



Krista Griffith
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12th District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
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House Judiciary Committee Meeting Minutes

4.17.24

House Committee Recording

Chair Griffith called the meeting to order at 11:10 a.m.

Members present:

Rep. Griffith, Chair

Rep. Romer, Vice Chair

Rep. Cooke

Rep. Lynn

Rep. Phillips

Rep. Dukes

Rep. Jones Giltner

Rep. Spiegelman

Chair Griffith introduced **HB 353, AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO DEEP FAKES.** *Time Stamp: 11:15*

Chair Griffith introduced House Bill 353, which addressed the issue of deep fakes, particularly in relation to the sharing of intimate images without consent. She acknowledged the potential misuse of artificial intelligence for harmful purposes and emphasized the need to protect individuals' privacy. The bill aimed to update existing laws to address the use of deep fakes, citing a specific case in Delaware where a young woman named Amelia was victimized. Griffith mentioned potential amendments to the bill based on feedback from the tech industry but believed they wouldn't significantly alter its substance. She invited Deputy Attorney General J.S. Taylor to discuss input from the Delaware Department of Justice regarding the bill's impact on child pornography laws.

J.S. Taylor discussed proposed changes to the bill, focusing on the criminal aspect, particularly regarding the violation of privacy crime. In Delaware, disseminating sexual or nude images without consent is a crime when the image was created in a situation with an expectation of privacy. Deep fakes, created without the subject's consent or knowledge, pose a challenge to this law. The suggested amendment would remove the requirement of consent or acknowledgment

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specifically for deep fakes. Additionally, it would establish two tiers of crime: felony for deep fakes depicting a child created by an adult, and misdemeanor for those created by minors. This distinction aims to address exploitation concerns.

Rep. Spiegelman posed a question regarding the definitions used in the bill, specifically concerning terms like "deep fake" and "synthetic media," asking where these definitions originated and what modifications might be expected for them.

Rep. Griffith responded that the definitions used in the bill were formulated with house attorneys. She acknowledged receiving various requests for modifications and emphasized the importance of making the legislation uniform with other jurisdictions while ensuring it effectively addresses situations like Amelia's. She expressed concern about potential loopholes that could leave victims unprotected if the legislation isn't carefully crafted. She invited House Majority Caucus Attorney Raeann Warner to comment.

Raeann Warner stated that the language of the bill was meticulously crafted to be narrow, aiming to protect First Amendment concerns. She noted that the language was developed collaboratively, with input from the Department of Justice and consideration of approaches taken by other jurisdictions. As a result, the bill is now specifically tailored and as uniform as possible.

Rep. Spiegelman raised two points in response. Firstly, he speculated about the likelihood of the federal government eventually providing a uniform definition of deep fakes and synthetic media to facilitate consistency across all states, given the novelty of these concepts. He anticipated that all states would eventually grapple with this issue as understanding and technology evolve. Secondly, he expressed concern about the potential impact of deep fakes on public figures, particularly in the context of elections. He emphasized the need for legislation to address this issue to prevent election interference and manipulation of public opinion. While acknowledging the bill as a good start, he stressed the importance of careful definition and wished success to those involved in tackling this complex issue.

Rep. Griffith responded by highlighting ongoing efforts to address the specific issue of deep fakes, mentioning the AI commission as a valuable resource for further exploration. She emphasized the importance of staying vigilant regarding AI technology and its impacts, citing past delays in addressing data privacy issues. She stressed the need for consistent and protective policies to address emerging issues while larger AI-related issues are being vetted.

Rep. Romer noted that she is currently working on a bill to address Rep. Spiegelman's concerns. She noted that the language regarding synthetic media aligns with model legislation circulating nationally, promoting consistency across states. She emphasized the importance of maintaining cohesive nomenclature among states to facilitate the enforcement of legislation.

Rep. Dukes asked if other states have enacted similar legislation.

Raeann Warner replied that she is not aware of other states that have passed a similar bill.

Rep. Romer expressed enthusiasm for their bill, noting that approximately 96% of deep fakes are related to pornography, making the legislation extremely important. She highlighted the accessibility of creating deep fakes, citing a case in New Jersey where numerous girls in a school fell victim to such manipulation by an individual without extensive coding knowledge. She emphasized the urgency of addressing this issue promptly.

Rep. Jones Giltner inquired about the jurisdictional aspect of prosecuting individuals who create deep fakes in another state.

