

## CHAPTER 6

### INCEST, CHILD ABUSE AND WRONGS TO CHILDREN

- 6:01 INCEST
- 6:02 INCEST (STEPCHILD OR CHILD BY ADOPTION,  
OVER TWENTY-ONE)
- 6:03 AGGRAVATED INCEST
- 6:04 CHILD ABUSE (KNOWING OR RECKLESS)
- 6:05 CHILD ABUSE-EXCISION OR INFIBULATION  
(KNOWING OR RECKLESS)
- 6:06 CHILD ABUSE (CRIMINAL NEGLIGENCE)
- 6:07 CHILD ABUSE-EXCISION OR INFIBULATION  
(CRIMINAL NEGLIGENCE)
- 6:08 INTERROGATORY-CHILD ABUSE (§§ 18-6-401(a)  
AND (b), C.R.S.)
- 6:09 SPECIAL VERDICT FORM
- 6:09.1 INTERROGATORY-CHILD ABUSE-BODILY INJURY-  
REPEATED CONDUCT
- 6:10 CHILD ABUSE
- 6:11 TRAFFICKING IN CHILDREN
- 6:12 SEXUAL EXPLOITATION OF CHILDREN
- 6:13 PROCUREMENT OF CHILDREN
- 6:14 SPECIAL INSTRUCTION - WEIGHT AND  
CREDIBILITY OUT-OF-COURT STATEMENTS OF A  
CHILD
- 6:15 CONTRIBUTING TO THE DELINQUENCY OF A MINOR
- 6:16 HARBORING A MINOR
- 6(1) SPECIAL RULES

The instructions in this chapter cover offenses defined in §§ 18-6-301-302; 18-6-401 through -404; 18-6-601; 18-6-701 and the evidentiary instruction in § 13-25-129, C.R.S.

## 6:01 INCEST

The elements of the crime of incest are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [married] [inflicted sexual penetration on] [inflicted sexual intrusion on] [subjected to sexual contact],
5. a(n) [ancestor] [natural child over the age of twenty-one] [brother of the whole or half blood] [sister of the whole or half blood] [uncle of the whole blood] [aunt of the whole blood] [nephew of the whole blood] [niece of the whole blood].
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of incest.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of incest.

### NOTES ON USE

Delete inapplicable bracketed material.

The appropriate definitions of "knowingly", "sexual contact," (as defined in §18-3-401, C.R.S.), "sexual intrusion" or "sexual penetration" must be used with this instruction.

If the child is less than twenty-one years of age, see "Aggravated Incest".

#### SOURCE & AUTHORITY

§18-6-301, C.R.S.

*People v. MacLeod*, 176 P.3d 75 (Colo. 2008)

COLJI-Crim. No. 22:01 (1993).

#### CLASSIFICATION OF OFFENSE

F4

#### **6:02 INCEST (STEPCHILD OR CHILD BY ADOPTION, OVER TWENTY-ONE)**

The elements of the crime of incest are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [inflicted sexual penetration on] [inflicted sexual intrusion on] [subjected to sexual contact],
5. a child by adoption or stepchild, twenty-one years of age or older, not legally married to the defendant,
6. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of incest.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of incest.

## NOTES ON USE

Delete inapplicable bracketed material.

The appropriate definitions of "knowingly" and "sexual contact," (as defined in §18-3-401, C.R.S.), "sexual intrusion" or "sexual penetration" must be used with this instruction.

If the child is less than twenty-one years of age, see "Aggravated Incest".

## SOURCE & AUTHORITY

§18-6-301, C.R.S.

COLJI-Crim. No. 22:01 (1983).

