

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

Via Webex
October 4th, 2023 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Discussion of Adverse Inference Instruction		Tab 2	Judge Welch/Sandi Johnson
	Review of Possible Projects			Open to the 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):

November 1, 2023

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December 6, 2023

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TAB 1

Meeting Minutes – August 2nd, 2023

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

Via Webex
August 2nd, 2023 – 12:00p.m. to 1:30p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		N/A
Hon. Brendan McCullagh	Justice Court Judge	•		
Sandi Johnson	Prosecutor	•		STAFF:
Jennifer Andrus	Linguist/Communications Professor		•	Jace Willard
Hon. Linda Jones	Emeritus District Court Judge	•		
Sharla Dunroe	Defense Attorney		•	
Janet Lawrence	Defense Attorney		•	
Jeffrey Mann	Prosecutor	•		
Richard Pehrson	Prosecutor	•		
Dustin Parmley	Defense Attorney		•	
Freyja Johnson	Defense Attorney	•		
[Vacant]	Prosecutor		•	
Hon. Matthew Bates	District Court Judge	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Welch welcomed the committee to the meeting and welcomed Judge Matthew Bates as the newest member of the committee. Richard Pehrson moved to approve the May meeting minutes, and Freyja Johnson seconded the motion. With no opposition to the motion, the motion carries and the minutes are approved.

(2) AGENDA ITEM 2: AMENDMENT TO CR1610

There was significant discussion and disagreement among Committee members regarding how much to amend CR1610. Some favored just making a single change (adding "or anus" after the word "genitals" in Paragraph 2 of the instruction) ("Option 1"). Others favored making that change and an additional change (replacing "one person" with "(DEFENDANT'S NAME) or (MINOR'S INITIALS)" and replacing "another" with "(DEFENDANT'S NAME) or (MINOR'S INITIALS)" in Paragraph 2) ("Option 2"). Noting the disagreement, Judge Welch called for a vote. Judge McCullagh, Judge Bates, Jeff Mann supported Option 1. Sandi Johnson, Rick Pehrson, and Freyja Johnson supported Option 2. Judge Welch cast the tie-breaking vote for Option 1.

Following that discussion, it was suggested that the word "another" in Paragraph 2 be changed to "the other." Judge McCullough moved to make this change and the Option 1 change previously discussed. Judge Bates

seconded, and the motion carried unanimously. CR1610's amendments were approved by the committee and will be published to the website.

(3) AGENDA ITEM 3: ADVERSE INFERENCE INSTRUCTION

This item was postponed to go on the agenda for the next meeting since Janet Lawrence was not present.

(4) AGENDA ITEM 4: DISCUSSION OF OTHER INSTRUCTIONS OR PROJECTS

Judge Welch invited proposals from the Committee for other instructions to work on. She mentioned that she would have suggested doing an instruction on the "doctrine of chances," but that a recent Utah Supreme Court decision (State v. Green, 2023 UT 10) abandoning that doctrine makes that unnecessary. Freyja responded that the Court indicated that other acts evidence may be available to rebut a defense of fabrication. She says the language of URE 404(b) still forbids a propensity inference. So, it may still be necessary to instruct the jury on rebuttal of fabrication under Rule 404(b). At Judge Welch's invitation, Freyja agreed to draft an instruction on that for the Committee to consider. She will send it to Judge Welch and Bryson when ready.

Sandi Johnson suggested that instructions should be made for the more common case types, such as DV-related cases, including criminal mischief, interruption of a communication device, and others.

Judge McCullagh proposed getting back to DUI instructions, suggesting that Bryson may be able to help identify where the Committee is at with those. Rick Pehrson notes existing DUI-related instructions (CR1001 through CR1005). Judge McCullagh to work on more DUI-related instructions that he can have ready by November.

(5) ADJOURN

The meeting adjourned at approximately 1:17p.m. The next meeting will be held September 6th, 2023 at 12:00p.m. via Webex.

TAB 2

Adverse Inference Instruction

CR416 Adverse inference for law enforcement failure to comply with activation or use of body-worn camera.

Evidence was introduced at trial that [Officer Name] may have intentionally or recklessly disregarded the requirement that

[an officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible]

[an officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, and there was not an exception allowed by law]

[an officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete]

[any other requirement].

Based upon that evidence, you may make an inference against the officer. It is up to you to decide how much weight to give that evidence.

References

Utah Code § 77-7a-104

Utah Code § 77-7a-104.1

State v. DeJesus, 2017 UT 22

Committee Notes

Prior to giving this instruction, the court presiding over a jury trial must determine that the defendant has established by a preponderance of the evidence that the officer intentionally or with reckless disregard of the requirements, failed to comply with a requirement of section 77-7a-104 AND the officers' failure to comply with that requirement is reasonably likely to affect the outcome of the defendant's trial.

Last Revised - 05/10/2021