

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

Via Webex
September 7, 2022 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Blanch
	Entrapment		Tab 2	Judge Blanch
	Partial Defense Instructions (continued)		Tab 3	Ms. Johnson Ms. Lawrence Mr. Mann Committee
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):

October 5, 2022

| November 2, 2022

| December 7, 2022

TAB 1

Meeting Minutes – August 3, 2022

NOTES:

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

Via Webex
August 3, 2022 – 12:00 p.m. to 1:30 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	•		STAFF: Bryson King
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		•	
<i>vacant</i>	Prosecutor	---	---	
Richard Pehrson	Prosecutor	•		
Hon. Teresa Welch	District Court Judge	•		
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 June 1, 2020 meeting.
Mr. Mann moved to approve the draft minutes; Judge Welch seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

Judge Blanch reported that he has seen the committee's unanimity instructions in use in two different cases already. This suggests that the new proposed instructions are already gaining traction with practitioners.

(2) COMMITTEE MEMBERSHIP UPDATE:

Mr. Drechsel provided a brief report on committee membership. There are two vacant positions on the committee (one defense attorney and one prosecutor). Mr. Drechsel reviewed the names of the applicants for these vacant positions and asked the committee members to provide feedback if they have any input on who could bring the most value to the committee. Judge Blanch will be formulating a recommendation to the Judicial Council for appointment of new committee members and this feedback will be helpful in making that recommendation. Judge Blanch reiterated the need to have the right balance of professional experience on this

committee — practitioners with trial experience and practitioners with appellate experience — and will be working to ensure that balance is preserved and maximized.

(3) ENTRAPMENT:

Judge Blanch introduced this agenda item, including a brief description of the meeting materials for this agenda item, which included an entrapment jury instruction used recently in a criminal trial. He also pointed the committee's attention to the recently published *State v. Dickerson* case (2022 UT App 60), which addresses the objective / subjective standards that are applicable to an entrapment defense. The committee agreed that entrapment is something that is coming up more frequently and as a result an entrapment instruction should be created, even while *Dickerson* may be on appeal. Judge Blanch noted that his review of the *Dickerson* case caused him to reconsider whether the jury instruction in the meeting materials was an accurate statement of the defense. Judge Blanch specifically focused the committee's attention on the second clause of the second sentence of the second paragraph of the proposed instruction in the meeting materials (regarding "a subjective standard"), suggesting that perhaps *Dickerson* means this clause should be deleted: " , rather than a subjective standard focusing on a particular defendant's individual predisposition to commit a crime."

The committee carefully and thoroughly discussed the objective and subjective components of the entrapment inquiry. Ms. Johnson had provided some detailed input on the proposed instruction. The committee reviewed her proposed revisions. After significant discussion and careful review of what *Dickerson* may mean for the statutory entrapment defense, the committee ultimately agreed, subject to discussion regarding the highlighted language (see below) and final review at the next meeting, that the following language would constitute an appropriate entrapment instruction:

NEW: CR ENTRAPMENT.

You must decide whether the defense of entrapment applies in this case. Under that defense, the defendant is not guilty of an offense if (he)(she) acted because (he)(she) was entrapped into committing the offense.

Entrapment occurs when, in order to obtain evidence of the commission for prosecution, a peace officer or a person directed by or acting in cooperation with the peace officer induces a person to commit an offense by methods that create a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

When determining whether the defendant was entrapped, you must decide whether the methods used by law enforcement create a substantial risk that the defendant did not freely and voluntarily commit the offense. In making your decision, you should consider:

- the defendant's reactions to the government inducement, including:
 - whether the defendant hesitated when presented with an illegal opportunity and succumbed only to persistent pressure; or
 - whether the defendant actively pursued the commission of the offense despite opportunities to withdraw;
- whether the case involves:
 - improper police conduct where the government agent applied persistent pressure or persistently pursued the defendant to commit the offense;
 - appeals based on sympathy, pity, close personal friendships, or offers of inordinate sums of money; and

- all other relevant circumstances.

[The defense of entrapment is unavailable when an element of the offense is causing or threatening bodily injury to a person other than a peace officer or the person directed by or acting in cooperation with the peace officer.]

A defendant carries no burden to prove the defense of entrapment. In other words, the defendant is not required to prove the defense of entrapment applies to his conduct. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped. If the prosecution has not met this burden, then you must find the defendant not guilty.

