

PROMPT OUTCRY¹

When relevant, the following charge should be included among the factors to consider on the credibility of a witness's testimony.

You may consider whether *(specify name of complainant)* complained of the crime promptly or within a reasonable period of time after its alleged commission.²

If you find that the complaint was made promptly or within a reasonable time, you may consider whether and to what extent, if any, that fact tends to support the believability of the witness's testimony.³

If you find that the complaint was unreasonably delayed, you may consider whether and to what extent, if any, that fact tends not to support the believability of the witness's testimony.⁴

[Add the following if there is a factual issue on the promptness of the complaint:

In determining whether a complaint was made within a reasonable period of time, you may consider such circumstances as:

the complainant's age, past experiences, and mental state;

whether or not the complainant feared for his/her own safety or the safety of others;

whether or not the complainant had an opportunity to make a complaint; and

any other circumstance that operated to prevent or delay disclosure within a reasonable period of time.^{5]}

¹ The Appellate Division has cited with approval this CJI “prompt outcry” charge. E.g. *People v Bernardez*, 85 AD3d 936, 938 [2d Dept 2011] [“the trial court instructed the jury regarding the proper use of “prompt outcry” evidence, tracking the language of New York's Criminal Jury Instructions (CJI.2d [NY] Prompt Outcry”]; *People v McCray*, 102 AD3d 1000, 1009 [3d Dept 2013] *affd* *People v McCray*, 23 NY3d 193 [2014] [“the outcry testimony was accurately limited to the fact that a complaint was made and the court gave an appropriate prompt outcry instruction in its charge to the jury (see CJI2d [N.Y.] Prompt Outcry”]; *People v Green*, 108 AD3d 782, 785 [3d Dept 2013] [“Supreme Court's instruction was fair, balanced, [and] followed the Criminal Jury Instructions very closely (see CJI2d[N.Y.] Prompt Outcry).”] *Green* also rejected the defendant’s argument that the trial court “ ‘usurped his right to chart his own defense’ by administering the prompt outcry charge over his objection.” *Green* at 785.

² Since its first edition, CJI has required that the outcry be made promptly or within a “reasonable period of time” after its alleged commission.” That formulation encapsulates Court of Appeals decisions that have noted that an outcry is “prompt” if it occurs at “the first suitable opportunity” [*People v. Rosario*, 17 NY3d 501, 512, 515 (2011); *People v Shelton*, 1 NY3d 614, 615 (2004)] and that what constitutes the first suitable opportunity “is a relative concept dependent on the facts.” *People v. McDaniel*, 81 NY2d 10, 17 (1993).

³ *People v Williams*, 75 NY2d 858 (1990).

⁴ *People v Geddes*, 186 A.D.2d 993 (4th Dept 1992).

⁵ See *Baccio v People*, 41 NY 265, 271 (1869) (“it is perhaps competent to explain the want of [an] early complaint, by facts which show that it was impracticable, or that it was prevented by circumstances consistent with the nature impulse to complain thereof”); *People v. O’Sullivan*, 104 N.Y. 481, 489–90 (1887) (“there may be circumstances which will excuse delay, as when the prosecutrix is under the physical control of the defendant, when she is among strangers and there is no one in whom she can confide, when she is induced to silence by threats, and is so far within the power or reach of the defendant that the threats may be executed. In such and other like cases delay may be excused, and the disclosure may be proved, and all the facts submitted to the jury for them to determine what weight shall be given to the disclosure, and what effect the delay shall have”); *People v. Nicholson*, 26 N.Y.3d 813 (2016) (In a child sexual assault case, the victim could testify to the defendant’s “violent actions” which were “observed or experienced” by her, and which gave rise to her fear of the defendant’s potential violent reaction had she timely reported the assault”).