

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, December 4, 2013
12:00 p.m. to 1:30 p.m.
Judicial Council Room

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| 1. Welcome and Approval of Minutes (Tab 1) | Judge Denise Lindberg |
| 2. Mens Rea Instructions Revised (Tab 2) | Judge Denise Lindberg |
| 3. CR 301 (Tab 4) | Committee |
| 4. Sexual Offense Instructions (Tab 5) | Committee |
| 5. Definitions (Tab 6) | Sandi Johnson |
| 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

Wednesday, November 6, 2013
12:00 p.m. to 2:00 p.m.
Judicial Council Room

PRESENT

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

EXCUSED

Diane Abegglen
Professor Jensie Anderson
Linda Jones

1. Welcome and Approval of Minutes**Alison Adams-Perlac**

Ms. Adams-Perlac welcomed the committee to the meeting. She introduced Tommy Pedersen, a student from the law school who will be assisting the committee with research and drafting.

Judge Blanch moved to approve the minutes from the previous meeting. Mr. West seconded the motion and it passed unanimously.

2. Mens Rea Instructions Revised**Judge Denise Lindberg**

This item was tabled for discussion at the next meeting.

3. Introductory Committee Note**Alison Adams-Perlac**

Ms. Adams-Perlac discussed the introductory committee note she and Judge Lingberg drafted. She stated that the idea is to provide some principles of drafting so that practitioners and judges understand how the instructions have been drafted. She stated that more principles can be added as necessary.

Ms. Klucznik recommended edits to the plain language paragraph. She recommended changing the last sentence, since it suggests that juries cannot understand. Judge Westfall suggested removing the

middle sentence. Ms. Johnson suggested changing the word “restating” to “stating” in the same paragraph.

The committee recommended further edits to the proposed committee note. The proposed committee note was amended as follows:

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 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 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 are 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 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.

Mr. Field moved to approve the committee note as amended. Judge Blanch seconded the motion and it passed unanimously.

4. CR 301 (Tab 4)

Alison Adams-Perlac

Ms. Adams-Perlac discussed the revised version of instruction 301. She stated that the revisions are based on the committee’s suggestions at the previous meeting. The committee suggested edits to the instruction. Judge Westfall stated that “one or more elements” is confusing. He stated that instruction 1604 uses “each and every element” and that language is less confusing. Ms. Johnson agreed that “each and every element” is clearer. Judge Blanch agreed.

Judge McCullagh stated that this language was discussed at length by the committee previously. He stated that the language expert at the time suggested “each and every”. Judge Blanch stated that “one or more” suggests that if you find one of the elements you can convict. Ms. Klucznik stated her agreement that “each and every” is the better language.

Mr. Field stated that he remembered that Ms. Jones had an opinion on this issue. Ms. Andrus stated that “each and every” means “all” and “one or more” means “one.” The committee recommended further edits.

The proposed instruction was amended as follows:

CR301 Elements. Revised.

The defendant, _____ (DEFENDANT’S NAME) is charged [in Count ____] with committing ~~{(CRIME)}~~ [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~~ _____ (DEFENDANT’S NAME);
2. ELEMENT ONE . . .;
3. ELEMENT TWO . . .;
4. [That the defense of _____ does not apply.]

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

Committee Notes

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

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

This instruction was tabled for further discussion regarding “each and every” versus “one or more” until Ms. Jones could participate in the discussion.

5. Sexual Offense Instructions (Tab 5)

Committee

The committee discussed instruction 1603, Sexual Abuse of a Minor. Ms. Johnson suggested putting in “(MINOR’S INITIALS)” in the place of “a person”. The committee suggested adding an age element. Judge Blanch suggested adding an age element as number 4. Ms. Klucznik suggested combining the mens rea with “defendant” as one element. Ms. Johnson suggested not making that change. Judge Westfall stated the “one or more” language is an issue in this instruction as well.

