

**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.

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

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

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

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

b. (1) 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 another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

(2) An actor commits a crime of the fourth 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 the undergarment-clad intimate parts of another person, without that person's consent and under circumstances in which a reasonable person would not expect to have his undergarment-clad intimate parts observed.

c. 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, regardless of whether the image was taken in violation of subsection b. of this section, of: (1) another person who is engaged in an act of sexual penetration or sexual contact; (2) another person whose intimate parts are exposed; or (3) another person's undergarment-clad intimate parts, unless that person has consented to such disclosure.

For purposes of this subsection: (1) "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer, share, or make available via the Internet or by any other means, whether for pecuniary gain or not; and (2) "intimate parts"

has the meaning ascribed to it in N.J.S.2C:14-1. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection.

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

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

(2) the actor acted with a lawful purpose.

e. (1) It shall not be a violation of subsection a. or b. to observe another person in the 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 person, if the actor conspicuously posts at the entrance to the fitting room or dressing room prior notice of his intent to make the observations, photographs, films, videotapes, recordings or other reproductions.

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

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

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

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

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

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

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

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

2. This act shall take effect immediately.

#### STATEMENT

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.