

AGENDA

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

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

Wednesday, October 2, 2013
12:00 p.m. to 2:00 p.m.
Judicial Council Room

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| 1. Welcome and Approval of Minutes (Tab 1) | Judge Denise Lindberg |
| 2. Committee Note on Construction of Criminal Jury Instructions | Judge Denise Lindberg |
| 3. Child Sex Offenses and Strict Liability (Tab 2) | Alison Adams-Perlac |
| 4. Sexual Offense Instructions (Tab 3) | Committee |
| • Sodomy on a Child | |
| • Forcible Sexual Abuse | |
| • Sexual Abuse of a Child | |
| • Aggravated Sexual Abuse of a Child | |
| • Penetration or Touching Sufficient to Constitute Offense | |
| 5. Sexual Offenses Instruction Table (Tab 4) | Alison Adams-Perlac |
| 6. Other Business | |
| 7. 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

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

PRESENT

Judge Denise Lindberg - Chair
Professor Jensie Anderson
Sandi Johnson
Linda Jones
Judge Brendan McCullagh
John West

EXCUSED

Diane Abegglen
Mark Field
Karen Klucznik
Scott Young

STAFF

Alison Adams-Perlac

1. Welcome and Approval of Minutes

Judge Denise Lindberg

Judge Lindberg welcomed the committee. As a quorum was not present, the committee tabled approval of the minutes from the last meeting.

When a quorum was later present, Judge McCullagh moved to approve the minutes from the August 7, 2013 meeting. Ms. Johnson seconded the motion and it passed unanimously.

2. Committee Note on Use of Victim's Name and Minor's Initials

Alison Adams-Perlac

Ms. Adams-Perlac discussed the committee note she drafted on use of a victim's name and a minor's initials. She suggested putting the note in an introduction to the instructions. Mr. West stated that there may be other things that belong in an introduction. Judge Lindberg stated that the homicide section has an introduction. Ms. Johnson stated that the introduction should begin with the MUJI template, the committee note proposed by Ms. Adams-Perlac, the special verdict forms, and anything else that applies to all the instructions. Ms. Jones suggested an intro to the sexual assault section. Judge Lindberg stated that the template could be highlighted and explained in an introduction at the beginning of the instructions. Ms. Johnson suggested that the section be called "MUJI Construction" instead of introduction. Ms. Jones suggested that the section be alphabetized. Judge Lindberg stated her concern that people still use the language in the old instructions where the presumption is reversed. She suggested that the introduction contain a note that the instructions are constructed to maintain the presumption of innocence and that is the burden of proof.

Ms. Adams-Perlac and Judge Lindberg will draft an introduction section and bring it back for discussion at the next meeting.

Ms. Johnson stated that she would prefer not to use the word “policy”. Ms. Jones suggested using “recommendation” instead of “policy.” Professor Anderson suggested that the note state at the beginning, “the committee recommends the...”

When a quorum was present, Professor Anderson moved to amend the proposed note to “the committee recommends...” Judge McCullagh seconded the motion and it passed unanimously.

3. Unlawful Sexual Conduct with a Minor

Sandi Johnson

The committee reviewed Ms. Johnson’s proposed instruction on unlawful sexual conduct with a minor. Professor Anderson suggested removing “with a 16 or 17 year old” at the beginning of the proposed instruction, since it is listed as an element. Ms. Johnson stated that the crime is called “unlawful sexual conduct with a 16 or 17 year old. Judge Lindberg said it has been our policy to name the crime as listed in the statute.

Judge McCullagh joined the meeting and the committee returned to agenda items 1 and 2. After resolving items 1 and 2, the committee returned to its discussion of the proposed instruction on unlawful sexual conduct with a minor.

Judge Lindberg recommended changing the language to “seven to nine” from “seven, eight, or nine”. Judge McCullagh moved to approve the language change to “seven to nine.” Ms. Johnson seconded the motion and it passed unanimously.

The committee reviewed the special verdict form. Both the third and the fourth bullet should include “intent to arouse or gratify the sexual desire of any person” and “with the intent to cause substantial emotional or bodily pain.” Judge McCullagh suggested that the “intent to arouse or gratify” language should go first since it is the longer clause.

