

# 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, October 1, 2014  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

---

12:00	Welcome and Approval of Minutes (Tab 1)	Judge James Blanch
12:05	Table of Sexual Offense Instructions (Tab 2)	Alison Adams-Perlac
12:10	CR 1622 Sexual Offense Prior Conviction (Tab 3)	Committee
12:25	CR 1615 Aggravated Sexual Assault (Tab 4)	Committee
12:40	SVF Aggravated Sexual Assault (Tab 5)	Committee
12:55	CR 1621 Penetration or Touching Sufficient to Constitute Offense (Tab 6)	Committee
1:10	50 Most Commonly Charged Criminal Offenses and Discussion Regarding Subcommittees (Tab 7)	Committee
1:25	December Meeting Schedule	Alison Adams-Perlac
1:30	Adjourn	

### Upcoming Meetings

November 5, 2014  
December 3, 2014  
January 7, 2015

# 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, September 3, 2014  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

---

#### **PRESENT**

Judge Denise Lindberg, Chair  
Alison Adams-Perlac, Staff  
Professor Jensie Anderson  
Judge James Blanch  
Mark Field  
Sandi Johnson  
Judge Brendan McCullagh  
Thomas Pedersen, Intern  
John West  
Scott Young

#### **EXCUSED**

Professor Jenny Andrus  
Linda Jones  
Karen Klucznik  
Jesse Nix  
Judge Michael Westfall

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

**Judge Denise Lindberg**

Judge Lindberg welcomed everyone to the meeting.  
*Judge Blanch moved to approve the minutes from the previous meeting. Mr. Field seconded the motion and it passed unanimously.*

#### **2. Committee Status Update**

**Alison Adams-Perlac**

Ms. Adams-Perlac stated that the Judicial Council has considered a proposal to move the Model Utah Jury Instructions Committees out from under the Supreme Court's oversight so that they are standing committees of the Judicial Council. She stated that the Judicial Council approved the proposal in concept, and that the Policy and Planning Committee are working on rules that outline the change.

She stated that the change would not change very much how the committee operates on a month to month basis, but that there may be changes. For example, there is a proposal to open the instructions for public comment. She stated that there would likely be term limits imposed when the committees become standing committees of the Judicial Council.

### **3. Proposed Rule URCrP 19**

**Judge Brendan McCullagh**

Judge McCullagh discussed proposed rule URCrP 19. He stated that he sits on the Rules of Criminal Procedure Committee. He stated that there is jury information in URCrP 17, 18, and 19. He stated that the Committee is working to clean up those rules. He stated that he drafted the rule 19 proposal and recommended that the MUJI Criminal Committee review the proposal.

Judge McCullagh stated that Mr. West suggested that the proposal is too complicated. Judge McCullagh stated that throughout the rule includes “unless the court orders otherwise” which will allow for some flexibility. However, Judge McCullagh stated that we need a structure for how jury instructions are given. He stated that proposal only requires that a copy of the instructions be given to each juror if the jury instructions are given at the beginning of the trial. He stated that the rule is not meant to change policy, but to clean up process.

Judge Lindberg asked Mr. West to address his concerns regarding submitting them early. Mr. West stated that for practitioners, jury instructions are a last minute issue. Judge Lindberg stated that it is helpful for judges to have them early. Judge Blanch stated that he prefers to have the jury instructions in electronic format. Mr. West asked whether documents that are filed electronically can be manipulated. Judges Blanch, Lindberg, and McCullagh agreed that they could not be, and that a Word document would be necessary for instructions to be edited.

Judge Blanch asked the practitioners whether they can contact judicial assistants to send proposed jury instructions electronically. Ms. Johnson stated that when efilng is set up as a rich text format, efiled documents will be able to be manipulated. Ms. Johnson stated that some judges think it is an ex parte communication to send jury instructions by email, even when the other parties are copied on the email.

Judge McCullagh stated that the rule presupposes that the parties will meet with the judge to discuss jury instructions before the trial. He also stated that all of the time periods will be 7, 14, 21, and 28 days since the Rules of Criminal Procedure Committee will be adopting those timeframes in line with the Rules of Civil Procedure.

Judge McCullagh stated that the Rules of Criminal Procedure Committee will meet in October to discuss the rule, and this committee can refer suggestions or comments on the rule to him. Mr. Field asked what parts “shall apply”. Judge McCullagh requested that Mr. Field email him so that he can determine whether he nested the rule correctly.

