

SENATE BILL 1043

By Yarbro

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 6, Part 1, relative to certain photograph, audio, or video recordings and recording devices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 6, Part 1, is amended by adding the following as a new section:

(a) If a person is in a public place or a place the person has a right to be and takes or possesses a photograph, whether live or still, or an audio, video, or other recording of a person or event, and the photograph or recording is not illegal, a law enforcement officer may not:

(1) Seize the photograph or recording, or the device used to produce the photograph or recording; or

(2) Erase, delete, deface, or otherwise destroy the photograph or recording.

(b) If a law enforcement officer reasonably believes that an electronic device contains photographic or video evidence of a criminal offense, the officer may petition a judge authorized to issue a search warrant to seek a copy of the relevant evidence. The petition must state with particularity:

(1) The date and time of the criminal offense for which the recording or photograph is believed to be evidence;

(2) Facts, not opinions, that would lead a reasonable person to believe that the recording or photograph contained on the device would be of substantial

assistance to law enforcement in arresting or convicting the perpetrator of the offense; and

(3) The evidence contained from the recording or photograph could not be obtained in another manner and therefore outweighs the person's right to privacy in the material.

(c)

(1) If the court grants the petition, the court shall order the device on which the photograph or recording is stored to be brought before the court. The court shall have an expert in electronic devices who is not associated with law enforcement copy only those photographs or recordings on the device relating to the specific time and place of the offense and specifically approved by the court.

(2) Upon copying the specific photograph or recording approved by the court, the device must be returned to the owner. The owner of the device that possesses the recording or photograph must be given an opportunity to argue to the judge that the recordings or photographs should not be given to law enforcement because the material is proprietary, privileged, or is not otherwise subject to release by the court before the copied material is given to the law enforcement agency.

(3) If the court determines the copied material is subject to disclosure, and that the interests of justice requires that the material be made available to law enforcement for use as evidence in a criminal case, the court shall so order and law enforcement shall be given a copy of the material. The original material as well as the device must be returned to the owner of the device.

(d) The owner whose device, photograph, or recording was seized, erased, deleted, defaced, or destroyed in violation of this section has a cause of action against the law enforcement agency employing the law enforcement officer who violates this section.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.