

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 209
Judiciary

(Delegate Moon, *et al.*)

Judicial Proceedings

Criminal Law – Unnatural or Perverted Sexual Practice – Repeal

This 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, 2022, under specified circumstances.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under § 3-322 of the Criminal Law Article, a person is prohibited 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. A violator is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a fine of up to \$1,000. The bill repeals this crime.

However, Chapter 72 of 2019 expanded the prohibition against aggravated cruelty to animals to include engaging in sexual contact with an animal, as specified. A person who engages in sexual contact with an animal is guilty of the felony of aggravated cruelty to

animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

Sexual Molestation or Exploitation, Sexual Abuse, and Sexual Activity

Under certain statutes, “sexual molestation or exploitation” and “sexual abuse” include unnatural or perverted sexual practices. The bill removes references to “unnatural or perverted sexual practices” and replaces those references with “*any other sexual conduct that is a crime*” in the following statutes: (1) child in need of assistance (§ 3-801 of the Courts and Judicial Proceedings Article); (2) sexual abuse of a minor (§ 3-602 of the Criminal Law Article); and (3) abuse or neglect of a vulnerable adult in the first degree (§ 3-604 of the Criminal Law Article). The bill also removes unnatural or perverted sexual practices from the definition of “sexual activity” under the State’s revenge porn statute (§ 3-809 of the Criminal Law Article).

Qualifying Offense to have a Conviction Vacated for Victims of Human Trafficking

Under current law, a person convicted of a “qualifying offense” may file a motion to vacate the judgment if the person’s participation in the offense was a direct result of being a victim of human trafficking. The bill clarifies that the offense of an unnatural or perverted sexual practice as the offense existed before October 1, 2022, is a qualifying offense.

Expungements

Subject to specified requirements and criteria, a person who has been convicted of a crime and the act on which the conviction was based is no longer a crime is eligible to file a petition for expungement of a police record, court record, or other record related to the conviction.

Although the bill repeals the crime of unnatural or perverted sexual practices, the bill specifically prohibits expungement of convictions for unnatural or perverted sexual practices, as the offense existed prior to October 1, 2022, 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.

Sex Offender Registry

The bill clarifies that a person who has been convicted of unnatural or perverted sexual practice, as the offense existed prior to October 1, 2022, is a Tier III sex offender if the offense was committed with force or threat of force.

Case Law

In *Schochet v. State*, 320 Md. 714 (1990), the Maryland Court of Appeals held that the unnatural or perverted sexual practice statute could not be enforced against noncommercial activity between consenting heterosexual adults in private. In a 1998 decision, the Circuit Court for Baltimore City held that State laws prohibiting sodomy and unnatural or perverted sexual practices do not apply to noncommercial, consensual private sexual activity between adults, regardless of whether the activity is heterosexual or homosexual. *Williams v. State*, 1998 Extra LEXIS 260 (Md. Cir. Ct. 1998). The consent order entered into pursuant to that decision enjoined the State and Anne Arundel County from enforcing the sodomy and unnatural or perverted sexual practice statutes in these instances.

Additional Comments: According to the Judiciary, in fiscal 2020, there were 158 violations/charges (0 convictions) in the District Court and 108 violations/charges (5 convictions) in the circuit courts for unnatural or perverted sexual practice. During fiscal 2021, there were 157 violations/charges (1 conviction) in the District Court and 103 violations/charges (5 convictions) in the circuit courts for unnatural or perverted sexual practice.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 22 (Senator Lam) - Judicial Proceedings.

Information Source(s): Baltimore, Garrett, and Howard counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Maryland State Archives; Department of Legislative Services

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Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510