

#### **CR1004 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[.]; and]
3. (DEFENDANT'S NAME):
  - a. [operated the vehicle in a negligent manner which was the proximate cause of bodily injury upon [VICTIM'S NAME];]
  - b. [had a passenger under 16 years of age in the vehicle at the time of the offense;]
  - c. [was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense;]
  - d. [operated a vehicle onto or from any controlled-access highway except at entrances and exits established by the appropriate highway authority;]
4. [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. Thompson, 2017 UT App 183](#)
- [State v. Vialpando, 2004 UT App 95](#)

#### **Committee Notes**

This instruction is intended to be used in prosecuting Class A Misdemeanor driving under the influence. For Class B Misdemeanor or Third Degree Felony driving under the influence instructions, use CR1003 or CR1005, respectively. An alternative method to instruct the jury would be to use CR1003 (MB Instruction) in combination with SVF1001 ("Driving Under the Influence Offenses").

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. See Utah Code § 76-2-101(2) (no mental state generally required for traffic offenses) and *State v. Thompson*, 2017 UT App 183; but see *State v. Vialpando*, 2004 UT App 95, ¶ 26.

Last Revised – 01/08/2020