

# **SB0054 Testimony to Judicial Proceedings.pdf**

Uploaded by: Camila Reynolds-Dominguez

Position: FAV



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The Honorable William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401  
February 1, 2023

### **Testimony of FreeState Justice**

#### **IN SUPPORT OF SB0054: Criminal Law – Unnatural or Perverted Sexual Practice – Repeal**

To the Honorable William C. Smith Jr., Vice Chair Jeff Waldstreicher, and the esteemed committee:

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

We write today in support of Senate Bill 54, which would repeal Criminal Law § 3-322, Maryland's outdated, dehumanizing, and largely unconstitutional law prohibiting "unnatural or perverted sexual practices." Like the state's now-repealed, closely-related sodomy law, § 3-322 is built on a foundation of animus against homosexuals but goes substantially further, likening oral sex—which surveys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Section 3-322 is closely related to Maryland's former statute criminalizing sodomy, which the General Assembly repealed in 2020. Before the sodomy statute's repeal, it was codified immediately before § 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 over 70% of older generations reporting partaking in oral sex. It is hard to believe that something practiced by a large majority of people of retirement age is an "unnatural or perverted sexual practice."

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

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. The full House subsequently passed HB81 with a vote of 133 to 5. Unfortunately, the time since the repeal of § 3-321 have made clear that § 3-322 must also be repealed. Two years ago, criminal charges were brought against four men in Harford County who were engaged in consensual sexual acts in private. Even if those acts may have been unlawful 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, booked, detained, and had their arrests publicized—in 2021—demonstrates that it is well past time that the General Assembly repeal § 3-322. And in the wake of the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*, where Justice Thomas plainly stated in his concurrence that he would be willing to overturn the federal caselaw that establishes LGBTQ+ persons' rights to marriage and private intimacy, the need to remove § 3-322 for the protection of Marylanders' bodily autonomy and privacy only grows clearer.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 54.

Phillip Westry, Esq.

Executive Director, FreeState Justice

# **Support for SB54- repeal of UPP.pdf**

Uploaded by: Carrie Williams

Position: FAV



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To: Members of The Senate Judicial Proceedings Committee  
From: Carrie J. Williams, Chair, Legislative Committee, Criminal Law and Practice  
Section  
Date: 1/24/2023  
Subject: SB54– Criminal Law–Unnatural or Perverted Sexual Practice–Repeal  
Position: **Support**

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The Legislative Committee of the Criminal Law and Practice Section of the Maryland State Bar Association (MSBA) Supports SB54—Unnatural or Perverted Sexual Practice—Repeal.

This bill repeals sections of current law that criminalize particular forms of sexual activity, even between consenting adults. The Unnatural and Perverted Sexual Practice statute represents a legacy of homophobia that has no place in current law. It should be repealed.

For the reasons stated, we Support SB54—Unnatural or Perverted Sexual Practice—Repeal. If you have questions about the position of the Criminal Law and Practice Section’s Legislative Committee, please feel free to address them to me at [carriej.williams@gmail.com](mailto:carriej.williams@gmail.com).

Additional information can also be provided by Shaoli Katana at MSBA - [shaoli@msba.org](mailto:shaoli@msba.org).

# **SB0054 Sexual Practice - Repeal.pdf**

Uploaded by: Cecilia Plante

Position: FAV



## TESTIMONY FOR SB0054

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

**Bill Sponsor:** Senator Lam

**Committee:** Judicial Proceedings

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** FAVORABLE

I am submitting this testimony in favor of SB0054 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

As a state in a country that prides itself on being secular, it is tragic how many laws are on the books in Maryland that are skewed entirely towards the religious preferences of the few. The LGBTQIA residents of this state have many laws that have been put in place to stigmatize them, and in some cases, criminalize them. These are all laws that we need to rid ourselves of.

This bill would seek to remove the phrase 'unnatural or perverted sexual practices' from the definition of sexual molestation or exploitation and replace it with 'any other sexual conduct that is a crime'. Sex between consenting adults is not a criminal act so this change will help decriminalize being LGBTQIA.

This change is long overdue. The Maryland Legislative Coalition supports this bill and we recommend a **FAVORABLE** report in Committee.