## CLASSIFICATION OF OFFENSE

F4

## 6:03 AGGRAVATED INCEST

The elements of the crime of aggravated incest are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [ [married] [inflicted sexual intrusion on] [inflicted sexual penetration on] [subjected to sexual contact] [his] [her] natural child who was under the age of twenty-one]

-or-

[4. [inflicted sexual intrusion on] [inflicted sexual penetration on] [subjected to sexual contact]

5. [his] [her] [step child] [child by adoption] who was under the age of twenty-one and not legally married to the defendant]

-or-

4. [[married] [inflicted sexual penetration on] [inflicted sexual intrusion on] [subjected to sexual contact] a [descendant] [brother of the whole blood] [aunt of the whole blood] [uncle of the whole blood] [nephew of the whole blood] [niece of the whole blood] who was under ten years of age]

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide, the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of aggravated incest.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of aggravated incest.

#### NOTES ON USE

Delete inapplicable bracketed material.

When this instruction is used, definitions of "knowingly", "descendant", "sexual intrusion", "sexual penetration" and "sexual contact" (as defined in C.R.S. 18-3-401), must be given if applicable.

*People v. Mintz*, 165 P.3d 829 (Colo. App. 2007) (discussing unit of prosecution for double jeopardy purposes)

#### SOURCE & AUTHORITY

§§18-6-302, 18-6-301 and 18-3-401(4), C.R.S.

**CLASSIFICATION OF OFFENSE**

F3

**6:04 CHILD ABUSE (KNOWING OR RECKLESS)**

The elements of the crime of knowing or reckless child abuse are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly,
4. [[caused an injury to a child's life or health]

-or-

[permitted a child to be unreasonably placed in a situation that posed a threat of injury to the child's life or health]

-or-

[engaged in a continued pattern of conduct that resulted in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately resulted in the death of a child or serious bodily injury to a child,]]

5. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of knowing or reckless child, abuse.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of knowing or reckless child abuse.

## NOTES ON USE

Delete inapplicable bracketed material.

Because the class of felony depends on the nature of the injury to the child, an appropriate special interrogatory must be given to determine the nature of injury suffered by the child: death, serious bodily injury, injury other than serious bodily injury, or no death or injury, §18-6-401(7)(a) and (b), C.R.S.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definition of "child", "knowingly" and "recklessly."

The statute includes within its provision a defense to unreasonably placing a child in a dangerous situation, §18-6-401(9), C.R.S.

## SOURCE & AUTHORITY

§18-6-401, C.R.S.

COLJI-Crim. No. 22:03 (1993).

*People v. Dunaway*, 88 P.3d 619 (Colo. 2004).

*People v. Weinreich*, 119 P.3d 1073 (Colo. 2005)(comparing former and current instruction)

## CLASSIFICATION OF OFFENSE

F2, if death results

F3, if severe bodily injury

F4, if any injury

M2, if no injury

**6:05 CHILD ABUSE-EXCISION OR INFIBULATION (KNOWING OR RECKLESS)**

The elements of the crime of child abuse excision or infibulation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly or recklessly,
4. [excised or infibulated, in whole or, in part, the labia majora, labia minora, vulva, clitoris of a female child]

- or -

[4. as a parent, guardian or other person legally responsible for a female child or charged with the custody of a female child,

5. allowed the excision or infibulation in whole, or in part, of such child's labia majora, labia minora, vulva or clitoris.]

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of the crime of child abuse -- excision or infibulation..

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of the crime of child abuse - excision or infibulation.

**NOTES ON USE**

Delete inapplicable bracketed material. Because the class of felony depends on the nature of the injury to the child, an appropriate special interrogatory must be given to determine the nature of injury suffered by the child: death, serious bodily injury, injury other than serious bodily injury, or no death or injury, §18-6-401(7)(a) and (b), C.R.S.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definition of "child", "knowingly" and "recklessly."

Belief that the conduct is required as a custom, ritual or standard practice or that the procedure was performed with the consent of the child, parent or legal guardian is not an affirmative defense to the charge. § 18-6-401(b)(II), C.R.S.

The procedure is legal when performed by a licensed physician to preserve the health of the child or during labor or child birth for medical purposes associated with the labor or child birth. § 18-6-401(b)(III), C.R.S.

