

SUBJECT: Creating offense for obscene visual material appearing to depict a child

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 11 ayes — Smithee, Wu, Bowers, Cook, J. Jones, Little, Louderback, Money, Moody, Rodríguez Ramos, Virdell

0 nays

SENATE VOTE: On final passage (March 12) — 31 - 0

WITNESSES: For — Greyson Gee, Texas Public Policy Foundation (*Registered, but did not testify*); Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Brian Hawthorne, Sheriffs' Association of Texas; Jennifer Allmon, Texas Catholic Conference of Bishops; John Wilkerson, Texas Municipal Police Association (TMPA); Scott Rubin, Texas Police Chiefs Association; Thomas Parkinson)

Against — None

BACKGROUND: Concerns have been raised regarding the authority of Texas law enforcement to combat child exploitation materials generated by artificial intelligence, cartoons, and other computer-generated imagery. Some have suggested expanding the legal authority to prosecute obscene visual material, as defined by law, that depicts a child.

DIGEST: SB 20 would create an offense for the possession or promotion of obscene visual material appearing to depict a child younger than 18 years of age.

Under the bill, a person would commit an offense if the person knowingly possessed, accessed with intent to view, or promoted obscene visual material containing a depiction that appeared to be of a child younger than 18 years of age engaging in certain activities described by provisions of current law on obscenity, regardless of whether the depiction was an image of an actual child, a cartoon or animation, or an image created using an artificial intelligence (AI) application or other computer software.

The offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), except that the offense would be:

- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person was previously convicted of an offense under the bill or for possessing or promoting child pornography or obscenity, electronically transmitting certain visual material depicting a minor, or possessing or promoting lewd visual material depicting a child; or
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the person was previously convicted two or more times of an offense under the bill, the above offenses, or any combination of these offenses.

If conduct constituting an offense under the bill also constituted an offense under another law, the actor could be prosecuted under the bill, the other law, or both. SB 20 would add the new offense to provisions regarding multiple crimes arising from the same episode, allowing sentences for an offense under the bill, or for an offense that was part of a plea agreement when the accused was charged with more than one offense under the bill, to run concurrently or consecutively.

The bill also would add the new offense to existing provisions in the Penal Code related to organized criminal activity. The bill would reenact these provisions, removing unlawful possession with the intent to deliver a controlled substance or dangerous drug and certain opiates from the list of organized crime offenses.

SB 20 would take effect September 1, 2025.

NOTES:

According to the Legislative Budget Board, the fiscal implications of the bill cannot be determined due to a lack of data to estimate the prevalence of conduct outlined in the bill that would be subject to criminal penalties.