

1-1 By: Huffman, et al. S.B. No. 1621
1-2 (In the Senate - Filed February 25, 2025; February 28, 2025,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 6, 2025, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; March 6, 2025, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Flores</u>	X		
1-9	<u>Parker</u>	X		
1-10	<u>Hagenbuch</u>	X		
1-11	<u>Hinojosa of Hidalgo</u>	X		
1-12	<u>Huffman</u>	X		
1-13	<u>King</u>	X		
1-14	<u>Miles</u>	X		

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to prosecution and punishment of certain criminal offenses
1-18 prohibiting sexually explicit visual material involving depictions
1-19 of children, computer-generated children, or other persons;
1-20 creating criminal offenses; increasing criminal penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 43.26, Penal Code, is amended by
1-23 amending Subsections (a), (e), (g), and (h) and adding Subsections
1-24 (a-1), (a-2), (c-1), (c-2), (c-3), (c-4), (e-1), (f), (g-1), (h-1),
1-25 and (h-2) to read as follows:

1-26 (a) In this section:

1-27 (1) "Depiction of a child" means, with respect to an
1-28 image of a child contained in visual material:

1-29 (A) a depiction of a child who was younger than 18
1-30 years of age at the time the image of the child was made; or

1-31 (B) a depiction of a child:

1-32 (i) who is recognizable as an actual person
1-33 by the person's face, likeness, or other distinguishing
1-34 characteristic, such as a unique birthmark or other recognizable
1-35 feature; and

1-36 (ii) whose image as a child younger than 18
1-37 years of age was used in creating, adapting, or modifying the visual
1-38 material, including computer-generated visual material that was
1-39 created, adapted, or modified using an artificial intelligence
1-40 application or other computer software.

1-41 (2) "Depiction of a computer-generated child" means,
1-42 with respect to an image of a child contained in visual material, a
1-43 depiction:

1-44 (A) appearing to be a child younger than 18 years
1-45 of age;

1-46 (B) created using an artificial intelligence
1-47 application or other computer software; and

1-48 (C) that to a reasonable person is virtually
1-49 indistinguishable from an actual child younger than 18 years of
1-50 age.

1-51 (3) "Promote" and "sexual conduct" have the meanings
1-52 assigned by Section 43.25.

1-53 (4) "School library" means a library of a public or
1-54 private primary or secondary school.

1-55 (5) "Visual material" means:

1-56 (A) any film, photograph, videotape, negative,
1-57 or slide or any photographic reproduction that contains or
1-58 incorporates in any manner any film, photograph, videotape,
1-59 negative, or slide; or

1-60 (B) any disk, diskette, or other physical medium,
1-61 or a file in any digital format, that allows an image to be

2-1 displayed on a computer or other video screen and any image
 2-2 transmitted to a computer or other video screen by telephone line,
 2-3 cable, satellite transmission, or other method.
 2-4 (a-1) A person commits an offense if:
 2-5 (1) the person intentionally or knowingly [~~or~~
 2-6 intentionally] possesses, or [~~knowingly or~~] intentionally or
 2-7 knowingly accesses with intent to view, visual material that
 2-8 contains a visual depiction of [~~visually depicts~~] a child [~~younger~~
 2-9 than 18 years of age at the time the image of the child was made who
 2-10 is] engaging in sexual conduct, including a depiction of a child
 2-11 engaging [~~who engages~~] in sexual conduct as a victim of an offense
 2-12 under Section 20A.02(a)(5), (6), (7), or (8); and
 2-13 (2) the person knows or should have known that the
 2-14 depiction [~~material depicts the child as~~] described by Subdivision
 2-15 (1) is of a child younger than 18 years of age at the time the image
 2-16 of the child was made.
 2-17 (a-2) A person commits an offense if the person:
 2-18 (1) intentionally or knowingly possesses, or
 2-19 intentionally or knowingly accesses with intent to view, visual
 2-20 material that contains a visual depiction of a computer-generated
 2-21 child engaging in sexual conduct; and
 2-22 (2) either:
 2-23 (A) knows or should have known that the depiction
 2-24 described by Subdivision (1) appears to be of a child younger than
 2-25 18 years of age; or
 2-26 (B) believes that the depiction is of an actual
 2-27 child younger than 18 years of age at the time the image of the child
 2-28 was made.
 2-29 (c-1) An offense under Subsection (a-1) is a felony of the
 2-30 third degree, except that the offense is:
 2-31 (1) a felony of the second degree if it is shown on the
 2-32 trial of the offense that the actor:
 2-33 (A) has been previously convicted one time of an
 2-34 offense:
 2-35 (i) under this chapter; or
 2-36 (ii) described by Article 62.001(5), Code
 2-37 of Criminal Procedure; or
 2-38 (B) possesses visual material that contains 10 or
 2-39 more visual depictions of a child engaging in sexual conduct as
 2-40 described by Subsection (a-1)(1) but fewer than 50 such depictions;
 2-41 (2) a felony of the first degree if it is shown on the
 2-42 trial of the offense that the actor:
 2-43 (A) has been previously convicted two or more
 2-44 times of an offense, or any combination of offenses:
 2-45 (i) under this chapter; or
 2-46 (ii) described by Article 62.001(5), Code
 2-47 of Criminal Procedure; or
 2-48 (B) possesses visual material that contains:
 2-49 (i) 50 or more visual depictions of a child
 2-50 engaging in sexual conduct as described by Subsection (a-1)(1); or
 2-51 (ii) a videotape or film that visually
 2-52 depicts conduct constituting an offense under Section
 2-53 22.011(a)(2); or
 2-54 (3) a felony of the first degree punishable by
 2-55 imprisonment in the Texas Department of Criminal Justice for life
 2-56 or for any term of not more than 99 years or less than 25 years if it
 2-57 is shown on the trial of the offense that:
 2-58 (A) at the time of the offense, the actor was:
 2-59 (i) an employee at a child-care facility or
 2-60 a residential child-care facility, as those terms are defined by
 2-61 Section 42.002, Human Resources Code;
 2-62 (ii) an employee at a residential treatment
 2-63 facility established under Section 221.056, Human Resources Code;
 2-64 (iii) an employee at a shelter or facility
 2-65 that serves youth and that receives state funds; or
 2-66 (iv) receiving state funds for the care of a
 2-67 child depicted by the visual material; or
 2-68 (B) the actor displayed the visual material or
 2-69 caused the visual material to be displayed in a school library.