### **4. Table of Sexual Offense Instructions**

**Committee**

Ms. Adams-Perlac stated that she included the table of sexual offenses so that the committee can be aware of its progress on the sexual offense jury instructions.

### **5. SVF Aggravated Sexual Abuse of a Child**

**Committee**

Ms. Adams-Perlac stated that the committee had previously approved the special verdict form, but had asked her to separate out the offenses so that they were not grouped together. She stated that the special verdict form needs the committee’s approval as to form.

*Ms. Johnson moved to approve the Aggravated Sexual Abuse of a Child Special Verdict Form as to form. Judge Blanch seconded the motion and it passed unanimously.*

## 6. CR 1623 Serious Bodily Injury

## Committee

The committee discussed the Serious Bodily Injury Instruction. Ms. Johnson stated that object rape in the first line needs a bracket added. Ms. Lindberg stated that the committee note regarding brackets needs to be added.

Ms. Johnson questioned where this instruction would be used. Ms. Adams-Perlac stated that the Sexual Abuse of a Child statute discusses “serious bodily injury” and this instruction would coincide with that. Ms. Johnson asked whether this goes to a sentencing issue. Ms. Adams-Perlac stated that it is a sentencing issue. Ms. Johnson stated that she does not think this instruction is helpful.

Judge McCullagh stated that serious bodily injury should be addressed through another special verdict form. Ms. Johnson stated that she thinks the instruction should include the first paragraph and then include the statutory definition of “serious bodily injury.” She then stated that the instruction should be given to the jury with the special verdict form.

The committee amended the instruction to read as follows:

### **CR 1623 Serious Bodily Injury. (Reading Level 20.7) Approved**

If you find the defendant guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child] [as charged in Count \_\_\_\_], you then must determine whether the defendant, in the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child], caused serious bodily injury to another.

~~To find the defendant has caused serious bodily injury to another, you must find beyond a reasonable doubt, based on the evidence, each of the following:~~

- ~~1. The defendant is guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child]; and~~
- ~~2. In the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child];~~
- ~~3. The defendant, (DEFENDANT’S NAME) caused serious bodily injury to another.~~

~~After you carefully consider all of 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 caused serious bodily injury during the commission of the offense. 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 did not cause serious bodily injury during the commission of the offense.~~

“Serious bodily injury” means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

**References**

Utah Code § 76-1-601.

**Committee Notes**

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

*Judge Blanch moved to approve Instruction CR 1623 Serious Bodily Injury as amended. Ms. Johnson seconded the motion and it passed unanimously.*

**7. SVF Serious Bodily Injury**

**Committee**

The committee discussed that no changes need to be made to the Serious Bodily Injury Special Verdict Form.

*Judge McCullagh moved to approved the Serious Bodily Injury Special Verdict Form. Judge Blanch seconded the motion and it passed unanimously.*

**8. Other Business**

Judge Lindberg stated that she will be retiring at the end of the year. She stated that Judge Blanch has expressed a willingness to chair the committee. Judge Blanch stated that he would be happy to do it, but that he would also be fine if a practitioner chaired it. Ms. Adams-Perlac stated that the Management Committee would need to approve the appointment once the rule has been approved, but that she does not foresee any problems with it.

Mr. West asked inquired regarding the term limits. Ms. Adams-Perlac stated that the term limits of Judicial Council standing committees would apply. The term limits are two 3-year terms, with a third term for if the member becomes chair. Ms. Adams-Perlac stated that once the rules are passed she can inquire into who has been on the committee for a long time and wants to get off, and start rotating members of that way.

Judge Lindberg stated that the committee has talked about reinitiating subcommittees and having members of the committee chair those subcommittees. She stated that Mr. Field was to chair the subcommittee on homicides. She stated that Judge McCullagh was to chair a DUI subcommittee. Judge McCullagh said he had brought some DUI instructions to the committee previously, but he will bring them again.

Judge Lindberg stated that the bulk of the cases in the courts involve drugs, assault, DV, and DUIs and that is where the committee’s focus should be. Judge Lindberg stated that Judge Taylor’s committee has done a lot of work on drugs, but the statute changed, so those instructions were tabled. Judge Lindberg asked that the committee members come back to the next meeting with topics they are willing to address by chairing a subcommittee.

Ms. Adams-Perlac stated that she will have her secretary work on making a list of the instructions she has in the queue so that the subcommittees will have a starting point.

Judge Lindberg stated that she has changed her view and that the committee should only focus on instructions that are high priority, rather than on addressing every single offense under a part of the Utah Code.

