

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

Via Webex  
<https://utcourts.webex.com/meet/michaelcd>  
April 6, 2022 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Recap of judicial feedback on new Unanimity Instructions (CR216, CR430, and CR431)		Tab 2	Judge Blanch
	Partial defense instructions (continued)		Tab 3	Staff
1:30	Adjourn			

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

**UPCOMING MEETING SCHEDULE:**

Meetings are held via Webex on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

May 4, 2022  
June 1, 2022  
July 6, 2022

August 3, 2022  
September 7, 2022  
October 5, 2022

November 2, 2022  
December 7, 2022

# **TAB 1**

## **Meeting Minutes – March 9, 2022**

**NOTES:**

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

Via Webex  
March 9, 2022 – 12:15 p.m. to 1:15 p.m.

**DRAFT**

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. James Blanch	District Court Judge [Chair]	•		None
Jennifer Andrus	Linguist / Communications		•	
Sharla Dunroe	Defense Counsel	•		<b>STAFF:</b> Michael Drechsel
Sandi Johnson	Prosecutor		•	
Janet Lawrence	Defense Counsel	•		
<i>vacant</i>	Defense Counsel	---	---	
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Debra Nelson	Defense Counsel	•		
Stephen Nelson	Prosecutor	•		
Richard Pehrson	Prosecutor		•	
Hon. Teresa Welch	District Court Judge		•	
<i>vacant</i>	Criminal Law Professor	---	---	
Hon. Linda Jones	<i>Emeritus</i>	•		

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

Judge Blanch welcomed the committee to the meeting.  
The committee considered the minutes from the February 2, 2022 meeting.  
Mr. Nelson moved to approve the draft minutes; Judge McCullagh seconded the motion.  
The committee voted unanimously in support of the motion. The motion passed.

**(2) CR216 – JURY DELIBERATIONS:**

The committee considered the proposed revisions to current instruction CR216. Judge McCullagh explained that the jury unanimity language in CR216 seems to be too hidden within the other language in the instruction such that it does not clearly accomplish one of its primary intended purposes. Judge Jones explained that her effort on CR216 (as included in the meeting materials) was to rewrite CR216, replacing the current rule in its entirety. In particular, she noted concern with the current language that states, "Try to reach unanimous agreement, but only if you can..." Judge Jones noted that language has been revised in her proposed draft. The committee turned its attention to the specific language in the proposed draft. The committee made careful review of the current language in CR216 and compared it with the language proposed in the draft. Ms. Lawrence noted her approval of having the unanimity language moved to the first sentence in the instruction. The

committee members agreed with that assessment. Judge McCullagh asked about the language in the second sentence of the second paragraph, "...you may not speculate," wondering why that language was included in this new version. Judge Jones noted that it would be appropriate to not include that language, as it may convey to the jury that they jury cannot draw reasonable inferences from the evidence presented at trial. The committee agreed that language should be removed from the draft.

After further opportunity for discussion and review, Judge McCullagh made a motion to adopt the new proposed language to take the place of current CR216; Mr. Nelson seconded the motion. The committee then voted unanimously in favor of the motion approving the following changes to CR216:

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**CR216 JURY UNANIMITY AND DELIBERATIONS.**

~~In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.~~

~~Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.~~

~~Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.~~

~~Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty." That is, you must be unanimous in your verdict for each count charged.~~

~~To help you in reaching unanimous agreement, I recommend that you not commit yourselves to a particular verdict before discussing all the evidence. In addition, you may not use methods of chance, such as drawing straws or flipping a coin. Rather, in the jury room, consider the evidence and speak your minds with each other. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with.~~

~~In the end, your vote must be your own. A unanimous verdict must reflect the individual, careful, and conscientious judgment of each juror as to whether the defendant is guilty or not guilty.~~

**REFERENCES**

Utah Const. Art. I, § 10.  
Utah R. Crim. P. 21(b).  
Utah R. Civ. P. 59(a)(2).  
*Burroughs v. United States*, 365 F.2d 431, 434 (10th Cir. 1966).

*State v. Lactod*, 761 P.2d 23, 30-31 (Utah Ct. App. 1988).  
75 Am. Jur.2d Trial §§ 1647, 1753, 1781.  
*State v. Hummel*, 2017 UT 19  
*State v. Alires*, 2019 UT App 206  
*State v. Case*, 2020 UT App 81  
*State v. Whytock*, 2020 UT App 107

## COMMITTEE NOTES

Utah's courts have directed that, under certain circumstances, juries must be instructed on something more than simply being unanimous as to the verdict. In cases where different acts and mental states can satisfy the same element, practitioners should add or amend proposed jury instructions and verdict forms to address unanimity concerns.

Utah's appellate courts have tried to distinguish between elements of a crime—on which a jury must be unanimous—and theories of a crime—on which a jury does not have to be unanimous. The line between elements and theories, however, is not clearly defined in the case law. Thus, the nature of the additional required instruction will vary depending upon the crimes charged and the facts and circumstances of a particular case. ~~For these reasons, the Committee has not adopted any specific model unanimity instructions beyond the general instruction in CR216 and CR218. Rather, the Committee encourages the parties to refer to case law on the matter. Refer to CR430 and CR431 for model instructions regarding specific jury unanimity requirements in particular types of cases.~~

## Amended Dates

Instruction last revised – ~~11/01/2017~~03/09/2022  
~~Committee note added – 08/05/2020~~

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Judge Blanch proposed that he would review the committee's recent jury unanimity work with Judge Harris to get an informal sense of whether these new instructions might be sufficient to adequately address the issues that have been raised in so many recent appellate decisions. Judge Blanch asked that these instructions (CR216, CR430, and CR431) be on the next meeting agenda so he can provide feedback on how that conversation proceeds. Judge McCullagh noted that once the committee has these instructions completely finalized, he will conduct a training for justice court judges on these specific instructions. Judge Blanch noted that these instructions appear to be a solid improvement over what has previously been available in MUJI on the unanimity issue, but that lawyers and judges will still need to carefully review the case law and consider how best to articulate the unanimity requirement within the instructions for each unique case so that it is clear which instructions relate to which charge.

