

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1062
Judiciary

(Delegate Lopez)

Criminal Law - Harassment - Digitally Altered or Generated Visual Representations

This bill (1) explicitly excludes visual representations that are drawings, cartoons, sculptures or paintings from § 3-809 of the Criminal Law Article (revenge porn) and (2) extends applicability of the revenge porn statute to a visual representation that is intentionally digitally altered or generated. A person who is depicted in a visual representation distributed in violation of § 3-809 may file an action to recover damages and for injunctive relief in which the court may award reasonable attorney’s fees. This authorization does not affect any legal or equitable remedy otherwise provided by law. The bill also specifies that nothing in the provisions of § 3-809 may be construed in a manner that abridges or otherwise limits a person’s right to free speech under the U.S. Constitution or the Maryland Declaration of Rights.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the expanded application of an existing penalty provision. Any increase in cases filed in the District Court to recover damages and for injunctive relief under the bill is absorbable within existing budget resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s expanded application of an existing penalty provision. Any increase in cases filed in the circuit courts to recover damages for injunctive relief under the bill is absorbable within existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: Section 3-809 of the Criminal Law Article (revenge porn) 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. 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.

Additional Comments: The Department of Public Safety and Correctional Services advises that during fiscal 2023, the Division of Correction received one individual and the Division of Parole and Probation opened 20 cases for the offense of revenge porn.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Howard and Prince George's 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 Legislative Services

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