

HF1370 - 0 - Deep Fake Technology; Crimes and Cause of Action

Chief Author: **Zack Stephenson**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/21/2023 3:27:26 PM**
 Lead Agency: **Sentencing Guidelines Comm**
 Other Agencies:
 Corrections Dept Public Defense Board
 Supreme Court

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
State Total						
	Total	-	-	-	-	-
	Biennial Total			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
	Total	-	-	-	-	-

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/21/2023 3:27:26 PM
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State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Fiscal Note

2023-2024 Legislative Session

HF1370 - 0 - Deep Fake Technology; Crimes and Cause of Action

Chief Author: **Zack Stephenson**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/21/2023 3:27:26 PM**
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 1 defines “deep fake” and establishes a cause of action, damages, and injunctions for nonconsensual dissemination of a deep fake under the newly codified Minn. Stat. § 604.32. This section is effective August 1, 2023, and applies to dissemination of a deep fake that takes place on or after that date.

Section 2 creates a misdemeanor offense for using deep fake technology to influence an election, to be codified at Minn. Stat. § 609.771. The offense is a felony with a 5-year statutory maximum if committed within five years of one or more prior convictions. The offense is a gross misdemeanor if committed with the intent to cause violence or bodily harm.

Section 3 creates a gross misdemeanor offense for nonconsensual dissemination of a deep fake depicting intimate parts or sexual acts. The offense is a felony with a 3-year statutory maximum if (1) the depicted person suffers financial loss due to the dissemination of the deep fake; (2) the actor disseminates the deep fake with intent to profit from the dissemination; (3) the actor maintains an Internet website, online service, online application, or mobile application for the purpose of disseminating the deep fake; (4) the actor posts the deep fake on a website; (5) the actor disseminates the deep fake with intent to harass the depicted person; (6) the actor obtained the deep fake by committing a violation of section 609.52, 609.746, 609.89, or 609.891; or (7) the actor has previously been convicted under this chapter.

Sections 2 and 3 are effective August 1, 2023, and apply to crimes committed on or after that date.

Assumptions

It is generally assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 are not a fair approximation of cases sentenced in the future. For this reason, 2019 case data are generally used to estimate impact. With respect to data about nonconsensual dissemination of private sexual images (Minn. Stat. § 617.261), however, it is assumed that legal uncertainty about the statute’s constitutionality, which was not resolved until the end of 2020, would have negatively impacted the quality of the data prior to 2021. For this offense, therefore, 2021 case data are used to estimate impact.

One of the responsibilities of the Commission is to assign severity-level (SL) rankings to new felony offenses passed by the Legislature. The Commission bases its decisions, in part, on the level of harm caused and the culpability of the person. The statutory maximum is also considered.

With respect to section 2, it is assumed that the Commission will leave the offense unranked, like violations of Minn. Stat. § 211B.15. It is assumed that the new offense proscribes behavior that is generally subject to the gross misdemeanor and misdemeanor penalties of Minn. Stat. § 211B.06, banning false political and campaign material. According to the Minn. Judicial Branch, between 2018 and 2022, there were no criminal charges filed. Therefore, it is assumed that the number of repeat felony uses of deep fake technology to influence an election will be minimal or none.

With respect to section 3, the new offense is assumed to be similar, both in terms of elements and penalties, to Minn. Stat. § 617.261, the statute banning nonconsensual dissemination of private sexual images, or “revenge porn.” It is assumed

that the Commission will rank the new offense similarly, at SL 3. MSGC has no information as to whether the deep-fake revenge porn banned by the bill will be more or less common than the revenge porn now banned by § 617.261. Plausible reasons exist to assume that the new deep-fake revenge porn offense will be both more common (the offense may be committed without possessing the victim's private sexual images, and thus may be committed by people with no intimate connection to the victim) and less common (technological hurdles; those with an intimate connection to the victim may be the most motivated to commit the offense) than the existing revenge-porn offense. Without a firm basis for a contrary assumption, it is assumed that the new offense will be sentenced approximately as frequently as Minn. Stat. § 617.261 was sentenced in 2021, and with a similar distribution of gross misdemeanor and felony sentences.

According to MSGC Monitoring Data, in 2021, there were six felony cases of nonconsensual dissemination of private sexual images under Minn. Stat. § 617.261 sentenced, none of which received a prison sentence. Five of the six probation cases (83.3%) received local confinement as a condition of probation. The average pronounced confinement time was 38 days. According to the Minn. Judicial Branch, in 2021, there were nine gross misdemeanor cases of nonconsensual dissemination of private sexual images under Minn. Stat. § 617.261 sentenced.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Because it is assumed that none of the additional six felony cases sentenced per year will be prison commitments, it is estimated that there will be no long-term fiscal considerations.

