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

Via WebEx
October 7, 2020 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes	Action	Tab 1	Judge Blanch
	Recognition: Remington Jiro Johnson			Committee
	Battered Person Mitigation Instructions - *Reworked materials after September 2, 2020 meeting discussion*	Discussion / Action	Tab 2	Karen Klucznik
	Public Comment Review - *Continued review of public comments received from June 3, 2020 to July 19, 2020 public comment period*	Discussion / Action	Tab 3	Committee Members
	DUI and Related Traffic Instructions	Discussion / Action	Tab 4	Judge McCullagh
1:30	Adjourn			

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

UPCOMING MEETING SCHEDULE:
Meetings are held via WebEx, on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

November 4, 2020 | December 2, 2020 |

UPCOMING ASSIGNMENTS:
1. Sandi Johnson = Burglary; Robbery
2. Judge McCullagh = DUI; Traffic
3. Karen Klucznik & Mark Fields = Murder
4. Stephen Nelson = Use of Force; Prisoner Offenses
5. Judge Jones = Wildlife Offenses

TAB 1

Minutes – September 2, 2020 Meeting

NOTES:

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

Via WebEx
September 2, 2020 – 12:00 p.m. to 1:30 p.m.

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Judge James Blanch, *Chair*	•	
Jennifer Andrus		•
Melinda Bowen	•	
Mark Field		•
Sandi Johnson	•	
Judge Linda Jones, *Emeritus*	•	
Karen Klucznik	•	
Elise Lockwood	•	
Judge Brendan McCullagh		•
Debra Nelson	•	
Stephen Nelson		•
Nathan Phelps	•	
Judge Michael Westfall *(from 12:45-13:20 due to court calendar)*	•	
Scott Young		•

GUESTS:

None

STAFF:

Michael Drechsel
Jiro Johnson (minutes)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the August 5, 2020 meeting. Mr. Phelps moved to approve the draft minutes. Ms. Johnson seconded the motion. The motion passed.

(2) "INDECENT LIBERTIES" DEFINITION FOR CR1601:

Mr. Drechsel reported to the committee on his efforts to follow the committee's August direction to make tense and stylistic changes to the statutory definition of "indecent liberties" (Utah Code § 76-5-416). The committee discussed the best manner to approach the definition, including various possibilities to ensure the definition is an accurate reflection of the statute and harmonizes with the tense of other MUJI instructions. Mr. Phelps noted that the tense difference between "take" and "took" will likely not pose a problem for jurors. Ms. Klucznik asked whether "the actor" in subparagraph (1) is necessary. After exploring some other possibilities (i.e., changing the gerunds—

touching, causing, simulating, etc.—to past tense verbs—touched, caused, simulated, etc.), the committee ultimately determined that the simplest solution that hews most closely to the statute is for the definition to be for "indecent liberties" (as opposed to the statute's "take indecent liberties") and that the words "the actor" should be removed from subparagraph (1), with no other changes, as follows:

"~~Take~~ [I]ndecent liberties" means:

(1) ~~the actor~~ touching [(VICTIM'S NAME) (MINOR'S INITIALS)]'s genitals, anus, buttocks, pubic area, or female breast;

(2) causing any part of [(VICTIM'S NAME) (MINOR'S INITIALS)]'s body to touch the actor's or another's genitals, pubic area, anus, buttocks, or female breast;

(3) simulating or pretending to engage in sexual intercourse with [(VICTIM'S NAME) (MINOR'S INITIALS)], including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or

(4) causing [(VICTIM'S NAME) (MINOR'S INITIALS)] to simulate or pretend to engage in sexual intercourse with the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.

Reference:
Utah Code Ann. § 76-5-416

Committee Note:
The legislature enacted the above definition, effective May 14, 2019. Before that date, the definition was based upon case law. See, e.g., State v. Lewis, 2014 UT App 241, 337 P.3d 1053; State v. Peters, 796 P.2d 708 (Utah App. 1990)

Ms. Klucznik made motion to adopt the language; Ms. Nelson seconded the motion. The motion passed unanimously. Staff will publish the adopted language, which will replace the previous case-law-based definition, which will be preserved in these minutes / meeting materials, and read as follows:

["Indecent liberties" is defined as conduct that is as serious as touching [under clothing] the anus, buttocks, or genitals of a person or the breast of a female.

In deciding whether conduct amounts to indecent liberties, use your judgment and common sense. You may consider such factors as:
(1) the duration of the conduct;
(2) the intrusiveness of the conduct against [(VICTIM'S NAME) (MINOR'S INITIALS)]'s person;
(3) whether [(VICTIM'S NAME) (MINOR'S INITIALS)]'s requested that the conduct stop;
(4) whether the conduct stopped upon request;
(5) the relationship between [(VICTIM'S NAME) (MINOR'S INITIALS)]'s and the defendant;

(6) [(VICTIM'S NAME) (MINOR'S INITIALS)]'s age; and
(7) whether [(VICTIM'S NAME) (MINOR'S INITIALS)]'s was forced or coerced to participate, and any other factors you consider relevant.

The fact that touching may have occurred over clothing does not preclude a finding that the conduct amounted to indecent liberties.]

Reference: *State v. Lewis*, 2014 UT App 241, 337 P.3d 1053; *State v. Peters*, 796 P.2d 708 (Utah App. 1990)

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(3) BATTERED PERSON MITIGATION:

The committee heard from Ms. Klucznik on the materials she previously prepared for "Battered Person Mitigation" (SB0238-2020). These materials were located in Tab 3 of the meeting materials. This was the first time the committee considered these materials. Ms. Klucznik explained her approach to the materials generally. She explained that she patterned these proposed instructions after the imperfect self-defense instructions. She also incorporated the "clear and convincing" standard from the civil jury instructions.

Ms. Johnson pointed out that in her review of the battered person mitigation (BPM) statute (Utah Code § 76-2-409), imperfect self-defense may not be the best model for these BPM instructions. Ms. Johnson pointed out that imperfect self-defense requires the prosecution to prove beyond a reasonable doubt that the defense does not apply. If the prosecution is unable to meet that burden, then the conviction would be for a different named offense at a different level of offense. In contrast, the burden for BPM is placed, by statute, on the defendant to prove by clear and convincing evidence that the defendant is entitled to mitigation, after having been convicted of the charged offense. If the defendant is able to meet that burden, then only the level of that charged offense is reduced (but the name of the offense does not change). In her view, the BPM instructions should be formulated as follows:

(1) the jury should be provided an elements instruction and verdict form for the charged offense;

(2) if the jury finds that the State has proved those elements beyond a reasonable doubt, then the jury would consider the BPM elements and have a verdict form for those BPM elements; and

(3) if the jury finds that the defendant has proven those BPM elements by clear and convincing evidence, then the level of the charged offense would be reduced one degree by the judge at the time of sentencing.

In other words there would be separate regular verdict forms for each of the verdict inquiries. Ms. Klucznik suggested that she take these materials back and rework them in light of the committee discussion. Judge Blanch agreed with that approach. The reworked materials will be reconsidered at the next meeting.

(4) PUBLIC COMMENT REVIEW:

The committee continued its review of public comments received in connection with the large number of instructions that were published from June 3, 2020, through July 19, 2020.

IMPERFECT SELF-DEFENSE REVISIONS

Ms. Klucznik described some public comments related to the committee's imperfect self-defense instructions (CR1411, CR1450, CR1451, CR1452, and SVF1450). She indicated that, based on public comment, there are two issues to address:

1) the committee should consider removing reference to the word "guilty" in connection with the greater crime until and unless the State has disproved imperfect self-defense beyond a reasonable doubt; and
2) the current instructions do not address how to handle the situation where a defendant claims imperfect self-defense to all offenses (i.e., aggravated murder and the lesser offense of murder.

Ms. Klucznik walked the committee through proposed changes to several instructions—CR1411 (labeled CR1411B), CR1450, CR1451, CR1452, and SVF1450—as follows:

CR1411B MURDER with IMPERFECT SELF-DEFENSE

(DEFENDANT'S NAME) is charged [in Count __] with committing Murder [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. [a. Intentionally or knowingly caused the death of another][;]
   [b. Intending to cause serious bodily injury to another, (DEFENDANT'S NAME) committed an act clearly dangerous to human life that causes the death of another][;]
   [c. Acting under circumstances evidencing a depraved indifference to human life, (DEFENDANT'S NAME) knowingly engaged in conduct which created a grave risk of death to another and thereby caused the death of another][;]
   [d. While engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],
      i. (VICTIM'S NAME) was killed; and
      ii. (DEFENDANT'S NAME) acted with the intent required as an element of the predicate offense][;]
   [e. recklessly caused the death of a peace officer or military service member in uniform while in the commission of
      i. an assault against a peace officer;
      ii. interference with a peace officer making a lawful arrest, if (DEFENDANT'S NAME) used force against a peace officer; or
      iii. an assault against a military service member in uniform.]

[3. The defense of self-defense, defense-of-others, defense-of-habitation does not apply.]

After you carefully consider all the evidence in this case, 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 of this crime.

On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, ~~On the other hand, if you find Defendant GUILTY beyond a reasonable doubt,~~ then you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____.

CR1450 Practitioner's Note: Explanation Concerning Imperfect Self-Defense

Imperfect self-defense is an affirmative defense that can reduce aggravated murder to murder, attempted aggravated murder to attempted murder, murder to manslaughter, and attempted murder to attempted manslaughter. See Utah Code Ann. § 76-5-202(4) (aggravated murder); Utah Code Ann. § 76-5-203(4) (murder).

When the defense is asserted, the State must disprove the defense beyond a reasonable doubt before the defendant can be convicted of the greater crime. If the State cannot disprove the defense beyond a reasonable doubt, the defendant can be convicted only of the lesser crime.

Instructing the jury on imperfect self-defense has proved to be problematic because many practitioners have tried to include the defense as an element of either or both of the greater crime and the reduced crime. The inevitable result is that the elements instruction on the reduced crime misstates the burden of proof on the defense as it applies to that reduced crime. See, e.g., State v. Lee, 2014 UT App 4, 318 P.3d 1164.

