

By: Hinojosa of Hidalgo, et al.  
(Fairly)

S.B. No. 442

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and punishment of the offense of unlawful production or distribution of certain sexually explicit media; increasing a criminal penalty.

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

SECTION 1. The heading to Section 21.165, Penal Code, is amended to read as follows:

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

SECTION 2. Section 21.165(a), Penal Code, is amended by amending Subdivision (1) and adding Subdivision (3) to read as follows:

(1) "Deep fake media [~~video~~]" means a visual depiction [a video], created or altered through [with] 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 [intent to deceive], 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.

(3) "Visual depiction" means a photograph, motion picture film, videotape, digital image or video, or other visual recording.

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

(b) 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 ~~[a]~~ deep fake media ~~[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 ~~[with the person's intimate parts exposed or engaged in sexual conduct]~~.

(b-1) 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. The agreement must include:

(1) a general description of the deep fake media; and

(2) if applicable, the audiovisual work into which the deep fake media will be incorporated.

(c) 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) It is not a defense to prosecution under this section that the deep fake media:

(1) contains a disclaimer stating that the media was

1 unauthorized or that the person appearing to be depicted did not  
2 participate in the creation or development of the deep fake media;  
3 or

4 (2) indicates, through a label or otherwise, that the  
5 depiction is not authentic.

6 (c-2) It is an affirmative defense to prosecution under this  
7 section that the production or distribution of the deep fake media  
8 occurs in the course of:

9 (1) lawful and common practices of law enforcement or  
10 medical treatment;

11 (2) reporting unlawful activity; or

12 (3) a legal proceeding, if the production or  
13 distribution is permitted or required by law.

14 SECTION 4. The changes in law made by this Act apply only to  
15 an offense committed on or after the effective date of this Act. An  
16 offense committed before the effective date of this Act is governed  
17 by the law in effect on the date the offense was committed, and the  
18 former law is continued in effect for that purpose. For purposes of  
19 this section, an offense was committed before the effective date of  
20 this Act if any element of the offense occurred before that date.

21 SECTION 5. This Act takes effect September 1, 2025.