

# **SB0022 2022-01-17 Testimony to Senate Judicial Pro**

Uploaded by: C.P. Hoffman

Position: FAV



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January 17, 2022

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**

**SB22: Criminal Law –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We write today in support of Senate Bill 22, which would repeal Criminal Law § 3-322, Maryland’s outdated, dehumanizing, and largely unconstitutional law prohibiting “unnatural or perverted sexual practices.” Like the state’s now-repealed sodomy law, to which § 3-322 was closely related, the law is built on a foundation of animus against homosexuals, but goes substantially farther, likening oral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Section 3-322 is closely related to Maryland’s former statute criminalizing sodomy, which was repealed by the General Assembly in 2020. Indeed, prior to the sodomy statute’s repeal, it was codified immediately prior to § 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 even over 70% of older generations reporting partaking in oral sex.<sup>1</sup> It is hard to believe that something practiced by upwards of 72% of people of retirement age is an “unnatural or perverted sexual practice.”

Indeed, court decisions since the 1990s at both the state<sup>2</sup> and federal level<sup>3</sup> have made it clear that § 3-322 is largely 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 vestige of an earlier time when institutionalized homophobia and the policing of the marital bedroom was written into the state’s criminal code.

In 2020, this committee considered repeal of § 3-322 as part of the broader repeal of Maryland’s sodomy law. As you no doubt recall, the 2020 legislative session was cut short by the COVID-19 pandemic, leaving this committee unable to fully consider

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<sup>1</sup> See, e.g., C.E. Copen et al, “Sexual Behavior, Sexual Attraction, and Sexual Orientation Among Adults Aged 18-44 in the United States: Data From the 2011-2013 National Survey of Family Growth,” 88 *Natl Health Stat Report* 1 (Jan. 7, 2016) (reporting that 83% of men and 82% of women between the ages of 15 and 44 had had oral sex with an opposite sex partner during their life); Gypsyamber D’Souza et al, “Differences in Oral Sexual Behaviors by Gender, Age, and Race Explain Observed Differences in Prevalence of Oral Human Papillomavirus Infection,” 9 *PLoS One* e86023 (2014) (reporting that in study of adults between 20 and 69 years old, 85.4% of men and 83.2% women had performed oral sex, with 72.7% of adults 60-69 years old reporting they had performed oral sex), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3901667/>.

<sup>2</sup> *Schochet v. State*, 320 Md. 714 (Md. 1990); *Williams v. Glendinning*, No. 98036031/CL-1059 (Baltimore City Cir. Ct. Oct. 15, 1998, Jan. 19, 1999).

<sup>3</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

the ramifications of repealing § 3-322 along with § 3-321. While this committee was assured at the time that there was no continued need for § 3-322 following the addition of sexual abuse of animals to Maryland's law prohibiting aggravated cruelty to animals in 2019, the fact that § 3-322 had not been used in recent years against consenting adults likely played a part in this committee's reticence to act too quickly.

Unfortunately, over the past year we have seen criminal charges brought against four men in Harford County who were engaged in consensual sexual acts. Whether those acts may have been criminal 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 for committing "unnatural or perverted sexual practices" in 2021, however, demonstrates that it is well past time that the General Assembly repeal § 3-322.

For this reason, FreeState Justice urges a favorable report on Senate Bill 22.

# **SB22 Support (Unnatural Perverted Practices Repeal**

Uploaded by: Carrie Williams

Position: FAV



State of Maryland  
Office of the Attorney General

Monday, January 17, 2021

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

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB22

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The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 22. Senate Bill 22 repeals Criminal Law § 3-322, the statute prohibiting “unnatural and perverted sexual practice,” a misdemeanor punishable by up to ten years in prison.

Criminal Law § 3-322 as written does not differentiate between the sexual acts of consenting adults and sexual acts performed commercially or without consent. For thirty years, however, the statute has not been enforceable as written. In 1990, the Court of Appeals interpreted Criminal Law § 3-322 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.

Section 3-322 has been interpreted to prohibit non-consensual or commercial: 1) oral sex (mouth to anus and mouth to genitals); 2) anal sex; and 3) penetration of the genitals or anus with an object. *See DiBartolomeo v. State*, 61 Md. App. 302 (1985); *Schochet*, 320 Md. at 730. It also prohibits any of these activities between a person and an animal.

