



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

SACRAMENTO LEGISLATIVE OFFICE

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April 18, 2024

The Honorable Aisha Wahab
Senate Public Safety Committee, Chair
1020 N Street, Room 545
Sacramento, CA 95814

SENATE BILL 926 (WAHAB and BECKER)
SPONSOR
Senate Public Safety Committee
Hearing Date: April 23, 2024

Dear Senator Wahab:

The Los Angeles County District Attorney's Office is pleased to support Senate Bill 926 (Wahab).

Existing law makes revenge porn a crime pursuant to Penal Code Section 647(j)(4). In order to have a successful prosecution under this section it must be proven that there was an image of an intimate body part of another identifiable person or an image of the person depicted engaged in specified sexual acts that was distributed by a person who either agreed or understood the image was to remain private and the person distributing the image knew or should have known that the distribution of the image would cause the victim serious emotional distress, and the victim did in fact suffer that distress.

With the rapid advancement in both the quality of computer technology and the easy availability of this technology to the general public, there has been an increase in the use of this technology to create highly realistic images of individuals to appear as if they are nude or engaged in sexual activity. Many of these images are of such quality that special computer software is needed to verify that the image is not real. Today's technology allows images to be generated that are virtually indistinguishable from actual images. As technology advances the ability to distinguish between actual images and artificially generated images will become harder for law enforcement to detect and will be nearly impossible for the general public to distinguish.

Our Office consulted prosecutors from our High Tech Crimes and Appellate Divisions, it was determined that an image of revenge porn that was artificially created could not be prosecuted under existing law. There are two reasons for this:

1. Since the image is not real the image does not contain the actual image of the intimate body parts of another identifiable person (since the intimate body parts depicted aren't real) or the image is not an actual image of the person engaged in any of the specified sexual acts (once again because the image is not real);
and

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2. Since the image is not real the victim and defendant never agreed or could there be an understanding between both parties that the image was to remain private because the victim was never aware of its existence.

There has been an unfortunate increase in the proliferation of artificially created images distributed electronically across the internet and via email that but for the deficiency in existing law could be prosecuted under California's existing revenge porn statute.

SB 926 would close this loophole in existing law by adding language to Penal Code Section 647(j)(4) that would make it a crime under California's revenge porn statute to distribute any image created or altered through digitization of an intimate body part or parts of another identifiable person, or a digitized image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted, under circumstances which in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

SB 926 will protect victims from harm when a fake image of them is distributed in the same way that existing law protects victims from harm when an actual image of them is distributed. SB 926 will protect victims while still protecting any constitutional issues by retaining the requirement that the person distributing the image knew or should have known the distribution of the image would cause the victim serious emotional distress, and the victim suffered that distress.

Given the proliferation and advancements in AI technology, it makes no sense from either a policy or legal standpoint to exclude artificially generated images from the definition of revenge porn.

For these reasons our Office is proud to sponsor SB 926 (Wahab and Becker).

If you have any questions or need additional information, please feel free to contact Daniel Felizzatto in my Sacramento Legislative Office at (916) 442-0668.

Very truly yours,



GEORGE GASCÓN
District Attorney