# **SB0054 Testimony of C.P. Hoffman on behalf of NCTE**

Uploaded by: Charlotte Hoffman

Position: FAV

February 1, 2023

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

**Testimony of the National Center for Transgender Equality Action Fund**

**IN SUPPORT OF**

**SB54: 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:

The National Center for Transgender Equality Action Fund (“NCTE Action Fund”) is a 501(c)(4) non-profit political advocacy organization affiliated with the National Center for Transgender Equality (“NCTE”). Founded in 2003, the NCTE works to improve the lives of the nearly two million transgender people in the United States and their families through sound public policy, public education, and groundbreaking research. NCTE has worked with countless health and human service providers as well as local, state, and federal agencies on policies to ensure equal access to vital health and human services. The NCTE Action Fund, launched in 2017, builds power for transgender people, our families, and our allies – to make our collective voice heard – so that together, we can change the landscape in this country to fully support transgender equality.

The NCTE Action Fund writes today in support of Senate Bill 54, which would repeal Criminal Law § 3-322, Maryland’s outdated, dehumanizing, and largely unconstitutional law prohibiting largely-undefined “unnatural or perverted sexual practices.”

While the language of § 3-322 does not expressly target the LGBTQIA+ community, the law was built on a foundation of animus against the queer community, and was historically used predominantly to target LGBTQIA+ people. Indeed, its history is closely tied to the Maryland’s now-repealed sodomy law, which the General Assembly repealed in 2020. Given the lack of specificity in that provision, 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,” Section 3-322 – which immediately followed the former sodomy law in the code – could reasonably be read as clarifying that Maryland’s sodomy laws covered more than simply anal sex.

What precisely § 3-322 does cover, however, is incredibly unclear. 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 is punishable by up to 10 years imprisonment and a fine of up to \$1,000.

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, the Maryland General Assembly considered repealing § 3-322 in tandem with the repeal of the state’s sodomy law, then encoded at § 3-321. Unfortunately on a number of fronts, the 2020 legislative session was unexpectedly cut short by the COVID-19 pandemic, leaving the General Assembly unable to fully consider the full ramifications of repealing § 3-322 along with § 3-321. Without time to consider the matter fully, and without a recent history of § 3-322 being used against consenting adults, the General Assembly decided to move forward with repeal of the § 3-321’s prohibition on sodomy, but to leave the question of § 3-322’s prohibition on unnatural or perverted sexual practice to the future.

Unfortunately, the past three years have demonstrated time and again why it is crucial that § 3-322 be repealed. During the summer of 2021, criminal charges under § 3-322 were brought against four men in Hartford County who had been engaged in consensual sex acts.<sup>4</sup> While the charges under § 3-322 were ultimately dropped, the men were still forced to undergo the trauma and publicity of arrest, the threat of having to serve up to ten years in prison, and the feeling of helplessness as a defendant in our criminal justice system.<sup>5</sup> Even with judicial oversight, an overzealous prosecutor can do massive personal damage through simply filing charges that they know will later be dismissed.

More critically, the past year has demonstrated decisively that leaving old unconstitutional laws on the books is simply no longer an option. As you are all aware, on June 24, 2022, the United States Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, in which the Court overturned five decades of precedent guaranteeing the right to have an abortion.<sup>6</sup> In the wake of *Dobbs*, there has been widespread concern over what precedent the Court will come for next, with particular concern focused on *Griswold v.*

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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) (finding § 3-322 unconstitutional under Maryland constitution when applied to heterosexual adults engaging in consensual, non-commercial sex acts in private); *Williams v. Glendinning*, No. 98036031/CL-1059 (Baltimore City Cir. Ct. Oct. 15, 1998, Jan. 19, 1999) (expanding *Schochet v. State* to include consensual, non-commercial sex acts engaged in in private by same-sex individuals).

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

<sup>4</sup> See Lou Chibbaro, Jr., “Gay Men Arrested under Md. Sodomy Law in Adult Bookstore Raid,” *The Washington Blade* (July 21, 2021), available at <https://www.washingtonblade.com/2021/07/21/gay-men-arrested-under-md-sodomy-law-in-adult-bookstore-raid/>.

