

Model Utah Jury Instructions – Criminal
Working Draft
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Cr100. OPENING INSTRUCTIONS

Cr101. Introduction

[Ladies/Gentlemen or Members of the Jury,] you have been selected and sworn as the jury in this case. The defendant is accused of committing one or more crimes. You will decide if the defendant(s) is guilty or not guilty. I will give you some instructions now and some later. You are required to consider and follow all my instructions. Keep an open mind throughout the trial. At the end of the trial you will discuss the evidence and reach a verdict. You took an oath to “well and truly try the issues pending between the parties” and to “render a true and just verdict.” The oath is your promise to do your duty as a member of the jury. Be alert. Pay attention. Follow my instructions.

Cr102. Information, Plea and Burden of Proof

The prosecutor has filed a document—called an “Information”—that contains the charges against the defendant. The Information is not evidence of anything. It is only a method of accusing a defendant of a crime. The Information will now be read.

[Read Information]

The defendant has entered a plea of not guilty and denies committing the crime(s). Every crime has component parts called “elements.” The prosecutor must prove each element beyond a reasonable doubt. Until then, you must presume that the defendant is not guilty. The defendant does not have to prove anything. (He) (she) does not have to testify, call witnesses, or present evidence.

Cr103. Proof Beyond a Reasonable Doubt

The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the prosecution's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find (him)(her) guilty. If on the other hand, you think there is a real possibility that (he)(she) is not guilty, you must give (him)(her) the benefit of the doubt and find (him)(her) not guilty.

Cr104. Presumption of Innocence.

Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crime(s) charged. This presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

Cr105. Role of Judge, Jury and Lawyers

All of us, judge, jury and lawyers, are officers of the court and have different roles during the trial:

- As the judge, I will supervise the trial, decide legal issues, and instruct you on the law.
- As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.
- The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

Cr106. Evidence

As jurors you will decide whether the defendant(s) is (are) guilty or not guilty. You must base your decision only on the evidence. Evidence usually consists of the testimony and exhibits presented at trial. Testimony is what witnesses say under oath. Exhibits are things like documents, photographs, or other physical objects. The fact that the defendant has been accused of a crime and brought to trial is not evidence. What the lawyers say is not evidence. For example, their opening statements and closing arguments are not evidence. Rules govern what evidence may be presented to you. On the basis of these rules, the lawyers may object to proposed evidence. If they do, I will rule in one of two ways. If I sustain the objection, the proposed evidence will not be allowed. If I overrule the objection, the evidence will be allowed. Do not evaluate evidence on the basis of whether objections are made.

Cr107. Objections

Cr108. Order of the Trial

I will now explain how the trial will unfold. The prosecution will give its opening statement. An opening statement gives an overview of the case from one point of view, and summarizes what that attorney thinks the evidence will show. Defense counsel may choose to make an opening statement right after the prosecutor, or wait until after all of the prosecution's evidence has been presented, or not make one at all. You will then hear the prosecution's evidence. Evidence is usually presented by calling and questioning witnesses. What they say is called testimony. A witness is questioned first by the lawyer who called that witness and then by the opposing lawyer.

[For judges who permit juror questions add: After the lawyers finish with their questions you will have the opportunity to submit questions. In a moment I will explain how to do this.]

Consider all testimony, whether from direct or cross-examination, regardless of who calls the witness. After the prosecution has presented all its evidence, the defendant may present evidence, though the defendant has no duty to do so. If the defendant does present evidence, the prosecution may then present additional evidence. After both sides have presented all their evidence, I will give you final instructions on the law you must follow in reaching your verdict. You will then hear closing arguments from the attorneys. The prosecutor will speak first, followed by the defense counsel. Then the prosecutor speaks last, because the government has the burden of proof. Finally you will deliberate in the jury room. You may take your notes and any exhibits. You will discuss the case and reach a verdict.

Cr109. Conduct of Jurors

From time to time I will call a recess. It may be for a few minutes or longer. During recesses, do not talk about this case with anyone—not family, not friends, not even each other. Until the trial is over, do not mingle or talk with the lawyers, parties, witnesses or anyone else connected with the case. Court clerks or bailiffs can answer general questions, such as the length of breaks or the location of restrooms. But they cannot comment about the case or anyone involved. The goal is to avoid the impression that anyone is trying to influence you improperly. If people involved in the case seem to ignore you outside of court, they are just following this instruction.

Until the trial is over, do not read or listen to any news reports about this case. If you observe anything that seems to violate this instruction, report it immediately to a clerk or bailiff.

Cr110. Note-taking

Feel free to take notes during the trial to help you remember the evidence, but do not let note-taking distract you. Your notes are not evidence and may be incomplete.

