

Testimony in Support of SB0655 from Anupam Joshi.p

Uploaded by: Anupam Joshi

Position: FAV



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Testimony in support of SB0655

Anupam Joshi

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I write today to strongly support SB0655 (Courts – Artificial Intelligence Evidence Clinic Pilot Program – Establishment). As Generative AI systems (such as ChatGPT, Gemini, Dall-E etc.) become more powerful, their ability to generate content that is realistic and plausible but completely fake has blurred the lines between true and false information in the public domain. This “data/knowledge poisoning” creates a problem when we are looking for evidence to support a hypothesis. With this technology now crossing national boundaries (e.g. DeepSeek), we also have the potential of its misuse by nation state adversaries.

One key issue confronting the judicial system from these developments is what evidence in a trial can be trusted. This is especially true if the evidence seems incontrovertible at a first glance, like the video of a person committing a crime or the audio of a person confessing to committing a crime. AI can be used to generate or manipulate such evidence, making its traditional trustworthiness potentially suspect.

Very recently in Maryland, generated audio was used to frame a person for alleged racial bias. The generation was done by a relative amateur, so it was eventually caught. This however required experts, including a Professor from UC Berkeley from what I understand. However, if the generation is done by experts, it is much harder to detect. In general, Maryland courts would not have the expertise to do such analysis for any evidence where there was a suspicion of it being generated.

The proposed SB0655 takes a step in addressing this challenge. Creating a clinic that leverages the expertise of Maryland students and faculty to support the court makes great sense. These students are taking courses at institutions such as UMBC in the cutting edge of AI, especially generative AI, as well as its cybersecurity implications. Traditionally, expert witnesses from either side present opinions. However, having students/faculty from Maryland academic institutions as neutral experts that assist the court would be beneficial, especially when a party does not have the resources to hire experts. This would also benefit the students, who will see the real-world implications of what they have learned, and faculty, who would be able to better design course and lab work based on this field experience. Providing modest financial assistance for this clinic is critical in the success of this effort. For these reasons, I urge the committee to view this bill favorably.

Hester SB655 Testimony.pdf

Uploaded by: Katie Fry Hester

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KATIE FRY HESTER
Legislative District 9
Howard and Montgomery Counties

Education, Energy, and
Environment Committee

Chair, Joint Committee on
Cybersecurity, Information Technology
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB655 - Courts - Artificial Intelligence Evidence Clinic Pilot Program - Establishment

February 11, 2025

Chairman Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee:

Thank you for your consideration of SB655, which establishes an Artificial Intelligence (AI) Evidence Clinic to support Maryland judges by providing expert analysis on whether electronic evidence has been altered by AI.

The advancement of generative AI has unlocked new possibilities in technology, but it also presents significant challenges. The use of AI to enhance, alter, or fabricate information poses a serious risk, particularly in the courtroom, where truth and accuracy are paramount. A 2021 study found that people often overestimate their ability to detect deepfakes, making it difficult to reliably distinguish authentic evidence from manipulated content.¹ Jurors can be heavily influenced by the evidence they see, even if it is later discredited, underscoring the need for reliable authentication. Furthermore, securing expert testimony to verify disputed evidence can drive up litigation costs, further widening the gap in access to justice.

Maryland has long benefited from impactful law clinics, with clinics across the state providing critical legal support to those in need. Building on this model, we are creating a similar initiative for computer science programs, allowing them to leverage their AI expertise to support the courts and expand access to expert testimony. In collaboration with Maryland Chief Justice Matthew Fader, we have worked to ensure this program effectively meets the needs of the judiciary and the communities it serves.

SB655 moves to create and fund an AI Evidence Clinic Pilot Program within the Administrative Office of the Courts, which will:

- Establish a competitive RFP process for Maryland colleges and universities committed to AI research and advancement to participate in the AI Evidence Clinic Pilot Program
- Those in the Clinic Pilot Program will then assist in civil cases by:

¹ www.ncsc.org/_data/assets/pdf_file/0019/101683/ncsc-ai-rrt-deepfakes-june-2024.pdf

- Providing expert opinions concerning the likelihood that an image, audio, or video is original or has been manipulated, including through the use of AI; and
- Prioritizing support to civil cases where the participants do not have legal counsel and access to expert testimony.

SB655 will ensure that our courts are prepared to meet the rising challenges presented by the growth of AI and deepfake technology, and continue to enforce justice fairly.

For these reasons, I respectfully request a favorable report on SB655.

