

CR1601. Definitions.

[Bodily injury” means physical pain, illness, or any physical impairment.] *See* Utah Code § 76-1-601.

[“Dangerous weapon” means:

1. any item capable of causing death or serious bodily injury; or
2. a facsimile or representation of the item, if:
 - a. 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;
 - b. or the actor represents to the victim verbally or in any other manner that he is in control of such an item.]

See Utah Code § 76-1-601.

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

[“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, osteopathic 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, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor.] *See* Utah Code § 76-5-406(12)(b).

[“Indecent liberties” is defined as conduct that is as serious as touching [under clothing] the anus, buttocks, or genitals of a person or the breast of a female.

In deciding whether conduct amounts to indecent liberties, use your judgment and common sense. You may consider such factors as: (1) the duration of the conduct, (2) the intrusiveness of the conduct against [(VICTIM'S NAME) (MINOR'S INITIALS)]'s person, (3) whether [(VICTIM'S NAME) (MINOR'S INITIALS)]'s requested that the conduct stop, (4) whether the conduct stopped upon request, (5) the relationship between [(VICTIM'S NAME) (MINOR'S INITIALS)]'s and the defendant, (6) [(VICTIM'S NAME) (MINOR'S INITIALS)]'s age, (7) whether [(VICTIM'S NAME) (MINOR'S INITIALS)]'s was forced or coerced to participate, and any other factors you consider relevant.

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The fact that touching may have occurred over clothing does not preclude a finding that the conduct amounted to indecent liberties.] *See State v. Lewis*, 2014 UT App 241, 337 P.3d 1053; *State v. Peters*, 796 P.2d 708 (Utah App. 1990).

["Position of special trust" means an adoptive parent; an adult athletic manager; an aunt; a babysitter; a coach; an adult cohabitant of a parent; a counselor; a doctor or physician; an employer; a foster parent; a grandparent; a legal guardian; a natural parent; an adult recreational leader; a religious leader; an adult sibling or stepsibling; an adult scout leader; a stepparent; a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older; an uncle; an adult youth leader; any other person in a position of authority that enables the person to exercise undue influence over the child.] *See Utah Code* § 76-5-404.1(1).

["Religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.] *See Utah Code* § 76-5-406(12)(b).

["Serious bodily injury" means bodily injury that creates a substantial risk of death or creates or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.] *See Utah Code* § 76-1-601.

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Based on the principle of *State v. Couch*, 635 P.2d 89 (Utah 1981), the committee has chosen to provide definitions only for words defined by statute or case law. If the jury requests a definition for a word not defined by statute or case law, practitioners and judges should work together to define this word using its ordinary and accepted meaning. *Id.*

For the definition of "grievous sexual offense," *see* CR1625, Sexual Offense Prior Conviction.

The definition of "position of special trust" applies to crimes committed on or after May 13, 2014. For crimes committed before May 13, 2014, *see State v. Watkins*, 2013 UT 28, 309 P.3d 209.

CR 1602. Sexual Abuse of a Minor.

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

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

References

Utah Code § 76-5-401.1

Utah Code § 76-5-407

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

CR 1603. Unlawful Sexual Activity with a Minor.

(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

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unless, based on the evidence, you find beyond a reasonable doubt all of the elements in one or more of the following variations:

VARIATION A:

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

[OR]

VARIATION B:

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

[OR]

VARIATION C:

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

4. (MINOR'S INITIALS) was 14 or 15 years old at the time of the conduct.

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

References

Utah Code § 76-5-401

Utah Code § 76-5-407

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

CR 1604. Unlawful Sexual Conduct with a 16 or 17 year old.

(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:
 - i. the touching, however slight, of the genitals of one person with the mouth or anus of another; and
 - ii. the touching of (MINOR'S INITIALS)'s genitals, mouth or anus involved (MINOR'S INITIALS)'s skin;] 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 skin of (MINOR'S INITIALS)'s anus, buttocks, or any part of (his)(her) genitals or touched the skin of (FEMALE 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 cause substantial emotional or bodily pain to any person]].
3. At the time of the conduct, (MINOR'S INITIALS) was 16 or 17 years old; and
 4. At the time of the conduct, (DEFENDANT'S NAME) was:
 - a. [seven or more but less than ten years older than (MINOR'S INITIALS), and (DEFENDANT'S NAME) knew or reasonably should have known (MINOR'S INITIALS)'s age]; or
 - b. [ten or more years older than (MINOR'S INITIALS)].

