

By: Huffman, et al.

S.B. No. 1621

A BILL TO BE ENTITLED

AN ACT

relating to prosecution and punishment of certain criminal offenses prohibiting sexually explicit visual material involving depictions of children, computer-generated children, or other persons; creating criminal offenses; increasing criminal penalties.

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

SECTION 1. Section 43.26, Penal Code, is amended by amending Subsections (a), (e), (g), and (h) and adding Subsections (a-1), (a-2), (c-1), (c-2), (c-3), (c-4), (e-1), (f), (g-1), (h-1), and (h-2) to read as follows:

(a) In this section:

(1) "Depiction of a child" means, with respect to an image of a child contained in visual material:

(A) a depiction of a child who was younger than 18 years of age at the time the image of the child was made; or

(B) a depiction of a child:

(i) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(ii) whose image as a child younger than 18 years of age was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence

1 application or other computer software.

2 (2) "Depiction of a computer-generated child" means,
3 with respect to an image of a child contained in visual material, a
4 depiction:

5 (A) appearing to be a child younger than 18 years
6 of age;

7 (B) created using an artificial intelligence
8 application or other computer software; and

9 (C) that to a reasonable person is virtually
10 indistinguishable from an actual child younger than 18 years of
11 age.

12 (3) "Promote" and "sexual conduct" have the meanings
13 assigned by Section 43.25.

14 (4) "School library" means a library of a public or
15 private primary or secondary school.

16 (5) "Visual material" means:

17 (A) any film, photograph, videotape, negative,
18 or slide or any photographic reproduction that contains or
19 incorporates in any manner any film, photograph, videotape,
20 negative, or slide; or

21 (B) any disk, diskette, or other physical medium,
22 or a file in any digital format, that allows an image to be
23 displayed on a computer or other video screen and any image
24 transmitted to a computer or other video screen by telephone line,
25 cable, satellite transmission, or other method.

26 (a-1) A person commits an offense if:

27 (1) the person intentionally or knowingly [~~or~~

1 ~~intentionally~~] possesses, or [~~knowingly or~~] intentionally or
2 knowingly accesses with intent to view, visual material that
3 contains a visual depiction of [~~visually depicts~~] a child [~~younger~~
4 ~~than 18 years of age at the time the image of the child was made who~~
5 ~~is~~] engaging in sexual conduct, including a depiction of a child
6 engaging [~~who engages~~] in sexual conduct as a victim of an offense
7 under Section 20A.02(a)(5), (6), (7), or (8); and

8 (2) the person knows or should have known that the
9 depiction [~~material depicts the child as~~] described by Subdivision
10 (1) is of a child younger than 18 years of age at the time the image
11 of the child was made.

12 (a-2) A person commits an offense if the person:

13 (1) intentionally or knowingly possesses, or
14 intentionally or knowingly accesses with intent to view, visual
15 material that contains a visual depiction of a computer-generated
16 child engaging in sexual conduct; and

17 (2) either:

18 (A) knows or should have known that the depiction
19 described by Subdivision (1) appears to be of a child younger than
20 18 years of age; or

21 (B) believes that the depiction is of an actual
22 child younger than 18 years of age at the time the image of the child
23 was made.

24 (c-1) An offense under Subsection (a-1) is a felony of the
25 third degree, except that the offense is:

26 (1) a felony of the second degree if it is shown on the
27 trial of the offense that the actor:

1 (A) has been previously convicted one time of an
2 offense:

3 (i) under this chapter; or
4 (ii) described by Article 62.001(5), Code
5 of Criminal Procedure; or

6 (B) possesses visual material that contains 10 or
7 more visual depictions of a child engaging in sexual conduct as
8 described by Subsection (a-1)(1) but fewer than 50 such depictions;

9 (2) a felony of the first degree if it is shown on the
10 trial of the offense that the actor:

11 (A) has been previously convicted two or more
12 times of an offense, or any combination of offenses:

13 (i) under this chapter; or
14 (ii) described by Article 62.001(5), Code
15 of Criminal Procedure; or

16 (B) possesses visual material that contains:

17 (i) 50 or more visual depictions of a child
18 engaging in sexual conduct as described by Subsection (a-1)(1); or

19 (ii) a videotape or film that visually
20 depicts conduct constituting an offense under Section
21 22.011(a)(2); or

22 (3) a felony of the first degree punishable by
23 imprisonment in the Texas Department of Criminal Justice for life
24 or for any term of not more than 99 years or less than 25 years if it
25 is shown on the trial of the offense that:

26 (A) at the time of the offense, the actor was:

27 (i) an employee at a child-care facility or

1 a residential child-care facility, as those terms are defined by
2 Section 42.002, Human Resources Code;

3 (ii) an employee at a residential treatment
4 facility established under Section 221.056, Human Resources Code;

5 (iii) an employee at a shelter or facility
6 that serves youth and that receives state funds; or

7 (iv) receiving state funds for the care of a
8 child depicted by the visual material; or

9 (B) the actor displayed the visual material or
10 caused the visual material to be displayed in a school library.

11 (c-2) If it is shown on the trial of an offense under
12 Subsection (a-1) that the visual material contained a depiction of
13 a child younger than 10 years of age at the time the image of the
14 child was made engaging in sexual conduct as described by Section
15 (a-1)(1):

16 (1) an offense punishable under Subsection (c-1) as a
17 felony of the second or third degree is increased to the next higher
18 category of offense; or

19 (2) the minimum term of confinement for an offense
20 described for purposes of punishment by Subsection (c-1)(2) is
21 increased to 15 years.

22 (c-3) An offense under Subsection (a-2) is a state jail
23 felony, except that the offense is:

24 (1) a felony of the third degree if it is shown on the
25 trial of the offense that the actor:

26 (A) has been previously convicted one time of an
27 offense:

1 (i) under this chapter; or
2 (ii) described by Article 62.001(5), Code
3 of Criminal Procedure; or

4 (B) possesses visual material that contains 10 or
5 more visual depictions of a computer-generated child engaging in
6 sexual conduct as described by Subsection (a-2)(1) but fewer than
7 50 such depictions;

8 (2) a felony of the second degree if it is shown on the
9 trial of the offense that the actor:

10 (A) has been previously convicted two or more
11 times of an offense, or any combination of offenses:

12 (i) under this chapter; or
13 (ii) described by Article 62.001(5), Code
14 of Criminal Procedure; or

15 (B) possesses visual material that contains 50 or
16 more visual depictions of a computer-generated child engaging in
17 sexual conduct as described by Subsection (a-2)(1); or

18 (3) a felony of the second degree with a minimum term
19 of imprisonment of 10 years if it is shown on the trial of the
20 offense that:

21 (A) at the time of the offense, the actor was an
22 employee described by Subsection (c-1)(3)(A)(i), (ii), or (iii); or

23 (B) the actor displayed the visual material or
24 caused the visual material to be displayed in a school library.

25 (c-4) If it is shown on the trial of an offense under
26 Subsection (a-2) that the visual material contained a depiction of
27 a computer-generated child who appears to be younger than 10 years

1 of age and is engaging in sexual conduct as described by Subsection
2 (a-2)(1), the punishment for the offense is increased to the
3 punishment for the next higher category of offense, provided that
4 the minimum term of imprisonment for an offense described for
5 purposes of punishment by Subsection (c-3)(3) is 10 years.

6 (e) A person commits an offense if:

7 (1) the person intentionally or knowingly [~~or~~
8 ~~intentionally~~] promotes or possesses with intent to promote visual
9 material described by Subsection (a-1)(1) [~~(a)(1)~~]; and

10 (2) the person knows or should have known that the
11 depiction [~~material depicts the child as~~] described by Subsection
12 (a-1)(1) is of a child younger than 18 years of age at the time the
13 image of the child was made [~~(a)(1)~~].

14 (e-1) A person commits an offense if the person:

15 (1) intentionally or knowingly promotes or possesses
16 with intent to promote visual material described by Subsection
17 (a-2)(1); and

18 (2) either:

19 (A) knows or should have known that the depiction
20 described by Subsection (a-2)(1) appears to be of a child younger
21 than 18 years of age; or

22 (B) believes that the depiction is of an actual
23 child younger than 18 years of age at the time the image of the child
24 was made.

