

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

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

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Suggestion for Amendment to CR1610		Tab 2	Judge Welch
	Suggestion for Adverse Inference Instruction		Tab 3	Janet Lawrence
	Review of Possible Projects			Judge Welch
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):

September 6, 2023
October 4, 2023

November 1, 2023
December 6, 2023

TAB 1

Meeting Minutes – May 3rd, 2023

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

Via Webex
May 3rd, 2023 – 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			
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. Freyja Johnson moved to approve the minutes from the last meeting. Richard Pehrson seconded. With no opposition to the motion, the motion carries and the minutes are approved.

(2) AGENDA ITEM 2: FINAL REVIEW OF CR1451, CR1452, AND CR1453

Judge Welch begins a discussion on the final review of CR1451, 1452, and 1453. Jeff Mann proposes a change to the 2nd paragraph of CR1451. Janet Lawrence addresses the standard of review for jury instructions and how to clarify and simplify an instruction’s description of the law for jury members. Jeff Mann suggests an edit to Janet’s proposal to the instruction. Judge McCullagh requests the Committee provide an example of where imperfect self-defense might apply. Janet Lawrence gives an example where an individual who has lived in another state where lethal force for defense of habitation is permitted, but then moves to Utah where lethal force for defense of habitation is not permitted, and kills another person under that mistaken belief of law. Janet also provides an example of disproportionate use of force. Richard Pehrson references a case he worked on where an individual in a vehicle was attacked by a person who used their skateboard as a weapon. The driver thought he could use lethal force (gun) against the skateboarder to defend his vehicle. The jury in that case found imperfect self-defense for disproportionate use of force. The committee votes to adopt changes suggested by Jeff Mann.

The committee makes additional edits to the “References” section of CR1451. Judge McCullagh moves to adopt the changes to CR1451. Jeff Mann seconds. With no opposition, the motion passes and CR1451 will be published.

Judge Welch asks if any Committee members would like to address CR1452 or CR1453. Judge McCullagh moves to approve CR1452. Janet Lawrence seconds. With no opposition, the motion passes and CR1452 will be published.

The Committee then turns to CR1453 to address Sharla Dunroe’s proposed changes. Sharla suggests that the two paragraphs in the instruction run parallel to each other to reflect the State’s burden to disprove the application of the defense. Judge McCullagh moves to approve the amendment to CR1453. Sharla Dunroe seconds. With no opposition, the motion passes and CR1453 will be published.

(3) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on June 7, 2023, starting at 12:00 noon.

TAB 2

Proposal for CR1610

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.

TAB 3

Suggestion for Adverse Inference Instruction



Bryson King <brysonk@utcourts.gov>

Agenda and Materials for MUJI Crim Meeting - 6.7.2023

Janet Lawrence <jlawrence@slda.com>
To: Bryson King <brysonk@utcourts.gov>

Mon, Jun 5, 2023 at 2:50 PM

Hi Bryson. I don't know if you want to include this in the agenda, but one of my colleagues had the following suggestion as an instruction the committee could address next:

Utah desperately needs an adverse inference criminal instruction for lost/mislaid/or missing evidence. Courts nationwide require an adverse inference/"missing evidence" instruction when applying the same balancing test for lost or destroyed evidence as laid out in *Tiedemann*.

- *Hammond v. State*, 569 A.2d 81, 90 (Del. 1989) (requiring a missing evidence jury instruction without a showing of bad faith)
- *Fletcher v. Anchorage*, 650 P.2d 417, 418 (Alaska Ct.App.1982) (when evidence is "lost or destroyed in good faith," a court may decide to "instruct the jury to assume that the [missing] evidence would be favorable to the defendant.")
- *State v. Youngblood*, 173 Ariz. 502, 844 P.2d 1152, 1157 (1993) (on remand from Supreme Court, reaffirming "bad faith" standard but noting that "an instruction is adequate where the state destroys, loses or fails to preserve evidence[.]")
- *Collins v. Commonwealth*, 951 S.W.2d 569 (Ky.1997) (following *Youngblood* but stating that a "factor of critical importance to this case is the missing evidence instruction that was provided [through which] any uncertainty as to what the [missing evidence] might have proved was turned to [defendant's] advantage.")
- *Cost v. State*, 417 Md. 360, 377–78, 10 A.3d 184, 194–95 (2010) (holding that the defendant "was entitled to a jury instruction of the missing evidence because the State had destroyed highly relevant evidence in its custody that it normally would have retained...").

I like the wording of the Arizona model instruction:

If you find that the State has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate, then you may draw an inference unfavorable to the State, which in itself may create a reasonable doubt as to the defendant's guilt.

Standard Criminal Instruction 42 (Revised), Arizona Jury Instruction (2019).