

# AGENDA

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Wednesday, May 7, 2014  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

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- |       |  |                       |
|-------|--|-----------------------|
| 12:00 | Welcome, Introduction of Recording Secretary (Tab 1) and Approval of Minutes | Judge Denise Lindberg |
| 12:10 | Sexual Offense Instructions from CR 1614 (Tabs 2 and 3)                      | Committee             |
| 12:50 | Sexual Offense Definitions (Tab 4)   | Committee             |
| 1:25  | Other Business   |                       |
| 1:30  | Adjourn  |                       |

### Upcoming Meetings

June 4, 2014  
September 3, 2014  
October 1, 2014  
November 5, 2014  
December 3, 2014

# Tab 1

# MINUTES

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Wednesday, March 5, 2014  
12:00 p.m. to 2:00 p.m.  
Judicial Council Room

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### **PRESENT**

Judge Denise Lindberg, Chair  
Alison Adams-Perlac, Staff  
Professor Jenny Andrus  
Judge James Blanch  
Mark Field  
Sandi Johnson  
Karen Klucznik  
Judge Brendan McCullagh  
Thomas Pedersen, Intern  
Judge Michael Westfall  
Scott Young

### **EXCUSED**

Professor Jensie Anderson  
Linda Jones  
John West

### **1. Welcome and Approval of Minutes**

**Judge Denise Lindberg**

Judge Lindberg welcomed everyone to the meeting.

Ms. Johnson stated that she was present and should be removed from the excused list. Ms. Andrus stated that she was not present and she should be on the excused list.

*Ms. Johnson moved to approve the minutes from the previous meeting as amended. Mr. Young seconded the motion and it passed unanimously.*

### **2. Special Verdict Instruction**

**Committee**

Ms. Adams-Perlac stated that the current instructions do not have an instruction addressing special verdict forms, so she drafted a new one. Judge Lindberg agreed that the current instructions do not include such an instruction.

The committee members made suggestions for amendments to the proposed instruction. Ms. Klucznik stated that the instruction is favored toward finding something. Ms. Johnson adding a sentence that states "if you do not find that one or more of the factors have been proven beyond a reasonable doubt do not check any boxes and have the foreperson sign the form." Judge McCullagh

suggested “check a box on the form for every factor that you the jury have unanimously found beyond a reasonable doubt.”

Ms. Klucznik stated that there is law that if there is insufficiency as to one of the variations, the state loses, because it is not clear which one the jury relied on it. Mr. Field stated that if one of the factors must be true in order for it to be an aggravated crime (e.g. sexual abuse of a child), then that factor is an element of the offense, and must be proven beyond a reasonable doubt. Ms. Johnson stated that she disagrees. She said that aggravated sexual abuse of a child says, the defendant committed sexual abuse of a child, and one of the aggravating factors was present. A jury could find that the defendant committed sexual abuse of a child, and they could each rely on a different aggravating factor. She stated that a special verdict form will require that jury be unanimous on the factor as well as the underlying crime. Ms. Klucznik said she thinks murder is the only one where the factors can be mixed and matched. Ms. Johnson stated that if we are using the special verdict form, we need to make clear that each factor must be unanimous.

Ms. Klucznik asked if the committee should look into the unanimity issue before formally approving it. Judge McCullagh stated that if we put it off, we will find that it is all over the place. He stated that this instruction is the most conservative approach. Judge Lindberg stated that this instruction will minimize cases involving factors being overturned on appeal. Ms. Johnson stated that a special verdict form should be used if there are multiple factors. Judge Blanch stated that it is the committee’s job to get the instructions right. Mr. Young stated his agreement and that it is the committee’s job to provide an instruction that is most likely to not be overturned.

Ms. Johnson stated that if the committee provides instructions on the second degree sexual abuse elements instructions, the first degree aggravated sex abuse elements instruction, and the special verdict form, that will cover everything the prosecutor would want to do.

The committee made other changes and amended the instruction as follows:

### **CR\_\_ Special Verdict Form.**

If you determine beyond a reasonable doubt that (DEFENDANT’S NAME) committed (NAME OF RELEVANT OFFENSE), you must complete the special verdict form. Check the box on the form for each factor which you as the jury unanimously find the prosecution has proven beyond a reasonable doubt. Do not check the box for any factor the prosecution has failed to prove beyond a reasonable doubt.

Even if you do not check any boxes, the foreperson must sign the special verdict form.

*Ms. Johnson moved to approve the special verdict instruction as amended. Judge McCullagh seconded the motion and it passed unanimously.*

### **3. Sexual Offense Instructions**

### **Committee**

The committee discussed Instruction 1614, Aggravated Sexual Abuse of a Child. Judge McCullagh suggested waiting until after the legislative session to address this instruction since there is a bill in the current legislative session that may change “special position of trust.” Judge McCullagh said that would also apply to the special verdict form. He offered to look at the special verdict form in light of any legislative changes.

*The committee tabled discussion of Instruction 1614 until after the legislative session.*

The committee discussed Instruction 1615. Ms. Adams-Perlac stated that she had not drafted an instruction since the committee had not decided whether one was necessary.

*Ms. Adams-Perlac will draft Instruction 1615 with a special verdict form and circulate it for the next meeting.*

The committee discussed Instruction 1616, Consent. Ms. Johnson stated her concern with using the term “must” and suggested using some of the language from the consent instruction in *Thompson*, and she read that instruction.

Ms. Andrus stated her concern that the language is complicated and suggested removing language such as “totality.” Judge McCullagh stated that the committee can make the *Thompson* instruction more plain language.

Ms. Johnson suggested using language from the preamble instructions at the beginning of Instruction 1616. Ms. Ms. Klucznik suggested stating, “Defendant has been charged with \_\_\_\_\_ (CRIME). The prosecution must prove beyond a reasonable doubt that the victim did not consent to the alleged conduct. The victim did not consent to an act if...”

Ms. Johnson suggested leaving the first couple of suggested lines in and then adding “the alleged sexual conduct is without consent of (VICTIM’S NAME) (MINOR’S INITIALS) under any, all, or a combination of the following circumstances...” then listing the factors and adding the ending paragraph from *Thompson*.

