

# STATE OF NEW YORK

9018

## IN SENATE

October 2, 2020

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the criminal procedure law, in relation to creating the crime of unlawful dissemination or publication of discovery material

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 215.09 to  
2 read as follows:

3 § 215.09 Unlawful dissemination or publication of discovery material.

4 1. A person is guilty of unlawful dissemination or publication of  
5 discovery material, when he or she:

6 a. Intentionally disseminates or publishes material defined under  
7 section 245.20 of the criminal procedure law with the intent of intim-  
8 idating or harassing another person; or

9 b. Intentionally disseminates or publishes material defined under  
10 section 245.20 of the criminal procedure law to another person and he or  
11 she knew or reasonably should have known that the person intended to use  
12 the discovery material to intimidate or harass another person.

13 2. A person who is the defense counsel to a defendant in a legal  
14 proceeding shall not be guilty of an offense under paragraph b of subdi-  
15 vision one of this section, when communicating directly with the defend-  
16 ant in accordance with article two hundred forty-five of the criminal  
17 procedure law.

18 3. Under this section, "disseminates" and "publishes" shall have the  
19 same meanings as under section 250.40 of this part.

20 Unlawful dissemination or publication of discovery material is a class  
21 E felony.

22 § 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the  
23 criminal procedure law, as added by section 2 of part UU of chapter 56  
24 of the laws of 2020, are amended and a new paragraph (u) is added to  
25 read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD17391-01-0

1 (s) a felony, where the defendant qualifies for sentencing on such  
2 charge as a persistent felony offender pursuant to section 70.10 of the  
3 penal law; ~~[or]~~

4 (t) any felony or class A misdemeanor involving harm to an identifi-  
5 able person or property, where such charge arose from conduct occurring  
6 while the defendant was released on his or her own recognizance or  
7 released under conditions for a separate felony or class A misdemeanor  
8 involving harm to an identifiable person or property, provided, however,  
9 that the prosecutor must show reasonable cause to believe that the  
10 defendant committed the instant crime and any underlying crime. For the  
11 purposes of this ~~[subparagraph]~~ paragraph, any of the underlying crimes  
12 need not be a qualifying offense as defined in this subdivision~~[-]~~; or  
13 (u) unlawful dissemination or publication of discovery material as  
14 defined in section 215.09 of the penal law.

15 § 3. Subparagraphs (xix) and (xx) of paragraph (b) of subdivision 1 of  
16 section 530.20 of the criminal procedure law, as amended by section 3 of  
17 part UU of chapter 56 of the laws of 2020, are amended and a new subpar-  
18 agraph (xxi) is added to read as follows:

19 (xix) a felony, where the defendant qualifies for sentencing on such  
20 charge as a persistent felony offender pursuant to section 70.10 of the  
21 penal law; ~~[or]~~

22 (xx) any felony or class A misdemeanor involving harm to an identifi-  
23 able person or property, where such charge arose from conduct occurring  
24 while the defendant was released on his or her own recognizance or  
25 released under conditions for a separate felony or class A misdemeanor  
26 involving harm to an identifiable person or property, provided, however,  
27 that the prosecutor must show reasonable cause to believe that the  
28 defendant committed the instant crime and any underlying crime. For the  
29 purposes of this subparagraph, any of the underlying crimes need not be  
30 a qualifying offense as defined in this subdivision~~[-]~~; or

31 (xxi) unlawful dissemination or publication of discovery material as  
32 defined in section 215.09 of the penal law.

33 § 4. Paragraphs (s) and (t) of subdivision 4 of section 530.40 of the  
34 criminal procedure law, as added by section 4 of part UU of chapter 56  
35 of the laws of 2020, are amended and a new paragraph (u) is added to  
36 read as follows:

37 (s) a felony, where the defendant qualifies for sentencing on such  
38 charge as a persistent felony offender pursuant to section 70.10 of the  
39 penal law; ~~[or]~~

40 (t) any felony or class A misdemeanor involving harm to an identifi-  
41 able person or property, where such charge arose from conduct occurring  
42 while the defendant was released on his or her own recognizance or  
43 released under conditions for a separate felony or class A misdemeanor  
44 involving harm to an identifiable person or property, provided, however,  
45 that the prosecutor must show reasonable cause to believe that the  
46 defendant committed the instant crime and any underlying crime. For the  
47 purposes of this ~~[subparagraph]~~ paragraph, any of the underlying crimes  
48 need not be a qualifying offense as defined in this subdivision~~[-]~~; or

49 (u) unlawful dissemination or publication of discovery material as  
50 defined in section 215.09 of the penal law.

51 § 5. This act shall take effect immediately.