Cr111. Juror Questions [Optional for judges who permit questions]

During the trial you may ask questions of the witnesses. However, to make sure the questions are legally appropriate, we will use the following procedure: After the attorneys have finished questioning each witness, I will ask if you have any questions. If you do, please do not ask the question out loud. Write it down and hand it to the bailiff. The bailiff will hand me your question. I will review it with the attorneys to make sure it is legally permissible. If the question is appropriate, it will be addressed. If not, I will tell you.

Cr200. Closing Instructions

Cr201. Closing Roadmap

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the attorneys will give their closing arguments. The prosecutor will go first, then the defense. Because the prosecution has the burden of proof, the prosecutor may give a rebuttal.

Finally, you will go to the jury room to discuss and decide the case.

Cr202. Juror Duties

You have two main duties as jurors.

The first is to decide what the facts are from the evidence. Deciding what the facts are is your job, not mine. Nothing I have said or done during this trial was meant to influence your decision about the facts.

The second duty is to take the law I give you in the instructions, apply it to the facts, and decide if the prosecution has proved the defendant guilty beyond a reasonable doubt.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. [You must also not let yourselves be influenced by public opinion.]

Finally, as I explained earlier, the fact that criminal charges were filed against the defendant is not evidence of guilt. You cannot base your decision on that fact.

Cr203. Closing Arguments

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

Cr204. Legal Rulings

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However,

- if I sustained an objection,
- if I did not accept evidence offered by one side or the other, or
- if I ordered that certain testimony be stricken,

then you must not consider those things in reaching your verdict.

Cr205. Judicial Neutrality

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

Cr206. Evidence-closing

Cr207. Direct/Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it was raining, that would be direct evidence that it had rained.

Circumstantial evidence is *indirect* evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. However, based on that testimony someone could conclude that the fact in question had occurred. For example, if a witness testified that she looked outside and saw that the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

Before you can find the defendant guilty of any charge, there must be enough evidence —direct, circumstantial, or some of both—to convince you of the defendant's guilt beyond a reasonable doubt. It is up to you to decide.

Cr208. Witness Credibility

In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- How good was the witness's memory?
- Does the witness have something to gain or lose from this case?
- Does the witness have any connection to the people involved in this case?
- Does the witness have any reason to lie or slant the testimony?
- Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- How believable was the witness's testimony in light of other evidence presented at trial?
- How believable was the witness's testimony in light of human experience?
- Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

Cr209A. Defendant Testifying

The defendant testified at trial. Instruction _____ mentions some things for you to think about in weighing testimony. Consider those same things in weighing the defendant's testimony. Don't reject the defendant's testimony merely because he or she is accused of a crime.

Cr209B. Defendant Not Testifying

A person accused of a crime may choose whether or not to testify. In this case the defendant chose not to testify. Do not hold that choice against the defendant. Do not try to guess why the defendant chose not to testify. Do not consider it in your deliberations. Decide the case only on the basis of the evidence. The defendant does not have to prove that he or she is not guilty. The prosecution must prove the defendant's guilt beyond a reasonable doubt.

Cr 210. Presumption of Innocence-closing

Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crime(s) charged. This presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

Cr211. Reasonable Doubt-closing

Cr212. Inferring the Required Mental State

The law requires that the prosecutor prove beyond a reasonable doubt that the defendant acted with a particular mental state.

Ordinarily, there is no way that a defendant's mental state can be proved directly, because no one can tell what another person is thinking.

A defendant's mental state can be proved indirectly from the surrounding facts and circumstances. This includes things like what the defendant said, what the defendant did, and any other evidence that shows what was in the defendant's mind.

Cr213. Motive

A defendant's "mental state" is not the same as "motive." Motive is *why* a person does something. Ordinarily, motive is not an element of a crime. As a result, the prosecutor does not have to prove why the defendant acted (or failed to act).

A motive or lack of motive may help you determine if the defendant did what (he)(she) is charged with doing, and if so, what (his)(her) mental state was at the time.

Cr214. Do Not Consider Punishment

In making your decision, do not consider what punishment could result from a verdict of guilty. Your duty is to decide if the defendant is guilty beyond a reasonable doubt. Punishment is not relevant to whether the defendant is guilty or not guilty.

Cr215. Consider All Instructions

Cr216. Jury Deliberations

In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty." In reaching your verdict you may not use methods of chance such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.

Cr217. Foreperson Selection and Duties

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

For each offense, the verdict form will have two blanks—one for “guilty” and the other for “not guilty.” The foreperson will fill in the appropriate blank to reflect the jury's unanimous decision. In filling out the form, the foreperson needs to make sure that only one blank is marked for each charge.

