

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

Hybrid Meeting: Matherson Courthouse Judicial Council Room & Via Webex  
November 6<sup>th</sup>, 2024 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Update on CR1005: Negligently Operating a Vehicle Resulting Injury		Tab 2	McKay Lewis
	Proposed Automobile Homicide Instruction		Tab 3	McKay Lewis
	Proposed Mistake of Law/Fact Instruction		Tab 4	Dustin Parmley and Freyja Johnson
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):

January 8<sup>th</sup>, 2025  
February 5<sup>th</sup>, 2025  
March 5<sup>th</sup>, 2025  
April 2<sup>nd</sup>, 2025  
May 7<sup>th</sup>, 2025  
June 4<sup>th</sup>, 2025

July 2<sup>nd</sup>, 2025  
August 6<sup>th</sup>, 2025  
September 3<sup>rd</sup>, 2025  
October 1<sup>st</sup>, 2025  
November 5<sup>th</sup>, 2025  
December 3<sup>rd</sup>, 2025

# **TAB 1**

**Meeting Minutes – October 2<sup>nd</sup>, 2024**

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

Hybrid Meeting – Judicial Council Room and via Webex  
October 2<sup>nd</sup>, 2024 12:00 – 1:30p.m.

**DRAFT**

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		<b>STAFF:</b>  Bryson King
Hon. Brendan McCullagh	Justice Court Judge		•	
[VACANT]	Linguist/Communications Professor	N/A	N/A	
Hon. Linda Jones	Emeritus District Court Judge	•		
Hon. Matthew Bates	District Court Judge	•		
Sharla Dunroe	Defense Attorney		•	
Janet Lawrence	Defense Attorney		•	
Jeffrey Mann	Prosecutor	•		
[VACANT]	Prosecutor	N/A	N/A	
Dustin Parmley	Defense Attorney		•	
Freyja Johnson	Defense Attorney	•		
McKay Lewis	Prosecutor	•		
Nic Mills	Prosecutor	•		

**(1) WELCOME AND APPROVAL OF MINUTES: SEPTEMBER 4<sup>TH</sup>, 2024**

Judge Welch welcomed the Committee to the meeting and updated the Committee regarding the recently published instructions and noted that the published instructions did not receive any feedback. She indicated that if any comments are published, the Committee will be notified. Judge Welch also updated the Committee regarding the vacant positions for the prosecutor and linguistic expert and explained the process of making a recommendation to the Judicial Council for who among the applicants should fill those positions. McKay Lewis commented that he was interested in providing feedback on the applicants as well, and Judge Welch instructed McKay to send Bryson King an email with his feedback on the applicants. Judge Welch then announced the retirement of Judge McCullagh from his position with the Committee now that he has joined the Judicial Council. Judge Welch expressed her appreciation for his service and Judge McCullagh offered some parting comments to members of the Committee. Judge Welch then requested a motion to approve the September minutes. Nic Mills moved to approve the minutes with Judge McCullagh seconding the motion. Without opposition, the motion passes and the minutes are approved.

**(2) AGENDA ITEM 2: CR1007- UNANIMITY INSTRUCTION ON DUI & SPECIAL VERDICT FORM**

Judge Welch then turned the Committee’s attention to CR1007 and the discussion on DUI unanimity. Judge McCullagh then reviewed the relevant statutes to the instruction with the Committee. Judge Welch then

recalled that there might be a pending case out of the appellate courts on the unanimity issue. Jeff Mann stated that a colleague in his office was working on the case, which is *State v. Cissel*, 20220963-CA. Given that, Judge McCullagh proposed that the Committee table its discussion on DUI unanimity until the *Cissel* decision is announced. Judge Bates seconded the proposal. Without opposition, the proposal passes, and the Committee will postpone its discussion until after the decision is published. Judge McCullagh also proposed that in a future meeting the Committee should discuss and develop instructions for extreme DUI offenses. Judge Welch asked Judge McCullagh to share any materials he has for this potential instruction and asked whether any committee member would take on the responsibility of drafting the instruction for the committee's consideration at the next meeting. Nic Mills volunteered for the assignment and also volunteered to propose amended instructions for the current DUI series in CR1003, 1004, and 1005.

