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NEWSPAPER ARTICLES:

Yes

"Video voyeurs' may now face prison," 1-10-2004 Star Ledger, p.7

"NJ makes video voyeurism a crime," 1-10-2004 The Press, p.B1

"Ban on video peeping signed by McGreevey," 1-12-2004 Home News & Tribune, p.A3

P.L. 2003, CHAPTER 206, *approved January 8, 2004*
Senate Committee Substitute for
Senate, No. 2366

1 **AN ACT** concerning invasion of privacy and supplementing chapter 14
2 of Title 2C and Title 2A of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. An actor commits a crime of the fourth degree if, knowing
8 that he is not licensed or privileged to do so, and under circumstances
9 in which a reasonable person would know that another may expose
10 intimate parts or may engage in sexual penetration or sexual contact,
11 he observes another person without that person's consent and under
12 circumstances in which a reasonable person would not expect to be
13 observed.

14 b. An actor commits a crime of the third degree if, knowing that
15 he is not licensed or privileged to do so, he photographs, films,
16 videotapes, records, or otherwise reproduces in any manner, the image
17 of another person whose intimate parts are exposed or who is engaged
18 in an act of sexual penetration or sexual contact, without that person's
19 consent and under circumstances in which a reasonable person would
20 not expect to be observed.

21 c. An actor commits a crime of the third degree if, knowing that
22 he is not licensed or privileged to do so, he discloses any photograph,
23 film, videotape, recording or any other reproduction of the image of
24 another person whose intimate parts are exposed or who is engaged in
25 an act of sexual penetration or sexual contact, unless that person has
26 consented to such disclosure. For purposes of this subsection,
27 "disclose" means sell, manufacture, give, provide, lend, trade, mail,
28 deliver, transfer, publish, distribute, circulate, disseminate, present,
29 exhibit, advertise or offer. Notwithstanding the provisions of
30 subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be
31 imposed for a violation of this subsection.

32 d. It is an affirmative defense to a crime under this section that:

33 (1) the actor posted or otherwise provided prior notice to the
34 person of the actor's intent to engage in the conduct specified in
35 subsection a., b., or c., and

36 (2) the actor acted with a lawful purpose.

37 e. (1) It shall not be a violation of subsection a. or b. to observe
38 another person in the access way, foyer or entrance to a fitting room
39 or dressing room operated by a retail establishment or to photograph,
40 film, videotape, record or otherwise reproduce the image of such

1 person, if the actor conspicuously posts at the entrance to the fitting
2 room or dressing room prior notice of his intent to make the
3 observations, photographs, films, videotapes, recordings or other
4 reproductions.

5 (2) It shall be a violation of subsection c. to disclose in any
6 manner any such photograph, film, videotape or recording of another
7 person using a fitting room or dressing room except under the
8 following circumstances:

9 (a) to law enforcement officers in connection with a criminal
10 prosecution;

11 (b) pursuant to subpoena or court order for use in a legal
12 proceeding; or

13 (c) to a co-worker, manager or supervisor acting within the scope
14 of his employment.

15 f. It shall be a violation of subsection a. or b. to observe another
16 person in a private dressing stall of a fitting room or dressing room
17 operated by a retail establishment or to photograph, film, videotape,
18 record or otherwise reproduce the image of another person in a
19 private dressing stall of a fitting room or dressing room.

20 g. For purposes of this act, a law enforcement officer, or a
21 corrections officer or guard in a correctional facility or jail, who is
22 engaged in the official performance of his duties shall be deemed to be
23 licensed or privileged to make and to disclose observations,
24 photographs, films, videotapes, recordings or any other reproductions.

25 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
26 provisions of law, a conviction arising under subsection b. of this
27 section shall not merge with a conviction under subsection c. of this
28 section, nor shall a conviction under subsection c. merge with a
29 conviction under subsection b.

30

31 2. a. An actor who, without license or privilege to do so,
32 photographs, films, videotapes, records, or otherwise reproduces in
33 any manner, the image of another person whose intimate parts are
34 exposed or who is engaged in an act of sexual penetration or sexual
35 contact, without that person's consent and under circumstances in
36 which a reasonable person would not expect to be observed, shall be
37 liable to that person, who may bring a civil action in the Superior
38 Court.

