

# AGENDA

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

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

Wednesday, November 6, 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. Mens Rea Instructions Revised (Tab 2)   | Judge Denise Lindberg |
| 3. Introductory Committee Note (Tab 3)     | Judge Denise Lindberg |
| 4. CR 301 (Tab 4)                          | Alison Adams-Perlac   |
| 5. Sexual Offense Instructions (Tab 5)     | Committee             |
| 6. Definitions (Tab 6)                     | Sandi Johnson         |
| 7. Other Business                          |                       |
| 8. 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, October 2, 2013  
12:00 p.m. to 2:00 p.m.  
Judicial Council Room

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### PRESENT

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

### EXCUSED

Diane Abegglen  
Professor Jensie Anderson  
Scott Young

### 1. Welcome and Approval of Minutes

**Judge Denise Lindberg**

Judge Lindberg welcomed the committee. She introduced Judge James Blanch, Judge Michael Westfall, and Professor Jennifer Andrus as new members of the committee.

Judge Lindberg discussed the goal of the committee to make sure the instructions are as plain language as possible. She stated her goal that the instructions be drafted at reading level of grade 9.

The new members of the committee discussed their interest in the committee, and committee members introduced themselves to the new members.

*Mr. West moved to approve the minutes from the September 9, 2013 meeting. Ms. Johnson seconded the motion and it passed unanimously.*

### 2. Committee Note on Construction of Criminal Jury Instructions

**Judge Denise Lindberg**

This item was tabled for discussion at the next meeting.

### 3. Child Sex Offenses and Strict Liability

Alison Adams-Perlac

Ms. Adams-Perlac discussed the research she did on child sex offenses and strict liability. She stated that she reviewed *State v. Martinez*, 2002 UT 80, 52 P.3d 1276, *State v. Martinez*, 2000 UT 320, 14 P.3d 114, and Utah Code section 76-2-304.5. She stated that the *Martinez* cases suggest that the age element of a child sex offense is strict liability, even if the act itself is not. Based on her research, she thinks some of the approved instructions on these offenses will need to be amended so that the general intent language does not apply to the age element.

Ms. Jones stated that she thinks there are sexual offenses against minors that are strict liability crimes. She thinks *Martinez* identifies the sexual offense as a strict liability crime. She agreed with Ms. Adams-Perlac's research that there may be some sexual assault statutes that do not require proof of mens rea. Ms. Klucznik agreed that the age element is strict liability.

Ms. Jones stated that there is case law that says when you have a mental state element, it goes to all of the elements of the crime, but she thinks that rape of a child and object rape of a child are strict liability crimes. Ms. Johnson stated that strict liability goes to the intent of the defendant, and the jury still needs to find that the victim is under the age of 14. She stated that she thinks the instructions have been drafted so that the general intent language goes to the act, and does not apply to the age element. Ms. Jones stated that she thinks some of these offenses are strict liability so that intent does not need to be proven with regard to the act, but that you only need to prove that the defendant had sex with someone under the age of 14. Ms. Johnson stated that she would rather the instruction state the general intent language.

Ms. Klucznik stated that the statute states that a mental state is required unless the statute specifically states strict liability. She stated that none of these statutes speak in terms of strict liability. Ms. Jones stated that there is an argument a prosecutor could make that it is a strict liability crime, and there is an argument a defense attorney could make that it requires a mental state. She asked whether the committee needs to alert the judges and attorneys using these instructions that the mens rea is unclear. She suggested putting the mental state in brackets with a committee note stating that the statute does not specify the mental state, but there are cases that raise questions of strict liability, and that it may need to be resolved.

Ms. Adams-Perlac stated that the way she read the statute with the case law, it is strict liability only as to the age element. Ms. Jones stated that she thinks *Martinez* only addressed age, because that was the issue in the case. There are cases that state whatever the mental state is, it goes to all of the elements of the offense.

Judge McCullagh stated that the committee had this argument at the beginning of their discussion of sexual offenses. He stated that these statutes have second non-mens rea intents, for example, with the intent to cause emotional pain or with the intent to arouse or gratify. Ms. Klucznik stated that the committee's decision turned on case law. Ms. Jones stated that we also have a statutory element in those crimes that specify intent, that indicate that those crimes are not strict liability.

Judge Lindberg stated that at the very least, there should be something in a committee note to explain the concern. Ms. Klucznik stated that she would be concerned about have such a note. Ms. Jones stated that if it is not clear to us, we can either pass on the instruction, or we should alert everyone that we do not know the answer here.

