

BILL ANALYSIS

S.B. 442
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that when digitally altered or fabricated media falsely depicting someone engaging in actions or behaviors is used to create sexually explicit content without consent, the fallout can have devastating effects on the individual depicted, such as threats to personal safety, emotional trauma, and reputational damage. The bill sponsor has further informed the committee that state law insufficiently addresses the unique threats posed by deep fake media. S.B. 442 seeks to strengthen the legal framework regarding conduct involving this material by establishing clear legal definitions, enhancing penalties, and ensuring consent is prioritized in the production and distribution of sexually explicit deep fake content.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 442 amends the Penal Code to revise the conduct that constitutes the Class A misdemeanor offense of unlawful production or distribution of certain sexually explicit videos by changing the requisite conduct from a person, without the effective consent of the person appearing to be depicted, knowingly producing or distributing by electronic means a deep fake video that appears to depict the person with the person's intimate parts exposed or engaged in sexual conduct to a person doing such by electronic means deep fake media that appears to depict the person as any of the following:

- with visible computer-generated intimate parts or with the visible intimate parts of another human being as the intimate parts of the person; or
- engaging in sexual conduct in which the person did not engage.

Accordingly, the bill replaces the definition of "deep fake video" with the definition of "deep fake media" to mean a visual depiction created or altered through the use of software, machine learning, artificial intelligence, or any other computer-generated or technological means, including by adapting, modifying, manipulating, or altering an authentic visual depiction manually or through an automated process, that appears to a reasonable person to depict a real person, indistinguishable from an authentic visual depiction of the real person, performing an action that did not occur in reality. The bill also defines "visual depiction" as a photograph, motion picture film, videotape, digital image or video, or other visual recording.

S.B. 442 establishes that the effective consent required by the revised conduct is valid only if the person appearing to be depicted knowingly and voluntarily signed a written agreement that was drafted in plain language. The agreement must include a general description of the deep fake media and, if applicable, the audiovisual work into which the deep fake media will be incorporated. The bill increases the penalty for unlawful production or distribution of certain sexually explicit media from a Class A misdemeanor to a third degree felony if it is shown on the trial of the offense that the person has been previously convicted of the offense.

S.B. 442 establishes that it is not a defense to prosecution for the offense of unlawful production or distribution of certain sexually explicit media that the deep fake media contains a disclaimer stating that the media was unauthorized or that the person appearing to be depicted did not participate in the creation or development of the deep fake media or indicates, through a label or otherwise, that the depiction is not authentic. The bill establishes as an affirmative defense to prosecution for the offense that the production or distribution of the deep fake media occurs in the course of the following:

- lawful and common practices of law enforcement or medical treatment;
- reporting unlawful activity; or
- a legal proceeding, if the production or distribution is permitted or required by law.

S.B. 442 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

EFFECTIVE DATE

September 1, 2025.