

# ASSEMBLY, No. 1892

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblyman REGINALD W. ATKINS**

**District 20 (Union)**

**Assemblywoman ELLEN J. PARK**

**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblymen Barlas, Assemblywoman N.Munoz and Assemblyman Kanitra**

**SYNOPSIS**

Prohibits deepfake pornography and imposes criminal and civil penalties for non-consensual disclosure.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Science, Innovation and Technology Committee with technical review.



**(Sponsorship Updated As Of: 10/17/2024)**

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2

1 AN ACT concerning the non-consensual disclosure of deepfake  
2 pornography and amending P.L.2003, c.206 and N.J.S.2C:24-4.

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, knowing  
10 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 another person without  
14 that person's consent and under circumstances in which a reasonable  
15 person would not expect to be observed.

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

23 (2) An actor commits a crime of the fourth degree if, knowing  
24 that he is not licensed or privileged to do so, he photographs, films,  
25 videotapes, records, or otherwise reproduces in any manner, the  
26 image of the undergarment-clad intimate parts of another person,  
27 without that person's consent and under circumstances in which a  
28 reasonable person would not expect to have his undergarment-clad  
29 intimate parts observed.

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

39 For purposes of this subsection:

40 (1) "disclose" means sell, manufacture, give, provide, lend,  
41 trade, mail, deliver, transfer, publish, distribute, circulate,  
42 disseminate, present, exhibit, advertise, offer, share, or make  
43 available via the Internet or by any other means, whether for  
44 pecuniary gain or not; **[and]**

**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.

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1 (2) "intimate parts" has the meaning ascribed to it in  
2 N.J.S.2C:14-1; and

3 (3) "deceptive audio or visual media" means any video  
4 recording, motion picture film, sound recording, electronic image,  
5 or photograph, or any technological representation of speech or  
6 conduct substantially derivative thereof that appears to authentically  
7 depict any speech or conduct of a person who did not in fact engage  
8 in the speech or conduct and the production of which was  
9 substantially dependent upon technical means, rather than the  
10 ability of another person to physically or verbally impersonate the  
11 person.

12 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-  
13 3, a fine not to exceed \$30,000 may be imposed for a violation of  
14 this subsection.

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

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

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

20 e. (1) It shall not be a violation of subsection a. or b. to observe  
21 another person in the access way, foyer or entrance to a fitting room  
22 or dressing room operated by a retail establishment or to  
23 photograph, film, videotape, record or otherwise reproduce the  
24 image of such person, if the actor conspicuously posts at the  
25 entrance to the fitting room or dressing room prior notice of his  
26 intent to make the observations, photographs, films, videotapes,  
27 recordings or other reproductions.

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

32 (a) to law enforcement officers in connection with a criminal  
33 prosecution;

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

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

38 f. It shall be a violation of subsection a. or b. to observe  
39 another person in a private dressing stall of a fitting room or  
40 dressing room operated by a retail establishment or to photograph,  
41 film, videotape, record or otherwise reproduce the image of another  
42 person in a private dressing stall of a fitting room or dressing room.

43 g. For purposes of this act, a law enforcement officer, or a  
44 corrections officer or guard in a correctional facility or jail, who is  
45 engaged in the official performance of his duties shall be deemed to  
46 be licensed or privileged to make and to disclose observations,  
47 photographs, films, videotapes, recordings or any other  
48 reproductions.

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

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

7  
8 2. N.J.S.2C:24-4 is amended to read as follows:

9 2C:24-4. a. (1) Any person having a legal duty for the care of a  
10 child or who has assumed responsibility for the care of a child who  
11 engages in sexual conduct which would impair or debauch the  
12 morals of the child is guilty of a crime of the second degree. Any  
13 other person who engages in conduct or who causes harm as  
14 described in this paragraph to a child is guilty of a crime of the third  
15 degree.

16 (2) Any person having a legal duty for the care of a child or who  
17 has assumed responsibility for the care of a child who causes the  
18 child harm that would make the child an abused or neglected child  
19 as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c.119  
20 (C.9:6-8.21) is guilty of a crime of the second degree. Any other  
21 person who engages in conduct or who causes harm as described in  
22 this paragraph to a child is guilty of a crime of the third degree.

23 b. (1) As used in this subsection:

24 "Child" means any person under 18 years of age.