### **(3) AGENDA ITEM 3: CR1005: NEGLIGENTLY OPERATING A VEHICLE RESULTING IN INJURY**

Judge Welch then asked McKay Lewis to begin a discussion on CR1005. McKay reviewed the elements on the instruction with the Committee and asked for feedback from the Committee on the format of the instruction. The Committee then discussed various formatting options to mirror the format of the statute. The Committee then discussed how to apply the instruction in settings where the jury is being instructed about whether bodily or serious bodily injury was caused, to differentiate between the charged offense, or a lesser-included alternative offense. The Committee then discussed further formatting options to use the instruction in that setting and amended the Committee Note for practitioners to consider how to apply the instruction in that setting. McKay Lewis offered to continue working on proposed language for the instruction and Committee Note and bring that to the Committee's next meeting.

### **(4) ADJOURN**

The Committee adjourned around 1:15p.m. The Committee's next meeting will be November 6<sup>th</sup>, 2024, at 12:00p.m. to 1:30p.m.

# **TAB 2**

**Proposed CR1005: Negligently Operating a  
Vehicle Resulting in Injury**

## **CR1005: Negligently Operating a Vehicle Resulting in Injury**

(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
- c. (DEFENDANT'S NAME):
  - i. [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;]
  - ii. [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
  - iii. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;]]

OR

[2. (DEFENDANT'S NAME);

- a. Operated a vehicle in a criminally negligent manner; and
- b. Caused [serious] bodily injury to another; and
- c. 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).

### **Committee 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)(a)(iv). Practitioners should use the bracketed “[serious]” language accordingly. The offense can also be a Third-Degree Felony based on prior convictions. See Utah Code Ann. § 76-5-102.1(3)(a)(ii)–(iii). If the prosecution charges the defendant with causing serious bodily injury and the defendant requests a lesser-included instruction on bodily injury, the court should give this instruction with the “serious bodily injury” language, an additional instruction with just the “bodily injury” language, and a special verdict form.

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

## **CR1005: Negligently Operating a Vehicle Resulting in Injury [Alternate]**

(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) operated a vehicle
  - a. in a negligent manner; and
    - i. [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;]
    - ii. [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
    - iii. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;]

OR

- b. in a criminally negligent manner; and
    - i. Had in [his] [her] body any measurable amount of a controlled substance;

AND

2. Caused [serious] bodily injury to another.

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).



## **Committee 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)(a)(iv). Practitioners should use the bracketed “[serious]” language accordingly. The offense can also be a Third-Degree Felony based on prior convictions. See Utah Code Ann. § 76-5-102.1(3)(a)(ii)–(iii). If the prosecution charges the defendant with causing serious bodily injury and the defendant requests a lesser-included instruction on bodily injury, the court should give this instruction with the “serious bodily injury” language, an additional instruction with just the “bodily injury” language, and a special verdict form.

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

# **TAB 3**

## **Proposed Automobile Homicide Instruction**

## **Automobile Homicide**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Automobile Homicide [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 or criminally negligent manner; and
- b. Caused the death of another; and
- c. (DEFENDANT'S NAME):
  - i. [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;]
  - ii. [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
  - iii. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;]]

OR

[2. (DEFENDANT'S NAME);

- a. Operated a vehicle in a criminally negligent manner; and
- b. Caused the death of another; and
- c. 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. § 76-5-207(2)

## **Relevant Definitions:**

- Negligence: see CR305.
- Criminal Negligence: see CR306A, CR306B, and CR307.

**Committee Notes:**

This instruction is intended to be used in prosecuting the crime of Automobile Homicide. For the definition of "negligent," see CR305. For the definition of "criminally negligent," see CR306A, CR306B, and CR307.

## **Automobile Homicide (Alternate)**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_ ] with committing Automobile Homicide [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) operated a vehicle
  - a. in a negligent or criminally negligent manner; and
    - i. [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;]
    - ii. [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
    - iii. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;]

OR

- b. in a criminally negligent manner; and
    - i. Had in [his] [her] body any measurable amount of a controlled substance;

AND

2. Caused the death of another.

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. § 76-5-207(2)

## **Relevant Definitions:**

- Negligence: see CR305.
- Criminal Negligence: see CR306A, CR306B, and CR307.

## **Committee Notes:**

This instruction is intended to be used in prosecuting the crime of Automobile Homicide. For the definition of "negligent," see CR305. For the definition of "criminally negligent," see CR306A, CR306B, and CR307.

