

PFLAG_Mark Eckstein_FAV_SB0735

Uploaded by: Eckstein, Mark

Position: FAV



SB-735: Written Testimony - SUPPORT

February 20, 2020

Dear Chair Smith, Vice-Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

We are writing on behalf of PFLAG-MetroDC in **support of SB735**, which would repeal the crimes of sodomy and unnatural or perverted sexual practice in the state of Maryland.

In 2003, the Supreme Court ruled in *Lawrence v. Texas* that private sexual acts are protected under the due process clause of the Constitution. Therefore, any laws deeming sodomy illegal should coincide with this ruling and be repealed.

Anti-sodomy laws have been put in place to discriminate and criminalize people in the LGBTQ+ community. It is time for Maryland to join the 37 other states that have repealed anti-sodomy laws and protect the rights of consenting adults to have privacy in their own homes.

We believe that together, we can achieve equality for all.

We urge a **Favorable Report on SB735**.

Thank you,

Nicolle Campa She | Her | Hers
Metro DC PFLAG
Board President

Mark Eckstein He | Him | His
Metro DC PFLAG
MD Advocacy Chair

www.pflagdc.org - Keeping Families Together!

Secular Coalition MD_Mathew Goldstein_FAV_SB0735

Uploaded by: Goldstein, Mathew

Position: FAV



[Secular Coalition for Maryland](http://secular.org) Secular Coalition for
America <http://secular.org>

February 20, 2020

The Honorable William C. Smith, Jr.

Judicial Proceedings Committee

2 East, Miller Senate Office Building

Annapolis, MD 21401

Re: SUPPORT FOR SB0735, Criminal Law - Sodomy and Unnatural or Perverted Sexual
Practice - Repeal

Chairman and Members of the Committee:

Criminal Law §3-321 & 322 defines sodomy as a felony and also broadly outlaws fellatio, cunnilingus, and any “unnatural or perverted sexual practice”. The U.S. Constitution’s Equal Protection clause forbids subtle discrimination just as much as it forbids obvious discrimination. This law is not subtle. The ACLU won its Maryland challenge against enforcement of this law on equal protection grounds in the lowest court in 1999. The state, instead of appealing, consented to the judgment and agreed that the law was invalid. Yet as of now, over twenty years later, the Maryland General Assembly has failed to repeal these invalid provisions from state law.

Illinois became the first state in the U.S. to get rid of its sodomy law in 1961. Connecticut followed Illinois' lead in 1971 and 20 more states (CT, CO, CA, DE, HI, IN, IO, ME, NE, NJ, NM, ND, OH, OR, RI, SD, VT, WA, WV, WY) repealed their sodomy laws in the 1970s. High Courts in New York and Pennsylvania struck down their state sodomy laws in the 1980s, in both cases relying at least in part on the federal constitution. Legislatures in Alaska (80) and Wisconsin (83) continued the trend of repeals. State courts overturned sodomy laws in Kentucky (Commonwealth v. Wasson 1992), Tennessee (Campbell v. Sundquist 1996), Montana

(Gryczan v. Montana, 1997) Georgia (Powell v. State, 1998) and Minnesota (Lavander Bar v. Ventura, 2001). Arizona repealed in 2001.

Originally, sodomy laws were part of a larger body of law - derived from church law - designed to prevent nonprocreative sexual activity anywhere, and any sexual activity outside of marriage. Sodomy laws began to be used in a new way, distinctly against gay people, in the late 1960's. As a gay rights movement began to make headway, and the social condemnation of being gay began to weaken, social conservatives, with the encouragement of some clergy, began invoking sodomy laws as a justification for discrimination. In Maryland (Court of Appeals, Schochet v. State, 1990) and Oklahoma, courts decided that sodomy laws could not be applied to private heterosexual conduct, leaving what amounted to same-sex only laws in effect.

