

# SENATE BILL 391

E1, E2

4lr1710

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By: **Senators Kelly and Carozza**

Introduced and read first time: January 18, 2024

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of providing that the State may institute a prosecution for sexual  
5 extortion, stalking, or revenge porn at any time; providing that, for purposes of the  
6 Maryland Constitution, a person who commits sexual extortion, stalking, or revenge  
7 porn shall be deemed to have committed a misdemeanor whose punishment is  
8 confinement in the penitentiary and may reserve a point or question for a certain in  
9 banc review; and generally relating to sexual extortion, stalking, and revenge porn.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 5–106(a) and (b)  
13 Annotated Code of Maryland  
14 (2020 Replacement Volume and 2023 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Criminal Law  
17 Section 3–709, 3–802, and 3–809  
18 Annotated Code of Maryland  
19 (2021 Replacement Volume and 2023 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 5–106.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) Except as provided by this section, § 1–303 of the Environment Article, and §  
 2 8–1815 of the Natural Resources Article, a prosecution for a misdemeanor shall be  
 3 instituted within 1 year after the offense was committed.

4 (b) Notwithstanding § 9–103(a)(3) of the Correctional Services Article or any  
 5 other provision of the Code, if a statute provides that a misdemeanor is punishable by  
 6 imprisonment in the penitentiary or that a person is subject to this subsection:

7 (1) The State may institute a prosecution for the misdemeanor at any time;  
 8 and

9 (2) For purposes of the Maryland Constitution, the person:

10 (i) Shall be deemed to have committed a misdemeanor whose  
 11 punishment is confinement in the penitentiary; and

12 (ii) May reserve a point or question for in banc review as provided  
 13 under Article IV, § 22 of the Maryland Constitution.

#### 14 **Article – Criminal Law**

15 3–709.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) “Intimate parts” has the meaning stated in § 3–809 of this title.

18 (3) “Sexual activity” has the meaning stated in § 3–809 of this title.

19 (b) A person may not cause another to:

20 (1) engage in an act of sexual activity by threatening to:

21 (i) accuse any person of a crime or of anything that, if true, would  
 22 bring the person into contempt or disrepute;

23 (ii) cause physical injury to a person;

24 (iii) inflict emotional distress on a person;

25 (iv) cause economic damage to a person; or

26 (v) cause damage to the property of a person; or

27 (2) engage as a subject in the production of a visual representation or  
 28 performance that depicts the other with the other’s intimate parts exposed or engaging in  
 29 or simulating an act of sexual activity by threatening to:

1 (i) accuse any person of a crime or of anything that, if true, would  
2 bring the person into contempt or disrepute;

3 (ii) cause physical injury to a person;

4 (iii) inflict emotional distress on a person;

5 (iv) cause economic damage to a person; or

6 (v) cause damage to the property of a person.

7 (c) A person who violates this section is guilty of a misdemeanor and on conviction  
8 is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

9 (d) A sentence imposed under this section may be separate from and consecutive  
10 to or concurrent with a sentence for any crime based on the act establishing the violation  
11 of this section.

12 (e) **A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5–106(B) OF**  
13 **THE COURTS ARTICLE.**

14 (F) A visual representation depicting a victim that is part of a court record for a  
15 case arising from a prosecution under this section:

16 (1) subject to item (2) of this subsection, may not be made available for  
17 public inspection; and

18 (2) except as otherwise ordered by the court, may only be made available  
19 for inspection in relation to a criminal charge under this section to:

20 (i) court personnel;

21 (ii) a jury in a criminal case brought under this section;

22 (iii) the State's Attorney or the State's Attorney's designee;

23 (iv) the Attorney General or the Attorney General's designee;

24 (v) a law enforcement officer;

25 (vi) the defendant or the defendant's attorney; or

26 (vii) the victim or the victim's attorney.

