MGA_1_23_24_ProBill145.pdf

Uploaded by: Abigail Schaffer

Position: FAV

January 23, 2024

The Honorable Luke Clippinger
Chairman, House Judiciary Committee
6 Bladen Street
Annapolis, MD 21401

Dear Chairman Clippinger and Members of the Judiciary Committee:

I write in support of HB145--Criminal Law - Revenge Porn - Visual Representation.

In the summer of 2023, much to my Horror, Humiliation, & Heartbreak, it was brought to my attention that there were images of me online, on a popular and widely-viewed fetish website. A former friend of mine, Oliver Bateman, had created a page for me on this semi-public website, where he shared hundreds of images and videos of me. Only here's the thing – it was my face, but the images of my body – were not real. I never posed for such images. Oliver had mastered the AI software which he had access to through his workplace. He used this software to take real images of me – lifted from my facebook and instagram pages – and while he kept my real face in the image, he extensively edited my body and my clothing in the images, to make me appear nude, and/or dressed provocatively, and engaging in sexual acts. He also used the Deep Fake technology to make it appear that I was engaged in pornographic acts, in images and videos. Now I want to be clear. He was using images of my face from real photos I had posed for – but he had edited these images extensively to make them appear pornographic, and engaging in all manner of sex acts. And he was sharing them on a website using my real location, and using a name very similar to my own name. His virtual representation of me put my real self in real danger. He impersonated my manner of speaking in the captions he wrote – such that onlookers might think it was the real me. (We were acquainted for 15 years - he knew my manner of speaking well.) This page he created had 10,000 subscribers, and was online for three years. These false and defamatory images and videos he created of me had hundreds of thousands of views. It could have been viewed by anyone who created an account for this publicly available website. It's very possible that these images could have

been viewed by coworkers at the hospital where I work, by a potential job interviewer for a new job, by members of my actual or prospective community, or by anyone. They present me in a light in which I would never present myself. These images looked incredibly real and convincing - but they were not me.

When this website was brought to my attention, I was devastated. I had absolutely no control over these false and defamatory images, and the fact that they had already been viewed thousands of times. To say I felt depressed is an understatement. It felt like these images were a violation against my very spirit. And they certainly ought to be a criminal violation, as well!

And the technology has only gotten better since then. Oliver, a pervert with computer skills and way too much time on his hands - could devote untold hours to creating these images of me. But as the AI technology progresses, someone could probably create images like these within minutes, if they simply purchase the right app.

I took a stand against Oliver. I sought out a restraining order, and I filed criminal charges. However I was told by the courts, that the depraved acts he committed, over a period of three years -- though clearly criminal in nature -- did not actually break any existing laws, because the laws had not yet caught up to the technology.

Revenge porn is a terrible crime, regardless of the circumstances. But with the rise of AI, revenge porn can be created for people who have never even engaged in any form of porn, whatsoever!

We've all witnessed the rise of AI over the last few years.

Today I ask you to criminalize bad actors such as Oliver, and update these laws to reflect modern technology.

I urge a favorable report on HB145.

Sincerely,
Abigail Schaffer

Feinstein Letter of Support HB0145.pdf
Uploaded by: Debbie Feinstein
Position: FAV

January 19, 2024

The Honorable Luke Clippinger
Chairman, House Judiciary Committee
6 Bladen Street
Annapolis, MD 21401

Dear Chairman Clippinger and Members of the Judiciary Committee:

On behalf of the Maryland State's Attorney's Association, and the Montgomery County State's Attorney's Office, I write in support of HB0145—Criminal Law—Revenge Porn—Visual Representation. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and supervise the prosecution of sexual assault, domestic violence, child abuse, elder abuse, human trafficking, and sexual exploitation. I also co-chair the Maryland State's Attorneys Association's Special Victims Legislative Subcommittee, and I am a member of the Governor's Family Violence Council.

Section 3-809 currently states:

> 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 activity:
> **(1)** with the intent to harm, harass, intimidate, threaten, or coerce the other person;
> **(2) (i)** under circumstances in which the person knew 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.

The current statute does not define "visual representation" or "another identifiable person." Under this statutory scheme, the State must prove that the person in the image, *the whole person,* is identified or known. Consequently, the statute provides a loophole for images that include a person's identifiable face paired with an unidentifiable body (and vice versa). These images are also known as "deep fakes."

My office has been unable to prosecute cases where the victim's head is connected to an unidentifiable naked body that is often in sexually explicit positions. The loophole that the current law provides for abusers must be closed. I urge a favorable report on HB0145.

Sincerely,

Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney

Feinstein Letter of Support HB0145.pdf

Uploaded by: Debbie Feinstein

Position: FAV

State's Attorney for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850

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January 19, 2024

The Honorable Luke Clippinger
Chairman, House Judiciary Committee
6 Bladen Street
Annapolis, MD 21401

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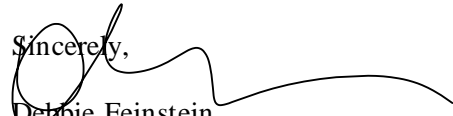
Section 3-809 currently states:

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> **(1)** with the intent to harm, harass, intimidate, threaten, or coerce the other person;
> **(2) (i)** under circumstances in which the person knew 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.

The current statute does not define "visual representation" or "another identifiable person" and it requires that the perpetrator display the identifiable person's "intimate parts." Under this statutory scheme, the State must prove that the person in the image, *their face and intimate parts,* is identified or known. Consequently, the statute provides a loophole for images that include a person's identifiable face paired with an unidentifiable body (and vice versa). These images are also known as "deep fakes."

