

SB 858 -WLCMD - FAV.pdf

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 858
TITLE: Revenge Porn – Civil Action and Reporting Requirement
COMMITTEE: Judicial Proceedings
HEARING DATE: February 29, 2024
POSITION: **SUPPORT**

The Women's Law Center of Maryland is dedicated to ensuring the physical safety, economic security, and bodily autonomy of women throughout the State. The clients that we represent have all experienced intimate partner violence, which may include physical, mental, and sexual abuse.

SB 858 aims to regulate the creation and sending of non-consensual sexual imagery created using artificial intelligence. This has become known as, deepfake porn, which is defined as an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said. The use of this technology has become a tool used by domestic abusers to harass, embarrass, and humiliate their victims. So far, 10 states have enacted legislation to regulate this activity. Maryland currently has a revenge porn statute which does not specifically address this type of activity. SB858 will add the definition for deepfake images and non-consensual sexual imagery for the purpose of legislative regulation.

The Women's Law Center of Maryland believes that this bill will provide relief to many victims that have been targeted and humiliated by their abusers with AI-generated images of them engaging in non-consensual sexual imagery. For all these reasons we urge a favorable report on SB 858.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

Amended Version

Uploaded by: Katie Fry Hester

Position: FAV

UNOFFICIAL COPY OF SENATE BILL 858

SENATE BILL 858

D3

4r1886
CF 4r3459

By: Senators Hester, Elfreth, Ellis, Feldman, Gile, James, Lam, Muse, Salling,
Waldstreicher, West, and Zucker

Introduced and read first time: February 2, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Revenge Porn - Civil Action and Reporting Requirement**

3 FOR the purpose of authorizing a person to bring ~~a civil action for the nonconsensual~~
4 ~~distribution of a visual representation of the person with the person's intimate parts~~
5 ~~exposed or while the person is engaged in sexual activity under certain~~
6 ~~circumstances; authorizing the Attorney General to bring a civil action under this~~
7 ~~Act; prohibiting visual representations in court documents under this Act from being~~
8 ~~made available for public inspection; requiring the Administrative Office of the~~
9 ~~Courts to report each year to the General Assembly on the number of civil actions~~
10 ~~brought under this Act; and maintain a civil action for defamation under certain circumstances;~~
altering the prohibition against revenge porn to prohibit a person from knowingly distributing a certain
computer-generated visual representation of another under certain circumstances; and generally
relating to a civil action for revenge porn.

11 BY adding to

12 Article - Courts and Judicial Proceedings

13 Section ~~3-2301 through 3-2305 to be under the new subtitle "Subtitle 23.~~

14 ~~Nonconsensual Distribution of Sexual Imagery"~~ 3-505

15 Annotated Code of Maryland

16 (2020 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article - Criminal Law

Section 3-809

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 **SUBTITLE 23. NONCONSENSUAL DISTRIBUTION OF SEXUAL IMAGERY.**

21 ~~3-2301.~~

22 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~

23 ~~INDICATED.~~

2

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1 ~~(D) "DEEP FAKE" MEANS A PHOTOGRAPH, A FILM, A VIDEO, A DIGITAL~~
 2 ~~IMAGE, OR A PICTURE THAT IS CREATED OR ALTERED USING ARTIFICIAL~~
 3 ~~INTELLIGENCE OR DIGITAL SOFTWARE TO MAKE IT APPEAR THAT AN INDIVIDUAL~~
 4 ~~DEPICTED IS ENGAGED IN ACTIVITY THAT THE INDIVIDUAL DID NOT ENGAGE IN.~~

5 ~~(E) "DISTRIBUTE" MEANS TO GIVE, SELL, TRANSFER, DISSEMINATE,~~
 6 ~~PUBLISH, UPLOAD, CIRCULATE, BROADCAST, MAKE AVAILABLE, ALLOW ACCESS TO,~~
 7 ~~OR ENGAGE IN ANY OTHER FORM OF TRANSMISSION, ELECTRONIC OR OTHERWISE.~~

