

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1248
Judiciary

(Delegate Woorman, *et al.*)

Revenge Pornography and Intimate Visual Depictions - Prohibition and Removal

This bill establishes that by October 1, 2026, a “covered platform” must establish and maintain a process for an individual or an individual’s representative to (1) notify the covered platform that it is allowing access to or otherwise displaying an “intimate visual depiction” of the individual without the individual’s consent and (2) submit a request for the covered platform to disable access to and remove the depiction and copies of the depiction and prevent new copies of the depiction from being accessed or displayed by the covered platform. A covered platform must comply with a request within 48 hours and preserve data necessary for legal proceedings, as specified. A covered platform may not be held liable for a tort or contractual claim based on the removal of or disabled access to intimate visual depictions in compliance with the bill or a good faith attempt to comply with the bill’s provisions.

The bill also makes various alterations to the State’s existing prohibition against revenge porn (§ 3-809 of the Criminal Law Article).

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s expanded application of an existing penalty provision.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s expanded application of an existing penalty provision.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Provisions Related to Covered Platforms (New Under the Bill)

A “covered platform” means a public-facing website or digital application that (1) primarily provides a forum for users to access user-generated content, including messages, videos, images, games, and audio files and (2) has at least 100,000 unique monthly active users in the United States. A covered platform does not include a provider of broadband Internet access service, a provider of electronic mail, or a public-facing website or digital application that consists primarily of content that is not user generated.

“Intimate visual depiction” means a visual representation of an identifiable person, or a computer-generated visual presentation that appears to be of an actual and identifiable person, that displays the person with intimate parts exposed or while engaged in sexual activity.

By October 1, 2026, a covered platform must establish and maintain a process for an individual or an individual’s representative to (1) notify the covered platform that it is allowing access or otherwise displaying an intimate visual depiction of the individual without the individual’s consent and (2) submit a request to disable access to and remove the intimate visual depiction and copies of the depiction and prevent new copies of the depiction from being accessed or displayed by the covered platform. Covered platforms must provide clear and conspicuous notice of the process for removing intimate visual depictions that is accessible by the public through the Internet.

The notification and request for removal must include, in writing (1) a physical or electronic signature of the individual or the individual's representative; (2) an identification of the intimate visual depiction of the individual; (3) a brief statement that the individual has a good faith belief that the intimate visual depiction has been made available for access or otherwise displayed without the individual’s consent; and (4) any relevant information to assist the covered platform to determine whether the intimate visual depiction has been made available for access or otherwise displayed without the individual's consent.

Covered platforms must comply with a request submitted through the established process as soon as possible but no later than 48 hours after receipt of the request. A covered platform must also establish minimum data logging requirements that preserve data necessary for legal proceedings related to an intimate privacy violation and ensure that the preserved data is not transferred or otherwise used for a purpose other than a related legal proceeding. A covered platform may not be held liable for claims in tort or contract based on the covered platform’s disabling of access to or removal of an intimate visual depiction

in compliance with the bill's provisions or a good faith attempt to comply with the bill's provisions.

Revenge Porn – § 3-809 of the Criminal Law Article

Under the bill, “visual representation of another identifiable person” includes a computer-generated visual representation that appears to be of an actual and identifiable person. The bill defines “appears to be of an actual and identifiable person” to mean that an ordinary person would conclude that the visual representation is of an actual and identifiable person. “Appears to be of an actual and identifiable person” includes a computer-generated visual representation that has been created, adapted, or modified to appear as an actual and identifiable person. However, it does not include visual representations or items depicting a person that are drawings, cartoons, sculptures, or paintings.

Under current law, § 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.

The bill amends the final requirement under the prohibition to the following: *if the visual representation was created or generated with permission from the other person, under circumstances in which the person knew or reasonably should have known that the other person had a reasonable expectation that the image would remain private.*

Under current law, the State may institute a prosecution for a violation of § 3-809 at any time. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$5,000 maximum fine. The bill does not alter these provisions.

Under current law, 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.

Under current law, 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. The bill specifies that a computer-generated visual representation is included as a visual representation for purposes of this restricted inspection and access provision.

Additional Comments: According to the Judiciary, 391 criminal actions (293 in the District Court and 98 in the circuit courts) under § 3-809 of the Criminal Law Article (revenge porn) were filed in the State’s trial courts during fiscal 2024.

Additional Information

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

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2025
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