39 b. An actor who, without license or privilege to do so, discloses
40 any photograph, film, videotape, recording or any other reproduction
41 of the image of another person whose intimate parts are exposed or
42 who is engaged in an act of sexual penetration or sexual contact,
43 without that person's consent and under circumstances in which a
44 reasonable person would not expect to be observed, shall be liable to
45 that person, who may bring a civil action in the Superior Court. For
46 purposes of this section, "disclose" means sell, manufacture, give,

1 provide, lend, trade, mail, deliver, transfer, publish, distribute,
2 circulate, disseminate, present, exhibit, advertise or offer.

3 c. The court may award:

4 (1) actual damages, but not less than liquidated damages
5 computed at the rate of \$1,000.00 for each violation of this act;

6 (2) punitive damages upon proof of willful or reckless disregard
7 of the law;

8 (3) reasonable attorney's fees and other litigation costs reasonably
9 incurred; and

10 (4) such other preliminary and equitable relief as the court
11 determines to be appropriate.

12

13 3. This act shall take effect immediately.

14

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16

17

18 Prohibits certain acts involving invasion of privacy.

SENATE, No. 2366

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 10, 2003

Sponsored by:

Senator BARBARA BUONO

District 18 (Middlesex)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

Senators Coniglio and Ciesla

SYNOPSIS

Creates new crime of "video voyeurism."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/25/2003)

1 AN ACT concerning video voyeurism and supplementing Title 2C of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Photographs" or "films" means the making of a photograph,
9 motion picture film, videotape, or any other recording or transmission
10 of the image of a person in a state of undress through electronic or
11 mechanical means.

12 "Reasonable expectation of privacy" means:

13 a. A belief that one could disrobe in privacy, without being
14 concerned that one's undressing was being photographed or filmed by
15 another; or

16 b. A belief that one may reasonably expect to be safe from casual
17 or hostile intrusion or surveillance.

18 "Surveillance" means the surreptitious observation of the activities
19 of another person having the purpose or effect of spying upon and
20 invading the privacy of the person.

21

22 2. A person is guilty of video voyeurism when, for the purpose of
23 arousing or gratifying the sexual desire of the person or any other
24 person, he knowingly photographs or films any person without that
25 person's knowledge and consent and while that person is in a place
26 where that person would have a reasonable expectation of privacy.

27

28 3. A person who violates the provisions of this act shall be guilty
29 of a crime of the third degree.

30

31 4. This act shall take effect on the first day of the second month
32 after enactment.

33

34

35

STATEMENT

36

37 This legislation creates a new criminal offense, video voyeurism.
38 It is designed to help shut the electronic blinds on modern peeping
39 toms. It will close a loophole in the state voyeurism law by penalizing
40 those who rely on tiny cameras and other technological tools for
41 sexual spying.

42 The current law is not well tailored to cope with video voyeurs who
43 conceal devices utilizing advanced technology and disseminate images
44 of undressed individuals on the Internet and elsewhere. This bill
45 would supplement the criminal trespass statute to make it a crime of
46 the third degree if a person surreptitiously photographs or films an

1 individual in a place where he or she would have a reasonable
2 expectation of privacy--for example, a home, bathroom or dressing
3 room--for the purpose of sexual arousal or gratification for the
4 photographer or anyone else.

5 Many times, a voyeur records the actions of his or her victim in the
6 privacy of the victim's own home. Therefore, the current provisions
7 of State law would not cover his or her actions. The invasion of one's
8 privacy is a serious offense that should be punished appropriately.
9 Although physical contact is not made between the victim and the
10 voyeur, the sense of violation and feeling of vulnerability is equal to
11 that of some rape victims. By recording the movements and actions
12 of a victim in his or her own home, the voyeur is able to make his or
13 her victim feel as if there is no safe place where one can escape from
14 the public eye. Thus, this legislation seeks to create a new offense
15 which would specifically punish a person's use of technology to invade
16 the privacy of another.

17 The bill is patterned on legislation pending in the New York State
18 Legislature.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2366

STATE OF NEW JERSEY

DATED: NOVEMBER 24, 2003

The Senate Judiciary Committee reports favorably Senate Committee Substitute for Senate Bill No. 2366.

This substitute recognizes that people have a right to control the observation of their most intimate behavior under circumstances where a reasonable person would not expect to be observed. The substitute provides for punishment of a person who, without license or privilege, observes another person with knowledge that the person may expose intimate parts or engage in sexual penetration or sexual contact, or who videotapes or otherwise records the image of that person or discloses such images.