Judge Westfall stated that he does not think the appellate court in *Martinez* had the ability to rewrite the code, and if the legislature has said that there has to be intent, it would be inappropriate to interpret *Martinez* to override the legislature. Ms. Jones stated her agreement, but said that she is focusing on those statutes that do not have a specific mental state indicated.

Ms. Jones stated the rape of a child instruction, as an example. She stated that she thinks rape of a child is a strict liability crime. She stated that it does not require that the person did it intentionally, knowingly, or recklessly. She said that it is a crime to have sex with a 14 year old, even if it was not done intentionally. Ms. Klucznik stated that all these statutes must be read with the general intent statute.

Ms. Jones stated that under *W.P.C. v. State*, 1999 UT App 35, Utah Code section 76-5-402.1 when considered as part of the criminal code as a whole “clearly evinces a legislative intent to impose strict liability on any person having sexual intercourse with a child under the age of 14.” Ms. Jones stated that she thinks this case answers the question, and suggested striking the general intent language.

Judge Blanch stated that he thinks the instruction is ambiguous because it sounds like the intent language goes to the age element as well as the act.

The committee examined the *W.P.C.* case. The case is referring over to the age statute, stating that under age minors cannot consent. Judge McCullagh suggested rewording the instruction so that it is clear that the general intent language does not apply to the age element.

The committee discussed “under 14 years of age”. Ms. Johnson stated that reading it this way may make a juror think that it includes 14 year olds. Professor Andrus stated that a juror would associate it with 14 instead of 13. Mr. West stated that if age is an issue, the lawyers will be on top of it, and suggested that the committee use the language of the statute.

Ms. Adams-Perlac stated that the committee may need to depart from the language of the statute in many cases, to ensure that the instructions are understandable to jurors. Judge Lindberg stated that the charge from the Supreme Court was to do just that.

Judge Blanch suggested using “13 or younger”. Professor Andrus stated that would likely be easier for a juror to associate with under 14 years of age. Ms. Klucznik suggested going back to the original language. Judge McCullagh suggested doing the same, but creating a definition for “under 14 years of age.”

The committee amended the proposed rape of a child instruction as follows:

**CR 16\_\_ Rape of a child.**

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 had sexual intercourse with [MINOR’S INITIALS];
- ~~3. Had sexual intercourse with another person;~~
- ~~34. Who [MINOR’S INITIALS] 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.

Ms. Adams-Perlac checked the grade reading level with the proposed changes, and it was 9.4.

Judge Lindberg stated that the committee needs to include an instruction that defines “under 14 years of age.” Mr. West asked if it should be in a committee note. Judge Lindberg stated that it should be in an instruction. Ms. Johnson suggested that it go in a general definitions instruction page for the sexual assault instructions.

*Ms. Johnson will develop proposed general definitions for the sexual assault instructions.*

#### **4. Sexual Offense Instructions**

#### **Committee**

##### **a. Sodomy on a Child**

The committee then discussed the Sodomy on a Child instruction. Ms. Jones suggested combining elements 2 and 3. The committee discussed that the standard is “under 14 years of age”, and that “or younger” is unnecessary. Ms. Johnson suggested removing “regardless of the sex of either participant”. Judge McCullagh suggested adding “committing” before the crime in the first sentence to make it grammatically correct.

Judge Lindberg stated that the format for the earlier instructions needs to be standardized with the current instructions.

Judge Westfall asked if the location should be included as an element of the crime. The committee discussed that the location and jurisdiction are not an element under the statute. Judge Westfall also asked whether the specific intent language applies, for example, “with intent to cause sexual gratification.” Judge Lindberg stated that the specific intent only applies to certain crimes as stated in the statute.

Judge Lindberg stated that she typically separates the general intent language from the act element in her instructions. Ms. Klucznik stated that it is improper to do it in this case, because the general intent would apply to the age element.

Ms. Jones suggested having two elements: 1. the defendant, a. intentionally, knowingly, or recklessly; b. committed an act with [MINOR’S INITIALS]; and 2. [MINOR’S INITIALS] was under 14 years of age at the time of the offense.

The committee discussed whether the instruction should be reformatted back to three elements. Ms. Klucznik stated that the 1 and 2 elements would be one thought, and the third would be a complete thought.

