ENDANGERING THE WELFARE OF A CHILD
(Acting in a Manner Likely To Be Injurious)
Penal Law § 260.10(1)
(Committed on or after Nov. 1, 1990)

(Revised Dec. 11, 2000[1])

The (*specify*) count is Endangering the Welfare of a Child.

Under our law, a person is guilty of endangering the welfare of a child when that person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old. [2]

The following term used in that definition has a special meaning:

A person KNOWINGLY acts in a manner likely to be injurious to the physical, mental or moral welfare of a child when that person is aware that he or she is acting in such manner. [3]

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[1] The revision was for the purpose of including the principles of *People v. Johnso*n, 95 N.Y.2d 368 (2000).

[2] The statute continues: "or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health." Where appropriate, that language should be added or substituted.

Further, Penal Law § 260.11 requires corroboration in certain circumstances. The statute reads: "A person shall not be convicted of endangering the welfare of a child, or of an attempt to commit the same, upon the testimony of a victim who is incapable of consent because of mental defect or mental incapacity as to conduct that constitutes an offense or an attempt to commit an offense referred to in section 130.16, without additional evidence sufficient pursuant to section 130.16 to sustain a conviction of an offense referred to in section 130.16, or of an attempt to commit the same." *See* Additional Charges in CJI2d Article 130.

[3] *See* Penal Law § 15.00(2).

Actual harm to the child need not result.[4]

[The defendant's conduct need not be specifically directed at a child.]

The defendant must act in a manner which is likely to be injurious to the physical, mental or moral welfare of a child, knowing of the likelihood of such injury.[5]

Knowledge of the age of the child is not an element of this crime, and it is not a defense to this charge that the defendant did not know the age of the child, or believed the age of the child to be seventeen years or more.[6]

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in this case, beyond a reasonable doubt, each of the following three elements:

1. That on or about [and between] *(date[s])*, in the county of (*county*), the defendant (*defendant's name*), acted in a manner likely to be injurious to the physical, mental or moral welfare of (*specify*);

2. That the defendant did so knowingly; and

3. That (*specify)* was less than seventeen years old.

[Note: If the affirmative defense does not apply, conclude as follows:

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty

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[4] *People v. Johnso*n, *supra*, 95 N.Y.2d 368.

[5] *Id.*

[6] *See* Penal Law § 15.20, subd. 3

of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

[Note: If the affirmative defense applies, continue as follows:

If you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of Endangering the Welfare of a Child as charged in the _____ count.

If you find that the People have proven beyond a reasonable doubt each of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Endangering the Welfare of a Child, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to a prosecution for Endangering the Welfare of a Child, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, that the defendant:

(a) was a parent, guardian or other person legally charged with the care or custody of such child; and

(b) was a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and

(c) treated or caused such ill child to be treated in accordance with such tenets.[7]

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

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[7] *See* Penal Law § 260.15.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider the evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt the elements of Endangering the Welfare of a Child, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of the Endangering the Welfare of a Child.]