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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 169

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SEXUAL OFFENSES AND SEXUAL RELATIONS IN A DETENTION FACILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subpart D, Subchapter II, Chapter 5, Title 11 of the Delaware Code by making deletions as
2 shown by strike through and insertions as shown by underline as follows:

3 § 769A. Sexual intercourse or penetration with a person in custody; class F felony.

4 (a) It is unlawful for a law-enforcement officer, an employee working at a detention facility, a contractor or
5 employee of a contractor working at a detention facility, or a volunteer working at a detention facility to engage in sexual
6 intercourse or penetration with a person who is in custody, as defined in § 1258 of this title.

7 (b) Subsection (a) of this section does not apply to a licensed medical doctor or nurse when the contact occurs for
8 the purpose of diagnosis or treatment or to a law enforcement officer who is lawfully performing job duties.

9 (c) Consent of the person in custody is not a defense to an act in violation of subsection (a) of this section.

10 (d) A violation of subsection (a) of this section is a class F felony.

11 § 769B. Unlawful sexual contact with a person in custody; class G felony.

12 (a) It is unlawful for a law-enforcement officer, an employee working at a detention facility, a contractor or
13 employee of a contractor working at a detention facility, or a volunteer working at a detention facility to intentionally have
14 sexual contact with a person in custody, as defined in § 1258 of this title,

15 (b) Subsection (a) of this section does not apply to a licensed medical doctor or nurse when the contact occurs for
16 the purpose of diagnosis or treatment or to a law enforcement officer who is lawfully performing job duties.

17 (c) Consent of the person in custody is not a defense to an act in violation of subsection (a) of this section.

18 (d) A violation of subsection (a) of this section is a class G felony.

19 Section 2. Amend § 1259, Title 11 of the Delaware Code by making deletions as shown by strike through and
20 insertions as shown by underline as follows:

21 § 1259. ~~Sexual relations in detention facility; class G felony. [Reserved.]~~

22 ~~A person is guilty of sexual relations in a detention facility when, being an employee working at a detention~~
23 ~~facility, a contractor or employee of a contractor at a detention facility, or a volunteer at a detention facility, the person~~
24 ~~engages in consensual sexual intercourse or sexual penetration with a person in custody on the premises of a detention~~
25 ~~facility.~~

SYNOPSIS

This Act modernizes the language of the crime of sexual relations in a detention facility and adds a prohibition on any sexual activity between law-enforcement personnel and persons in custody. The new statutes are different from the one being replaced as follows:

1. The crimes are located in the subpart relating to sexual offenses instead of the subchapter relating to crimes against public administration.
2. The crimes apply to law-enforcement officers in addition to employees, contractors, and volunteers at a detention facility.
3. Sexual contact is prohibited, in addition to sexual intercourse and sexual penetration.
4. States clearly that consent is not a defense.
5. Medical treatment and lawful searches are specifically excluded from the crimes.
6. The penalty for the crime of sexual intercourse or penetration with a person in custody is increased to a class F felony from a class G felony.
7. The penalty for the new crime of unlawful sexual contact with a person in custody is a class G felony.

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