

SENATE BILL 360

D3

(5lr0837)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Hester and Smith**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Revenge Porn – Definition of Visual Representation and Civil Action ~~and~~**
3 **~~Criminal Offense~~**

4 FOR the purpose of ~~authorizing a person to bring and maintain a civil action for defamation~~
5 ~~under certain circumstances; prohibiting a person from knowingly distributing a~~
6 ~~certain computer-generated visual representation of another under certain~~
7 ~~circumstances~~ defining the term “visual representation” as it relates to the crime of
8 revenge porn; authorizing a person to bring a certain civil action for revenge porn;
9 and generally relating to ~~a civil action and criminal offense for~~ revenge porn.

10 ~~BY adding to~~
11 ~~Article — Courts and Judicial Proceedings~~
12 ~~Section 3–505~~
13 ~~Annotated Code of Maryland~~
14 ~~(2020 Replacement Volume and 2024 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 3–809
Annotated Code of Maryland
(2021 Replacement Volume and 2024 Supplement)

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

~~Article – Courts and Judicial Proceedings~~

~~§ 505.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.~~

~~(2) “COMPUTER GENERATED VISUAL REPRESENTATION” INCLUDES:~~

~~(I) A VISUAL REPRESENTATION CREATED WITHOUT USING
OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON; AND~~

~~(II) A VISUAL REPRESENTATION CREATED USING OTHER
EXISTING VISUAL REPRESENTATIONS OF A PERSON WITHOUT THE PERSON’S
CONSENT.~~

~~(3) “DISTRIBUTE” HAS THE MEANING STATED IN § 3-809 OF THE
CRIMINAL LAW ARTICLE.~~

~~(4) (I) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON” MEANS THAT AN ORDINARY PERSON WOULD
CONCLUDE THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON.~~

~~(II) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON” INCLUDES A COMPUTER GENERATED VISUAL
REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR
GENUINE.~~

~~(III) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON” DOES NOT INCLUDE IMAGES OR ITEMS
DEPICTING A PERSON THAT ARE:~~

~~1. DRAWINGS;~~

~~2. CARTOONS;~~

~~3. SCULPTURES; OR~~

~~4. PAINTINGS.~~

~~(5) "INTIMATE PARTS" HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.~~

~~(6) "SEXUAL ACTIVITY" HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.~~

~~(B) A PERSON MAY BRING AND MAINTAIN A CIVIL ACTION FOR DEFAMATION PER SE AGAINST ANOTHER WHO DISTRIBUTES A COMPUTER GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON AND FALSELY DEPICTS THE PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR ENGAGED IN SEXUAL ACTIVITY.~~

~~(C) IN ADDITION TO OTHER RELIEF, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.~~

Article – Criminal Law

3-809.

(a) (1) In this section the following words have the meanings indicated.

~~(2) "COMPUTER GENERATED VISUAL REPRESENTATION" INCLUDES:~~

~~(I) A VISUAL REPRESENTATION CREATED WITHOUT USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON; AND~~

~~(II) A VISUAL REPRESENTATION CREATED USING OTHER EXISTING VISUAL REPRESENTATIONS OF A PERSON WITHOUT THE PERSON'S CONSENT.~~

~~(3)~~ (2) "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.

~~{(3)}~~ (4) "Harm" means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

~~(5) (i) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS OF AN ACTUAL AND IDENTIFIABLE PERSON.~~

~~(ii) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" INCLUDES A COMPUTER GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE PERSON.~~

~~(iii) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" DOES NOT INCLUDE VISUAL REPRESENTATIONS OR ITEMS DEPICTING A PERSON THAT ARE:~~

~~1. DRAWINGS;~~

~~2. CARTOONS;~~

~~3. SCULPTURES; OR~~

~~4. PAINTINGS.~~

~~{(4)} (6)~~ "Intimate parts" means the naked genitals, pubic area, buttocks, or female nipple.

~~{(5)} (7)~~ "Sexual activity" means:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal;

(ii) masturbation; or

(iii) sadomasochistic abuse.

(6) (I) "VISUAL REPRESENTATION" OF AN IDENTIFIABLE PERSON MEANS:

1. AN UNALTERED IMAGE OF THE PERSON; OR

2. AN IMAGE CREATED WITH OR WITHOUT USING OTHER EXISTING DEPICTIONS OF THE PERSON THAT IS INDISTINGUISHABLE FROM THE PERSON, FROM THE PERSPECTIVE OF AN ORDINARY PERSON.

(II) "VISUAL REPRESENTATION" INCLUDES A
COMPUTER-GENERATED IMAGE.

(III) "VISUAL REPRESENTATION" DOES NOT INCLUDE AN IMAGE
OR DEPICTION THAT IS:

1. A DRAWING;

2. A CARTOON;

3. A SCULPTURE; OR

4. A PAINTING.

(b) (1) This section does not apply to:

(i) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings; or

(ii) situations involving voluntary exposure in public or commercial settings.

(2) An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable under this section for content provided by another person.

(c) ~~(1)~~ A person may not knowingly distribute a visual representation of another identifiable person that displays the other person with ~~his or her~~ intimate parts exposed or while engaged in an act of sexual activity:

~~[(1)]~~ ~~(H)~~ with the intent to harm, harass, intimidate, threaten, or coerce the other person;

~~[(2)]~~ (i) ~~(H)~~ ~~1.~~ under circumstances in which the person knew that the other person did not consent to the distribution; or

~~[(ii)]~~ ~~2.~~ with reckless disregard as to whether the person consented to the distribution; and

~~[(3)]~~ ~~(H)~~ under circumstances in which the other person had a reasonable expectation that the image would remain private.

~~(2) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A
COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE
FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER~~

~~PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT OF SEXUAL ACTIVITY;~~

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

~~(H) 1. UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR~~

~~2. WITH RECKLESS DISREGARD AS TO WHETHER THE PERSON CONSENTED TO THE DISTRIBUTION.~~

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$5,000 or both.

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

(f) (1) A PERSON WHOSE VISUAL REPRESENTATION WAS DISTRIBUTED IN VIOLATION OF THIS SECTION HAS A CIVIL CAUSE OF ACTION FOR DEFAMATION PER SE OR INVASION OF PRIVACY AGAINST ANY PERSON WHO DISTRIBUTED THE VISUAL REPRESENTATION.

(2) IN ADDITION TO OTHER RELIEF, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF UNDER THIS SUBSECTION.

(G) A visual representation ~~AND A COMPUTER-GENERATED VISUAL REPRESENTATION~~ of a victim that is part of a court record for a case arising ~~from a prosecution~~ under this section:

(1) subject to item (2) of this subsection, may not be made available for public inspection; and

(2) except as otherwise ordered by the court, may only be made available for inspection in relation to a criminal charge OR CIVIL ACTION under this section to:

(i) court personnel;

(ii) a jury in a criminal case brought under this section;

(iii) the State's Attorney or the State's Attorney's designee;

(iv) the Attorney General or the Attorney General's designee;

(v) a law enforcement officer;

(vi) **THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY;**

(VII) the defendant or the defendant's attorney; or

~~(vii)~~ **(VIII)** the victim or the victim's attorney.

~~SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof 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 ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2025.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.