



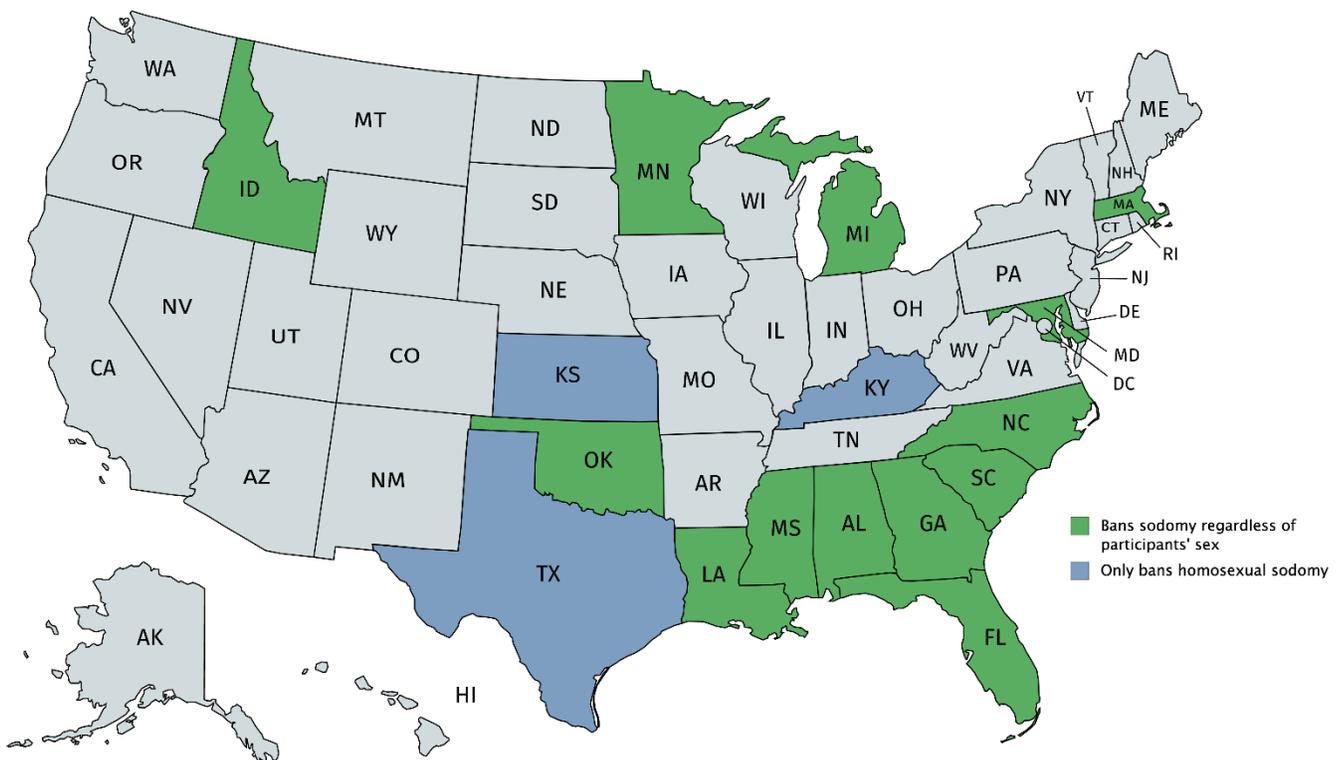
SB0735 - Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal
Presented to the Honorable Will Smith and Members of the Judicial Proceedings Committee
February 20, 2020 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland **urges the Senate Judicial Proceedings Committee a favorable report on SB0735 - Criminal Law - Sodomy and Unnatural or Perverted Sexual Practice - Repeal**, sponsored by Senator Clarence Lam.

Our organization is an advocate for reproductive health, rights, and justice. Reproductive justice recognizes that regardless of gender identity or sexual orientation, every person has the right to be treated with dignity and to engage in safe, consensual sex. Thus, we support the repeal of Maryland's archaic sodomy law.

The Supreme Court struck down state sodomy laws in 2003 in the landmark decision *Lawrence v. Texas*, in which it ruled that consenting adults have the right to engage in private sexual activity, regardless of gender.ⁱ Yet 16 states, including Maryland, still have not repealed their sodomy laws.ⁱⁱ



Though the Supreme Court deemed sodomy laws unconstitutional nearly two decades ago, the states where these laws remain on the books use them to target and punish LGBTQ people. For example, in 2008, Raleigh police arrested two men under North Carolina’s unenforceable “crimes against nature” statute for engaging in private, consensual sex. Due to *Lawrence*, the charges were dropped, but the time the men spent in jail, the \$450 fine they each paid, and the humiliation of the ordeal constitute a punishment.ⁱⁱⁱ Allowing Maryland’s sodomy law to remain in place leaves the door open for this kind of harassment of LGBTQ people by law enforcement.

Sodomy laws are also used to create different standards for punishment of heterosexual and homosexual sex acts. In Louisiana, for example, prosecutors have discretion on whether to charge people who have solicited sex for money under the state’s prostitution statute or under the solicitation provision of its crimes against nature statute, which outlaws oral and anal sex. Until 2013, a “crimes against nature” conviction carried higher penalties than a prostitution conviction, including requiring convicted individuals to register as sex offenders—not a requirement for those convicted under the prostitution statute.^{iv}

Regardless whether Maryland’s sodomy law is enforceable, the mere existence of it in our criminal statutes contributes to the stigmatization of LGBTQ people and negatively impacts the self-worth of LGBTQ youth who are wary of law enforcement discriminating against them for acts considered criminal. Leaving this law in place suggests that the state government still condemns homosexuality.

Sodomy laws contribute to the criminalization and stigmatization of LGBTQ people. By repealing its sodomy law, Maryland would take a step toward full respect for LGBTQ people and everyone’s right to engage in consensual sex. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0735**. Thank you for your time and consideration.

ⁱ *Lawrence v. Texas*, 539 U.S. 558 (2003).

ⁱⁱ Other than Maryland, 12 states have laws banning both heterosexual and homosexual sodomy: Alabama (Alab. Code 13A-6-65), Florida (Fld. Stat. 798.02; Fld. Stat. 800.02), Georgia (Ga. Stat. 16-6-18), Idaho (I.C. § 18-6605), Louisiana (R.S. 14:89), Massachusetts (MGL Ch. 272, § 34; MGL Ch. 272, § 35), Michigan (MCL § 750.158; MCL § 750.338; MCL § 750.338a; MCL § 750.338b), Minnesota (Minn. Stat. 609.293; Minn. Stat. 609.34), Mississippi (Miss. Code § 97-29-59), Georgia (G.S. § 14-177; G.S. § 14-184; G.S. § 14-186), Oklahoma (Okla. Stat. § 21-886), and South Carolina (S.C. Code § 16-15-60; S.C. Code § 16-15-120).

Three states specifically ban homosexual sodomy: Kansas (Kan. Stat. 21-5504), Kentucky (KY Rev Stat § 510.100), and Texas (Tx. Code § 21.06).

ⁱⁱⁱ Maza, Carlos. “State Sodomy Laws Continue To Target LGBT Americans.” Equality Matters, August 8, 2011. Archived at <https://web.archive.org/web/20140708032346/http://equalitymatters.org/blog/201108080012>.

^{iv} Center for Constitutional Rights. “Crimes Against Nature by Solicitation (CANS) Litigation,” January 4, 2013. <https://ccrjustice.org/node/1520>.