

**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
May 1, 2019 – 12:00 p.m. to 1:30 p.m.

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

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the April 3, 2019 meeting.
Mr. Field moved to approve the draft minutes.
Judge McCullagh seconded the motion.
The motion passed unanimously.

(2) IMPERFECT SELF-DEFENSE:

The committee continued its consideration of imperfect self-defense instructions. Ms. Klucznik had prepared a draft of a practitioner note to this section of instructions prior to the meeting and distributed a copy to the committee members for review. This was prepared with the purpose of informing practitioners about the reasons for why the committee chose to approach these instructions in this way.

Ms. Klucznik also distributed a copy of a case (*State v. Drej*, 2010 UT 35) which she and Mr. Field worried may create an issue for the committee's chosen approach to these instructions. Ultimately, after discussion, the committee concluded that the approach espoused by the committee does not run afoul of the *State v. Drej* case largely because *State v. Drej* was not focused on the issue of how instructions are to be delivered to a jury when a case involves imperfect self-defense. The committee decided that the practitioner note should include a mention of *State v. Drej* so that practitioners are aware that the case was considered as part of the process of adopting this approach to instructing the jury on imperfect self-defense.

The committee briefly discussed any "order of deliberations" issues that may exist in the practitioner note. Judge Blanch recommended that the word "then" be removed from the fourth paragraph of Ms. Klucznik's draft.

The committee discussed how to incorporate a reference to *State v. Drej* in the practitioner note.

The committee then discussed where this practitioner note should be situated within the collection of MUJI instructions, as well as the overall organization of the 1400 series of instructions.

The committee voted to adopt the practitioner note, as follows:

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

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

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

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

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

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

Last Revised – 05/01/2019

The committee then reviewed the other instructions that were addressed by the committee at the April 3, 2019 meeting to ensure the committee membership still approved of the work completed at that meeting. The

committee reviewed the Murder instruction (a new instruction that will be numbered as CR1411), the Explanation of Perfect and Imperfect Self-Defense as Defenses (which was formerly numbered CR1410, but will now be numbered in its revised form as CR1451), and the Special Verdict Form – Imperfect Self-Defense instruction (previously numbered at earlier meetings as CR219A, but now changed to CR1452 so that it is grouped with the other imperfect self-defense instructions; existing CR219 will have a reference added to direct people to CR1452 for the imperfect self-defense special verdict form instruction). The committee discussed each discussion to ensure that it was in the form intended by the committee, including the name of each instruction. The committee agreed that the work on those instructions completed at the April 3, 2019 meeting is still approved.

The committee then debated the actual special verdict form language. This is a continuation of the discussion from the April 3, 2019 meeting. In particular, the committee discussed the proper method of phrasing the second option / checkbox on the special verdict form. After significant discussion exploring many alternatives for the language (including longer options, shorter options, options that avoid the use of a double negative, and options that mirror the language structure of the first option), the committee agreed that the special verdict form should read, as follows:

SVF1400 SPECIAL VERDICT – 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 that the State has proven beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.

OR

☐ We do not unanimously find that the State has proven beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.

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

Foreperson

Last Revised - 04/03/2019

This language was agreed upon in order to minimize the possibility that something in the second option would tend, in any way, to encourage the jury to select the first option over the second option. The only reason the second option even exists is to ensure the jury has to make an affirmative indication that it intentionally did NOT check the first box. The risk with the language in the second option is that if carelessly worded it may have an unintended impact on the jury’s decision-making process. Mirroring the language structure between the two options minimizes the risk of unintended impact. This mirroring requires the use of a double negative, but the committee believed that the double negative would not be confusing in a way that would be prejudicial to a defendant.

The committee approved staff numbering these instructions in a way that makes sense within the larger numbering scheme in the MUJI instructions as a whole.

(3) ASSAULT INSTRUCTIONS:

This agenda item was not considered during this meeting. It will be considered as part of the next agenda.

(4) ADJOURN

The meeting adjourned at approximately 1:35 p.m. The next meeting will be held on June 5th, 2019, starting at 12:00 noon. At that time, the committee will review the meeting schedule for the summer months.