

**DISSEMINATION OF AN UNLAWFUL SURVEILLANCE IMAGE
IN THE FIRST DEGREE
Penal Law § 250.60(2)
(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

having created a surveillance image in violation of ¹ Unlawful Surveillance in the [First] Second Degree

[or in violation of the law in any other jurisdiction which includes all of the essential elements of either such crime, or having acted as an accomplice to such crime, or acting as an agent to the person who committed such crime],

he or she intentionally disseminates such unlawfully created image.

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 appropriate “unlawful surveillance” crime.

¹ At this point the statute continues: “section 250.50 or 250.45 of this article.” The charge substitutes the names of those crimes and provides for the applicable definition 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 on the second degree crime.

The following terms used in the definition of Dissemination of an Unlawful Surveillance Image in the First Degree have a special meaning:

DISSEMINATE means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.²

INTENT means conscious objective or purpose. Thus, a person INTENTIONALLY disseminates an image [or images] when that person's conscious objective or purpose is to do so.³

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 two elements:

1. That on or about (date), in the County of (County), the defendant, having created a surveillance image in violation of Unlawful Surveillance in the [First] Second Degree;

[or in violation of the law in any other jurisdiction which includes all of the essential elements of either such crime, or having acted as an accomplice to such crime, or acting as an agent to the person who committed such crime];

disseminated that image; and

2. That the defendant did so intentionally.

² Penal Law § 250.40(5).

² See Penal Law § 15.05(1).

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

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