The instruction was revised as follows:

(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 (MINOR’S INITIALS)];
 - b. [touched the breast of (MINOR’S INITIALS), a female];
 - c. [otherwise took indecent liberties with (MINOR’S INITIALS)]; or
 - d. [caused (MINOR’S INITIALS) to take indecent liberties with any person];
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person];
4. (MINOR’S INITIALS) was 14 or 15 years old at the time of the offense; and
5. (DEFENDANT’S NAME) was seven or more years older than (MINOR’S INITIALS).

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

Ms. Klucznik moved to approve the instruction subject to changes based on final approval of the revised elements instruction. Judge Blanch seconded the motion and it passed unanimously.

The committee discussed instruction 1604, Unlawful Sexual Activity with a Minor. Ms. Johnson recommended minor edits to the instruction. She suggested that on variation 3 should be changed so that 3 states “intentionally, knowingly, or recklessly caused the penetration...” Ms. Klucznik suggested deleting the committee note.

The committee note was deleted and the instruction was edited as follows:

(DEFENDANT’S NAME) is charged [in Count _____] with committing Unlawful Sexual Activity with a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt all of the elements in one or more of the following variations:

VARIATION A:

1. (DEFENDANT’S NAME);
2. Intentionally, knowingly, or recklessly had sexual intercourse;
3. With (MINOR’S INITIALS); and
4. (MINOR’S INITIALS) was 14 or 15 years old at the time of the act.

[OR]

VARIATION B:

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

[OR]

VARIATION C:

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

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

Judge Blanch moved to approve the instruction subject to changes based on final approval of the revised elements instruction. Mr. Field seconded the motion and it passed unanimously.

The committee discussed instruction 1605, Unlawful Sexual Activity with a Minor. Ms. Johnson suggested bracketing paragraph 2a, 2b, 2c, and 2d, and bracketing the subparagraphs within them. These paragraphs were bracketed.

Mr. West suggested changing the age language in paragraph 4. Paragraph 4 was amended as follows:

At the time of the sexual conduct, (DEFENDANT'S NAME) was [seven ~~or more to nine~~ but less than ten years older than (MINOR'S INITIALS), and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age] [ten or more years older than (MINOR'S INITIALS)].

Mr. West moved to approve the instruction subject to changes based on final approval of the revised elements instruction. Ms. Johnson seconded the motion and it passed unanimously.

The committee discussed where the special verdict forms should be published in relation to the instructions. *The committee agreed that the special verdict forms should be published in their own special section, and that there should be a link in the committee note to the special verdict form, in lieu of publishing them within a specific section.*

Judge Lindberg joined the meeting.

The committee discussed the Unlawful Sexual Activity with a 16 or 17 year old special verdict form. Ms. Johnson recommended minor edits. Mr. Field recommended minor edits. Ms. Johnson recommended moving "with the intent" to the end of the sentence in all the bullet points. Judge McCullagh stated that it should remain as is, because the jury would read the intent first. Judge Westfall questioned whether we should identify the defendant, by name, and then we can refer to "the defendant" throughout.

The committee amended the special verdict form as follows:

We, the jury, having found the defendant, (DEFENDANT'S NAME), guilty of Unlawful Sexual Conduct with a 16 or 17 Year Old, [is charged in Count ____ ~~of the Information~~], unanimously find beyond a reasonable doubt ~~that 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 ~~The defendant~~ caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening by any foreign object, substance, instrument, or device, including a part of the human body ~~With the intent to arouse or gratify the sexual desire of any person, or with the intent to cause substantial emotional or bodily pain to any person, the defendant; 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.

Judge McCullagh moved to approve the special verdict form. Ms. Klucznik seconded the motion and it passed unanimously.

The committee discussed instruction 1606, Rape. Ms. Johnson suggested changing “with another person” and “that person” to (VICTIM'S NAME). Ms. Klucznik suggested minor edits to the instruction.

The instruction was edited as follows:

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

1. ~~That~~ (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
3. Had sexual intercourse with ~~another person~~ (VICTIM'S NAME);
4. Without ~~that person's~~ (VICTIM'S NAME)'s consent.

