

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, January 8, 2014
12:00 p.m. to 1:30 p.m.
Judicial Council Room

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| 1. Welcome and Approval of Minutes (Tab 1) | Judge Denise Lindberg |
| 2. Mens Rea Committee Notes (Tab 2) | Judge Denise Lindberg |
| 3. Sexual Offense Instructions (Tab 3) | Committee |
| 4. Sexual Offense Definitions (Tab 4) | Sandi Johnson |
| 5. Other Business | |
| 6. Adjourn | |

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, December 4, 2013
12:00 p.m. to 2:00 p.m.
Judicial Council Room

PRESENT

Judge Denise Lindberg, Chair
Alison Adams-Perlac, Staff
Professor Jennifer Andrus
Judge James Blanch
Mark Field
Sandi Johnson
Linda Jones
Judge Brendan McCullagh
Scott Young
Thomas Pedersen, Intern

EXCUSED

Professor Jensie Anderon
Karen Klucznik
John West
Judge 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. Ms. Johnson seconded the motion and it passed unanimously.*

2. Mens Rea Instructions Revised

Judge Denise Lindberg

Judge Lindberg discussed the proposed mens rea instructions. She stated that in practice neither side has liked the current mens reas instructions, because the language is too stripped down. She stated that she has combined the versions as to conduct and as to the result of conduct, and that there have been no objections. Judge Lindberg asked whether the committee should substitute the combined instructions for the currently separated instructions.

Ms. Jones stated that *Hutchings*, 2012 UT 50, is a case where either intent or knowing was the element, and only one aspect of it was, and the trial court gave an instruction on the wrong aspect, and the Supreme Court ruled that was error. She stated that there are occasions when a criminal defense lawyer can articulate why it should be one specific intent as opposed to the combination. She suggested that we continue with 302A and 302B and add a 302C with them combined, so that all options are on the table. Mr. Field asked whether the combination would be confusing. Ms. Jones stated that she does not think it is confusing. She stated that there are attorneys out there who understand which intent applies. Some attorneys do not understand this, and they end up defaulting to a combination. She

suggested keeping them separate, and adding a new instruction with the combination for those cannot articulate which one applies.

Judge Lindberg stated that there have been problems with the bare-bones instruction. Ms. Jones gave the example of felony homicide. She stated that it does not fall in the typical intent category – you intend the robbery, but not the homicide. She stated that combining them on felony homicide may be sending the wrong message, but maybe it is important to have them combined and break it out for the jury how the intent applies to the robbery and the result applies to the homicide.

Mr. Field stated that giving a combined instruction could end up being error by the judge if the focus should only be on intent as to the result or the conduct. Judge Lindberg is concerned with the opposite scenario, where two separate instructions are given one as to result, and one as to conduct when only one applies. Ms. Jones agreed with Judge Lindberg and stated that scenario existed in *Hutchings*. Ms. Jones stated that she is not suggesting that a combined instruction not be included, but that the committee should keep all of the options on the table for judges and lawyers.

The committee reviewed *Hutchings*. Ms. Jones stated that *Hutchings* is a case where the wrong variation was used. Having a combined instruction would avoid that problem. She stated that by only leaving the combined instruction, we are making a decision for judges and lawyers that they should be making.

Judge Blanch stated that the combined instruction would be legally correct, but that it might confuse the jury. It covers all the bases, but it is confusing. He has always thought it would be better, if you are confident that you are using the correct one, if you only have an alleged offense that involves intent as to conduct or as to result, but not as to both. Judge Lindberg stated that the attorneys uniformly express discomfort with the current instructions and routinely resort back to the statutory definitions. Ms. Jones stated that she agreed, and that her proposal was only to keep the current instructions and add the new combined instruction to them.

Judge Lindberg stated that she would recommend a further modification. She stated that since the combined one would be used most often, she would make it 302A, and move the result instruction to 302B and the conduct instruction to 302C. Judge Blanch agreed, stating that often instructions as to both conduct and to result are necessary. He said there is a temptation to err on the side of having both. Judge Lindberg stated that the statutory definition includes both, so people seem comfortable having both.

