



Working to end sexual violence in Maryland

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

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

Testimony Supporting House Bill 663 with Amendments **Lisae C. Jordan, Executive Director & Counsel** February 19, 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 House Bill 663 with Amendments.

House Bill 663 – Revenge Porn and Deep Fakes – Civil Remedies and Criminal Law

This bill would create a civil action of per se defamation against those who distribute “deep fake” intimate images of another without their consent. The new civil action would encompass computer-generated sexual images, often called “deep fakes.” As drafted, however, these provisions will not encompass unaltered or consensually altered images. HB663 would also amend the current “revenge porn” criminal statute to add computer-generated images and create a civil cause of action for violations of the provisions Criminal Law 3-809.

“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.

House Bill 663 provides survivors with the ability to seek civil punitive damages for nonconsensual distribution of intimate deep fake images. MCASA strongly supports creating civil remedies 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. It also may be prudent to clarify that actual damages are available as well as punitive damages.

House Bill 663 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 with a single penalty.** 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.

HB663 also adds 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. In contrast to the provision on pages 2-3 of the bill, the proposed provisions in §3-809 provide for actual damages, but not punitive damages.

House Bill 663 is one of several bills this session which address this issue. The Senate has heard testimony on SB360 addressing civil and criminal issues. Yesterday, the Committee heard a bill addressing criminal penalties, HB803, and in March, the Committee will hear a bill addressing criminal and civil penalties as well as creating a process to ensure materials are removed from the web, HB1428. To date, none of these bills have crossfiles. MCASA urges the Committee to create both criminal and civil remedies for survivors using whatever vehicles it deems appropriate.

Specifically, we respectfully suggest that, whatever vehicles the Committee chooses, survivors have access to:

- 1) Civil remedies for non-consensual posting of intimate images, including:
 - a. Intimate images of their actual bodies,
 - b. Intimate images modified with computer generated or other realistic alterations;
and
 - c. Intimate images generated completely by a computer and indistinguishable from the actual person.
- 2) Civil remedies including actual damages, punitive damages, attorneys' fees, and costs
- 3) Criminal remedies for non-consensual posting of intimate images, including:
 - a. Intimate images of their actual bodies,
 - b. Intimate images modified with computer generated or other realistic alterations;
and
 - c. Intimate images generated completely by a computer and indistinguishable from the actual person.

These criminal remedies should be contained in one section of the code, subject to the same penalty, and fashioned so that a survivor will not have to provide evidence of what is or is not computer generated.

- 4) Injunctive relief to effectively require that images be removed from wherever they are posted.

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
Judiciary Committee to
report favorably on House Bill 663 with Amendments**