Yelin Testimony - SB362 2025 .pdf

Uploaded by: Ben Yelin

Position: FAV

TESTIMONY IN SUPPORT OF SB0362 - FORGED DIGITAL LIKENESSES - DISTRIBUTION - PROHIBITION

JUDICIAL PROCEEDINGS

JANUARY 29, 2025

Chair Smith, Vice Chair Waldstreicher and Members of the Committee:

My name is Ben Yelin, and I am the Program Director for Public Policy & External Affairs at the University of Maryland Center for Health and Homeland Security. I am testifying on behalf of myself and Christopher Webster, the Center's Program Director for Cybersecurity and Emerging Technologies. Over the past few legislative sessions, our Center has worked closely with Senator Hester on legislation relating to artificial intelligence, cybersecurity and other matters. After the horrific incident at Pikesville High School, we began working with Senator Hester, Senator Hettleman, and other members of the General Assembly on a potential policy solution that would properly disincentivize the distribution of what we call Deceptive Deepfakes.

This bill is the result of that collaboration. SB0362 would criminalize the distribution of a very specific, and narrow type of deepfake. Under this bill, a person may not distribute a computer-generated video, image, or audio representation of a person if:

- The media is being presented *as if genuine;*
- It Is likely to deceive a reasonable person into thinking the media was genuine;
- The sender knows or reasonably should know that the image, video, or audio was fake.

My colleague Christopher Webster and I are in the final stages of writing a law review article defending the approach taken here. In our view, the bill balances the need to disincentivize the type of bad behavior at issue here, while preserving robust First Amendment protection for constitutionally protected speech and technological progress. The ban in this bill is consistent with our long legal tradition of prohibiting certain types of "fakes" or "public cheats." For centuries, the law has criminalized acts that deceive the public by, "some deception against which common prudence cannot guard."[i] In the pre-digital world, this philosophy was reflected in bans against forgery, defined historically as, "the act of fraudulently making a false document or altering a real one to be used as if genuine."[ii]

Just like with the Deceptive Deepfakes at issue here, forged documents are not just crimes against the individual whose signature has been forged, but it is a crime against a society that could lose trust in the authenticity of documents. While the common law ban on forgery has historically been limited to documents of legal significance, courts have recognized a legislatures' ability to criminalize other types of false misrepresentations, namely, those that might affect anyone relying on the authenticity of testimonial speech. Many of these laws, like the one proposed here, do not require a legally recognized harm against another to sustain a criminal conviction. For it is not just the person directly affected by the deepfake that is victimized by forged digital speech, but society itself, because such fakes, undermine the basic trust individuals have in the testimony of their fellow citizens in nearly all contexts. We believe that Deceptive Deepfakes designed and distributed for fraudulent gain are just as harmful to our society as those designed to harm.

CHHS›

This bill does not criminalize constitutionally protected speech. Drawings, paintings, cartoons and other works of art are exempted. Any digital media being distributed which is *not* being presented as if genuine, but for some other purpose (such as parody or satire, or special effects in fictional movies, for example) is not criminalized here. Even hyper-realistic deepfakes are permissible under this approach if an individual includes a disclaimer that that the media is a was created using artificial intelligence tools or is otherwise not genuine. Under this law, you may still, should you desire, create hyper-realistic fake videos of yourself or others for entertainment, education, marketing, or any other purpose, so long as you present those videos as AI generated. Finally, a person can only be held criminally liable if they know, or have reason to know, that the media is a Deceptive Deepfake. Cropping the disclaimer out of an AI generated deepfake to share it as genuine is criminalized here, while mistakenly resharing a deepfake that fooled you is not. This law seeks to punish only the willful distribution of computer generated hyper-realistic false media that can cause the type of societal harm we saw in the Pikesville case.

As a free society, we must protect free speech. But, we do not believe that Deceptive Deepfakes can fairly be considered "speech" at all. They add nothing to the marketplace of ideas the First Amendment is intended to protect. Lies and deception enjoy constitutional protection because they can sometimes be valuable, and a false statement can be countered easily with a true one. The same cannot be said of a Deceptive Deepfake, just as the presence of a real twenty-dollar bill does nothing to discredit an indistinguishable fake twenty in the same cash register. While forgeries and false testimony will always plague truth seeking societies, we believe they need not (and should not) enjoy First Amendment protection as a form of expressive speech.

