

ABANDONMENT OF A CHILD
(E Felony)
PENAL LAW 260.00
(Committed on or after Sept. 1, 1967)

The _____ count is Abandonment of a Child.

Under our law, a person is guilty of Abandonment of a Child when, being a parent, guardian or other person legally charged with the care or custody of a child¹ less than fourteen years old, he deserts such child in any place with intent to wholly abandon it.

The term "intent" has its own special meaning in our law. I will now give you the meaning of that term.

INTENT means conscious objective or purpose.² Thus, a person acts with intent to wholly abandon a child when his or her conscious objective or purpose is to do so.

It is not a defense to this charge that the actor did not know that the child was less than fourteen (14) years old, or that the actor believed that the child was fourteen (14) years old or more on the date of the crime.³

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

1. That on or about ___(date)___, in the County of _

¹ "[O]ther person legally charged with the care and custody of a child" is not defined in the statute. See, *Family Court Act § 1012(g)*; See also, *People v. Carroll*, 93 NY2d 564 at 566 and 568 (1999), in which the Court of Appeals discussed the term in the context of an endangering the welfare of a child case.

² See, Penal Law § 15.05(1).

³ See, Penal Law §15.20(3).

(county) _____, the defendant, (defendant's name), deserted (specify), a child less than fourteen years old;

2. That the defendant did so with the intent to wholly abandon (specify); and
3. That the defendant was the [parent][guardian][other person legally charged with the care or custody] of (specify).

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

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Abandonment of a Child as charged in the _____ count.

On the other hand, 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 the crime of Abandonment of a Child as charged in the _____ count.]

[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 Abandonment of a Child as charged in the _____ count.

On the other hand, 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 Abandonment of a Child, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to a prosecution

for Abandonment of a Child, based upon an alleged desertion of a child not more than five days old with an intent to wholly abandon such child, that, with the intent that the child be safe from physical injury and cared for in an appropriate manner, the defendant left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.⁴

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

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.

Therefore, 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 Abandonment of a Child, you must find the defendant guilty of that crime as charged in the _____ count.

On the other hand, 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 crime of

⁴ See, Penal Law § 260.03. This affirmative defense, known as the "abandoned infant protection act" was added, L. 2000, ch. 156, § 3, eff. July 18, 2000.

Abandonment of a Child as charged in the _____ count.]