

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

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

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
12:05	Imperfect Self-Defense <ul style="list-style-type: none"><li>- <i>Consideration of Preface Instruction</i></li><li>- <i>Packet of Instructions for Final Review and Approval</i></li></ul>		Tab 2	Judge Blanch Karen Klucznik
12:30	Assault Instructions <ul style="list-style-type: none"><li>- <i>Special Verdict Form Review</i></li><li>- <i>Assault Against Peace Officer / Military Service Member</i></li><li>- <i>Assault Against School Employee</i></li><li>- <i>Assault / Aggravated Assault by Prisoner</i></li><li>- <i>Related Definition</i></li></ul>		Tab 3	Sandi Johnson
1:30	Adjourn			

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

**UPCOMING MEETING SCHEDULE:**

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

June 5, 2019  
September 4, 2019

October 2, 2019  
November 6, 2019

December 4, 2019

**UPCOMING ASSIGNMENTS:**

1. Sandi Johnson = Assault; 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 – April 3, 2019 Meeting**

**NOTES:**

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

Judicial Council Room (N301), Matheson Courthouse  
450 South State Street, Salt Lake City, Utah 84114  
April 3, 2019 – 12:00 p.m. to 1:30 p.m.

**DRAFT**

**MEMBERS:**

**PRESENT    EXCUSED**

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

**GUESTS:**

None

**STAFF:**

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

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

Judge Blanch welcomed the committee and began the proceeding.

The committee considered the minutes from the March 6, 2019 meeting.

Mr. Field made a motion to approve the minutes.

Mr. Nelson seconded.

The motion passed unanimously.

Judge Blanch then turned to the imperfect self-defense instructions.

## **(2) IMPERFECT SELF-DEFENSE INSTRUCTIONS:**

Judge Blanch thanked Ms. Johnson, Ms. Klucznik, and Ms. Jacobs for their subcommittee work assembling the package of instructions for the committee to consider today. Ms. Johnson provided a brief explanation of the methods for handling jury instructions for imperfect self-defense. One option involved including the imperfect self-defense instructions in the actual elements instruction for the offense (i.e., for murder, etc.). But this approach is complicated when you consider the various permutations of offenses where imperfect self-defense might be raised (murder, attempted murder, aggravated murder, attempted aggravated murder, etc.) and when those offenses might be converted to manslaughter (and different types of manslaughter, or different methods of arriving at manslaughter). The subcommittee decided that perfect self-defense should remain in the elements instruction, because it is a complete defense. But to avoid confusing the jury and promoting clarity about what the jury ultimately decides during deliberations as it relates to imperfect self-defense, a better approach is to use the special verdict form for addressing imperfect self-defense. During the last meeting, the committee had discussed whether there needed to be unanimity from the jury in finding that the State had not disproven imperfect self-defense. The subcommittee's approach is that if the jury convicts of, for instance, murder (or attempted, or aggravated, or any combination of those), and the judge determines there is sufficient reason to instruct on imperfect self-defense, that, at that point, the defendant is essentially entitled to the reduction unless the State is able to disprove imperfect self-defense beyond a reasonable doubt. For that reason, a special verdict form is the best method for addressing this with the jury. The subcommittee prepared a revised draft of CR1410 to bring clarity to this approach and the difference between perfect and imperfect self-defense. Furthermore, the subcommittee recommends adding a committee note to each elements instruction if an imperfect self-defense special verdict form is to be used. On the actual special verdict form, there is a single option: that the State had proven beyond a reasonable doubt that imperfect self-defense did not apply. If not, the jury will simply sign the blank form. That is the overall approach.

Judge Blanch called for whether there were disagreements about the approach the subcommittee had taken, there were no disagreements. The full committee is unanimous that the special verdict form described by Ms. Johnson is the best approach. Judge Blanch again thanked the subcommittee because it seems juries are not appropriately instructed on this (based upon the frequency of appellate decisions on this issue).

Ms. Klucznik collaborated with Mr. Field and indicated that the verdict form may need to have two choices so that it is clear what the jury intended. Judge Blanch noted that the entire group of proposed instructions forms would be individually analyzed and Mr. Field's concerns would be addressed at that point.

### ***CR\_\_\_\_ MURDER INSTRUCTION (NEW INSTRUCTION)***

Judge Blanch then called the committee to attention with respect to the Murder instruction. There is no murder instruction presently included in the MUJI instructions. So this is a new instruction. Ms. Klucznik explained the changes she made to the instruction, including that she felt the instruction tracked the statute. The committee discussed the instruction. The committee discussed whether the "the defense of self-defense" language should be changed to "the defense of perfect self-defense." The committee determined that the instruction should just leave the defense language be left as in all other instructions ("[3. The defense of \_\_\_\_\_ does not apply.]").

