

SENATE, No. 542

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Prohibits the unauthorized photographing or videotaping of a child.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the criminal invasion of privacy of children and
2 supplementing chapter 14 of Title 2C.

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

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7 1. a. An actor commits a crime of the third degree if, knowing
8 that he is not licensed or privileged to do so, he photographs, films,
9 videotapes, records, or otherwise reproduces in any manner the
10 image of a child, without the consent of the child's parent or
11 guardian and under circumstances in which a reasonable parent or
12 guardian would not expect his child to be the subject of such
13 reproduction.

14 As used in this act "child" means any person under 18 years of
15 age.

16 b. It is an affirmative defense to a crime under this section that:
17 (1) the actor posted or otherwise provided prior notice to the
18 parent or guardian of the child of the actor's intent to engage in the
19 conduct specified in subsection a. and
20 (2) the actor acted with a lawful purpose.

21 c. It shall not be a violation of subsection a. of this section to
22 observe a child in the common area, access way, foyer or entrance
23 to a fitting room or dressing room operated by a retail establishment
24 or to photograph, film, videotape, record or otherwise reproduce the
25 image of such child, if the actor conspicuously posts at the entrance
26 to the fitting room or dressing room prior notice of his intent to
27 make the photographs, films, videotapes, recordings or other
28 reproductions. It shall be a violation to disclose in any manner any
29 such photograph, film, videotape or recording of a child using a
30 fitting room or dressing room except under the following
31 circumstances:

32 (1) to law enforcement officers in connection with a criminal
33 prosecution;

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

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

38 d. For purposes of this act, a law enforcement officer who is
39 engaged in the official performance of his duties shall be deemed
40 licensed or privileged to make photographs, films, videotapes,
41 recordings or any other reproductions. A law enforcement officer
42 may disclose such photographs, films, videotapes, recordings or any
43 other reproductions only under the following circumstances:

44 (1) to law enforcement officers in connection with a criminal
45 prosecution;

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

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

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4 2. This act shall take effect immediately and shall be applicable
5 to all offenses committed on or after the effective date.

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8 STATEMENT

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10 This bill supplements the current “video voyeurism” statute,
11 P.L.2003, c. 206 (N.J.S.A.2C:14-9), to criminalize the unauthorized
12 photographing or videotaping of a child.

13 Under the provisions of the bill, it is a crime of the third degree
14 if a person, knowing that he is not licensed or privileged to do so,
15 photographs, films, videotapes, records or otherwise reproduces in
16 any manner the image of a child, without the consent of the child's
17 parent or guardian and under circumstances in which a reasonable
18 parent or guardian would not expect his child to be the subject of
19 such reproduction. A “child” is defined as any person under the age
20 of 18. A crime of the third degree is punishable by a term of
21 imprisonment of three to five years, a fine of up to \$15,000 or both.

22 Similar to the “video voyeurism” statute, this bill would provide
23 for an affirmative defense to the crime if the actor posted or
24 otherwise provided prior notice to the parent or guardian of his
25 intent to engage in the conduct and he acted with a lawful purpose.
26 In addition, this bill would provide an exception for retail
27 merchants who record the activities of patrons in dressing rooms,
28 provided that notice is given that persons may be observed while
29 within the dressing room. An exception is also provided with regard
30 to a law enforcement officers engaged in the official performance of
31 his duties. Such photographs may be disclosed to: (1) law
32 enforcement officers in connection with a criminal prosecution; (2)
33 pursuant to subpoena or court order for use in a legal proceeding; or
34 (3) to a co-worker, manager or supervisor acting within the scope of
35 his employment.

36 The sponsor was prompted to introduce this bill in response to an
37 incident in Ringwood involving a man videotaping young girls at a
38 swimming competition.