25 (f) In the prosecution of an offense under Subsection (a-1)
26 or (e):

27 (1) the state is not required to prove the identity of

1 the child in the depiction described by Subsection (a-1)(1); and
2 (2) there is a rebuttable presumption that the
3 depiction is of an actual child, as described by Subsection
4 (a)(1)(A) or (B), and not of a computer-generated child, as
5 described by Subsection (a)(2).

6 (g) An offense under Subsection (e) is a felony of the
7 second degree, except that the offense is:

8 (1) a felony of the first degree if it is shown on the
9 trial of the offense that the actor:

10 (A) [~~person~~] has been previously convicted one or
11 more times of an offense:

12 (i) under this chapter; or

13 (ii) described by Article 62.001(5), Code
14 of Criminal Procedure;

15 (B) promotes or possesses with intent to promote
16 visual material that contains 10 or more visual depictions of a
17 child engaging in sexual conduct as described by Subsection
18 (a-1)(1) but fewer than 50 such depictions; or

19 (C) promotes or possesses with intent to promote
20 visual material that contains one or more visual depictions of a
21 child who appears to be younger than 10 years of age and is engaging
22 in sexual conduct as described by Subsection (a-1)(1); or

23 (2) a felony of the first degree with a minimum term of
24 imprisonment of 15 years if it is shown on the trial of the offense
25 that the actor promotes or possesses with intent to promote visual
26 material that contains:

27 (A) 50 or more visual depictions of a child

1 engaging in sexual conduct as described by Subsection (a-1)(1); or
2 (B) a videotape or film that visually depicts
3 conduct constituting an offense under Section 22.011(a)(2) with
4 respect to a depiction of a child [~~that subsection~~].

5 (g-1) An offense under Subsection (e-1) is a felony of the
6 third degree, except that the offense is:

7 (1) a felony of the second degree if it is shown on the
8 trial of the offense that the person:

9 (A) has been previously convicted one or more
10 times of an offense:

11 (i) under this chapter; or

12 (ii) described by Article 62.001(5), Code
13 of Criminal Procedure;

14 (B) promotes or possesses with intent to promote
15 visual material that contains 10 or more visual depictions of a
16 computer-generated child engaging in sexual conduct as described by
17 Subsection (a-2)(1); or

18 (C) promotes or possesses with intent to promote
19 visual material that contains one or more visual depictions of a
20 computer-generated child who appears to be younger than 10 years of
21 age and is engaging in sexual conduct as described by Subsection
22 (a-2)(1); or

23 (2) a felony of the second degree with a minimum term
24 of imprisonment of 10 years if it is shown on the trial of the
25 offense that the person promotes or possesses with intent to
26 promote visual material that contains 50 or more visual depictions
27 of a computer-generated child engaging in sexual conduct as

1 described by Subsection (a-2)(1).

2 (h) It is a defense to prosecution under this section
3 [~~Subsection (a) or (e)~~] that the actor is a law enforcement officer
4 or a school administrator who:

5 (1) possessed or accessed the visual material in good
6 faith solely as a result of an allegation of a violation of Section
7 [43.261](#);

8 (2) allowed other law enforcement or school
9 administrative personnel to possess or access the material only as
10 appropriate based on the allegation described by Subdivision (1);
11 and

12 (3) took reasonable steps to destroy the material
13 within an appropriate period following the allegation described by
14 Subdivision (1).

15 (h-1) It is an affirmative defense to prosecution under this
16 section that the conduct was for a bona fide educational, medical,
17 psychological, psychiatric, judicial, law enforcement, or
18 legislative purpose.

19 (h-2) It is an affirmative defense to prosecution under
20 Subsection (a-2) or (e-1) that the actor is not more than two years
21 older than the depicted child.

