

1405

2009-2010 Regular Sessions

I N S E N A T E

January 29, 2009

Introduced by Sens. MAZIARZ, ALESI, FLANAGAN, LARKIN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the crime of surreptitious surveillance, a class B misdemeanor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 250.40 of the penal law, as added by chapter 69 of
2 the laws of 2003 and subdivision 2 as amended by chapter 291 of the laws
3 of 2007, is amended to read as follows:
4 S 250.40 Unlawful surveillance; definitions.
5 The following definitions shall apply to sections 250.45, 250.50,
6 250.55 [and], 250.60 AND 250.70 of this article:
7 1. "Place and time when a person has a reasonable expectation of
8 privacy" means a place and time when a reasonable person would believe
9 that he or she could fully disrobe in privacy.
10 2. "Imaging device" means any mechanical, digital or electronic view-
11 ing device, camera, cellular phone or any other instrument capable of
12 recording, storing or transmitting visual images that can be utilized to
13 observe a person.
14 3. "Sexual or other intimate parts" means the human male or female
15 genitals, pubic area or buttocks, or the female breast below the top of
16 the nipple, and shall include such part or parts which are covered only
17 by an undergarment.
18 4. "Broadcast" means electronically transmitting a visual image with
19 the intent that it be viewed by a person.
20 5. "Disseminate" means to give, provide, lend, deliver, mail, send,
21 forward, transfer or transmit, electronically or otherwise to another
22 person.
23 6. "Publish" means to (a) disseminate, as defined in subdivision five
24 of this section, with the intent that such image or images be dissem-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD01240-01-9

1 inated to ten or more persons; or (b) disseminate with the intent that
2 such images be sold by another person; or (c) post, present, display,
3 exhibit, circulate, advertise or [allows] ALLOW access, electronically
4 or otherwise, so as to make an image or images available to the public;
5 or (d) disseminate with the intent that an image or images be posted,
6 presented, displayed, exhibited, circulated, advertised or made accessi-
7 ble, electronically or otherwise and to make such image or images
8 available to the public.

9 7. "Sell" means to disseminate to another person, as defined in subdi-
10 vision five of this section, or to publish, as defined in subdivision
11 six of this section, in exchange for something of value.

12 S 2. The penal law is amended by adding a new section 250.70 to read
13 as follows:

14 S 250.70 SURREPTITIOUS SURVEILLANCE.

15 1. A PERSON IS GUILTY OF SURREPTITIOUS SURVEILLANCE WHEN SUCH PERSON,
16 FOR PURPOSES OF HIS OR HER OWN AMUSEMENT OR ENTERTAINMENT OR FOR THE
17 PURPOSE OF DEGRADING OR ABUSING ANOTHER PERSON, OR FOR HIS OR HER OWN
18 SEXUAL AROUSAL OR SEXUAL GRATIFICATION, OR FOR NO LEGITIMATE PURPOSE
19 INTENTIONALLY AND SURREPTITIOUSLY OBSERVES BY MEANS OF HIS OR HER
20 UNAIDED EYES, OR BY MEANS OF AN IMAGING DEVICE, A PERSON DRESSING OR
21 UNDRESSING OR THE SEXUAL OR OTHER INTIMATE PARTS OF SUCH PERSON WITHOUT
22 SUCH PERSON'S KNOWLEDGE OR CONSENT AND AT A PLACE AND TIME WHEN SUCH
23 PERSON HAS A REASONABLE EXPECTATION OF PRIVACY.

24 2. FOR THE PURPOSES OF THIS SECTION, WHEN A PERSON SURREPTITIOUSLY
25 OBSERVES BY MEANS OF HIS OR HER UNAIDED EYES OR BY MEANS OF AN IMAGING
26 DEVICE A PERSON IN A BEDROOM, CHANGING ROOM, FITTING ROOM, RESTROOM,
27 TOILET, BATHROOM, WASHROOM, SHOWER OR ANY ROOM ASSIGNED TO GUESTS OR
28 PATRONS IN A SPA, HOTEL, MOTEL OR INN, THERE IS A REBUTTABLE PRESUMPTION
29 THAT SUCH PERSON DID SO FOR NO LEGITIMATE PURPOSE.

30 SURREPTITIOUS SURVEILLANCE IS A CLASS B MISDEMEANOR.

31 S 3. This act shall take effect on the first of November next succeed-
32 ing the date on which it shall have become a law.