The committee then determined that the changes to the committee note in CR216 should also be made to the committee note in CR218. In addition, the committee agreed that the entire committee note from CR216 should be included in CR219. Judge McCullagh made the motion, seconded by Ms. Dunroe. The motion was unanimously approved.

## (3) ADJOURN

Before adjourning, Judge Blanch asked that staff make a review of bills that passed during the 2022 general session and bring to the committee in May any instructions that may need revision based upon those bills.

The meeting adjourned at approximately 1:00 p.m. The next meeting will be held on April 6, 2022, starting at 12:00 noon.

# TAB 2

## Recap of Judicial Feedback on Jury Unanimity Instructions

### NOTES:

CR216 Jury Unanimity and Deliberations.\*

CR430 Jury Unanimity – Single Offense in More Than One Way.

CR431 Jury Unanimity – Multiple Offenses with Identical Elements.

\* Staff also added the CR216 committee note to CR218 and CR219, as instructed by the committee. CR218 and CR219 are not included here because no substantive changes were made to those instructions.

**CR216 Jury Unanimity and Deliberations.**

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found “guilty” or “not guilty.” That is, you must be unanimous in your verdict for each count charged.

To help you in reaching unanimous agreement, I recommend that you not commit yourselves to a particular verdict before discussing all the evidence. In addition, you may not use methods of chance, such as drawing straws or flipping a coin. Rather, in the jury room, consider the evidence and speak your minds with each other. Listen carefully and respectfully to each other’s views and keep an open mind about what others have to say. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with.

In the end, your vote must be your own. A unanimous verdict must reflect the individual, careful, and conscientious judgment of each juror as to whether the defendant is guilty or not guilty.

**References**

Utah Const. Art. I, § 10.  
Utah R. Crim. P. 21(b).  
Utah R. Civ. P. 59(a)(2).  
*Burroughs v. United States*, 365 F.2d 431, 434 (10th Cir. 1966).  
*State v. Lactod*, 761 P.2d 23, 30-31 (Utah Ct. App. 1988).  
75 Am. Jur.2d Trial §§ 1647, 1753, 1781.  
*State v. Hummel*, 2017 UT 19  
*State v. Alires*, 2019 UT App 206  
*State v. Case*, 2020 UT App 81  
*State v. Whytock*, 2020 UT App 107

**Committee Notes**

Utah’s courts have directed that, under certain circumstances, juries must be instructed on something more than simply being unanimous as to the verdict. In cases where different acts and mental states can satisfy the same element, practitioners should add or amend proposed jury instructions and verdict forms to address unanimity concerns.

Utah’s appellate courts have tried to distinguish between elements of a crime—on which a jury must be unanimous—and theories of a crime—on which a jury does not have to be unanimous. The line between elements and theories, however, is not clearly defined in the case law. Thus, the nature of the additional required instruction will vary depending upon the crimes charged and the facts and circumstances of a particular case. Refer to CR430 and CR431 for model instructions regarding specific jury unanimity requirements in particular types of cases.

**Amended Dates**

Last revised – 03/09/2022

**CR430 Jury Unanimity – Single Offense in More Than One Way.**

The prosecution has charged that the defendant committed [Count \_\_\_\_] in more than one way. You may not find the defendant guilty of that offense unless you unanimously agree that the prosecution has proved that the defendant committed the offense in at least one specific way AND you unanimously agree on the specific way(s) in which the defendant committed the offense.

**References**

*State v. Saunders*, 1999 UT 59  
*State v. Hummel*, 2017 UT 19  
*State v. Alires*, 2019 UT App 206  
*State v. Case*, 2020 UT App 81  
*State v. Whytock*, 2020 UT App 107  
*State v. Covington*, 2020 UT App 110  
*State v. Mendoza*, 2021 UT App 79  
*State v. Paule*, 2021 UT App 120  
*State v. Baugh*, 2022 UT App 3

**Committee Notes**

Counsel and trial courts should consider the use of either CR430 or CR431 in certain cases to help eliminate confusion or ambiguity about whether the jury has reached a unanimous conclusion regarding a defendant's guilt. When appropriate, these instructions should be included in addition to the general unanimity principles contained within instructions CR216 and CR218.

Increasingly, Utah's appellate courts are identifying circumstances in which it is not clear, based on instructions given, that juries necessarily reached unanimous agreement as to all elements of a particular charged crime. Examples of such case law are set forth in the references above.

CR430 is meant for use in circumstances in which the prosecution has alleged the defendant committed a particular crime in more than one way, such as asserting the defendant committed two or more acts that each would constitute a charged offense of obstruction of justice. See, e.g., *State v. Mendoza*, 2021 UT App 79. The committee encourages the use of a special verdict form or forms to reduce further the possibility of confusion in this context.

CR431 is meant for use in circumstances in which the prosecution has alleged the defendant committed multiple crimes consisting of identical elements on separate occasions, such as asserting the defendant committed multiple acts constituting separate instances of aggravated sexual abuse of a child over a period of time. See, e.g., *State v. Alires*, 2019 UT App 206. In circumstances such as these, use of CR430 or CR431, in addition to the unanimity language in CR216 and CR218, should help reduce confusion or ambiguity over whether the jury has reached unanimous agreement as to whether the defendant committed a particular specific criminal act.

The committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury's verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and verdict forms to ensure it is clear which specific acts relate to which charged offenses. The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count. The use of special verdict forms is also encouraged. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

Last Revised – 03/02/2022



**CR431 Jury Unanimity – Multiple Offenses with Identical Elements.**

The prosecution has charged in Count \_\_\_\_\_ through Count \_\_\_\_\_ that the defendant committed [INSERT NAME OF OFFENSE] multiple times. Although each of these counts has similar or identical elements, you must consider each count separately and reach unanimous agreement as to whether the defendant is guilty or not guilty of each specific count. You may not find the defendant guilty of any one of these counts unless you unanimously agree on the specific act the prosecution has proven that is within the elements of the offense AND you unanimously agree the prosecution has proven all other elements of the count. You may find the defendant guilty of all of these counts, none of these counts, or only some of these counts; but for each count your decision must be unanimous.

**References**

*State v. Saunders*, 1999 UT 59  
*State v. Hummel*, 2017 UT 19  
*State v. Alires*, 2019 UT App 206  
*State v. Case*, 2020 UT App 81  
*State v. Whytock*, 2020 UT App 107  
*State v. Covington*, 2020 UT App 110  
*State v. Mendoza*, 2021 UT App 79  
*State v. Paule*, 2021 UT App 120  
*State v. Baugh*, 2022 UT App 3

**Committee Notes**

Counsel and trial courts should consider the use of either CR430 or CR431 in certain cases to help eliminate confusion or ambiguity about whether the jury has reached a unanimous conclusion regarding a defendant’s guilt. When appropriate, these instructions should be included in addition to the general unanimity principles contained within instructions CR216 and CR218.

Increasingly, Utah’s appellate courts are identifying circumstances in which it is not clear, based on instructions given, that juries necessarily reached unanimous agreement as to all elements of a particular charged crime. Examples of such case law are set forth in the references above.

CR430 is meant for use in circumstances in which the prosecution has alleged the defendant committed a particular crime in more than one way, such as asserting the defendant committed two or more acts that each would constitute a charged offense of obstruction of justice. See, e.g., *State v. Mendoza*, 2021 UT App 79. The committee encourages the use of a special verdict form or forms to reduce further the possibility of confusion in this context.

CR431 is meant for use in circumstances in which the prosecution has alleged the defendant committed multiple crimes consisting of identical elements on separate occasions, such as asserting the defendant committed multiple acts constituting separate instances of aggravated sexual abuse of a child over a period of time. See, e.g., *State v. Alires*, 2019 UT App 206. In circumstances such as these, use of CR430 or CR431, in addition to the unanimity language in CR216 and CR218, should help reduce confusion or ambiguity over whether the jury has reached unanimous agreement as to whether the defendant committed a particular specific criminal act.

The committee cautions counsel and trial courts against relying exclusively on these instructions to ensure it is clear a jury’s verdict is unanimous. To remove ambiguity, it may also be advisable to amend the language of particular elements instructions and verdict forms to ensure it is clear which specific acts relate to which charged offenses. The instructions must instruct the jury it must unanimously agree that the applicable mental state(s) and other essential elements have been proven for each count. The use of special verdict forms is also encouraged. The appellate courts have further encouraged counsel to explain clearly to jurors in closing arguments which specific acts relate to which charged offenses. The committee recommends to counsel and trial courts that they employ such approaches, in addition to use of the instructions described above, to ensure it is sufficiently clear that jury verdicts are unanimous.

# TAB 3

## Partial Defense Instructions

### NOTES:

During the 2022 general session, **SB0123** ( <https://le.utah.gov/~2022/bills/static/SB0123.html> ) passed, making changes to the process for the court to enter a judgment of conviction when the trier of fact finds that special mitigation applies or that an affirmative defense has not been disproven. These changes (which go into effect on May 4) have bearing on instructions that the committee has been working on for the last two years including: CR1402B, CR1403B, CR1411B, CR1450, CR1451, CR1452, CR505A, and more. Below is the specific language from SB0123 regarding special mitigation and affirmative defenses for aggravated murder and murder (including attempts):

#### =====

#### 76-5-202 Aggravated Murder (lines 2651-59 and 2670-78)

#### =====

- (3)(f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds that **the existence of special mitigation** is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:
- (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
  - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.

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- (4)(c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds **the affirmative defense** described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
- (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
  - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.

#### =====

#### 76-5-203 Murder (lines 2746-55 and 2766-73)

#### =====

- (3)(b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds

that **the existence of special mitigation** is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:

- (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
- (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment of conviction for attempted manslaughter.

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- (4)(c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds **the affirmative defense** described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
- (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
  - (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.

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**76-5-205.5 Special Mitigation for Mental Illness or Provocation (lines 2873-92)**

=====

- (5) If the trier of fact finds that the elements of aggravated murder, attempted aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and also finds that **the existence of special mitigation** under this section is established by a preponderance of the evidence, the court shall enter a judgment of conviction in accordance with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii), respectively.
- (6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact shall return a special verdict at the same time as the general verdict, indicating whether it finds special mitigation.
- (7)(a) If a jury is the trier of fact, a unanimous vote of the jury is required to find special mitigation under this section.
- (7)(b) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a unanimous vote, the jury shall return a general verdict finding the defendant guilty of the charged crime and a special verdict indicating special mitigation.
- (7)(c) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that special mitigation is not established, or if the jury is unable to unanimously agree that special mitigation is established, the jury shall convict the defendant of the greater offense for which the prosecution proves all the elements beyond a reasonable doubt.