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

References

Utah Code § 76-5-401.2

Utah Code § 76-5-407

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

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.

Variation A should be used with Instruction 1616A, Conduct Sufficient to Constitute Sexual Intercourse for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 Year Old, or Rape.

CR 1605. Rape.

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly had sexual intercourse with (VICTIM'S NAME);
3. Without (VICTIM'S NAME)'s consent; and
4. (DEFENDANT'S NAME) acted with intent, knowledge or recklessness that (VICTIM'S NAME) did not consent.

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

References

Utah Code § 76-5-402

Utah Code § 76-5-406

Utah Code § 76-5-407

State v. Barela, 2015 UT 22

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Although the committee believes that the applicable mens rea as to element 4 would be knowledge or recklessness, it has included intent based on the Utah Supreme Court's opinion in *State v. Barela*, 2015 UT 22.

Use this instruction with CR 1621A, Conduct Sufficient to Constitute Sexual Intercourse for Rape.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1606. Rape of a Child.

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

1. (DEFENDANT’S NAME);
 - a. intentionally, knowingly, or recklessly;
 - b. had sexual intercourse with (MINOR’S INITIALS); and

2. (MINOR’S INITIALS) was under 14 years old at the time of the conduct.

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

References

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

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Use this instruction with Instruction 1616B, Conduct Sufficient to Constitute Sexual Intercourse for Rape of a Child.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. *See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1607 Object Rape.

(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 caused the penetration, however slight, of ([VICTIM'S NAME][MINOR'S INITIALS])'s genital or anal opening, by any object or substance other than the mouth or genitals;
3. The act was without ([VICTIM'S NAME] [MINOR'S INITIALS])'s consent;
4. (DEFENDANT'S NAME) acted with intent, knowledge or recklessness that ([VICTIM'S NAME] [MINOR'S INITIALS]) did not consent; and
5. (DEFENDANT'S NAME) did the act 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.

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

References

Utah Code § 76-5-402.2

State v. Barela, 2015 UT 22

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. *See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1608. Object Rape of a Child.

(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);

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2. Intentionally, knowingly, or recklessly caused the penetration or touched the skin, however slight, of (MINOR'S INITIALS)'s genital or anal opening with any object or substance 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 under the age of 14 at the time of the conduct.

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

References

Utah Code § 76-5-402.3

Utah Code § 76-5-407

State v. Martinez, 2002 UT 60

State v. Martinez, 2000 UT App 320

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. *See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1609. Forcible Sodomy.

(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 committed a sexual act involving any touching of the skin, however slight, of the genitals of one person and the mouth or anus of another;
3. Without (VICTIM'S NAME)'s consent; and

4. (DEFENDANT'S NAME) acted with intent, knowledge or recklessness that (VICTIM'S NAME) did not consent.

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

References

Utah Code § 76-5-403

Utah Code § 76-5-407

State v. Barela, 2015 UT 22

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Although the committee believes that the applicable mens rea as to element 4 would be knowledge or recklessness, it has included intent based on the Utah Supreme Court's opinion in *State v. Barela*.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1610. Sodomy on a Child.

(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);
2. Intentionally, knowingly, or recklessly committed a sexual act with (MINOR'S INITIALS), involving any touching, however slight, of the genitals of one person and the mouth or anus of another, even if accomplished through clothing; and
3. (MINOR'S INITIALS) was under the age of 14 at the time of the conduct.

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

References

Utah Code § 76-5-403.1

Utah Code § 76-5-407

State v. Martinez, 2002 UT 60

State v. Martinez, 2000 UT App 320

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. *See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1611. Forcible Sexual Abuse.

