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POSITION ON PROPOSED LEGISLATION

BILL: SB0360 - Revenge Porn – Civil Action and Criminal Offense

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: March 26, 2025

The Maryland Office of the Public Defender respectfully submits this testimony and asks for an unfavorable report from the committee.

Under Maryland Law, distribution of ‘revenge porn’ is already unlawful. MD. CRIM. LAW § 3-809. The Revenge Porn Statute specifically prohibits “[distribution of] 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” when three specific criteria are met. These are:

- 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.

MD. CRIM. LAW § 3-809(c).

Senate Bill 0360 seeks to expand the Revenge Porn Statute drastically by expanding the types of ‘images’ covered by the statute to include “Computer-generated visual representations” but excluding drawings, cartoons, sculptures, or paintings. Senate Bill 0360 does not define any of these terms. Rather, Senate Bill 0360 merely states that a “Computer-generated visual representation” can include:

- 1) A visual representation created without using other existing visual representations of a person or
- 2) A visual representation created using other existing visual representations of a person without the person’s consent.

Without clear definitions, the bill is vague in what type of representation would fall into the bill’s broadly defined categories. In one instance, a ‘computer-generated’ visual representation might

be interpreted to mean an image created solely by a computer, such as AI. Thus, any contribution by a human being to the creation of the image would negate the image being defined as ‘computer-generated’.

Conversely, the term ‘computer-generated’ might be interpreted broadly to include any image created with the mere assistance of a computer. It is common to use computers and applications to assist in creating digital images. Thus, if an image was put through a scanner to enhance the color or sharpen the contrast, this could be considered ‘computer-generated.’ The vagueness of the term ‘computer-generated’ makes Senate Bill 0360 subject to challenge in the courts.

Moreover, the bill excludes ‘drawings’ but fails to define that term. Certainly, one can ‘draw’ on a computer. In its current incarnation, Senate Bill 0360 could be defeated simply by claiming that part or all of the visual representation was ‘drawn’ on a computer using a stylus or mouse. The vagueness of the term ‘drawing’ is ripe for challenge.

Maryland Law already permits civil actions for defamation, intentional infliction of emotional distress, and false light. Victims of revenge porn already have a civil remedy for which damages, injunctions and attorney’s fees can be sought. Maryland civil codes are the better place to expand remedies for victims of Revenge Porn.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 0360.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Jeremy Zacker, Assistant Public Defender.