

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

Via Hybrid Meeting – Matheson Courthouse and Webex
June 5th, 2024 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Discussion: Failure to Respond to Officer’s Signal to Stop (Misdemeanor)		Tab 2	Judge Welch/McKay Lewis
	Discussion: Proposed Unanimity Instructions		Tab 2	Judge Welch/Judge Jones
	Discussion: Unanimity on DUI Alternatives/SVF/Refusal to submit to chemical test or blood draw		Tab 3	Judge Welch/Judge McCullagh
	Discussion: Negligently Operating a Vehicle Resulting in Bodily Injury Instruction		Tab 5	Judge Welch/McKay Lewis
	Discussion: Proposed Instruction on Mistake of Fact/Mistake of Law		Tab 6	Judge Welch/Freyja Johnson/Dustin Parmley
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):

July 3rd, 2024
August 7th, 2024
September 4th, 2024

October 2nd, 2024
November 6th, 2024
December 4th, 2024

Category 1 = Instruction exists and no amendments necessary

Category 2 = Instruction exists and amendments necessary

Category 3 = Instruction does not exist, but instruction awaiting publication

Category 4 = Instruction does not exist

Proposed Order of DUI Instructions CR1000 Series:

CR1000 – DUI Instructions (Category 1)

CR1001 – Preamble to Driving Under the Influence Instructions (Category 1)

CR1002 – [No Instruction] Actual Physical Control Definition (J. McCullagh)
(Category 4)

CR1003 – Simple Driving Under the Influence Instruction (Category 2)

CR1004 – Enhanced Driving Under the Influence Instruction (Category 2)

CR1005 – Operating a Vehicle Negligently Resulting in Injury (McKay Lewis)
(Category 4)

CR1006 – Automobile Homicide (McKay Lewis) (Category 4)

CR1007 – Unanimity Instruction on DUI (& Special Verdict Form) (J.
McCullagh) (Category 4)

CR1008 – Driving with a Measurable Controlled Substance (Category 3)

CR1009 – Refusing a Chemical Test or Blood Draw (J. McCullagh) (Category
4)

CR1011 – Ignition Interlock (J. McCullagh) (Category 4)

CR1012 – Alcohol Restricted Driver (J. McCullagh) (Category 4)

CR1013 – Driving on Alcohol or DUI Suspended License (J. McCullagh)
(Category 4)

CR1014 – Refusal as Evidence of Consciousness of Guilt (J. McCullagh)
(Category 4)

Proposed DUI Special Verdict Forms

SVF1001 – Driving Under the Influence [Will Revise]

TAB 1

Meeting Minutes – April 3rd, 2024

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

Via Webex
April 3rd, 2024 – 12:00 p.m. to 1:30 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Theresa Welch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge		•	
Jennifer Andrus	Linguist/Communications Professor		•	STAFF:
Hon. Linda Jones	Emeritus District Court Judge	•	•	Bryson King
Hon. Matthew Bates	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	•		
McKay Lewis	Prosecutor	•		
Nic Mills	Prosecutor	•	•	

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Welch welcomed the committee to the meeting. After reviewing the minutes from the previous meeting, McKay Lewis moved to approve the minutes, and Janet Lawrence seconded the motion. Without objection, the motion passes and the minutes are approved.

(2) AGENDA ITEM 2: RENUMBERING CR1000 SERIES - DUI

Judge Welch began the Committee’s discussion on the renumbering of the CR1000 Series. Judge Welch reviewed the color-coding with the Committee, which determines what stage an instruction is in as the Committee develops the Series. Judge Welch then reviewed each of the instructions with the Committee to determine which category (stage) applies to the instructions in the Series.

(3) AGENDA ITEM 3: PROPOSED CR1101: FAILURE TO RESPOND TO OFFICER’S SIGNAL TO STOP (MISDEMEANOR)

