

CR1010: Refusing a Chemical Test

(DEFENDANT'S NAME) is charged [in Count ____] with committing Refusing 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. [DEFENDANT];
2. Was issued the Refusal Admonition;
3. A court issued a warrant to draw and test [his] [her] blood; and
4. After the Refusal Admonition was issued and the court issued the warrant, [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.

References:

- Utah Code Ann. § 41-6a-520.1
- Utah Code Ann. § 41-6a-520(2)(a)
- Utah Code Ann. § 76-2-101(2)
- *Gukeisen v. Dep't. of Pub. Safety? Driver License Div.*, 2020 UT App 32, ¶ 12, 461 P.3d 1146, 1150

Committee Notes:

This instruction is intended to be used in prosecuting the crime of Refusing a Chemical Test. Whether that offense constitutes a Class B Misdemeanor, a Class A Misdemeanor, or a Third-Degree Felony depends on various factors. See Utah Code Ann. § 41-6a-520.1(2)(a)–(c). Practitioners should adjust this instruction accordingly. Similar to the offense of Driving Under the Influence, Refusing a Chemical Test is a strict liability offense. See Utah Code Ann. § 76-2-101(2) (no mental state generally required for traffic offenses). An element of this crime is that the defendant was issued “the warning required in Subsection 41-6a-520(2)(a).” See Utah Code Ann. § 41-6a-520.1(1)(a). The committee has chosen to use the phrase “Refusal Admonition” as shorthand to refer to this warning. The committee believes that including the entirety of the Refusal Admonition in the elements of the crime would render this instruction

unwieldy. As such, CR 1010A, which defines the content of the Refusal Admonition, should be given alongside this instruction.