



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

Office of Chief Public Defender
55 Farmington Avenue, 8th Floor
Hartford, Connecticut 06105
(860) 509-6405 Telephone
(860) 509-6495 Fax

Deborah Del Prete Sullivan
Legal Counsel, Director
deborah.d.sullivan@pds.ct.gov

Testimony of John R. DelBarba, Assistant Legal Counsel
Office of Chief Public Defender

JUDICIARY COMMITTEE - MARCH 10, 2025

Raised Bill No. 1440

**AN ACT CONCERNING UNAUTHORIZED DISSEMINATION OF
INTIMATE IMAGES THAT ARE DIGITALLY ALTERED OR CREATED THROUGH THE USE
OF ARTIFICIAL INTELLIGENCE**

The Office of Chief Public Defender (OCPD) is strongly opposed to Raised Bill No. 1440, An Act Concerning Unauthorized Dissemination Of Intimate Images That Are Digitally Altered Or Created Through The Use Of Artificial Intelligence, for all of the same the reasons mentioned in our testimony during the 2024 session on a substantially similar bill, Raised Bill No. 5421, *An Act Concerning Unlawful Dissemination Of Intimate Images That Are Digitally Altered Or Created Through The Use Of Artificial Intelligence*, and which had a public hearing on March 11, 2024.

Raised Bill No. 1440, just like last year's version of Raised Bill No. 5421, continues to expand criminal liability for unauthorized dissemination of an intimate image that is digitally altered or created through the use of artificial intelligence under C.G.S. Section 53a-189c. In essence, "synthetic image" from last year's bill 5421 has been removed and in its place now is "digitally altered image."¹

The raised bill amends C.G.S. Section 53a-189c to include "any digitally altered image or image created through the use of artificial intelligence that depicts the likeness of a person." "Likeness of a person" means an image that closely resembles a living, identifiable person. The bill would make it a felony to send a prohibited digitally altered or created through the use of artificial intelligence image to more than one person.

¹ Synthetic Image is now re-appearing in 2025 Raised Bill 2 – An Act Concerning Artificial Intelligence for which this office has provided testimony on and opposes Section 27. This new bill also uses "unauthorized" versus "unlawful" but at its core, is still expanding unlawful behavior in a criminal statute.

If the intent of this bill is to criminalize the dissemination of “any digitally altered image” that depicts the “likeness of a person” that closely resembles an identifiable person or perhaps cannot be distinguished from the real thing – in other words, one that may fool people into thinking the image is real when it’s not – the raised bill goes far beyond that in problematic ways. Would a cartoon involving the intimate parts of a teacher now be a felony? Would a caricature that depicts the likeness of a classmate with her breasts visible be a crime? Would an X Rated Emoji now be a crime if sent to a friend? Going one step further, on newer iPhones you can create “digitally altered images” with two new features called Image Playground² and Genmoji using Apple Intelligence. You can simply describe what you want the Genmoji to look like or create one of friends and family based on their photos and it simply appears on your screen. You are only limited by your imagination. You can refine all images. The purpose is to be able to add your Genmoji to messages, share them with friends, and more.

The ultimate result of this bill is the potential for criminalizing conduct that is not a crime, as well as creating a variety of First Amendment challenges, vagueness challenges, and uneven application of the law in terms of who gets prosecuted and for what – especially children/juveniles, college students, and young adults.

It is clear that these laws are creating a fundamentally new category of criminal behavior. The real concern here is that this office believes that this legislation will have unintended consequences. Given our current technology used by children/juveniles, high school and college students such as Apple AirDrop, Instagram, Snapchat, and similar technologies and/or apps, which have the ability to transfer an unlimited number of images to an unlimited number of people with the press of a button on your phone, this statute can turn an entire high school into felons within 1 school day. All with a single image or two as these images are passed around and around - disseminated across the school at the high rate of speed of the Internet.

What happens if some of these children decide to show their parents, or even their lawyers, these images on their phone to discuss what is going on? Have the children committed another crime? Have the parents or the lawyer committed a crime simply by viewing the image? All of these actions would appear to fall well within the definition of disseminate under C.G.S. Section 53a-189c. We can all agree that finding more ways to put people in prison for speech and expression of ideas is not a

² The Image Playground experience allows users to easily create fun and unique images, with concepts like themes, costumes, accessories, and places. Users can add their own text descriptions, and can even create images in the likeness of a family member or friend using photos from their photo library. Image Playground generates images in distinct styles, including Animation – a modern, 3D-animated look – and Illustration, which offers images with simple shapes, clear lines, and colorblocking. See e.g., <https://www.apple.com/gq/newsroom/2024/12/apple-intelligence-now-features-image-playground-genmoji-and-more/>

good thing. We must seriously question whether the path forward on this issue of “deepfakes” is to use criminal law to remedy this issue.

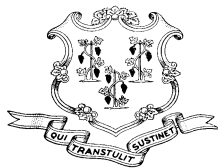
The First Amendment protects nearly all speech, with only a handful of notable exceptions. One of those exceptions is “defamation.” But there are numerous constitutional requirements that the Supreme Court has imposed before speech can be prohibited – even speech that is false and may harm someone’s reputation and/or may cause emotional distress. (See generally *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) and *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) The constitutional requirements that are most relevant here are that even false speech against a public figure, such as a politician, cannot be prohibited unless the plaintiff can show by clear and convincing evidence that the speaker acted with actual malice, i.e., that the speaker knew that the speech was false or acted with “reckless disregard” of its falsity. (*New York Times v. Sullivan*, 376 U.S. at 279-86.)

The majority of states are attempting to draft bills regarding this type of legislation. As the ACLU has noted, “anytime you see large waves of bills attempting to regulate a new technology across 50 different state legislatures - and God knows how many community ordinances - there’s going to be a fair number of them that draw the lines incorrectly.”³ There will be a lot of litigation over these bills as some of them get implemented.

The manufacturing of disinformation and deepfakes using AI is a serious issue that presents novel challenges as this is uncharted territory. As the legislature work through solutions, this office asks this body to keep Constitutional protections top of mind. This office suggests education as a first step before contemplating creating a fundamentally new category of criminal behavior. Education that should start early enough within our school systems that educates and discusses the technology itself, its endless ability as a creative outlet and tool, as well as the ability to do harm with technology and its impact on those affected by deepfakes.

This office is currently working to address similar concerns with respect to General Law Committee Raised Bill No. 2, *An Act Concerning Artificial Intelligence*, a raised bill, which also adds criminal liability under C.G.S. Section 53a-189c, *Unlawful dissemination of an intimate image*: Class A misdemeanor or class D felony, for computer-generated images. As always, this office is willing and available to discuss this bill further and assist with the drafting of any substitute language. But as drafted, and for the reasons put forth in this testimony, as well as our prior testimony re Raised Bill No. 5421 (see attached with further examples), and our related testimony this session in Raised Bill No. 2, *An Act Concerning Artificial Intelligence*, **this office requests that the Committee take no action on this bill.** Thank you.

³ See <https://ediscoverytoday.com/2024/07/30/constitutional-right-to-make-deepfakes-the-aclu-says-yes-artificial-intelligence-trends/>



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

Office of Chief Public Defender
55 Farmington Avenue, 8th Floor
Hartford, Connecticut 06105
(860) 509-6405 Telephone
(860) 509-6495 Fax

Deborah Del Prete Sullivan
Legal Counsel, Director
deborah.d.sullivan@pds.ct.gov

Testimony of the Office of Chief Public Defender
Jennifer Bourn, Chief of Legal Services

JUDICIARY COMMITTEE - MARCH 11, 2024

Raised Bill No. 5421
AN ACT CONCERNING UNLAWFUL DISSEMINATION OF INTIMATE IMAGES
THAT ARE DIGITALLY ALTERED OR CREATED THROUGH THE USE OF
ARTIFICIAL INTELLIGENCE

The Office of Chief Public Defender (OCPD) opposes *Raised H.B. 5421, An Act Concerning Unlawful Dissemination of Intimate Images That are Digitally Altered or Created Through the Use of Artificial Intelligence*, which expands liability for unlawful dissemination of an intimate image under *C.G.S. § 53a-189c, Unlawful dissemination of an intimate image: Class A misdemeanor or class D felony*, to include dissemination of “any digitally altered image or image created through the use of artificial intelligence that depicts the likeness of a person.” The proposed bill defines “likeness of a person” as “an image that closely resembles a living, identifiable person.” This raised bill would make it a felony to send a prohibited image to more than one person.

This Office opposes the raised bill because the definition of “likeness of a person” is too broad, resulting in the potential for First Amendment challenges, vagueness challenges, and uneven application of the law in terms of who gets prosecuted and for what.

If the intent of this raised bill is to criminalize the dissemination of an intimate, computer-generated image that cannot be distinguished from the real thing – in other words, one that can fool people into thinking the image is real when it is not – the raised bill goes far beyond that in problematic ways.

Raised Bill No. 5421 - An Act Concerning Unlawful Dissemination of Intimate Images That are Digitally Altered or Created Through the Use of Artificial Intelligence

March 11, 2024

Testimony of Jennifer Bourn, Chief of Legal Services

Here are just a few examples of where this raised bill goes awry:

- Imagine a tenth-grader receiving a snap from a classmate of one of their teachers with fake breasts superimposed on the photo or they receive an image of a friend with an unusually-sized penis superimposed on their body. That teen may be said to have committed a felony under this raised bill if they forward those photos – even if clearly fake and not purporting to depict the real person’s body – to two friends.
- Imagine a news publication or blogger creating a computer-generated caricature of a political figure engaged in a sexual act as political commentary or humor. They may be said to have committed a felony under this raised bill, even though their work may be protected by the First Amendment.
- Imagine a person superimposing the head of their new partner over the nude body of a Playboy centerfold or the David to send to their friends as a way of bragging about how attractive their partner is. They have committed a felony under this bill because the head/face closely resembles a living, identifiable person even if a reasonable person can see that the bottom part of the photo does not purport to depict that person, or even any real person at all.
- Imagine a person creates and shows to more than two people an animated version of themselves and another real person engaging in sexual intercourse. The animated characters would likely closely resemble the real people, and, therefore, that person has committed a felony under this raised bill.

This Office has worked with Senator Looney’s office to address similar concerns with respect to *S.B. 2, An Act Concerning Artificial Intelligence*, a different raised bill, which also adds criminal liability under *C.G.S. § 53a-189c, Unlawful dissemination of an intimate image: Class A misdemeanor or class D felony*, for computer-generated images. This office requests that the Committee take no action on the bill as drafted. If the bill proceeds, this office would be happy to continue to work on language that would address the concerns raised.