8 ~~(D) "HARM" MEANS:~~

9 ~~(1) PHYSICAL INJURY;~~

10 ~~(2) SERIOUS EMOTIONAL DISTRESS; OR~~

11 ~~(3) ECONOMIC DAMAGES.~~

12 ~~(E) "INTIMATE PARTS" MEANS THE NAKED GENITALS, PUBIC AREA,~~
 13 ~~BUTTOCKS, OR FEMALE NIPPLE.~~

14 ~~(F) "SEXUAL ACTIVITY" MEANS:~~

15 ~~(1) SEXUAL INTERCOURSE, INCLUDING GENITAL-GENITAL,~~
 16 ~~ORAL-GENITAL, ANAL-GENITAL, OR ORAL-ANAL;~~

17 ~~(2) MASTURBATION; OR~~

18 ~~(3) SADOMASOCHISTIC ABUSE.~~

19 ~~(G) "VISUAL REPRESENTATION" INCLUDES A DEEP FAKE.~~

20 ~~§ 2302.~~

21 ~~(A) THIS SUBTITLE DOES NOT APPLY TO:~~

22 ~~(1) LAWFUL AND COMMON PRACTICES OF LAW ENFORCEMENT, THE~~
 23 ~~REPORTING OF UNLAWFUL CONDUCT, OR LEGAL PROCEEDINGS; OR~~

24 ~~(2) SITUATIONS INVOLVING VOLUNTARY EXPOSURE IN PUBLIC OR~~
 25 ~~COMMERCIAL SETTINGS.~~

26 ~~(B) AN INTERACTIVE COMPUTER SERVICE, AS DEFINED IN 47 U.S.C. §~~

3

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1 ~~230(F)(2), IS NOT LIABLE UNDER THIS SUBTITLE FOR CONTENT PROVIDED BY~~
2 ~~ANOTHER PERSON.~~

3 ~~3-2303.~~

4 ~~(A) A PERSON MAY NOT KNOWINGLY DISTRIBUTE A VISUAL~~
5 ~~REPRESENTATION OF ANOTHER IDENTIFIABLE PERSON THAT DISPLAYS THE OTHER~~
6 ~~PERSON WITH THE OTHER PERSON'S INTIMATE PARTS EXPOSED OR WHILE ENGAGED~~
7 ~~IN SEXUAL ACTIVITY;~~

8 ~~(1) WITH THE INTENT TO HARM, HARASS, INTIMIDATE, THREATEN, OR~~
9 ~~COERCE THE OTHER PERSON;~~

10 ~~(2) (i) UNDER CIRCUMSTANCES IN WHICH THE PERSON KNEW~~
11 ~~THAT THE OTHER PERSON DID NOT CONSENT TO THE DISTRIBUTION; OR~~

12 ~~(ii) WITH RECKLESS DISREGARD AS TO WHETHER THE PERSON~~
13 ~~CONSENTED TO THE DISTRIBUTION; AND~~

14 ~~(3) UNDER CIRCUMSTANCES IN WHICH THE OTHER PERSON HAD A~~
15 ~~REASONABLE EXPECTATION THAT THE IMAGE WOULD REMAIN PRIVATE.~~

16 ~~(B) (1) A PERSON WHO IS A VICTIM OF A VIOLATION OF THIS SECTION MAY~~
17 ~~BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE~~
18 ~~PERSON OR PERSONS WHO COMMITTED THE VIOLATION.~~

19 ~~(2) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION FOR A~~
20 ~~VIOLATION OF THIS SUBTITLE AGAINST THE PERSON OR PERSONS WHO COMMITTED~~
21 ~~THE VIOLATION.~~

22 ~~(C) THE COURT MAY:~~

23 ~~(1) ISSUE AN INJUNCTION TO PREVENT OR RESTRAIN AN ACT THAT~~
24 ~~WOULD CONSTITUTE A VIOLATION OF THIS SUBTITLE;~~

25 ~~(2) AWARD ECONOMIC DAMAGES; AND~~

26 ~~(3) AWARD ANY OTHER RELIEF THE COURT DEEMS APPROPRIATE.~~

27 ~~3-2304.~~

28 ~~(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A VISUAL~~
29 ~~REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL~~

