

# 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, March 5, 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. Special Verdict Instruction (Tab 2)             | Alison Adams-Perlac   |
| 3. Sexual Offense Instructions from Page 4 (Tab 3) | Committee             |
| 4. Sexual Offense Definitions (Tab 4)              | Committee             |
| 5. Other Business                                  |                       |
| 6. Adjourn   |                       |

### Upcoming Meetings

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

# Tab 1

# MINUTES

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

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

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

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### PRESENT

Judge Denise Lindberg, Chair  
Alison Adams-Perlac, Staff  
Professor Jennifer Andrus  
Judge James Blanch  
Mark Field  
Sandi Johnson  
Linda Jones  
Karen Klucznik  
Judge Brendan McCullagh  
John West  
Scott Young

### EXCUSED

Professor Jensie Anderson  
Sandi Jones  
Thomas Pedersen, Intern  
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. Ms. Jones seconded the motion and it passed unanimously.*

Judge Lindberg read a letter she received from Supreme Court Chief Justice Durrant recommending that the committee appoint a recording secretary to attend the meeting as a non-voting member to take minutes. Appoint a recording secretary would allow the staff attorney to give more attention to researching points of law and assisting with drafting.

The committee discussed the pros and cons of appointing a recording secretary and decided to appoint a recording secretary. Judge Blanch mentioned that the committee could advertise the position as providing an opportunity to become a voting member when there is a vacancy on the committee, which might create an incentive to accept the appointment. Ms. Jones recommended Brittany Enniss from LDA, and Scott Young recommended Nathan Crane from Snow, Christensen & Martineau to serve as recording secretary.

*Judge Lindberg and Ms. Adams-Perlac will explore the committee's recommendations and Judge Lindberg will appoint a recording secretary.*

## 2. Sexual Offense Instructions from CR 1613

## Committee

The committee reviewed the sexual offense instructions. With regard to CR 1611, Sodomy on a Child, Ms. Adams-Perlac stated that Ms. Johnson sent an email suggesting that subsections a. and b. be reversed, so that the mens rea comes first. The committee discussed reorganizing the instruction so that it has elements numbered 1 through 4, instead of 1a, 1b, 2, and 3. The committee discussed reorganizing some of the other instructions, but determined that they were previously organized this way since the mens rea should apply only to the act, with the minor's age being a strict liability element.

Ms. Jones stated that "offense" should be changed to "act" in the elements of instructions 1603, 1607, and 1611. Judge Blanch and Ms. Klucznik agreed.

*Judge Blanch moved to substitute "conduct" for "offense" in the elements of the sexual offense instructions. Ms. Klucznik seconded the motion, and it passed unanimously. Ms. Adams-Perlac will review all of the sexual offense instructions and will substitute "conduct" for "offense" in the elements.*

*Mr. Field suggested that the other instructions be reviewed to remove "offense" where it is listed in an element. The committee agreed and will consider this issue at a later date.*

The committee discussed CR 1613, Sexual Abuse of a Child. Ms. Klucznik stated that she would recommend having a separate aggravated sexual abuse of a child instruction, as well as an aggravated sexual abuse of a child special verdict form. Judge Blanch stated that Ms. Johnson felt strongly that the aggravating factors should be placed in a special verdict form only. Judge Lindberg stated she thinks having both is best practice. Ms. Jones said that the jury has to find at least one aggravator beyond a reasonable doubt under *Saunders*.

Ms. Jones stated that she thinks aggravated sexual abuse of a child is an aggravator, rather than an enhancement. An enhancement enhances the lower part of the sentence, but it still stays at the top, e.g. from 1-15 years to 3-15 years. If it is an aggravator, the whole thing shifts, because it is a completely different crime, e.g., it goes from a 2<sup>nd</sup> degree felony to a 3<sup>rd</sup> degree felony. Judge Blanch stated that some of the statutes will have the aggravated offense set forth as a separate statute, but that is not the case with aggravated sexual abuse of a child, e.g. aggravated murder.

Judge Blanch stated that if sexual abuse of a child is a lesser included offense of aggravated sexual abuse, then it ought to be set out in a separate instruction and the parties should argue about it. Ms. Jones stated that in cases where the aggravating circumstance is the defendant's prior conduct, case law says that you do bifurcate. Ms. Klucznik stated you bifurcate those for the defendant's benefit. Judge Lindberg said that this would not truly be a bifurcation, because the jury would have all of the information at the same time. Ms. Klucznik stated that this is not true bifurcation, it is simply separate consideration.

The committee agreed that they would like to have Ms. Johnson's input before making a decision on Aggravated Sexual Abuse of a Child.