My office has been unable to prosecute cases where the victim's head is connected to an unidentifiable naked body that is often in sexually explicit positions. The loophole that the current law provides for abusers must be closed. I urge a favorable report on HB0145.

Sincerely,

Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney

HB 145_ MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV

BILL NO: House Bill 145
TITLE: Criminal Law - Revenge Porn - Visual Representation
COMMITTEE: Judiciary
HEARING DATE: January 23, 2023
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 House Judiciary Committee to issue a favorable report on HB 145.**

House Bill 145 clarifies and provides a definition for what is a "visual representation" in the context of revenge porn. Revenge porn is one of many abusive tactics of power and control present in domestic violence. In one study 71% of victims report that a current or previous romantic partner had posted a nude image.[1]

Revenge porn can be used to threaten a victim, for retaliation, or to simply cause a victim harm. A victim can be coerced into creating an image, the image could have been taken without their consent, or an image could be consensual only for it to be subsequently used to victimize by its distribution without their consent. A victim of revenge porn can experience trauma and psychological harm in addition to economic harm due to the unlawful sharing of images.

The clarifying definition for "visual representation" in HB 145 reflects the evolving nature of technology and how victims can be harmed.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 145.**

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[1] https://www.strangulationtraininginstitute.com/revenge-porn-the-latest-research-and-law-enforcement-efforts/
For further information contact Melanie Shapiro ▪ Public Policy Director ▪ 301-852-3930 ▪ mshapiro@mnadv.org

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HB 145 written testimony.pdf

Uploaded by: Sarah Proctor

Position: FAV

OFFICE OF THE STATE'S ATTORNEY

JAYMI STERLING
STATE'S ATTORNEY

CIRCUIT COURT
DIVISION

ST. MARY'S COUNTY, MARYLAND

DATE: January 19, 2024

BILL NUMBER: HB 145

POSITION: Favorable

The St. Mary's County State's Attorney's Office supports HB 145.

HB 145 seeks to amend Criminal Law Article 3-809; Revenge Porn-Visual Representation, by modernizing or evolving the definition of what constitutes a visual representation with the current state of technology and various social media.

As a prosecutor for over 20 years, there have been many cases, especially in the last 10 years with advances in technology and the progression of social media, in which images are created via electronic means therefore not a printed photograph. During my tenure, with the Charles County State's Attorneys Office, I assisted in preparing a response to a request to dismiss in a case involving an argument over whether a video created on a phone constituted a visual representation under the meaning of a videotape or film. This amendment of definition is evolving with the current environment of cellular telephones, computer generated images, and electronic devices all which can be used to distribute revenge pornography.

Thus, this amendment serves to protect persons from harm from all means of electronic communication when relationships are broken, or a trust is broken.

Sarah Proctor

Sarah F Proctor
Chief of Special Victims Unit
For St. Mary's County State's Attorney Office

Revenge Porn - constl concerns - testimony - house
Uploaded by: Lisae C Jordan
Position: FWA

![MCASA - Maryland Coalition Against Sexual Assault]

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<div align="center">

Testimony Supporting House Bill 145 with Amendments
Lisae C. Jordan, Executive Director & Counsel
January 23, 2024

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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 which provides direct legal services for survivors across the State of Maryland. We urge the Judiciary Committee to report favorably on House Bill 145.

House Bill 145 – Revenge Porn – Digitally Altered Images
This bill is an effort to expand the current "revenge porn" statute, Criminal Law §3-809, to include a broader range of images, including "deep-fakes" and similar depictions. MCASA fully supports the intent of the bill, but expresses concerns about whether it may be overbroad and tread into constitutionally protected areas.

Revenge Porn is the abhorrent practice of harming another person by distributing images of their intimate parts or sexual activities without their consent. Typically, this involves former romantic partners who have shared pictures of themselves willingly and one shares the pictures without the consent of the other to harm, harass, intimidate, threaten, or coerce the other person. The statute was carefully crafted to balance constitutional protections for free speech and the need to prohibit harmful conduct.

The advent of AI and more sophisticated computer technology creates a need to update the current statute. It is not difficult to create sexual images of someone that are wholly made up and also indistinguishable from an actual person. These images can cause significant emotional, reputational, and even financial harm. As drafted, however, HB145 would include clearly fake pictures, for instance "a picture" made by "mechanical or other means" could include a cartoon with a parody of a public figure. MCASA respectfully suggests borrowing from the language in §11-208 and adding a requirement that a "visual representation" under §3-809(a)(6) include a requirement that the image be "indistinguishable from an actual and identifiable human being" and that a definition of this term be added on page 2, line 2 after "(4)":

(I)"INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING" MEANS AN ORDINARY PERSON WOULD CONCLUDE THAT THE IMAGE IS OF AN ACTUAL AND IDENTIFIABLE HUMAN BEING"

(II) "INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING" INCLUDES A COMPUTER–GENERATED IMAGE THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO

APPEAR AS AN ACTUAL AND IDENTIFIABLE HUMAN BEING.

(III)   "INDISTINGUISHABLE FROM AN ACTUAL AND IDENTIFIABLE HUMAN BEING" DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING HUMAN BEINGS THAT ARE:

1.   DRAWINGS;
2.   CARTOONS;
3.   SCULPTURES;
4.   PAINTINGS.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 145 with Amendments**