Mr. Field pointed out that the committee note stated that the jury must be instructed as to which instruction applies to which count. The committee note seems to say that you have to point out to the jury which mens rea applies to which offense. Ms. Johnson agreed. She stated that if there are crimes like aggravated assault, there should be a separate instruction that says “as to intentionally causing serious bodily injury, it must be the defendant’s specific intent to cause serious bodily injury.”

Ms. Johnson stated if the committee does it this way, we will have *Hutchings* again. Unless you have a different instruction telling the jury which mens rea instructions goes with which offense, no matter how they are divided up, the wrong one may be applied. Judge Lindberg stated that the committee should develop such an instruction. Judge McCullagh suggested addressing it through a special verdict form, for example, “having found the defendant guilty of aggravated assault, we also find beyond a reasonable doubt the defendant intentionally caused serious bodily injury.” He stated that you would have the same verdict finding which gets you the second instead of the third. Ms. Johnson stated that she does not have objections to doing it separately. However, she stated that for these types of case the committee will not be able to solve the problem in the intent instructions, as it will also need to be addressed in the aggravated assault instructions.

Judge Blanch stated that he thinks if you have different offenses with different types of intent, it is appropriate to craft the instruction so that it is clear which intent applies to which offense and which element. He stated that he would not want it to be put in a special verdict form as you mess up in terms of shifting the burden, and for that reason he would want the special verdict form to be as simple as possible. He stated if there were two different offenses and one went to conduct and one went to result, he would want to instruct the jury separately on them, and not just mash them together. Mr. Young stated that you would decide to do that on a case by case basis.

Ms. Johnson stated that she is fine with having 302A, B, and C as Ms. Jones suggested, but that in the future we need to make sure to deal with it in the aggravated assault instructions. She also suggested that the committee note state, “crimes or elements within a crime”, since the intent can apply to specific elements.

Mr. Field stated that it is sometimes confusing whether result or conduct applies. Ms. Jones stated that the default is intent as to result, and that the rare circumstance is conduct. She stated that is why it makes sense to have it blended, but keep the options open so that the parties can argue which instructions are proper in their case. Judge Blanch stated that having the three options does not clear up the confusion.

Ms. Adams-Perlac stated that she would be willing to draft an instruction that provides for two different mens reas applying, and the parties would have to plug in the specific element or crime. Ms. Jones stated doing so is beyond the committee’s charge. She stated that the committee’s charge is to identify the elements and if there is a disagreement, parties can appeal it to the appellate courts. She stated that the three options is an improvement from the two options. Ms. Adams-Perlac stated that the instruction would provide sample language where multiple intents apply, not make the decision for the parties. She stated that 302A is going to confuse a jury. Judge Blanch stated that 302A is confusing, but it is not ambiguous, and it does not answer the question about which of the two applies. He stated that the problem is that it is not clear which is the actual intent requirement. Judge McCullagh stated that he is not in favor of the combined instruction. He stated that using a combined instruction runs the risk of the jury not getting there. He stated that a jury should be given either the results instruction or the conduct instruction. Judge McCullagh stated that the committee now has the opportunity to make it clear. Judge Lindberg disagreed that a combined instruction should not be provided. She stated that it is very difficult to get attorneys to work through whether the results or the conduct intent applies. Ms. Johnson stated that the statute includes both results and conduct for intent, so that until the legislature changes the statute, it should include both.

Mr. Field stated that he would like to review the committee note. Ms. Johnson stated that the committee note could state, “some crimes or elements within a crime with a mens rea... jurors must be specifically instructed as to the definition of intentionally which applies to the crime or the elements of the crime they are considering.” Ms. Jones stated that the first paragraph of the committee note covers the concerns of the combined instruction, and the second paragraphs are fine with regard to the individual ones.

Regarding to the Intentional instructions, Ms. Jones moved to adopt a combined instruction as 302A, with the committee note containing the first paragraph, to adopt a result instruction as 302B with the paragraph in the committee note relating to result, and a conduct instruction as 302C, with the paragraph in the committee note relating to conduct. Judge McCullagh seconded the motion, and it passed unanimously. Ms. Adams-Perlac will make the agreed upon revisions and circulate the committee note.