The committee then discussed a committee note for the murder instruction. Once that discussion was completed, the committee agreed that the murder instruction, in full, should read:

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**CR\_\_\_\_\_ 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; 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 CR1410 (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

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***CR1410 EXPLANATION OF PERFECT AND IMPERFECT SELF-DEFENSE AS DEFENSES***

Having reached agreement on the murder instruction, the committee then moved on to consider CR1410. The committee discussed whether this instruction possibly suggests to the jury what issues should be considered and in

which order which Judge Jones felt could be against case law, noting specific cases regarding order of deliberations. The committee ultimately agreed that the instructions, as written here, do not violate the order of deliberations decisions from the appellate courts.

Ms. Klucznik raised the hypothetical that if the special verdict form was not filled out, whether a judge would automatically reduce the charge from murder to manslaughter. Ms. Johnson felt that if a verdict comes back with an unsigned special verdict form, then that should be to the defendant's benefit, not against the defendant. Judge Blanch felt that in a scenario where the special verdict form is not completed, that should be resolved by appellate review, but Ms. Klucznik countered by saying the State has no avenue of review because, under these circumstances the murder charge resulted in acquittal and the judge reduces the charge to manslaughter. Judge Blanch asked the Committee if the members were comfortable moving forward despite the above concerns. The committee agreed to move on.

Ms. Lockwood raised concerns about the second paragraph of proposed CR1410 stating "if you find the defendant guilty of..." may influence a juror to believe that guilty is the appropriate verdict. After discussion, the language was changed to read "You must consider imperfect self-defense only if you find the defendant guilty of..." After discussing the instruction, the committee agreed that CR1410 should be amended to read:

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#### **CR1410 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 must consider imperfect self-defense only if you find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. 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, 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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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

### **CR219A SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE**

The Committee then moved on to CR219A Special Verdict Form – Imperfect Self-Defense. This is an instruction that provides directions to the jury in completing the special verdict form. The committee discussed whether there was a need to have only one option or if there should be two options for the jury to pick between. There was significant discussion on this point. On the one hand, the jury is not required to be unanimous if the State has not disproven imperfect self-defense. That would suggest that a single option to indicate that the State HAS proven that imperfect self-defense does not apply. On the other hand, having a single option leaves the judge, parties, and appellate courts to wonder if the jury adequately considered the special verdict form. Ultimately, the jury decided there should be two options, agreeing on this language:

#### **CR219A SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE.**

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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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

**SVF\_\_\_\_ SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE**

The committee then turned to the actual special verdict form language. Mr. Field raised a concern that if the verdict form only requires a signature, that can result in error. After much conversation the Committee adopted a second option for the special verdict form to avoid confusing language for the jurors.

The Special Verdict Form for Imperfect Self-Defense was amended to read:

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**SVF\_\_\_\_ SPECIAL VERDICT FORM – IMPERFECT SELF-DEFENSE.**

(Case Caption Information)

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 beyond a reasonable doubt that the State has proven that the defense of imperfect self-defense DOES NOT apply.

OR

☐ We are not unanimously convinced that the defense of imperfect self-defense DOES NOT apply.

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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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

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### ***AN INTRODUCTORY PREFACE***

Some of the committee members were concerned that some attorneys will have a problem with the committee's approach with imperfect self-defense with a special verdict form. The committee agreed that the purpose of jury instructions is to make the process and requirements clear for the jury. Ms. Klucznik agreed to draft a foreword to explain to judges and practitioners the reasoning behind the overarching approach to these instructions, including the special verdict form.

The Committee agreed that they would make a wholesale review of the instructions that were worked on today and that the package of instructions would be voted on at the beginning of the next meeting.

### **(3) ASSAULT INSTRUCTIONS**

This Item was not considered at this meeting and was moved to the agenda for the next meeting.

### **(4) ADJOURN**

The meeting adjourned at approximately 1:35 p.m. The next meeting will be held on May 1, 2019, starting at 12:00 noon.

# TAB 2

## Imperfect Self-Defense Packet

**NOTES:** Ms. Klucznik will provide a copy of the Preface Instruction to the committee at the meeting.

**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; 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 CR1410 (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 \_\_\_\_\_.”

