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POSITION ON PROPOSED LEGISLATION

BILL: HB 184 – Criminal Law – Identity Fraud – Artificial Intelligence and Deepfake Representations

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 3, 2026

The Maryland Office of the Public Defender respectfully request an unfavorable report on House Bill 184 because we feel that this bill is vague and overbroad to the point that it will be used to criminalize and suppress free speech.

Although this bill aims to address a legitimate problem – harmful deepfakes –our concern is that it does so with such vague and overbroad language that will be prone to abuse. This bill creates 3 new categories of criminalized conduct.

First, under CL§ 8-301(b-2) a person may not knowingly, willfully, and with fraudulent intent utilize the personal identifying information of an individual, without the consent of the individual, in order to cause harm.

Second, under CL§ 8-301 (c)(2)(IV) A person may not knowingly and willfully assume the identity of another, including a fictitious person with fraudulent intent to harm, harass, intimidate, threaten, or coerce the other person.

Under CL§ 8-301(g)(1)(i) ,(ii)(iii) and (2), a person who violates the above laws where the benefit, credit, good, service, health information or health care, or other thing of value has the value of:

- \$100- \$1,500 is guilty of a misdemeanor subject to imprisonment of 1 year and/or a fine not exceeding \$500;
- At least \$1,500 but less than \$25,000 is guilty of a felony and subject to imprisonment not exceeding 5 years and/or a fine not exceeding \$10,000;
- At least \$25,000 but less than \$100,000 is guilty of a felony and subject to imprisonment not exceeding 10 years and/or a fine not exceeding \$25,000;
- Or at least \$100,000 is guilty of a felony and subject to imprisonment not exceeding 20 years and/or a fine not exceeding \$25,000.

Finally, under CL§ 8-301(f)(2) the bill criminalizes the conduct of knowingly, willfully, and with fraudulent intent using artificial intelligence or a deepfake representation to:

- impersonate, falsely depict, or claim to represent another person with the intent to defraud, mislead, or cause harm to that person or any other person; OR
- create or distribute false records with the intent to:

- cause harm to another person; induce another person to provide personal identifying information; or obtain a benefit, credit, good, service, or other thing of value.

If there is one victim under 8-301(f)(2) the person is guilty of a felony subject to 5 years' imprisonment and if there are two or more victims a person found guilty under 8-301(f)(2) is guilty of a felony and subject to 10 years' imprisonment.

Our primary concerns surround the third range of conduct that is criminalized in CL§ 8-301(f)(2). While the ease with which deepfakes can be generated by virtually anyone with access to a computer is truly alarming, the way House Bill 184 criminalizes conduct surrounding the use of deepfakes is too broad and may have a chilling effect on free speech at a time when the risk of free speech being curtailed is greater than ever. Any conduct that is criminalized in CL§ 8-301(f)(2) is not subject to a felony, regardless of the degree of actual harm. Due to the vagueness of the bill, any person who shared a deepfake on social media could be charged with a felony under this bill and face 10 years' imprisonment.

There are numerous circumstances where a felony conviction would be wholly disproportionate to the conduct at issue. For example, imagine a student who creates a deepfake audio recording of a principal cancelling class for the next day, which he emails out. According to this bill, he could be convicted under this proposed statute of a felony. All that this statute requires is a knowing and willing fraudulent intent to defraud, mislead, or and cause "harm to any other person"¹(including physical injury, serious emotional distress or economic damages). Further, anyone who forwards this hypothetical recording, whether they knew it was a deepfake or not, could very easily be caught up in a prosecution as well and undergo the stressful ordeal of a felony trial, where the outcome is far from certain. Under HB 184, a parent must miss a day of work to stay home with their child due to this fictitious recording, that appears to be sufficient economic damages for a felony charge. If two students' parents stay home that appears sufficient for a 10 years' imprisonment. Further, "serious emotional distress" is vague, if a student misses an exam they have been preparing for that could be sufficient under HB 184. Minor harm requires a minor response. This bill does not allow for that.

Additionally, some of the foundational terms in the bill are too broad. For example, "deepfake" is defined in effect by audience confusion "indistinguishable from an actual and identifiable human being" CL§ 8-301(a)(3)(I) which means it depends on the subjective perception of a jury or judge, and can criminalize parody or political speech, etc. Also, the 'deepfake representation' definition under 8-301(a)(3) doesn't actually require modification to a person in an image that is modified. It could encompass changes solely to the background of the image, like placing someone on a beach instead of hard at work at their office. Moreover, the 'deepfake representation' explicitly excludes 'drawings', but fails to define 'drawings'. There is no parameter for the portion of the image needs to be 'drawn' to be a drawing. For example, since Adobo Photoshop has tools that use a stylus to modify images it could potentially be considered a drawing.

¹ "Any other person" includes persons not in Maryland.

Finally, this conduct is better addressed in the civil arena. Traditionally, the harms of defamation and infliction of emotional distress are civil torts, and making an aggrieved person whole is best done through monetary damages and injunctive relief.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.