*Ms. Klucznik moved to approve CR 1613, Sexual Abuse of a Child, changing "offense" to "conduct" in subsection 4. Judge McCullagh seconded the motion, and it passed unanimously.*

Mr. Field asked whether there is an instruction that says the jury must reach a unanimous verdict before reaching a special verdict form. Judge Lindberg stated that the closing instructions state this requirement. Ms. Jones stated that we will need a separate instruction stating that the jury must unanimously agree on the aggravating factor they check. She suggested the following, "Now that you have determined defendant committed (CRIME), consider the aggravating factors. Before checking any of the boxes, you must unanimously agree on any aggravating factors that you think apply."

*Judge Lindberg said that there is a stock instruction that explains how the jury should use the special verdict form. The committee will review this instruction at the next meeting to determine if it can be made clearer.*

*Ms. Jones stated that the Court has ruled on her case involving consent. The committee will consider a consent instruction at the next meeting.*

The committee considered CR 1617, Penetration or Touching Sufficient to Constitute Offense. Ms. Klucznik stated that object rape needs to be added to the second paragraph. She stated that CR 1617 should include all of the offenses listed in the statute.

*Ms. Adams-Perlac will review the instruction and will make sure all offenses in Utah Code section 76-5-407 are included.*

### **3. Sexual Offense Definitions**

### **Committee**

Ms. Jones stated that she believes the definition of penetration has been superseded by Utah Code section 76-5-407.

Ms. Klucznik recommended that someone look at the defining statute and at section 76-5-407 with regard to the crime specific definitions. *Ms. Adams-Perlac will review these definitions.*

Judge Blanch stated that *Couch* stands for the proposition that ordinarily, terms of common usage should not be defined for the jury, but when they ask for a definition, in which case they should receive a definition. Ms. Klucznik stated that she thinks the definitions should be limited to legal definitions. Judge McCullagh stated that we may want to hold on to the common usage definitions for judges to use if they are in trial and the jury requests a definition on a common term. The committee agreed that the common usage definitions should be separated from the legal definitions, but should be retained. *Ms. Adams-Perlac will separate the definitions into legal and non-legal categories.*

### **4. Other Business**

There was no other business discussed.

### **5. Adjourn**

*The meeting was adjourned at 1:10 p.m.* The next meeting will be held on Wednesday, March 5, 2014 at 12:00 p.m.

# Tab 2

1 **CR\_\_\_\_ Special Verdict Form. (Reading level 11.3)**

2

3 If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed  
4 (NAME OF RELEVANT OFFENSE), you must complete the special verdict form. You  
5 may check a box on the form only for a factor which you as the jury have found beyond  
6 a reasonable doubt. You may check one or more factors, as long as you are unanimous  
7 in your decision that each factor checked has been proven beyond a reasonable doubt.

# Tab 3

**Sexual Offense Instructions**

**Draft: February 26, 2014**

**CR1603 Sexual Abuse of a Minor. Approved 11062013. ....2**

**CR1604 Unlawful Sexual Activity with a Minor. Revision Approved 11062013. ....2**

**CR 1605 Unlawful Sexual Conduct with a 16 or 17 year old. Approved 11062013. ....3**

**SVF Unlawful Sexual Conduct with a 16 or 17 year old. Previously approved 11062013.....5**

**CR 1606 Rape. Approved 11062013.....6**

**CR 1607 Rape of a Child. Approved 12042013.....6**

**CR 1608 Object Rape. Approved 12042013 .....7**

**CR 1609 Object Rape of a Child. Approved 12042013 .....8**

**CR 1610 Forcible Sodomy. Approved .....8**

**CR 1611 Sodomy on a Child. Approved.....9**

**CR 1612 Forcible Sexual Abuse. Approved 12042013. ....10**

**CR 1613 Sexual Abuse of a Child. Approved 02052014.....10**

**CR 1614 Aggravated Sexual Abuse of a Child. ....11**

**SVF Aggravated Sexual Abuse of a Child. ....14**

**CR 1615 Aggravated Sexual Assault.....15**

**SVF Aggravated Sexual Assault.....16**

**CR 1616 Consent .....16**

**CR 1617 Penetration or Touching Sufficient to Constitute Offense.....17**

**CR 1618 Custodial Sexual Relations.....18**

**CR 1619 Custodial Sexual Misconduct.....18**

**CR 1620 Custodial Sexual Relations or Misconduct with Youth Receiving State Services.  
.....18**

**SVF Prior Conviction.....18**

**SVF Serious Bodily Injury.....18**

**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 conduct; and
5. (DEFENDANT'S NAME) was seven or more years older than (MINOR'S INITIALS).

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

**References**

Utah Code § 76-5-401.1.

**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 conduct.

[OR]

VARIATION B:

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

[OR]

VARIATION C:

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

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

### **References**

Utah Code § 76-5-401.

