

Benjamin Bouchard
BAR HARBOR
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My name is Benjamin Bouchard of Bar Harbor and I am writing to testify my concern over the wording of some portions of section 4 of this otherwise excellent bill.

CSA is a very important subject to me due to having family, friends, and domestic partners past and present who have been victims of CSA, and it has scarred them deeply. While most of this bill wisely specifies "identifiable child" in its provisions such that fictional depictions generated by AI are included, Section 4 paragraph A-1 (line 7 of page 6) and several further times from that point onward merely use the term "depicts" or "appears to depict" which extends into the realm of fictional depictions of fictional persons or characters, and this is where my concern lies, as it makes victimless acts criminal and, despite efforts to account for it, opens a dangerous dynamic of policing artwork of fictitious persons or characters in the process.

In law it is unfortunately common to find criminalization of victimless acts, and in the cases in which "depicts" or "appears to depict" are used instead of "identifiable child" it raises the question of who is the victim, and who is being protected, and how? It is absolutely vital that real human beings be protected from images of actual abuse or depictions of the simulated abuse of actual people, and there is a clear victim in those cases. However, given that there is no actual victim in the case of fictional materials, it seems at odds with the overall noble goal of this bill to criminalize a broad category of "depictions" of fictional persons. Our ultimate goal is protections FOR real people FROM real people. While the majority of this bill successfully makes this distinction, it is in those few portions its wording strays from the correctly exacting into the woefully broad-reaching.

Human morphology has a broad range. In the real world there are many fully adult persons who are, throughout the majority of their adult lives, mistaken for being minors for various reasons, including short stature, extraordinarily youthful facial features and/or proportions or bodily structure, vocal conditions that cause them to have child-like voices, and so on, and these constant confusions by the general populace are a great source of discomfort for those very real people. These people exist, and have sexual lives, and their constant infantilization by others is a constant source of insecurity. Part of inclusivity in artwork includes diversity of depictions of the human form, including in artwork that is intended as erotic or explicit, and while many works within that realm may be something that an average person would consider as "obscene" under the definitions of the documents here, those who are artists in the space and their audiences alike consider sexual expression and exploration a healthy activity, and sexuality as an intrinsic aspect of humanity and the human experience. Rendering criminal any depiction that could incorrectly be perceived as depicting a minor would have a chilling effect on artistic works that explore this aspect, making depictions of persons with slender builds, less prominent busts, and so on, a grey area, and therefore a potential liability, and things get even more grey when entering the deeper realms of fiction where the subject matter escapes the bounds of reality and involves fictional species like elves, halflings, or similar that may have body types outside the bounds of conventional human depictions, and raises questions as to how such things would even be determined if judged. Despite the provisions for works of artistic merit, the mere possibility of liability is worrisome enough to dissuade exploration of themes that may deal with these subjects. Real people have real ages and real bodies that can be used as the basis for determining the depicted age of the work in question, but we cannot meaningfully do this with fictional subjects that are works of the human imagination. On top of all of this, there is the matter of the influence that art style and technical skill may exert on a given artwork and may cause ambiguity that is a danger to the artist as a result of the unnecessary policing of works of fiction.

All in all, these factors considered, I believe the bill as-written should be revised such that all portions of it pertain to depictions of actual and identifiable persons. This resolves the issue of criminalization of victimless acts while preserving the protections against the improper usage of one's likeness in AI-generated images OR human generated artworks.