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The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401
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Testimony of FreeState Justice

IN SUPPORT OF SB0054: Criminal Law – Unnatural or Perverted Sexual Practice – Repeal

To the Honorable William C. Smith Jr., Vice Chair Jeff Waldstreicher, and the esteemed committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ+) civil rights advocacy organization. We provide free legal services each year to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise afford an attorney, and we advocate more broadly on behalf of the LGBTQ+ community.

We write today in support of Senate Bill 54, which would repeal Criminal Law § 3-322, Maryland's outdated, dehumanizing, and largely unconstitutional law prohibiting "unnatural or perverted sexual practices." Like the state's now-repealed, closely-related sodomy law, § 3-322 is built on a foundation of animus against homosexuals but goes substantially further, likening oral sex—which surveys demonstrate is practiced by upwards of 80% of adults—to bestiality. In so doing, § 3-322 undercuts the bodily autonomy of all adult Marylanders, whether LGBTQ+ or not.

Under § 3-322(a):

A person may not:

- (1) take the sexual organ of another or of an animal in the person's mouth;*
- (2) place the person's sexual organ in the mouth of another or of an animal; or*
- (3) commit another unnatural or perverted sexual practice with another or with an animal.*

Violation of § 3-322 is punishable by up to 10 years imprisonment and a fine of up to \$1,000.

Section 3-322 is closely related to Maryland's former statute criminalizing sodomy, which the General Assembly repealed in 2020. Before the sodomy statute's repeal, it was codified immediately before § 3-322 at § 3-321. Given the lack of specificity of § 3-321—which read *en toto* "A person who is convicted of sodomy is guilty of a felony and is subject to imprisonment not exceeding 10 years"—§ 3-322 could reasonably be read as clarifying the fact that Maryland's sodomy laws covered more than simply anal sex. On its face, § 3-322 is primarily concerned with individuals performing or receiving oral sex, which the section implicitly refers to as an "unnatural or perverted sexual practice." Yet, according to multiple public surveys, more than 80% of adults in the United States have performed or received oral sex, with over 70% of older generations reporting partaking in oral sex. It is hard to believe that something practiced by a large majority of people of retirement age is an "unnatural or perverted sexual practice."

Indeed, court decisions since the 1990s at both the state and federal level have made it clear that § 3-322 is unconstitutional and unenforceable because it infringes upon the privacy and bodily autonomy of Marylanders. While Maryland's law and policies have shifted dramatically over the decades, § 3-322 remains a relic of an earlier time when institutionalized homophobia and the policing of the marital bedroom was written into the state's criminal code.

Two years ago, this committee passed a favorable report on HB81, which would have repealed § 3-322 as part of the broader repeal of Maryland's sodomy laws. The full House subsequently passed HB81 with a vote of 133 to 5. Unfortunately, the time since the repeal of § 3-321 have made clear that § 3-322 must also be repealed. Two years ago, criminal charges were brought against four men in Harford County who were engaged in consensual sexual acts in private. Even if those acts may have been unlawful for other reasons, there is no reason to believe that they were "unnatural or perverted sexual practices," and, indeed, the state's attorney ultimately opted not to proceed with prosecution. The mere fact that they were arrested, booked, detained, and had their arrests publicized—in 2021—demonstrates that it is well past time that the General Assembly repeal § 3-322. And in the wake of the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*, where Justice Thomas plainly stated in his concurrence that he would be willing to overturn the federal caselaw that establishes LGBTQ+ persons' rights to marriage and private intimacy, the need to remove § 3-322 for the protection of Marylanders' bodily autonomy and privacy only grows clearer.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 54.

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