

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING AGENDA**

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
August 7, 2019 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Approval of CR411 re: 404(b) - <i>Edits from June 5, 2019 meeting</i>		Tab 2	Judge Blanch
	Final consideration and approval of Assault Instructions		Tab 3	Sandi Johnson
	DUI and related traffic instructions		Tab 4	Judge McCullagh
1:30	Adjourn			

**COMMITTEE WEB PAGE:** <https://www.utcourts.gov/utc/muji-criminal/>

**UPCOMING MEETING SCHEDULE:**

Meetings are held at the Matheson Courthouse in the Judicial Council Room (N301), on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

September 4, 2019  
October 2, 2019

November 6, 2019  
December 4, 2019

**UPCOMING ASSIGNMENTS:**

1. Judge McCullagh = DUI; Traffic
2. Sandi Johnson = Assault; Burglary; Robbery
3. Karen Klucznik & Mark Fields = Murder

4. Stephen Nelson = Use of Force; Prisoner Offenses
5. Judge Jones = Wildlife Offenses

# TAB 1

## Minutes from June 5, 2019 Meeting

**NOTES:** The minutes from the June 5, 2019 meeting should be reviewed and approved.

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
June 5, 2019 – 12:00 p.m. to 1:30 p.m.

**DRAFT**

**MEMBERS:**

PRESENT    EXCUSED

MEMBERS:	PRESENT	EXCUSED
Judge James Blanch, <i>Chair</i>	•	
Jennifer Andrus		•
Melinda Bowen		•
Mark Field	•	
Jessica Jacobs	•	
Sandi Johnson	•	
Judge Linda Jones, <i>Emeritus</i>	•	
Karen Klucznik	•	
Elise Lockwood	•	
Judge Brendan McCullagh		•
Stephen Nelson		•
Nathan Phelps	•	
Judge Michael Westfall		•
Scott Young		•

**GUESTS:**

Darian (Intern to Judge Blanch)

**STAFF:**

Michael Drechsel  
Jiro Johnson (minutes)  
Minhvan Brimhall (recording secretary)

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Blanch welcomed the committee to the meeting.  
The committee considered the minutes from the May 1, 2019 meeting.  
Mr. Phelps moved to approve the draft minutes.  
Ms. Lockwood seconded the motion.  
The motion passed.

**(2) CR411 REVIEW IN LIGHT OF STATE V. LANE, 2019 UT APP 86:**

Ms. Johnson introduced this matter to the committee. She noted that Judge Harris’s statements in the opinion caused her to question whether CR411 needed to be modified. Ms. Klucznik thought that the main opinion and the concurrence each created a need to modify CR411. The committee discussed CR411 and the *State v. Lane* opinion. Judge Blanch pointed out that CR411 contains a bracketed portion that requires the instruction to be modified. Judge Blanch asked whether the instruction itself needs modification or whether the committee notes should be amended to more pointedly direct practitioners to make appropriate modifications to the bracketed language. In his view, if the bracketed material is sufficiently detailed and describes a lawful non-propensity

purpose, then CR411 appears to be an accurate statement of the law. The committee discussed ¶128 and ¶144 of the opinion and the . Ms. Klucznik raised the *State v. Bell*, 770 P.2d 100, 111 (Utah 1988) case for consideration. The committee discussed various approaches to addressing the issue, including proposed edits to the existing language in CR411. Because the details of each case will be fact dependent, the committee is not in a position to draft an instruction that doesn't include a bracketed portion that requires customization. Customization by the parties will always be necessary. The committee discussed whether modifications to CR411 needed additional time for more detailed consideration or whether edits could be agreed upon today.

Ultimately, after significant discussion, the committee agreed upon the following language:

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**CR411 404(B) INSTRUCTION.**

You (are about to hear) (have heard) evidence that the defendant [insert 404(b) evidence] (before) (after) the act(s) charged in this case. This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait. You may consider this evidence, if at all, for the limited purpose of tailor to specify proper non-character purpose such as motive, intent, doctrine of chances, etc. and to which element(s) it applies]. ~~This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait.~~ Keep in mind that the defendant is on trial for the crime(s) charged in this case, and for (that) (those) crime(s) only. You may not convict ~~a person~~ the defendant simply because you believe (he) (she) may have committed some other act(s) at another time.

