

**ENDANGERING THE WELFARE OF A VULNERABLE
ELDERLY PERSON SECOND DEGREE
(E Felony)
(No Acquiescence)¹
PENAL LAW 260.32(4)
(Committed on or after Feb. 1, 2001 Oct. 13, 2010 ²)**

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, he or she subjects that vulnerable elderly person to sexual contact without that person's consent.³

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," "sexual contact" and "without a person's consent."

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

¹ This charge can be modified to apply to other forms of lack of consent contained within the statute (namely, "forcible compulsion," "mentally disabled," "mentally incapacitated," "physically helpless") by substituting the definition for those forms of lack of consent found in CJ12d charges for sexual abuse in the third degree (Penal Law §130.55).

² Except for the amendment to the definition of "sexual contact," effective October 13, 2010, as explained in the footnote to that definition, this charge is effective for crimes committed on or after Feb. 1, 2001.

³ The statute reads "he or she subjects such person to sexual contact without the latter's consent." The language in the charge has been modified for clarity.

health or personal care.⁴

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.⁵

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the actor by the victim as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.⁶

Sexual contact takes place WITHOUT A PERSON'S CONSENT when it results from any circumstances in which a person does not expressly or impliedly acquiesce in the actor's conduct.⁷

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 defendant, (name of defendant), subjected (name of complainant) to sexual contact without

⁴ Penal Law § 260.30(3).

⁵ Penal Law § 260.30(1).

⁶

Penal Law § 130.00(3), as amended by the L.2010, c. 193, effective October 13, 2010, which struck the phrase "not married to the actor" after the word "person," and added the concluding phrase "as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed."

⁶ Penal Law § 130.05(2)(c).

his/her consent in that he/she did not expressly or impliedly acquiesce to the defendant's conduct;

2. That (name of complainant) was a vulnerable elderly person; and
3. That the defendant was a caregiver for (name of complainant).

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