



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Virginia General Assembly
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Synthetic Digital Content Workgroup Report per Chapter 407 Enactment Clause 2

Dear Members of the Virginia General Assembly,

Pursuant to the enactment of SB1053 and HB2124, the Office of the Attorney General convened a multidisciplinary workgroup to examine the implementation and practical implications of Virginia's newly enacted synthetic digital content provisions. This report summarizes the workgroup's discussions, identifies key issues related to enforcement and prosecution, and highlights considerations for the Commonwealth as generative technologies continue to evolve.

Overview

In September, the Office of the Attorney General convened a multidisciplinary workgroup to examine the implementation and implications of the synthetic digital content provisions enacted under SB1053 and HB2124. The workgroup was composed of representatives from the Virginia State Police, the Chief Information Officer of the Commonwealth, staff from the Joint Commission on Technology and Science, a designee of Senator Adam Ebbin, Delegate Michelle Maldonado and her designee, two Commonwealth's Attorneys, and two private sector experts with relevant technical and legal expertise.

The workgroup met on three occasions to discuss the scope, enforcement, and practical impact of the newly enacted criminal penalty related to synthetic digital content. These meetings facilitated robust and constructive dialogue among stakeholders with diverse perspectives, including law enforcement, policymakers, prosecutors, technologists, and legal experts.

Through these discussions, the workgroup identified several significant challenges associated with implementing and enforcing the new statutory provisions. In particular, members highlighted complexities related to defining synthetic digital content with sufficient precision, distinguishing lawful from unlawful uses, assessing evidentiary standards, and keeping pace with rapidly evolving generative technologies. While the workgroup generally supported the legislative intent to address harmful uses of synthetic media, the discussions underscored the inherent difficulty of regulating an emerging and fast changing technological landscape in a manner that is both effective and constitutionally sound.

Key Issues

The statute establishes a separate Class 1 misdemeanor offense when synthetic digital media is used in the commission of fraud. Because the offense is distinct from the underlying fraud, the Commonwealth must prove each element of the synthetic digital media offense in addition to all elements of the underlying fraudulent conduct. In practice, this statutory structure presents several challenges for enforcement and prosecution.

First, the misdemeanor classification limits the practical impact of the offense. Many fraud offenses to which the statute would apply are already classified as felonies. As a result, charging an additional Class 1 misdemeanor is unlikely to meaningfully affect sentencing outcomes when a defendant is convicted of an underlying felony fraud offense. This dynamic diminishes the incentive to pursue the additional charge, particularly where doing so would increase evidentiary burdens and litigation complexity without a corresponding impact on punishment.

Second, establishing that fraud was committed through the use of synthetic digital media presents significant evidentiary hurdles. Experts in the field have indicated that reliably determining whether digital media is synthetic remains difficult and, in many cases, uncertain. Even where such a determination may be possible, it would almost certainly require expert testimony. This requirement would add complexity, expense, and delay to prosecutions, making the additional offense challenging to charge and prove in practice.

Third, existing criminal statutes already provide effective tools to prosecute fraud and secure justice for victims. These statutes focus on the core harm caused by fraudulent conduct, regardless of the technological means employed. From an enforcement perspective, proof that synthetic digital media was used is not necessary to establish criminal liability or to hold offenders accountable under current law.

Given these considerations, the workgroup identified potential structural alternatives for legislative consideration. One option would be to elevate the offense classification so that it more closely aligns with the seriousness and complexity of cases involving synthetic digital media. Another option would be to incorporate the use of synthetic digital media as a sentencing enhancement or as an aggravating factor within existing felony fraud statutes or sentencing guidelines. Either approach could better address the conduct at issue while avoiding many of the practical challenges associated with charging a standalone **misdemeanor offense**.

Looking Ahead

The workgroup reached consensus that as generative content technologies continue to advance, the Commonwealth will increasingly benefit from developing dedicated subject matter expertise focused on artificial intelligence and synthetic digital content, particularly as these technologies intersect with criminal conduct. The rapid pace of innovation in this area presents ongoing challenges for law enforcement, prosecutors, and policymakers, underscoring the importance of building institutional capacity to understand, identify, and respond to emerging technological threats.

During the workgroup's discussions, three state agencies were identified as potential candidates to serve as a centralized source of expertise on the criminal implications of artificial intelligence and synthetic digital content: the Office of the Attorney General, the Department of Forensic Science, and the Virginia State Police. Each of these agencies currently engages with technology driven criminal investigations and has experience with cybercrime, digital evidence, or complex technical matters.

Among the agencies discussed, the Virginia State Police expressed the greatest interest in assuming such a role and were viewed by the workgroup as being particularly well positioned to do so, given their existing investigative infrastructure, statewide jurisdiction, and experience supporting complex criminal investigations. Participants emphasized, however, that assuming responsibility as the Commonwealth's primary subject matter expert in this area would require additional resources and sustained investment. In particular, the tools and software used to detect and analyze synthetic digital content are costly, and effective use of those tools requires specialized training and technical expertise.

The workgroup noted that designating and appropriately resourcing a state agency to develop expertise in artificial intelligence and synthetic digital content could significantly enhance the Commonwealth's ability to enforce any future synthetic digital media offenses. A centralized expert agency with sufficient staffing, technology, and training could assist law enforcement and prosecutors across the Commonwealth and, when appropriate, serve as expert witnesses in court proceedings. Developing this capacity could help address several of the evidentiary challenges identified by the workgroup and support more effective charging and prosecution of offenses involving synthetic digital media as the technology continues to evolve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason S. Miyares".

Jason S. Miyares
Attorney General of Virginia