

SENATE BILL 769

E1

(8lr1506)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senator Zirkin**

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 **Criminal Law – Sextortion and Revenge Porn**

3 FOR the purpose of prohibiting a person from causing another to engage in certain sexual
4 ~~contact~~ activity by making certain threats; prohibiting a person from causing
5 another to engage as the subject in the production of a certain visual representation
6 or performance by making certain threats; repealing a provision of law prohibiting a
7 person from intentionally causing serious emotional distress to another by
8 intentionally placing on the Internet a certain reproduction of the image of the other
9 under certain circumstances; prohibiting a person from knowingly distributing a
10 certain visual representation of a certain other person under certain circumstances;
11 establishing and applying certain penalties for a violation of this Act; authorizing a
12 sentence imposed under this Act to be separate from and consecutive to or concurrent
13 with a sentence for any other crime based on the action establishing a violation of this
14 Act; prohibiting a certain visual representation from being made available for public
15 inspection in certain cases; providing that a certain visual representation may be

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.



1 made available to certain persons under certain circumstances; defining certain
2 terms; and generally relating to sextortion and revenge porn.

3 BY adding to
4 Article – Criminal Law
5 Section 3–709
6 Annotated Code of Maryland
7 (2012 Replacement Volume and 2017 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 3–809
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2017 Supplement)

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

15 **Article – Criminal Law**

16 **3–709.**

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

19 (2) “INTIMATE PARTS” HAS THE MEANING STATED IN § 3–809 OF THIS
20 TITLE.

21 (3) “SEXUAL ~~CONTACT~~ ACTIVITY” HAS THE MEANING STATED IN §
22 3–809 OF THIS TITLE.

23 (B) A PERSON MAY NOT CAUSE ANOTHER TO:

24 (1) ENGAGE IN AN ACT OF SEXUAL ~~CONTACT~~ ACTIVITY BY
25 THREATENING TO:

26 (I) ACCUSE ANY PERSON OF A CRIME OR OF ANYTHING THAT, IF
27 TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE;

28 (II) CAUSE PHYSICAL INJURY TO A PERSON;

29 (III) INFLICT EMOTIONAL DISTRESS ON A PERSON;

30 (IV) CAUSE ECONOMIC DAMAGE TO A PERSON; OR

1 (V) CAUSE DAMAGE TO THE PROPERTY OF A PERSON; OR

2 (2) ENGAGE AS A SUBJECT IN THE PRODUCTION OF A VISUAL
3 REPRESENTATION OR PERFORMANCE THAT DEPICTS THE OTHER WITH THE OTHER'S
4 INTIMATE PARTS EXPOSED OR ENGAGING IN OR SIMULATING AN ACT OF SEXUAL
5 ~~CONTACT~~ ACTIVITY BY THREATENING TO:

6 (I) ACCUSE ANY PERSON OF A CRIME OR OF ANYTHING THAT, IF
7 TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE;

8 (II) CAUSE PHYSICAL INJURY TO A PERSON;

9 (III) INFLICT EMOTIONAL DISTRESS ON A PERSON;

10 (IV) CAUSE ECONOMIC DAMAGE TO A PERSON; OR

11 (V) CAUSE DAMAGE TO THE PROPERTY OF A PERSON.

12 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A ~~FELONY~~
13 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
14 EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.

15 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM
16 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED
17 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

18 (E) A VISUAL REPRESENTATION DEPICTING A VICTIM ~~WHICH~~ THAT IS PART
19 OF A COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS
20 SECTION:

21 (1) SUBJECT TO ITEM (2) OF THIS SUBSECTION, MAY NOT BE MADE
22 AVAILABLE FOR PUBLIC INSPECTION; AND

23 (2) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY BE
24 MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER
25 THIS SECTION TO:

26 (I) COURT PERSONNEL;

27 (II) A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
28 SECTION;

29 (III) THE STATE'S ATTORNEY OR THE STATE'S ATTORNEY'S
30 DESIGNEE;

1 (IV) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
 2 DESIGNEE;

3 (V) A LAW ENFORCEMENT OFFICER;

4 ~~(VI)~~ (VI) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY;
 5 OR

6 ~~(VII)~~ (VII) THE VICTIM OR THE VICTIM'S ATTORNEY.

7 3-809.

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

9 (2) "DISTRIBUTE" MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE,
 10 PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO,
 11 OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.

12 (3) "HARM" MEANS:

13 (I) PHYSICAL INJURY;

14 (II) SERIOUS EMOTIONAL DISTRESS; OR

15 (III) ECONOMIC DAMAGES.

16 [(2)] (4) "Intimate parts" means the naked genitals, pubic area, buttocks,
 17 or female nipple.

18 [(3)] (5) ["Sexual contact"] "SEXUAL ACTIVITY" means:

19 (I) sexual intercourse, including genital-genital, oral-genital,
 20 anal-genital, or oral-anal, whether between persons of the same or opposite sex;

21 (II) SODOMY UNDER § 3-321 OF THIS TITLE OR AN UNNATURAL
 22 OR PERVERTED SEXUAL PRACTICE UNDER § 3-322 OF THIS TITLE;

23 (III) MASTURBATION; OR

24 (IV) SADOMASOCHISTIC ABUSE.

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

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

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

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

7 [(c) A person may not intentionally cause serious emotional distress to another by
8 intentionally placing on the Internet a photograph, film, videotape, recording, or any other
9 reproduction of the image of the other person that reveals the identity of the other person
10 with his or her intimate parts exposed or while engaged in an act of sexual contact:

11 (1) knowing that the other person did not consent to the placement of the
12 image on the Internet; and

13 (2) under circumstances in which the other person had a reasonable
14 expectation that the image would be kept private.]

15 (C) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A VISUAL
16 REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER
17 PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT
18 OF SEXUAL ~~CONTACT~~ ACTIVITY:

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

21 ~~(II) WITH RECKLESS DISREGARD FOR THE LIKELIHOOD THAT~~
22 ~~THE OTHER PERSON WILL SUFFER HARM; AND~~

23 (2) (I) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW ~~OR~~
24 ~~SHOULD HAVE KNOWN~~ THAT THE OTHER PERSON DID NOT CONSENT TO THE
25 DISTRIBUTION; OR

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

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

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

1 (E) A VISUAL REPRESENTATION OF A VICTIM ~~WHICH~~ THAT IS PART OF A
2 COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS SECTION:

3 (1) SUBJECT TO ITEM (2) OF THIS SUBSECTION, MAY NOT BE MADE
4 AVAILABLE FOR PUBLIC INSPECTION; AND

5 (2) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY BE
6 MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER
7 THIS SECTION TO:

8 (I) COURT PERSONNEL;

9 (II) A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
10 SECTION;

11 (III) THE STATE’S ATTORNEY OR THE STATE’S ATTORNEY’S
12 DESIGNEE;

13 (IV) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL’S
14 DESIGNEE;

15 (V) A LAW ENFORCEMENT OFFICER;

16 ~~(VI)~~ (VI) THE DEFENDANT OR THE DEFENDANT’S ATTORNEY;
17 OR

18 ~~(VII)~~ (VII) THE VICTIM OR THE VICTIM’S ATTORNEY.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.