#### **SOURCE & AUTHORITY**

§18-6-401(b)(I), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F2, if death results

F3, if severe bodily injury

F4, if any injury

M2, if no injury

#### **6:06 CHILD ABUSE (CRIMINAL NEGLIGENCE)**

The elements of the crime of criminally negligent child abuse are:

1. That the defendant,

2. in the State of Colorado, at or about the date and place charged,

3. with criminal negligence,

4. [[caused an injury to a child's life or health]

-or-

[permitted a child to be unreasonably placed in a situation that posed a threat of injury to the child's life or health]

-or-

[engaged in a continued pattern of conduct that resulted in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child]]

5. [without the affirmative defense in instruction number \_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse with criminal negligence.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse with criminal negligence.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

Since the class of felony is dependent on the nature of the injury to the child, an appropriate special interrogatory must be given to determine the nature of injury suffered by the child: death, serious bodily injury, injury other than serious bodily injury, or no death or injury, §18-6-401(7)(a) and (b), C.R.S.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definitions of "child" and "criminal negligence."

The statute includes within its provision a defense to unreasonably placing a child in a dangerous situation, §18-6-401(9), C.R.S.

#### **SOURCE & AUTHORITY**

§18-6-401, C.R.S.

COLJI-Crim. No. 22:04 (1993).

#### **CLASSIFICATION OF OFFENSE**

F3, if death results

F4, if serious bodily injury results

M2, if any injury

M3, if no injury

#### **6:07 CHILD ABUSE - EXCISION OR INFIBULATION (CRIMINAL NEGLIGENCE)**

The elements of the crime of child abuse excision or infibulation are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. with criminal negligence,
4. [excised or infibulated, in whole or, in part, the labia majora, labia minora, vulva, clitoris of a female child]

- or -

[4. as a parent, guardian or other person legally responsible for a female child or charged with the custody of a female child, and

5. allowed the excision or infibulation in whole, or in part, of such child's labia majora, labia minora, vulva or clitoris.]

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of the crime of child abuse -- excision or infibulation..

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of the crime of child abuse - excision or infibulation.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

Since the class of felony is dependent on the nature of the injury to the child, an appropriate special interrogatory must be given to determine the nature of injury suffered by the child: death, serious bodily injury, injury other than serious bodily injury, or no death or injury, §18-6-401(7)(a) and (b), C.R.S.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definitions of "child" and "criminal negligence."

Delete inapplicable bracketed material.

Because the class of felony depends on the nature of the injury to the child, an appropriate special interrogatory must be given to determine the nature of injury suffered by the child: death, serious bodily injury, injury other than serious bodily injury, or no death or injury, §18-6-401(7)(a) and (b), C.R.S.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definition of "child", "knowingly" and "recklessly."

Belief that the conduct is required as a custom, ritual or standard practice or that the procedure was performed with the consent of the child, parent or legal guardian is not an affirmative defense to the charge. § 18-6-401(b)(II), C.R.S.

The procedure is legal when performed by a licensed physician to preserve the health of the child or during labor or child birth for medical purposes associated with the labor or child birth. § 18-6-401(b)(III), C.R.S.

#### **SOURCE & AUTHORITY**

§18-6-401(b)(I), C.R.S.

#### **CLASSIFICATION OF OFFENSE**

F3, if death results

F4, if serious bodily injury results

M2, if any injury

M3, if no injury

#### **6:08 INTERROGATORY-CHILD ABUSE (§18-6-401(a) AND (b), C.R.S.)**

#### **PART ONE**

If you find the defendant not guilty of child abuse, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of child abuse, you should fill out the verdict form reflecting your guilty verdict, and then answer the following question:

Did the defendant cause an injury to the child? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant caused an injury to the child.

After considering all the evidence, if you decide the prosecution has failed to prove beyond a reasonable doubt that the defendant caused an injury to the child, you should indicate "No" on the verdict form that has been provided. (You will not need to answer the question in Part two, below.)

After considering all the evidence, if you decide the prosecution has proven beyond a reasonable doubt that the defendant caused an injury to the child, you should indicate "Yes" on the verdict form that has been provided. (You must then address the question in Part two, below.)

