

SENATE AMENDMENTS

2nd Printing

By: Davis of Harris, Springer, Leach,
Guillen, et al.

H.B. No. 603

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of the offense of unlawful dissemination
3 of certain visual material; providing penalties.

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

5 SECTION 1. Chapter 21, Penal Code, is amended by adding
6 Section 21.16 to read as follows:

7 Sec. 21.16. UNLAWFUL DISSEMINATION OF CERTAIN VISUAL
8 MATERIAL. (a) In this section:

9 (1) "Exposed intimate parts" means a person's intimate
10 parts that are:

11 (A) entirely unclothed; or

12 (B) clothed in a manner that leaves any portion
13 of those parts uncovered or visible through less than fully opaque
14 clothing.

15 (2) "Intimate parts" means the genitals, pubic area,
16 anus, buttocks, or female nipple of a person.

17 (3) "Sexual conduct" has the meaning assigned by
18 Section 43.25.

19 (4) "Visual material" has the meaning assigned by
20 Section 43.26.

21 (b) A person commits an offense if:

22 (1) the person intentionally disseminates visual
23 material depicting the other person:

24 (A) with the other person's exposed intimate

1 parts; or

2 (B) engaged in sexual conduct;

3 (2) the person obtained the visual material under
4 circumstances in which a reasonable person should have known or
5 understood that the visual material was to remain private;

6 (3) the person knows or should have known that the
7 depicted person did not consent to the dissemination;

8 (4) the depicted person is identifiable from the
9 content of the visual material or from any information displayed in
10 connection with the visual material; and

11 (5) the person disseminates the visual material with
12 the intent to:

13 (A) harass, abuse, or torment the depicted
14 person; or

15 (B) obtain a benefit in return for or in
16 connection with the dissemination.

17 (c) It is a defense to prosecution under this section that:

18 (1) the dissemination is made in the course of:

19 (A) lawful and common practices of law
20 enforcement or medical treatment;

21 (B) reporting unlawful activity; or

22 (C) a legal proceeding, if the dissemination was
23 permitted or required by law;

24 (2) the dissemination consists of visual material
25 depicting only a voluntary exposure of intimate parts or sexual
26 conduct in a public or commercial setting; or

27 (3) the actor is an interactive computer service, as

1 defined by 47 U.S.C. Section 230, or a provider of an information
2 service, as defined by 47 U.S.C. Section 153, and the dissemination
3 consists of visual material provided by another person.

4 (d) An offense under this section is a state jail felony.

5 SECTION 2. This Act takes effect September 1, 2015.

ADOPTED

MAY 27 2015

Atty. Gen.
Secretary of the Senate

By: *Spencer H. Garcia*

H.B. No. 603

Substitute the following for H.B. No. 603:

By: *John L. Wittman*

C.S. H.B. No. 603

A BILL TO BE ENTITLED

1

AN ACT

2 relating to civil and criminal liability for the unlawful
3 disclosure or promotion of certain intimate visual material;
4 creating an offense.

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

6 SECTION 1. This Act shall be known as the Relationship
7 Privacy Act.

8 SECTION 2. Title 4, Civil Practice and Remedies Code, is
9 amended by adding Chapter 98B to read as follows:

10 CHAPTER 98B. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE

11 VISUAL MATERIAL

12 Sec. 98B.001. DEFINITIONS. In this chapter:

13 (1) "Intimate parts," "promote," "sexual conduct,"
14 and "visual material" have the meanings assigned by Section
15 21.16, Penal Code.

16 (2) "Intimate visual material" means visual material
17 that depicts a person:

18 (A) with the person's intimate parts exposed; or

19 (B) engaged in sexual conduct.

20 Sec. 98B.002. LIABILITY FOR UNLAWFUL DISCLOSURE OR

21 PROMOTION OF CERTAIN INTIMATE VISUAL MATERIAL. (a) A defendant

22 is liable, as provided by this chapter, to a person depicted in

23 intimate visual material for damages arising from the disclosure

24 of the material if:

1 (1) the defendant discloses the intimate visual
2 material without the effective consent of the depicted person;

3 (2) the intimate visual material was obtained by the
4 defendant or created under circumstances in which the depicted
5 person had a reasonable expectation that the material would
6 remain private;

7 (3) the disclosure of the intimate visual material
8 causes harm to the depicted person; and

9 (4) the disclosure of the intimate visual material
10 reveals the identity of the depicted person in any manner,
11 including through:

12 (A) any accompanying or subsequent information
13 or material related to the intimate visual material; or

14 (B) information or material provided by a third
15 party in response to the disclosure of the intimate visual
16 material.

