

HB161 INTRODUCED



1 HB161
2 JYG4NYY-1
3 By Representatives Moore (P), Woods, Butler, Bedsole
4 RFD: Judiciary
5 First Read: 14-Feb-24



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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



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

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

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A BILL

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TO BE ENTITLED

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AN ACT

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47 Related to crimes and offenses; to amend Section
48 13A-6-240, Code of Alabama 1975, as last amended by Act
49 2023-464, 2023 Regular Session; to prohibit a person from
50 creating a private image; to further provide for the crime of
51 distributing a private image; to provide criminal penalties
52 for violations; to make nonsubstantive, technical revisions to
53 update the existing code language to current style; and in
54 connection therewith would have as its purpose or effect the
55 requirement of a new or increased expenditure of local funds
56 within the meaning of Section 111.05 of the Constitution of



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57 Alabama of 2022.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

62 "§13A-6-240

63 (a) (1) A person commits the crime of distributing a
64 private image if he or she knowingly posts, emails, texts,
65 transmits, or otherwise distributes a private image when the
66 depicted ~~person~~ individual has not consented to the
67 transmission and the depicted ~~person~~ individual had a
68 reasonable expectation of privacy against transmission of the
69 private image.

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

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



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85 (2) The term includes both of the following:

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

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

92 (c) (1) For purposes of this section, a "reasonable
93 expectation of privacy" includes, but is not limited to,
94 either of the following circumstances:

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

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

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

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

110 (e) ~~For the purposes of determining jurisdiction, the~~
111 ~~crime~~ The crimes of distributing a private image and creating
112 a private image shall be considered to be committed in any



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113 county in which any part of the crime took place, in the
114 county of residence of the victim or defendant, or any county
115 where the image is received.

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

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

125 Section 3. This act shall become effective on October
126 1, 2024.