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**Also included under this TAB 3 are:**

- Previously approved instructions: CR505A, CR1402A, CR1403A, CR1411A, and CR1450
- Instructions not previously approved while awaiting SB0123: CR1402B, CR1403B, and CR1411B
- Instructions that have not been considered: CR1451, CR1452, SVF1450, and two SVFs for Agg. Murder
- Mr. Jeff Mann's Memo re: mitigation and imperfect self-defense

### **CR505A Roadmap for mitigation defenses.**

If you find the defendant guilty of (CHARGED CRIME) or (LESSER INCLUDED CRIME) on Count [#], you will then need to decide whether the mitigation defense of [imperfect self-defense] [extreme emotional distress special mitigation] [mental illness special mitigation] [or] [battered person mitigation] applies to that crime. ~~Because each mitigation defense has its own elements and burden of proof, make sure to read their instructions carefully.~~

[The elements for imperfect self-defense are set forth in Instruction [#].]

[The elements for extreme emotion distress special mitigation are set forth in Instruction [#].]

[The elements for mental illness special mitigation are set forth in Instruction [#].]

[The elements for battered person mitigation are set forth in Instruction [#].]

Because each mitigation defense has its own elements and burden of proof, make sure to read the instructions carefully. For each mitigation defense listed, you must complete a special verdict form. You will find the special verdict form[s] for Count [#] immediately behind “General Verdict Form: Count (#).”

### **Committee Notes**

A roadmap instruction such as this one should be prepared for each count that involves one or more lesser offenses and one or more mitigation defenses.

General verdict forms and special verdict forms should then be prepared as explained in the instruction.

“Imperfect self-defense” mitigation is only applicable to aggravated murder, murder, attempted aggravated murder, or attempted murder charges.

“Extreme Emotional Distress” mitigation is only applicable when the defendant causes the death of another or attempts to cause the death of another.

“Battered Person” mitigation is applicable to any offense between cohabitants.

Mental Illness can be both a defense and mitigation:

- Under Utah Code 76-2-305 it is a complete defense if it negates the mental state, except for homicide or attempted homicide;
- Under Utah Code 76-5-205.5 it is a special mitigation when the defendant causes the death of another or attempts to cause the death of another, and will reduce the level of the offense; and
- Under Utah Code 77-16a-102 it can be the basis for a finding of guilty with a mental illness at the time of the offense, which does not reduce the offense but changes sentencing requirements and is a necessary finding by the trier of fact.

Approved 08/04/2021

**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 separately from the charged offense 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. The final paragraphs of the elements instruction then explain how the jury should proceed based on whether it has found the defendant guilty of the charged offense:

- If the jury finds that the State *has not* proved the elements of the greater offense beyond a reasonable doubt, the elements instruction on the greater offense directs the jury to find the defendant NOT GUILTY of the charged offense. The instruction then directs the jury that it may consider any lesser offenses included in the instructions.
- If the jury finds the State *has* proved the elements of the greater offense beyond a reasonable doubt, the elements instruction on that greater offense directs the jury to the imperfect self-defense instructions to determine whether the State has disproved imperfect self-defense beyond a reasonable doubt. In a separate roadmap instruction, the jury is instructed to record its finding on the defense on a special verdict form attached to the jury's specific guilty verdict.

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.

**Committee Notes**

Last revised – 05/01/201908/04/2021

(2)(a)

**CR1402A Aggravated Murder Elements – Utah Code § 76-5-202(1) – Without Mitigation Defenses.**

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. Intentionally or knowingly;
3. Caused the death of (VICTIM'S NAME);
4. Under one or more of the following circumstances: [insert all applicable aggravating circumstances]; and
5. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] 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 of Aggravated Murder. On the other hand, if you are not convinced that all of these elements have been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Aggravated Murder.

**Committee Notes**

Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the aggravating circumstances in element 4. See State v. Hummel, 2017 UT 19. Therefore, if more than one aggravating circumstance applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the aggravating circumstance(s) they unanimously find. See State v. Mendoza, 2021 UT App 79; State v. Alires, 2019 UT App 206; State v. Saunders, 1999 UT 59; State v. Tillman, 750 P.2d 546 (Utah 1987).

Mitigation

Whenever any mitigation defense (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation) is submitted to the jury, do not use CR1402A, but instead use CR1402B.

(b)

**CR1403A Aggravated Murder Elements – Utah Code § 76-5-202(2) – Without Mitigation Defenses.**

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. With reckless indifference to human life;
3. Caused the death of (VICTIM'S NAME); and
4. That the defendant did so incident to an act, scheme, course of conduct, or criminal episode during which (he)(she) was a major participant in the commission or attempted commission of: [insert all applicable predicate felonies]; and]
5. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] 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 of Aggravated Murder. On the other hand, if you are not convinced that all of these elements have been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY of Aggravated Murder.

**Committee Notes**

Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the predicate felony in element 4. See State v. Hummel, 2017 UT 19. Therefore, if more than one predicate felony applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the predicate felony or felonies they unanimously find. See State v. Mendoza, 2021 UT App 79; State v. Alires, 2019 UT App 206; State v. Saunders, 1999 UT 59; State v. Tillman, 750 P.2d 546 (Utah 1987).

Mitigation

Whenever any mitigation defense (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation) is submitted to the jury, do not use CR1403A, but instead use CR1403B

### **CR1411A Murder – Without Mitigation Defenses.**

(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 causes 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;
    - ii. (VICTIM’S NAME) was not a party to [the predicate offense(s)]; and
    - ii. (DEFENDANT’S NAME) acted with the intent required as an element of [the predicate offense(s)]; 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]; and]
  3. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] 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.