**CR1410 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 must consider imperfect self-defense only if you find the defendant guilty of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. 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, 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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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

## **CR219A Special Verdict Form – Imperfect Self-Defense.**

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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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

**SVF1400 Special Verdict Form – Imperfect Self-Defense.**

(Case Caption Information)

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 beyond a reasonable doubt that the State has proven that the defense of imperfect self-defense DOES NOT apply.

OR

- ☐ We are not unanimously convinced that the defense of imperfect self-defense DOES NOT apply.

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 CR1410, amended as appropriate;
- Use the special verdict form for imperfect self-defense;
- Do not include imperfect self-defense in element #3 above;
- Do not use an imperfect self-defense manslaughter 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 \_\_\_\_\_.”

# TAB 3

## Assault Instructions

**NOTES:** This section is organized into two subparts.

**FIRST:** a several instructions are organized as requested by the committee at the last meeting, as follows:

### **Class B Misdemeanor**

Assault

### **Class A Misdemeanor**

Assault of Pregnant Person / Substantial Bodily Injury (combined instruction)

Assault of Pregnant Person (stand-alone)

Assault Causing Substantial Bodily Injury (stand-alone)

Assault (MB) + SVF for Pregnant Person / Substantial Bodily Injury

### **Third Degree Felony**

Aggravated Assault

### **Second Degree Felony**

Aggravated Assault (combined instruction with all possible elements included)

Aggravated Assault (F3) + SVF for “serious bodily injury” OR “loss of consciousness”

**SECOND:** there are assault-related instructions that have not been considered by the committee, as follows:

- Assault Against Peace Officer / Military Service Member
- Assault Against School Employee
- Assault by Prisoner
- Aggravated Assault by Prisoner
- Related Definitions

**CR\_\_\_\_\_ ~~Simple Assault~~ (Use SVF for SBI or Pregnant Victim).**

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

1. (DEFENDANT'S NAME)
2. Intentionally, knowingly, or recklessly
  - a. attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME).
3. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102

**Committee Notes**

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

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

Last Revised – 11/07/2018



**CR\_\_\_\_\_ Assault – Pregnant Person or Substantial Bodily Injury.**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_\_] with committing Assault Against a Pregnant Person or Committing Assault 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);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME);

AND EITHER

3. (VICTIM'S NAME) was pregnant; and
4. (DEFENDANT'S NAME) had knowledge of the pregnancy;

OR

5. Intentionally, knowingly, or recklessly;
  - a. Committed an act with unlawful force or violence; and
  - b. The act caused substantial bodily injury to (VICTIM'S NAME).
6. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102(3)(b)

**Committee Notes**

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

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

Last Revised – 00/00/0000

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

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (VICTIM'S NAME) was pregnant; and
4. (DEFENDANT'S NAME) had knowledge of the pregnancy; and
5. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102(3)(b)

**Committee Notes**

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

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

Last Revised – 12/05/2018

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

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly committed an act with unlawful force or violence;
3. The act caused substantial bodily injury to (VICTIM'S NAME).
4. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102(3)(a)

**Committee Notes**

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

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

Last Revised – 11/07/2018

**CR\_\_\_\_\_ Special Verdict Form – Assault – Pregnant Person / Substantial Bodily Injury**

(Case Caption Information)

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

We also unanimously find beyond a reasonable doubt that (check all that apply):

\_\_\_\_\_ (DEFENDANT'S NAME) caused substantial bodily injury to (VICTIM'S NAME).

\_\_\_\_\_ (VICTIM'S NAME) was pregnant at the time of the assault and (DEFENDANT'S NAME) knew of the pregnancy.

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

\_\_\_\_\_  
Foreperson

Last Revised - 00/00/0000

**CR\_\_\_\_\_ Aggravated Assault (Must Use SVF for 3rd Degree or 2nd Degree).**

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
  - c. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
- ~~3. (DEFENDANT'S NAME)
  - a. [Used a dangerous weapon; or]
  - b. [Committed an act that impeded the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
    - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
    - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
  - c. [Used other means or force likely to produce death or serious bodily injury].~~
- 4.3. [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 § 76-5-103

**Committee Notes**

Depending on the facts of the case, practitioners should include a special verdict form under the following circumstances:

- where there is “serious bodily injury” OR “loss of consciousness” (see Utah Code § 76-5-103(2)(a)); or
- where there is “targeting law enforcement officer” AND “serious bodily injury” (see Utah Code § 76-5-103(2)(b)).