Regarding the Knowledge instructions, Ms. Jones moved to adopt a combined instruction as 303A, with the committee note containing the first paragraph, to adopt a result instruction as 303B with the paragraph in the committee

note relating to result, and a conduct instruction as 303C, with the paragraph in the committee note relating to conduct. Ms. Johnson seconded the motion, and it passed unanimously.

Regarding the Reckless instructions, Ms. Jones moved to adopt a combined instruction as 304A, with the committee note containing the first paragraph, to adopt a result instruction as 304B with the paragraph in the committee note relating to result, and a conduct instruction as 304C, with the paragraph in the committee note relating to conduct. Ms. Johnson seconded the motion, and it passed unanimously.

3. CR 301

Committee

The committee discussed the language at the end of the elements instruction, CR 301. Ms. Jones stated that she wanted to make sure that the instruction was not suggesting to the jury that an element has to be disproved beyond a reasonable doubt. She stated that she does not have concerns with the “each and every” language.

The instructions previously approved stand approved changing “one or more of the elements” to “each and every element” language.

4. Sexual Offense Instructions

Committee

The committee discussed CR 1605, unlawful sexual conduct with a 16 or 17 year old, and whether paragraph 4 should be modified. Ms. Jones stated that the instruction would only include 4a or 4b, so it will be less confusing for the jury than it is as currently written. The instruction remained as written and previously approved.

The committee discussed CR 1607, rape of a child. The instruction remained as written and previously approved. The committee also discussed CR 1608 object rape, and made minor changes to the instruction’s punctuation. The instruction remained as written and previously approved. The committee discussed CR 1609, object rape of a child. Ms. Andrus stated that subparagraphs should begin with a lower case letter if they are to read as part of a full sentence. The instruction remained as written and previously approved.

The committee discussed CR 1610, forcible sodomy. Ms. Jones questioned whether all the parentheses and brackets would be confusing to judges and attorneys. The instruction remained as written and previously approved.

Ms. Adams-Perlac stated that she is on the Bar Summer Convention Committee and said that if anyone is interested in doing a CLE on how to use the jury instructions she could pass that information on to the committee. She stated that it would not even have to be through the Bar Convention. Judge Lindberg suggested putting a CLE together with the Litigation Section. Judge McCullagh suggested doing a training session at the SWAP training for prosecutors and for the Utah Association of Criminal Defense Lawyers.

Judge Blanch stated that part of the problem is that attorneys bring the instructions to court as hard copies, so they cannot be manipulated. Mr. Field stated that judges should require it of the parties. Ms. Johnson stated that the judge should direct the attorneys to email the instructions to the clerks, or to bring them on a thumb drive.

The committee discussed CR 1611, sodomy on a child. The instruction remained as written and previously approved.

The committee discussed CR 1612, forcible sexual abuse. Ms. Johnson suggested changing “of a person” to “([VICTIM’S NAME] [MINOR’S INITIALS])” throughout the instruction. Judge Lindberg

suggested dividing paragraph 1 into subparagraphs a and b. Judge Lindberg suggested changing “actor” to (DEFENDANT’S NAME).

Ms. Jones suggested going back to the original language on 3d, because the defendant could cause indecent liberties taken with the victim or cause the victim to take indecent liberties with another person. Mr. Field thinks 3d means causing the victim to take indecent liberties with the defendant or another, but if it is written that way, then we are making substantive decisions. Ms. Johnson suggested that 3d remain as written.

Judge Blanch moved to approve the instruction as amended. Judge McCullagh seconded the motion and it passed unanimously.

5. Definitions

Sandi Johnson

This agenda item was tabled for discussion at the next meeting.

6. Other Business

There was no other business discussed at the meeting.

7. Adjourn

Judge McCullagh moved to adjourn the meeting. Mr. Field seconded the motion and it passed unanimously. The next meeting will be held on Wednesday, January 8, 2014 at 12:00 p.m.

