



State of Maryland
Office of the Attorney General

Wednesday, February 19, 2020

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings
Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB735

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 735. Senate Bill 735 repeals the outdated common law offense of “sodomy,” and the penalty provision codified in Criminal Law § 3-321, and Criminal Law § 3-322, the statute prohibiting “unnatural and perverted sexual practice. Under current law, both of these crimes are punishable by up to ten years in prison, with sodomy classified as a felony and unnatural and perverted practices classified as a misdemeanor.

The law as currently written does not differentiate between the sexual acts of consenting adults and sexual acts performed commercially or without consent. For thirty years, however, the statutes have not been enforceable as written. In 1990, the Court of Appeals interpreted Criminal Law § 3-322 (unnatural and perverted practices) under the doctrine of constitutional avoidance, which states that, where possible, courts should construe statutes to avoid constitutional issues. *See Schochet v. State*, 320 Md. 714 (1990). To avoid doubts about the constitutionality of § 3-322, the Court held that it did not “encompass consensual, noncommercial, heterosexual activity between adults in the privacy of the home.” *Id.* at 730. A few years later, in 1999, the State entered into a consent decree whereby it agreed not to enforce the common law crime of sodomy or the unnatural or perverted practices statute “in cases of consensual, non-commercial, private sexual activity.”

Recent developments in other areas of criminal law, including § 3-319.1 (physical resistance is not required to prove force in the context of sexual offenses) and § 10-606 (sexual contact with animals punishable as aggravated cruelty), have rendered § 3-321 and § 3-322 largely duplicative. In light of the historic use of

sodomy laws to harass and discriminate against the LGBTQ community, these antiquated statutes should not be permitted to remain on the books.

The remainder of Senate Bill 735 ensures that persons convicted of sodomy or unnatural and perverted practice based on non-consensual sex acts will not be permitted to expunge their convictions or avoid the sex offender registry, allowing the responsible repeal of these antiquated statutes. The Attorney General supports Senate Bill 735, and encourages the Judicial Proceedings Committee to report favorably on the bill.

cc: Members of the Committee