

HOUSE BILL 81

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CF SB 735

By: **Delegates Moon, Bartlett, Charkoudian, Crutchfield, Korman, Lehman, J. Lewis, ~~and Palakovich Carr~~ Palakovich Carr, Clippinger, Atterbeary, Cardin, Lopez, Shetty, and Williams**

Introduced and read first time: January 13, 2020
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 18, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Sodomy and Unnatural or Perverted Sexual Practice – Repeal**

3 FOR the purpose of repealing the crimes of sodomy and unnatural or perverted sexual
4 practice; making conforming changes; clarifying that certain evidence is not
5 admissible as an infamous crime; providing that a certain conviction may not be
6 expunged under certain circumstances; and generally relating to sexual crimes.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 3–801(aa) and 10–905(a)(1)
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2019 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law
14 Section ~~3–321 and 3–322~~ 2–201(a)(4), 3–602(a)(4)(ii), 3–604(a)(9)(ii), and 3–809(a)(5)
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2019 Supplement)

17 BY repealing
18 Article – Criminal Law
19 Section 3–321 and 3–322
20 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2012 Replacement Volume and 2019 Supplement)

2 BY adding to
3 Article – Criminal Law
4 Section 3–321
5 Annotated Code of Maryland
6 (2012 Replacement Volume and 2019 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Procedure
9 Section 10–105(a)(11) and (a–1), 11–701(q)(1), and 11–1007(a)(6)(ii)
10 Annotated Code of Maryland
11 (2018 Replacement Volume and 2019 Supplement)

12 BY adding to
13 Article – Criminal Procedure
14 Section 10–105(a–1)
15 Annotated Code of Maryland
16 (2018 Replacement Volume and 2019 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Family Law
19 Section 5–701(z)
20 Annotated Code of Maryland
21 (2019 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

25 3–801.

26 (aa) “Sexual molestation or exploitation” includes:

27 (1) Allowing or encouraging a child to engage in:

28 (i) Obscene photography, films, poses, or similar activity;

29 (ii) Pornographic photography, films, poses, or similar activity; or

30 (iii) Prostitution;

31 (2) Incest;

32 (3) Rape;

1 (4) Sexual offense in any degree; AND

2 (5) [Sodomy; and

3 (6) Unnatural or perverted sexual practices] ANY OTHER SEXUAL
4 CONDUCT THAT IS CRIMINALLY PROHIBITED.

5 10-905.

6 (a) (1) Evidence is admissible to prove the interest of a witness in any
7 proceeding, or the fact of the witness's conviction of an infamous crime OTHER THAN THE
8 COMMON LAW OFFENSE OF SODOMY AS IT EXISTED BEFORE OCTOBER 1, 2020.

9 **Article – Criminal Law**

10 2-201.

11 (a) A murder is in the first degree if it is:

12 (4) committed in the perpetration of or an attempt to perpetrate:

13 (i) arson in the first degree;

14 (ii) burning a barn, stable, tobacco house, warehouse, or other
15 outbuilding that:

16 1. is not parcel to a dwelling; and

17 2. contains cattle, goods, wares, merchandise, horses, grain,
18 hay, or tobacco;

19 (iii) burglary in the first, second, or third degree;

20 (iv) carjacking or armed carjacking;

21 (v) escape in the first degree from a State correctional facility or a
22 local correctional facility;

23 (vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;

24 (vii) mayhem;

25 (viii) rape;

26 (ix) robbery under § 3-402 or § 3-403 of this article;

- 1 (x) sexual offense in the first or second degree;
 2 (xi) sodomy AS THAT CRIME EXISTED BEFORE OCTOBER 1, 2020;
 3 or
 4 (xii) a violation of § 4-503 of this article concerning destructive
 5 devices.
 6 [3-321.

7 A person who is convicted of sodomy is guilty of a felony and is subject to
 8 imprisonment not exceeding 10 years.]

9 **3-321.**

10 **THE COMMON LAW CRIME OF SODOMY HAS BEEN REPEALED.**

11 [3-322.

12 (a) A person may not:

13 (1) take the sexual organ of another or of an animal in the person's mouth;

14 (2) place the person's sexual organ in the mouth of another or of an animal;

15 or

16 (3) commit another unnatural or perverted sexual practice with another or
 17 with an animal.

18 (b) A person who violates this section is guilty of a misdemeanor and on conviction
 19 is subject to imprisonment not exceeding 10 years or a fine not exceeding \$1,000 or both.

20 (c) A person who violates this section is subject to § 5-106(b) of the Courts Article.

21 (d) An indictment for a violation of this section:

22 (1) is sufficient if it states that the defendant committed an unnatural and
 23 perverted sexual practice with a person or animal as applicable; but

24 (2) need not state the particular:

25 (i) unnatural or perverted sexual practice with which the defendant
 26 is charged; or

27 (ii) manner in which the defendant committed the unnatural or
 28 perverted sexual practice.]