J.S. Taylor explained that under the criminal statute, Delaware would have jurisdiction if the dissemination of deep fake images occurred within the state's borders. However, if the dissemination took place in Pennsylvania, it would be considered Pennsylvania conduct and fall outside of Delaware's jurisdiction. The determining factor is where the dissemination of the images occurred.

Rep. Cooke commented on the severity of the offense in relation to the age of the perpetrator. He noted that under the current criminal court system, even if a juvenile is involved in the dissemination of deep fake images, the offense remains a misdemeanor. He expressed concern about the potential for adults to evade felony charges by attributing the actions to juveniles. He highlighted the serious consequences of disseminating such images, emphasizing the irreversible impact once they spread online. He mentioned the upcoming testimony from a witness who experienced the consequences firsthand, underscoring the need for stronger penalties for those involved in such activities.

J.S. Taylor assured that the Department of Justice remains vigilant in identifying the correct perpetrators. While recognizing that different penalties for adults and minors may create incentives for adults to manipulate minors into taking responsibility for their actions, he emphasized that the DOJ is proactive in detecting such attempts. He expressed confidence in their ability to discern the true perpetrators regardless of age-based penalties.

Rep. Romer asked about the possibility of using geolocation to determine where the dissemination of deep fake images occurred, suggesting that if dissemination happened in Delaware, the state could press charges, and if it occurred in Pennsylvania, that state could also pursue charges separately.

J.S. Taylor confirmed that geolocation of the digital device from which the image originated is one of the ways that jurisdiction is established.

Chair Griffith opened the floor for public comment.

Amelia Kramer, Mariann Kenville-Moore, Delaware Coalition Against Domestic Violence, and Robert Overmiller provided testimony in support of the bill.

No members of the public provided testimony in opposition of the bill.

A motion was made by Rep. Spiegelman and seconded by Rep. Cooke to release HB 353 from committee; motion failed. Yes = 8 (Cooke, Dukes, Jones Giltner, Lynn, Phillips, Spiegelman, Romer, Griffith); No = 0; Absent = 3 (Dorsey Walker, Schwartzkopf, Shupe). The bill was released from committee with a F=6, M=2, U=0 vote.

Chair Griffith introduced **HB 323, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL MISCHIEF**. *Time Stamp: 11:40*

Rep. Vanderwende, the primary sponsor of the legislation, explained that the bill was created in response to a significant incident in Greenwood where several fire departments responded to a fire. During this incident, a group of individuals threw large rocks at the fire engines and apparatuses, causing considerable damage, including busted windshields. The Volunteer Fire Association proposed a bill that would reclassify emergency vehicles, including those of fire departments, ambulances, EMS, and police, from Class B to Class A when in the line of duty. This would provide better protection for emergency responders and their equipment.

Rep. Phillips asked if individuals can be charged with criminal mischief under existing statutes for tampering with emergency vehicles.

Rep. Vanderwende asked House Minority Caucus Attorney Ron Smith to respond.

Ron Smith explained that the proposed bill adds an additional penalty situation by reclassifying the offense from Class G to Class E, which carries a potential zero to five-year prison sentence and fines. This adjustment aims to give the court system a broader perspective in addressing such situations, especially those involving interference with emergency vehicles responding to critical situations like fires or medical emergencies. The intention behind this change is to ensure that penalties reflect the seriousness of the offense and its potential impact on public safety.

Rep. Vanderwende emphasized that the concern wasn't solely about the individuals operating the emergency vehicles but also about those they were responding to assist. He underscored the potential seriousness of situations where emergency response vehicles were impeded, especially if people were trapped inside a burning building or facing a life-threatening situation.

Rep. Griffith raised concerns about immediately escalating to a higher penalty phase without first assessing the effectiveness of existing felony coverage for such offenses. She suggested a gradual approach, proposing a bill that includes language covering emergency vehicles within the current framework to determine if it serves as an adequate deterrent. She emphasized the shared goal of preventing damage to emergency vehicles and the impact it has on emergency workers and their ability to respond effectively. Additionally, she inquired whether discussions had taken place with the Department of Justice regarding the bill and its potential effectiveness in addressing this type of crime.

Rep. Vanderwende responded that he had not spoken with the Department of Justice about the bill. Instead, they collaborated with the Volunteer Firefighters Association. He clarified that the bill doesn't fundamentally change the process but rather adjusts penalties.

Rep. Griffith expressed support for the idea of specifying emergency vehicles within the criminal mischief statute as an improvement. However, she voiced concerns about immediately changing the felony class might not necessarily lead to significant improvements compared to the current penalty. She suggested trying the approach of adding language to the criminal mischief statute without changing the felony classification as an alternative.