Even if a court was to disagree with this conclusion – and consider Deceptive Deepfakes a form of "speech" within the First Amendment's purview, we believe a law criminalizing them would be still be constitutional. It is well established that some categories of "speech," such as fraud, certain types of defamation, false advertising, or speech essential for criminal activity do not merit First Amendment protection because they are forms of communication, "more likely to deceive the public than to inform it."[iii] We believe the forged digital likenesses at issue here have the same qualities as these categories, because this "speech" is not properly attributed to any real individual and does not contribute to the marketplace of ideas. Rather, Deceptive Deepfakes attack the social, legal, and political systems upon which democracy relies. Put simply, Deceptive Deepfakes work to undermine the same truth-seeking function and trust-based open society that the First Amendment seeks to protect.

We respectfully request a favorable report on SB0362 and would be happy to answer questions from the Committee.

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[i] [64] William Livesey Burdick, *The Law of Crime* § 626 (M. Bender, Inc. 1946) at 630.

[ii] [72] *Black's Law Dictionary* 677 (8th ed. 2004).

[iii] [60] *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 563 (1980).

SB0362 Written Testimony (1).pdf

Uploaded by: Cara McMahon

Position: FAV

Chair Smith, Vice Chair Waldstreicher, and esteemed members of the Judicial Proceedings Committee, I thank you for your consideration of SB 362.

Like many Marylanders, I have found myself both amazed and concerned by the advancing capabilities of Artificial Intelligence (AI). In 2015, AI-generated images were generally abstract and easily identifiable. Yet, the growing popularity and accessibility of AI has enabled its technologies to learn rapidly as millions of users inadvertently finetune its algorithm with their requests. By 2019, AI had become capable of generating photorealistic images in seconds– an ability which has only been refined in the years since.

As this technology progresses at an exponential rate, the ability of bad actors to abuse it grows ever more pressing. Already, AI technology has been used in attempts to manipulate election results; last January, voters in New Hampshire were instructed by a robocall impersonating President Biden's voice to "save [their] vote" for the November election rather than voting in the state's primary.[1] The 2024 presidential election saw an influx of AI-generated headlines intended to scare away voters, including false reports of shootings at polling locations.[2] These manipulations erode public trust and threaten the sanctity of democratic elections.

Several states have already taken steps to address this growing problem, with California's AB 730, Texas' SB 751, and Delaware's HB 316 all addressing the danger of election manipulation through AI-generated media. SB 362 as introduced would address this broad threat to democracy while simultaneously protecting individual citizens who find themselves equally at risk of having their image abused with AI technology. The proposed prohibition of forged digital likenesses protects both Maryland as a whole and the valued citizens within it.

I would like to thank Senators Hester and Hettleman for introducing this important bill, as well as the members of the Committee for considering it. For the reasons outlined above, I respectfully request a favorable vote on this legislation.

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[1] Fake Biden robocall urges New Hampshire voters to skip their primary
[2] AI deepfakes a top concern for election officials with voting underway

Deep Fake Forgery Incidents List.pdf

Uploaded by: Katie Fry Hester

Position: FAV

Katie Fry Hester
Legislative District 9
Howard and Montgomery Counties

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Education, Energy, and
Environment Committee

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Chair, Joint Committee on
Cybersecurity, Information Technology
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THE SENATE OF MARYLAND
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Deep Fake Forgery Incidents

Fake AI versions of world-renowned academics are spreading claims that Ukraine should surrender to Russia. (2024, December 13). The Insider. https://theins.ru/en/news/277174
> A Russian disinformation network used AI to create fake videos of Western scholars calling on the West to lift sanctions placed because of the Russian invasion into Ukraine.

Martin, H., & Scully, E. (2019, September 6). *World's first AI heist: Scammers used technology to mimic the voice of a German company executive and con his British subordinate into sending $240,000 to a secret account*. DailyMail. https://www.dailymail.co.uk/news/article-7435863/Scammers-mimic-voice-German-company-executive-240-000-sent-secret-account.html
> Scammers stole $240,000 by mimicking a German CEO's voice to trick his assistant, marking one of the first publically-reported AI heist.

