

## **BILL ANALYSIS**

Senate Research Center  
89R5262 JRR-F

S.B. 20  
By: Flores et al.  
Criminal Justice  
2/27/2025  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 20 creates a new criminal offense related to obscene visual material. This bill reflects an effort to address the challenges posed by modern technology in the creation and distribution of harmful visual content, particularly concerning the protection of minors.

S.B. 20 creates a new criminal offense for the possession or promotion of obscene visual material that appears to depict a child. This bill specifically targets visual depictions of minors in obscene activities, regardless of whether the depiction is of an actual child, a cartoon or animation, or an image created using artificial intelligence or other computer software.

#### Key Provisions

1. **Creation of Offense:** This bill adds Section 43.235 to the Penal Code, which makes it an offense to knowingly possess, access with intent to view, or promote obscene visual material that appears to depict a child under 18 years of age engaging in certain activities.
2. **Penalties:** The offense is classified as a state jail felony. However, it can be elevated to a third-degree felony if the person has a prior conviction under this section or related sections (43.23, 43.26, 43.261, or 43.262). It can further escalate to a second-degree felony if there are two or more prior convictions.
3. **Prosecution Options:** If the conduct also constitutes an offense under another law, the actor may be prosecuted under either this section or the other law, but not both.
4. **Sections of Code Affected**
  - **Penal Code:** This bill amends Subchapter B, Chapter 43, by adding Section 43.235.
  - **Section 71.02(a):** This bill also amends this section of the Penal Code, which deals with engaging in organized criminal activity (RICO) by deleting two duplicative provisions.

As proposed, S.B. 20 amends current law relating to the creation of the criminal offense of possession or promotion of obscene visual material appearing to depict a child.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 43, Penal Code, by adding Section 43.235, as follows:

Sec. 43.235. POSSESSION OR PROMOTION OF OBSCENE VISUAL MATERIAL APPEARING TO DEPICT CHILD. (a) Defines "promote" and "visual material."

(b) Provides that 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) (relating to defining "obscene" to mean material or a performance that depicts or describes certain sexual acts), 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) Provides that an offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under certain provisions or a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under certain provisions.

(d) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another law, to be prosecuted under this section or the other law, but not both.

SECTION 2. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 269 (S.B. 224), 369 (H.B. 1442), 462 (S.B. 1900), 885 (H.B. 4635), and 910 (H.B. 6), Acts of the 88th Legislature, Regular Session, 2023, and amends it as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang or foreign terrorist organization, the person commits or conspires to commit certain offenses, including any offense under Section 43.235. Deletes existing text providing that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang or foreign terrorist organization, the person commits or conspires to commit any unlawful possession with intent to deliver a controlled substance or dangerous drug or unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022 (Penalty Group 1-B), Health and Safety Code. Makes nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2025.