The U.S. Supreme Court said in 1996, in *Romer v. Evans*, that states could not discriminate against gay people on the basis of "disapproval," undermining the leveraging of anti-sodomy laws as justification for discrimination against gay people. The Supreme Court ruled in *Lawrence et al. v. Texas* (2003) "The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government." So why does Maryland state law, more than 20 years later, still declare private sexual conduct to be a felony?

Freestate Justice_CP Hoffman_FAV_SB0735

Uploaded by: Hoffman, CP

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February 20, 2020

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

Testimony of FreeState Justice

IN SUPPORT OF

SB735: Criminal Law – Sodomy and Unnatural or Perverted Sexual Practice – Repeal

To the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and esteemed members of the Judicial Proceedings Committee:

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

We write today in support of Senate Bill 735, which would repeal Maryland's outdated, dehumanizing, and largely unconstitutional sodomy law.

Maryland's sodomy law, presently encoded in sections 3-321 and 3-322 of the Criminal Law article, remains on the books despite a series of court decisions – at both the state¹ and federal level² – that have ruled the law largely unconstitutional. While Maryland's law and policies have shifted dramatically in favor of LGBTQ rights, Maryland's sodomy statute remains a vestige of an earlier time when institutionalized homophobia was enforced through the state's criminal code.

¹ *Schochet v. State*, 320 Md. 714 (Md. 1990); *Williams v. Glendenning*, No. 98036031/CL-1059 (Baltimore City Cir. Ct. Oct. 15, 1998, Jan. 19, 1999).

² *Lawrence v. Texas*, 539 U.S. 558 (2003).

Since the *Williams v. Glendinning* decisions by the Circuit Court of Baltimore City in 1998-1999 and the United States Supreme Court's decision in *Lawrence v. Texas* in 2003, Maryland's sodomy law has been largely unenforceable, except in cases where conduct was already prohibited by other laws. But while the law might have been scarcely used, the fact that it remains a part of the Maryland Code is an affront to the state's LGBTQ community, for at its core it was a law designed to target us and criminalize our existence.

In the years since *Williams* and *Lawrence*, Maryland has largely embraced LGBTQ+ rights. In 2005, the state expanded the definition of hate crimes to include sexual orientation and gender identity. In 2012, the Marriage Protection Act granted Marylanders in same-sex couples equal access to the institution of marriage. The Fairness for All Marylanders Act in 2014 expanded state non-discrimination laws to include gender identity. In 2018, Maryland banned conversion therapy. Just last year, Maryland began offering a third gender marker on driver's licenses and state IDs. And these are just a few of the many laws and policies adopted by the state of Maryland in the two decades since *Williams*.

And yet, Maryland's sodomy law still remains on the books.

The time has come for the state of Maryland to remedy this injustice, to remove this badge of criminality and dehumanization from LGBTQ+ Marylanders.

For this reason, FreeState Justice urges a favorable report on Senate Bill 735.

MCASA_FAV_SB735

Uploaded by: Jordan, Lisae

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 993
Lisae C. Jordan, Executive Director & Counsel
February 20, 2020

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI) which provides direct legal services for survivors across Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 993.

Senate Bill 993 – Anti-Discrimination Protections for All Students

The Inclusive Schools Act codifies anti-discrimination protections for all students, Pre-K-12 who are enrolled in Maryland's public schools and in schools receiving public funding. It also prohibits retaliation against a student, parent, or guardian who files a complaint of discrimination.

Sexual assault and sexual harassment are a type of discrimination based on sex. All too often, these issues are not viewed as discrimination when they occur in high schools or involve even younger students. As of August 30, 2019, 56.4% of schools (elementary-secondary and post-secondary) under investigation by the Office for Civil Rights for Title IX Sexual Harassment violations are K-12 schools. Additionally, 32.5% of schools (elementary-secondary and post-secondary) under investigation by the Officer for Civil Rights for Title IX Sexual Violence violations are K-12 schools.

