

(PRE-FILED)

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

Requested: October 12, 1995

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Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

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CHAPTER ____

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:

2

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

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

5 (2) "CUSTODIAL EMPLOYEE" INCLUDES:

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

8 (II) A CORRECTIONAL ADMINISTRATOR, CORRECTIONAL OFFICER,
9 CORRECTIONAL SUPERVISOR, CASE MANAGER, HEALTH CARE PROVIDER, OR
10 SOCIAL WORKER; AND

11 (III) ADMINISTRATIVE AND SUPPORT STAFF.

12 (C) "CUSTODY" MEANS:

13 (1) PRETRIAL INCARCERATION OR HOME DETENTION;

14 (2) INCARCERATION UNDER A SENTENCE TO A STATE OR LOCAL
15 CORRECTIONAL FACILITY, COMMUNITY ADULT REHABILITATION CENTER, OR
16 HOME DETENTION; OR

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

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

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

30 [(d)] (F) "Physically helpless" means (1) a victim who is unconscious; or (2) a
31 victim who does not consent to an act of vaginal intercourse, a sexual act, or sexual
32 contact, and is physically unable to resist an act of vaginal intercourse, a sexual act, or
33 sexual contact or communicate unwillingness to submit to an act of vaginal intercourse, a
34 sexual act, or sexual contact.

35 [(e)] (G) "Sexual act" means cunnilingus, fellatio, anilingus, or anal intercourse,
36 but does not include vaginal intercourse. Emission of semen is not required. Penetration,
37 however slight, is evidence of anal intercourse. Sexual act also means the penetration,
38 however slight, by any object into the genital or anal opening of another person's body if
39 the penetration can be reasonably construed as being for the purposes of sexual arousal

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1 or gratification or for abuse of either party and if the penetration is not for accepted
2 medical purposes.

3 [(f)] (H) "Sexual contact" as used in §§ 464B and 464C, means the intentional
4 touching of any part of the victim's or actor's anal or genital areas or other intimate parts
5 for the purposes of sexual arousal or gratification or for abuse of either party and includes
6 the penetration, however slight, by any part of a person's body, other than the penis,
7 mouth, or tongue, into the genital or anal opening of another person's body if that
8 penetration can be reasonably construed as being for the purposes of sexual arousal or
9 gratification or for abuse of either party. It does not include acts commonly expressive of
10 familial or friendly affection, or acts for accepted medical purposes.

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

14 464C.

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

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

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

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

25 (2) A CUSTODIAL EMPLOYEE IS GUILTY OF A SEXUAL OFFENSE IN THE
26 FOURTH DEGREE IF THE CUSTODIAL EMPLOYEE ENGAGES IN VAGINAL
27 INTERCOURSE, A SEXUAL ACT, OR SEXUAL CONTACT WITH AN INDIVIDUAL WHO IS
28 IN CUSTODY.

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

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

