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Howard County Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Support SB 735:

Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal

The Issue:

- Maryland's common law and criminal code provisions prohibit some sexual activities that are consensual, private, and not commercial in nature, specifically:
 - The common law offense and related provision prohibiting "sodomy" (Section 3-321)
 - The provision that outlaws sexual activities termed "unnatural and perverted sexual practices." (Section 3-322)
- The term "sodomy" is not actually defined in the code, since it migrated to the code from the common law.
- Over the past few decades, these provisions have been ruled by the courts to be unconstitutional or otherwise unenforceable except in cases involving a lack of consent or force.
- Despite this, the code still says these acts are punishable by up to 10 years in prison.
- The language and provisions in these laws:
 - Imply same-sex attraction, relationships, and sexual behavior are "unnatural and perverted," showing a lack of respect, support, and equality for the LGBTQ+ community.
 - Criminalize common consensual sexual activity conducted in private.

Background:

- The term sodomy comes from the biblical city of Sodom, which was said to have been destroyed by God because of its citizens "evil practices."
- Henry VIII made sodomy a crime in England, punishable by "burning at the stake, hanging, drowning, or being buried alive."
- Sodomy has historically been applied and enforced inconsistently, and in a discriminatory manner, frequently against minority groups, for sexual behavior deemed immoral or wrong.
- In 2003, the United States Supreme Court overturned state sodomy laws criminalizing sexual activity between same-sex partners, indicating such laws were unconstitutional. (*Lawrence v. Texas*, 539 U.S. 558, 2003)
- Then in 1990, the Maryland Court of Appeals ruled that "unnatural and perverted sexual practices" did not include consensual, noncommercial, heterosexual activity between adults in the privacy of the home." (*Schochet v. State*, 320 Md. 714, 1990)

What Does SB 735 Do?

- The purpose of SB 735 is to repeal outdated, duplicative, and poorly defined sex offense laws in the Maryland code.
- SB 735 repeals the common law offense and related provision prohibiting the sex offense of “sodomy.” (Section 3-321)
- SB 735 repeals the provision that outlaws sexual activities termed “unnatural and perverted sexual practices.” (Section 3-322)
 - Mostly this section prohibits consensual and non-commercial oral sex.
 - It also contains outdated prohibitions pertaining to sexual abuse of animals, which were updated and expanded in the Aggravated Cruelty to Animals section of the code last year. (Section 10-606)
- SB 735 contains additional changes to ensure that individuals previously convicted using the sections being repealed, who committed non-consensual acts, or used force, will not be permitted to expunge those convictions. They will also not be allowed to remove themselves from the sex offender registry in these cases.
- The other changes requested in the bill simply remove the reference to sodomy from the definition of sexual exploitation or offense and replace it with more appropriate language once the statutes are repealed.

Why is SB 735 needed?

- These provisions have become progressively obsolete as other parts of the code have been updated to more appropriately define and address sex offenses. *(See attachment for a comprehensive list of current valid laws available to prosecute sex offenses in the code.)*
- Obsolete and duplicative code should be removed to maintain the integrity, effectiveness, and proper enforcement of the laws.
- The sodomy and unnatural and perverted sexual practices provisions are offensive to the LGBTQ+ community.
- Maryland code should reflect the evolving needs, beliefs, and values of Maryland citizens over time.
- SB 735 will ensure that our sex offense laws do not discriminate against members of the LGBTQ+ community or criminalize common consensual sexual activity conducted in private. *(See attached data from the National Health Statistics Reports pertaining to sexual behavior.)*

