

# AGENDA

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

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

Wednesday, September 3, 2014  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

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12:00	Welcome and Approval of Minutes (Tab 1)	Judge Denise Lindberg
12:05	Committee Status Update	Alison Adams-Perlac
12:15	Proposed Rule URCrP 19 (Tab 2)	Judge Brendan McCullagh
12:45	Table of Sexual Offense Instructions (Tab 3)	Committee
12:45	SVF Aggravated Sexual Abuse of a Child (Tab 4) (Approval as to Form)	Committee
12:55	CR 1623 Serious Bodily Injury (Tab 5)	Committee
1:10	SVF Serious Bodily Injury (Tab 6)	Committee
1:25	Other Business	
1:30	Adjourn	

### Upcoming Meetings

October 1, 2014  
November 5, 2014  
December 3, 2014  
January 7, 2015

# Tab 1

## MINUTES

### SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

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

Wednesday, June 4, 2014  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

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#### **PRESENT**

Judge Denise Lindberg, Chair  
Alison Adams-Perlac, Staff  
Professor Jensie Anderson  
Jennifer Andrus  
Judge James Blanch  
Mark Field  
Sandi Johnson  
Linda Jones  
Jesse Nix  
Dillon Olson, Guest  
Thomas Pedersen, Intern  
Judge Michael Westfall (remotely via VIAC)  
Scott Young

#### **EXCUSED**

Karen Klucznik  
Judge Brendon McCullagh  
John West

#### **1. Welcome,** Approval of Minutes

**Judge Denise Lindberg**

Judge Lindberg welcomed everyone to the meeting. She introduced Dillon Olson, her summer semester intern.

The committee discussed the previous meeting's minutes. Ms. Jones stated that a correction needed to be made on page 3, paragraph 5: "Ms. Jones stated that the special verdict form should be clear on the unanimity requirement." Mr. Field stated a correction needed to be made on page 3, paragraph 5: "Ms. Klucznik..."

*Ms. Jones moved to approve the minutes from the previous meeting as amended. Mr. Field seconded the motion and it passed unanimously.*

## 2. Instruction 1614

## Committee

### 2.1. Discussion of 5(a)

Judge Lindberg stated that the committee's goal should be to simplify and clarify language, not to adopt the statutory language every time. She stated that the committee should translate the statute into plain language.

Judge Lindberg stated that the list in 5(a) should remain because of potential scenarios that may apply, but suggested stating, "while committing the offense" rather than "during the commission of the offense." Ms. Johnson stated that "during the commission of" is defined elsewhere as either "attempting while actually committing" or "during the flight thereof." She stated that "while committing" could be contrary to the normal definition of "during the commission of." Ms. Perlac-Adams stated that she believed this phrasing was discussed at the committee's last meeting. She stated that "while committing the offense" is clearer. Mr. Field asked if "while committing" has the same meaning as "during the commission." He asked if the judge could define "while committing." Ms. Johnson stated that either statement requires a definition for the jury. Mr. Field stated that because a definition would be required, either phrase could be used.

Ms. Andrus suggested "before, during, or fleeing from the act" to reduce complexity because it has a clearer meaning. Mr. Field stated that the phrase would still need to be defined to explain how much before or how much after. Ms. Anderson suggested removing "during the commission of the offense" after the list of aggravating circumstances. Judge Lindberg stated that a possible alternative basis would be "during the course of a kidnapping." Ms. Adams-Perlac suggested "during the offense." Judge Lindberg suggested, "as part of the offense" and define "as part of" by applying "during the commission of" language.

Ms. Johnson stated that "during the course" language is only a part of the kidnapping and does not apply to any of the other listed aggravating circumstances. Ms. Jones suggested individually bracketing the list of aggravating circumstances. Mr. Field stated that the force does not need to be with a dangerous weapon. Ms. Johnson stated that there are three different situations: [a defendant used a dangerous weapon], [a defendant used force, duress, violence, intimidation, coercion, menace, or threat of harm], or [a defendant committed the offense during the course of a kidnapping]. Judge Lindberg stated that she agreed.

