



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 360 with Amendments
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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 Judiciary Committee to report favorably on Senate Bill 360 with Amendments.

Senate Bill 360 – Revenge Porn and Deep Fakes – Civil Remedies

This bill would create a civil action of per se defamation against those who distribute “deep fake” intimate images of another without their consent. The new civil action would encompass computer-generated sexual images, often called “deep fakes.” As drafted, however, these provisions will not encompass unaltered or consensually altered images. SB360 would also amend the current “revenge porn” criminal statute to add computer-generated images.

“Revenge Porn” is the abhorrent practice of harming another person by distributing images of their intimate parts or sexual activities without their consent. Often, but not always, 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. The advent of AI and more sophisticated computer technology has created new challenges. It is now a simple task to create sexual images of someone that are wholly made up and also indistinguishable from the actual person. These images can cause significant emotional, reputational, and financial harm.

From the point of view of the person depicted, the harm caused by non-consensual sexual imagery abuse are the same whether the image is wholly, partially or completely false. Those viewing the image do not know whether an image is computer-generated or not, and they will make judgements about the person depicted either way. Consider the reactions of a potential employer, a romantic partner, a family member, or others who view these graphic and vulgar images. The harms case are real and include practical financial issues, such as losing job opportunities, to serious psychological harms, with some victims even attempted suicide after learning pornographic images were posted.

Senate Bill 360 provides survivors with the ability to seek civil remedies for nonconsensual distribution of intimate deep fake images. MCASA strongly supports this approach because it helps put control into the hands of survivors. We also very much appreciate that the bill would permit recovery of attorney fees. Without this, there would be substantial barriers to recovery. We suggest the minor technical amendment of adding the ability to recover costs as well as attorney fees. We also urge a more important addition to these provisions: clear authority to issue injunctive relief. Courts should not only award damages, but also order the actions needed to remove images from public view. Rule 15-502 currently provides broad authority to issue injunctions, however, MCASA asks the Committee to consider including specific statutory language to encourage courts and litigants to address this important issue.

Senate Bill 360 also includes important improvements to the criminal law by adding deep fakes to the current revenge porn statute, Crim.Law 3-809. **It is critical that both computer-generated images and actual images be encompassed in one statute.** If these crimes are constituted separately (as proposed last session), this could have the unintended consequence of forcing victims to provide testimony about very detailed and personal aspects of their body in an effort to prove an image is or is not computer generated. This would add additional trauma for no good purpose.

In order to provide an avenue of civil relief for cases involving actual images, altered images, or computer-generated images, MCASA also urges the Committee to amend SB360 to add a civil action to the criminal provisions proposed. This type of approach is used in other parts of the criminal law article and helps provide a more comprehensive range of relief for survivors.

Proposed amendments are attached.

In conclusion, MCASA asks the Committee to center the experiences of the people harmed by sexualized deep fakes. The rape crisis centers in our state and MCASA's Sexual Assault Legal Institute are seeing these cases more and more. Often survivors had no idea that a picture of their naked body was circulating. Some survivors of sex trafficking report that their exploitation was taped and that they now feel they can never put their experience behind them because the images are seen over and over again. Others survivors have reached out because the images are completely false and give the impression that they participate in sexual activities they have never even considered. This is a very real problem made worse by AI and the development of ever more sophisticated software. The civil and criminal law need to catch up with technology and provide victims and survivors with meaningful relief.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 360 with Amendments**

Senate Bill 360 proposed amendments:

On page 3, in line 3, after “IN ADDITION TO” strike “OTHER” and insert “DAMAGES AND INJUNCTIVE” and in line 4, after “FEES” insert “AND COSTS”

On page 5, in line 17, after “(f)” insert:

(1) AN INDIVIDUAL WHOSE ACTUAL OR COMPUTER-GENERATED VISUAL REPRESENTATION WAS DISTRIBUTED IN VIOLATION OF THIS SECTION HAS A CIVIL CAUSE OF ACTION AGAINST ANY PERSON WHO CONDUCTED OR PROCURED A PERSON TO DISTRIBUTE THE ACTUAL OR COMPUTER-GENERATED VISUAL REPRESENTATION.

(2) IN AN ACTION UNDER THIS SUBSECTION, THE COURT MAY AWARD A PREVAILING PLAINTIFF DAMAGES, INJUNCTIVE RELIEF, REASONABLE ATTORNEY’S FEES AND COSTS.

[and re-letter (f) to (G) etc]

Drafting notes:

- subsection (f) based on Crim Law 3-901(f)
- Rule 15-501 currently provides the courts with broad authority to issue injunctions; proposed language would help encourage consideration of this issue.