Local Fiscal Impact

It is estimated that there will be minimal local government fiscal impact: 1 local bed statewide. Because it is assumed that there will be an additional six felony cases that will receive "stayed" probationary sentences, and it is assumed that 83.3 percent of them will receive local confinement as a condition of probation, it is expected that this will result in four felony probationers receiving conditional confinement in a local jail or workhouse for an average 38 days resulting in the need for less than one local bed needed statewide. (This assumes people serve 2/3 of the pronounced jail sentence (25 days); (4 cases x 25 days to serve = 100) ÷ 365 days = 0.27 local beds.)

Based on the above assumptions, there will be nine new gross misdemeanor cases which will require local gross misdemeanor supervision and may receive local confinement as a condition of their sentences. The rate of confinement is unknown and the average confinement time is unknown. However, for example, if more than half the new cases (6 cases) each received 30-days' confinement (serve 2/3 = 20 days) as a result of their probation sentences, the impact would be less than one local bed statewide ((6 cases × 20) ÷ 365 = 0.32 local beds)).

References/Sources

State v. Casillas, 938 N.W.2d 74 (Minn. Ct. App. Dec. 23, 2019) (holding Minn. Stat. § 617.261 unconstitutional), *reversed*, 952 N.W.2d 629 (Minn. Dec. 30, 2020).

Minn. Judicial Branch, 2018-2022, retrieved 2/6/2023 at <https://mncourts.gov/Help-Topics/Court-Statistics/District-Court-Criminal-Charges-Data.aspx>.

2021 MSGC Monitoring data.

Agency Contact:

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HF1370 - 0 - Deep Fake Technology; Crimes and Cause of Action

Chief Author: **Zack Stephenson**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/21/2023 3:27:26 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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	Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
	Total	-	-	-	-	-
	Biennial Total			-		-
2 - Revenues, Transfers In*						
	Total	-	-	-	-	-
	Biennial Total			-		-

Bill Description

H.F. 1370 establishes a cause of action for nonconsensual dissemination of deep-fake sexual images, establishes a crime for using deep-fake technology to influence an election, and establishes a crime for nonconsensual dissemination of deep-fake sexual images.

Assumptions

The Minnesota Sentencing Guidelines Commission estimates minimal impact on correctional resources.

Expenditure and/or Revenue Formula

N/A

Long-Term Fiscal Considerations

N/A

Local Fiscal Impact

The commission estimates a minimal local government fiscal impact of one local bed statewide.

References/Sources

Department of Corrections staff
Minnesota Sentencing Guidelines Commission

Agency Contact:

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HF1370 - 0 - Deep Fake Technology; Crimes and Cause of Action

Chief Author: **Zack Stephenson**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/21/2023 3:27:26 PM**
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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Full Time Equivalent Positions (FTE)	Biennium			Biennium	
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LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/14/2023 3:14:53 PM
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Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF 9013 defines deep fake technology as a video, sound, film, or photograph that authentically depict a person’s speech or conduct using technological means.

Section 2 of the bill would prohibit the dissemination of deep technology with the intent to influence an election. A person convicted of an offense under this section within 5 years of a similar offense is subject to a five year felony. A convicted of a violation with intent to cause violence or bodily harm is guilty of a misdemeanor and may incarcerated for up to a year. In other cases, a person would be subject to up to 90 days of incarceration.

Section 3 of the bill makes it a crime for nonconsensual dissemination of deep fake technology depicting intimate body parts or a sex act if the person disseminating the deep fake technology knew or reasonably should have known that the person depicted did not consent to the dissemination. A person convicted under this section is subject to a gross misdemeanor.

A person convicted of disseminating the deep fake technology that results in financial loss to the person depicted, derives a profit from dissemination, maintains a website or other on line presence, posts the deep face technology, disseminates with intent to harass the person depicted, or has previously been convicted of theft, interference with privacy, computer theft, unauthorized computer access or a second violation under this section is subject to a 3 year felony.

Assumptions

There does not appear to be a significant impact on cases or workloads as a result of this bill.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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HF1370 - 0 - Deep Fake Technology; Crimes and Cause of Action

Chief Author: **Zack Stephenson**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/21/2023 3:27:26 PM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/21/2023 3:18:27 PM
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Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF1370 adds 3 new statutes: 1) Minn. Stat. § 604.32, which creates a civil cause of action for nonconsensual dissemination of “deep fake” recordings, images, or technological depictions of intimate parts or sexual acts; 2) Minn. Stat. § 609.771, which makes it a crime to use deep fake technology to influence an election; and 3) Minn. Stat. § 617.262, which makes nonconsensual dissemination of deep fake depictions of intimate parts or sexual acts a crime.

Assumptions

It is assumed that the provisions of this bill may increase civil and criminal case filings. It is assumed that the case filing rates would be relatively low based on the requirement that the material appear to authentically depict another and be produced by technical means, which requires a high level of technical sophistication, as well as the current filing rate for criminal nonconsensual dissemination under section 617.261, which based on the last 2 years of judicial branch data is an average of 72 cases statewide per year, fewer than one per county.

Expenditure and/or Revenue Formula

This bill is not anticipated to have a significant fiscal impact on the judicial branch.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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