4

UNOFFICIAL COPY OF SENATE BILL 858

~~1 ACTION UNDER THIS SUBTITLE MAY NOT BE MADE AVAILABLE FOR PUBLIC
2 INSPECTION.~~

~~3 (b) EXCEPT AS OTHERWISE ORDERED BY THE COURT, A VISUAL
4 REPRESENTATION OF A VICTIM THAT IS PART OF THE COURT RECORD IN A CIVIL
5 ACTION UNDER THIS SUBTITLE MAY BE MADE AVAILABLE FOR INSPECTION ONLY IN
6 CONNECTION WITH THE CIVIL ACTION BY:~~

~~7 (1) COURT PERSONNEL;~~

~~8 (2) A JURY;~~

~~9 (3) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
10 DESIGNEE;~~

~~11 (4) THE DEFENDANT OR THE DEFENDANT'S ATTORNEY; OR~~

~~12 (5) THE VICTIM OR THE VICTIM'S ATTORNEY.~~

~~13 3-2305.~~

~~14 ON OR BEFORE DECEMBER 1, 2024, AND EACH DECEMBER 1 THEREAFTER,
15 THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL REPORT TO THE GENERAL
16 ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE,
17 ON THE NUMBER OF CIVIL ACTIONS BROUGHT UNDER THIS SUBTITLE IN THE
18 PRECEDING YEAR.~~

3-505.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
MEANINGS INDICATED.

(2) "DISTRIBUTE" HAS THE MEANING STATED IN § 3-809 OF THE
CRIMINAL LAW ARTICLE.

(3) (I) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE
THAT THE VISUAL REPRESENTATION IS AN ACTUAL VISUAL REPRESENTATION OF THE PERSON.

(II) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" INCLUDES A COMPUTER-GENERATED VISUAL
REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR
GENUINE.

(III) "INDISTINGUISHABLE FROM AN ACTUAL VISUAL
REPRESENTATION OF THE PERSON" DOES NOT INCLUDE IMAGES OR ITEMS DEPICTING A
PERSON THAT ARE:

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

(5) "INTIMATE PARTS" HAS THE MEANING STATED IN § 3-809 OF THE
CRIMINAL LAW ARTICLE.

(6) "SEXUAL ACTIVITY" HAS THE MEANING STATED IN § 3-809 OF THE

CRIMINAL LAW ARTICLE.

(B) A PERSON MAY BRING AND MAINTAIN A CIVIL ACTION FOR DEFAMATION AGAINST ANOTHER WHO DISTRIBUTES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM AN ACTUAL VISUAL REPRESENTATION OF THE PERSON AND FALSELY DEPICTS THE PERSON WITH HIS OR HER INTIMATE PARTS EXPOSED OR ENGAGED IN SEXUAL ACTIVITY.

Article - Criminal Law

3-809.

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

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

(3) "Harm" means:

(i) physical injury;

(ii) serious emotional distress; or

(iii) economic damages.

(4) **(I) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" MEANS THAT AN ORDINARY PERSON WOULD CONCLUDE THAT THE VISUAL REPRESENTATION IS OF AN ACTUAL AND IDENTIFIABLE PERSON.**

(II) "INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" INCLUDES A COMPUTER-GENERATED VISUAL REPRESENTATION THAT HAS BEEN CREATED, ADAPTED, OR MODIFIED TO APPEAR AS AN ACTUAL AND IDENTIFIABLE PERSON.

(III) INDISTINGUISHABLE FROM ANOTHER ACTUAL AND IDENTIFIABLE PERSON" DOES NOT INCLUDE VISUAL REPRESENTATIONS OR ITEMS DEPICTING A PERSON THAT ARE:

1. DRAWINGS;

2. CARTOONS;

3. SCULPTURES; OR

4. PAINTINGS.

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

[5] (6) "Sexual activity" means:

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

(ii) masturbation; or

(iii) sadomasochistic abuse.

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

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

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

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

(c) A person may not knowingly distribute a visual representation of another identifiable person, OR A COMPUTER-GENERATED VISUAL REPRESENTATION THAT IS INDISTINGUISHABLE FROM ANOTHER ACTUAL AND 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) IF THE VISUAL REPRESENTATION WAS CREATED OR GENERATED WITH PERMISSION FROM THE OTHER PERSON, under circumstances in which the other person had a reasonable expectation that the image would remain private.

