

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 145  
Judiciary

(Delegates Pippy and Simpson)

Judicial Proceedings

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**Criminal Law - Deep Fake Representations and Revenge Porn**

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This bill expands § 3-803 of the Criminal Law Article (harassment) to prohibit a person from knowingly distributing a “deep fake representation” of another identifiable person that displays the other person with intimate parts exposed or while engaged in specified acts of sexual activity. Violators are subject to the existing statutory penalty for violations of § 3-803. A prosecution for violating this prohibition must be instituted within five years after the victim knew or reasonably should have known of the violation. The bill also (1) specifies the circumstances under which the prohibition does not apply; (2) limits who may inspect a deep fake representation that is part of a court record; (3) excludes a deep fake representation from the meaning of “visual representation” for the purposes of the revenge porn statute (§ 3-809 of the Criminal Law Article); and (4) defines several terms.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by approximately \$11,000 in FY 2025 only for the Judiciary to implement programming changes. Otherwise, the bill is not expected to materially affect State finances or operations.

**Local Effect:** The bill is not expected to materially affect local government finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A person may not knowingly distribute a “deep fake representation” of another identifiable person that displays the other person with 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 and (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. Violators are guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$500 for a first offense and imprisonment for up to 180 days and/or a maximum \$1,000 fine for a second or subsequent offense.

“Deep fake representation” means a photograph, film, video, digital image, picture, 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. Deep fake representation does not include images or items depicting human beings that are drawings, cartoons, sculptures, or paintings.

A deep fake representation of a victim that is part of a court record for a case arising from a prosecution under the bill may not be made available for public inspection except (1) as ordered by the court or (2) in relation to a criminal charge under the bill, to:

- court personnel;
- a jury in a criminal case brought under the bill;
- the State’s Attorney (or designee);
- the Attorney General (or designee);
- a law enforcement officer;
- the defendant or the defendant’s attorney; or
- the victim or the victim’s attorney.

The bill’s 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. As with the other provisions of § 3-803, the prohibition does not apply to a peaceable activity intended to express a political view or provide information to others.

An interactive computer service – as defined under 47 U.S.C. § 230(f)(2) – is not liable under the bill for content provided by another person.

**Current Law:** In general, a misdemeanor must be prosecuted within one year after the offense was committed.

Section 3-803 of the Criminal Law Article (harassment) prohibits a person from following another in or about a public place or maliciously engaging in a course of conduct that alarms or seriously annoys the other (1) with the intent to harass, alarm, or annoy the other;

- (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
- (3) without a legal purpose.

Violators are guilty of a misdemeanor and on conviction subject a penalty (1) for a first offense, up to 90 days imprisonment and/or a maximum \$500 fine and (2) for a second or subsequent offense, up to 180 days imprisonment and/or a maximum \$1,000 fine. The prohibition does not apply to a peaceable activity intended to express a political view or provide information to others.

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. Section 3-809 does not define “visual representation.”

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

A visual representation of a victim that is part of a court record in a case prosecuting revenge porn may not be available for public inspection and, except as otherwise ordered by the court, may only be made available to specified individuals for inspection in relation to a criminal charge for revenge porn.

**State Expenditures:** The Judiciary advises that programming changes to the Judicial Information System are necessary to shield a deep fake representation of a victim that is part of a court record to all except those authorized under the bill. Thus, general fund expenditures increase by \$11,006 in fiscal 2025 only.

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### **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, and Frederick counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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