

**Model Utah Civil Jury Instructions, Second Edition**  
**Civil Rights: Set 1**

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**CV1301 SECTION 1983 CLAIM—ELEMENTS. Approved 12/12/16.**

To establish [his/her] claims under Section 1983, [name of plaintiff] must demonstrate, by a preponderance of the evidence, the following three elements:

First, that [name of defendant] was a state employee and was acting, purporting to act, or pretending to act in performance of [his/her] official duties.

Second, that this conduct deprived [name of plaintiff] of a right protected by federal law; and

Third, that [name of defendant]’s conduct was a cause of harm sustained by [name of plaintiff].

**References**

*W. v. Atkins*, 487 U.S. 42, 49, 108 S. Ct. 2250, 2255, 101 L. Ed. 2d 40 (U.S. 1988)

**Committee Note:**

See CV209 for a definition of “cause.”

In the first element above, the committee has attempted to define “acting under color of state law” in plain language. The United States Supreme Court case of *W. v. Atkins*, 487 U.S. 42, 49, 108 S. Ct. 2250, 2255, 101 L. Ed. 2d 40 (U.S. 1988) provides that “[t]he traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”

If the claim is that the defendant was purporting to act under color of state law, the judge may need to define what it means to purport to do something.

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**CV1302 SECTION 1983 CLAIM—DEPRIVATION OF RIGHTS. Approved 11/14/16.**

The second element of [name of plaintiff]’s claims is that [name of defendant]’s conduct deprived [him/her] of a right protected by federal law. [Name of plaintiff] claims in this case that [he/she] was deprived of [his/her] right to [list the right or rights].

I will explain [this/these] right[s]] later in the Instructions.

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**CV1303 WARRANTLESS ARREST. Approved 4/10/17.**

The Constitution prohibits the police from carrying out unreasonable seizures. An arrest is considered a “seizure” within the meaning of the Constitution. Under the Constitution an arrest may be made only when 1) a police officer has an arrest warrant, or 2) when a police officer has

probable cause to believe that the person arrested has engaged in criminal conduct. An arrest without either an arrest warrant or a probable cause is an unreasonable seizure.

[Name of plaintiff] claims that [he/she] was unlawfully arrested by [name of defendant] on [date]. [Name of defendant] did not have an arrest warrant. Therefore, you must determine whether [name of defendant] had probable cause to arrest [name of plaintiff].

**Committee Note:**

Utah Code section 77-7-2 places limitations on when a police officer can make a warrantless arrest.

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**CV1304 PROBABLE CAUSE. Approved 1/9/2016.**

Probable cause does not require that the officer had proof beyond a reasonable doubt, or even proof by a preponderance of the evidence. Probable cause exists when an officer has knowledge of facts and circumstances that are of such weight and persuasiveness as to convince a prudent and reasonable person of ordinary intelligence, judgment, and experience that it is reasonably likely that a crime has been committed and the person arrested committed that crime.

The existence of probable cause is measured as of the moment of the arrest, not on the basis of later developments. Thus, the ultimate resolution of the criminal charges is irrelevant.

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**CV1304A OFFENSES AT ISSUE. APPROVED 3/13/17.**

You are to determine whether [name of defendant] had probable cause to believe [name of plaintiff] committed [any of] the following offense[s]:

- 1)
- 2)
- 3)

**Committee Note:**

In this instruction, the parties will need to insert each offense. The elements of each offense will need to be listed in separate instructions.

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**CV1305 UNLAWFUL ARREST-ANY CRIME. Approved 1/9/2016.**

It is not necessary that [name of officer[s]] had probable cause to arrest [name of plaintiff] for the offense with which [he/she] was charged, so long as [name of officer[s]] had probable cause to arrest [name of plaintiff] for some criminal offense.

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**CV1306 UNLAWFUL ARREST – MINOR CRIME. APPROVED 3/13/17.**

If a police officer has probable cause to believe a person has committed any criminal offense, however minor, he may arrest the person without violating the Constitution.