**REFERENCES**

Utah R. Evid. 105.  
Utah R. Evid. 404(b).  
*Huddleston v. United States*, 485 U.S. 681, 691-92 (1988).  
*State v. Forsyth*, 641 P.2d 1172, 1175-76 (Utah 1982).  
29 Am. Jur.2d Evidence § 461.  
*State v. Lane*, 2019 UT App 86  
*State v. Bell*, 770 P.2d 100 (1988)

**COMMITTEE NOTES**

When used, this instruction must be modified in accordance with *State v. Lane* and *State v. Bell*. Further, ~~This~~ this instruction, if given, should be given at the time the 404(b) evidence is presented to the jury and, upon request, again in the closing instructions. Under Rule 105, the court must give a limiting instruction upon request of the defendant.

The committee recognizes, however, that there may be times when a defendant, for strategic purposes, does not want a 404(b) instruction to be given. In those instances, a record should be made outside the presence of the jury that the defendant affirmatively waives the giving of a limiting instruction.

404(b) allows evidence when relevant to prove any material fact, except criminal disposition as the basis for an inference that the defendant committed the crime charged. *State v. Forsyth*, 641 P.2d 1172 (Utah 1982). In the rare instance where, after the jury has been instructed, a party identifies another proper non-character purpose, the court may give additional instruction.

If the 404(b) evidence was a prior conviction admitted also to impeach under Rule 609, see instruction CR409.

If the instruction relates to a witness other than a defendant, it should be modified.

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After agreeing upon this language, the committee also agreed that they would wait to adopt the language at the next committee meeting.

**(3) SUMMER MEETING SCHEDULE:**

The committee discussed what meetings would be held during July and August. It was agreed that a July meeting will not be held. Judge Blanch asked that the committee plan on meeting in August. He instructed staff to reach out to the committee members in advance of that meeting to ensure we will have a quorum.

**(4) ASSAULT INSTRUCTIONS:**

Judge Blanch asked that Ms. Johnson describe to the committee the various configurations for the assault instructions. Ms. Johnson noted that there is agreement that cohabitant should be determined by a separate special verdict form. The MA for assault of pregnant person will likely not typically need a special verdict form, as that is not usually the issue in the case; the issue is typically “was there an assault” not “did the defendant know of the pregnancy.” In terms of the F2 and F3 versions of assault involving serious bodily injury (or the MA for substantial bodily injury), it seemed to Ms. Johnson that a special verdict form is useful because a different mental state is required compared to MB assault. In her view, any time there is an increase in the level of offense, a special verdict form would be appropriate. The committee still needs to determine how the various permutations of the instructions should be organized. Judge Blanch noted that the instructions themselves are not particularly challenging on their own. It is trying to ascertain the best permutation for a specific case that is the difficult question. A one-size-fits-all approach is complicated. One concern with special verdict forms is how they relate to the use of lesser included offense instructions. If the instruction includes all elements without a special verdict form, a lesser included instruction becomes a more important consideration. If the underlying instruction is already drafted for the lower offense, with a special verdict form to get to the higher level offense, there is often no need for lesser included offenses. If standalone instructions are used, there would need to be the following:

- Assault, MB
- Assault – pregnant, MA
- Assault – substantial bodily injury, MA
- Aggravated assault – [force likely to cause serious bodily injury or death / use of weapon], F3
- Aggravated assault – serious bodily injury, F2
- Aggravated assault – strangulation, F2

Any other combinations or permutations would need to be customized by the parties. The committee asked that Ms. Johnson assemble the instructions (including those that have not yet been approved by the committee) into a useful packet prior to the next meeting so that the committee can make final consideration and approval. Mr. Drechsel will provide the materials to Ms. Johnson for organization and assembly.

**(5) NEXT PROJECT**

The committee agreed to move next to the Traffic / DUI instructions, with Judge McCullagh taking the lead. Mr. Drechsel will coordinate with Judge McCullagh.