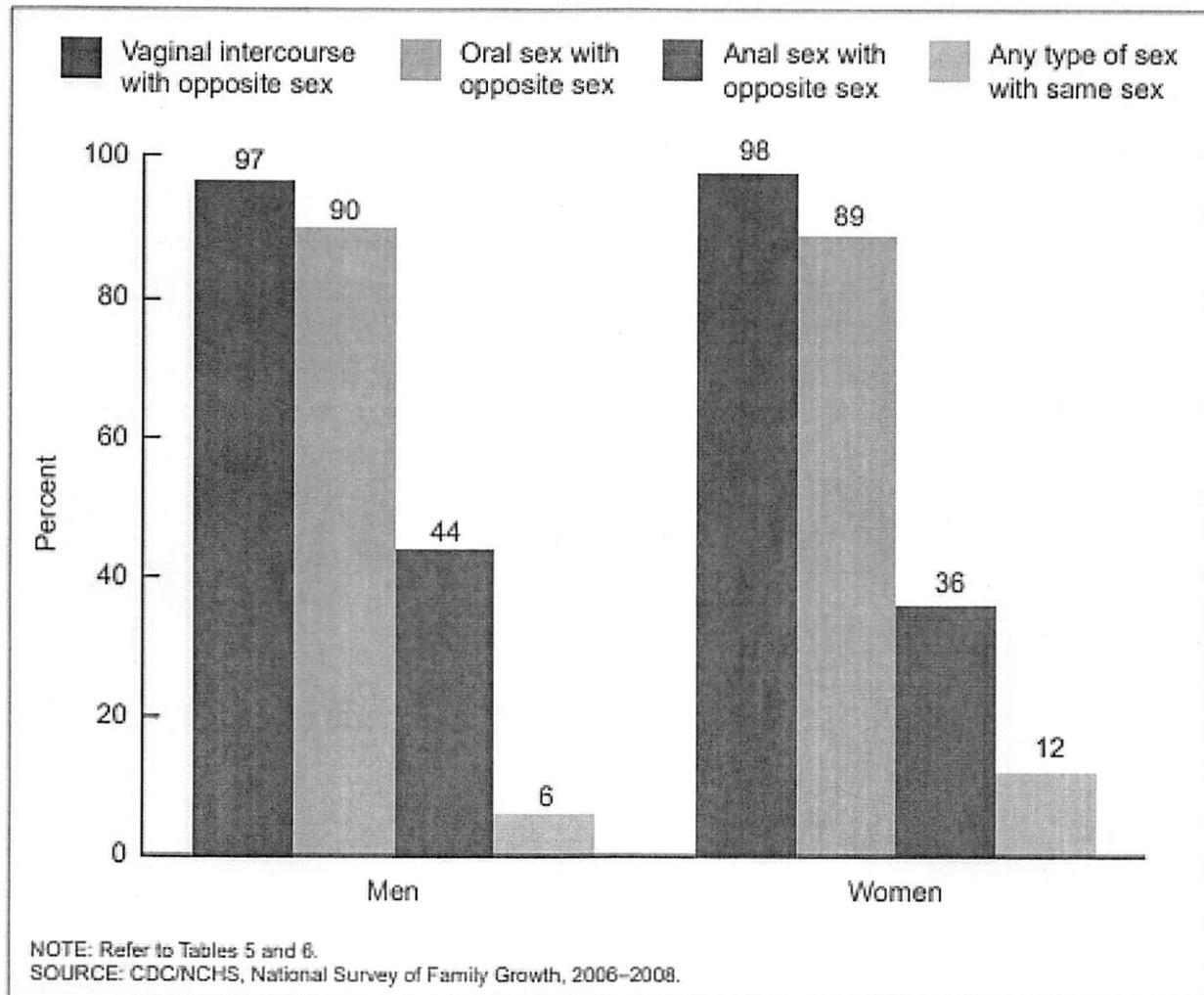


Figure 1. Sexual behavior in lifetime among men and women aged 25-44 years: United States, 2006-2008

ADDITIONAL INFORMATION

Criminal Law 10-606: Aggravated Cruelty to Animals - in General

(a)(1) In this section, "sexual contact with an animal" means any act:

(i) involving:

1. a person touching the sex organ or anus of an animal;

2. contact between:

A. the sex organ or anus of a person and the mouth, sex organ, or anus of an animal; or

B. the sex organ or anus of an animal, and the mouth, sex organ, or anus of a person; or

3. insertion of:

A. any part of the body of a person into the opening of the vagina or anus of an animal;

B. any part of an animal's body into the opening of the vagina or anus of a person; or

C. any object into the opening of the vagina or anus of an animal; and

(ii) committed for the purpose of sexual arousal, sexual gratification, abuse, or financial gain.

(b) A person may not: (1) intentionally: (v) engage in sexual contact with an animal;

(c)(1) A person who violates this section is guilty of the felony of aggravated cruelty to animals and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

Criminal Law 3-301: Definitions

(d)(1) "Sexual act" means any of the following acts, regardless of whether semen is emitted:

(i) anilingus;

(ii) cunnilingus;

(iii) fellatio;

(iv) anal intercourse, including penetration, however slight, of the anus; or

(v) an act:

1. in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and

2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(e)(1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.

(g)(1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted.

(2) "Vaginal intercourse" includes penetration, however slight, of the vagina.

Criminal Law 3-303: Rape in the First Degree

(a) A person may not: (1)(i) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; or

(ii) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and

(2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;

(iv) commit the crime while aided and abetted by another; or

(v) commit the crime in connection with a burglary in the first, second, or third degree.