Sincerely,

A handwritten signature in cursive script that reads "Katie Fry Hester".

Senator Katie Fry Hester
Howard and Montgomery Counties

SB 655- Fader Written Testimony.pdf

Uploaded by: Will Vormelker

Position: FAV



Supreme Court of Maryland

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Matthew J. Fader
Chief Justice

(410) 260-3725

February 11, 2025

Testimony of Chief Justice Matthew Fader in support of Senate Bill 655

Senate Judicial Proceedings Committee

The Maryland Judiciary supports Senate Bill 655. This bill would establish an Artificial Intelligence Evidence Clinic Pilot Program within the Administrative Office of the Courts (AOC). This pilot program would provide expert testimony on the authenticity of electronic evidence that a court determines may have been created or altered by Artificial Intelligence (AI). This applies to circuit courts and the District Court. The AOC would develop a request for proposals for an entity to manage the program and will prioritize Maryland-based academic institutions with expertise in computer science and particularly in AI.

This bill is intended to address an urgent need to help Maryland courts prepare for an expected expansion in the use of allegedly fake evidence associated with the explosive growth and ready availability of generative artificial intelligence platforms. While fabricated evidence is not a new problem in state courts, generative artificial intelligence platforms threaten to exacerbate the problem by offering the ability to create convincing fake evidence with ease and at little or no cost. Such fabricated evidence is often referred to as “deepfakes.” At present, and for the readily foreseeable future, courts lack tools to easily and reliably detect when high-quality artificial intelligence may have been used to generate deepfake evidence. Examples of evidence that can be created or manipulated using generative artificial intelligence include digital images, videos, and audio files, all of which are frequently introduced as evidence in our state trial courts, all of which can be given great weight by fact finders in deciding cases, and all of which can be created or manipulated using generative artificial intelligence.

State courts across the country are anticipating that in the near future there will be a substantial increase in challenges to the authenticity of digital evidence, in which one party alleges that something offered as authentic evidence by the other is instead a deepfake. When both parties have sufficient resources to hire experts to opine on the authenticity of the evidence, courts may be able to handle the challenge in the same way they have traditionally handled such challenges. When the parties lack those resources, there is not presently a mechanism for courts to engage expert witness services themselves. As a result, a court may lack any way to determine whether the evidence is real other than their assessment of which party is more likely telling the truth. Given the

weight that finders of fact often give to digital evidence such as photographs and voicemails, the inability to have a more reliable way to determine whether a piece of evidence is real or fabricated may become a significant obstacle to reaching the correct result in cases. Real life examples of disputes that may turn on the authenticity of digital evidence could include a domestic violence protective order case in which one party submits photographs of injuries allegedly caused by the other party, or a custody dispute in which one party submits a series of threatening text messages allegedly sent or voicemails allegedly left by the other party.

The problems presented by the expected substantial increase in deepfake evidence are twofold. First is the risk that deepfakes will be received as real. Second, and equally concerning, is the risk that authentic evidence will be discounted or disregarded out of concern that it might be a deepfake. Both instances create substantial challenges to the truth-seeking function of courts and to the Judiciary's ability to reach the right result under the law. As deepfakes proliferate on the Internet and in social media and as access to the platforms used to create them becomes more familiar to the general public, the Judiciary anticipates that both concerns will quickly grow. The need to find solutions to help courts confront this problem is urgent.

This bill offers an innovative approach to the problem. The bill would allow the Administrative Office of the Courts to create a pilot program that will build the capacity to provide expert witness services to assess the likelihood that digital evidence submitted by parties is authentic. The program will thus allow courts to make better decisions by relying on qualified experts with access to the latest detection technology and expertise in examining metadata and other indicia of genuineness, rather than trying to assess the authenticity of complex digital evidence on their own. It can also be expected that parties who are aware that the courts have access to such services will be less likely to offer deepfake evidence in the first place.

Importantly, this bill also furthers the Judiciary's mission of providing access to justice by focusing on providing expert witness services in cases in which one or both parties are unable to afford them, including cases involving self-represented parties.

We are working with the bill sponsor to address two issues with the current language. First, with respect to section (f) of the bill, the Judiciary requests that it be authorized, rather than required, to place a hold harmless provision in its agreement with the selected entity. That will allow the negotiation of a reasonable provision subject to reasonable limitations, rather than requiring an uncapped indemnification. Second, the Judiciary understands the intent of the bill is to authorize a competitive grant to an institution of higher education, rather than an RFP. We are working on language to reflect that.

Thank you for your consideration.