

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 735

(Senator Lam, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law – Sodomy – Repeal

This bill (1) repeals the crime of sodomy under § 3-321 Criminal Law Article; (2) makes conforming and technical changes due to the repeal; (3) prohibits the expungement of a conviction for sodomy, as the offense existed prior to the bill's effective date, under specified circumstances; and (4) clarifies that evidence of a witness's conviction for sodomy as it existed prior to October 1, 2020, is not admissible as evidence to prove a witness's conviction of an infamous crime.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law/Bill Summary: Under § 3-321 of the Criminal Law Article, a person is prohibited from committing the act of sodomy. A violator is guilty of a felony and subject to imprisonment for up to 10 years.

Sexual Molestation or Exploitation, Sexual Abuse, and Sexual Activity

Under certain statutes, "sexual molestation or exploitation" and "sexual abuse" include sodomy. The bill removes sodomy from these definitions. The bill also removes sodomy from the definition of "sexual activity" under the State's revenge porn statute.

Expungements

Subject to specified requirements and criteria, a person who has been convicted of a crime and the act on which the conviction was based is no longer a crime is eligible to file a petition for expungement of a police record, court record, or other record related to the conviction.

Although the bill repeals the crime of sodomy, the bill specifically prohibits expungement of a conviction for sodomy, as the offense existed prior to October 1, 2020, if the act was committed:

- without consent;
- with a minor younger than age 16;
- with anyone the individual could not marry under State law (*e.g.*, parent, child, or sibling);
- with a mentally incapacitated individual; or
- with a substantially cognitively impaired individual.

Sex Offender Registry

The bill clarifies that a person who has been convicted of sodomy, as the offense existed prior to October 1, 2020, is a Tier III sex offender if the offense was committed with force or threat of force.

Background: In a 1998 decision, the Circuit Court for Baltimore City held that State laws prohibiting sodomy and unnatural or perverted sexual practices do not apply to noncommercial, consensual private sexual activity between adults, regardless of whether the activity is heterosexual or homosexual. *Williams v. State*, 1998 Extra LEXIS 260 (Md. Cir. Ct. 1998). The consent order entered into pursuant to that decision enjoined the State and Anne Arundel County from enforcing the sodomy and unnatural or perverted sexual practices in these instances.

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court held that a Texas statute prohibiting certain intimate sexual conduct between two individuals of the same sex violated the constitutional right to liberty under the Due Process Clause.

The Judiciary advises that in fiscal 2019, 97 violations (53 District Court and 44 circuit court) were filed in the courts under § 3-321 of the Criminal Law Article. According to the Maryland State Commission on Criminal Sentencing Policy, four individuals were sentenced on five counts of sodomy in the State's circuit courts during fiscal 2019.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 81 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; American Civil Liberties Union, Williams Institute (UCLA School of Law); Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2020
rh/aad Third Reader - March 16, 2020
Revised - Amendment(s) - March 16, 2020

Analysis by: Donovan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510