Non-consensual oral sex, anal sex, and penetration with an object are all prohibited elsewhere in the criminal code. Sections 3-303 and 3-304 (first and second degree rape) prohibit these activities without consent where done by force

or threat of force.<sup>1</sup> Section 3-319.1 makes it clear that proof of physical resistance is not required to prove force or threat of force in the context of sexual offenses.

Section 3-304 (second-degree rape) also prohibits oral sex, anal sex, and penetration with an object where the victim is mentally incapacitated, cognitively impaired, or physically helpless, and where the victim is under 14 and the perpetrator is more than 4 years older than the victim. Other statutes prohibit these same activities: 1) where the victim is 14 or 15 years old and the perpetrator is over 21 years old (§ 3-307); 2) where the victim is 14 or 15 years old and the perpetrator is at least four years older than the victim (§ 3-308); and 3) where the victim is under 18 and the perpetrator is a “person of authority” at the victim’s school (§ 3-308).

The sexual abuse of a minor statute (§ 3-602) prohibits all of these acts where the victim is a minor and the perpetrator is a family or household member. Section 3-315 prohibits a “continuing course of conduct” involving three or more non-consensual incidents of these acts over a period of 90 days or more where the victim is under 14 years old.<sup>2</sup>

Commercial acts of oral sex, anal sex, and penetration with an object are prohibited by § 11-303. These acts committed upon an animal are prohibited by § 10-606.

Non-consensual and commercial acts covered by § 3-322 are prohibited elsewhere in the criminal code. In light of the historic use of these types of laws to harass and discriminate against the LGBTQ community, this antiquated statutes should not be permitted to remain on the books.

Senate Bill 22 ensures that persons convicted of 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 this antiquated statute. The Attorney General supports Senate Bill 22, and encourages the Judicial Proceedings Committee to report favorably on the bill.

cc: Members of the Committee

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<sup>1</sup> Section 3-303 (first-degree rape) requires proof of one of the following aggravating factors: 1) a deadly weapon; 2) strangulation or serious injury; 3) threat of death or serious injury; 4) aided or abetted by another; or 5) in connection with a 1-3 degree burglary.

<sup>2</sup> In addition to the statutes above, any non-consensual touching (sexual or otherwise) could be prosecuted as a second-degree assault, which carries a maximum penalty of 10 years’ incarceration.

**LAM\_SB22\_FAV .pdf**

Uploaded by: Clarence Lam

Position: FAV



CLARENCE K. LAM, M.D., M.P.H.  
*Legislative District 12*  
Baltimore and Howard Counties



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Education, Health, and Environmental Affairs  
Committee  
Chair, Environment Subcommittee

Executive Nominations Committee

Joint Committee on Ending Homelessness

*Senate Chair*

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and  
State Personnel Oversight

*Vice Chair*

Baltimore County Senate Delegation

*Chair*

Howard County Senate Delegation

*Chair*

Asian-American & Pacific-Islander Caucus

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**SB 22 - Criminal Law - Unnatural or Perverted Sexual Practice - Repeal**

**What SB 22 Accomplishes:**

- SB 22 repeals “Unnatural and Perverted Sexual Practices” in Maryland Criminal Code<sup>1</sup> (§ 3-322), an outdated, duplicative, and poorly defined sexual offense.
- SB 22 reduces stigmatization of the LGBTQ+ community by striking an unnecessary and offensive statute without creating loopholes for other sexual offenses that are covered by numerous other provisions in the criminal code.
- SB 22 ensures that individuals previously convicted using these repealed provisions who committed non-consensual acts, used force, abused minors, and committed sexual crimes against animals will not be permitted to expunge those convictions or to remove themselves from the sex offender registry in these cases.

