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

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

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

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

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

(1) the actor posted or otherwise provided prior notice to the parent or guardian of the child of the actor's intent to engage in the conduct specified in subsection a. and

(2) the actor acted with a lawful purpose.

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

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

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

STATEMENT

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

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

Similar to the “video voyeurism” statute, this bill would provide for an affirmative defense to the crime if the actor posted or otherwise provided prior notice to the parent or guardian of his intent to engage in the conduct and he acted with a lawful purpose.

In addition, this bill would provide an exception for retail merchants who record the activities of patrons in dressing rooms, provided that notice is given that persons may be observed while within the dressing room. An exception is also provided with regard to a law enforcement officers engaged in the official performance of his duties. Such photographs may be disclosed to: (1) 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.

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