Ms. Andrus suggested stating, “lack of consent is not limited to the circumstances listed above.” Judge Lindberg suggested, “In deciding whether there is lack of consent, you are not limited to the above circumstances.” Mr. Field suggested, “you are not limited to the circumstances listed above.” Ms. Kluczik suggested adding “common ordinary meaning of consent.”

The committee discussed other changes to the instruction, including bracketing the factors, and adding a committee note advising individuals using the instruction to include only the relevant factors. The committee amended Instruction 1616 as follows:

**CR 1616 Consent. (Reading level 24.8) Approved 03/5/2014**

(DEFENDANT’S NAME) has been charged with (name of offense). The prosecution must prove beyond a reasonable doubt that the victim did not consent to the alleged sexual conduct. The alleged sexual conduct is without consent of [(VICTIM’S NAME)] [(MINOR’S INITIALS)] under any, all, or a combination of the following circumstances:

[[ (VICTIM’S NAME) ] [(MINOR’S INITIALS) ] expressed lack of consent through words or conduct];

[(DEFENDANT'S NAME) overcame [(VICTIM'S NAME)] [(MINOR'S INITIALS)] through the application of physical force or violence];

[(DEFENDANT'S NAME) overcame the victim through concealment or by the element of surprise];

[(DEFENDANT'S NAME) coerced the victim to submit by threatening immediate or future retaliation against [(VICTIM'S NAME)] [(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)] [(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to carry out the threat];

[[[(VICTIM'S NAME)] [(MINOR'S INITIALS)] did not consent and (DEFENDANT'S NAME) knew [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was unconscious, unaware that the act was occurring, or was physically unable to resist];

[(DEFENDANT'S NAME) knew that as a result of mental illness or defect, [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was incapable at the time of the act of either understanding the nature of the act or of resisting it];

[(DEFENDANT'S NAME) knew that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] submitted or participated because [(VICTIM'S NAME)] [(MINOR'S INITIALS)] believed that (DEFENDANT'S NAME) was [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s spouse];

[(DEFENDANT'S NAME) intentionally impaired [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s power to understand or control [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s conduct by giving [(VICTIM'S NAME)] [(MINOR'S INITIALS)] a substance without [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s knowledge];

[(MINOR'S INITIALS) was younger than 14 years old at the time of the act];

[At the time of the act, (MINOR'S INITIALS) was younger than 18 years old and (DEFENDANT'S NAME) was (MINOR'S INITIALS)'s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to (MINOR'S INITIALS)];

[(MINOR'S INITIALS) was 14 years old or older, but younger than 18 years old, and (DEFENDANT'S NAME) was more than three years older than (MINOR'S INITIALS) and enticed or coerced (MINOR'S INITIALS) to submit or participate, under circumstances not amounting to physical force or violence or the threat of retaliation];

[(DEFENDANT'S NAME) was a health professional or religious counselor who committed the act under the guise of providing professional diagnosis, counseling or treatment, and at the time of the act [(VICTIM'S NAME)] [(MINOR'S INITIALS)] reasonably believed the act was for professionally appropriate reasons, so that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] could not reasonably be expected to have expressed resistance].

In deciding lack of consent, you are not limited to the circumstances listed above. You may also apply the common, ordinary meaning of consent to all of the facts and circumstances of this case.

#### **References**

Utah Code § 76-5-406.

*State v. Thompson*, 2014 UT App 14, 318 P.3d 1221.

#### **Committee Notes**

When using this instruction, practitioners should include only the factors relevant to the particular case, rather than all factors listed.

*Mr. Field moved to approve Instruction 1616, Consent, as amended. Ms. Klucznik seconded the motion and it passed unanimously.*

#### **4. Sexual Offense Definitions**

#### **Committee**

This item was tabled for discussion at the next meeting.

#### **5. Other Business**

There was no other business discussed at the meeting.

#### **6. Adjourn**

*The meeting was adjourned at 1:27 p.m. The next meeting will be held on Wednesday, June 7, 2014 at 12:00 p.m.*

# Tab 2

<b>Statute</b>	<b>Offense</b>	<b>Number</b>	<b>Drafted</b>	<b>Discussion</b>	<b>Approved</b>	<b>Published</b>
76-5-401	Unlawful sexual activity with a minor	1604	Yes		6-Nov-13	
76-5-401.1	Sexual abuse of a minor	1603	Yes		6-Nov-13	
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	1605	Yes		6-Nov-13	
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old - special verdict form	SVF	Yes		6-Nov-13	
76-5-402	Rape	1606	Yes		6-Nov-13	
76-5-402.1	Rape of a child	1607	Yes		4-Dec-13	
76-5-402.2	Object rape	1608	Yes		4-Dec-13	
76-5-402.3	Object rape of a child	1609	Yes		4-Dec-13	
76-5-403	Forcible sodomy	1610	Yes		4-Dec-13	
76-5-403.1	Sodomy on a child	1611	Yes		4-Dec-13	
76-5-404	Forcible sexual abuse	1612	Yes		4-Dec-13	
76-5-404.1	Sexual abuse of a child	1613	Yes		5-Feb-14	
76-5-404.1	Aggravated sexual abuse of a child	1614	Yes	7-May-14		
76-5-404.1	Aggravated sexual abuse of a child - special verdict form	SVF	Yes	7-May-14		
76-5-405	Aggravated sexual assault	1615	Yes	7-May-14		
76-5-405	Aggravated sexual assault - special verdict form	SVF	Yes	7-May-14		
76-5-406	Consent	1616	Yes	7-May-14	5-Mar-14	
76-5-407	Touching sufficient to constitute offense	1617	Yes	7-May-14		
76-5-412	Custodial sexual relations	1618	Yes	7-May-14		
76-5-412	Custodial sexual misconduct	1619	Yes	7-May-14		
76-5-413	Custodial sexual relations with youth receiving state services	1620	Yes	7-May-14		
76-5-413	Custodial sexual misconduct with youth receiving state services	1621	Yes	7-May-14		
	Definitions	1601	Yes	7-May-14		
	Prior Conviction - special verdict form					
	Serious Bodily Injury - special verdict form					