Sexual harassment and sexual violence violations persist in the K-12 context because the procedures and policies currently implemented in schools are failing students. Senate Bill 993 would help give the State of Maryland the tools it needs to respond to sexual assault and sexual harassment in our schools.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 993**

MCASA_Lisae Jordan_FAV_SB0735

Uploaded by: Jordan, Lisae

Position: FAV



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Testimony Supporting Senate Bill 735 **Lisae C. Jordan, Executive Director & Counsel** February 20, 2020

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 735.

Senate Bill 735 – Repeal of statutes on Sodomy and “Unnatural and Perverted Sexual Practice”

This bill repeals the outdated laws prohibiting “sodomy” and “unnatural and perverted sexual practice”. Sodomy, Criminal Law §3-321, is a felony subject to imprisonment for up to 10 years; the statute makes no distinction between acts of consenting adults and otherwise. Criminal Law §3-322, so called “unnatural and perverted sexual practice,” prohibits a person from (1) taking the sexual organ of another or of an animal in a person's mouth; (2) placing the person's sexual organ in the mouth of another or of an animal; or (3) committing another unnatural or perverted sexual practice with another or with an animal. This misdemeanor is subject to imprisonment for up to 10 years and a fine of up to \$1,000. Both laws are outdated and contain offensive provisions which should be rescinded.

Animals. Last session, the General Assembly enacted provisions prohibiting sexual abuse of animals by amending the law on aggravated cruelty to animals, §10-606. This improved Maryland's public policy by permitting courts to order offenders away from animals, prohibiting offenders from having pets, and imposing other conditions to protect animals. The changes to §10-606 eliminates the need for the provisions related to animals in §3-322.

People. Provisions prohibiting “sodomy” and other sexual practices had historically been used against the GBLTQ+ community and, as such, are offensive reminders of what we hope is a bygone era. State and federal case law has largely invalidated these laws as applied to consenting adults. Maryland's somewhat antiquated sex crimes laws meant the provisions were still occasionally useful when force was difficult to prove, typically cases involving coercion or power imbalances. In recent sessions, Maryland has passed laws making it clear that physical resistance is not necessary to prove force, §3-319.1, and expanding prohibited sexual activity to include a wide variety of coercive activities, §3-709. The offensive and disrespectful nature of §§3-321 and 3-322 now far outweigh any utility they may have had.

Amendments. Amendments in the House and in the Senate bill as introduced ensure that any cases other than those involving consenting adults will not be vacated and will continue to be on the sex offender registry.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 735**