<sup>5</sup> See Bradley S. Clark, “Commentary: Why Does Maryland Law Still Prohibit Sexual Contact Between Same-Sex Couples?” *Baltimore Sun* (Jan. 28, 2022), available at <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0130-perverted-practice-20220128-envbyoffivagfnsywra7yvipzy-story.html>.

<sup>6</sup> 597 U.S. \_\_\_ (2022), available at [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf).

*Connecticut* (right to access contraception),<sup>7</sup> *Lawrence v. Texas* (right to engage in private, consensual sexual acts),<sup>8</sup> *Obergefell v. Hodges* (right to marry a person of the same sex),<sup>9</sup> or even the recent *Bostock v. Clayton County* (interpreting prohibition of employment discrimination “because of sex” to include discrimination on the basis of sexual orientation or transgender status).<sup>10</sup> Indeed, in his concurrence in *Dobbs*, Justice Clarence Thomas expressly called for the court to reconsider *Griswold*, *Lawrence*, and *Obergefell*.<sup>11</sup>

Unsurprisingly, in the wake of *Dobbs* we have seen a wave of legislative efforts to restrict access to abortion, as well as the going into effect of previously-passed “trigger” laws. But, more directly applicable to the discussion of § 3-322, we have also seen a number of states attempt to enforce pre-*Roe* abortion bans, some of which are more than a century old and had been enjoined from use for nearly half a century. Should *Lawrence v. Texas* be the next precedent to fall, we are likely to see prosecutors across the country seek to enforce sodomy and sodomy-like laws that remain on the books. That could easily include overzealous prosecutors in Maryland, especially since the Supreme Court of Maryland has not specifically ruled that enforcement of § 3-322 against consenting individuals in same-sex relationships is unconstitutional under the state’s constitution.

Finally, NCTE Action Fund is also particularly concerned with the vagueness of § 3-322, especially subsection (a)(3), which prohibits “commit[ing] another unnatural or perverted sexual practice with another or with an animal.” Nowhere, either in § 3-322 or elsewhere in the Maryland code, is “another unnatural or perverted sexual practice” defined. While this may be a scenario like obscenity where legislators and judges “know it when we see it,” that standard provides little protection for LGBTQIA+ individuals who are concerned in an increasingly hostile political environment.

Over the past year, we have seen the rise of a slanderous moral panic focused on LGBTQIA+ (and especially transgender) people as “groomers,” who are intent on corrupting (and sexually abusing) the youth of America. Regardless of the role in which we exist in the world – whether as parents, teachers, doctors, advocates, or even just friends – our motivations have been called into question. More frighteningly, we have seen multiple legislative and administrative attacks against us, all of which are justified by this libel. Across the country, for instance, state legislatures are considering bills to prohibit public drag performances under the theory that they both corrupt youth and are inherently sexual.

While thankfully we have not yet seen this level of moral panic reach Maryland, I fear for the future. What is to stop a Maryland prosecutor from bringing charges under § 3-322 against drag performers or against transgender people gathering together in public, under the false theory that wearing clothing inconsistent with societal expectations for our sexes assigned at birth is somehow an “unnatural or perverted sexual practice”?

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<sup>7</sup> 381 U.S. 479 (1965).

<sup>8</sup> 539 U.S. 558 (2003).

<sup>9</sup> 576 U.S. 644 (2015).

<sup>10</sup> 590 U.S. \_\_ (2020), available at [https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf).

<sup>11</sup> 597 U.S. \_\_, at \_\_ (2022) (concurrence of Thomas, J.) (“For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is ‘demonstrably erroneous,’ we have a duty to ‘correct the error’ established in those precedents.”). *See also* 597 U.S. \_\_, at \_\_ (2022) (dissent of Breyer, Sotomayor, and Kagan, JJ.) (“The majority (or to be more accurate, most of it) is eager to tell us today that nothing it does ‘cast[s] doubt on precedents that do not concern abortion. But how could that be? The lone rationale for what the majority does today is that the right to elect an abortion is not ‘deeply rooted in history’: Not until *Roe*, the majority argues, did people think abortion fell within the Constitution’s guarantee of liberty. The same could be said, though, of most of the rights the majority claims it is not tampering with. The majority could write just as long an opinion showing, for example, that until the mid-20<sup>th</sup> century, ‘there was no support in American law for a constitutional right to obtain [contraceptives].’ So one of two things must be true. Either the majority does not really believe in its own reasoning. Or, if it does, all rights that have no history stretching back to the mid-19<sup>th</sup> century are insecure.”) (internal citations omitted).

