

Tenn. law bans posting images that "cause emotional distress"

By [Timothy B. Lee](#) | Published about 17 hours ago

A new Tennessee law makes it a crime to "transmit or display an image" online that is likely to "frighten, intimidate or cause emotional distress" to someone who sees it. Violations can get you almost a year in jail time or up to \$2500 in fines.

The Tennessee legislature has been busy updating its laws for the Internet age, and not always for the better. Last week we [reported](#) on a bill that updated Tennessee's theft-of-service laws to include "subscription entertainment services" like Netflix.

The ban on distressing images, which was signed by Gov. Bill Haslam last week, is also an update to existing law. [Tennessee law](#) already made it a crime to make phone calls, send emails, or otherwise communicate directly with someone in a manner the sender "reasonably should know" would "cause emotional distress" to the recipient. If the communication lacked a "legitimate purpose," the sender faced jail time.

The new legislation adds images to the list of communications that can trigger criminal liability. But for image postings, the "emotionally distressed" individual need not be the intended recipient. *Anyone* who sees the image is a potential victim. If a court decides you "should have known" that an image you posted would be upsetting to someone who sees it, you could face months in prison and thousands of dollars in fines.

If you think that sounds unconstitutional, you're not alone. In a blog post, constitutional scholar Eugene Volokh [points out](#) just how broad the legislation is. The law doesn't require that the picture be of the "victim," nor would the government need to prove that you intended the image to be distressing. Volokh points out that a wide variety of images, "pictures of Mohammed, or blasphemous jokes about Jesus Christ, or harsh cartoon insults of some political group," could "cause emotional distress to a similarly situated person of reasonable sensibilities," triggering liability. He calls the bill "pretty clearly unconstitutional."

Another provision of the legislation governs law enforcement access to the contents of communications on social networking sites. The government can get access to "images or communications" posted to a social networking site by offering "specific and articulable facts," suggesting that the information sought is "relevant and material to an ongoing criminal investigation."

This section, too, faces constitutional problems. Julian Sanchez, a privacy scholar at the Cato Institute, tells Ars that "this is a lower standard than the federal Electronic Communications Privacy Act requires" for unread communications. More importantly, because Tennessee is in the Sixth Circuit, it is bound by that court's [Warshak decision](#), which held that the Fourth Amendment requires the government to obtain a full search warrant in order to access e-mail communications. "That case dealt with e-mail," Sanchez said, "but there's no good reason to think a private message on a social network site is any different."

Rep. Charles Curtiss, the lead sponsor of the legislation, did not respond to our request for comment.

Further reading

- ["Post A Picture That 'Causes Emotional Distress' And You Could Face Jailtime In Tennessee"](#) (techdirt.com)