Professor Anderson moved to approve the special verdict form with changes to bullets 3 and 4. Judge McCullagh seconded the motion and it passed unanimously.

4. In-custody Informant

Committee

The committee discussed the proposed in-custody informant instruction. Judge McCullagh suggested changing the word “informer” to “informant” throughout the instruction. Ms. Johnson suggested stating “in-custody informant” throughout. Judge McCullagh suggested that only “informant” is needed. Ms. Adams-Perlac suggested adding a committee note that this instruction is specific only to the kind of informant in *Charles*. The committee stated that the attorneys should be able to argue whether the instruction should be limited to an informant like the one in *Charles*. The committee decided that the instruction should include a neutral reference to *Charles*.

Professor Anderson stated that the first sentence of the second paragraph is not correct because it needs more than just a lighter sentence, etc. She suggested that it leaves out monetary payment and other incentives. She suggested that the language should be, “The witness who receives an incentive for his testimony should be...” then as outlined in factors 1 and 2. Ms. Jones suggested adding, “for example”. Ms. Johnson suggested taking the first sentence, and making it factor 6, and combining the rest of paragraph 2 with paragraph 1. Professor Anderson suggested adding the first sentence of paragraph 2 to the first factor. Ms. Jones expressed concern that such a change would make that sentence a factor, not an inference, and the “motive to testify falsely” message would be lost. Judge Lindberg stated that the issue is the inconsistency in *Charles*. *Charles* approved an instruction that is broader than the “in-custody informant” situation in *Charles*.

Professor Anderson proposed that the first paragraph be changed as follows: “bear in mind... different from that of an ordinary witness, including the motive to testify falsely”, then adding “or believes he may receive” to the first factor. Mr. West and Ms. Jones expressed concern with changing the instruction too much from the one listed in *Charles*. Ms. Jones said judges may default to the *Charles* footnote. Professor Anderson stated that the instruction makes more sense taken exactly as it is in the *Charles* footnote.

Ms. Jones moved to adopt the Charles instruction verbatim, calling it “in-custody informant”, and changing “informer” to “informant” throughout. Mr. West seconded the motion and it passed unanimously.

5. Object Rape

Committee

The committee discussed the proposed object rape instruction.

Judge McCullagh moved to approve the instruction as written, but reversing the “based on the evidence” clause. Mr. West seconded the motion and it passed unanimously.

6. Object Rape of a Child

Committee

The committee discussed the proposed object rape of a child instruction. Judge Lindberg stated that a consent instruction is needed. Ms. Jones stated that she has a case before the Utah Supreme Court on consent, and the committee decided to wait to draft a consent instruction until that opinion is delivered.

Mr. West moved to approve the instruction as written, but reversing the “based on the evidence” clause. Judge McCullagh seconded the motion and it passed unanimously.

7. Forcible Sodomy

Committee

The committee discussed the proposed forcible sodomy instruction.

Judge McCullagh moved to approve the instruction as written, but reversing the “based on the evidence” clause. Ms. Johnson seconded the motion. The motion passed with five approving it, and Ms. Jones abstaining from the vote.

8. Sodomy on a Child

Committee

The committee discussed the sodomy on a child instruction. The committee suggested moving the “based on the evidence” clause, and striking “regardless of the sex of any participant”. Ms. Jones stated that she thinks sodomy on a child is a strict liability crime, so that the general intent language is not necessary.

The committee requested that Ms. Adams-Perlac research whether sodomy on a child is a strict liability crime, and review the Utah Supreme Court’s *Martinez* case on sexual conduct with a minor.

9. Child Pornography Instructions

Committee

These instructions were tabled for a future meeting.

10. Other Business

11. Adjourn

The meeting was adjourned.