Again, I have little doubt that Maryland courts – at least as they stand now – would allow a conviction to stand, but what about what happens in the meantime?

In the past, we may have had the luxury of keeping old, patently unconstitutional laws on the book, knowing they would never be enforced. Unfortunately, we no longer have the luxury, as it is increasingly clear “never” has come far sooner than any of us could have ever expected.

I thank you for your time and urge a favorable report of Senate Bill 54.

Sincerely,

C.P. Hoffman  
Senior Policy Counsel  
National Center for Transgender Equality Action Fund  
cphoffman@transequality.org

**LAM\_SB54\_FAV (2).pdf**

Uploaded by: Clarence Lam

Position: FAV

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

—  
Finance Committee  
—

Executive Nominations Committee  
—

Joint Committee on Ending Homelessness  
—

*Senate Chair*

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and  
State Personnel Oversight  
—

*Chair*

Howard County Senate Delegation

*Chair*

Asian-American & Pacific-Islander Caucus



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**SUPPORT: SB 54 - Criminal Law - Unnatural or Perverted Sexual Practice -  
Repeal**

**What SB 54 Accomplishes:**

- SB 54 repeals “Unnatural and Perverted Sexual Practices” from Maryland Criminal Code (§ 3-322), an outdated, duplicative, and poorly defined sexual offense.
- SB 54 reduces stigmatization of the LGBTQ+ community by striking an unnecessary and offensive statute that was disproportionately used to criminalize members of the LGBTQ+ community.
- SB 54 ensures that individuals previously convicted under § 3-322 who committed non-consensual acts, used force, abused minors, or 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 54 Is Needed:**

- Current law prohibits sexual activities that are consensual, and private, specifically, § 3-322 outlaws oral sex as an “unnatural and perverted sexual practices.”
- This section has been found unconstitutional, but Justice Thomas has called for the Supreme Court to revisit *Lawrence v. Texas*, which could make laws prohibiting “unnatural and perverted sexual practices” enforceable again.
- Repealing § 3-322 ensures that Marylanders will be protected if the Supreme Court were every to strike down *Lawrence*. There is currently no reported appellate decision in Maryland to serve as a backstop to the overturning of *Lawrence*.
- As recently as 2021, Marylanders were charged under § 3-322 for consensual sex.<sup>i,ii</sup>

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<sup>i</sup> <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0130-perverted-practice-20220128-envbyoffivagfnsywra7yvipzy-story.html>

<sup>ii</sup> <https://www.washingtonblade.com/2021/07/21/gay-men-arrested-under-md-sodomy-law-in-adult-bookstore-raid/>

# **SB 54 MOPD Fav repeal unnatural and perverted.pdf**

Uploaded by: Elizabeth Hilliard

Position: FAV



DEPUTY PUBLIC DEFENDER

**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 54 Criminal Law – Unnatural of Perverted Sexual Practice – Repeal**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 1/31/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 54.

Senate Bill 54 aims to correct the injustice of Maryland’s current law, which prohibits sexual conduct between same-sex couples and carries a maximum sentence of ten years of incarceration, by repealing Maryland’s so-called “perverted practice” statute.

One of the impacted statutes, Section 3-322 of Maryland’s criminal code, is patently unconstitutional. That fact, however, does not assuage the terror that a person feels when charged with violating it. Nor does it stop police from filing charges against gay men for the simple act of physically expressing their affection for one another.

The Office of the Public Defender in Maryland has represented several clients who were charged [with violating Section 3-322 in 2021](#). The clients are filled with fear and panic wondering if they are really facing ten years in jail. They often wonder aloud how such a law can even exist. The Maryland General Assembly can answer that question by fixing it now.

