St-Lim - Stalking, Sextortion, Revenge Porn - testUploaded by: Carrie Tirrell



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 391 Carrie Tirrell, Supervising Attorney, Sexual Assault Legal Institute Lisae C. Jordan, Executive Director & Counsel

February 2, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 391.

Senate Bill 391 – Time to Prosecute Stalking, Sextortion, Revenge Porn

This bill expands the time to prosecute stalking, sextortion, and revenge porn by eliminating the current one statute of limitations and providing that the State may institute a prosecution for sexual extortion, stalking, or revenge porn at any time

A recent article on technology and sexual offending notes that, "Conventionally, for an act of sexual violence to occur, a perpetrator and a victim needed to be in close physical proximity to one another. However, with technological advancements and technology becoming a critical underpinning in many people's lives, a new type of sexual violence has seemingly developed alongside these changes, which has made this need for proximity increasingly unnecessary." https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8287845/

Maryland has responded to the development of on-line and technology-based sex crimes with some specific statutes. Prosecutors have also used non-technology specific statutes in new ways to address these crimes. Three statutes responding to sexual violence via technology are: Sextortion, Criminal Law §3-709; Revenge Porn, Criminal Law §3-809; and Stalking, Criminal Law §3-802. While some have non-technology based application, many of the cases involving these offenses involve pictures of victims on the Internet or traded via phones or online apps. These crimes are all misdemeanors with the standard one-year statute of limitations. One year is simply not an adequate amount of time to discover and investigate the technology used in these crimes. Computer forensics are time consuming and in short supply. Moreover, survivors and victims of many of these crimes often do not know their images are on the Internet or shared electronically for months or even years.

The effects of stalking, sextortion, and revenge porn on survivors is serious and long lasting. Once an image is on the web, it is virtually impossible to remove. Survivors live in fear that their families, co-workers, neighbors, classmates, and acquaintances will discover intimate pictures of their bodies. This can result in lifelong mental health consequences for victims, damaged relationships, and social isolation. *Revenge Pornography: Mental Health Implications and Related Legislation*, Mudasir Kamal and William J. Newman, Journal of the American Academy of Psychiatry and the Law Online September 2016, 44 (3) 359-367.

Senate Bill 391 will provide investigators and prosecutors with the tools they need to effectively use the existing law and help the survivors of sextortion, revenge porn, and stalking seek justice.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Bill 391

SB0391_Sexual_Extortion_Stalking_Revenge_Porn_MLC_ Uploaded by: Cecilia Plante



TESTIMONY FOR SB0391

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

Bill Sponsor: Senator Kelly

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0391 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

This bill, if enacted, will make offenses such as sexual extortion, stalking and posting revenge porn charged as misdemeanors. For each of these offenses, prison sentences and financial penalties are specified.

- For sexual extortion, the prison sentence can be no more than 10 years and a penalty of not more than \$10,000.
- For stalking, the prison sentence can be no more than 5 years and a penalty of not more than \$5,000.
- For revenge porn, the prison sentence can be no more than 2 years and a penalty of not more than \$5,000.

These offenses would be prosecuted within one year.

These are all offenses where someone preys on another person and threatens them or harms them. They are all crimes that leave their victims with scars and our members are relieved to see that there are penalties and jail time associated with them.

We support this bill and recommend a **FAVORABLE** report in committee.

SB 391 - WLCMD - FAV.pdf Uploaded by: Laure Ruth Position: FAV



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BILL NO: Senate Bill 391

TITLE: Criminal Law - Sexual Extortion, Stalking, and Revenge Porn - Statute of

Limitations and In Banc Review

COMMITTEE: Judicial Proceedings HEARING DATE: February 2, 2024

POSITION: SUPPORT

Senate Bill 391 would expand the time to prosecute stalking, sextortion, and revenge porn by eliminating the current one statute of limitations and providing that the State may institute a prosecution for sexual extortion, stalking, or revenge porn at any time. The Women's Law Center supports this bill because our laws must advance to address new ways people seek to commit crimes.