### **Committee Notes**

#### Elements

There is some uncertainty in the case law regarding a unanimity requirement as it relates to proving the alternatives in element 2. See State v. Hummel, 2017 UT 19. Therefore, if more than one alternative applies in element 2, practitioners are encouraged to use a special verdict form requiring the jury to identify the alternative(s) they unanimously find. See State v. Mendoza, 2021 UT App 79; State v. Alires, 2019 UT App 206; State v. Saunders, 1999 UT 59; State v. Tillman, 750 P.2d 546 (Utah 1987).

#### Mitigation

Whenever any mitigation defense (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation) is submitted to the jury, do not use CR1411A, but instead use CR1411B.



# WITH MITIGATION:

CR1402B Aggravated Murder Elements – Utah Code § 76-5-202(~~1~~)(2)(a) with Mitigation Defenses.  
CR1403B Aggravated Murder Elements – Utah Code § 76-5-202(2)(b) with Mitigation Defenses.  
CR1411B Murder with Mitigation Defenses.

**CR1402B Aggravated Murder Elements – Utah Code § 76-5-202(1)(2)(a) – With Mitigation Defenses.**

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. Intentionally or knowingly;
3. Caused the death of (VICTIM'S NAME);
4. Under one or more of the following circumstances: [insert all applicable aggravating circumstances][; and]
5. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] does not apply.]

After you carefully consider all the evidence in this case, 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. On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find ~~the~~ that all of the elements of Aggravated Murder have been met ~~defendant GUILTY of Aggravated Murder.~~

If you find ~~the defendant guilty~~ that all of the elements of Aggravated Murder have been met, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

[Imperfect self-defense is defined in Instruction [#].]

[Extreme emotional distress special mitigation is defined in Instruction [#].]

[Mental illness special mitigation is defined in Instruction [#].]

[Battered person mitigation is defined in Instruction [#].]

**Committee Notes**

*Elements*

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the aggravating circumstances in element 4. See *State v. Hummel*, 2017 UT 19. Therefore, if more than one aggravating circumstance applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the aggravating circumstance(s) they unanimously find. See *State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

*Mitigation*

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to aggravated murder and attempted aggravated murder. Whenever imperfect self-defense is submitted to the jury:

- in addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- use the “Special Verdict Imperfect Self-Defense” special verdict form;
- do not include “imperfect self-defense” or any other mitigation defense as a defense in element #5 above;
- do not use an “imperfect self-defense manslaughter” elements instruction; and
- always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Extreme Emotional Distress” mitigation is potentially applicable to aggravated murder and attempted aggravated murder (Utah Code § 76-5-205.5; CR\_\_\_\_\_).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR\_\_\_\_\_).

“Mental Illness”:

- is never a complete defense to aggravated murder or attempted aggravated murder (Utah Code § 76-2-305);
- can be a special mitigation, reducing the level of an aggravated murder or attempted aggravated murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the aggravated murder and attempted aggravated murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

**CR1403B Aggravated Murder Elements – Utah Code § 76-5-202(2)(b) – With Mitigation Defenses.**

The defendant, (DEFENDANT'S NAME), is charged with Aggravated Murder. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (DEFENDANT'S NAME);
2. With reckless indifference to human life;
3. Caused the death of (VICTIM'S NAME); and
4. That the defendant did so incident to an act, scheme, course of conduct, or criminal episode during which (he)(she) was a major participant in the commission or attempted commission of: [insert all applicable predicate felonies][; and]
5. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] does not apply.]

After you carefully consider all the evidence in this case, 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. On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Aggravated Murder.

If you find the defendant guilty, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

- [Imperfect self-defense is defined in Instruction [#].]
- [Extreme emotional distress special mitigation is defined in Instruction [#].]
- [Mental illness special mitigation is defined in Instruction [#].]
- [Battered person mitigation is defined in Instruction [#].]

**Committee Notes**

*Elements*

There is some uncertainty in the case law regarding a unanimity requirement as it relates to the predicate felony in element 4. *See State v. Hummel*, 2017 UT 19. Therefore, if more than one predicate felony applies in element 4, practitioners are encouraged to use a special verdict form requiring the jury to identify the predicate felony or felonies they unanimously find. *See State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

*Mitigation*

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to aggravated murder and attempted aggravated murder. Whenever imperfect self-defense is submitted to the jury:

- in addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- use the “Special Verdict Imperfect Self-Defense” special verdict form;
- do not include “imperfect self-defense” or any other mitigation defense as a defense in element #5 above;
- do not use an “imperfect self-defense manslaughter” elements instruction; and
- always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Extreme Emotional Distress” mitigation is potentially applicable to aggravated murder and attempted aggravated murder (Utah Code § 76-5-205.5; CR\_\_\_\_\_).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR\_\_\_\_\_).

“Mental Illness”:

- is never a complete defense to aggravated murder or attempted aggravated murder (Utah Code § 76-2-305);
- can be a special mitigation, reducing the level of an aggravated murder or attempted aggravated murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the aggravated murder and attempted aggravated murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

**CR1411B Murder – With Mitigation Defenses**

(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 causes 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;
  - ii. (VICTIM’S NAME) was not a party to [the predicate offense(s)]; and
  - ii. (DEFENDANT’S NAME) acted with the intent required as an element of [the predicate offense(s)]; 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]]]; and]- 3. [The defense of [perfect self-defense][defense-of-others][defense-of-habitation] does not apply.]

After you carefully consider all the evidence in this case, 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.  
On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of Murder.

If you find the defendant guilty, you must then decide whether the mitigation defense[s] of [imperfect self-defense][extreme emotional distress special mitigation][mental illness special mitigation][battered person mitigation] applies.

- [Imperfect self-defense is defined in Instruction [#].]
- [Extreme emotional distress special mitigation is defined in Instruction [#].]
- [Mental illness special mitigation is defined in Instruction [#].]
- [Battered person mitigation is defined in Instruction [#].]