Tab 2

CR302A Intentional as to Conduct, or as to Result.

A person acts ["intentionally"] ["willfully"] ["with intent"] when [his] [her] conscious objective is to:

1. engage in certain conduct, or
2. cause a certain result.

"Conduct" means either an act or an omission.

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References

Utah Code § 76-2-103(1).

Committee Notes

Some crimes or elements within a crime with a mens rea of "intentionally" require that the defendant intentionally engages in conduct, while others require that the defendant intentionally causes a result. Jurors must be specifically instructed as to the definition of "intentionally" which applies to the crime(s) or element(s) they are considering. If the jury is considering more than one count with a mens rea of "intentionally," and if a single definition does not cover all counts, then the jury must be instructed as to which definition applies to each count.

CR302B Intentional as to the Result.

A person acts ["intentionally"] ["willfully"] ["with intent"] when [his] [her] conscious objective is cause a certain result.

References

Utah Code § 76-2-103(1).

Committee Notes

This instruction should be used when intentionality goes to the result of one's conduct rather than just to the conduct itself. See, e.g., Utah Code §§ 76-5-203 (2)(a), murder; 76-5-109 (2)(a), child abuse; and 76-5-301, kidnapping.

CR302C Intentional as to Conduct.

A person acts [“intentionally”] [“willfully”] [“with intent”] when [his] [her] conscious objective is to engage in certain conduct.

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(1).

Committee Notes

This instruction should be used when intentionality goes to one’s conduct rather than to the result of one’s conduct. See, e.g., Utah Code §§ 76-5-209, homicide by assault; 76-6-106(2)(b), criminal mischief (variation); and 58-37-8(2)(g) having a measurable amount of controlled substance in system and driving negligently, thereby causing serious bodily injury or death.

An example of an offense in which the conduct is an omission rather than an act is failure to report child abuse under Utah Code § 62A-4a-411.

CR303A Knowledge as to Conduct or as to Result.

A person acts [“knowingly”] [“with knowledge”] when the person:

1. is aware of the nature of [his] [her] conduct; or
2. is aware of the particular circumstances surrounding [his] [her] conduct; or
3. is aware that [his] [her] conduct is reasonably certain to cause a particular result.

“Conduct” means either an act or an omission.

References

Utah Code Ann. § 76-2-103(2).

State v. Graham, 2006 UT 43, ¶20, 143 P.3d 268.

Gardner v. Galetka, 2004 UT 42, ¶3, 94 P.3d 263.

Committee Notes

Some crimes or elements with a mens rea of “knowingly” require that the defendant knowingly engages in conduct, while others require that the defendant knowingly causes a result. Jurors must be specifically instructed as to the definition of “knowingly” which applies to the crime(s) or element(s) they are considering. If the jury is considering more than one count with a mens rea of “knowingly,” and if a single definition does not cover all counts, then the jury must be instructed as to which definition applies to each count.

CR303B Knowledge as to Result.

A person acts [“knowingly”] [“with knowledge”] when the person is aware that [his] [her] conduct may cause a particular result.

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(2).

State v. Graham, 2006 UT 43, ¶20, 143 P.3d 268.

Gardner v. Galetka, 2004 UT 42, ¶3, 94 P.3d 263.

Committee Notes

This instruction should be given in crimes in which the element of the defendant's knowledge goes to the result of his or her conduct. See, e.g., Utah Code §§ 76-5-203(2)(a), murder; 76-5-109(2)(a), child abuse; and 76-5-301, kidnapping.

The committee recognizes that this is not verbatim the instruction discussed by the Utah Supreme Court in *Gardner v. Galetka*, 2004 UT 42, 94 P.3d 263, but feels it adequately and more directly addresses the concept for crimes that require that the defendant knowingly cause a result. The committee also feels that it is inherent in the concept of knowingly causing a result that a defendant is aware of the nature of his conduct or the existing circumstances.

CR303C Knowledge as to Conduct or Circumstances Surrounding Conduct.

A person acts [“knowingly”] [“with knowledge”] when the person is aware of the nature of [his] [her] conduct, or is aware of the particular circumstances surrounding [his] [her] conduct.

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(2).

State v. Graham, 2006 UT 43, ¶20, 143 P.3d 268.

Committee Notes

This instruction should be given in crimes in which the element of knowledge goes to one’s conduct or the circumstances surrounding one’s conduct, rather than to the result of one’s conduct. See, e.g., *State v. Fontana*, 680 P.2d 1042 (Utah 1984) (holding that the element of knowledge for purposes of depraved indifference murder, “refers to the nature of the actor’s conduct or to the circumstance surrounding it, or both; it does not refer to the result produced by that conduct”).

Since this instruction applies to crimes in which the element of knowledge goes to one’s conduct or the circumstances surrounding one’s conduct, rather than to the result of one’s conduct, *Gardner v. Galetka*, 2004 UT 42, 94 P.3d 263, is inapplicable.

CR304A Reckless as to Circumstances Surrounding Conduct, or as to Result.

A person acts “recklessly” when [he] [she] is aware of a substantial and unjustifiable risk that:

1. certain circumstances exist relating to [his] [her] conduct; or
2. [his] [her] conduct will cause a particular result, but [he] [she] consciously disregards the risk, and acts anyway.

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

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(3).

Committee Notes

Some crimes or elements with a mens rea of “recklessly” require that the defendant recklessly engages in conduct, while others require that the defendant recklessly causes a result. Jurors must be specifically instructed as to the definition of “recklessly” which applies to the crime(s) or element(s) they are considering. If the jury is considering more than one count with a mens rea of “recklessly,” and if a single definition does not cover all counts, then the jury must be instructed as to which definition applies to each count.

CR304B Reckless as to Result.

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

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

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(3).

Committee Notes

This instruction should be given in crimes in which the element of the defendant’s recklessness goes to the result of his or her conduct. See, e.g., Utah Code §§ 76-5-203(2)(a), murder; 76-5-109(2)(a), child abuse; and 76-5-301, kidnapping.

CR 304C Reckless as to Circumstances Surrounding Conduct.

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

The nature and extent of the risk must be of such a magnitude that disregarding it is

a gross deviation from what an ordinary person would do in that situation.

“Conduct” means either an act or an omission.

References

Utah Code § 76-2-103(3).

Committee Notes

This instruction should be given in crimes in which the element of recklessness goes to one’s conduct or the circumstances surrounding one’s conduct, rather than to the result of one’s conduct.

Tab 3

CR1603 Sexual Abuse of a Minor. Approved 11062013. (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 offense; 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.

CR1604 Unlawful Sexual Activity with a Minor. Revision Approved 11062013. (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);
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 act.

[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 act.

[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 act.

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

**CR 1605 Unlawful sexual conduct with a 16 or 17 year old. Approved 11062013.
(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 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 arouse or gratify the sexual desire of any person]].
3. At the time of the sexual conduct (MINOR'S INITIALS) was 16 or 17 years old;
and
4. At the time of the sexual 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.

**CR SVF Unlawful sexual conduct with a 16 or 17 year old. (special verdict form).
Approved 11062013. (Reading Level 34)**

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

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

We, the jury, having found the defendant, (DEFENDANT'S NAME), guilty of Unlawful Sexual Conduct with a 16 or 17 Year Old, [ias charged in Count ____], unanimously find beyond a reasonable doubt (check all that apply):

- The defendant had sexual intercourse with (MINOR'S INITIALS);
- 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;
- 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;
- 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 with the defendant or another person, regardless of the sex of any participant.

DATED this _____ day of (MONTH), 20(**).

Foreperson

CR 1606 Rape. Approved 11062013. (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. ~~That~~(DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
3. Had sexual intercourse with ~~another person~~(VICTIM'S NAME);
4. Without ~~that person's~~(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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-402.

Committee Notes

See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1607 Rape of a child. Approved. 12042013 (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. had sexual intercourse with (MINOR'S INITIALS); and
 - b. did so intentionally, knowingly, or recklessly; and
2. (MINOR'S INITIALS) was under 14 years old at the time of the offense.

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 one or more of these elements 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

See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1608 Object rape. Approved 12042013 (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:
 - 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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-402.2.

Committee Notes

See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1609 Object rape of a child. Approved 12042013 (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 one or more of these elements 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

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-403.

Committee Notes

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

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 one or more of these elements 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

See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1612 Forcible sexual abuse. Approved 12042013. (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. 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;
3. 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]);
 - 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;
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 offense.

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-404.

Committee Notes

See Special Verdict Form for Serious Bodily Injury or Prior Conviction.

CR 1613 Sexual abuse of a child. (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 offense.

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 one or more of these elements 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 Note

For aggravated sexual abuse of a child, see *also* Aggravated Sexual Abuse of a Child Special Verdict Form.

CR SVF Aggravated sexual abuse of a child (Special Verdict Form). (Reading Level 25.7)

[LOCATION] JUDICIAL DISTRICT COURT, [IF APPLICABLE] 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, having found the defendant, (DEFENDANT'S NAME), guilty of Sexual Abuse of a Child, [as charged in Count ____], unanimously find beyond a reasonable doubt (check all that apply):

- The offense was committed by the use of a dangerous weapon as defined in Utah Code Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnaping; or
- The defendant caused bodily injury or severe psychological injury to the victim during or as a result of the offense; or
- The defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense; or
- The defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense; or
- The defendant, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense; or
- 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; or

- 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; or
- The defendant encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person; or
- 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; or
- The defendant occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent.

DATED this _____ day of (Month), 20(**).

Foreperson

CR SVF Aggravated sexual assault. SPECIAL VERDICT FORM?

CR 1614 Consent. TABLED UNTIL A DECISION IS ISSUED IN LINDA'S CASE

CR 1615 Penetration or touching sufficient to constitute offense. (Reading Level 22)

[Any sexual penetration, however slight, is enough to establish the relevant element of the offense for [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] [Forcible Sodomy] [Rape of a Child] [Rape].]

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

References

Utah Code § 76-5-402.1.
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, Rape, Forcible Sodomy, Rape of a Child, Sexual Abuse of a Child, or Aggravated Sexual Abuse of a Child.

Add notes to applicable instructions.

CR 1616 Custodial sexual relations.

CR 1617 Custodial sexual misconduct.

CR 1618 Custodial sexual relations or misconduct with youth receiving state services.

SVF Prior Conviction

SVF Serious Bodily Injury

Tab 4

Generals:

- Age:
 - “Under 14 years of age” means that the child had not yet reached his or her 14th birthday at the time of the act in question.
 - “14 years of age or older” means that the person had reached his or her 14th birthday at the time of the act in question.
- Anus
 - Anus means the opening of the rectum to the outside of the body.
 - Anus is the opening between a person’s buttocks through which solid waste passes from the body (Merriam-Webster)
- “Bodily injury” means physical pain, illness, or impairment of physical condition (76-1-601)
- “Breast” means the female mammary gland, whether developed or undeveloped (AH Dictionary & Mosby’s)
- “Buttocks” means the large fleshy protuberances at the lower posterior portion of the torso comprising fat and the gluteal muscles. (Mosby’s)
 - This does not include the “anus.” State v. Pullman, 2013 UT App 168 ¶16
- “Child” means a person under the age of 14. (76-5-404.1)
- “Dangerous weapon” means any item capable of causing death or serious bodily injury or a facsimile or representation of the item if (i) the actor’s use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or (ii) the actor represents to the victim verbally or in any other manner that he is in control of such an item. (76-1-601)
- Genitals means the reproductive organs. On the female, this includes the vagina, clitoris, and vulva, but does not include the breast. On a male, this includes the testes and penis.
- “Grievous sexual offense” means (a) rape, Section 76-5-402; (b) rape of a child, Section 76-5-402.1; (c) object rape, Section 76-5-402.2; (d) object rape of a child, Section 76-5-402.3; (e) forcible sodomy, Subsection 76-5-403(2); (f) sodomy on a child, Section 76-5-403.1; (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4); (h) aggravated sexual assault, Section 76-5-405; (i) any felony attempt to commit an offense described in Subsections (6)(a) through (h); or (j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).
- Indecent liberties
 - Although the Utah Code does not define what conduct qualifies as “tak[ing] indecent liberties with another,” we have applied the doctrine of ejusdem generis and interpreted this phrase to mean activities of the

“same magnitude of gravity as that specifically described in the statute.” [State ex rel. J.L.S., 610 P.2d 1294, 1296 \(Utah 1980\)](#). And, in considering whether conduct constitutes an indecent liberty, the Utah Court of Appeals has stated that, the fact finder “must consider the totality of the facts,” including “the nature of the victim's participation,” “the duration of the defendant's acts,” “the defendant's willingness to terminate his conduct at the victim's request,” “the relationship between the victim and the defendant,” and “the age of the victim.” [State v. Balfour, 2008 UT App 410, ¶ 15, 198 P.3d 471](#) (internal quotation marks omitted). [State v. Maestas, 2012 UT 46, n. 371]

- “Penetrate” means to enter or force a way into; pierce (AH Dict)
 - “Penetration” of genitals for adults:
 - You are instructed that penetration however slight means touching beyond the outer folds of the female’s labia. *State v. Simmons*, 759 P.2d 1152, 1154 (Utah 1988) and *State v. Kelly*, 770 P.2d 98, 99 (Utah 1988).
- “Sexual Intercourse” (see specific statute to determine if penetration required)
 - An actual contact of the sexual organs and a penetration, however slight, into the body of the female the insertion of the male organ to some extent into the female organ. It need be no particular depth and the hymen need not be broken.
 - The sexual union of two people of opposite sex in which the penis is introduced into the vagina (Mosby’s Medical and Nursing Dictionary)
 - “Thus, it has been held that there was no need to define “intercourse” in a rape case, since that word has a common meaning.” [State v. Couch](#), 635 P.2d 89 (Utah 1981)
- “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.
- “Substantial emotional or bodily pain” means
- “Touching” (see specific statute to determine type of touch, i.e. skin to skin, however slight, etc.)
 - “Touching” means to bring a body part into contact with so as to feel through the tactile sense, no matter how brief or light the contact.

Crime Specific Definitions

76-5-401 Unlawful Sexual Activity with a Minor

- Sexual Intercourse (Requires penetration)
 - Any sexual penetration, however slight, is sufficient (76-5-407)
- Touching
 - Any touching, however slight, is sufficient (76-5-407) if the sexual act involved the genitals of one person and the mouth or anus of another person (76-5-407)
 - Requires contact with the victim's skin
- Minor
 - For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age. (76-5-401 (1))

76-5-401.1 Sexual Abuse of a Minor

- No specific definitions
- Touching requires contact with the victim's skin
- Minor
 - Same as for 76-5-401

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

- Sexual intercourse (requires penetration)
 - Any sexual penetration, however slight, is sufficient (76-5-407)
- Touching
 - Any touching, however slight, is sufficient (76-5-407) if the sexual act involved the genitals of one person and the mouth or anus of another person (76-5-407)
 - Touching requires contact with the victim's skin
- Minor
 - As used in this section, "minor" means a person who is 16 years of age or older, but younger than 18 years of age. (76-5-401.2 (1))

76-5-402 Rape

- Sexual intercourse (requires penetration)
 - Any sexual penetration, however slight, is sufficient (76-5-407)

76-5-402.1 Rape of a Child

- Sexual intercourse (Does NOT require penetration)

- “Touching” however slight is sufficient (76-5-407) Does not require penetration. State v. Simmons, 759 P.2d 1152 (Utah 1988)(?)
- Touching requires contact with the victim’s skin
- In any prosecution for rape of a child, any touching, however slight, is sufficient to constitute the relevant element of the offense. Utah law does not require penetration of the genitals with a penis as a necessary element of the offense of rape of a child. Touching the genitals with a penis, alone, is sufficient to constitute the necessary element of the offense of rape of a child.
- “Sexual Intercourse” as that term is used in these instructions means any touching of the female’s genitals by the actor’s penis, no matter however slight.