Section 1 of the substitute sets forth the criminal penalties for violations of the act. The unlawful observation (i.e., observation without license or privilege) of another under circumstances in which a reasonable person would not expect to be observed would be a crime of the fourth degree. The unlawful photographing, filming, videotaping, recording or other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact would be a crime of the third degree. The unlawful disclosure such as selling, publishing or other distribution of such recorded images would be a crime of the third degree.

It would be an affirmative defense if a person, acting with lawful purpose, posts or otherwise provides a notice alerting others of his intent to conduct such surveillance.

Subsections e. and f. of section 1 of the bill are intended to protect the personal privacy of individuals shopping in certain establishments while at the same time recognize the legitimate public safety and security concerns of retailers. Merchants would not be allowed to observe any person in a private dressing stall of a fitting room or dressing room or to photograph, film, videotape, record or otherwise reproduce the image of that person. (Subsection f. of section 1). However, merchants would be permitted to observe or photograph the activities of persons in the access way, foyer or entrance to a fitting room or dressing room, provided that notice is conspicuously posted at the entrance to the fitting or dressing room. (Paragraph (1) of

subsection e. of section 1).

Merchants would be allowed to disclose a photograph of an individual in a private dressing stall of a fitting room only under limited circumstances: (1) to law enforcement officers in connection with a criminal prosecution; (2) pursuant to subpoena or court order for use in a legal proceeding; or (3) to a co-worker, manager or supervisor acting within the scope of his employment. (Paragraph (2) of subsection e. of section 1).

Section 2 of the substitute would establish a civil cause of action for the recording or disclosure of images obtained in violation of the substitute. The court may award actual damages, punitive damages and reasonable attorney's fees.

These amendments make this bill identical to Assembly Committee Substitute for Assembly Bill Nos. 3302/3286/3426/57.

ASSEMBLY, No. 3302

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 4, 2003

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman GARY L. GUEAR, SR.

District 14 (Mercer and Middlesex)

Assemblyman ROBERT J. SMITH

District 4 (Camden and Gloucester)

SYNOPSIS

Prohibits certain acts involving invasion of privacy.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2003)

1 AN ACT concerning invasion of privacy and supplementing chapter 14
2 of Title 2C and Title 2A of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. An actor commits a crime of the fourth degree if, knowing
8 that he is not licensed or privileged to do so, and for the purpose of
9 arousing or gratifying the sexual desire of the actor or any other
10 person, and under circumstances in which a reasonable person would
11 know that another may expose intimate parts or may engage in sexual
12 penetration or sexual contact, he observes another person without that
13 person's consent and under circumstances in which a reasonable person
14 would not expect to be observed.

15 b. An actor commits a crime of the third degree if, knowing that
16 he is not licensed or privileged to do so, and for the purpose of
17 arousing or gratifying the sexual desire of the actor or any other
18 person, he photographs, films, videotapes, records, or otherwise
19 reproduces in any manner, the image of another person whose intimate
20 parts are exposed or who is engaged in an act of sexual penetration or
21 sexual contact, without that person's consent and under circumstances
22 in which a reasonable person would not expect to be observed.

23 c. An actor commits a crime of the third degree if, knowing that he
24 is not licensed or privileged to do so, he discloses any photograph,
25 film, videotape, recording or any other reproduction of the image of
26 another person whose intimate parts are exposed or who is engaged in
27 an act of sexual penetration or sexual contact, unless that person has
28 consented to such disclosure. For purposes of this subsection,
29 "disclose" means sell, manufacture, give, provide, lend, trade, mail,
30 deliver, transfer, publish, distribute, circulate, disseminate, present,
31 exhibit, advertise or offer. Notwithstanding the provisions of
32 subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be
33 imposed for a violation of this subsection.

34 d. It is an affirmative defense to a crime under this section that:

35 (1) the actor posted or otherwise provided prior notice to the
36 person of the actor's intent to engage in the conduct specified in
37 subsection a., b., or c., and

38 (2) the actor acted with a lawful purpose.

39 e. (1) It shall not be a violation of subsection a. or b. to observe
40 another person in the access way, foyer or entrance to a fitting room
41 or dressing room operated by a retail establishment or to photograph,
42 film, videotape, record or otherwise reproduce the image of such
43 person, if the actor conspicuously posts at the entrance to the fitting
44 room or dressing room prior notice of his intent to make the
45 observations, photographs, films, videotapes, recordings or other

1 reproductions.

2 (2) It shall be a violation of subsection c. to disclose in any manner
3 any such photograph, film, videotape or recording of another person
4 using a fitting room or dressing room except under the following
5 circumstances:

6 (a) to law enforcement officers in connection with a criminal
7 prosecution;

8 (b) pursuant to subpoena or court order for use in a legal
9 proceeding; or

10 (c) to a co-worker, manager or supervisor acting within the scope
11 of his employment.

