

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

Via Webex
May 3rd, 2023 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Final Review of CR1451, 1452, and 1453		Tab 2	Judge Welch
	Suggestion for Amendment to CR1610		Tab 3	Judge Welch
	Review of Possible Projects			Judge Welch/Bryson King
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):

June 7, 2023
July 5, 2023
August 2, 2023

September 6, 2023
October 4, 2023
November 1, 2023

December 6, 2023

TAB 1

Meeting Minutes – April 5th, 2023

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

Via Webex
April 5th – 12:00 p.m. to 1:30 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge		•	
Sandi Johnson	Prosecutor	•		STAFF:
Jennifer Andrus	Linguist/Communications Professor		•	Bryson King
Hon. Linda Jones	Emeritus District Court Judge		•	
VACANT	District Court Judge	N/A	N/A	
Sharla Dunroe	Defense Attorney		•	
Janet Lawrence	Defense Attorney	•		
Jeffrey Mann	Prosecutor	•		
Richard Pehrson	Prosecutor	•		
Dustin Parmley	Defense Attorney	•		
Freyja Johnson	Defense Attorney	•		
Brian Williams	Prosecutor		•	

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Welch welcomed the committee to the meeting and began the meeting at approximately 12:10 p.m.

Richard Pehrson moved to approve the minutes and Janet Lawrence seconded. Without objection, the motion carries.

(2) AGENDA ITEM 2: FINAL REVIEW OF CR444

Judge Welch then requests the committee make a final review of CR444 and asks if any members have recommended changes or revisions. Without any additional recommendations to change or modify the draft instruction, CR444 is approved and will be published.

(3) AGENDA ITEM 3: DEFINITION INSTRUCTION FOR IMPERFECT SELF-DEFENSE

Judge Welch then turns the committee’s attention to State v. Low, 192 P.3d 867 (2008) and State v. Cabututan, 508 P.3d 1003 (2022), case law addressing the standard and applications of the imperfect self-defense theory. Judge Welch introduces a proposal for creating a definitional instruction for imperfect self-defense and proposes a draft

instruction, indicating that we could title it CR534 or amend CR1451. After reviewing several paragraphs from the case law, and reviewing the draft proposal instruction, Judge Welch asks the committee if CR1451 is sufficient or if the committee should continue its work to draft a definitional instruction. Sandi Johnson addresses the committee and discusses the Cabututan case. She proposes that we add the four categories/circumstances listed in statute to the proposed instruction. Dustin Parmley also addresses the committee and offers a proposal for how to explain the imperfect self-defense theory. Jeff Mann suggests that the original CR1451 includes a definition similar to the one the committee may be proposing, and believes we should rely on that original definition, since it complies with the statute. He directs the committee to State v. Bonds from this year to support his suggestion for limiting ourselves to what the law already states on the theory. The committee continues its discussion about the limitations on imperfect self-defense and suggests wording to the proposed instruction. After lengthy discussion with the committee, the consensus is to revise and renumber the existing instructions on imperfect self-defense as follows: CR1451 will become a definitional instruction for imperfect self-defense, CR1452 will become a stand-alone instruction on the burden of proof, and CR1453 will be an explanation instruction on the use of the special verdict forms. The committee will review these proposed instructions prior to the next meeting and will make final motions on the proposals at that time.

(7) ADJOURN

The meeting was adjourned at 1:30p.m. and the next meeting will be held on May 3rd, 2023 via Webex.

TAB 2

Final Review of CR1451-1453

CR1451 (Amended): Definition of imperfect self-defense

Defense of Self or Other is also sometimes called *perfect* self-defense because it is a complete defense to [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted Murder] [Manslaughter]. 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 changes the level of the offense.

Imperfect self-defense applies when a defendant makes a reasonable mistake of law—when the defendant acts under a reasonable belief that the circumstances provided a legal justification or excuse for the defendant’s conduct although the conduct was not legally justifiable or excusable under the existing circumstances. In other words, if the defendant’s understanding of the law is incorrect, but reasonable, then imperfect self-defense applies. The reasonable belief of the defendant shall be determined from the viewpoint of a reasonable person under the existing circumstances.