22 SECTION 2. Article [38.45](#)(a), Code of Criminal Procedure, is
23 amended to read as follows:

24 (a) During the course of a criminal hearing or proceeding,
25 the court may not make available or allow to be made available for
26 copying or dissemination to the public property or material:

27 (1) that constitutes child pornography, as described

1 by Section 43.26(a-1)(1) or (a-2)(2) [~~43.26(a)(1)~~], Penal Code;

2 (2) the promotion or possession of which is prohibited
3 under Section 43.261, Penal Code; or

4 (3) that is described by Section 2 or 5, Article
5 38.071, of this code.

6 SECTION 3. Article 39.15(a), Code of Criminal Procedure, is
7 amended to read as follows:

8 (a) In the manner provided by this article, a court shall
9 allow discovery under Article 39.14 of property or material:

10 (1) that constitutes child pornography, as described
11 by Section 43.26(a-1)(1) or (a-2)(2) [~~43.26(a)(1)~~], Penal Code;

12 (2) the promotion or possession of which is prohibited
13 under Section 43.261, Penal Code; or

14 (3) that is described by Section 2 or 5, Article
15 38.071, of this code.

16 SECTION 4. Section 21.16(a)(5), Penal Code, is amended to
17 read as follows:

18 (5) "Visual material" means:

19 (A) any film, photograph, videotape, negative,
20 or slide or any photographic reproduction that contains or
21 incorporates in any manner any film, photograph, videotape,
22 negative, or slide; or

23 (B) any disk, diskette, or other physical medium,
24 or a file in any digital format, that allows an image to be
25 displayed on a computer or other video screen and any image
26 transmitted to a computer or other video screen by telephone line,
27 cable, satellite transmission, or other method.

1 SECTION 5. Section 43.261(b-1), Penal Code, is amended to
2 read as follows:

3 (b-1) For purposes of conduct prohibited under Subsection
4 (b), visual material to which that conduct applies includes:

5 (1) a depiction of a minor:

6 (A) [~~(1)~~] who is recognizable as an actual person
7 by the person's face, likeness, or other distinguishing
8 characteristic, such as a unique birthmark or other recognizable
9 feature; and

10 (B) [~~(2)~~] whose image as a minor was used in
11 creating, adapting, or modifying the visual material, including
12 computer-generated visual material that was created, adapted, or
13 modified using an artificial intelligence application or other
14 computer software; or

15 (2) a depiction of a minor, created using an
16 artificial intelligence application or other computer software,
17 that to a reasonable person is virtually indistinguishable from an
18 actual minor.

19 SECTION 6. Section 43.262(b-1), Penal Code, is amended to
20 read as follows:

21 (b-1) For purposes of conduct prohibited under Subsection
22 (b), visual material to which that conduct applies includes:

23 (1) a depiction of a child:

24 (A) [~~(1)~~] who is recognizable as an actual person
25 by the person's face, likeness, or other distinguishing
26 characteristic, such as a unique birthmark or other recognizable
27 feature; and

1 (B) [~~2~~] whose image as a child younger than 18
2 years of age was used in creating, adapting, or modifying the visual
3 material, including computer-generated visual material that was
4 created, adapted, or modified using an artificial intelligence
5 application or other computer software; or

6 (2) a depiction of a child, created using an
7 artificial intelligence application or other computer software,
8 that to a reasonable person is virtually indistinguishable from an
9 actual child younger than 18 years of age.

10 SECTION 7. The following provisions of the Penal Code are
11 repealed:

- 12 (1) Sections 43.26(b), (c), (d), (d-2), and (i);
13 (2) Section 43.26(d-1), as added by Chapter 93 (S.B.
14 1527), Acts of the 88th Legislature, Regular Session, 2023; and
15 (3) Section 43.26(d-1), Penal Code, as added by
16 Chapter 1041 (S.B. 129), Acts of the 88th Legislature, Regular
17 Session, 2023.

18 SECTION 8. The changes in law made by this Act apply only to
19 an offense committed on or after the effective date of this Act. An
20 offense committed before the effective date of this Act is governed
21 by the law in effect on the date the offense was committed, and the
22 former law is continued in effect for that purpose. For purposes
23 of this section, an offense was committed before the effective date
24 of this Act if any element of the offense was committed before that
25 date.

26 SECTION 9. This Act takes effect September 1, 2025.