**T.P.I. -- CRIM. 10.26**

**ESPECIALLY AGGRAVATED SEXUAL EXPLOITATION OF A MINOR**

Any person who knowingly commits the offense of especially aggravated sexual exploitation of a minor 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 did *[promote] [employ] [use] [assist] [transport] [permit]* a minor to participate in the *[performance] [production]* of material which includes the minor engaging in *[sexual activity] [simulated sexual activity that was patently offensive]*;

and

1. that the defendant did so knowingly.

You, as the trier of fact, may infer that the participant is a minor if the material through its title, text, visual representation or otherwise, represents or depicts the participant as a minor. However, you are 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 you to draw. The inference may be rebutted by direct or circumstantial evidence or both, whether it exists in the evidence of the state or is offered by the defendant. Although the defendant is not required by law to do so, when the defendant offers an explanation to rebut the inference raised, you should consider such explanation along with all the evidence to determine not only the correctness of the inference, but also the reasonableness of the defendant’s explanation. You are not bound to accept either the inference or the defendant’s explanation. The state must prove beyond a reasonable doubt every element of the offense before the defendant can be found guilty.

["Community" means the judicial district, (describe judicial district), in which a violation is alleged to have occurred.]

["Cunnilingus" means a sex act accomplished by placing the mouth or tongue on or in the vagina of another.]

["Fellatio" means a sex act accomplished with the male sex organ and the mouth or lips of another. Intrusion into the alleged victim’s mouth is not required.]

["Lascivious" means tending to incite lust; lewd; indecent.]

"Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval;

or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

or

[(E) **Only for offenses committed on or after 5/2/17:** Any computer image, or computer-generated image, [**only for offenses committed on or after 7/1/24:** including an image created, adapted, or modified by artificial intelligence,] whether made or produced by electronic, mechanical, or other means.]

[“Artificial intelligence” means

1. a machine-based system that:
2. Can, for a given set of human-defined objectives, make predictions, recommendations, or decisions; influence real and virtual environments without significant human oversight; or that can learn from experience in an automated manner and improve such performance when exposed to data sets; or
3. Is developed in any context, including software or physical hardware, and solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action; and
4. Includes generative artificial intelligence. “Generative artificial intelligence” means an artificial intelligence system that is capable of creating new content or data, including text, images, audio, or video, when prompted by an individual.]

"Minor" means any person who has not reached eighteen (18) years of age.

["Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters.]

["Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise.]

"Sexual activity" means any of the following acts:

(A) vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) masturbation, whether done alone or with another human or an animal;

(C) patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of

apparent sexual stimulation or sexual abuse;

(D) sadomasochistic abuse including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) the insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as a part of a

recognized medical procedure by a licensed professional;

(F) patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of

excretory functions;

or

(G) **Only for offenses committed prior to 5/11/21:** lascivious exhibition of the female breast or the genitals, buttocks, anus, or pubic or rectal area of any person.

or

**Only for offenses committed on or after 5/11/21:** exhibition of the female breast, genitals, buttocks, anus, or pubic or rectal area of any person that can reasonably be construed as being for the purpose of the sexual gratification of the defendant or another.

[A "simulated sexual activity" depicts explicit sexual activity which gives the appearance of ultimate sexual acts, anal, oral or genital. "Ultimate sexual acts" means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy.]

["Sodomy" means a sex act accomplished by anal intercourse or a sex act between a person and an animal.]

"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.

[**Only for offenses committed on or after 7/1/13:** It is not a defense that the minor victim consented to the conduct that constituted the offense.]