Mecija, M. (2023, November 7). *AI voice scheme nearly tricks San Diego woman in high-tech "grandparent scam."* ABC 10 San Diego News. https://www.10news.com/news/local-news/san-diego-news/ai-voice-scheme-nearly-tricks-san-diego-woman-in-high-tech-grandparent-scam
> Scammers used AI to replicate a woman's grandson's voice, attempting to steal almost $10,000 by saying her grandson was in an accident and needed money. The only reason she did not send it was because her daughter verified it was not her grandson, otherwise she would have sent the money.

Snapes, L. (2023, April 18). *AI song featuring fake Drake and Weeknd vocals pulled from streaming services*. The Guardian. https://www.theguardian.com/music/2023/apr/18/ai-song-featuring-fake-drake-and-weeknd-vocals-pulled-from-streaming-services
> The song "Heart on My Sleeve," which was created with AI-generated replicas of the voices of pop stars Drake and The Weeknd, quickly accumulated hundreds of thousands of listens on YouTube, Spotify, and other streaming sites before it was identified as a fake and removed from the platforms.

KATIE FRY HESTER
Legislative District 9
Howard and Montgomery Counties

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Education, Energy, and
Environment Committee

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Chair, Joint Committee on
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Spring, M. (2023, October 4). *The racist AI deepfake that fooled and divided a community*. BBC.
https://www.bbc.com/news/articles/ckg9k5dv1zdo

> The Pikesville case is the most close-to-home incident of AI forgery. A disgruntled gym teacher at Pikesville High School created a deepfake voice recording of Principal Eric Eiswert going on a racist, anti-semitic rant. This led to the principal being fired pending the investigation, which revealed the forged activity.

Thompson, S. A. (2024, August 14). How 'Deepfake Elon Musk' became the internet's biggest scammer. *The New York Times*.
https://www.nytimes.com/interactive/2024/08/14/technology/elon-musk-ai-deepfake-scam.html

> Deepfakes of Elon Musk have circulated in different scams across the internet, leading to people losing up to hundreds of thousands of dollars to scammers.

Tom Hanks says AI version of him used in dental plan ad without his consent. (2023, October 1). The Guardian.
https://www.theguardian.com/film/2023/oct/02/tom-hanks-dental-ad-ai-version-fake

> Last October, an AI-generated version of Tom Hanks was used in advertisements for a dental plan that he never appeared in or otherwise endorsed.

KATIE FRY HESTER
Legislative District 9
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Education, Energy, and
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB0362- Forged Digital Likenesses - Distribution - Prohibition

January 27, 2025

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

Thank you for your consideration of Senate Bill 0362, Forged Digital Likenesses - Distribution - Prohibition. This legislation addresses the increasing misuse of artificial intelligence (AI) to create forged digital likenesses—realistic representations of individuals that are indistinguishable from authentic ones but falsely presented as genuine. These deceptive creations not only mislead viewers but also leave the targeted individuals unaware and defenseless against such violations. The consequences can be devastating, with the potential to cause irreparable harm to reputations and inflict significant personal damages.

Earlier this year, a troubling incident at Pikesville High School highlighted the urgency and threat of this issue. The school's athletic director used artificial intelligence to create a false audio recording of the school's principal, leading the public to believe he had made racist and antisemitic remarks. This falsified audio, while not technically advanced, required only a basic recording of the principal's voice and a $ 5-a-month AI tool.[1] The incident served as an important warning and call to action: anyone with minimal resources can now use AI to forge someone's likeness.

In the aftermath of the Pikesville incident, Senator Hettleman and I recognized a critical gap in our legal framework: the need to hold individuals accountable for creating synthetic media with the intent to deceive. As you know, there are certain forms of speech, such as fraud and obscenity, that fall outside the protections of the First Amendment. Therefore, we sought an Attorney General's opinion on whether deepfakes deliberately crafted to deceive were protected. The opinion confirmed that the language in this bill "would likely pass First Amendment scrutiny by a reviewing court to the extent it covers only fraudulent speech and/or content."

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[1] https://www.thebaltimorebanner.com/education/k-12-schools/pikesville-principal-ai-GXGDPO5W6JHFBGES25SYQ2KM5M/

SB 362 will protect our citizens from this emerging threat and strengthen Maryland's criminal law by:

1. **Defining a forged digital likeness** as any computer-generated visual representation or audio that is indistinguishable from a genuine representation, misrepresents an individual, and is likely to deceive a reasonable person into believing the representation is genuine.
2. **Prohibiting malicious distribution by** making it illegal to knowingly share forged digital likenesses as genuine when the person sharing them knows or should reasonably know they are fake.
   a. Violators can face up to three years in prison, a $1,000 fine, or both.
3. **Providing legal protection** for people who clearly mark their content as fake or ensure viewers understand it isn't real. Clarifying that this bill may not be construed in a manner that infringes on the right of free speech or of the press, and clarifying the bill does not apply to works of art.

