

**Statement of Karen Agnifilo
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New York City Council
Committee on Public Safety
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Good morning, Chairman Vallone and members of the Committee on Public Safety. My name is Karen Agnifilo and I am General Counsel to John Feinblatt, the City's Criminal Justice Coordinator. Thank you for the opportunity to be heard today.

Since day one, the Bloomberg Administration has been committed to reducing sexual assault and other sexually-motivated crimes in New York City. In fact, since 2001, the incidents of rape have gone down 31.6%. Not only have we focused on enhancing prosecutions for the most serious sex crimes – through initiatives such as the John Doe Indictment Project and the Sexual Assault Response Teams – but we have also worked to address other sexually-motivated offenses. For example, we have advocated at the state level to increase the penalties for Public Lewdness and make this a registerable offense under Megan's Law. We believe it is important to not only address the issue of serious sexual assaults but to also focus attention on other offensive and intimidating conduct, such as lewdness and voyeurism, and to develop innovative ways to prevent these crimes and ensure the safety and privacy of all New Yorkers.

Despite our successes in these areas, there is always more we can do to protect New Yorkers and I appreciate the opportunity today to focus on the topic of voyeurism, commonly known as "peeping toms."

Intro 617, which the Council is proposing, creates two new offenses: voyeurism in a private place, to address situations such as a peephole in a dressing room, and voyeurism in a public place, to address situations such as looking up a woman's skirt while in public.

This legislation seeks to fill a gap that exists in state law. State law does currently cover certain forms of voyeurism but does not penalize the "peeping tom." The Penal Law addresses voyeurism under the crime of Unlawful Surveillance, which is located in Article 250 and is a Class E felony for the first offense and a Class D felony the second time. It covers conduct when the viewing is done by means of an imaging device – such as a camera or cell phone camera, video recorder or other device – and for the purpose of sexual gratification, or other non-legitimate purposes. For example, this charge covers situations such as a restaurant employee installing a hidden camera in a restroom; an individual hiding a small camera on the top of his shoe or hidden inside a bag and then surreptitiously placing it under a woman's skirt; a roommate or landlord secretly placing a camera in a bedroom; or even using a telescope to violate another's privacy. On average, there are about twenty arrests each year in New York City for Unlawful Surveillance.

The General Business Law also covers voyeurism in section 395-b. This statute prohibits the owner or manager of any business or building from installing or permitting a device to surreptitiously view or record inside a fitting room, restroom, shower, or hotel room. This statute covers the situation where a business owner installs a peephole or camera in a women's

bathroom or hotel room. This offense is a violation, not a crime, unless the defendant used a recording device, in which case it is an unspecified felony. A violation of this statute can be criminally prosecuted or can serve as the basis for a civil lawsuit against the perpetrator.

State law does not, however, cover conduct by individuals who do not use an imaging device. As the law currently stands, a person looking through a peephole in a changing room using a camera lens is guilty of an E felony, while that same person looking through that same peephole with the naked eye cannot be charged with a crime.

Approximately 23 states have laws that address this conduct. For example, a Washington state statute makes it a felony to knowingly view another person, or to view the intimate areas of another person, for the purpose of sexual gratification, when the person viewed has a reasonable expectation of privacy. A New Jersey statute makes it a crime, punishable by up to 18 months imprisonment, to peer into a window or other opening of a dwelling for the purpose of invading the privacy of another person when the person viewed would not expect to be observed. And, a Washington D.C. statute makes it a misdemeanor to occupy a hidden observation post or install a peephole for the purpose of surreptitiously observing an individual who is using a bathroom, undressing or changing clothes, or engaged in sexual activity. These are only a few examples of how other jurisdictions have chosen to address this problem.

Additionally, a bill is currently pending in the New York State legislature that would create a new Class B misdemeanor offense in the Penal Law called "Surreptitious Surveillance." This bill is similar to the "voyeurism in a private place" provision in Intro 617 and would criminalize surreptitiously observing a person, for no legitimate purpose, dressing or undressing, or the sexual or other intimate parts of a person without their knowledge and consent and when they have a reasonable expectation of privacy. This bill was prompted by an incident in Niagara County where a man was accused of deliberately looking over the top of a tanning bed at a naked woman. In that case, the defendant was charged with disorderly conduct, but found not guilty because his conduct did not create a public disturbance. As it is currently written, the pending state bill does not appear to cover the conduct targeted by "voyeurism in a public place" in Intro 617.

We applaud the Council for introducing local legislation to attempt to fill this gap in state law. This behavior is not only offensive, it can be frightening and violating. Intro 617 attempts to cover two forms of conduct not currently addressed by state law: voyeurism in a private place, defined as viewing someone when they are in a place where they have a reasonable expectation of privacy and are engaged in specified conduct, and voyeurism in a public place, defined as positioning oneself in a public place to look at the intimate parts of another person when those areas are not otherwise visible to the public.

We support the intent of the first provision, voyeurism in a private place, particularly in light of the recent amendment to the bill which makes it clear that a person undressing in front of an uncovered window does not have a reasonable expectation of privacy. We have a couple of suggestions about the way it is currently drafted; however, we are confident that we can work with Council to craft this statute in a way that makes it both enforceable and prosecutable.

With respect to the second provision, voyeurism in public place, we have concerns about this bill as it is currently drafted. It is important that this legislation be narrowly tailored to ensure that it does not encompass innocent conduct that is not intended to be criminalized and is not vulnerable to a constitutional vagueness challenge. We must also ensure that the statute is written in such a manner that it can be easily enforced by the NYPD and prosecuted by the District Attorneys. We look forward to working with the Council to address these issues as well.

Thank you again for the opportunity to speak today. I'll be happy to take your questions.