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
 - a. touched the skin of ([VICTIM'S NAME] [MINOR'S INITIALS])'s anus, buttocks, or genitals ; or
 - b. touched the skin of ([FEMALE VICTIM'S NAME] [FEMALE MINOR'S INITIALS])'s breast ; or
 - c. took indecent liberties with ([VICTIM'S NAME] [MINOR'S INITIALS]); or
 - d. caused a person to take indecent liberties with (DEFENDANT'S NAME) or another;
3. Without (VICTIM'S NAME)'s consent;
4. (DEFENDANT'S NAME) acted with intent, knowledge or recklessness that (VICTIM'S NAME) did not consent;
5. Did so with the intent to:

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- a. cause substantial emotional or bodily pain to any person, or
 - b. arouse or gratify the sexual desire of any person; and
6. ([VICTIM'S NAME] [MINOR'S INITIALS]) was 14 years of age or older at the time of the conduct.

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

References

- Utah Code § 76-5-404
- Utah Code § 76-5-406
- Utah Code § 76-5-407
- State v. Barela*, 2015 UT 22
- State v. Jacobs*, 2006 UT App 35

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See Special Verdict Form for Prior Conviction or Serious Bodily Injury.

CR 1612. Sexual Abuse of a Child.

(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 genitals of (MINOR'S INITIALS), even if accomplished through clothing]; or
 - b. [touched (MINOR'S INITIALS)'s breast, even if accomplished through clothing]; or
 - c. [took indecent liberties with (MINOR'S INITIALS)]; or
 - d. [caused (MINOR'S INITIALS) to take indecent liberties with

(DEFENDANT'S NAME) or another]; and

3. Did so with the intent to:
 - a. [cause substantial emotional or bodily pain to any person]; or
 - b. [arouse or gratify the sexual desire of any person]; and
4. (MINOR'S INITIALS) was under 14 years old at the time of the conduct.

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

References

Utah Code § 76-5-404.1

Utah Code § 76-5-407

State v. Martinez, 2002 UT 60

State v. Martinez, 2000 UT App 320

State v. Barela, 2015 UT 22

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

CR 1613. Aggravated Sexual Abuse of a Child.

(DEFENDANT'S NAME) is charged [in Count__] with committing Aggravated 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 genitals of (MINOR'S INITIALS), even if accomplished through clothing]; or
 - b. [touched (MINOR'S INITIALS)'s breast, even if accomplished through clothing]; 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; and
5. [You find that at least one of the following aggravating circumstances applies:]
 - a. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly [used a dangerous weapon] [used force, duress, violence, intimidation, coercion, menace, or threat of harm] [or committed the offense during the course of a kidnapping];
 - b. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense];
 - c. [(DEFENDANT'S NAME) was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense];
 - d. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly [used or showed pornography] [caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense];
 - e. [(DEFENDANT'S NAME) was convicted of a sexual offense prior to this trial];
 - f. [(DEFENDANT'S NAME) committed a similar sexual act upon two or more victims at the same time or during the same course of conduct];
 - g. [(DEFENDANT'S NAME) has committed six or more separate acts that would each constitute a sexual offense];
 - h. [(DEFENDANT'S NAME) was in a position of special trust in relation to (MINOR'S INITIALS)];
 - i. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly encouraged, aided, allowed, or benefitted from [acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person] [human trafficking, or human smuggling]]; or
 - j. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening with any part of the human body other than the genitals or mouth].

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

defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 76-5-404.1

Utah Code § 76-5-407

State v. Martinez, 2002 UT 60

State v. Martinez, 2000 UT App 320

State v. Barela, 2015 UT 22

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If more than one aggravating circumstance applies, the jury should also be given an Aggravated Sexual Abuse of a Child special verdict form.

CR 1614. Aggravated Sexual Assault.

References

Utah Code § 76-5-405

Committee Notes

Because there are numerous variations of aggravated sexual assault that are case specific and complex, the committee determined that a model jury instruction would not be practical and may be confusing to practitioners. Practitioners should look to the format of other elements instructions and special verdict forms to assist them in developing their own instructions and verdict forms on aggravated sexual assault.

