**T.P.I. – CRIM. 6.11**

**GRAVE TORTURE**

Any person who commits the offense of grave torture is guilty of a crime.

For you to find a person guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant inflicted severe physical and mental pain and suffering upon the victim;

and

(2) that the defendant did so with the intent to perpetrate first degree murder. A person acts intentionally when it is the person's conscious objective or desire to cause the death of the alleged victim;

and

(3) that the offense was accompanied by three (3) *[or more]* of the following:

[(a) The defendant also committed against the victim the offense of *[especially aggravated rape] [aggravated rape] [especially aggravated rape of a child] [aggravated rape of a child]*;

[(b) The defendant also committed the offense of *[kidnapping] [false imprisonment]* against the victim. **See Comment Two**];

[(c) The defendant had, at the time of the commission of the offense, more than one (1) prior conviction for a *[sexual offense] [ violent sexual offense]*. Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.];

[(d) The defendant mutilated the victim during the commission of the offense];

[(e) Force or coercion was used to accomplish the act, and the defendant was armed with a weapon or an article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon];

[(f) The defendant's commission of the offense involved more than one (1) victim]; or

[(g) The defendant knew or had reason to know that the victim was *[mentally defective] [mentally incapacitated] [physically helpless] [a vulnerable adult].*

To find that the defendant intended to perpetrate First Degree Murder, you must find beyond a reasonable doubt that the defendant

[(a) intended to kill and premeditated the killing of the victim. A premeditated act is one done after the exercise of reflection and judgment. Premeditation means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time *[he] [she]* allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. If the design to kill was formed with premeditation, it is immaterial that the accused may have been in a state of passion or excitement when the design was carried into effect. Furthermore, premeditation can be found if the decision to kill is first formed during the heat of passion, but the accused commits the act after the passion has subsided];

or

[(b) intended to kill the victim in the perpetration of or attempt to perpetrate any first degree murder, arson, rape, robbery, burglary, theft, kidnapping, aggravated abuse of an elderly or vulnerable adult in violation of § 39-15-511, aggravated neglect of an elderly or vulnerable adult in violation of § 39-15-508, aggravated child abuse, aggravated child neglect, rape of a child, aggravated rape of a child, or aircraft piracy]; or

[(c) intended to kill the victim as the result of the unlawful throwing, placing or discharging of a destructive device or bomb];

or

[(d) intended to kill the victim in the perpetration or attempted perpetration of an act of terrorism].

[ \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_ are *[sexual offenses] [violent sexual offenses].*

["Force" means compulsion by the use of physical power or violence.]

["Coercion" means a threat, however communicated, to:

[(A) commit any offense;]

[(B) wrongfully accuse any person of any offense;]

[(C) expose any person to hatred, contempt or ridicule;]

[(D) harm the credit or business repute of any person;] or

[(E) take or withhold action as a public servant or cause a public servant to take or withhold action]].

[“Vulnerable adult” means a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

[The trial judge may wish to utilize T.P.I. 43.11, a suggested verdict form for this offense, adapted to blend in with the judge’s other verdict forms.]