

# STATE OF NEW YORK

5340

2023-2024 Regular Sessions

## IN SENATE

March 2, 2023

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

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 subdivi-  
15 sion 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 (t) and (u) of subdivision 4 of section 510.10 of the  
23 criminal procedure law, paragraph (t) as amended and paragraph (u) as

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

LBD09275-02-3

1 added by section 2 of subpart B of part UU of chapter 56 of the laws of  
2 2022, are amended and a new paragraph (v) is added to read as follows:

3 (t) any felony or class A misdemeanor involving harm to an identifi-  
4 able person or property, or any charge of criminal possession of a  
5 firearm as defined in section 265.01-b of the penal law, where such  
6 charge arose from conduct occurring while the defendant was released on  
7 his or her own recognizance, released under conditions, or had yet to be  
8 arraigned after the issuance of a desk appearance ticket for a separate  
9 felony or class A misdemeanor involving harm to an identifiable person  
10 or property, or any charge of criminal possession of a firearm as  
11 defined in section 265.01-b of the penal law, provided, however, that  
12 the prosecutor must show reasonable cause to believe that the defendant  
13 committed the instant crime and any underlying crime. For the purposes  
14 of this subparagraph, any of the underlying crimes need not be a quali-  
15 fying offense as defined in this subdivision. For the purposes of this  
16 paragraph, "harm to an identifiable person or property" shall include  
17 but not be limited to theft of or damage to property. However, based  
18 upon a review of the facts alleged in the accusatory instrument, if the  
19 court determines that such theft is negligible and does not appear to be  
20 in furtherance of other criminal activity, the principal shall be  
21 released on his or her own recognizance or under appropriate non-mone-  
22 tary conditions; [~~ex~~]

23 (u) criminal possession of a weapon in the third degree as defined in  
24 subdivision three of section 265.02 of the penal law or criminal sale of  
25 a firearm to a minor as defined in section 265.16 of the penal law[~~+~~];  
26 or

27 (v) unlawful dissemination or publication of discovery material as  
28 defined in section 215.09 of the penal law.

29 § 3. Subparagraphs (xx) and (xxi) of paragraph (b) of subdivision 1 of  
30 section 530.20 of the criminal procedure law, subparagraph (xx) as  
31 amended and subparagraph (xxi) as added by section 4 of subpart C of  
32 part UU of chapter 56 of the laws of 2022, are amended and a new subpar-  
33 agraph (xxii) is added to read as follows:

34 (xx) any felony or class A misdemeanor involving harm to an identifi-  
35 able person or property, or any charge of criminal possession of a  
36 firearm as defined in section 265.01-b of the penal law where such  
37 charge arose from conduct occurring while the defendant was released on  
38 his or her own recognizance, released under conditions, or had yet to be  
39 arraigned after the issuance of a desk appearance ticket for a separate  
40 felony or class A misdemeanor involving harm to an identifiable person  
41 or property, provided, however, that the prosecutor must show reasonable  
42 cause to believe that the defendant committed the instant crime and any  
43 underlying crime. For the purposes of this subparagraph, any of the  
44 underlying crimes need not be a qualifying offense as defined in this  
45 subdivision. For the purposes of this paragraph, "harm to an identifi-  
46 able person or property" shall include but not be limited to theft of or  
47 damage to property. However, based upon a review of the facts alleged in  
48 the accusatory instrument, if the court determines that such theft is  
49 negligible and does not appear to be in furtherance of other criminal  
50 activity, the principal shall be released on his or her own recognizance  
51 or under appropriate non-monetary conditions; [~~ex~~]

52 (xxi) criminal possession of a weapon in the third degree as defined  
53 in subdivision three of section 265.02 of the penal law or criminal sale  
54 of a firearm to a minor as defined in section 265.16 of the penal  
55 law[~~+~~]; or

1 (xxii) unlawful dissemination or publication of discovery material as  
2 defined in section 215.09 of the penal law.

3 § 4. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the  
4 criminal procedure law, paragraph (t) as amended and paragraph (u) as  
5 added by section 4 of subpart B of part UU of chapter 56 of the laws of  
6 2022, are amended and a new paragraph (v) is added to read as follows:

7 (t) any felony or class A misdemeanor involving harm to an identifi-  
8 able person or property, or any charge of criminal possession of a  
9 firearm as defined in section 265.01-b of the penal law, where such  
10 charge arose from conduct occurring while the defendant was released on  
11 his or her own recognizance, released under conditions, or had yet to be  
12 arraigned after the issuance of a desk appearance ticket for a separate  
13 felony or class A misdemeanor involving harm to an identifiable person  
14 or property, or any charge of criminal possession of a firearm as  
15 defined in section 265.01-b of the penal law, provided, however, that  
16 the prosecutor must show reasonable cause to believe that the defendant  
17 committed the instant crime and any underlying crime. For the purposes  
18 of this subparagraph, any of the underlying crimes need not be a quali-  
19 fying offense as defined in this subdivision. For the purposes of this  
20 paragraph, "harm to an identifiable person or property" shall include  
21 but not be limited to theft of or damage to property. However, based  
22 upon a review of the facts alleged in the accusatory instrument, if the  
23 court determines that such theft is negligible and does not appear to be  
24 in furtherance of other criminal activity, the principal shall be  
25 released on his or her own recognizance or under appropriate non-mone-  
26 tary conditions; ~~[ex]~~

27 (u) criminal possession of a weapon in the third degree as defined in  
28 subdivision three of section 265.02 of the penal law or criminal sale of  
29 a firearm to a minor as defined in section 265.16 of the penal law~~[r]~~ ;  
30 or

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

33 § 5. This act shall take effect immediately.