

**CR1613 Aggravated Sexual Abuse of a Child.**

(DEFENDANT'S NAME) is charged [in Count\_\_\_] with committing Aggravated Sexual Abuse of a Child [on or about DATE]. You cannot convict [him][her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly:
  - a. [touched the anus, buttocks, or genitals of (MINOR'S INITIALS), even if accomplished through clothing]; or
  - b. [touched (MINOR'S INITIALS)'s breast, even if accomplished through clothing]; or
  - c. [took indecent liberties with (MINOR'S INITIALS)]; or
  - d. [caused (MINOR'S INITIALS) to take indecent liberties with (DEFENDANT'S NAME) or another]; and
3. Did so with the intent to:
  - a. [cause substantial emotional or bodily pain to any person]; or
  - b. [arouse or gratify the sexual desire of any person]; and
4. (MINOR'S INITIALS) was under 14 years old at the time of the offense; and
5. [You find that at least one of the following aggravating circumstances applies:]
  - a. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly [used a dangerous weapon] [used force, duress, violence, intimidation, coercion, menace, or threat of harm] [or committed the offense during the course of a kidnapping]];
  - b. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly caused bodily injury or severe psychological injury to (MINOR'S INITIALS) during or as a result of the offense];
  - c. [(DEFENDANT'S NAME) was a stranger to (MINOR'S INITIALS) or made friends with (MINOR'S INITIALS) for the purpose of committing the offense];
  - d. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly [used or showed pornography] [caused (MINOR'S INITIALS) to be photographed in a lewd condition during the course of the offense]];
  - e. [(DEFENDANT'S NAME) was convicted of a sexual offense prior to this trial];
  - f. [(DEFENDANT'S NAME) committed a similar sexual act upon two or more victims at the same time or during the same course of conduct];
  - g. [(DEFENDANT'S NAME) has committed six or more separate acts that would each constitute a sexual offense];
  - h. [(DEFENDANT'S NAME) was in a position of special trust in relation to (MINOR'S INITIALS)];
  - i. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly encouraged, aided, allowed, or benefitted 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] [human trafficking, or human smuggling]];
  - j. [(DEFENDANT'S NAME) intentionally, knowingly, or recklessly 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].

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 § 76-5-404.1

Utah Code § 76-5-407

*State v. Martinez*, 2002 UT 60

*State v. Martinez*, 2000 UT App 320

*State v. Barela*, 2015 UT 22

### **Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If more than one aggravating circumstance applies, the jury should also be given SVF 1613, [Aggravated Sexual Abuse of a Child](#).

In regard to subpart 5.f., the committee considered the use of the word “victims” in light of *State v. Vallejo*, 2019 UT 38, ¶¶ 99-102, but chose to preserve the language set forth in the statute. Any attempt to alter the instruction in an effort to avoid the use of the word “victims” appears to impermissibly change the meaning of the statute

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