Tab 2

Child Sex Offenses and Strict Liability

Both the Utah Supreme Court and the Utah Court of Appeals have held the child sex offenses are strict liability crimes, and thus instructions on these offenses do not require intent language. Under the *Martinez* cases and Utah Code Section 76-2-304.5, the following are strict liability crimes: child kidnaping, rape of a child, object rape of a child, sodomy on a child, sexual abuse of a child, aggravated sexual abuse of a child, unlawful sexual activity with a minor, sexual abuse of a minor, and any of the above attempted offenses. Some of these offenses already have approved instructions with intent language, which will need to be amended.

State v. Martinez, 2002 UT 80, 52 P.3d 1276.

¶ 11 The plain language of section 76-5-401 does not contain a mens rea element yet we may look to the relationship between other sections of the criminal code and the section at issue for further guidance on legislative intent. See *State v. W.C.P.*, 1999 UT App 35, ¶ 8, 974 P.2d 302 (“In discerning the purpose of [the statute], we are guided by the relationship [of the section] to other sections of the criminal code.”); see also *State v. Bishop*, 753 P.2d 439, 468 (Utah 1988) (“[W]hen possible, statutes must be interpreted harmoniously with other statutes relevant to the subject matter.”). Section 76-2-304.5, entitled “Mistake as to victim's age not a defense,” explicitly prohibits a defendant from raising mistake as to the victim's age as a defense to a violation of section 76-5-401. Section 76-2-304.5 states:

It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401 ... that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

Utah Code Ann. § 76-2-304.5(2)(2001). This section clearly states the legislative intent. The plain language of both section 76-2-304.5 and 76-5-401 shows that the legislature intended to impose criminal responsibility for sexual activity with a minor whether or not the defendant knew the victim's true age.^{FN5} Allowing the defense of mistake as to the victim's age, or requiring the prosecution to prove a mens rea for a violation of section 76-5-401 would render section 76-2-304.5 inoperative.^{FN6}

^{FN5}. As the court of appeals noted below, it previously held that parallel language in section 76-2-304.5(1) shows a clear legislative intent to impose strict liability for sexual offenses against children under fourteen. *State v. Martinez*, 2000 UT App 320, ¶ 14, 14 P.3d 114 (citing *W.C.P.*, 1999 UT App 35, ¶¶ 6-10, 974 P.2d 302, cert. denied, 984 P.2d 1023).

State v. Martinez, 2000 UT App 320, 14 P.3d 114.

¶ 8 The plain language of Utah's criminal code explicitly precludes the defense of mistake of fact regarding the victim's age in crimes involving sexual acts against children:

It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401, ... that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

Utah Code Ann. § 76-2-304.5(2) (1999). The clear language of this section supports the conclusion that the

legislature intended to render a defendant's state of mind regarding the age of the victim irrelevant. Thus, the element of the victim's age under section 76-5-401 is one of strict liability.^{EN3}

76-2-304.5. Mistake as to victim's age not a defense.

(1) It is not a defense to the crime of child kidnapping, a violation of Section **76-5-301.1**; rape of a child, a violation of Section **76-5-402.1**; object rape of a child, a violation of Section **76-5-402.3**; sodomy on a child, a violation of Section **76-5-403.1**; sexual abuse of a child, a violation of Section **76-5-404.1**; aggravated sexual abuse of a child, a violation of Subsection **76-5-404.1(4)**; or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section **76-5-401**; sexual abuse of a minor, a violation of Section **76-5-401.1**; or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(3) It is not a defense to the crime of aggravated human trafficking or aggravated human smuggling, a violation of Section **76-5-310**, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Subsection **76-5-401.2(2)(a)(ii)**, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(5) It is not a defense to any of the following crimes that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age:

- (a) patronizing a prostitute, a violation of Section **76-10-1303**;
- (b) aggravated exploitation of a prostitute, a violation of Section **76-10-1306**; or
- (c) sexual solicitation, a violation of Section **76-10-1313**.

Tab 3

CR1603 Sexual Abuse of a Minor. Published.