Judge Welch then asked McKay Lewis to begin the discussion on a proposed instruction for Failure to Respond to an Officer’s Signal to Stop (misdemeanor). McKay began by reviewing the elements from the statute and relevant

case law that guides the development of the instruction. McKay asked the Committee to consider whether “operating a vehicle” is an element of the offense for the purposes of this particular instruction, or a provision of the statute that simply directs a prosecutor’s charging decision. Richard Pehrson indicated that *State v. Young* does not require “operating a vehicle” as the sixth element listed in the proposed instruction. The Committee then discussed the differences between the misdemeanor and felony versions of the statute. After lengthy discussion, the Freyja Johnson moved to retain element six in the proposed instruction. Judge Bates opposed the motion and explained that because of the overlap between the misdemeanor and felony versions (foot fleeing versus vehicle fleeing), the sixth element should be removed. Judge Welch invited the Committee to take a vote on the issue. Jeff Mann and Freyja Johnson voted to retain the sixth element. Judge Bates, Richard Pehrson, Dustin Parmley, McKay Lewis, and Janet Lawrence voted against retaining the element. With that vote, the element will be removed from the instruction. Judge Welch then turned the Committee’s discussion to the correct mens rea element for the instruction. Dustin Parmley referenced *State v. Bird* for his argument that the correct mens rea should be “intentional.” Judge Bates argued that “for the purpose of arrest,” which is contained in the instruction already, identifies the correct mens rea. Richard Pehrson argued that because ambiguity in the caselaw exists, the Committee should not engage in a discussion of the correct mens rea until the courts have decided the issue. The Committee then addressed whether ambiguity does, in fact, exist in the case law by discussion *Bird* and *Alvarado*. Ultimately, the Committee agreed that “knowingly” and “recklessly” should be removed from the second element of the instruction, as not relevant to the mens rea of this offense. Judge Welch then asked the Committee to consider, in its next meeting, whether to retain the word “Intentionally” as a mens rea element of the instruction, or to remove the word from the instruction. Judge Bates then address the UCJA Rule 3-418, which provides that if case law is unclear, the Committee may draft alternative instructions with a committee note that indicate where ambiguity in the law exists. Jeff Mann suggested that we could use brackets within the instruction, where appropriate, to represent the alternative options available in the instruction based on existing law. The Committee will return to its discussion on the proposed instruction at its next meeting.

(4) AGENDA ITEM 4: PROPOSED INSTRUCTION ON MISTAKE OF FACT/MISTAKE OF LAW

Judge Welch then turned the Committee’s attention to Utah Code 76-2-304 on mistake of fact or law. Judge Welch then asked if someone from the Committee would volunteer to work on a proposed instruction for the Committee’s next meeting. Dustin and Freyja volunteered to collaborate on the project together.

(5) ADJOURN

Judge Welch also mentioned to the Committee that Jennifer Andrus would be leaving the Committee as the linguistic expert. Dr. Andrus has recommended a replacement who will be joining the Committee at its next meeting to observe its discussion. The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on June 5th, 2024, starting at 12:00 noon.

TAB 2

**Proposed CR1101 – Failure to Respond
(Misdemeanor)**

CR1101: Failure to Respond to an Officer's Signal to Stop (Class A Misdemeanor)

(DEFENDANT'S NAME) is charged [in Count ____] with committing Failure to Stop at the Command of a Peace Officer [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. After a peace officer issued a verbal or visual command to stop;
2. (DEFENDANT'S NAME);
3. [Intentionally] fled from or otherwise attempted to elude a peace officer;;
- 4.

For the purpose of avoiding arrest; 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 Ann. § 76-8-305.5
- *State v. Young*, 2015 UT App 286, 364 P.3d 55
- *Salt Lake City v. Gallegos*, 2015 UT App 78, 347 P.3d 842
- *State v. Alvarado*, 2023 UT App 123, 538 P.3d 633
- *State v. Bird*, 2015 UT 7, 345 P.3d 1141

Committee Notes

This instruction is intended to be used in prosecuting **Class A Misdemeanor** Failure to Stop at the Command of a Peace Officer. For the Felony Failure to Respond to an Officer's Signal to Stop instruction, use CR1102 or CR1103.

TAB 3

Proposed Unanimity Instructions

New CR216 (03.18.22):

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.

Instruction No. _____

[SINGLE OFFENSE CHARGED MORE THAN ONE WAY]

The prosecution has charged that the defendant committed [count 1 / each count] in more than one way. You may not find the defendant guilty of [that/any] count unless you unanimously agree that the prosecution has proved that the defendant committed [the/each] offense in at least one specific way AND you unanimously agree on the specific way(s) in which the defendant committed the offense.

OR

The prosecution has charged that the defendant committed [Count __ and Count __] in alternative ways. You may not find the defendant guilty of any offense unless you unanimously agree that the prosecution has proved that the defendant committed each offense in at least one specific alternative way AND you unanimously agree on the specific way or ways in which the defendant committed that offense. 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.