**Effective 5/1/2024**

**76-5-207 Automobile homicide -- Penalties -- Evidence.**

- (1)
  - (a) As used in this section:
    - (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.
    - (ii) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).
    - (iii) "Drug" means:
      - (A) a controlled substance;
      - (B) a drug as defined in Section 58-37-2; or
      - (C) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of an individual to safely operate a vehicle.
    - (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.
    - (v) "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 automobile homicide if the actor:
  - (a)
    - (i) operates a vehicle in a negligent or criminally negligent manner causing the death of another individual; 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, 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
  - (b)
    - (i) operates a vehicle in a criminally negligent manner causing death to another; and
    - (ii) has in the actor's body any measurable amount of a controlled substance.
- (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty of:
  - (a) a second degree felony, punishable by a term of imprisonment of not less than five years nor more than 15 years; and
  - (b) a separate offense for each victim suffering death as a result of the actor's violation of this section, regardless of whether the deaths arise from the same episode of driving.
- (4) An actor is not guilty of a violation of automobile homicide 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 adult sentencing and supervision length guidelines, as defined in Section 63M-7-401.1;
    - (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 as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by 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 when 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.
- (6) If, when imposing a sentence under this section, the court finds that it is in the interest of justice to suspend the imposition of prison, the court shall detail the finding on the record, including why a suspended prison sentence is in the interest of justice.
- (7) Notwithstanding Subsection (3)(a), the court may impose a sentence of not less than three years nor more than 15 years if the court details on the record why it is in the interest of justice.

Amended by Chapter 153, 2024 General Session

Amended by Chapter 208, 2024 General Session

Amended by Chapter 381, 2024 General Session

# **TAB 4**

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



## **Ignorance or Mistake of Fact**

[Defendant] is not guilty of [list offense(s)] if [he/she] did not have the mental state required to commit the crime[s] because of [his/her] ignorance or mistake about a fact.

If you have reasonable doubt about whether [Defendant] had the mental state required for [offenses] due to [his/her] ignorance or mistake of fact, you must find [him/her] not guilty of [offenses].

[The defendant may be convicted of [lesser included offense] if [he/she] would be guilty of [lesser included offense] if the facts were as [he/she] believed them to be.]

The defendant is not required to prove that this defense applies. Rather, the State must prove beyond a reasonable doubt that this defense does not apply. The State has the burden of proof at all times. If the State has not carried this burden, then you must find the defendant not guilty.

## **Ignorance or Mistake of Law**

[Defendant] is not guilty of [list offense(s)] if

1. [Defendant] reasonably believed [his/her] conduct was not criminal, and
2. [Defendant's] ignorance or mistake about the law resulted from [his/her] reasonable reliance on

[an official statement of law contained in a written order or grant of permission from an administrative agency charged with the responsibility of interpreting the law in question.]

[a written interpretation of law contained in an opinion of a court of record.]

[a written interpretation of the law made by a public servant charged with the responsibility for interpreting the law in question.]

The defendant may be convicted of [lesser included offense] if [he/she] would be guilty of [lesser included offense] if the law was as [he/she] believed it to be.

The defendant is not required to prove this defense applies. Rather, the State must prove beyond a reasonable doubt that this defense does not apply. The State has the burden of proof at all times. If the State has not carried this burden, then you must find the defendant not guilty.

## **Ignorance or Mistake of Law – Not a Defense**

Ignorance or mistake about the meaning or existence of a criminal law is not a defense to the crime[s] charged in this case.

## 3406. Mistake of Fact

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**The defendant is not guilty of \_\_\_\_\_ <insert crime[s]> if (he/she) did not have the intent or mental state required to commit the crime because (he/she) [reasonably] did not know a fact or [reasonably and] mistakenly believed a fact.**

**If the defendant's conduct would have been lawful under the facts as (he/she) [reasonably] believed them to be, (he/she) did not commit \_\_\_\_\_ <insert crime[s]>.**

**If you find that the defendant believed that \_\_\_\_\_ <insert alleged mistaken facts> [and if you find that belief was reasonable], (he/she) did not have the specific intent or mental state required for \_\_\_\_\_ <insert crime[s]>.**

**If you have a reasonable doubt about whether the defendant had the specific intent or mental state required for \_\_\_\_\_ <insert crime[s]>, you must find (him/her) not guilty of (that crime/those crimes).**

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*New January 2006; Revised April 2008, December 2008, August 2014, September 2018, September 2022*

### BENCH NOTES

#### ***Instructional Duty***

The court must instruct on a defense when the defendant requests it, there is substantial evidence supporting the defense, and the instruction is legally correct. (*People v. Anderson* (2011) 51 Cal.4th 989, 996–997 [125 Cal.Rptr.3d 408, 252 P.3d 968]; *People v. Speck* (2022) 74 Cal.App.5th 784, 791 [289 Cal.Rptr.3d 816] [No sua sponte duty to instruct on mistake of fact defense].)