## **PART TWO**

You must now determine whether the defendant caused serious bodily injury or death. It is the prosecution's burden to prove beyond a reasonable doubt that the defendant caused serious bodily injury or death.

]The defendant caused death to the child

]The defendant's action caused serious bodily injury to the child.

]The defendant's action caused bodily injury to the child.

]The prosecution has failed to prove beyond a reasonable doubt that the defendant caused death, serious bodily injury or bodily injury

After considering all the evidence, if you decide the prosecution has proven that the defendant caused death, serious bodily injury or bodily injury beyond a reasonable doubt, you should indicate which one has been proven. on the verdict form that has been provided.

After considering all the evidence, if you decide the prosecution has not proven beyond a reasonable doubt that the defendant caused injury, serious bodily injury or death

to **the** child, you should so indicate on the verdict form that has been provided.

**NOTES ON USE**

Instructions defining "bodily injury" and "serious bodily injury" should be given with this instruction where appropriate. Submit only those alternatives for which there is any evidence.

See note on use, "Elements and Sentence Enhancers."

**6:09 SPECIAL VERDICT FORM**

DISTRICT COURT, [CITY AND] COUNTY OF \_\_\_\_\_, STATE OF  
COLORADO  
Case No. \* Div.

---

SPECIAL VERDICT FORM Including Injury on Child Abuse Count

---

PEOPLE OF THE STATE OF COLORADO,  
Plaintiff,

v.

\*  
Defendant.

---

[fn\*]I. We, the jury, find the Defendant, \*, NOT  
GUILTY of Count No. \*.

---

FOREPERSON

[fn\*]II. We, the jury, find the defendant guilty of  
Count No. \_\_\_ and, unanimously answer the following  
questions.

Did the defendant cause bodily injury to the Child?

[fn\*\*] [ ] Yes  
[fn\*\*] [ ] No

If you answered no, you need not answer the  
following questions. The injury caused by the defendant to  
the child was:

[fn\*\*\*] [ ] death  
[fn\*\*\*] [ ] serious bodily injury  
[fn\*\*\*] [ ] bodily injury  
[fn\*\*\*\*] [ ] The prosecution has failed to  
prove beyond a reasonable doubt that the defendant caused  
death, serious bodily injury or bodily injury

---

FOREPERSON

[fn\*]The foreperson may sign only one of the above I or II.

If the verdict is Not Guilty, then I above should be signed. If the verdict is Guilty, then II above should be signed and the jurors must answer the question on bodily injury.

[fn\*\*]Only one square to this question should be marked with an X, in ink. If your answer to the question is no, then you have concluded your deliberations to this count. If your verdict is yes, answer the next question on degree of bodily injury.

[fn\*\*\*]Only one square in this section on degree of bodily injury may be filled in by an X, in ink.

[fn\*\*\*\*]Fill out this square when the prosecution has failed to prove beyond a reasonable doubt any injury to the child.

Your answers to the questions must be unanimous.

**6:09.1 INTERROGATORY-CHILD ABUSE-BODILY INJURY-  
REPEATED CONDUCT**

**PART ONE**

If you find the defendant not guilty of child abuse, you should disregard this instruction and fill out the verdict form reflecting your not guilty verdict. If, however, you find the defendant guilty of child abuse, you should fill out the verdict form reflecting your guilty verdict, and then answer the following question:

Did the defendant cause an injury to the child? (Yes or No)

It is the prosecution's burden to prove beyond a reasonable doubt that the defendant caused an injury to the child.

After considering all the evidence, if you decide the prosecution has failed to prove beyond a reasonable doubt that the defendant caused an injury to the child, you should indicate "No" on the verdict form that has been provided. (You will not need to answer the question in Part two, below.)

After considering all the evidence, if you decide the prosecution has proven beyond a reasonable doubt that the defendant caused an injury to the child, you should indicate "Yes" on the verdict form that has been provided. (You must then address the question in Part two, below.)

