

Criminal Jury Instructions Committee

Minutes September 30, 2022

Attending:

Hon. Jennifer Green – Chair
Comm. Elizabeth Bingert
James Baumann
Daniel Carrion
Bruce Chalk
David Euchner (Proxy vote for Mikel Steinfeld)
Jillian Francis
Kush Govani
Robb Holmes
Alice Jones
Samantha Kluger
Karen Komrada (Proxy vote for William Wallace)
Jennifer Linn (Proxy vote for Ellen Dahl)
Sarah Mayhew
Michael Minicozzi
Shawn Steinberg (Proxy vote for Todd Lawson)
Hon. Lacey Stover Gard
Greta Vietor

Absent:

Jarom Harris
Comm. Steve McCarthy

1. Call to Order by Judge Green 1:30 p.m.
2. Introductions
3. Approval of May 6th, 2022 minutes
 - a. Noted misspelling of last names, corrected
 - b. Francis moves to approve minutes, Mayhew seconds. Motion passes unanimously. Green and Komrada abstain.
4. Standard 35 is moved to next meeting because no agreement beforehand to hear it at this meeting.
5. Comments – Chapter 14 Instructions – Michael Minicozzi
 - a. 14.01.02 – Discussion about specific comment submitted by defense agencies, specifically about positions of trust and whether it continues to apply after the

relationship ends (teacher before offense, etc.). Sex abuse statute was not drafted with same language.

- i. Discussion held between Jones, Minicozzi, Euchner.
 - ii. Euchner proposes bracketing the subsection, Minicozzi agrees. Clerical changes made to conform to revisions and missing quotation marks.
 - iii. Discussion where to put use notes to reference definitions. Ilona will send to Minicozzi for suggestions.
 - iv. Numbering corrected for sexual abuse instructions.
 - v. Linn moves to adopt changes, Euchner seconds. Motion passes unanimously.
 - b. 14.04.01 – Renumber former 14.04 to new 14.04.01
 - i. Euchner moves, Carrion seconds. Motion passes unanimously.
 - c. 14.04.02 – Adopt correct numbering and delete phrase “or had been” to read “was.”
 - i. Minicozzi moves to adopt changes, Euchner seconds. Motion passes unanimously.
 - d. 14.04.03 – Correct numbering, add word “under” in second element before “15 years of age.”
 - i. Mayhew moves to adopt changes, Euchner seconds. Motion passes unanimously.
6. Proposed Revisions to Use of Deadly Physical Force 4.05 – Komrada
 - a. Discussion held regarding current state of self-defense law.
 - b. Discussion held about finding source material for when this instruction was added and when it was changed.
 - c. Euchner motions to table until next meeting. Bingert seconds. Motion passes unanimously.
7. Revisions to Standard 45
 - a. Discussion among Kovani, Euchner, and others about the use note changes; specifically, whether the *Bigger*, *Perry*, and *Nottingham* cases are appropriate citations.
 - b. Discussion about whether proposed change is a correct statement of the law.
 - c. Carrion motions to table, Euchner seconds. Motion passes unanimously.
8. Revisions to Standard 47
 - a. Discussion about adding new paragraph and moving other paragraph to Standard 46. Discussion held that deleting the paragraph from alibi was likely a mistake from when the committee renumbered the standard instructions several years ago.
 - b. Steinberg believes that she can find materials from that period that would shine light on the change.
 - c. Steinberg moves to table, Euchner seconds. Motion passes unanimously.
 - d. The committee contemplates adding revisions to Standards 46 and 47 to a future agenda.

9. Revision to 15.07 – Francis

- a. Francis lost reception and was able to connect through Bingert’s phone and Bingert held phone to computer. This made communication difficult.
- b. Discussion held. Euchner cites case that says that the RAJI committee has been told not to use language from cases to create jury instructions because the language is often case-specific. Position against amendment is that we don’t always have to mirror the cases and it may be an incorrect statement of the law.
- c. Counterargument presented that instruction needs to present accurate statement of the law and proposal does that.
- d. Euchner proposes a friendly amendment to add “The court upheld…” and to add, “*See also Altamirano.*”
 - i. Francis moves to adopt, Euchner seconds. No vote on this motion.
- e. Linn proposing tabling the matter to review all of the wording in the note. Discussion held between Bingert and Linn. Bingert opposes tabling because additional proposals can be submitted later. Linn advocates for tabling to review language and to rewrite with more neutral language.
 - i. Linn moves to table, Steinberg seconds.
 - ii. Vote is taken and motion passes.

10. State v. Fierro – Euchner

- a. Case from AZSC where it provided the jury instruction that should be used in attempted second-degree murder cases.
- b. Chalk motions to adopt new instruction, Carrion seconds. Motion passes unanimously.
- c. Committee notes that it needs to update the citation for this case at next meeting.

11. Call to Public

12. Motion to Adjourn

- a. Euchner moves, Linn seconds. Motion passes unanimously.