With the development of on-line and technology-based sex crimes, Maryland has created three Maryland statutes responding to sexual violence via technology are: Sextortion, Criminal Law §3-709; Revenge Porn, Criminal Law §3-809; and Stalking, Criminal Law §3-802. While some have non-technology-based application, many of the cases involving these offenses involve pictures of victims on the Internet or traded via phones or online apps. These crimes are all misdemeanors with the standard one-year statute of limitations. Victims of domestic violence are often subject to any variety of these crimes.

But the reality is that many victims don't know for a long period of time that this crime has been committed. Further, once discovered it can take significant resources and time to appropriately investigate and develop a case against the perpetrator.

Meanwhile, the harm to the victims that these crimes can cause is significant. Once on the internet, images may be there forever. This can cause long-lasting effects on the victim.

For these reasons, the Women's Law Center urges a favorable report on SB 391.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

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SB 391_MNADV_FAV.pdf Uploaded by: Melanie Shapiro Position: FAV



BILL NO: Senate Bill 391

TITLE: Criminal Law - Sexual Extortion, Stalking, and Revenge Porn - Statute of

Limitations and In Banc Review

COMMITTEE: Judicial Proceedings HEARING DATE: February 2, 2024 POSITION: SUPPORT

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 391.

Senate Bill 391 removes the one-year statute of limitations for sexual extortion, stalking and revenge porn. Each of these insidious offenses often requires forensic investigations by law enforcement to gather sufficient evidence to pursue a prosecution. These offenses may also not be discovered immediately by a victim leading to a delay in reporting. In addition, victims of domestic and sexual violence vastly underreport their victimization to law enforcement for many complex reasons including fear and shame. The one-year statute of limitations creates an unnecessary barrier to prosecution due to the increased time needed for a thorough investigation and the very nature of the underlying offenses.

Victims of domestic violence are often victims of stalking and revenge porn. Stalking increases the risk of domestic violence homicide, and the risk of physical violence increases when a victim is stalked. Revenge porn is one of many abusive tactics of power and control present in domestic violence. In one study 71% of victims report that it was a current or previous romantic partner that had posted a nude image as revenge porn. Sextortion presents with very similar characteristics and investigatory demands to stalking and revenge porn but is less prevalent in domestic violence situations.

MNADV believes that removing the barrier of the one-year statute of limitations in cases of stalking, sextortion, and revenge porn will enable law enforcement the time necessary to complete a thorough investigation and gather the evidence needed in these often complex cases involving technology. No victim should be denied justice due to a necessary but lengthy

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¹ https://www.stalkingawareness.org/wp-content/uploads/2018/11/Stalking-IPV-Fact-Sheet.pdf

² https://www.strangulationtraininginstitute.com/revenge-porn-the-latest-research-and-law-enforcement-efforts/



investigation or because they were not even aware of their victimization until it was beyond the statute of limitations.

For the above stated reasons, the Maryland Network Against Domestic Violence urges a favorable report on SB 391.

391 written support FINAL.pdfUploaded by: Sarah David Position: FAV

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SUPPORT FOR SB 391

Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the support of the Office of the State Prosecutor for Senate Bill 391. The Office of the State Prosecutor is tasked with enforcement of political corruption and police misconduct cases throughout Maryland and believes that this legislation will help ensure that the crimes of stalking, revenge porn, and sextortion can be thoroughly investigated and, where appropriate prosecuted.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees, and elections.

Stalking, Revenge Porn and Sextortion- eliminating the statute of limitations

This legislation 391 adds Maryland Courts and Judicial Proceedings §5-106(b) to the following offenses: (1) Criminal Law Title 3 - Other Crimes Against the Person Subtitle 7 - Extortion and Other Threats § 3-709 - Sextortion and Revenge Porn; (2) Subtitle 8 - Stalking § 3-802; and (3) § 3-809 Revenge Porn. These offenses all involve charges that have a lifelong impact on victims and often involve complicated, long investigations to prove. Oftentimes, these crimes are not known or reported until after the one-year statute of limitations has expired.

The Office of the State Prosecutor recently created a unit to address Official Misconduct involving special victims. With an uptick in complaints of misconduct involving special victims, we sought a specialized prosecutor and investigator to handle the complexities of prosecuting cases involving people using their positions to exploit victims. Our office recently reported that in FY 23 we received 58 complaints involving special victims and the numbers continue to increase.