MD NARAL_FAV_SB735

Uploaded by: philip, diana

Position: FAV



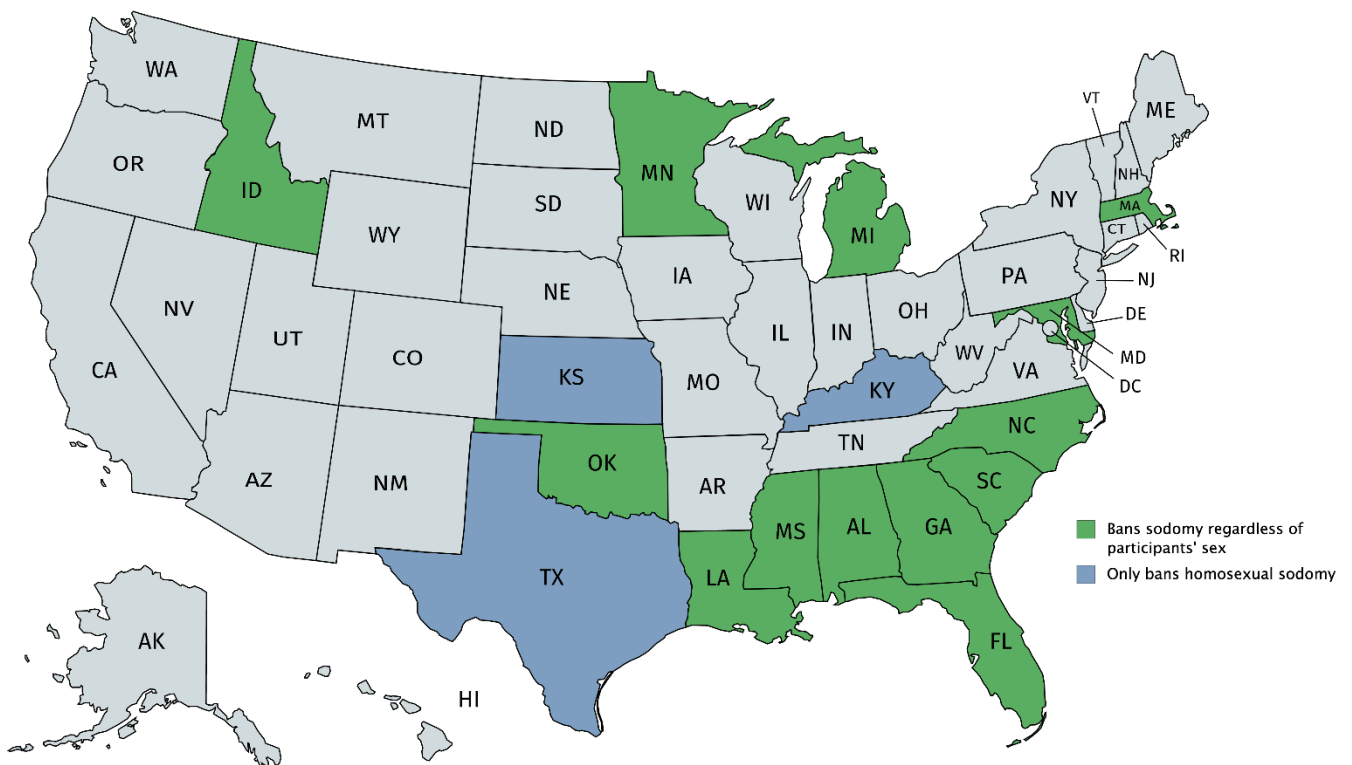
SB0735 - Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal
Presented to the Honorable Will Smith and Members of the Judicial Proceedings Committee
February 20, 2020 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland **urges the Senate Judicial Proceedings Committee a favorable report on SB0735 - Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal**, sponsored by Senator Clarence Lam.

Our organization is an advocate for reproductive health, rights, and justice. Reproductive justice recognizes that regardless of gender identity or sexual orientation, every person has the right to be treated with dignity and to engage in safe, consensual sex. Thus, we support the repeal of Maryland's archaic sodomy law.

The Supreme Court struck down state sodomy laws in 2003 in the landmark decision *Lawrence v. Texas*, in which it ruled that consenting adults have the right to engage in private sexual activity, regardless of gender.ⁱ Yet 16 states, including Maryland, still have not repealed their sodomy laws.ⁱⁱ



Though the Supreme Court deemed sodomy laws unconstitutional nearly two decades ago, the states where these laws remain on the books use them to target and punish LGBTQ people. For example, in 2008, Raleigh police arrested two men under North Carolina’s unenforceable “crimes against nature” statute for engaging in private, consensual sex. Due to *Lawrence*, the charges were dropped, but the time the men spent in jail, the \$450 fine they each paid, and the humiliation of the ordeal constitute a punishment.ⁱⁱⁱ Allowing Maryland’s sodomy law to remain in place leaves the door open for this kind of harassment of LGBTQ people by law enforcement.

Sodomy laws are also used to create different standards for punishment of heterosexual and homosexual sex acts. In Louisiana, for example, prosecutors have discretion on whether to charge people who have solicited sex for money under the state’s prostitution statute or under the solicitation provision of its crimes against nature statute, which outlaws oral and anal sex. Until 2013, a “crimes against nature” conviction carried higher penalties than a prostitution conviction, including requiring convicted individuals to register as sex offenders—not a requirement for those convicted under the prostitution statute.^{iv}

Regardless whether Maryland’s sodomy law is enforceable, the mere existence of it in our criminal statutes contributes to the stigmatization of LGBTQ people and negatively impacts the self-worth of LGBTQ youth who are wary of law enforcement discriminating against them for acts considered criminal. Leaving this law in place suggests that the state government still condemns homosexuality.

