

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, November 5, 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	Committee Update and Feedback on Rule 4-318 of the Utah Code of Judicial Administration (Tab 2)	Alison Adams-Perlac
12:15	Table of Sexual Offense Instructions (Tab 3)	Committee
12:20	CR 1622 Sexual Offense Prior Conviction (Tab 4)	Committee
12:35	CR 1615 Aggravated Sexual Assault (Tab 5)	Committee
12:55	SVF Aggravated Sexual Assault (Tab 6)	Committee
1:10	CR 1621 Penetration or Touching Sufficient to Constitute Offense (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.

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

PRESENT

Alison Adams-Perlac, Staff
Professor Jenny Andrus
Judge James Blanch
Mark Field
Sandi Johnson
Linda Jones
Karen Klucznik
Jesse Nix

EXCUSED

Judge Denise Lindberg, Chair
Professor Jensie Anderson
Judge Brendan McCullagh
Thomas Pedersen, Intern
John West
Judge Michael Westfall
Scott Young

1. Welcome and Approval of Minutes

Judge James Blanch

Judge Blanch welcomed everyone to the meeting.

The minutes could not be approved due because there was not a quorum of the committee in attendance.

2. Subcommittee Discussion

Committee

Because there was not a quorum present, the committee reviewed the list of the 50 Most Commonly Charged Criminal Offenses. The committee determined that drug, DUI, domestic violence, and theft cases should take priority, in that order, when the committee is finished drafting the sexual offense instructions. The committee decided that Karen Klucznik will chair a subcommittee on drug instructions and that Scott Young will also serve on that subcommittee. Judge McCullagh will chair a subcommittee on DUI instructions. Sandy Johnson will chair a subcommittee on domestic violence instructions. Finally, John West will chair a subcommittee to develop instructions for all types of theft offenses. The committee discussed that the subcommittee chairs should take the next few weeks to make invitations for others to work with them on their subcommittees. In drafting instructions, the subcommittee will focus on the most common offenses.

Ms. Klucznik stated that she will put together a spreadsheet on drug offenses similar to the one the committee has for sexual offenses so that the committee can monitor its progress on those offenses.

3. Instruction Comment Period

The committee discussed publishing instructions on the webpage and then having a 30 day comment period for practitioners and the public to make suggested changes. The committee would then review the comments and could make any necessary changes. The committee also discussed having an email where anyone could email at any time with suggestions about an instruction, or to send a proposed instruction. Because there was no quorum present, the committee will consider this again at the next meeting.

4. Adjourn

The meeting was adjourned at 12:30 p.m. The next meeting will be held on Wednesday, November 5, 2014.

Tab 2

1 **Rule 1-205. Standing and ad hoc committees.**

2 Intent:

3 To establish standing and ad hoc committees to assist the Council and
4 provide recommendations on topical issues.

5 To establish uniform terms and a uniform method for appointing committee
6 members.

7 To provide for a periodic review of existing committees to assure that their
8 activities are appropriately related to the administration of the judiciary.

9 Applicability:

10 This rule shall apply to the internal operation of the Council.

11 Statement of the Rule:

12 (1) Standing committees.

13 (1)(A) Establishment. The following standing committees of the Council are
14 hereby established:

15 (1)(A)(i) Technology Committee;

16 (1)(A)(ii) Uniform Fine/Bail Schedule Committee;

17 (1)(A)(iii) Ethics Advisory Committee;

18 (1)(A)(iv) Justice Court Standards Committee;

19 (1)(A)(v) Judicial Branch Education Committee;

20 (1)(A)(vi) Court Facility Planning Committee;

21 (1)(A)(vii) Committee on Children and Family Law;

22 (1)(A)(viii) Committee on Judicial Outreach;

23 (1)(A)(ix) Committee on Resources for Self-represented Parties;

24 (1)(A)(x) Language Access Committee; and

25 (1)(A)(xi) Guardian ad Litem Oversight Committee;

26 (1)(A)(xii) Committee on Model Utah Civil Jury Instructions; and

27 (1)(A)(xiii) Committee on Model Utah Criminal Jury Instructions.

28 (1)(B) Composition.

29 (1)(B)(i) The Technology Committee shall consist of one judge from each
30 court of record, one justice court judge, one lawyer recommended by the
31 Board of Bar Commissioners, two court executives, two court clerks and two
32 staff members from the Administrative Office.

33 (1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one
34 district court judge who has experience with a felony docket, three district
35 court judges who have experience with a misdemeanor docket, one juvenile
36 court judge and three justice court judges.

37 (1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from
38 the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4,
39 one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court
40 judge, one justice court judge, and an attorney from either the Bar or a college
41 of law.

