

Testimony in Support of HB184 - Criminal Law - Identity Fraud - Artificial Intelligence and Deepfake Representations

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Committee: Judiciary

Introduction

Chair Bartlett, Vice Chair Davis, and members of the Committee, thank you for the opportunity to provide testimony in support of HB184 - Criminal Law - Identity Fraud - Artificial Intelligence and Deepfake Representations. My name is Ben Yelin, and I serve as the Program Director for Public Policy & External Affairs at the University of Maryland Center for Cyber, Health and Hazard Strategies. Over the past several years, our organization has collaborated with members of this committee and the Senate Judicial Proceedings Committee to develop policies addressing the challenges posed by the rapid advancement of artificial intelligence and deepfakes.

The Rising Threat of Deepfakes

The 2024 incident at Pikesville High School, where a principal was falsely depicted in an AI-generated video making offensive remarks about racial and religious groups, clearly demonstrates the growing danger of deceptive “deepfakes.” Even after it was revealed that the video was a deepfake produced by the school’s athletic director, many students and parents continued to feel emotional distress from having seen their principal appear to say such things. As the technology behind deepfakes becomes more sophisticated, these manipulations are increasingly indistinguishable from authentic audio and video, undermining trust in testimonial evidence in much the same way that counterfeit currency erodes confidence in our financial system.

Current Legal Gaps and the Need for HB184

Our legal system already criminalizes identity fraud when a person uses deception to impersonate someone else. However, this bill seeks to modernize that definition and address the particular threat posed by the fraudulent use of artificial intelligence to appropriate someone’s identity and likeness. Last session, the State’s Attorney for Baltimore County, when testifying on a similar bill, shared his difficulty finding an existing statute that matched the nature of the offense in the Pikesville case. Despite clear harm to the community, only lesser charges such as interrupting school proceedings were available as legal remedies.

Key Provisions of HB184

HB184 will ensure that Maryland law explicitly criminalizes the creation and distribution of deepfakes when done knowingly and willfully, with the intent to defraud, mislead, or cause harm to another person. The bill defines “harm” broadly to include physical injury, emotional distress, and economic damages. It also prohibits the knowing, willful, and unconsented use of personal identifying information, including biometric data, to cause harm. Furthermore, the bill establishes a civil cause of action for individuals harmed by any of the prohibited conduct described.

Safeguards for Protected Speech

This bill is carefully crafted to address a specific subset of deepfakes that cause demonstrable harm, while not infringing on First Amendment-protected speech. HB184 includes several layers of protection to prevent overzealous prosecution of constitutionally-protected expression:

- **Indistinguishability Requirement:** The deepfake must be “indistinguishable from an actual and identifiable human being,” meaning an ordinary person would conclude the image or video depicts a real individual. For example, a comedic portrayal of a public figure, such as those on Saturday Night Live, would not fall under the statute because it would not be mistaken for the genuine person.
- **Knowledge and Intent:** Only the knowing and willful creation and distribution of deepfakes are criminalized. Sharing or reposting content without knowledge or intent is not subject to prosecution.
- **Intent to Harm:** The conduct must be undertaken with the intent to defraud, mislead, or cause harm. Deepfakes that are clear parodies or created for artistic purposes are explicitly protected. Additionally, if a deepfake contains a visible watermark or another clear indicator that it is not genuine, prosecution is not possible because there is no intent to deceive or harm.
- **Legally Cognizable Harm:** For prosecution, the deepfake must result in physical injury, severe emotional distress, or financial hardship. Minor modifications that do not produce substantial harm are not covered by the statute.

Conclusion

In summary, HB184 criminalizes identity fraud using artificial intelligence and deepfake technology in a way that preserves essential First Amendment protections. This common-sense, narrowly tailored legislation provides Maryland with the necessary tools to address the unique and contemporary risks of malicious deepfakes. I respectfully urge the Committee to issue a favorable report on HB184.