# Tab 3

**Sexual Offense Instructions**

**Draft: April 30, 2014**

CR1603 Sexual Abuse of a Minor. Approved. (Reading Level 11) ..... 2

CR1604 Unlawful Sexual Activity with a Minor. Approved. (Reading Level 11)..... 2

CR 1605 Unlawful Sexual Conduct with a 16 or 17 year old. Approved. (Reading Level 12) ..... 3

SVF Unlawful Sexual Conduct with a 16 or 17 year old. Approved. (Reading Level 34) ..... 6

CR 1606 Rape. Approved. (Reading Level 10)..... 7

CR 1607 Rape of a Child. Approved. (Reading Level 10.8)..... 8

CR 1608 Object Rape. Approved. (Reading Level 10.6) ..... 8

CR 1609 Object Rape of a Child. Approved. (Reading Level 11.1) ..... 9

CR 1610 Forcible Sodomy. Approved. (Reading Level 11)..... 10

CR 1611 Sodomy on a Child. Approved. (Reading Level 11.3) ..... 11

CR 1612 Forcible Sexual Abuse. Approved. (Reading Level 9.8) ..... 11

CR 1613 Sexual Abuse of a Child. Approved. (Reading Level 11.1)..... 12

CR 1614 Aggravated Sexual Abuse of a Child. (Reading Level 13.3) ..... 13

SVF Aggravated Sexual Abuse of a Child. (Reading Level 25.7) ..... 15

CR 1615 Aggravated Sexual Assault. (Reading Level 10.9) ..... 16

SVF Aggravated Sexual Assault. (Reading Level 10.1) ..... 18

CR 1616 Consent. Approved. (Reading level 24.8)..... 19

CR 1617 Penetration or Touching Sufficient to Constitute Offense. (Reading Level 16.6)..... 21

CR 1618 Custodial Sexual Relations. (Reading Level 11.4)..... 22

CR 1619 Custodial Sexual Misconduct. (Reading Level 12.1) ..... 23

CR 1620 Custodial Sexual Relations with Youth Receiving State Services..... 24

CR 1621 Custodial Sexual Misconduct with Youth Receiving State Services. .... 25

**CR1603 Sexual Abuse of a Minor. Approved. (Reading Level 11)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_] with committing Sexual Abuse of a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. [touched the anus, buttocks, or any part of the genitals of (MINOR'S INITIALS)];
  - b. [touched the breast of (MINOR'S INITIALS), a female];
  - c. [otherwise took indecent liberties with (MINOR'S INITIALS)]; or
  - d. [caused (MINOR'S INITIALS) to take indecent liberties with any person];
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person];
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct; and
5. (DEFENDANT'S NAME) was seven or more years older than (MINOR'S INITIALS).

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-401.1.

**Committee Note**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**CR1604 Unlawful Sexual Activity with a Minor. Approved. (Reading Level 11)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Unlawful Sexual Activity with a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt all of the elements in one or more of the following variations:

VARIATION A:

1. (DEFENDANT'S NAME);

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2. Intentionally, knowingly, or recklessly had sexual intercourse;
3. With (MINOR'S INITIALS); and
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

[OR]

VARIATION B:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly engaged in any sexual act with (MINOR'S INITIALS) involving the genitals of one person and the mouth or anus of another; and
3. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

[OR]

VARIATION C:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS) by any foreign object, substance, instrument, or device, including a part of the human body;
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person]; and
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element [of one or more of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element [of at least one of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-401.

### Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

### CR 1605 Unlawful Sexual Conduct with a 16 or 17 year old. Approved. (Reading Level 12)

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Unlawful Sexual Conduct with a 16 or 17 year old [on or about DATE]. You cannot convict [him] [her] of

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this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. [had sexual intercourse with (MINOR'S INITIALS)]; or
  - b. [engaged in any sexual act with (MINOR'S INITIALS) involving the genitals of one person and the mouth or anus of another person]; or
  - c. [caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS) by any foreign object, substance, instrument, or device, including a part of the human body;
    - i. [with the intent to arouse or gratify the sexual desire of any person]; or
    - ii. [with the intent to cause substantial emotional or bodily pain to any person]]; or
  - d. [touched the anus, buttocks, or any part of (MINOR'S INITIALS)'s genitals or touched (MINOR'S INITIALS)'s breast, or otherwise took indecent liberties with (MINOR'S INITIALS), or caused (MINOR'S INITIALS) to take indecent liberties with the defendant or another person;
    - i. [with the intent to arouse or gratify the sexual desire of any person]; or
    - ii. [with the intent to cause substantial emotional or bodily pain to any person]].
3. At the time of the conduct, (MINOR'S INITIALS) was 16 or 17 years old; and
4. At the time of the conduct, (DEFENDANT'S NAME) was:
  - a. [seven or more but less than ten years older than (MINOR'S INITIALS), and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age]; or
  - b. [ten or more years older than (MINOR'S INITIALS)].

After you carefully consider all the evidence in this case, if you are convinced that each and every element [of one or more of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element [of at least one of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

## References

Utah Code § 76-5-401.2.

**Committee Notes**

If the State intends to rely on Subsection 2d in combination with 2a, 2b, or 2c, use the Unlawful Sexual Conduct with a 16 or 17 year old special verdict form.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

SVF Unlawful Sexual Conduct with a 16 or 17 year old. Approved. (Reading Level 34)

[LOCATION] JUDICIAL DISTRICT COURT, [IF APPLICABLE] DEPARTMENT,
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff, : SPECIAL VERDICT
- vs - : Count (#)
(DEFENDANT'S NAME) :
Defendant. : Case No. (\*\*)

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Unlawful Sexual Conduct with a 16 or 17 Year Old, [as charged in Count \_\_\_\_]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- checkbox The defendant had sexual intercourse with (MINOR'S INITIALS);
checkbox The defendant engaged in any sexual act with (MINOR'S INITIALS) involving the genitals of one person and the mouth or anus of another person;
checkbox With the intent to arouse or gratify the sexual desire of any person, or with the intent to cause substantial emotional or bodily pain to any person, the defendant caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening by any foreign object, substance, instrument, or device, including a part of the human body;
checkbox With the intent to arouse or gratify the sexual desire of any person, or with the intent to cause substantial emotional or bodily pain to any person, the defendant touched the anus, buttocks, or any part of (MINOR'S INITIALS) genitals, or touched (MINOR'S INITIALS)'s breast, or otherwise took indecent liberties with (MINOR'S INITIALS), or caused (MINOR'S INITIALS) to take indecent liberties

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with the defendant or another person, regardless of the sex of any participant.