This legislation will provide Marylanders protection against the growing misuse of AI and prevent the weaponization of digital likenesses for malicious purposes. As our technology gets more advanced and these forgeries become more common, it is more important now than ever that we are equipped with a pathway for victims to receive justice. Fundamentally, every person should have a right to their own likeness. ***For these reasons I am requesting a favorable report on SB 362.***

Sincerely,

Senator Katie Fry Hester
Howard and Montgomery Counties

OAG Opinion

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

STATE OF MARYLAND
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NATALIE R. BILBROUGH
Assistant Attorney General

October 31, 2024

The Honorable Shelly Hettleman
Maryland Senate
203 James Senate Office Building
Annapolis, Maryland 21401
Via email

> **RE:** *Proposed Language for Bill Concerning Deepfakes*

Dear Senator Hettleman:

You have requested advice concerning a potential bill to criminalize deepfakes, particularly false AI-generations of a person or a person's voice. Although you do not yet have a complete bill draft, you have provided a portion of the proposed language:

> *The act of fraudulently creating a piece of synthetic media or using artificial intelligence tools to alter real media as if genuine.*

As I explain below, it is my view that this language would likely pass First Amendment scrutiny by a reviewing court to the extent it covers only fraudulent speech and/or conduct, however, without the full bill in front of me, I cannot give a definitive answer.

Laws that attempt to regulate deepfakes can run into First Amendment hurdles because even AI-generated media is a form of expression that is generally protected by the First Amendment. *See, e.g.*, *Kohls v. Bonta*, No. 2:24-CV-02527 JAM-CKD, 2024 WL 4374134, at *1 (E.D. Cal. Oct. 2, 2024) (concluding California statute prohibiting use of "materially deceptive" AI-generated media related to elections was unconstitutional under the First Amendment). As content-based restrictions, laws regulating deepfakes would generally be reviewed by a court under strict scrutiny, which is a very difficult standard to meet. Thus, attempts to categorically ban all deepfakes would likely be unconstitutional, and laws that criminalize deepfakes are more likely to be found by a court to be unconstitutional than a law that creates a private cause of action or provides for civil penalties.

However, there are certain types of speech, such as fraud or obscenity, that are not protected by the First Amendment. *United States v. Alvarez*, 567 U.S. 709, 717-18, 723 (2012) (plurality opinion) ("Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment."); *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 803 (1988) (Scalia, J., concurring) (recognizing fraudulent misrepresentations of fact can be regulated). The State can ban these types of speech.

Forgeries are a type of fraud.[1] As you pointed out, the proposed language is similar to Black's Law Dictionary's definition of "forgery," which is "the act of fraudulently making a false document or altering a real one to be used as if genuine." In Maryland, common law forgery is "the fraudulent making of a false writing having apparent legal significance." *Nelson v. State*, 224 Md. 374, 377-78 (1961). A deepfake or "synthetic media" that intentionally purports to be a genuine recording of another individual with intent to defraud is similar to a forged record.

Laws targeting fraudulent AI-generated material are likely to be constitutional because the First Amendment does not protect fraudulent conduct or statements, such as forgeries. *Illinois, ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003) ("[T]he First Amendment does not shield fraud."). Indeed, many criminal statutes prohibit certain speech or expressive conduct done for a fraudulent purpose or as part of a fraudulent scheme. *E.g.*, 18 U.S.C. § 471 (forging securities of the U.S. with intent to defraud); 18 U.S.C. § 912 (impersonating a federal officer); 18 U.S.C. § 1001 (knowingly and willfully making or using any false writing or document knowing it contains any materially false, fictitious, or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the federal government); Md. Code Ann., Crim. Law § 8-601 (counterfeiting private instruments).