CR 1615. Consent.

(DEFENDANT'S NAME) has been charged with (name of offense). The prosecution must prove beyond a reasonable doubt that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] did not consent to the alleged sexual conduct. The alleged sexual conduct is without consent of [(VICTIM'S NAME)] [(MINOR'S INITIALS)] under any, all, or a combination of the following circumstances:

[[[(VICTIM'S NAME)] [(MINOR'S INITIALS)] expressed lack of consent through words or conduct];

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[(DEFENDANT'S NAME) overcame [(VICTIM'S NAME)] [(MINOR'S INITIALS)] through the application of physical force or violence];

[(DEFENDANT'S NAME) overcame the victim through concealment or by the element of surprise];

[(DEFENDANT'S NAME) coerced the victim to submit by threatening immediate or future retaliation against [(VICTIM'S NAME)] [(MINOR'S INITIALS)] or any person, and [(VICTIM'S NAME)] [(MINOR'S INITIALS)] thought at the time that (DEFENDANT'S NAME) had the ability to carry out the threat];

(DEFENDANT'S NAME) knew [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was unconscious, unaware that the act was occurring, or was physically unable to resist];

[(DEFENDANT'S NAME) knew that as a result of mental illness or defect, or for any other reason [(VICTIM'S NAME)] [(MINOR'S INITIALS)] was incapable at the time of the act of either understanding the nature of the act or of resisting it];

[(DEFENDANT'S NAME) knew that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] submitted or participated because [(VICTIM'S NAME)] [(MINOR'S INITIALS)] believed that (DEFENDANT'S NAME) was [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s spouse];

[(DEFENDANT'S NAME) intentionally impaired [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s power to understand or control [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s conduct by giving [(VICTIM'S NAME)] [(MINOR'S INITIALS)] a substance without [(VICTIM'S NAME)] [(MINOR'S INITIALS)]'s knowledge];

[(MINOR'S INITIALS) was younger than 14 years old at the time of the act];

[At the time of the act, (MINOR'S INITIALS) was younger than 18 years old and (DEFENDANT'S NAME) was (MINOR'S INITIALS)'s parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to (MINOR'S INITIALS)];

[(MINOR'S INITIALS) was 14 years old or older, but younger than 18 years old, and (DEFENDANT'S NAME) was more than three years older than (MINOR'S INITIALS) and enticed or coerced (MINOR'S INITIALS) to submit or participate,

Sexual Offenses Jury Instructions

under circumstances not amounting to physical force or violence or the threat of retaliation];

[(DEFENDANT'S NAME) was a health professional or religious counselor who committed the act under the guise of providing professional diagnosis, counseling or treatment, and at the time of the act [(VICTIM'S NAME)] [(MINOR'S INITIALS)] reasonably believed the act was for professionally appropriate reasons, so that [(VICTIM'S NAME)] [(MINOR'S INITIALS)] could not reasonably be expected to have expressed resistance].

In deciding lack of consent, you are not limited to the circumstances listed above. You may also apply the common, ordinary meaning of consent to all of the facts and circumstances of this case.

References

Utah Code § 76-5-406

Utah Code § 76-5-407

State v. Barela, 2015 UT 22

State v. Thompson, 2014 UT App 14

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction

CR 1616A. Conduct Sufficient to Constitute Sexual Intercourse for Unlawful Sexual Activity with a Minor, Unlawful Sexual Conduct with a 16 or 17 year old, or Rape.

For purposes of [Unlawful Sexual Activity with a Minor] [Unlawful Sexual Conduct with a 16 or 17 year old] [Rape], any sexual penetration, however slight, is sufficient to constitute sexual intercourse.

References

Utah Code § 76-5-401

Utah Code § 76-5-401.2

Utah Code § 76-5-402.

Utah Code § 76-5-407

State v. Martinez, 2002 UT 80

State v. Martinez, 2000 UT App 320

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

CR 1616B. Conduct Sufficient to Constitute Sexual Intercourse for Rape of a Child.

For purposes of Rape of a Child, sexual intercourse can be accomplished by any touching, however slight.

