

By: Johnson

H.B. No. 418

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to prosecution and punishment of certain criminal offenses  
3 prohibiting sexually explicit visual material involving children  
4 or other persons; increasing a criminal penalty.

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

6 SECTION 1. Section 21.16(a)(5), Penal Code, is amended to  
7 read as follows:

8 (5) "Visual material" means:

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

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

18 SECTION 2. Section 43.26(b)(3), Penal Code, is amended to  
19 read as follows:

20 (3) "Visual material" means:

21 (A) any film, photograph, videotape, negative,  
22 or slide or any photographic reproduction that contains or  
23 incorporates in any manner any film, photograph, videotape,  
24 negative, or slide; or

1 (B) any disk, diskette, or other physical medium,  
2 or a file in any digital format, that allows an image to be  
3 displayed on a computer or other video screen and any image  
4 transmitted to a computer or other video screen by telephone line,  
5 cable, satellite transmission, or other method.

6 SECTION 3. Section 43.26(d), Penal Code, as amended by  
7 Chapters 93 (S.B. 1527) and 1041 (S.B. 129), Acts of the 88th  
8 Legislature, Regular Session, 2023, is reenacted and amended to  
9 read as follows:

10 (d) An offense under Subsection (a) is[+  
11 [~~(1)~~] a felony of the third degree [~~if the person~~  
12 ~~possesses visual material that contains fewer than 100 visual~~  
13 ~~depictions of a child as described by Subsection (a)(1),~~

14 [~~(2)~~], except that the offense is:

15 (1) a felony of the second degree if:

16 (A) it is shown on the trial of the offense that  
17 the person [~~possesses visual material that contains 100 or more~~  
18 ~~visual depictions of a child as described by Subsection (a)(1) but~~  
19 ~~fewer than 500 such depictions]~~ has been previously convicted one  
20 time of an offense under that subsection; or

21 (B) the person possesses visual material that  
22 contains 10 or more visual depictions of a child as described by  
23 Subsection (a)(1) but fewer than 50 such depictions;

24 (2) [~~(3)~~] a felony of the first degree if:

25 (A) it is shown on the trial of the offense that  
26 the person [~~possesses visual material that contains 500 or more~~  
27 ~~visual depictions of a child as described by Subsection (a)(1)] has~~

1 been previously convicted two or more times of an offense under that  
2 subsection; or

3 (B) the person possesses visual material that  
4 contains:

5 (i) 50 or more visual depictions of a child  
6 as described by Subsection (a)(1); or

7 (ii) a videotape or film that visually  
8 depicts conduct constituting an offense under Section  
9 [22.011\(a\)\(2\)](#); or

10 (3) [~~(4)~~] a felony of the first degree punishable by  
11 imprisonment in the Texas Department of Criminal Justice for life  
12 or for any term of not more than 99 years or less than 25 years if it  
13 is shown on the trial of the offense that, at the time of the  
14 offense, the person was:

15 (A) an employee at a child-care facility or a  
16 residential child-care facility, as those terms are defined by  
17 Section [42.002](#), Human Resources Code;

18 (B) an employee at a residential treatment  
19 facility established under Section [221.056](#), Human Resources Code;

20 (C) an employee at a shelter or facility that  
21 serves youth and that receives state funds; or

22 (D) receiving state funds for the care of a child  
23 depicted by the visual material.

24 SECTION 4. Section [43.26\(d-1\)](#), Penal Code, as added by  
25 Chapter 1041 (S.B. 129), Acts of the 88th Legislature, Regular  
26 Session, 2023, is amended to read as follows:

27 (d-1) If it is shown on the trial of an offense under

1 Subsection (a) that the visual material depicted a child younger  
2 than 10 years of age at the time the image of the child was made [~~or~~  
3 ~~that the defendant has been previously convicted of an offense~~  
4 ~~under that subsection~~]:

5 (1) an offense described for purposes of punishment by  
6 Subsection (d) as a felony of the second or third degree [~~(d)(1) or~~  
7 ~~(2)~~] is increased to the next higher category of offense; or

8 (2) the minimum term of confinement for an offense  
9 described for purposes of punishment by Subsection (d)(2) [~~(d)(3)~~]  
10 is increased to 15 years.

