SB 360 - Revenge Porn - Civil Action and Criminal

Uploaded by: Catherine OMalley
Position: FAV

BILL NO: Senate Bill 0360
TITLE: Revenge Porn – Civil Action and Criminal Offense
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2025
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.

Senate Bill 0360 aims to regulate the distribution of non-consensual sexual imagery created using a computer-generated visual representation. 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 his technology has become a tool used by domestic abusers to harass, embarrass, and humiliate their victims. Nonconsensual intimate deepfakes are proliferating rapidly, overwhelmingly targeting women and especially girls. Intimate deepfakes, falsely but convincingly depicting people naked or engaged in sexual acts, can cause serious harm, with victims reporting experiencing significant emotional consequences and trauma, as well as damage to their reputations and careers.

So far, 23 states have enacted legislation to regulate this activity. SB 0360 will allow a victim to bring and maintain a civil action for defamation against someone distributing their computer-generated likeness in this regard, and introduces criminal penalties for a person knowingly distributing these depictions.

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 0360.

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.

Favorable on SB 0360 Dardis.pdf

Uploaded by: Christina Dardis

Position: FAV

Testimony Concerning SB 0360

"Revenge Porn- Civil Action and Criminal Offense"

<mark>**POSITION: FAVORABLE**</mark>

Submitted to the Senate Judicial Proceedings Committee

January 27th, 2025

Department of Psychology
8000 York Road
Towson, MD 21252-0001

Dear Delegates Hester and Smith and Colleagues,

I, Christina Dardis, Associate Professor of Psychology at Towson University, strongly support SB 0360, which would amend civil and criminal codes against "Revenge Porn" in the state of Maryland to include distribution of computer-generated images/videos of a sexual or intimate nature that are indistinguishable from actual images/videos. My research examines sexual violence and intimate partner violence, including image-based sexual assault ("revenge porn"). In my career, I have published over 60 articles on sexual and intimate partner violence and presented my work at professional conferences nearly 100 times. This testimony represents my own views based on the extant scientific literature and does not represent the views of Towson University.

Current Maryland law prohibits revenge porn (also known as "image-based sexual assault"), however, the law does not presently extend to computer-generated and "deep-fake" images. **As deepfake and other computer-generated images and videos are indistinguishable from actual photographs/videos,** even through many advanced technological methods (Kaur et al., 2024), **they stand to cause the same psychological effects and reputational harm as do "actual" images**. Based on the literature, I strongly support the proposed legislation for the following reasons.

(1) **Image-based sexual assault** (i.e., "revenge porn") is **extremely common;** U.S. national estimates indicate that **1 in 8** individuals experience IBSA (Eaton et al., 2017), while, in my own research at a Maryland public university, I have found rates of **1 in 6 among our students** (Dardis & Richards, 2022), with women particularly at risk (**1 in 5)**. Although the prevalence of deepfake image abuse victimization is less frequently studied, results from the UK and Australia indicated that approximately 13-14% of adult residents reported deepfake/digitally altered imagery abuse victimization and 7.6% reported engaging in perpetration (Flynn et al., 2022).

(2) **Deepfake prevalence is increasing** (Mania, 2024), **and difficult to detect or differentiate from "real" images**—even using the best available technology (Kaur et al., 2024). Thus, **perceived as real, there**

O 410.704.2372   F 410.704.3800

cdardis@towson.edu

https://wp.towson.edu/cdardis/

is no reason to believe that these images would be less harmful than "real" images.

(3) **Sharing intimate images has a range of incredibly deleterious consequences for victim-survivors.** Within my research, over 1/3 of victims of IBSA meet probable criteria for PTSD and nearly 2/3 meet probable criteria for depression (Fahmy, Piper, & Dardis, 2024). Importantly, **survivors of image-based sexual abuse report psychological distress at levels that meet or surpass that of survivors of past-year intimate partner violence (Fahmy et al., 2024). These effects are far-reaching.** In our research, we have found that 95% of survivors report negative effects of their victimization, including **feeling betrayed, experiencing humiliation, powerlessness, shame, anxiety, self-harm, suicidal ideation, occupational stress and bullying, and reputational harm** (Piper & Dardis, under review). Further, due to the frequent sharing of these images, many described **fears that images will be continually shared, potentially ruining careers and relationships.** Similar outcomes were described in a study specifically examining outcomes of deepfake image-sharing (Flynn et al., 2022). In fact, one study of survivors noted "irreparable harm," being "forever changed" with the harms "ingrained in me," with continual fears of the images being reshared and the resulting reputational harms that could result (Rousay, 2023).

