

HOUSE BILL 145

E1

4lr0852

(PRE-FILED)

By: **Delegates Pippy and Simpson**

Requested: October 5, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 7, 2024

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – ~~Revenge Porn – Visual Representation~~ Deep Fake**
3 **Representations and Revenge Porn**

4 FOR the purpose of ~~clarifying what constitutes a visual representation for purposes of a~~
5 ~~certain prohibition against distributing a certain visual representation in a certain~~
6 ~~manner~~, establishing the statute of limitations for a certain prosecution relating to
7 harassment by distribution of a deep fake image to begin at the time the victim knew
8 or reasonably should have known of the violation; establishing that it is harassment
9 for a person to distribute a certain deep fake representation that is indistinguishable
10 from an actual and identifiable human being; establishing that revenge porn does
11 not include certain deep fake representations; and generally relating to ~~visual~~ deep
12 fake representations and revenge porn.

13 BY repealing and reenacting, without amendments,

14 Article – Courts and Judicial Proceedings

15 Section 5–106(a)

16 Annotated Code of Maryland

17 (2020 Replacement Volume and 2023 Supplement)

18 BY adding to

19 Article – Courts and Judicial Proceedings

20 Section 5–106(gg)

21 Annotated Code of Maryland

22 (2020 Replacement Volume and 2023 Supplement)

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, with amendments,
 2 Article – Criminal Law
 3 Section ~~3–809~~ 3–803 and 3–809
 4 Annotated Code of Maryland
 5 (2021 Replacement Volume and 2023 Supplement)

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

8 **Article – Courts and Judicial Proceedings**
 9 **5–106.**

10 (a) Except as provided by this section, § 1–303 of the Environment Article, and §
 11 8–1815 of the Natural Resources Article, a prosecution for a misdemeanor shall be
 12 instituted within 1 year after the offense was committed.

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

17 **Article – Criminal Law**

18 **3–803.**

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

21 **(2) (I) “DEEP FAKE REPRESENTATION” MEANS A PHOTOGRAPH, A**
 22 **FILM, A VIDEO, A DIGITAL IMAGE, A PICTURE, OR A COMPUTER OR**
 23 **COMPUTER–GENERATED IMAGE OR PICTURE, WHETHER MADE OR PRODUCED BY**
 24 **ELECTRONIC, MECHANICAL, OR OTHER MEANS THAT IS INDISTINGUISHABLE FROM**
 25 **AN ACTUAL AND IDENTIFIABLE HUMAN BEING.**

26 **(II) “DEEP FAKE REPRESENTATION” DOES NOT INCLUDE**
 27 **IMAGES OR ITEMS DEPICTING HUMAN BEINGS THAT ARE:**

- 28 **1. DRAWINGS;**
- 29 **2. CARTOONS;**
- 30 **3. SCULPTURES; OR**
- 31 **4. PAINTINGS.**

1 **(3) “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 **(4) “HARM” MEANS:**

5 **(I) PHYSICAL INJURY;**

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

7 **(III) ECONOMIC DAMAGES.**

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

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

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

17 **(7) “SEXUAL ACTIVITY” MEANS:**

18 **(I) SEXUAL INTERCOURSE, INCLUDING GENITAL–GENITAL,**
19 **ORAL–GENITAL, ANAL–GENITAL, OR ORAL–ANAL;**

20 **(II) MASTURBATION; OR**

21 **(III) SADOMASOCHISTIC ABUSE.**

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

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

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

27 **(3) without a legal purpose.**

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

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

4 2. SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN
5 PUBLIC OR COMMERCIAL SETTINGS.

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

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

13 (I) WITH THE INTENT TO HARM, HARASS, INTIMIDATE,
14 THREATEN, OR COERCE THE OTHER PERSON; AND

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

17 2. WITH RECKLESS DISREGARD AS TO WHETHER THE
18 PERSON CONSENTED TO THE DISTRIBUTION.

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

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

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

27 1. COURT PERSONNEL;

28 2. A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS
29 SECTION;

30 3. THE STATE'S ATTORNEY OR THE STATE'S
31 ATTORNEY'S DESIGNEE;

1 4. THE ATTORNEY GENERAL OR THE ATTORNEY
 2 GENERAL'S DESIGNEE;

3 5. A LAW ENFORCEMENT OFFICER;

4 6. THE DEFENDANT OR THE DEFENDANT'S ATTORNEY;
 5 OR

6 7. THE VICTIM OR THE VICTIM'S ATTORNEY.

7 **[(b)] (D)** This section does not apply to a peaceable activity intended to express
 8 a political view or provide information to others.

9 **[(c)] (E)** A person who violates this section is guilty of a misdemeanor and on
 10 conviction is subject to:

11 (1) for a first offense, imprisonment not exceeding 90 days or a fine not
 12 exceeding \$500 or both; and

13 (2) for a second or subsequent offense, imprisonment not exceeding 180
 14 days or a fine not exceeding \$1,000 or both.

15 3-809.

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

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

20 (3) "Harm" means:

21 (i) physical injury;

22 (ii) serious emotional distress; or

23 (iii) economic damages.

24 (4) "Intimate parts" means the naked genitals, pubic area, buttocks, or
 25 female nipple.

26 (5) "Sexual activity" means:

27 (i) sexual intercourse, including genital-genital, oral-genital,
 28 anal-genital, or oral-anal;

1 (ii) masturbation; or

2 (iii) sadomasochistic abuse.

3 **(6) “VISUAL REPRESENTATION” ~~INCLUDES A PHOTOGRAPH, A FILM,~~**
4 **~~A VIDEO, A DIGITAL IMAGE, A PICTURE, OR A COMPUTER OR COMPUTER-GENERATED~~**
5 **~~IMAGE OR PICTURE, WHETHER MADE OR PRODUCED BY ELECTRONIC, MECHANICAL,~~**
6 **~~OR OTHER MEANS DOES NOT INCLUDE A DEEP FAKE REPRESENTATION, AS DEFINED~~**
7 **IN § 3-803 OF THIS SUBTITLE.**

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

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

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

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

15 (c) A person may not knowingly distribute a visual representation of another
16 identifiable person that displays the other person with his or her intimate parts exposed or
17 while engaged in an act of sexual activity:

18 (1) with the intent to harm, harass, intimidate, threaten, or coerce the
19 other person;

20 (2) (i) under circumstances in which the person knew that the other
21 person did not consent to the distribution; or

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

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

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

28 (e) A visual representation of a victim that is part of a court record for a case
29 arising from a prosecution under this section:

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.