

## 800.72 INVASION OF PRIVACY—DISCLOSURE OF PRIVATE IMAGES<sup>1</sup>

The (*state number*) issue reads:

“Did the defendant disclose (a) private image(s) of the plaintiff?”

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, five things:<sup>2</sup>

First, that the defendant knowingly disclosed<sup>3</sup> (an) image(s)<sup>4</sup> of the plaintiff with the intent to:

[Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the plaintiff]; [or]

[Cause others to coerce harass, intimidate, demean, humiliate, or cause financial loss to the plaintiff.]

Second, that the plaintiff is identifiable from the disclosed [image itself] [images themselves] or information offered in connection with the image(s).

Third, that the plaintiff’s intimate parts<sup>5</sup> are exposed or the plaintiff is engaged in sexual conduct<sup>6</sup> in the disclosed image(s).

Fourth, that the defendant disclosed the image(s) without the affirmative consent of the plaintiff; and

Fifth, that the defendant obtained the image(s) without consent of the plaintiff or under circumstances such that the defendant knew or should have known that the plaintiff expected the image(s) to remain private.<sup>7</sup>

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that

the defendant disclosed (a) private image(s) of the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. N.C.G.S. § 14-190.5A, a criminal statute regarding the disclosure of private images, and more commonly referred to as North Carolina's "revenge porn" statute, see *Clark v. Clark*, \_\_\_ N.C. App. \_\_\_, 867 S.E.2d 743 (2021), affords a private right of action for the same conduct. Subsection (g) provides that "[i]n addition to any other remedies at law or in equity, including an order by the court to destroy any image disclosed in violation of this section, any person whose image is disclosed, or used, as described in subsection (b) of this section, has a civil cause of action against any person who discloses or uses the image[.]"

2. These five elements are set forth in N.C.G.S. § 14-190.5A(b). Section 14-190.5A(g) specifically states that any civil action brought pursuant to this statute must meet the elements set forth in subsection (b). \

3. "Disclosed" is defined as [t]ransfer, publish, distribute, or reproduce." N.C.G.S. 14-190.5A(a)(1).

4. "Image" is defined as "[a] photograph, film, videotape, recording, live transmission, digital or computer-generated visual depiction, or any other reproduction that is made by electronic, mechanical, or other means." N.C.G.S. § 14-190.5A(a)(2).

5. "Intimate parts" is defined as "(i) male or female genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the nipple of a female over the age of 12." N.C.G.S. § 14-190.5A(a)(3). See also *Clark v. Clark*, \_\_\_ N.C. App. \_\_\_, 867 S.E.2d 743 (2021) (discussing "intimate parts" definition).

6. "Sexual conduct" includes any of the following: (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals; or (c) an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume. N.C.G.S. § 14-190.5A(a)(6).

7. Section 14-190.5A does not apply to (1) images involving voluntary exposure in public or commercial settings; (2) disclosures made in the public interest, including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, medical treatment, or scientific or educational activities; or (3) providers of an interactive computer service, as defined in 47 U.S.C. § 230(f), for images provided by another person. If facts supporting any of these exceptions are pled and evidence supporting these exceptions is presented at trial, then there may be an additional issue for the jury as to whether an exception applies.