**Committee Notes**

*Elements*

There is some uncertainty in the case law regarding a unanimity requirement as it relates to proving the alternatives in element 2. *See State v. Hummel*, 2017 UT 19. Therefore, if more than one alternative applies in element 2, practitioners are encouraged to use a special verdict form requiring the jury to identify the alternative(s) they unanimously find. *See State v. Mendoza*, 2021 UT App 79; *State v. Alires*, 2019 UT App 206; *State v. Saunders*, 1999 UT 59; *State v. Tillman*, 750 P.2d 546 (Utah 1987).

*Mitigation*

For mitigation defenses (imperfect self-defense mitigation, extreme emotional distress mitigation, battered person mitigation, or mental illness mitigation), the committee has prepared other definitional instructions and special verdict forms that should be used together with this elements instruction.

“Imperfect Self-defense” mitigation is potentially applicable to murder and attempted murder. Whenever imperfect self-defense is submitted to the jury:

- in addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- use the “Special Verdict Imperfect Self-Defense” special verdict form;
- do not include “imperfect self-defense” or any other mitigation defense as a defense in element #5 above;
- do not use an “imperfect self-defense manslaughter” elements instruction; and
- always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions.

“Extreme Emotional Distress” mitigation is potentially applicable to murder and attempted murder (Utah Code § 76-5-205.5; CR\_\_\_\_\_).

“Battered Person” mitigation is potentially applicable to offenses between cohabitants (Utah Code § 76-2-409; CR\_\_\_\_\_).

“Mental Illness”:

- is never a complete defense to murder or attempted murder (Utah Code § 76-2-305);

- can be a special mitigation, reducing the level of a murder or attempted murder offense (Utah Code § 76-5-205.5); and
- can be the basis for a finding of guilty with a mental illness at the time of the murder and attempted murder, which does not reduce the offense, but is a necessary finding by the trier of fact and changes sentencing requirements (Utah Code §§ 77-16a-102 and 77-16a-104).

## **CR1451 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 § 76-2-404
Utah Code § 76-5-203(4)	Utah Code § 76-2-405
Utah Code § 76-5-205	Utah Code § 76-2-407
Utah Code § 76-2-402	

### **Committee Notes**

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions, use CR1451 (amended as appropriate);
- Use the “Special Verdict Imperfect Self-Defense” special verdict form;
- Do not include “imperfect self-defense” as a defense in the elements instruction;
- 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 the 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

## CR1452 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 CR1451 (amended as appropriate);
- Use the specific Aggravated Murder or Murder elements instruction(s) in CR1402B, CR1403B, or CR1411B;
- Use the "SVF1450 Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in **element #3** of the elements instruction above;
- Do not use an "imperfect self-defense manslaughter" elements instruction; and
- 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 \_\_\_\_\_."~~

~~Use Special Verdict Form SVF1450 in connection with this instruction.~~

Last Revised – 04/03/2019

**SVF 1450. Imperfect Self-Defense.**

(LOCATION) JUDICIAL DISTRICT COURT, [\_\_\_\_\_] DEPARTMENT]  
IN AND FOR (COUNTY) COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-VS-

(DEFENDANT'S NAME),

Defendant.

**SPECIAL VERDICT  
IMPERFECT SELF-DEFENSE**

Count (#)

Case No. (\*\*)

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 proved beyond a reasonable doubt that the defense of imperfect self-defense DOES NOT apply.

OR

- ☐ We do not unanimously find that the State has proved beyond a reasonable doubt 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



**SVF ####. Aggravated Murder (knowingly or intentionally under specified circumstances).**

[LOCATION] JUDICIAL DISTRICT COURT, [\_\_\_\_\_] DEPARTMENT,  
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

[DEFENDANT'S NAME],

Defendant.

**SPECIAL VERDICT  
AGGRAVATED MURDER**

Case No. [#]

Count [#]

We, the jury, have found the defendant, [Defendant], guilty of Aggravated Murder, [as charged in Count \_\_\_\_]. We also unanimously find beyond a reasonable doubt that the defendant knowingly or intentionally caused the death under the following circumstance[s] (check all that apply):

- ☐ [The defendant committed the homicide while confined in a jail or other correctional institution;]
- ☐ [The defendant committed the homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;]
- ☐ [The defendant created a great risk of death to a person other than the victim and the actor;]
- ☐ [The defendant committed the homicide incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit the following offense[s]:
  - ☐ aggravated robbery, as defined in Instruction[s] [#];
  - ☐ robbery, as defined in Instruction[s] [#];
  - ☐ rape, as defined in Instruction[s] [#];
  - ☐ rape of a child, as defined in Instruction[s] [#];
  - ☐ object rape, as defined in Instruction[s] [#];
  - ☐ object rape of a child, as defined in Instruction[s] [#];
  - ☐ forcible sodomy, as defined in Instruction[s] [#];
  - ☐ sodomy upon a child, as defined in Instruction[s] [#];
  - ☐ forcible sexual abuse, as defined in Instruction[s] [#];

- ☐ sexual abuse of a child, as defined in Instruction[s] [#];
- ☐ aggravated sexual abuse of a child, as defined in Instruction[s] [#];
- ☐ child abuse, as defined in Instruction[s] [#];
- ☐ aggravated sexual assault, as defined in Instruction[s] [#];
- ☐ aggravated arson, as defined in Instruction[s] [#];
- ☐ arson, as defined in Instruction[s] [#];
- ☐ aggravated burglary, as defined in Instruction[s] [#];
- ☐ burglary, as defined in Instruction[s] [#];
- ☐ aggravated kidnapping, as defined in Instruction[s] [#];
- ☐ kidnapping, as defined in Instruction[s] [#];
- ☐ child kidnapping, as defined in Instruction[s] [#];]
  