### **Committee Notes**

**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:

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- 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 conduct, (MINOR'S INITIALS) was 16 or 17 years old; and
  4. At the time of the conduct, (DEFENDANT'S NAME) was:
    - a. [seven or more but less than ten years older than (MINOR'S INITIALS), and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age]; or
    - b. [ten or more years older than (MINOR'S INITIALS)].

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

### References

Utah Code § 76-5-401.2.

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

**SVF Unlawful Sexual Conduct with a 16 or 17 year old. (special verdict form).  
Previously approved 11062013. (Reading Level 34)**

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

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

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

- 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

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

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

**References**

Utah Code § 76-5-402.

**Committee Notes**

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

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

### References

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

### Committee Notes

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

### References

Utah Code § 76-5-402.2.

**Committee Notes**

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

**References**

Utah Code § 76-5-402.3.

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);

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

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

### **References**

Utah Code § 76-5-403.

### **Committee Notes**

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

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

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

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

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

### **References**

Utah Code § 76-5-403.1.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

**Committee Notes**

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

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

**References**

Utah Code § 76-5-404.

**Committee Notes**

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

**CR 1613 Sexual Abuse of a Child. Approved 02052014 (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

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on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. touched the anus, buttocks, or genitalia of (MINOR'S INITIALS); or
  - b. touched (MINOR'S INITIALS)'s breast; or
  - c. took indecent liberties with (MINOR'S INITIALS); or
  - d. caused (MINOR'S INITIALS) to take indecent liberties with (DEFENDANT'S NAME) or another; and
3. Did so with the intent to:
  - a. cause substantial emotional or bodily pain to any person; or
  - b. arouse or gratify the sexual desire of any person; and
4. (MINOR'S INITIALS) was under 14 years old at the time of the conduct.

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

### References

Utah Code § 76-5-404.1.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

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

(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

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4. (MINOR'S INITIALS) was under 14 years old at the time of the offense; and
5. In conjunction with the above offense:
  - a. the offense was committed by the use of a dangerous weapon, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;
  - b. (DEFENDANT'S NAME) caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense;
  - c. (DEFENDANT'S NAME) was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense;
  - d. (DEFENDANT'S NAME) used, showed, or displayed pornography or caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense;
  - e. (DEFENDANT'S NAME), prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;
  - f. (DEFENDANT'S NAME) committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;
  - g. (DEFENDANT'S NAME) committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;
  - h. (DEFENDANT'S NAME) occupied a position of special trust in relation to (MINOR'S INITIALS); "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 (MINOR'S INITIALS), 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;
  - i. (DEFENDANT'S NAME) encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person, human trafficking, or human smuggling; or
  - j. (DEFENDANT'S NAME) caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

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

## **Sexual Offense Instructions**

**DRAFT: February 26, 2014**

### **References**

Utah Code § 76-5-404.1.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

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

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

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

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

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Foreperson

**References**

Utah Code § 76-5-404.1.

**CR 1615 Aggravated Sexual Assault. (See statute listed below)**

**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.

**SVF Aggravated Sexual Assault.**

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

You must find that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] did not consent to an act of [Sexual Intercourse] [Rape] [Attempted Rape] [Rape of a Child] [Attempted Rape of a Child] [Object Rape] [Attempted Object Rape] [Object Rape of a Child] [Attempted Object Rape of a Child] [Sodomy] [Attempted Sodomy] [Forcible Sodomy] [Attempted Forcible Sodomy] [Sodomy on a Child] [Attempted Sodomy on a Child] [Forcible Sexual Abuse] [Attempted Forcible Sexual Abuse] [Sexual Abuse of a Child] [Attempted Sexual Abuse of a Child] [Aggravated Sexual Abuse of a Child] [Attempted Aggravated Sexual Abuse of a Child] [Sexual Abuse] if:

1. [(VICTIM'S NAME)] [(MINOR'S INITIALS)] expressed lack of consent through words or conduct;
2. (DEFENDANT'S NAME) overcame [(VICTIM'S NAME)] [(MINOR'S INITIALS)] through the application of physical force or violence;
3. (DEFENDANT'S NAME) overcame the victim through concealment or by the element of surprise;
4. (DEFENDANT'S NAME) coerced the victim to submit by threatening to retaliate in the:
  - a. immediate future against [(VICTIM'S NAME)] [(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)] [(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to execute the threat; or
  - b. future against [(VICTIM'S NAME)] [(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)] [(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to execute the threat;

