HB161

JJG4NYY-1

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

RFD: Judiciary

First Read: 14-Feb-24

SYNOPSIS:

This bill would provide that it is unlawful for any person to knowingly create, record, or alter 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.

Under existing law, a private image includes a recording that has been edited, altered, or otherwise manipulated from its original form.

This bill would provide that a private image also includes an image or recording that a reasonable person would believe actually depicts an identifiable individual, regardless of whether any portion of the image or recording depicts another individual or is artificially generated.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3

vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the section. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the section.

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 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~~the sexually explicit acts 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."

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.