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## Legal Currents

### Are peeping Toms criminals, or are they just annoying?

*This column, featured every Monday, tackles timely issues important to the local legal community.*

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Unless an “imaging device” is used for “peeping,” Toms are merely annoying in New York, since Penal Law § 250.45 et. seq. prohibits only the use of imaging devices to capture the likeness of another person within certain contexts.

However, voyeurism occurring through the use of the naked eye has yet to be criminalized.

New York City Councilman Peter F. Vallone Jr. perceives this to be a glaring gap in the law. As such, he recently sponsored broadly worded legislation that would make nonconsensual voyeurism a Class B misdemeanor, punishable by up to 90 days in jail.

The proposed law parrots language used in Penal Law § 250.45 and prohibits the viewing “of another person ... in other than a casual or cursory manner, for purpose of personal amusement, entertainment, sexual arousal, sexual gratification, or for the purpose of degrading or abusing the person viewed” while the person is located in either a private or public place, as defined in the law.

Under the proposed law, voyeurism in a public place is unlawful if a person “deliberately and repeatedly position(s) him or herself in a public place to view another person’s sexual or other intimate parts while such person is in a public place and without such person’s knowledge or consent, when such parts are not otherwise visible to the public.”

Voyeurism in a private place prohibits “viewing another without their knowledge or consent, at a place and time when a person has a reasonable expectation of privacy, while such person is (1) in a state of undress or partial dress, (2) engaged



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in sexual intercourse or sexual contact, or (3) urinating or defecating.”

Vallone drafted the bill, in part, due to complaints about a man who stood beneath an elevated subway station in Vallone’s district and stared up women’s skirts. If enacted, the law may very well serve its purpose in making such questionable conduct illegal.

However, as noted by New York Civil Liberties Union Executive Director Donna Liberman: “It raises major Constitutional concerns because it defines voyeurism in vague and overly broad terms that would give police officers broad latitude to arrest New Yorkers guilty of nothing

more than a furtive glance.”

It could arguably criminalize relatively harmless conduct such as innocent comparisons made by insecure men while standing at urinals in public restrooms. If the law is passed, New York City men may want to consider waiting in line in order to use the limited number of available stalls in public restrooms, lest they find themselves charged with “deliberately view(ing) another without their knowledge or consent while such person ...(was) urinating.”

Presumably, the only defense would be to prove the alleged viewing was cursory and caused the unconfident defendant no amusement or entertainment whatsoever and, in fact, had the opposite effect of further increasing his insecurity.

If the law is enacted, self-conscious men everywhere would be well advised to avoid traveling to New York City. If the trip cannot be avoided, purchase a pair of blinders or be prepared to face the risk of extreme public humiliation should your eyes wander while in the restroom.

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