25 "Deceptive audio or visual media" means any video recording,  
26 motion picture film, sound recording, electronic image, or  
27 photograph, or any technological representation of speech or  
28 conduct substantially derivative thereof that appears to authentically  
29 depict any speech or conduct of a person who did not in fact engage  
30 in the speech or conduct and the production of which was  
31 substantially dependent upon technical means, rather than the  
32 ability of another person to physically or verbally impersonate the  
33 person.

34 "Distribute" means to sell, or to manufacture, give, provide,  
35 lend, trade, mail, deliver, publish, circulate, disseminate, present,  
36 exhibit, display, share, advertise, offer, or make available via the  
37 Internet or by any other means, whether for pecuniary gain or not.  
38 The term also includes an agreement or attempt to distribute.

39 "File-sharing program" means a computer program, application,  
40 software or operating system that allows the user of a computer on  
41 which such program, application, software or operating system is  
42 installed to designate files as available for searching by and copying  
43 to one or more other computers, to transmit such designated files  
44 directly to one or more other computers, and to request the  
45 transmission of such designated files directly from one or more  
46 other computers. The term "file-sharing program" includes but is  
47 not limited to a computer program, application or software that  
48 enables a computer user to participate in a peer-to-peer network.

1       “Internet” means the international computer network of both  
2 federal and non-federal interoperable packet switched data  
3 networks.

4       “Item depicting the sexual exploitation or abuse of a child”  
5 means a photograph, film, video, an electronic, electromagnetic or  
6 digital recording, an image stored or maintained in a computer  
7 program or file or in a portion of a file, or any deceptive audio or  
8 visual media, or any other reproduction or reconstruction which :

9       (a) depicts a child engaging in a prohibited sexual act or in the  
10 simulation of such an act; or

11       (b) portrays a child in a sexually suggestive manner.

12       “Peer-to-peer network” means a connection of computer systems  
13 through which files are shared directly between the systems on a  
14 network without the need of a central server.

15       “Portray a child in a sexually suggestive manner” means:

16       (a) to depict a child's less than completely and opaquely covered  
17 intimate parts, as defined in N.J.S.2C:14-1, in a manner that, by  
18 means of the posing, composition, format, or animated sensual  
19 details, emits sensuality with sufficient impact to concentrate  
20 prurient interest on the child; or

21       (b) to depict any form of contact with a child's intimate parts, as  
22 defined in N.J.S.2C:14-1, in a manner that, by means of the posing,  
23 composition, format, or animated sensual details, emits sensuality  
24 with sufficient impact to concentrate prurient interest on the child;  
25 or

26       (c) to otherwise depict a child for the purpose of sexual  
27 stimulation or gratification of any person who may view the  
28 depiction where the depiction does not have serious literary, artistic,  
29 political, or scientific value.

30       “Prohibited sexual act” means

31       (a) Sexual intercourse; or

32       (b) Anal intercourse; or

33       (c) Masturbation; or

34       (d) Bestiality; or

35       (e) Sadism; or

36       (f) Masochism; or

37       (g) Fellatio; or

38       (h) Cunnilingus; or

39       (i) Nudity, if depicted for the purpose of sexual stimulation or  
40 gratification of any person who may view such depiction; or

41       (j) Any act of sexual penetration or sexual contact as defined in  
42 N.J.S.2C:14-1.

43       “Reproduction” means, but is not limited to, computer generated  
44 images.

45       (2) (Deleted by amendment, P.L.2001, c.291).

46       (3) A person commits a crime of the first degree if he causes or  
47 permits a child to engage in a prohibited sexual act or in the  
48 simulation of such an act or to be portrayed in a sexually suggestive

1 manner if the person knows, has reason to know or intends that the  
2 prohibited act or portrayal may be photographed, filmed,  
3 reproduced, or reconstructed in any manner, including on the  
4 Internet, or may be part of an exhibition or performance.

5 (4) A person commits a crime of the second degree if he  
6 photographs or films a child in a prohibited sexual act or in the  
7 simulation of such an act or for portrayal in a sexually suggestive  
8 manner or who uses any device, including a computer, to reproduce  
9 or reconstruct the image of a child in a prohibited sexual act or in  
10 the simulation of such an act or for portrayal in a sexually  
11 suggestive manner.

12 (5) (a) A person commits a crime if, by any means, including but  
13 not limited to the Internet, he:

14 (i) knowingly distributes an item depicting the sexual  
15 exploitation or abuse of a child;

16 (ii) knowingly possesses an item depicting the sexual  
17 exploitation or abuse of a child with the intent to distribute that  
18 item; or

19 (iii) knowingly stores or maintains an item depicting the sexual  
20 exploitation or abuse of a child using a file-sharing program which  
21 is designated as available for searching by or copying to one or  
22 more other computers.