Section 3-322 prohibits a person from committing an “unnatural or perverted sexual practice with another.” The plain language of the statute appears to proscribe conduct irrespective of sexual orientation. In 1990, however, the Maryland Court of Appeals recognized potential constitutional problems with the statute’s broad language and gave the law a decidedly homophobic interpretation.

In *Scochet v. State*, 320 Md. 714 (1990), the Court of Appeals ruled that Section 3-322’s “broad, nonspecific language . . . is subject to a limiting construction in order to avoid a substantial constitutional issue.” To limit the reach of the law, the court concluded that Section 3-322 “does not encompass consensual, noncommercial, *heterosexual* activity between adults in the privacy of the home.” In other words, to protect Section 3-322 from being attacked as unconstitutionally vague, the Court of Appeals ruled that the law was to be interpreted as only proscribing homosexual activity.

The ruling in *Scochet* is an abomination and an embarrassment to the state of Maryland. Thankfully, the Supreme Court's 2003 ruling in *Lawrence v. Texas* rendered the decision moot.

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court wrote that a Texas law similar to Section 3-322 "touch[ed] upon the most private human conduct, sexual behavior, and in the most private of places, the home." The Court went on to say that such statutes "seek to control a personal relationship that . . . is within the liberty of persons to choose without being punished as criminals."

The *Lawrence* court ultimately held that the Texas statute furthered no legitimated state interest that could "justify its intrusion into the personal and private life of the individual" and that the law (and others like it) thus violated the Due Process Clause of the Fourteenth Amendment.

The problem, however, is that the Supreme Court's ruling in *Lawrence* did not make all of the laws that it invalidated suddenly disappear. Rather, the ruling only makes such laws theoretically unenforceable. The laws themselves remain on the books unless and until the legislatures in the states where they exist decide to repeal them. As long as the laws are still codified, police can and will continue to charge people with violating them.

The passage of Senate Bill 54 allows Marylanders to take a stand. It is a critical acknowledgement that the criminalization of homosexual conduct has no place in Maryland. Section 3-322's continued existence has real-world consequences for the individuals charged with violating it. Unless Senate Bill 54 is passed and the law repealed, the trauma of being arrested and charged with a ten-year crime will continue to be inflicted on members of Maryland's gay community. This is not justice. This is structural homophobia, plain and simple.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 54.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

# **SB0054Testimony.pdf**

Uploaded by: Finn Coy-Gresavage

Position: FAV

Finn Coy-Gresavage

**Maryland General Assembly**

**Written Testimony: SB0054**

Good Afternoon,

I am writing testimony in support of the repeal of SB0054: The Unnatural and Perverted Sex Practices code. This code is redundant, outdated, and it has a history of being weaponized against consenting adults in private spaces due to its breadth of scope.

Under the code as it's written, "a person may not commit another unnatural or perverted sex practice with another," and to do so is punishable by a fine and jail time. The wide brush with which is paints creates a host of issues with enforcement. Terms like "unnatural" and "perverted" are far too subjective to be effective in something as important as the letter of the law. Who determines what is unnatural or perverted, and by what empirical scale is that determination made? This unnecessary breadth leaves this legislation open to be used as a weapon against consenting adults in private, designated spaces for such activities.

Those opposed to repealing this code may argue that those in favor are trying to legalize bestiality and pedophilia, as both of these things are also mentioned. This is nothing more than unsubstantiated fear-mongering. Both pedophilia and bestiality are already enforced more effectively in existing legislation. Child sexual abuse is outlined under criminal code 3-602, and even stipulates that the code is still enforceable whether injuries are sustained or not (this code makes no such distinction). Sexual contact with animals was more thoroughly outlined just recently with the passing of HB0641 (cross-filed in the senate as SB0355) in the 2019 session. The things in the code we're discussing here that should be in the letter of the law already are, and in a way that is more effectively enforceable.

As of the writing of this testimony, the 14<sup>th</sup> Amendment of the United States Constitution still guarantees citizens the right to privacy. What two or more consenting adults do in private, designated spaces is of no business to this legislative body. To have code like the Unnatural and Perverted Sexual Acts measure still on the books hundreds of years after their original writing is a violation of the amendments from which our legislation is supposed to be built. In fact, a similar piece of legislation was repealed in Virginia on constitutional grounds not long ago.

