

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

Hybrid Meeting: Matherson Courthouse Judicial Council Room & Via Webex  
October 2<sup>nd</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 in Injury		Tab 2	McKay Lewis
	Update on Proposed CR1007 – Unanimity Instruction on DUI & Special Verdict Form		Tab 3	Judge McCullagh
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 6<sup>th</sup>, 2024  
December 4<sup>th</sup>, 2024  
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 – September 4th, 2024**

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

vVia Webex  
June 5, 2024 – 12:00 p.m. to 1:30 p.m.

**DRAFT**

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		Dr. Jay Jordan
Hon. Brendan McCullagh	Justice Court Judge		•	
[VACANT]	Linguist/Communications Professor	N/A	N/A	<b>STAFF:</b> Bryson King Jace Willard (covering)
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: AUGUST 2024 MEETING**

Judge Welch welcomed the Committee and reminded the members that applications are pending for the vacancies in the Committee. Judge Welch also mentioned that the recently published instructions have not yet received any public comments for the Committee’s feedback. Judge Welch then reviewed the minutes from the previous month’s meeting and asked for a motion to approve the minutes. Nic Mills moved to approve the minutes, with Freyja Johnson seconding the motion. Without opposition, the minutes are approved. Dr. Jay Jordan, visiting as an observer, then introduced himself to the Committee and explained his work history and professional background in linguistics, specifically applied linguistics in pedagogy. McKay Lewis then addressed some formatting issues for instructions showing up on the website and asked that Bryson King look into those formatting issues to fix those.

**(2) AGENDA ITEM 2: CR1005: NEGLIGENCELY OPERATING A VEHICLE RESULTING IN INJURY**

Judge Welch then turned the Committee’s discussion to CR1005. McKay Lewis began the discussion by explaining that Negligently Operating a Vehicle Resulting in Injury could be charged as a misdemeanor or felony based on whether the defendant inflicted “injury” or “serious injury” on the victim. He offered the idea that a single instruction could accomplish the work of combining the two different versions of the offense (misdemeanor vs. felony), using brackets and a Committee Note to explain the combination. Judge Welch

asked whether any Committee would prefer multiple instructions or a single instruction. Freyja Johnson offered that a single instruction makes sense, but also noted that the Committee drafted multiple instructions in the DUI series for the various misdemeanor levels of that crime. McKay also noted that CR1102 and CR1103, Failing to Stop at an Officer's Signal to Stop, are two different instructions for the two different levels of the offense. After some discussion, Judge Welch indicated that there was a consensus that a single instruction is sufficient for the two versions of Negligently Operating a Vehicle Resulting in Injury. Judge Welch then asked the Committee to review CR1005 before the next meeting and prepare to discuss the instruction then.

### **(3) AGENDA ITEM 3: CR1007 – UNANIMITY INSTRUCTION ON DUI & SPECIAL VERDICT FORM**

The Committee will resume its discussion on this agenda item at its next meeting.

### **(4) AGENDA ITEM 4: IGNORANCE OR MISTAKE OF FACT/LAW INSTRUCTION**

Judge Welch then turned the time to Freyja Johnson for a discussion on the proposed instructions on mistake of fact/law. Freyja reviewed the materials prepared for this agenda item with the Committee. McKay Lewis asked Freyja to review with the Committee when the instruction would be given. Freyja explained that the statute provides the language for when the instruction would be given as a defense. For example, the mental state of a defendant could negate a fact in evidence. Judge Welch asked whether any Committee member had questions or comments about the proposed instruction. Dr. Jordan expressed some confusion about the relationship between a defendant's mental state and ignorance of a fact in evidence and explained he was attempting to understand from a layperson's perspective the mental state and whether the ignorance of a fact was the same thing. Judge Welch and Freyja agreed that there is little case law that addresses Dr. Jordan's question. McKay Lewis offered an example to address Dr. Jordan's question involving a defendant charged with murder (intentionally or knowingly cause the death of another individual) who picked mushrooms from the forest that they thought could be safe and fed them to her parents who then died from the mushrooms that turned out to be poisonous. McKay further explained that the defendant's mistake of fact (misidentification of the mushrooms, or her thought that they were safe to eat) negates the mental state required (intentional or knowing) for murder but might qualify her for a charge of manslaughter. Judge Welch asked the Committee to also consider where a defendant's verdict would be not guilty based on the defense instruction, or whether they would be guilty of a lesser-included offense. The Committee then discussed additional considerations between mistake and ignorance of a fact or the law. Judge Welch asked Freyja to include a Committee Note in the proposed instruction and asked the Committee to review relevant caselaw on the issue of ignorance or mistake of fact/law.

### **(5) ADJOURN**

The Committee adjourned around 12:50p.m. The Committee's next meeting will be October 2<sup>nd</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
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).

**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). 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 7/1/2024**

**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 actor has two or more driving under the influence related convictions under Subsection 41-6a-501(2)(a), 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;
    - (iii) a third degree felony, if the current conviction is at any time after the conviction of:
      - (A) a conviction, as the term conviction is defined in Subsection 41-6a-501(2), that is a felony; or
      - (B) any conviction described in Subsection (3)(a)(iii)(A) for which judgment of conviction is reduced under Section 76-3-402; or
    - (iv) 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 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 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 197, 2024 General Session

# **TAB 3**

**Proposed CR1007: Unanimity Instruction on  
DUI & Special Verdict Form**

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

Count (#) charges (DEFENDANT'S NAME) with (CRIME). The prosecution argues that the defendant may have committed the offense by [WAY 1][WAY 2][WAY 3].

You may not find (DEFENDANT'S NAME) guilty on this count unless you unanimously agree that the prosecution has proven that (DEFENDANT'S NAME) committed (CRIME) in at least one of those specific ways AND you unanimously agree on the specific way in which the defendant committed the offense.

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

1. Under the influence of alcohol and/or any other drug to a degree that he/she was incapable of safely operating the vehicle; 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-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.

***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





- (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