

# AGENDA

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Wednesday, September 4, 2013  
12:00 p.m. to 2:00 p.m.  
Judicial Council Room

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|---|-----------------------|
| 1. Welcome and Approval of Minutes                                | Judge Denise Lindberg |
| 2. Committee Note on Use of<br>Minor's Name and Victim's Initials | Alison Adams-Perlac   |
| 3. Unlawful Sexual Conduct with a Minor                           | Sandi Johnson         |
| 4. In-custody Informant   | Committee             |
| 5. Object Rape  | Committee             |
| 6. Object Rape of a Child   | Committee             |
| 7. Forcible Sodomy  | Committee             |
| 8. Sodomy on a Child  | Committee             |
| 9. Child Pornography Instructions                                 | Committee             |
| 10. Other Business  |                       |
| 11. Adjourn   |                       |

## **MEETING MATERIALS**

SUPREME COURT'S ADVISORY COMMITTEE ON THE  
MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Wednesday, September 4, 2013

# AGENDA ITEM 1

# MINUTES

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Judicial Council Room  
Wednesday, August 7, 2013  
12:00 p.m. to 2:00 p.m.

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### PRESENT

Judge Denise Lindberg – Chair  
Mark Field  
Sandi Johnson  
Linda Jones  
John West  
Scott Young

### EXCUSED

Judge Brendan McCullagh  
Professor Jensie Anderson  
Karen Klucznik  
Matt Lewis

### STAFF

Alison Adams-Perlac  
Diane Abegglen

#### 1. Welcome and Approval of Minutes

Judge Lindberg welcomed the committee and introduced Ms. Adams-Perlac who will be staffing the committee. Judge Lindberg expressed appreciation for Brent Johnson's efforts as staff to the committee. The present members of the committee introduced themselves.

*Ms. Jones moved to approve the minutes from the June 5, 2013 meeting. Mr. Field seconded the motion. The motion passed unanimously.*

Judge Lindberg discussed three items of old business with the committee. First, Judge Lindberg asked for an update on progress with updating Judge Taylor's instructions. Ms. Jones stated that she and Ms. Klucznik received about 34 instructions from Judge Taylor. Ms. Jones stated that she has formatted half of them, and that she will format the other half before the September meeting.

Judge Lindberg discussed the previous instructions drafted by Judge Himonas's subcommittee, including an instruction on child pornography, which the committee had previously tabled. The committee discussed the need for instructions on old and new versions of the sex crime statutes, since they change so frequently. Ms. Jones suggested that the committee include committee notes on instructions involving sex crimes including the date and a note to check the instructions against the current statute. The committee agreed to revisit the instructions drafted by Judge Himonas's committee at a later meeting.

Judge Lindberg stated that she reviewed minutes from prior meetings and she will be bringing items back to the committee for follow-up.

## 2. Unlawful Sexual Conduct with a Minor

Ms. Johnson discussed the proposed instructions and Special Verdict Form she drafted for unlawful sexual conduct with a 16 or 17 year old. She discussed that the instruction needs to direct the jury to indicate which of the four acts of sexual conduct they find the defendant guilty of, since the acts have different classifications. Ms. Jones suggested adding the word “unanimously” to the Special Verdict Form. Ms. Adams-Perlac suggested adding “with intent to cause substantial emotional or bodily pain to any person” under section 4 on the sexual conduct instruction and bullet number 4 of the Special Verdict Form, since the statute includes it as a possible mens rea for that offense. Judge Lindberg suggested deleting “regardless of the sex of any participant” in sections 3 and 4 on the sexual conduct instruction and bullets 3 and 4 on the Special Verdict Form. Ms. Jones noted that the unlawful sexual conduct with a minor instruction needs language addressing general intent (intentionally, knowingly, or recklessly) as required by case law from the Utah Court of Appeals, and that these should be added to each instruction. The committee discussed putting the elements in a committee note.

Ms. Johnson will work on the unlawful sexual conduct with a minor and sexual conduct instructions, including adding intent language. She will send them to Ms. Adams-Perlac for circulation to the committee before the next meeting.