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

Ms. Johnson moved to approve the instruction subject to changes based on final approval of the revised elements instruction. Mr. Field seconded the motion and it passed unanimously.

6. Definitions (Tab 6)

Sandi Johnson

This item was tabled for discussion at the next meeting.

7. Other Business

There was no other business.

8. 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] [her] 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

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 each and every
15 ~~one or more of these~~ elements has been proven beyond a reasonable doubt, then you
16 must find the 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 ~~shall~~must instruct the jury that the State has the burden to~~must~~ disprove an
27 affirmative, a partial, or a justification defense beyond a reasonable doubt.

Tab 4

CR1603 Sexual Abuse of a Minor. Approved 11062013. (Reading Level 11)

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
 - a. [touched the anus, buttocks, or any part of the genitals of (MINOR'S INITIALS)];
 - b. [touched the breast of (MINOR'S INITIALS), a female];
 - c. [otherwise took indecent liberties with (MINOR'S INITIALS)]; or
 - d. [caused (MINOR'S INITIALS) to take indecent liberties with any person];
3. With the intent [to arouse or gratify the sexual desire of any person] [to cause substantial emotional or bodily pain to any person];
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the offense; and
5. (DEFENDANT'S NAME) was seven or more years older than (MINOR'S INITIALS).

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that 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. Revision Approved 11062013. (Reading Level 11)

(DEFENDANT'S NAME) is charged [in Count _____] with committing Unlawful Sexual Activity with a Minor [on or about DATE]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt all of the elements in one or more of the following variations:

VARIATION A:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly had sexual intercourse;
3. With (MINOR'S INITIALS); and
4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the act.

[OR]

VARIATION B:

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

[OR]

VARIATION C:

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

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

References

Utah Code § 76-5-401.

Committee Notes

~~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 11062013.
(Reading Level 12)**

(DEFENDANT'S NAME) is charged [in Count ____] with committing Unlawful Sexual Conduct with a 16 or 17 year old [on or about DATE]. You cannot convict [him] [her] of

this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
 - a. [Had sexual intercourse with (MINOR'S INITIALS)]; or
 - b. [Engaged in any sexual act with (MINOR'S INITIALS) involving the genitals of one person and the mouth or anus of another person]; or
 - c. [Caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS) by any foreign object, substance, instrument, or device, including a part of the human body;
 - i. [With the intent to arouse or gratify the sexual desire of any person]; or
 - ii. [With the intent to cause substantial emotional or bodily pain to any person]]; or
 - d. [Touched the anus, buttocks, or any part of (MINOR'S INITIALS)'s genitals or touched (MINOR'S INITIALS)'s breast, or otherwise took indecent liberties with (MINOR'S INITIALS), or caused (MINOR'S INITIALS) to take indecent liberties with the defendant or another person;
 - i. [With the intent to arouse or gratify the sexual desire of any person]; or
 - ii. [With the intent to arouse or gratify the sexual desire of any person]].
3. At the time of the sexual conduct (MINOR'S INITIALS) was 16 or 17 years old; and
4. At the time of the sexual conduct, (DEFENDANT'S NAME) was [seven or more to nine- but less than ten years older than (MINOR'S INITIALS)]-and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age] [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 11062013. (Reading Level 34)**

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

THE STATE OF UTAH, : **SPECIAL VERDICT**
 :
 Plaintiff, :
 : 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, [~~is~~ charged in Count ____ ~~of the Information~~], unanimously find beyond a reasonable doubt ~~that 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 ~~The defendant~~ caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening by any foreign object, substance, instrument, or device, including a part of the human body ~~With the intent to arouse or gratify the sexual desire of any person, or with the intent to cause substantial emotional or bodily~~

pain to any person, the defendant; 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 1606 Rape. Approved 11062013. (Reading Level 10)

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

1. ~~That~~(DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
3. Had sexual intercourse with ~~another person~~(VICTIM'S NAME);
4. Without ~~that person's~~(VICTIM'S NAME)'s consent.

