

HOUSE BILL 81

E1

(0lr1223)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

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

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of repealing the ~~crimes~~ *crime* 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)

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.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
 2 Article – Criminal Law
 3 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)
 4 Annotated Code of Maryland
 5 (2012 Replacement Volume and 2019 Supplement)

6 BY repealing
 7 Article – Criminal Law
 8 Section ~~3–321~~ and ~~3–322~~
 9 Annotated Code of Maryland
 10 (2012 Replacement Volume and 2019 Supplement)

11 BY adding to
 12 Article – Criminal Law
 13 Section 3–321
 14 Annotated Code of Maryland
 15 (2012 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Criminal Procedure
 18 Section 10–105(a)(11) and (a–1), 11–701(q)(1), and 11–1007(a)(6)(ii)
 19 Annotated Code of Maryland
 20 (2018 Replacement Volume and 2019 Supplement)

21 BY adding to
 22 Article – Criminal Procedure
 23 Section 10–105(a–1)
 24 Annotated Code of Maryland
 25 (2018 Replacement Volume and 2019 Supplement)

26 BY repealing and reenacting, with amendments,
 27 Article – Family Law
 28 Section 5–701(z)
 29 Annotated Code of Maryland
 30 (2019 Replacement Volume)

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

33 **Article – Courts and Judicial Proceedings**

34 3–801.

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

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

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

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

(iii) Prostitution;

(2) Incest;

(3) Rape;

(4) Sexual offense in any degree; AND

(5) ~~Sodomy; and~~

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

10-905.

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

Article – Criminal Law

2-201.

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

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

(i) arson in the first degree;

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

1. is not parcel to a dwelling; and

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

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

(iv) carjacking or armed carjacking;

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

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

4 (vii) mayhem;

5 (viii) rape;

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

7 (x) sexual offense in the first or second degree;

8 (xi) sodomy AS THAT CRIME EXISTED BEFORE OCTOBER 1, 2020;

9 or

10 (xii) a violation of § 4-503 of this article concerning destructive
 11 devices.

12 [3-321.

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

15 **3-321.**

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

17 ~~[3-322.~~

18 ~~(a) A person may not:~~

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

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

21 ~~or~~

22 ~~(3) commit another unnatural or perverted sexual practice with another or~~
 23 ~~with an animal.~~

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

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

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

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

3 (2) ~~need not state the particular:~~

4 (i) ~~unnatural or perverted sexual practice with which the defendant~~
5 ~~is charged; or~~

6 (ii) ~~manner in which the defendant committed the unnatural or~~
7 ~~perverted sexual practice.]~~

8 3-602.

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

10 1. incest;

11 2. rape;

12 3. sexual offense in any degree; AND

13 4. ~~[sodomy; and~~

14 5. unnatural or perverted sexual practices] ~~ANY OTHER~~
15 ~~SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

16 3-604.

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

18 1. incest;

19 2. rape;

20 3. sexual offense in any degree; AND

21 4. ~~[sodomy; and~~

22 5. unnatural or perverted sexual practices] ~~ANY OTHER~~
23 ~~SEXUAL CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

24 3-809.

25 (a) (5) “Sexual activity” means:

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

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

5 ~~[(iii)]~~ ~~(H)~~ masturbation; or

6 ~~[(iv)]~~ ~~(H)~~ sadomasochistic abuse.

7 **Article – Criminal Procedure**

8 10–105.

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

14 (11) **EXCEPT AS PROVIDED IN SUBSECTION (A–1) OF THIS SECTION, the**
 15 **person was convicted of a crime and the act on which the conviction was based is no longer**
 16 **a crime; or**

17 **(A–1) AN EXPUNGEMENT MAY NOT BE OBTAINED UNDER SUBSECTION (A)(11)**
 18 **OF THIS SECTION FOR A CONVICTION FOR SODOMY OR UNNATURAL OR PERVERTED**
 19 **PRACTICE, AS THOSE OFFENSES AS THAT OFFENSE EXISTED BEFORE OCTOBER 1,**
 20 **2020, WHERE THE OFFENSE WAS COMMITTED:**

21 **(1) WITHOUT CONSENT;**

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

23 **(3) WITH ANYONE THE INDIVIDUAL COULD NOT MARRY UNDER §**
 24 **2–202 OF THE FAMILY LAW ARTICLE;**

25 **(4) WITH A MENTALLY INCAPACITATED INDIVIDUAL, AS DEFINED IN §**
 26 **3–301 OF THE CRIMINAL LAW ARTICLE;**

27 **(5) WITH A PHYSICALLY HELPLESS INDIVIDUAL, AS DEFINED IN §**
 28 **3–301 OF THE CRIMINAL LAW ARTICLE; OR**

29 **(6) WITH A SUBSTANTIALLY COGNITIVELY IMPAIRED INDIVIDUAL, AS**
 30 **DEFINED IN § 3–301 OF THE CRIMINAL LAW ARTICLE.**

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

4 11-701.

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

6 (1) conspiring to commit, attempting to commit, or committing a violation
 7 of:

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

9 (ii) § 3-303, § 3-304, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311,
 10 § 3-312, § 3-315, § 3-323, or § 3-602 of the Criminal Law Article;

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

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

14 (v) the common law offense of sodomy, **AS THAT OFFENSE EXISTED**
 15 **BEFORE OCTOBER 1, 2020**, or § 3-322 of the Criminal Law Article ~~AS THOSE OFFENSES~~
 16 ~~EXISTED BEFORE OCTOBER 1, 2020~~, if the offense was committed with force or threat of
 17 force; or

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

20 11-1007.

21 (a) (6) (ii) "Sexual abuse" includes~~§~~:

22 1. ~~§~~ incest, rape, or sexual offense in any degree~~§~~; **AND**

23 2. ~~sodomy; and~~

24 ~~§~~ unnatural or perverted sexual practices~~§~~.

25 **Article – Family Law**

26 5-701.

27 (z) "Sexual molestation or exploitation" includes:

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

- 1 (i) obscene photography, films, poses, or similar activity;
- 2 (ii) pornographic photography, films, poses, or similar activity; or
- 3 (iii) prostitution;
- 4 (2) incest;
- 5 (3) rape;
- 6 (4) sexual offense in any degree; AND
- 7 (5) ~~Sodomy; and~~
- 8 (6) unnatural or perverted sexual practices ~~ANY OTHER SEXUAL~~
- 9 ~~CONDUCT THAT IS CRIMINALLY PROHIBITED.~~

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

Approved:

_____ Governor.

_____ Speaker of the House of Delegates.

_____ President of the Senate.