## **9. Adjourn**

*The meeting was adjourned at 1:04 p.m.* The next meeting will be held on Wednesday, October 1, 2014.

# Tab 2

<b>Statute</b>	<b>Offense</b>	<b>Number</b>	<b>Drafted</b>	<b>Discussion</b>	<b>Approved</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		4-Jun-14
76-5-404.1	Aggravated sexual abuse of a child - special verdict form	SVF	Yes		3-Sep-14
76-5-405	Aggravated sexual assault	1615	Yes	1-Oct-14	
76-5-405	Aggravated sexual assault - special verdict form	SVF	Yes	1-Oct-14	
76-5-412	Custodial sexual relations	1616	Yes	N/A	N/A
76-5-412	Custodial sexual misconduct	1617	Yes	N/A	N/A
76-5-413	Custodial sexual relations with youth receiving state services	1618	Yes	N/A	N/A
76-5-413	Custodial sexual misconduct with youth receiving state services	1619	Yes	N/A	N/A
76-5-406	Consent	1620	Yes		5-Mar-14
76-5-407	Penetration or touching sufficient to constitute offense	1621	Yes	1-Oct-14	
	Definitions	1601	Yes		
	Sexual offense prior conviction	1622	Yes	1-Oct-14	
	Sexual offense prior conviction - special verdict form	SVF	Yes	4-Jun-14	4-Jun-14
	Serious bodily injury	1633	Yes	3-Sep-14	3-Sep-14
	Serious bodily injury - special verdict form	SVF	Yes	3-Sep-14	3-Sep-14

# Tab 3

## **CR 1622 Sexual Offense Prior Conviction (Reading Level 20.6)**

Having found (DEFENDANT'S NAME) guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Forcible Sodomy] [Sodomy on a Child] [Aggravated Sexual Abuse of a Child] [Aggravated Sexual Assault] [as charged in Count \_\_\_\_], you must now determine whether at the time (DEFENDANT'S NAME) committed this offense, [he] [she] had been previously convicted of a grievous sexual offense.

“Grievous sexual offense” means [rape] [rape of a child] [object rape] [object rape of a child] [forcible sodomy] [sodomy on a child] [aggravated sexual abuse of a child] [aggravated sexual assault], or any attempt to commit the offense.

The State must prove beyond a reasonable doubt the defendant was previously convicted of a grievous sexual offense. Your decision must be unanimous and should be reflected on special verdict form (NUMBER).

### **References**

Utah Code § 76-1-601

Utah Code § 76-5-402

Utah Code § 76-5-402.1

Utah Code § 76-5-402.2

Utah Code § 76-5-402.3

Utah Code § 76-5-403

Utah Code § 76-5-403.1

Utah Code § 76-5-404.1

Utah Code § 76-5-405

### **Committee Note**

In some cases the defendant has previously been convicted in another state, territory, or district of the United States of rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy on a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of those offenses. In such cases, counsel should work with the court to decide whether the court or the jury should make the determination of whether, based on the elements, the out-of-state offense qualifies as a “grievous sexual offense” under Utah law.

# Tab 4

## 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]];
  - 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]]
  - 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.

**76-5-405. Aggravated sexual assault -- Penalty.**

(1) A person commits aggravated sexual assault if:

(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:

(i) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section **76-1-601**;

(ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iii) is aided or abetted by one or more persons;

(b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section **76-1-601**;

(iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons; or

(c) in the course of an attempted forcible sexual abuse, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section **76-1-601**;

(iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of:

(a) for an aggravated sexual assault described in Subsection (1)(a):

(i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

(b) for an aggravated sexual assault described in Subsection (1)(b):

(i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or

(c) for an aggravated sexual assault described in Subsection (1)(c):

(i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

(3) (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under Subsection (2)(a)(ii).

(4) (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

(b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).

(5) (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.

(b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).

(6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section **76-3-406**.

# Tab 5

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

---

(LOCATION) JUDICIAL DISTRICT COURT, [\_\_\_\_\_ DEPARTMENT,]

IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

---

THE STATE OF UTAH,

:

**SPECIAL VERDICT**

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 kidnapping, 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 kidnapping, 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 kidnapping, 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.

# Tab 6

**CR 1621 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.

**76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to constitute offense.**

(1) The provisions of this part do not apply to consensual conduct between persons married to each other.