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

References

Utah Code § 76-5-402.

Committee Notes

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

CR 1607 Rape of a child. Approved. (Reading Level 10.8)

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

1. (DEFENDANT'S NAME);
 - a. Had sexual intercourse with (MINOR'S INITIALS); and
 - b. Did so intentionally, knowingly, or recklessly; and
2. (MINOR'S INITIALS) was under 14 old at the time of the offense.

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

References

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

Committee Notes

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

CR 1608 Object rape. Approved. (Reading Level 10.6)

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
 - a. Caused the penetration, however slight;
 - b. Of [VICTIM'S NAME] [MINOR'S INITIALS]'s genital or anal opening;
 - c. By any object or substance other than the mouth or genitals;
3. With the intent to:
 - a. Cause substantial emotional or bodily pain to [VICTIM'S NAME] [MINOR'S INITIALS]; or
 - b. Arouse or gratify the sexual desire of any person; and
4. Without [VICTIM'S NAME] [MINOR'S INITIALS]'s consent.

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

References

Utah Code § 76-5-402.2.

Committee Notes

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

CR 1609 Object rape of a child. Approved. (Reading Level 11.1)

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly;
 - a. Caused the penetration, however slight;
 - b. Of (MINOR'S INITIALS)'s genital or anal opening;
 - c. By any foreign object, substance, instrument or device that is not a part of the human body;
3. With the intent to:
 - a. Cause substantial emotional or bodily pain to (MINOR'S INITIALS); or
 - b. Arouse or gratify the sexual desire of any person; and
4. (MINOR'S INITIALS) was 13 years old or younger at the time of the conduct.

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

References

Utah Code § 76-5-402.3.

State v. Martinez, 2002 UT 60.

State v. Martinez, 2000 UT App 320.

Committee Notes

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

CR 1610 Forcible Sodomy. Approved. (Reading Level 11)

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

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

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

References

Utah Code § 76-5-403.

Committee Notes

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

CR 1611 Sodomy on a child. Approved. (Reading Level 11.3)

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

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

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the

defendant GUILTY. On the other hand, if you are not convinced that one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-403.1.
State v. Martinez, 2002 UT 60.
State v. Martinez, 2000 UT App 320.

Committee Notes

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

CR 1612 Forcible sexual abuse. (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 old or older at the time of the offense.

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

References

Utah Code § 76-5-404.

Committee Notes

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

CR 1613 Sexual abuse of a child. (Reading Level 11.1)

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

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

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

References

Utah Code § 76-5-404.1.
State v. Martinez, 2002 UT 60.
State v. Martinez, 2000 UT App 320.

Committee Note

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

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

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

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

- The defendant committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense; or
- The defendant encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person; or
- The defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth; or
- The defendant occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent.

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

Foreperson

CR 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 5

Generals:

