

# HOUSE BILL 1062

E1, D3

4lr1767

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By: **Delegate Lopez**

Introduced and read first time: February 7, 2024

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 2024

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Criminal Law – Harassment – Digitally Altered or Generated Visual~~  
3 ~~Representations~~  
4 Deep Fake Representations and Revenge Porn

5 FOR the purpose of ~~prohibiting a person from knowingly distributing an intentionally~~  
6 ~~digitally altered or generated representation of another identifiable person that~~  
7 ~~displays the other person with his or her intimate parts exposed or while engaging~~  
8 ~~in an act of sexual activity under certain circumstances; establishing a certain cause~~  
9 ~~of action for a victim of a violation of this Act; and generally relating to harassment~~  
10 authorizing a person to bring and maintain a civil action for defamation under  
11 certain circumstances; establishing the statute of limitations for a certain  
12 prosecution relating to harassment by distribution of a deep fake image to begin at  
13 the time the victim knew or reasonably should have known of the violation;  
14 establishing that it is harassment for a person to distribute a certain deep fake  
15 representation that is indistinguishable from an actual and identifiable human  
16 being; establishing that revenge porn does not include certain deep fake  
17 representations; and generally relating to deep fake representations and revenge  
18 porn.

19 BY adding to

20 Article – Courts and Judicial Proceedings  
21 Section 3–505 and 5–106(gg)  
22 Annotated Code of Maryland  
23 (2020 Replacement Volume and 2023 Supplement)

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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 BY repealing and reenacting, without amendments,  
 2 Article – Courts and Judicial Proceedings  
 3 Section 5–106(a)  
 4 Annotated Code of Maryland  
 5 (2020 Replacement Volume and 2023 Supplement)

6 BY repealing and reenacting, with amendments,  
 7 Article – Criminal Law  
 8 Section 3–803 and 3–809  
 9 Annotated Code of Maryland  
 10 (2021 Replacement Volume and 2023 Supplement)

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

13 Article – Courts and Judicial Proceedings

14 3–505.

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

17 (2) “DISTRIBUTE” HAS THE MEANING STATED IN § 3–809 OF THE  
 18 CRIMINAL LAW ARTICLE.

19 (3) (i) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL  
 20 REPRESENTATION OF THE PERSON” MEANS THAT AN ORDINARY PERSON WOULD  
 21 CONCLUDE THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL  
 22 REPRESENTATION OF THE PERSON.

23 (ii) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL  
 24 REPRESENTATION OF THE PERSON” INCLUDES A COMPUTER–GENERATED VISUAL  
 25 REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR  
 26 GENUINE.

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

- 30 1. DRAWINGS;
- 31 2. CARTOONS;
- 32 3. SCULPTURES; OR

4. PAINTINGS.

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

(5) "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.

5-106.

(a) Except as provided by this section, § 1-303 of the Environment Article, and § 8-1815 of the Natural Resources Article, a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed.

(GG) A PROSECUTION FOR A VIOLATION OF § 3-803(C) OF THE CRIMINAL LAW ARTICLE RELATING TO HARASSMENT BY DISTRIBUTION OF A DEEP FAKE IMAGE SHALL BE INSTITUTED WITHIN 5 YEARS AFTER THE VICTIM IN FACT KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE VIOLATION.

Article - Criminal Law

3-803.

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

(2) (i) "DEEP FAKE REPRESENTATION" MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL IMAGE, A PICTURE, OR A COMPUTER OR COMPUTER-GENERATED IMAGE OR PICTURE, WHETHER MADE OR PRODUCED BY ELECTRONIC, MECHANICAL, OR OTHER MEANS THAT IS INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING.

(ii) "DEEP FAKE REPRESENTATION" DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING HUMAN BEINGS THAT ARE:

1. DRAWINGS;

2. CARTOONS;

1                                   **3.     SCULPTURES; OR**

2                                   **4.     PAINTINGS.**

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

6                   **(4)   “HARM” MEANS:**

7                                   **(I)    PHYSICAL INJURY;**

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

9                                   **(III)  ECONOMIC DAMAGES.**

10                   **(5)   (I)   “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE**  
11 **HUMAN BEING” MEANS AN IMAGE THAT AN ORDINARY PERSON WOULD CONCLUDE IS**  
12 **OF AN ACTUAL AND IDENTIFIABLE HUMAN BEING.**

13                                   **(II)   “INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE**  
14 **HUMAN BEING” INCLUDES AN IMAGE THAT IS COMPUTER GENERATED AND HAS**  
15 **BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND**  
16 **IDENTIFIABLE HUMAN BEING.**

17                   **(6)   “INTIMATE PARTS” MEANS THE NAKED GENITALS, PUBIC AREA,**  
18 **BUTTOCKS, OR FEMALE NIPPLE.**

19                   **(7)   “SEXUAL ACTIVITY” MEANS:**

20                                   **(I)    SEXUAL INTERCOURSE, INCLUDING GENITAL–GENITAL,**  
21 **ORAL–GENITAL, ANAL–GENITAL, OR ORAL–ANAL;**

22                                   **(II)   MASTURBATION; OR**

23                                   **(III)  SADOMASOCHISTIC ABUSE.**

24                   **(B)   A person may not follow another in or about a public place or maliciously**  
25 **engage in a course of conduct that alarms or seriously annoys the other:**

26                                   **(1)   with the intent to harass, alarm, or annoy the other;**

27                                   **(2)   after receiving a reasonable warning or request to stop by or on behalf**  
28 **of the other; and**

1           (3)    without a legal purpose.