To avoid these problems, these instructions direct the jury to decide the defense exclusively through a special verdict form. Under this approach, the jury is given a standard elements instruction on the greater offense, with no element addressing imperfect self-defense. If the jury finds that the State has proved the elements of the greater offense beyond a reasonable doubt, the elements instruction on the greater offense directs the jury ~~enters a guilty verdict on that offense. The jury is directed to~~ to the imperfect self-defense instructions and instruct~~s~~~~ed~~ the jury that it must complete the imperfect self-defense special verdict form. On the special verdict form, the jury must indicate whether it has unanimously found that the State disproved the defense beyond a reasonable doubt. If the jury indicates the State has disproved the defense and that the defendant is thus guilty of the greater crime, the trial court enters a conviction for the greater crime. If the jury indicates the State has not disproved the defense and that the defendant is thus guilty of the lesser crime, the trial court enters a conviction for the lesser crime.

~~The committee considered State v. Drej, 2010 UT 35, 233 P.3d 476, and concluded that it does not preclude this approach.~~

CR1451 Explanation of Perfect and Imperfect Self-Defense as Defenses

Perfect self-defense is a complete defense to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder][Manslaughter]. The defendant is not required to prove that perfect self-defense applies. Rather, the State must prove beyond a reasonable doubt that perfect self-defense does not apply. The State has the burden of proof at all times. As Instruction ____ provides, for you to find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted

Murder][Manslaughter], the State must prove beyond a reasonable doubt that perfect self-defense does not apply. Consequently, your decision regarding perfect self-defense will be reflected in the "Verdict" form for Count [#].

You do not have to ~~must~~ consider imperfect self-defense unless~~only if~~ OR You must consider imperfect self-defense if you find that the State has proved all the elements ~~the defendant guilty~~ of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]~~.~~ beyond a reasonable doubt. Imperfect self-defense is a partial defense to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. It applies when the defendant caused the death of another while incorrectly, but reasonably, believing that (his)(her) conduct was legally justified or excused. The effect of the defense is to reduce the level of the offense. The defendant is not required to prove that imperfect self-defense applies. Rather, before you can find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder], the State must prove beyond a reasonable doubt that imperfect self-defense does not apply. The State has the burden of proof at all times. Your decision will be reflected in the special verdict form titled "Special Verdict Imperfect Self-Defense."

References
Utah Code § 76-5-202(4)
Utah Code § 76-5-203(4)
Utah Code § 76-5-205
Utah Code § 76-2-402
Utah Code § 76-2-404
Utah Code § 76-2-405
Utah Code § 76-2-407

Committee Notes
Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction ~~#3 above~~;
- Do not use an "imperfect self-defense manslaughter" elements instruction;
- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Make sure that last paragraph of the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction contains the following language~~Add the following paragraph at the bottom of this elements instruction~~:

  "If you are convinced that each and every element has been proven beyond a reasonable doubt, ~~If you find Defendant GUILTY beyond a reasonable doubt of murder~~you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____."

CR1452 Special Verdict Form - Imperfect Self-Defense

If you find that the State has proved all the elements of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder] beyond a reasonable doubt~~, If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder],~~ you must complete the special verdict form titled "Special Verdict Imperfect Self-Defense."

- Check ONLY ONE box on the form.
- The foreperson MUST sign the special verdict form.

References
State v. Lee, 2014 UT App 4
State v. Ramos, 2018 UT App 161
State v. Navarro, 2019 UT App 2

Committee Notes
Whenever imperfect self-defense is submitted to the jury:

In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);

- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction~~element #3 above~~;
- Do not use an "imperfect self-defense manslaughter" elements instruction;
- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Make sure that last paragraph of the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction contains the following language~~Add the following paragraph at the bottom of this elements instruction~~:

  "If you are convinced that each and every element has been proven beyond a reasonable doubt,~~If you find Defendant GUILTY beyond a reasonable doubt of murder~~, you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____."

Use Special Verdict Form SVF1450 in connection with this instruction.

SVF 1450. Imperfect Self-Defense.

_____

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

_____

THE STATE OF UTAH,	:	
	:	**SPECIAL VERDICT**
Plaintiff,	:	**IMPERFECT SELF-DEFENSE**
	:	
-vs-	:	Count (#)
(DEFENDANT'S NAME),		
Defendant.		Case No. (**)

Having found the State has proved all the elements of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder] beyond a reasonable doubt,~~the defendant, (DEFENDANT'S NAME), guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]~~, as charged in Count [#],

Check ONLY ONE of the following boxes:

☐ We unanimously find that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply, and thus we unanimously find that (DEFENDANT'S NAME) is guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder].

OR

☐ We do not unanimously find that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply, and thus we unanimously find that (DEFENDANT'S NAME) is guilty of [Attempted Aggravated Murder][Murder][Attempted Murder][Manslaughter].

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

_____
Foreperson

References
State v. Lee, 2014 UT App 4
State v. Ramos, 2018 UT App 161
State v. Navarro, 2019 UT App 2

Committee Notes
Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction~~element #3 above~~;
- Do not use an "imperfect self-defense manslaughter" elements instruction;

- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Make sure that last paragraph of the aggravated murder/murder/attempted aggravated murder/attempted murder elements instruction contains the following language~~Add the following paragraph at the bottom of this elements instruction~~:

  "If you are convinced that each and every element has been proven beyond a reasonable doubt,~~If you find Defendant GUILTY beyond a reasonable doubt of murder,~~ you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____."

The committee discussed the major points of these proposed changes. Judge Blanch expressed some concern, on the one hand, about making changes to MUJI instructions that have been favorably mentioned by the Supreme Court. On the other hand, Judge Blanch also felt these proposed changes do not change the parts of the instructions that were relevant to the Supreme Court.

The committee discussed other ways in which these same result could be accomplished for instructions and verdict forms involving imperfect self-defense. Ms. Johnson suggested that she had some concern with having a regular verdict form AND a special verdict form and the confusion that may result from how the various instructions and verdict forms would be explained to the jury. She suggested that it might be better to have a verdict form that was similar to the "lesser included" verdict form layout where the instruction explains, for instance, that a person has been charged with murder, but that a lesser included charge is manslaughter with mitigation. In order to find the person guilty of murder, here are the elements, for manslaughter, here are the elements, and then not guilty. Then on the verdict form, have options for murder, manslaughter with mitigation, and not guilty. The primary concern is to make sure the instruction and verdict form is laid out carefully to avoid juror confusion and ensure that the jury's findings are accurately captured. For these reasons, Ms. Johnson wondered if it would be better to get rid of the special verdict form altogether.

After this discussion, Judge Blanch asked if Ms. Klucznik and Ms. Johnson would work together to take the proposed materials outlined above and convert them to the format Ms. Johnson had described. They agreed to work together on this prior to the next meeting. Judge Blanch then turned the committee's attention to the next items of public feedback that Ms. Klucznik had prepared to address. Nothing on the proposed language for the materials—CR1411 (labeled CR1411B), CR1450, CR1451, CR1452, and SVF1450—was approved during this meeting.

CR1411 MURDER INSTRUCTION – VICTIM CANNOT BE PARTY TO THE OFFENSE

Ms. Klucznik noted that a few public comments identified that the felony murder alternative in CR1411 (murder) should include that the victim cannot be party to the predicate offense. She proposed the following change to incorporate the public feedback into the instruction:

CR1411 Murder
(DEFENDANT'S NAME) is charged [in Count __] with committing Murder [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.
    a. [intentionally or knowingly caused the death of (VICTIM'S NAME); or]
    b. [intending to cause serious bodily injury to another, (DEFENDANT'S NAME) committed an act clearly dangerous to human life that caused the death of (VICTIM'S NAME); or]
    c. [acting under circumstances evidencing a depraved indifference to human life, (DEFENDANT'S NAME) knowingly engaged in conduct which created a grave risk of death to another and thereby caused the death of (VICTIM'S NAME); or]
    d. [while engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],
        i. (VICTIM'S NAME) , who was not a party to the predicate offense, was killed; and
        ii. (DEFENDANT'S NAME) acted with the intent required as an element of the predicate offense; or]
    e. [recklessly caused the death of (VICTIM'S NAME), a peace officer or military service member in uniform while in the commission of
        i. an assault against a peace officer;
        ii. interference with a peace officer making a lawful arrest, if (DEFENDANT'S NAME) used force against a peace officer; or
        iii. an assault against a military service member in uniform.]
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 § 76-5-203

Committee Notes
Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in element #3 above;
- Do not use an "imperfect self-defense manslaughter" elements instruction;
- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

"If you find Defendant GUILTY beyond a reasonable doubt of murder, you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____."

Last Revised – 04/03/2019

The committee discussed this proposed change. During the discussion, the committee made a number of revisions to Ms. Klucznik's proposed draft, including:

- bracketing "[predicate offense(s)]";
- splitting the first element into two separate elements (i. victim was killed; ii .victim was not a party to the [predicate offense(s)]); and
- other minor stylistic corrections, as follows:

CR1411 Murder
(DEFENDANT'S NAME) is charged [in Count __] with committing Murder [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.
    a. [intentionally or knowingly caused the death of (VICTIM'S NAME); or]
    b. [intending to cause serious bodily injury to another, (DEFENDANT'S NAME) committed an act clearly dangerous to human life that caused the death of (VICTIM'S NAME); or]
    c. [acting under circumstances evidencing a depraved indifference to human life, (DEFENDANT'S NAME) knowingly engaged in conduct which created a grave risk of death to another and thereby caused the death of (VICTIM'S NAME); or]
    d. [while engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],
        i. (VICTIM'S NAME) was killed;
        ii. (VICTIM'S NAME)~~, who~~ was not a party to [the predicate offense(s)]~~, was killed~~;
    and
        iii. (DEFENDANT'S NAME) acted with the intent required as an element of [the predicate offense(s)]; or]
    e. [recklessly caused the death of (VICTIM'S NAME), a peace officer or military service member in uniform while in the commission of
        i. an assault against a peace officer;
        ii. interference with a peace officer making a lawful arrest, if (DEFENDANT'S NAME) used force against a peace officer; or
        iii. an assault against a military service member in uniform.]
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 § 76-5-203
Committee Notes
Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in element #3 above;
- Do not use an "imperfect self-defense manslaughter" elements instruction;
- Always distinguish between "perfect self-defense" and "imperfect self-defense" throughout the instructions; and
- Add the following paragraph at the bottom of this elements instruction:

"If you find Defendant GUILTY beyond a reasonable doubt of murder, you must decide whether the defense of imperfect self-defense applies and complete the special verdict form concerning that defense. Imperfect self-defense is addressed in Instructions _____."

