

# SENATE BILL 735

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CF HB 81

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By: **Senators Lam, Lee, Carter, Feldman, and Guzzone**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

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 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  
21 (2012 Replacement Volume and 2019 Supplement)

22 BY adding to  
23 Article – Criminal Law  
24 Section 3–321  
25 Annotated Code of Maryland  
26 (2012 Replacement Volume and 2019 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – Criminal Procedure  
3 Section 10–105(a)(11) and (a–1), 11–701(q)(1), and 11–1007(a)(6)(ii)  
4 Annotated Code of Maryland  
5 (2018 Replacement Volume and 2019 Supplement)

6 BY adding to  
7 Article – Criminal Procedure  
8 Section 10–105(a–1)  
9 Annotated Code of Maryland  
10 (2018 Replacement Volume and 2019 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article – Family Law  
13 Section 5–701(z)  
14 Annotated Code of Maryland  
15 (2019 Replacement Volume)

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

18 **Article – Courts and Judicial Proceedings**

19 3–801.

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

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

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

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

24 (iii) Prostitution;

25 (2) Incest;

26 (3) Rape;

27 (4) Sexual offense in any degree; **AND**

28 (5) **[Sodomy; and**

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

31 10–905.

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

4 **Article – Criminal Law**

5 2–201.

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

7 (4) committed in the preparation of or an attempt to perpetuate:

8 (i) arson in the first degree;

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

11 1. is not parcel to a dwelling; and

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

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

15 (iv) carjacking or armed carjacking;

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

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

19 (vii) mayhem;

20 (viii) rape;

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

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

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

24 or

25 (xii) a violation of § 4–503 of this article concerning destructive  
26 devices.

27 [3–321.

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

3 **3-321.**

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

5 [3-322.

6 (a) A person may not:

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

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

9 or

10 (3) commit another unnatural or perverted sexual practice with another or  
11 with an animal.

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

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

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

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

18 (2) need not state the particular:

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

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

23 3-602.

24 (a) (4) (ii) "Sexual abuse" includes:

25 1. incest;

26 2. rape;



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

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

8 (1) WITHOUT CONSENT;

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

10 (3) WITH ANYONE THE INDIVIDUAL COULD NOT MARRY UNDER §  
 11 2-202 OF THE FAMILY LAW ARTICLE; OR

12 (4) WITH A MENTALLY INCAPACITATED INDIVIDUAL, AS DEFINED IN §  
 13 3-301 OF THE CRIMINAL LAW ARTICLE;

14 (5) WITH A PHYSICALLY HELPLESS INDIVIDUAL, AS DEFINED IN §  
 15 3-301 OF THE CRIMINAL LAW ARTICLE; OR

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

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

21 11-701.

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

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

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

26 (ii) § 3-303, § 3-304, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311,  
 27 § 3-312, § 3-315, § 3-323, or § 3-602 of the Criminal Law Article;

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

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

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

4 (vi) § 3–305 or § 3–306 of the Criminal Law Article as the sections  
5 existed before October 1, 2017;  
6 11–1007.

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

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

9 2. sodomy; and

10 3. unnatural or perverted sexual practices].

11 **Article – Family Law**

12 5–701.

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

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

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

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

17 (iii) prostitution;

18 (2) incest;

19 (3) rape;

20 (4) sexual offense in any degree; **AND**

21 (5) [sodomy; and

22 (6) unnatural or perverted sexual practices] **ANY OTHER SEXUAL**  
23 **CONDUCT THAT IS CRIMINALLY PROHIBITED.**

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