As our culture and society progress, so too must our legislation. Part of that progress involves ridding our books of antiquated code that puts the constitutional rights of citizens at risk with its phrasing, and who's useful segments are already more effectively covered elsewhere. The Unnatural and Perverted Sexual Acts code has far outlasted its usefulness, and for the good of the rights of consenting adults throughout our great state, the time has come to repeal it. Thank you for your time.

# **Glenda Rider Testimony.pdf**

Uploaded by: Glenda Rider

Position: FAV

Good Afternoon, Honorable Chair Senator Smith, Vice Chair Waldstricher & Bill Sponsor Lam,

Thank you for the opportunity to address an important issue today. I want to request your support for the repeal of the unnatural and perverted sexual practices statute. Laws such as this have historically been used in oppressive ways to target the LGBTQIA+ community and to restrict sexual freedom among consenting adults.

My name is Glenda Rider. I've been an out, proud member of the queer community in Baltimore for over 35 years. In that time, I've seen over and over again how laws such as this statute have been used to target my friends & loved ones. I've seen people lose their jobs, face prosecution & have their families torn apart by antiquated laws like this one; laws that are grounded in a bigoted past but are still ruining people's lives today.

As a long time community organizer & mentor I have seen the people of Maryland grow in their acceptance & support of my community. This gives me hope that the next generation of LGBTQIA+ young adults, your constituents & neighbors, will be spared the fear, shame, & stigma of having their very identity criminalized.

In order to assure that future, I'm asking this committee to support Senate Bill 54. Doing so would provide needed protections for me, my family & my friends as well as affirm the freedom and liberties of all consenting adults across our great state. Thank you.

**SB0054 Testimony.pdf**

Uploaded by: Jared Schablein

Position: FAV

## SB0054 Criminal Law – Unnatural or Perverted Sexual Practice – Repeal

Bill Sponsors: Senator West

Committee: Judiciary Proceedings

Organization Submitting: Lower Shore Progressive Caucus

Person Submitting: Sam Harvey

Position: Favorable

I am submitting this testimony in favor of SB0054 on behalf of the Lower Shore Progressive Caucus. The Caucus is a political and activist organization on the Eastern Shore, unaffiliated with any political party, committed to empowering working people by building a Progressive movement of the Lower Eastern Shore.

SB0054 addresses some archaic language, related to certain intimate acts which were always entirely appropriate in private, and between consenting adults - and, indeed, were never any of the state's business.

It builds on civil rights efforts of decades past - the successful repeal of the main part of Maryland's anti-sodomy laws. Whatever one might feel personally about any specific intimate act, no one wants the government peeping in at the bedroom window. Worse, ill-intentioned politickers frequently stumped around that never-should-have-been criminality, moralizing and tribalizing with little regard for the anguish and injury it caused people who were bothering absolutely no one.

While SB0054 removes the entire section dealing with "unnatural or perverted" sex acts, the primary effect of the repeal is to legalize rather prosaic intimate acts - oral sex is still considered sodomy in Maryland.

SB0054 does remove language about bestiality from this section, but only because it is redundant. The section clearly references criminal acts covered elsewhere. (Specifically, bestiality is criminal under the Aggravated Cruelty to Animals section - and was unanimously bumped up to a felony several years ago in Maryland.)

SB0054 also strikes "...whether between persons of the same or opposite sex" from the definition of sexual intercourse. The language would be fair enough, but hearkens back to the bad faith actions of anti-sodomy days of old. And as long as the act occurs in private, between consenting adults, there's no reason the state should be considering the particulars, much less trying to shoehorn them into a definition.

As we progress toward a more fair and equitable society, we continue to refine the definition of our basic civil rights. SB0054 recognizes the spirit embedded in the Fourth Amendment that speaks to our reasonable expectation of privacy, and further advances its development.

The Lower Shore Progressive Caucus supports this bill and recommends a **FAVORABLE** report in committee.