[MULTIPLE OFFENSE WITH IDENTICAL ELEMENTS]

Instruction No. _____

The prosecution has charged [INSERT NAME OF OFFENSE] in Count _____ through Count _____. Although each count has similar or identical elements, you must consider each count separately, and you must reach unanimous agreement as to whether the defendant is guilty or not guilty of each individual and specific count. You may not find the defendant guilty on any count unless you unanimously agree on the specific act the prosecution has proven that is within the elements of the offense AND you unanimously agree that the prosecution has proven all other elements of the offense. 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. You must all agree.

[ONE (OR MORE) COUNTS WHERE EVIDENCE IS OF MORE OCCURRENCES THAN CHARGES]

The prosecution has charged in [Count __] [Counts __ through __] that defendant committed [OFFENSE] [separate acts of OFFENSE]. You may not convict the defendant of [this] [each separate] count unless [for each separate count] you are unanimous with respect to the occasion upon which [the] [each separate] act [for each count] occurred, unanimous about [the] [each separate] act [for each count], and unanimous that the prosecution has proven each and every element for [that] [each separate] count beyond a reasonable doubt. If you are not

unanimous about the occasion upon which [the act] [each act for each separate count] occurred, about the act that occurred [for each separate count], and about each element for [Count ____] [each element for each separate count], you may not find the defendant guilty on that count.

TAB 4

**Unanimity on DUI Alternatives/SVF/Refusal
to Submit to Chemical Test or Blood Draw**

Unanimity around alternative ways to prove a violation of 41-6a-502 (DUI).

The defendant is charged with operating, or being in actual physical control of, a vehicle while:

1. Being under the influence of alcohol; or
2. Having sufficient alcohol in their body that a subsequent test showed that the defendant had a blood or breath alcohol concentration of .05 grams or greater at the time of the test.
3. [Having a blood or breath alcohol concentration of .05 grams or greater at the time of the operation or actual physical control.] [rare option]

These are separate considerations. To find the defendant guilty, you must unanimously agree on at least one of those above alternatives. Should you find the defendant guilty you must also fill out the special verdict form indicating which alternatives you had unanimity on. There must be at least one.

SPECIAL VERDICT FORM For which alternative method of DUI.

We the Jury, in finding (Defendant's name) GUILTY of Count __, find unanimously, and beyond a reasonable doubt, that the defendant:

_____ was under the influence of alcohol and/or any other drug to a degree that he/she was incapable of safely operating the vehicle.

_____ had sufficient alcohol in their body at the time of operating or being in actual physical control of the vehicle, that a subsequent chemical test showed the defendant had a blood or breath alcohol concentration of .05 grams or greater at the time of the test.

_____ operated or was in actual physical control of a vehicle with a blood or breath alcohol concentration of .05 grams or greater.

Jury Foreperson

SPECIAL VERDICT FORM FOR THE MYRIAD ADD-ONS THAT INCREASE THE OFFENSE LEVEL (TOP) OR MINIMUM MANDATORY SENTENCING (BOTTOM)

We the jury having found the defendant guilty of Count # ___ [or violating Utah Code Ann 41-6a-502 (the DUI Statute)][we don't usually do it this way, but it's a lot cleaner than the whole statute title)], find unanimously and beyond a reasonable doubt the following:

Foreperson initial next to each that you do find. If you find none, initial the last box "None."
Verdict form must also be signed by the foreperson on behalf of the jury.

[Factors that increase the level of offense]

___ when committing the offense, the defendant had a passenger younger than 16 years old in the vehicle at the time of the offense.

___ when committing the offense, the defendant was at least 21 years of age and had a passenger younger than 18 years of age in the vehicle.

___ when committing the offense, the defendant also violated 41-6a-712 or 714 regarding Divided Highways [if those violations are charged in the information. If not, a longer special verdict form outlining all the elements of those offenses will need to be used.]

___ Within ten years of [[the date defendant committed this offense] or [today's date]], the defendant had a prior conviction as defined in Instruction # _____.

___ Within ten years of [[the date defendant committed this offense] or [today's date]], the defendant has two or more prior convictions as defined in Instruction # _____.

___ The defendant has a prior felony conviction as defined in Instruction # _____.

[Factors that increase the minimum sentence a court must impose]

When committing the offense, the defendant had:

___ a blood or breath alcohol level of .16 or higher;

___ a blood or breath alcohol level of .05 or higher AND a measured amount of a controlled substance in his/her body that was not [recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis] or [prescribed].