**Why SB 22 Is Needed:**

- Maryland’s criminal code provisions prohibit some sexual activities that are consensual, private, and not commercial in nature, specifically, the provision that outlaws sexual activities termed “unnatural and perverted sexual practices.” (Section 3-322)
- Specifically, this section makes oral sex a criminal offense punishable by up to 10 years in prison.
- The provisions in this section have been ruled by the Supreme Court and Maryland Judiciary to be unconstitutional or otherwise unenforceable, except in cases involving a lack of consent or force, regardless of gender.<sup>2</sup>
- Prior legislation ([SB0735/HB0081](#), [CH0045](#), 2020) repealed sodomy from the criminal statute, but left the crime of “unnatural and perverted sexual practice” in code. (Note: The 2020 proposed legislation in the House, [HB0081](#) third reader, passed with 133 delegates in favor in, and included both the repeal of sodomy and unnatural and perverted sexual practices provisions.)

<sup>1</sup> [MD Code § 3-322](#)

<sup>2</sup> Lawrence v. Texas, 539 U.S. 558 (2003), Schochet v. State, 320 Md. 714 (1990), Williams v. State (1998)

- § 3-322 in Maryland criminal law is offensive LGBTQ+ community.
  - This charge has been predominantly applied to LGBTQ+ individuals, particularly gay men.<sup>3</sup>
  - 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 in 2019. (§10-606).<sup>4</sup>
- Numerous other provisions in criminal statute exist that are not offensive to LGBTQ+ Marylanders and capture a wide spectrum of sexual offenses that make § 3-322 obsolete.
  - Obsolete and duplicative code should be removed to maintain the integrity, effectiveness, and proper enforcement of the laws.
  - Maryland code should reflect the evolving needs, beliefs, and values of Maryland citizens over time.

**Supporters of this proposed repeal include:**

- Maryland Office of the Attorney General
- Maryland Coalition Against Sexual Assault (MCASA)
- Free State Justice
- The National LGBT Bar Association and Foundation
- Lambda Legal
- Women's Law Center of Maryland
- MetroDC PFLAG

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<sup>3</sup> [Washington Blade](#) (July 2021)

<sup>4</sup> [MD Code § 10-606](#)

**Maryland SB0022.pdf**

Uploaded by: DArcy Kemnitz

Position: FAV



*Testimony of D’Arcy Kemnitz SUPPORT SB 0022*

*Executive Director, The National LGBTQ+ Bar Association and Foundation - January 19, 2022*

To: Chairman Smith and members of the Committee.

My name is D’Arcy Kemnitz and I’m the Executive Director at The National LGBT Bar Association and Foundation, and I am testifying in support of SB22. The LGBTQ+ Bar was founded over thirty years ago by a small group of family law practitioners at the height of the HIV/AIDS crisis. We promote justice in and throughout the legal profession for the LGBTQ+ community.

In 2003, the United States Supreme Court ruled that laws criminalizing homosexuality, including anti-sodomy laws, are unconstitutional. In *Lawrence v Texas* (2003), the court the clear ruling that LGBTQ+ Americans are entitled to equal dignity in the eyes of the state, and invalidated anti-sodomy laws across the nation.

Despite the ruling in Lawrence, many states, like Maryland, still have the progeny of discriminatory anti-sodomy laws in place. While unenforceable, the continued presence of Unnatural or Perverted Sexual Practice laws like those SB22 aims to repeal demonstrate a lack of support for LGBTQ+ citizens. The language in these outdated laws distinctly implies that same-sex attraction and relationships are inherently deviant, repulsive, and inferior to heterosexual attraction and relationships. Sections of the Annotated Code of Maryland perpetuate antiquated and bigoted beliefs that have no place in our modern society. The LGBT Bar knows such sentiments certainly have no place in Maryland.

Regardless of the effectiveness of such laws, their mere presence implicates that the state of Maryland values their LGBTQ+ residents less than their cisgender or heterosexual residents and promotes a culture of anti-LGBTQ+ rhetoric. In an age where transwomen of color are being assaulted and murdered at horrific rates, such oversight is simply inexcusable.

The LGBT Bar is confident that the Judicial Proceedings Committee and the great state of Maryland will vote in favor of SB22 and in favor of LGBTQ+ equality.