In my view, the closer the proposed offense is to forgery or fraud, the more likely it will be upheld if challenged under the First Amendment. By using the words "fraudulently" and "as if genuine," which implies an intent to deceive, the proposed language ("*fraudulently creating a piece of synthetic media… as if genuine*") requires fraudulent intent. This would be important to a reviewing court as it would distinguish the criminalized conduct from other protected forms of expression that are done without malicious intent, such as deepfakes created for satire, parody, or education. Nevertheless, the proposed bill could be more defensible if it provides explicit exemptions for the creation or dissemination of deepfakes for certain non-malicious purposes that are clearly protected by the First Amendment, e.g., exemptions for news reporting, satire, or comedy.

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[1] The common law elements of a civil fraud claim include a (1) misrepresentation of a material fact; (2) knowledge that the representation is false or a reckless indifference to its truth; (3) deliberate intent or purpose to defraud someone, i.e., deceive or induce reliance of another; (4) the reliance of the other person; and (4) resulting harm or injury. *See Nails v. S & R, Inc.*, 334 Md. 398, 415 (1994); *Fowler v. Benton*, 229 Md. 571, 578 (1962); *see also* FRAUD, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment.").

Without the full context of a bill draft, I cannot assess the proposed language in further detail. For example, the term "synthetic media" is not defined in the proposed language provided to me, but the definition could be important in terms of the constitutionality of the potential bill. To be constitutional, the definition should not be vague, meaning it should "provide a person of ordinary intelligence fair notice of what is prohibited," and provide sufficient standards to avoid "seriously discriminatory enforcement." *Martin v. Lloyd*, 700 F.3d 132, 135 (4th Cir. 2012). Moreover, to approximate forgery, the definition could also make clear that "synthetic media" is itself a lie, purporting to be what it is not, i.e., it is not a recording of events that actually occurred. *See State v. Reese*, 283 Md. 86, 94 (1978) ("As one scholar has phrased it, it is not enough that the writing 'tells a lie; the writing itself must be a lie.'") (quoting R. Perkins, Criminal Law 345 (2d ed. 1969)); *see also* Marc Jonathan Blitz, *Deepfakes and Other Non-Testimonial Falsehoods: When Is Belief Manipulation (Not) First Amendment Speech?*, 23 YALE J. L. & TECH. 160, 245-46, 300 (2020) (arguing that the First Amendment should permit regulation of deepfakes "when they pose as genuine camera footage" or "non-testimonial evidence").

In addition, "one of the essential elements of forgery is a writing in such form as to be apparently of some legal efficacy and hence capable of defrauding or deceiving. … If then the instrument is entirely valueless on its face and of no binding force or effect for any purpose of harm, liability or injury to anyone, all authorities agree that it cannot be the subject of forgery." *Smith v. State*, 7 Md. App. 457, 461 (1969). Maryland has a statute listing certain types of documents that can be the subject of a forgery, including deeds, checks, bonds, and promissory notes — documents that can affect a person's legal rights or obligations. *See* Md. Code Ann., Crim. Law § 8-601. In the context of the potential bill, this may mean "synthetic media" must definitionally be of a nature that is capable of defrauding, or actually harming, someone.

The element of harm is an important facet of laws that regulate false speech, including deepfakes. While the U.S. Supreme Court has held that false statements alone are protected speech subject to exacting scrutiny, it has recognized that "[t]he First Amendment does not preclude liability for false statements that involve 'legally cognizable harm associated with [the] false statement.'" *United States v. Nabaya*, 765 F. App'x 895, 899 (4th Cir. 2019) (quoting *United States v. Alvarez*, 567 U.S. 709, 719 (2012) (plurality opinion)). The Court explained that certain well-accepted laws that criminalize false speech do not violate the First Amendment where harm is caused by those lies; for example, the crime of perjury "undermines the function and province of the law and threatens the integrity of judgments that are the basis of the legal system," and the crimes of impersonating public officials or using the name of a federal agency without authorization harm the "integrity of Government processes." *Alvarez*, 567 U.S. at 719-21. Drawing on this concept, the Fourth Circuit later upheld a Virginia statute forbidding impersonating law enforcement, saying,

> Put simply, we decline to strike down a statute that prohibits lies **"that are particularly likely to produce harm." …** The statute does not proscribe all untruths about one's occupation or accomplishments, but only lies that may trick ordinary citizens into the erroneous belief that someone is a peace officer and that may in turn "deceive[ ]" a person into following a harmful **"course of action he would not have pursued but for the deceitful conduct."**

United States v. Chappell, 691 F.3d 388, 399 (4th Cir. 2012) (quoting *Alvarez*, 506 U.S. at 734-35 (Breyer, J. concurring)) (emphasis in original).