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

(e) A visual representation AND A COMPUTER-GENERATED VISUAL REPRESENTATION of a victim that is part of a court record for a case arising from a prosecution under this section:

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

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

(i) court personnel;

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

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

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

(v) a law enforcement officer;

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
20 the application of any provision of this Act to any person or circumstance is held invalid for
21 any reason in a court of competent jurisdiction, the invalidity does not affect other
22 provisions or any other application of this Act that can be given effect without the invalid
23 provision or application, and for this purpose the provisions of this Act are declared
24 severable.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2024.

SB858 Testimony.docx.pdf

Uploaded by: Katie Fry Hester

Position: FAV

KATIE FRY HESTER
Legislative District 9
Carroll and Howard Counties

Education, Health, and
Environmental Affairs Committee

Chair, Joint Committee on
Cybersecurity, Information Technology
and Biotechnology



Annapolis Office
James Senate Office Building
11 Bladen Street, Room 304
Annapolis, Maryland 21401
410-841-3671 · 301-858-3671
800-492-7122 Ext. 3671
KatieFry.Hester@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of Revenge Porn - Civil Action and Reporting Requirement

February 29, 2024

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

Thank you for your consideration of Senate Bill 858, which enables a person to bring a civil action for defamation against another who distributes a computer-generated visual representation that falsely depicts the person in a sexual manner.

Websites and apps that use artificial intelligence (AI) to generate sexual imagery have grown in popularity since their inception. In September 2023, 24 million people visited websites that can manipulate images to make the person in the photo appear naked. Furthermore, from 2018 to 2020, the number of pornographic deep fakes online doubled every six months.¹

More recently, in January of this year, fake pornographic images of Taylor Swift began to circulate on X, prompting lawmakers to take immediate legislative action to protect individuals from deep fake-produced nonconsensual sexual images. Non-consensual sexual imagery has targeted other well-known celebrities, including Kristen Bell, Gal Gadot, Emma Watson, Natalie Portman, and Scarlett Johansson. Following the Taylor Swift incident, the White House requested legislative action from Congress to address the issue.

However, this harmful proliferation is not limited to celebrities. Dedicated websites now produce and disseminate thousands of AI-generated and altered images of men, women, and children engaging in violent and sexual acts. The ease of access to these websites is facilitating the proliferation of fake imagery that is devastating the lives of an ever-increasing number of victims.²

For example, a recent criminal case heard in Long Island, NY, centered around a young man who used AI to alter publicly posted pictures of eleven different girls into sexually explicit images.

¹ [Opinion: The rise of deepfake pornography is devastating for women](#)

² AI porn is easy to make now. For women, that's a nightmare.

The perpetrator then revealed the victims' personal identifying information, including full names, phone numbers, and home addresses. Although the perpetrator clearly violated the privacy, dignity, and security of these girls, the state of New York lacks the legislative framework to hold him accountable for the fabrication of the images. Instead, the state charged him with violating existing child pornography laws.

To address this growing problem, SB858 will broaden the existing criminal code by:

1. Amending the existing misdemeanor revenge porn offense to apply to the distribution of computer-generated sexual imagery under circumstances in which the possessor knew that the depicted person did not consent to the distribution.
2. Enabling victims to seek civil remedies through a private right of action. These actions include, but are not limited to, monetary damages, restraining orders, and any other relief deemed appropriate by the court against the distributor(s) of the "non-consensual sexual imagery."
3. Enabling further victim protections by restricting the availability of court-documented imagery from being viewed publicly.

In closing, the rise of non-consensual artificially generated sexual imagery is only going to get worse as the technology becomes more advanced and accessible to the average person. This bill will not end deep-fake, non-consensual pornography, but it will give courts and victims the tools and resources they need to hold those who generate the images accountable for their actions.

For these reasons, I respectfully request a favorable report on SB858.

Sincerely,

A handwritten signature in black ink that reads "Katie Fry Hester". The signature is written in a cursive, slightly slanted style.