11 SECTION 5. Sections 43.26(g) and (i), Penal Code, are  
12 amended to read as follows:

13 (g) An offense under Subsection (e) is a felony of the  
14 second degree, except that the offense is:

15 (1) a felony of the first degree if the person promotes  
16 or possesses with intent to promote visual material that contains  
17 10 or more visual depictions of a child as described by Subsection  
18 (a)(1) but fewer than 50 such depictions; or

19 (2) a felony of the first degree with a minimum term of  
20 confinement of 15 years if:

21 (A) it is shown on the trial of the offense that  
22 the person has been previously convicted of an offense under  
23 Subsection (e); or

24 (B) the person promotes or possesses with intent  
25 to promote visual material that contains:

26 (i) 50 or more visual depictions of a child  
27 as described by Subsection (a)(1); or

1                    (ii) a videotape or film that visually  
2 depicts conduct constituting an offense under Section 22.011(a)(2)  
3 [that subsection].

4            (i) For purposes of conduct prohibited under this section,  
5 visual material to which that conduct applies includes:

6            (1) a depiction of a child:

7                    (A) [~~(1)~~] who is recognizable as an actual person  
8 by the person's face, likeness, or other distinguishing  
9 characteristic, such as a unique birthmark or other recognizable  
10 feature; and

11                    (B) [~~(2)~~] whose image as a child younger than 18  
12 years of age was used in creating, adapting, or modifying the visual  
13 material, including computer-generated visual material that was  
14 created, adapted, or modified using an artificial intelligence  
15 application or other computer software; or

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

20            SECTION 6. Section 43.261(b-1), Penal Code, is amended to  
21 read as follows:

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

24            (1) a depiction of a minor:

25                    (A) [~~(1)~~] who is recognizable as an actual person  
26 by the person's face, likeness, or other distinguishing  
27 characteristic, such as a unique birthmark or other recognizable

1 feature; and

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

7 (2) a depiction of a minor, created using an  
8 artificial intelligence application or other computer software,  
9 that to a reasonable person is virtually indistinguishable from an  
10 actual minor.

11 SECTION 7. Section 43.262(b-1), Penal Code, is amended to  
12 read as follows:

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

15 (1) a depiction of a child:

16 (A) [~~(1)~~] who is recognizable as an actual person  
17 by the person's face, likeness, or other distinguishing  
18 characteristic, such as a unique birthmark or other recognizable  
19 feature; and

20 (B) [~~(2)~~] whose image as a child younger than 18  
21 years of age was used in creating, adapting, or modifying the visual  
22 material, including computer-generated visual material that was  
23 created, adapted, or modified using an artificial intelligence  
24 application or other computer software; or

25 (2) a depiction of a child, created using an  
26 artificial intelligence application or other computer software,  
27 that to a reasonable person is virtually indistinguishable from an

1 actual child younger than 18 years of age.

2 SECTION 8. The following provisions of the Penal Code are  
3 repealed:

4 (1) Section 43.26(d-1), as added by Chapter 93 (S.B.  
5 1527), Acts of the 88th Legislature, Regular Session, 2023; and

6 (2) Section 43.26(d-2).

7 SECTION 9. The changes in law made by this Act apply only to  
8 an offense committed on or after the effective date of this Act. An  
9 offense committed before the effective date of this Act is governed  
10 by the law in effect on the date the offense was committed, and the  
11 former law is continued in effect for that purpose. For purposes  
12 of this section, an offense was committed before the effective date  
13 of this Act if any element of the offense was committed before that  
14 date.

15 SECTION 10. This Act takes effect September 1, 2025.