Texas Public POLICY FOUNDATION

BETTER TECH FOR TOMORROW

BILL ANALYSIS: HOUSE BILL 2551 & SENATE BILL 1108

PURPOSE

Companion legislation House Bill 2551 and Senate Bill 1108 augments Section 21.165 of Penal Code to broaden the application of offenses that can be brought when perpetrators produce or distribute sexually explicit deep fake content without the effective consent of the individual being depicted. Existing statute covers deep fake videos which depict a person with their intimate parts exposed or engaged in sexual conduct; these bills expand to cover all visual material, as defined by Section 43.26 (b)(3) of Penal Code. Specifically, this would extend protections for "any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide...or any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

BACKGROUND

In the 88th Legislature, lawmakers passed and the governor signed Senate Bill 1361 into law. As noted in the author's/sponsor's statement of intent, this bill was advanced to respond to "the rapid expansion of artificial intelligence...[given] technology is now being used to intentionally deceive and cause harm to others. To address this issue, S.B. 1361 would make it a criminal 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 video that appears to depict the person with the person's intimate parts exposed or engaged in sexual conduct" (SB 1361, 2023). Simply, this law amended Penal Code and made this an offense as a Class A misdemeanor. Violation of this law is punishable by up to a year in the county jail and a maximum fine of $4,000.

This law has equipped law enforcement and prosecutors with an important tool to protect minors. Consider that 98% of *all* deepfake videos online are pornographic and that 99% of the individuals targeted in deepfake pornography are female. Both the explicitness and frequency of this content is skyrocketing (Dunmoyer & Whiting, 2024). One study notes a 550% increase in deepfake videos online from 2019 to 2023. Another study indicates a 704% increase in "face swaps," whereupon a perpetrator swaps the face of the original image with that of the victim. Importantly, this could be a still image—rather than video—appealing to a prurient interest.

The sad reality is that criminals seem to be a step ahead, and rapid advancements in artificial intelligence and emerging technologies only make the challenges of taking down child predators that much harder. Given SB 1361 only applies to video content, criminals are exploiting gaps in current law by generating more sexualized deepfake images. For example, a wave of AI-generated sexualized images of Taylor Swift began circulating in early 2024. While the Taylor Swift story made headlines worldwide, many more—mostly women and girls—are victimized daily. One source reports of "a rise in cheap and easy-to-use AI tools that can 'undress' people in photographs—analyzing what their naked bodies would look like and imposing it into an image...on the top 10 websites that host AI-generated porn photos, fake nudes have ballooned by more than 290 percent since 2018" (Verma, 2023).

House Bill 2551 and Senate Bill 1108 builds on SB 1361, making it unlawful to distribute AI-general sexually explicit "visual material," rather than just videos. These bills acknowledge the need to provide protections for all depictions of this malevolent content—such as video, images, or any other physical medium—accounting for contemporary problems that exist while proactively getting ahead of any other modalities would be criminalizes might pursue.

HOUSE BILL 2551 AND SENATE BILL 1108

Section 1
Amends the heading of Section 21.165 of Penal Code, changing the terminology from "videos" to "visual material" to broaden the application of the law to account for all visual material as defined by Section 43.26 (b)(3) of Penal Code.

Section 2
Amends Section 21.165 (a) of Penal Code to replace "deep fake video" with "deep fake visual material" and amends the meaning to change from narrow application of "a video" to apply to "visual material." A new section (3) is established in this section to clarify the definition of the more comprehensive term "visual material" in reference to Section 43.26(b)(3) of Penal Code.

Amends Section 21.165 (b) of Penal Code to change the term "deep fake video" to "deep fake visual material" in enumerating what constitutes an offense.

Section 3
Establishes an effective date of September 1, 2025.

REFERENCES

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