

BILL ANALYSIS: HB 1717

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ISSUE

House Bill 1717, authored by Representative Shofner, seeks to amend the Texas Penal Code regarding the prosecution of offenses involving sexually explicit visual material depicting minors by introducing a new definition. The legislation addresses the emerging issue of AI-generated and computer-modified explicit images of children, which are increasingly difficult to differentiate from authentic photographs ([Whiting & Dunmoyer, 2024](#)). The bill modifies several sections of the Penal Code to incorporate the new concept of "indistinguishable" imagery into existing statutes.

In 2023, Texas enacted HB 2700 ([2023](#)), which added AI and deepfake-generated sexually explicit materials targeting children to the list of prohibitions in three sections of the Penal Code. In a June 2024 interim hearing, prosecutors testified that while grateful for the law, they are hamstrung by the requirement for the materials to depict an "actual" child rather than any depiction of what is child pornography ([Senate Committee on Criminal Justice, 2024](#)). One solution recommended for Texas lawmakers to consider is to change the "actual" standard to "indistinguishable." As the National Center for Missing and Exploited Children noted, such a change would punish "users of the technology to create this material [who] have used the argument that, 'At least I didn't hurt a real child' and 'It's not actually a child.'" ([National Center for Missing & Exploited Children, 2024, para. 3](#)).

CRIMINAL JUSTICE IMPACT

None anticipated.

RULEMAKING AUTHORITY

None anticipated.

SECTION BY SECTION ANALYSIS

SECTION 1.

Amends Section 43.26(b) of the Penal Code to add a new definition of "indistinguishable":

- "In respect to a visual depiction, means virtually indistinguishable, in that visual depiction is such that an ordinary person viewing the visual depiction would conclude that the visual depiction is of an actual minor engaged in a prohibited sexual act."

Section 2

Modifies Section 43.26(i) of the Penal Code (which relates to the offense of the possession or promotion of child pornography) to expand the scope of prohibited visual material to include images "created by

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the use of artificial intelligence or other computer technology" that are "indistinguishable from an actual minor."

Section 3

Amends Section 43.261(b-1) of the Penal Code (which relates to the offense of possessing or promoting, via electronic means, sexually explicit visual material involving a minor) to expand the scope of prohibited visual material to include images "created by the use of artificial intelligence or other computer technology" that are "indistinguishable from an actual minor."

Section 4

Amends Section 43.262(b-1) of the Penal Code (which relates to the offense of possessing, accessing with the intent to view, or promoting lewd visual material depicting a child) to expand the scope of prohibited visual material to include images "created by the use of artificial intelligence or other computer technology" that are "indistinguishable from an actual minor."

Section 5

Contains a saving and transition provision clarifying that the changes to law made by HB 1717 apply only to an offense committed on or after the effective date of the Act, and an offense committed before the effective date is governed by law in effect at the time the offense was committed.

Section 6

Establishes the effective date as September 1, 2025.

REFERENCES

HB 2700. Enrolled. 88th Texas Legislature. Regular. (2023). <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB02700S.htm>

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>

Senate Committee on Criminal Justice. (2024). *Interim charges report to the Texas Senate, 89th Legislature*. Texas Senate. https://senate.texas.gov/cmtes/89/c590/c590_InterimReport_2024.pdf

Whiting, Z. & Dunmoyer, D. (2024). *Promise and peril: How Texas can lead on responsible artificial intelligence policy*. Texas Public Policy Foundation. https://www.texaspolicy.com/wp-content/uploads/2024/11/2024-11-BTT-Responsible-AI-Policy-WhitingDunmoyer_FINAL.pdf

