**A** **BILL**

TO AMEND SECTION 44‑23‑1150, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING IN PART TO SEXUAL MISCONDUCT WITH INMATES OR OFFENDERS, SO AS TO ADD AN ARRESTING OR CUSTODIAL LAW ENFORCEMENT OFFICER AS AN “ACTOR” AND A PERSON ARRESTED OR WITHIN POLICE CUSTODY AS A “VICTIM” INCAPABLE OF CONSENTING TO SEXUAL INTERCOURSE OR SEXUAL CONTACT WITH AN ACTOR, AND TO MAKE SEXUAL CONDUCT BETWEEN SUCH ACTORS AND VICTIMS A CRIMINAL OFFENSE.

Whereas, since 2006, at least 158 law enforcement officers in the State of South Carolina have been charged with sexual assault, sexual battery, or unlawful sexual contact with a person in custody, and of these, 26 have been acquitted based on a defense of consent. Many others were either never charged or had the charges dropped; and

Whereas, since 2010, at least ten South Carolina law enforcement officers have resigned or been terminated in connection with allegations of sexual misconduct against persons in their custody, including allegations of sexual misconduct against suspects, victims, and minors; and

Whereas, South Carolina statutory law prohibits sexual conduct between law enforcement officers and inmates, patients, and offenders; however, such conduct with persons arrested or in custody is not expressly prohibited, which places those individuals at risk of sexual assault and other misconduct by arresting and custodial law enforcement officers; and

Whereas, other states, including Kansas, Louisiana, Maryland, and New York, have addressed a similar legislative loophole, by enacting bipartisan-supported legislation, providing that individuals in the custody of law enforcement are not capable of consenting to sexual intercourse or sexual contact with law enforcement officers; and

Whereas, the General Assembly, by this act, intends to ensure that crime victims and suspects are afforded the same protections against sexual misconduct as are inmates, patients, and offenders. Now, therefore:

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑23‑1150(A) and (B) of the 1976 Code is amended to read:

“(A) As used in this section:

(1) ‘Actor’ means:

(a) an employee, volunteer, agent, or contractor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility~~.~~;

(b) ~~Actor includes individuals who supervise~~ an individual who supervises inmate labor details outside of an institution or who ~~have~~ has supervisory responsibility for offenders on parole, probation, or other community supervision programs;

(c) a police officer or other law enforcement official who either:

(i) arrests a person, or otherwise takes a person into custody, or is responsible for maintaining a person in actual custody; or

(ii) knows or reasonably should know that a person is under arrest or otherwise in actual custody.

(2) ‘Victim’ means:

(a) an inmate or patient who is confined in or lawfully or unlawfully absent from a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs; or

(b) a person who is under arrest or otherwise in the actual custody of a police officer or other law enforcement official.

A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

(B) An actor is guilty of sexual misconduct when the actor, knowing that the victim is an inmate, offender, or patient, or person under arrest or otherwise in actual custody, voluntarily engages with the victim in an act of sexual intercourse, whether vaginal, oral, or anal, or other sexual contact for the purpose of sexual gratification.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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