

CORROBORATION OF UNSWORN WITNESS

(Revised May 2022)¹

(*Specify*) did not testify under oath and therefore gave unsworn testimony.²

Under our law, a defendant may not be convicted of an offense solely upon unsworn testimony.

Therefore, before you may convict the defendant upon the testimony of (*specify*) you must find that his/her testimony is truthful and accurate and that it is supported by other evidence which:

tends to establish that the offense was in fact committed;
and

tends to connect the defendant with the commission of the offense.³

[Add where appropriate:

You have heard testimony that (*specify*) told another that he/she had been (*specify*, e.g. sexually abused). Though you may accept that testimony, it is by itself insufficient to corroborate his/her testimony. If you find other corroborative evidence, however, you may consider it, along with that other evidence, on determining whether there is sufficient evidence of corroboration.⁴]

¹ The May 2022 revision was for the purpose of adding the “Add where appropriate” paragraph.

² A witness may be unsworn and give evidence only for a reason specified in CPL 60.20(1) and (2), and when that is permitted, this charge should be given. See *People v. Ward*, 175 A.D.3d 722, 725 (2d Dept 2019) (“Since [the witness] refused to take the oath, and was not deemed to be ineligible to take the oath by reason of, inter alia, infancy, mental disease, or defect pursuant to CPL 60.20(2), the Supreme Court erred in allowing [the witness] to testify or be questioned by counsel”).

³ See CPL 60.20(3); *People v. Groff*, 71 N.Y.2d 101, 108 (1987).

⁴ *People v. Lane*, 160 AD3d 1363, 1364 [4th Dept 2018] (“although ‘prompt outcry evidence alone may not suffice to corroborate the testimony of an unsworn witness, it may be considered by the [factfinder] on the issue of corroboration under CPL 60.20’ where, as here, there is other corroborative evidence,” citing *People v. Cordero*, 257 A.D.2d 372, 377 (1st Dept. 1999). See also *People v. Badia*, 163 A.D.2d 4, 7 (1st Dept. 1990) (“The repetition of the complainant’s account of the incident to her mother, her father, the police and a doctor similarly do not possess the “independence” required of corroborative evidence”).