Judge Lindberg stated that the committee notes should be clear that attorneys should only choose the option that is applicable and not use all of them. Ms. Adams-Perlac reminded the committee that the first note clarifies that brackets suggest optional language and that attorneys must review and edit their own instructions.

### 2.2. Discussion of 2(c)

Judge Blanch asked the committee if there should be an "or" after 2(c) to be consistent with 3 and 5 by listing the alternative options. He stated that section 3 uses an "or," as does section 5(i). Judge Lindberg agreed.

### **2.3. Discussion of 5(d)**

Judge Lindberg asked the committee what the difference was between “showed and displayed” and questioned the necessity of both words that she admitted were in the statute. Ms. Andrus stated there is a technical difference. Mr. Young stated that “display” could be a photo on a computer monitor and “showed” as a more purposeful action. Ms. Andrus stated there should only be one. She stated that she liked “showed” because “display” could mean a lack of intention or accidental. Judge Lindberg suggested removing “displayed.” Ms. Johnson suggested “used or showed pornography.”

Mr. Field presented hypothetical situation:

What if somebody has pornography displayed in their home on their living room table and a child walks in. You don’t actually show it to the child, but it’s displayed there for the child to see and the child sees it. The accused could say, ‘I mean it was there, I didn’t show it to him or her.’”

Ms. Perlac stated that this could be criminal under the statute. Judge Blanch asked Mr. Field if this situation should be an aggravator. Mr. Field asked if a crime is committed when a defendant allows a child to walk around in a house displaying pornography and the defendant is not actively showing it to them. Ms. Johnson stated that it would not be a crime. Ms. Andrus asked if the defendant wanted the child to see the pornography. Judge Lindberg stated that 5(d) is a list of aggravators for further action and stated that a person must use pornography to accomplish their goal. Mr. Field presented another hypothetical situation:

Somebody is downstairs, watching pornography and upstairs, there is a family party, and then the guy or woman goes to the restroom, and while the movie is playing, a child comes down and sees the pornography. Is that a crime?

Ms. Andrus stated that 5(d) is about purposeful action. Mr. Field and Judge Lindberg stated that there must be intent.

### **2.4. Discussion of 5(c)**

Professor Anderson stated the language suggests that an aggravator includes a person who is a stranger or not a stranger, which means everyone.

### **2.5. Further discussion of 5(d)**

Ms. Johnson stated that removing “displayed” and using “showed” is best because the aggravators must occur during the course of the actual act by the defendant. She stated that pornography on a coffee table would be another charge.

Judge Lindberg asked if brackets should be around [“used” or “showed” pornography] and [caused (MINOR’S INITIALS) to be photographed in a lewd condition during the course of

the offense]. Mr. Field asked if “during the course of the offense” modifies all three phrases. Judge Lindberg stated yes and suggested that brackets should not be around “during the course of the offense” because the defendant must use pornography as part of the act of molesting the child. Ms. Johnson stated that section 4 specifies that the aggravator must be committed in conjunction with an act. She stated that she believes the Legislature intended “during the course of the offense” to modify “photographed in a lewd condition.”

## **2.6. Discussion of 5(e)**

Ms. Jones stated that “prior to sentencing for this offense” is unnecessary because it is obvious. She stated it is a direction for prosecutors, defense attorneys, and judges. Judge Lindberg questioned if this aggravator would be presented without bifurcation. Ms. Johnson stated that the committee should create jury instructions and leave bifurcation to the judge and attorneys. She stated that there could be strategic reasons not to bifurcate, such as 404(c) evidence, and the committee should not go beyond the scope of creating jury instructions.

Judge Lindberg agreed that “prior to sentencing for this offense” should be removed.