You are not to consider whether you think [name of defendant] should have arrested [name of plaintiff]. Instead, you must decide whether [name of defendant] had probable cause to believe that [name of plaintiff] committed [any of] the offense[s] listed in [CV1304A].

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**CV 1307A INVESTIGATIVE STOP. APPROVED 3/13/17.**

The Constitution permits a law enforcement officer to detain a person without arresting [him/her] if two requirements are met.

First, the officer must have reasonable suspicion that the person detained has committed a crime.

Second, the officer’s actions must be reasonably limited in time and scope to the investigation of the suspected crime.

**References:**

*U.S. v. Fonseca*, 744 F. 3d 674, 680-81 (10<sup>th</sup> Cir. 2014) (“A twofold inquiry determines whether a Terry stop is reasonable under the Fourth Amendment. ‘First, the officer’s action must be justified at its inception.’” *United States v. King*, 990 F.2d 1552, 1557 (10th Cir.1993) (quoting *Terry*, 392 U.S. at 20, 88 S.Ct. 1868) (internal quotation marks omitted). Thus, ‘[f]or an investigative detention, the officer must have an articulable and reasonable suspicion that the person detained is engaged in criminal activity.’ *Id.* Second, the officer’s actions must be ‘reasonably related in scope to the circumstances which justified the interference in the first place.’ *Id.* (quoting *Terry*, 392 U.S. at 20, 88 S.Ct. 1868) (internal quotation marks omitted). ‘There is no bright-line rule to determine whether the scope of police conduct was reasonably related to the goals of the stop; rather our evaluation is guided by common sense and ordinary human experience.’ *United States v. Albert*, 579 F.3d 1188, 1193 (10th Cir.2009) (internal quotation marks omitted).”)

*State v. Chettero*, 2013 UT 9 n.11 (Terry stop “must be justified at its inception”).

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**CV1307 REASONABLE SUSPICION. APPROVED 4/10/17.**

Reasonable suspicion means the officer was aware of specific facts that would lead a reasonable officer to conclude that the person in question committed a crime. The level of suspicion required for reasonable suspicion is considerably less than proof of wrongdoing by a

preponderance of the evidence. But reasonable suspicion requires something more than a mere guess or hunch.

Whether an officer has reasonable suspicion is evaluated objectively under all of the circumstances known to the officer.

**References**

*State v. Peterson*, 2005 UT 17 ¶ 11 (“Whether an officer has reasonable suspicion to subject an individual to a Terry stop and frisk is ‘evaluated objectively according to the totality of the circumstances.’”)

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**CV1308 EXCESSIVE FORCE—INTRODUCTORY INSTRUCTION. Approved 9/19/16.**

[Name of plaintiff] claims that [name of officer] used unreasonable force in [arresting/stopping] [him/her].

[Name of officer] claims the force [s]he used in [arresting/stopping] [name of plaintiff] was reasonable.

It is your duty to determine whether [name of plaintiff] has proved [his/her] claims against [name of officer] by a preponderance of the evidence.

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**CV1309 EXCESSIVE FORCE—STANDARD. Approved 9/19/16**

A person interacting with a law enforcement officer has a constitutional right to be free from unreasonable force. A police officer is entitled to use such force as is reasonably necessary to lawfully stop a person, take an arrested citizen into custody or prevent harm to the officer or others. A police officer is not allowed to use force beyond that reasonably necessary to accomplish these lawful purposes.

The test of reasonableness requires careful attention to the specific facts and circumstances of the case. The reasonableness of a particular use of force must be judged from the perspective of an officer on the scene rather than with the 20/20 vision of hindsight.

In determining whether [name of officer] used unreasonable force with [name of plaintiff], you should consider all the facts known to [name of officer] at the time [he/she] applied the force. You are not to consider facts unknown to [name of officer] at the time [name of officer] applied force to [name of plaintiff].