12 f. It shall not be a violation of subsection a. to observe another
13 person of the same gender in a fitting room or dressing room operated
14 by a retail establishment, if the actor conspicuously posts at the
15 entrance to the fitting room or dressing room prior notice of his intent
16 to make the observations.

17 g. For purposes of this act, a law enforcement officer, or a
18 corrections officer or guard in a correctional facility or jail, who is
19 engaged in the official performance of his or her duties shall be
20 deemed to be licensed or privileged to make and to disclose
21 observations, photographs, films, videotapes, recordings or any other
22 reproductions.

23 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
24 provisions of law, a conviction arising under subsection b. of this
25 section shall not merge with a conviction under subsection c. of this
26 section, nor shall a conviction under subsection c. merge with a
27 conviction under subsection b.

28

29 2. a. An actor who, without license or privilege to do so,
30 photographs, films, videotapes, records, or otherwise reproduces in
31 any manner, the image of another person whose intimate parts are
32 exposed or who is engaged in an act of sexual penetration or sexual
33 contact, without that person's consent and under circumstances in
34 which a reasonable person would not expect to be observed, shall be
35 liable to that person, who may bring a civil action in the Superior
36 Court.

37 b. An actor who, without license or privilege to do so, discloses
38 any photograph, film, videotape, recording or any other reproduction
39 of the image of another person whose intimate parts are exposed or
40 who is engaged in an act of sexual penetration or sexual contact,
41 without that person's consent and under circumstances in which a
42 reasonable person would not expect to be observed, shall be liable to
43 that person, who may bring a civil action in the Superior Court. For
44 purposes of this section, "disclose" means sell, manufacture, give,
45 provide, lend, trade, mail, deliver, transfer, publish, distribute,
46 circulate, disseminate, present, exhibit, advertise or offer.

1 c. The court may award:

2 (1) actual damages, but not less than liquidated damages computed
3 at the rate of \$1,000.00 for each violation of this act;

4 (2) punitive damages upon proof of willful or reckless disregard of
5 the law;

6 (3) reasonable attorney's fees and other litigation costs reasonably
7 incurred; and

8 (4) such other preliminary and equitable relief as the court
9 determines to be appropriate.

10

11 3. This act shall take effect immediately.

12

13

14

STATEMENT

15

16 This bill is intended to prohibit " video voyeurism." Under the
17 provisions of the bill, it is a crime for a person who, without license
18 or privilege, observes another person with the knowledge that person
19 may expose intimate parts or engage in sexual penetration or sexual
20 contact, or record or disclose images of the same.

21 The bill sets forth the criminal penalties for violations of the act.
22 The unlawful observation (i.e. observation without license or privilege)
23 of another would be a fourth degree crime. The unlawful
24 photographing, filming, videotaping, recording or other reproduction
25 of the image of intimate parts or sexual penetration or sexual contact
26 would be a crime of the third degree. The unlawful disclosure such as
27 selling, publishing or other distribution of such recorded images would
28 be a crime of the third degree.

29 It would be an affirmative defense if a person, acting with lawful
30 purpose, posts or otherwise provides a notice alerting others of his
31 intent to conduct such surveillance.

32 The bill permits merchants to observe or photograph the activities
33 of patrons in dressing or fitting rooms, provided that notice is posted
34 at the entrance to the fitting or dressing rooms. However, the
35 disclosure of these photographs would be regulated. Same gender
36 observations in fitting and dressing rooms would be permitted un if
37 the patron has been appropriately notified that such observations may
38 occur.

39 In addition, the bill establishes a civil cause of action for the
40 recording or disclosure of images obtained in violation of the bill.
41 Under the provisions of the bill, the court may award actual damages,
42 punitive damages and reasonable attorney's fees.

ASSEMBLY, No. 3286

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 4, 2003

Sponsored by:

Assemblyman PATRICK DIEGNAN, JR.

