

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1491
Judiciary

(Delegate Conaway)

Criminal Law - Prohibited Sexual Acts - Exclusion for Private Consensual
Noncommercial Adult Sexual Activity

This bill prohibits a person from being charged with sodomy or unnatural or perverted sexual practice for a noncommercial act that took place between consenting adults in private.

Fiscal Summary

State Effect: None. The bill codifies current practice.

Local Effect: None. The bill codifies current practice.

Small Business Effect: None.

Analysis

Current Law: A person convicted of sodomy is guilty of a felony and is subject to a maximum penalty of imprisonment for 10 years.

The unnatural or perverted sexual practice statute prohibits (1) oral sex and related acts involving animals; or (2) the commission of another unnatural or perverted sexual practice with a person or an animal. Violators are guilty of a misdemeanor, punishable by up to 10-years imprisonment and/or a \$1,000 fine.

Background: In *Schochet v. State*, 320 Md. 714 (1990), the Maryland Court of Appeals held that the unnatural or perverted sexual practice statute could not be enforced against noncommercial activity between consenting heterosexual adults in private. 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 United States 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.

According to the Maryland State Commission on Criminal Sentencing Policy, there were four convictions for sodomy and two convictions for unnatural or perverted sexual practice in circuit courts in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, American Civil Liberties Union, Williams Institute (UCLA School of Law), Department of Legislative Services

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mlm/kdm

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