Thank you,

D’Arcy Kemnitz

Executive Director

The National LGBT Bar Association and Foundation

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# **SB 22- Criminal Law - Unnatural or Perverted Sexua**

Uploaded by: Laure Ruth

Position: FAV

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BILL NO.: Senate Bill 22  
TITLE: Criminal Law - Unnatural or Perverted Sexual Practice - Repeal  
COMMITTEE: Judiciary Proceedings  
DATE: January 19, 2022  
POSITION: **SUPPORT**

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Senate Bill 22 would close a loophole that was left in 2020 when another bill was passed to repeal the crime of sodomy. Through amendments that bill left the criminal law on unnatural and perverted sex acts intact. SB22 would repeal the remaining law.

Because of the amendments to the sodomy repeal in 2020, the crime of unnatural and perverted acts remains on the books. Therefore consensual sexual activity is still illegal. SB 22 would abrogate this crime, and make it safe for people to engage in consensual activity as they mutually choose. In essence, the bill (1) repeals the crime of unnatural or perverted sexual practice under § 3-322 of the Criminal Law Article; (2) makes conforming and technical changes due to the repeal; and (3) prohibits the expungement of a conviction for unnatural or perverted practice, as the offense existed prior to the bill's effective date of October 1, 2022, under specified circumstances. Importantly SB 22 makes clear that in certain circumstances the law still would prohibit expungement of convictions for unnatural or perverted sexual practices, as the offense existed prior to October 1, 2022, if the act was committed: without consent; with a minor younger than age 16; with anyone the individual could not marry under State law (e.g., parent, child, or sibling); with a mentally incapacitated individual; with a physically helpless individual; or with a substantially cognitively impaired individual. Thus, the Women's Law Center of Maryland urges a favorable report for SB 22.

*The Women's Law Center of Maryland is a private, non-profit, legal services 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, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.*

# **Unnat and Perverted - repeal - testimony - senate**

Uploaded by: Lisae C Jordan

Position: FAV



**Working to end sexual violence in Maryland**

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For more information contact:  
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**Testimony Supporting Senate Bill 22**  
**Lisae C. Jordan, Executive Director & Counsel**  
January 19, 2022

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 22.

**Senate Bill 22 – Repeal of statute “Unnatural and Perverted Sexual Practice”**

This bill repeals the outdated laws prohibiting “unnatural and perverted sexual practice”. 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. It is substantially similar to the former law of sodomy, which was repealed in 2020. The law is outdated and contains offensive provisions which should be rescinded.

**Animals.** In 2019, 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 the remaining other sexual practices in §3-322 have historically been used against the LGBTQ+ 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 §3-322 now far outweigh any utility it may have had. The General



Assembly repealed the sodomy law in 2020, but was still in discussion regarding whether §3-322 should also be repealed when the legislature adjourned as a result of the COVID-19 pandemic. A recent case in Harford County involving criminal charges against men engaged in consensual sexual activities makes it clear that the Legislature must repeal the provisions of §3-322.

SB22 addresses other concerns raised in 2020 about whether there would be an unintended consequence to repeal of these provisions and repeal would make it more difficult to prosecute sexual crimes against children. MCASA states unequivocally that SB22 will not weaken Maryland's laws against sexual crimes against minors and notes that language is included in SB22 clarifying that any sexual conduct that is a crime is included in Maryland's definition of child abuse.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 22**

# **PFLAG Written Testimony-SB22-Sexual Act.pdf**

Uploaded by: Mark Eckstein

Position: FAV



## SB0022: Written Testimony - SUPPORT

January 17, 2022

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

We are writing on behalf of PFLAG-MetroDC in **support of SB0022.**

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 these acts to be illegal — should coincide with this ruling and be repealed.

Such laws have been put in place to discriminate and criminalize people in the LGBTQ+ community. It is time for Maryland to join the most other states that have repealed these laws.

We believe that together, we can achieve equality for all. We urge a **Favorable Report on SB0022.**

Nicolle Campa She|Her|Hers

A handwritten signature in black ink that reads "Nicolle Campa".

Board President

Mark Eckstein He|Him|His

A handwritten signature in black ink that reads "Mark Eckstein".

MD Advocacy Co-chair

[www.pflagdc.org](http://www.pflagdc.org)

Keeping Families Together!

