

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 769

(Senator Zirkin)

Judicial Proceedings

Judiciary

Criminal Law - Sextortion and Revenge Porn

This bill prohibits a person from causing another to engage in sexual activity or causing another to engage as a subject in the production of a visual representation performance meeting specified criteria by threatening to (1) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute; (2) cause physical injury to a person; (3) inflict emotional distress on a person; (4) cause economic damage to a person; or (5) cause damage to the property of a person. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 fine. A sentence imposed for a violation of this prohibition may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation. Access to an applicable visual representation is limited as specified in the bill.

The bill also makes significant changes to the existing revenge porn statute under § 3-809 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the prohibitions under § 3-809 of the Criminal Law Article (revenge porn) and instead 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 bill retains the existing classification and penalties for a violation of the revenge porn statute under § 3-809. Access to an applicable visual representation is limited as specified in the bill.

Current Law: Section 3-809 of the Criminal Law Article (revenge porn) prohibits a person from intentionally causing serious emotional distress to another by intentionally placing on the Internet a photograph, film, videotape, recording, or any other reproduction of the image of the other person that reveals the identity of the other person with his or her intimate parts exposed or while engaged in an act of sexual contact (1) knowing that the other person did not consent to the placement of the image on the Internet and (2) under circumstances in which the other person had a reasonable expectation that the image would be kept private.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$5,000 maximum fine.

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 47 U.S.C. § 230(f)(2), an “interactive computer service” is any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

Background: According to the Judiciary, there were 130 violations of § 3-809 of the Criminal Law Article in District Court and 14 violations in the circuit courts during fiscal 2017. A violation is a charge filed with the court. It is not a conviction, and

one person may be associated with more than 1 violation. According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), a review of the Maryland Sentencing Guidelines Database indicates that MSCCSP received information for one individual sentenced under § 3-809 of the Criminal Law Article in the State's circuit courts during fiscal 2017.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision and expanded application of an existing monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty and expanded application of an existing incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted as a result of the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision and expanded application of an existing monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty and expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Montgomery counties; 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 State Police; U. S. Code; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2018
mm/kdm Third Reader - March 23, 2018
Revised - Amendment(s) - March 23, 2018
Revised - Clarification - March 23, 2018
Enrolled - May 11, 2018
Revised - Amendment(s) - May 11, 2018

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510