

Chapter 365

(Senate Bill 769)

AN ACT concerning

Criminal Law – Sextortion and Revenge Porn

FOR the purpose of prohibiting a person from causing another to engage in certain sexual ~~contact~~ activity by making certain threats; prohibiting a person from causing another to engage as the subject in the production of a certain visual representation or performance by making certain threats; repealing a provision of law prohibiting a person from intentionally causing serious emotional distress to another by intentionally placing on the Internet a certain reproduction of the image of the other under certain circumstances; prohibiting a person from knowingly distributing a certain visual representation of a certain other person under certain circumstances; establishing and applying certain penalties for a violation of this Act; authorizing a sentence imposed under this Act to be separate from and consecutive to or concurrent with a sentence for any other crime based on the action establishing a violation of this Act; prohibiting a certain visual representation from being made available for public inspection in certain cases; providing that a certain visual representation may be made available to certain persons under certain circumstances; defining certain terms; and generally relating to sextortion and revenge porn.

BY adding to

Article – Criminal Law

Section 3–709

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 3–809

Annotated Code of Maryland

(2012 Replacement Volume and 2017 Supplement)

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

Article – Criminal Law**3–709.**

(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 ~~CONTACT~~ 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 ~~CONTACT~~ 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 ~~CONTACT~~ 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.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A ~~FELONY~~ 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 VISUAL REPRESENTATION DEPICTING A VICTIM ~~WHICH~~ 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)~~ (VI) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY;
OR

~~(VII)~~ (VII) THE VICTIM OR THE VICTIM'S ATTORNEY.

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.

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

[(3)] (5) [“Sexual contact”] **“SEXUAL ACTIVITY”** means:

(I) sexual intercourse, including genital–genital, oral–genital, anal–genital, or oral–anal, whether between persons of the same or opposite sex;

(II) SODOMY UNDER § 3–321 OF THIS TITLE OR AN UNNATURAL OR PERVERTED SEXUAL PRACTICE UNDER § 3–322 OF THIS TITLE;

(III) MASTURBATION; OR

(IV) 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 intentionally cause serious emotional distress to another by intentionally placing on the Internet a photograph, film, videotape, recording, or any other reproduction of the image of the other person that reveals the identity of the other person with his or her intimate parts exposed or while engaged in an act of sexual contact:

(1) knowing that the other person did not consent to the placement of the image on the Internet; and

(2) under circumstances in which the other person had a reasonable expectation that the image would be kept private.]

(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 ~~CONTACT~~ ACTIVITY:

(1) ~~(I)~~ WITH THE INTENT TO HARM, HARASS, INTIMIDATE, THREATEN, OR COERCE THE OTHER PERSON; ~~OR~~

~~(II) WITH RECKLESS DISREGARD FOR THE LIKELIHOOD THAT THE OTHER PERSON WILL SUFFER HARM; AND~~

(2) (I) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW ~~OR SHOULD HAVE KNOWN~~ 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 VISUAL REPRESENTATION OF A VICTIM ~~WHICH~~ 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;

OR ~~(v)~~ (vi) THE DEFENDANT OR THE DEFENDANT’S ATTORNEY;

~~(vi)~~ (vii) THE VICTIM OR THE VICTIM’S ATTORNEY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 8, 2018.