**T.P.I.─CRIM. 34.09**

***[Possession] [Distribution] [Production]* of *[Technology] [Software] [Digital Tools]* Designed for the Purpose of Creating Material that Includes a Minor Engaged in *[Sexual Activity] [Simulated Sexual Activity]* that is**

**Patently Offensive**

Any person who commits the offense of *[Possession] [Distribution] [Production]* of *[Technology] [Software] [Digital Tools]* Designed for the Purpose of Creating Material that Includes a Minor Engaged in *[Sexual Activity] [Simulated Sexual Activity]* that is Patently Offensive is guilty of a crime.

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

(1) that the defendant *[possessed] [distributed] [produced] [technology] [software] [digital tools]* designed for the purpose of creating material that includes a minor engaged in *[sexual activity] [simulated sexual activity]* that is patently offensive;

and

(2) that the defendant acted knowingly.

In determining whether the *[technology was] [software was] [digital tools were]* designed for the purpose of creating material that includes a minor engaged in *[sexual activity] [simulated sexual activity]* that is patently offensive, the jury shall, in addition to all other logically relevant factors, consider the following:

*[(1) Statements by the defendant concerning its use;] [Only charge this bracketed section if the proof shows the defendant made a statement concerning its use.  If the proof does not show the defendant made a statement concerning its use, omit these bracketed words and renumber the other six factors from (1) to (6).]*

(2) The existence of material that includes a minor engaged in *[sexual activity] [simulated sexual activity]* that is patently offensive in the defendant's possession;

(3) Instructions, oral or written, provided with the *[technology] [software] [digital tools]* concerning its use;

(4) Descriptive materials accompanying the *[technology] [software] [digital tools]* that explain or depict its use;

(5) The manner in which the *[*technology was*]* *[*software was*]* *[*digital tools were*]* advertised or offered when obtained by the defendant;

(6) The existence and scope of legitimate uses for the *[technology] [software] [digital tools]* in the community;

and

(7) Expert testimony concerning use of the *[technology] [software] [digital tools].*

“Patently offensive” means that which goes substantially beyond customary limits of candor in describing or representing such matters.

"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.