(4) Further, **risk of harm is socially stratified, with evidence of higher victimization rates among those holding marginalized identities,** including, for example, sexual minority and disabled individuals (Flynn et al., 2022). Protecting against deepfakes serves, thus, as a critical protection for groups already at the margins in our society.

(5) **Protecting against deepfake intimate image sharing is also a protection for survivors of intimate partner violence,** as image-based sexual abuse is most commonly perpetrated by partners or former partners (Dardis & Richards, 2022; Ruvalcaba & Eaton, 2020), and deepfakes are believed to be no exception (see Lucas, 2022 and Dodge, 2021 for a discussion). Without legislation, partners and former intimate partners retain a tool of potential control, extortion, and devastation to their victim-survivors.

(6) **Civil and criminal laws are necessary for justice, can serve a deterrent function, and communicate our state's values.** In order for laws to serve a deterrent function, knowing of the consequences of those behaviors is necessary. Enabling civil action against perpetrators allows for the potential for greater justice for victims/survivors with a wider range

of consequences for perpetrators. Having both civil and criminal penalty for this crime provides additional deterrent power.

In sum, the State of Maryland has already determined that the sharing of sexual images violates the rights of its citizens. Extending this law and the civil protections to include the sharing of computer-generated images indistinguishable from "real" images is a logical and necessary extension of this policy in order to meet the needs of our changing technological age. Without these protections, victims and survivors, who bear no fault or responsibility for the malicious and defamatory behaviors of others, are without recourse or renumeration. It is imperative that Maryland respond with this action to protect survivors, protect marginalized groups (victim-survivors, at intersecting marginalized identities), and deter would-be perpetrators.
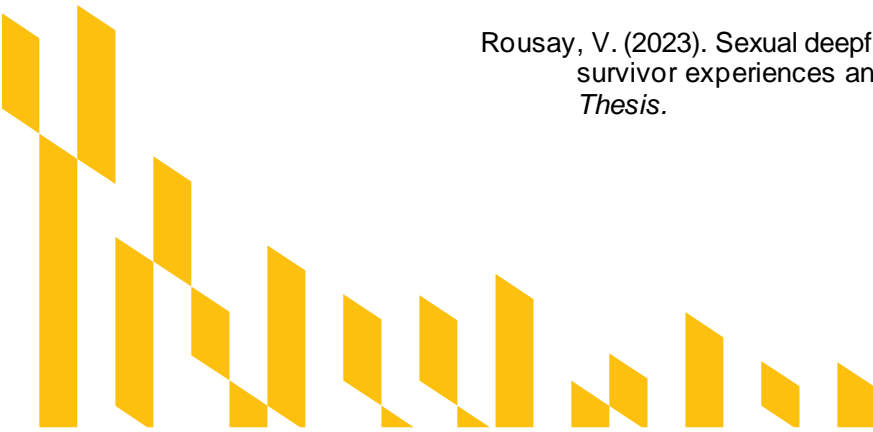
Thank you for your consideration,

Christina M. Dardis, Ph.D.
Assistant Professor of Psychology
Towson University

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Dardis, C. M., & Richards, E. C. (2022). Nonconsensual distribution of sexually explicit images within a context of coercive control: Frequency, characteristics, and associations with other forms of victimization. *Violence Against Women*, *28*(15–16), 3933–3954. https://doi.org/10.1177/10778012221077126

Dodge, A., & Johnstone, E. (2018). Using fake video technology to perpetuate intimate partner abuse. *Without My Consent*, 1-9.

