

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

Via Webex
September 1, 2021 – 12:00 p.m. to 1:00 p.m.

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge James Blanch, <i>Chair</i>	•		None
Jennifer Andrus		•	
Melinda Bowen		•	STAFF:
Sandi Johnson	•		Michael Drechsel
Judge Linda Jones, <i>Emeritus</i>	•		
Elise Lockwood		•	
Judge Brendan McCullagh		•	
Debra Nelson	•		
Stephen Nelson	•		
Judge Michael Westfall		•	
Janet Lawrence	•		
Sharla Dunroe	•		
Richard Pehrson	•		
Jeffrey Mann		•	

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Blanch welcomed the committee to the meeting.
The committee considered the minutes from the August 4, 2021 meeting.
Ms. Nelson moved to approve the draft minutes; Ms. Johnson seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) NEW COMMITTEE MEMBERS:

Judge Blanch introduced the existing committee members to four new members, recently appointed by the Judicial Council, with terms starting September 1, 2021:

- Sharla Dunroe – defense attorney
- Janet Lawrence – defense attorney
- Richard Pehrson – prosecuting attorney
- Jeffrey Mann – prosecuting attorney (unable to attend today)

Each member provided a brief introduction, explaining their professional background. Judge Blanch then provided an overview of the committee’s work. As part of this overview, he noted the value of the committee’s

work, pointing to the recent case *State v. Eyre*, 2021 UT 45, as an example of the Utah Supreme Court referencing with approval a MUJI instruction (in footnote 7). Judge Blanch encouraged all committee members to make every effort to attend every meeting so that the work can continue to be completed.

(3) REVIEW CR1402A, CR1403A, CR1411A, CR1402B, CR1403B, AND CR1411B FOR CONSISTENCY:

Mr. Drechsel explained that in preparing final versions of instructions as amended at the August 4 meeting, he noticed a few instances where the committee had not clearly communicated whether certain changes made to a subset of instructions CR1402A, CR1403A, CR1411A, CR1402B, CR1403B, and CR1411B should be replicated across all of the instructions in the full group. These inconsistencies were outlined in the meeting materials on the Tab 2 cover page. The committee discussed each unresolved question identified on Tab 2.

Should element #5 of CR1402A and CR1403A be modified to be consistent with element #3 of CR1411A?

Ms. Johnson noted that the answer to this question is “yes”: the “The defense of...” element should be the same across CR1411A, CR1402A, and CR1403A. The correct wording for the final element of each instruction would be:

[The defense of [perfect self-defense][defense-of-others][defense-of-habitation][mental illness (76-2-305)] does not apply.]

The committee members agreed with this change. Mr. Drechsel applied that change to proposed instructions CR1402A and CR1403A.

Should the committee note language in CR1402A and CR1403A starting with “Whenever imperfect self-defense is submitted to the jury...” (followed by a bulleted list) be modified to be consistent with the related language in CR1411A (removing the bulleted list and stating that the instruction is not to be used where imperfect self-defense is at issue)?

Ms. Johnson stated that the change should be made to CR1402A and CR1403A. Ms. Johnson also suggested the addition of “or any other mitigation defense” after the word “self-defense” and before the word “is” in the language in CR1411A’s committee note. The correct wording for the first line of the committee note for each instruction (CR1402A, CR1403A, and CR1411A) would be:

Whenever imperfect self-defense or any other mitigation defense is submitted to the jury, do not use [CR1402A/CR1403A/ CR1411A], but instead use [CR1402B/CR1403B/CR1411B].

The committee members agreed with this change. Mr. Drechsel applied that change to proposed instructions CR1402A, CR1403A, and CR1411A.

The committee then discussed the statutory reference as part of the “mental illness” option included in the final element of these of these six instructions. Ms. Johnson noted that it didn’t seem necessary to include “mental illness” in the elements at all. The committee discussed Ms. Johnson’s observation and agreed that in the context of aggravated murder and murder, “mental illness” should not be included as a complete defense, but is instead limited to functioning as a mitigation. The committee then turned its attention to related “mental illness” language in the committee note in each of the six instructions, making refinements to the language regarding mental illness as a defense and as special mitigation.

The committee then discussed the need for unanimity when more than one aggravating factor is alleged as part of the elements of the offense. When that is the case, the committee agreed that the committee note should

instruct the parties to ensure a special verdict form is included in the instructions, requiring the jury to indicate the aggravating factors that they unanimously find to have been proven.

Due to the changes made during the meeting, the approval given to CR1402A, CR1403A, CR1411A, CR1402B, CR1403B, and CR1411B at the August 4, 2021 meeting is nullified. Judge Blanch instructed staff to make a review of these six instructions based upon the committee's discussions and resulting modifications. Staff should revise these instructions accordingly and bring cleaned up versions to the next committee meeting for discussion and possible approval. No instructions were approved during this meeting.

(4) ADJOURN

The meeting adjourned at approximately 1:18 p.m. The next meeting will be held on October 6, 2021, starting at 12:00 noon.