

Chapter 772

(Senate Bill 391)

AN ACT concerning

Criminal Law – Sexual Extortion, Stalking, and Revenge Porn – Statute of Limitations and In Banc Review

FOR the purpose of altering the statute of limitations applicable to the crimes of sexual extortion and stalking; providing that the State may institute a prosecution for ~~sexual extortion, stalking, or~~ revenge porn at any time; providing that, for purposes of the Maryland Constitution, a person who commits ~~sexual extortion, stalking, or~~ revenge porn shall be deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for a certain in banc review; and generally relating to sexual extortion, stalking, and revenge porn.

BY repealing and reenacting, without amendments,
 Article – Courts and Judicial Proceedings
 Section 5–106(a) and (b)
 Annotated Code of Maryland
 (2020 Replacement Volume and 2023 Supplement)

BY adding to
Article – Courts and Judicial Proceedings
Section 5–106(gg) and (hh)
Annotated Code of Maryland
(2020 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
 Article – Criminal Law
 Section ~~3–709, 3–802, and~~ 3–809
 Annotated Code of Maryland
 (2021 Replacement Volume and 2023 Supplement)

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

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.

(b) Notwithstanding § 9–103(a)(3) of the Correctional Services Article or any other provision of the Code, if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection:

(1) The State may institute a prosecution for the misdemeanor at any time; and

(2) For purposes of the Maryland Constitution, the person:

(i) Shall be deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary; and

(ii) May reserve a point or question for in banc review as provided under Article IV, § 22 of the Maryland Constitution.

(GG) THE STATUTE OF LIMITATIONS FOR THE PROSECUTION OF THE CRIME OF SEXUAL EXTORTION IN VIOLATION OF § 3–709 OF THE CRIMINAL LAW ARTICLE IS 5 YEARS.

(HH) THE STATUTE OF LIMITATIONS FOR THE PROSECUTION OF THE CRIME OF STALKING IN VIOLATION OF § 3–802 OF THE CRIMINAL LAW ARTICLE IS 10 YEARS.

Article – Criminal Law

~~§ 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 activity” 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 activity 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 activity 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.~~

~~(e) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.~~

~~(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.~~

~~(e) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.~~

~~(F) A visual representation depicting a victim that is part of a court record for a case arising from a prosecution under this section:~~

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

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

~~(i) court personnel;~~

~~(ii) a jury in a criminal case brought under this section;~~

~~(iii) the State's Attorney or the State's Attorney's designee;~~

~~(iv) the Attorney General or the Attorney General's designee;~~

~~(v) a law enforcement officer;~~

- ~~(vi) the defendant or the defendant's attorney; or~~
- ~~(vii) the victim or the victim's attorney.~~

~~§ 802.~~

~~(a) In this section:~~

~~(1) "stalking" means a malicious course of conduct that includes approaching or pursuing another where:~~

~~(i) the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:~~

~~1. A. of serious bodily injury;~~

~~B. of an assault in any degree;~~

~~C. of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree;~~

~~D. of false imprisonment; or~~

~~E. of death; or~~

~~2. that a third person likely will suffer any of the acts listed in item 1 of this item; or~~

~~(ii) the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another; and~~

~~(2) "stalking" includes conduct described in item (1) of this subsection that occurs:~~

~~(i) in person;~~

~~(ii) by electronic communication, as defined in § 3-805 of this subtitle; or~~

~~(iii) through the use of a device that can pinpoint or track the location of another without the person's knowledge or consent.~~

~~(b) The provisions of this section do not apply to conduct that is:~~

~~(1) performed to ensure compliance with a court order;~~

~~(2) performed to carry out a specific lawful commercial purpose; or~~

~~(3) authorized, required, or protected by local, State, or federal law.~~

~~(e) A person may not engage in stalking.~~

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

~~(e) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing a violation of this section.~~

~~(F) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.~~

3-809.

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

(2) “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.

(3) “Harm” means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

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

(5) “Sexual activity” means:

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

(ii) masturbation; or

(iii) sadomasochistic abuse.

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

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

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

(2) 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.

(c) A person may not knowingly distribute 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) (i) under circumstances in which the person knew that the other person did not consent to the distribution; or

(ii) 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.

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

(e) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5–106(B) OF THE COURTS ARTICLE.

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

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

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

(i) court personnel;

(ii) a jury in a criminal case brought under this section;

(iii) the State's Attorney or the State's Attorney's designee;

- (iv) the Attorney General or the Attorney General's designee;
- (v) a law enforcement officer;
- (vi) the defendant or the defendant's attorney; or
- (vii) the victim or the victim's attorney.

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

Approved by the Governor, May 16, 2024.