

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 905 (Senator Hester)
Judicial Proceedings

**Criminal Law – Identity Fraud – Artificial Intelligence and Deepfake
Representations**

This bill expands prohibitions under the identity fraud statute, including prohibiting a person from (1) using personal identifying information to cause harm, as specified and (2) assuming the identity of another (including a fictional person) to harm, harass, intimidate, or threaten. The bill also prohibits a person from using artificial intelligence or deepfake representations for specified fraud related purposes. Finally, the bill authorizes a person who is the victim of a specified prohibited act to bring a civil cause of action for injunctive or other appropriate relief against the person or persons who committed the act.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

New Definitions Under the Bill

“Deepfake representation” means a photograph, a film, a video, an audio recording, a digital image, a picture, or a computer or computer-generated image or picture, whether

made, produced, or generated by electronic, mechanical, or other means, that is indistinguishable from an actual and identifiable human being.

“Deepfake representation” does not include images or items depicting human beings that are drawings, cartoons, sculptures, or paintings.

“Harm” means physical injury, serious emotional distress, or economic damages.

“Indistinguishable from an actual and identifiable human being” means an image an ordinary person would conclude is of an actual and identifiable human being. “Indistinguishable from an actual and identifiable human being” includes an image that is computer-generated and has been created, adapted, or modified to appear as an actual and identifiable human being.

Identity Fraud and New Civil Cause of Action

Under current law and the bill, “personal identifying information” includes a name, address, telephone number, driver’s license number, Social Security number, place of employment, employee identification number, health insurance identification number, medical identification number, mother’s maiden name, bank or other financial institution account number, date of birth, personal identification number, unique biometric data, including fingerprint, voice print, retina or iris image or other unique physical representation, digital signature, credit card number, or other payment device number.

The identity fraud statute contains an extensive number of prohibitions. Among other things, the existing statute prohibits a person from knowingly, willfully, and with fraudulent intent possessing, obtaining, or helping another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value or to access health information or health care.

The bill further prohibits a person from knowingly, willfully, and with fraudulent intent utilizing the personal identifying information of an individual, without the consent of the individual, in order to cause harm.

Under current law, a person may not knowingly and willfully assume the identity of another, including a fictitious person (1) to avoid identification, apprehension, or prosecution for a crime or (2) with fraudulent intent to get a benefit, credit, good, service, or other thing of value; access health information or health care; or avoid the payment of debt or other legal obligation. The bill expands this provision by prohibiting a person from engaging in this behavior to harm, harass, intimidate, threaten, or coerce the other person.

Under current law and the bill, violators of these prohibitions are subject to the following penalties, based on the value involved:

- at least \$100 but less than \$1,500 – misdemeanor, imprisonment for up to 1 year and/or a \$500 maximum fine;
- at least \$1,500 but less than \$25,000 – felony, imprisonment for up to 5 years and/or a \$10,000 maximum fine;
- at least \$25,000 but less than \$100,000 – felony, imprisonment for up to 10 years and/or a \$15,000 maximum fine; and
- \$100,000 or more – felony, imprisonment for up to 20 years and/or a \$25,000 maximum fine.

Under current law and the bill, a person who violates these prohibitions under circumstances that reasonably indicate that the person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without that individual's consent is guilty of a felony and on conviction is subject to imprisonment for up to 10 years and/or a \$25,000 maximum fine.

Current law also prohibits a person from knowingly and willfully claiming to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any other action to otherwise induce another person to provide personal identifying information or a payment device number. Violators are guilty of a misdemeanor and subject to imprisonment for up to one year and/or a \$500 maximum fine.

Under the bill, a person may not knowingly, willfully, and with fraudulent intent use artificial intelligence or a deepfake representation to (1) 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 (2) 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 the violation involves one victim, a violator is guilty of a felony and subject to imprisonment for up to 5 years and/or a \$10,000 maximum fine. If the violation involves two or more victims is guilty of a felony and subject to imprisonment for up to 10 years and/or a \$15,000 maximum fine.

A person who is a victim of an act that would constitute a violation of this prohibition may bring a civil action against the person(s) who committed the act in a court of competent jurisdiction. The court may (1) issue an injunction to prevent or restrain an act that would constitute a violation and (2) grant any other appropriate relief.

State Fiscal Effect: Despite the available penalties, the bill is not anticipated to materially affect State finances. This estimate assumes that the bill applies to a small number of cases.

The Judiciary does not anticipate that the bill will have a significant fiscal or operational impact on the trial courts.

The Office of the Public Defender (OPD) advises that the bill's provisions may result in costs for the agency due to additional cases and litigation requiring the equivalent of one attorney statewide. The Department of Legislative Services advises that while the bill *may* increase OPD workloads, OPD can likely accommodate any increased level of effort with existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1425 (Delegate Wilson) - Judiciary.

Information Source(s): Baltimore, Carroll, Harford, and Queen Anne's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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