

BILL ANALYSIS

Senate Research Center
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S.B. 442
By: Hinojosa, Juan "Chuy"
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The emergence of technology, particularly artificial intelligence and machine learning has led to the rise of "deep fake" media. These are images or videos that are digitally altered or fabricated to falsely depict someone engaging in actions or behaviors they did not consent to, often with harmful consequences. These manipulations, when used to create sexually explicit content without consent, can have devastating effects on the individual depicted, including emotional trauma, reputational damage, and even threats to personal safety. Existing laws fail to fully address the unique threats posed by deep fake media, as they do not specifically criminalize its production or distribution in the context of intimate depictions.

This bill seeks to strengthen the legal framework by establishing clear legal definitions, enhancing penalties, and ensuring consent is prioritized in the production and distribution of sexually explicit deep fake content.

As proposed, S.B. 442 amends current law relating to the prosecution and punishment of the offense of unlawful production or distribution of certain sexually explicit media and increases a criminal penalty.

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 the heading to Section 21.165, Penal Code, to read as follows:

Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT MEDIA.

SECTION 2. Amends Section 21.165(a), Penal Code, by amending Subdivision (1) and adding Subdivision (3), to define "deep fake media" and "visual depiction."

SECTION 3. Amends Section 21.165, Penal Code, by amending Subsections (b) and (c) and adding Subsections (b-1), (c-1), and (c-2), as follows:

(b) Provides that a person commits an offense if, without the effective consent of the person appearing to be depicted, the person knowingly produces or distributes by electronic means deep fake media, rather than video, that appears to depict the person:

(1) with visible computer-generated intimate parts or with the visible intimate parts of another human being as the intimate parts of the person; or

(2) engaging in sexual conduct in which the person did not engage, rather than with the person's intimate parts exposed or engaged in sexual conduct.

Makes a nonsubstantive change.

(b-1) Provides that consent required by Subsection (b) is valid only if the person appearing to be depicted knowingly and voluntarily signed a written agreement that was drafted in plain language. Requires that the agreement include a general description of the deep fake media and, if applicable, the audiovisual work into which the deep fake media will be incorporated.

(c) Provides that an offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(c-1) Provides that it is not a defense to prosecution under this section 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.

(c-2) Provides that it is an affirmative defense to prosecution under this section that the production or distribution of the deep fake media occurs in the course of 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.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2025.