___ two or more controlled substances in his/her body that were not [recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis] or [prescribed].

(DEFENDANT'S NAME) is charged [in Count ____] with committing Criminal Refusal to submit to a Blood test [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. The defendant was under arrest;
2. A peace officer had requested the defendant to submit to a chemical test or tests;
3. The defendant refused that request;
4. The peace officer warned the defendant that refusal to submit to the test or tests may result in:
 - a. criminal prosecution;
 - b. revocation of the defendant's driver license;
 - c. a five or ten year prohibition of driving with any measurable or detectable amount of alcohol in [his/her] body on the defendant's driving history; and
 - d. a three-year prohibition of driving without an ignition interlock device.
5. A judge had issued a warrant allowing seizure of a sample of the defendant's blood; and
6. After being presented with evidence of that warrant, the defendant refused another request by an officer to submit to a test of the defendant's blood.

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.

Effective 5/3/2023

41-6a-502 Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Penalties -- Reporting of convictions.

- (1) An actor commits driving under the influence if the actor operates or is in actual physical control of a vehicle within this state if the actor:
 - (a) has sufficient alcohol in the actor's body that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
 - (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the actor incapable of safely operating a vehicle; or
 - (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control.
- (2)
 - (a) A violation of Subsection (1) is a class B misdemeanor.
 - (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A misdemeanor if the actor:
 - (i) has a passenger younger than 16 years old in the vehicle at the time of the offense;
 - (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time of the offense;
 - (iii) the actor also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
 - (iv) has one prior conviction within 10 years of:
 - (A) the current conviction under Subsection (1); or
 - (B) the commission of the offense upon which the current conviction is based.
 - (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree felony if:
 - (i) the actor has two or more prior convictions each of which is within 10 years of:
 - (A) the current conviction; or
 - (B) the commission of the offense upon which the current conviction is based; or
 - (ii) the current conviction is at any time after a conviction of:
 - (A) a violation of Section 76-5-207;
 - (B) a felony violation of this section, Section 76-5-102.1, 41-6a-520.1, or a statute previously in effect in this state that would constitute a violation of this section; or
 - (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of conviction is reduced under Section 76-3-402.
- (3) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.
- (4) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.
- (5) A court shall, monthly, send to the Division of Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving under the influence, in whole or in part, of a prescribed controlled substance.
- (6) An offense described in this section is a strict liability offense.
- (7) A guilty or no contest plea to an offense described in this section may not be held in abeyance.
- (8) An actor is guilty of a separate offense under Subsection (1) for each passenger in the vehicle that is younger than 16 years old at the time of the offense.

Amended by Chapter 415, 2023 General Session

Effective 5/3/2023

41-6a-520.1 Refusing a chemical test.

- (1) An actor commits refusing a chemical test if:
 - (a) a peace officer issues the warning required in Subsection 41-6a-520(2)(a);
 - (b) a court issues a warrant to draw and test the blood; and
 - (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's blood.
- (2)
 - (a) A violation of Subsection (1) is a class B misdemeanor.
 - (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A misdemeanor if the actor:
 - (i) has a passenger younger than 16 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
 - (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
 - (iii) also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
 - (iv) has one prior conviction within 10 years of:
 - (A) the current conviction under Subsection (1); or
 - (B) the commission of the offense upon which the current conviction is based.
 - (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree felony if:
 - (i) the actor has two or more prior convictions, each of which is within 10 years of:
 - (A) the current conviction; or
 - (B) the commission of the offense upon which the current conviction is based; or
 - (ii) the current conviction is at any time after a conviction of:
 - (A) a violation of Section 76-5-207;
 - (B) a felony violation of this section, Section 76-5-102.1, 41-6a-502, or a statute previously in effect in this state that would constitute a violation of this section; or
 - (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of conviction is reduced under Section 76-3-402.
- (3) As part of any sentence for a conviction of violating this section, the court shall impose the same sentencing as outlined for driving under the influence violations in Section 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the following modifications:
 - (a) any jail sentence shall be 24 consecutive hours more than is required under Section 41-6a-505;
 - (b) any fine imposed shall be \$100 more than is required under Section 41-6a-505; and
 - (c) the court shall order one or more of the following:
 - (i) the installation of an ignition interlock system as a condition of probation for the individual, in accordance with Section 41-6a-518;
 - (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the individual; or
 - (iii) the imposition of home confinement through the use of electronic monitoring, in accordance with Section 41-6a-506.
- (4)
 - (a) The offense of refusing a chemical test under this section does not merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.
 - (b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense of refusal to submit to a chemical test under this section may not be held in abeyance.

