**T.P.I. – CRIM. 39.03(b)**

**UNLAWFUL PHOTOGRAPHING**

**(for offenses committed on or after July 1, 2021)**

Any person who commits the offense of unlawful photographing an individual 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:

[Part A: **Only for offenses committed on or after July 1, 2021:**

(1) that the defendant *[photographed an individual] [caused an individual to be photographed]*;

and

(2)(a) that the photograph would offend or embarrass an ordinary person if such person appeared in the photograph;

or

(2)(b) that the photograph was focused on the intimate area of the individual and would be considered offensive or embarrassing by the individual;

and

(3) that the photograph was taken for the purpose of sexual arousal *[and] [or]* gratification of the defendant;

and

(4) that the photograph was made without the prior effective consent of *[the individual photographed, if an adult] [,in the case of a minor, the minor's parent or guardian]*;

and

(5) that the defendant acted knowingly in taking the photograph or in causing it to be taken.

[and]

[(6) that the defendant disseminated or permitted the dissemination of the photograph to any other person.]

[and]

[(7) that the alleged victim was under the age of thirteen (13) when the photograph was taken.]]

[Part B: **Only for offenses committed on or after 7/1/22:**

(1) that the defendant *[photographed an individual] [caused an individual to be photographed]*;

and

(2) that the photograph includes the unclothed intimate areas of the individual and would be considered offensive or embarrassing by the individual;

and

(3) that the photograph was taken for the purpose of offending, intimidating, embarrassing, ridiculing or harassing the victim;

and

(4) that *[the photograph was disseminated by the defendant] [the defendant threatened to disseminate the photograph] [the defendant permitted the dissemination of the photograph]* to another person;

and

(5) that the photograph was made without the prior effective consent of *[the individual photographed, if an adult] [,in the case of a minor, the minor's parent or guardian]*;

and

(6) that the defendant acted knowingly in taking the photograph or in causing it to be taken.]

["Disseminating" means the playing or duplicating of the recording in a manner other than authorized by this law.]

“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception or coercion if fairly raised in the proof]*;] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].

“Intimate area” means the naked or clothed genitals, pubic area, anus, buttocks or female breast of a person.

"Photograph" means any photograph or photographic reproduction, whether taken using digital media or conventional film, still or moving, or any videotape, live television transmission or social media broadcast of any individual.

"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.