## **2.7. Discussion of 5(g)**

Judge Lindberg suggested changing the language to “committed more than five separate acts that would constitute an offense described in this chapter.” She stated that she does not understand why timing is important to this aggravator. Ms. Jones asked if it was necessary to have “described in this chapter.” Mr. Field stated that (g) is not a jury instruction, but rather actual instructions to practitioners.

## **2.8. Further discussion of 5(e)**

Judge Blanch stated that if “prior to sentencing for this offense” is removed, it would not be an aggravating factor. He stated that a conviction that occurs between the facts at issue and sentencing would not count as an aggravator. Ms. Jones stated that an assumption of sentencing should not be in a jury instruction. Mr. Field agreed. Ms. Johnson suggested stating, “prior to trial.” Judge Blanch agreed. Judge Lindberg suggested using “a sexual offense” instead of “any sexual offense.” Ms. Jones suggested using “(DEFENDANT’S NAME) was convicted of a sexual offense prior to this trial” to eliminate phrases in the middle of the sentence.

## **2.9. Further discussion of 5(e)**

Judge Lindberg asked if the language could be changed to “committed similar sexual acts.” Ms. Andrus stated that “similar” would be sufficient.

## **2.10. Further discussion of 5(g)**

On (G), Judge Lindberg asked if the timing language at the end was necessary. Ms. Adams-Perlac suggested “committed more than five separate acts which would constitute a sexual offense.” Judge Blanch suggested “has committed more than five separate acts.” Mr. Field

asked if this meant “six or more.” Judge Lindberg stated yes. Ms. Johnson stated that the statute means six or more.

Judge Blanch asked if “which” or “that” should be used.

### **2.11. Further discussion of 5(e)**

Judge Blanch suggested using “sexual offenses” instead of “a sexual offense” because each charge must be separate.

### **2.12. Discussion of 5(i)**

Judge Lindberg suggested bracketing [acts of prostitution or sexual acts by (MINOR’S INITIALS) with any other person] and [sexual performance by (MINOR’S INITIALS) before any other person, human trafficking, or human smuggling]. Mr. Field asked if “encouraged, aided, allowed, or benefited from” modifies human trafficking and human smuggling. Judge Lindberg stated yes.

### **2.13. Discussion of 5(h)**

Ms. Adams-Perlac suggested “was in a position of special trust.”

### **2.14. Discussion of 5(j)**

Ms. Anderson suggested “Defendant penetrated, however slightly, the (MINOR’S INITIALS)’s genital or anal opening with any part of the human body other than the genitals or mouth.” Judge Lindberg suggested removing “or parts” because it is redundant. Judge Blanch stated that genitals or mouth are a different offense so it is not necessary to include in this instruction. Ms. Johnson stated that it might be necessary because a child victim may not understand penetration. She stated that the prosecution could charge a defendant under this statute and use this aggravator. She stated that if the jury does not find actual penetration, it would still include sex abuse of a child.

Mr. Young asked if the instruction included a situation where a defendant orders a child to penetrate another child. He stated that this is the difference between “caused the penetration” and “penetration.” Ms. Adams-Perlac suggested “caused the penetration, however slight.”

*Ms. Johnson moved to approve the changes. Judge Blanch seconded the motion. The committee unanimously approved the motion.*

## **3. Discussion of Special Verdict Form for Instruction 1614**

## **Committee**

*Ms. Jones moved that the committee modify the special verdict form. Judge Blanch seconded the motion and moved that Ms. Adams-Perlac make the necessary corrections on the special verdict form.*

Ms. Johnson asked if the three separate brackets in 5(a) should remain bracketed on the special verdict form. Judge Lindberg stated that practitioners should remove the extraneous information. Ms. Johnson presented a hypothetical: “A child says [the defendant] had a gun.