Last Revised – ~~04/03/2019~~09/02/2020

Ms. Klucznik moved to approve these changes; Ms. Johnson seconded the motion. The committee voted unanimously in support of the motion.

NEW INSTRUCTION – CR1411A ADDITIONAL INSTRUCTION WHEN FELONY MURDER IS CHARGED

Ms. Klucznik explained that public comment had identified a need to clearly state the relevant intent associated with the predicate offense(s). Often, practitioners only note in the murder instruction what the predicate offense is, but do not include any information about the intent for the predicate offense. One possible method is to create a new instruction (proposed CR1411A) for when felony murder is charged, as follows:

CR1411A Additional instruction when felony murder is charged

As Instruction ____ provides, you may find (DEFENDANT'S NAME) guilty of murder if:

while engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],

i. (VICTIM'S NAME), who was not a party to the predicate offense, was killed; and
ii. (DEFENDANT'S NAME) acted with the intent required as an element of the predicate offense.

The relevant predicate offenses here are [name offenses].

The elements of [name predicate offense] are contained in Instruction ___. As that instruction states, the intent element for [name predicate offense] is _____.

[The elements of [name predicate offense] are contained in Instruction ___ As that instruction states, the intent element for [name predicate offense] is _____.]

After Ms. Klucznik explained the thinking behind this proposal, the committee discussed the language. Ms. Johnson recognized the need for an instruction like this, but found this particular formulation to be confusing. Ms. Klucznik and Ms. Johnson discussed other ways to accomplish the same result. Ms. Johnson suggested that this would need additional attention before the next meeting. Ms. Klucznik proposed that she and Mr. Field would tackle the drafting on this and on the "Imperfect Self-Defense Revisions" materials (above), since this is their area of responsibility. Once that work is completed, they would send the more polished materials to Ms. Johnson for review. Ms. Johnson found that to be a very agreeable plan. Nothing on this language was approved during this meeting.

CR522 DEFENSE OF HABITATION – PRESUMPTION

Ms. Klucznik explained that public feedback noted a concern with the use of the word "showing" may not adequately explain the state's burden of proof necessary to overcome the presumption. To remedy this issue, she proposed the following revision to CR522:

CR522 Defense of Habitation – Presumption.

The person using force or deadly force in defense of habitation is presumed to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry:

1. is unlawful; and
2. is made or attempted:
   a. by use of force~~,~~ or in a violent and tumultuous manner; or
   b. surreptitiously or by stealth; or
   c. for the purpose of committing a felony.

The prosecution may defeat the presumption by proving beyond a reasonable doubt ~~showing~~ that the entry was 1) lawful or 2) not made or attempted by use of force, or in a violent and tumultuous manner; or surreptitiously or by stealth; or for the purpose of committing a felony. The prosecution may also rebut the presumption by proving beyond a reasonable doubt that in fact the defendant's beliefs and actions were not reasonable.

References
Utah Code § 76-2-405
State v. Karr, 364 P.3d 49 (Utah App. 2015)

State v. Walker, 391 P.3d 380 (Utah App. 2017)
State v. Mitcheson, 560 P.2d 1120 (Utah 1977)
State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)
State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

Committee Notes
This instruction should be used with CR520, CR521, CR523, and CR510.

Amended Dates: 02/07/2018, 09/02/2020

Judge Blanch solicited feedback to the proposed revision. There was no committee feedback. Ms. Klucznik moved to approve; Mr. Phelps seconded. The committee voted unanimously in support of the motion.

CR530 DEFENSE OF SELF OR OTHER

Ms. Klucznik explained that public comment had suggested a very minor addition to CR530: add the word "person" immediately after the first instance of the word "another" in the second sentence, as follows:

CR530 Defense of Self or Other.

You must decide whether the defense of Defense of Self or Other applies in this case. Under that defense, the defendant is justified in using force against another person when and to the extent that the defendant reasonably believes that force is necessary to defend [himself] [herself], or a third party, against another person's imminent use of unlawful force.

The defendant is justified in using force intended or likely to cause death or serious bodily injury only if the defendant reasonably believes that:

1. Force is necessary to prevent death or serious bodily injury to the defendant or a third person as a result of another person's imminent use of unlawful force; or
2. To prevent the commission of [Forcible Felony], the elements of which can be found under jury instruction [_____].

The defendant is not justified in using force if the defendant:

1. Initially provokes the use of force against another person with the intent to use force as an excuse to inflict bodily harm upon the assailant;
2. Is attempting to commit, committing, or fleeing after the commission or attempted commission of [Felony], the elements of which can be found under jury instruction [_____]; or
3. Was the aggressor or was engaged in a combat by agreement, unless the defendant withdraws from the encounter and effectively communicates to the other person the defendant's intent to do so

and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

The following do not, by themselves, constitute "combat by agreement":

1. Voluntarily entering into or remaining in an ongoing relationship; or
2. Entering or remaining in a place where one has a legal right to be.

References
Utah Code § 76-2-402(1) and (5)

Committee Notes
Under circumstances where the use of force is a reasonable response to factors unrelated to the commission, attempted commission, or fleeing after the commission of that felony, the parties should consider modifying the language in subsection 2 regarding when the defendant is "not justified" in using force, to reflect Utah Code §76-2-402(2)(a)(ii).

Amended Dates:
Approved: 03/07/2018
Committee note approved: 12/05/2018

The original draft of this proposed language also included a suggestion to delete the committee note and move that language into the instruction as part of the second "2." so that the language in that subsection would read: "Is attempting to commit, committing, or fleeing after the commission or attempted commission of [Felony], the elements of which can be found under jury instruction [_____], unless the use of force is a reasonable response to factors unrelated to the commission, attempted commission, or fleeing after the commission of that felony; or".

The committee discussed these proposed revisions based upon the public comments received. Ms. Johnson noted that the reason the committee note existed in the first place was because to include it in the instruction was too unwieldy. Judge Blanch agreed with that recollection. Ms. Johnson pointed out that some practitioners want the MUJI instructions to have every possible option included. The committee's approach has typically been to focus on those instructions and options that are most likely to be used. Practitioners need to know when to include less common language when circumstances require it. Judge Blanch pointed out that this particular proposal was something that the committee had previously considered, but had specifically decided against. He asked whether anyone wanted to revisit the committee's previous decision. No committee members wanted to do so.

Ms. Johnson made motion to add the word "person" as indicated in the proposed language above; Ms. Klucznik seconded. The committee unanimously voted in support of the motion.

CR531 DEFENSE OF SELF OR OTHER – IMMINENCE

Ms. Klucznik explained that public comment had identified a concern about how the instruction does not address those who have no duty to retreat. In response to the public comment, Ms. Klucznik prepared the following proposed language:

CR531 Defense of Self or Other – Imminence.

In determining imminence or reasonableness you may consider any of the following factors:

1. the nature of the danger;
2. the immediacy of the danger;
3. the probability that the unlawful force would result in death or serious bodily injury;
4. the other's prior violent acts or violent propensities;
5. any patterns of abuse or violence in the parties' relationship; or
6. whether any person involved had a duty to retreat;
7. any other relevant factor.

If a person (including the defendant) has no duty to retreat, you may not consider their failure to retreat in determining whether the defendant acted reasonably in using or threatening to use force.

Ms. Klucznik pointed out that this can be particularly important in cases involving domestic violence. This language is complicated by the fact that when a person DOES have a duty to retreat it is permissible for the jury to consider that. She drafted the proposed language with both situations in mind (duty to retreat AND no duty to retreat). Ms. Lockwood asked whether the "no duty to retreat" language should be a separate instruction, particularly where this instruction is directed toward "imminence" and "reasonableness." Judge Blanch asked if anyone on the committee believed the proposed new final sentence was an incorrect statement of the law. No committee member felt it was incorrect. The committee discussed whether this new language is situated correctly in this instruction OR whether it should be an instruction of its own. Ms. Lockwood opined that parties would include this language only where it was relevant in the case. Ms. Klucznik stated there is an instruction on "no duty to retreat" (CR533) and wondered whether the final sentence should be included in that instruction instead. Judge Blanch wondered whether the proposed "6." should be included in this instruction at all. He noted that if the final sentence is an accurate statement of the law, then duty to retreat is not something to consider (i.e., if there is no duty to retreat, that ends the analysis). Ms. Klucznik explained that the jury can consider whether there is a duty to retreat, so "6." is appropriate. If there answer to "6." is "no one had a duty to retreat," then the final sentence is appropriate. Ms. Johnson noted that the proposed language asks the jury to consider the same issue from both directions, which is confusing. Judge Blanch asked if changing the word "whether" in "6." could be changed to "that" to avoid the confusion. Ms. Klucznik pointed out that statute (Utah Code § 76-2-402(5)) sets out the factors to consider. She added "6." based on the provision in the statute (Utah Code § 76-2-402(4)(b)), which is addressed in the final sentence of her proposed language. Ms. Klucznik agreed that if there were to be a standalone instruction for the final sentence, then "6." is not necessary in CR531. Ms. Klucznik offered to draft a standalone instruction for the next meeting. Judge Blanch agreed with that plan. None of this language was approved in this meeting.

(5) ADJOURN

The meeting adjourned at approximately 1:32 p.m. The next meeting will be held on October 7, 2020, starting at 12:00 noon.

TAB 2

Battered Person Mitigation Instructions

NOTES: After giving this matter additional thought since the September 2, 2020 meeting, Ms. Klucznik would like to discuss with the committee members some questions and concerns she has about drafting these proposed instructions in the way that was contemplated at the conclusion of the September 2, 2020 meeting. No new materials are provided in this packet.

TAB 3

Public Comments on Published Instructions

NOTES: On June 3, 2020, committee staff published a large number of committee-approved instructions and special verdict forms. The public comment period ran from June 3, 2020, through July 19, 2020. During the comment period, 16 individuals provided over 30 comments. Several of the comments identified minor clerical issues that have committee staff has already resolved without need for any committee consideration.

The remaining comments have been grouped into sub-tabs, as follows:

- **Tab 3A – DUI Instructions (1000 series):** Judge McCullagh
  Elements Instructions (CR1003, CR1004, CR1005) – one comment

- **Tab 3B – Assault Instructions (1300 series):** Sandi Johnson
  CR1301 – four comments
  CR1302 – two comments
  CR1320 – two comment
  CR1322 – two comments

- **Tab 3C – Homicide Instructions (1400 series):** Karen Klucznik, Mark Field
  CR1411 – two comments
  CR1451, CR1452, SVF1450 – three comments

- **Tab 3D – Sexual Offenses Instructions (1600 series):** Sandi Johnson
  CR1601 – three comments
  CR1613, SVF1613 – two comments
  CR1616A – four comments

- **Tab 3E – Defense of Habitation / Self / Others (500 series):** Karen Klucznik
  CR520 through CR523 – two comments
  CR530 through CR533 – four comments

- **Tab 3F – Miscellaneous Instructions:** by committee at future meeting
  CR411 – two comments
  In General – one comment

TAB 3A

Public Comment:
DUI Instructions (1000 series)

NOTES: The committee received the following comment related to the committee notes for the three DUI elements instructions (CR1003 – MB, CR1004 – MA, and CR1005 – F3):

Hyrum Hemingway: *"The committee notes are misleading. Contrary to their assertion, it is not 'an open question whether a mens rea is required with respect to the operation of actual physical control element of DUI' for offenses occurring before HB0139 takes effect. The amended committee notes are equally problematic, as they persist in suggesting it is unresolved whether DUI is a strict liability offense for offenses occurring before HB0139.*

"The only authority relied on for the proposition that DUI is not a strict liability offense is State v. Vialpando, 2004 UT App 95, ¶26. In that case, the Court of Appeals considered whether the trial court erred by failing to instruct the jury that the State was required to prove intent in an actual physical control case. The Court ultimate [sic] concluded no such showing was necessary. In reaching its decision, the Court recognized that the plain text of the former DUI statute (Utah Code § 41-6-44) did not contain a mens rea requirement. In the absence of such requirement, the Court fell back on the general presumption in Utah Code § 76-2-102 that in the absence of a specified mens rea for a specific offense, the code requires evidence of intent, knowledge, or recklessness. The decision made no mention of Utah Code § 76-2-101's plain text, which stated, '[t]hese standards of criminal responsibility shall not apply to the violations set forth in Title 41, Chapter 6, unless specifically provided by law.' It is unclear why the Court failed to address this controlling text, as it is simply not acknowledged in any fashion.

"In 2015, the Utah Supreme Court interpreted Utah Code Ann. 76-2-101, holding that "[v]iolations of the Utah Traffic Code . . . are strict liability offenses "unless specifically provided by law." State v. Bird, 2015 UT 7, ¶ 18 (quoting Utah Code § 76–2–101(2)). When Bird is considered with Vialpando, the only logical outcome is that Vialpando's holding that DUI had any mens rea requirement was overruled. Vialpando expressly held that the DUI statute (which has not materially changed since Vialpando was decided) contains no mens rea requirement. Vialpando relied on Utah Code § 76-2-102 for the default mens rea applicable to all criminal offenses that do not contain a mens rea requirement. However, the Supreme Court's decision in Bird makes clear that Vialpando's reliance on Utah Code § 76-2-102 was erroneous. DUI is part of the traffic code. In the absence of anything specifically providing otherwise, Utah Code § 76–2–101(2) renders DUI a strict liability offense.

"Subsequent to Bird, the Court of Appeals has twice interpreted the DUI statute (now Utah Code § 41-6a-502) and Utah Code § 76-2-101(2) as creating a strict liability crime. State v. Thompson, 2017 UT App 183, ¶ 52 ('But driving under the influence of alcohol is a strict-liability crime and therefore does

not have a mens rea requirement.'); State v. Higley, 2020 UT App 45, ¶22 (same). While these two cases were not directly deciding whether it was error to refuse to instruct a jury about whether DUI contains any mental state, there is no reason to believe such a case would result in a different result. The controlling statutes would be the same. And any decision addressing such an argument would have to grapple with Bird, which leaves little room for debate. The Court of Appeals' decisions subsequent to Vialpando, which account for the Supreme Court's interpretation of Utah Code § 76-2-101(2) in Bird, have undermined any persuasive force left in Vialpando, to the extent it suggested DUI is anything other than a strict liability offense.

"If some believe Vialpando's mens rea analysis is still good law, that belief does not have sufficient legal justification to be published in a model jury instruction. Vialpando ignored the legislature's clear direction that the traffic code was exempted from the standards of Utah Code § 76-2-102. Subsequent to the Supreme Court's decision in Bird, the Court of Appeals has twice interpreted the DUI statute and Utah Code § 76-2-101(2) as creating a strict liability offense. Publishing an official model jury instruction stating it is an 'open question' or 'unresolved' gives too much weight to Vialpando and ignores what has happened since.

"Finally, floor remarks from Senator Curtis S. Bramble on March 4 and March 5, 2020, discussing HB0139 clearly state the bill was 'clarifying' and 'clarifies' that DUI was a strict liability offense. Repeated use of the root verb 'clarify' signals the legislature's opinion was that Utah Traffic Code section 502 has always been a strict liability offense. That suggests the legislature meant what it said in Utah Code Ann. § 76-2-101."

TAB 3B

Public Comment:
Assault Instructions (1300 series)

NOTES: ==========

Recklessly attempting assault in Utah

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One comment raised the issue of whether it is even possible to "recklessly attempt to assault" in Utah:

Brent Huff: *CR1302 states the elements of Assault to include "Intentionally, knowingly, or recklessly" attempting, with unlawful force or violence, to do bodily injury." Can a person recklessly attempt in Utah?*

In CR1302, CR1303, CR1304, CR1305, CR1306, CR1320, and CR1321 the instructions all read:

1) DEFENDANT'S NAME;
2) Intentionally, knowingly, or recklessly;
3) Attempted . . .

The issue raised in the comment is whether it is even possible for a person to "recklessly attempt" to assault someone in Utah. Utah Code § 76-4-101 says "attempt" =

(1)(a) engaging in conduct constituting a substantial step; AND
(1)(b)(i) intending to commit the crime; OR
(1)(b)(ii) acting with awareness that the conduct is reasonably certain to cause the result (i.e., knowingly)

That is the general attempt statute. But Utah Code § 76-4-301 says that an attempt that is specifically designated in statute (perhaps like the specific mention of "attempt" in the assault statute) prevails over the general attempt statute.

Should these instructions be modified?

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CR1301 – Definition changes

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There were a few public comments suggesting minor changes or additional definitions be included in CR1301:

Corey Sherwin: *The one potential assault-related definition the proposed instruction does not have is* ***"act"*** *(UCA 76-1-601(1)). While not frequently in need of explanation, the term "act" has a specific definition under the law and ought to be included in the instruction.*

Janet Lawrence: *In the "Targeting a Law Enforcement Officer" definition, the term* ***"commission of"*** *is not in common usage and is not plain English. I would change "the commission of" to "committing." The* ***"military servicemember in uniform"*** *and* ***"peace officer"*** *definitions refer the jury to sections of the code that are not defined. The jury should not be referring to the code, so these need to be defined. For example, the second element in the "military servicemember in uniform" now worded "a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9" could be worded as "a member of the National Guard who the governor has ordered into active service or who the President of the United States has called into service."*

Katie Ellis: *We could possibly add a few more definitions:*
"Emergency medical service worker" *means a person licensed under Section 26-8a-302. See Utah Code § 76-5-102.7(3)(b).*
"Health care provider" *includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment. See Utah Code §§ 76-5-102.7(3)(c); 78B-3-403.*

Tom Brunker: *Consider removing the definition of* ***"targeting a law enforcement officer."*** *CR1322 presents an elements instruction for aggravated assault involving targeting a law enforcement officer. That could be used as a model for other offenses that involve targeting a law enforcement officer. The statutory language defining targeting a law enforcement officer is hard to follow; repeating that language for the jury is not helpful. Breaking it out into elements, as in CR1322, is helpful.*
If you remove the definition of "targeting a law enforcement officer" from CR1301 and keep the elements instruction for aggravated assault—targeting a law enforcement officer (CR1322), then targeting a law enforcement officer should be eliminated from the special form.

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Structure of CR1302 and CR1320 – Assault Enhancements

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Tom Brunker: *[On CR1302] CR1302 purports to cover both class B and class A misdemeanor assault. But when there are aggravators at issue that may increase the assault to a class A misdemeanor, the instruction, as written, allows the jury only to either convict or acquit of the higher crime. It should allow for a conviction of the lower crime if the State fails to prove the aggravator.*

The elements instruction says (both before and after the listed elements) that the jury must find that each of the elements applies before it can convict. Elements 3 and 4 list alternative facts that must be found by the jury to enhance the penalty to a class A misdemeanor. If neither of those facts are found, but every other element is found, then the defendant is still guilty of a class B misdemeanor. But as the instruction is written, the jury is required to find the enhancement in order to find the defendant guilty of any assault. In other words, including elements 3 and 4 effectively eliminates class B misdemeanor assault as a crime. Elements 3 and 4 should be handled through a special verdict form rather than the elements instruction.

Tom Brunker: *[On CR1320] The enhancement element on aggravated assault (element 3) raises a similar problem. Again, the elements instruction says (both before and after the listed elements) that the jury must find that each of the elements applies before it can convict. Element 3 lists facts that must be found by the jury to enhance the penalty to a second-degree felony. If none of those facts are found, but every other element is found, then the defendant is still guilty of a third-degree felony. But as the instruction is written, the jury is required to find the enhancement facts in order to find the defendant guilty of aggravated assault. In other words, including element 3 effectively eliminates third degree felony aggravated assault as a crime.*

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Feedback on Committee Note to CR1320 re: Cohabitancy Status

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Hyrum Hemingway: *The note includes a suggestion that co-habitancy status may require proof of mens rea. This suggestion comes from of an accurate statement, but the statement appears to be a solution in search of a problem that does not exist. The note cites to State v. Barela, 2015 UT 22, ¶26, which stands for the proposition that Utah's "criminal code requires proof of mens rea for each element of a non-strict liability crime." Indeed, Utah Code Ann. 76-2-101 states that for every criminal offense, "a person is not guilty of an offense unless . . . the person acts intentionally, knowingly, recklessly, with criminal negligence . . . or the person's acts constitute an offense involving strict liability."*

However, an offense does not become a domestic violence offense based off any action not already contemplated by the underlying offense. An Aggravated Assault has the same elements as Aggravated Assault – Domestic Violence, except for the identity of the victim. To convict a defendant of a domestic violence offense, the State must prove the underlying offense occurred, and then prove it was "committed by one cohabitant against another." Utah Code Ann. 77-36-1(4). Any consequences of a finding regarding cohabitancy is not based on any action, but solely on status.

The proposed special verdict form for DV offense (SVF 1331) is written in the passive voice, accurately reflecting that whether or not a DV status exists does not depend on any action. However, when mens rea terms are inserted, the form becomes nonsensical:

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [CRIME(S)], as charged in

Count(s) [#,#,#]. We also unanimously find the State: ¨ has ¨ has not proven beyond a reasonable doubt (DEFENDANT'S NAME) and (VICTIM'S NAME) were intentionally, knowingly, or recklessly cohabitants at the time of [this][these] offense(s)

Whose actions is the jury being asked to assess? What actions are they assessing?

This confusion appears to arise from a mistaken notion that every portion of a criminal offense must include proof of a specific mental state. As noted above, the general rule in the code requires that actions be accompanied with a mental state, unless the offense is one of strict liability.

Attendant circumstances may be an element of a criminal offense. Utah Code Ann. 76-1-501(2). "Attendant circumstances" are those circumstances that may be required to be present for criminal liability in addition to the requisite physical conduct, or actus reus, and the mens rea specified for the offense. State v. Vigil, 842 P.2d 843, 846, n.4 (Utah 1992), overruled on other grounds by State v. Casey, 2003 UT 55. The presence or absence of a cohabitant relationship is best understood as a question of whether a certain attendant circumstance exists. As noted by the Court in Vigil, it is rare for an offense to require a mental state for an attendant circumstance. Id. When an attendant circumstance does require proof of a mental state, the determination is made based off the language of the specific offense. See id. In the absence of any language defining what constitutes a domestic violence offense, the proposed note, while technically accurate, will mislead parties into believing that the code's requirement that actions be accompanied with a mental state extends to attendant circumstances, when no such general requirement is found in the code.

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CR1322 – Eliminate duplicative element re: bodily injury?

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Blake Hills: *Parts 1b and 2 should be combined to state in 1b that serious bodily injury was caused, since that is the only way to commit the crime.*

Tom Brunker: *The MUJI is confusing because it effectively requires the jury to find both bodily injury and serious bodily. But aggravated assault targeting a law enforcement officer requires serious bodily injury. So element 2 should be eliminated and 1(b) changed to require a finding of serious bodily injury. If the intent was to try to capture both a greater and lesser offense, the better approach would be to suggest in committee notes asking for separate instructions on aggravated assault targeting a law enforcement officer and aggravated assault.*

The relevant elements of that instruction state:

1. (DEFENDANT'S NAME) intentionally, knowingly, or recklessly;
a. committed an act with unlawful force or violence that
b. **caused bodily injury** to (VICTIM'S NAME) by:

[list of methods]; and

2. (DEFENDANT'S NAME)'s actions **caused serious bodily injury**; and

Proposed amendments from Ms. Sandi Johnson re: some of the comments in Tab 3B

CR1302 Misdemeanor Assaults

(DEFENDANT'S NAME) is charged [in Count ____] with committing Assault [against a Pregnant Person][that Caused 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);
    a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
    b) Intentionally, knowingly, or recklessly 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).
2) [The act caused substantial bodily injury to (VICTIM'S NAME).]
3) [(VICTIM'S NAME) was pregnant, and (DEFENDANT'S NAME) had knowledge of the pregnancy.]
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.

Committee Note:
If the case requires instruction on elements 2 or 3, practitioners should consider using a special verdict form (SVF1301), as these elements result in different levels of offense.

CR1303 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);
   a) [Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
   b) [Intentionally, knowingly, or recklessly
      i) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); or]
      ii) [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]
      iii) [made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]
2) (DEFENDANT'S NAME) had knowledge that (VICTIM'S NAME) was an employee or volunteer of a public or private school;
3) (VICTIM'S NAME) was acting within the scope of (his)(her) authority as an employee or volunteer of a public or private school; 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.

CR1304 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);
   a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
   b) [Intentionally, knowingly, or recklessly
      i) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); or]
      ii) [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]
      iii) [made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]
2) (DEFENDANT'S NAME) had knowledge that (VICTIM'S NAME) was a peace officer;
3) [(DEFENDANT'S NAME):
   a) [has been previously convicted of a class A misdemeanor or a felony violation of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;]
   b) [caused substantial bodily injury;]
   c) [used a dangerous weapon; or]
   d) [used means or force likely to produce death or serious bodily injury]]
4) (VICTIM'S NAME) was acting within the scope of (his)(her) authority as a peace officer; 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.

CR1305 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);
   a) [Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or]
   b) [Intentionally, knowingly, or recklessly
      i) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); or]
      ii) [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]
      iii) [made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);]
2) [(DEFENDANT'S NAME):
   a) [has been previously convicted of a class A misdemeanor or a felony violation of Assault Against a Peace Officer or Assault Against a Military Servicemember in Uniform;]
   b) [caused substantial bodily injury;]
   c) [used a dangerous weapon; or]
   d) [used means or force likely to produce death or serious bodily injury]]
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.

CR1306 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:
   a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
   b) Intentionally, knowingly, or recklessly committed an act with unlawful force or violence that
      (1) caused bodily injury to (VICTIM'S NAME); or
      (2) created a substantial risk of bodily injury to (VICTIM'S NAME); and
3) 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][a facility used for confinement of delinquent juveniles] regardless of whether the confinement is legal; 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.

CR1320 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)
   a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
   b) Intentionally, knowingly, or recklessly
      i) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
      ii) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); and
2) (DEFENDANT'S NAME) conduct included the use of
   a) [a dangerous weapon; or]
   b) [any 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]; and
3) [(DEFENDANT'S NAME)'s actions
   a) [resulted in serious bodily injury; or]
   b) [produced a loss of consciousness by impeding the breathing or circulation of blood of (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.

Committee Note:
"If the case requires instruction on element 3, practitioners should consider using a special verdict form (SVF1301), as this element can result in different levels of offense.

CR1321 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);
   a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
   b) Intentionally, knowingly, or recklessly
      i) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
      ii) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); and
2) (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]; and
3) [(DEFENDANT'S NAME) intentionally caused serious bodily injury];
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.

CR1322 Aggravated Assault - Targeting Law Enforcement Officer.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Aggravated Assault – Targeting a Law Enforcement 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)
   a) Intentionally or knowingly attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
   b) Intentionally, knowingly, or recklessly
      i) made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
      ii) committed an act with unlawful force or violence that
         (1) caused bodily injury to (VICTIM'S NAME); or
         (2) created a substantial risk of bodily injury to (VICTIM'S NAME); and
2) (DEFENDANT'S NAME) conduct included the use of
   a) [a dangerous weapon; or]
   b) [any 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]
      iii) [used other means or force likely to produce death or serious bodily injury]; and
3) (DEFENDANT'S NAME)'s actions caused serious bodily injury; and
4) (DEFENDANT'S NAME) intentionally, knowingly, or recklessly committed the offense against a law enforcement officer; and
5) (DEFENDANT'S NAME) intentionally or knowingly acted 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; [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.

TAB 3C

Public Comment:
Homicide Instructions (1400 series)

NOTES:

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CR1411 – Felony Murder: victim as participant

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~~The committee received two similar comments outlining the need for additional language in the instruction to make clear that the victim cannot be a participant in the underlying felony.~~

This was addressed and resolved at the 09/02/2020 meeting.

~~***Fred Burmester:*** *The murder elements instruction is fine with one exception; the victim in the case of felony murder theory must not be a participant in the felony. Thus I think the following language must be added to the elements instruction:*~~
~~*"d. While engaging in the commission, attempted commission, or immediate flight from the commission or attempted commission of [the predicate offense(s)], or as a party to [the predicate offense(s)],*~~
~~*i. (VICTIM'S NAME),* ***[ADD THIS LANGUAGE: "who was not a participant in the predicate offense(s)"]*** *was killed; and…"*~~

~~***Sean Brian:*** *(2)(d)(i) Pursuant to Utah Code § 76-5-203(2)(d)(ii), the victim cannot be a party to the predicate offense.*~~
~~*(2)(d)(ii) A jury may not be able to determine the appropriate level of intent applicable to the predicate offense. The instruction would be clearer if the level of intent were directly stated.*~~

==========

CR1411 – Felony Murder: level of intent

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Sean Brian: *(2)(d)(ii) A jury may not be able to determine the appropriate level of intent applicable to the predicate offense. The instruction would be clearer if the level of intent were directly stated.*

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CR1450-1452 / SVF1450 – imperfect self-defense

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Tom Brunker: *The [AG's Appellate] Division has seen several cases with defective imperfect self-defense instructions. As the practitioner's note points out, it has been particularly problematic when the instructions try to fold imperfect self-defense into the elements instruction. It has resulted in either misstating who has the burden of proof or potentially misleading the jury into believing that it must reach unanimity on whether the State had failed to disprove imperfect self-defense. So the Division*

agrees that the imperfect self-defense instruction should be separate from the elements instruction.

But the proposed MUJI procedure arguably conflicts with the rules. As relevant here, Utah R. Crim. P. 21(a) requires the jury to enter a verdict of "guilty" or "not guilty of the crime charged but guilty of a lesser included offense." The proposed MUJI procedure, however, results in there being no verdict on the lesser crime.

As proposed, and as relevant here, the jury verdict is either guilty of the greater offense or guilty of the lesser offense for reasons other than imperfect self-defense. The jury is then instructed only to make a finding on imperfect self-defense. But it is not asked to enter a verdict on the lesser crime if it finds in favor of the defendant on imperfect self-defense. So contrary to rule 21's requirement, there is no verdict on the lesser offense.

The parties sometimes agree to bifurcate proceedings so that the jury enters a verdict on a particular crime and the judge decides whether aggravating circumstances that enhance the crime—usually prior convictions—exist. But in that case, the defendant has agreed to waive a jury verdict on the second step. Here, the defendant has not expressly waived the jury verdict on the lesser offense. Rather than entering a verdict on the lesser offense, the jury enters a verdict on the greater offense and only enters a finding that results in a lesser offense.

It may be that the disconnect between the rule and the proposed MUJI won't make a difference. But a fix would eliminate the problem.

A related concern is that the proposed instructions speak in terms of the jury finding the defendant guilty of the greater offense before considering imperfect self-defense. For example, CR 1451 states, "You must consider imperfect self-defense only if you find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]." But if the jury ultimately finds that the State has not disproven imperfect self-defense beyond a reasonable doubt, then the defendant is not guilty of the greater crime. We therefore recommend that when describing the jury's finding on the greater offense the instructions should speak in terms of the jury having found that the State proved all the elements of the greater offense, or some similar phrasing, not that the jury has found the defendant guilty of the greater offense. This change would need to be incorporated into CR 1450, 1451, 1452, and the Special Verdict Form.

Sean Brian: *[For SVF1450] "Having found the defendant, (DEFENDANT'S NAME), guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder], as charged in Count [#], Check ONLY ONE of the following boxes:*
[ ] We unanimously find that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.
OR
[ ] We do not unanimously find that the State has ***NOT (ADD THIS "NOT")*** *proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply* ***(ADD THIS:) and therefore the level of offense should be reduced****."*
Notes/ Explanation:
The phrasing could be misinterpreted to negate the unanimity requirement, so the "not" is moved so that it clearly modifies "proved."
The emphasis should be placed on the difference between the two options. It may also be helpful to the jury to clarify the consequence of their selection. The verdict form appears to successfully avoid the issue raised in State v. Campos , 2013 UT App 213, 309 P. 3d 1160, where the instruction failed to place the burden of proof on the State.

Fred Burmester: *The proposal to make imperfect self-defense subject to a special verdict has some logic to it in my opinion, but the defense results in a lesser included manslaughter. The supporting practitioners' notes only refer to a court of appeals case Lee and in the end Drej. State v. Lee does not take on the issue straight ahead. It has dicta that the method of the instruction misplaced the burden which is a pitfall I think the MUJI drafters were trying to avoid. Drej does not apply (it is a mitigation case and not an affirmative defense case). The problem is that State v. Shumway, a Supreme Court case, says that you cannot instruct the jury on a specific order of deliberation with a lesser included manslaughter. However, the proposed instruction tells the jury they can only consider the affirmative defense (lesser included manslaughter) if they first find the defendant guilty of murder, a thing I think Shumway prohibits. I have attached the citations for the relevant cases at the bottom of this note. SHUMWAY, 63 P.3d 94; LEE, 318 P.3d 1164; LOW, 192 P.3d 867*

TAB 3D

Public Comments:
Sexual Offenses Instructions (1600 series)

NOTES:

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CR1601 – Definitions: "indecent liberties"

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Blake Hills: *~~Indecent liberties is specifically defined by 76-5-416.~~*

This was addressed and resolved at the 09/02/2020 meeting.

Donna Kelly: *~~Regarding "indecent liberties," where it says "any conduct" I think that should say "any sexual conduct." To leave it as it is would mean that any act with equal seriousness would be a sex crime – so a punch or a slap could be a sex crime.~~*
Also, Could we include a definition of "penetration" and of "touching" here? That way, we could make clear the differences between those terms for the elements of adult crimes and child crimes.

==========

CR1601 – Definitions / CR1613: use of "victim"

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Blake Hills: *As to the new committee note, I suppose the definition could use the term "alleged victim." I don't see how else it could be phrased without approaching ridiculousness.*

Robert Denny: *The committee notes for CR1601 and CR1613 state that the committee considered the use of the word "victim" in light of State v. Vallejo, 2019 UT 38, ¶¶99-103, but that it chose to preserve the language used in the statutes. It then opines that "[a]ny attempt to alter the instruction in an effort to avoid the use of the word 'victim' appears to impermissibly change the meaning of the statute."*
Rather than commenting on whether replacing the word "victim" would impermissibly change the meaning of the statute, the committee notes should simply mention State v. Vallejo, and the Supreme Court's concern with the word "victim." I suggest that the comment should read as follows, "In Vallejo, the Supreme Court 'recognize[d] the gravity of referring to witnesses as victims during a trial.' Attorneys should consider Vallejo's concerns in determining how to word this instruction."

==========

CR1613 / SVF1613 – Aggravated Sexual Abuse of Child

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Clint Heiner: *The language should delete the Aggravated Sexual Abuse of a Child from the […] area because they found the person guilty of Sexual Abuse of a Child, it is by checking one of the following boxes that makes it aggravated.*

In reviewing this comment, staff supposes that the commenter was suggesting that the "[Aggravated Sexual Abuse of a Child]" option in the introductory paragraph for SVF1613 be removed. All of the options that follow that introductory paragraph are the ways in which Sexual Abuse of a Child would be aggravated. The assumption is that the defendant would not be guilty of Aggravated Sexual Abuse of a Child until **after** the findings in that SVF were made.

==========-

CR1616A "Sexual Intercourse" for certain offenses

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Clint Heiner: *Why are we saying "sexual penetration" of the penis. Doesn't sexual penetration limit that definition? For example part (c) can be not only for sexual purpose but also, to cause substantial emotional or bodily pain…. Of course there is the issue of power and control as well…?*

Donna Kelly: *Where it says "between the outer folds of the labia" I would change that to say simply "genitals" to be consistent with all the other statutes*

Robert Denny: *The revised jury instruction seems to add more confusion and strays from the statutory language. The phrase "sexual penetration of the penis" could be interpreted several different ways. Moreover, adding language to jury instructions from cases addressing the sufficiency of the evidence, such as State v. Heath, has previously been recognized as problematic. The instruction should track the language of the statute, and only state that "any sexual penetration, however slight, is sufficient to constitute sexual intercourse." This is how the instruction was previously written.*

Tony Graf: *I echo Donna's comments with the exception of "between the outer folds of the labia". I believe that this definition is important and should be included as it is the same language being requested for Object Rape. In addition, I believe that this same language should be included in the special verdict form for SVF1613, CR1601 and CR613 to be consistent with the other proposed changes.*

TAB 3E

Public Comments:
Defense Habitation/Self/Others (500 series)

NOTES: ==========

CR520-CR523 – Defense of Habitation

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This was addressed and resolved at the 09/02/2020 meeting.

~~***James Vilos:*** *The last paragraph of CR522 may confuse the burden as stated in CR523 (beyond a reasonable doubt). Therefore, the last paragraph of CR522 should use "prove beyond a reasonable doubt" instead of "showing" and "proving" without reference to "reasonable doubt."*~~

Tom Brunker: *The instructions track the statutory language, but we noted that some of the language seemed antiquated, and the Committee may want to consider referring the statute to the Criminal Code Evaluation Task Force.*
For example, the defense applies when the defendant reasonably believes that the victim has entered the habitation "for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation." The MUJI does substitute "threatens" for "offer[s]" personal violence. But it's unclear what kind of "being" is anticipated other than a "person."
Also, I assume that the statute intends to provide a defense when the victim damages or threatens to damage the habitation, but typically that kind of damage or threat would not be called an assault or threat of violence.
Further, the definition of habitation comes from case law; there is no statutory definition. And it applies to a place that the defendant inhabits "peacefully." There is, however, no requirement that the victim inhabit the place "lawfully." So someone who is squatting in an abandoned building "peacefully" may have this defense available to them when they use force against another squatter, even though both are trespassers.
On the presumption of reasonableness (CR522), the list under #2 has three sub-points stated in the disjunctive, but some of the sub-points include more than one item also stated in the disjunctive. We recognize that those group related items, but we think it would be a little clearer to break each one out into a sub-point.

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CR530-CR533 – Defense of Self or Others

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This was addressed and resolved at the 09/02/2020 meeting.

~~***James Vilos:*** *CR530 does not incorporate all the language of the self-defense statute 76-2-402(3)(ii) beginning w/ "unless" in cases where the felony committed by the defendant may not have anything to do with the act of self-defense.*~~

~~***Tom Brunker:*** *[On CR530] Sometimes the instruction uses "another" alone; and sometimes it uses "another person." "Another person" is clearer.*~~
~~*Also, the statute makes the defense available to someone committing or fleeing from committing a*~~

This was addressed and resolved at the 09/02/2020 meeting.

~~*felony if the use of force is "a reasonable response to factors" unrelated to the felony. The instruction does not include this contingency. Instead, it relegates the issue to the committee note, and suggests that the parties "should consider" modifying the statutory language when that is at issue. We think this should not be relegated to a committee note. Rather, the instruction should include optional language to cover that contingency when it arises. And when it applies, we think that it's something that the jury should be instructed on, not something that the parties should just consider.*~~

Tom Brunker: *[On CR533] The statute includes a component that is missing from the instruction—a failure to retreat cannot be considered in deciding reasonableness. 76-2-402(4)(b). That should either be added here or in CR531 (the factors for determining imminence and reasonableness).*

David Ferguson: *The proposed rules related to Defense of Self or Others bring up "combat by agreement" several times without a definition. And the term pops up in places where it assumes that people understand what it means, e.g. CR530. Maybe there's not an easy fix based on what I assume is a lack of clarity in either statute or caselaw on the topic. That said, I don't really see that it fits where it's at, either.*

TAB 3F

Public Comments: Miscellaneous Instructions

NOTES: ==========

In General

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Brent Huff: *Why has the term "person" been replaced with the term "Defendant?" This seems intentionally prejudicial.*

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CR411 – 404(b) Evidence

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Tom Brunker: *The language in the brackets would be clearer if it were reworded to be "practitioners must specify a proper non-character purpose such as motive, intent, etc., whether the evidence is to prove or disprove that purpose, and the issues to which that purpose applies." Ambiguity issues have arisen when the jury is not instructed how to use the 404(b) evidence. For example, in a self-defense case, instructing the jury that the 404(b) evidence is to be used "for the limited purpose of self-defense" is ambiguous when it's being offered "for the limited purpose of rebutting a claim of self-defense." Or if the defendant argues mistake or accident, the instruction should say "for the limited purpose of rebutting a claim of mistake or accident." And if the evidence is to prove motive, it should say "for the limited purpose of proving motive."*

David Ferguson: *The proposed rule substitute's Rule 404's "a person's character or character trait" with just "character trait." It also omits the Rule's language of "on a particular occasion."*

I think there's something different between "a person's character" and a "character trait." The former speaks to the quality of the person, the latter speaks to an aspect of that person. To illustrate the difference, improper 404(b) evidence may include a statement like, "the defendant is a drunk." Assuming that the statement is inadmissible, it appears to me to be inadmissible because it says something about the character of the person as a drunk, not the trait of drunkenness. I worry that a jury might not appreciate the scope of "character trait" to be as broad as to include "a person's character." Both terms should be included.

Secondly, I can see how, in cases that involve multiple counts over a period of time, the words "on a particular occasion" (which are found in 404) might not fit. But the proposed wording loses some clarity without that phrase. The idea behind the rule is that you can't hold someone's past against them in this instance. And the words "on a particular occasion" help to anchor that the concern is biasing jurors towards convicting on propensity of action, not just pattern of who the defendant is. There may be other solutions here, but omitting "on a particular occasion" loses some meaning without any obvious benefit of clarity.

TAB 4

DUI and Related Traffic Instructions

NOTES: At the January 2020 meeting, three DUI elements instructions and a special verdict form were approved by the committee for publication:

CR1003 (MB DUI), CR1004 (MA DUI), CR1005 (F3 DUI), and SVF1001

At the May 6, 2020 meeting, the committee agreed that the following instructions would be in order as a result of HB0139[1]:

- actual physical control (and a safe harbor)
- criminal refusal to test

Draft language for those two instructions is included in these materials.

In addition, the remaining draft DUI instructions that have not been reviewed by the committee are:

- refusal of chemical test as evidence
- actual physical control
- alcohol restricted driver
- automobile homicide – mobile device (F3)
- automobile homicide – mobile device (F2)
- automobile homicide (F3)
- automobile homicide (F2)
- driving with measurable controlled substance
- definitions – DUI in general
- svf – dui priors
- svf – automobile homicide w/ priors

[1] https://le.utah.gov/~2020/bills/static/HB0139.html

CR_____ Safe Harbor Actual Physical Control.

In this case, the charges distinguish between "operating" OR being "in actual physical control" of a vehicle. These are separate considerations. Operation of a vehicle is a straightforward matter. Actual physical control is more elusive a concept. This instruction will help you in your deliberation of that issue.

Actual physical control of a vehicle means that a person has the apparent ability to start and move the vehicle. However, Utah law also provides a specific set of circumstances under which a person is NOT in actual physical control of a vehicle.

If all of the following factors are present, then you must find that the Defendant was NOT in actual physical control of the vehicle:

1. (DEFENDANT'S NAME) was asleep in a vehicle;
2. (DEFENDANT'S NAME) was not in the driver's seat;
3. The engine of the vehicle that (DEFENDANT'S NAME) was sleeping in was not running;
4. The vehicle that (DEFENDANT'S NAME) was sleeping in was lawfully parked; and
5. It is evident that (DEFENDANT'S NAME) did not, while under the influence of alcohol and/or another drug or drugs, drive the vehicle to the location where [he][she] was sleeping in it.

Even if your deliberations do not allow you to conclude that the above five numbered factors were present at the time of the alleged offense, remember that it is the prosecution's burden to convince you that the defendant WAS in actual physical control of the vehicle and they must prove that to you beyond a reasonable doubt.

Therefore, I will provide you some other factors that you may consider in determining whether, under the totality of the circumstances presented, the defendant was in "actual physical control" of the vehicle on [DATE].

You may want to consider, among other things:

- Whether the defendant was asleep or wake when discovered;
- The position of the vehicle;
- Whether the vehicle was running;
- Whether the defendant was in the driver's seat;
- Whether the defendant was the sole occupant of the vehicle;
- Whether the defendant was in possession of the vehicle's keys;
- Whether the defendant had the apparent ability to start and move the vehicle;
- How the vehicle got to where it was found.
- Whether the 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.

{Good luck!}

DRAFTER'S NOTE:
The instruction on the previous page is about as good a one as I can think of where the facts of a case suggest that the statutory "safe harbor" is met. There will certainly be cases where there will not be a chance to give the instruction. Among those:
1. Defendant was awake when discovered.
2. Defendant was in the driver's seat when discovered.
3. The engine is running.

If these are the facts presented at trial, I think we can all say that the safe harbor facts aren't going to be there, no instruction.

The parking one might be a little bit squishier. It is a truism to say that whether something is legal is a question of law. So, the court is going to have to make a determination that the vehicle is parked legally, not the jury. That is sometimes grayish, store parking lot late at night, not fully in a stall, etc. I can only say that I would probably make the prosecution cite me a law that says parking where that vehicle was found is illegal, like on a roadway; in front of a fire hydrant, etc. before I wouldn't allow the instruction based on the legally parked prong.

Then there is the fifth prong, "evident from the facts presented" is a weird way to write a law, and whoever at SWAP or Leg Counsel came up with it should be flogged. Every time I come back to it, it reads to me like an affirmative defense, that there must be some evidence that the jury can rely on to find that the vehicle got there by means other than a drunk defendant. I also can credit the argument that if factors 1-4 exist so that the safe harbor comes into play, then the prosecution must prove beyond a reasonable doubt that "it is NOT evident that the defendant didn't drunk drive the vehicle to that spot." The second approach is more consistent with other affirmative type offenses, such as self-defense, but those don't have such weird statutory language.

I sort of ducked the issue in the draft, but I want the committee to weigh in. Then we can do a committee note based on our conclusions about when to give this instruction. It also means we need the old actual physical control instruction too, for when we won't give the safe harbor instruction.

References

Committee Notes

Last Revised - 00/00/0000

CR_____ Actual physical control.

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 determining whether the Defendant had “actual physical control” of a motor vehicle, you are instructed to consider the totality of the circumstances. You may want to consider, among other things:

- whether the Defendant was asleep or awake when discovered;
- the position of the automobile;
- whether the automobile's motor was running;
- whether the Defendant was positioned in the driver's seat of the vehicle;
- whether the Defendant was the vehicle's sole occupant;
- whether the Defendant had possession of the ignition key;
- the Defendant's apparent ability to start and move the vehicle;
- how the car got to where it was found;
- whether the 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.

References

State v. Barnhart, 850 P.2d 473 (Utah App. 1993)

Committee Notes

Last Revised - 00/00/0000

CR_____ Refusal to Submit to a Chemical Test.

(DEFENDANT'S NAME) is charged [in Count ____] with Refusal to Submit to a Chemical Test [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. That on or about [DATE];
2. A court had issued a warrant to draw and test the defendant's blood;
3. The peace officer issued the defendant a warning that a refusal to submit to a chemical test or tests could result in criminal prosecution; and
4. The defendant refused to submit to a test of [his/her] blood.

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.

> ***DRAFTER'S NOTE:***
> *Will have to be given in addition to the DUI or other underlying offense, b/c statute makes plain it doesn't merge, or is any sort of greater included offense (its penalties are higher than the underlying offense).*
> *Of minor interest, " I consent to you testing my blood, just not sticking a needle in my arm to get it out." The statute only criminalizes refusal to test, not refusal to submit. I chose the elements language purposefully.*

References

Committee Notes

Last Revised - 00/00/0000

CR_____ Refusal to test as evidence.

In this case, you must determine whether [DEFENDANT'S NAME], while under arrest, refused to submit to a chemical test or tests. If you determine that [DEFENDANT'S NAME] refused to submit to a chemical test or tests, you may weigh that as part of your considerations in determining whether [DEFENDANT'S NAME] is guilty of operating or in actual physical control of a motor vehicle while:

1. [under the influence of:
   a. alcohol;
   b. any drug; or
   c. a combination of alcohol and any drug;]
2. [having any measurable controlled substance or metabolite of a controlled substance in the person's body;] or
3. [having any measurable or detectable amount of alcohol in the person's body if the person is an alcohol restricted driver as defined under Section 41-6a-529.]

A person operating a motor vehicle in Utah is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

1. having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, or 53-3-231;
2. under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or
3. having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

The peace officer determines which of the tests are administered and how many of them are administered. If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal.

References

Utah Code § 41-6a-520
Utah Code § 41-6a-524

Committee Notes

Last Revised - 00/00/0000

CR_____ Alcohol Restricted License.