The victims in stalking cases, particularly those where the person is in a position of power like law enforcement or prosecutors, are often hesitant to come forward in part because of the perpetrator's position. The current stalking statute, in subsection (a)(2)(iii), staties that stalking "includes conduct that occurs through the use of a location tracking device without the person's knowledge." This body has already recognized that this offense can occur without

someone's knowledge initially, and the consequence is often late reporting that puts behaviors out of the statute of limitations. Our office recently charged a police officer with various offenses, including witness retaliation, visual surveillance with prurient intent, misconduct in office and other crimes (the Statement of Facts is attached). Stalking, however, was out of the statute of limitations and could not be charged.

In cases of revenge porn, often the challenge is that the victim is not made aware of the revenge porn until the statute of limitations has expired. In one of our cases, the former Mayor of Cambridge, Maryland was convicted on multiple counts of revenge porn that was detected only when a friend of the victim notified the victim about a reddit thread with her photograph. Otherwise, the victim would not have had notice until it was too late to hold him accountable. The victim, however, would have been harmed either way, with her image a permanent fixture on the internet.

Sextortion is one of the most challenging cases to prove given the statute of limitations because often victims do not come forward until there has been a significant passage of time, due to the very nature of the crime committed –that the perpetrator has caused another to engage in sexual activity or engage as a subject in the production of a visual representation of sexual activity, by *threatening* the person. The perpetrator of this crime instills fear in the victim, which understandably transfers to a fear of further harm or retaliation for reporting the crime. The one-year statute of limitations makes this crime prosecutable only when it is immediately reported, which is exceedingly rare. Rather, understandably, it is common for the victim of this crime to wait to report it until there has been a separation from the offender before gaining the courage to report the conduct.

Timeline

There are 26 misdemeanors in the Criminal Law Article (and several others related to voting) where the statute of limitations has been eliminated by the legislature, and all for similar reasons related to the time it takes for evidence to surface. Bribery and perjury, for example, are misdemeanors without a statute of limitations because the ongoing and deceitful nature of the offenses makes it hard to detect within a short time frame.

While the Office of the State Prosecutor has in-house investigators, we must rely on already overburdened law enforcement agencies to extract and process electronic evidence. Therefore, even if the crime of revenge porn or stalking is reported within the statute of limitations, these offenses often involve the use of electronics, so a phone extraction as well as other electronic forensics are required. The extraction and review of electronics can take months. Sometimes, the behavior in our cases has taken place over the course of years, and victim phones, target phones and witness phones all need to be reviewed in addition to other electronics. A thorough investigation is necessary, particularly when the offender is in a position of public trust, and a short statute of limitations not only makes some investigations impossible, it also forces prosecutions to proceed without all the evidence.

We welcome this opportunity to support our colleagues in the MSAA in supporting SB 391. We believe this is important legislation to ensure justice for victims throughout the State and encourage this Committee to issue a favorable report on SB 391.

Sincerely,

CHARLTON T. HOWARD STATE PROSECUTOR

Thomas Statement of Facts

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CHARLTON T. HOWARD III State Prosecutor

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Statement of Facts

The State and the Defendant understand, agree, and stipulate to the following Statement of Facts, which the State would prove beyond a reasonable doubt had this case proceeded to trial:

Kyle Logan Thomas ("THOMAS") served as a Deputy for the Cecil County Sheriff's Office ("CCSO") from February 2021 through July 2023. The CCSO had written Policies and Procedures (the "Policies") which served as published directives to all CCSO employees. The Policies state that CCSO employees shall conduct themselves, both on and off duty, in a manner that reflects favorably on the CCSO, and refrain from engaging in any activity or personal business while on-duty that would cause them to neglect or be inattentive to their duties. Additionally, the Policies state that CCSO employees are prohibited from using speech on their personal social media accounts that contains obscene or sexually explicit language, images, or acts.

I. VICTIM 1

In or around 2020, THOMAS began having a romantic relationship with VICTIM 1. Throughout the relationship, THOMAS shared sexual photographs and videos of him and other women with VICTIM 1, primarily via the social media platform, Snapchat. Snapchat users can send messages, photos, and videos to other users, and once the message, photo, or video is viewed by both parties, the message will clear. There is also a feature on Snapchat that enables a user to save something to an album titled "My Eyes Only" that restricts others from accessing the content without a password. THOMAS suggested, because he was married to someone other than VICTIM 1, and communications or other exchanges on Snapchat typically disappear, that he and VICTIM 1 communicate and exchange photos and videos using that social media platform.

