

SENATE BILL 858

D3

4lr1886
CF 4lr3459

By: **Senators Hester, Elfreth, Ellis, Feldman, Gile, James, Lam, Muse, Salling, Waldstreicher, West, and Zucker**

Introduced and read first time: February 2, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Revenge Porn – Civil Action and Reporting Requirement**

3 FOR the purpose of authorizing a person to bring a civil action for the nonconsensual
4 distribution of a visual representation of the person with the person's intimate parts
5 exposed or while the person is engaged in sexual activity under certain
6 circumstances; authorizing the Attorney General to bring a civil action under this
7 Act; prohibiting visual representations in court documents under this Act from being
8 made available for public inspection; requiring the Administrative Office of the
9 Courts to report each year to the General Assembly on the number of civil actions
10 brought under this Act; and generally relating to a civil action for revenge porn.

11 BY adding to

12 Article – Courts and Judicial Proceedings

13 Section 3–2301 through 3–2305 to be under the new subtitle “Subtitle 23.
14 Nonconsensual Distribution of Sexual Imagery”

15 Annotated Code of Maryland

16 (2020 Replacement Volume and 2023 Supplement)

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

19 **Article – Courts and Judicial Proceedings**

20 **SUBTITLE 23. NONCONSENSUAL DISTRIBUTION OF SEXUAL IMAGERY.**

21 **3–2301.**

22 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(B) “DEEP FAKE” MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL IMAGE, OR A PICTURE THAT IS CREATED OR ALTERED USING ARTIFICIAL INTELLIGENCE OR DIGITAL SOFTWARE TO MAKE IT APPEAR THAT AN INDIVIDUAL DEPICTED IS ENGAGED IN ACTIVITY THAT THE INDIVIDUAL DID NOT ENGAGE IN.

(C) “DISTRIBUTE” MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE, PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO, OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.

(D) “HARM” MEANS:

(1) PHYSICAL INJURY;

(2) SERIOUS EMOTIONAL DISTRESS; OR

(3) ECONOMIC DAMAGES.

(E) “INTIMATE PARTS” MEANS THE NAKED GENITALS, PUBIC AREA, BUTTOCKS, OR FEMALE NIPPLE.

(F) “SEXUAL ACTIVITY” MEANS:

(1) SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL;

(2) MASTURBATION; OR

(3) SADOMASOCHISTIC ABUSE.

(G) “VISUAL REPRESENTATION” INCLUDES A DEEP FAKE.

3-2302.

(A) THIS SUBTITLE DOES NOT APPLY TO:

(1) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, THE REPORTING OF UNLAWFUL CONDUCT, OR LEGAL PROCEEDINGS; OR

(2) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR COMMERCIAL SETTINGS.

(B) AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. §

230(F)(2), IS NOT LIABLE UNDER THIS SUBTITLE FOR CONTENT PROVIDED BY ANOTHER PERSON.

3-2303.

(A) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A VISUAL REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER PERSON WITH THE OTHER PERSON'S INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN SEXUAL ACTIVITY:

(1) WITH THE INTENT TO HARM, HARASS, INTIMIDATE, THREATEN, OR COERCE THE OTHER PERSON;

(2) (I) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR

(II) WITH RECKLESS DISREGARD AS TO WHETHER THE PERSON CONSENTED TO THE DISTRIBUTION; AND

(3) UNDER CIRCUMSTANCES IN WHICH THE OTHER PERSON HAD A REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE.

(B) (1) A PERSON WHO IS A VICTIM OF A VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE PERSON OR PERSONS WHO COMMITTED THE VIOLATION.

(2) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR A VIOLATION OF THIS SUBTITLE AGAINST THE PERSON OR PERSONS WHO COMMITTED THE VIOLATION.

(C) THE COURT MAY:

(1) ISSUE AN INJUNCTION TO PREVENT OR RESTRAIN AN ACT THAT WOULD CONSTITUTE A VIOLATION OF THIS SUBTITLE;

(2) AWARD ECONOMIC DAMAGES; AND

(3) AWARD ANY OTHER RELIEF THE COURT DEEMS APPROPRIATE.

3-2304.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A VISUAL REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL

ACTION UNDER THIS SUBTITLE MAY NOT BE MADE AVAILABLE FOR PUBLIC INSPECTION.

(B) EXCEPT AS OTHERWISE ORDERED BY THE COURT, A VISUAL REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL ACTION UNDER THIS SUBTITLE MAY BE MADE AVAILABLE FOR INSPECTION ONLY IN CONNECTION WITH THE CIVIL ACTION BY:

(1) COURT PERSONNEL;

(2) A JURY;

(3) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE;

(4) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR

(5) THE VICTIM OR THE VICTIM'S ATTORNEY.

3-2305.

ON OR BEFORE DECEMBER 1, 2024, AND EACH DECEMBER 1 THEREAFTER, THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON THE NUMBER OF CIVIL ACTIONS BROUGHT UNDER THIS SUBTITLE IN THE PRECEDING YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.