The defendant, (NAME), is charged with Sexual Abuse of a Minor. You cannot convict [him][her] of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. The defendant, (NAME);
2. Intentionally, knowingly, or recklessly:
 - a. touched the anus, buttocks, or any part of the genitals of a person age 14 or 15 at the time of the offense;
 - b. touched the breast of a female person age 14 or 15 at the time of the offense;
 - c. otherwise took indecent liberties with a person age 14 or 15 at the time of the offense; or
 - d. caused a person age 14 or 15 at the time of the offense 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]; and
4. The defendant was seven years or more older than the minor.

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.

CR1604 Unlawful Sexual Activity with a Minor. Published.

The defendant, (NAME), is charged [in Count _____] with 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. The defendant, (NAME);
2. Intentionally, knowingly, or recklessly had sexual intercourse;
3. With [minor's initials]; and
4. [minor's initials] was 14 or 15 at the time of the act.

[OR]

VARIATION B:

1. The defendant, (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 at the time of the act.

[OR]

VARIATION C:

1. The defendant, (NAME);
2. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person];
3. 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; and
4. [minor's initials] was age 14 or 15 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.

Committee Notes

This instruction includes bracketed language. Please review and edit as appropriate before finalizing the instruction.

CR 16__ Unlawful sexual conduct with a 16 or 17 year old. Approved.

The defendant, (NAME), is charged [in Count ____] with 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. That the defendant, _____ (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 the genitals of [MINOR'S INITIALS], or touched the breast of [MINOR'S INITIALS], 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, the defendant was:

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- A) Seven to nine years older than [MINOR’S INITIALS] and the defendant knew or reasonably should have known the age of [MINOR’S INITIALS]; or
- B) Was 10 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, a special verdict form will be necessary.

CR 16__ Unlawful sexual conduct with a 16 or 17 year old. (special verdict form). Approved.

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

THE STATE OF UTAH,	:	
	:	SPECIAL VERDICT
Plaintiff,	:	
	:	Count [#]
-vs-	:	
	:	
[Name],	:	
	:	Case No. [**]
Defendant.	:	

We, the jury, having found the defendant, [Name], guilty of Unlawful Sexual Conduct with a 16 or 17 Year Old, as charged in Count [#] of the Information, unanimously find beyond a reasonable doubt the defendant engaged in the following “sexual conduct” (check all that apply):

- The defendant had sexual intercourse with [MINOR’S INITIALS]; or
- 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, regardless of the sex of

either participant; or

- 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 the genital or anal opening of [MINOR'S INITIALS] by any foreign object, substance, instrument, or device, including a part of the human body, regardless of the sex of any participant; or
- 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 the genitals of [MINOR'S INITIALS], or touched the breast of [MINOR'S INITIALS], 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 16__ Rape. Approved

The defendant, _____(NAME), is charged [in Count__] with 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 the defendant _____ (NAME);
2. Intentionally, knowingly, or recklessly;
3. Had sexual intercourse with another person;
4. Without that person'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 16__ Rape of a child. Approved

The defendant, _____(NAME), is charged [in Count__] with 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. That the defendant_____ (NAME);
2. Intentionally, knowingly, or recklessly;
3. Had sexual intercourse with another person;
4. Who was under 14 years of age 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.

Committee Notes

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

CR 16__ Object rape. Approved

The defendant, (NAME), is charged [in Count ____] with 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. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
 - a. Caused the penetration, however slight;
 - b. Of the genital or anal opening of [VICTIM'S NAME] or [MINOR'S INITIALS];
 - 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] or [MINOR'S INITIALS] or
 - b. arouse or gratify the sexual desire of any person; and
4. Without [VICTIM'S NAME]'s or [MINOR'S INITIALS]'s consent.

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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 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 16__ Object rape of a child. Approved

The defendant, (NAME), is charged in [Count ____] with 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. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
 - a. Caused the penetration, however slight;
 - b. Of the genital or anal opening of [MINOR'S INITIALS];
 - 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 of age 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.

Committee Notes

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

CR 16__ Sodomy.

CR 16__ Forcible Sodomy. Approved

The defendant, (NAME), is charged in [Count ____] with 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. That the defendant, (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 16__ Sodomy on a child.