**(5) ADJOURN**

The meeting adjourned at approximately 1:35 p.m. The next meeting will be held on [month] [day], 20\_\_, starting at 12:00 noon.

# TAB 2

## Approval of CR411 re: 404(b)

**NOTES:** At the June 5, 2019 meeting, the committee members discussed and made changes to CR411 re: 404(b) evidence, in light of the Utah Court of Appeals decision in State v. Lane, 2019 UT App 86. Lacking a quorum, and to provide the committee members additional time to review the proposed changes, it was agreed that a vote regarding the amended language would be taken at this meeting. A draft of the revised rule is attached.

**CR411 404(b) Instruction.**

You (are about to hear) (have heard) evidence that the defendant [insert 404(b) evidence] (before) (after) the act(s) charged in this case. ~~This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait.~~ You may consider this evidence, if at all, for the limited purpose of [~~tailor to specify~~ proper non-character purpose such as motive, intent, doctrine of chances, etc. and to which element(s) it applies]. ~~This evidence (is) (was) not admitted to prove a character trait of the defendant or to show that (he) (she) acted in a manner consistent with such a trait.~~ Keep in mind that the defendant is on trial for the crime(s) charged in this case, and for (that) (those) crime(s) only. You may not convict ~~a person the defendant~~ simply because you believe (he) (she) may have committed some other act(s) at another time.

**References**

Utah R. Evid. 105.

Utah R. Evid. 404(b).

*Huddleston v. United States*, 485 U.S. 681, 691-92 (1988).

*State v. Forsyth*, 641 P.2d 1172, 1175-76 (Utah 1982).

29 Am. Jur.2d Evidence § 461.

[State v. Lane, 2019 UT App 86](#)

[State v. Bell, 770 P.2d 100 \(1988\)](#)

**Committee Notes**

When used, this instruction must be modified in accordance with *State v. Lane* and *State v. Bell*. Further, this instruction, if given, should be given at the time the 404(b) evidence is presented to the jury and, upon request, again in the closing instructions. Under Rule 105, the court must give a limiting instruction upon request of the defendant.

The committee recognizes, however, that there may be times when a defendant, for strategic purposes, does not want a 404(b) instruction to be given. In those instances, a record should be made outside the presence of the jury that the defendant affirmatively waives the giving of a limiting instruction.

404(b) allows evidence when relevant to prove any material fact, except criminal disposition as the basis for an inference that the defendant committed the crime charged. *State v. Forsyth*, 641 P.2d 1172 (Utah 1982). In the rare instance where, after the jury has been instructed, a party identifies another proper non-character purpose, the court may give additional instruction.

If the 404(b) evidence was a prior conviction admitted also to impeach under Rule 609, see instruction CR409.

If the instruction relates to a witness other than a defendant, it should be modified.

Last Revised – 06/05/2019

# TAB 3

## Assault Instructions

**NOTES:** Since the June 5, 2019 meeting, Sandi Johnson has arranged a set of assault instructions based upon the committee's most recent discussions. That packet of materials is attached.



## **CR\_\_\_\_\_ Assault**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault [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. attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME).
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 § 76-5-102

### **Committee Notes**

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 11/07/2018

ORIGINAL DRAFT: 05/02/2018

APPROVED BY COMMITTEE: 11/07/2018

## **CR\_\_\_\_\_ Assault – Pregnant Person.**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault Against a Pregnant Person [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. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (VICTIM'S NAME) was pregnant; and
4. (DEFENDANT'S NAME) had knowledge of the pregnancy; and
5. [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 § 76-5-102(3)(b)

### **Committee Notes**

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 12/05/2018

ORIGINAL DRAFT: 05/02/2018

APPROVED BY COMMITTEE: 12/05/2018

**CR\_\_\_\_\_ Assault – Causing Substantial Bodily Injury.**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault Causing Substantial Bodily Injury [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 an act with unlawful force or violence;
3. The act caused substantial bodily injury to (VICTIM'S NAME).
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 § 76-5-102(3)(a)

