

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 488 – HB 1140

March 13, 2018

SUMMARY OF ORIGINAL BILL: Creates a status offense applicable only to minors prohibiting the creation, receipt, exchange, transmittal, or possession of a photograph, video, or other material showing a minor in the state of nudity, even if the minor in such a state is the minor committing the offense, through the use of a telecommunication device.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (015090): Deletes all language after the enacting clause. Defines “reasonable expectation of privacy” under Tenn. Code Ann. § 39-13-605 relative to photographs taken that constitute an invasion of privacy.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Tennessee Code Annotated § 39-13-605 prohibits any person from knowingly photographing an individual when the individual has a reasonable expectation of privacy without the prior consent of the individual if (1) the photograph would offend or embarrass an ordinary person and (2) the photograph was taken for the purpose of sexual arousal or gratification of the defendant.
- A violation of Tenn. Code Ann. § 39-13-605 is a class A misdemeanor unless:
 - The defendant disseminates the photograph or the photograph is of a person less than 13 years of age, in which case a violation is a class E felony; or
 - The defendant disseminates the photograph and the photograph is of a person less than 13 years of age, in which case a violation is a class D felony.
- The proposed legislation adds a subdivision to Tenn. Code Ann. § 39-13-605(b) defining “reasonable expectation of privacy” for purposes of the offense.
- Under the proposed legislation, an individual has a reasonable expectation of privacy, regardless of the location where the photograph is taken if (1) the photograph is taken in

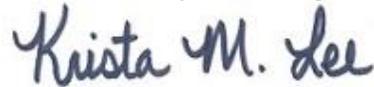
SB 488 – HB 1140

a manner that would offend or embarrass a reasonable person and (2) the photograph depicts areas of the individual's body, clothed or unclothed, that would not be visible to ordinary observation but for the offensive or embarrassing manner of photography.

- "Reasonable expectation of privacy" is not otherwise defined in the code. The phrase is generally referenced in court cases where a defendant challenges the legality of a search or seizure under the Fourth Amendment of the Constitution of the United States.
- Regardless, reasonable expectation of privacy relates to a person, not a place. The determination is whether a person has a reasonable expectation of privacy and not whether a particular location provides a reasonable expectation of privacy.
- It is assumed that the proposed legislation does not expand the meaning of reasonable expectation of privacy under Tenn. Code Ann. § 39-13-605. Therefore, the proposed legislation will not significantly impact state or local incarceration costs.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/trm