The mistake of fact instruction must negate an element of the crime. (*People v. Speck, supra*, 74 Cal.App.5th at p. 791.)

When the court concludes that the defense is supported by substantial evidence and is inconsistent with the defendant's theory of the case, however, it should ascertain whether defendant wishes instruction on this alternate theory. (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 389–390 [88 Cal.Rptr.2d 111]; *People v. Breverman* (1998) 19 Cal.4th 142, 157 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Substantial evidence means evidence of a defense, which, if believed, would be sufficient for a reasonable jury to find a reasonable doubt as to the defendant's guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982–983 [38 Cal.Rptr.3d 624, 127 P.3d 40].)

If the defendant is charged with a general intent crime, the trial court must instruct with the bracketed language requiring that defendant's belief be both actual and reasonable.

If the mental state element at issue is either specific criminal intent or knowledge, do not use the bracketed language requiring the belief to be reasonable. (*People v. Reyes* (1997) 52 Cal.App.4th 975, 984 & fn. 6 [61 Cal.Rptr.2d 39]; *People v. Russell* (2006) 144 Cal.App.4th 1415, 1425–1426 [51 Cal.Rptr.3d 263].)

Mistake of fact is not a defense to the following crimes under the circumstances described below:

1. Involuntary manslaughter (*People v. Velez* (1983) 144 Cal.App.3d 558, 565–566 [192 Cal.Rptr. 686] [mistake of fact re whether gun could be fired]).
2. Furnishing cannabis to a minor (Health & Saf. Code, § 11352; *People v. Lopez* (1969) 271 Cal.App.2d 754, 760–762 [77 Cal.Rptr. 59]).
3. Selling narcotics to a minor (Health & Saf. Code, § 11353; *People v. Williams* (1991) 233 Cal.App.3d 407, 410–411 [284 Cal.Rptr. 454] [specific intent for the crime of selling narcotics to a minor is the intent to sell cocaine, not to sell it to a minor]).
4. Aggravated kidnapping of a child under the age of 14 (Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206]).
5. Unlawful sexual intercourse or oral copulation by person 21 or older with minor under the age of 16 (Pen. Code, §§ 261.5(d), 287(b)(2); *People v. Scott* (2000) 83 Cal.App.4th 784, 800–801 [100 Cal.Rptr.2d 70]).
6. Lewd and lascivious conduct with a child under the age of 14 (Pen. Code, § 288(a); *People v. Olsen* (1984) 36 Cal.3d 638, 645–646 [205 Cal.Rptr. 492, 685 P.2d 52]).

## AUTHORITY

- Instructional Requirements. Pen. Code, § 26(3).
- Burden of Proof. *People v. Mayberry* (1975) 15 Cal.3d 143, 157 [125 Cal.Rptr. 745, 542 P.2d 1337].
- This Defense Applies to Attempted Lewd and Lascivious Conduct With Minor Under 14. *People v. Hanna* (2013) 218 Cal.App.4th 455, 461 [160 Cal.Rptr.3d 210].

## RELATED ISSUES

### *Mistake of Fact Based on Involuntary Intoxication*

A mistake of fact defense can be based on involuntary intoxication. (*People v. Scott* (1983) 146 Cal.App.3d 823, 829–833 [194 Cal.Rptr. 633].) In *Scott*, the court held that the defendant was entitled to an instruction on mistake of fact, as a matter of law, where the evidence established that he unknowingly and involuntarily ingested a hallucinogen. As a result he acted under the delusion that he was a secret agent in a situation where it was necessary to steal vehicles in order to save his own life and possibly that of the President. The court held that although defendant's mistake of fact was irrational, it was reasonable because of his delusional state and had the mistaken facts been true, his actions would have been justified under the doctrine of

necessity. The court also stated that mistake of fact would not have been available if defendant's mental state had been caused by voluntary intoxication. (*Ibid.*; see also *People v. Kelly* (1973) 10 Cal.3d 565, 573 [111 Cal.Rptr. 171, 516 P.2d 875] [mistake of fact based on voluntary intoxication is not a defense to a general intent crime].)

### ***Mistake of Fact Based on Mental Disease***

Mistake of fact is not a defense to general criminal intent if the mistake is based on mental disease. (*People v. Gutierrez* (1986) 180 Cal.App.3d 1076, 1084 [225 Cal.Rptr. 885]; see *People v. Castillo* (1987) 193 Cal.App.3d 119, 124–125 [238 Cal.Rptr. 207].) In *Gutierrez*, the defendant was charged with inflicting cruel injury on a child, a general intent crime, because she beat her own children under the delusion that they were evil birds she had to kill. The defendant's abnormal mental state was caused in part by mental illness. (*People v. Gutierrez, supra*, 180 Cal.App.3d at pp. 1079–1080.) The court concluded that evidence of her mental illness was properly excluded at trial because mental illness could not form the basis of her mistake of fact defense. (*Id.* at pp. 1083–1084.)