The act of creating synthetic media depicting another individual or individual's voice with an intent to defraud someone involves an intent to cause harm in one or more forms.[2] *See Smith v. State*, 7 Md. App. 457, 461, n.5 (1969) ("If there is a reasonable possibility that the false writing or instrument may operate to cause injury, it is sufficient to constitute forgery, even though no actual injury is caused."); *see also* Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Cal. L. Rev. 1753 (2019) (describing harmful uses of deepfake technology). This factor supports my view that the proposed language fits into the category of harmful false speech that the Supreme Court has signaled may be constitutionally regulated.

Ultimately, there are very few published cases addressing laws regulating deepfakes, making it difficult to predict how a court would review the proposed language. But in my view, the proposed language appears to define a new offense that would fall under the category of unprotected fraudulent speech and thus would be constitutional under the First Amendment.

I hope this letter is responsive. Please let me know if you have any further questions.

Sincerely,

Natalie R. Bilbrough
Assistant Attorney General

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[2] It is possible a court could consider the proposed language to be overbroad if it criminalizes all types of fraudulent synthetic media regardless of the level or type of harm that could be caused. For example, a fraudulent deepfake of a parent that tricks a child into eating spinach may be intentionally deceptive, but a court may be skeptical that the level of "harm" justifies the suppression of speech in that instance. This could be mitigated by specifying levels or types of harm covered by the offense.

SB 362 - MNADV - FAV.pdf

BILL NO: Senate Bill 362
TITLE: Forged Digital Likenesses – Distribution – Prohibition
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2025
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 362.**

Senate Bill 362 would create a new misdemeanor crime for distribution of a "forged digital likeness, as defined. A "forged digital likeness" is a computer-generated visual or audio representation of a person that is identifiable as that person but is not that actual person. Instead it misrepresents the appearance, speech or behavior of the person and is likely to deceive someone viewing or listening to it. It excludes certain products, cartoons, paintings, drawings or sculpture. The balance in the definition acknowledges the value of artistic endeavors versus the damage that can be done in today's world or advanced technology. The person distributing the forged digital likeness must distribute the image or audio asserting its genuineness or reasonably should know the forged digital likeness is not genuine. A violation of SB 362 would be a sentence of up to three years and/or a fine of up to $1000.

Breakthroughs in AI tools have led to a sudden surge in digital replicas in many different forms, including examples that range from the dangerous (like creating convincing replicas of the President) and despicable (like the image-based sexual abuse faced publicly by Taylor Swift), to the inspiring (like the accessibility and inclusion benefits of video translation that preserves voices) and prosaic (like getting a group photo where everyone actually has their eyes open). While digital replicas can be made using any type of digital technology, and with or without an individual's authorization, the flurry of attention is on unauthorized digital replicas created using generative artificial intelligence.[1]

Commercial harms primarily arise from violations of people's right to control how their name, image, and likeness – often referred to as "NIL" – are all used commercially, but also includes the threat of potential economic displacement from digital replicas. Dignitary harms are violations of a person's rights to privacy and respect, and to be free from harassment and abuse. Finally,

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[1] https://publicknowledge.org/digital-replicas-part-i-defining-the-harms/. Last viewed 1/27/2025.

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democratic harms are those that harm our system of government and shared information environment, like disinformation.[2]

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

Forged digital image - testimony - senate - 2025 -
Uploaded by: Lisae C Jordan
Position: FAV

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For more information contact:
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Working to end sexual violence in Maryland

Testimony Supporting Senate Bill 362
Lisae C. Jordan, Executive Director & Counsel
Jodi Cavanaugh, Legal Director (incoming)
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 362.

Senate Bill 360 – Forged Digital Images

This bill clarifies that digital images and recordings that misrepresent the appearance, speech, or behavior of a person are criminal and actionable as defamation if the image is likely to deceive a reasonable person to believe that the image or recording is genuine. This would include sexualized images and recordings and provide an avenue of relief if SB360 is not enacted or the image or recording does not fall under the definitions of sexual activity or intimate parts.