3-1 (c-2) If it is shown on the trial of an offense under
3-2 Subsection (a-1) that the visual material contained a depiction of
3-3 a child younger than 10 years of age at the time the image of the
3-4 child was made engaging in sexual conduct as described by Section
3-5 (a-1)(1):
3-6 (1) an offense punishable under Subsection (c-1) as a
3-7 felony of the second or third degree is increased to the next higher
3-8 category of offense; or
3-9 (2) the minimum term of confinement for an offense
3-10 described for purposes of punishment by Subsection (c-1)(2) is
3-11 increased to 15 years.
3-12 (c-3) An offense under Subsection (a-2) is a state jail
3-13 felony, except that the offense is:
3-14 (1) a felony of the third degree if it is shown on the
3-15 trial of the offense that the actor:
3-16 (A) has been previously convicted one time of an
3-17 offense:
3-18 (i) under this chapter; or
3-19 (ii) described by Article 62.001(5), Code
3-20 of Criminal Procedure; or
3-21 (B) possesses visual material that contains 10 or
3-22 more visual depictions of a computer-generated child engaging in
3-23 sexual conduct as described by Subsection (a-2)(1) but fewer than
3-24 50 such depictions;
3-25 (2) a felony of the second degree if it is shown on the
3-26 trial of the offense that the actor:
3-27 (A) has been previously convicted two or more
3-28 times of an offense, or any combination of offenses:
3-29 (i) under this chapter; or
3-30 (ii) described by Article 62.001(5), Code
3-31 of Criminal Procedure; or
3-32 (B) possesses visual material that contains 50 or
3-33 more visual depictions of a computer-generated child engaging in
3-34 sexual conduct as described by Subsection (a-2)(1); or
3-35 (3) a felony of the second degree with a minimum term
3-36 of imprisonment of 10 years if it is shown on the trial of the
3-37 offense that:
3-38 (A) at the time of the offense, the actor was an
3-39 employee described by Subsection (c-1)(3)(A)(i), (ii), or (iii); or
3-40 (B) the actor displayed the visual material or
3-41 caused the visual material to be displayed in a school library.
3-42 (c-4) If it is shown on the trial of an offense under
3-43 Subsection (a-2) that the visual material contained a depiction of
3-44 a computer-generated child who appears to be younger than 10 years
3-45 of age and is engaging in sexual conduct as described by Subsection
3-46 (a-2)(1), the punishment for the offense is increased to the
3-47 punishment for the next higher category of offense, provided that
3-48 the minimum term of imprisonment for an offense described for
3-49 purposes of punishment by Subsection (c-3)(3) is 10 years.
3-50 (e) A person commits an offense if:
3-51 (1) the person intentionally or knowingly [~~or~~
3-52 ~~intentionally~~] promotes or possesses with intent to promote visual
3-53 material described by Subsection (a-1)(1) [~~(a-1)~~]; and
3-54 (2) the person knows or should have known that the
3-55 depiction [~~material depicts the child as~~] described by Subsection
3-56 (a-1)(1) is of a child younger than 18 years of age at the time the
3-57 image of the child was made [~~(a-1)~~].
3-58 (e-1) A person commits an offense if the person:
3-59 (1) intentionally or knowingly promotes or possesses
3-60 with intent to promote visual material described by Subsection
3-61 (a-2)(1); and
3-62 (2) either:
3-63 (A) knows or should have known that the depiction
3-64 described by Subsection (a-2)(1) appears to be of a child younger
3-65 than 18 years of age; or
3-66 (B) believes that the depiction is of an actual
3-67 child younger than 18 years of age at the time the image of the child
3-68 was made.
3-69 (f) In the prosecution of an offense under Subsection (a-1)

