

SB0858/213223/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 858
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with the second “a” in line 3 down through “Act;” in line 10 and substitute “and maintain a civil action for defamation under certain circumstances; altering the prohibition against revenge porn to prohibit a person from knowingly distributing a certain computer-generated visual representation of another under certain circumstances;”; strike beginning with “3-2301” in line 13 down through “Imagery” in line 14 and substitute “3-505”; and after line 16, insert:

“BY repealing and reenacting, with amendments,
Article - Criminal Law
Section 3-809
Annotated Code of Maryland
(2021 Replacement Volume and 2023 Supplement)”.

AMENDMENT NO. 2

On pages 1 through 4, strike in their entirety the lines beginning with line 20 on page 1 through line 18 on page 4, inclusive, and substitute:

“3-505.

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

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

(3) (1) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON” MEANS THAT AN ORDINARY PERSON WOULD

CONCLUDE THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL REPRESENTATION OF THE PERSON.

(II) “INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON” INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR GENUINE.

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

1. DRAWINGS;
2. CARTOONS;
3. SCULPTURES; OR
4. PAINTINGS.

(5) “INTIMATE PARTS” HAS THE MEANING STATED IN § 3-809 OF THE CRIMINAL LAW ARTICLE.

(6) “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.

Article – Criminal Law

3–809.

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

(2) “Distribute” means to give, sell, transfer, disseminate, publish, upload, circulate, broadcast, make available, allow access to, or engage in any other form of transmission, electronic or otherwise.

(3) “Harm” means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

(4) (I) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS OF AN ACTUAL AND IDENTIFIABLE PERSON.

(II) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE PERSON.

(III) “INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON” DOES NOT INCLUDE VISUAL REPRESENTATIONS OR ITEMS DEPICTING A PERSON THAT ARE:

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- 1. DRAWINGS;**
- 2. CARTOONS;**
- 3. SCULPTURES; OR**
- 4. PAINTINGS.**

(5) “Intimate parts” means the naked genitals, pubic area, buttocks, or female nipple.

~~(5)~~ (6) “Sexual activity” means:

(i) sexual intercourse, including genital–genital, oral–genital, anal–genital, or oral–anal;

(ii) masturbation; or

(iii) sadomasochistic abuse.

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

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

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

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

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(c) A person may not knowingly distribute a visual representation of another identifiable person, OR A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM ANOTHER ACTUAL AND 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) (i) under circumstances in which the person knew that the other person did not consent to the distribution; or

(ii) with reckless disregard as to whether the person consented to the distribution; and

(3) IF THE VISUAL REPRESENTATION WAS CREATED OR GENERATED WITH PERMISSION FROM THE OTHER PERSON, under circumstances in which the other person had a reasonable expectation that the image would remain private.

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

(e) A visual representation AND A COMPUTER-GENERATED VISUAL REPRESENTATION of a victim that is part of a court record for a case arising from a prosecution under this section:

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

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

- (i) court personnel;
- (ii) a jury in a criminal case brought under this section;
- (iii) the State's Attorney or the State's Attorney's designee;
- (iv) the Attorney General or the Attorney General's designee;
- (v) a law enforcement officer;
- (vi) the defendant or the defendant's attorney; or
- (vii) the victim or the victim's attorney."