Sodomy laws contribute to the criminalization and stigmatization of LGBTQ people. By repealing its sodomy law, Maryland would take a step toward full respect for LGBTQ people and everyone’s right to engage in consensual sex. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0735**. Thank you for your time and consideration.

ⁱ *Lawrence v. Texas*, 539 U.S. 558 (2003).

ⁱⁱ Other than Maryland, 12 states have laws banning both heterosexual and homosexual sodomy: Alabama (Alab. Code 13A-6-65), Florida (Fld. Stat. 798.02; Fld. Stat. 800.02), Georgia (Ga. Stat. 16-6-18), Idaho (I.C. § 18-6605), Louisiana (R.S. 14:89), Massachusetts (MGL Ch. 272, § 34; MGL Ch. 272, § 35), Michigan (MCL § 750.158; MCL § 750.338; MCL § 750.338a; MCL § 750.338b), Minnesota (Minn. Stat. 609.293; Minn. Stat. 609.34), Mississippi (Miss. Code § 97-29-59), Georgia (G.S. § 14-177; G.S. § 14-184; G.S. § 14-186), Oklahoma (Okla. Stat. § 21-886), and South Carolina (S.C. Code § 16-15-60; S.C. Code § 16-15-120).

Three states specifically ban homosexual sodomy: Kansas (Kan. Stat. 21-5504), Kentucky (KY Rev Stat § 510.100), and Texas (Tx. Code § 21.06).

ⁱⁱⁱ Maza, Carlos. “State Sodomy Laws Continue To Target LGBT Americans.” Equality Matters, August 8, 2011. Archived at <https://web.archive.org/web/20140708032346/http://equalitymatters.org/blog/201108080012>.

^{iv} Center for Constitutional Rights. “Crimes Against Nature by Solicitation (CANS) Litigation,” January 4, 2013. <https://ccrjustice.org/node/1520>.

Women's Law Center of MD_FAV_SB735

Uploaded by: Ruth, Laure

Position: FAV

BILL NO: Senate Bill 735
TITLE: Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice –
Repeal
COMMITTEE: Judiciary Proceedings
HEARING DATE: February 20, 2020
POSITION: **SUPPORT**

Senate Bill 735 would repeal the crimes of sodomy and unnatural or perverted practice from Maryland's Criminal code. The Women's Law Center (WLC) supports this bill as these laws, particularly the law against sodomy (§3-321), reflect social mores of a past era and the law needs to be updated to reflect both case law and current societal views.

In the 1990s, in several cases, all mentioned in this bill's fiscal note, our Court of Appeals held that these crimes could not be charged against consenting heterosexual adults in private. Later these cases extended to consenting homosexual adults. By 2002, 36 states had repealed their laws criminalizing sodomy and certain other acts, and in 2003 the United States Supreme Court invalidated the remains states' laws. Indeed, statutes prohibiting consensual, intimate sexual conduct between two individuals violate the constitutional right to liberty under the Due Process Clause.

While case law and practice has caught up with our current understanding of human rights, the continued existence of the statute, even if not enforced, remains an injurious and problematic reminder of the discrimination individuals within the LGBTQ community face. When LGBTQ folks remain three times more likely to be incarcerated than heterosexual individuals, laws like this only perpetuate those challenges. As such, Maryland's Code should be updated.

For these reasons, the WLC supports SB735 and urges a favorable report.

The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.