The committee discussed using initials versus using names with minors and alleged victims. Ms. Jones disagreed with using initials for adult alleged victims, since it signals to the jury that the alleged victim needs special protection. Ms. Johnson suggested that the committee adopt the policy of using initials when the alleged victim is a minor, and using names for adult alleged victims, unless the court decides that the alleged victim’s name needs to be protected. Ms. Jones suggested that the committee’s policy be as neutral as possible, and suggested that the committee adopt a policy that initials should be used when the alleged victim is a minor, and that names of adult alleged victims should be used. She suggested adding a note at the beginning of the instructions that initials may be used for an adult alleged victim if there is a judicial finding made regarding why it is appropriate. Ms. Adams-Perlac agreed to draft proposed language for the committee note and will circulate it before the next meeting.

*Ms. Jones moved the committee to adopt the policy that: 1) minor’s initials will be used in jury instructions, and 2) that names will be used for adult alleged victims, unless 3) the court makes a judicial finding warranting the use of initials for an adult. Mr. West seconded the motion. The motion passed unanimously.*

## 3. Jailhouse Informant

The committee discussed the proposed jailhouse informer instruction. Judge Lindberg suggested calling it “Jailhouse Informant/Accomplice”, since the instruction applies to accomplices. The committee discussed that an instruction is necessary based on *State v. Charles*, 2011 UT App 291. The committee discussed concerns about the title of the instruction suggesting bias. Ms. Jones stated that the instruction should only apply to a case that has an informant like the one in *Charles*. Judge Lindberg discussed changing the title to “In-custody Informant.” The committee discussed whether the instruction should apply to accomplices. Mr. West noted the difference between informants and accomplices. Ms. Jones stated that the instruction should not be taken farther than the law requires. She suggested the committee limit the instruction to informants like the one in *Charles*, and then add a committee note referencing *Charles*. Ms. Jones suggested tabling the instruction, since *Charles* gives guidance on the issue. She also stated that the committee notes should be neutral.

The committee agreed to change the title to “In-custody Informant”, and to delete “accomplice” from the instruction. The instruction will be recirculated with those changes and will be discussed at the next meeting.

Mr. West raised the concern of multiple copies of the meeting materials being printed. The committee discussed this issue and agreed that Ms. Adams-Perlac will send the meeting materials in an electronic format (that can be manipulated) prior to the meeting, and that everyone will review the materials prior to the meeting and print them from their office. Ms. Adams-Perlac will bring only a few copies of the materials to the next meeting.

#### **4. Object Rape**

The committee discussed the proposed object rape instruction. Ms. Johnson asked whether special verdict forms for these offenses exist. The committee agreed that they do not have these forms. Ms. Johnson stated that she has some and she will email them to Alison Adams-Perlac for circulation before the next meeting. Ms. Johnson discussed whether the general intent language should be a subsection. The committee agreed that the language works where it is. Ms. Johnson suggested breaking section 6 into subsections, and adding victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed. Ms. Jones suggested that the committee delete the semi-colons or do not punctuate the instruction. Judge Lindberg stated that the committee has used semi-colons in prior rules. The committee discussed removing “who is 14 years or older”, since age is not an element of object rape.

The committee agreed to break section 6 into subsections, and to add victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed. The committee also agreed to remove the age language. With these changes, Ms. Johnson will recirculate this instruction for review prior to the next meeting.

#### **5. Object Rape of a Child**

The committee discussed the proposed object rape of a child instruction. The committee agreed to break section 6 into subsections, and to add victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed as in the object rape instruction. With these changes, Ms. Johnson will recirculate this instruction for review prior to the next meeting.

#### **6. Adjourn**

Judge Lindberg stated that the committee will discuss the organization of the instructions at a future meeting. The committee will discuss changes to the proposed instructions for in-custody informant, object rape, and object rape of a child, as well as the proposed instructions for forcible sodomy and sodomy on a child at the next meeting. The next meeting will be held September 4, 2013 at 12:00 p.m. The meeting adjourned.

# AGENDA ITEM 2

It is the policy of the committee that criminal jury instructions should use only a victim's initials when referencing a victim who is a minor. If the victim is an adult, the victim's name should be used unless the court makes a specific judicial finding that use of the victim's name is inappropriate in a particular case.