(2) In any prosecution for:

(a) the following offenses, any sexual penetration, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section [76-5-401](#), involving sexual intercourse;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Subsection [76-5-401.2](#), involving sexual intercourse; or

(iii) rape, a violation of Section [76-5-402](#); or

(b) the following offenses, any touching, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section [76-5-401](#), involving acts of sodomy;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section [76-5-401.2](#), involving acts of sodomy;

(iii) sodomy, a violation of Subsection [76-5-403\(1\)](#);

(iv) forcible sodomy, a violation of Subsection [76-5-403\(2\)](#);

(v) rape of a child, a violation of Section [76-5-402.1](#); or

(vi) object rape of a child, a violation of Section [76-5-402.3](#).

(3) In any prosecution for the following offenses, any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense:

(a) sodomy on a child, a violation of Section [76-5-403.1](#); or

(b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section [76-5-404.1](#).

# Tab 7

**The 50 Most Common Criminal Charges Filed in District Court  
FY 2014**

<b>Rank</b>	<b>Offense Violation Code</b>	<b>Description</b>	<b>Number</b>
1	58-37-8(2)(A)(I)	Possession Or Use Of A Controlled Substance	12,357
2	58-37A-5(1)	Use Or Possession Of Drug Paraphernalia	9,417
3	41-6A-601	Speeding	7,273
4	76-6-404	Theft	4,605
5	76-6-602	Retail Theft (Shoplifting)	3,417
6	76-5-102	Assault	2,489
7	76-6-501(2)	Forgery	2,194
8	58-37-8(1)(A)(III)	Poss W/ Intent To Dist C/Substance	2,185
9	41-1A-1303	Failure To Register Or Expired Vehicle Registration	2,155
10	76-6-408	Theft By Receiving Stolen Property	1,963
11	41-6A-502	Driving Under The Influence Of Alcohol/Drugs	1,882
12	76-6-405	Theft By Deception	1,801
13	76-5-108	Violation Of Protective Order	1,796
14	76-6-506.3	Unlaw Acquisition/Possess/Transfer-Card	1,603
15	76-6-202	Burglary	1,590
16	76-6-106(2)(C)	Criminal Mischief: Intentional Damage, Deface, Destroy Property	1,575
17	76-5-109.1(2)(C)	Dom Viol In The Presence Of A Child	1,471
18	76-5-103(1)	Aggravated Assault	1,400
19	58-37-8(1)(A)(II)	Distribute/Offer/Arrange Distribution Of Controlled Substanc	1,386
20	76-9-701(1)	Intoxication	1,233
21	76-5B-201	Sexual Exploitation Of A Minor	1,195
22	76-8-305	Interference With Arresting Officer	1,179
23	53-3-227(1)	Drive On Revocation	1,116
24	76-8-305.5	Fail To Stop At Command Of Law Enforceme	1,065
25	41-12A-302	Operating Vehicle Without Insurance	1,047
26	76-9-102	Disorderly Conduct	964
27	76-6-204	Burglary Of A Vehicle	948
28	76-8-507(2)	False Personal Info W/Intent To Be Another Actual Person	913
29	76-6-506.2	Unlawful Use Of A Financial Transaction Card	872
30	Z21467	Overnight/Snow/Overtime/Improper Parking	846
31	76-6-502	Possess Forgery Writing/Device	813
32	76-10-503(3)(A)	Purch, Trans, Possess, Use Of A Firearm By Restricted Person	795
33	41-6A-902	Right Of Way - Stop Or Yield Sign	739
34	53-3-227(2)	Drive On Suspension	734
35	76-5-109.1(2)	Domestic Violence In The Presence Of A Child	674
36	53-3-227	Drive On Denied License	671
37	41-1A-1303(1)	Failure To Register Or Expired Vehicle Registration	649
38	41-6A-530	Alcohol Restricted Drivers	630
39	41-6A-210	Fail To Stop Or Respond At Command Of Police	615
40	76-8-306(1)	Obstructing Justice	602
41	76-6-206(2)(A)	Criminal Trespass	600
42	76-10-503(3)(B)	Unlaw Poss/Purch/Trans Dangerous Weapon	576
43	77-22-2	Criminal Investigation	573
44	76-6-206(2)(B)	Criminal Trespass Knowing Entry Unlawful	565
45	41-6A-305	Traffic Control Signal Violations	563
46	53-3-227(3)(A)	Drive On Susp/Revocation/Den Alc Related	553
47	53-3-202	No Valid License - Never Obtained License	540
48	41-6A-711(1)	Following Too Close	508
49	58-37-8(3)(A)(II)	Falsely Obtaining/Dispensing Prescriptio	504
50	41-6A-518.2(3)	Interlock Restricted Driver Operating Vehicle W/O II System	484