DATED this \_\_\_\_\_ day of (MONTH), 20(\*\*).

\_\_\_\_\_  
Foreperson

**References**

Utah Code § 76-5-401.2.

**Committee Notes**

**CR 1606 Rape. Approved. (Reading Level 10)**

(DEFENDANT'S NAME) is charged [in Count\_\_] with committing Rape [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

- 1. (DEFENDANT'S NAME);
- 2. Intentionally, knowingly, or recklessly;
- 3. Had sexual intercourse with (VICTIM'S NAME);
- 4. Without (VICTIM'S NAME)'s consent.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-402.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

**CR 1607 Rape of a Child. Approved. (Reading Level 10.8)**

(DEFENDANT'S NAME) is charged [in Count\_\_\_] with committing Rape of a Child [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
  - a. intentionally, knowingly, or recklessly;
  - b. had sexual intercourse with (MINOR'S INITIALS); and
2. (MINOR'S INITIALS) was under 14 years old at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-402.1.  
State v. Martinez, 2002 UT 60.  
State v. Martinez, 2000 UT App 320.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

**CR 1608 Object Rape. Approved. (Reading Level 10.6)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_] with committing Object Rape [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. caused the penetration, however slight;
  - b. of ([VICTIM'S NAME][MINOR'S INITIALS])'s genital or anal opening;
  - c. by any object or substance other than the mouth or genitals;
3. With the intent to:

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- a. cause substantial emotional or bodily pain to ([VICTIM'S NAME] [MINOR'S INITIALS]); or
  - b. arouse or gratify the sexual desire of any person; and
4. Without ([VICTIM'S NAME] [MINOR'S INITIALS])'s consent.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-402.2.

### Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

### CR 1609 Object Rape of a Child. Approved. (Reading Level 11.1)

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Object Rape of a Child [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. caused the penetration, however slight;
  - b. of (MINOR'S INITIALS)'s genital or anal opening;
  - c. by any foreign object, substance, instrument or device that is not a part of the human body;
3. With the intent to:
  - a. cause substantial emotional or bodily pain to (MINOR'S INITIALS); or
  - b. arouse or gratify the sexual desire of any person; and
4. (MINOR'S INITIALS) was 13 years old or younger at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every

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element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-402.3.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

### Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

### CR 1610 Forcible Sodomy. Approved. (Reading Level 11)

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Forcible Sodomy [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
3. Committed a sexual act involving the genitals of one person and the mouth or anus of another;
4. Without ([VICTIM'S NAME] [MINOR'S INITIALS])'s consent.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-403.

### Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

**CR 1611 Sodomy on a Child. Approved. (Reading Level 11.3)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Sodomy on a Child [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
  - a. intentionally, knowingly, or recklessly;
  - b. committed a sexual act with (MINOR'S INITIALS), involving the genitals of one person and the mouth or anus of another.
2. (MINOR'S INITIALS) was under 14 years old at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-403.1.  
State v. Martinez, 2002 UT 60.  
State v. Martinez, 2000 UT App 320.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

**CR 1612 Forcible Sexual Abuse. Approved. (Reading Level 9.8)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Forcible Sexual Abuse [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. touched the anus, buttocks, or genitals of ([VICTIM'S NAME] [MINOR'S INITIALS]);
  - b. touched the breast of ([FEMALE VICTIM'S NAME] [FEMALE MINOR'S INITIALS]);

## Sexual Offense Instructions

DRAFT: May 1, 2014

- c. took indecent liberties with ([VICTIM'S NAME] [MINOR'S INITIALS]); or
  - d. caused a person to take indecent liberties with (DEFENDANT'S NAME) or another;
3. With the intent to:
    - a. cause substantial emotional or bodily pain to any person, or
    - b. arouse or gratify the sexual desire of any person;
  4. Without consent of ([VICTIM'S NAME] [MINOR'S INITIALS]).
  5. ([VICTIM'S NAME] [MINOR'S INITIALS]) was 14 years old or older at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-404.

### Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

### CR 1613 Sexual Abuse of a Child. Approved. (Reading Level 11.1)

(DEFENDANT'S NAME) is charged [in Count\_\_] with committing Sexual Abuse of a Child [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. [touched the anus, buttocks, or genitalia of (MINOR'S INITIALS)]; or
  - b. [touched (MINOR'S INITIALS)'s breast]; or
  - c. [took indecent liberties with (MINOR'S INITIALS)]; or
  - d. [caused (MINOR'S INITIALS) to take indecent liberties with (DEFENDANT'S NAME) or another]; and
3. Did so with the intent to:
  - a. [cause substantial emotional or bodily pain to any person]; or
  - b. [arouse or gratify the sexual desire of any person]; and

4. (MINOR'S INITIALS) was under 14 years old at the time of the conduct.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-404.1.  
State v. Martinez, 2002 UT 60.  
State v. Martinez, 2000 UT App 320.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**CR 1614 Aggravated Sexual Abuse of a Child. (Reading Level 13.3)**

