

CR1003 Driving Under the Influence of Alcohol, Drugs, or Combination.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Driving Under the Influence of [Alcohol][Any Drug][the Combined Influence of Alcohol and Any Drug] [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) **intentionally, knowingly, or recklessly**
 - a. operated a vehicle; or
 - b. was in actual physical control of a vehicle; and
2. (DEFENDANT'S NAME):
 - a. [had sufficient alcohol in [his][her] body that a subsequent chemical test showed that [he][she] had a blood or breath alcohol concentration of [.05][.08] grams or greater at the time of the test;]
 - b. [was under the influence of [alcohol][any drug][the combined influence of alcohol and any drug] to a degree that rendered [him][her] incapable of safely operating a vehicle; or]
 - c. [had a blood or breath alcohol concentration of [.05][.08] grams or greater at the time of operation or actual physical control].
3. [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 element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References

Utah Code § 41-6a-502

Utah Code § 76-2-101(2)

State v. Bird, 2015 UT 7

[*State v. Higley*, 2020 UT App 45](#)

State v. Thompson, 2017 UT App 183

State v. Vialpando, 2004 UT App 95

Committee Notes

This instruction is intended to be used in prosecuting Class B Misdemeanor driving under the influence. For Class A Misdemeanor or Third Degree Felony driving under the influence instructions, use CR1004 or CR1005, respectively.

In the realm of DUI, courts often give instructions at the request of the parties that comment on the sufficiency, or relative quality, of evidence. These instructions are disfavored and may run afoul of the Utah Supreme Court's admonition that trial courts should not comment upon the evidence. See *State v. Pappacostas*, 407 P.2d 576 (Utah 1965); Utah R. Crim. P. 19(f); and CR1001 "Preamble to Driving Under the Influence Instructions."

It is an open question whether a mens rea is required with respect to the operation or actual physical control element of DUI. As of July 1, 2020, Utah Code was amended to explicitly state that driving under the influence is a strict liability offense (see HB0139-2020, line 164). For any offense committed prior to July 1, 2020, there is divergent legal authority on whether driving under the influence is a strict liability offense with respect to the operation or actual physical control of the vehicle. See Utah Code § 76-2-101(2) (no mental state generally required for traffic offenses), [*State v. Higley*, 2020 UT App 45](#), and *State v. Thompson*, 2017 UT App 183; but see *State v. Vialpando*, 2004 UT App 95, ¶ 26.