

AN ACT concerning the unauthorized production of images that depict nudity, amending P.L.1992, c.7, P.L.2003, c.206, and N.J.S.2C:24-4.

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

1. Section 2 of P.L.1992, c.7 (C.2A:30B-2) is amended to read as follows:

2. As used in this act:

a. "Child" means any person under 18 years of age;

b. "Person" means any natural person, association, partnership, corporation or other entity. "Corporation" includes any director, officer, servant, employee or other person authorized to act on behalf of a corporation;

c. "Prohibited sexual act" means

(1) Sexual intercourse; or

(2) Anal intercourse; or

(3) Masturbation; or

(4) Bestiality; or

(5) Sadism; or

(6) Masochism; or

(7) Fellatio; or

(8) Cunnilingus; or

(9) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view the depiction **[.]**; or

(10) Nudity, if an image is created or viewed by any local, State, or federal employee that was generated as a condition for boarding an airplane, or other form of public transportation, that depicts a child's genitals or breasts unless: the person depicted is under arrest; a search warrant has been issued authorizing the creation of such an image; the person is lawfully confined in any county or State correctional facility; or the child's parent or guardian has provided written authorization for the production of the image. No local, State, or federal government employee shall have immunity from civil or criminal liability resulting from the creation of such an image even if the violation occurred while acting within the scope of employment.

(cf: P.L.1992, c.7, s.2)

2. Section 2 of P.L.2003, c.206 (C.2A:58D-1) is amended to read as follows:

2. a. An actor who, without license or privilege to do so, 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, shall be

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. >

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liable to that person, who may bring a civil action in the Superior Court.

b. An actor who, without license or privilege to do so, 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, without that person's consent and under circumstances in which a reasonable person would not expect to be observed, shall be liable to that person, who may bring a civil action in the Superior Court. For purposes of this section, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer.

c. The court may award:

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

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

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

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

d. For the purposes of this section, the creation or viewing of an image by any local, State, or federal employee generated as a condition for boarding an airplane, or other form of public transportation that depicts a person's genitals or breasts shall be considered a violation of this section unless: the person depicted is under arrest; a search warrant has been issued authorizing the creation of such an image; the person is lawfully confined in any county or State correctional facility; or the person has provided written authorization for the production of the image. No local, State, or federal government employee shall have immunity from civil or criminal liability resulting from the creation of such an image even if the violation occurred while acting within the scope of employment.

(cf: P.L.2003, c.206, s.2)

3. 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. 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. A local, State, or federal employee who creates an image of a person's genitals or breasts, or a local, State, or federal government employee who views an image of a person's genitals or breasts, that was generated as a condition for boarding an airplane, or other form of public transportation, shall be considered a violation of this subsection unless: the person depicted is under arrest; a search warrant has been issued authorizing the creation of such an image; the person is lawfully confined in any county or State correctional facility; or the person has provided written authorization for the production of the image. No local, State, or federal government employee shall have immunity from prosecution under this subsection even if the violation occurred while acting within the scope of employment.

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 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. For purposes of this subsection, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. 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]** Except for those government employees denied immunity from prosecution pursuant to subsection b. of this section, 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.2003, c.206, s.1)

4. N.J.S.2C:24-4 is amended to read as follows:

2C:24-4. Endangering Welfare of Children.

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

"Child" means any person under 16 years of age.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Prohibited sexual act" means

(a) Sexual intercourse; or

(b) Anal intercourse; or

(c) Masturbation; or

(d) Bestiality; or

(e) Sadism; or

(f) Masochism; or

(g) Fellatio; or

(h) Cunnilingus;

(i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

(j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

"Reproduction" means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c.291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5) (a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

d. A local, State, or federal employee who creates an image of a child's genitals or breasts, or a local, State, or federal government employee who views an image of a child's genitals or breasts, that was generated as a condition for boarding an airplane, or other form

of public transportation, shall be guilty of a crime of the third degree unless: the person depicted is under arrest; a search warrant has been issued authorizing the creation of such an image; the person is lawfully confined in any county or State correctional facility; or the child's parent or guardian has provided written authorization for the production of the image. No local, State, or federal government employee shall have immunity from prosecution under this subsection even if the violation occurred while acting within the scope of employment.

(cf: P.L.2001, c.291, s.1)

5. This act shall take effect immediately.

STATEMENT

This bill specifies that certain images generated by body scans conducted in order to board an airplane, or other form of public transportation, that reveal a person's private parts violate the State's statutes prohibiting the invasion of privacy, child pornography, and endangerment of child welfare. The creation of such an image would not be a violation if the person scanned was under arrest, had been issued a search warrant authorizing the scan, was under the care and custody of a correctional facility, or provided written consent.

In each instance, the bill clarifies that government employees who conduct these naked body scans as part of their employment activities are not immune from prosecution.

Recent scanners acquired by the Transportation Security Administration generate images that reveal the naked bodies of travelers. This bill clarifies that the legislature intends to provide privacy protections, and to protect children from sexual exploitation, in all parts of the State, including its airports.

This bill does provide government employees with sufficient authority to conduct these scans when a real risk to public safety has been identified since the scans would be permitted if a person were under arrest or under the care and custody of a correctional facility, in response to a search order, or if a person provides written consent.

This bill is part of a package of three bills designed by the sponsor to protect the privacy of the traveling public.

Specifies that certain images generated by body scans violate State statutes prohibiting invasion of privacy, pornography, and endangerment of child welfare under certain circumstances.