

## BILL ANALYSIS

Senate Research Center  
87R11854 AJZ-F

S.B. 1388  
By: Creighton  
Criminal Justice  
3/23/2021  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a family has lost a loved one and an autopsy is conducted, it is unacceptable that images or other visual depictions of the autopsy be disclosed without the family's permission. S.B. 1388 creates an offense for the unlawful disclosure of an autopsy image.

As proposed, S.B. 1388 amends current law relating to the unlawful disclosure or promotion of an autopsy image or other visual depiction and creates a criminal offense.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42, Penal Code, by adding Section 42.076, as follows:

Sec. 42.076. UNLAWFUL DISCLOSURE OR PROMOTION OF AUTOPSY IMAGE OR OTHER VISUAL DEPICTION. (a) Provides that a person commits an offense if:

(1) the person discloses an image or other visual depiction of an autopsy without the prior consent of the person who is the subject of the autopsy or without the consent of that person's legal representative; and

(2) the disclosure of the image or other visual depiction reveals in any manner the identity of the person who is the subject of the autopsy, including through any accompanying or subsequent information or material related to the visual depiction, or information or material provided by a third party in response to the disclosure of the visual depiction.

(b) Provides that a person commits an offense if, knowing the character and content of the depiction, the person promotes an image or other visual depiction described by Subsection (a) on an Internet website or other forum for publication that is owned or operated by the person.

(c) Provides that it is an affirmative defense to prosecution under Subsection (a) or (b) that:

(1) the disclosure or promotion is made in the course of reporting unlawful activity, or a legal proceeding, if the disclosure or promotion is permitted or required by law; or

(2) the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure or promotion consists of an image or visual depiction provided by another person to the computer service.

(d) Provides that an offense under Subsection (a) is a Class A misdemeanor. Provides that an offense under Subsection (b) is a state jail felony.

(e) Provides that, if conduct constituting an offense under this section also constitutes an offense under Section 552.352 (Distribution or Misuse of Confidential Information), Government Code, the actor may be prosecuted under either section.

SECTION 2. Effective date: September 1, 2021.