**T.P.I. – CRIM. 10.27**

**EXPLOITATION OF A MINOR [BY ELECTRONIC MEANS**]

Any person who commits the offense of exploitation of a minor *[by electronic means]* 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:

1. that the defendant was eighteen (18) years of age or older;

and

1. that the defendant *[directly] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*, engaged in *[sexual activity] [simulated sexual activity that was patently offensive]*;

and

1. that this activity was for the purpose of having a minor view the *[simulated]* sexual activity *[in the presence of the defendant] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*;

and

1. that the defendant acted intentionally.]

or

[PART B:

1. that the defendant was eighteen (18) years of age or older;

and

1. that the defendant *[directly] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*, *[displayed to a minor] [exposed a minor to]* any material containing *[sexual activity] [simulated sexual activity that was patently offensive]*;

and

1. that the purpose of the display could reasonably be construed as being for the sexual arousal or gratification of the minor or the defendant displaying the material;

and

1. that the defendant acted intentionally.]

or

[PART C:

1. that the defendant was eighteen (18) years of age or older;

and

1. that the defendant *[directly] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*, displayed to a law enforcement officer posing as a minor any material containing *[sexual activity] [simulated sexual activity that was patently offensive]*;

and

(3) that the defendant reasonably believed the law enforcement officer to be less than eighteen (18) years of age;

and

(4) that the purpose of the display could reasonably be construed as being for the sexual arousal or gratification of the intended minor or the defendant displaying the material;

and

(5) that the defendant acted intentionally.

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

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

[“Law enforcement officer” means an officer, employee or agent of government who has a duty imposed by law to:

1. Maintain public order;

or

(B) Make arrests for offenses, whether that duty extends to all

offenses or is limited to specific offenses;

and

(C) Investigate the commission or suspected commission of

offenses];

and

[(D) **Only for offenses committed on or after 7/1/23:** Includes a sheriff, sheriff’s deputy, **[only if the offense would be enhanced by the victim being a deputy jailer:** *or a deputy jailer***]**.

["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.]

"Minor" means any person under eighteen (18) years of age.

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

"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 7/1/23:** 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 7/1/23:** 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.]

“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.] [It is not a defense to this offense that the defendant was ignorant or mistaken as to the age of the minor.]

[**Only for offenses committed on or after 7/1/13:** It is an exception to this offense that the victim was at least fifteen (15) but less than eighteen (18) years of age and the defendant was no more than four (4) years older than the victim. If the defendant intentionally commanded, hired, induced or caused the victim to commit this offense, this exception does not apply.]