REFERENCES

Utah Code § 76-2-303

State v. Hernandez, 2020 UT App 58

State v. Hatchett, 2020 UT App 61

State v. Dickerson, 2022 UT App 56

State v. Smith, 2022 UT App 82

COMMITTEE NOTES

When using this instruction, practitioners should add to the relevant elements instruction a final numbered element stating, “The defense of entrapment does not apply.”

Last Revised - 00/00/0000

No official committee vote was taken at the meeting on this instruction language. There was a difference of opinion among committee members regarding whether to include the highlighted language in the first sentence of the second paragraph. This language is included in the statutory articulation of the entrapment defense (see Utah Code § 76-2-303(1)). As a result, some members of the committee believed the language should be included in this model jury instruction. Other members of the committee were concerned that it may tend to confuse the jury in that if there weren't an intention to obtain evidence for prosecution then why is a case being prosecuted in the first place? The committee members agreed to continue considering whether and how to address this statutory language in the model jury instruction. The committee will resolve this issue and make a final review of the instruction as the first agenda item at the September committee meeting.

(4) PARTIAL DEFENSE INSTRUCTIONS:

This agenda item was not addressed at this meeting.

(5) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held via Webex on September 7, 2022, starting at 12:00 noon.

TAB 2

Entrapment Instruction

NOTES:

At the conclusion of the August 3, 2022 meeting, the committee had formulated the following proposed model instruction for the entrapment defense. The committee instructed staff to bring this proposed instruction back to the committee for further review at the September meeting. The only unresolved issue at the end of the August meeting was the highlighted language in the first sentence of the second paragraph. See the August meeting minutes for a brief description of that unresolved issue.

NEW: CR_____ Entrapment.

You must decide whether the defense of entrapment applies in this case. Under that defense, the defendant is not guilty of an offense if (he)(she) acted because (he)(she) was entrapped into committing the offense.

Entrapment occurs when, **in order to obtain evidence of the commission for prosecution**, a peace officer or a person directed by or acting in cooperation with the peace officer induces a person to commit an offense by methods that create a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

When determining whether the defendant was entrapped, you must decide whether the methods used by law enforcement create a substantial risk that the defendant did not freely and voluntarily commit the offense. In making your decision, you should consider:

- the defendant’s reactions to the government inducement, including:
 - whether the defendant hesitated when presented with an illegal opportunity and succumbed only to persistent pressure; or
 - whether the defendant actively pursued the commission of the offense despite opportunities to withdraw;
- whether the case involves:
 - improper police conduct where the government agent applied persistent pressure or persistently pursued the defendant to commit the offense;
 - appeals based on sympathy, pity, close personal friendships, or offers of inordinate sums of money; and
- all other relevant circumstances.

[The defense of entrapment is unavailable when an element of the offense is causing or threatening bodily injury to a person other than a peace officer or the person directed by or acting in cooperation with the peace officer.]

A defendant carries no burden to prove the defense of entrapment. In other words, the defendant is not required to prove the defense of entrapment applies to his conduct. Rather, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped. If the prosecution has not met this burden, then you must find the defendant not guilty.

References

Utah Code § 76-2-303

State v. Hernandez, 2020 UT App 58

State v. Hatchett, 2020 UT App 61

State v. Dickerson, 2022 UT App 56

State v. Smith, 2022 UT App 82

Committee Notes

When using this instruction, practitioners should add to the relevant elements instruction a final numbered element stating, “The defense of entrapment does not apply.”

TAB 3

Partial Defenses (continued)

NOTES:

Ms. Johnson, Mr. Mann, and Ms. Lawrence collaborated on the following materials regarding battered person mitigation instructions and imperfect self-defense instructions.

CR505A Roadmap for mitigation defenses.

If you find the defendant guilty of (~~CHARGED CRIME~~) ~~or (LESSER INCLUDED CRIME)~~ ~~on~~ [in 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.