(DEFENDANT'S NAME) is charged [in Count\_\_] with committing Aggravated Sexual Abuse of a Child [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. [touched the anus, buttocks, or genitalia of (MINOR'S INITIALS)];
  - b. [touched (MINOR'S INITIALS)'s breast];
  - c. [took indecent liberties with (MINOR'S INITIALS)];
  - d. [caused (MINOR'S INITIALS) to take indecent liberties with (DEFENDANT'S NAME) or another]; and
3. Did so with the intent to:
  - a. [cause substantial emotional or bodily pain to any person]; or
  - b. [arouse or gratify the sexual desire of any person]; and
4. (MINOR'S INITIALS) was under 14 years old at the time of the offense; and
5. In conjunction with the above offense:
  - a. [the offense was committed by the use of a dangerous weapon, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping];
  - b. [(DEFENDANT'S NAME) caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense];

- c. [(DEFENDANT'S NAME) was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense];
- d. [(DEFENDANT'S NAME) used, showed, or displayed pornography or caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense];
- e. [(DEFENDANT'S NAME), prior to sentencing for this offense, was previously convicted of any sexual offense];
- f. [(DEFENDANT'S NAME) committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct];
- g. [(DEFENDANT'S NAME) committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense];
- h. [(DEFENDANT'S NAME) occupied a position of special trust in relation to (MINOR'S INITIALS)];
- i. [(DEFENDANT'S NAME) encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person, human trafficking, or human smuggling]; or
- j. [(DEFENDANT'S NAME) caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth].

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-404.1.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**SVF Aggravated Sexual Abuse of a Child. (Reading Level 25.7)**

[LOCATION] JUDICIAL DISTRICT COURT, [IF APPLICABLE] DEPARTMENT,  
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	Count (#)
-vs-	:	
(DEFENDANT’S NAME),	:	
	:	Case No. (**)
Defendant.	:	

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of Sexual Abuse of a Child, [as charged in Count \_\_\_\_]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The offense was committed by the use of a dangerous weapon or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnaping;
- The defendant caused bodily injury or severe psychological injury to (MINOR’S INITIALS) during or as a result of the offense;
- The defendant was a stranger to (MINOR’S INITIALS) or made friends with (MINOR’S INITIALS) for the purpose of committing the offense;
- The defendant used, showed, or displayed pornography or caused (MINOR’S INITIALS) to be photographed in a lewd condition during the course of the offense;
- The defendant, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;
- The defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

- The defendant committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;
  
- The defendant encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person;
  
- The defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth;
  
- The defendant occupied a position of special trust in relation to (MINOR'S INITIALS).

DATED this \_\_\_\_\_ day of (Month), 20(\*\*).

\_\_\_\_\_  
Foreperson

**References**

Utah Code § 76-5-404.1.

**CR 1615 Aggravated Sexual Assault. (Reading Level 10.9)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing [Rape] [Object Rape] [Forcible Sodomy] [Forcible Sexual Abuse] [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements.

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. During a [rape] [object rape] [forcible sodomy] [forcible sexual abuse];
    - i. [used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon];
    - ii. [compelled, or tried to compel, (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [rape] [object rape] [forcible sodomy] [forcible sexual abuse] by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person]; or
    - iii. [was aided or abetted by one or more persons]; or
  - b. During an attempted [rape] [object rape] [forcible sodomy]:
    - i. [caused any person serious bodily injury]; or
    - ii. [used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with

- the use of, a dangerous weapon]; or
- iii. [tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [rape] [object rape] [forcible sodomy], by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person]; or
- iv. [was aided or abetted by one or more persons]; or
- c. During an attempted forcible sexual abuse:
  - i. [caused any person serious bodily injury]; or
  - ii. [used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon]; or
  - iii. [tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to forcible sexual abuse by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person]; or
  - iv. [was aided or abetted by one or more persons].

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-405.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**SVF Aggravated Sexual Assault. (Reading Level 10.1)**

[LOCATION] JUDICIAL DISTRICT COURT, [IF APPLICABLE] DEPARTMENT,  
 IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	
	:	Count (#)
-vs-	:	
	:	
(DEFENDANT'S NAME),	:	
	:	Case No. (**)
Defendant.	:	

[We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Rape] [Object Rape] [Forcible Sodomy] [Forcible Sexual Abuse], [as charged in Count \_\_\_\_]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant compelled, or tried to compel, (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [rape] [object rape] [forcible sodomy] [forcible sexual abuse] by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

[We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Attempted Rape] [Attempted Object Rape] [Attempted Forcible Sodomy], [as charged in Count \_\_\_\_]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The defendant caused any person serious bodily injury;
- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [rape] [object rape] [forcible sodomy], by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

[We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Attempted Forcible Sexual Abuse, [as charged in Count \_\_\_\_]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The defendant caused any person serious bodily injury;
- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to forcible sexual abuse by threatening kidnaping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

DATED this \_\_\_\_\_ day of (Month), 20(\*\*).

\_\_\_\_\_  
Foreperson

**References**

Utah Code § 76-5-405.

**Committee Notes**

This special verdict form contains bracketed language which suggests optional language. Please review and edit before finalizing the form.

**CR 1616 Consent. Approved. (Reading level 24.8)**

(DEFENDANT'S NAME) has been charged with (name of offense). The prosecution must prove beyond a reasonable doubt that the victim did not consent to the alleged sexual conduct. The alleged sexual conduct is without consent of [(VICTIM'S NAME)] [(MINOR'S INITIALS)] under any, all, or a combination of the following circumstances:

[[ (VICTIM'S NAME) ] [(MINOR'S INITIALS) ] expressed lack of consent through words or conduct];

[(DEFENDANT'S NAME) overcame [(VICTIM'S NAME)] [(MINOR'S INITIALS)] through the application of physical force or violence];

[(DEFENDANT'S NAME) overcame the victim through concealment or by the element of surprise];

[(DEFENDANT'S NAME) coerced the victim to submit by threatening immediate or future retaliation against [(VICTIM'S NAME)] [(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)] [(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to carry out the threat];

[[[(VICTIM'S NAME)] [(MINOR'S INITIALS)] did not consent and (DEFENDANT'S NAME) knew [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was unconscious, unaware that the act was occurring, or was physically unable to resist];

[(DEFENDANT'S NAME) knew that as a result of mental illness or defect, [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was incapable at the time of the act of either understanding the nature of the act or of resisting it];

