

# SENATE BILL 769

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8lr1506

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By: **Senator Zirkin**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Sextortion and Revenge Porn**

3 FOR the purpose of prohibiting a person from causing another to engage in certain sexual  
4 contact by making certain threats; prohibiting a person from causing another to  
5 engage as the subject in the production of a certain visual representation or  
6 performance by making certain threats; repealing a provision of law prohibiting a  
7 person from intentionally causing serious emotional distress to another by  
8 intentionally placing on the Internet a certain reproduction of the image of the other  
9 under certain circumstances; prohibiting a person from knowingly distributing a  
10 certain visual representation of a certain other person under certain circumstances;  
11 establishing and applying certain penalties for a violation of this Act; prohibiting a  
12 certain visual representation from being made available for public inspection in  
13 certain cases; providing that a certain visual representation may be made available  
14 to certain persons under certain circumstances; defining certain terms; and  
15 generally relating to sextortion and revenge porn.

16 BY adding to  
17 Article – Criminal Law  
18 Section 3–709  
19 Annotated Code of Maryland  
20 (2012 Replacement Volume and 2017 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article – Criminal Law  
23 Section 3–809  
24 Annotated Code of Maryland  
25 (2012 Replacement Volume and 2017 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## Article – Criminal Law

**3-709.**

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

**(2) “INTIMATE PARTS” HAS THE MEANING STATED IN § 3-809 OF THIS TITLE.**

**(3) “SEXUAL CONTACT” HAS THE MEANING STATED IN § 3-809 OF THIS TITLE.**

**(B) A PERSON MAY NOT CAUSE ANOTHER TO:**

**(1) ENGAGE IN AN ACT OF SEXUAL CONTACT BY THREATENING TO:**

**(I) ACCUSE ANY PERSON OF A CRIME OR OF ANYTHING THAT, IF TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE;**

**(II) CAUSE PHYSICAL INJURY TO A PERSON;**

**(III) INFLICT EMOTIONAL DISTRESS ON A PERSON;**

**(IV) CAUSE ECONOMIC DAMAGE TO A PERSON; OR**

**(V) CAUSE DAMAGE TO THE PROPERTY OF A PERSON; OR**

**(2) ENGAGE AS A SUBJECT IN THE PRODUCTION OF A VISUAL REPRESENTATION OR PERFORMANCE THAT DEPICTS THE OTHER WITH THE OTHER’S INTIMATE PARTS EXPOSED OR ENGAGING IN OR SIMULATING AN ACT OF SEXUAL CONTACT BY THREATENING TO:**

**(I) ACCUSE ANY PERSON OF A CRIME OR OF ANYTHING THAT, IF TRUE, WOULD BRING THE PERSON INTO CONTEMPT OR DISREPUTE;**

**(II) CAUSE PHYSICAL INJURY TO A PERSON;**

**(III) INFLICT EMOTIONAL DISTRESS ON A PERSON;**

**(IV) CAUSE ECONOMIC DAMAGE TO A PERSON; OR**

**(V) CAUSE DAMAGE TO THE PROPERTY OF A PERSON.**

1           **(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND**  
2 **ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A**  
3 **FINE NOT EXCEEDING \$10,000 OR BOTH.**

4           **(D) A VISUAL REPRESENTATION DEPICTING A VICTIM WHICH IS PART OF A**  
5 **COURT RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS SECTION:**

6                   **(1) SUBJECT TO ITEM (2) OF THIS SUBSECTION, MAY NOT BE MADE**  
7 **AVAILABLE FOR PUBLIC INSPECTION; AND**

8                   **(2) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY BE**  
9 **MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER**  
10 **THIS SECTION TO:**

11                           **(I) COURT PERSONNEL;**

12                           **(II) A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS**  
13 **SECTION;**

14                           **(III) THE STATE'S ATTORNEY;**

15                           **(IV) A LAW ENFORCEMENT OFFICER;**

16                           **(V) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR**

17                           **(VI) THE VICTIM OR THE VICTIM'S ATTORNEY.**

18 3-809.

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

20                   **(2) "DISTRIBUTE" MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE,**  
21 **PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO,**  
22 **OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.**

23                   **(3) "HARM" MEANS:**

24                           **(I) PHYSICAL INJURY;**

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

26                           **(III) ECONOMIC DAMAGES.**

1                    [(2)] (4)        “Intimate parts” means the naked genitals, pubic area, buttocks,  
2 or female nipple.

3                    [(3)] (5)        [“Sexual contact”] **“SEXUAL ACTIVITY”** means:

4                    (I)        sexual intercourse, including genital–genital, oral–genital,  
5 anal–genital, or oral–anal, whether between persons of the same or opposite sex;

6                    (II)       **SODOMY UNDER § 3–321 OF THIS TITLE OR AN UNNATURAL**  
7 **OR PERVERTED SEXUAL PRACTICE UNDER § 3–322 OF THIS TITLE;**

8                    (III)       **MASTURBATION; OR**

9                    (IV)       **SADOMASOCHISTIC ABUSE.**

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

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

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

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

17                [(c)       A person may not intentionally cause serious emotional distress to another by  
18 intentionally placing on the Internet a photograph, film, videotape, recording, or any other  
19 reproduction of the image of the other person that reveals the identity of the other person  
20 with his or her intimate parts exposed or while engaged in an act of sexual contact:

21                    (1)        knowing that the other person did not consent to the placement of the  
22 image on the Internet; and

23                    (2)        under circumstances in which the other person had a reasonable  
24 expectation that the image would be kept private.]

25                (C)       **A PERSON MAY NOT KNOWINGLY DISTRIBUTE A VISUAL**  
26 **REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER**  
27 **PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR WHILE ENGAGED IN AN ACT**  
28 **OF SEXUAL CONTACT:**

29                    (1)        (I)        **WITH THE INTENT TO HARM, HARASS, INTIMIDATE,**  
30 **THREATEN, OR COERCE THE OTHER PERSON; OR**

1                   **(II) WITH RECKLESS DISREGARD FOR THE LIKELIHOOD THAT**  
2 **THE OTHER PERSON WILL SUFFER HARM; AND**

3                   **(2) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW OR**  
4 **SHOULD HAVE KNOWN THAT THE OTHER PERSON DID NOT CONSENT TO THE**  
5 **DISTRIBUTION.**

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

8           **(E) A VISUAL REPRESENTATION OF A VICTIM WHICH IS PART OF A COURT**  
9 **RECORD FOR A CASE ARISING FROM A PROSECUTION UNDER THIS SECTION:**

10                   **(1) SUBJECT TO ITEM (2) OF THIS SUBSECTION, MAY NOT BE MADE**  
11 **AVAILABLE FOR PUBLIC INSPECTION; AND**

12                   **(2) EXCEPT AS OTHERWISE ORDERED BY THE COURT, MAY ONLY BE**  
13 **MADE AVAILABLE FOR INSPECTION IN RELATION TO A CRIMINAL CHARGE UNDER**  
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17 **SECTION;**

18                   **(III) THE STATE'S ATTORNEY;**

19                   **(IV) A LAW ENFORCEMENT OFFICER;**

20                   **(V) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR**

21                   **(VI) THE VICTIM OR THE VICTIM'S ATTORNEY.**

22           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2018.