HB161

Q6IQ551-2

By Representatives Moore (P), Woods, Butler, Bedsole

RFD: Judiciary

First Read: 14-Feb-24

A BILL

TO BE ENTITLED

AN ACT

Related to crimes and offenses; to amend Section 13A-6-240, Code of Alabama 1975, as last amended by Act 2023-464, 2023 Regular Session; to prohibit a person from creating a private image; to further provide for the crime of distributing a private image; to provide for exceptions; to provide criminal penalties for violations; to make nonsubstantive, technical revisions to update the existing code language to current style; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-6-240, Code of Alabama 1975, as last amended by Act 2023-464, 2023 Regular Session, is amended to read as follows:

"§13A-6-240

(a)(1) A person commits the crime of distributing a private image if he or she knowingly posts, emails, texts, transmits, or otherwise distributes a private image when the

depicted ~~person~~ individual has not consented to the transmission and the depicted ~~person~~ individual had a reasonable expectation of privacy against transmission of the private image.

(2) A person commits the crime of creating a private image if he or she knowingly creates, records, or alters a private image when the depicted individual has not consented to the creation, recording, or alteration and the depicted individual had a reasonable expectation of privacy against the creation, recording, or alteration of the private image.

(b)(1) For purposes of this section, "private image" means a photograph, digital image, video, film, or other recording of ~~a person~~ an individual who is identifiable from the recording itself or from the circumstances of its transmission and who is engaged in any act of sadomasochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity~~, as defined in Section 13A-12-190,~~ genital nudity, or other sexual conduct all as defined in Section 13A-12-190.

(2) The term includes both of the following:

a. ~~a~~ A recording that has been edited, altered, or otherwise manipulated from its original form.

b. A recording that a reasonable person would believe actually depicts an identifiable individual, regardless of whether any portion of the recording depicts another individual or is artificially generated.

(c)(1) For purposes of this section, a "reasonable expectation of privacy" includes, but is not limited to,

either of the following circumstances:

a. The ~~person~~ individual depicted in the private image created it or consented to its creation believing that it would remain confidential.

b. The sexual conduct depicted in the image was involuntary.

(2) There is no reasonable expectation of privacy against the transmission of a private image made voluntarily in a public or commercial setting.

(d) It is a defense to distributing a private image if the distribution of the private image was made in the public interest, including, but not limited to, the reporting of unlawful conduct; the lawful and common practices of law enforcement, legal proceedings, or medical treatment; or a bona fide attempt to prevent further distribution of the private image.

(e) ~~For the purposes of determining jurisdiction, the crime~~ The crimes of distributing a private image and creating a private image shall be considered to be committed in any county in which any part of the crime took place, in the county of residence of the victim or defendant, or any county where the image is received.

(f) A violation of this section is a Class A misdemeanor. A subsequent adjudication or conviction under this section is a Class C felony.

(g) No Internet service provider, search engine, cloud service provider, or affiliate or subsidiary of any of the same, shall be held to have violated this section solely for

providing access or connection to or from a website, other information or content on the Internet, or a facility, system, or network not under the control of the provider, including, but not limited to, the transmission, download, or intermediate storage of content that is a private image."

Section 2. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. This act shall become effective on October 1, 2024.

House of Representatives

Read for the first time and referred 14-Feb-24
to the House of Representatives
committee on Judiciary

Read for the second time and placed 21-Feb-24
on the calendar:
2 amendments

Read for the third time and passed 22-Feb-24
as amended
Yeas 97
Nays 0
Abstains 2

John Treadwell
Clerk