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The Honorable Luke Clippinger  
House of Delegates Judiciary Committee  
Room 101  
House Office Building  
Annapolis, Maryland 21401

**Testimony of FreeState Justice  
IN SUPPORT OF  
HB209: Criminal Law –Unnatural or Perverted Sexual Practice – Repeal**

To the Honorable Chair Luke Clippinger, Vice Chair David Moon, and esteemed members of the Judiciary 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We write today in support of House Bill 209, which would repeal Criminal Law § 3-322, Maryland’s outdated, dehumanizing, and largely unconstitutional law prohibiting “unnatural or perverted sexual practices.” Like the state’s now-repealed sodomy law, to which § 3-322 was closely related, the law is built on a foundation of animus against homosexuals, but goes substantially farther, likening oral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Section 3-322 is closely related to Maryland’s former statute criminalizing sodomy, which was repealed by the General Assembly in 2020.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.

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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).

Two years ago, this committee passed a favorable report on HB81, which would have repealed § 3-322 as part of the broader repeal of Maryland’s sodomy laws. HB81 was subsequently passed by the full House with a vote of 133 to 5. Unfortunately, as you no doubt recall, the 2020 legislative session was cut short by the COVID-19 pandemic, leaving the Senate Judicial Proceedings Committee unable to fully consider the ramifications of repealing § 3-322 along with § 3-321, which prohibited sodomy. Without time to fully consider the effects of repealing § 3-322, the Judicial Proceedings Committee amended the bill to repeal only § 3-321. This amended bill passed the full Senate on March 17, 2020, with the House concurring with the amendments the next day.

Unfortunately, the time since the repeal of § 3-321 have made clear that Maryland’s Unnatural or Perverted Sexual Practices statute must also be repealed. Last year, criminal charges brought against four men in Harford County who were engaged in consensual sexual acts in private. 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. However, the mere fact that they were arrested, booked, detained, and had their arrests publicized—in 2021!—demonstrates that it is well past time that the General Assembly repeal § 3-322.

For this reason, FreeState Justice urges a favorable report on House Bill 209.