Officers go in and don't find the gun. As a prosecutor, I'm going to go [to trial] and say 'Look, you can find that this is an aggravating factor because you believe the child that there was actually a gun, or if you don't believe there actually was a gun, [the defendant] threatened the use of a gun.'" Judge Lindberg stated that any changes to the elements instruction would be reflected on the special verdict form. She stated that the jury instruction would include both aspects. Ms. Johnson stated that the special verdict form requires that the jury unanimously decide. Mr. Field stated that as a prosecutor, he would break them out and we should leave it to the practitioner to separate them. He stated that each could be a separate aggravator. Ms. Jones stated that this situation is likely to occur. Judge Lindberg stated that she preferred to break them out on the special verdict form. Mr. Field agreed.

*Professor Anderson moved to accept the special verdict form as amended. Mr. Field seconded the motion. The committee unanimously approved the motion.*

#### **4. Discussion of Special Verdict Form for Sexual Offense Prior Conviction Committee**

Ms. Johnson suggested "We, the jury, having found the defendant..." Ms. Adams-Perlac stated that "have found" conforms to the other special verdict forms that were previously approved. Mr. Field asked if it is strange for the form to say the defendant is guilty. Ms. Jones stated that this special verdict form serves every purpose and asked if the jury would receive a general verdict form. She asked if the jury needs both forms because the jury would choose among different forms.

Ms. Johnson stated that this form is given to the jury after the jury has found the defendant guilty and chosen the aggravating factors. She stated this form is to decide whether the defendant has been previously convicted of a sexual offense. She stated that this special verdict form could be used for all the crimes listed, not just aggravated sexual abuse of a child.

Judge Blanch asked if "grievous sexual offense" is defined. Ms. Johnson stated yes. Ms. Adams-Perlac stated that it is defined in Utah Code § 76-1-601. Ms. Jones asked if the committee should work on the definition. Ms. Adams-Perlac stated that the committee would work on definitions at a later time because they can apply to multiple jury instructions.

Ms. Johnson stated that if the jury convicts the defendant, then the jury receives the instruction on sexual offense prior conviction. Judge Blanch asked if this form could be used for other sexual offenses. Judge Lindberg and Ms. Johnson stated yes.

Mr. Field asked Ms. Johnson if, on aggravated sex abuse of child, the jury is given a general verdict form and then, if the jury find the defendant guilty, the jury completes the special verdict form. He asked if the jury then completes another special verdict form for aggravated sexual abuse of a child. Ms. Johnson stated that the jury is typically given a general verdict form for aggravated sex abuse of a child. She stated that the aggravating circumstance is not usually in dispute. She stated that she usually gives the jury one verdict form that includes the aggravator. She stated that the defense may ask for a lesser included offense that requires two general elements instructions.

Mr. Field stated that the special verdict form for aggravated sexual abuse of a child should read, "We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of Aggravated Sexual Abuse of a Child." Judge Lindberg stated that this form is used to determine whether it will become an aggravator. Ms. Johnson stated that the difference is a practical dispute. Mr. Field asked who makes the determination that an aggravator could be applied. He





Ms. Johnson suggested using brackets around [in another state, territory, or district of the United States]. She stated that the attorneys must correctly create the instruction. She stated that the elements of offenses in other jurisdictions would have to be listed in the instruction.

Judge Westfall asked how an attorney would prove the law in other jurisdictions. Judge Blanch stated that there is a rule of civil procedure that describes the process of proving the law in foreign jurisdictions. Judge Lindberg stated that this could be decided in a motion in limine. Judge Westfall asked why the jury is asked to determine if the offense in another jurisdiction is an offense in Utah if the judge instructs the jury on this. Judge Blanch stated that the brackets would be replaced by the elements from the foreign jurisdiction based on the legal finding by the judge.