42 (1)(B)(iv) The Justice Court Standards Committee shall consist of one
43 municipal justice court judge from a rural area, one municipal justice court
44 judge from an urban area, one county justice court judge from a rural area,
45 and one county justice court judge from an urban area, all appointed by the
46 Board of Justice Court Judges; one mayor from either Utah, Davis, Weber or
47 Salt Lake Counties, and one mayor from the remaining counties, both
48 appointed by the Utah League of Cities and Towns; one county commissioner
49 from either Utah, Davis, Weber or Salt Lake Counties, and one county
50 commissioner from the remaining counties, both appointed by the Utah
51 Association of Counties; a member of the Bar from Utah, Davis, Weber or Salt
52 Lake Counties, and a member of the Bar from the remaining counties, both

53 appointed by the Bar Commission; and a judge of a court of record appointed
54 by the Presiding Officer of the Council. All Committee members shall be
55 appointed for four year staggered terms.

56 (1)(B)(v) The Judicial Branch Education Committee shall consist of one
57 judge from an appellate court, one district court judge from Judicial Districts 2,
58 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one
59 juvenile court judge, the education liaison of the Board of Justice Court
60 Judges, one state level administrator, the Human Resource Management
61 Director, one court executive, one juvenile court probation representative, two
62 court clerks from different levels of court and different judicial districts, one
63 data processing manager, and one adult educator from higher education. The
64 Human Resource Management Director and the adult educator shall serve as
65 non-voting members. The state level administrator and the Human Resource
66 Management Director shall serve as permanent Committee members.

67 (1)(B)(vi) The Court Facility Planning Committee shall consist of one judge
68 from each level of trial court, one appellate court judge, the state court
69 administrator, a trial court executive, and two business people with experience
70 in the construction or financing of facilities.

71 (1)(B)(vii) The Committee on Children and Family Law shall consist of one
72 Senator appointed by the President of the Senate, one Representative
73 appointed by the Speaker of the House, the Director of the Department of
74 Human Services or designee, one attorney of the Executive Committee of the
75 Family Law Section of the Utah State Bar, one attorney with experience in
76 abuse, neglect and dependency cases, one attorney with experience
77 representing parents in abuse, neglect and dependency cases, one
78 representative of a child advocacy organization, one mediator, one

79 professional in the area of child development, one representative of the
80 community, the Director of the Office of Guardian ad Litem or designee, one
81 court commissioner, two district court judges, and two juvenile court judges.
82 One of the district court judges and one of the juvenile court judges shall
83 serve as co-chairs to the committee. In its discretion the committee may
84 appoint non-members to serve on its subcommittees.

85 (1)(B)(viii) The Committee on Judicial Outreach shall consist of one
86 appellate court judge, one district court judge, one juvenile court judge, one
87 justice court judge, one state level administrator, a state level judicial
88 education representative, one court executive, one Utah State Bar
89 representative, one communication representative, one law library
90 representative, one civic community representative, and one state education
91 representative. Chairs of the Judicial Outreach Committee's subcommittees
92 shall also serve as members of the committee.

93 (1)(B)(ix) The Committee on Resources for Self-represented Parties shall
94 consist of two district court judges, one juvenile court judge, one justice court
95 judge, three clerks of court – one from an appellate court, one from an urban
96 district and one from a rural district – one member of the Online Court
97 Assistance Committee, one representative from the Utah State Bar, two
98 representatives from legal service organizations that serve low-income clients,
99 one private attorney experienced in providing services to self-represented
100 parties, two law school representatives, the state law librarian, and two
101 community representatives.

102 (1)(B)(x) The Language Access Committee shall consist of one district
103 court judge, one juvenile court judge, one justice court judge, one trial court
104 executive, one court clerk, one interpreter coordinator, one probation officer,

105 one prosecuting attorney, one defense attorney, two certified interpreters, one
106 approved interpreter, one expert in the field of linguistics, and one American
107 Sign Language representative.

108 (1)(B)(xi) The Guardian ad Litem Oversight Committee shall consist of
109 seven members with experience in the administration of law and public
110 services selected from public, private and non-profit organizations.

111 (1)(B)(xii) The Committee on Model Utah Civil Jury Instructions shall
112 consist of two district court judges, four lawyers who primarily represent
113 plaintiffs, four lawyers who primarily represent defendants, and one person
114 skilled in linguistics or communication.

115 (1)(B)(xiii) The Committee on Model Utah Criminal Jury Instructions shall
116 consist of two district court judges, one justice court judge, four prosecutors,
117 four defense counsel, and one person skilled in linguistics or communication.

118 (1)(C) The Judicial Council shall designate the chair of standing
119 committees. Standing committees shall meet as necessary to accomplish their
120 work but a minimum of once every six months. Standing committees shall
121 report to the Council as necessary but a minimum of once every six months.
122 Council members may not serve, participate or vote on standing committees.
123 Standing committees may invite participation by others as they deem
124 advisable, but only members designated by this rule may make motions and
125 vote. All members designated by this rule may make motions and vote unless
126 otherwise specified. Standing committees may form subcommittees as they
127 deem advisable.

