

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1949 – SB 2781**

February 6, 2024

**SUMMARY OF BILL:** Expands the offense of observation without consent to include a person or entity that adopts rules or enforces a policy or other work-related guidance for employees or contractors to promote or assist in the commission of observation without consent in a place where there is a reasonable expectation of privacy, including, but not limited to, a restroom, locker room, dressing room, or shower, designated for multi-person, single-sex use.

Establishes that incidental viewing by a law enforcement officer, firefighter, or other official first responder while performing official duties or providing essential services, or incidental viewing by a person who is sincerely acting in a good Samaritan capacity while rendering first aid or humanitarian, medical, or rescue assistance or other actions that would be judged by an ordinary person to be reasonable or appropriate, does not constitute the offense of observation without consent.

Creates a civil action for invasion of privacy based on a violation of observation without consent.

**FISCAL IMPACT:**

**NOT SIGNIFICANT**

Assumptions:

- Pursuant to Tenn. Code Ann. § 39-13-607(a)(1)-(2), a person commits the offense of observation without consent if the person knowingly spies upon, observes or otherwise views an individual, when the individual is in a place where there is a reasonable expectation of privacy, without the prior effective consent of the individual, if the viewing:
  - Would offend or embarrass an ordinary person if the person knew the person was being viewed; and
  - Was for the purpose of sexual arousal or gratification of the defendant.
- The proposed legislation expands the offense of observation without consent to include a person or entity that adopts rules or enforces a policy or other work-related guidance for employees or contractors to promote or assist in the commission of observation without consent in a place where there is a reasonable expectation of privacy, including, but not limited to, a restroom, locker room, dressing room, or shower, designated for multi-person, single-sex use.

- Pursuant to Tenn. Code Ann. § 39-13-607(d), observation without consent is a Class A misdemeanor. The penalty is enhanced to a Class E felony if the victim is under 13 years of age at the time the offense is committed.
- Based on information provided by the Administrative Office of the Courts and the Department of Correction (DOC) Jail Summary Reports, there have been an average of 7.72 Class A misdemeanor convictions of observation without consent in each of the last five years.
- Based upon information provided by the DOC, there has been an average of 0.40 admissions per year over the last five years for the Class E felony offense under Tenn. Code Ann. § 39-13-607 for observation without consent, where the victim is under 13 years of age.
- Due to the low number of annual admissions, it is reasonable assumed there will not be a sufficient change in the number of convictions for state or local government to experience any significant change in revenue or expenditures.
- Establishing that incidental viewing by certain first responders while performing official duties or providing essential services, or incidental viewing by a person who is sincerely acting in a good Samaritan capacity in a reasonable or appropriate manner does not constitute the offense of observation without consent will not significantly decrease the number of misdemeanor convictions.
- The proposed legislation creates a civil action for invasion of privacy based on a violation of observation without consent.
- Any civil action brought against a person or entity is assumed to be borne of a private party.
- This legislation will not significantly impact courts' caseloads.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal analysis are available upon request.

**CERTIFICATION:**

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



Krista Lee Carsner, Executive Director

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