5. [(VICTIM'S NAME)] [(MINOR'S INITIALS)] did not consent and (DEFENDANT'S NAME) knew [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was unconscious, unaware that the act was occurring, or was physically unable to resist;
6. (DEFENDANT'S NAME) knew that as a result of mental illness or defect, [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was incapable at the time of the act of either appraising the nature of the act or of resisting it;
7. (DEFENDANT'S NAME) knew that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] submitted or participated because [(VICTIM'S NAME)] [(MINOR'S INITIALS)] believed that (DEFENDANT'S NAME) was [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s spouse;
8. (DEFENDANT'S NAME) intentionally impaired the [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s power to appraise or control [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s conduct by giving [(VICTIM'S NAME)] [(MINOR'S INITIALS)] a substance without [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s knowledge;
9. (MINOR'S INITIALS) was younger than 14 years old at the time of the act;
10. At the time of the act, (MINOR'S INITIALS) was younger than 18 years old and (DEFENDANT'S NAME) was (MINOR'S INITIALS)'s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation (MINOR'S INITIALS);
11. (MINOR'S INITIALS) was 14 years old or older, but younger than 18 years old, and (DEFENDANT'S NAME) was more than three years older than (MINOR'S INITIALS) and enticed or coerced (MINOR'S INITIALS) to submit or participate, under circumstances not amounting to a force or threat; or
12. (DEFENDANT'S NAME) was a health professional or religious counselor, [he] [she] committed the act under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act (MINOR'S INITIALS) reasonably believed the act as for medically or professionally appropriate diagnosis, counseling, or treatment so that (MINOR'S INITIALS) could not reasonably be expected to have resisted.

**CR 1617 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 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, Sodomy, 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.

**CR 1618 Custodial Sexual Relations.**

**CR 1619 Custodial Sexual Misconduct.**

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

**SVF Prior Conviction**

**SVF Serious Bodily Injury**

# Tab 4

General Legal Definitions

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

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

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

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

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

30 “Serious bodily injury” means bodily injury that creates or causes serious permanent  
31 disfigurement, protracted loss or impairment of the function of any bodily member or  
32 organ, or creates a substantial risk of death. Utah Code § 76-1-601.  
33

Non-Legal Definitions

34  
35  
36 “Sexual intercourse” means any touching of the female’s genitals by the actor’s penis,  
37 however slight.  
38

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

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

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

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

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

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

"Touching" means any touching, even if accomplished through clothing. Utah Code § 76-5-407.

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

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

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

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

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

**76-5-402 Rape**

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

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

"Sexual intercourse" does not require penetration.

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

93 **76-5-402.2 Object Rape of a Child**

94  
95 “Penetration” or “touching” means any touching, however slight. Utah Code § 76-5-407.  
96 Touching requires contact with the victim’s skin.

97  
98 **76-5-403 Sodomy/Forcible Sodomy**

99  
100 “Touching” means any touching, however slight. Utah Code § 76-5-407. Touching  
101 requires contact with the victim’s skin.

102  
103 **76-5-403.1 Sodomy on a Child**

104  
105 “Touching” means any touching, however slight, even if accomplished through clothing.  
106 Utah Code § 76-5-407.

107  
108 **76-5-404 Forcible Sexual Abuse**

109  
110 “Touching” requires contact with the victim’s skin. *State v. Jacobs*, 2006 UT App 356.  
111 “Even when the specified body parts are touched through clothing, the perpetrator may  
112 still be punished under the indecent liberties prong of the statute when, considering all  
113 the surrounding circumstances, the conduct is comparable to the touching that is  
114 specifically prohibited.” *State v. Jacobs*, 2006 UT App 356, ¶9.

115  
116 **76-5-404.1 Sexual Abuse of a Child**

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

119  
120 **76-5-406 Sexual Offenses without Victim’s Consent**

121  
122 “To Retaliate” includes threats of physical force, kidnapping, or extortion. Utah Code §  
123 76-5-406(4)(b).

124  
125 “Health Professional” means an individual who is licensed or who holds himself or  
126 herself out to be licensed, or who otherwise provides professional physical or mental  
127 health services, diagnosis, treatment, or counseling including, but not limited to, a  
128 physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social  
129 service worker, clinical social worker, certified social worker, marriage and family  
130 therapist, professional counselor, psychiatrist, psychologists, psychiatric mental health  
131 nurse specialist, or substances abuse counselor. Utah Code § 76-5-406(12)(a).

132  
133 “Religious Counselor” means a minister, priest, rabbi, bishop, or other recognized  
134 member of the clergy. Utah Code § 76-5-406(12)(b).

135  
136 “Position of Special Trust” means that position occupied by a person in a position of  
137 authority, who, by reason of that position is able to exercise undue influence over the  
138 victim, and includes, but is not limited to, a youth leader or recreational leader who is an

139 adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,  
140 employer, foster parent, babysitter, adult scout leader, natural parent, stepparent,  
141 adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a  
142 parent. Utah Code § 76-5-404(4)(h).

143

144 **76-5-412 Custodial sexual relations – Custodial sexual misconduct**

145

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

149

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

154

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

160

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