**Committee Notes**

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

Last Revised – 12/05/2018

ORIGINAL DRAFT: 05/02/2018

APPROVED BY COMMITTEE: 11/07/2018

## **CR\_\_\_\_\_ Domestic Violence – Special Verdict Instructions.**

If you find (DEFENDANT'S NAME) guilty of [CRIME], you must determine whether (DEFENDANT'S NAME) and (VICTIM'S NAME) were cohabitants at the time of this offense. To find (DEFENDANT'S NAME) was a cohabitant with (VICTIM'S NAME), you must find beyond a reasonable doubt, that (DEFENDANT'S NAME) and (VICTIM'S NAME) were 16 years of age or older, and at the time of the offense, (DEFENDANT'S NAME):

- [Is or was a spouse of (VICTIM'S NAME);]
- [Is or was living as if a spouse of (VICTIM'S NAME);]
- [Is related by blood or marriage to (VICTIM'S NAME) as (VICTIM'S NAME)'s parent, grandparent, sibling, or any other person related to (VICTIM'S NAME) by consanguinity or affinity to the second degree;]
- [Has or had one or more children in common with (VICTIM'S NAME);]
- [Is the biological parent of (VICTIM'S NAME)'s unborn child;]
- [Resides or has resided in the same residence as (VICTIM'S NAME);] or
- [Is or was in a consensual sexual relationship with (VICTIM'S NAME)].

The State must prove beyond a reasonable doubt that (DEFENDANT'S NAME) and (VICTIM'S NAME) were cohabitants at the time of this offense. Your decision must be unanimous and should be reflected on the special verdict form.

### **References**

Utah Code § 77-36-1

Utah Code § 78B-7-102

### **Committee Notes**

Last Revised – 10/03/2018

ORIGINAL DRAFT: 05/02/2018

APPROVED BY COMMITTEE: 10/03/2018

## **CR\_\_\_\_\_ Domestic Violence – Special Verdict Definitions.**

“Reside” means to dwell permanently or for a length of time; to have a settled abode for a time; to dwell permanently or continuously.

“Residence” is defined as “a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit.” It does not require an intention to make the place one’s home. It is possible that a person may have more than one residence at a time.

When determining whether (DEFENDANT’S NAME) and (VICTIM’S NAME) resided in the same residence, factors to consider include the following:

- the amount of time one spends at the shared abode and the amount of effort expended in its upkeep;
- whether a person is free to come and go as he pleases, treating the place as if it were his own home;
- whether there has been a sharing of living expenses or sharing of financial obligations for the maintenance of a household;
- whether there has been sexual contact evidencing a conjugal association;
- whether furniture or personal items have been moved into a purported residence;
- voting, owning property, paying taxes, having family in the area, maintaining a mailing address, being born or raised in the area, working or operating a business, and having children attend school in the forum.

In deciding whether (DEFENDANT’S NAME) and (VICTIM’S NAME) were residing in the same residence, you are not limited to the factors listed above, but you may also apply the common, ordinary meaning of the definition to all of the facts and circumstances of this case.

### **References**

*Keene v. Bonser*, 2005 UT App 37

*State v. Salt*, 2015 UT App 72

### **Committee Notes**

Last Revised – 10/03/2018

ORIGINAL DRAFT: 05/02/2018

APPROVED BY COMMITTEE: 10/03/2018

**CR\_\_\_\_\_ Domestic Violence – Special Verdict Form.**

(CAPTION INFORMATION with document title being: “SPECIAL VERDICT Count(s) \_\_\_\_\_“)

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of [CRIME(S)]. We also unanimously find the State:

\_\_\_\_\_ Has  
\_\_\_\_\_ Has Not

proven beyond a reasonable doubt (DEFENDANT'S NAME) and (VICTIM’S NAME) were cohabitants at the time of this offense.

DATED this \_\_\_\_\_ day of (MONTH), (YEAR).

\_\_\_\_\_  
Foreperson

**References**

None.