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Metro DC PFLAG is a nonprofit, nonpartisan, volunteer organization founded in 1983 and oversees sixteen (16) PFLAG Community Groups across Washington D.C., Maryland and Virginia. As a chapter of PFLAG, we strive to promote the health and well-being of gay, lesbian, bisexual, and transgender persons and their families and friends through support, education, and advocacy to end discrimination and secure equal rights.

**SB 22\_mgoldstein\_fav 2022.pdf**

Uploaded by: Mathew Goldstein

Position: FAV



Secular Maryland

secularmaryland@tutanota.com

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January 19, 2022

The Honorable William C. Smith Jr.  
Judicial Proceedings Committee  
2 East Miller Senate Office Building  
Annapolis, MD 21401-1991

Re: FAVORABLE SB0022 Criminal Law - Unnatural or Perverted Sexual Practice - Repeal

Chairman and Members of the Committee

This bill revokes Criminal Law §3-322. That section of Maryland law invokes no distinction between consensual and non-consensual sexual activities, or between sexual activities involving only independent adults or including children. Private, consensual, sexual activities between competent adults should not be criminalized.

Laws like this 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. Our right to liberty under the Due Process Clause should be understood to give adults the right to engage in non-injurious private conduct without intervention of the government. Please revoke this overly broad and outdated law.

# **SB22 JPR FAV Sasha Buchert Lambda Legal.pdf**

Uploaded by: Sasha Buchert

Position: FAV

Testimony of Sasha Buchert  
Senior Attorney, Lambda Legal  
January 17, 2022

Chairman William C. Smith, Jr. and members of the Committee,

Lambda Legal writes in strong support of Senate Bill 22. Founded in 1973, Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal served as lead counsel in the landmark case *Lawrence v. Texas* and has served as counsel and amicus in many other cases challenging the validity of sodomy and unnatural sexual practices prohibitions.

SB22 is an exceptionally important bill that would eradicate an archaic statute that has been deployed to criminalize consensual intimacy among lesbian, gay, bisexual, transgender, and queer (LGBTQ) adults. Cloaked in the language of “unnatural or perverted sexual practices,” this statute is an outdated copycat of multiple previously overturned statutes that sought to criminalize consensual same-sex intimacy. The existence of this statute provides a vehicle for continued discrimination against LGBTQ people in Maryland. The statute is not an anachronistic dead letter. It was weaponized by law enforcement to target LGBTQ people as recently as last May when the Harford County Sheriff’s Office conducted a raid on the Bush River Books & Video store, arresting nine men, four of whom were charged with “unnatural or perverted sexual practice.”<sup>1</sup> The men were all consenting adults engaged in sexual intimacy in a private setting.<sup>2</sup>

In the landmark 2003 Supreme Court decision in *Lawrence v. Texas*, the Supreme Court held that the Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct was unconstitutional. Justice Anthony Kennedy clarified in the opinion that, “[t]he petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.”<sup>3</sup> The Court’s opinion in *Lawrence* cannot be read to permit continued enforcement of sodomy-only statutes given the Court’s candid and explicit mandate to strike these laws from the books and to ameliorate their stigma.<sup>4</sup>

Of course, we did not see universal compliance throughout the United States with the letter and spirit of *Lawrence* that same day; it continues to take time and ongoing work to bring

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<sup>1</sup> Md. Code Ann., Crim. Law § 3-322.

<sup>2</sup> Chibbaro Jr., Lou, *Gay men arrested under Md. sodomy law in adult bookstore raid*, July 21, 2021, The Washington Blade, available at <https://www.washingtonblade.com/2021/07/21/gay-men-arrested-under-md-sodomy-law-in-adult-bookstore-raid/>

<sup>3</sup> *Lawrence v. Texas*, 539 U.S. 558, 578, 123 S. Ct. 2472, 2484 (2003).

