

By: Flores, et al.
(Capriglione)

S.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the criminal offense of possession or promotion of obscene visual material appearing to depict a child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.235 to read as follows:

Sec. 43.235. POSSESSION OR PROMOTION OF OBSCENE VISUAL MATERIAL APPEARING TO DEPICT CHILD. (a) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes obscene visual material containing a depiction that appears to be of a child younger than 18 years of age engaging in activities described by Section 43.21(a)(1)(B), regardless of whether the depiction is an image of an actual child, a cartoon or animation, or an image created using an artificial intelligence application or other computer software.

(c) An offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted

1 one time of an offense under this section or Section 43.23, 43.26,
2 43.261, or 43.262; or

3 (2) a felony of the second degree if it is shown on the
4 trial of the offense that the person has been previously convicted
5 two or more times of an offense under this section, Section 43.23,
6 43.26, 43.261, or 43.262, or any combination of those offenses.

7 (d) If conduct constituting an offense under this section
8 also constitutes an offense under another law, the actor may be
9 prosecuted under this section, the other law, or both.

10 SECTION 2. Section 3.03(b), Penal Code, is amended to read
11 as follows:

12 (b) If the accused is found guilty of more than one offense
13 arising out of the same criminal episode, the sentences may run
14 concurrently or consecutively if each sentence is for a conviction
15 of:

16 (1) an offense:

17 (A) under Section 49.07 or 49.08, regardless of
18 whether the accused is convicted of violations of the same section
19 more than once or is convicted of violations of both sections; or

20 (B) for which a plea agreement was reached in a
21 case in which the accused was charged with more than one offense
22 listed in Paragraph (A), regardless of whether the accused is
23 charged with violations of the same section more than once or is
24 charged with violations of both sections;

25 (2) an offense:

26 (A) under Section 33.021 or an offense under
27 Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed

1 against a victim younger than 17 years of age at the time of the
2 commission of the offense regardless of whether the accused is
3 convicted of violations of the same section more than once or is
4 convicted of violations of more than one section; or

5 (B) for which a plea agreement was reached in a
6 case in which the accused was charged with more than one offense
7 listed in Paragraph (A) committed against a victim younger than 17
8 years of age at the time of the commission of the offense regardless
9 of whether the accused is charged with violations of the same
10 section more than once or is charged with violations of more than
11 one section;

12 (3) an offense:

13 (A) under Section 21.15 or 43.26, regardless of
14 whether the accused is convicted of violations of the same section
15 more than once or is convicted of violations of both sections; or

16 (B) for which a plea agreement was reached in a
17 case in which the accused was charged with more than one offense
18 listed in Paragraph (A), regardless of whether the accused is
19 charged with violations of the same section more than once or is
20 charged with violations of both sections;

21 (4) an offense for which the judgment in the case
22 contains an affirmative finding under Article 42.0197, Code of
23 Criminal Procedure;

24 (5) an offense:

25 (A) under Section 20A.02, 20A.03, or 43.05,
26 regardless of whether the accused is convicted of violations of the
27 same section more than once or is convicted of violations of more

1 than one section; or

2 (B) for which a plea agreement was reached in a
3 case in which the accused was charged with more than one offense
4 listed in Paragraph (A), regardless of whether the accused is
5 charged with violations of the same section more than once or is
6 charged with violations of more than one section;

7 (6) an offense:

8 (A) under Section 22.04(a)(1) or (2) or Section
9 22.04(a-1)(1) or (2) that is punishable as a felony of the first
10 degree, regardless of whether the accused is convicted of
11 violations of the same section more than once or is convicted of
12 violations of more than one section; or

13 (B) for which a plea agreement was reached in a
14 case in which the accused was charged with more than one offense
15 listed in Paragraph (A) and punishable as described by that
16 paragraph, regardless of whether the accused is charged with
17 violations of the same section more than once or is charged with
18 violations of more than one section; ~~or~~

19 (7) an offense under Section 43.235 or an offense for
20 which a plea agreement was reached in a case in which the accused
21 was charged with more than one offense under Section 43.235; or

22 (8) any combination of offenses listed in Subdivisions
23 (1)-(7) [~~(1)-(6)~~].

24 SECTION 3. Section 71.02(a), Penal Code, as amended by
25 Chapters 269 (S.B. 224), 369 (H.B. 1442), 462 (S.B. 1900), 885 (H.B.
26 4635), and 910 (H.B. 6), Acts of the 88th Legislature, Regular
27 Session, 2023, is reenacted and amended to read as follows:

1 (a) A person commits an offense if, with the intent to
2 establish, maintain, or participate in a combination or in the
3 profits of a combination or as a member of a criminal street gang or
4 foreign terrorist organization, the person commits or conspires to
5 commit one or more of the following:

6 (1) murder, capital murder, arson, aggravated
7 robbery, robbery, burglary, theft, aggravated kidnapping,
8 kidnapping, aggravated assault, aggravated sexual assault, sexual
9 assault, continuous sexual abuse of young child or disabled
10 individual, solicitation of a minor, forgery, deadly conduct,
11 assault punishable as a Class A misdemeanor, burglary of a motor
12 vehicle, or unauthorized use of a motor vehicle;

13 (2) any gambling offense punishable as a Class A
14 misdemeanor;

15 (3) promotion of prostitution, aggravated promotion
16 of prostitution, or compelling prostitution;

17 (4) unlawful manufacture, transportation, repair, or
18 sale of firearms or prohibited weapons;

19 (5) unlawful manufacture, delivery, dispensation, or
20 distribution of a controlled substance or dangerous drug, or
21 unlawful possession of a controlled substance or dangerous drug:

22 (A) through forgery, fraud, misrepresentation,
23 or deception; or

24 (B) with the intent to deliver the controlled
25 substance or dangerous drug;

26 (5-a) causing the unlawful delivery, dispensation, or
27 distribution of a controlled substance or dangerous drug in

violation of Subtitle B, Title 3, Occupations Code;

~~[(5-b) any unlawful possession with intent to deliver
a controlled substance or dangerous drug;~~

~~[(5-b) unlawful possession with intent to deliver a
controlled substance listed in Penalty Group 1-B under Section
481.1022, Health and Safety Code,]~~

(6) any unlawful wholesale promotion or possession of
any obscene material or obscene device with the intent to wholesale
promote the same;

(7) any offense under Subchapter B, Chapter 43,
depicting or involving conduct by or directed toward a child
younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or
38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 43.235;

(17) any offense under Section 46.06(a)(1) or 46.14;

(18) ~~[(17)]~~ any offense under Section 20.05, 20.06, or
20.07;

(19) ~~[(18)]~~ any offense under Section 16.02;

(20) ~~[(19)]~~ any offense punishable under Section

1 42.03(d) or (e);

2 (21) [~~(19)~~] an offense under Section 28.03 that is
3 punishable under Subsection (b)(4)(E) of that section;

4 (22) [~~(20)~~] an offense under Section 31.21 that is
5 punishable under Subsection (d) of that section; [~~or~~]

6 (23) [~~(20)~~] any offense classified as a felony under
7 the Tax Code; or

8 (24) [~~(21)~~] any offense under Section 545.420,
9 Transportation Code.

10 SECTION 4. The change in law made by this Act applies only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 governed by the law in effect on the date the offense was committed,
14 and the former law is continued in effect for that purpose. For
15 purposes of this section, an offense was committed before the
16 effective date of this Act if any element of the offense occurred
17 before that date.

18 SECTION 5. This Act takes effect September 1, 2025.