

SENATE BILL 769

E1

8lr1506

By: **Senator Zirkin**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2018

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; prohibiting a
12 certain visual representation from being made available for public inspection in
13 certain cases; providing that a certain visual representation may be made available
14 to certain persons under certain circumstances; defining certain terms; and
15 generally relating to sextortion and revenge porn.

16 BY adding to
17 Article – Criminal Law
18 Section 3–709
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2017 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Law
23 Section 3–809

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.



1 Annotated Code of Maryland
2 (2012 Replacement Volume and 2017 Supplement)

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

5 **Article – Criminal Law**

6 **3–709.**

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

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

11 (3) “~~SEXUAL CONTACT~~ SEXUAL CONTACT ACTIVITY” HAS THE MEANING STATED IN §
12 **3–809 OF THIS TITLE.**

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

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

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

18 (II) CAUSE PHYSICAL INJURY TO A PERSON;

19 (III) INFLICT EMOTIONAL DISTRESS ON A PERSON;

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

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

22 (2) ENGAGE AS A SUBJECT IN THE PRODUCTION OF A VISUAL
23 REPRESENTATION OR PERFORMANCE THAT DEPICTS THE OTHER WITH THE OTHER’S
24 INTIMATE PARTS EXPOSED OR ENGAGING IN OR SIMULATING AN ACT OF SEXUAL
25 ~~CONTACT~~ ACTIVITY BY 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;

1 (III) INFLICT EMOTIONAL DISTRESS ON A PERSON;

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

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

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

7 (D) A VISUAL REPRESENTATION DEPICTING A VICTIM ~~WHICH~~ THAT IS PART
8 OF A COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS
9 SECTION:

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

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

15 (I) COURT PERSONNEL;

16 (II) A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
17 SECTION;

18 (III) THE STATE'S ATTORNEY OR THE STATE'S ATTORNEY'S
19 DESIGNEE;

20 (IV) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
21 DESIGNEE;

22 (V) A LAW ENFORCEMENT OFFICER;

23 ~~(VI)~~ (VI) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY;
24 OR

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

26 3-809.

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

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

4 **(3) “HARM” MEANS:**

5 **(I) PHYSICAL INJURY;**

6 **(II) SERIOUS EMOTIONAL DISTRESS; OR**

7 **(III) ECONOMIC DAMAGES.**

8 **[(2)] (4) “Intimate parts” means the naked genitals, pubic area, buttocks,**
9 **or female nipple.**

10 **[(3)] (5) [“Sexual contact”] “SEXUAL ACTIVITY” means:**

11 **(I) sexual intercourse, including genital–genital, oral–genital,**
12 **anal–genital, or oral–anal, whether between persons of the same or opposite sex;**

13 **(II) SODOMY UNDER § 3–321 OF THIS TITLE OR AN UNNATURAL**
14 **OR PERVERTED SEXUAL PRACTICE UNDER § 3–322 OF THIS TITLE;**

15 **(III) MASTURBATION; OR**

16 **(IV) SADOMASOCHISTIC ABUSE.**

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

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

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

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

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

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

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

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

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

9 (II) WITH RECKLESS DISREGARD FOR THE LIKELIHOOD THAT
10 THE OTHER PERSON WILL SUFFER HARM; AND

11 (2) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW OR
12 SHOULD HAVE KNOWN THAT THE OTHER PERSON DID NOT CONSENT TO THE
13 DISTRIBUTION.

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

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

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

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

23 (I) COURT PERSONNEL;

24 (II) A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
25 SECTION;

26 (III) THE STATE'S ATTORNEY OR THE STATE'S ATTORNEY'S
27 DESIGNEE;

28 (IV) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
29 DESIGNEE;

30 (V) A LAW ENFORCEMENT OFFICER;

1 ~~(V)~~ (VI) THE DEFENDANT OR THE DEFENDANT’S ATTORNEY;
2 OR

3 ~~(VI)~~ (VII) THE VICTIM OR THE VICTIM’S ATTORNEY.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.