

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 360

(Senators Hester and Smith)

Judicial Proceedings

Judiciary

Revenge Porn - Definition of Visual Representation and Civil Action

This bill (1) defines “visual representation” under § 3-809 of the Criminal Law Article (revenge porn); (2) establishes that a person whose “visual representation” was distributed in violation of § 3-809 has a civil cause of action for defamation *per se* or invasion of privacy against any person who distributed the visual representation and authorizes a court to award reasonable attorney’s fees to a prevailing plaintiff in addition to any other relief; and (3) expands an existing provision that limits the inspection of a visual representation of a victim that is part of a court record in a violation of § 3-809 to account for these civil actions and plaintiffs and plaintiffs’ attorneys. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the expanded application of an existing penalty provision. The Judiciary can address additional civil cases using existing budgeted resources.

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: Minimal.

Analysis

Bill Summary: “Visual representation” of an identifiable person means (1) an unaltered image of the person or (2) an image created with or without using other existing depictions of the person that is indistinguishable from the person, from the perspective of an ordinary person. “Visual representation” includes a computer-generated image but does not include an image or depiction that is a drawing, cartoon, sculpture, or painting.

Current Law: 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. 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 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.

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.

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): 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 - January 29, 2025
km/aad Third Reader - March 14, 2025
Revised - Updated Information - March 25, 2025
Enrolled - May 2, 2025
Revised - Amendment(s) - May 2, 2025

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