

UNLAWFUL DISSEMINATION OF A PERSONAL IMAGE
Penal Law § 250.71 (1) ¹
Committed on or after February 21, 2023

The (specify) count is Unlawful Dissemination of a Personal Image.

Under our law, a person is guilty of Unlawful Dissemination of a Personal Image when with the intent of degrading or abusing a person who has been the victim of a crime², or otherwise causing harm to the emotional, financial or physical welfare of such victim or such victim's family, the person intentionally:

creates and disseminates or publishes a still or video image of such victim on a social media platform, without the victim's consent, in a manner that has no or minimal cultural or social value; and

the victim is identifiable from the still or video image itself or from information displayed in connection with the still or video image; and

³ the victim suffered

¹ Subdivision 2 of Penal Law § 250.71 that is not included in this instruction extends liability, in the alternative, to a person “acting as an agent of the actor who created an image in violation of subdivision one of this section, he or she knowingly disseminates or publishes such image.”

² At this point the statute reads: “described in title H of this part.” Penal Law Title H is entitled OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION and encompasses: Penal Law articles 120 (Assault and Related Offenses), 125 (Homicide and Related Offenses), 130 (Sex Offenses), and 135 (Kidnapping, Coercion, and Related Offenses). This element is addressed in the definition section of this instruction.

³ At this point the statute states: “the victim suffered physical injury as a result of a sex offense as defined by article one hundred thirty of this part, serious physical injury as a result of any non-sex offense, or death and this injury or death is depicted in the image. . . .” Since the actor must by the last sentence commit (participate in the commission of or conspire to commit) “the crime” that resulted in physical injury, serious physical injury, or death, the word “crime” has been substituted for “offense.” Although the definition of “serious physical injury” includes “death,” the term “death” is stated in the alternative to comport (continued)

Select appropriate alternative(s):

physical injury as a result of a sex crime [or]
serious physical injury as a result of any non-sex crime⁴ [or]
death

and this injury [or death] is depicted in the image; and

the actor committed (or) participated in the commission of, [or conspired to commit] the crime that resulted in such injury to such victim.

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

INTENT means conscious objective or purpose.⁵ Thus, a person INTENTIONALLY engages in conduct when that person's conscious objective or purpose is to do so. And a person acts with the intent of degrading or abusing a person who has been the victim of a crime, or otherwise causing harm to the emotional, financial or physical welfare of such victim or such victim's family when that person's conscious objective or purpose is to do so.

BROADCAST means electronically transmitting a visual image with the intent that it be viewed by a person.⁶

DISSEMINATE means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.⁷

with the statute. The definition section of this instruction requires the definition of the requisite crime.

⁴ Note the difference between the portion of the definition of this crime that requires an "intent" directed to a "victim" of a limited list of crimes (see footnote 2) and the portion of the definition that the "victim" be injured or die as a result of "any" offense.

³ See Penal Law § 15.05(1).

⁶ Penal Law § 250.70(a).

⁷ Penal Law § 250.70(b).

PUBLISH means to:

Select appropriate alternative(s):

- (i) disseminate⁸ with the intent that such image or images be disseminated to ten or more persons;
- (ii) disseminate with the intent that such images be sold by another person;
- (iii) 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
- (iv) 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.⁹

FAMILY means a parent or guardian, sibling, spouse, or child of a person depicted in an image disseminated in violation of this law.¹⁰

SOCIAL MEDIA PLATFORM means a website, online or mobile application, or online service that is designed primarily to enable a user to generate or share content that can be viewed by other users on the platform or to interact with other user-generated content on such platform.

Add if in issue:

"Social media platform" does not include a website, online or mobile application, or online service that is designed primarily to enable a user to access content on the platform that is not user-generated and is preselected or organized by the provider; or a website, online or mobile

⁸ At this point the statute reads: "as defined in paragraph (b) of this subdivision."

⁹ Penal Law § 250.70(c).

¹⁰ Penal Law § 250.70(d). The words "this law" substitute for the words "section 250.71 of this article."

application, or online service that includes any chat, comment or other interactive functionality that is incidental to the provision of such website, application, or service.¹¹

(Specify) is a crime.

Select as appropriate:

That crime is separately charged in count (specify) and I have already instructed you on the definition of that crime.

(Specify) is defined as follows:

[Add if a following provision(s) has been placed in issue.]¹²

This law shall not apply to:

- (i) the reporting of suspected unlawful conduct to law enforcement;
- (ii) the dissemination or publication of an image in the course of official law enforcement duties, legal proceedings or criminal prosecution or medical treatment;
- (iii) the dissemination or publication of an image made for a legitimate public discourse concerning local, national, or worldwide events or other matters of public concern or public interest or affecting the public welfare; any work of public interest, educational or newsworthy value, including comment, criticism, parody or satire, and works of entertainment, regardless of the degree of fictionalization; or an advertisement or commercial announcement for any of the foregoing works.¹³

¹¹ Penal Law § 250.70(e).

¹² Penal Law § 250.71(2)(a).

¹³ See Guide to NY Evidence rule 4.33 (Exceptions and Provisos).

*NOTE: Subdivision (3) of Penal Law § 250.70 specifies that the provisions of “subdivisions one and two of [Penal Law § 235.24 (Disseminating indecent material to minors; limitations)] shall apply.”*¹⁴

Note: Subdivision (2)(b) of Penal Law § 250.71 states: “Nothing in these sections shall be construed to limit, or to enlarge, the protections that 47 U.S.C. § 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.”

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, both of the following (specify #) elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name),¹⁵ intentionally

¹⁴ Those provisions read as follows:

“1. No person shall be held to have violated such provisions solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(a) The limitations provided by this subdivision shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications.

(b) The limitations provided by this subdivision shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of such provisions that is owned or controlled by such person.

2. No employer shall be held liable under such provisions for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.”

¹⁵ When the defendant is charged in whole or in part as an accomplice, insert: “personally, or by acting in concert with another person.” See Accomplice charge.

created and disseminated [or published] a still or video image of such victim on a social media platform, without the victim's consent, in a manner that has no or minimal cultural or social value; and

the victim is identifiable from the still or video image itself or from information displayed in connection with the still or video image; and

the victim suffered

Select appropriate alternative(s):

physical injury as a result of a sex crime [or]
serious physical injury as a result of any non-sex crime¹⁶ [or]
death

and this injury [or death] is depicted in the image; and

the actor committed (or) participated in the commission of, [or conspired to commit] the crime that resulted in such injury to such victim.

2. That the defendant did so with the intent of degrading or abusing the victim of that crime or otherwise causing harm to the emotional, financial or physical welfare of such victim or such victim's family.

NOTE: If a provision that the law does not apply to has been placed in issue, add an element for each such provision, requiring the People to negate the provision.

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

¹⁶ Note the difference between the portion of the definition of this crime that requires an "intent" directed to a "victim" of a limited list of crimes (see footnote 2) and the portion of the definition that the "victim" be injured or die as a result of "any" offense.

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.

NOTE: Penal Law § 250.70(3) specifies that the affirmative defense in subdivision two of Penal Law § 235.15 (Obscenity or disseminating indecent material to minors in the second degree; defense) “shall apply.”