**Committee Notes**

Last Revised – 10/03/2018  
ORIGINAL DRAFT: 05/02/2018  
APPROVED BY COMMITTEE: 10/03/2018

# Pending/Working Drafts

## **CR\_\_\_\_\_ Assault Against School Employees**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault Against a School Employee [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. Knowing that (VICTIM'S NAME) was an employee or volunteer of a public or private school;
3. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
  - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
  - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. (VICTIM'S NAME) was acting within the scope of (his)(her) authority as an employee or volunteer of a public or private school; and
5. [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 § 76-5-102.3



## **CR \_\_\_\_\_ Assault Against a Peace Officer**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault Against a Peace Officer [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. Knowing that (VICTIM'S NAME) was a peace officer;
3. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
  - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
  - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. [(DEFENDANT'S NAME);
  - a. Has been previously convicted of a class A misdemeanor or a felony violation of Assault Against a Peace Officer;
  - b. Caused substantial bodily injury;
  - c. Used a dangerous weapon; or
  - d. Used means or force likely to produce death or serious bodily injury]
5. (VICTIM'S NAME) was acting within the scope of (his)(her) authority as a peace officer;  
and
6. [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 § 76-5-102.4(2)(a)

### **Committee Notes**

Depending on the facts of the case, if practitioners are using multiple elements under element 4, they are advised to use separate elements instructions or a special verdict form, as these elements enhance the crime to 3<sup>rd</sup> Degree and 2<sup>nd</sup> Degree felonies.

## **Assault Against a Military Servicemember in Uniform**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Assault Against a Military Servicemember in Uniform 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. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
  - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
  - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
3. (VICTIM'S NAME) was on orders and acting within the scope of authority granted to the military servicemember in uniform; and
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 § 76-5-102.4(2)(b)

### **Committee Notes**

Depending on the facts of the case, if practitioners are using multiple elements under element 4, they are advised to use separate elements instructions or a special verdict form, as these elements enhance the crime to 3<sup>rd</sup> Degree and 2<sup>nd</sup> Degree felonies.

## **CR \_\_\_\_ Assault By Prisoner**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Assault By Prisoner [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. Intending to cause bodily injury;
3. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
4. At the time of the act (DEFENDANT'S NAME) was
  - a. In the custody of a peace officer pursuant to a lawful arrest; or
  - b. Was confined in a [jail or other penal institution][facility used for confinement of delinquent juveniles] regardless of whether the confinement is legal; and
5. [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 § 76-5-102.5

## CR \_\_\_\_ Aggravated Assault

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Aggravated Assault [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. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
  - c. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
  - a. [Used a dangerous weapon; or]
  - b. [Committed an act that interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
    - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
    - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
  - c. [Used other means or force likely to produce death or serious bodily injury];
4. [(DEFENDANT'S NAME)'s actions
  - a. [Resulted in serious bodily injury; or]
  - b. [impeding the breathing or circulation of blood of (VICTIM'S NAME) produced a loss of consciousness; or]
  - c. [targeted a law enforcement officer and resulted in serious bodily injury]; and
5. [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 § 76-5-103

### Committee Notes

Depending on the facts of the case, if practitioners are using multiple elements under element 4, they are advised to use separate elements instructions or a special verdict form, as these elements enhance the crime to 2<sup>nd</sup> Degree or 1<sup>st</sup> Degree felonies.

In cases involving domestic violence, practitioners should include a special verdict form and instructions defining cohabitant.

Utah appellate courts have not decided whether the cohabitant relationship between the defendant and the alleged victim is an element of the offense requiring proof of an associated *mens rea* (intentional, knowing, or reckless). Practitioners should review *State v. Barela*, 2015 UT 22.

## CR \_\_\_\_\_ Aggravated Assault By Prisoner

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Aggravated Assault By Prisoner [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. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
  - c. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
  - a. [Used a dangerous weapon; or]
  - b. [Committed an act that interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
    - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
    - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
  - c. [Used other means or force likely to produce death or serious bodily injury];
4. [(DEFENDANT'S NAME) intentionally caused serious bodily injury];
5. At the time of the act (DEFENDANT'S NAME) was
  - a. In the custody of a peace officer pursuant to a lawful arrest; or
  - b. Was confined in a [jail or other penal institution][facility used for confinement of delinquent juveniles] regardless of whether the confinement is legal; and
6. [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 § 76-5-103.5

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(LOCATION) JUDICIAL DISTRICT COURT, [ \_\_\_\_\_ DEPARTMENT,]

IN AND FOR (COUNTY), STATE OF UTAH

---

THE STATE OF UTAH,

:

**SPECIAL VERDICT**

Plaintiff,

:

Count (#)

-vs-

:

(DEFENDANT'S NAME),

:

Case No. (\*\*)

Defendant.

---

### **Assault Against a Peace Officer SVF**

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Assault Against a Peace Officer, as charged in Count [#]. We also unanimously find the State has proven the following beyond a reasonable doubt (check all that apply):

- (DEFENDANT'S NAME) has been previously convicted of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;
- (DEFENDANT'S NAME) caused substantial bodily injury;
- (DEFENDANT'S NAME) used a dangerous weapon;
- (DEFENDANT'S NAME) used other means or force likely to produce death or serious bodily injury.
- None of the above

### **Assault Against a Military Servicemember in Uniform SVF**

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Assault Against a Military Servicemember, as charged in Count [#]. We also unanimously find the State has proven the following beyond a reasonable doubt (check all that apply):

- (DEFENDANT'S NAME) has been previously convicted of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;
- (DEFENDANT'S NAME) caused substantial bodily injury;
- (DEFENDANT'S NAME) used a dangerous weapon;
- (DEFENDANT'S NAME) used other means or force likely to produce death or serious bodily injury.
- None of the above

**Aggravated Assault SVF**

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

- The act resulted in serious bodily injury[;]
- The act that impeded the breathing or the circulation of blood of (VICTIM'S NAME) produced a loss of consciousness.
- The act targeted a law enforcement officer and resulted in serious bodily injury
- None of the above

DATED this \_\_\_\_\_ day of (Month), 20(\*\*).

\_\_\_\_\_  
Foreperson



## CR \_\_\_\_ Definitions for Assault and Related Offenses

**"Bodily injury"** means physical pain, illness, or any impairment of physical condition.

### References

Utah Code § 76-1-601(3)

**"Substantial Bodily Injury"** means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

### References

Utah Code § 76-1-601(12)

**"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(11)

**"Dangerous weapon"** means:

- (a) any item capable of causing death or serious bodily injury; or
- (b) a facsimile or representation of the item, if:
  - (i) (DEFENDANT'S NAME)'s use or apparent intended use of the item leads (VICTIM'S NAME) to reasonably believe the item is likely to cause death or serious bodily injury; or
  - (ii) (DEFENDANT'S NAME) represents to (VICTIM'S NAME) verbally or in any other manner that [he][she] is in control of such an item

### References

Utah Code § 76-1-601(5)

**"Peace officer"** means:

- (a) A law enforcement officer certified under Section 53-13-103;
- (b) A correctional officer under Section 53-13-104;
- (c) A special function officer under Section 53-13-105; or
- (d) A federal officer under Section 53-13-106

### References

Utah Code § 76-5-102.4(1)(c)

**"Military servicemember in uniform"** means:

- (a) A member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or
- (b) A member of the National Guard serving as provided in Section 39-1-5 or 39-1-9

**References**

Utah Code § 76-5-102.4(1)(b)

**“Targeting a Law Enforcement Officer”** means the commission of any offense involving the unlawful use of force and violence against a law enforcement officer, causing serious bodily injury or death in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.

**References**

Utah Code § 76-5-210

# TAB 4

## **DUI and related traffic instructions**

**NOTES:** Judge McCullagh has assembled a group of instructions to begin the conversation regarding DUI and related traffic instructions. That packet of materials is attached.

INSTRUCTION NO. \_\_\_\_\_

Before you can convict the defendant of Driving Under the Influence of Alcohol, you must find from all of the evidence and beyond a reasonable doubt each and every one of the following **numbered** elements of that offense:

1. That on or about DATE, the defendant:

2. Operated or was in actual physical control of a vehicle in this state; and

3.A. He had sufficient alcohol in his body at the time he operated or was in physical control of the vehicle, that a subsequent chemical test showed that, at the time of the test, he had a [breath/blood] alcohol concentration of greater than .[08/05]. OR

3.B. He was under the influence of alcohol to a degree that rendered him incapable of safely operating a vehicle. OR

3.C. At the Time of the operation of the motor vehicle S/he had a blood alcohol level of .08[5].