## **SECONDARY SOURCES**

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 47.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.06 (Matthew Bender).

## 3407. Defenses: Mistake of Law

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**It is not a defense to the crime[s] of \_\_\_\_\_ <insert crime[s]> that the defendant did not know (he/she) was breaking the law or that (he/she) believed (his/her) act was lawful.**

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*New January 2006*

### BENCH NOTES

#### ***Instructional Duty***

There is no sua sponte duty to give this instruction. It is no defense to a crime that the defendant did not realize he or she was breaking the law when he or she acted. (*People v. Vineberg* (1981) 125 Cal.App.3d 127, 137 [177 Cal.Rptr. 819].) This is true even when the defendant claims he or she was acting in good faith on the mistaken advice of counsel. (*People v. Snyder* (1982) 32 Cal.3d 590, 593 [186 Cal.Rptr. 485, 652 P.2d 42] [defendant's mistaken belief, based on attorney's advice, that prior conviction was a misdemeanor no defense to felon in possession of a firearm]; *People v. McCalla* (1923) 63 Cal.App. 783, 795 [220 P. 436], disapproved on other grounds by *People v. Elliot* (1960) 54 Cal.2d 498 [6 Cal.Rptr. 753, 354 P.2d 225]; *People v. Honig* (1996) 48 Cal.App.4th 289, 347–348 [55 Cal.Rptr.2d 555]; *People v. Smith* (1966) 63 Cal.2d 779, 792–793 [48 Cal.Rptr. 382, 409 P.2d 222] [no defense to felony murder that defendant did not know that entering a store intending to pass a forged check constituted burglary in California].)

The court should, however, exercise caution with specific intent crimes. A mistaken belief about legal status or rights may be a defense to a specific intent crime if the mistake is held in good faith. (*People v. Vineberg* (1981) 125 Cal.App.3d 127, 137 [177 Cal.Rptr. 819] [defendants' belief that they had a legal right to use clients' gold reserves to buy future contracts could be a defense if held in good faith]; (*People v. Stewart* (1976) 16 Cal.3d 133, 140 [127 Cal.Rptr. 117, 544 P.2d 1317] [defendant's good faith belief that he was legally authorized to use property could be defense to embezzlement]; *People v. Flora* (1991) 228 Cal.App.3d 662, 669–670 [279 Cal.Rptr. 17] [defendant's belief, if held in good faith, that out-of-state custody order was not enforceable in California could have been basis for defense to violating a child custody order]; see also 1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Defenses, § 37.) Although concerned with knowledge of the law, a mistake about legal status or rights is a mistake of fact, not a mistake of law. (See CALCRIM No. 3406, *Mistake of Fact*.)

### AUTHORITY

- Instructional Requirements. *People v. Vineberg* (1981) 125 Cal.App.3d 127, 137 [177 Cal.Rptr. 819]; *People v. Stewart* (1976) 16 Cal.3d 133, 140 [127 Cal.Rptr. 117, 544 P.2d 1317]; *People v. Flora* (1991) 228 Cal.App.3d 662, 669–670 [279 Cal.Rptr. 17].

**RELATED ISSUES*****Good Faith Reliance on Statute or Regulation***

Good faith reliance on a facially valid statute or administrative regulation (which turns out to be void) may be considered an excusable mistake of law. Additionally, a good faith mistake-of-law defense may be established by special statute. (See 1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 46.)

**SECONDARY SOURCES**

1 Witkin & Epstein, California Criminal Law (4th Ed. 2012) Defenses, §§ 45–46.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.07 (Matthew Bender).



West's Utah Code Annotated  
Title 76. Utah Criminal Code  
Chapter 2. Principles of Criminal Responsibility (Refs & Annos)  
Part 3. Defenses to Criminal Responsibility

U.C.A. 1953 § 76-2-304

§ 76-2-304. Ignorance or mistake of fact or law

Currentness

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

**Credits**

Laws 1973, c. 196, § 76-2-304; Laws 1974, c. 32, § 5.

**Notes of Decisions (9)**

U.C.A. 1953 § 76-2-304, UT ST § 76-2-304

Current with laws of the 2024 General Session eff. through April 30, 2024. Some statutes sections may be more current, see credits for details.