**PART TWO**

You must now determine whether the defendant engaged in repeated conduct including:

I. A continued pattern of conduct that results in malnourishment or lack of proper medical care of the child;

-or-

II. A continued pattern of cruel punishment or unreasonable isolation or confinement of the child;

-or-

III. Repeated threats by such person of harm or death to the child or to a significant person in the child's life, which threats are made in the presence of the child;

-or-

IV. A continued pattern of acts of domestic violence committed by such person, as that term is defined in Section 18-6-800.3, in the presence of the child;

-or-

V. A continued pattern of extreme deprivation of hygienic or sanitary conditions in the child's daily living environment.

After considering all the evidence, if you decide the prosecution has proven that the defendant engaged in any repeated conduct beyond a reasonable doubt, you should indicate which one has been proven. on the verdict form that has been provided.

After considering all the evidence, if you decide the prosecution has not proven beyond a reasonable doubt that the defendant engaged in any repeated conduct, you should so indicate on the verdict form that has been provided.

#### **NOTES ON USE**

Instructions defining "bodily injury". The finding is a sentence enhancer, moving a misdemeanor to a class 4 felony.

#### **SOURCE AND AUTHORITY**

§18-6-401 (7), C.R.S.

**6:10 CHILD ABUSE-EXPOSING CHILD TO CONTROLLED  
SUBSTANCE MANUFACTURING**

The elements of the crime of child abuse by exposing the child to controlled substance manufacturing are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowing that it was in the presence of a child or on the premises where a child was found or where the child resided,
4. [the defendant knowingly engaged in the manufacture or attempted manufacture of a controlled substance],

- or -

[4. knowingly possessed ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers,

5. with the intent to use the product as an immediate precursor in the manufacture of a controlled substance]

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of child abuse by exposing the child to controlled substance manufacturing.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of child abuse by exposing the child to controlled substance manufacturing.

**NOTES ON USE**

Delete inapplicable bracketed material.

The applicable definitions of "premises", "knowingly", "with intent", "child" and "controlled substance" must be given with this instruction. For the purpose of this instruction, a child is a person under the age of sixteen years.

#### SOURCE & AUTHORITY

§18-6-401(1)(C), C.R.S.

#### CLASSIFICATION OF OFFENSE

F3

### 6:11 TRAFFICKING IN CHILDREN

The elements of the crime of trafficking in children are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly
4. [sold, exchanged, bartered, or leased a child and
5. received [any money or consideration] [anything of value] for the child.]

-or-

4. [received a child,
5. as a result of a sale, exchange, barter, or lease,
6. and any person received [any money or consideration] [anything of value] for the child.]

[6. or 7. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of trafficking in children.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of trafficking in children.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

"Child", as used in this instruction, is specifically defined in the statute as "a person under the age of sixteen." The jury should be instructed on the applicable definition of "child" and "knowingly."

#### **SOURCE & AUTHORITY**

§18-6-402, C.R.S.

COLJI-Crim. No. 22:07 (1983).

#### **CLASSIFICATION OF OFFENSE**

F3

### **6:12 SEXUAL EXPLOITATION OF CHILDREN**

The elements of the crime of sexual exploitation of children are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. [[caused] [induced] [enticed] [permitted] a child to [engage in] [be used for]

5. any explicit sexual conduct for making any sexually exploitative material.]

-or-

4. [[prepared] [arranged for] [published] [produced] [promoted] [made] [sold] [financed] [offered] [exhibited] [advertised] [dealt in] [distributed] any sexually exploitative material].

-or-

4. [possessed or controlled any sexually exploitative material for any purpose

5. and was not a peace officer or court personnel in the performance of his official duties or a physician, psychologist, therapist, or social worker licensed in the state of Colorado, in possession of the materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site].]

-or-

4. [possessed with the intent to [deal in] [sell] [distribute] any sexually exploitative material].

-or-

4. [[caused] [induced] [enticed] [permitted] a child to [engage in] [be used for]

5. any explicit sexual conduct for the purpose of producing a performance].