MGA_Sen Lam_FAV_SB0735

Uploaded by: Senator Lam, Senator Lam

Position: FAV

CLARENCE K. LAM, M.D., M.P.H.
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Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Committee on Fair Practices and
State Personnel Oversight

Chair

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.)*

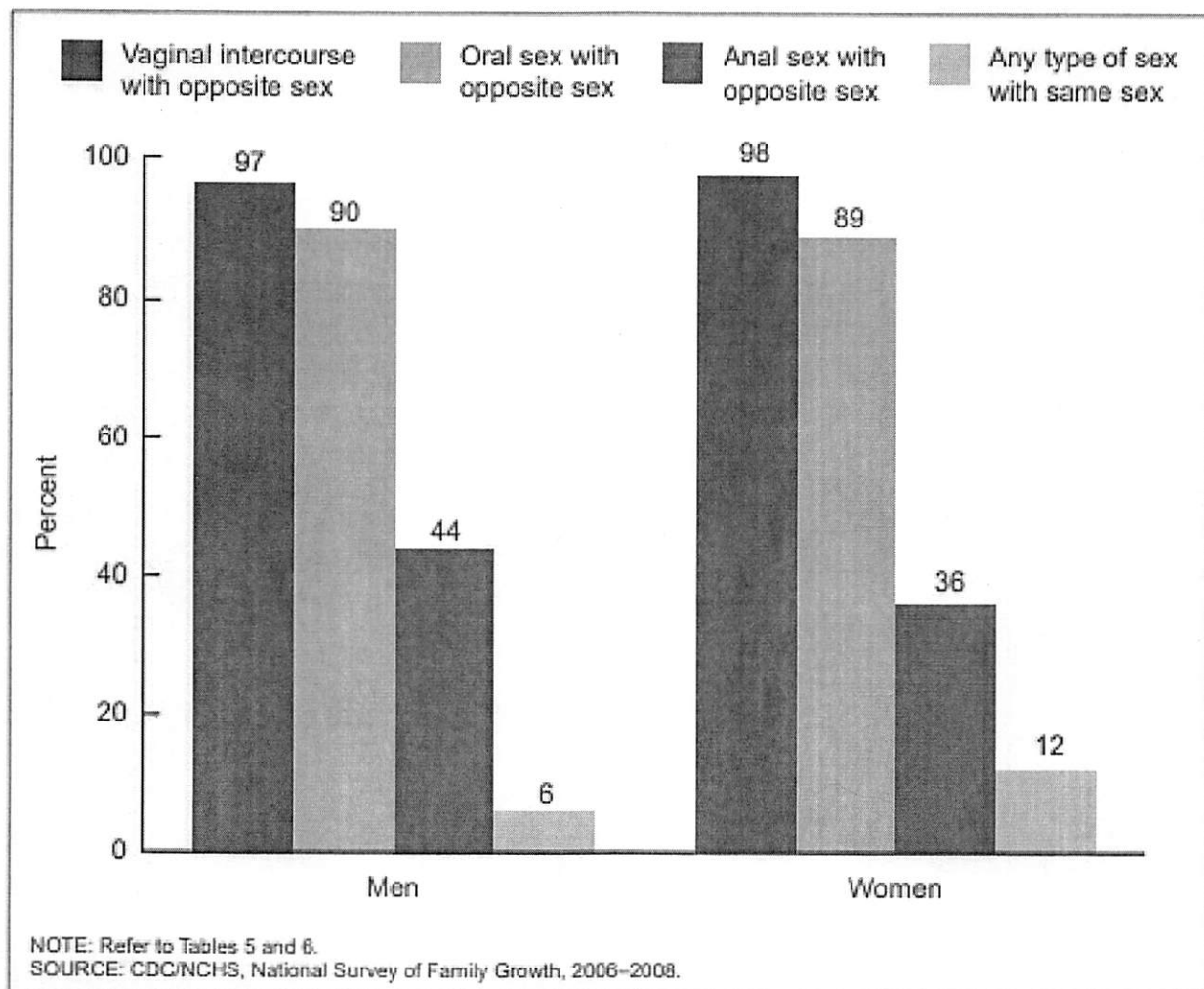


Figure 1. Sexual behavior in lifetime among men and women aged 25-44 years: United States, 2006-2008

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.