4-1 or (e):

4-2 (1) the state is not required to prove the identity of
4-3 the child in the depiction described by Subsection (a-1)(1); and

4-4 (2) there is a rebuttable presumption that the
4-5 depiction is of an actual child, as described by Subsection
4-6 (a)(1)(A) or (B), and not of a computer-generated child, as
4-7 described by Subsection (a)(2).

4-8 (g) An offense under Subsection (e) is a felony of the
4-9 second degree, except that the offense is:

4-10 (1) a felony of the first degree if it is shown on the
4-11 trial of the offense that the actor:

4-12 (A) [person] has been previously convicted one or
4-13 more times of an offense:

4-14 (i) under this chapter; or

4-15 (ii) described by Article 62.001(5), Code
4-16 of Criminal Procedure;

4-17 (B) promotes or possesses with intent to promote
4-18 visual material that contains 10 or more visual depictions of a
4-19 child engaging in sexual conduct as described by Subsection
4-20 (a-1)(1) but fewer than 50 such depictions; or

4-21 (C) promotes or possesses with intent to promote
4-22 visual material that contains one or more visual depictions of a
4-23 child who appears to be younger than 10 years of age and is engaging
4-24 in sexual conduct as described by Subsection (a-1)(1); or

4-25 (2) a felony of the first degree with a minimum term of
4-26 imprisonment of 15 years if it is shown on the trial of the offense
4-27 that the actor promotes or possesses with intent to promote visual
4-28 material that contains:

4-29 (A) 50 or more visual depictions of a child
4-30 engaging in sexual conduct as described by Subsection (a-1)(1); or

4-31 (B) a videotape or film that visually depicts
4-32 conduct constituting an offense under Section 22.011(a)(2) with
4-33 respect to a depiction of a child [~~that subsection~~].

4-34 (g-1) An offense under Subsection (e-1) is a felony of the
4-35 third degree, except that the offense is:

4-36 (1) a felony of the second degree if it is shown on the
4-37 trial of the offense that the person:

4-38 (A) has been previously convicted one or more
4-39 times of an offense:

4-40 (i) under this chapter; or

4-41 (ii) described by Article 62.001(5), Code
4-42 of Criminal Procedure;

4-43 (B) promotes or possesses with intent to promote
4-44 visual material that contains 10 or more visual depictions of a
4-45 computer-generated child engaging in sexual conduct as described by
4-46 Subsection (a-2)(1); or

4-47 (C) promotes or possesses with intent to promote
4-48 visual material that contains one or more visual depictions of a
4-49 computer-generated child who appears to be younger than 10 years of
4-50 age and is engaging in sexual conduct as described by Subsection
4-51 (a-2)(1); or

4-52 (2) a felony of the second degree with a minimum term
4-53 of imprisonment of 10 years if it is shown on the trial of the
4-54 offense that the person promotes or possesses with intent to
4-55 promote visual material that contains 50 or more visual depictions
4-56 of a computer-generated child engaging in sexual conduct as
4-57 described by Subsection (a-2)(1).

4-58 (h) It is a defense to prosecution under this section
4-59 [~~Subsection (a) or (e)~~] that the actor is a law enforcement officer
4-60 or a school administrator who:

4-61 (1) possessed or accessed the visual material in good
4-62 faith solely as a result of an allegation of a violation of Section
4-63 43.261;

4-64 (2) allowed other law enforcement or school
4-65 administrative personnel to possess or access the material only as
4-66 appropriate based on the allegation described by Subdivision (1);
4-67 and

4-68 (3) took reasonable steps to destroy the material
4-69 within an appropriate period following the allegation described by

5-1 Subdivision (1).

5-2 (h-1) It is an affirmative defense to prosecution under this
5-3 section that the conduct was for a bona fide educational, medical,
5-4 psychological, psychiatric, judicial, law enforcement, or
5-5 legislative purpose.

5-6 (h-2) It is an affirmative defense to prosecution under
5-7 Subsection (a-2) or (e-1) that the actor is not more than two years
5-8 older than the depicted child.

