

3925

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 31, 2011

---

Introduced by M. of A. CROUCH, RAIA, McDONOUGH, MOLINARO -- read once  
and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to unlawful surveillance in  
the third degree

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

1     Section 1. The penal law is amended by adding a new section 250.44 to  
2     read as follows:  
3     S 250.44 UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE.  
4     A PERSON IS GUILTY OF UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE WHEN,  
5     FOR HIS OR HER OWN, OR ANOTHER PERSON'S AMUSEMENT, ENTERTAINMENT,  
6     PROFIT, OR SEXUAL AROUSAL OR SEXUAL GRATIFICATION, HE OR SHE INTENTIONALLY  
7     USES OR INSTALLS, OR PERMITS THE UTILIZATION OR INSTALLATION OF  
8     AN IMAGING DEVICE TO RECORD A CHILD UNDER THE AGE OF TWELVE, WHILE SUCH  
9     CHILD IS ATTENDING A DAY CARE, GROUP FAMILY DAY CARE, OR FAMILY DAY CARE  
10    WITHOUT SUCH CHILD'S PARENT'S OR LEGAL GUARDIAN'S KNOWLEDGE AND CONSENT,  
11    OR THE KNOWLEDGE AND CONSENT OF ANY PERSON CHARGED WITH THE TEMPORARY  
12    CARE OR CUSTODY OF SUCH CHILD. KNOWLEDGE AND CONSENT SHALL BE PRESUMED  
13    TO HAVE BEEN OBTAINED WHERE THE PERSON USING OR INSTALLING OR PERMITTING  
14    THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE IS A PARENT OR  
15    LEGAL GUARDIAN OF A CHILD BEING RECORDED OR ACTING AT SUCH PERSON'S  
16    REQUEST, PROVIDED SUCH RECORDING IS NOT BEING DONE SURREPTITIOUSLY OR  
17    FOR THE SEXUAL AROUSAL OR SEXUAL GRATIFICATION OF THE PERSON UNDERTAKING  
18    THE RECORDING OR ANOTHER PERSON.  
19    UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.  
20    S 2. The opening paragraph of section 250.40 of the penal law, as  
21    added by chapter 69 of the laws of 2003, is amended to read as follows:  
22    The following definitions shall apply to sections 250.44, 250.45,  
23    250.50, 250.55 and 250.60 of this article:

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

LBD04896-01-1

1 S 3. Section 250.60 of the penal law, as added by chapter 69 of the  
2 laws of 2003 and subdivisions 1 and 2 as amended by chapter 157 of the  
3 laws of 2003, is amended to read as follows:

4 S 250.60 Dissemination of an unlawful surveillance image in the first  
5 degree.

6 A person is guilty of dissemination of an unlawful surveillance image  
7 in the first degree when:

8 1. He or she, with knowledge of the unlawful conduct by which an image  
9 or images of the sexual or other intimate parts of another person or  
10 persons were obtained and such unlawful conduct would satisfy the essen-  
11 tial elements of the crime of unlawful surveillance in the first [or],  
12 second OR THIRD degree, sells or publishes such image or images; or

13 2. Having created a surveillance image in violation of section 250.44,  
14 250.45 or 250.50 of this article, or in violation of the law in any  
15 other jurisdiction which includes all of the essential elements of  
16 either such crime, or having acted as an accomplice to such crime, or  
17 acting as an agent to the person who committed such crime, he or she  
18 intentionally disseminates such unlawfully created image; or

19 3. He or she commits the crime of dissemination of an unlawful  
20 surveillance image in the second degree and has been previously  
21 convicted within the past ten years of dissemination of an unlawful  
22 surveillance image in the first [or], second OR THIRD degree.

23 Dissemination of an unlawful surveillance image in the first degree is  
24 a class E felony.

25 S 4. Subdivision 1 of section 250.65 of the penal law, as added by  
26 chapter 69 of the laws of 2003, is amended to read as follows:

27 1. The provisions of sections 250.44, 250.45, 250.50, 250.55 and  
28 250.60 of this article do not apply with respect to any: (a) law  
29 enforcement personnel engaged in the conduct of their authorized duties;  
30 (b) security system wherein a written notice is conspicuously posted on  
31 the premises stating that a video surveillance system has been installed  
32 for the purpose of security; or (c) video surveillance devices installed  
33 in such a manner that their presence is clearly and immediately obvious.

34 S 5. This act shall take effect on the first of November next succeed-  
35 ing the date on which it shall have become a law.