(b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

(c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.

(d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life.

(2) A person who violates subsection (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section, or § 3-305 of this subtitle as it existed before October 1, 2017.

(4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.

(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.

Criminal Law 3-304: Rape in the Second Degree

(a) A person may not engage in vaginal intercourse or a sexual act with another:

(1) by force, or the threat of force, without the consent of the other;

(2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or

(3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.

(b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment not exceeding 20 years.

(2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.

(ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

Criminal Law 3-307: Sexual Offense in the third degree

(a) A person may not: (1)(i) engage in sexual contact with another without the consent of the other; and

(ii) 1. employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or

4. commit the crime while aided and abetted by another;

(2) engage in sexual contact with another if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act

knows or reasonably should know the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual;

(3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;

(4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or

(5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

(b) A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment not exceeding 10 years.

3-308 Sexual offense in the fourth degree

(a) In this section, "person in a position of authority":

(1) means a person who:

(i) is at least 21 years old;

(ii) is employed by or under contract with a public or private preschool, elementary school, or secondary school; and

(iii) because of the person's position or occupation, exercises supervision over a minor who attends the school; and

(2) includes a principal, vice principal, teacher, coach, or school counselor at a public or private preschool, elementary school, or secondary school.

(b) A person may not engage in: (1) sexual contact with another without the consent of the other;

(2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or

(3) except as provided in § 3-307(a)(5) of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.

(c)(1) Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2) of this section, a person in a position of authority may not engage in a sexual act or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a student enrolled at a school where the person in a position of authority is employed.

(2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor who, at the time of the vaginal intercourse, is a student enrolled at a school where the person in a position of authority is employed.

(d)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the misdemeanor of sexual offense in the fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

(2)(i) On conviction of a violation of this section, a person who has been convicted on a prior occasion not arising from the same incident of a violation of § 3-303, § 3-304, §§ 3-307 through 3-310 of this subtitle, § 3-311 or § 3-312 of this subtitle as the sections existed before October 1, 2017, § 3-315 of this subtitle, or § 3-602 of this title is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

Criminal Law 3-319.1: Evidence of physical resistance not required

(a) Evidence of physical resistance by the victim is not required to prove that a crime under this subtitle was committed.

Criminal Law 3-324: Sexual solicitation of a minor

(b) A person may not, with the intent to commit a violation of § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

(d) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both.

Criminal Law 3-602: Sexual abuse of a minor

(a)(1) In this section the following words have the meanings indicated.

(ii) "Sexual abuse" includes:

1. incest;
2. rape;
3. sexual offense in any degree;
4. sodomy; and
5. unnatural or perverted sexual practices.

(b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.

(2) A household member or family member may not cause sexual abuse to a minor.

(c) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.

Criminal Law 3-709: Sextortion prohibited

(b) A person may not cause another to: (1) engage in an act of sexual activity by threatening to:

(i) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute;

- (ii) cause physical injury to a person;
 - (iii) inflict emotional distress on a person;
 - (iv) cause economic damage to a person; or
 - (v) cause damage to the property of a person; or
- (2) engage as a subject in the production of a visual representation or performance that depicts the other with the other's intimate parts exposed or engaging in or simulating an act of sexual activity by threatening to:
- (i) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute;
 - (ii) cause physical injury to a person;
 - (iii) inflict emotional distress on a person;
 - (iv) cause economic damage to a person; or
 - (v) cause damage to the property of a person.

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

Criminal Law 11-303: Human trafficking

(a) A person may not knowingly:

- (1) engage in prostitution or assignation by any means; or
- (2) occupy a building, structure, or conveyance for prostitution or assignation.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

Criminal Law 11-304: Receiving earnings of prostitute

(a) A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:

- (1) promote a crime under this subtitle;
- (2) profit from a crime under this subtitle; or
- (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.

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

Criminal Law 11-305: Receiving earnings of prostitute

(a) For the purpose of committing a crime under Title 3, Subtitle 3 of this article, a person may not:

- (1) persuade or entice or aid in the persuasion or enticement of an individual under the age of 16 years from the individual's home or from the custody of the individual's parent or guardian; and

(2) knowingly secrete or harbor or aid in the secreting or harboring of the individual who has been persuaded or enticed in the manner described in item (1) of this subsection.

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding \$5,000 or both.

(c) It is not a defense to prosecution under this section that the person did not know the age of the victim.

Criminal Law 11-305: Receiving earnings of prostitute

(a) A person may not knowingly procure or solicit or offer to procure or solicit prostitution or assignation.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.