District 18 (Middlesex)

Co-Sponsored by:

Assemblymen Barnes, Connors and R.Smith

SYNOPSIS

Criminalizes certain acts involving invading a person's privacy.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning invasion of privacy and supplementing Title 2C of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. A person commits a crime of the third degree if knowing that
8 he is not licensed nor privileged to do so and with the purpose of
9 arousing or gratifying his sexual desires or the sexual desires of any
10 other person, the actor knowingly:

11 (1) videotapes, photographs, films, records or otherwise reproduces
12 in any manner, the image of another person whose intimate parts are
13 exposed or who is engaged in an act of sexual penetration or sexual
14 contact, without that person's consent and under circumstances in
15 which a reasonable person would not expect to be observed;

16 (2) videotapes, photographs, films, records or otherwise reproduces
17 in any manner, another person, under circumstances in which a
18 reasonable person would not expect to be observed, including but not
19 limited to, a restroom, locker room or fitting room;

20 (3) videotapes, photographs or films another person in the other
21 person's residence; or

22 (4) using a concealed camcorder or photographic camera of any
23 type, videotapes, photographs or films another person, under
24 circumstances in which a reasonable person would not expect to be
25 observed, under or through the clothing worn by that other person.

26 b. A person commits a crime of the third degree if , knowing that
27 he is not licensed or privileged to do so, he sells, distributes,
28 circulates, gives or otherwise discloses any videotape, photograph,
29 film, recording or any other reproduction of the image of another
30 person whose intimate parts are exposed or who is engaged in an act
31 of sexual penetration or sexual contact.

32

33 2. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill would make it a crime to unlawfully videotape,
39 photograph, film, record or otherwise reproduce in any manner,
40 another person, for the sexual arousal or gratification of the observer
41 or any other person, without that person's consent and under
42 circumstances in which a reasonable person would not expect to be
43 observed. It is the sponsor's intent to criminalize this conduct, which
44 is more commonly referred to as "video voyeurism."

45 Under the provision of the bill, it would be a crime of the third
46 degree if a person, knowing that he is not licensed or privileged to do

1 so and with the purpose of arousing or gratifying his sexual desires or
2 the sexual desires of any other person: (1) videotapes, photographs,
3 films, records or otherwise reproduces in any manner the image of
4 another person whose intimate parts are exposed or who is engaged in
5 an act of sexual penetration or sexual contact, without that person's
6 consent and under circumstances in which a reasonable person would
7 not expect to be observed; (2) videotapes, photographs, films,
8 records or otherwise reproduces in any manner, another person, under
9 circumstances in which a reasonable person would not expect to be
10 observed, including but not limited to, a restroom, locker room or
11 fitting room; (3) videotapes, photographs or films another person in
12 the other person's residence; or (4) using a concealed camcorder or
13 photographic camera of any type, videotapes, photographs or films
14 another person, under circumstances in which a reasonable person
15 would not expect to be observed, under or through the clothing worn
16 by that other person.

17 It would also be a crime of the third degree if the person sells,
18 distributes, circulates, gives or otherwise discloses the unlawfully
19 obtained photograph, videotape or recording.

ASSEMBLY, No. 3426

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 6, 2003

Sponsored by:

Assemblyman ALFRED E. STEELE

District 35 (Bergen and Passaic)

Assemblyman MIMS HACKETT, JR.

District 27 (Essex)

Assemblyman GARY L. GUEAR, SR.

District 14 (Mercer and Middlesex)

Co-Sponsored by:

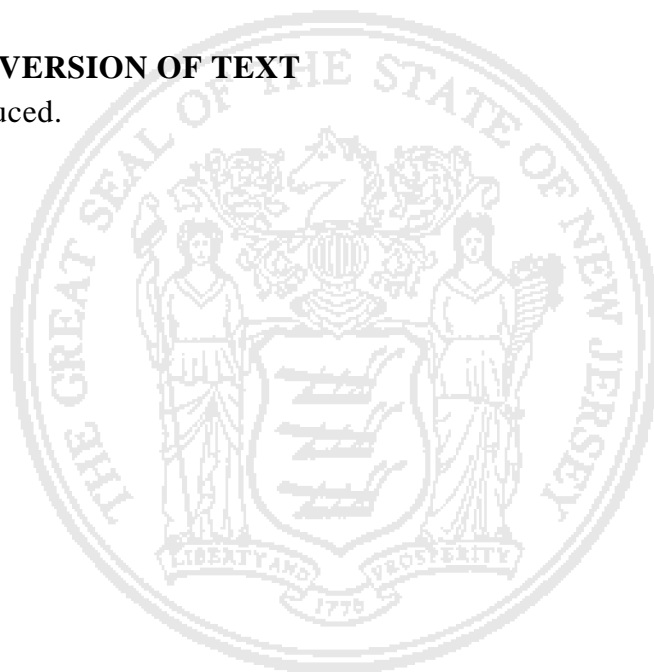
Assemblywoman Greenstein

SYNOPSIS

Creates new crime of "video voyeurism."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning video voyeurism and supplementing Title 2C of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 "Photographs" or "films" means the making of a photograph,
9 motion picture film, videotape, or any other recording or transmission
10 of the image of a person in a state of undress through electronic or
11 mechanical means.