- ☐ [The defendant committed the homicide incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Instruction[s] [#];]
  
- ☐ [The defendant committed the homicide for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;]
  
- ☐ [The defendant committed the homicide for pecuniary gain;]
  
- ☐ [The defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;]
  
- ☐ [The defendant previously committed or was convicted of the following offense[s]:
  - ☐ aggravated murder, as defined in Instruction[s] [#];
  - ☐ attempted aggravated murder, as defined in Instruction[s] [#];
  - ☐ murder, as defined in Instruction[s] [#];
  - ☐ attempted murder, as defined in Instruction[s] [#]; or
  - ☐ an offense committed in another jurisdiction which if committed in this state would be a violation of another crime in this list;]
  
- ☐ [The defendant was previously convicted of the following offense[s]:
  - ☐ aggravated assault, as defined in Instruction[s] [#];
  - ☐ mayhem, as defined in Instruction[s] [#];
  - ☐ kidnapping, as defined in Instruction[s] [#];
  - ☐ child kidnapping, as defined in Instruction[s] [#];
  - ☐ aggravated kidnapping, as defined in Instruction[s] [#];
  - ☐ rape, as defined in Instruction[s] [#];
  - ☐ rape of a child, as defined in Instruction[s] [#];
  - ☐ object rape, as defined in Instruction[s] [#];
  - ☐ object rape of a child, as defined in Instruction[s] [#];
  - ☐ forcible sodomy, as defined in Instruction[s] [#];
  - ☐ sodomy on a child, as defined in Instruction[s] [#];

- ☐ aggravated sexual abuse of a child, as defined in Instruction[s] [#];
  - ☐ aggravated sexual assault, as defined in Instruction[s] [#];
  - ☐ aggravated arson, as defined in Instruction[s] [#];
  - ☐ aggravated burglary, as defined in Instruction[s] [#];
  - ☐ aggravated robbery, as defined in Instruction[s] [#];
  - ☐ felony discharge of a firearm, as defined in Instruction[s] [#]; or
  - ☐ an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this list;]
- ☐ [The defendant committed the homicide for the purpose of:
- ☐ preventing a witness from testifying;
  - ☐ preventing a person from providing evidence or participating in any legal proceedings or official investigation;
  - ☐ retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation;
  - ☐ disrupting or hindering any lawful governmental function or enforcement of laws;]
- ☐ [The defendant committed the homicide by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;]
- ☐ [The defendant committed the homicide by means of any weapon of mass destruction, as defined in Instruction [#];]
- ☐ [The defendant committed the homicide to target a law enforcement officer, as defined in Instruction [#];]
- ☐ [The defendant committed the homicide during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;]
- ☐ [The defendant committed the homicide by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;]
- ☐ [The defendant committed the homicide in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;]
- ☐ [The defendant dismembered, mutilated, or disfigured the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind;]
- ☐ [The victim was or had been a local, state, or federal public official, or a candidate for public office, and the homicide was based on, was caused by, or was related to that official position, act, capacity, or candidacy;]

- ☐ [The victim was on duty in a verified position or the homicide was based on, was caused by, or was related to the victim's position, and the actor knew, or reasonably should have known, that the victim held or had held the position of:
  - ☐ a law enforcement officer, correctional officer, special function officer, or any other peace officer, as defined in Instruction[s] [#];
  - ☐ an executive officer, prosecuting officer, jailer, or prison official;
  - ☐ a firefighter, search and rescue personnel, emergency medical personnel, ambulance personnel, or any other emergency responder, as defined in Instruction[s] [#];
  - ☐ a judge or other court official, juror, probation officer, or parole officer;
  - ☐ a security officer contracted to secure, guard, or otherwise protect tangible personal property, real property, or the life and well-being of human or animal life in the area of the offense;]
- ☐ [The victim was a person held or otherwise detained as a shield, hostage, or for ransom;]
- ☐ [The victim, at the time of the death, was younger than 14 years of age and was not an unborn child.]

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

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Foreperson

Amended \*\*\*.

## References

Utah Code § 76-5-202(1)

## Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction. Only the circumstances that apply to the state's theory of the case should be included.

**SVF ####. Aggravated Murder (reckless indifference to human life).**

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[LOCATION] JUDICIAL DISTRICT COURT, [\_\_\_\_\_] DEPARTMENT,  
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff,

vs.

[DEFENDANT'S NAME],

Defendant.

**SPECIAL VERDICT  
AGGRAVATED MURDER**

Case No. [#]

Count [#]

---

We, the jury, have found the defendant, [Defendant], guilty of Aggravated Murder, [as charged in Count \_\_\_\_]. We also unanimously find beyond a reasonable doubt that the defendant, with reckless indifference to human life, caused the death incident to an act, scheme, course of conduct, or criminal episode during which the defendant was a major participant in the commission or attempted commission of any of the following (check all that apply):

- ☐ child abuse, as defined in Instruction[s] [#];
- ☐ child kidnapping, as defined in Instruction[s] [#];
- ☐ rape of a child, as defined in Instruction[s] [#];
- ☐ object rape of a child, as defined in Instruction[s] [#];
- ☐ sodomy on a child, as defined in Instruction[s] [#];
- ☐ sexual abuse or aggravated sexual abuse of a child, as defined in Instruction[s] [#];

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

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Foreperson

Amended \*\*\*.

**References**

Utah Code § 76-5-202(2)

**Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction. Only the circumstances that apply to the state's theory of the case should be included.