On June 16, 2021, THOMAS was on duty as a sworn Deputy with the CCSO from 7:45 a.m. until 7:00 p.m. At approximately 12:21 p.m., while still on duty and acting in his official capacity, THOMAS took a video of himself in his CCSO uniform, in the CCSO building, touching his exposed penis. With corrupt intent, THOMAS uploaded the video into VICTIM 1's "My Eyes Only" Snapchat album.

VICTIM 1 attempted to end her relationship with THOMAS several times. In response, THOMAS threatened to tell VICTIM 1's husband about their relationship. In approximately August 2021, VICTIM 1 ended her relationship with THOMAS.

After an interaction between VICTIM 1 and THOMAS in or around October 2022, VICTIM 1 provided the video of THOMAS in his police uniform with his penis exposed to the CCSO, and the CCSO opened an internal investigation. On October 28, 2022, THOMAS became aware of the internal investigation because CCSO Deputies served THOMAS with a CCSO Order of Emergency Suspension and a Non-Contact Order that prohibited THOMAS from contacting several individuals pursuant to an ongoing investigation (the "No-Contact Order"). Though served with the No-Contact Order, THOMAS refused to sign the Order.

Shortly thereafter, THOMAS became aware that VICTIM 1 provided the video to the CCSO. In response, on November 11, 2022 and several times on November 14, 2023, THOMAS contacted VICTIM 1's place of business, stating that he needed to make a complaint against VICTIM 1. As a result, on November 22, 2022, VICTIM 1 obtained a Final Peace Order against THOMAS.

In response, on April 6, 2023, THOMAS filed an Application for Statement of Charges with a Cecil County Commissioner, requesting that VICTIM 1 be charged with, among other things, revenge porn because VICTIM 1 showed the video of THOMAS to VICTIM 1's husband and the CCSO. The Commissioner issued a Statement of Charges and Criminal Summons which charged VICTIM 1 with revenge porn in violation of Md. Code, Crim. Law § 3-809. The Cecil County State's Attorney's Office subsequently dismissed the charge against VICTIM 1.

II. VICTIM 2

From 2019 through May 2023, THOMAS was in a sexual relationship with VICTIM 2. Throughout their relationship, and without VICTIM 2's consent, THOMAS used his cell phone to take photos and videos of he and VICTIM 2 engaged in sexual acts, with VICTIM 2's private areas exposed. On several occasions VICTIM 2 attempted to end her relationship with THOMAS, and in response, THOMAS sent the videos to VICTIM 2.

Additionally, THOMAS sent a sexually explicit photo of VICTIM 2 to VICTIM 2's fiancé. THOMAS also threatened to post photos and videos of VICTIM 2 on social media. For example, on July 3, 2022, VICTIM 2 and THOMAS engaged in the following conversation on TikTok, another social media application:

VICTIM 2: No I don't want any of that I told you to erase everything you have. I don't want an pics, videos, or messages on your phone.

. . .

THOMAS: Well everything will still be on my phone. Can't wait to psot [sic] them one day soon. Maybe when you get pregnant or married or ..

From at least April 2022 through at least January 2023, THOMAS sent videos of himself and VICTIM 2 engaged in sexual acts to dozens of different social media users.

THOMAS paid many of the social media users to watch the videos of him and VICTIM 2 engaged in sexual acts. VICTIM 2 was not aware that THOMAS recorded all of the videos of her engaged in sexual acts, and did not give THOMAS consent to record all of the videos. Likewise, VICTIM 2 was not aware that THOMAS sent videos of her engaged in sexual acts to other social media users, and did not give THOMAS consent to distribute the videos.

Further, the No-Contact Order served on THOMAS on October 28, 2022 prohibited THOMAS from contacting VICTIM 2. The No-Contact Order stated that THOMAS's failure to follow the Order could result in misconduct charges filed against him. It further stated that the Order remained in effect until THOMAS was told otherwise. Nonetheless, from at least November 13, 2022, through and including May 4, 2023, while the No Contact Order was still in effect, THOMAS had repeated contact with VICTIM 2 in person, through text message, and on different social media applications.