12 "Reasonable expectation of privacy" means:

13 a. A belief that one could disrobe in privacy, without being
14 concerned that one's undressing was being photographed or filmed by
15 another; or

16 b. A belief that one may reasonably expect to be safe from casual
17 or hostile intrusion or surveillance.

18 "Surveillance" means the surreptitious observation of the activities
19 of another person having the purpose or effect of spying upon and
20 invading the privacy of the person.

21

22 2. A person is guilty of video voyeurism when, for the purpose of
23 arousing or gratifying the sexual desire of the person or any other
24 person, he knowingly photographs or films any person without that
25 person's knowledge and consent and while that person is in a place
26 where that person would have a reasonable expectation of privacy.

27

28 3. A person who violates the provisions of this act shall be guilty
29 of a crime of the third degree.

30

31 4. This act shall take effect on the first day of the second month
32 after enactment.

33

34

35

STATEMENT

36

37 This legislation creates a new criminal offense, video voyeurism.
38 It is designed to help shut the electronic blinds on modern peeping
39 toms. It will close a loophole in the state voyeurism law by penalizing
40 those who rely on tiny cameras and other technological tools for
41 sexual spying.

42 The current law is not well tailored to cope with video voyeurs who
43 conceal devices utilizing advanced technology and disseminate images
44 of undressed individuals on the Internet and elsewhere. This bill
45 would supplement the criminal trespass statute to make it a crime of
46 the third degree if a person surreptitiously photographs or films an

1 individual in a place where he or she would have a reasonable
2 expectation of privacy--for example, a home, bathroom or dressing
3 room--for the purpose of sexual arousal or gratification for the
4 photographer or anyone else.

5 Many times, a voyeur records the actions of his or her victim in the
6 privacy of the victim's own home. Therefore, the current provisions
7 of State law would not cover his or her actions. The invasion of one's
8 privacy is a serious offense that should be punished appropriately.
9 Although physical contact is not made between the victim and the
10 voyeur, the sense of violation and feeling of vulnerability is equal to
11 that of some rape victims. By recording the movements and actions
12 of a victim in his or her own home, the voyeur is able to make his or
13 her victim feel as if there is no safe place where one can escape from
14 the public eye. Thus, this legislation seeks to create a new offense
15 which would specifically punish a person's use of technology to invade
16 the privacy of another.

17 The bill is patterned on legislation pending in the New York State
18 Legislature.

ASSEMBLY, No. 57

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblyman TOM SMITH

District 11 (Monmouth)

Assemblyman STEVE CORODEMUS

District 11 (Monmouth)

Co-Sponsored by:

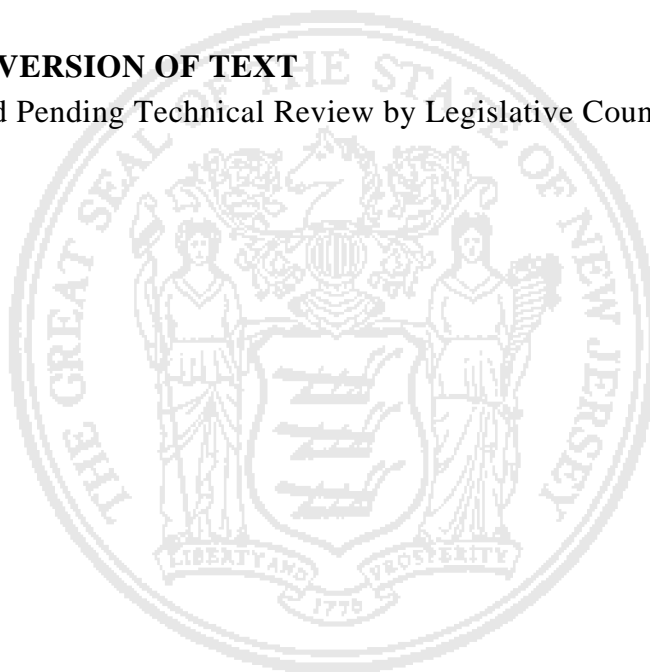
**Assemblywoman Farragher, Assemblymen Arnone, Thompson, Azzolina,
Holzapfel, Wolfe, Malone, Cottrell, Biondi, Bateman, C.Connors,
Assemblywoman Heck and Assemblyman Blee**

