

## **BILL ANALYSIS**

S.B. 1135  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In recent years, there has been a disturbing Internet trend of sexually explicit images being disclosed without the consent of the depicted person, resulting in immediate and, in many cases, irreversible harm to the victim. Victims' images are often posted with identifying information such as name, contact information, and links to their social media profiles. Many victims have reportedly been threatened with sexual assault, harassed, stalked, fired from jobs, or forced to change schools. Some victims have even committed suicide. In some instances, the images are disclosed by a former spouse or partner who is seeking revenge, a practice commonly referred to as "revenge pornography" by the media. To add insult to injury, some websites further prey on victims by charging fees to remove the sexually explicit images from the Internet. S.B. 1135 seeks to preserve relationship privacy by providing victims both civil and criminal remedies when these intimate images are disclosed in a nonconsensual manner and cause harm to the depicted person.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1135 amends the Penal Code to create the Class A misdemeanor offense of unlawful disclosure or promotion of intimate visual material for a person who, without the effective consent of the depicted person, intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct under the following conditions: the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private, the disclosure of the visual material causes harm to the depicted person, and the disclosure of the visual material reveals the identity of the depicted person in any manner, including through any accompanying or subsequent information or material related to the visual material or information or material provided by a third party in response to the disclosure of the visual material. The bill also makes it such an offense to intentionally threaten to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct, if the actor makes the threat to obtain a benefit in return for not making the disclosure or in connection with the threatened disclosure. The bill makes it such an offense to promote intimate visual material, knowing the character and content of the material, on a website or other forum for publication that is owned

or operated by the actor.

S.B. 1135 specifies that it is not a defense to prosecution for such an offense that the depicted person created or consented to the creation of the visual material or voluntarily transmitted the visual material to the actor. The bill establishes an affirmative defense to prosecution for conduct constituting the offense involving the disclosure or promotion of the visual material that the disclosure or promotion is made in the course of lawful and common practices of law enforcement or medical treatment; reporting unlawful activity; or a legal proceeding, if the disclosure or promotion is permitted or required by law. The bill further establishes an affirmative defense to prosecution for that conduct that the disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of the person's intimate parts or the person engaging in sexual conduct or that the actor is an interactive computer service, as defined by federal law, and the disclosure or promotion consists of visual material provided by another person. The bill authorizes the prosecution of an actor under all applicable law if the actor's conduct constituting an unlawful disclosure or promotion of intimate visual material offense also constitutes an offense under another law.

S.B. 1135 amends the Civil Practice and Remedies Code to make a defendant liable to a person depicted in intimate visual material for damages arising from the disclosure of the material if the defendant discloses the intimate visual material without the effective consent of the depicted person, the intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private, the disclosure of the intimate visual material causes harm to the depicted person, and the disclosure of the intimate visual material reveals the identity of the depicted person in any manner. The bill makes a defendant liable to a person depicted in intimate visual material for damages arising from the promotion of the material if, knowing the character and content of the material, the defendant promotes intimate visual material on a website or other forum for publication that is owned or operated by the defendant.

S.B. 1135 sets out the damages to be awarded to a claimant who prevails in such a liability suit, including exemplary damages, and authorizes a court in which such a suit is brought, on the motion of a party, to issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the disclosure or promotion of intimate visual material with respect to the person depicted in the material. The bill sets out the damages amounts that the court may award to the party who brought the motion, depending on whether the disclosure or promotion of intimate visual material is wilful or intentional and specifies that the cause of action created by the bill's civil liability provisions is cumulative of any other remedy provided by common law or statute. The bill grants a court personal jurisdiction over a defendant in a suit brought under those provisions if the defendant or claimant depicted in the intimate visual material resides in Texas, the material is stored on a server that is located in Texas, or the material is available for view in Texas. The bill requires its civil liability provisions to be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, the disclosure or promotion of intimate visual material. The bill exempts from its civil liability provisions a claim brought against an interactive computer service, as defined by federal law, for a disclosure or promotion consisting of intimate visual material provided by another person.

#### **EFFECTIVE DATE**

September 1, 2015.