Additionally, on May 3, 2023, THOMAS received a copy of an affidavit in support of a search warrant executed in this investigation that contained statements made by VICTIM 2. The next day, on May 4, 2023, THOMAS sent a photo of the affidavit to VICTIM 2 accompanied by expletives calling VICTIM 2 a "liar" and a "b****". In May 2023, VICTIM 2 obtained a Final Protective Order against THOMAS.

If called to testify, VICTIM 1, VICTIM 2, and other witnesses would identify THOMAS. All events originated in Cecil County, Maryland.

Senator Kelly SB391 Testimony.pdfUploaded by: Senator Ariana Kelly

ARIANA KELLY
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Judicial Proceedings Committee



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THE SENATE OF MARYLAND ANNAPOLIS, MARYLAND 21401

February 2nd, 2024

Testimony in Support of SB391 Criminal Law - Sexual Extortion, Stalking, and Revenge Porn -Statute of Limitations and In Banc Review

Dear Chair Smith, Vice Chair Waldstreicher, and Committee Members,

I am before you today to speak about SB391 Criminal Law - Sexual Extortion, Stalking, and Revenge Porn - Statute of Limitations and In Banc Review.

SB391 originated from the Governor's Family Violence Council Stalking Subcommittee.

Due to the complexities of stalking, sextortion, and revenge porn cases, including victims not recognizing that they're being stalked or that their sexual images have been nonconsensually shared until years later, these cases are often not able to be prosecuted due to a one-year statute of limitations.

Maryland Courts and Judicial Proceedings §5-106(b) classifies some misdemeanors as not having a statute of limitations. As you will see from the chart below my written testimony, there are 25 misdemeanors with no statute of limitations in the Criminal code, including sex trafficking, persuasion of a minor under 16, and perjury.

SB391 adds stalking (§ 3-802), sextortion (§ 3-709), and revenge porn (§ 3-809) to this list.

SB391 will NOT increase criminal penalties, it will only allow victims the time needed to seek protection and have the opportunity for law enforcement to *thoroughly* investigate their case.

Among our witnesses today you will hear from Debbie Feinstein, who serves on the Governor's Family Violence Stalking Subcommittee, and is Senior Assistant State's Attorney and Chief of the Special Victims Division at the Montgomery County State's Attorney's Office. Debbie will explain in detail the difficulties of why these crimes are not often able to be prosecuted due to the current statute of limitations. Mary Setzer, Senior Assistant State Prosecutor for the Maryland Office of the State Prosecutor will provide examples of cases that have been negatively affected by the current statute of limitations. You will hear compelling testimony from Carrie Tirrell with Maryland Coalition Against Sexual Assault's Sexual Assault Legal Institute and Melanie Shapiro, Public Policy Director at Maryland Network Against Domestic Violence about the effects and risks of these crimes.

I thank you for your consideration and urge a favorable report for SB391.

Additional crimes that are misdemeanors guided by 5-106(b)
§ 8-606.1. Use of forged, falsified, or counterfeit signatures prohibited
§ 8-701. Embezzling, altering will or record
§ 8-406. Misuse of documents of title
§ 9-202. Bribery of juror; acceptance of bribe by juror
§ 8-401. Fraudulent conversion of partnership assets
§ 8-702. Destroying will
§ 6-106. Burning with intent to defraud
§ 7-115. Rehypothecation of personal securities
§ 8-608. Counterfeiting stamp of Comptroller
§ 7-116. Failure to Deliver Documents for Merchandise
§ 8-607. Counterfeiting public seal
§ 11-305. Persuasion, enticement, or aid in persuasion or enticement of individuals under age of 16

§ 8-402. Fraudulent misrepresentation by corporate officer or agent
§ 11-304. Received earnings of prostitute
§ 3-1102. Sex trafficking
§ 4-405. Use of machine gun for aggressive purpose
§ 7-114. Defalcation
§ 7-113. EmbezzlementFraudulent misappropriation by fiduciaries
§ 9-102. Subornation Perjury
§ 10-402. Removing human remains without authority
§ 9-204. Bribery of person participating in or connected with athletic contest
§ 3-603. Sale of Minor
§ 8-301. Identity fraud
§ 9-201. Bribery of a public employee
§ 9-101. Perjury