



OFFICE OF THE DISTRICT ATTORNEY
NASSAU COUNTY

February 28, 2024

Testimony in Support of Senate Bill 858: Revenge Porn Civil Action and Reporting Requirement

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

I am the District Attorney of Nassau County, New York—one of the largest counties in New York State and home to more than 1.3 million residents—and I submit this testimony in strong support of Maryland Senate Bill 858 (“SB 858”), sponsored by Senator Katie Fry Hester, because of its laudable goals and potential impact on addressing an increasingly problematic and pressing issue.

As a criminal prosecutor for more than 30 years, I began prosecuting child sex abuse cases at the true dawn of the social internet and was on the front lines of prosecutions of child sex abuse cases stemming from the use of computers and the internet to traffic child sexual abuse materials (“CSAM”). Protecting children has always been an issue that is near and dear to my heart. In the last few years, across the country, we have seen a troubling rise in cases involving digitally altered images, what are commonly known as “deepfakes,” where bad actors take innocent images or videos and digitally alter them to make them appear to depict identifiable people—often women and children—as nude or engaged in sexual activity. Today’s technology makes it as simple as typing a quick command to create realistic—yet fake—images and videos of identifiable individuals engaged in sexual conduct. This is terrifying, and it is a practice that has become so commonplace that an internet search will retrieve dozens of news articles daily about incidents happening across our country. Recently, for example, bad actors targeted pop superstar Taylor Swift and created sexual deepfake images that they then published online. She is not alone. This problem is pervasive, pernicious, and damaging.

I have witnessed firsthand the devastating—and often long-lasting—effects of this predatory conduct. In many ways, the effects on individuals victimized by the exposure to and publication of sexual deepfakes of their own bodies resemble those often felt by victims of sexual violence because the experience profoundly violates their physical and emotional well-being. Indeed, I have seen victims suffer extensive and deep psychological damage. These victims are typically forced to manage reputational harm, public humiliation, loss of job prospects, and numerous other real-life, lasting consequences. That is why last year, after a truly heinous case prosecuted by my office, we drafted legislation that would protect adults and children from these dangerous sexual deepfakes called the Digital Alterations Protection Act (“DAPA”).

In 2021, my office brought charges against an individual—Patrick Carey—for creating sexual deepfakes with widely-available mobile editing applications, even before artificial intelligence software became ubiquitous and raised the stakes for prosecutors. Carey digitally altered innocent images of

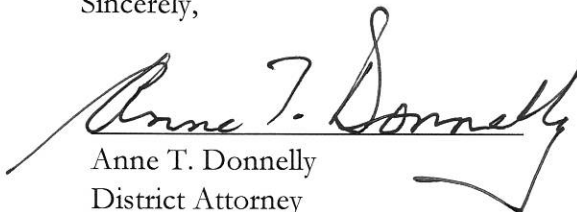
women, who were underaged in the photographs, that he obtained from public social media accounts on Facebook and Instagram. Carey digitally manipulated these images to depict the girls posing nude and engaging in sexual activity. The defendant was able to bypass laws prohibiting the possession and creation of CSAM because he used digitally altered images. He then uploaded the pictures to a depraved website where he and others would denigrate the images in comment sections and send vile and harassing messages—at the defendant’s urging—to victims. In prosecuting that case, we realized that while New York had a civil cause of action prohibiting the dissemination of digitally altered images (New York Civil Rights Law § 52-C), there were no criminal statutes that could be used to charge Carey for creating and publishing sexual deepfakes. He was ultimately convicted for other conduct related to his harassment of the victims and for possessing an authentic CSAM image. Even after his sentencing, the scars remain for the more than dozen women he victimized.

This repulsive conduct is quickly reaching pandemic levels with the increasing ease of deepfake creation and proliferation. And, as technology advances, blurring the lines between reality and fantasy, the problem will continue to spread and worsen. Notably, the number of websites devoted to the creation and spread of sexual deepfakes is expanding exponentially. But we need not sit idly by and allow this to happen. I applaud Senator Hester for recognizing this coming storm and taking steps to protect Maryland residents.

It is my mission to get legislation passed to protect children and adults in New York from falling victim to this horrendous, invasive, and damaging conduct. I continue to work with my legislative partners in the New York Assembly and Senate to refine our DAPA bill and fight to see it passed.

I implore all states to follow this lead and to introduce laws that target the scourge of sexual deepfakes to protect all the people we represent. I wholeheartedly support Senator Hester’s bill to create a civil cause of action for the victims of this conduct and open a pathway to criminal penalties. The passage of this bill marks an important and necessary first step in combating this extremely serious societal problem.

Sincerely,



Anne T. Donnelly
District Attorney
Nassau County

CC: Members, Judicial Proceedings Committee
The Honorable Katie Fry Hester