References

Utah Code § 76-5-402.1

Utah Code § 76-5-407.

State v. Martinez, 2002 UT 80

State v. Martinez, 2000 UT App 320

CR 1617. Sexual Offense Prior Conviction.

Having found (DEFENDANT’S NAME) guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Forcible Sodomy] [Sodomy on a Child] [Aggravated Sexual Abuse of a Child] [Aggravated Sexual Assault] [as charged in Count ____], you must now determine whether at the time (DEFENDANT’S NAME) committed this offense, [he] [she] had been previously convicted of a grievous sexual offense.

“Grievous sexual offense” means [rape] [rape of a child] [object rape] [object rape of a child] [forcible sodomy] [sodomy on a child] [aggravated sexual abuse of a child] [aggravated sexual assault], or any attempt to commit the offense.

The State must prove beyond a reasonable doubt that the defendant was previously convicted of a grievous sexual offense. Your decision must be unanimous and should be reflected on special verdict form (NUMBER).

References

Utah Code § 76-1-601

Utah Code § 76-5-402

Utah Code § 76-5-402.1

Utah Code § 76-5-402.2

Utah Code § 76-5-402.3

Utah Code § 76-5-403

Utah Code § 76-5-403.1

Utah Code § 76-5-404.1

Utah Code § 76-5-405

Committee Notes

Utah law does not state whether a determination that a prior conviction for an out-of-state offense is sufficiently similar to a Utah offense to prove a prior conviction is a question of law or fact. In either case, further jury instructions will be required.

However, at least one other jurisdiction has held that the determination is a legal one, and one that should be made by the trial court, not the jury. *State v. Henderson*, 689 S.E.2nd 462, 465 (N.C.App. 2009).

CR 1618. Serious Bodily Injury. Approved.

If you find the defendant guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child] [as charged in Count ____], you then must determine whether the defendant, in the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child], caused serious bodily injury to another.

“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.

References
Utah Code § 76-1-601.

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

SVF 1604. Unlawful Sexual Conduct with a 16 or 17 Year Old.

(LOCATION) JUDICIAL DISTRICT COURT, [_____DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

:
:
:
:
:

Plaintiff,

SPECIAL VERDICT

Count (#)

-vs-

(DEFENDANT'S NAME)

Case No. (**)

Defendant.

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

- The defendant had sexual intercourse with (MINOR'S INITIALS);
- The defendant engaged in any sexual act with (MINOR'S INITIALS) involving the touching, however slight, of the genitals of one person with the mouth or anus of another; and the touching of (MINOR'S INITIALS)'s genitals, mouth or anus involved (MINOR'S INITIALS)'s skin;
- With the intent to arouse or gratify the sexual desire of any person, or with the intent to cause substantial emotional or bodily pain to any person, the defendant caused the penetration, however slight, of the genital or anal opening of (MINOR'S INITIALS) by any foreign object, substance, instrument, or device, including a part of the human body;
- 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 (his)(her) genitals or touched the skin of (FEMALE 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.

Sexual Offenses Special Verdict Forms

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

Foreperson

References

Utah Code § 76-5-401.2

Utah Code § 76-5-407

SVF 1613. Aggravated Sexual Abuse of a Child.

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

(DEFENDANT'S NAME),

Defendant.

:
:
:
:
:

SPECIAL VERDICT

Count (#)

Case No. (**)

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

- The defendant used a dangerous weapon;
- The defendant used force, duress, violence, intimidation, coercion, menace, or threat of harm;
- The defendant committed the offense during the course of a kidnapping;

Sexual Offenses Special Verdict Forms

- The defendant caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense;
- The defendant was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense;
- The defendant used or showed pornography;
- The defendant caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense;
- The defendant was convicted of a sexual offense prior to this trial;
- The defendant committed a similar sexual act upon two or more victims at the same time or during the same course of conduct;
- The defendant has committed six or more separate acts that would each constitute a sexual offense;
- The defendant was in a position of special trust in relation to (MINOR'S INITIALS);
- The defendant encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person;
- The defendant encouraged, aided, allowed, or benefited from human trafficking, or human smuggling;
- The defendant caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening with any part of the human body other than the genitals or mouth.