Judge Westfall suggested reversing a. and b. He stated that it would make the “and” less awkward. Professor Andrus stated that it would also make them complete thoughts.

Ms. Klucznik asked why the committee’s uses brackets. Ms. Jones stated that brackets are used for optional language. Ms. Klucznik stated that “on or about” should also be in the DATE bracket. Ms. Klucznik suggested adding “committing” before the crime in the first sentence. Ms. Adams-Perlac asked if “committing” should be added to the MUJI elements template. The committee agreed that it should be.

Judge Westfall asked whether the date is an essential element. The committee agreed that it is not. Ms. Johnson stated that it is important to include the date to show that the minor was under 14 years of age on the date of the offense.

Ms. Adams-Perlac asked if the committee would like her to update the MUJI elements template. The committee discussed whether “committing” should be in brackets or not, and determined that it should not be in brackets.

Judge Lindberg stated that the parentheses change should be made to the standard template and be changed throughout the instructions. Ms. Klucznik stated that “on or about” should also be within the DATE brackets.

### **CR 16\_\_ Sodomy on a child.**

The defendant, (NAME), is charged [in Count \_\_\_\_] with committing 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);
  - 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
- ~~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~~
- ~~2.4. [MINOR’S INITIALS] was under 1413 years of age or younger 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.

*Ms. Jones moved to adopt the proposed rule as amended above, and also moved that Ms. Adams-Perlac would change brackets to parentheses on MINOR’S INITIALS. Ms. Klucznik seconded the motion, and it passed unanimously.*

*Mr. West will develop a definition of “under 14 years of age” and send it to Ms. Johnson.*

### **b. Sexual Abuse of a Child**

The committee discussed the Sexual Abuse of a Child instruction. Ms. Jones stated that this instruction needs to be revised to conform to the Rape of a Child and Sodomy on a Child instructions. Ms. Klucznik suggested modifying one of the instructions, revising the others to conform, and then bringing these instructions back for discussion at the next meeting.

*Ms. Jones moved to conform the Rape of a Child, Object Rape of a Child, and Sexual Abuse of a Child with the Sodomy on a Child instructions.*

Ms. Adams-Perlac stated that the instructions are typically published as a package, since the committee may make amendments to some of the earlier proposed instructions in a group based on discussions about later proposed instructions in a group. She also stated that it is helpful to approve the instructions, and then review the whole package prior to publication. Judge Blanch agreed that if the instructions come out once in a while, people are more inclined to review them.

*The committee agreed that the instructions should be published in a package, as opposed to individually, and that the committee should review the entire set once more prior to publication.*

### **c. Forcible Sexual Abuse**

Mr. West asked if this instruction needs to state that the person is “14 years of age or older”, or if it can just state “person.” Ms. Jones agreed with Mr. West. She stated that it is confusing, and the language does not add anything. Ms. Johnson suggested creating an element 5, stating “person was 14 years of age or older at the time of the act.”

Ms. Klucznik stated that the lines should be removed. Ms. Adams-Perlac stated that the lines are part of the standard template and asked if the standard template should be revised. The committee agreed that it should be.

*Ms. Adams-Perlac will update the MUJI elements template and conform the Sodomy on a Child instruction to it. Judge Lindberg and Ms. Adams-Perlac will then work to standardize these instructions and to conform them to the Sodomy on a Child instruction. They will make sure they all conform to the revised MUJI elements template, and they will circulate them for the next meeting.*

### **CR 16\_\_ Forcible sexual abuse.**

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;
  - b. Touched the breast of a female;
  - c. Took indecent liberties with a person; or
  - d. Caused a person to take indecent liberties with the actor or another;
4. Without consent of the other person.

5. (VICTIM'S INITIALS) was 14 years of age 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.

Judge Westfall left the meeting.

Ms. Jones stated that her consent case has been argued and they are awaiting a decision from the appellate court.

**d. Aggravated Sexual Abuse of a Child**

The committee discussed this special verdict form. Judge Blanch stated that it should say “having unanimously found”, instead of unanimously guilty. Ms. Johnson stated that the heading on the Unlawful Sexual Conduct with a 16 or 17 year old should be used for the beginning of this special verdict form.

*Ms. Adams-Perlac will update this form as requested by the committee and will circulate it for the next meeting.*

**e. Penetration or Touching Sufficient to Constitute Offense**

This instruction was tabled for further discussion at the next meeting.

