

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 391

(Senator Kelly, *et al.*)

Judicial Proceedings

Judiciary

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

This bill establishes that (1) the statute of limitations for a prosecution of the crime of sexual extortion in violation of § 3-709 of the Criminal Law Article is 5 years; (2) the statute of limitations for a prosecution of the crime of stalking in violation of § 3-802 of the Criminal Law Article is 10 years; and (3) an individual may be prosecuted at any time for a violation of §3-809 of the Criminal Law Article (revenge porn).

Fiscal Summary

State Effect: General fund revenues and expenditures *may* increase minimally beginning in FY 2026 to the extent that the bill's changes to the statute of limitations for specified crimes increase the number of fines imposed in the District Court and incarcerations in State facilities, as discussed below.

Local Effect: Local revenues and expenditures *may* increase minimally beginning in FY 2026 to the extent that the bill's changes to the statute of limitations for specified crimes increase the number of fines imposed in circuit courts and incarcerations in local correctional facilities, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Statute of Limitations for Misdemeanors

In general, a prosecution for a misdemeanor must be instituted within one year after the offense was committed. However, if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary, or that a person is subject to § 5-106(b) of the Courts and Judicial Proceedings Article, the State may institute a prosecution for the misdemeanor at any time.

Sextortion

Section 3-709 of the Criminal Law Article prohibits a person from causing another to engage in sexual activity or causing another to engage as a subject in the production of a visual representation performance meeting specified criteria by threatening to (1) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute; (2) cause physical injury to a person; (3) inflict emotional distress on a person; (4) cause economic damage to a person; or (5) cause damage to the property of a person. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 fine. A sentence imposed for a violation of this prohibition may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

Stalking

Section 3-802 of the Criminal Law Article prohibits a person from engaging in “stalking.” “Stalking” means a malicious course of conduct that includes approaching or pursuing another where:

- the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear of serious bodily injury or death, of an assault in any degree, of rape or sexual offense as defined by §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree, of false imprisonment, or that a third person likely will suffer any of these acts; or
- the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another.

Stalking includes conduct that occurs (1) in person; (2) by electronic communication, as defined in § 3-805 of the Criminal Law Article; or (3) through the use of a device that can pinpoint or track the location of another without the person’s knowledge or consent.

The prohibition against stalking does not apply to conduct that is performed to ensure compliance with a court order; performed to carry out a specific lawful commercial purpose; or authorized, required, or protected by local, State, or federal law.

Stalking is a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A sentence imposed for stalking may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing the stalking violation.

Revenge Porn

Section 3-809 of the Criminal Law Article 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.

State Fiscal Effect: As noted above, the offenses affected by the bill are currently subject to a one-year statute of limitations; the bill extends or removes the statute of limitations for these crimes. Therefore, general fund revenues *may* increase minimally beginning in fiscal 2026 to the extent that the bill's changes to the statute of limitations for specified offenses leads to more fines being imposed in the District Court. General fund incarceration expenditures for the Department of Public Safety and Correctional Services may increase minimally beginning in fiscal 2026, as discussed below. The bill is not anticipated to materially affect the Judiciary or the Office of the Public Defender (OPD).

Relevant Offense Data

Exhibit 1 contains information on the number of violations and guilty dispositions for the offenses affected by the bill.

Exhibit 1
Violations and Guilty Dispositions
§§ 3-709, 3-802, and 3-809 of the Criminal Law Article

Criminal Law Article Offenses	Fiscal 2022		Fiscal 2023	
	Violations	Guilty Dispositions	Violations	Guilty Dispositions
§ 3-709 – District Court	8	1	7	0
§ 3-802 – District Court	296	10	365	6
§ 3-809 – District Court	171	11	286	12
§ 3-709 – Circuit Courts	10	0	6	0
§ 3-802 – Circuit Courts	63	8	78	9
§ 3-809 – Circuit Courts	86	10	62	0

Source: Maryland Judiciary

Department of Public Safety and Correctional Services

General fund revenues *may* increase minimally beginning in fiscal 2026 to the extent that the bill's changes to the statute of limitations for specified crimes lead to additional individuals being committed to State correctional facilities and increased payments to counties for reimbursement of costs for incarcerated individuals. The number of additional people sentenced to State facilities as a result of the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Office of the Public Defender

OPD advises that the bill may result in new cases but is unable to quantify the extent of any increase without actual experience under the bill. The Department of Legislative Services advises that based on current statistics (see Exhibit 1), any increase in workload (beginning in fiscal 2026) is not expected to be significant enough to necessitate additional staff. To the extent that current staffing levels prove insufficient, OPD can request additional resources through the annual budget process.

Local Revenues: Revenues *may* increase minimally beginning in fiscal 2026 from fines imposed in circuit court cases that are allowed to proceed because of the bill's changes to the statute of limitations for specified offenses.

Local Expenditures: Expenditures *may* increase minimally beginning in fiscal 2026 to the extent that the bill's changes to the statute of limitations for specified offenses increase the number of individuals incarcerated in local correctional facilities. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per incarcerated individual in recent years.

Additional Information

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

Designated Cross File: HB 544 (Delegate Atterbeary, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 1, 2024
rh/aad Third Reader - March 18, 2024
Revised - Amendment(s) - March 18, 2024

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