READING LEVEL 12.2

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

1. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
3. Committed a sexual act with [MINOR'S INITIALS], involving the genitals of one person and the mouth or anus of another, regardless of the sex of either participant; and
4. [MINOR'S INITIALS] was under 13 years of age or younger 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.

Committee Notes

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

CR 16__ Forcible sexual abuse.

READING LEVEL 6.4

The defendant, _____ (NAME), is charged [in Count__] with 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, based on the evidence:

1. The defendant _____ (NAME);
2. With the intent to cause substantial emotional or bodily pain to any person, or with the intent to arouse or gratify the sexual desire of any person;
3. Intentionally, knowingly, or recklessly:
 - a. Touched the anus, buttocks, or genitals of a person who was 14 years of age or older at the time of the act;
 - b. Touched the breast of a female who was 14 years of age or older at the time of the act;
 - c. Took indecent liberties with a person who was 14 years of age or older at the time of the act; or
 - d. Caused a person who was 14 years of age or older at the time of the act to take indecent liberties with the actor or another;
4. Without consent of the other person.

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 16__ Sexual abuse of a child.

READING LEVEL 12.2

The defendant, _____ (NAME), is charged [in Count__] with 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:

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1. The defendant, (NAME);
2. With the intent to cause substantial emotional or bodily pain to any person, or with the intent to arouse or gratify the sexual desire of any person;
3. Intentionally, knowingly, or recklessly:
 - a. Touched the anus, buttocks, or genitalia of a person who was under 14 years of age at the time of the act;
 - b. Touched the breast of a female who was under 14 years of age at the time of the act;
 - c. Took indecent liberties with a person who was under 14 years of age at the time of the act; or
 - d. Caused a person who was under 14 years of age at the time of the act to take indecent liberties with the actor or another;

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.

Committee Note

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

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

THE STATE OF UTAH,

:

SPECIAL VERDICT

Plaintiff,

:

Count [#]

-vs-

:

[Name],

:

Case No. [**]

Defendant.

:

We, the jury, having found the defendant, [Name], unanimously guilty of Sexual Abuse of a Child, as charged in Count [#] of the Information, unanimously find the State has proven beyond a reasonable doubt that the defendant committed Aggravated Sexual Abuse of a Child as follows:

- 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 accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense; or
- the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense; or
- the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense; or
- the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense; or
- the accused 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 accused 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 accused 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 accused 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 offense was committed by a person who 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, 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[**].

Foreperson

CR 16__ Aggravated sexual assault (Special Verdict Form).

CR 16__ Consent. TABLED UNTIL A DECISION IS ISSUED IN LINDA’S CASE

CR 16__ 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 acts of sodomy] [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].

Committee Notes

Use this instruction with instructions 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, Aggravated Sexual Abuse of a Child.

Add note to instructions for the above offenses to see this instruction.

CR 16__ Custodial sexual relations.

CR 16__ Custodial sexual misconduct.

CR 16__ Custodial sexual relations or misconduct with youth receiving state services.

Tab 4

Sex Offense Instruction Table as of 9/25/2013

Statute	Offense	Status
76-5-401	Unlawful sexual activity with a minor	Published
76-5-401.1	Sexual abuse of a minor	Published
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	Approved
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old - special verdict form	Approved
76-5-402	Rape	Approved
76-5-402.1	Rape of a child	Approved
76-5-402.2	Object rape	Approved
76-5-402.3	Object rape of a child	Approved
76-5-403	Sodomy	
76-5-403	Forcible sodomy	Approved
76-5-403.1	Sodomy on a child	10/2/2013
76-5-404	Forcible sexual abuse	10/2/2013
76-5-404.1	Sexual abuse of a child	10/2/2013
76-5-404.1	Aggravated sexual abuse of a child	10/2/2013
76-5-405	Aggravated sexual assault – special verdict form	
76-5-406	Consent	
76-5-407	Touching sufficient to constitute offense	10/2/2013
76-5-412	Custodial sexual relations	
76-5-412	Custodial sexual misconduct	
76-5-413	Custodial sexual relations or misconduct with youth receiving state services	