

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

Via Webex
December 7, 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: Michael Drechsel Bryson King
Freyja Johnson	Defense Counsel	•		
Sandi Johnson	Prosecutor	•		
Janet Lawrence	Defense Counsel	•		
Jeffrey Mann	Prosecutor	•		
Hon. Brendan McCullagh	Justice Court Judge	•		
Dustin Parmley	Defense Counsel	•		
Richard Pehrson	Prosecutor	•		
Hon. Teresa Welch	District Court Judge	•		
Brian Williams	Prosecutor		•	
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 November 2, 2022 meeting.
Mr. Mann moved to approve the draft minutes; Mr. Pehrson seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.
Judge Blanch facilitated committee introductions for new committee members Freyja Johnson and Dustin Parmley. The committee took note that Brian Williams is also a new member who was unable to join the meeting today due to a trial conflict.

(2) PARTIAL DEFENSE INSTRUCTIONS – BATTERED PERSON MITIGATION (CONTINUED):

Judge Blanch turned the committee's attention to the second item on the agenda and returned the committee's focus to the formulation of the special verdict form for the battered person mitigation finding. This is where the committee left off at the last meeting, where two different options had been discussed by the committee. Option one was to present the battered person mitigation finding as a unanimous finding that the defendant proved the mitigation, with a second checkbox indicating that the jury did not reach unanimity on the battered person mitigation issue. Option two was to require the jury to indicate a unanimous finding in either direction (either that the jury was unanimous that battered person mitigation had been proven or that the jury was

unanimous that battered person mitigation had not been proven). The committee resumed its discussion on these options with several committee members in support of each option, advocating the same views articulated in the minutes from the November 2, 2022 meeting.

Mr. Pehrson and Ms. Dunroe returned to a practicality issue raised by Ms. S. Johnson at the previous meeting regarding how the court and attorneys will know what issue a jury may be hung on (the offense or the special mitigation issue). Because the statute (Utah Code § 76-2-409(5)(a)(ii)) requires the verdict forms to be returned at the same time, it is conceivable that the issue preventing the jury from completing its work may be unknown to the court and parties. Inquiring about what issues the jury is struggling with can create issues in the case. And this also raises the issue of whether an Allen charge would be provided on the battered person mitigation issue. Judge McCullagh pointed out that if the jury can't reach unanimity on the battered person mitigation defense, they aren't a "hung jury." This is made clear in statute (Utah Code § 76-2-409(5)(b)).

Ms. Dunroe suggested that a third checkbox on the form may be advisable in this situation: 1) unanimous that battered person mitigation has been proven; 2) unanimous that battered person mitigation has not been proven; or 3) unable to reach unanimity on the issue. Judge Welch noted that while this may raise appellate issues, it creates clarity about what the jury decided. Committee members expressed support for this three-checkbox approach. Judge Blanch asked if any committee members were opposed to the three-checkbox option. Mr. Mann remained concerned that including a third checkbox indicating that the jury was unable to reach unanimity on the issue will result in appeals based on the verdict form possibly being seen as an invitation to the jury to treat the battered person mitigation issue without full consideration (because it is a simple way out of making a serious attempt to reach unanimity on the issue). For that reason, Mr. Mann continued to support a two-checkbox option requiring unanimity either way ("option two" described above and in the meeting materials on page 12). Ultimately, the committee agreed that the language in the special verdict form should contain three checkboxes.

The committee then discussed the language for a committee note on the special verdict form. Ms. Lawrence suggested that the committee note should inform practitioners that there is no caselaw guiding practitioners on how Utah Code § 76-2-409 should be implemented in any particular case. Judge Welch and Judge Jones suggested that such language may not be entirely accurate and may inadvertently affect practitioners' work in unanticipated and undesirable ways. After an informal vote, the majority of the committee members present (six in favor) agreed that the committee note should simply point practitioners to the underlying battered person mitigation statute without any additional commentary. Mr. Pehrson then made a formal motion to approve the following language for the complete special verdict form:

NEW: SVF570. Battered Person Mitigation Defense

<u>(LOCATION) JUDICIAL DISTRICT COURT, [DEPARTMENT]</u> <u>IN AND FOR (COUNTY) COUNTY, STATE OF UTAH</u>	
<u>THE STATE OF UTAH,</u> <u>Plaintiff,</u> <u>-VS-</u> <u>(DEFENDANT'S NAME),</u>	<u>SPECIAL VERDICT FORM</u> <u>BATTERED PERSON</u> <u>MITIGATION DEFENSE</u> <u>Count (#)</u>

<u>Defendant.</u>	<u>Case No. (**)</u>
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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 unanimously find that (DEFENDANT'S NAME) has not proven battered person mitigation by clear and convincing evidence.

OR

☐ We are unable to reach unanimous agreement on this issue.

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

Foreperson

COMMITTEE NOTE:

Practitioners should be aware that Utah Code § 76-2-409(5)(b) states: "a nonunanimous vote by the jury on the question of mitigation under Subsection (2)(a) does not result in a hung jury."

The committee voted in favor of the motion, approving this formulation of the special verdict form, with Mr. Mann continuing to be opposed to the inclusion of the third checkbox.

(3) ADJOURN

Prior to the conclusion of the meeting, Bryson King introduced himself to the committee members. He will be taking over staffing this committee moving forward so that Mr. Drechsel's legislative commitments do not impede the committee's work in the coming months.

Judge Blanch asked the committee if there was interest in having an in-person meeting in January. Judge McCullagh suggested that having the in-person meeting after the winter, when whether is more predictable, may be advisable. Judge Blanch agreed that the January meeting (and most future meetings) will be via Webex, with further discussion of an in-person meeting to be held sometime in the next few months (possibly April).

The meeting then adjourned at approximately 1:30 p.m. The next meeting will be held on January 4, 2023, starting at 12:00 noon.