1 (a) In this section:

2 (1) “stalking” means a malicious course of conduct that includes  
3 approaching or pursuing another where:

4 (i) the person intends to place or knows or reasonably should have  
5 known the conduct would place another in reasonable fear:

6 1. A. of serious bodily injury;

7 B. of an assault in any degree;

8 C. of rape or sexual offense as defined by §§ 3–303 through  
9 3–308 of this title or attempted rape or sexual offense in any degree;

10 D. of false imprisonment; or

11 E. of death; or

12 2. that a third person likely will suffer any of the acts listed  
13 in item 1 of this item; or

14 (ii) the person intends to cause or knows or reasonably should have  
15 known that the conduct would cause serious emotional distress to another; and

16 (2) “stalking” includes conduct described in item (1) of this subsection that  
17 occurs:

18 (i) in person;

19 (ii) by electronic communication, as defined in § 3–805 of this  
20 subtitle; or

21 (iii) through the use of a device that can pinpoint or track the location  
22 of another without the person’s knowledge or consent.

23 (b) The provisions of this section do not apply to conduct that is:

24 (1) performed to ensure compliance with a court order;

25 (2) performed to carry out a specific lawful commercial purpose; or

26 (3) authorized, required, or protected by local, State, or federal law.

27 (c) A person may not engage in stalking.

1 (d) A person who violates this section is guilty of a misdemeanor and on conviction  
2 is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

3 (e) A sentence imposed under this section may be separate from and consecutive  
4 to or concurrent with a sentence for any other crime based on the acts establishing a  
5 violation of this section.

6 **(F) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF**  
7 **THE COURTS ARTICLE.**

8 3-809.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) "Distribute" means to give, sell, transfer, disseminate, publish, upload,  
11 circulate, broadcast, make available, allow access to, or engage in any other form of  
12 transmission, electronic or otherwise.

13 (3) "Harm" means:

14 (i) physical injury;

15 (ii) serious emotional distress; or

16 (iii) economic damages.

17 (4) "Intimate parts" means the naked genitals, pubic area, buttocks, or  
18 female nipple.

19 (5) "Sexual activity" means:

20 (i) sexual intercourse, including genital-genital, oral-genital,  
21 anal-genital, or oral-anal;

22 (ii) masturbation; or

23 (iii) sadomasochistic abuse.

24 (b) (1) This section does not apply to:

25 (i) lawful and common practices of law enforcement, the reporting  
26 of unlawful conduct, or legal proceedings; or

27 (ii) situations involving voluntary exposure in public or commercial  
28 settings.

1           (2) An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is  
2 not liable under this section for content provided by another person.

3           (c) A person may not knowingly distribute a visual representation of another  
4 identifiable person that displays the other person with his or her intimate parts exposed or  
5 while engaged in an act of sexual activity:

6           (1) with the intent to harm, harass, intimidate, threaten, or coerce the  
7 other person;

8           (2) (i) under circumstances in which the person knew that the other  
9 person did not consent to the distribution; or

10           (ii) with reckless disregard as to whether the person consented to the  
11 distribution; and

12           (3) under circumstances in which the other person had a reasonable  
13 expectation that the image would remain private.

14           (d) A person who violates this section is guilty of a misdemeanor and on conviction  
15 is subject to imprisonment not exceeding 2 years or a fine not exceeding \$5,000 or both.

16           (e) **A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5–106(B) OF**  
17 **THE COURTS ARTICLE.**

18           (F) A visual representation of a victim that is part of a court record for a case  
19 arising from a prosecution under this section:

20           (1) subject to item (2) of this subsection, may not be made available for  
21 public inspection; and

22           (2) except as otherwise ordered by the court, may only be made available  
23 for inspection in relation to a criminal charge under this section to:

24           (i) court personnel;

25           (ii) a jury in a criminal case brought under this section;

26           (iii) the State's Attorney or the State's Attorney's designee;

27           (iv) the Attorney General or the Attorney General's designee;

28           (v) a law enforcement officer;

29           (vi) the defendant or the defendant's attorney; or

30           (vii) the victim or the victim's attorney.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2024.