17 (b) A defendant is liable, as provided by this chapter, to
18 a person depicted in intimate visual material for damages
19 arising from the promotion of the material if, knowing the
20 character and content of the material, the defendant promotes
21 intimate visual material described by Subsection (a) on an
22 Internet website or other forum for publication that is owned or
23 operated by the defendant.

24 Sec. 98B.003. DAMAGES. (a) A claimant who prevails in a
25 suit under this chapter shall be awarded:

26 (1) actual damages, including damages for mental
27 anguish;

1 (2) court costs; and

2 (3) reasonable attorney's fees.

3 (b) In addition to an award under Subsection (a), a
4 claimant who prevails in a suit under this chapter may recover
5 exemplary damages.

6 Sec. 98B.004. INJUNCTIVE RELIEF. (a) A court in which a
7 suit is brought under this chapter, on the motion of a party,
8 may issue a temporary restraining order or a temporary or
9 permanent injunction to restrain and prevent the disclosure or
10 promotion of intimate visual material with respect to the person
11 depicted in the material.

12 (b) A court that issues a temporary restraining order or a
13 temporary or permanent injunction under Subsection (a) may award
14 to the party who brought the motion damages in the amount of:

15 (1) \$1,000 for each violation of the court's order or
16 injunction, if the disclosure or promotion of intimate visual
17 material is wilful or intentional; or

18 (2) \$500 for each violation of the court's order or
19 injunction, if the disclosure or promotion of intimate visual
20 material is not wilful or intentional.

21 Sec. 98B.005. CAUSE OF ACTION CUMULATIVE. The cause of
22 action created by this chapter is cumulative of any other remedy
23 provided by common law or statute.

24 Sec. 98B.006. JURISDICTION. A court has personal
25 jurisdiction over a defendant in a suit brought under this
26 chapter if:

27 (1) the defendant resides in this state;

1 (2) the claimant who is depicted in the intimate
2 visual material resides in this state;

3 (3) the intimate visual material is stored on a
4 server that is located in this state; or

5 (4) the intimate visual material is available for
6 view in this state.

7 Sec. 98B.007. LIBERAL CONSTRUCTION AND APPLICATION;
8 CERTAIN CONDUCT EXCEPTED. (a) This chapter shall be liberally
9 construed and applied to promote its underlying purpose to
10 protect persons from, and provide adequate remedies to victims
11 of, the disclosure or promotion of intimate visual material.

12 (b) This chapter does not apply to a claim brought against
13 an interactive computer service, as defined by 47 U.S.C. Section
14 230, for a disclosure or promotion consisting of intimate visual
15 material provided by another person.

16 SECTION 3. Chapter 21, Penal Code, is amended by adding
17 Section 21.16 to read as follows:

18 Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE
19 VISUAL MATERIAL. (a) In this section:

20 (1) "Intimate parts" means the naked genitals, pubic
21 area, anus, buttocks, or female nipple of a person.

22 (2) "Promote" means to procure, manufacture, issue,
23 sell, give, provide, lend, mail, deliver, transfer, transmit,
24 publish, distribute, circulate, disseminate, present, exhibit,
25 or advertise or to offer or agree to do any of the above.

26 (3) "Sexual conduct" means sexual contact, actual or
27 simulated sexual intercourse, deviate sexual intercourse, sexual

1 bestiality, masturbation, or sadomasochistic abuse.

2 (4) "Simulated" means the explicit depiction of
3 sexual conduct that creates the appearance of actual sexual
4 conduct and during which a person engaging in the conduct
5 exhibits any uncovered portion of the breasts, genitals, or
6 buttocks.

