

1 (a)~~(1)~~ **Verdict options.**

2 ~~(1) For crimes committed on or after May 6, 2002, t~~The verdict of the jury ~~shall~~ must
3 be ~~either~~ “guilty,” ~~or~~ “not guilty,” “not guilty by reason of insanity,” “guilty and
4 mentally ill at the time of the offense,” ~~or~~ “not guilty of the crime charged but guilty
5 of a lesser included offense,” or “not guilty of the crime charged but guilty of a lesser
6 included offense and mentally ill at the time of the offense,” provided that when the
7 defense of mental illness has been asserted and the defendant is acquitted on the
8 ground that the defendant was insane at the time of the commission of the offense
9 charged, the verdict ~~shall~~ must be “not guilty by reason of insanity.”

10 ~~(a)~~(2) For crimes committed before May 6, 2002, the defendant may elect to proceed
11 under subsection (a)(1) or under (a)(3).

12 ~~(a)~~(3) For crimes committed before May 6, 2002, unless the defendant elects to proceed
13 under subsection (a)(1), the verdict of the jury ~~shall~~ must be ~~either~~ “guilty,” “not
14 guilty,” “not guilty by reason of insanity,” “guilty and mentally ill,” “not guilty of the
15 crime charged but guilty of a lesser included offense,” or “not guilty of the crime
16 charged but guilty of a lesser included offense and mentally ill” provided that when
17 the defense of mental illness has been asserted and the defendant is acquitted on the
18 ground that the defendant was insane at the time of the commission of the offense
19 charged, the verdict ~~shall~~ must be “not guilty by reason of insanity.”

20 (b) **Unanimity.** The verdict ~~shall~~ must be unanimous. It ~~shall~~ must be returned by the
21 jury to the judge in open court and in the presence of the defendant and counsel. If the
22 defendant is voluntarily absent, the verdict may be received in the defendant’s absence.

23 (c) **Multiple defendants.** If there are two or more defendants, the jury at any time during
24 its deliberations may return a verdict or verdicts with respect to any defendant as to
25 whom it has agreed. If the jury cannot agree with respect to all, the defendant or
26 defendants as to whom it does not agree may be tried again.

27 (d) **Multiple offenses.** When the defendant may be convicted of more than one offense
28 charged, each offense of which the defendant is convicted ~~shall~~ must be stated separately
29 in the verdict.

30 (e) **Offenses included in charged offense.** The jury may return a verdict of guilty to the
31 offense charged or to any offense necessarily included in the offense charged or an
32 attempt to commit either the offense charged or an offense necessarily included therein.

33 (f) **Polling the jury.** When a verdict is returned and before it is recorded, the jury ~~shall~~
34 will be polled at the request of any party or may be polled at the court's own instance. If,
35 upon the poll, there is no unanimous concurrence, the jury may be directed to retire for
36 further deliberations or may be discharged. If the verdict is unanimous, it shall be
37 recorded.

38 (g) ~~Acquittal.~~ Custody. If judgment of acquittal is given on a verdict or the case is
39 dismissed and the defendant is not detained for any other legal cause, the court will
40 discharge the defendant ~~shall be discharged~~ as soon as the judgment is given. If a verdict
41 of guilty is returned, the court may order the defendant to be taken into custody to await
42 judgment on the verdict or may permit the defendant to remain on bail.

43 (h) Legally impossible verdict. The court will vacate a conviction based on a legally
44 impossible guilty verdict. A legally impossible verdict occurs when a fact finder finds a
45 defendant guilty of an offense that has as an essential element another offense for which
46 the same fact finder found the same defendant not guilty in the same trial. In determining
47 whether the acquitted offense constitutes an essential element of the offense of conviction,
48 the court will consider the elements of the crimes, the admitted evidence, any jury
49 instructions, and the verdicts.

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51 Committee Note:

52 The 2023 amendments added paragraph (h) to incorporate the Utah Supreme Court's
53 holding in *Pleasant Grove v. Terry*, 2020 UT 69, that a legally impossible verdict cannot
54 stand as a matter of law. There the Court distinguished between factually inconsistent
55 verdicts and legally impossible verdicts, holding that only the latter were impermissible.
56 Paragraph (h) is intended to apply only to legally impossible verdicts and not to factually
57 inconsistent verdicts. *Note adopted 2023.*