If, after careful consideration of all of the evidence in this case, you are convinced of the truth of each and every one of the foregoing **numbered** elements beyond a reasonable doubt, then you must find the defendant guilty of Driving under the Influence of Alcohol as charged in the information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of that count.

INSTRUCTION NO. \_\_\_\_\_

In this case, you have heard evidence that the defendant was asked to perform certain roadside tests commonly referred to as field sobriety tests. It is up to you to decide if those tests have any rational connection to operating a motor vehicle safely. It is also up to you to decide if the defendant's performance on those tests gives any reliable indication of whether or not the defendant's capacity to safely drive a motor vehicle was diminished. In other words, it is up to you to determine the weight to give to the defendant's performance on the field sobriety tests.

In judging the defendant's performance on the roadside tests, you may consider the circumstances under which they were given, the defendant's physical condition, the defendant's state of mind, and any other factors you find relevant.

You are not bound to agree with the officer's opinion. It is your duty as jurors to independently determine whether the defendant was capable of safely operating a vehicle based upon all of the evidence presented to you. In considering that issue, you may give whatever weight you deem proper to the officer's opinion and to any of the various bases for that opinion.

INSTRUCTION NO. \_\_\_\_\_

To prove the element outlined in Section 3B of Instruction Number \_\_\_\_, the prosecution must prove to you that the defendant was under the influence of alcohol to a degree which rendered him or her incapable of safely driving the vehicle. Proof that the defendant had consumed alcohol, without other evidence, is not enough to prove this element.

“Under the influence of alcohol to a degree that renders a driver incapable of safely driving a vehicle,” as that expression is used here, covers not only the well known and easily recognized conditions and degrees of intoxication, but also any abnormal mental or physical condition which is the result of the consumption of alcohol which perceptibly tends to deprive one of the use of that clearness of intellect and control that one would otherwise possess and which is required to safely operate a vehicle.

Moreover, it may be said that a driver is under the influence of alcohol when, as a result of ingesting any or a combination of those substances, his abilities of perception, coordination, or judgment are so affected as to impair to an appreciable degree, his ability to operate a vehicle with the degree of care which an ordinary, prudent person in full possession of his or her faculties would exercise in similar circumstances.

The City is not bound to prove that the defendant was drunk or intoxicated as those terms are commonly understood, nor is the City bound to prove that the defendant drove his or her vehicle improperly or erratically.

INSTRUCTION No. \_\_\_\_\_

The Prosecution has established to the Court's satisfaction, that the intoxilyzer instrument used in this case was tested and functioning properly on [BEFORE], and [AFTER]. By Utah law, no further foundation is required to admit the defendant's breath test result from [OFFENSE DATE]. However, by admitting the breath test result in this case, the court is not making any finding about the accuracy or reliability of the instrument at the time of the test. That is for you to determine based on the evidence.

INSTRUCTION NO. \_\_\_\_\_

In this case, the charges distinguish between “operating” OR being “in actual physical control” of a motor vehicle. These are separate considerations.

Actual physical control of a motor vehicle means that a person has the apparent ability to start and move a vehicle. The question of whether a person operated or even intends to operate a motor vehicle is irrelevant to whether that person has the present ability to start and move the vehicle.

You must decide from the evidence of this case whether the defendant had the present ability to start and move the vehicle. In making that determination you may want to consider the following factors:

- (1) whether defendant was asleep or awake when discovered.
- (2) the position of the automobile;
- (3) whether the automobile's motor was running;
- (4) whether defendant was positioned in the driver's seat of the vehicle;
- (5) whether defendant was the vehicle's sole occupant;
- (6) whether defendant had possession of the ignition key;
- (7) how the car got to where it was found; and
- (8) whether defendant drove it there;

None of these factors is solely determinative of the question, nor is the list all-inclusive of factors you may find helpful in your deliberations.