[(DEFENDANT'S NAME) knew that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] submitted or participated because [(VICTIM'S NAME)] [(MINOR'S INITIALS)] believed that (DEFENDANT'S NAME) was [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s spouse];

[(DEFENDANT'S NAME) intentionally impaired [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s power to understand or control [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s conduct by giving [(VICTIM'S NAME)] [(MINOR'S INITIALS)] a substance without [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s knowledge];

[(MINOR'S INITIALS) was younger than 14 years old at the time of the act];

[At the time of the act, (MINOR'S INITIALS) was younger than 18 years old and (DEFENDANT'S NAME) was (MINOR'S INITIALS)'s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to (MINOR'S INITIALS)];

[(MINOR'S INITIALS) was 14 years old or older, but younger than 18 years old, and (DEFENDANT'S NAME) was more than three years older than (MINOR'S INITIALS) and enticed or coerced (MINOR'S INITIALS) to submit or participate, under circumstances not amounting to physical force or violence or the threat of retaliation];

[(DEFENDANT'S NAME) was a health professional or religious counselor who committed the act under the guise of providing professional diagnosis, counseling or treatment, and at the time of the act [(VICTIM'S NAME)] [(MINOR'S INITIALS)] reasonably believed the act was for professionally appropriate reasons, so that

[(VICTIM'S NAME)] [(MINOR'S INITIALS)] could not reasonably be expected to have expressed resistance].

In deciding lack of consent, you are not limited to the circumstances listed above. You may also apply the common, ordinary meaning of consent to all of the facts and circumstances of this case.

**References**

Utah Code § 76-5-406.

*State v. Thompson*, 2014 UT App 14, 318 P.3d 1221.

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**CR 1617 Penetration or Touching Sufficient to Constitute Offense. (Reading Level 16.6)**

[Any sexual penetration, however slight, is enough to establish the relevant element of the offense of [Unlawful Sexual Activity with a Minor, involving sexual intercourse] [Unlawful Sexual Conduct with a 16 or 17 year old, involving sexual intercourse] [Rape].]

[Any touching, however slight, is enough to establish the relevant element of the offense for [Unlawful Sexual Activity with a Minor, involving sodomy] [Unlawful Sexual Conduct with a 16 or 17 year old, involving sodomy] [Sodomy] [Forcible Sodomy] [Rape of a Child] [Object Rape of a Child].]

[Any touching, even if it is over clothing, is enough to establish the relevant element of the offense of [Sodomy on a Child] [Sexual Abuse of a Child] [Aggravated Sexual Abuse of a Child].]

**References**

Utah Code § 76-5-407.

*State v. Martinez*, 2002 UT 60.

*State v. Martinez*, 2000 UT App 320.

**Committee Notes**

Use this instruction with the relevant instruction for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 year old, Forcible Sodomy, Rape of a Child, Object Rape of a Child, Rape, Sodomy on a Child, Sexual Abuse of a Child, or Aggravated Sexual Abuse of a Child.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**CR 1618 Custodial Sexual Relations. (Reading Level 11.4)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Custodial Sexual Relations [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. [had sexual intercourse with (VICTIM'S NAME) (MINOR'S INITIALS)];
  - b. [engaged in a sexual act with (VICTIM'S NAME) (MINOR'S INITIALS) involving the genitals of one person and the mouth of anus of another person]; or
  - c. [caused penetration, however slight, of (VICTIM'S NAME) (MINOR'S INITIALS)'s genital or anal opening by any object, substance, instrument, or device, including a part of the human body];
3. With the intent to cause substantial emotional or bodily pain to any person.
4. (VICTIM'S NAME) (MINOR'S INITIALS) was in custody at the time of the conduct.
5. (DEFENDANT'S NAME) [knew that (VICTIM'S NAME) (MINOR'S INITIALS) was in custody] [a reasonable person in (DEFENDANT'S POSITION) should have known that (VICTIM'S NAME) (MINOR'S INITIALS) was in custody].

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-412.

**Committee Notes**

Under Utah Code section 76-5-412(2), Custodial Sexual Relations is only applicable if the above elements are met, and the alleged circumstances do not amount to commission of or an attempt to commit Unlawful Sexual Activity with a Minor, Rape, Rape of a Child; Object Rape; Object Rape of a Child; Forcible Sodomy; Sodomy on a Child; Forcible Sexual Abuse; Sexual Abuse of a Child, Aggravated Sexual Abuse of a Child; or Aggravated Sexual Assault.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

**CR 1619 Custodial Sexual Misconduct. (Reading Level 12.1)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Custodial Sexual Misconduct [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. [touched (VICTIM'S NAME) (MINOR'S INITIALS)'s anus, buttocks, or any part of the genitals];
  - b. [touched the breast of (VICTIM'S NAME) (MINOR'S INITIALS), a female];
  - c. [took indecent liberties with (VICTIM'S NAME) (MINOR'S INITIALS)]; or
  - d. [caused (VICTIM'S NAME) (MINOR'S INITIALS) to take indecent liberties with the defendant or another person];
3. With the intent to [cause substantial emotional or bodily pain to any person] [arouse or gratify the sexual desire of any person].
4. (VICTIM'S NAME) (MINOR'S INITIALS) was in custody at the time of the conduct.
5. [(DEFENDANT'S NAME) knew] [A reasonable person in (DEFENDANT'S POSITION) should have known] that (VICTIM'S NAME) (MINOR'S INITIALS) was in custody.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-412.

**Committee Notes**

Under Utah Code section 76-5-412(4), Custodial Sexual Misconduct is only applicable if the above elements are met, and the alleged circumstances do not amount to commission of or an attempt to commit Unlawful Sexual Activity with a Minor, Rape, Rape of a Child; Object Rape; Object Rape of a Child; Forcible Sodomy; Sodomy on a Child; Forcible Sexual Abuse; Sexual Abuse of a Child, Aggravated Sexual Abuse of a Child; or Aggravated Sexual Assault.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

For a definition of "indecent liberties", see Instruction 1602.