**2023-02-01 SB 54 (Support).pdf**

Uploaded by: Jer Welter

Position: FAV

**ANTHONY G. BROWN**  
*Attorney General*



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February 1, 2023

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

**FROM:** Jer Welter, Assistant Attorney General

**RE:** SB 54 - Criminal Law - Unnatural or Perverted Sexual Practice - Repeal (SUPPORT)

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The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 54. Senate Bill 54 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, has been interpreted to prohibit all sexual activity other than vaginal intercourse, including: 1) oral sex; 2) anal sex; and 3) penetration of the genitals or anus with an object. *See DiBartolomeo v. State*, 61 Md. App. 302 (1985); *Schochet v. State*, 320 Md. 714, 730 (1990). As written, it does not differentiate between the sexual acts of consenting adults and sexual acts performed without consent. And by the same provision, it prohibits any of these activities between a person and an animal. The statute is a product of historical anti-LGBT animus that deemed anything other than heterosexual vaginal intercourse a crime equivalent to bestiality.

For over thirty years, the statute has been unenforceable as written. In 1990, the Court of Appeals adopted a narrowing interpretation of Criminal Law § 3-322 to save it from being invalidated as unconstitutional. *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. *Schochet*'s holding was subsequently extended by consent decree to cover all private, non-commercial activity between consenting adults, regardless of sexual orientation.

Nevertheless, the continued existence of § 3-322 in the Code, as written, demeans the dignity of LGBT Marylanders and is inconsistent with modern sensibilities. It is also

unnecessary. Non-consensual, commercial, or public sexual acts, and sexual acts committed against animals, 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). In addition, 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.
- Performing sexual acts in public is prohibited by § 11-107.
- Finally, sexual acts committed against an animal are prohibited by § 10-606.

In summary, non-consensual, non-private, and commercial acts covered by § 3-322 are prohibited elsewhere in the criminal code. Continuing use of the statute in prosecutions is fraught with practical problems. Particularly in light of the historic use of these types of laws to harass and discriminate against the LGBTQ community, these antiquated statutes should not be permitted to remain on the books. For these same reasons, the legislature

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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.

The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee  
February 1, 2023  
Page 3

previously repealed the prohibition on sodomy, and this statute should likewise be repealed.

It should also be noted that Senate Bill 54 ensures that persons previously 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 54, and requests a favorable report.

cc: Senator Clarence K. Lam and Members of the Committee

**SB0054 - FAV - MSAA PGSAO.pdf**

Uploaded by: Jessica Garth

Position: FAV

**AISHA N. BRAVEBOY**  
STATE'S ATTORNEY



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301-952-3500

February 1, 2023

Testimony in **Support** of

**SB 0054 – Criminal Law – Unnatural or Perverted Sexual Practice - Repeal**

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Dear Chairman Smith, Vice Chairman Waldstreicher, and Members of the Committee:

I am writing to show my strong support for Senate Bill 0054 on behalf of State's Attorney Aisha Braveboy and the Maryland State's Attorneys' Association, and to urge a favorable report. Criminal Law Article §3–322 is an outdated and unnecessary statute and we urge its repeal.

I serve as the Chief of the Special Victims & Family Violence Unit in Prince George's County. My staff and I carry an extensive caseload of cases involving sexual crimes against both adults and children. Our goal is to seek justice for the victims of some of the worst types of abuse that can befall our community. As part of our pursuit of justice, it is incumbent upon us to bring attention to laws that leave room for injustice and unfair application. Criminal Law Article §3–322 is one such law.

This statute criminalizes two general categories of behavior: certain acts with other persons and certain acts with animals. Most concerningly, the statute does not specify that the acts between persons must be non-consensual or otherwise criminal in nature, leaving open the possibility that consensual sexual acts between two adult partners could be prosecuted. The potential for unjust application of this law is a risk that should not be tolerated.

Repeal of this law does not mean that the category of behavior concerning sexual acts with animals will go unprosecuted. Nor does it mean that non-consensual acts between persons will go unprosecuted. However, these criminal applications are addressed by other statutes already on the books – many with steeper penalties.

