

# HOUSE BILL 81

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CF SB 735

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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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 18, 2020

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## 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

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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.



(2012 Replacement Volume and 2019 Supplement)

BY adding to

Article – Criminal Law

Section 3–321

Annotated Code of Maryland

(2012 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 10–105(a)(11) and (a–1), 11–701(q)(1), and 11–1007(a)(6)(ii)

Annotated Code of Maryland

(2018 Replacement Volume and 2019 Supplement)

BY adding to

Article – Criminal Procedure

Section 10–105(a–1)

Annotated Code of Maryland

(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – Family Law

Section 5–701(z)

Annotated Code of Maryland

(2019 Replacement Volume)

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

**Article – Courts and Judicial Proceedings**

3–801.

(aa) “Sexual molestation or exploitation” includes:

(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;

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

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

(vii) mayhem;

(viii) rape;

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

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

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

or

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

[3-321.

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

**3-321.**

**THE COMMON LAW CRIME OF SODOMY HAS BEEN REPEALED.**

[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.

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

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

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

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

(2) need not state the particular:

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

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

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

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

10 (a) (9) (ii) "Sexual abuse" includes:

1. incest;

2. rape;

13                     3.       sexual offense in any degree; AND

4. [sodomy; and

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

18            (a)        (5)        “Sexual activity” means:

(i) sexual intercourse, including genital-genital, oral-genital,  
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.

10-105.

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

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

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

**(1) WITHOUT CONSENT;**

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

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

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

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

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

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

11-701.

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

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

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

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

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

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

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

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

11-1007.

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

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

2. sodomy; and

3. unnatural or perverted sexual practices].

#### Article – Family Law

5-701.

(z) “Sexual molestation or exploitation” includes:

(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;

(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:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.