

Testimony of Devon Johnson
Paralegal, Lambda Legal
January 21, 2022

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

Lambda Legal writes in strong support of House Bill 209. 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.

HB209 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 Cloaked in the language of “unnatural or perverted sexual practices,” this statute is an outdated copycat of multiple previously overturned statutes that sought to criminalize consensual same-sex intimacy.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.”¹ The men were all consenting adults engaged in sexual intimacy in a private setting.²

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.”³ 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.⁴

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

¹ Md. Code Ann., Crim. Law § 3-322.

² 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/>

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

⁴ *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

Lawrence’s promise of liberty and equality to fruition.⁵ 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 HB209 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.⁶ The statute at issue is a glaring example of such a policy that exacerbates the criminalization of LGBTQ people.

The legislature must enact House Bill 209 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. House Bill 209 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,

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⁵ 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>

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