Eaton, A. A., Jacobs, H., & Ruvalcaba, Y. (2017). *Nationwide online study of nonconsensual porn victimization and perpetration: A summary report*. Cyber Civil Rights Initiative. https://cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf

Fahmy, L., Piper, C. M., & Dardis, C. M. (2024). Comparative and combined associations of nonconsensual distribution of sexually explicit materials and interpersonal violence on psychological distress. *Journal of Interpersonal Violence.* Advance online publication. https://doi.org/10.1177/08862605241301798

Flynn, A., Powell, A., Scott, A. J., & Cama, E. (2022). Deepfakes and digitall altered imagery abuse: A cross-country exploration of an emerging form of image-based sexual abuse. *The British Journal of Criminology, 62*(6), 1341-1358. https://doi.org/10.1093/bjc/azab111

Lucas, K. T. (2022). Deepfakes and domestic violence: Perpetrating intimate partner abuse using video technology. *Victims & Offenders*, *17*(5), 647-659. https://doi.org/10.1080/15564886.2022.2036656

Mania, K. (2024). Legal protection of revenge and deepfake porn victims in the European Union: findings from a comparative legal study. *Trauma, Violence, & Abuse*, *25*(1), 117-129. https://doi.org/10.1177/15248380221143772

Kaur, A., Noori Hoshyar, A., Saikrishna, V., Firmin, S., & Xiz, F. (2024). Deepfake video detection: Challenges and opportunities. *Artificial Intelligence Review,* 57 (159), 1-47. https://doi.org/10.1007/s10462-024-10810-6

Piper, C. M. & Dardis, C. M. (under review). "I still haven't worked through it": A mixed-methods examination of social and psychological outcomes of nonconsensual distribution of sexually explicit materials.

Rousay, V. (2023). Sexual deepfakes and image-based sexual abuse: Victim-survivor experiences and embodied harms. *Unpublished Master's Thesis.*

SB 360 - FAV - House of Ruth.pdf

Uploaded by: Deena Hausner

Position: FAV

House of Ruth Maryland

Domestic Violence Legal Clinic

2201 Argonne Drive, Baltimore, Maryland 21218
(410) 554-8463 · Fax: (410) 243-3014 · www.hruth.org · dhausner@hruthmd.org

Bill No.:   Senate Bill 360
Bill Title: Revenge Porn – Civil Action and Criminal Offense
Committee: Judicial Proceedings
Hearing Date: January 29, 2025
Position: **FAV**

House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. House of Ruth has offices in Baltimore City, Baltimore County, Prince George's County, and Montgomery County. Senate Bill 360 would create a civil cause of action for certain forms of revenge porn. **We urge the Senate Judicial Proceedings Committee to favorably report on Senate Bill 360.**

Revenge porn is an insidious act that can have devastating consequences for its victims, including victims of intimate partner violence whose abusive partners may use revenge porn as a means of intimidation and control. With the rise of artificial intelligence, it has become all too easy for perpetrators to create and disseminate sexually explicit images even when they do not have actual photographs or videos of their victims. Senate Bill 360 would create a civil cause of action against a revenge porn perpetrator who has created fake, sexually explicit images of their victim.

It is House of Ruth's understanding that House Bill 663 is similar to Senate Bill 360 and supports conforming the bills.

The House of Ruth urges the Senate Judicial Proceedings Committee to report favorably on Senate Bill 360.

To the Maryland General Assembly,

My name is Jasheen Kaur, and I am a student at Clarksburg High School in Maryland. I am a supporter of the Revenge Porn – Civil Action and Criminal Offense Bill, which would allow victims of digital sexual harassment to take legal action against those who create and distribute intimate images and videos without consent.

In a highly digital era, artificial intelligence and deepfake technology have introduced a new means of sexual harassment vocal manipulation, and exploitation. Just recently at Pikesville High School a teacher was the victim of a racist deepfake that distorted her voice and resulted in a temporary arrest. In other parts of our country deepfakes are even being used to sexualize teachers, classmates, celebrities, and political officials.

As a young woman I am scared every day for the rate of sexual assault in our country is only growing. The threat of digital revenge porn is now an added fear, similarly violating everyday people's dignity in ways they cannot control. The accessibility of AI and these tools make it all too easy for perpetrators to exploit these victims and get away without facing consequences. It would be a serious mistake to let this session go on without this bill being passed. The lack of consequence in response to deepfakes sets a precedent that diminishes the importance of consent.