~~—[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. Your decision on whether a mitigation applies to Count (#) should be reflected on the mitigation special verdict form for each count. You will find the special verdict form[s] for Count (#) immediately behind "General Verdict Form: Count (#)."~~

References

[Utah Code § 76-2-409](#)

[Utah Code § 76-2-305](#)

[Utah Code § 76-5-205.5](#)

[Utah Code § 77-16a-102](#)

Committee Notes

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

General verdict forms and special verdict forms should ~~also then be prepared~~ ~~used 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 to homicide or attempted homicide charges. See Utah Code § 76-5-205.5.~~

~~"Battered Person" mitigation is applicable to any offense between cohabitants as defined in Utah Code § 78B-7-102 or the relationship of a minor to a natural parent, an adoptive parent, a stepparent, or an individual living with the minor's natural parent as if a stepparent to the minor. See Utah Code § 76-2-409.~~

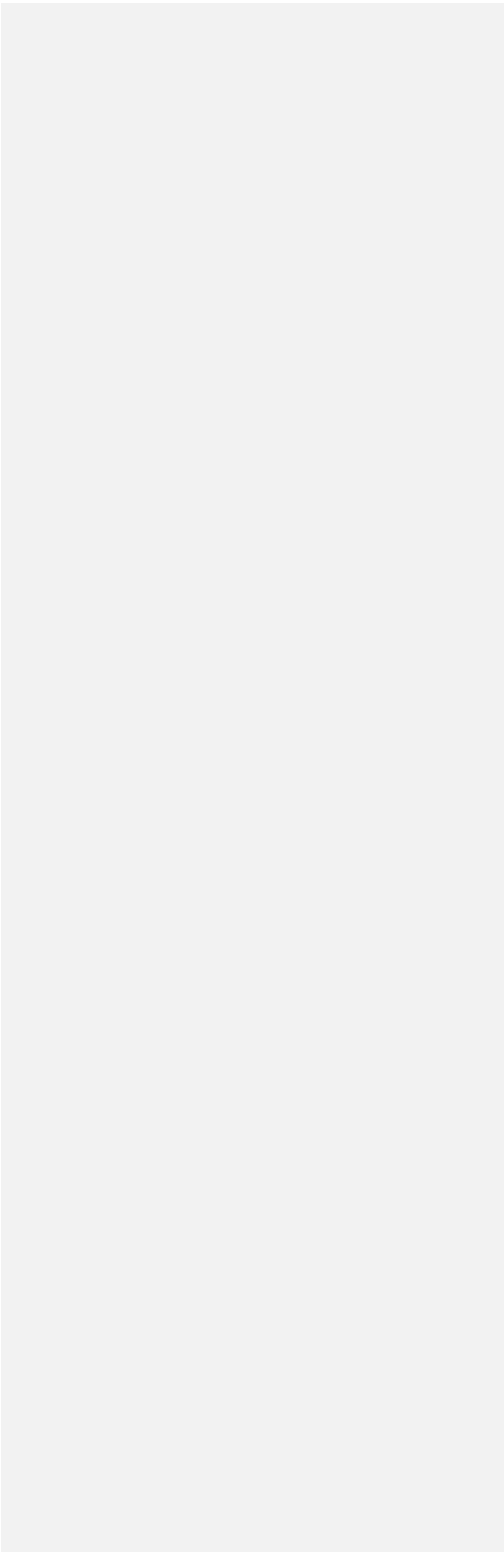
Mental Illness can be ~~both either a defense and or a mitigation depending on the crime charged;~~

- Under Utah Code § 76-2-305, ~~except for homicide or attempted homicide, mental illness it is a complete defense if it negates the mental state required as an element of the offense charged, except for homicide or attempted homicide;~~
- Under Utah Code § 76-5-205.5 ~~it mental illness is a special mitigation for homicide or attempted homicide 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. See Utah Code §§ 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), and 76-5-203(3)(b)(ii).~~
 - Mental illness mitigation must be found by the trier of fact by a preponderance of the evidence.
 - If a jury is the trier of fact, a finding of mental illness mitigation must be unanimous.
- 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 ~~in accordance with Utah Code § 77-16a-104 and is a necessary finding by the trier of fact.~~
 - ~~Mental illness at the time of the offense must be found by the trier of fact by a preponderance of the evidence;~~

Commented [MCD1]: Similar language might need to be adjusted in recently approved new instructions CR1402B, CR1403B, and CR1411B (the agg murder / murder with mitigation instructions).

DRAFT: 06/01/2022

Approved: 08/04/2021
Reapproved: 04/06/2022



NEW: CR570 Elements with Mitigation (Battered Person/Mental Illness Special Mitigation).

(DEFENDANT'S NAME) is charged [in Count ____] with committing (CRIME) [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. [Insert All Applicable Elements] [; and]
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.

If you find the defendant guilty, you must then decide whether [Battered Person Mitigation] [or] [Mental Illness Special Mitigation] applies.

[Battered Person Mitigation is defined in Instruction [#].]

[Mental Illness Special Mitigation is defined in Instruction [#].]

