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Search Within Original Results (1 - 1)



Advanced...

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 1 of 1 [Return to Results](#) | [Book Browse](#)**Tenn. Code Ann. § 39-13-511** (Copy w/ Cite)

Pages: 4

Tenn. Code Ann. § 39-13-511

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*** CURRENT THROUGH THE 2011 REGULAR SESSION ***

Title 39 Criminal Offenses
 Chapter 13 Offenses Against Person
 Part 5 Sexual Offenses

Tenn. Code Ann. § 39-13-511 (2011)

39-13-511. Public indecency -- Indecent exposure.

(a) (1) (A) A person commits the offense of public indecency who, in a public place, as defined in subdivision (a)(2)(B), knowingly or intentionally:

(i) Engages in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions or other ultimate sex acts;

(ii) Appears in a state of nudity; or

(iii) Fondles the genitals of the person, or another person.

(B) A person does not violate subdivision (a)(1)(A) if the person makes intentional and reasonable attempts to conceal the person from public view while performing an excretory function, and the person performs the function in an unincorporated area of the state.

(2) As used in subdivision (a)(1):

(A) "Nudity" or "state of nudity" means the showing of the bare human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. "Nudity" or "state of nudity" does not include a mother in the act of nursing the mother's baby; and

(B) (i) "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. "Public place" includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations.

(ii) Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. "Public place" does not include enclosed single sex public restrooms, enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is

necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation, or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation or an accredited private college. "Public place" does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.

(3) Public indecency is punishable as follows:

(A) A first or second offense is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500); and

(B) A third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both.

(4) (A) If a person is arrested for public indecency while working as an employee or a contractor, the employer or principal may be held liable for a fine imposed by subdivision (a)(3).

(B) The employer may not be held liable under this section, unless it is shown the employer knew or should have known the acts of the employee or contractor were in violation of this section.

(5) This subsection (a) does not apply to any theatrical production that contains nudity as defined by this section, performed in a theater by a professional or amateur theatrical or musical company that has serious artistic merit; provided, that the production is not in violation of chapter 17, part 9 of this title.

(6) This subsection (a) shall not affect in any fashion the ability of local jurisdictions or the state of Tennessee to regulate any activity where alcoholic beverages, including malt beverages, are sold for consumption.

(b) (1) A person commits the offense of indecent exposure who:

(A) In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:

(i) Intentionally:

(a) Exposes the person's genitals or buttocks to another; or

(b) Engages in sexual contact or sexual penetration as defined in § 39-13-501; and

(ii) Reasonably expects that the acts will be viewed by another and the acts:

(a) Will offend an ordinary viewer; or

(b) Are for the purpose of sexual arousal and gratification of the defendant; or

(B) (i) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:

(a) Exposure of such person's genitals, buttocks or female breasts; or

(b) Masturbation.

(ii) Knowingly engages in the person's own residence, in the intended presence of any child, for the defendant's sexual arousal or gratification the following intentional conduct:

(a) Exposure of the person's genitals, buttocks or female breasts; or

(b) Masturbation.

(iii) No prosecution shall be commenced for a violation of subdivision (b)(1)(B)(ii)(a) based solely upon the uncorroborated testimony of a witness who shares with the accused any of the relationships described in § 36-3-601(5).

(iv) For the provisions of subdivision (b)(1)(B)(i) or (b)(1)(B)(ii) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.

(2) "Indecent exposure," as defined in subdivision (b)(1), is a Class B misdemeanor, unless the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, in which event, indecent exposure is a Class A misdemeanor. Additionally, "indecent exposure," as defined in subdivision (b)(1), is a Class E felony when the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section.

(c) (1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard:

(A) Intentionally exposes the person's genitals or buttocks to the guard; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c), "guard" means any sheriff, jailer, guard, correctional officer or other authorized personnel charged with the custody of the person.

(3) Notwithstanding subdivision (b)(2), a violation of this subsection (c) is a Class A misdemeanor.

(d) This section does not apply to a mother who is breastfeeding her child in any location, public or private.

HISTORY: Acts 1989, ch. 591, § 1; 1990, ch. 980, § 33; 1994, ch. 542, §§ 1-3; 1998, ch. 755, § 1; 1999, ch. 189, § 1; 2006, ch. 617, § 2; 2007, ch. 209, § 1; 2009, ch. 414, §§ 1, 2; 2011, ch. 91, § 2.

View Full

1 of 1

[Return to Results](#) | [Book Browse](#)

Tenn. Code Ann. § 39-13-511 (Copy w/ Cite)

Pages: 4

In

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