This bill is an important step toward protecting individuals from digital exploitation. By allowing victims to pursue civil action and criminal charges, it helps restore dignity and control over our digital identities. As a student who takes part in the digital world and navigates its complexities, I urge you to pass this bill to protect the rights of all individuals.

Thank you for your time.

Sincerely,

Jasheen Kaur

SB 360 FAV.pdf

BILL NUMBER: SB 360

TITLE: Revenge Porn - Civil Action and Criminal Offense

COMMITTEE: Judicial Proceedings

HEARING DATE: January 29, 2025

POSITION: Favorable

Reproductive Justice Maryland supports Senate Bill 360 in keeping with our mission to champion reproductive justice as a fundamental human right for all Marylanders. We believe that everyone deserves the freedom to make informed decisions about their bodies, health, and futures, free from discrimination, coercion, and barriers. Accordingly, everyone deserves the right to be free from nonconsensual pornography, whether it was created live or fabricated using deepfake technology.

In 2018, the Senate of Maryland unanimously passed Senate Bill 769, which prohibits the nonconsensual distribution of images of another person with their intimate parts exposed or engaged in sexual activity. Senate Bill 769 later unanimously passed in the House of Delegates and became law, codified at Maryland Code, Criminal Law Article § 3-809. The General Assembly in 2018 understood that in the technological environment of the time, nonconsensual pornography posed a threat of grievous harm to survivors of intimate partner violence and others who may be victimized by a person sharing intimate images without their consent.

Seven years later, the threat of victimization via nonconsensual intimate imagery has expanded via the use of deepfake technology. It is now easier than ever to fabricate a pornographic image or video of another person. In fact, it is so easy that children of middle school age have been reported to use it to create highly realistic nonconsensual

pornographic depictions of their peers.[1] In fact, there are entire online marketplaces devoted to deepfakes, allowing creators to harass and humiliate their targets for pecuniary gain. Although many targets are public figures, private individuals are at risk as well. Over 95% of those targeted are women.[2]

When the General Assembly unanimously passed Senate Bill 769 in 2018, it did so because it was necessary to protect Marylanders from the distribution of intimate images without their consent. A survivor of this form of abuse faces humiliation, re-victimization, reputational damage, severe emotional distress, and potential professional and social consequences, all at the hands of someone who she likely trusted at one time. With the current advances in technology, it is now possible for these harms to be perpetrated not only by abusive current or former partners, but by literally anyone with a computer and an internet connection. By the same token, it is now possible for anyone, especially women, to be victimized by anyone, even by complete strangers with whom one has never had an intimate relationship. Victims of deepfake abuse face the same negative consequences as if actual nude or pornographic depictions of them had been disseminated, and so the law must protect them accordingly.

Additionally, we are pleased to see that Senate Bill 360 as written contains provisions for the recovery of attorneys' fees should a plaintiff prevail in a civil action. This, along with the shielding of nonconsensual content from the public record, will make a difference in survivors receiving access to justice. Reproductive Justice Maryland is proud to support Senate Bill 360 and urges a favorable report.

Jennifer A. Mercer

Legislative Director

Reproductive Justice Maryland

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[1] Pfefferkorn, R. (2024). *Teens Are Spreading Deepfake Nudes of One Another. It's No Joke*. Scientific American. https://www.scientificamerican.com/article/teens-are-spreading-deepfake-nudes-of-one-another-its-no-joke/

[2] Han, C., Li, A., Kumar, D., & Durumeric, Z. (2024). Characterizing the MrDeepFakes Sexual Deepfake Marketplace. *ArXiv (Cornell University)*. https://doi.org/10.48550/arxiv.2410.11100

Cases of Deep Fake Non-Consensual Sexual Imagery.p
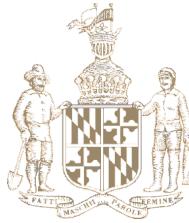
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Position: FAV

KATIE FRY HESTER
Legislative District 9
Howard and Montgomery Counties

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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

Cases of Deep Fake Non-Consensual Sexual Imagery

Annotated Bibliography

Axelrod, Jim. "Teen Victim of AI-Generated 'Deepfake Pornography' Urges Congress to Pass 'Take It Down Act' - CBS News." CBS News | Breaking News, Top Stories & Today's Latest Headlines, CBS News, 18 Dec. 2024, https://www.cbsnews.com/news/deepfake-pornography-victim-congress/.

