
Research Plan: House Bill 1855/Senate Bill 1840, Civil Causes of Action for Invasion of Privacy

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Deputy Executive Director Approval: Initial: Date:

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Purpose:

The Civil Justice Committee of the House amended **House Bill 1855** by Ryan Williams (**Senate Bill 1840** by Norris) and sent it to the Commission for study. As introduced, the bill would have created civil causes of action against any person who physically invaded the privacy of another or for attempting to capture a visual image, sound recording, or any other physical impression of a person engaging in personal or familial activities. The bill would have imposed civil liability, under limited circumstances, for the publication or other use of images or recordings captured through such violation. It would have established exceptions for law enforcement and related activities. As amended, the bill would have also exempted regular or contract employees of established news media outlets whose employees are members of recognized professional or trade associations.

Background:

Tennessee common law already allows for civil actions for intrusion into one's privacy, but House Bill 1855 would expand this by allowing civil actions against a much broader range of activities that offend one's reasonable expectations of privacy. There is a concern that current law has not caught up with advanced technologies' effect on diminishing personal privacy. With the proliferation of these new technologies, an ever-increasing number of people now have an enhanced ability to intrude on others' privacy. For example, with the commercial availability of small drones equipped with video and camera functions, it's easy to imagine the various ways that the device could be used to intrude into one's privacy. The problem is complicated by constitutional issues and the federal government's role in approving and regulating certain technologies, such as drones.

Step 1. Define the Problem

What protections should be extended to individuals on their own property against being recorded or having visual or auditory images of them published. What is a reasonable expectation of privacy?

Step 2. Assemble Some Evidence

- Review referred legislation
 - Review House Bill 1855 and related statutes to determine what the bill does, including any statutes dealing with
 - privacy,
 - freedom of speech,
 - liability,
 - drones and other new technology, and
 - exceptions for law enforcement, media, and others.
 - Review committee hearing on the bill and summarize comments and concerns of committee members, the bill sponsor, and others speaking for or against the bill.
 - Interview the sponsor, bill proponents, and other stakeholders to determine what is driving this issue.
 - Review the fiscal note. Consult with Fiscal Review Committee staff and follow up with agencies submitting support forms to determine the estimated cost and the method and rationale for the estimates.
- Review similar bills from the past several general assemblies to identify related issues.
- Review privacy laws and options in other states.
- Review relevant federal statutes and regulations.
- Review literature and seek opinions of subject matter experts.

Step 3. Construct Alternatives

Alternatives will be based on

- current law
- proposed changes to the current law, and
- any additional alternatives drawn from the research and analysis in Step 2.

Each alternative will be described specifically enough to project outcomes in Step 5.

Step 4. Select Criteria

- Effectiveness
- Constitutionality
- Estimate receptiveness of

- state agencies,
- federal agencies,
- communities, and
- others

Step 5. Project Outcomes

- Estimate cost
- Estimate effectiveness
- Evaluate constitutional issues
- Estimate the acceptability to state and federal agencies, communities, and others

Step 6. Confront Trade-offs

- How will the differences between the current law and the other alternatives affect the public?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission

Revisit Steps 5-8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives
- Revise and edit the draft to reflect comments of the Commission
- Submit final report to the Commission for approval