128 (1)(D) Six months before the scheduled termination of a standing
129 committee, the Management Committee shall review the performance of the
130 committee and make recommendations to the Judicial Council regarding

131 reauthorization. Unless reauthorized by the Judicial Council, the committees
132 shall terminate on the date indicated and every six years thereafter.

133 (1)(D)(i) The Technology Committee shall terminate on June 30, 2006.

134 (1)(D)(ii) The Uniform Fine/Bail Schedule Committee shall terminate on
135 June 30, 2006.

136 (1)(D)(iii) The Ethics Advisory Committee shall terminate on June 30, 2007.

137 (1)(D)(iv) The Justice Court Standards Committee shall terminate on June
138 30, 2008.

139 (1)(D)(v) The Judicial Branch Education Committee shall terminate on June
140 30, 2008.

141 (1)(D)(vi) The Court Facility Planning Committee shall terminate on June
142 30, 2009.

143 (1)(D)(vii) The Committee on Children and Family Law shall terminate on
144 June 30, 2009.

145 (1)(D)(viii) The Committee on Judicial Outreach shall terminate on June 30,
146 2010.

147 (1)(D)(ix) The Committee on Resources for Self-represented Parties shall
148 terminate on June 30, 2010.

149 (1)(D)(x) The ~~Court Interpreter Committee~~ Language Access Committee
150 shall terminate on June 30, 20147.

151 (1)(D)(xi) Notwithstanding subsection (1)(D), the Guardian ad Litem
152 Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

153 (2) Ad hoc committees. The Council may form ad hoc committees or task
154 forces to consider topical issues outside the scope of the standing committees
155 and to recommend rules or resolutions concerning such issues. The Council
156 may set and extend a date for the termination of any ad hoc committee. The

157 Council may invite non-Council members to participate and vote on ad hoc
158 committees. Ad hoc committees shall keep the Council informed of their
159 activities. Ad hoc committees may form sub-committees as they deem
160 advisable. Ad hoc committees shall disband upon issuing a final report or
161 recommendations to the Council, upon expiration of the time set for
162 termination, or upon the order of the Council.

163 (3) General provisions.

164 (3)(A) Appointment process.

165 (3)(A)(i) Administrator's responsibilities. The state court administrator shall
166 select a member of the administrative staff to serve as the administrator for
167 committee appointments. Except as otherwise provided in this rule, the
168 administrator shall:

169 (3)(A)(i)(a) announce expected vacancies on standing committees two
170 months in advance and announce vacancies on ad hoc committees in a timely
171 manner;

172 (3)(A)(i)(b) for new appointments, obtain an indication of willingness to
173 serve from each prospective appointee and information regarding the
174 prospective appointee's present and past committee service;

175 (3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve
176 from the prospective reappointee, the length of the prospective reappointee's
177 service on the committee, the attendance record of the prospective
178 reappointee, the prospective reappointee's contributions to the committee,
179 and the prospective reappointee's other present and past committee
180 assignments; and

181 (3)(A)(i)(d) present a list of prospective appointees and reappointees to the
182 Council and report on recommendations received regarding the appointment
183 of members and chairs.

184 (3)(A)(ii) Council's responsibilities. The Council shall appoint the chair of
185 each committee. Whenever practical, appointments shall reflect geographical,
186 gender, cultural and ethnic diversity.

187 (3)(B) Terms. Except as otherwise provided in this rule, standing
188 committee members shall serve staggered three year terms. Standing
189 committee members shall not serve more than two consecutive terms on a
190 committee unless the Council determines that exceptional circumstances exist
191 which justify service of more than two consecutive terms.

192 (3)(C) Members of standing and ad hoc committees may receive
193 reimbursement for actual and necessary expenses incurred in the execution
194 of their duties as committee members.

195 (3)(D) The Administrative Office shall serve as secretariat to the Council's
196 committees.

1 **Rule 3-418. Model Utah Jury Instructions.**

2 Intent:

3 To develop jury instructions that are an accurate statement of Utah law
4 using simple structure and, where possible, words of ordinary meaning.

5 Applicability:

6 This rule applies to the committees on Model Utah Jury Instructions.

7 Statement of the Rule:

8 The committees on Model Utah Jury Instructions will develop jury
9 instructions that are accurate statements of Utah law using simple structure
10 and, where possible, words of ordinary meaning. If Utah law is unclear or not
11 yet established, the committees may draft an instruction with two or more
12 alternatives based on differing authority. The order of the alternatives does not
13 imply preference. A model instruction will not be published for comment
14 before publication on the Utah state court website.

Tab 3

Statute	Offense	Number	Drafted	Discussion	Approved
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 4

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

Utah law does not state whether a determination that prior conviction for an out-of-state offense is sufficiently similar to a Utah offense to prove a prior conviction is a question of law or fact.

However, at least one other jurisdiction has held that the determination is a legal one, and one that should be made by the trial court, not the jury. *State v. Henderson*, 689 S.E.2nd 462, 465 (N.C.App. 2009).

Tab 5

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 6

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 7

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](#).