**5. Sexual Offenses Instruction Table**

**Alison Adams-Perlac**

This table was provided to the committee to show which sexual offense instructions have been completed, and which ones need to be done.

**6. Other Business**

The next meeting will be held on Wednesday, November 6, 2013.

**7. Adjourn**

The meeting was adjourned.

# Tab 2

**CR302A Intentional as to Conduct, or as to the Result of Conduct.**

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.

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“Conduct” means either an act or an omission.

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**References**

Utah Code Ann. § 76-2-103(1).

**Committee Notes**

Some crimes with a mens rea of “intentionally” require that the defendant intentionally engage in conduct, while others require that the defendant intentionally cause a result. Jurors must be specifically instructed as to the definition of “intentionally” which applies to the crime(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, the jury must be instructed as to which definition applies to each count.

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 Ann. §§ 76-5-203 (2)(a), Murder; 76-5-109 (2)(a), Child abuse; and 76-5-301, Kidnapping.

~~**CR302B 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 Ann. § 76-2-103(1).~~

~~**Committee Notes**~~

~~Some crimes with a mens rea of “intentionally” require that the defendant intentionally engage in conduct, while others require that the defendant intentionally cause a result. Jurors must be specifically instructed as to the definition of “intentionally”~~

~~which applies to the crime(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, the jury must be instructed as to which definition applies to each count.~~

~~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 Ann. §§ 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 a statute where the conduct is an omission rather than an act is Failure to Report Child Abuse, Utah Code Ann. § 62A-4a-411.~~

### **CR303A Knowledge as to Result of Conduct or as to Circumstances**

#### **Surrounding Conduct.**

A person acts “knowingly” or “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. i[s aware that ([his]), ([her])] conduct is reasonably certain to cause a particular result.

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“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 with a mens rea of “knowingly” require that the defendant knowingly engage in conduct, while others require that the defendant knowingly cause a result. Jurors must be specifically instructed as to the definition of “knowingly” which applies to the crime(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, the jury must be instructed as to which definition applies to each count.

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 Ann. §§ 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.

#### **CR303B Knowledge as to Conduct or Circumstances Surrounding Conduct.**

A person acts "knowingly" or "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 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 with a mens rea of "knowingly" require that the defendant knowingly engage in conduct, while others require that the defendant knowingly cause a result. Jurors must be specifically instructed as to the definition of "knowingly" which applies to the crime(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, the jury must be instructed as to which definition applies to each count.

This instruction should be given in crimes in which the element of the defendant's 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.” Id. at 4046.

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

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

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

1. Certain circumstances exist relating to his conduct; or
2. {[hHis]}\_{[hHer]} conduct will cause a particular result, but [he] [she] consciously disregards the risk, and acts anyway.

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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 Ann. § 76-2-103(3).

**~~CR304B 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 Ann. § 76-2-103(3).~~

# Tab 3

## CR Introductory Note

The Advisory Committee on the Model Utah Jury Instructions – Criminal has drafted instructions with the following principles in mind:

1. Plain Language – While the committee recognizes the reticence of practitioners and judges to depart from statutory language, the Committee’s has been charged with using plain language drafting principles so that statements of the law will be clear to non-lawyers. Therefore, the committee has attempted to draft instructions that a jury can understand by accurately restating the law using simple structure and words of ordinary meaning.
2. Template – Where possible, the Committee has used the pattern elements instruction found in CR 301 as a template for other instructions. This instruction shifts the language away from that used in older instructions to more appropriately maintain the presumption of innocence. The Committee strongly encourages practitioners and judges to apply this pattern in drafting elements instructions for other crimes.
3. Brackets and Parentheses – Brackets [ ] are placed around an element or language that is optional, or when more than one language option is available, e.g. [him] [her]. Parentheses ( ) are used when information must be entered, e.g. (DEFENDANT’S NAME).
4. Use of Initials – The Committee has drafted the instructions so that only a victim’s initials should be used when the victim is a minor. If the victim is an adult, the Committee recommends that the victim’s name be used unless the court makes a specific judicial finding that use of the victim’s name is inappropriate in a particular case.

Where available, the Committee urges practitioners to use jury instructions from the Second Edition of the Model Utah Jury Instructions to the exclusion of other instructions. When an approved instruction is not available, practitioners should focus on substance, as well as format, in drafting proposed instructions.

