

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

Original **Amendment** _____
Correction **Substitute** _____

Date Feb. 24, 2025
Bill No: 530-280

Sponsor: Christine Chandler
Short Sensitive Deepfake Images
Title: _____

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 401, A.I. Synthetic Content
Accountability Act**

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 530 would add images that are “created, altered or digitally manipulated to depict a person” to the existing misdemeanor crime for “distribution of sensitive images.” NMSA 1978, § 30-37A-1.

The bill would also add a “threat” crime to that statute as a petty misdemeanor for a first offense or full misdemeanor second offense for *threatening* to commit the distribution crime with the specific 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 bill would clarify the types of act that may render an image “sensitive,” and defines the phrase “sensitive deepfake image.”

Finally, the bill would create a civil cause of action for libel, slander or invasion of privacy based on the publication, exhibition or communication of a sensitive deepfake image. The civil claims Section provides that a “victim of a crime” defined in Section 30-6A-3 (sexual exploitation, commonly referred to as “child pornography”) or 30-37A-1 (distribution of sensitive images) will have established a “prima facie case” for a tort claim of intentional infliction of emotional distress.

FISCAL IMPLICATIONS

There are likely few prosecutions for these offenses, so little impact is envisioned. LOPD would not be involved in any civil litigation set forth in Section 2 of the bill, but because a criminal case could result in “prima facie” evidence for a civil claim, LOPD attorneys may require some additional training to advise clients facing such charges regarding the expanded collateral consequences they face.

While the LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

As compared with the new felony proposed in HB 401, adding deepfake images to the existing misdemeanor crime avoids the unnecessary complication to our criminal code, and the illogical penalty disparity that HB 401 created. (See LOPD analysis, HB 401).

As the bill proposes a new crime based on a wholly unprecedented factual scenario, it is difficult to predict the potential pitfalls of proving and defending such cases, and significant issues may well arise that are not currently foreseen, including potential First Amendment challenges.

Section 30-37A-1 describes conduct involving a specific intent to cause emotional distress, such that a prima facie case of that intentional tort might be reasonable. However, the crimes in Section 30-6A-3 involve no such intent, so that prima facie proof of an intent *to cause emotional distress* is inappropriate, even if the risk of such harm may seem self-evident. Such claims based on Section 30-6A-3 should still require proof of the defendant's intent to establish tort liability.

LOPD further questions the wisdom of establishing "prima facie" proof of an intentional tort based solely on depicted person's "victim" status. LOPD flags that the prima facie provision does not currently require a conviction for any such crime. The Victims of Crime Act attaches "victim" status based on allegations, not conviction. To ensure some confidence in proof of the criminal acts justifying prima facie proof of a civil claim, LOPD recommends that prima facie civil liability should – at a minimum – require proof of a *conviction* in criminal court to attach, and not just a person's victim status. LOPD further recommends that conviction *not* include an *Alford* plea under which a defendant avoids the risks of a trial, but maintains their factual innocence.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS