

226.78 SECRETLY OR SURREPTITIOUSLY USING A DEVICE TO CREATE A PHOTOGRAPHIC IMAGE OF ANOTHER PERSON UNDERNEATH OR THROUGH THE CLOTHING.<sup>1</sup> FELONY.

*NOTE WELL: When a person is convicted under this statute the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of Chapter 14 would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.*

The defendant has been charged with secretly using a device to create a photographic image<sup>2</sup> of another person underneath or through the clothing.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant secretly or surreptitiously used a device to create a photographic image of another person.

Second, that the defendant created the photographic image of the other person without their consent.

Third, that the defendant created the photographic image of the other person [underneath] (or) [through] the clothing being worn by that other person.

And Fourth, that the defendant acted for the purpose of viewing the body of, or the undergarments worn by, the other person.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant secretly used a device to create a photographic image of another person underneath or through the clothing being worn by that person, that the defendant acted without the consent of the other person, and that the defendant acted for the purpose of viewing

N.C.P.I.—Crim. 226.78

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GENERAL CRIMINAL VOLUME

APRIL 2004

N.C. Gen. Stat. § 14-202(e)

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the body of, or the undergarments worn by the other person, then it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

*NOTE WELL: This statute shall not apply to law enforcement officers while discharging or attempting to discharge their official duties, or personnel of the Department of Correction or of a local confinement facility for security purposes or during an investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility. Furthermore, this section does not affect the legal activities of those who are licensed pursuant to G.S. Chapter 74C, Private Protective Services, or G.S. Chapter 74D, Alarm Services, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section.*

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1. A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher.

2. The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual.