**T.P.I. – CRIM. 10.01(a)**

**ESPECIALLY AGGRAVATED RAPE**

Any person who commits the offense of especially aggravated rape 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 had unlawful sexual penetration of the alleged victim or the alleged victim had unlawful sexual penetration of the defendant;

and

(2) (a) that force or coercion was used to accomplish the act, and the defendant was armed with a weapon or any article used or fashioned in a manner to lead the alleged victim reasonably to believe it to be a weapon;

or

(b) that the defendant caused bodily injury to the alleged victim;

or

(c) that the defendant was aided or abetted by one (1) or more persons;

and

(1) that force or coercion was used to accomplish the act;

or

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

and

(3) that the defendant acted either intentionally, knowingly or recklessly.

and

(4) that the offense was accompanied by two (2) [*or more]* of the following circumstances:

[(a) The defendant tortured the victim during the commission of the offense]

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

[(c) The defendant also committed the offense of kidnapping, as defined in § 39-13-303, or false imprisonment, as defined in § 39-13-302, against the victim. **See Comment Two**]

[(d) The defendant also committed the offense of involuntary labor servitude, as defined in § 39-13-307, or trafficking for a commercial sex act, as defined in § 39-13-309, against the victim]

[(e) The defendant had, at the time of the commission of the offense, more than one (1) prior conviction for a sexual offense or a violent sexual offense, as those terms are defined in § 40-39-202. 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.]

[(f) The offense occurred during an attempt by the defendant to perpetrate first degree murder in violation of§ 39-13-202]

[(g) The defendant subjected the victim to extreme cruelty during the commission of the offense]

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

[(i) The defendant knew or had reason to know that the victim was mentally defective, mentally incapacitated, physically helpless or a vulnerable adult, as defined in § 39-15-501].

[An "aider and abetter" is one who advises, counsels, procures or encourages another to commit a crime.]

["Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.]

["Coercion" means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial or official authority over a child less than fifteen (15) years of age.]

["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.]

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

["Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.]

["Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent.]

["Physically helpless" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act.]

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the alleged victim's, the defendant's, or any other person's body, but emission of semen is not required.

“Victim" means the person alleged to have been subjected to criminal sexual conduct *[and includes the spouse of the defendant]*.

[“Vulnerable adult” means a person eighteen (18) years of age or older who, because of intellectual disability, 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.]

"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.

"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.

"Recklessly" means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.

[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.]