

SUBJECT: Revising civil, criminal liability for disclosure of intimate visual material

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco

0 nays

WITNESSES: For — Sophie Jerwick, Rhea Shahane, and Tatum Zeko, Deeds Not Words; Sammi Ennis; Carlie Tise; (*Registered, but did not testify*: Lauren Baker, Andrea Reyes, and Claudia Yoli, Deeds Not Words; Chris Kaiser, Texas Association Against Sexual Assault; Reggie Smith, Texas Criminal Justice Coalition)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code sec. 21.16 establishes criminal offenses for the unlawful disclosure or promotion of intimate visual material, and Civil Practices and Remedies Code sec. 98B.002 allows civil lawsuits related to the disclosure or promotion of intimate visual material.

Under Penal Code sec. 21.16(b) a person commits an offense if:

- without consent, an individual intentionally disclosed visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;
- the visual material was obtained or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
- the disclosure of the material caused harm to the depicted person;
- and

- the disclosure revealed the identity of the depicted person, including through accompanying or subsequent information or material or through information or material provided by a third party in response to the disclosure.

Civil Practices and Remedies Code sec. 98B.002 makes defendants liable to persons depicted in intimate visual material for damages from the disclosure if:

- the defendant disclosed the material without the effective consent of the depicted person;
- the material was obtained or created under circumstances in which the depicted person had a reasonable expectation that it would remain private;
- the disclosure caused harm to the depicted person; and
- the disclosure of the material revealed the identity of the depicted person in any manner, including through accompanying or subsequent information or material or through material provided by a third party in response to the disclosure.

Interested parties have noted that in April 2018, the state's 12th Court of Appeals struck down part of the offense in Penal Code sec. 21.16. Concerns have been raised that if current law is not amended, the entire statute could be struck down when the Texas Court of Criminal Appeals considers the case.

DIGEST:

CSHB 98 would revise the intent provision for the criminal offense of disclosing intimate visual material. The bill also would revise the criteria that defined when a defendant was liable in a civil suit related to the disclosure of such material.

Under Penal Code sec. 21.16(b), the disclosure of intimate visual material would be an offense if it was done with the intent to harm the depicted person.

An intent provision would be added to Civil Practices and Remedies Code

sec. 98B.002 so that a defendant could be held liable for damages arising from the release of intimate visual material if the material was disclosed with the intent to harm the depicted person.

The bill would also amend the criminal offense and civil liability requirements so that a defendant had to have known or had reason to believe at the time of disclosure that the intimate visual material was obtained under circumstances in which the depicted person had a reasonable expectation that the material would remain private.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date and to causes of action that accrue on or after that date.