

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** February 13, 2025  
**Bill No:** HB 401-280

**Sponsor:** Linda Serrato  
**Short Title:** A.I. Synthetic Content  
Accountability Act

**Agency Name and Code**    280—LOPD  
**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)**

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 401 proposes to target the improper use of Artificial Intelligence (AI).

In the civil context, the bill proposes to create a private cause of action against a person who publicly disseminates nonconsensual synthetic content with the intent to harass, entrap, defame, extort, or otherwise cause financial or reputational harm to the person depicted. The cause of action would require that the synthetic content realistically represents the depicted person engaging in conduct that the depicted person did not actually engage in, and the person depicted in the synthetic content was identifiable from the content or was otherwise identified by personal information.

In the criminal context, the bill proposes to punish as a fourth-degree felony the improper dissemination of synthetic content meant to harass, entrap, defame, extort, or otherwise cause financial or reputational harm to the person depicted. The bill provides that the attorney general and the district attorney in the county with jurisdiction shall have concurrent jurisdiction to enforce the new crime. The “significant issues” analysis pertains to this criminal section (Section 4) of HB 401.

The bill proposes to implement identification, labeling, and classifying requirements for synthetic content. And it proposes identity verification for any user posting synthetic content on a large online platform.

**FISCAL IMPLICATIONS**

It is difficult to predict the impact on the LOPD due to the creation of a new crime insofar as no statistics exist to suggest how much the previously legal behavior presently occurs and would continue and would be prosecuted. Additionally, the field of AI is rapidly developing, and it is not yet clear if this technology will be readily available to the average New Mexican in coming years.

Under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide constitutionally mandated effective assistance of counsel to their existing clients. 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. Accurate prediction of the fiscal impact is impossible to speculate;

assessment of the required resources would be necessary after the implementation of the proposed new crime.

## **SIGNIFICANT ISSUES**

The criminal section of this bill provides:

Improper dissemination of covered synthetic content consists of knowingly disseminating or presenting any likeness *of an identifiable person* in covered synthetic content with the purpose of harassing, entrapping, defaming, extorting or otherwise causing financial or reputational harm to the depicted person.

(emphasis added)

This section is vague with respect to defining what constitutes an “identifiable person.” Identifiable to whom? Does this apply only to public figures? Or to ordinary New Mexicans as well? How would the State be required to prove that the person is “identifiable?”

Moreover, does “person” refer only to human beings or to legal persons more broadly, including non-human entities? *See, e.g.*, NMSA 1978, § 30-1-12 (defining “person” for purposes of the Criminal Code as “any human being or legal entity, whether incorporated or unincorporated, including the United States, the state of New Mexico or any subdivision thereof.”).

As written, it is not clear who (or what) can be a victim of this crime.

LOPD also questions making this crime a felony to disseminate a *synthetic likeness* when current law makes it a misdemeanor to distribute *actual* sensitive images of a person with similar intents (to “harass, humiliate or intimidate”). *See* NMSA 1978, § 30-37A-1 (Unauthorized distribution of sensitive images).

Similarly, NMSA 1978, § 1-19-26.8 (passed in the 2024 session), creates the crime of distributing or entering into an agreement with another person to distribute materially deceptive media regarding campaign advertising. The first conviction is a misdemeanor and only the second conviction is a fourth-degree felony.

Felonies carry significant collateral consequences. Making this new crime a felony appears out of sync with existing criminal penalties.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

### **Also proposed in the 2025 session:**

HB 60—Artificial Intelligence Act. This bill would require: notice of use of AI, disclosure of algorithmic discrimination risk and risk incidents, and risk management policies and impact assessments. This bill does not contain a criminal component.

HB 221—Voice and Visual Likeness Rights Act. This bill proposes creating a private cause of action against a person that produces, publishes, reproduces, displays, distributes or otherwise makes available a computer-generated, highly realistic electronic representation that is readily

identifiable as the voice or visual likeness of another individual without consent. This bill does not contain a criminal component.

HB 20—Technology and Innovation Division. This bill would create a Technology and Innovation Division within the Economic Development Department. AI is included in the definition of “target sectors” addressed by the new division.

HB 215—No Use of AI for Rent Manipulation. This bill proposes prohibiting the use of AI to manipulate rent pricing.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

Status quo.

## **AMENDMENTS**