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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 22

SHORT TITLE: Distribution Of Sensitive and Deepfake Images

SPONSOR: Chandler

LAST ORIGINAL
UPDATE: _____ **DATE:** 1/22/26 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	\$27.2 to \$952.0	\$27.2 to \$952.0	\$54.4 to \$1,904.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the District Attorneys

Law Offices of the Public Defender

New Mexico Sentencing Commission

Administrative Office of the Courts

SUMMARY

Synopsis of House Bill 22

House Bill 22 (HB22) seeks to amend Section 30-37A-1 NMSA 1978 (Criminal Invasion of Privacy Act) to expand the definition of the crime of unauthorized distribution of sensitive images to include the dissemination of “sensitive deepfake images.” The bill defines a “sensitive deepfake image” as a digitally altered, computer-generated, or manipulated visual representation that falsely appears to depict an identifiable individual, without their consent, in a state of nudity or engaged in a sexual act, regardless of whether the original source image included nudity or sexual content. Under current law, Section 30-37A-1 criminalizes the intentional distribution of sensitive visual material—such as images showing nudity or sexual activity—without the depicted person’s consent and with the intent to harass, abuse, or embarrass. HB22 amends this provision to account for technological advances by explicitly including deepfake imagery within its scope.

In addition to expanding the definition of unauthorized distribution, HB22 creates a new criminal offense under the same section: threatening to distribute a sensitive image, including a sensitive deepfake image. This new offense would apply when an individual intentionally threatens to disseminate such imagery without consent, and the threat is made under circumstances in which

a reasonable person would fear the image would actually be distributed. The proposed amendment provides that a first offense for threatening distribution is a misdemeanor, while subsequent offenses are fourth-degree felonies, mirroring the penalty structure already in place for unauthorized distribution.

The bill also enacts a new section of Chapter 41 NMSA 1978 (Tort Claims and Civil Remedies) to establish a civil cause of action for individuals who are harmed by the publication of a sensitive deepfake image. Under this new section, victims may sue for damages under theories of libel, slander, or invasion of privacy. The bill limits the availability of certain affirmative defenses typically raised in defamation cases, such as claims that the material is satire, parody, or of public concern, where the court finds the image to be knowingly false and the harm substantial. Furthermore, HB22 provides that individuals may recover compensatory damages for emotional distress, reputational harm, and, in some cases, punitive damages when malice is proven. The bill also expressly authorizes civil claims arising from any crime involving the digital exploitation of children or other invasion of privacy offenses, potentially expanding civil liability for conduct criminalized under the amended Section 30-37A-1.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail, and in the length of time served, that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY25 was \$64.7 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$27.2 thousand per year across all facilities. HB22 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

HB22 is not associated with an appropriation and is not anticipated to generate new revenue. While immediate fiscal impacts are expected to be minimal, the bill's expansion of Section 30-37A-1 NMSA 1978 to include "sensitive deepfake images" and the creation of a new misdemeanor offense for "threatening to distribute sensitive images" could incrementally increase demands on criminal justice system resources over time. Analyses from the Public Defender Department, Administrative Office of the Courts, and New Mexico Sentencing Commission indicate that prosecutions under the existing statute are currently infrequent, with few resulting in incarceration. In FY24, for example, only 35 cases adjudicated a charge under Section 30-37A, and none involved a fourth-degree felony conviction. Accordingly, the short-term fiscal impact on caseloads, court proceedings, or detention is likely to be limited under current conditions. For the purposes of this analysis, LFC estimates assume one to 35 individuals would be incarcerated.

However, if the bill results in increased prosecutions or the filing of new charges, costs could rise for multiple agencies, including courts, district attorneys, public defenders, and the Department of Corrections. The Public Defender Department notes any increase in criminal caseloads across

multiple bills could require corresponding adjustments in indigent defense resources to maintain compliance with constitutional mandates. In addition, the bill's creation of a civil cause of action for the publication of sensitive deepfake images could lead to increased litigation in district courts. Agencies note these cases may require additional trial time and technical analysis due to the evolving nature of AI-generated content and the evidentiary challenges of proving digital manipulation or intent.

The bill also allows for a prima facie showing of intentional infliction of emotional distress based on a person's status as a victim of certain crimes, which could influence the conduct of related criminal proceedings. Although the bill does not require a conviction to establish this civil threshold, and no immediate fiscal impact is estimated from this provision, agency comments suggest there may be future implications for legal advisement and court administration as such claims are adjudicated.

The extent to which enforcement of these provisions will generate new criminal or civil cases remains uncertain. Any long-term fiscal implications would depend on the volume of cases brought under the new statutory framework and on how courts, law enforcement, and counsel adapt to the evidentiary and procedural challenges posed by synthetic digital media.

SIGNIFICANT ISSUES

HB22 proposes statutory changes that intersect with evolving definitions of harm, privacy, and authenticity in the context of rapidly advancing digital technologies. By incorporating “sensitive deepfake images” into criminal and civil law, the bill addresses conduct that may not be explicitly covered under existing statutes but may nonetheless give rise to reputational, emotional, or safety-related concerns for individuals depicted in such content. While current law prohibits the nonconsensual distribution of sensitive visual material, the bill clarifies and expands that scope by including images that are digitally manipulated to falsely appear authentic, potentially reflecting broader legal and technological trends occurring at the national level.

In doing so, the bill may overlap with existing statutes, particularly Section 30-16-9, NMSA 1978, which governs the crime of extortion. That section criminalizes threats made with the intent to wrongfully obtain something of value or compel another to act against their will, including through threats to expose disgrace. Because HB22 introduces a separate offense for “threatening to distribute” sensitive images without requiring proof of intent to obtain value, the distinction between the two statutes could prompt case-by-case decisions regarding which charge to pursue. Prosecutorial discretion may be relevant in situations where a single set of facts could support multiple charges.

On the federal level, recent legislation, such as the Take It Down Act and the DEFIANCE Act, reflect increased congressional interest in regulating the nonconsensual use of synthetic sexual imagery. Similarly, more than half of U.S. states have adopted laws addressing deepfakes in contexts ranging from electioneering to intimate image abuse. HB22 would position New Mexico alongside these efforts, aligning statutory definitions and civil remedies with those emerging in other jurisdictions. However, agency analyses identify potential interpretive and evidentiary challenges in identifying whether an image is a deepfake, proving intent, and distinguishing between satire, parody, and unlawful publication. These issues may contribute to legal complexity in the implementation of the bill's provisions.

Finally, executive and legislative developments at the federal level suggest that future regulation of artificial intelligence and synthetic content may affect the landscape in which state statutes like HB22 operate. One recent executive order directed federal agencies to review and potentially challenge state-level regulations of AI technologies. While the implications of that directive remain uncertain, the dynamic policy environment may shape how HB22's provisions are interpreted or enforced over time.

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