A classmate took a picture from Elliston Berry's (15 years old) Instagram, ran it through an artificial intelligence program that appeared to remove her dress and then sent around the digitally altered image on Snapchat.

Cook, Jesselyn. "Here's What It's Like To See Yourself In A Deepfake Porn Video | HuffPost Women." *HuffPost*, HuffPost, 23 June 2019, https://www.huffpost.com/entry/deepfake-porn-heres-what-its-like-to-see-yourself_n_5d0d0faee4b0a3941861fced.

HuffPost spoke to six women who have been digitally inserted into porn without their consent. Those quoted here are identified by pseudonyms to protect their privacy, and are speaking out to call attention to an issue that's been left to fester in the shadows.

Cox, Nicki. "Podcaster Bobbi Althoff Insists Graphic Viral Video Is Fake." *Page Six*, Page Six, 21 Feb. 2024, https://pagesix.com/2024/02/21/celebrity-news/podcaster-bobbi-althoff-insists-graphic-viral-video-is-fake/.
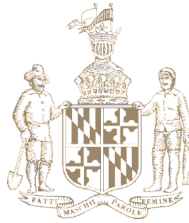
The TikToker-turned-podcast host took to her Instagram Story on Wednesday to clear the air after someone edited her face onto a now-viral video of a woman pleasuring herself in bed. "Hate to disappoint you all, but the reason I'm trending is 100% not me & is definitely AI generated," she wrote atop a screenshot of her name trending on X.

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ANNAPOLIS, MARYLAND 21401

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

Devine, Lucy. "Vicky Pattison Speaks out on Receiving Backlash after Releasing Deepfake Sex Tape of Herself for New Show - Celebrity - LADbible." *LADbible*, LAD Bible, 26 Jan. 2025, https://www.ladbible.com/entertainment/celebrity/vicky-pattison-backlash-deepfake-video-documentary-307138-20250126.

Vicky Pattison has spoken out about the backlash she's received over her decision to release a deepfake sex tape of herself. Pattison, 37, created the video for her new documentary, Vicky Pattison: My Deepfake Sex Tape, which explores the concerning increase of deepfake videos and the impact they are having on victims.

DOJ. "Office of Public Affairs | Recidivist Sex Offender Sentenced for Possessing Deepfake Child Sexual Abuse Material | United States Department of Justice." *Department of Justice | Homepage | United States Department of Justice*, DOJ, 1 May 2024, https://www.justice.gov/opa/pr/recidivist-sex-offender-sentenced-possessing-deepfake-child-sexual-abuse-material.

A recidivist offender received a 14-year and seven-month prison sentence for possessing deepfake child sexual abuse material depicting numerous child celebrities.

FBI. "'Horribly Twisted' Charlotte Pornography Case Shows the 'unsettling' Reach of AI-Generated Imagery." *FBI News*, FBI, 29 Apr. 2024, https://www.fbi.gov/news/stories/charlotte-child-sexual-abuse-material-case-shows-unsettling-reach-of-ai-generated-imagery.

A child psychiatrist was sentenced to 40 years in prison for using generative AI to digitally alter images of minors, creating explicit content. Tatum manipulated innocent photos, such as first-day-of-school pictures, to produce these illicit images.
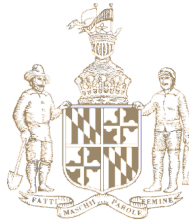
IC3. "Internet Crime Complaint Center (IC3) | Child Sexual Abuse Material Created by Generative AI and Similar Online Tools Is Illegal." *Home Page - Internet Crime Complaint Center (IC3)*, FBI, 29 Mar. 2024, https://www.ic3.gov/PSA/2024/PSA240329.

The FBI is warning the public that child sexual abuse material (CSAM) created with content manipulation technologies, to include generative artificial intelligence (AI), is illegal. Federal law prohibits the production, advertisement, transportation, distribution, receipt, sale,

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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

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ANNAPOLIS, MARYLAND 21401

access with intent to view, and possession of any CSAM, including realistic computer-generated images.

