

**DISSEMINATION OF AN UNLAWFUL SURVEILLANCE IMAGE
IN THE FIRST DEGREE
Penal Law § 250.60(1)
(Committed on or after Nov. 1, 2014)**

The (*specify*) count is Dissemination of an Unlawful Surveillance Image in the First Degree

A person is guilty of Dissemination of an Unlawful Surveillance Image in the First Degree when

he or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and

such unlawful conduct would satisfy the essential elements of the crime of Unlawful Surveillance in the [First] Second Degree¹

sells or publishes such image or images.

It is unlawful to obtain an image or images of the sexual or other intimate parts of another person or persons when it is done in violation of the crime(s) of Unlawful Surveillance in the [First] Second Degree.

¹ At this point the statute continues: “as defined, respectively, in section 250.50 or 250.45 of this article.” Those definitions are provided for below. It should be noted that Unlawful Surveillance in the First Degree is defined as: “A person is guilty of unlawful surveillance in the first degree when he or she commits the crime of unlawful surveillance in the second degree and has been previously convicted within the past ten years of unlawful surveillance in the first or second degree.” Normally therefore the jury will need to be instructed only on the second degree crime.

NOTE: If “unlawful surveillance in the [first] second degree” has been separately charged, that charge should be given to the jury first and at this point the jury may then be instructed that the “unlawful surveillance” charge applies here. Otherwise, the jury should be instructed here on the definition of the appropriate “unlawful surveillance” crime(s).

The following terms used in that definition have a special meaning:

SEXUAL OR OTHER INTIMATE PARTS means the human male or female genitals, pubic area or buttocks, or the female breast below the top of the nipple, and shall include such part or parts which are covered only by an undergarment.²

The following definition(s) of
Select either or both terms:

publish [and]
sell

include the term “disseminate.” DISSEMINATE means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.³

[PUBLISH means to:
Select appropriate alternative(s):

² Penal Law § 250.40(3).

³ Penal Law § 250.40(5).

- (a) disseminate⁴ with the intent that such image or images be disseminated to ten or more persons; or
- (b) disseminate with the intent that such images be sold by another person; or
- (c) post, present, display, exhibit, circulate, advertise or allows access, electronically or otherwise, so as to make an image or images available to the public; or
- (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public.^{5]}

SELL means to disseminate to another person [or to publish] in exchange for something of value.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant sold [or published] an image [or images] of the sexual or other intimate parts of another person [or persons];

2. That the defendant did so with knowledge of the unlawful conduct by which an image or images of the

⁴ At this point the statute [Penal Law § 250.40(6)] continues: “as defined in subdivision five of this section.” The definition of “disseminate” is defined after the definition of “publish.”

⁵ Penal Law § 250.40(6).

⁶ Penal Law § 250.40(7).

sexual or other intimate parts of another person or persons were obtained; and

3. That the unlawful conduct by which the image [or images] was/were obtained would satisfy the essential elements of the crime of Unlawful Surveillance in the [First] Second Degree.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.