Judge Westfall asked who would make the finding. Ms. Johnson stated that the jury would make the determination of whether the elements in the foreign jurisdiction match the elements in Utah. Judge Lindberg asked if the committee should include a committee note that there is a process of determining the law in other jurisdictions. Judge Westfall is concerned that an attorney preparing the instruction would select from the bracketed alternatives. He asked what the jury is to decide if the judge instructs them that rape in another jurisdiction constitutes rape in Utah. Judge Lindberg stated that this would be a previous legal determination. Judge Blanch states that the judge should decide rather than the jury. Ms. Adams-Perlac stated that the prosecution must still prove the elements of the crime. Judge Westfall stated that the offenses in foreign jurisdictions should be removed from this instruction and left to the judge to make the determination. He stated that this would make it clearer for the jury.

Judge Blanch stated that Rule 44(f) of Rules of Civil Procedure outlines how to determine the law in other jurisdictions. He stated that rule 44 does not clear up the question of who determines the law of the foreign jurisdiction.

Judge Westfall suggested, "The State must prove the defendant was previously convicted of a grievous sexual offense." Judge Blanch suggested adding, "beyond a reasonable doubt." Judge Lindberg suggested adding, in the second paragraph, "or any attempt to commit the offense."

Ms. Johnson suggested that the intern research the issue of what the jury should decide when the law of a foreign jurisdiction should be used in Utah.

## **6. Adjourn**

## **Committee**

Judge Lindberg reminded the committee that the next meeting is September 3, 2014.

# Tab 2

## **Rule 19. Jury Instructions.**

In all jury trials:

The Court shall instruct the jury on the law as it applies to the case. This includes addressing the jury's role as finder of fact; the presumption of innocence and the burden of proof; the required elements of any charged offense; any necessary definitions of particular legal terms. The judge may also instruct the jury on matters requested by the parties, or as it sees fit that effect the course and scope of the trial, or deliberations.

To assist the court, the following procedures shall apply.

[PROCEDURE FOR PROMULGATING INSTRUCTIONS]

(a) Proposed Instructions and Determining which instructions to give-

(1) Stock instructions-- If the court uses a set of "stock" instructions, or has a set of proposed instructions for a particular trial, it shall provide a copy to any party upon request as early as possible before trial. If the court uses the Supreme Court's MUJI instructions, it shall inform the parties as such, and no copies need be provided.

(2) Court Ordered Proposed Instructions- The court may order the prosecution to provide a proposed elements instruction for each charge the defendant is facing.

The Court may order one or both parties to provide instructions defining legal terms, and or other instructions specific to the nature of the case or the crimes charged.

The Court may order the parties to provide proposed instructions specific to the nature of the case or the crimes charged. These instructions will be provided to the court and other parties in the electronic format desired by the court and not less than ten days before trial, unless other time limits are set by the court.

(3) Party Proposed Instructions-In addition to any proposed instructions ordered by the court, a party may submit other instructions it desires be given to the jury. Such instructions will be provided to the court and other parties in the electronic format desired by the court and not less than ten days before trial, unless other time limits are set by the court.

(4) Objections to Proposed Instructions-If a party has an objection to a proposed instruction, or any party-prepared instruction, it shall file such objection at least five days before trial. The party shall include with such objection, any alternative proposed instruction, unless such has already been filed, in which case the party shall identify that instruction for the court.

(5) Ruling on proposed instructions-

The Court shall meet with the parties, at or before trial, and address the proposed instructions and any objections raised. For any proposed instruction, the court shall indicate whether the instruction will be provided to the jury or not. Where the jury instruction is given in substance, but in another form, the court shall indicate which given instruction includes the substance of the proposed instructions.

The court will give a party the chance to make any objections concerning the instructions, given, not given or modified, before the instructions are given to the jury. Such opportunity will be provided on the record but outside the presence of the jury.

6. Failure to object- A party that does not object to an instruction or the failure to give an instruction may not maintain an appeal with respect to such instruction, except to avoid a manifest injustice. In stating the objection the party shall identify the matter to which the objection is made and the ground of the objection.