References

Utah Code § 76-2-409

Utah Code § 76-2-305

Utah Code § 76-5-205.5

Utah Code § 77-16a-102

Committee Note

Battered Person Mitigation is applicable to any offense between cohabitants as defined in Utah Code § 78B-7-102 or the relationship of a minor and a natural parent, an adoptive parent, a stepparent, or an individual living with the minor's natural parent as if a stepparent to the minor. See Utah Code § 76-2-409.

Mental Illness can be either a defense or a mitigation depending on the crime charged.

- Under Utah Code § 76-2-305, except for homicide or attempted homicide mental illness is a complete defense if it negates the mental state required as an element of the offense charged.
- Under Utah Code § 76-5-205.5, mental illness is a special mitigation for homicide or attempted homicide and will reduce the level of the offense. See Utah Code §§ 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), and 76-5-203(3)(b)(ii).
 - Mental illness mitigation must be found by the trier of fact by a preponderance of the evidence.
 - If a jury is the trier of fact, a finding of mental illness mitigation must be unanimous.
- 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 in accordance with Utah Code § 77-16a-104.
 - Mental illness at the time of the offense must be found by the trier of fact by a preponderance of the evidence.

DRAFT: 06/01/2022

BATTERED PERSON MITIGATION

NEW: CR571 Definitions Applicable to Battered Person Mitigation Defense

“Abuse” means

- [intentionally or knowingly causing or attempting to cause another individual physical harm;]
- [intentionally or knowingly placing another individual in reasonable fear of imminent physical harm;]
- [physical abuse;]
- [sexual abuse;]
- [sexual exploitation of a minor or aggravated sexual exploitation of a minor;]
- [sexual exploitation of a vulnerable adult;]
- [distribution of an intimate image or misuse of an intimate image during a criminal action;]
- [sexual extortion;]
- [unlawful distribution of a counterfeit intimate image;] [or]
- [human trafficking of a child for sexual exploitation.]

“Cohabitant” means at the time of the offense:

[(VICTIM’S NAME) was a minor and (DEFENDANT’S NAME) is (VICTIM’S NAME)’s natural parent, adoptive parent, stepparent, or an individual living with the minor’s natural parent as if a stepparent to the minor]

[OR]

[(VICTIM’S NAME) was 16 years of age or older at the time of the offense, and (DEFENDANT’S NAME):

- [is or was a spouse of (VICTIM’S NAME);]
- [is or was living as if a spouse of (VICTIM’S NAME);]
- [is related by blood or marriage to (VICTIM’S NAME) as a [parent][grandparent][child][grandchild][aunt][uncle][niece][nephew][sibling][half-sibling];]
- [has or had one or more children in common with (VICTIM’S NAME);]
- [is the biological parent of (VICTIM’S NAME)’s unborn child;]
- [resides or has resided in the same residence as (VICTIM’S NAME);] [or]
- [is or was in a consensual sexual relationship with (VICTIM’S NAME).]

“Reside” means to dwell permanently or for a length of time, to have a settled abode for a time, or to dwell permanently or continuously. “Residence” is defined as “a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit.” It does not require an intention to make the place one’s home. It is possible that a person may have more than one residence at a time. When determining whether (DEFENDANT’S NAME) and (VICTIM’S NAME) resided in the same residence, factors to consider include the following:

- the amount of time one spends at the shared abode;
- the amount of effort expended in its upkeep;
- whether a person is free to come and go as he pleases, treating the place as if it were his own home;
- whether there has been a sharing of living expenses or sharing of financial obligations for the maintenance of a household;
- whether there has been sexual contact evidencing a conjugal association;
- whether furniture or personal items have been moved into a purported residence; and
- voting, owning property, paying taxes, having family in the area, maintaining a mailing address, being born or raised in the area, working or operating a business, and having children attend school in the forum.

In deciding whether (DEFENDANT’S NAME) and (VICTIM’S NAME) were residing in the same residence, you are not limited to the factors listed above, but you may also apply the common, ordinary meaning of the definition to the facts and circumstances of this case.]

References

Utah Code § 76-2-409

Keene v. Bonser, 2005 UT App 37

State v. Salt, 2015 UT App 72

Committee Note

Practitioners should tailor the definitions in this instruction so they include only those that are relevant to the charged crime.

For purposes of the battered person mitigation defense, “abuse” and “cohabitant” are defined by reference to statutory definitions in other parts of the Utah Code. See Utah Code § 76-2-409. Where possible, this instruction integrates those references into a unified whole.