- (5) An actor is guilty of a separate offense under Subsection (1) for each passenger in the vehicle that is younger than 16 years old at the time the officer had grounds to believe the actor was driving under the influence.

Enacted by Chapter 415, 2023 General Session

TAB 5

**Negligently Operating a Vehicle Resulting in
Bodily Injury**

Draft Instruction for Negligently Operating a Vehicle Resulting in Injury

Proposed Instruction:

(DEFENDANT'S NAME) is charged [in Count ____] with committing Negligently Operating a Vehicle Resulting in Injury [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);
 - a. Operated a vehicle in a negligent manner; and
 - b. Caused [serious] bodily injury to another; and
2. (DEFENDANT'S NAME):
 - a. [Had sufficient alcohol in [his] [her] body that a subsequent chemical test showed that [he] [she] had a blood or breath alcohol concentration of .05 grams or greater at the time of the test;]
 - b. [Was under the influence of [alcohol] [a drug] [the combined influence of alcohol and a drug] to a degree that rendered [him] [her] incapable of safely operating a vehicle;] or
 - c. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;] or
3. (DEFENDANT'S NAME);
 - a. Operated a vehicle in a criminally negligent manner; and
 - b. Caused [serious] bodily injury to another; and

4. (DEFENDANT'S NAME):

- a. Had in [his] [her] body any measurable amount of a controlled substance.

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 Ann. § 76-5-102.1(2)

Relevant Definitions:

- Negligence: *see* CR305.
- Criminal Negligence: *see* CR306A, CR306B, and CR307.
- Bodily Injury “means physical pain, illness, or any impairment of physical condition.” *See* Utah Code Ann. § 76-1-101.5(4).
- Serious Bodily Injury “means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” *See* Utah Code Ann. § 76-1-101.5(17).

Notes:

This instruction is intended to be used in prosecuting the crime of Negligently Operating a Vehicle Resulting in Injury. Whether that offense constitutes a Class A Misdemeanor or a Third-Degree Felony depends on whether the Defendant caused bodily injury or serious bodily injury to another. *See* Utah Code Ann. § 76-5-102.1(3). Practitioners should use the bracketed [serious] language accordingly.

For the definition of “negligent,” see CR305. For the definition of “criminally negligent,” see CR306A, CR306B, and CR307.

Effective 5/3/2023

76-5-102.1 Negligently operating a vehicle resulting in injury.

- (1)
 - (a) As used in this section:
 - (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (ii) "Drug" means the same as that term is defined in Section 76-5-207.
 - (iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.
 - (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.
 - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
 - (a)
 - (i) operates a vehicle in a negligent manner causing bodily injury to another; and
 - (ii)
 - (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
 - (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or
 - (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or
 - (b)
 - (i) operates a vehicle in a criminally negligent manner causing bodily injury to another; and
 - (ii) has in the actor's body any measurable amount of a controlled substance.
- (3) Except as provided in Subsection (4), a violation of Subsection (2) is:
 - (a)
 - (i) a class A misdemeanor; or
 - (ii) a third degree felony if the bodily injury is serious bodily injury; and
 - (b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.
- (4) An actor is not guilty of negligently operating a vehicle resulting in injury under Subsection (2) (b) if:
 - (a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;
 - (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or
 - (c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:
 - (i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
 - (ii) the substance was administered to the actor by the medical researcher.
- (5)
 - (a) A judge imposing a sentence under this section may consider:
 - (i) the sentencing guidelines developed in accordance with Section 63M-7-404;
 - (ii) the defendant's history;
 - (iii) the facts of the case;
 - (iv) aggravating and mitigating factors; or
 - (v) any other relevant fact.
 - (b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.

- (c) The standards for chemical breath analysis under Section 41-6a-515 and the provisions for the admissibility of chemical test results under Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.
- (d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).
- (e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.
- (f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.
- (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

Amended by Chapter 111, 2023 General Session

Amended by Chapter 415, 2023 General Session

TAB 6

**Proposed Instruction: Mistake of
Law/Mistake of Fact**