SENTENCED INMATES IN CORRECTIONAL FACILITIES; OR

25 (II) PERSONS SUPERVISED IN HOME DETENTION, MANDATORY  
26 SUPERVISION RELEASE, PAROLE, OR PROBATION STATUS.

27 (2) "CUSTODIAL EMPLOYEE" INCLUDES:

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1 (I) THE EMPLOYEES OF ANY AGENT OR CONTRACTOR OF A  
2 GOVERNMENTAL AGENCY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION;

3 (II) A CORRECTIONAL ADMINISTRATOR, CORRECTIONAL OFFICER,  
4 CORRECTIONAL SUPERVISOR, CASE MANAGER, HEALTH CARE PROVIDER, OR  
5 SOCIAL WORKER; AND

6 (III) ADMINISTRATIVE AND SUPPORT STAFF.

7 (C) "CUSTODY" MEANS:

8 (1) PRETRIAL INCARCERATION OR HOME DETENTION;

9 (2) INCARCERATION UNDER A SENTENCE TO A STATE OR LOCAL  
10 CORRECTIONAL FACILITY, COMMUNITY ADULT REHABILITATION CENTER, OR  
11 HOME DETENTION; OR

12 (3) SUPERVISED PAROLE, PROBATION, OR MANDATORY SUPERVISION  
13 RELEASE, INCLUDING HOME DETENTION STATUS.

14 [(b)] (D) "Mentally defective" means (1) a victim who suffers from mental  
15 retardation, or (2) a victim who suffers from a mental disorder, either of which  
16 temporarily or permanently renders the victim substantially incapable of appraising the  
17 nature of his or her conduct, or resisting the act of vaginal intercourse, a sexual act, or  
18 sexual contact, or of communicating unwillingness to submit to the act of vaginal  
19 intercourse, a sexual act, or sexual contact.

20 [(c)] (E) "Mentally incapacitated" means a victim who, due to the influence of a  
21 drug, narcotic or intoxicating substance, or due to any act committed upon the victim  
22 without the victim's consent or awareness, is rendered substantially incapable of either  
23 appraising the nature of his or her conduct, or resisting the act of vaginal intercourse, a  
24 sexual act, or sexual contact.

25 [(d)] (F) "Physically helpless" means (1) a victim who is unconscious; or (2) a  
26 victim who does not consent to an act of vaginal intercourse, a sexual act, or sexual  
27 contact, and is physically unable to resist an act of vaginal intercourse, a sexual act, or  
28 sexual contact or communicate unwillingness to submit to an act of vaginal intercourse, a  
29 sexual act, or sexual contact.

30 [(e)] (G) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse,  
31 but does not include vaginal intercourse. Emission of semen is not required. Penetration,  
32 however slight, is evidence of anal intercourse. Sexual act also means the penetration,  
33 however slight, by any object into the genital or anal opening of another person's body if  
34 the penetration can be reasonably construed as being for the purposes of sexual arousal  
35 or gratification or for abuse of either party and if the penetration is not for accepted  
36 medical purposes.

37 [(f)] (H) "Sexual contact" as used in §§ 464B and 464C, means the intentional  
38 touching of any part of the victim's or actor's anal or genital areas or other intimate parts  
39 for the purposes of sexual arousal or gratification or for abuse of either party and includes  
40 the penetration, however slight, by any part of a person's body, other than the penis,  
41 mouth, or tongue, into the genital or anal opening of another person's body if that

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1 penetration can be reasonably construed as being for the purposes of sexual arousal or  
2 gratification or for abuse of either party. It does not include acts commonly expressive of  
3 familial or friendly affection, or acts for accepted medical purposes.

4 [(g)] (I) "Vaginal intercourse" has its ordinary meaning of genital copulation.  
5 Penetration, however slight, is evidence of vaginal intercourse. Emission of semen is not  
6 required.

7 464C.

8 (a) (1) A person is guilty of a sexual offense in the fourth degree if the person  
9 engages:

10 [(1)] (I) In sexual contact with another person against the will and without  
11 the consent of the other person; or

12 [(2)] (II) Except as provided in § [464B(4)] 464B(A)(4) of this subheading,  
13 in a sexual act with another person who is 14 or 15 years of age and the person performing  
14 the sexual act is four or more years older than the other person; or

15 [(3)] (III) Except as provided in § [464B(5)] 464B(A)(5) of this subheading,  
16 in vaginal intercourse with another person who is 14 or 15 years of age and the person  
17 performing the act is four or more years older than the other person.

18 (2) A CUSTODIAL EMPLOYEE IS GUILTY OF A SEXUAL OFFENSE IN THE  
19 FOURTH DEGREE IF THE CUSTODIAL EMPLOYEE ENGAGES IN VAGINAL  
20 INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT WITH AN INDIVIDUAL WHO IS  
21 IN CUSTODY.

22 (b) Any person violating the provisions of this section is guilty of a misdemeanor  
23 and upon conviction is subject to imprisonment for a period of not more than one year, or  
24 a fine of not more than \$1,000, or both fine and imprisonment.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 1996.