7 (5) "Visual material" means:

8 (A) any film, photograph, videotape, negative,
9 or slide or any photographic reproduction that contains or
10 incorporates in any manner any film, photograph, videotape,
11 negative, or slide; or

12 (B) any disk, diskette, or other physical medium
13 that allows an image to be displayed on a computer or other
14 video screen and any image transmitted to a computer or other
15 video screen by telephone line, cable, satellite transmission,
16 or other method.

17 (b) A person commits an offense if:

18 (1) without the effective consent of the depicted
19 person, the person intentionally discloses visual material
20 depicting another person with the person's intimate parts
21 exposed or engaged in sexual conduct;

22 (2) the visual material was obtained by the person or
23 created under circumstances in which the depicted person had a
24 reasonable expectation that the visual material would remain
25 private;

26 (3) the disclosure of the visual material causes harm
27 to the depicted person; and

1 (4) the disclosure of the visual material reveals the
2 identity of the depicted person in any manner, including
3 through:

4 (A) any accompanying or subsequent information
5 or material related to the visual material; or

6 (B) information or material provided by a third
7 party in response to the disclosure of the visual material.

8 (c) A person commits an offense if the person
9 intentionally threatens to disclose, without the consent of the
10 depicted person, visual material depicting another person with
11 the person's intimate parts exposed or engaged in sexual conduct
12 and the actor makes the threat to obtain a benefit:

13 (1) in return for not making the disclosure; or

14 (2) in connection with the threatened disclosure.

15 (d) A person commits an offense if, knowing the character
16 and content of the visual material, the person promotes visual
17 material described by Subsection (b) on an Internet website or
18 other forum for publication that is owned or operated by the
19 person.

20 (e) It is not a defense to prosecution under this section
21 that the depicted person:

22 (1) created or consented to the creation of the
23 visual material; or

24 (2) voluntarily transmitted the visual material to
25 the actor.

26 (f) It is an affirmative defense to prosecution under
27 Subsection (b) or (d) that:

1 (1) the disclosure or promotion is made in the course
2 of:

3 (A) lawful and common practices of law
4 enforcement or medical treatment;

5 (B) reporting unlawful activity; or

6 (C) a legal proceeding, if the disclosure or
7 promotion is permitted or required by law;

8 (2) the disclosure or promotion consists of visual
9 material depicting in a public or commercial setting only a
10 person's voluntary exposure of:

11 (A) the person's intimate parts; or

12 (B) the person engaging in sexual conduct; or

13 (3) the actor is an interactive computer service, as
14 defined by 47 U.S.C. Section 230, and the disclosure or
15 promotion consists of visual material provided by another
16 person.

17 (g) An offense under this section is a Class A
18 misdemeanor.

19 (h) If conduct that constitutes an offense under this
20 section also constitutes an offense under another law, the actor
21 may be prosecuted under this section, the other law, or both.

22 SECTION 4. (a) Chapter 98B, Civil Practice and Remedies
23 Code, as added by this Act, applies only to a cause of action
24 that accrues on or after the effective date of this Act. A
25 cause of action that accrues before the effective date of this
26 Act is governed by the law in effect immediately before that
27 date, and that law is continued in effect for that purpose.

1 (b) Section 21.16, Penal Code, as added by this Act,
2 applies to visual material disclosed or promoted, or threatened
3 to be disclosed, on or after the effective date of this Act,
4 regardless of whether the visual material was created or
5 transmitted to the actor before, on, or after that date.

6 SECTION 5. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (Relating to the creation of the offense of unlawful disclosure or promotion of intimate visual material.), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Civil Practice and Remedies Code and the Penal Code to create a civil and criminal liability for the disclosure or promotion of certain visual material. The bill would create a cause of action for damages, costs, and fees caused to a person depicted in intimate visual materials in violation of the new Penal Code provision. The bill would create a Class A misdemeanor offense for the intentional publication of intimate visual material, as described. The Office of Court Administration indicates that the bill provisions would not result in a significant fiscal implication to the court system.