23 In a prosecution under sub-subparagraph (iii) of this  
24 subparagraph, the State shall not be required to offer proof that an  
25 item depicting the sexual exploitation or abuse of a child had  
26 actually been searched, copied, transmitted or viewed by another  
27 user of the file-sharing program, or by any other person, and it shall  
28 be no defense that the defendant did not intend to distribute the item  
29 to another user of the file-sharing program or to any other person.  
30 Nor shall the State be required to prove that the defendant was  
31 aware that the item depicting the sexual exploitation or abuse of a  
32 child was available for searching or copying to one or more other  
33 computers, and the defendant shall be strictly liable for failing to  
34 designate the item as not available for searching or copying by one  
35 or more other computers.

36 A violation of this subparagraph that involves 1,000 or more  
37 items depicting the sexual exploitation or abuse of a child is a crime  
38 of the first degree; otherwise it is a crime of the second degree.

39 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
40 6, a person whose offense under this subparagraph involved at least  
41 25 but less than 1,000 items depicting the sexual exploitation or  
42 abuse of a child shall be sentenced to a mandatory minimum term of  
43 imprisonment, which shall be fixed at, or between, one-third and  
44 one-half of the sentence imposed by the court or five years,  
45 whichever is greater, during which the defendant shall be ineligible  
46 for parole.

47 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
48 6, a person whose offense under this subparagraph involved 1,000

1 or more items depicting the sexual exploitation or abuse of a child  
2 shall be sentenced to a mandatory minimum term of imprisonment,  
3 which shall be fixed at, or between, one-third and one-half of the  
4 sentence imposed by the court or 10 years, whichever is greater,  
5 during which the defendant shall be ineligible for parole.

6 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
7 6, a person convicted of a second or subsequent offense under this  
8 subparagraph shall be sentenced to an extended term of  
9 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
10 subparagraph, an offense is considered a second or subsequent  
11 offense if the actor has at any time been convicted pursuant to  
12 paragraph (3), (4), or (5) of this subsection, or under any similar  
13 statute of the United States, this State, or any other state for an  
14 offense that is substantially equivalent to paragraph (3), (4), or (5)  
15 of this subsection.

16 For purposes of this subparagraph, the term "possess" includes  
17 receiving, viewing, or having under one's control, through any  
18 means, including the Internet.

19 (b) (i) A person commits a crime of the first degree if he  
20 knowingly possesses, knowingly views, or knowingly has under his  
21 control, through any means, including the Internet, 100,000 or more  
22 items depicting the sexual exploitation or abuse of a child.

23 (ii) A person commits a crime of the second degree if he  
24 knowingly possesses, knowingly views, or knowingly has under his  
25 control, through any means, including the Internet, at least 1,000  
26 but less than 100,000 items depicting the sexual exploitation or  
27 abuse of a child.

28 (iii) A person commits a crime of the third degree if he  
29 knowingly possesses, knowingly views, or knowingly has under his  
30 control, through any means, including the Internet, less than 1,000  
31 items depicting the sexual exploitation or abuse of a child.

32 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-  
33 1, in any instance where a person was convicted of an offense under  
34 this subparagraph that involved 100 or more items depicting the  
35 sexual exploitation or abuse of a child, the court shall impose a  
36 sentence of imprisonment unless, having regard to the character and  
37 condition of the defendant, it is of the opinion that imprisonment  
38 would be a serious injustice which overrides the need to deter such  
39 conduct by others.

40 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-  
41 6, a person convicted of a second or subsequent offense under this  
42 subparagraph shall be sentenced to an extended term of  
43 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this  
44 subparagraph, an offense is considered a second or subsequent  
45 offense if the actor has at any time been convicted pursuant to  
46 paragraph (3), (4), or (5) of this subsection, or under any similar  
47 statute of the United States, this State, or any other state for an

1 offense that is substantially equivalent to paragraph (3), (4), or (5)  
2 of this subsection.

3 Nothing in this subparagraph shall be construed to preclude or  
4 limit any prosecution or conviction for the offense set forth in  
5 subparagraph (a) of this paragraph.

