



## House Judiciary Reported Substitute for HB161

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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



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

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

39 (b) (1) For purposes of this section, "private image"  
40 means a photograph, digital image, video, film, or other  
41 recording of ~~a person~~an individual who is identifiable from  
42 the recording itself or from the circumstances of its  
43 transmission and who is engaged in any **act** of **sadomasochistic**  
44 **abuse, sexual intercourse, sexual excitement, masturbation,**  
45 **breast nudity, as defined in Section 13A-12-190, genital**  
46 **nudity,** or other sexual conduct all as defined in Section  
47 13A-12-190.

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

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

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

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



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57 either of the following circumstances:

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

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

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

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

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

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

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



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

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

96           Section 3. This act shall become effective on October  
97 1, 2024.