Battered Persons Mitigation has an expanded definition of “cohabitant” so practitioners should be deliberate when determining whether Battered Person mitigation applies.

If practitioners are relying on a definition of “abuse” that references a criminal offense, an instruction detailing the elements for that offense should be included.

- Sexual exploitation of a minor – see Utah Code § 76-5b-201.
- Aggravated sexual exploitation of a minor – see Utah Code § 76-5b-201.1.
- Sexual exploitation of a vulnerable adult – see Utah Code § 76-5b-202.
- Distribution of an intimate image or misuse of an intimate image during a criminal action – see Utah Code §§ 76-5b-203, 203.5.
- Sexual extortion – see Utah Code § 76-5b-204.
- Unlawful distribution of a counterfeit intimate image – see Utah Code § 76-5b-205.
- Human trafficking of a child for sexual exploitation – see Utah Code §§ 76-5-308.5(2) and (4)(b).

NEW: CR572 Battered Person Mitigation – Elements and Burden of Proof

Battered Person Mitigation is a mitigating circumstance that only applies if you have unanimously found that the defendant committed (CRIME) [in Count ____] beyond a reasonable doubt.

Battered Person Mitigation is the only time the defendant has the burden of proof. For Battered Person Mitigation to apply, you must unanimously find the defendant has proven by clear and convincing evidence that:

1. (VICTIM'S NAME) was a cohabitant of (DEFENDANT'S NAME);
2. (VICTIM'S NAME) engaged in a pattern of abuse against (DEFENDANT'S NAME) or another cohabitant of (DEFENDANT'S NAME); and
3. (DEFENDANT'S NAME) reasonably believed committing (CRIME) was necessary to end the pattern of abuse.

To prove something by clear and convincing evidence, the defendant must present sufficient evidence to persuade you to the point that there remains no serious or substantial doubt as to the truth of the fact. Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

References

Utah Code § 76-2-409

Essential Botanical Farms, LLC v. Kay, 2011 UT 71

CV118 “Clear and Convincing Evidence”

Committee Note

Whenever Battered Person Mitigation is submitted to the jury:

- Provide roadmap instruction CR505A and include each count to which the mitigation may apply;
- Use the elements instruction template in CR570 for every crime to which Battered Person Mitigation might apply;
- Include CR571, the definitional instruction for Battered Person Mitigation;
- Include CR572, the elements of Battered Person Mitigation and the Burden of Proof;
- Using SVF570, prepare a special verdict form for each count and offense to which Battered Person Mitigation might apply;
- Make sure the special verdict forms are labeled in the same way they are referenced in the roadmap instruction; and
- Include special verdict forms as outlined in the roadmap instruction.

DRAFT: 06/01/2022

NEW: CR573 Special Verdict Form – Battered Person Mitigation

If you determine beyond a reasonable doubt that (DEFENDANT'S NAME) committed (CRIME) [in Count ____], you must complete the special verdict form titled "Special Verdict Form Battered Person Mitigation."

- Check ONLY ONE box on the form.
- The foreperson MUST sign the special verdict form.

References

Utah Code Ann. § 76-2-409

Committee Notes

Whenever Battered Person Mitigation is submitted to the jury:

- Provide roadmap instruction CR505A and include each count to which the mitigation may apply;
- Use the elements instruction template in CR570 for every crime to which Battered Person Mitigation might apply;
- Include CR571, the definitional instruction for Battered Person Mitigation;
- Include CR572, the elements of Battered Person Mitigation and the Burden of Proof;
- Using SVF570, prepare a special verdict form for each count and offense to which Battered Person Mitigation might apply;
- Make sure the special verdict forms are labeled in the same way they are referenced in the roadmap instruction; and
- Include special verdict forms as outlined in the roadmap instruction.

Commented [JL2]: I don't see that this is needed if CR505A is used.

NEW: SVF570. Battered Person Mitigation 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 FORM BATTERED PERSON MITIGATION DEFENSE Count (#) Case No. (**)
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Having found (DEFENDANT’S NAME), guilty beyond a reasonable doubt of (CRIME), as charged in Count (#),

Check ONLY ONE of the following boxes:

- ☐ We unanimously find that (DEFENDANT’S NAME) has proven battered person mitigation by clear and convincing evidence.
- OR
- ☐ We do not unanimously find that (DEFENDANT’S NAME) has proven battered person mitigation by clear and convincing evidence.