ACLU_Joseph Spielberg_FAV_SB0735

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**Testimony for the Senate Judicial Proceedings Committee
February 20, 2020**

**SB 735 – Criminal Law – Sodomy and Unnatural or Perverted Sexual
Practice - Repeal**

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

FAVORABLE

The ACLU of Maryland supports SB 735 to repeal from the Maryland Code the crimes of sodomy and unnatural or perverted sexual practice.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

The U.S. Supreme Court held in a landmark 2003 ruling that the Constitution protects the right of consenting adults to engage in private sexual activity.¹ That right had already been extended in Maryland, first to heterosexual adults,² and then all adults regardless of sexual orientation.³

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However, despite these victories, anti-sodomy laws still remain nationwide. While they may seem like antiquated laws that technically still exist but are not actually enforced, these laws have been frequently used to discriminate against the LGBTQ community. As long as Maryland's law is on the books, it will continue to endanger LGBTQ people, and leave them vulnerable to employment discrimination, unfair attacks in child custody cases, and being labeled as a criminal.

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Government should not have the right to police other people's bedrooms and consensual adult sexual activity. States across the country have been repealing their sodomy laws since 1961.⁴ It is time for Maryland to join them, and live up to our state nickname, "The Free State."

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

² *Schochet v. State*, 320 Md. 714 (1990).

³ *Williams v. State*, No. 98036031/CC-1059, 1998 Extra LEXIS 260 (Balt. City Cir. Ct. Oct. 15, 1998).

⁴ American Civil Liberties Union, *Getting rid of sodomy laws: history and strategy that led to the Lawrence decision*, available at <http://www.aclu.org/other/getting-rid-sodomy-laws-history-and-strategy-led-lawrence-decision>

OAG Carrie Williams_FAV_SB0735

Uploaded by: Williams, Carrie

Position: FAV



State of Maryland
Office of the Attorney General

Wednesday, February 19, 2020

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB735

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 735. Senate Bill 735 repeals the outdated common law offense of “sodomy,” and the penalty provision codified in Criminal Law § 3-321, and Criminal Law § 3-322, the statute prohibiting “unnatural and perverted sexual practice. Under current law, both of these crimes are punishable by up to ten years in prison, with sodomy classified as a felony and unnatural and perverted practices classified as a misdemeanor.

The law as currently written does not differentiate between the sexual acts of consenting adults and sexual acts performed commercially or without consent. For thirty years, however, the statutes have not been enforceable as written. In 1990, the Court of Appeals interpreted Criminal Law § 3-322 (unnatural and perverted practices) under the doctrine of constitutional avoidance, which states that, where possible, courts should construe statutes to avoid constitutional issues. *See Schochet v. State*, 320 Md. 714 (1990). To avoid doubts about the constitutionality of § 3-322, the Court held that it did not “encompass consensual, noncommercial, heterosexual activity between adults in the privacy of the home.” *Id.* at 730. A few years later, in 1999, the State entered into a consent decree whereby it agreed not to enforce the common law crime of sodomy or the unnatural or perverted practices statute “in cases of consensual, non-commercial, private sexual activity.”

Recent developments in other areas of criminal law, including § 3-319.1 (physical resistance is not required to prove force in the context of sexual offenses) and § 10-606 (sexual contact with animals punishable as aggravated cruelty), have rendered § 3-321 and § 3-322 largely duplicative. In light of the historic use of

sodomy laws to harass and discriminate against the LGBTQ community, these antiquated statutes should not be permitted to remain on the books.

The remainder of Senate Bill 735 ensures that persons convicted of sodomy or unnatural and perverted practice based on non-consensual sex acts will not be permitted to expunge their convictions or avoid the sex offender registry, allowing the responsible repeal of these antiquated statutes. The Attorney General supports Senate Bill 735, and encourages the Judicial Proceedings Committee to report favorably on the bill.

cc: Members of the Committee