SYNOPSIS

Punishes certain acts involving invasion of privacy.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning invasion of privacy and supplementing chapter 14
2 of Title 2C and Title 2A of New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. An actor commits a crime of the fourth degree if, knowing
8 that he is not licensed or privileged to do so and under circumstances
9 in which a reasonable person would know that another may expose
10 intimate parts or may engage in sexual penetration or sexual contact,
11 he observes another person without that person's consent and under
12 circumstances in which a reasonable person would not expect to be
13 observed.

14 b. An actor commits a crime of the third degree if, knowing that he
15 is not licensed or privileged to do so, he photographs, films, videotape,
16 records, or otherwise reproduces in any manner the image of another
17 person whose intimate parts are exposed or who is engaged in an act
18 of sexual penetration or sexual contact, without that person's consent
19 and under circumstances in which a reasonable person would not
20 expect to be observed.

21 c. An actor commits a crime of the third degree if, knowing that he
22 is not licensed or privileged to do so, he discloses any photograph,
23 film, videotape, recording or any other reproduction of the image of
24 another person whose intimate parts are exposed or who is engaged in
25 an act of sexual penetration or sexual contact, unless that person has
26 consented to such disclosure. For purposes of this subsection,
27 "disclose" means sell, manufacture, give, provide, lend, trade, mail,
28 deliver, transfer, publish, distribute, circulate, disseminate, present,
29 exhibit, advertise or offer. Notwithstanding the provisions of
30 subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be
31 imposed for a violation of this subsection.

32 d. It is an affirmative defense to a crime under this section that:

33 (1) the actor posted or otherwise provided prior notice to the
34 person of the actor's intent to engage in the conduct specified in
35 subsection a., b., or c., and

36 (2) the actor acted with a lawful purpose.

37 e. It shall not be a violation of subsection a. or b. to observe
38 another person in the common area [, access way, foyer or entrance
39 to] of a fitting room or dressing room operated by a retail
40 establishment or to photograph, film, videotape, record or otherwise
41 reproduce the image of such person, if the actor conspicuously posts
42 at the entrance to the common area of a fitting room or dressing room
43 prior notice of his intent to make the observations, photographs, films,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 videotapes, recordings or other reproductions. It shall be a violation
2 of subsection c. to disclose in any manner any such photograph, film,
3 videotape or recording or another person [using] in the common area
4 of a fitting room or dressing room except under the following
5 circumstances:

6 (1) to law enforcement officers in connection with a criminal
7 prosecution;

8 (2) pursuant to subpoena or court order for use in a legal
9 proceeding; or

10 (3) to a co-worker, manager or supervisor acting within the scope
11 of his employment.

12 [e.]f. It shall not be a violation of subsection a. to observe another
13 person of the same gender in a fitting room or dressing room operated
14 by a retail establishment, if the actor conspicuously posts at the
15 entrance to the fitting room or dressing room prior notice of his intent
16 to make the observations.

17 g. For purposes of this act, a law enforcement officer, or a
18 corrections officer or guard in a correctional facility or jail, who is
19 engaged in the official performance of his or her duties shall be
20 deemed to be licensed or privileged to make and to disclose
21 observations, photographs, films, videotapes, recordings or any other
22 reproductions. [A law enforcement officer or corrections officer or
23 guard may disclose such observations, photographs, films, videotapes,
24 recordings or any other reproductions only under the following
25 circumstances:

26 (1) to law enforcement officers in connection with a criminal
27 prosecution;

28 (2) pursuant to subpoena or court order for use in a legal
29 proceeding; or

30 (3) to a co-worker, manager or supervisor acting within the scope
31 of his employment.

32 f.] h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
33 provisions of law, a conviction arising under subsection b. of this
34 section shall not merge with a conviction under subsection c. of this
35 section, nor shall a conviction under subsection c. merge with a
36 conviction under subsection b.

37

38 2. a. An actor who, without license or privilege to do so,
39 photographs, films, videotapes, records, or otherwise reproduces in
40 any manner, the image of another person whose intimate parts are
41 exposed or who is engaged in an act of sexual penetration or sexual
42 contact, without that person's consent and under circumstances in
43 which a reasonable person would not expect to be observed, shall be
44 liable to that person, who may bring a civil action in the Superior
45 Court.