2           **(C) (1) (I) THIS SUBSECTION DOES NOT APPLY TO:**

3                       **1.    LAWFUL AND COMMON PRACTICES OF LAW**  
4 **ENFORCEMENT, THE REPORTING OF UNLAWFUL CONDUCT, OR LEGAL**  
5 **PROCEEDINGS; OR**

6                       **2.    SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN**  
7 **PUBLIC OR COMMERCIAL SETTINGS.**

8                       **(II) AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47**  
9 **U.S.C. § 230(F)(2), IS NOT LIABLE UNDER THIS SECTION FOR CONTENT PROVIDED**  
10 **BY ANOTHER PERSON.**

11           **(2) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A DEEP FAKE**  
12 **REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER**  
13 **PERSON WITH INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT OF SEXUAL**  
14 **ACTIVITY:**

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

17                       **(II) 1.    UNDER CIRCUMSTANCES IN WHICH THE PERSON**  
18 **KNEW THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR**

19                       **2.    WITH RECKLESS DISREGARD AS TO WHETHER THE**  
20 **PERSON CONSENTED TO THE DISTRIBUTION.**

21           **(3) A DEEP FAKE REPRESENTATION OF A VICTIM THAT IS PART OF A**  
22 **COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS**  
23 **SUBSECTION:**

24                       **(I) SUBJECT TO ITEM (II) OF THIS PARAGRAPH, MAY NOT BE**  
25 **MADE AVAILABLE FOR PUBLIC INSPECTION; AND**

26                       **(II) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY**  
27 **BE MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER**  
28 **THIS SECTION TO:**

29                       **1.    COURT PERSONNEL;**

30                       **2.    A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS**  
31 **SECTION;**



- 1 (i) sexual intercourse, including genital–genital, oral–genital,  
2 anal–genital, or oral–anal;
- 3 (ii) masturbation; or
- 4 (iii) sadomasochistic abuse.

5 **(6) “VISUAL REPRESENTATION” DOES NOT INCLUDE A DEEP FAKE**  
6 **REPRESENTATION, AS DEFINED IN § 3–803 OF THIS SUBTITLE.**

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

- 8 (i) lawful and common practices of law enforcement, the reporting  
9 of unlawful conduct, or legal proceedings; ~~for~~
- 10 (ii) situations involving voluntary exposure in public or commercial  
11 settings; ~~OR~~

12 ~~(iii) VISUAL REPRESENTATIONS THAT ARE:~~

- 13 ~~1. DRAWINGS;~~
- 14 ~~2. CARTOONS;~~
- 15 ~~3. SCULPTURES; OR~~
- 16 ~~4. PAINTINGS.~~

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

19 (c) A person may not knowingly distribute a visual representation, ~~INCLUDING~~  
20 ~~AN INTENTIONALLY DIGITALLY ALTERED OR GENERATED VISUAL~~  
21 ~~REPRESENTATION,~~ of another identifiable person that displays the other person with his  
22 or her intimate parts exposed or while engaged in an act of sexual activity:

- 23 (1) with the intent to harm, harass, intimidate, threaten, or coerce the  
24 other person;
- 25 (2) (i) under circumstances in which the person knew that the other  
26 person did not consent to the distribution; or
- 27 (ii) with reckless disregard as to whether the person consented to the  
28 distribution; and

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

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

5 ~~(E) (1) A PERSON DEPICTED IN A VISUAL REPRESENTATION~~  
6 ~~DISTRIBUTED IN VIOLATION OF THIS SECTION MAY FILE AN ACTION TO RECOVER~~  
7 ~~DAMAGES AND FOR INJUNCTIVE RELIEF.~~

8 ~~(2) IN ADDITION TO ANY RELIEF GRANTED UNDER PARAGRAPH (1) OF~~  
9 ~~THIS SUBSECTION, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES.~~

10 ~~(3) THIS SUBSECTION DOES NOT AFFECT ANY LEGAL OR EQUITABLE~~  
11 ~~RIGHT OR REMEDY OTHERWISE PROVIDED BY LAW.~~

12 ~~(e)~~ (F) A visual representation of a victim that is part of a court record for a  
13 case arising from a prosecution under this section:

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

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

18 (i) court personnel;

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

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

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

22 (v) a law enforcement officer;

23 (vi) the defendant or the defendant's attorney; or

24 (vii) the victim or the victim's attorney.

25 ~~(G) NOTHING IN THIS SECTION MAY BE CONSTRUED IN A MANNER THAT~~  
26 ~~ABRIDGES OR OTHERWISE LIMITS A PERSON'S RIGHT TO FREE SPEECH UNDER THE~~  
27 ~~UNITED STATES CONSTITUTION OR THE MARYLAND CONSTITUTION OR MARYLAND~~  
28 ~~DECLARATION OF RIGHTS.~~

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2024.