**CR 1620 Custodial Sexual Relations with Youth Receiving State Services.**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Custodial Sexual Relations with Youth Receiving State Services [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. [had sexual intercourse with (VICTIM'S NAME) (MINOR'S INITIALS)];
  - b. [engaged in any sexual act with (VICTIM'S NAME) (MINOR'S INITIALS) involving the genitals of one person and the mouth or anus of another person]; or
  - c. [caused the penetration, however slight, of (VICTIM'S NAME) (MINOR'S INITIALS)'s genital or anal opening by any object, substance, instrument, or device, including a part of the human body];
3. With the intent to [cause substantial emotional or bodily pain to any person] [arouse or gratify the sexual desire of any person].
4. (VICTIM'S NAME) (MINOR'S INITIALS) was a youth receiving state services at the time of the conduct.
5. [(DEFENDANT'S NAME) knew] [A reasonable person in (DEFENDANT'S POSITION) should have known] that (VICTIM'S NAME) (MINOR'S INITIALS) was a youth receiving state services.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-413.

**Committee Notes**

Under Utah Code section 76-5-413(2), Custodial Sexual Relations with Youth Receiving State Services is only applicable if the above elements are met, and the alleged circumstances do not amount to commission of or an attempt to commit Unlawful Sexual Activity with a Minor, Rape, Rape of a Child; Object Rape; Object Rape of a Child; Forcible Sodomy; Sodomy on a Child; Forcible Sexual Abuse; Sexual Abuse of a Child, Aggravated Sexual Abuse of a Child; or Aggravated Sexual Assault.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

For a definition of "youth receiving state services", see Instruction 1601.

**CR 1621 Custodial Sexual Misconduct with Youth Receiving State Services.**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Custodial Sexual Misconduct with Youth Receiving State Services [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
  - a. [touched (VICTIM'S NAME) (MINOR'S INITIALS)'s anus, buttocks, or any part of the genitals];
  - b. [touched the breast of (VICTIM'S NAME) (MINOR'S INITIALS), a female];
  - c. [took indecent liberties with (VICTIM'S NAME) (MINOR'S INITIALS)]; or
  - d. [caused (VICTIM'S NAME) (MINOR'S INITIALS) to take indecent liberties with the defendant or another person];
3. With the intent to [cause substantial emotional or bodily pain to any person] [arouse or gratify the sexual desire of any person].
4. (VICTIM'S NAME) (MINOR'S INITIALS) was a youth receiving state services at the time of the conduct.
5. [(DEFENDANT'S NAME) knew] [A reasonable person in (DEFENDANT'S POSITION) should have known] that (VICTIM'S NAME) (MINOR'S INITIALS) was a youth receiving state services.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-413.

**Committee Notes**

Under Utah Code section 76-5-413(2), Custodial Sexual Misconduct with Youth Receiving State Services is only applicable if the above elements are met, and the alleged circumstances do not amount to commission of or an attempt to commit Unlawful Sexual Activity with a Minor, Rape, Rape of a Child; Object Rape; Object Rape of a Child; Forcible Sodomy; Sodomy on a Child; Forcible Sexual Abuse; Sexual Abuse of a Child, Aggravated Sexual Abuse of a Child; or Aggravated Sexual Assault.

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

For a definition of "youth receiving state services", see Instruction 1601.

# Tab 4

General Legal Definitions

1  
2  
3 “Bodily injury” means physical pain, illness, or impairment of physical condition. Utah  
4 Code § 76-1-601.

5  
6 “Buttocks” does not include the “anus.” *State v. Pullman*, 2013 UT App 168 ¶16.  
7

8 “Dangerous weapon” means any item capable of causing death or serious bodily injury  
9 or a facsimile or representation of the item if (i) the actor’s use or apparent intended use  
10 of the item leads the victim to reasonably believe the item is likely to cause death or  
11 serious bodily injury; or (ii) the actor represents to the victim verbally or in any other  
12 manner that he is in control of such an item. Utah Code § 76-1-601.  
13

14 “Grievous sexual offense” means rape; rape of a child; object rape; object rape of a  
15 child; forcible sodomy; sodomy on a child; aggravated sexual abuse of a child;  
16 aggravated sexual assault; any felony attempt one of the above offenses; or an offense  
17 in another state, territory, or district of the United States that, if committed in Utah,  
18 would constitute one of the above offenses. Utah Code § 76-1-601.  
19

20 “Indecent liberties” are activities of the same magnitude of gravity as [the act specifically  
21 described in the statute]. To determine whether Defendant’s conduct is of equal gravity  
22 to [the act described in the statute], consider the totality of the facts and all the  
23 surrounding circumstances, including the following factors: (1) the nature of the victim’s  
24 participation (whether defendant required the victim’s active participation), (2) the  
25 duration of the defendant’s act, (3) the defendant’s willingness to terminate his conduct  
26 at the victim’s request, (4) the relationship between the victim and the defendant, and  
27 (5) the age of the victim. *State ex rel. J.L.S.*, 610 P.2d 1294, 1296 (Utah 1980), *State v.*  
28 *Balfour*, 2008 UT App 410, ¶ 15, 198 P.3d 471.  
29

30 "Position of special trust" means an adoptive parent; an adult athletic manager; an aunt;  
31 a babysitter; a coach; an adult cohabitant of a parent; a counselor; a doctor or  
32 physician; an employer; a foster parent; a grandparent; a legal guardian; a natural  
33 parent; an adult recreational leader; a religious leader; an adult sibling or step sibling;  
34 an adult scout leader; a stepparent; a teacher; an uncle; an adult youth leader; or any  
35 person in a position of authority which enables the person to exercise undue influence  
36 over the child. Utah Code § 76-5-404.1.  
37

38 “Serious bodily injury” means bodily injury that creates or causes serious permanent  
39 disfigurement, protracted loss or impairment of the function of any bodily member or  
40 organ, or creates a substantial risk of death. Utah Code § 76-1-601.  
41

Non-Legal Definitions

42  
43  
44 “Sexual intercourse” means any touching of the female’s genitals by the actor’s penis,  
45 however slight.  
46

47 “Pornography” means written, graphic, or other forms of communication intended to  
48 excite lascivious feelings,” (AH Dictionary); that which is of or pertaining to obscene  
49 literature; obscene; licentious; taken as a whole appeals to the prurient interest and  
50 lacks serious literary, artistic, political or scientific value, (Black’s Law).