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

Foreperson

Sexual Offenses Special Verdict Forms

References

Utah Code § 76-5-404.1

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

SVF 1614. Aggravated Sexual Assault.

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

:
:
:
:
:

Plaintiff,

SPECIAL VERDICT

Count (#)

-vs-

(DEFENDANT'S NAME),

Case No. (**)

Defendant.

[We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Rape][Object Rape][Forcible Sodomy][Forcible Sexual Abuse], [as charged in Count ____]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant compelled, or tried to compel, (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [Rape][Object Rape][Forcible Sodomy][Forcible Sexual Abuse] by threatening kidnapping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

Sexual Offenses Special Verdict Forms

[We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Attempted Rape][Attempted Object Rape][Attempted Forcible Sodomy], [as charged in Count ____]. We also unanimously find the following beyond a reasonable doubt (check all that apply):

- The defendant caused any person serious bodily injury;
- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to [rape] [object rape] [forcible sodomy], by threatening kidnapping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

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

- The defendant caused any person serious bodily injury;
- The defendant used, or threatened (VICTIM'S NAME) (MINOR'S INITIALS) with the use of, a dangerous weapon;
- The defendant tried to compel (VICTIM'S NAME) (MINOR'S INITIALS) to submit to forcible sexual abuse by threatening kidnapping, death, or imminent infliction of serious bodily injury on any person; or
- The defendant was aided or abetted by one or more persons.]

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

Foreperson

References

Utah Code § 76-5-405

Sexual Offenses Special Verdict Forms

Committee Notes

This special verdict form contains bracketed language which suggests optional language. Please review and edit before finalizing the form.

SVF 1617. Sexual Offense Prior Conviction.

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

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

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Rape][Rape of a Child][Object Rape][Object Rape of a Child][Forcible Sodomy][Sodomy on a Child][Aggravated Sexual Abuse of a Child][Aggravated Sexual Assault], [as charged in Count ____]. We also unanimously find the State:

_____ Has
_____ Has Not

proven beyond a reasonable doubt the defendant was previously convicted of a grievous sexual offense at the time of the commission of the [Rape][Rape of a Child][Object Rape][Object Rape of a Child][Forcible Sodomy][Sodomy on a Child][Aggravated Sexual Abuse of a Child][Aggravated Sexual Assault].

DATED this _____ day of (MONTH), (YEAR).

Foreperson

References

Utah Code § 76-1-601
Utah Code § 76-5-402

Sexual Offenses Special Verdict Forms

- Utah Code § 76-5-402.1
- Utah Code § 76-5-402.2
- Utah Code § 76-5-402.3
- Utah Code § 76-5-403
- Utah Code § 76-5-403.1
- Utah Code § 76-5-404.1
- Utah Code § 76-5-405

SVF 1618. Serious Bodily Injury.

 (LOCATION) JUDICIAL DISTRICT COURT, [_____DEPARTMENT,]
 IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

 Plaintiff,

:
 :
 :
 :
 :

SPECIAL VERDICT

Count (#)

-vs-

(DEFENDANT'S NAME)

 Defendant.

Case No. (**)

 We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of
 [Rape][Rape of a Child][Object Rape][Object Rape of a Child][Forcible
 Sodomy][Sodomy on a Child][Forcible Sexual Abuse][Aggravated Sexual Abuse of a
 Child], [as charged in Count ____]. We also unanimously find the State:

_____ Has
 _____ Has Not

proven beyond a reasonable doubt the defendant caused serious bodily injury to
 another in the course of committing [Rape][Rape of a Child][Object Rape][Object Rape
 of a Child][Forcible Sodomy][Sodomy on a Child][Forcible Sexual Abuse][Aggravated
 Sexual Abuse of a Child].

DATED this _____ day of (MONTH), (YEAR).

 Foreperson

Sexual Offenses Special Verdict Forms

References

Utah Code § 76-1-601

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.