



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB0362 - Forged Digital Likenesses – Distribution – Prohibition

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 27, 2025

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

Senate Bill 00362 seeks to criminalize ‘Forged Digital Likenesses’ which are defined as “Computer-generated” visual representations of an actual and identifiable individual. Per the bill, a likeness is ‘forged’ if it has been created, adapted or modified to be indistinguishable from a genuine visual representation” that “misrepresents the appearance, speech, or behavior of the individual” and is “likely to deceive a reasonable person to believe that the visual representation...is genuine.” Senate Bill 0362 excludes drawings, cartoons, sculptures, or paintings, but fails to define these terms.

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 0362 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 0362 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.

Shockingly, Senate Bill 0362 does not require any injury to the person depicted in the visual representation. Nor does the bill require significant modification to the visual representation to

run afoul of its prohibitions. Thus, if a professional photographer touches up a photograph using a computer application to adjust the hair or eye color of a subject, Senate Bill 0362 would criminalize such behavior. Consent is irrelevant in Senate Bill 0362.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 0362.

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

Authored by: Jeremy Zacker, Assistant Public Defender.