



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## POSITION ON PROPOSED LEGISLATION

**BILL: HB1062 Criminal Law – Harassment – Digitally Altered or Generated Visual Representations**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: February 15, 2024**

The Maryland Office of the Public Defender respectfully submits this testimony and asks for an unfavorable report from the committee.

Under Maryland Law, distribution of ‘revenge porn’ is unlawful. MD. CRIM. LAW § 3-809. The Revenge Porn Statute specifically prohibits “[distribution of] 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” under three specific circumstances:

- 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
- 3) with reckless disregard as to whether the person consented to the distribution; and under circumstances in which the other person had a reasonable expectation that **the image would remain private.**

MD. CRIM. LAW § 3-8093-809(c) (emphasis added). The current version of the statute is clearly intended to address images created in private settings.

House Bill 1062 seeks to expand the Revenge Porn Statute drastically by expanding the types of ‘images’ covered by the statute to include drawings, illustrations, sculptures, and paintings. Intrinsicly, drawings, illustrations, sculptures, and paintings need not be created from actual events. The content of such media may have sprung completely from the mind of the author. With such a creation, the person depicted in the image could have no expectation the image would remain private as the person depicted had no role in creating the image.

Furthermore, the drawing, illustration, sculpture, or painting need not be of such quality that it would be recognized as a true reflection of actual events. Doodles, caricatures and sketches could be criminalized if the person depicted was even slightly recognizable despite the lack of realism in the drawing. A bored teenager causally drawing an inappropriate picture of a fellow student on

the back of his spiral notebook would be subject to prosecution should another student be allowed to view the material. House Bill 1062 sweeps too broadly and would ensnare relatively innocent conduct in its breadth.

House Bill 1062 also expands the current Revenge Porn Statute by permitting “[an] action to recover damages and for injunctive relief” as well as “reasonable attorney’s fees.” The Criminal Code is no place for such a remedy.

Maryland Law already permits civil actions for defamation, intentional infliction of emotional distress, and false light. Victims of revenge porn already have a civil remedy for which damages, injunctions and attorney’s fees can be sought. The criminal courts are not the proper venue for determining damages for several reasons.

First, there is no standard defined in criminal court to determine such damages. The standard of proof in criminal court is generally proof beyond a reasonable doubt where in civil court the standard is preponderance of the evidence. Thus, it is easier to prevail in civil court than in criminal court. In addition, restitution in criminal court is not an appropriate remedy as reputation damages would likely not apply under the current restitution statute.

Second, the criminal courts have no method of determining attorney’s fees. A criminal action is brought by the State’s Attorney. Defense is handled by private counsel or the Office of the Public Defender. Our criminal code does not require Defendant’s to pay the salaries of the State’s Attorneys. Nor can a private Defense Counsel seek attorney’s fees if a Defendant is acquitted (although that’s not a bad idea).

The better section of laws to expand financial remedies for victims of Revenge Porn would be our civil codes which already provide remedy for victims.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 1062.**

---

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

**Authored by: Jeremy Zacker, Assistant Public Defender.**