5-9 SECTION 2. Article 38.45(a), Code of Criminal Procedure, is
5-10 amended to read as follows:

5-11 (a) During the course of a criminal hearing or proceeding,
5-12 the court may not make available or allow to be made available for
5-13 copying or dissemination to the public property or material:

5-14 (1) that constitutes child pornography, as described
5-15 by Section 43.26(a-1)(1) or (a-2)(2) [~~43.26(a)(1)~~], Penal Code;

5-16 (2) the promotion or possession of which is prohibited
5-17 under Section 43.261, Penal Code; or

5-18 (3) that is described by Section 2 or 5, Article
5-19 38.071, of this code.

5-20 SECTION 3. Article 39.15(a), Code of Criminal Procedure, is
5-21 amended to read as follows:

5-22 (a) In the manner provided by this article, a court shall
5-23 allow discovery under Article 39.14 of property or material:

5-24 (1) that constitutes child pornography, as described
5-25 by Section 43.26(a-1)(1) or (a-2)(2) [~~43.26(a)(1)~~], Penal Code;

5-26 (2) the promotion or possession of which is prohibited
5-27 under Section 43.261, Penal Code; or

5-28 (3) that is described by Section 2 or 5, Article
5-29 38.071, of this code.

5-30 SECTION 4. Section 21.16(a)(5), Penal Code, is amended to
5-31 read as follows:

5-32 (5) "Visual material" means:

5-33 (A) any film, photograph, videotape, negative,
5-34 or slide or any photographic reproduction that contains or
5-35 incorporates in any manner any film, photograph, videotape,
5-36 negative, or slide; or

5-37 (B) any disk, diskette, or other physical medium,
5-38 or a file in any digital format, that allows an image to be
5-39 displayed on a computer or other video screen and any image
5-40 transmitted to a computer or other video screen by telephone line,
5-41 cable, satellite transmission, or other method.

5-42 SECTION 5. Section 43.261(b-1), Penal Code, is amended to
5-43 read as follows:

5-44 (b-1) For purposes of conduct prohibited under Subsection
5-45 (b), visual material to which that conduct applies includes:

5-46 (1) a depiction of a minor:

5-47 (A) [~~(1)~~] who is recognizable as an actual person
5-48 by the person's face, likeness, or other distinguishing
5-49 characteristic, such as a unique birthmark or other recognizable
5-50 feature; and

5-51 (B) [~~(2)~~] whose image as a minor was used in
5-52 creating, adapting, or modifying the visual material, including
5-53 computer-generated visual material that was created, adapted, or
5-54 modified using an artificial intelligence application or other
5-55 computer software; or

5-56 (2) a depiction of a minor, created using an
5-57 artificial intelligence application or other computer software,
5-58 that to a reasonable person is virtually indistinguishable from an
5-59 actual minor.

5-60 SECTION 6. Section 43.262(b-1), Penal Code, is amended to
5-61 read as follows:

5-62 (b-1) For purposes of conduct prohibited under Subsection
5-63 (b), visual material to which that conduct applies includes:

5-64 (1) a depiction of a child:

5-65 (A) [~~(1)~~] who is recognizable as an actual person
5-66 by the person's face, likeness, or other distinguishing
5-67 characteristic, such as a unique birthmark or other recognizable
5-68 feature; and

5-69 (B) [~~(2)~~] whose image as a child younger than 18

6-1 years of age was used in creating, adapting, or modifying the visual
6-2 material, including computer-generated visual material that was
6-3 created, adapted, or modified using an artificial intelligence
6-4 application or other computer software; or

6-5 (2) a depiction of a child, created using an
6-6 artificial intelligence application or other computer software,
6-7 that to a reasonable person is virtually indistinguishable from an
6-8 actual child younger than 18 years of age.

6-9 SECTION 7. The following provisions of the Penal Code are
6-10 repealed:

6-11 (1) Sections 43.26(b), (c), (d), (d-2), and (i);

6-12 (2) Section 43.26(d-1), as added by Chapter 93 (S.B.
6-13 1527), Acts of the 88th Legislature, Regular Session, 2023; and

6-14 (3) Section 43.26(d-1), Penal Code, as added by
6-15 Chapter 1041 (S.B. 129), Acts of the 88th Legislature, Regular
6-16 Session, 2023.

6-17 SECTION 8. The changes in law made by this Act apply only to
6-18 an offense committed on or after the effective date of this Act. An
6-19 offense committed before the effective date of this Act is governed
6-20 by the law in effect on the date the offense was committed, and the
6-21 former law is continued in effect for that purpose. For purposes
6-22 of this section, an offense was committed before the effective date
6-23 of this Act if any element of the offense was committed before that
6-24 date.

6-25 SECTION 9. This Act takes effect September 1, 2025.

6-26 * * * * *