6 (6) For purposes of this subsection, a person who is depicted as  
7 or presents the appearance of being under the age of 18 in any  
8 photograph, film, videotape, computer program or file, video game,  
9 or any other reproduction or reconstruction shall be rebuttably  
10 presumed to be under the age of 18. If the child who is depicted as  
11 engaging in, or who is caused to engage in, a prohibited sexual act  
12 or simulation of a prohibited sexual act or portrayed in a sexually  
13 suggestive manner is under the age of 18, the actor shall be strictly  
14 liable and it shall not be a defense that the actor did not know that  
15 the child was under the age of 18, nor shall it be a defense that the  
16 actor believed that the child was 18 years of age or older, even if  
17 such a mistaken belief was reasonable.

18 (7) For aggregation purposes, each depiction of the sexual  
19 exploitation or abuse of a child shall be considered a separate item,  
20 provided that each depiction that is in the form of a photograph,  
21 picture, image, or visual depiction of a similar nature shall be  
22 considered to be one item and each depiction that is in the form of a  
23 film, video, video-clip, movie, or visual depiction of a similar  
24 nature shall be considered to be 10 separate items, and each  
25 individual act of distribution of an item depicting the sexual  
26 exploitation or abuse of a child shall be considered a separate item.  
27 For purposes of determining the number of items depicting the  
28 sexual exploitation or abuse of a child for purposes of sentencing  
29 pursuant to subparagraph (a) of paragraph (5) of this subsection, the  
30 court shall aggregate all items involved, whether the act or acts  
31 constituting the violation occurred at the same time or at different  
32 times and, with respect to distribution, whether the act or acts of  
33 distribution were to the same person or several persons or occurred  
34 at different times, provided that each individual act was committed  
35 within the applicable statute of limitations. For purposes of  
36 determining the number of items depicting the sexual exploitation  
37 or abuse of a child for purposes of sentencing pursuant to  
38 subparagraph (b) of paragraph (5) of this subsection, the court shall  
39 aggregate all items involved, whether the possession of such items  
40 occurred at the same time or at different times, provided that each  
41 individual act was committed within the applicable statute of  
42 limitations.

43 (cf: P.L.2017, c.141, s.1)

44

45 3. Section 2 of P.L.2003, c.206 (C.2A:58D-1) is amended to  
46 read as follows:

1       2. a. An actor who, in violation of section 1 of P.L.2003, c.206  
2 (C.2C:14-9), photographs, films, videotapes, records, or otherwise  
3 reproduces in any manner, the image of another person who is  
4 engaged in an act of sexual penetration or sexual contact, the  
5 exposed intimate parts of another person, or the undergarment-clad  
6 intimate parts of another person shall be liable to that person, who  
7 may bring a civil action in the Superior Court.

8       b. An actor who, in violation of section 1 of P.L.2003, c.206  
9 (C.2C:14-9), discloses any photograph, film, videotape, recording  
10 or any other reproduction of the image of another person, or who  
11 discloses any deceptive audio or visual media of another person,  
12 who is engaged in an act of sexual penetration or sexual contact, the  
13 exposed intimate parts of another person, or the undergarment-clad  
14 intimate parts of another person shall be liable to that person, who  
15 may bring a civil action in the Superior Court.

16       For purposes of this section:

17       (1) “disclose” means sell, manufacture, give, provide, lend,  
18 trade, mail, deliver, transfer, publish, distribute, circulate,  
19 disseminate, present, exhibit, advertise, offer, share, or make  
20 available via the Internet or by any other means, whether for  
21 pecuniary gain or not; **[and]**

22       (2) “intimate parts” has the meaning ascribed to it in  
23 N.J.S.2C:14-1; and

24       (3) “deceptive audio or visual media” means any video  
25 recording, motion picture film, sound recording, electronic image,  
26 or photograph, or any technological representation of speech or  
27 conduct substantially derivative thereof that appears to authentically  
28 depict any speech or conduct of a person who did not in fact engage  
29 in the speech or conduct and the production of which was  
30 substantially dependent upon technical means, rather than the  
31 ability of another person to physically or verbally impersonate the  
32 person.

33       c. The court may award:

34       (1) actual damages, but not less than liquidated damages  
35 computed at the rate of \$1,000 for each violation of this act;

36       (2) punitive damages upon proof of willful or reckless disregard  
37 of the law;

38       (3) reasonable attorney's fees and other litigation costs  
39 reasonably incurred; and

40       (4) such other preliminary and equitable relief as the court  
41 determines to be appropriate.

42 A conviction of a violation of section 1 of P.L.2003, c.206  
43 (C.2C:14-9) shall not be a prerequisite for a civil action brought  
44 pursuant to this section.

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

46

47       4. This act shall take effect immediately.