**T.P.I. – CRIM. 39.03(a)**

**Unlawful photographing (for offenses committed on or after 7/1/2025)**

Any person who commits the offense of unlawful photographing 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 *[photographed an individual] [caused an individual to be photographed]*;

and

(2) that the photograph was taken when the individual had a reasonable expectation of privacy;

and

(3) that the photograph was taken 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

(4)(a) that the photograph would offend or embarrass an ordinary person if the person appeared in the photograph and it was taken for the purpose of sexual arousal or gratification of the defendant;

or

(4)(b) that the photograph included the unclothed intimate area of the individual and the defendant knew that the photograph would include such content;

or

(4)(c) that the photograph included the individual engaged in [here include the relevant sexual activity as set out in T.C.A. § 39‑17‑1002] and the defendant knew that the photograph would include such content;

and

(5) that the defendant acted knowingly.

[and

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

[and

(7) the victim of the offense was under thirteen (13) years of age at the time of the offense].

[and

(8) a minor under thirteen (13) years of age was used by the defendant to facilitate the offense].

[and

(9) the defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional, or occupational status and used the position of trust or power to accomplish the unlawful photography.

[Part B:

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

and

(2) that the photograph was taken when the individual had a reasonable expectation of privacy;

and

(3) 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

(4) that the photograph included the unclothed intimate area of the individual and would be considered offensive or embarrassing by the individual;

and

(5) that the photograph was taken for the purpose of *[offending] [intimidating] [embarrassing] [ridiculing] [harassing]* the victim;

and

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

and

(7) that the defendant acted intentionally.

[Part C:

(1) that the defendant *[photographed an individual] [caused an individual to be photographed]* without the prior effective consent of the individual [or if a minor, without the prior effective consent of the minor’s parent or guardian].

and

(2) 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 or gratification of the defendant;

and

(4) that the defendant acted intentionally.

[and

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

[and

(6) the victim of the offense was under thirteen (13) years of age at the time of the offense]

[and

(7) a minor under thirteen (13) years of age was used by the defendant to facilitate the offense].

“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.

“Reasonable expectation of privacy” means that an individual has a reasonable expectation of privacy, regardless of the location where a photograph is taken, if:

(A) The photograph is taken in a manner that would offend or embarrass a reasonable person; and

(B) the photograph depicts areas of the individual's body, clothed or

unclothed, that would not be visible to ordinary observation but for the offensive or embarrassing manner of photography.

"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.