

MINUTES

STANDING COMMITTEE ON THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, March 2, 2016
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Jennifer Andrus
Judge James Blanch, Chair
Alison Adams-Perlac, Staff
Mark Field
Sandi Johnson
Karen Klucznik
Judge Brendon McCullagh
Steve Nelson
Jesse Nix
Nathan Phelps

EXCUSED

David Perry
Linda Jones
Judge Michael Westfall

1. Welcome and Recognition of Alison Adams-Perlac

Judge Blanch

Judge Blanch welcomed everyone to the meeting.

Mr. Klucznik moved to approve the minutes from the February 2016 meeting. Mr. Phelps seconded the motion and it passed unanimously.

Judge Blanch recognized departing member Ms. Adams-Perlac for her invaluable work on the committee.

2. Drug Offense Instructions

Committee

(a) Special Enhancements Instruction

Ms. Adams-Perlac presented a special enhancements form for drug offenses.

Mr. Field asked about the procedure for providing a jury with the special enhancements instruction. Ms. Johnson answered that unless a trial is bifurcated, the jury would normally receive the special enhancements instruction and verdict form with all the instructions.

Ms. Kluznik asked if the instruction should separately bracket elementary and secondary schools. Ms. Johnson stated that she often uses the MUJI instructions and she prefers fewer brackets. She stated that practitioners should be responsible for removing unnecessary brackets.

Ms. Kluznik also suggested adding a committee note reminding practitioners to include lesser included offenses.

The committee proposed the following language:

CR____. Special Enhancements.

Only use this instruction and the SPECIAL VERDICT FORM if you have found (DEFENDANT'S NAME) guilty of (NAME OF RELEVANT OFFENSE) as charged in Count____.

If you found (DEFENDANT'S NAME) guilty of (NAME OF RELEVANT OFFENSE) as charged in Count____, you must now decide whether any of the following circumstances have been proven beyond a reasonable doubt.

Defendant committed (NAME OF RELEVANT OFFENSE):

- [a. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a public or private [elementary or secondary school][vocational school or postsecondary institution] between 6 a.m. and 10 p.m.]
- [b. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a preschool or child-care facility during the preschool's or facility's hours of operation.]
- [c. in or within 100 feet of any structure, facility, or grounds of a [public park][amusement park][arcade][recreation center] when the [public park][amusement park][arcade][recreation center] is open to the public.]
- [d. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a house of worship.]
- [e. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a library when the library is open to the public.]
- [f. in the presence of a person younger than 18 years of age, regardless of where the act occurs.]
- [g. for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a [controlled][counterfeit] substance to an inmate or on the grounds of any correctional facility.]

References

Utah Code § 58-37-8(4)

Committee Note

Practitioners may need to modify this instruction to include any lesser-included offenses on which the jury was instructed and to which special enhancements may apply.

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

(b) Special Enhancements Verdict Form

Ms. Adams-Perlac presented a special enhancement verdict form for drug offenses. Mr. Field recommended adding language to the committee note with instructions on using the special verdict form. Ms. Johnson recommended using language from the previously approved firearm instruction.

The committee proposed the following language:

SVF Special Enhancements.

(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 (RELEVANT OFFENSE). We also unanimously find beyond a reasonable doubt that Defendant committed (NAME OF RELEVANT OFFENSE) (check only those that apply):

- a. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a public or private [elementary or secondary school][vocational school or postsecondary institution] between 6 a.m. and 10 p.m.]

- b. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a preschool or child-care facility during the preschool's or facility's hours of operation.]
- c. in or within 100 feet of any structure, facility, or grounds of a [public park][amusement park][arcade][recreation center] when the [public park][amusement park][arcade][recreation center] is open to the public.]
- d. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a house of worship.]
- e. in, on the grounds of, or within 100 feet of any structure, facility, or grounds of a library when the library is open to the public.]
- f. in the presence of a person younger than 18 years of age, regardless of where the act occurs.]
- g. for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a [controlled][counterfeit] substance to an inmate or on the grounds of any correctional facility.]

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

Foreperson

References

Utah Code § 58-37-8(4)

Committee Notes

The jury must check the boxes for those factors the jury finds unanimously beyond a reasonable doubt. The jury must not check the boxes for any factors the jury does not find unanimously beyond a reasonable doubt.

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

(c) Relevant Definitions

Judge Blanch asked for discussion on the relevant definitions.

Ms. Kluznik presented definitions for “house of worship,” “correctional facility,” and “firearm.”

The committee first discussed the definition for “house of worship.” Judge McCullagh recommended bracketing “building set apart primarily for the purpose of worship” because of

the infrequency of its use by practitioners. The committee discussed the meaning of “main body” and concluded that it was conjunctive to “other building.”

The committee created a definition for “house of worship” that simplified the statutory language. Some committee members were concerned that the proposed definition was not faithful to the statutory language.

Judge Blanch asked committee members to discuss whether the proposed language was faithful to the statute. Ms. Johnson stated that the proposed language was clearer than the statute. Judge Blanch stated that the proposed language did not change the meaning. Judge Westfall stated that the proposed language changed the definition of the statute because “other building” has four elements and the proposed language eliminated those elements. Professor Andrus stated that proposed language included the four elements.

After a lengthy discussion on whether the proposed language was faithful to the statute, Ms. Johnson suggested using the statutory language. Judge Blanch agreed and stated that the committee’s robust discussion convinced him to recommend the statutory language.

Judge Blanch asked if the committee wanted to discuss “correctional facility” and “firearm.” The committee was satisfied with using the statutory definitions.

The committee proposed the following language:

CR____. Relevant Definitions.

[A “house of worship” means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose]. *See* Utah Code § 76-10-501.

[A “correctional facility” means:

1. any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;
2. any facility operated by a municipality or a county to house or detain criminal offenders;
3. any juvenile detention facility; and
4. any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.] *See* Utah Code § 76-8-311.3).

[A “firearm” means a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.] *See* Utah Code § 76-10- 501.

Mr. Young moved to approve the relevant definitions. Ms. Johnson seconded the motion and it passed unanimously.

3. Adjourn

Committee

The meeting was adjourned at 1:40 p.m. The next meeting is Wednesday, May 4, 2016.