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

Foreperson

DRAFT: 06/01/2022

IMPERFECT SELF-DEFENSE

CR1451 Explanation of Perfect and Imperfect Self-Defense as Defenses

Defense of Self or Other is also sometimes called Perfect perfect self-defense because it is a complete defense to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder][Manslaughter]. As explained, perfect self-defense applies when a defendant is justified in using force against another person when and to the extent that the defendant reasonably believes that force is necessary to defend [himself][herself], or a third party, against another person's imminent use of unlawful force.

Another form of self-defense is called imperfect self-defense because it is only a partial defense, not a complete defense, to [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder]. Imperfect self-defense reduces the level of the offense to [Murder][Attempted Murder][Manslaughter][Attempted Manslaughter]. Imperfect self-defense applies when the defendant [causes the death of another] [attempts to cause the death of another] when [he][she] reasonably, but mistakenly, believes that the circumstances provide a legal justification or excuse for the use of deadly force. In other words, although a reasonable person in the defendant's circumstances could reasonably believe that [he][she] was justified in using deadly force, the use of deadly force was not actually legally justified under the circumstances.

The defendant is not required to prove that either perfect self-defense or imperfect self-defense applies. Rather, the prosecution must prove beyond a reasonable doubt that perfect self-defense and imperfect self-defense do not apply.

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 (#).

If you find the defendant guilty of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder], you must also consider imperfect self-defense. Your decision regarding imperfect self-defense will be reflected in the special verdict form titled "Special Verdict Imperfect Self-Defense."

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~~

State v. Silva, 2019 UT 36, 456 P.3d 718

State v. Low, 2008 UT 58, 192 P.3d 867

State v. Spillers, 2007 UT 13, 152 P.3d 315

State v. Lee, 2014 UT App 4, 318 P.3d 1164

Committee Notes

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions (~~see CR510 through CR540~~), use CR1451 (~~amended as appropriate~~);
- Use the *SVF1450* “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. Imperfect self-defense does not apply to manslaughter;~~
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions; and
- Add the following paragraph at the bottom of the ~~aggravated murder, attempted aggravated murder, murder, or attempted murder~~ elements instruction:

“If you find the ~~Defendant~~~~defendant~~ ~~GUILTY~~~~guilty~~ beyond a reasonable doubt of ~~Aggravated Murder~~~~Attempted Aggravated Murder~~~~[Murder]~~~~Attempted Murder~~~~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 ____.”

~~In the rare circumstance where imperfect self-defense is available but perfect self-defense is not available, practitioners will have to modify this instruction as appropriate. For example, practitioners should include CR510 through CR540, as applicable, because the jury will have to understand basic principles of perfect self-defense in order to understand imperfect self-defense. The imperfect self-defense instruction should state clearly that even though the jury should not consider perfect self-defense, it must still consider imperfect self-defense.~~

Last Revised – 04/03/2019

SVF 1450. Special Verdict 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. (**)
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Having found the defendant, (DEFENDANT'S NAME), guilty beyond a reasonable doubt 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

Committee Notes

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable imperfect self-defense instructions (see CR510 through CR540), use CR1451 (amended as appropriate);
- Use the SVF1450 "Special Verdict Imperfect Self-Defense" special verdict form;
- Do not include "imperfect self-defense" as a defense in the elements instruction;

Commented [MCD3]: Janet proposes that this language be changed to:

•→ We unanimously find that the defense of imperfect self-defense applies.

OR

•→ We unanimously find that the defense of imperfect self-defense does not apply.

- Do not use an “imperfect self-defense manslaughter” elements instruction. Imperfect self-defense does not apply to manslaughter;
- Always distinguish between “perfect self-defense” and “imperfect self-defense” throughout the instructions; and
- Add the following paragraph at the bottom of the aggravated murder, attempted aggravated murder, murder, or attempted murder elements instruction:

“If you find the ~~Defendant~~ defendant ~~GUilty~~ guilty beyond a reasonable doubt of [Aggravated Murder][Attempted Aggravated Murder][Murder][Attempted Murder] ~~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 ____.”

In the rare circumstance where imperfect self-defense is available but perfect self-defense is not available, practitioners will have to modify this instruction as appropriate. For example, practitioners should include CR510 through CR540, as applicable, because the jury will have to understand basic principles of perfect self-defense in order to understand imperfect self-defense. The imperfect self-defense instruction should state clearly that even though the jury should not consider perfect self-defense, it must still consider imperfect self-defense.

Last amended – 05/01/2019