1 3-602.

2 (a) (4) (ii) “Sexual abuse” includes:

3 1. incest;

4 2. rape;

5 3. sexual offense in any degree; AND

6 4. [sodomy; and

7 5. unnatural or perverted sexual practices] ANY OTHER

8 SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.

9 3-604.

10 (a) (9) (ii) “Sexual abuse” includes:

11 1. incest;

12 2. rape;

13 3. sexual offense in any degree; AND

14 4. [sodomy; and

15 5. unnatural or perverted sexual practices] ANY OTHER

16 SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.

17 3-809.

18 (a) (5) “Sexual activity” means:

19 (i) sexual intercourse, including genital-genital, oral-genital,
20 anal-genital, or oral-anal, whether between persons of the same or opposite sex;

21 [(ii) sodomy under § 3-321 of this title or an unnatural or perverted
22 sexual practice under § 3-322 of this title;]

23 [(iii) (II) masturbation; or

24 [(iv) (III) sadomasochistic abuse.

25 Article – Criminal Procedure

1 10-105.

2 (a) A person who has been charged with the commission of a crime, including a
 3 violation of the Transportation Article for which a term of imprisonment may be imposed,
 4 or who has been charged with a civil offense or infraction, except a juvenile offense, may
 5 file a petition listing relevant facts for expungement of a police record, court record, or other
 6 record maintained by the State or a political subdivision of the State if:

7 (11) EXCEPT AS PROVIDED IN SUBSECTION (A-1) OF THIS SECTION, the
 8 person was convicted of a crime and the act on which the conviction was based is no longer
 9 a crime; or

10 (A-1) AN EXPUNGEMENT MAY NOT BE OBTAINED UNDER SUBSECTION (A)(11)
 11 OF THIS SECTION FOR A CONVICTION FOR SODOMY OR UNNATURAL OR PERVERTED
 12 PRACTICE, AS THOSE OFFENSES EXISTED BEFORE OCTOBER 1, 2020, WHERE THE
 13 OFFENSE WAS COMMITTED:

14 (1) WITHOUT CONSENT;

15 (2) WITH A MINOR UNDER THE AGE OF 16;

16 (3) WITH ANYONE THE INDIVIDUAL COULD NOT MARRY UNDER §
 17 2-202 OF THE FAMILY LAW ARTICLE;

18 (4) WITH A MENTALLY INCAPACITATED INDIVIDUAL, AS DEFINED IN §
 19 3-301 OF THE CRIMINAL LAW ARTICLE;

20 (5) WITH A PHYSICALLY HELPLESS INDIVIDUAL, AS DEFINED IN §
 21 3-301 OF THE CRIMINAL LAW ARTICLE; OR

22 (6) WITH A SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL, AS
 23 DEFINED IN § 3-301 OF THE CRIMINAL LAW ARTICLE.

24 ~~[(a-1)]~~ (A-2) A person's attorney or personal representative may file a
 25 petition, on behalf of the person, for expungement under this section if the person died
 26 before disposition of the charge by nolle prosequi or dismissal.

27 11-701.

28 (q) "Tier III sex offender" means a person who has been convicted of:

29 (1) conspiring to commit, attempting to commit, or committing a violation
 30 of:

31 (i) § 2-201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

1 (ii) § 3-303, § 3-304, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311,
2 § 3-312, § 3-315, § 3-323, or § 3-602 of the Criminal Law Article;

3 (iii) § 3-502 of the Criminal Law Article, if the victim is a minor;

4 (iv) § 3-502 of the Criminal Law Article, if the victim is an adult, and
5 the person has been ordered by the court to register under this subtitle;

6 (v) the common law offense of sodomy or § 3-322 of the Criminal
7 Law Article AS THOSE OFFENSES EXISTED BEFORE OCTOBER 1, 2020, if the offense
8 was committed with force or threat of force; or

9 (vi) § 3-305 or § 3-306 of the Criminal Law Article as the sections
10 existed before October 1, 2017;

11 11-1007.

12 (a) (6) (ii) “Sexual abuse” includes[:

13 1. incest, rape, or sexual offense in any degree[:

14 2. sodomy; and

15 3. unnatural or perverted sexual practices].

16 Article – Family Law

17 5-701.

18 (z) “Sexual molestation or exploitation” includes:

19 (1) allowing or encouraging a child to engage in:

20 (i) obscene photography, films, poses, or similar activity;

21 (ii) pornographic photography, films, poses, or similar activity; or

22 (iii) prostitution;

23 (2) incest;

24 (3) rape;

25 (4) sexual offense in any degree;

26 (5) [sodomy; and

1 (6) unnatural or perverted sexual practices] ANY OTHER SEXUAL
2 CONDUCT THAT IS CRIMINALLY PROHIBITED.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.