ASSEMBLY, No. 2119

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Clarifies that crimes of trespassing and invasion of privacy also include use of unmanned aircraft systems.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning unmanned aircraft systems and amending P.L.2003, c.206, N.J.S.2C:18-3, and P.L.2017, c.315.

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 or operates an unmanned aircraft system for the purpose of observing 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 or operates an unmanned aircraft system for the purpose of photographing, filming, videotaping, recording, or otherwise reproducing 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 or operates an unmanned aircraft system for the purpose of photographing, filming, videotaping, recording, or otherwise reproducing 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, 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,

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.

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.

<u>As used in this act:</u>

"Operate" means to fly, control, direct, or program the flight of an unmanned aircraft system.

"Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

"Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently.

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

2. N.J.S.2C:18-3 is amended to read as follows:

2C:18-3. a. Unlicensed entry of structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in or causes an unmanned aircraft system to enter or surreptitiously remain over any research facility, structure, or separately secured or occupied portion thereof, or in **[**or**]**, upon , or over utility company property, or in or over the sterile area or operational area of an airport. An offense under this subsection is a crime of the fourth degree if it is committed in a school or on or over school property. The offense is a crime of the fourth degree if it is committed in or over a dwelling. An offense under this section is a crime of the fourth degree if it is committed in or over a research facility, power generation facility, waste treatment facility, public sewage facility, water treatment facility, public water facility, nuclear electric generating plant or any facility which stores, generates or handles any hazardous chemical or chemical compounds. An offense under this subsection is a crime of the fourth degree if it is committed in **[**or**]**, upon , or over utility company property. An offense under this subsection is a crime of the fourth degree if it is committed in or over the sterile area or operational area of an airport. Otherwise it is a disorderly persons offense.

b. Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in or causes an unmanned aircraft system to enter or remain over any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

c. Peering into windows or other openings of dwelling places. A person commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, he peers into or uses an unmanned aircraft system or other device to peer into a window or other opening of a dwelling or other structure adapted for overnight

accommodation for the purpose of invading the privacy of another person and under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed.

d. Defenses. It is an affirmative defense to prosecution under this section that:

(1) A structure involved in an offense under subsection a. was abandoned;

(2) The structure was at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the structure; **[**or**]**

(3) The actor reasonably believed that the owner of the structure, or other person empowered to license access thereto, would have licensed him to enter or remain, or, in the case of subsection c. of this section, to peer ; or

(4) (a) An unmanned aircraft system was used to commit the act;

(b) The person was operating the unmanned aircraft system for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and

(c) The act committed was solely incidental to the lawful commercial or educational use of the unmanned aircraft system.

As used in this section:

"Operate" means to fly, control, direct, or program the flight of an unmanned aircraft system.

"Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

"Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently.

(cf: P.L.2013, c.138, s.2)

3. Section 1 of P.L.2017, c.315 (C.2C:40-27) is amended to read as follows:

1. a. As used in this act:

"Operate" means to fly, control, direct, or program the flight of an unmanned aircraft system.

"Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

"Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently.

b. Except as otherwise prohibited by P.L.2017, c.315 (C.2C:40-27 et al.), section 1 of P.L.2003, c.206 (C.2C:14-9), or N.J.S.2C:18-

3, a person who is authorized by federal law to operate an unmanned aircraft system may operate an unmanned aircraft system in this State for any purpose, provided that the person operates the unmanned aircraft system in a manner consistent with applicable federal law and regulations. Nothing in this section shall be construed to affect federal preemption of State law regarding aviation.

For purposes of this subsection, "person" means an individual, partnership, corporation, association, governmental entity, or other legal or commercial entity.

c. An owner or operator of a critical infrastructure, including a political subdivision, may apply to the Administrator of the Federal Aviation Administration, pursuant to section 2209 of the "FAA Extension, Safety, and Security Act of 2016," Pub.L.114-190, in order to prohibit or restrict the operation of unmanned aircraft systems in close proximity to the critical infrastructure.

Prior to applying to the Administrator of the Federal Aviation Administration to prohibit or restrict the operation of unmanned aircraft systems in close proximity to a critical infrastructure, a political subdivision shall hold a minimum of one public hearing, with adequate notice to the public, concerning the proposed application.

(cf: P.L.2017, c.315, s.1)

4. This act shall take effect immediately.

STATEMENT

This bill amends current law to clarify that the crimes of invasion of privacy and trespassing also include the use of unmanned aircraft systems.

Current statutory law governing the crimes of invasion of privacy and trespassing does not explicitly address violations which involve the use of an unmanned aircraft system, commonly referred to as a drone. This bill amends statutory law to explicitly provide that a person who uses a drone to commit a violation under the relevant statute also commits a crime.

The bill also expands the affirmative defenses available to a person accused of trespass to include a person: (1) who used an unmanned aircraft system to commit the act; (2) who was operating the unmanned aircraft system for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration (FAA) rules, exemptions, or other authorizations; and (3) the act was solely incidental to the lawful commercial or educational use of the unmanned aircraft system.