**T.P.I. – CRIM. 39.10**

**RECIDIVIST MISDEMEANANT**

Members of the jury, you have now determined that the defendant is guilty of *[here list misdemeanor offense(s) charged in the indictment upon which the defendant was found guilty]* as charged in Count \_\_\_\_\_ of the indictment.

It will now be your duty to determine whether or not the defendant is a recidivist misdemeanant as charged in Count \_\_\_\_\_\_ of the indictment. Any person who commits a [sixth] [third] or subsequent qualifying misdemeanor is guilty of the separate criminal offense of being a recidivist misdemeanant.

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 committed the offense(s) of [*here list the misdemeanor offense(s) for which the defendant was just convicted*];

and

(2) that the defendant has five (5) or more prior qualifying misdemeanor convictions [*here list the appropriate qualifying convictions included in 40-35-124 that are set out in the indictment*].

[Part B]

(1) that the defendant committed the offense(s) of [*here list the misdemeanor offense(s) for which the defendant was just convicted*];

and

(2) that the defendant has two (2) or more prior qualifying misdemeanor convictions *[here list the appropriate qualifying convictions included in 40-35-124 that are set out in the indictment*].

[If more than ten (10) years have elapsed between the offense date of the present offense and the offense date of any preceding qualifying misdemeanor conviction, the defendant must be found not guilty of this offense.]

[If the offense date of a preceding qualifying misdemeanor conviction is within ten (10) years of the date of the present offense, all eligible qualifying misdemeanor convictions occurring within twenty (20) years of the offense date of the present offense must be considered when determining the total number of preceding qualifying misdemeanor criminal convictions.]

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.