Office of Public Affairs. "Office of Public Affairs | Army Soldier Arrested for Using AI to Generate Child Pornography | United States Department of Justice." *Department of Justice | Homepage | United States Department of Justice*, DOJ, 26 Aug. 2024, https://www.justice.gov/opa/pr/army-soldier-arrested-using-ai-generate-child-pornography.

An Army soldier stationed at Joint Base Elmendorf-Richardson in Anchorage, Alaska, was arrested last week on criminal charges related to his alleged transportation, receipt and possession of files depicting child sexual abuse, and use of AI to generate sexually explicit images of children.

Singh, Ritu. "FBI Arrests Man For Generating AI Child Sexual Abuse Pictures Using Stable Diffusion." *Www.Ndtv.Com*, NDTV World, 22 May 2024, https://www.ndtv.com/world-news/fbi-arrests-man-for-generating-ai-child-sexual-abuse-material-using-stable-diffusion-5718236.

A software engineer in the US was arrested on Monday for allegedly creating and distributing thousands of AI-generated images of child sexual abuse material (CSAM). According to court documents, Steven Anderegg, 42, allegedly used a text-to-image generative artificial intelligence (GenAI) model called Stable Diffusion to create thousands of realistic images of prepubescent minors.

Wong, Matteo. "AI-Generated Child-Sexual-Abuse Images Are Flooding the Web - The Atlantic." *The Atlantic*, https://www.facebook.com/TheAtlantic/, 26 Sept. 2024, https://www.theatlantic.com/technology/archive/2024/09/ai-generated-csam-crisis/680034/.

AI is being used to create nonconsensual, sexually explicit images and videos of children. Perhaps millions of kids nationwide have been affected in some way by the emergence of this technology, either directly victimized themselves or made aware of other students who have been.
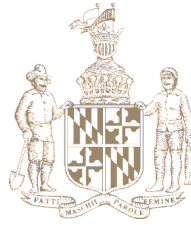
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ANNAPOLIS, MARYLAND 21401

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

Citron, Danielle K. "The Continued (In)visibility of Cyber Gender Abuse." *Yale Law Journal*, vol. 133, no. 2023, 2023, pp. 333-372. *SSRN*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4534124.

Discusses the case of Nina Jankowicz, whom the Biden Administration appointed to lead the Department of Homeland Security's (DHS) Disinformation Governance Board. Within hours of her appointment, right-wing media outlets denounced Jankowizc, and over the course of weeks, Jankowicz faced a "tsunami" of cyber abuse; manipulated, deceiving videos and tweets were posted everywhere, and even deepfake pornography containing Jankowizc's face was created.

SB 360 Testimony.docx.pdf

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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

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ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB 360 - Revenge Porn - Civil Action and Reporting Requirement

January 27, 2025

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

Thank you for your consideration of Senate Bill 360, which provides civil remedies for victims and creates a misdemeanor for those who distribute a computer-generated visual representation that falsely depicts a person in a sexual manner.

Last year, you heard and passed this bill out of the Senate with a unanimous favorable report. However, with slight differences between the Senate and House versions, we ran out of time to get the bill over the finish line. This year, we have strengthened the bill with some changes to address concerns in the House.

As you know, websites and apps that use artificial intelligence (AI) to generate sexual imagery have grown in popularity since their inception. In the first half of 2024, AI-powered "undressing" websites, which create non-consensual nude images, collectively garnered over 200 million visits.[1] 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]

On a national level, the U.S. Senate has taken action by unanimously passing the Disrupt Explicit Forged Images and Non-Consensual Edits (DEFIANCE) Act of 2024, which seeks to create federal civil remedies for identifiable victims of deepfake sexual abuse.[3] However, the bill has been stalled in the House of Representatives since July. Building on these efforts, SB360 introduces strong state-level protections, offering a critical pathway to justice if the federal bill fails and reinforcing enforcement measures should it succeed.

