

SENATE BILL 735

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0lr1222
CF HB 81

By: **Senators Lam, Lee, Carter, Feldman, and Guzzone**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Sodomy ~~and Unnatural or Perverted Sexual Practice~~ – Repeal**

3 FOR the purpose of repealing the ~~crimes~~ crime of sodomy ~~and unnatural or perverted~~
4 ~~sexual practice~~; making conforming changes; clarifying that certain evidence is not
5 admissible as an infamous crime; providing that a certain conviction may not be
6 expunged under certain circumstances; and generally relating to sexual crimes.

7 BY repealing and reenacting, with amendments,

8 Article – Courts and Judicial Proceedings

9 Section 3–801(aa) and 10–905(a)(1)

10 Annotated Code of Maryland

11 (2013 Replacement Volume and 2019 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article – Criminal Law

14 Section 2–201(a)(4), 3–602(a)(4)(ii), 3–604(a)(9)(ii), and 3–809(a)(5)

15 Annotated Code of Maryland

16 (2012 Replacement Volume and 2019 Supplement)

17 BY repealing

18 Article – Criminal Law

19 Section 3–321 ~~and 3–322~~

20 Annotated Code of Maryland

21 (2012 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



- 1 BY adding to
2 Article – Criminal Law
3 Section 3–321
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2019 Supplement)
- 6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 10–105(a)(11) and (a–1), 11–701(q)(1), and 11–1007(a)(6)(ii)
9 Annotated Code of Maryland
10 (2018 Replacement Volume and 2019 Supplement)
- 11 BY adding to
12 Article – Criminal Procedure
13 Section 10–105(a–1)
14 Annotated Code of Maryland
15 (2018 Replacement Volume and 2019 Supplement)
- 16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 5–701(z)
19 Annotated Code of Maryland
20 (2019 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Courts and Judicial Proceedings**

24 3–801.

25 (aa) “Sexual molestation or exploitation” includes:

26 (1) Allowing or encouraging a child to engage in:

27 (i) Obscene photography, films, poses, or similar activity;

28 (ii) Pornographic photography, films, poses, or similar activity; or

29 (iii) Prostitution;

30 (2) Incest;

31 (3) Rape;

32 (4) Sexual offense in any degree; **AND**

1 (xi) sodomy AS THAT CRIME EXISTED BEFORE OCTOBER 1, 2020;
2 or

3 (xii) a violation of § 4-503 of this article concerning destructive
4 devices.

5 [3-321.

6 A person who is convicted of sodomy is guilty of a felony and is subject to
7 imprisonment not exceeding 10 years.]

8 **3-321.**

9 **THE COMMON LAW CRIME OF SODOMY HAS BEEN REPEALED.**

10 ~~[3-322.~~

11 ~~(a) A person may not:~~

12 ~~(1) take the sexual organ of another or of an animal in the person's mouth;~~

13 ~~(2) place the person's sexual organ in the mouth of another or of an animal;~~
14 ~~or~~

15 ~~(3) commit another unnatural or perverted sexual practice with another or~~
16 ~~with an animal.~~

17 ~~(b) A person who violates this section is guilty of a misdemeanor and on conviction~~
18 ~~is subject to imprisonment not exceeding 10 years or a fine not exceeding \$1,000 or both.~~

19 ~~(c) A person who violates this section is subject to § 5-106(b) of the Courts Article.~~

20 ~~(d) An indictment for a violation of this section:~~

21 ~~(1) is sufficient if it states that the defendant committed an unnatural and~~
22 ~~perverted sexual practice with a person or animal as applicable; but~~

23 ~~(2) need not state the particular:~~

24 ~~(i) unnatural or perverted sexual practice with which the defendant~~
25 ~~is charged; or~~

26 ~~(ii) manner in which the defendant committed the unnatural or~~
27 ~~perverted sexual practice.]~~

28 3-602.

1 (a) (4) (ii) “Sexual abuse” includes:

- 2 1. incest;
- 3 2. rape;
- 4 3. sexual offense in any degree; AND
- 5 4. ~~sodomy; and~~

6 ~~5. unnatural or perverted sexual practices; ANY OTHER~~
 7 ~~SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

8 3-604.

9 (a) (9) (ii) “Sexual abuse” includes:

- 10 1. incest;
- 11 2. rape;
- 12 3. sexual offense in any degree; AND
- 13 4. ~~sodomy; and~~

14 ~~5. unnatural or perverted sexual practices; ANY OTHER~~
 15 ~~SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

16 3-809.