- Age:
 - “Under 14 years of age” means that the child had not yet reached his or her 14th birthday at the time of the act in question.
 - “14 years of age or older” means that the person had reached his or her 14th birthday at the time of the act in question.
- Anus
 - Anus means the opening of the rectum to the outside of the body.
 - Anus is the opening between a person’s buttocks through which solid waste passes from the body (Merriam-Webster)
- “Bodily injury” means physical pain, illness, or impairment of physical condition (76-1-601)
- “Breast” means the female mammary gland, whether developed or undeveloped (AH Dictionary & Mosby’s)
- “Buttocks” means the large fleshy protuberances at the lower posterior portion of the torso comprising fat and the gluteal muscles. (Mosby’s)
 - This does not include the “anus.” State v. Pullman, 2013 UT App 168 ¶16
- “Child” means a person under the age of 14. (76-5-404.1)
- “Dangerous weapon” means any item capable of causing death or serious bodily injury or a facsimile or representation of the item if (i) the actor’s use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or (ii) the actor represents to the victim verbally or in any other manner that he is in control of such an item. (76-1-601)
- Genitals means the reproductive organs. On the female, this includes the vagina, clitoris, and vulva, but does not include the breast. On a male, this includes the testes and penis.
- “Grievous sexual offense” means (a) rape, Section 76-5-402; (b) rape of a child, Section 76-5-402.1; (c) object rape, Section 76-5-402.2; (d) object rape of a child, Section 76-5-402.3; (e) forcible sodomy, Subsection 76-5-403(2); (f) sodomy on a child, Section 76-5-403.1; (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4); (h) aggravated sexual assault, Section 76-5-405; (i) any felony attempt to commit an offense described in Subsections (6)(a) through (h); or (j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).
- Indecent liberties
 - Although the Utah Code does not define what conduct qualifies as “tak[ing] indecent liberties with another,” we have applied the doctrine of ejusdem generis and interpreted this phrase to mean activities of the “same magnitude of gravity as that specifically described in the statute.” State ex rel. J.L.S., 610 P.2d 1294, 1296 (Utah 1980). And, in considering whether conduct constitutes an indecent liberty, the Utah Court of Appeals has stated that, the fact finder “must consider the totality of the facts,” including “the nature of the victim's participation,” “the duration of the defendant's acts,” “the defendant's willingness to terminate his conduct at the victim's request,” “the relationship between the victim and the defendant,”

and “the age of the victim.” [State v. Balfour, 2008 UT App 410, ¶ 15, 198 P.3d 471](#) (internal quotation marks omitted). [State v. Maestas, 2012 UT 46, n. 371]

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

Crime Specific Definitions

76-5-401 Unlawful Sexual Activity with a Minor

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

76-5-401.1 Sexual Abuse of a Minor

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

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

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

76-5-402 Rape

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

76-5-402.1 Rape of a Child

- Sexual intercourse (Does NOT require penetration)
- "Touching" however slight is sufficient (76-5-407) Does not require penetration. State v. Simmons, 759 P.2d 1152 (Utah 1988)(?)
- Touching requires contact with the victim's skin
- In any prosecution for rape of a child, any touching, however slight, is sufficient to constitute the relevant element of the offense. Utah law does not require penetration of the genitals with a penis as a necessary element of the offense of rape of a

child. Touching the genitals with a penis, alone, is sufficient to constitute the necessary element of the offense of rape of a child.

- “Sexual Intercourse” as that term is used in these instructions means any touching of the female’s genitals by the actor’s penis, no matter however slight.

76-5-402.2 Object Rape

- Foreign object, substance, instrument, or device

76-5-402.3 Object Rape of a Child

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

76-5-403 Sodomy/Forcible Sodomy

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

76-5-403.1 Sodomy on a Child

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

76-5-404 Forcible Sexual Abuse

- Touching
 - For all other theories (except indecent liberties), contact with the victim’s skin is required. *State v. Jacobs*, 2006 UT App 356

- “Thus, even when the specified body parts are touched through clothing, the perpetrator may still be punished under the indecent liberties prong of the statute when, considering all the surrounding circumstances, the conduct is comparable to the touching that is specifically prohibited.” State v. Jacobs, 2006 UT App 356 ¶9

76-5-404.1 Sexual Abuse of a Child

- Touching
 - Any touching, however slight, is sufficient (76-5-407)
 - Any touching, even if accomplished through clothing, is sufficient (76-5-407)
 - Penetration is unnecessary to constitute the offense, touching alone is sufficient. Any sexual touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense of Sexual Abuse of Child. You are instructed that an act of touching the clothed breast, anus, genitals and/or buttocks of a child is not exculpated or diminished by the fact that there is a layer of clothing between the actor and the child's breast, anus, genitals and/or buttocks. §76-5-407(3); *State v. 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

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

- "To Retaliate" includes threats of physical force, kidnapping, or extortion. (76-5-406 (4) (b))
- "Health Professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologists, psychiatric mental health nurse specialist, or substances abuse counselor. (76-5-406 (12) (a))
- "Religious Counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy. (76-5-406 (12) (b))
- "Position of Special Trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent. (76-5-404 (4) (h))

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

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