(DEFENDANT'S NAME) is charged [in Count ____] with committing a Violation of Alcohol Restricted License [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. operated or was in actual physical control of a vehicle;
3. while having a measurable or detectable amount of alcohol in [his][her] body; and
4. (DEFENDANT'S NAME) meets at least one of the following:
   a. [is a person under age 21;]
   b. [is a novice learner driver;]
   c. [within the two years prior to [OFFENSE DATE] (DEFENDANT'S NAME) was convicted of:
      i. driving under the influence of alcohol or any drug;
      ii. alcohol-related or drug-related reckless driving;
      iii. impaired driving;
      iv. a local ordinance similar to those referenced in i, ii, or iii; or
      v. 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;]
   d. [within the two years prior to [OFFENSE DATE] (DEFENDANT'S NAME) has had the person's driving privileges suspended pursuant to Utah Code Ann. 53-3-223 for an alcohol related offense;]
   e. [within the three years prior to [OFFENSE DATE] (DEFENDANT'S NAME) has been convicted of 41-6a-518.2, Driving Without an Ignition Interlock Device;]
   f. [within the last five years (DEFENDANT'S NAME) has had [his][her] driver's privilege revoked for a refusal to submit to a chemical test under Utah Code Ann. 41-6a-520;]
   g. [within the last five years (DEFENDANT'S NAME) has been convicted of a class A misdemeanor violation of 41-6a-502;]
   h. [within the ten years prior to [OFFENSE DATE] (DEFENDANT'S NAME) has been convicted of:
      i. driving under the influence of alcohol or any drug;
      ii. alcohol-related or drug-related reckless driving;
      iii. impaired driving;
      iv. a local ordinance similar to those referenced in i, ii, or iii; or
      v. 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;]
   i. [within the ten years prior to [OFFENSE DATE] (DEFENDANT'S NAME) has had his/her driving privilege revoked for a refusal to submit to a chemical test and that refusal was within ten years after:
      i. a prior refusal to submit to a chemical test under Utah Code Ann. 51-6a-520; or
      ii. 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};]
   j. [(DEFENDANT'S NAME) has previously been convicted of automobile homicide under Utah Code Ann. 76-5-207;] or
   k. [(DEFENDANT'S NAME) has previously been convicted of a felony violation of 41-6a-502.]

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 §

Committee Notes

Last Revised - 00/00/0000

DRAFT: 01/08/2020

CR_____ Automobile Homicide Involving Using a Handheld Wireless Communication Device While Driving.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Automobile Homicide Involving Using a Handheld Wireless Communication Device While Driving [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):
   a. operated a motor vehicle on a highway in a negligent manner;
2. While using a handheld wireless communication device to manually:
   a. write, send, or read a written communication, including:
      i. a text message;
      ii. an instant message; or
      iii. electronic mail; or
   b. dial a phone number;
   c. access the Internet;
   d. view or record video; or
   e. enter data into a handheld wireless communication device; and
3. Caused the death of (VICTIM'S NAME); and
4. [That 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 § 76-5-207.5

Committee Notes

Last Revised - 00/00/0000

Commented [MCD1]: (3)→ Subsection (2) does not prohibit a person from using a handheld wireless communication device while operating a moving motor vehicle:
(a)→ when using a handheld communication device for voice communication;
(b)→ to view a global positioning or navigation device or a global positioning or navigation application;
(c)→ during a medical emergency;
(d)→ when reporting a safety hazard or requesting assistance relating to a safety hazard;
(e)→ when reporting criminal activity or requesting assistance relating to a criminal activity;
(f)→ when used by a law enforcement officer or emergency service personnel acting within the course and scope of the law enforcement officer's or emergency service personnel's employment; or
(g)→ to operate:
(i)→ hands-free or voice operated technology; or
(ii)→ a system that is physically or electronically integrated into the motor vehicle.

DRAFT: 01/08/2020

CR_____ Automobile Homicide Involving Using a Handheld Wireless Communication Device While Driving.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Automobile Homicide Involving Using a Handheld Wireless Communication Device While Driving [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):
   a. operated a motor vehicle on a highway in a criminally negligent manner;
2. While using a handheld wireless communication device to manually:
   a. write, send, or read a written communication, including:
      i. a text message;
      ii. an instant message; or
      iii. electronic mail; or
   b. dial a phone number;
   c. access the Internet;
   d. view or record video; or
   e. enter data into a handheld wireless communication device; and
3. Caused the death of (VICTIM'S NAME); and
4. [That 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 § 76-5-207.5

Committee Notes

Last Revised - 00/00/0000

Commented [MCD1]: (3)→ Subsection (2) does not prohibit a person from using a handheld wireless communication device while operating a moving motor vehicle:
(a)→ when using a handheld communication device for voice communication;
(b)→ to view a global positioning or navigation device or a global positioning or navigation application;
(c)→ during a medical emergency;
(d)→ when reporting a safety hazard or requesting assistance relating to a safety hazard;
(e)→ when reporting criminal activity or requesting assistance relating to a criminal activity;
(f)→ when used by a law enforcement officer or emergency service personnel acting within the course and scope of the law enforcement officer's or emergency service personnel's employment; or
(g)→ to operate:
(i)→ hands-free or voice operated technology; or
(ii)→ a system that is physically or electronically integrated into the motor vehicle.

CR_____ Automobile Homicide.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Automobile Homicide [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):
   a. operated a motor vehicle in a negligent manner; and
2. Caused the death of (VICTIM'S NAME); and
3. (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][.][; and]
4. [That 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 § 76-5-207

Committee Notes

For Second Degree Felony automobile homicide based upon negligent operation of a motor vehicle and a prior conviction as defined in Utah Code § 41-6a-501(2), practitioners should request that the court address the prior conviction in a bifurcated proceeding and, if appropriate, use SVF_____ ("Automobile Homicide with Prior Conviction").

Last Revised - 00/00/0000

CR_____ Automobile Homicide.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Automobile Homicide [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):
    a. operated a motor vehicle in a criminally negligent manner; and
2. Caused the death of (VICTIM'S NAME); and
3. (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][.][; and]
4. [That 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 § 76-5-207

Committee Notes

Last Revised - 00/00/0000

CR_____ Driving with Any Measurable Controlled Substance in the Body. (VERSION 1)

(DEFENDANT'S NAME) is charged [in Count ____] with committing Driving with Any Measurable Controlled Substance in the Body [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 any measurable controlled substance or metabolite, other than 11-nor-9-carboxy-tetrahydrocannabinol, of a controlled substance in the person's body.
3. [That the following defenses do not apply:]
   a. [the controlled substance was not involuntarily ingested;]
   b. [the controlled substance was not prescribed by a practitioner for use by (DEFENDANT'S NAME);]
   c.]the controlled substance was not cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form that the accused legally ingested; or]
   d. [the controlled substance was not otherwise legally ingested.]
4. [That 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-517

Committee Notes

Last Revised - 00/00/0000

CR_____ Driving with Any Measurable Controlled Substance in the Body. (VERSION 2)

Before you can convict the defendant of "driving a motor vehicle with a measured amount of a Controlled Substance {DRUG}" you must find from all 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 motor vehicle;
3. had a measurable {amount of a} controlled substance or metabolite of a controlled substance, other than 11-nor-9-carboxy-tetrahydrocannabinol, in his/her body; and
4. [DEFENSES:
   a. The substance was {NOT IN}voluntarily ingested by the defendant.
   b. The substance was not prescribed by a practitioner {or recommended by a physician [cannabis offenses prior to 12/04/18]} for use by the defendant.
   c. If the controlled substance was cannabis or a cannabis product, it was not ingested by the defendant in a medicinal dosage form in accordance with the Utah Medical Cannabis Act. [Offenses after 12/04/18].
   d. The substance was not legally ingested.

If, after careful consideration of all 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 a motor vehicle with a measured amount of a Controlled Substance {DRUG}" 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.

References

Utah Code § 41-6a-517

Committee Notes

Last Revised - 00/00/0000

CR1002 Definitions.

"Serious bodily injury" means bodily injury that creates or causes:
(i) serious permanent disfigurement;
(ii) protracted loss or impairment of the function of any bodily member or organ; or (iii) a substantial risk of death.
[see Utah Code § 41-6a-501(1)(h)]

"Drug" or "drugs" means:
(i) a controlled substance as defined in Section 58-37-2;
(ii) a drug as defined in Section 58-17b-102; or
(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.
[see Utah Code § 41-6a-501(1)(c)]

"Negligence" means simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.
[see Utah Code § 41-6a-501(1)(e)]

"Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in Section 41-6a-102; and
(ii) "Vehicle" or "motor vehicle" includes:
(A) an off-highway vehicle as defined under Section 41-22-2; and (B) a motorboat as defined in Section 73-18-2.
[see Utah Code § 41-6a-501(1)(k)]

For MA/F3 DUI:
“Proximate cause” means that:
(1) the person's act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and
(2) the person's act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.
There may be more than one cause of the same harm.

References

Committee Notes

Last Revised - 00/00/0000

SVF 1002. Driving Under the Influence – Prior Conviction.

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, vs. (DEFENDANT'S NAME), Defendant.	**SPECIAL VERDICT** **DRIVING UNDER THE INFLUENCE** **PRIOR CONVICTION** Case No. (*********) Count (#)

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Driving Under the Influence of [Alcohol][Any Drug][the Combined Influence of Alcohol and Any Drug], 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 two or more prior convictions in case number(s) [_____] and [_____] each of which is within 10 years of:
  i. the current conviction; or
  ii. the commission of the offense upon which the current conviction is based;]

- ☐ [(DEFENDANT'S NAME)'s conviction in this case is at any time after a conviction of:
  i. automobile homicide in case number [_____], which was committed after July 1, 2001; or
  ii. felony-level driving under the influence in case number [_____], which was committed after July 1, 2001~~; or~~
  ~~iii. any conviction described in element i. or ii. which judgment of conviction is reduced under Section 76-3-402~~.]
- ☐ None of the above.

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

_____
Foreperson

Committee Notes

Last Revised – 00/00/0000

SVF ____. Automobile Homicide with Prior Conviction.

(LOCATION) JUDICIAL DISTRICT COURT, [_____ DEPARTMENT,]
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH, Plaintiff, vs. (DEFENDANT'S NAME), Defendant.	**SPECIAL VERDICT** **AUTOMOBILE HOMICIDE** **WITH PRIOR CONVICTION** Case No. (*********) Count (#)

We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Automobile Homicide, 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 a prior conviction for [driving under the influence of alcohol, any drug, or a combination of both][alcohol, any drug, or a combination of both-related reckless driving or a similar local ordinance][impaired driving][driving with a measurable controlled substance][automobile homicide][Utah Code § 58-37-8(2)(g)].]

- ☐ None of the above.

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

_____
Foreperson

Committee Notes

Last Revised – 00/00/0000