17 (a) (5) “Sexual activity” means:

18 (i) sexual intercourse, including genital-genital, oral-genital,
 19 anal-genital, or oral-anal, whether between persons of the same or opposite sex;

20 ~~[(ii) sodomy under § 3-321 of this title or an unnatural or perverted~~
 21 ~~sexual practice under § 3-322 of this title;]~~

22 ~~[(iii)] ~~(H)~~ masturbation; or~~

23 ~~[(iv)] ~~(H)~~ sadomasochistic abuse.~~

24 **Article – Criminal Procedure**

25 10-105.

1 (a) A person who has been charged with the commission of a crime, including a
 2 violation of the Transportation Article for which a term of imprisonment may be imposed,
 3 or who has been charged with a civil offense or infraction, except a juvenile offense, may
 4 file a petition listing relevant facts for expungement of a police record, court record, or other
 5 record maintained by the State or a political subdivision of the State if:

6 (11) **EXCEPT AS PROVIDED IN SUBSECTION (A-1) OF THIS SECTION**, the
 7 person was convicted of a crime and the act on which the conviction was based is no longer
 8 a crime; or

9 **(A-1) AN EXPUNGEMENT MAY NOT BE OBTAINED UNDER SUBSECTION (A)(11)**
 10 **OF THIS SECTION FOR A CONVICTION FOR SODOMY OR UNNATURAL OR PERVERTED**
 11 **PRACTICE, AS THOSE OFFENSES AS THAT OFFENSE EXISTED BEFORE OCTOBER 1,**
 12 **2020, WHERE THE OFFENSE WAS COMMITTED:**

13 (1) **WITHOUT CONSENT;**

14 (2) **WITH A MINOR UNDER THE AGE OF 16;**

15 (3) **WITH ANYONE THE INDIVIDUAL COULD NOT MARRY UNDER §**
 16 **2-202 OF THE FAMILY LAW ARTICLE; OR**

17 (4) **WITH A MENTALLY INCAPACITATED INDIVIDUAL, AS DEFINED IN §**
 18 **3-301 OF THE CRIMINAL LAW ARTICLE;**

19 (5) **WITH A PHYSICALLY HELPLESS INDIVIDUAL, AS DEFINED IN §**
 20 **3-301 OF THE CRIMINAL LAW ARTICLE; OR**

21 (6) **WITH A SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL, AS**
 22 **DEFINED IN § 3-301 OF THE CRIMINAL LAW ARTICLE.**

23 [(a-1)] (A-2) A person's attorney or personal representative may file a
 24 petition, on behalf of the person, for expungement under this section if the person died
 25 before disposition of the charge by nolle prosequi or dismissal.

26 11-701.

27 (q) "Tier III sex offender" means a person who has been convicted of:

28 (1) conspiring to commit, attempting to commit, or committing a violation
 29 of:

30 (i) § 2-201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

1 (ii) § 3-303, § 3-304, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311,
2 § 3-312, § 3-315, § 3-323, or § 3-602 of the Criminal Law Article;

3 (iii) § 3-502 of the Criminal Law Article, if the victim is a minor;

4 (iv) § 3-502 of the Criminal Law Article, if the victim is an adult, and
5 the person has been ordered by the court to register under this subtitle;

6 (v) the common law offense of sodomy, AS THAT OFFENSE EXISTED
7 BEFORE OCTOBER 1, 2020, or § 3-322 of the Criminal Law Article ~~AS THOSE OFFENSES~~
8 ~~EXISTED BEFORE OCTOBER 1, 2020~~, if the offense was committed with force or threat of
9 force; or

10 (vi) § 3-305 or § 3-306 of the Criminal Law Article as the sections
11 existed before October 1, 2017;

12 11-1007.

13 (a) (6) (ii) “Sexual abuse” includes~~f~~:

14 1.~~f~~ incest, rape, or sexual offense in any degree~~f~~; AND

15 2. ~~sodomy; and~~

16 ~~3.~~ unnatural or perverted sexual practices~~f~~.

17 Article – Family Law

18 5-701.

19 (z) “Sexual molestation or exploitation” includes:

20 (1) allowing or encouraging a child to engage in:

21 (i) obscene photography, films, poses, or similar activity;

22 (ii) pornographic photography, films, poses, or similar activity; or

23 (iii) prostitution;

24 (2) incest;

25 (3) rape;

26 (4) sexual offense in any degree; **AND**

1 (5) ~~[sodomy; and~~
 2 ~~(6) unnatural or perverted sexual practices]~~ ~~ANY OTHER SEXUAL~~
 3 ~~CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 5 October 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.