Senator Katie Fry Hester
Howard and Montgomery Counties

SB 858_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 858
TITLE: Revenge Porn - Civil Action and Reporting Requirement
COMMITTEE: Judicial Proceedings
HEARING DATE: February 29, 2024
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 Senate Judicial Proceedings Committee to issue a favorable report on SB 858.**

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 Senate Bill 858 authorizes a person to bring a civil action for the nonconsensual distribution of a visual representation of the person with the person's intimate parts exposed or while the person is engaged in sexual activity. Among the types of relief available to a victim in a civil action is an injunction.

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. Senate Bill 858 also includes a definition of “deep fakes” which 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 SB 858.**

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

Testimony of DA Donnelly in Support of SB858 - 2-2

Uploaded by: Nicole Turso

Position: FAV



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

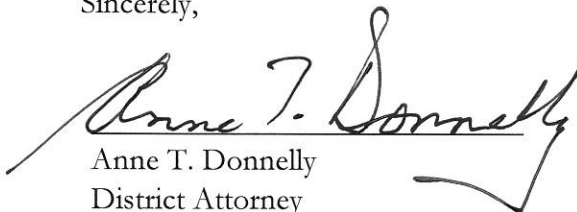
women, who were underaged in the photographs, that he obtained from public social media accounts on Facebook and Instagram. Carey digitally manipulated these images to depict the girls posing nude and engaging in sexual activity. The defendant was able to bypass laws prohibiting the possession and creation 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

Deep Fakes, civil action by OAG - testimony - sena

Uploaded by: Lisae C Jordan

Position: FWA



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
www.mcasa.org

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544

Testimony Supporting Senate Bill 858 with Amendments
Lisae C. Jordan, Executive Director & Counsel
February 29, 2024

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 Judicial Proceedings Committee to report favorably on Senate Bill 858 with Amendments.

Senate Bill 858 – Revenge Porn and Deep Fakes – Civil Remedies

This bill would create a civil action against those who distribute intimate images of another without their consent. It applies to “deep fakes” as well as to unaltered images. Interactive computer services are exempt from liability. Both the Attorney General and survivors are authorized to bring these lawsuits.

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. Maryland's criminal law was carefully crafted to balance constitutional protections for free speech and the need to prohibit harmful conduct. Senate Bill 858 similarly includes provisions to ensure the constitutionality of the proposed law.

The advent of AI and more sophisticated computer technology creates new challenges. 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 financial harm.

Senate Bill 858 provides survivors with the ability to seek civil remedies for nonconsensual distribution of intimate images, including deep fakes. MCASA strongly supports this approach because it helps put control into the hands of survivors. The proposed provisions include both damages and injunctive relief so that courts can, for example, order that images be taken down or that an offender disclose where images are stored. The Attorney General is also authorized to bring suit, an important option for enforcement. Unfortunately, the bill fails to provide for attorneys fees and costs in survivor initiated suits. MCASA encourages the Committee to add fees and costs and help ensure survivors have access to the courts and this important remedy. Additionally, the bill exempts interactive computer services from liability, citing federal law. This troubling law has been roundly and recently criticized for promoting harm and MCASA urges the Committee to amend the bill to strike §2-2302(b).

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 858 with Amendments**

sb858.pdf

Uploaded by: Linda Miller

Position: INFO

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
ASSISTANT STATE COURT
ADMINISTRATOR
GOVERNMENT RELATIONS
AND PUBLIC AFFAIRS
P: (410) 260-1560

SUZANNE PELZ, ESQ.
SNR. GOVT. RELATIONS AND
PUBLIC AFFAIRS OFFICER
P: (410)260-1523

MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq., Staff
410-260-1523
RE: Senate Bill 858
Revenge Porn – Civil Action and Reporting Requirement
DATE: February 15, 2024
(2/29)

COMMENT PAPER

The Judiciary respects the separation of powers doctrine and acknowledges that the legislature is the policy-making branch. As such, the Judiciary has no position on the policy aims of this legislation and defers to the legislative branch on such matters.

Although the Judiciary takes no position on Senate Bill 858, the Judiciary observes that “court of competent jurisdiction” is not defined. If the General Assembly intends the reference to “a court of competent jurisdiction” to include the District Court, the General Assembly would need to amend the District Court’s equitable powers as currently a District Court cannot grant injunctive relief.

cc. Hon. Katie Fry Hester
Judicial Council
Legislative Committee
Kelley O’Connor