# AGENDA ITEM 3

## INSTRUCTION \_\_\_\_\_

The defendant, (NAME), is charged [in Count \_\_\_\_] with Unlawful Sexual Conduct with a 16 or 17 year old 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. That the defendant, \_\_\_\_\_ (NAME);
2. Intentionally, knowingly, or recklessly:
  - a. Had sexual intercourse with [MINOR'S INITIALS]; or
  - b. Engaged in any sexual act with [MINOR'S INITIALS] involving the genitals of one person and the mouth or anus of another person; or
  - c. Caused the penetration, however slight, of the genital or anal opening of [MINOR'S INITIALS] by any foreign object, substance, instrument, or device, including a part of the human body;
    - i. With the intent to arouse or gratify the sexual desire of any person; or
    - ii. With the intent to cause substantial emotional or bodily pain to any person; or
  - d. Touched the anus, buttocks, or any part of the genitals of [MINOR'S INITIALS], or touched the breast of [MINOR'S INITIALS], or otherwise took indecent liberties with [MINOR'S INITIALS], or caused [MINOR'S INITIALS] to take indecent liberties with the defendant or another person;
    - i. With the intent to arouse or gratify the sexual desire of any person; or
    - ii. With the intent to arouse or gratify the sexual desire of any person;
3. At the time of the sexual conduct [MINOR'S INITIALS] was 16 or 17 years old; and
4. At the time of the sexual conduct, the defendant was:
  - A) Seven, eight, or nine years older than [MINOR'S INITIALS] and the defendant knew or reasonably should have known the age of [MINOR'S INITIALS]; or
  - B) Was 10 or more years older than \_\_\_\_\_ [MINOR'S INITIALS]

After you carefully consider all the evidence in this case, if you are convinced that each and every element [of one or more of the above variations] 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 [of at least one of the above variations] has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 76-5-401.2

**Committee Notes:** If the State intends to rely on Subsection 2d in combination with 2a, 2b, or 2c, a special verdict form will be necessary.

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[LOCATION] JUDICIAL DISTRICT COURT, [IF APPLICABLE] DEPARTMENT,  
IN AND FOR [COUNTY] COUNTY, STATE OF UTAH

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THE STATE OF UTAH,	:	<b>SPECIAL VERDICT</b>
Plaintiff,	:	Count [#]
-vs-	:	
[Name],	:	Case No. [**]
Defendant.	:	

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We, the jury, having found the defendant, [Name], guilty of Unlawful Sexual Conduct with a 16 or 17 Year Old, as charged in Count [#] of the Information, unanimously find beyond a reasonable doubt the defendant engaged in the following “sexual conduct” (check all that apply):

- The defendant had sexual intercourse with [MINOR’S INITIALS]; or
- The defendant engaged in any sexual act with [MINOR’S INITIALS] involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or
- With the intent to cause substantial emotional or bodily pain to any person, the defendant caused the penetration, however slight, of the genital or anal opening of [MINOR’S INITIALS] by any foreign object, substance, instrument, or device, including a part of the human body, regardless of the sex of any participant; or
- With the intent to arouse or gratify the sexual desire of any person, the defendant touched the anus, buttocks, or any part of the genitals of [MINOR’S INITIALS], or touched the breast of [MINOR’S INITIALS], or otherwise took indecent liberties with [MINOR’S INITIALS], or caused [MINOR’S INITIALS] to take indecent liberties with the defendant or another person, regardless of the sex of any participant,.

DATED this \_\_\_\_\_ day of [Month], 20[\*\*].

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Foreperson

# AGENDA ITEM 4

Instruction \_\_\_\_\_

You have heard from a witness who may be classified as [an “in-custody informant”]. The law allows the use of such testimony. Bear in mind that such a witness may have an interest in the case different from that of an ordinary witness.

A witness who believes [he/she] may be able to obtain [his/her] own freedom, or receive a lighter sentence by giving testimony favorable to the prosecution, has motive to testify falsely. Therefore, you must examine that testimony with caution and weigh it with great care. Whether the informer's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making that determination, you should consider:

1. Whether the informer has received anything (including leniency in prosecution, personal advantage, or vindication) in exchange for testimony;
2. Other cases, and the number of other cases, in which the informer testified or offered statements against another, whether those statements are being used, and whether the informer received any deal, promise, inducement, or benefit in exchange for that testimony or statement[,] or believed he was likely to receive some benefit from his cooperation;
3. Whether the informer has ever changed his or her testimony;
4. The criminal history of the informant, not just limited to number of convictions, but also the level of sophistication gained through the informer's experience in the criminal justice system; and
5. Any other evidence related to the informer's credibility.

After scrutinizing such testimony, you may give it whatever weight, if any, you find it deserves.

**References**

*State v. Charles*, 2011 UT App 291, 263 P.3d 469.