The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 362

SB 362 - Forged Digital Likenesses - Distribution

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 362
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 362
FORGED DIGITAL LIKENESSES – DISTRIBUTION – PROHIBITION

I write in support of Senate Bill 362 which fills a large gap in this day and age of committing crimes using computers and more specifically Artificial Intelligence.

What if you are a County Executive, a Police Chief or a Senator and there is someone out there who has a grudge against you. Nowadays they can get revenge by using Artificial Intelligence to take prior statements you have made that have been recorded and turn that into anti-racial or anti-anything and make those statements very public. What if that audio is released to the public and causes regular people to get angry and upset at you. What if people are so upset that you need police protection. Right now in Maryland we do not have a statutory crime to charge that person. There is a hole in the Law that needs to be filled to make the crimes of today and the way they can be committed punishable. We need SB 362 to fill a gap in the Law.
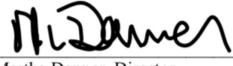
The scenario I just outlined is not a made up story, it really happened. As you know Baltimore County has such a case and because it is a pending trial I will not talk about the facts or details of that case. When that incident happened I picked up this book, Criminal Laws, and searched and searched and found nothing directly on point to what they did.

Senate Bill 362 fills that gap by making it a crime to use Forged Digital Likeness to misrepresent and likely to deceive. Senate Bill 362 uses the word Forged Digital Likeness that is defined as a <u>visual</u> representation of a person or <u>audio</u> recording of an identifiable person's voice. That's the one we needed in this case. Under the new Law we must prove that it was created to imitate how the person looks or sounds. The key is the state must prove that it is likely to deceive a reasonable person. That would provide the needed Law if it ever happens to a County Executive of Police Chief or a senator.

We are looking for a modest start by setting the maximum sentence of 3 years in jail.

I urge a favorable report.

Martha Danner, Director
Division of Parole and Probation

er penalty of perjury that the foregoing is true and correct.

Martha Danner, Director
Division of Parole and Probation

SB362 Director, State and Local Government Relatio

Uploaded by: Brianna January

Position: UNF

January 28, 2025

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
Maryland General Assembly
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Opposition to SB 362 Concerning Forged Digital Likenesses

Dear Chair Smith:

On behalf of the undersigned public interest organizations and trade associations, we write to respectfully urge you to oppose SB 362 concerning forged digital likenesses and to request that this letter be included in the record of tomorrow's scheduled Judicial Proceedings Committee hearing. We do so because, as written, SB 362 is vague, overbroad, and facially unconstitutional under the First Amendment.

The bill imposes criminal liability on any person found to be "distributing" a "forged digital likeness." That liability applies to any individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation or other entity."

Neither that standard nor the meaning of "distribution," however, are defined in the bill. This statute thus will chill speech by individuals, satirists, teachers, online service providers and others that a judge or jury could determine knew – or, critically, "should have known" – that the image was not genuine. Those subject to the bill have no notice of when (or if) their speech would be implicated and, consequently, when or if they would be subject to fines and imprisonment. That is a severe and constitutionally impermissible – effect on a broad range of protected expressive activity.

We appreciate that the bill contains what is intended to be a savings clause. That language, mandating consistency with the Maryland and federal Constitutions, is circular and will not cure the bill's fundamental, constitutionally fatal infirmities. That is true because the legislation will likely be subject to strict scrutiny under the First Amendment, and thus must be narrowly tailored to achieve a compelling state interest.

Even if such an interest is demonstrated, which is open to serious question, the bill remains both over and under inclusive.

Moreover, in addition to chilling multiple kinds of lawful speech, it appears to be subject to circumvention by simply labeling all images posted as potentially ungenuine, thus assuring the insulation from liability for such disclosure explicitly included in the bill. For all of the foregoing reasons, when this legislation faces First Amendment scrutiny it is thus unlikely to survive.

We appreciate the legitimacy of concerns surrounding deep fakes and the misuse of multi-purpose technology for undesirable purposes. This legislation, however, is an unconstitutional and ill-advised approach to solving that problem.

We respectfully urge you and your colleagues to proceed cautiously and without haste to best balance protecting Maryland consumers and industry and **reject SB 362** at this time.

Sincerely,

Chamber of Progress
Engine
Public Knowledge
Software & Information Industry Association

SB0362 - Forged Digital Likenesses – Distribution
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: 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 is 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.

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Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Jeremy Zacker, Assistant Public Defender.