

**ENDANGERING THE WELFARE OF A VULNERABLE
ELDERLY PERSON SECOND DEGREE
(E Felony)
(Physical Injury; Criminal
Negligence; Weapon)
PENAL LAW 260.32(3)
(Committed on or after Feb. 1, 2001)**

The ____ count is Endangering the Welfare of a Vulnerable Elderly Person in the Second Degree.

Under our law, a person is guilty of Endangering the Welfare of a Vulnerable Elderly Person in the Second Degree when, being a caregiver for a vulnerable elderly person with criminal negligence, he or she causes physical injury to such person by means of a deadly weapon [*or a dangerous instrument*].

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “vulnerable elderly person,” “caregiver,” “physical injury,” “criminal negligence,” and “deadly weapon” [*or “dangerous instrument”*].

VULNERABLE ELDERLY PERSON means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.¹

CAREGIVER means a person who assumes responsibility for the care of a vulnerable elderly person pursuant to a court order or receives monetary or other valuable consideration for providing care for a vulnerable elderly person.²

¹ Penal Law § 260.30(3).

² Penal Law § 260.30(1).

PHYSICAL INJURY means impairment of physical condition or substantial pain.³

CRIMINAL NEGLIGENCE is not the same as that type of negligence you may be familiar with that permits a person injured by ordinary negligence to obtain a monetary judgment in a civil law suit. The carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence.

A person acts with CRIMINAL NEGLIGENCE with respect to physical injury to a vulnerable elderly person by means of a deadly weapon [*or* dangerous instrument] when

that person engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to a vulnerable elderly person by means of a deadly weapon [*or* dangerous instrument] will occur, and

when he or she fails to perceive that risk,

and when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.⁴

DEADLY WEAPON means:

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

[*or* a switchblade knife defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.]

³ See, Penal Law § 10.00(9).

⁴ See, Penal Law § 15.05(4); *People v. Boutin*, 75 NY2d 692, 696 (1990).

[or a gravity knife defined as any knife having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.]

[or a pilum ballistic knife defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.]

[or a dagger]

[or a billy]

[or a blackjack]

[or metal knuckles]

[or a metal knuckle knife].⁵

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,⁶ that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁷ Under that definition, death or other serious physical injury need not, in fact, be caused.]

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 (county), the

⁵See Penal Law § 10.00(12). See also, Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," and "pilum ballistic knife."

⁶See Penal Law § 10.00(13).

⁷See Penal Law § 10.00(10).

defendant, (defendant's name), caused physical injury by means of a deadly weapon [or dangerous instrument] to (specify) who was a vulnerable elderly person;

2. That the defendant did so with criminal negligence; and
3. That the defendant was a caregiver for (specify).

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 Endangering the Welfare of a Vulnerable Elderly Person in the Second Degree under 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 Endangering the Welfare of a Vulnerable Elderly Person in the Second Degree under the _____ count.