**Issue #1: Mitigation Elements Instruction.**

The current elements instruction states that if the jury finds each element of the offense [agg murder, murder, etc.] it MUST find the defendant GUILTY. But when mitigation is at issue, the question of the defendant's guilty on the charged offense is not over until the jury has considered the mitigation defense. In my view, it is confusing (and perhaps misleading) to tell the jury it MUST find the defendant guilty before the jury has decided everything it must decide to find him guilty. The instruction should instead say that if it finds each element has been proven, it must then consider the mitigation defense. Below are two proposed wordings.

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

On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY of [aggravated murder, murder, etc.], unless you determine that the level of the offense should be reduced due to the mitigation defense[s] of [imperfect self-defense, extreme emotional distress, mental illness special mitigation, battered person mitigation]. This/these mitigation defense[s] are explained in instruction[s] \_\_\_\_\_.

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

On the other hand, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must also decide whether the mitigation defense[s] of [imperfect self-defense, extreme emotional distress, mental illness special mitigation, battered person mitigation] appl[y][ies] before you can find the defendant GUILTY of [aggravated murder, murder, etc]. This/these mitigation defense[s] is/are explained in instruction[s] \_\_\_\_\_.

**Issue #2: Imperfect self-defense instruction.**

In an effort to further avoid the confusing language about find the defendant guilty of the charged offense and then considering imperfect self-defense, I propose a revision of the imperfect self-defense instruction and verdict form.

~~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 [#].~~

**Commented [JM1]:** If perfect self-defense is at issue, there will be a separate instruction explaining its elements and how it applies, which this paragraph does not. This instruction doesn't do anything but tell the jury either (1) a lesser version of a full instruction on perfect self-defense or (2) something it doesn't need to consider at all if perfect self-defense is not at issue. Get rid of it.

~~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]. 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.~~

**Commented [JM2]:** Insert one of these specific statements of the law from the statute or case law.

"under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances." UCA 76-5-203(4)(a).

... when (he/she) "reasonably, but mistakenly, believes 'that the circumstances provided a legal justification or excuse' for the use of deadly force." *State v. Silva*, 2019 UT 36, ¶25, 456 P.3d 718 (quoting UCA 76-5-203(4)(a)).

... when (he/she) "reasonably but incorrectly believed that (his/her) actions were legally justifiable" or excusable. *State v. Lee*, 2014 UT App 4, ¶38 (Voros, J., concurring).

Imperfect self-defense applies when the defendant [caused the death or attempted to cause the death] of another . . . . The effect of the defense is to reduce the level of the offense from [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] to [Murder] [Attempted Murder] [Manslaughter] [Attempted Manslaughter].

**Commented [JM3]:** The supreme court has stated that "a correct instruction" for imperfect self-defense on a charge of attempted murder "would have informed the jury that if Garcia acted in imperfect self-defense, he could be convicted of attempted manslaughter. If the jury were to find that imperfect self-defense did not apply, Garcia could be guilty of attempted murder." *State v. Garcia*, 2017 UT 53, ¶23, n.5, 424 P.3d 171. Here, I have added language explaining to the jury what the reduced offense is. This will also be helpful for my proposed change in the verdict form below.

Therefore, if you find that each and every element of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] has been proven beyond a reasonable doubt and that the State proved beyond a reasonable doubt that imperfect self-defense does not apply, then you must find the defendant GUILTY of



[Aggravated Murder] [Attempted Aggravated Murder] [Murder]  
[Attempted Murder].

On the other hand, if you find that each and every element of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] has been proven beyond a reasonable doubt but that the State DID NOT prove beyond a reasonable doubt that imperfect self-defense does not apply, then you must find the defendant GUILTY of the reduced offense of [Murder] [Attempted Murder] [Manslaughter] [Attempted Manslaughter].

~~Your decision will be reflected in the special verdict form titled "Special Verdict Imperfect Self-Defense."~~

### Issue #3: Verdict form.

With the above changes, there is no need for a special verdict form. Instead, the regular verdict form can be used to explain that with imperfect self-defense, there are three options: (1) guilty of the charged offense, (2) guilty of the reduced offense, or (3) not guilty. Under my suggestion for the imperfect self-defense instruction, we have told the jury the effect of imperfect self-defense is to reduce one specific offense to another specific offense. This way the jury can enter a guilty verdict of the actual offense of conviction – original or reduced.

As to Count I, [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder], we, the jury, find the defendant:

\_\_\_ Guilty of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] because we unanimously find that the State proved each and every element of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] beyond a reasonable doubt, *and that the State proved* beyond a reasonable doubt that imperfect self-defense does not apply.

\_\_\_ Guilty of the reduced offense of [Murder] [Attempted Murder] [Manslaughter] [Attempted Manslaughter] because we unanimously find that the State proved each and every element of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] beyond a reasonable doubt, *but we do not unanimously find*

**Commented [JM4]:** If evidence of an affirmative defense is presented, "defendant is entitled to acquittal or, as in the case of imperfect self-defense, reduction of the charges unless the prosecution carries its burden of disproving the defense beyond a reasonable doubt." *State v. Campos*, 2013 UT App 213, ¶41, 309 P.3d 1160.

If the jury is hung on imperfect self-defense, D gets the benefit of it and is convicted of only the lesser offense.

I don't know how to accurately explain to the jury that it need not be unanimous on the question of imperfect self-defense, but it can be.

**Commented [JM5]:** optional

*that the State proved* beyond a reasonable doubt that imperfect self-defense does not apply.

Commented [JM6]: optional

\_\_\_Not guilty

If we still want a special verdict form, I suggest we simplify it to having a “Yes” and “No” box under a single heading.

We unanimously find that the State has proved beyond a reasonable doubt that the defense of imperfect self-defense does not apply.

- ☐ Yes
- ☐ No