Cr218. Separate Consideration of Multiple Crimes

The defendant has been charged with more than one crime. It is your duty to consider each charge separately. For each crime charged, consider all of the evidence related to that charge. Decide whether the prosecution has presented proof beyond a reasonable doubt that the defendant is guilty of that particular crime. Your verdict on one charge does not determine your verdict on any other charge.

Cr219. Unanimity (?)

Cr220. Offense Requires Conduct and Mental State (?)

Cr301. Expert witnesses

Cr302. Fact versus expert witnesses

There are two types of witnesses: fact witnesses and expert witnesses. Usually a fact witness can testify only about facts that (he)(she) can see, hear, touch, taste or smell. An expert witness has scientific, technical or other special knowledge that allows the witness to give an opinion. An expert's knowledge can come from training, education, experience or skill. Experts can testify about facts, and they can give their opinions in their area of expertise.

You may have to weigh one expert's opinion against another's. In weighing the opinions of experts, you may look at their qualifications, the reasoning process the experts used, and the overall credibility of their testimony. You may also look at things like bias, consistency, and reputation.

Use your common sense in evaluating all witnesses, including expert witnesses. You do not have to accept an expert's opinion. You may accept it all, reject it all, or accept part and reject part. Give it whatever weight you think it deserves.

Cr303. Multiple Defendants

Cr304. Party Liability

A defendant who does not directly commit an offense can still be held responsible for the crime if the defendant, acting with the mental state required to be found guilty of the crime:

- solicited, OR
- requested, OR
- commanded, OR
- encouraged, OR
- intentionally helped

another person to commit the crime.

Cr305. Eyewitness Identification [Long instruction]

Cr306. Flight

Cr307. Police Officer's Testimony

Cr701. Elements

The defendant, [NAME], is charged in [count __ of] the Information with [CRIME]. You cannot convict (him)(her) of this offense unless you find beyond reasonable doubt and based on all the evidence, each of the following elements:

1. That on or about the DATE, the defendant, NAME:
2. ELEMENT ONE; and/or (as appropriate)
3. ELEMENT TWO: . . .

After you carefully consider all of the evidence in this case, if you are convinced that each element has been proved beyond a reasonable doubt, then you must find the defendant GUILTY of [CRIME]. On the other hand, if you are not convinced beyond a reasonable doubt that one or more of these elements has been proved, then you must find the defendant NOT GUILTY.

Cr711. Intentional

A person acts “intentionally” [“wilfully,”] [“with intent”] when it is that person’s *purpose* to act in a specific way or to cause a specific result. To act “intentionally” the person must act with a conscious objective or desire in mind.

Cr712. Knowing

A person acts “knowingly,” or “with knowledge” when the person:

- *is aware* that he/she is doing a specific act; OR
- *is aware* of a particular fact or circumstance surrounding his/her conduct; OR
- *is aware* that the action taken is reasonably certain to cause a particular result.

Cr713. Reckless

As to “result” of conduct

A person acts “recklessly” when (he)(she) is aware of a substantial and unjustifiable risk that (his)(her) conduct will cause a particular result, consciously disregards the risk, and acts anyway.

The nature and extent of the risk must be such that disregarding it is a gross deviation from what an ordinary person would do in that situation.

As to “circumstances” surrounding conduct

A person acts “recklessly” when (he)(she) is aware of a substantial and unjustifiable risk that certain circumstances exist relating to (his)(her) conduct, consciously disregards the risk, and acts anyway.

The nature and extent of the risk must be such that disregarding it is a gross deviation from what an ordinary person would do in that situation.

Note: Substitute “maliciously” for “recklessly” when the statutory language requires it.

Note: Generally it will be enough to use the top definition (dealing with the **result** of the actor’s conduct). However, where the statute requires awareness of **special circumstances** related to the actor’s conduct, the second definition should be used. The law sometimes requires a person to inform himself/herself of certain circumstances before he/she acts.

Cr714. Criminal negligence

As to “result” of conduct

A person acts with criminal negligence when (he)(she) should be aware that (his)(her) conduct creates a substantial and unjustifiable risk that a particular result will occur.

The nature and extent of the risk must be such that failing to perceive it is a gross deviation from what an ordinary person would perceive in that situation.

As to “circumstances surrounding conduct”

A person acts with criminal negligence when (he)(she) should be aware of a substantial and unjustifiable risk that certain circumstances exist relating to (his)(her) conduct.

The nature and extent of the risk must be such that failing to perceive it is a gross deviation from what an ordinary person would perceive in that situation.

Note: Generally it will be enough to use the top definition (dealing with the **result** of the actor’s conduct). However, where the statute requires awareness of **special circumstances** related to the actor’s conduct, the second definition should be used. The law sometimes requires a person to inform himself/herself of certain circumstances before he/she acts.

Cr715. Comparing recklessness with criminal negligence