Local Government Impact

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution, and confinement could likely be absorbed with existing resources. Revenue from fines imposed and collected is not anticipated to have a significant fiscal impact.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, SD, KJo, TB, ESi, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 23, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (relating to civil and criminal liability for the unlawful disclosure or promotion of certain intimate visual material; creating an offense.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code and the Penal Code to create a civil and criminal liability for the disclosure or promotion of certain visual material. The bill would create a cause of action for damages, costs, and fees caused to a person depicted in intimate visual materials in violation of the new Penal Code provision. The bill would create a Class A misdemeanor offense for the intentional publication of intimate visual material, as described. The Office of Court Administration indicates that the bill provisions would not result in a significant fiscal implication to the court system.

Local Government Impact

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution, and confinement could likely be absorbed with existing resources. Revenue from fines imposed and collected is not anticipated to have a significant fiscal impact.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, KJo, TB, ESi, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (Relating to the creation of the offense of unlawful dissemination of certain visual material; providing penalties.), **As Engrossed**

Due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill, there could be an indeterminate fiscal impact to the state.

The bill would amend the Penal Code to create the offense of unlawful dissemination of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disseminating certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

Expanding the types of behavior which are considered criminal offenses is expected to result in increased demands upon the correctional resources of the state due to additional persons who may be sentenced to terms of community supervision or confinement in state jail. However, the fiscal implications of the bill cannot be determined at this time due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, ESi, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 19, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (relating to the creation of the offense of unlawful dissemination of certain visual material; providing penalties.), **Committee Report 1st House, Substituted**

Due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill, there could be an indeterminate fiscal impact to the state.

The bill would amend the Penal Code to create the offense of unlawful dissemination of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disseminating certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, ESi, LM

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 10, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (Relating to the creation of the offense of unlawful disclosure of certain visual material.), **As Introduced**

Due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill, there could be an indeterminate fiscal impact to the state.

The bill would amend the Penal Code to create the offense of unlawful disclosure of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disclosing certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

Expanding the types of behavior which are considered criminal offenses is expected to result in increased demands upon the correctional resources of the state due to additional persons who may be sentenced to terms of community supervision or confinement in state jail. However, the fiscal implications of the bill cannot be determined at this time due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, ESi, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (Relating to the creation of the offense of unlawful dissemination of certain visual material; providing penalties.), **As Engrossed**

The provisions of the bill addressing felony sanctions for criminal offenses are the subject of this analysis. The bill would amend the Penal Code to create the offense of unlawful dissemination of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disseminating certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

Expanding the types of behavior which are considered criminal offenses is expected to result in increased demands upon the correctional resources of the state due to additional persons who may be sentenced to terms of community supervision or confinement in state jail. However, the bill's impact on state correctional populations, programs, or workloads cannot be determined at this time due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill.

Source Agencies:

LBB Staff: UP, LM, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

April 22, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (relating to the creation of the offense of unlawful dissemination of certain visual material; providing penalties.), **Committee Report 1st House, Substituted**

The provisions of the bill addressing felony sanctions for criminal offenses are the subject of this analysis. The bill would amend the Penal Code to create the offense of unlawful dissemination of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disseminating certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

Expanding the types of behavior which are considered criminal offenses is expected to result in increased demands upon the correctional resources of the state due to additional persons who may be sentenced to terms of community supervision or confinement in state jail. However, the bill's impact on state correctional populations, programs, or workloads cannot be determined at this time due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill.

Source Agencies:

LBB Staff: UP, LM, ESi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

March 10, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB603 by Davis, Sarah (Relating to the creation of the offense of unlawful disclosure of certain visual material.), **As Introduced**

The bill would amend the Penal Code to create the offense of unlawful disclosure of certain visual material. Under the provisions of the bill, a person commits an offense by intentionally disclosing certain sexual visual material without the consent of the persons included in the visual material. This offense would be punishable as a state jail felony. The bill also provides certain defenses to prosecution from the offense.

Expanding the types of behavior which are considered criminal offenses is expected to result in increased demands upon the correctional resources of the state due to additional persons who may be sentenced to terms of community supervision or confinement in state jail. However, the bill's impact on state correctional populations, programs, or workloads cannot be determined at this time due to a lack of reliable data regarding the prevalence of the behaviors considered criminal offenses under the provisions of the bill.

Source Agencies:

LBB Staff: UP, LM, ESi