51  
52 “Youth receiving state services” means a person: (1) younger than 18 years of age,  
53 except who is in the custody of the department under Subsection 78A-6-117(2)(c)(ii) or  
54 receiving services from any division of the department if any portion of the costs of  
55 these services is covered by public money as defined in Section 76-8-401; or (2)  
56 younger than 21 years of age who is in the custody of the Division of Juvenile Justice  
57 Services, or the Division of Child and Family Services or under the jurisdiction of the  
58 juvenile court.

59  
60

61 Crime Specific Definitions

62

63 **76-5-401 Unlawful Sexual Activity with a Minor**

64

65 "Sexual intercourse" means any sexual penetration, however slight, is sufficient for  
66 sexual intercourse. Utah Code § 76-5-407.

67

68 “Touching” means any touching, however slight, if the sexual act involved the genitals of  
69 one person and the mouth or anus of another person. Utah Code § 76-5-407. Touching  
70 requires contact with the victim’s skin

71

72 “Minor” means a person who is 14 years old or older, but younger than 16 years old.  
73 Utah Code § 76-5-401(1).

74

75 **76-5-401.1 Sexual Abuse of a Child**

76

77 “Touching” means any touching, even if accomplished through clothing. Utah Code §  
78 76-5-407.

79

80 “Child” means a person who is under 14 years old. Utah Code § 76-5-404.1.

81

82 **76-5-401.2 Unlawful Sexual Conduct with a 16 or 17 Year Old**

83

84 “Sexual Intercourse” means any sexual penetration, however slight. Utah Code § 76-5-  
85 407.

86

87 “Touching” means any touching, however slight, if the sexual act involved the genitals of  
88 one person and the mouth or anus of another person Utah Code § 76-5-407. Touching  
89 requires contact with the victim’s skin.

90

91 “Minor” means a person who is 16 years old or older, but younger than 18 years old.  
92 Utah Code § 76-5-401.2(1).

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**76-5-402 Rape**

“Sexual intercourse means any sexual penetration, however slight. Utah Code § 76-5-407.

**76-5-402.1 Rape of a Child**

“Sexual intercourse” does not require penetration.

“Touching” means any touching, however slight. Utah Code § 76-5-407. Touching requires contact with the victim’s skin.

**76-5-402.2 Object Rape of a Child**

“Penetration” or “touching” means any touching, however slight. Utah Code § 76-5-407. Touching requires contact with the victim’s skin.

**76-5-403 Sodomy/Forcible Sodomy**

“Touching” means any touching, however slight. Utah Code § 76-5-407. Touching requires contact with the victim’s skin.

**76-5-403.1 Sodomy on a Child**

“Touching” means any touching, however slight, even if accomplished through clothing. Utah Code § 76-5-407.

**76-5-404 Forcible Sexual Abuse**

“Touching” requires contact with the victim’s skin. *State v. Jacobs*, 2006 UT App 356. “Even when the specified body parts are touched through clothing, the perpetrator may still be punished under the indecent liberties prong of the statute when, considering all the surrounding circumstances, the conduct is comparable to the touching that is specifically prohibited.” *State v. Jacobs*, 2006 UT App 356, ¶9.

**76-5-404.1 Sexual Abuse of a Child**

“Touching” means any touching, however slight, even if accomplished through clothing. Utah Code § 76-5-407.

**76-5-406 Sexual Offenses without Victim’s Consent**

“To Retaliate” includes threats of physical force, kidnapping, or extortion. Utah Code § 76-5-406(4)(b).

139 “Health Professional” means an individual who is licensed or who holds himself or  
140 herself out to be licensed, or who otherwise provides professional physical or mental  
141 health services, diagnosis, treatment, or counseling including, but not limited to, a  
142 physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social  
143 service worker, clinical social worker, certified social worker, marriage and family  
144 therapist, professional counselor, psychiatrist, psychologists, psychiatric mental health  
145 nurse specialist, or substances abuse counselor. Utah Code § 76-5-406(12)(a).

146  
147 “Religious Counselor” means a minister, priest, rabbi, bishop, or other recognized  
148 member of the clergy. Utah Code § 76-5-406(12)(b).

149  
150 “Position of Special Trust” means that position occupied by a person in a position of  
151 authority, who, by reason of that position is able to exercise undue influence over the  
152 victim, and includes, but is not limited to, a youth leader or recreational leader who is an  
153 adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,  
154 employer, foster parent, babysitter, adult scout leader, natural parent, stepparent,  
155 adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a  
156 parent. Utah Code § 76-5-404(4)(h).

157  
158 **76-5-412 Custodial sexual relations – Custodial sexual misconduct**

159  
160 “Actor” means a correctional officer; a law enforcement officer; or an employee of, or  
161 private provider or contractor for the Department of Corrections or a county jail. Utah  
162 Code § 76-5-412(1)(a).

163  
164 “Correctional Officer” means a sworn and certified officer employed by the Department  
165 of Corrections, any political subdivision of the state, or any private entity which contracts  
166 with the state or its political subdivisions to incarcerate inmates who is charged with the  
167 primary duty of providing community protection. Utah Code § 53-13-104.

168  
169 “Law Enforcement Officer” means a sworn and certified peace officer who is an  
170 employee of a law enforcement agency that is part of or administered by the state or  
171 any of its political subdivisions, and whose primary and principal duties consist of the  
172 prevention and detection of crime and the enforcement of criminal statutes or  
173 ordinances of this state or any of its political subdivisions. Utah Code § 53-13-103.

174  
175 “Private Provider or Contractor” means any person or entity that contracts with the  
176 Department of Corrections or with a county jail to provide services or functions that are  
177 part of the operations of the Department of Corrections or a county jail under state or  
178 local law. Utah Code § 76-5-412(1)(c).