

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

Hybrid Meeting: Utah Judicial Council Room & Via Webex
June 5, 2024 – 12:00 p.m. to 1:30 p.m.

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Theresa Welch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge	•		
[VACANT]	Linguist/Communications Professor	N/A	N/A	STAFF: Bryson King
Hon. Linda Jones	Emeritus District Court Judge	•		
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 and reminded everyone that there will be no meeting in July. Judge Welch mentioned that Richard Pehrson was appointed to the Third District Court as a judge and will no longer be on the Committee. Bryson King discussed with the Committee the selection process for a replacement prosecutor to take Mr. Pehrson’s position on the Committee. Judge McCullagh then moved to approve the minutes from the May meeting, with Freya Johnson seconding the motion. Without opposition, the motion was approved.

(2) AGENDA ITEM 2: CR1101: FAILURE TO RESPOND TO AN OFFICER’S SIGNAL TO STOP (CLASS A)

Judge Welch then turned the Committees attention to CR1101. The Committee had last discussed whether the term “intentionally” should be used in the instruction. The Committee had also discussed using alternatives in the instruction to allow practitioners to decide whether to use the mens rea term or not. Judge Jones and McKay Lewis then discussed the various mens rea forms and how they would apply in the instruction. Judge Welch directed the Committee to review the language from *State v. Bird* to guide its discussion about the mens rea options in the instruction. Judge Bates discussed the differences between the Class A and felony versions of the fleeing statute, and highlighted how those differences are articulated in *Bird* and how they might play out in the instruction. Judge McCullagh also explained that the statute includes a motive, not a mens rea. The Committee engages in additional discussion on the topic. After extensive discussion, Judge Welch provided three options for the Committee to

consider: 1) the term “intentionally” should only be used; 2) the terms “intentionally” and “knowingly or recklessly” should be used; and 3) no mens rea should be included, because the term “for the purpose of avoiding arrest” does the work for the mens rea element. Judge Bates suggested that the Committee not decide the mens rea element, and use a Committee Note to provide the options above for practitioners to decide themselves. Judge Bates then moved to include the word “intentionally” in brackets and have a subcommittee draft a Note to explain the mens rea options. McKay Lewis offered to draft the Note. Jeff Mann suggested that the brackets also include “intentionally/knowingly/recklessly.” Judge McCullagh called a point of order and suggested that McKay Lewis draft the Note, the vote be tabled, and the Committee resume its vote and discussion at the next meeting. Without opposition, the vote is tabled, and the Committee will resume its discussion at the next meeting.

(3) AGENDA ITEM 3: UNANIMITY INSTRUCTIONS CR216, CR430, CR432

Judge Jones then led the Committee’s next discussion on the criminal instructions on unanimity. Specifically, Judge Jones suggested that the Committee remove any language where the judge might say, “you have heard evidence,” to avoid the judge drawing a jury’s attention to evidence. Judge Jones suggests replacing this language with “The prosecution has charged . . .” to highlight what crimes and elements the State must prove instead of what evidence the State has introduced. Judge Bates moved to adopt Judge Jones’ recommendation on CR430, with Judge McCullagh seconding the motion. McKay Lewis objected to the motion and requested time to review the caselaw associated with Judge Jones’ proposals. Janet Lawrence then suggested that instead of “The prosecution has charged,” the language be, “If evidence was introduced . . .” She also requested more time to determine what the caselaw says on the issue before deciding. Judge Welch asked the Committee if it would like to table the discussion until more research could be completed. Judge Bates recommended the language “If evidence was introduced” to “The prosecution has asserted that . . .” After additional discussion, the Committee determined to use the language, “The prosecution argues that . . .” Judge Bates then moved to adopt the proposed language, with Judge McCullagh seconding the motion. Without opposition, the motion carries and CR430 will be issued for public comment with the recommended changes. McKay Lewis then moved to adopt the same language in CR432, with Judge McCullagh seconding the motion. Without opposition, the motion carries and CR432 will be issued for public comment as well.

(4) AGENDA ITEM 4: PROPOSED CR1007 – UNANIMITY INSTRUCTION ON DUI & SPECIAL VERDICT FORM

Judge Welch invites Judge McCullagh to discuss proposed CR1007. Judge McCullagh requests the Committee consider the instruction at the next meeting.

(5) AGENDA ITEM 5: PROPOSED CR1005 – NEGLIGENTLY OPERATING A VEHICLE RESULTING IN INJURY

Judge Welch then invites McKay Lewis to discuss proposed CR1005. McKay Lewis then discusses the proposal with the Committee. Judge McCullagh suggests that the language mirror the statutory scheme and additionally suggests bracketing the word “serious.” After discussion among the Committee, Judge Welch suggests that the Committee form a subcommittee with McKay Lewis on CR1005. Judge McCullagh and Freya Johnson both volunteer.

(6) ADJOURN

The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on August 7th, 2024, starting at 12:00 noon.