

HB0145/233726/1

BY: Judiciary Committee

AMENDMENTS TO HOUSE BILL 145
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “**Revenge Porn – Visual Representation**” and substitute “**Deep Fake Representations and Revenge Porn**”; strike beginning with “clarifying” in line 3 down through “manner;” in line 5 and substitute “establishing the statute of limitations for a certain prosecution relating to harassment by distribution of a deep fake image to begin at the time the victim knew or reasonably should have known of the violation; establishing that it is harassment for a person to distribute a certain deep fake representation that is indistinguishable from an actual and identifiable human being; establishing that revenge porn does not include certain deep fake representations;”; in line 5, strike “visual” and substitute “deep fake”; after line 5, insert:

“BY repealing and reenacting, without amendments,

Article – Courts and Judicial Proceedings

Section 5–106(a)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)

BY adding to

Article – Courts and Judicial Proceedings

Section 5–106(gg)

Annotated Code of Maryland

(2020 Replacement Volume and 2023 Supplement)”;

and in line 8, strike “3–809” and substitute “3–803 and 3–809”.

AMENDMENT NO. 2

On page 1, after line 12, insert:

“Article – Courts and Judicial Proceedings

5–106.

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

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

AMENDMENT NO. 3

On page 1, after line 13, insert:

“3–803.

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

(2) (I) “DEEP FAKE REPRESENTATION” MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL IMAGE, A PICTURE, OR A COMPUTER 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.

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

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

(3) “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.

(4) “HARM” MEANS:

(I) PHYSICAL INJURY;

(II) SERIOUS EMOTIONAL DISTRESS; OR

(III) ECONOMIC DAMAGES.

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

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

(Over)

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

(7) “SEXUAL ACTIVITY” MEANS:

(I) SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL, ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL;

(II) MASTURBATION; OR

(III) SADOMASOCHISTIC ABUSE.

(B) A person may not follow another in or about a public place or maliciously engage 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.

(C) (1) (I) THIS SUBSECTION 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.

(II) 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.

(2) 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:

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

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

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

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

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

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

1. COURT PERSONNEL;
2. A JURY IN A CRIMINAL CASE BROUGHT UNDER THIS SECTION;
3. THE STATE'S ATTORNEY OR THE STATE'S ATTORNEY'S DESIGNEE;
4. THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE;
5. A LAW ENFORCEMENT OFFICER;
6. THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR
7. THE VICTIM OR THE VICTIM'S ATTORNEY.

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

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

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

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

On page 2, strike beginning with “INCLUDES” in line 9 down through “MEANS” in line 12 and substitute “**DOES NOT INCLUDE A DEEP FAKE REPRESENTATION, AS DEFINED IN § 3-803 OF THIS SUBTITLE**”.