**T.P.I. – CRIM. 10.12(a)**

**ESPECIALLY AGGRAVATED RAPE OF A CHILD**

Any person who commits the offense of especially aggravated rape of a child 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) that the alleged victim was less than eighteen (18) years of age;

and

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

and

(4) that the offense was accompanied by three (3) *[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];

[(f) (A) 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 sexual penetration; or

(B) The defendant had, at the time of the offense, parental or

custodial authority over the victim by virtue of the defendant's legal, professional, or occupational status and used the position to accomplish the sexual penetration;

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

[(h) The defendant subjected the victim to extreme cruelty during the commission of the offense;

[(i) 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 victim reasonably to believe it to be a weapon;

[(j) The defendant caused serious bodily injury to the victim;

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

[(l) The defendant knew or had reason to know that the victim was *[mentally defective] [mentally incapacitated] [physically helpless]*.

["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.]

"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]*.

"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.]