

SENATE, No. 3318

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JANUARY 15, 2019

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Senators Andrzejczak, Bateman, Cruz-Perez, Cunningham, Greenstein, Lagana, Oroho, Rice, Sacco, Sarlo, Thompson, A.R.Bucco and O'Scanlon

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2019)

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

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2003, c.206 (C.2C:14-9) is amended to read
8 as follows:

9 1. a. An actor commits a crime of the fourth degree if,
10 knowing that he is not licensed or privileged to do so, and under
11 circumstances in which a reasonable person would know that
12 another may expose intimate parts or may engage in sexual
13 penetration or sexual contact, he observes or operates an unmanned
14 aircraft system for the purpose of observing another person without
15 that person's consent and under circumstances in which a reasonable
16 person would not expect to be observed.

17 b. (1) An actor commits a crime of the third degree if,
18 knowing that he is not licensed or privileged to do so, he
19 photographs, films, videotapes, records, or otherwise reproduces or
20 operates an unmanned aircraft system for the purpose of
21 photographing, filming, videotaping, recording, or otherwise
22 reproducing in any manner, the image of another person whose
23 intimate parts are exposed or who is engaged in an act of sexual
24 penetration or sexual contact, without that person's consent and
25 under circumstances in which a reasonable person would not expect
26 to be observed.

27 (2) An actor commits a crime of the fourth degree if, knowing
28 that he is not licensed or privileged to do so, he photographs, films,
29 videotapes, records, or otherwise reproduces or operates an
30 unmanned aircraft system for the purpose of photographing,
31 filming, videotaping, recording, or otherwise reproducing in any
32 manner, the image of the undergarment-clad intimate parts of
33 another person, without that person's consent and under
34 circumstances in which a reasonable person would not expect to
35 have his undergarment-clad intimate parts observed.

36 c. An actor commits a crime of the third degree if, knowing
37 that he is not licensed or privileged to do so, he discloses any
38 photograph, film, videotape, recording or any other reproduction of
39 the image, taken in violation of subsection b. of this section, of: (1)
40 another person who is engaged in an act of sexual penetration or
41 sexual contact; (2) another person whose intimate parts are exposed;
42 or (3) another person's undergarment-clad intimate parts, unless that
43 person has consented to such disclosure.

44 For purposes of this subsection: (1) "disclose" means sell,
45 manufacture, give, provide, lend, trade, mail, deliver, transfer,
46 publish, distribute, circulate, disseminate, present, exhibit,

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.

1 advertise, offer, share, or make available via the Internet or by any
2 other means, whether for pecuniary gain or not; and (2) "intimate
3 parts" has the meaning ascribed to it in N.J.S.2C:14-1.
4 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
5 fine not to exceed \$30,000 may be imposed for a violation of this
6 subsection.

7 d. It is an affirmative defense to a crime under this section that:

8 (1) the actor posted or otherwise provided prior notice to the
9 person of the actor's intent to engage in the conduct specified in
10 subsection a., b., or c., and

11 (2) the actor acted with a lawful purpose.

12 e. (1) It shall not be a violation of subsection a. or b. to
13 observe another person in the access way, foyer or entrance to a
14 fitting room or dressing room operated by a retail establishment or
15 to photograph, film, videotape, record or otherwise reproduce the
16 image of such person, if the actor conspicuously posts at the
17 entrance to the fitting room or dressing room prior notice of his
18 intent to make the observations, photographs, films, videotapes,
19 recordings or other reproductions.

20 (2) It shall be a violation of subsection c. to disclose in any
21 manner any such photograph, film, videotape or recording of
22 another person using a fitting room or dressing room except under
23 the following circumstances:

24 (a) to law enforcement officers in connection with a criminal
25 prosecution;

26 (b) pursuant to subpoena or court order for use in a legal
27 proceeding; or

28 (c) to a co-worker, manager or supervisor acting within the
29 scope of his employment.

30 f. It shall be a violation of subsection a. or b. to observe
31 another person in a private dressing stall of a fitting room or
32 dressing room operated by a retail establishment or to photograph,
33 film, videotape, record or otherwise reproduce the image of another
34 person in a private dressing stall of a fitting room or dressing room.

35 g. For purposes of this act, a law enforcement officer, or a
36 corrections officer or guard in a correctional facility or jail, who is
37 engaged in the official performance of his duties shall be deemed to
38 be licensed or privileged to make and to disclose observations,
39 photographs, films, videotapes, recordings or any other
40 reproductions.

41 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
42 provisions of law, a conviction arising under subsection b. of this
43 section shall not merge with a conviction under subsection c. of this
44 section, nor shall a conviction under subsection c. merge with a
45 conviction under subsection b.

46 As used in this act:

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

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

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

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

9
10 2. N.J.S.2C:18-3 is amended to read as follows:

11 2C:18-3. a. Unlicensed entry of structures. A person commits
12 an offense if, knowing that he is not licensed or privileged to do so,
13 he enters or surreptitiously remains in or causes an unmanned
14 aircraft system to enter or surreptitiously remain over any research
15 facility, structure, or separately secured or occupied portion thereof,
16 or in **【or】**, upon , or over utility company property, or in or over the
17 sterile area or operational area of an airport. An offense under this
18 subsection is a crime of the fourth degree if it is committed in a
19 school or on or over school property. The offense is a crime of the
20 fourth degree if it is committed in or over a dwelling. An offense
21 under this section is a crime of the fourth degree if it is committed
22 in or over a research facility, power generation facility, waste
23 treatment facility, public sewage facility, water treatment facility,
24 public water facility, nuclear electric generating plant or any facility
25 which stores, generates or handles any hazardous chemical or
26 chemical compounds. An offense under this subsection is a crime of
27 the fourth degree if it is committed in **【or】**, upon , or over utility
28 company property. An offense under this subsection is a crime of
29 the fourth degree if it is committed in or over the sterile area or
30 operational area of an airport. Otherwise it is a disorderly persons
31 offense.

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

37 (1) Actual communication to the actor; or

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

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

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

1 person and under circumstances in which a reasonable person in the
2 dwelling or other structure would not expect to be observed.

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

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

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

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

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

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

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

22 As used in this section:

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

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

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

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

33

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

36 1. a. As used in this act:

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

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

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

46 b. Except as otherwise prohibited by P.L.2017, c.315 (C.2C:40-
47 27 et al.), section 1 of P.L.2003, c.206 (C.2C:14-9), or N.J.S.2C:18-
48 3, a person who is authorized by federal law to operate an

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

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

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

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

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

23
24 4. This act shall take effect immediately.

25 26 27 STATEMENT

28
29 This bill amends current law to clarify that the crimes of
30 invasion of privacy and trespassing also include the use of
31 unmanned aircraft systems.

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

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

46 In addition, the bill defines "operate" to mean to fly, control,
47 direct, or program the flight of an unmanned aircraft system.
48 "Unmanned aircraft" is defined as an aircraft that is operated

1 without the possibility of direct human intervention from within or
2 on the aircraft. "Unmanned aircraft system" is defined under the bill
3 to mean an unmanned aircraft and associated elements, including
4 communication links and the components that control the unmanned
5 aircraft, that are required for the pilot in command to operate safely
6 and efficiently.