[5. or 6. without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of sexual exploitation of children.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of sexual exploitation of children.

#### NOTES ON USE

Delete inapplicable bracketed material.

"Child", as used in this instruction, is specifically defined in the statute as "a person who is less than eighteen years of age." The jury should be instructed on the applicable definitions of "child", "knowingly" and "with intent."

When this instruction is given, applicable definitions of "explicit sexual conduct," "commercial purpose," and "sexually exploitative material" must be given. Further the applicable definition or definitions of "explicit sexual conduct" (sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism or sexual excitement) must be given.

*People v. Grady*, 126 P.3d 218 (Colo. App. 2006) (People must prove that a person knowingly took sexually explicit photographs of a child and that the content of those photographs, viewed objectively, would lead to sexual gratification or stimulation of a reasonable viewer. The test is not a subjective test)

It may be necessary to define "publish", §18-6-403(3)(b), C.R.S.

If the criminality of the conduct depends on the child being below eighteen years old and the child was at least fifteen years old, it is an affirmative defense that the defendant reasonably believed the child to be eighteen years or older. When the affirmative defense is raised, the prosecution has the burden of proving beyond a reasonable doubt that the defendant did not reasonably believe the child was eighteen years or older. However, the element of knowingly does not apply to the age element. *People v. Bath*, 890 P.2d 269 (Colo. App. 1994); §18-1-503.5, C.R.S.

## SOURCE & AUTHORITY

§18-6-403, C.R.S.

COLJI-Crim. No. 22:08 (1993).

*People v. Grady*, 126 P.3d 318 (Colo. App. 2006)(jury should be instructed that the content of the photographs when viewed objectively would lead to the sexual gratification or stimulation of a reasonable viewer - not subjectively through defendant's eyes.)

*People v. Campbell*, 94 P.3d 1186 (Colo. App. 2004)(statute constitutional).

## CLASSIFICATION OF OFFENSE

F3

M1, if possession of sexually exploitative material, except second or subsequent offense, F4

## 6:13 PROCUREMENT OF CHILDREN

The elements of the crime of procurement of children are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. intentionally,
4. [[gave] [transported] [provided] [made available]],

-or-

[offered to [give] [transport] [provide] [make available]],

5. to another person,
6. a child who is less than 18 years of age,

7. for the purpose of [sexual exploitation]  
[prostitution] of the child.

8. [without the affirmative defense in instruction  
number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of procurement of children.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of procurement of children.

#### **NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is given, the definitions of "intentionally", "prostitution," and "sexual exploitation" must be given.

#### **SOURCE & AUTHORITY**

§§18-6-404 and 18-7-403.5, C.R.S.

COLJI-Crim. No. 22:09 (1993).

#### **CLASSIFICATION OF OFFENSE**

F3

### **6:14 SPECIAL INSTRUCTION-WEIGHT AND CREDIBILITY OUT-OF-COURT STATEMENTS OF A CHILD**

In this case, you heard evidence repeating (an) out of court statement(s) of \_\_\_\_\_, which (was) (were) admitted into evidence. (insert child's name)

You are instructed that it is for you to determine the weight and credit to be given this (these) statement(s). In

making this determination you shall consider the age and maturity of the child, the nature of the statement(s), the circumstances under which the statement(s) was (were) made, and any other evidence that has been admitted that you choose to consider for this purpose [unless the court has instructed you that it must be considered for some other purpose.]

#### NOTES ON USE

Delete inapplicable bracketed material.

This instruction assumes that the trial court has ruled on the relevancy of the evidence pertaining to the out of court statement.

The admissibility of § 13-25-129, C.R.S. statements may be limited due to constitutional confrontation clause issues, at least where such statements are testimonial and the child does not testify. See *Crawford v. Washington*, 541 U.S. 46 (2007); *People v. Vigil*, 127 P.3d 916, 929-30 (Colo. 2006); *People v. Moreno*, 160 P.3d 242 (Colo. 2007); *Vasquez v. People*, 173 P.3d 1099 (Colo. 2007); *People v. Argoramirez*, 102 P.3d 1015 (Colo. 2004).