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[1] AI-powered 'undressing' websites are getting sued
[2] AI porn is easy to make now. For women, that's a nightmare.
[3] U.S. Congress. (2024). *DEFIANCE Act of 2024*, S. 3696, 118th Cong. Retrieved from https://www.congress.gov/bill/118th-congress/senate-bill/3696/text
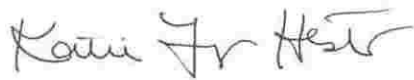
Specifically, SB360 will broaden the existing state criminal and civil code by:

1. Defining computer-generated visual representation as a visual representation created without using other existing visual representations AND created using other existing visual representations of a person without the person's consent.
2. Amending the existing misdemeanor revenge porn offense to apply to the distribution of explicit computer-generated media under circumstances in which the possessor did not have consent and had intent to harm, harass, intimate, or coerce.
3. 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."
4. Enabling further victim protections by restricting the availability of court-documented imagery from being viewed publicly.
5. Addresses concerns raised during the 2024 session by removing the requirement for a victim of these offenses to have had a reasonable expectation of privacy in order to seek justice against distributors.

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 non-consensual, computer-generated pornography, but it will strengthen protections for victims, addressing the risks posed by new technologies and ensuring perpetrators are held accountable.

For these reasons, I respectfully request a favorable report on SB360.

Sincerely,

Senator Katie Fry Hester
Howard and Montgomery Counties

Deep Fakes, civil action and crim - testimony - se

Testimony Supporting Senate Bill 360 with Amendments
Lisae C. Jordan, Executive Director & Counsel
January 29, 2025

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-generate 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 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.

SB 360 FAV Peggy Cairns MCAP SJPtestimony.pdf

Uploaded by: Peggy Cairns

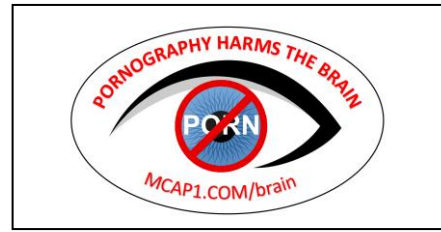Position: FAV

Maryland Coalition Against Pornography, Inc.

P.O. Box 2868
Silver Spring, MD 20915-2868
mcapinc@juno.com
www.mcap1.com
(301) 439-8475

TOGETHER WE CARE

January 29, 2025

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In support of SB 360

MCAP thanks the sponsors for this bill and this committee for its hearing. A 2023 study found that while 98% of all online deepfake videos were pornographic, women were the subjects in 99% of them. It is used to punish, silence and humiliate mostly women. Victims of non-consensual pornography experience extreme psychological distress that can lead to self-harm and suicide, physical endangerment that include in-person stalking and harassment and financial professional and reputational ruin. The damage done is, in some respects, not unlike the way acid is thrown on the faces of some non-conforming women in some cultures. And if Taylor Swift cannot get the digital forgery of herself removed from the internet, obviously no one is safe.

Free speech rights should not stand in the way of legislating in this arena. Long-standing precedent in First Amendment law allows for regulation of false harmful expressions that are perceived by others to be true - for example, untruthfully yelling "Fire" in a crowded arena. Defamation, fraud, impersonation, counterfeiting and forgery are NOT protected speech. The proliferation of *extremely* bad actors, the worsening sickness of their acts, the ease with which AI has enabled their actions, and the way that the law has *not* kept up with tecnological advances should be worrisome enough to spur both reactive and preventive measures asap.

According to the **National Conference of State Legislatures,** the states below now have legislation that specifically targets those who create and share explicit deepfake content, with penalties ranging from fines to possible jail time for offenders. Examples include: California, Florida, Georgia, Hawaii, Illinois, Minnesota, New York, South Dakota, Texas and Virginia – the earliest, passed in 2019. At least 40 states have pending legislation in the 2024 legislative session. At least 50 bills have been enacted. More details from this helpful compilation on state legislativeefforts can be viewed at https://www.ncsl.org/technology-and-communication/deceptive-audio-or-visual-media-deepfakes-2024-legislation#:~:text=These%20states%20are%20California%2C%20Connecticut,at%20the%20use%20of%20deepfakes.

MCAP applauds your efforts here to try fill legal gaps and make sure that bad actors are punished. Please don't delay enacting some significant measures in Maryland!