INSTRUCTION NO. \_\_\_\_\_

Before you can convict the defendant of Violating an Alcohol License Restriction, you must find from all of the evidence and beyond a reasonable doubt each and every one of the following elements of that offense:

1. That on or about February 12, 2012, the defendant:
2. [is a person under age 21];
2. [is a novice learner driver];
2. [within the two years prior to [OFFENSE DATE] was convicted of:
  - a. a violation of Utah Code Ann. 41-6a-502
  - b. alcohol and or drug related reckless driving;
  - c. impaired driving, Utah Code Ann. 41-6a502.5
  - d. a local ordinance similar to those referenced in subsections 2(a-c)
  - e. a statute or ordinance of this state, another state, the United States, or any of its districts, possessions or territories, which would constitute a violation Utah Code Ann. 41-6a-502.]
2. [within the two years prior to [OFFENSE DATE], has had the person's driving privileges suspended pursuant to Utah Code Ann. 53-3-223 for an alcohol related offense.]
2. [within the three years prior to [OFFENSE DATE], has been convicted of 41-6a-518.2, Driving Without an Ignition Interlock Device]
2. [within the last five years has:
  - a. had their driver's privilege revoked for a refusal to submit to a chemical test under Utah Code Ann. 41-6a-520.
  - b. been convicted of a class A misdemeanor violation of 41-6a-502.
- [within the ten years prior to [OFFENSE DATE] has been convicted of:

- a. a violation of Utah Code Ann. 41-6a-502
- b. alcohol and or drug related reckless driving;
- c. impaired driving, Utah Code Ann. 41-6a502.5
- d. a local ordinance similar to those referenced in subsections 2(a-c)
- e. a statute or ordinance of this state, another state, the United States, or any of its

districts, possessions or territories, which would constitute a violation Utah Code Ann. 41-6a-502.]

AND that conviction was for an offense that was committed within ten years of the commission of another such offense for which the defendant was convicted.

2. [within the ten years prior to [OFFENSE DATE], has had his/her driving privilege revoked for a refusal to submit to a chemical test and that refusal was within ten years after:

- a. a prior refusal to submit to a chemical test under Utah Code Ann. 51-6a-520; or
- b. a prior conviction for {LIST OFFENSE, which was not based on the same arrest

as the refusal} {used because this is a legal determination which will be made by COURT}

2. [has previously been convicted of:

- a. automobile homicide under Utah Code Ann. 76-5-207; or
- b. a felony violation of 41-6a-502.]

3. operated or was in actual physical control of a vehicle in this state; and

4. at the time of that operation or physical control, had a measurable or detectable amount of alcohol in his body.

If, after careful consideration of all of the evidence in this case, you are convinced of the truth of each and every one of the foregoing numbered elements beyond a reasonable doubt, then you must find the defendant guilty of Violating an Alcohol License Restriction as charged in the information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of that count.

INSTRUCTION \_\_\_\_\_:

SPECIAL VERDICT INSTRUCTIONS

If your deliberations cause you to return a verdict of guilty on the charge of DUI, you must also deliberate about the questions contained in the special verdict form.

In this case you are being asked to find whether the prosecution has proved these questions to you beyond a reasonable doubt.

- At the time of the offense, the defendant inflicted bodily injury on \_\_\_\_\_ as a proximate result of having operated the vehicle negligently, as charged in Count \_\_\_\_.  
  
{REPEAT AS NECESSARY}
- At the time of the offense, had a passenger in the vehicle who was under 16 years of age.
- At the time of the offense, the defendant was over the age of 21 years of age and had a passenger in the car who was under 18 years of age.
- At the time of the offense, the defendant entered or exited a freeway or other controlled-access highway at a place other than an entrance and exit established by the highway authority having jurisdiction over the highway.
- At the time of the offense, the defendant inflicted serious bodily injury on \_\_\_\_\_ as a proximate result of having operated the vehicle negligently, as charged in Count \_\_\_\_  
  
{repeat as necessary}
- The defendant has two or more prior convictions, each of which is within ten years of:
  - The current conviction ; or
  - [DATE], the date of occurrence of the current offense; or
- The defendant has a conviction for:
  - a prior felony violation of Utah Code Ann. 41-6a-502
  - Automobile homicide under 76-5-207

Please fill in the appropriate box on the special verdict form for each special question posed.