

<b>LFC Requester:</b>	<b>Sanchez, Scott</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/21/25 *Check all that apply:*  
**Bill Number:** HB 530 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Christine Chandler **Agency Name and Code** AOC  
**Short** Sensitive Deepfake Images **Number:** 218  
**Title:** \_\_\_\_\_ **Person Writing** Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 530 amends Section 30-37A-1 NMSA 1978, within the Criminal Code and governing the crime of distribution of unauthorized sensitive images, to include sensitive deepfake images within the crime, and to create the petty misdemeanor crime of “Threatening to distribute sensitive images”, consisting of maliciously making a threat to a person to distribute, publish or otherwise make available sensitive images or sensitive deepfake images of the person with intent to: (1) harass, humiliate or intimidate that person; (2) cause that person to reasonably fear for that person's own or family member's safety; or (3) cause that person to suffer substantial emotional distress.

The HB 530 amendment to Section 30-37A-1 NMSA 1978 defines “sensitive deepfake image” to mean

...an image, recording or other digital depiction or digital data capable of conversion to an image, recording or other digital depiction of a person that was created, altered or digitally manipulated to depict a person: (a) with uncovered genitals or, if the person is a woman, a breast below the top of the areola that is uncovered or visible through less-than-fully opaque clothing; or (b) engaging in an intimate act.

HB 530 provides a misdemeanor penalty for a second or subsequent conviction for the crime of threatening to distribute sensitive images.

HB 530 also enacts a new statutory section of Chapter 41 NMSA 1978, governing torts, to provide a cause of action for libel, slander or invasion of privacy based on the publication, exhibition or communication of a sensitive deepfake image, provided that:

(1) a person's consent to the creation of a sensitive deepfake image alone shall not establish that the person consented to the publication, exhibition or communication of the image; and

(2) in addition to actual damages, a person who succeeds in a claim for libel, slander or invasion of privacy based on the publication, exhibition or communication of a sensitive deepfake image may recover: (a) if applicable, an amount equal to the monetary gain made by the defendant from the publication, exhibition or communication of the sensitive deepfake image; (b) punitive damages; (c) court costs, reasonable attorney fees and other litigation costs reasonably incurred; and (d) any other legal or equitable relief the court deems just and proper.

HB 530 provides that a victim under Section 30-6A-3(G) NMSA 1978, governing sexual exploitation of children, or a victim under Section 30-37A-1 NMSA 1978, governing unauthorized distribution of sensitive images and threatening to distribute sensitive images, shall establish a prima facie case for a claim of intentional infliction of emotional distress upon filing a petition in the district court for such a claim. HB 530 further provides that, in addition to actual damages, a person who succeeds in claim for intentional infliction of emotional distress, may recover:

- (1) if applicable, an amount equal to the monetary gain made by the defendant from the fruits of the crime committed;
- (2) punitive damages;
- (3) court costs, reasonable attorney fees and other litigation costs reasonably incurred;
- and (4) any other legal or equitable relief the court deems just and proper.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions, as well as any increase in civil actions based on the publication, exhibition or communication of a sensitive deepfake image, including for the intentional infliction of emotional distress, and any appeals from the awarding of damages, costs and fees, or other equitable relief. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

- 1) The FBI notes that it has seen a “huge increase” in the number of cases involving children and teens being threatened and coerced into sending explicit images online – a crime called sextortion. See *Sextortion*, <https://www.fbi.gov/how-we-can-help-you/scams-and-safety/common-frauds-and-scams/sextortion> . See also, *Nonconsensual Distribution of Intimate Images: What to Know*, Federal Trade Commission (FTC), <https://consumer.ftc.gov/articles/nonconsensual-distribution-intimate-images-what-know>.
- 2) Section 30-16-9 NMSA 1978 governs the crime of extortion, consisting of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will. Among the acts listed as constituting a threat is “a threat to expose, or impute to the person threatened, or another, any deformity or disgrace”. There is a question as to whether the conduct described in the HB 530 amendment to Section 30-37A-1 NMSA 1978 as “threatening to distribute sensitive images” would also constitute extortion. See California’s proposed legislation, 2023 CA A 1872, [https://custom.statenet.com/public/resources.cgi?mode=show\\_text&id=ID:bill:CA202300A1872&verid=CA2023000A1872\\_20240122\\_0\\_I&](https://custom.statenet.com/public/resources.cgi?mode=show_text&id=ID:bill:CA202300A1872&verid=CA2023000A1872_20240122_0_I&) , providing that a threat to post, distribute, or create AI-generated images or videos of another may also induce fear sufficient to constitute extortion.
- 3) According to the National Conference of State Legislatures (NCSL),

Beginning in 2019, several states passed legislation aimed at the use of deepfakes. These laws do not apply exclusively to deepfakes created by AI. Rather, they more broadly apply to deceptive manipulated audio or visual images, created with malice, that falsely depict others without their consent.

Most of these laws are targeted at sexually explicit or pornographic video images, with some expanding existing nonconsensual intimate image laws. States have begun to prohibit the distribution of deceptive audio or visual media with the intent to injure a candidate's reputation or to deceive a voter into voting for or against a candidate.

NCSL reports that at least 40 states had pending legislation in the legislative session and at least 50 bills were enacted.

See Deceptive Audio or Visual Media ('Deepfakes') 2024 Legislation, November 2024, <https://www.ncsl.org/technology-and-communication/deceptive-audio-or-visual-media-deepfakes-2024-legislation> , including a table of legislation enacted in each state. See also California's proposed legislation 2023 CA A 2691, [https://custom.statenet.com/public/resources.cgi?mode=show\\_text&id=ID:bill:CA2023000A2691&verid=CA2023000A2691\\_20240214\\_0\\_I&](https://custom.statenet.com/public/resources.cgi?mode=show_text&id=ID:bill:CA2023000A2691&verid=CA2023000A2691_20240214_0_I&) , making a person guilty of sexual harassment if the person intentionally posts, distributes, or creates, or threatens to post, distribute, or create an intimate digital depiction of another individual without consent of that individual.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

See "Fiscal Implications," above.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**