Excerpt from *State v. Charles*, 2011 UT App 291, 263 P.3d 469

III. Jury Instruction

¶ 40 Defendant also argues that the trial court erred by failing to provide a jury instruction regarding how to weigh jailhouse informant testimony. <sup>FN15</sup> Defendant requested a lengthy instruction modeled after an instruction required in Oklahoma whenever a jailhouse informant testifies. <sup>FN16</sup> See [Dodd v. State, 2000 OK CR 2, ¶ 26, 993 P.2d 778, 784](#). Over defense counsel's objection, the court instead instructed the jury as follows:

[FN15](#). Although not necessary to our decision in view of our reversal on other grounds, it is appropriate that we comment on this issue. See [Utah R.App. P. 30\(a\)](#) ("If a new trial is granted, the court may pass upon and determine all questions of law involved in the case presented upon the appeal and necessary to the final determination of the case."); [State v. Cloud, 722 P.2d 750, 755 \(Utah 1986\)](#) ("When a new trial or further proceeding is ordered, it is our duty to pass upon questions of law which may be pertinent and helpful in arriving at a final determination of the case.") (citation and internal quotation marks omitted).

[FN16](#). Utah's model jury instructions do not include a pattern instruction addressing testimony by a jailhouse informant. See Model Utah Jury Instructions (2d ed.).

The testimony of an in-custody informant should be viewed with caution and close scrutiny. In evaluating this testimony, you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. This does not mean that you may arbitrarily disregard this testimony, but you should give it the weight to which you find it to be entitled in the light of all the evidence in this case.

¶ 41 We are not necessarily persuaded at this point that the trial court erred by giving the jury this instruction, particularly in the **\*480** context of the unusually broad latitude the court gave Defendant to present testimony regarding every detail that might be relevant to the jury's consideration of the informant's credibility, including allowing testimony regarding the informant's crimes that were older than ten years and testimony regarding crimes that were not related to honesty. See generally [Utah R. Evid. 609](#).<sup>FN17</sup> Nevertheless, on balance, it does seem to us that the better instruction is the one Defendant proposed.<sup>FN18</sup> It is more specific to the

issues that may arise when a jailhouse informant testifies, and we think it would be helpful to the jury based on the particular factual circumstances of the informant's testimony in this case.

[FN17. Rule 609](#) provides some limits on the admissibility of evidence for purposes of attacking the credibility of a witness other than the accused depending on the nature of the evidence. For example, "evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." [Utah R. Evid. 609\(a\)\(2\)](#). However, "evidence that a witness ... has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year," if the court "determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." *Id.* 609(a)(1). In addition, [e]vidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

*Id.* 609(b).

[FN18.](#) Defense counsel requested the following instruction:

You have heard from a witness who may be classified as a "jailhouse informer." The law allows the use of such testimony. However[, ] the testimony of an informer who provides evidence against a defendant must be examined and weighed by you with greater care than the testimony of an ordinary witness. Whether the informer's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making that determination, you should consider:

- (1) whether the informer has received anything (including leniency in prosecution, personal advantage, or vindication) in exchange for testimony;
- (2) other cases, and the number of other cases, in which the informer testified or offered statements against another, whether those statements are being used, and whether the informer received any deal, promise, inducement, or benefit in exchange for that testimony or statement[, ] or believed he was likely to receive some benefit from his cooperation;
- (3) whether the informer has ever changed his or her testimony;
- (4) the criminal history of the informant, not just limited to number of convictions, but also the level of sophistication gained through the informer's experience in the criminal justice system; and
- (5) any other evidence related to the informer's credibility.

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you would want to give to the jailhouse informer.

You should bear in mind that a witness who has entered into such an agreement with the government may have an interest in the case different than any ordinary witness. A witness who believes that he may be able to obtain his own freedom, or receive a lighter sentence by giving testimony favorable to the prosecution, has motive to testify falsely. Therefore, you must examine his testimony with caution and weigh it with great care. If, after scrutinizing his testimony, you decide to accept it, you may give it whatever weight, if any, you find it deserves.



# AGENDA ITEM 5

## INSTRUCTION \_\_\_\_\_

The defendant, (NAME), is charged [in Count \_\_\_\_] with Object Rape on or about [DATE]. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
  - a. Caused the penetration, however slight;
  - b. Of the genital or anal opening of [VICTIM'S NAME] or [MINOR'S INITIALS];
  - c. By any object or substance other than the mouth or genitals;
3. With the intent to:
  - a. cause substantial emotional or bodily pain to [VICTIM'S NAME] or [MINOR'S INITIALS] or
  - b. arouse or gratify the sexual desire of any person; and
4. Without [VICTIM'S NAME]'s or [MINOR'S INITIALS]'s consent.