<sup>4</sup> *MacDonald v. Moose*, Brief of Amici Dean and Professor Erwin Chemerinsky, American Civil Liberties Union of Virginia, Inc., And Lambda Legal Defense And Education Fund, Inc., June 5, 2012, [https://acluva.org/sites/default/files/wp-content/uploads/2012/06/MacDonald\\_amicus.pdf](https://acluva.org/sites/default/files/wp-content/uploads/2012/06/MacDonald_amicus.pdf)

Lawrence’s promise of liberty and equality to fruition.<sup>5</sup> This very work by Lambda Legal has led to victories in overturning sodomy laws in other states since *Lawrence*, such as the 2012 case of *MacDonald v. Moose* where the Fourth Circuit held that blanket sodomy bans are unconstitutional. Maryland must follow the lead of states who have already stricken similar laws from their books and enact SB22 as expeditiously as possible.

LGBTQ people are already subject to disproportionate harassment, profiling, and criminalization by police. Lambda Legal’s research report “Protected and Served?” found that LGBTQ people experience significant discrimination at the hands of government entities. Compounded by factors such as race and income, police and other government entities continue to treat LGBTQ people as second-class individuals through their actions and inactions. The report also found that many government and law enforcement entities still operate under policies, practices and attitudes that have historically characterized LGBTQ people as criminals.<sup>6</sup> The statute at issue is a glaring example of such a policy that exacerbates the criminalization of LGBTQ people.

The legislature must enact Senate Bill 22 to end the unconstitutional criminalization of LGBTQ people in Maryland. Decades of empirical evidence shows that overly-broad language—such as the “unnatural or perverted sexual practices” text included in this statute—has been used to intimidate LGBTQ individuals, discriminate against their constitutional rights to privacy and autonomy, and unnecessarily criminalize acts between consenting adults. Therefore, the Maryland legislature must repeal these laws to protect LGBTQ people from further discrimination and harassment by law enforcement and the criminal legal system. Senate Bill 22 is a crucial step to address an anachronism that demeans and devalues the lives of LGBTQ people.

We urge the committee to support this legislation and to move quickly.

Thank you,

Sasha Buchert  
Senior Attorney  
Lambda Legal

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<sup>5</sup> Sommer, Susan, *From Sex to Marriage: Opening the Door to Legal Victories*, March 22, 2013, Lambda Legal, available at <https://www.lambdalegal.org/blog/from-sex-to-marriage-sommer>

<sup>6</sup> *Protected And Served?: Executive Summary*, 2015, available at <https://www.lambdalegal.org/protected-and-served>



**SB22\_FAV\_ACLUMD\_Amanuel.pdf**

Uploaded by: Yanet Amanuel

Position: FAV



## Testimony for the Senate Judicial Proceedings Committee

YANET AMANUEL  
PUBLIC POLICY ADVOCATE

January 19, 2022

### SB 22 - Criminal Law - Unnatural or Perverted Sexual Practice Repeal

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

#### FAVORABLE

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The ACLU of Maryland supports SB 22 to repeal from the Maryland Code the crimes of sodomy and unnatural or perverted sexual practice.

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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.<sup>1</sup> That right had already been extended in Maryland, first to heterosexual adults,<sup>2</sup> and then all adults regardless of sexual orientation.<sup>3</sup>

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
JOHN HENDERSON  
PRESIDENT

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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<sup>1</sup> Lawrence v. Texas, 539 U.S. 558 (2003)

<sup>2</sup> Schochet v. State, 320 Md. 714 (1990).

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

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.<sup>4</sup> It is time for Maryland to join them, and live up to our state nickname, "The Free State."

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<sup>4</sup> 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>



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**THE HUMANE SOCIETY  
OF THE UNITED STATES**



**January 19, 2022  
Judicial Proceedings Committee**

**SB22**

***Criminal Law - Unnatural or Perverted Sexual Practice – Repeal***

**LETTER OF INFORMATION**

On behalf of The Humane Society of the United States and Maryland Votes for Animals, we wanted to provide the committee with brief informational testimony on SB 22, *Criminal Law - Unnatural or Perverted Sexual Practice – Repeal*. We do not take a position on SB 22 because we consider the passage of comprehensive animal sexual abuse prohibitions in the felony animal cruelty statute in 2019 to make the component of the perverted practice prohibition related to sexually abusing animals redundant.

We thank this committee again for your leadership in the passage of that important 2019 legislation to define animal sexual abuse and prohibit it in all its forms.

We hope this information is helpful as you consider SB22.

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