S T A T E O F N E W Y O R K

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I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CROUCH, RAIA, McDONOUGH -- 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:

Section 1. The penal law is amended by adding a new section 250.44 to read as follows:

S 250.44 UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE.

A PERSON IS GUILTY OF UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE WHEN, FOR HIS OR HER OWN, OR ANOTHER PERSON'S AMUSEMENT, ENTERTAINMENT, PROFIT, OR SEXUAL AROUSAL OR SEXUAL GRATIFICATION, HE OR SHE INTENTIONALLY USES OR INSTALLS, OR PERMITS THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE TO RECORD A CHILD UNDER THE AGE OF TWELVE, WHILE SUCH CHILD IS ATTENDING A DAY CARE, GROUP FAMILY DAY CARE, OR FAMILY DAY CARE WITHOUT SUCH CHILD'S PARENT'S OR LEGAL GUARDIAN'S KNOWLEDGE AND CONSENT, OR THE KNOWLEDGE AND CONSENT OF ANY PERSON CHARGED WITH THE TEMPORARY CARE OR CUSTODY OF SUCH CHILD. KNOWLEDGE AND CONSENT SHALL BE PRESUMED TO HAVE BEEN OBTAINED WHERE THE PERSON USING OR INSTALLING OR PERMITTING THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE IS A PARENT OR LEGAL GUARDIAN OF A CHILD BEING RECORDED OR ACTING AT SUCH PERSON'S REQUEST, PROVIDED SUCH RECORDING IS NOT BEING DONE SURREPTITIOUSLY OR FOR THE SEXUAL AROUSAL OR SEXUAL GRATIFICATION OF THE PERSON UNDERTAKING THE RECORDING OR ANOTHER PERSON.

UNLAWFUL SURVEILLANCE IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

S 2. The opening paragraph of section 250.40 of the penal law, as added by chapter 69 of the laws of 2003, is amended to read as follows:

The following definitions shall apply to sections 250.44, 250.45, 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.

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

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

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

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

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

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

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

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

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

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.