Rep. Vanderwende acknowledged the need for further discussions regarding the proposed approach. He admitted uncertainty about the potential impact of changing penalties and highlighted the analogy of increasing penalties for littering, where the effectiveness of such measures is uncertain.

Rep. Spiegelman addressed concerns about the classification of offenses, highlighting the importance of considering the context of the crime rather than solely focusing on monetary value. He emphasized the gravity of obstructing emergency vehicles responding to life-threatening situations, such as fires or medical emergencies.

Rep. Griffith proposed that the classification of offenses regarding emergency vehicles should align with the monetary value, suggesting that if it involves an emergency vehicle, it should be treated differently in terms of both monetary and legal penalties.

Rep. Spiegelman replied that it should be considered an aggravating circumstance if an emergency vehicle is on its way to an emergency.

Rep. Phillips suggested that individuals interfering with emergency vehicles could potentially already be charged with reckless endangerment, as they may be endangering lives in the process. She expressed uncertainty but indicated that this was her understanding of the situation.

Rep. Vanderwende drew a distinction between unintentional acts of reckless endangerment, such as speeding past a fire truck, and intentional actions involving physical harm, like using a weapon or a brick to interfere with emergency vehicles. He implied that the latter would likely be considered more severe and intentional.

Ron Smith outlined different standards within the law, emphasizing that intent is a critical factor distinguishing between offenses. He explained that intentional acts, where the perpetrator deliberately causes harm, carry the highest standard and are specified in both Class G and Class E felony charges. Reckless behavior, on the other hand, implies a lower standard, where harm may occur unintentionally due to negligence. He clarified that negligence and recklessness are of lesser burden compared to intentional acts. The new language in the bill sets a high standard by requiring intent for the offense of interfering with authorized emergency vehicles.

Rep. Romer asked Rep. Vanderwende about the stakeholders involved in drafting the legislation.

Rep. Vanderwende replied that he collaborated with fire departments in his area.

Rep. Romer expressed concerns about the lack of consultation with other groups regarding the bill. She highlighted a broader pattern of bills related to emergency services being brought forward without engaging with all relevant stakeholders.

Rep. Vanderwende acknowledged that in the past when pieces of legislation faced opposition from groups like the Department of Justice, adjustments were made to address their concerns. He noted that since they hadn't heard any objections from such groups regarding this bill, he assumed it must have met their standards.

Rep. Spiegelman highlighted another aspect of the bill, noting that obstructing emergency vehicles not only prevents immediate response to a call but also hinders their ability to respond to future emergencies until the vehicle is repaired.

Rep. Vanderwende emphasized the practical challenges faced by fire departments when multiple vehicles are taken out of operation due to damage, such as broken windshields, which need time and resources for repair.

Rep. Griffith expressed concern about the disparity in penalties between damaging emergency vehicles and other property. She highlighted that punching someone in the face, resulting in physical harm, is considered a misdemeanor, while damaging emergency vehicles under the proposed bill could lead to a higher-grade felony. She proposed adjusting the felony grade to align with the severity of the offense and requested consultation with the Department of Justice to ensure comprehensive feedback on the legislation. She indicated willingness to support the bill if these adjustments were made, emphasizing the need for consistency and consideration of the specific context surrounding damage to emergency vehicles.

Rep. Phillips expressed uncertainty regarding the necessity of the proposed bill in light of existing laws and definitions.

Chair Griffith opened the floor for public comment.

Robert Overmiller and Jay Jones, Delaware Volunteer Firefighters Association provided testimony in support of the bill.

Javonne Rich, ACLU Delaware, and Alanna Mozeik, Office of Defense Services, provided testimony in opposition of the bill.

A motion was made by Rep. Spiegelman and seconded by Rep. Jones Giltner to release HB 323 from committee; motion failed. Yes = 5 (Cooke, Dukes, Jones Giltner, Spiegelman, Griffith); No = 3 (Lynn, Phillips, Romer); Absent = 3 (Shupe, Schwartzkopf, Dorsey Walker). The bill was released from committee with a F=2, M=4, U=0 vote.

Chair Griffith said that she would walk the bill.

Chair Griffith adjourned the meeting at 12:23 p.m.

Respectfully submitted by:

Wyatt Patterson

Attendance List

- Amelia Kramer
- Mariann Kenville-Moore, Delaware Coalition Against Domestic Violence
- Robert Overmiller
- Javonne Rich, ACLU Delaware
- Alanna Mozeik, Office of Defense Services
- Jay Jones, Delaware Volunteer Firefighters Association