Respectfully submitted,

Peggy Cairns,
Education Chairperson
Silver Spring, MD

Testimony in support of SB0360 - Revenge Porn - Ci

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0360_RichardKaplowitz_FAV

01/29/2025

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON SB#0360 - POSITION: FAVORABLE
Revenge Porn - Civil Action and Criminal Offense

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee
FROM: Richard Keith Kaplowitz

My name is Richard Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony in support of/ SB#/0360, Revenge Porn - Civil Action and Criminal Offense

This bill offers protection to victims of the perversion of use of AI technology to create pornography. As documented by the Maryland Coalition Against Sexual Assault:

> Preventionists, advocates, and service providers who work to address sexual violence must contend with new challenges presented by the rise of widely accessible artificial intelligence (AI) technology. Perpetrators of sexual abuse and exploitation have begun using AI technology to create "deepfakes." Deepfakes are hyper-realistic synthetic images and videos created using AI software that convincingly replace the individual in the original video or image with the likeness of another person (Harris, 2015). This allows the creators of these representations to make it appear that the person whose face is portrayed in the image or video is engaging in an act that in reality they did not engage in. [1]

This bill will create a civil cause of action against this malicious misuse of AI technology. The bill authorizes a person to 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 is of a sexual or intimate nature. It further prohibits a person from knowingly distributing a certain computer-generated visual representation of another under certain circumstances.

The Center for Advancing Safety of Machine Intelligence has noted this problem has spread from the adults to children in schools. [2]

> The New York Times recently reported on another case of a public school having to deal with issues of students using deepfake and image rewriting technology to create nude and sexual images of other students in their school.

This bill will make it more costly for the purveyors of this misuse of AI.

I respectfully urge this committee to return a favorable report on SB0360.

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[1] https://mcasa.org/newsletters/article/survivor-safety-deepfakes-and-negative-impacts-of-ai-technology

[2] https://casmi.northwestern.edu/news/articles/2024/pornographic-deepfakes-in-schools.html

mnadv
Maryland Network Against Domestic Violence

BILL NO: Senate Bill 360
TITLE: Revenge Porn - Civil Action and Reporting Requirement
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2025
POSITION: **SUPPORT WITH AMENDMENTS**

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 360 with amendments.**

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 360 would create a **civil action** of *per se* defamation against a person who distributes "deep fake" intimate images of another without their consent. The new civil action would encompass computer-generated sexual images, often called "deep fakes." SB360 would also amend the current "revenge porn" **criminal statute** to add computer-generated images.

Revenge porn can be used to threaten a victim, for retaliation, or simply to 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. This bill would create a civil action of *per se* defamation against those who distribute "deep fake" intimate images of another without their consent. As drafted, however, these provisions will not encompass unaltered or consensually altered images. SB360 therefore would also amend the current "revenge porn" criminal statute to add computer-generated images. The potential harm is no less possible for images created by evolving technology. Senate Bill 360 also includes a definition of "deep fakes" which reflects the evolving nature of technology and how victims can be harmed.

"Revenge Porn" often, but not always, 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

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[1] https://www.strangulationtraininginstitute.com/revenge-porn-the-latest-research-and-law-enforcement-efforts/

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 caused 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.

Civil remedies for nonconsensual distribution of intimate deep fake images is a way to 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. A minor technical amendment of adding the ability to recover costs as well as attorney fees makes sense. An amendment that would be even more helpful would be adding clear authority to issue injunctive relief. Courts should not only be able to award damages, but also to order the actions needed to remove images from public view to the extent possible.

Senate Bill 360 also includes important improvements to the criminal law by adding deep fakes to the current revenge porn statute, MD Code Ann. 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 cause 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, we also urge 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.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 360.**

For further information contact Laure Ruth ■ Public Policy Director ■ 301-852-3930 ■ lruth@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

Maryland Network Against Domestic Violence

For further information contact Laure Ruth ▪ Public Policy Director ▪ 301-852-3930 ▪ lruth@mnadv.org

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Tel: 301-429-3601 ▪ E-mail: info@mnadv.org ▪ Website: www.mnadv.org

SB0360 - Revenge Porn – Civil Action and Criminal

Uploaded by: Jeremy Zacker

Position: UNF

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: SB0360 - Revenge Porn – Civil Action and Criminal Offense

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.

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) (emphasis added).

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.