76-5-402.2 Object Rape

- Foreign object, substance, instrument, or device

76-5-402.3 Object Rape of a Child

- Penetration
 - Any sexual penetration, however slight, is sufficient (76-5-407)
- Touching
 - Any touching, however slight, is sufficient (76-5-407)
 - Touching requires contact with the victim’s skin
 - In any prosecution for object rape of a child, any touching, however slight, is sufficient to constitute the relevant element of the offense. Utah law does not require penetration of the genitals or anal opening with any foreign object, substance, instrument, or device as a necessary element of the offense of object rape of a child. Touching of the genitals or anal opening, alone, with any foreign object, substance, instrument, or device is sufficient to constitute the necessary element of the offense of object rape of a child.
- Foreign object, substance, instrument, or device

76-5-403 Sodomy/Forcible Sodomy

- Touching
 - Any touching, however slight, is sufficient (76-5-407)
 - Touching requires contact with the victim’s skin

76-5-403.1 Sodomy on a Child

- Touching
 - Any touching, however slight, is sufficient (76-5-407)
 - Any touching, even if accomplished through clothing, is sufficient (76-5-407)

- Any sexual touching (act), even if accomplished through clothing, is sufficient to constitute the relevant element of the offense of Sodomy on a Child. You are instructed that an act of touching the clothed genitals and/or anus of a child is not exculpated or diminished by the fact that there is a layer of clothing between the actor and the child's genitals and/or anus. §76-5-407(3); *State v. Glenn*, 656 P.2d 990 (Utah 1982)

76-5-404 Forcible Sexual Abuse

- Touching
 - For all other theories (except indecent liberties), contact with the victim's skin is required. State v. Jacobs, 2006 UT App 356
 - "Thus, 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
 - Any touching, however slight, is sufficient (76-5-407)
 - Any touching, even if accomplished through clothing, is sufficient (76-5-407)
 - Penetration is unnecessary to constitute the offense, touching alone is sufficient. Any sexual touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense of Sexual Abuse of Child. You are instructed that an act of touching the clothed breast, anus, genitals and/or buttocks of a child is not exculpated or diminished by the fact that there is a layer of clothing between the actor and the child's breast, anus, genitals and/or buttocks. §76-5-407(3); *State v. Glenny*, 656 P.2d 990 (Utah 1982)
- Severe psychological injury
- “Pornography” means
 - written, graphic, or other forms of communication intended to excite lascivious feelings.” (AH Dictionary)
 - that which is of or pertaining to obscene literature; obscene; licentious; taken as a whole appeals to the prurient interest and lacks serious literary, artistic, political or scientific value (Black’s Law)

76-5-405 Aggravated Sexual Assault

- None specific to this statute

76-5-406 Sexual Offenses Against the Victim Without Consent of Victim – Circumstances

- “To Retaliate” includes threats of physical force, kidnapping, or extortion. (76-5-406 (4) (b))
- “Health Professional” means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologists, psychiatric mental health nurse specialist, or substances abuse counselor. (76-5-406 (12) (a))
- “Religious Counselor” means a minister, priest, rabbi, bishop, or other recognized member of the clergy. (76-5-406 (12) (b))

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

76-5-412 Custodial sexual relations – Custodial sexual misconduct

- “Actor” means a correctional officer; a law enforcement officer; or an employee of, or private provider or contractor for the Department of Corrections or a county jail. (76-5-412 (1) (a))
- “Correctional Officer” means a sworn and certified officer employed by the Department of Corrections, any political subdivision of the state, or any private entity which contracts with the state or its political subdivisions to incarcerate inmates who is charged with the primary duty of providing community protection. (53-13-104)
- “Law Enforcement Officer” means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions. (53-13-103)
- “Private Provider or Contractor” means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operations of the Department of Corrections or a county jail under state or local law. (76-5-412 (1) (c))
- Substantial Emotional or Bodily Pain