References

State v. Lee, 2014 UT App 4, ¶ 42

State v. Low, 192 P.3d 867 (2008)

State v. Cabututan, 508 P.3d 1003 (2022)

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. Bonds, 2019 UT App 156, ¶¶ 44-45

Committee Notes

Whenever imperfect self-defense is submitted to the jury:

- In addition to other applicable self-defense instructions (see CR510 through CR543), use CR1451;
 - Use the “Special Verdict Imperfect Self-Defense” special verdict form;
 - Do not include “imperfect self-defense” as a defense in the elements instruction;
 - Imperfect self-defense does not apply to manslaughter;
- Always distinguish between perfect 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 Defendant GUILTY beyond a reasonable doubt of [Aggravated Murder] [Attempted Aggravated Murder] [Murder] [Attempted 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 Instruction ____.

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 clearly state that even though the jury should not consider perfect self-defense, it must still consider imperfect self-defense.

CR1452 (New): Imperfect Self-Defense – Prosecution’s Burden.

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.

CR1453 (New): Explanation of Special Verdict Instructions -- Perfect and Imperfect Self-Defense as Defenses.

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 Form Imperfect Self-Defense."

TAB 3

Proposal for CR1610



Bryson King <brysonk@utcourts.gov>

Fwd: Comment on MUJI CR1610 Sodomy on a Child.

Michael Drechsel <michaelcd@utcourts.gov>
To: Bryson King <brysonk@utcourts.gov>

Thu, Feb 23, 2023 at 9:54 AM

Hi Bryson. I received this feedback via email this morning. I haven't made a review to see if the feedback is accurate. I'm passing it along for your MUJI attention. Thanks!

=====
MICHAEL C. DRECHSEL • Assistant State Court Administrator • Legislative Liaison
Administrative Office of the Courts • 450 S State St • SLC, UT 84111
michaelcd@utcourts.gov • (801) 578-3821
=====

Begin forwarded message:

From: Ronnie Keller <rkeller@cacheattorney.org>
Subject: Comment on MUJI CR1610 Sodomy on a Child.
Date: February 23, 2023 at 09:45:24 MST
To: "michaelcd@utcourts.gov" <michaelcd@utcourts.gov>

To whom it may concern:

In the course of some research, I have come to realize that MUJI CR1610 Sodomy on a Child could use an amendment. Currently, CR1610 reflects the same language for the second element as CR1609 Forcible Sodomy. However, while the language of Forcible Sodomy under 76-5-403 is limited to encompass sexual conduct involving one person's genitals and either the mouth or anus of another person, Sodomy on a Child under 76-5-403.1 has language that incorporates an additional act, and that would be oral to anal conduct. Ultimately, while placing one's mouth on someone's anus is not included under the language of Forcible Sodomy because genitals are not involved, such an act is included under the language of Sodomy on a Child. Unfortunately, the language used for CR1610 does not incorporate that act.

Please let me know if my explanation needs any clarification. Thank you!

-Ronnie J. Keller-

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CR1610 Sodomy on a Child.

(DEFENDANT'S NAME) is charged [in Count ____] with committing Sodomy on a Child [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. Intentionally, knowingly, or recklessly committed a sexual act with (MINOR'S INITIALS), involving any touching, however slight, of the genitals of one person and the mouth or anus of another, even if accomplished through clothing; and
3. (MINOR'S INITIALS) was under the age of 14 at the time of the conduct.

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.

References

Utah Code § 76-5-403.1

Utah Code § 76-5-407

State v. Martinez, 2002 UT 60

State v. Martinez, 2000 UT App 320

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

If there was a prior conviction or serious bodily injury, a special verdict form may be necessary. See [SVF 1617, Sexual Offense Prior Conviction](#) or [SVF 1618, Serious Bodily Injury](#).

Amended Dates:

September 2015.