You are not to consider [name of officer]’s intentions or motivations, whether good or bad. Bad intentions will not make a constitutional violation out of an objectively reasonable use of force, and good intentions will not make an unreasonable use of force proper.

**Reference:**

*Graham v. Connor*, 490 U.S. 386 (1989)

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**CV1310 SEARCH OF PROPERTY--DEFINITION. Approved 1/9/2017.**

Search has a special meaning under the law. A “search” of property occurs if a [government actor] intrudes into an area in which a person would have a reasonable expectation of privacy.

**References:**

*Soldal v. Cook County*, 506 U.S. 56, 62, (1992)

*United States v. Jacobsen*, 466 U.S. 109, 113 (1984)

*United States v. Hutchings*, 127 F.3d 1255, 1259 (1997)

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**CV1311 SEARCH OF PROPERTY—CONSTITUTIONAL RIGHT. Approved 6/12/17.**

A person has a constitutional right to be free from an unreasonable [search/entry] of [his/her] [property]. To prove [name of defendant(s)] violated [name of plaintiff]’s constitutional right, [name of plaintiff] must prove the following by a preponderance of the evidence:

1. [Name of defendant(s)] [searched/entered] [name of plaintiff]’s [property];
2. [Name of defendant(s)] intended to [search/enter] the [property]; and
3. The [search/entry] was not “reasonable.”

“Reasonable” has a special meaning under the law. I will now instruct you on what “reasonable” means.

**References:**

*Minnesota v. Carter*, 525 U.S. 83 (1998)

*Kentucky v. King*, 563 U.S. 462 (2011)

**Committee Note:**

These instructions refer to ”property” in brackets, but it may be clearer to refer to the specific type of property involved in the case, such as residences, businesses, vehicles, backpacks, computer files, etc.

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**CV1312 LAWFUL SEARCH OF REAL PROPERTY. Approved 6/12/17.**

A search of real property is reasonable if:

1. The officer has a valid warrant;
2. The officer has obtained consent; or
3. The officer has probable cause, and exigent circumstances exist.

**References:**

*Steagald v. U.S.*, 451 U.S. 204, 101 S.Ct. 1642 (1981)

**Committee Note:**

If one or more of the above is not at issue in this case, it should be omitted from the instruction. Similar exceptions will be applicable to other searches, such as automobile searches.

The committee has here attempted to define reasonableness in a single, common context. But in contexts other than real property, be it automobiles, backpacks, computers, etc., the parties and the court should define what a reasonable search or entry is.

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**CV1313 CONSENT. APPROVED 9/11/17.**

Consent is permission for something to happen, or an agreement to do something. Consent must be freely given, but it may be either expressly stated or implied by the circumstances. [Name of defendant] has the burden to prove by a preponderance of the evidence that the officer reasonably believed based on all of the circumstances that [name of plaintiff] consented to the search.

**References:**

*United States v. Dewitt*, 946 F.2d 1497 (10th Cir. 1991)

**Committee Note:**

This instruction should only be used when consent is at issue, such as in a warrantless search or when a warrant is claimed to be invalid.

The parties should argue whether the circumstances in a given case give rise to consent. Some of the cases that discuss factors relevant to consent include *Eidson v. Owens*, 515 F.3d 1139 (10th Cir. 2008) and *United States v. Jones*, 701 F.3d 1300, 1318 (10th Cir. 2012).

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**CV1314 PROBABLE CAUSE – SEARCH OF RESIDENCE. APPROVED 9/11/17.**

Probable cause to search exists when the facts and circumstances known to the officer, based on reasonably trustworthy information, are such that a reasonable officer would believe that [contraband], [evidence of a crime], [criminal activity], or [the subject of an arrest warrant] will be found in the residence.