For example:

- Non-consensual fellatio and/or cunnilingus between adults is addressed by CR § 3-303 and CR § 3-304;
- Fellatio and/or cunnilingus between an adult and a minor is addressed by CR § 3-303, CR § 3-304, CR § 3-307, CR § 3-308, and CR § 3-602 (in some cases); and
- Sexual contact between a person and an animal is addressed by CR § 10-606.

Criminal Law Article §3–322 leaves the door open for injustice while not serving any necessary purpose under the law. For the foregoing reasons, I respectfully urge a favorable report, and ultimately passage, on SB 0054 to repeal this law.

Sincerely,



Jessica L. Garth  
Chief, Special Victims & Family Violence Unit  
State's Attorney's Office for Prince George's County

**SB 54 - FAV - Women's Law Center of MD.pdf**

Uploaded by: Laure Ruth

Position: FAV

BILL NO.: Senate Bill 54  
TITLE: Criminal Law - Unnatural or Perverted Sexual Practice -Repeal  
COMMITTEE: Judicial Proceedings  
DATE: February 1, 2023  
POSITION: **SUPPORT**

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Senate Bill 54 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. SB 54 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 54 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, 2023, under specified circumstances. Importantly SB 54 makes clear that in certain circumstance the law still would prohibits expungement of convictions for unnatural or perverted sexual practices, as the offense existed prior to October 1, 2023, 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 54.

**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:  
Lisae C. Jordan, Esquire  
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**Testimony Supporting Senate Bill 54**  
**Lisae C. Jordan, Executive Director & Counsel**  
February 1, 2023

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 54.

**Senate Bill 54 – 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.

SB54 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 SB54 will not weaken Maryland's laws against sexual crimes against minors and notes that language is included in SB54 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 54**

**2023 PPM SB 54 Senate Side FAV.pdf**

Uploaded by: Robyn Elliott

Position: FAV

Planned Parenthood of Maryland

<b>Committee:</b>	Senate Judicial Proceedings Committee
<b>Bill Number:</b>	SB 54
<b>Title:</b>	Criminal Law – Unnatural or Perverted Sexual Practice – Repeal
<b>Hearing:</b>	February 1, 2023
<b>Position:</b>	Support

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Planned Parenthood of Maryland supports *Senate Bill 54 – Criminal Law – Unnatural or Perverted Sexual Practice – Repeal* to repeal the crime of unnatural or perverted sexual practice from the Maryland Code.

This law has been used to criminalize consensual intimacy among lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) adults and stands in direct opposition to the 2003 Supreme Court decision in *Lawrence v. Texas*, in which the 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. As a health care provider to many members of the LGBTQIA+ community, we support any legislation that will protect the rights and safety of our patients. Laws such as the one in this bill have been used to intimidate LGBTQIA+ individuals, discriminate against their constitutional rights to privacy and autonomy, and unnecessarily criminalize acts between consenting adults.

For these reasons, we ask for a favorable vote on this legislation. If we can provide any additional information, please contact Robyn Elliott at (443) 926-3443 or [relliott@policypartners.net](mailto:relliott@policypartners.net).

**SB54\_LOI\_HSUS,MDVFA.pdf**

Uploaded by: Jennifer Bevan-Dangel

Position: INFO



**THE HUMANE SOCIETY  
OF THE UNITED STATES**



**February 1, 2023  
Judicial Proceedings Committee**

**SB 54  
*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 54, *Criminal Law - Unnatural or Perverted Sexual Practice – Repeal*.

In 2019, this committee passed comprehensive legislation that added animal sexual abuse prohibitions as a stand-alone section of the felony animal cruelty statute. As a result, the animal abuse language that would be struck by SB 54 in Section 3-322 is duplicative, and we do not have any concerns with its deletion. In addition, by adding “any other sexual conduct that is a crime” to Sections 3-602 and 3-604 of the code, the changes proposed in SB 54 could potentially increase the ability to hold animal abusers accountable.

While we are not officially taking a position on SB 54, we do encourage this committee to consider the bill without any fear of undermining the hard work you did in 2019 and urge you to consider this legislation as potentially enhancing our anti-abuse statutes.

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 SB 54.

*Jennifer Bevan-Dangel, Maryland State Director  
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