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Testimony before the Senate Committee on Judiciary and Public Safety

Senator André Jacque
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Chairman Wanggaard and Colleagues:

Thank you for the opportunity to testify as the author in support of Senate Bill 553, which updates state law to protect victims from artificially made 'deep fake' pornography.

As the capabilities of artificial intelligence (AI) become more and more advanced, bad actors are increasingly using artificially generated sexually explicit images to harass and intimidate innocent people online. A study from the cybersecurity company Deeptrace found that about 96% of "deep fake" material is non-consensual pornography. This legislation would strengthen and modernize Wisconsin law by making it a felony to create, store, reproduce, or disseminate sexually explicit deep fakes without the consent of the person who is being depicted. The bill would also make it a misdemeanor to reproduce sexually explicit "private images," which are voluntarily taken but not intended to be shared widely.

Current state law prohibits non-consensual creation and dissemination of representations depicting nudity (s. 942.09 Stats.), but does not directly address the unauthorized creation of sexually explicit images known as "deep fakes," which, for example, use an existing picture of a person's face to create a new, hyper-realistic pornographic image. This bill would protect against a new and disturbing form of cyber-abuse and ensure that all Wisconsinites can feel comfortable sharing regular images of themselves online without fearing that those images will be manipulated or corrupted into pornography.

This bill would also strengthen and update Wisconsin law by making it a felony to hack, intercept, or otherwise steal sexually explicit images from someone's phone or other digital devices. Current state law does not specifically prohibit someone from obtaining an intimate image voluntarily taken by another person on their phone who has not shared it with anyone else.

This proposal is an update of 2021 Senate Bill 987 with the following revisions:

- This draft would also make reproducing a deep fake a Class I felony, as opposed to a Class A misdemeanor, to align with current penalties for "intimate representations," which are created without consent, as opposed to "private representations," which are created consensually, but only intended to be shared among specific individuals.

- This draft creates a new definition of "synthetic intimate representation," rather than relying on current definitions of "intimate representation," to make sure that images that appear to be sexually explicit but that do not depict actual physical body parts are covered under the law.

- This draft requires that the person who created or shared the image intended to coerce, harass, or intimidate the depicted person in order for them to be convicted, addressing First Amendment concerns.

Thank you for your consideration of Senate Bill 553. I'm happy to answer any questions.