

## **BILL ANALYSIS: SB 20**

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### **Purpose**

Senate Bill 20 amends and adds a new section to the Penal Code to clarify and expand penalties for accessing, possessing, or promoting visual material which appears to be a child engaging in sexual acts or patently offensive sexual depictions as enumerated in [Section 43.21 \(a\)\(1\)\(B\), Penal Code](#). Offenses are expanded to capture new visual depictions, such as artificial intelligence-generated content, cartoons or animation, and other computer software-generated sexual material. Furthermore, it establishes a new standard whereupon an offense still occurs regardless of whether the depiction is of an actual child. An offense under this new section is considered a state jail felony, or a third-degree felony if a person has been previously convicted, or a second-degree felony if a person has been previously convicted two or more times.

The bill also reenacts and amends [Section 71.02\(a\), Penal Code](#), which addresses engagement in organized criminal activity, in order to classify these new offenses as organized crime if the offender has intent to establish, maintain, or participate in a combination or in the profits of a combination as a member of a criminal street gang or foreign terrorist organization, and conspires to commit any offense under the newly established Section 43.235, Penal Code.

### **Background**

There has been a dramatic increase in the creation of child sexual abuse material (CSAM) since the advent of AI tools. Consider the following statistics:

- The National Center for Missing and Exploited Children ([2024](#)) received 4,700 reports of generative AI (GAI) porn images in 2023, which was the technology's breakout year.
- Even before GAI, the internet's supply of CSAM grew dramatically. From 2016 to 2022, the global number of URLs confirmed to contain at least one instance of child pornography doubled every 15 months. In 2016, there were 57,000 instances; in 2022, that number grew to 255,000 ([Internet Watch Foundation, 2022](#)).

- In 2023, the total number of deepfake videos online was 95,820—up 550% from 2019. Additionally, 98% of all deepfake videos online are pornographic, and 99% of the individuals targeted in deepfake pornography are female ([Security Hero, 2023, “Key Findings” section](#)).
- From the first to the second half of 2023, there was a 704% increase in deepfake “face swap” attacks, where a perpetrator swaps the face of the original image with that of the victim ([French, 2024](#)).

In the 88th Texas Legislature, lawmakers took initial steps to remedy this growing issue, and the Legislature 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” ([SB 1361 Bill Analysis, 2023, para. 1](#)). To address this issue, SB 1361 makes 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” ([Sec. 21.165\(b\)](#)). This law amended the 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.

While SB 1361 was an important step in penalizing some of CSAM offenses, gaps remain. During an interim hearing in the Senate Criminal Justice committee, expert witnesses enumerated where additional legislation is needed to bring accessors, processors, or promoters of visual material depicting minors engaging in sexual acts to justice. The subsequent interim report notes that “current law requires that law enforcement and/or the prosecution find an identifiable minor as a victim” ([Flores et al., 2024, p. 8](#)). The report asserts that “[i]t should not be necessary to prove the actual identity of an **identifiable** minor,” which SB 20, in part, aims to remedy ([Flores et al., 2024, p. 8](#)). Furthermore, the report recommends modifying “current law to resolve all conflicts in section 43.26 of the Penal Code” ([Flores et al., 2024, p. 9](#)).

## **Section-by-Section Analysis**

### *Section 1*

Amends Subchapter B, Chapter 43 of the Penal Code to add Section 43.235, titled “possession or promotion of obscene visual material appearing to depict child.” The terms “promote” and “visual material” are defined by reference to existing Penal Code. This section also enumerates the standard required for a person to commit an offense, occurring if a person “knowingly possesses, accesses with intent to view, or promotes obscene visual material” of a minor engaging in sexual acts

or patently offensive sexual depictions as enumerated in [Section 43.21\(a\)\(1\)\(B\), Penal Code](#). The offense occurs regardless of whether the depiction is of an actual child.

An offense under this new section is considered a third-degree state jail felony if a person has been previously convicted, or a second-degree felony if a person has been previously convicted two or more times. Moreover, if an offense under this section also constitutes an offense under another section of law, the offender may only be prosecuted under either this section or the other law, but not both.

## *Section 2*

Amends [Section 71.02\(a\), Penal Code](#) by striking Sections (5-b) regarding unlawful possession with intent to deliver controlled substances and as listed in Penalty Group 1-B under Section 481.1022 of the Health and Safety Code. Furthermore, the bill adds subsubsection (16) to existing Section 71.02(a) to capture the new Section 43.235 as it relates to organized crime.

## *Section 3*

Clarifies that changes in law stemming from SB 20 only apply to offenses committed after the effective date. Offenses committed before SB 20 goes into law will be governed by the law in effect on the date the offense was committed.

## *Section 4*

Establishes that SB 20 would take effect on September 1, 2025.

## References

Flores, P., King, P., Bettencourt, P., Hinojosa, J., Huffman, J., & Miles, B. *Interim charges report to the Texas Senate 89th legislature*. Texas Senate Committee on Criminal Justice. [https://senate.texas.gov/cmtes/89/c590/c590\\_InterimReport\\_2024.pdf](https://senate.texas.gov/cmtes/89/c590/c590_InterimReport_2024.pdf)

French, L. (2024, February 7). *Deepfake face swap attacks on ID verification systems up 704% in 2023*. SC Media. <https://www.scworld.com/news/deepfake-face-swap-attacks-on-id-verification-systems-up-704-in-2023>

Internet Watch Foundation. (2022). *The annual report 2022*. [https://annualreport2022.iwf.org.uk/wp-content/uploads/2023/04/IWF-Annual-Report-2022\\_FINAL.pdf](https://annualreport2022.iwf.org.uk/wp-content/uploads/2023/04/IWF-Annual-Report-2022_FINAL.pdf)

National Center for Missing & Exploited Children. (2024, March 11). *Generative AI CSAM is CSAM*. <https://www.missingkids.org/blog/2024/generative-ai-csam-is-csam>

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SB 1361 Bill Analysis. 88th Texas Legislature. Regular. (2023, June 6). <https://capitol.texas.gov/tlodocs/88R/analysis/pdf/SB01361F.pdf>

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