**References:**

*State v. Moreno*, 2009 UT 15, ¶ 37, 203 P.3d 1000, 1012  
*Illinois v. Gates*, 462 U.S. 213 (1983)

**Committee Note:**

If the search involves the subject of an arrest warrant, an instruction similar to the second paragraph of CV1315 should also be given.

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**CV1315 EXIGENT CIRCUMSTANCES. APPROVED 9/11/17.**

Exigent circumstances exist when an officer, acting on probable cause and in good faith, reasonably believes, based on all of the circumstances known to the officer at the time, that the delay in getting a search warrant will result in

- (1) [evidence or contraband being destroyed immediately];
- (2) [an officer or another person being placed in immediate danger]; or
- (3) [a suspect potentially escaping].

**References:**

*Kirk v. Louisiana*, 536 U.S. 635, 122 S. Ct. 2458 (2002)  
*Armijo ex rel. Armijo Sanchez v. Peterson*, 601 F.2d 1065 (10th Cir. 2010)  
*State v. Yoder*, 935 P.2d 534 (Utah Ct. App. 1997)

**Committee Note:**

There may be other circumstances beyond those in brackets above. See *State v. Yoder*, 935 P.2d 534 (Utah Ct. App. 1997).

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**CV1316 SEIZURES OF PROPERTY. Approved 1/9/2017.**

Seizure has a special meaning under the law. A “seizure” of property occurs when a [government actor] [takes/removes] a person’s property or otherwise interferes in a meaningful way with a person’s right to possess that property.

**References:**

*Soldal v. Cook County*, 506 U.S. 56, 62, (1992)  
*United States v. Jacobsen*, 466 U.S. 109, 113 (1984)

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**CV 1317 ENTRY OF RESIDENCE PURSUANT TO ARREST WARRANT. Approved 2/27/17.**

To lawfully enter a residence based on an arrest warrant, the officer must have reason to believe at the time of entry that 1) the person named in the arrest warrant was living at that residence; and 2) that person was actually in the residence at the time.

**References:**

*Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980)

**Committee Note:**

This instruction is limited to entries of residences based only on an arrest warrant. It does not apply to entries based on a search warrant, consent, or exigent circumstances and probable cause.

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**CV1318 PROTECTIVE SECURITY SWEEP. Approved 6/12/17.**

If an officer has lawfully entered a residence based on an arrest warrant, the officer is allowed to conduct a “protective security sweep” if the officer has reasonable suspicion that a person posing danger to the officer or others is in the area to be searched.

A “protective security sweep” is a limited search of the residence for the sole purpose of securing the officers’ safety during the arrest. It is a limited inspection of just those spaces where a person may be found.

An arrest warrant does not authorize any search greater than a protective security sweep.

**References:**

*Maryland v. Buie*, 494 U.S. 325, 327 (1990)

*Fishbein ex rel. Fishbein v. City Of Glenwood Springs, Colorado*, 469 F.3d 957, 961 (10th Cir. 2006)

*State v. Grossi*, 2003 UT App 181, 72 P.3d 686

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**CV1319 VALIDITY OF SEARCH WARRANT APPLICATION. Approved 6/12/17.**

In this case, [name of plaintiff] claims that, even though the search was based on a search warrant, the search was nonetheless unconstitutional. In order to prevail on this claim, [name of plaintiff] must prove by a preponderance of the evidence that:

1) at the time of the search warrant application, [name of defendant officer(s)] knowingly, intentionally, or with reckless disregard for the truth omitted information from or included false statements in the application, and

2) the information, if accurately included, would have changed the magistrate's decision to issue the warrant.

**References:**

*Salmon v. Schwarz*, 948 F.2d 1131, 1139 (10<sup>th</sup> Cir. 1991)

*Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978)

*Malley v. Briggs*, 475 U.S. 335, 345, (1986)

**Committee Note:**

Some of the issues in this instruction may be questions for the judge to decide, rather than the jury. It will be up to the parties and the judge to determine how to appropriately tailor the instruction for the jury.

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