[TIMING OF INSTRUCTIONS]

(b) Preliminary Instructions

(c) (1) After the jury is sworn and before opening statements, the court shall instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the elements of the crime charged; the presumption of innocence and the burden of proof for the alleged crime. The court may, at that time, instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and any matter the court in its discretion believes will assist the jurors in comprehending the case.

(d) Recess and other Interim Instructions-

(1) During the trial, the court, in its discretion, or at the request of one or both of the parties, and after an opportunity to object outside the presence of the jury, may instruct the jury on a relevant portion of the law if the instruction will assist the jurors in comprehending the case.

(2) At the first recess of the court, the court shall instruct the jury that it is their duty not to converse among themselves or any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them. Upon subsequent recesses the court will remind the jury of this instruction.

(e) Final Instructions

(1) At the close of the evidence the court will allow the parties an opportunity to modify the proposed instructions to conform to the evidence. Having made any required modifications, or if there are none, the court shall instruct the jury on the presumption of innocence and the burden of proof; the required elements of any charged offense; any necessary definitions of particular legal terms; and any other matters deemed to help the jury in deliberations.

(2) If, at a time less than 48 hours before giving the final instructions, court gave a particular instruction, and a copy of that instruction is being provided to the jury in its deliberations, the court may refer to that instruction, rather than reading it again at the close of evidence.

(3) A written copy of the final instructions, and any instructions given earlier, that the court does not read at the close of evidence shall be provided to the jury during its deliberations. The court may, upon request of a juror, or otherwise in its discretion, provide multiple copies for each juror.

# Tab 3



<b>Statute</b>	<b>Offense</b>	<b>Number</b>	<b>Drafted</b>	<b>Discussion</b>	<b>Approved</b>
76-5-401	Unlawful sexual activity with a minor	1604	Yes		6-Nov-13
76-5-401.1	Sexual abuse of a minor	1603	Yes		6-Nov-13
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old	1605	Yes		6-Nov-13
76-5-401.2	Unlawful sexual conduct with a 16 or 17 year old - special verdict form	SVF	Yes		6-Nov-13
76-5-402	Rape	1606	Yes		6-Nov-13
76-5-402.1	Rape of a child	1607	Yes		4-Dec-13
76-5-402.2	Object rape	1608	Yes		4-Dec-13
76-5-402.3	Object rape of a child	1609	Yes		4-Dec-13
76-5-403	Forcible sodomy	1610	Yes		4-Dec-13
76-5-403.1	Sodomy on a child	1611	Yes		4-Dec-13
76-5-404	Forcible sexual abuse	1612	Yes		4-Dec-13
76-5-404.1	Sexual abuse of a child	1613	Yes		5-Feb-14
76-5-404.1	Aggravated sexual abuse of a child	1614	Yes		4-Jun-14
76-5-404.1	Aggravated sexual abuse of a child - special verdict form	SVF	Yes		
76-5-405	Aggravated sexual assault	1615	Yes		
76-5-405	Aggravated sexual assault - special verdict form	SVF	Yes		
76-5-412	Custodial sexual relations	1616	Yes		
76-5-412	Custodial sexual misconduct	1617	Yes		
76-5-413	Custodial sexual relations with youth receiving state services	1618	Yes		
76-5-413	Custodial sexual misconduct with youth receiving state services	1619	Yes		
76-5-406	Consent	1620	Yes		5-Mar-14
76-5-407	Penetration or touching sufficient to constitute offense	1621	Yes		
	Definitions	1601	Yes		
	Sexual offense prior conviction	1622	Yes	4-Jun-14	
	Sexual offense prior conviction - special verdict form	SVF	Yes	4-Jun-14	4-Jun-14
	Serious bodily injury	1633	Yes	3-Sep-14	
	Serious bodily injury - special verdict form	SVF	Yes	3-Sep-14	

# Tab 4

**76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

(b) "Child" means an individual under the age of 14.