# Tab 4

**1 CR301 Elements. Revised.**

2 ~~The defendant,~~ \_\_\_\_\_ (DEFENDANT'S NAME), is charged [in Count  
3 \_\_\_\_] with committing {(CRIME)} [on or about {DATE}]. You cannot convict {(him)}\_{(her)}  
4 of this offense unless, based on the evidence, you find beyond a reasonable doubt each  
5 of the following elements:

6

7 1. That ~~the defendant~~ \_\_\_\_\_ (DEFENDANT'S NAME);

8 2. ELEMENT ONE . . . ;

9 3. ELEMENT TWO . . . ;

10 4. [That the defense of \_\_\_\_\_ does not apply.]

11

12 After you carefully consider all the evidence in this case, if you are convinced that each  
13 and every element has been proven beyond a reasonable doubt, then you must find the  
14 defendant GUILTY. On the other hand, if you are not convinced that one or more of  
15 these elements has been proven beyond a reasonable doubt, then you must find the  
16 defendant NOT GUILTY.

17

**18 Committee Notes**

19 This is a pattern elements instruction that can apply in most cases. If the date or the  
20 location of a crime could be considered an element of the offense, those should be  
21 included within the list of elements. In some circumstances, identifying the specific  
22 counts might help the jury sort through offenses with similar elements. In those  
23 circumstances, the specific counts should be identified in the first paragraph.

24

25 With respect to the bracketed defense element, unless the statute directs otherwise, the  
26 trial court must instruct the jury that the State must disprove an affirmative, a partial, or  
27 a justification defense beyond a reasonable doubt.

# Tab 5

**CR1603 Sexual Abuse of a Minor. Published. (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 you find beyond a reasonable doubt, based on the evidence, 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 a person aged 14 or 15 at the time of the offense;
  - b. touched the breast of a female person aged 14 or 15 at the time of the offense;
  - c. otherwise took indecent liberties with a person aged 14 or 15 at the time of the offense; or
  - d. caused a person aged 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 or more years 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.

**References**

Utah Code § 76-5-401.1.

**CR1604 Unlawful Sexual Activity with a Minor. Published. (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 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 at the time of the act.

[OR]

VARIATION C:

1. (DEFENDANT'S 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.

**References**

Utah Code § 76-5-401.

**Committee Notes**

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

**CR 1605 Unlawful sexual conduct with a 16 or 17 year old. Approved. (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. That (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, the defendant was:
  - a. Seven to nine years older than (MINOR'S INITIALS) and the defendant 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 16\_\_ Unlawful sexual conduct with a 16 or 17 year old. (special verdict form).  
Approved. (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,	:	
	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	
	:	Count (#)
-vs-	:	
	:	
(DEFENDANT'S NAME)	:	
	:	Case No. (**)
Defendant.	:	

---

We, the jury, having found the defendant, (DEFENDANT'S 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; 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 (MINOR'S INITIALS)'s genital or anal opening by any foreign object, substance, instrument, or device, including a part of the human body; 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 (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 16\_\_ Rape. Approved. (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;
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. (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. That 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 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.  
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 16\_\_ Object rape. Approved. (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 16\_\_ Object rape of a child. Approved. (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. That (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 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.

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 16\_\_ 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. That (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 16\_\_ 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. That (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 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 § 76-5-403.1.  
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 16\_\_ Forcible sexual abuse. (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 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;
  - b. Touched the breast of a female;
  - c. Took indecent liberties with a person; or
  - d. Caused a person to take indecent liberties with the actor or another;
4. Without consent of the other person.
5. Person was 14 years of age 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 16\_\_ 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 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 § 76-5-404.1.  
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 16\_\_ 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,	:	
	:	<b>SPECIAL VERDICT</b>
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 \_\_\_\_\_ of the Information, unanimously find beyond a reasonable doubt that defendant committed Aggravated Sexual Abuse of a Child as follows (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 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 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 16\_\_ Custodial sexual relations.**

**CR 16\_\_ Custodial sexual misconduct.**

**CR 16\_\_ Custodial sexual relations or misconduct with youth receiving state services.**

# Tab 6

## Generals:

- Age:
  - “Under 14 years of age” means that the child had not yet reached his or her 14<sup>th</sup> birthday at the time of the act in question.
  - “14 years of age or older” means that the person had reached his or her 14<sup>th</sup> 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
- “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

#### 76-5-401.1 Sexual Abuse of a Minor

- No specific definitions
- Touching requires contact with the victim's skin

#### 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

### 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 ¶19

#### 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. Glenn*, 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