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

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

Last Revised – 12/05/2018

**CR\_\_\_\_\_ Aggravated Assault (For Use With SVF Only for 2nd Degree).**

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
  - c. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
  - a. [Used a dangerous weapon; or]
  - b. [Committed an act that ~~impeded~~interfered with the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
    - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
    - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
  - c. [Used other means or force likely to produce death or serious bodily injury].
4. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-103

**Committee Notes**

Depending on the facts of the case, practitioners should include a special verdict form under the following circumstances:

- where there is “serious bodily injury” OR “loss of consciousness” (see Utah Code § 76-5-103(2)(a)); or
- where there is “targeting law enforcement officer” AND “serious bodily injury” (see Utah Code § 76-5-103(2)(b)).

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

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

Last Revised – 12/05/2018

**CR\_\_\_\_\_ Special Verdict Form – Aggravated Assault 2nd Degree**

(Case Caption Information)

We, the jury, have found the defendant, (DEFENDANT’S NAME), guilty of Aggravated Assault, as charged in Count [#].

We also unanimously find beyond a reasonable doubt that **OPTION ONE – (check all that apply):**

\_\_\_\_\_ The act resulted in serious bodily injury.

\_\_\_\_\_ The act interfering with the breathing or the circulation of blood produced a loss of consciousness.

\_\_\_\_\_ **OPTION TWO – None of the above.**

**OPTION THREE – If you find beyond a reasonable doubt that none of the above circumstances apply, leave all boxes unchecked and sign the form.**

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

\_\_\_\_\_  
Foreperson

Last Revised - 00/00/0000

**INSTRUCTIONS  
THAT HAVE NOT YET  
BEEN REVIEWED BY  
THE COMMITTEE**



**CR\_\_\_\_\_ Assault Against a Peace Officer or Military Servicemember in Uniform.**

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

1. (DEFENDANT'S NAME)
2. [Knowing that (VICTIM'S NAME) was a peace officer];
3. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
  - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
  - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. (VICTIM'S NAME) was [acting within the scope of (his)(her) authority as a peace officer][on orders and acting within the scope of authority granted to the military servicemember in uniform].
5. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102.4

**Committee Notes**

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

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

Last Revised - 00/00/0000

**CR\_\_\_\_\_ Definitions - Assault Against a Peace Officer or Military Servicemember in Uniform.**

“Peace officer” means:

1. A law enforcement officer certified under Section 53-13-103;
2. A correctional officer under Section 53-13-104;
3. A special function officer under Section 53-13-105; or
4. A federal officer under Section 53-13-106.

“Military servicemember in uniform” means:

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

**References**

Utah Code § 76-5-102.4

**Committee Notes**

Last Revised - 00/00/0000

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

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

1. (DEFENDANT'S NAME);
2. Knowing that (VICTIM'S NAME) was an employee or volunteer of a public or private school;
3. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); or
  - c. threatened to commit any offense involving bodily injury, death, or substantial property damage, and acted with intent to place (VICTIM'S NAME) in fear of imminent serious bodily injury, substantial bodily injury, or death; or
  - d. made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME);
4. (VICTIM'S NAME) was acting within the scope of (his)(her) authority as an employee or volunteer of a public or private school.
5. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102.3

**Committee Notes**

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

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

Last Revised - 00/00/0000

**CR\_\_\_\_\_ Assault by Prisoner.**

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. 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 or a facility used for confinement of delinquent juveniles.
4. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-102.5

**Committee Notes**

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

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

Last Revised - 00/00/0000

**CR\_\_\_\_\_ Aggravated Assault by Prisoner (Use SVF if Intentionally Caused SBI).**

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

1. (DEFENDANT'S NAME);
2. Intentionally, knowingly, or recklessly
  - a. Attempted, with unlawful force or violence, to do bodily injury to (VICTIM'S NAME); or
  - b. Made a threat, accompanied by a show of immediate force or violence, to do bodily injury to (VICTIM'S NAME); or
  - c. Committed an act with unlawful force or violence that
    - i. caused bodily injury to (VICTIM'S NAME); or
    - ii. created a substantial risk of bodily injury to (VICTIM'S NAME); and
3. (DEFENDANT'S NAME)
  - a. [Used a dangerous weapon; or]
  - b. [Committed an act that impeded the breathing or the circulation of blood of (VICTIM'S NAME) by use of unlawful force or violence that was likely to produce a loss of consciousness by:
    - i. applying pressure to the neck or throat of (VICTIM'S NAME); or
    - ii. obstructing the nose, mouth, or airway of (VICTIM'S NAME); or]
    - c. [Used other means or force likely to produce death or serious bodily injury];
4. 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 or a facility used for confinement of delinquent juveniles].
5. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**References**

Utah Code § 76-5-103.5

**Committee Notes**

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

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

Last Revised - 00/00/0000