(c) "Position of special trust" means:

(i) an adoptive parent;

(ii) an athletic manager who is an adult;

(iii) an aunt;

(iv) a babysitter;

(v) a coach;

(vi) a cohabitant of a parent if the cohabitant is an adult;

(vii) a counselor;

(viii) a doctor or physician;

(ix) an employer;

(x) a foster parent;

(xi) a grandparent;

(xii) a legal guardian;

(xiii) a natural parent;

(xiv) a recreational leader who is an adult;

(xv) a religious leader;

(xvi) a sibling or a stepsibling who is an adult;

(xvii) a scout leader who is an adult;

(xviii) a stepparent;

(xix) a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;

(xx) an uncle;

(xxi) a youth leader who is an adult; or

(xxii) any person in a position of authority, other than those persons listed in Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over the child.

(2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) Sexual abuse of a child is a second degree felony.

(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section **76-1-601**, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by a person who occupied a position of special trust in relation to the victim;

(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;

(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.

(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (5)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c).

(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(9) Imprisonment under this section is mandatory in accordance with Section **76-3-406**.

Amended by Chapter 135, 2014 General Session

Amended by Chapter 141, 2014 General Session

**SVF Aggravated Sexual Abuse of a Child. Approved. (Reading Level 25.7)**

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

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THE STATE OF UTAH,	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	Count (#)
-vs-	:	
(DEFENDANT'S NAME),	:	Case No. (**)
Defendant.	:	

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

- The defendant used a dangerous weapon;
- The defendant used force, duress, violence, intimidation, coercion, menace, or threat of harm;
- The defendant committed the offense during the course of a kidnapping;
- The defendant caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense;
- The defendant was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense;
- The defendant used or showed pornography;

- The defendant caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense;
- The defendant was convicted of a sexual offense prior to this trial;
- The defendant committed a similar sexual act upon two or more victims at the same time or during the same course of conduct;
- The defendant has committed six or more separate acts that would each constitute a sexual offense;
- The defendant was in a position of special trust in relation to (MINOR'S INITIALS);
- The defendant encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by (MINOR'S INITIALS) with any other person, or sexual performance by (MINOR'S INITIALS) before any other person;
- The defendant encouraged, aided, allowed, or benefited from human trafficking, or human smuggling;
- The defendant caused the penetration, however slight, of (MINOR'S INITIALS)'s genital or anal opening with any part of the human body other than the genitals or mouth.

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

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Foreperson

**References**

Utah Code § 76-5-404.1.

# Tab 5



## **CR 1623 Serious Bodily Injury. (Reading Level 20.7)**

If you find the defendant guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child] [as charged in Count \_\_\_\_], you then must determine whether the defendant, in the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child], caused serious bodily injury to another.

To find the defendant has caused serious bodily injury to another, you must find beyond a reasonable doubt, based on the evidence, each of the following:

1. The defendant is guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child]; and
2. In the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child];
3. The defendant, (DEFENDANT'S NAME) caused serious bodily injury to another.

After you carefully consider all of 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 caused serious bodily injury during the commission of the offense. 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 did not cause serious bodily injury during the commission of the offense.

# Tab 6

**SVF Serious Bodily Injury. (Reading Level 10.4)**

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(LOCATION) JUDICIAL DISTRICT COURT, [\_\_\_\_\_DEPARTMENT,]  
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

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THE STATE OF UTAH,	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	Count (#)
-vs-	:	
(DEFENDANT'S NAME)	:	Case No. (**)
Defendant.	:	

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We, the jury, have found the defendant, (DEFENDANT'S NAME), guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Forcible Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child], [as charged in Count \_\_\_\_]. We also unanimously find the State:

\_\_\_\_\_ Has

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

proven beyond a reasonable doubt the defendant caused serious bodily injury to another in the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Forcible Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child].

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

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Foreperson