46 b. An actor who, without license or privilege to do so, discloses

1 any photograph, film, videotape, recording or any other reproduction
2 of the image of another person whose intimate parts are exposed or
3 who is engaged in an act of sexual penetration or sexual contact,
4 without that persons' consent and under circumstances in which a
5 reasonable person would not expect to be observed, shall be liable to
6 that person, who may bring a civil action in the Superior Court. For
7 purposes of this section "disclose" means sell, manufacture, give,
8 provide, lend, trade, mail, deliver, transfer, publish, distribute,
9 circulate, disseminate, present, exhibit, advertise or offer.

10 c. The court may award:

11 (1) actual damages, but not less than liquidated damages
12 computed at the rate of \$1,000.00 for each violation of this act;

13 (2) punitive damages upon proof of willful or reckless disregard
14 of the law;

15 (3) reasonable attorney's fees and other litigation costs reasonably
16 incurred; and

17 (4) such other preliminary and equitable relief as the court
18 determines to be appropriate.

19
20 3. This act shall take effect immediately.
21
22

23 STATEMENT
24

25 This bill recognizes that people have a right to control the
26 observation of their most intimate behavior under circumstances
27 where a reasonable person would not expect to be observed. The bill
28 provides for the punishment of persons who, without license or
29 privilege, observe another person with the knowledge that person may
30 expose intimate parts or engage in sexual penetration and sexual
31 contact, or record or disclose images of the same. "Intimate parts,"
32 "sexual penetration" and "sexual contact" are terms defined in
33 N.J.S.2C:14-1.

34 Section 1 of the bill sets forth the criminal penalties for violations
35 of the act. The unlawful observation (i.e., observation without license
36 or privilege) of another would be a fourth degree crime. The unlawful
37 photographing, filming, videotaping, recording or other reproduction
38 of the image of intimate parts or sexual penetration or sexual contact
39 would be a crime of the third degree. The unlawful disclosure such as
40 selling, publishing or other distribution of such recorded images would
41 be a crime of the third degree.

42 A person may engage in the conduct contemplated by the bill if the
43 person being observed consents to the particular type of conduct. A
44 person's consent to one type of conduct, however, does not constitute
45 consent to all types of conduct covered under this bill. Thus, persons
46 may consent to observations of their intimate parts or of their sexual

1 activity without necessarily having consented to the recording of their
2 images, for which a defendant may still be held liable under this bill.
3 Similarly, persons may consent to being photographed, but have the
4 ability to withhold consent to the disclosure of the photograph.

5 Section 2 of the bill establishes a civil cause of action for the
6 recordation or disclosure of images obtained in violation of the bill.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3302, 3286, 3426, and 57**

STATE OF NEW JERSEY

DATED: MAY 8, 2003

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill Nos. 3302, 3286, 3426 and 57.

This substitute recognizes that people have a right to control the observation of their most intimate behavior under circumstances where a reasonable person would not expect to be observed. The substitute provides for punishment of a person who, without license or privilege, observes another person with the knowledge that person may expose intimate parts or engage in sexual penetration or sexual contact, or videotape or otherwise record that person or disclose such images of the same.

Section 1 of the substitute sets forth the criminal penalties for violations of the act. The unlawful observation (i.e., observation without license or privilege) of another under circumstances in which a reasonable person would not expect to be observed would be a crime of the fourth degree. The unlawful photographing, filming, videotaping, recording or other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact would be a crime of the third degree. The unlawful disclosure such as selling, publishing or other distribution of such recorded images would be a crime of the third degree.

It would be an affirmative defense if a person, acting with lawful purpose, posts or otherwise provides a notice alerting others of his intent to conduct such surveillance.

The substitute protects the personal privacy of individuals shopping in certain establishments while at the same time recognizing the legitimate public safety and security concerns of retailers. The substitute would permit merchants to observe or photograph the activities of patrons in the access way, foyer or entrance to a fitting room or dressing room, provided that notice is conspicuously posted at the entrance to the fitting or dressing rooms. However, merchants would not be allowed to observe another person in a private dressing stall of a fitting room or dressing room or to photograph, film, videotape, record or otherwise reproduce the image of another person in a private dressing stall.

In addition, the substitute would regulate the disclosure of any photographs, films, videotapes or recording of another person using a fitting room or dressing room.

Section 2 of the substitute would establish a civil cause of action for the recording or disclosure of images obtained in violation of the substitute. The court may award actual damages, punitive damages and reasonable attorney's fees.