

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 360

(Senators Hester and Smith)

Judicial Proceedings

Judiciary

Revenge Porn - Civil Action and Criminal Offense

This bill authorizes a person to 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 is of a sexual or intimate nature, as specified. The bill also expands the State’s existing prohibition against revenge porn (§ 3-809 of the Criminal Law Article) to prohibit a person from knowingly distributing 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. Violators are subject to the existing penalty under § 3-809. **The bill contains a severability provision and takes effect July 1, 2025.**

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the expanded application of an existing penalty provision. Potential minimal increase in general fund expenditures for the Judiciary due to additional civil cases, as discussed below.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s expanded application of an existing penalty provision.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Civil Cause of Action (New under the Bill)

Under the bill, 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. In addition to other relief, the court may award reasonable attorney's fees to a prevailing plaintiff.

“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. It includes a computer-generated visual representation that has been created, adapted, or modified to appear genuine, but does not include images or items depicting a person that are drawings, cartoons, sculptures, or paintings.

“Computer-generated visual representation” includes (1) a visual representation created without using other existing visual representations of a person and (2) a visual representation created using other existing visual representations of a person without the person's consent.

Revenge Porn – § 3-809 of the Criminal Law Article

Under current law, § 3-809 of the Criminal Law Article prohibits a person from knowingly distributing 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) with the intent to harm, harass, intimidate, threaten, or coerce the other person; (2) under circumstances in which the person knew that the other person did not consent to the distribution or 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. The State may institute a prosecution for a violation of § 3-809 at any time. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$5,000 maximum fine.

The bill expands the prohibition against revenge porn to include knowing distribution of 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 (1) with the intent to harm, harass, intimidate, threaten, or coerce the other person and (2) under circumstances in which the person knew that the other person did not consent to the distribution or with reckless disregard as to

whether the person consented to the distribution. Violators are subject to the existing penalty under § 3-809.

Under current law, the prohibition 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. An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable for content provided by another person.

Under current law, a visual representation of a victim that is part of a court record in a case prosecuting revenge porn may not be available for public inspection and, except as otherwise ordered by the court, may only be made available to specified individuals for inspection in relation to a criminal charge for revenge porn. The bill expands this restricted inspection to a computer-generated visual representation of a victim.

As with the civil action provisions, the bill specifies under § 3-809 that a “computer-generated visual representation” includes (1) a visual representation created without using other existing visual representations of a person and (2) a visual representation created using other existing visual representations of a person without the person’s consent.

State Expenditures: The Judiciary notes that depending on case volume, additional resources may be needed to address civil cases filed under the bill. According to the Judiciary, 391 *criminal actions* (293 in the District Court and 98 in the circuit courts) under § 3-809 of the Criminal Law Article (revenge porn) were filed in the State’s trial courts during fiscal 2024. The Judiciary cautions that these cases do not include unreported acts, which may be the basis for civil actions under the bill. However, the Department of Legislative Services advises that while the bill may address activity that occurs fairly frequently, given the resources needed by an aggrieved party to bring a civil suit, and considering the overall civil caseloads of the courts, any potential additional expenditures for the Judiciary solely attributable to the bill are likely to be minimal.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 858 of 2024.

Designated Cross File: None.

Information Source(s): 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;
Department of Legislative Services

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