

**SENATE, No. 3077**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED OCTOBER 15, 2018

**Sponsored by:**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**SYNOPSIS**

Clarifies the crime of invasion of privacy.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/19/2018)**

1 AN ACT concerning invasion of privacy and amending P.L.2003,  
2 c.206.

3

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

6

7 1. Section 1 of P.L.2003, c.206 (C.2C:14-9) is amended to read  
8 as follows:

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

16 b. (1) An actor commits a crime of the third degree if,  
17 knowing that he is not licensed or privileged to do so, he  
18 photographs, films, videotapes, records, or otherwise reproduces in  
19 any manner, the image of another person whose intimate parts are  
20 exposed or who is engaged in an act of sexual penetration or sexual  
21 contact, without that person's consent and under circumstances in  
22 which a reasonable person would not expect to be observed.

23 (2) An actor commits a crime of the fourth degree if, knowing  
24 that he is not licensed or privileged to do so, he photographs, films,  
25 videotapes, records, or otherwise reproduces in any manner, the  
26 image of the undergarment-clad intimate parts of another person,  
27 without that person's consent and under circumstances in which a  
28 reasonable person would not expect to have his undergarment-clad  
29 intimate parts observed.

30 c. An actor commits a crime of the third degree if, knowing  
31 that he is not licensed or privileged to do so, he discloses any  
32 photograph, film, videotape, recording or any other reproduction of  
33 the image, regardless of whether the image was taken in violation of  
34 subsection b. of this section, of: (1) another person who is engaged  
35 in an act of sexual penetration or sexual contact; (2) another person  
36 whose intimate parts are exposed; or (3) another person's  
37 undergarment-clad intimate parts , unless that person has consented  
38 to such disclosure.

39 For purposes of this subsection: (1) "disclose" means sell,  
40 manufacture, give, provide, lend, trade, mail, deliver, transfer,  
41 publish, distribute, circulate, disseminate, present, exhibit,  
42 advertise, offer, share, or make available via the Internet or by any  
43 other means, whether for pecuniary gain or not; and (2) "intimate  
44 parts" has the meaning ascribed to it in N.J.S.2C:14-1.  
45 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a

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

**Matter underlined thus is new matter.**

1 fine not to exceed \$30,000 may be imposed for a violation of this  
2 subsection.

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

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

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

8 e. (1) It shall not be a violation of subsection a. or b. to  
9 observe another person in the access way, foyer or entrance to a  
10 fitting room or dressing room operated by a retail establishment or  
11 to photograph, film, videotape, record or otherwise reproduce the  
12 image of such person, if the actor conspicuously posts at the  
13 entrance to the fitting room or dressing room prior notice of his  
14 intent to make the observations, photographs, films, videotapes,  
15 recordings or other reproductions.

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

20 (a) to law enforcement officers in connection with a criminal  
21 prosecution;

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

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

26 f. It shall be a violation of subsection a. or b. to observe  
27 another person in a private dressing stall of a fitting room or  
28 dressing room operated by a retail establishment or to photograph,  
29 film, videotape, record or otherwise reproduce the image of another  
30 person in a private dressing stall of a fitting room or dressing room.

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

37 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
38 provisions of law, a conviction arising under subsection b. of this  
39 section shall not merge with a conviction under subsection c. of this  
40 section, nor shall a conviction under subsection c. merge with a  
41 conviction under subsection b.

42 (cf: P.L.2016, c.2, s.1)

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44 2. This act shall take effect immediately.

STATEMENT

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This bill would amend N.J.S.A.2C:14-9, invasion of privacy, to clarify that the disclosure of certain images is a crime of the third degree.

Prior to the 2016 amendment to N.J.S.A.2C:14-9 to address the crime of “upskirting” (the surreptitious recording of images of undergarment-clad intimate parts of unsuspecting subjects) in the invasion of privacy law, subsection c. of N.J.S.2C:14-9 provided that an actor commits a crime of the third degree “if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any 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, unless that person has consented to such disclosure.”

P.L.2016, c.2 clarified that this formulation applies to another person’s undergarment-clad intimate parts, if the recording or reproduction of the image were taken “without that person’s consent and under circumstances in which a reasonable person would not expect to have his undergarment-clad intimate parts observed.” However, the 2016 amendments also added the specification that, for a violation to have occurred, the photograph, film, videotape, recording or other reproduction of the image must have been “taken in violation of subsection b. of this section.” Subsection b. pertains to the unconsented recording or 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, under circumstances in which a reasonable person would not expect to be observed. This change had the unintended effect of making it more difficult to prosecute instances of so-called “revenge porn,” where an individual discloses an intimate recorded image of another person that the other person had consented to taking (but had not consented to further disclosure). Even though the person whose image is depicted in the recording did not consent to the disclosure as contemplated by subsection c., a prosecution would be unlikely to succeed because the prosecutor would have to prove that the recording of the image was taken in violation of subsection b. of N.J.S. 2C:14-9.

This bill would remove that element that serves to limit prosecution of such cases.