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### **References**

Utah Code § 76-5-402.2.

### **Committee Notes**

*See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

# AGENDA ITEM 6

## INSTRUCTION \_\_\_\_\_

The defendant, (NAME), is charged in [Count \_\_\_\_] with Object Rape of a Child on or about [DATE]. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
  - a. Caused the penetration, however slight;
  - b. Of the genital or anal opening of [MINOR'S INITIALS];
  - c. By any foreign object, substance, instrument or device that is not a part of the human body;
3. With the intent to:
  - a. cause substantial emotional or bodily pain to [MINOR'S INITIALS] or
  - b. arouse or gratify the sexual desire of any person; and
4. [MINOR'S INITIALS] was 13 years of age or younger 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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### **References**

Utah Code § 76-5-402.3.

### **Committee Notes**

*See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

# AGENDA ITEM 7

## INSTRUCTION \_\_\_\_\_

The defendant, (NAME), is charged in [Count \_\_\_\_] with Forcible Sodomy on or about [DATE]. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
3. Committed a sexual act involving the genitals of one person and the mouth or anus of another;
4. Without [VICTIM'S NAME] [MINOR'S INITIALS]'s consent.

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant **NOT GUILTY**.

### **References**

Utah Code § 76-5-403.

### **Committee Notes**

*See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.

# AGENDA ITEM 8

## INSTRUCTION \_\_\_\_\_

The defendant, (NAME), is charged [in Count \_\_\_\_] with Sodomy on a Child on or about [DATE]. You cannot convict (him)(her) of this offense unless you find beyond a reasonable doubt, based on the evidence, each of the following elements:

1. That the defendant, (NAME);
2. Intentionally, knowingly, or recklessly;
3. Committed a sexual act with [MINOR'S INITIALS], involving the genitals of one person and the mouth or anus of another, regardless of the sex of either participant; and
4. [MINOR'S INITIALS] was under 13 years of age or younger the time of the offense;

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 one or more of these elements has been proven beyond a reasonable doubt, then you must find the defendant **NOT GUILTY**.

### **References**

Utah Code § 76-5-403.1.

### **Committee Notes**

*See* Special Verdict Form for Prior Conviction or Serious Bodily Injury.



# AGENDA ITEM 9

Instruction \_\_\_\_\_

“Child pornography” means any visual depiction (including any live performance), however made or produced, of sexually explicit conduct, where:

1. The production of the visual depiction involves the use of a minor engaging in sexually explicit conduct; or
2. The visual depiction is of a minor engaging in sexually explicit conduct; or
3. The visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaged in sexually explicit conduct.

**References**

Utah Code § 76-5b-103(1).

Instruction \_\_\_\_\_

“Distribute” means to sell, display, provide, give, grant admission to, or otherwise transfer or present child pornography.

**References**

Utah Code § 76-5b-103(2).

Instruction \_\_\_\_\_

“Identifiable minor” means a person:

1. Who was a minor at the time the visual depiction was created, adapted, or modified, or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
2. Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic.

Proof of the actual identify of the minor is not required.

**References**

Utah Code § 76-5b-103(3).

Instruction \_\_\_\_\_

“Live performance” means any act performed live and in person.

**References**

Utah Code § 76-5b-103(6).

Instruction \_\_\_\_\_

“Minor” means a person younger than 18 years old.

**References**

Utah Code § 76-5b-103(7).

Instruction \_\_\_\_\_

“Nudity or partial nudity” means any state of dress or undress which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

**References**

Utah Code § 76-5b-103(8).

Instruction \_\_\_\_\_

“Produce” means to photograph, film, tape, direct, create, design or compose child pornography or to secure or hire persons to engage in the production of child pornography.

**References**

Utah Code § 76-5b-103(9).



Instruction \_\_\_\_\_

“Sexually explicit conduct” means actual or simulated:

1. Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
2. Masturbation;
3. Bestiality;
4. Sadistic or masochistic activities;
5. Lewd exhibition of the genitals or pubic area of any person;
6. The visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;
7. The touching of the genitals, pubic region, buttocks, or female breast; or
8. The explicit representation of the defecation or urination functions.

**References**

Utah Code § 76-5b-103(10).

Instruction \_\_\_\_\_

“Simulated sexually explicit conduct” means a pretend act, which mimics within the perception of an average person, actual sexually explicit conduct.

**References**

Utah Code § 76-5b-103(11).