Pursuant to §13-25-129(2), C.R.S., the court must include this special instruction in the final written instructions to the jury. Furthermore, when requested by either party, the court should give this special instruction contemporaneously with the admission of the evidence. See *People v. Burgess*, 946 P.2d 565 (Colo. App. 1997).

This instruction is to be used in addition to the general instruction on credibility of witnesses.

#### SOURCE & AUTHORITY

§13-25-129(2), C.R.S.

COLJI-Crim. No. 22:10 (1993).

**6:15 CONTRIBUTING TO THE DELINQUENCY OF A MINOR**

The elements of the crime of contributing to the delinquency of a minor are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. induced, aided, or encouraged,
5. a person under the age of 18,
6. to [violate] [commit the crime of] \_\_\_\_\_ .  
(insert crime, specific federal or state law, municipal or county ordinance, or court order).
7. [without the affirmative defense in instruction number \_\_\_\_\_.]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of contributing to the delinquency of a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of criminal solicitation.

**NOTES ON USE**

Delete inapplicable bracketed material.

When this instruction is used, the definition of "knowingly" should be given.

The ulterior crime must be named in the instruction and an additional instruction explaining the elements of the ulterior crime must be given immediately following this instruction. Only the elemental portions of the ulterior crime instruction and applicable definitions need be given;

i.e., the final two paragraphs regarding the prosecution's burden of proof should be deleted for this purpose.

#### **SOURCE & AUTHORITY**

§18-6-701, C.R.S.

COLJI-Crim. No. 22:11 (1993).

*People v. Corpening*, 837 P.2d 249 (Colo. App. 1992).

*People v. Gorman*, 19 P.3d 662 (Colo. 2000)(knowingly does not apply to the age element of the statute but the affirmative defense of reasonable belief regarding age under § 18-1-503.5, C.R.S. does apply when properly raised).

#### **CLASSIFICATION OF OFFENSE**

F4

### **6:16 HARBORING A MINOR**

The elements of the crime of harboring a minor:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. provided shelter to a minor
5. without the consent of the parent, guardian, or custodian and
6. the defendant
7. intentionally
8. [failed to release the minor to a law enforcement officer after being requested to do so] [failed to disclose the location of the minor to a law enforcement officer when requested to do so, if the defendant knew the location of

the minor and had either taken the minor to that location or had assisted the minor in reaching that location] [obstructed a law enforcement officer from taking the minor into custody] [assisted the minor in avoiding or attempting to avoid the custody of a law enforcement officer] [failed to notify the parent, guardian, or custodian of the minor or a law enforcement officer that the minor was being sheltered within twenty-four hours after shelter had been provided.]

9. [without the affirmative defense in instruction \_\_\_\_\_ .]

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of harboring a minor.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of harboring a minor.

#### **NOTES ON USE**

The statute includes within its provisions two defenses to the crime, see §18-6-601 (b) and (c), C.R.S.. The definition of "knowingly" and "intentionally" should be given with this instruction.

#### **SOURCE & AUTHORITY**

§18-6-601, C.R.S.

#### **CLASSIFICATION OF OFFENSE**

M2

## **SPECIAL RULES**

### **6(1) POSSESSION FOR A COMMERCIAL PURPOSE**

An inference of commercial purpose is created by the possession of three or more identical copies of any sexually exploitative material.

#### **NOTES ON USE**

This provision is found in §18-6-403(4), C.R.S. and is applicable to §18-6-403(3)(c), C.R.S.

The statutory provision provides for a "presumption of commercial purposes". However, due to constitutional concerns in criminal cases, a "presumption" ordinarily creates a "permissive inference", rather than a mandatory presumption. *Barnes v. People*, 735 P.2d 869 (Colo. 1987). The word "inference" has, therefore, been substituted for the word "presumption" as used in the statutory provision. The instruction defining and explaining inferences should be given with this special rule.

#### **SOURCE & AUTHORITY**

§18-6-403(4), C.R.S.