

**ENDANGERING THE WELFARE OF  
A VULNERABLE ELDERLY PERSON OR  
AN INCOMPETENT OR PHYSICALLY DISABLED PERSON  
IN THE FIRST DEGREE  
(D Felony)  
(Serious Physical Injury; Intent)  
PENAL LAW § 260.34(1)  
(Committed on or after May 22, 2010<sup>1</sup>)**

The \_\_\_ count is Endangering the Welfare of A Vulnerable Elderly Person, Or An Incompetent or Physically Disabled Person in the First Degree.

Under our law a person is guilty of Endangering the Welfare of a Vulnerable Elderly Person or an Incompetent or Physically Disabled Person in the First Degree when, being a caregiver for

Select appropriate alternative(s):

a vulnerable elderly person

an incompetent or physically disabled person

with intent to cause physical injury to such person, he or she causes serious physical injury to such person.

Some of the terms used in this definition have their own special meaning in our law. I will now give the meaning of the following terms: ["vulnerable elderly person,"] ["incompetent or physically disabled person,"] "caregiver," "physical injury," "serious physical injury," and "intent."

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<sup>1</sup> Effective May 20, 2010, the crime was renamed to add the words "Or An Incompetent or Physically Disabled Person" and the definition of the crime was amended to include "an incompetent or physically disabled person." L. 2010, ch. 14.

[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.<sup>2</sup>]

[INCOMPETENT OR PHYSICALLY DISABLED PERSON means an individual who is unable to care for himself or herself because of physical disability, mental disease or defect.<sup>3</sup>]

CAREGIVER means a person who assumes responsibility for the care of a vulnerable elderly person, or an incompetent or physically disabled person pursuant to a court order or receives monetary or other valuable consideration for providing care for a vulnerable elderly person, or an incompetent or physically disabled person.<sup>4</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>5</sup>

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a bodily organ.<sup>6</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to a person when

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<sup>2</sup> Penal Law § 260.30(3).

<sup>3</sup> Penal Law § 260.31(4).

<sup>4</sup> Penal Law § 260.30(1).

<sup>5</sup> See Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

<sup>6</sup> See Penal Law § 10.00(10).

his or her conscious objective or purpose is to do so.<sup>7</sup>

To be guilty of this crime, a person must have the intent to cause physical injury, but must cause serious physical injury.

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

1. That on or about (*date*), the defendant (*defendant's name*) was a caregiver for (*specify*);

2. That, on that date, (*specify*) was:

Select appropriate alternative(s):

a vulnerable elderly person

an incompetent or physically disabled person;

3. That, on that date, in the county of (*county*), the defendant caused serious physical injury to (*specify*); and

4. That the defendant did so with the intent to cause physical injury to (*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, or an Incompetent or Physically Disabled Person in the First 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

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<sup>7</sup> See Penal law § 15.05(1). An expanded definition of “intent” is available in the General Charges section under Culpable Mental States.

Endangering the Welfare of a Vulnerable Elderly Person, or an Incompetent or Physically Disabled Person in the First Degree as charged in the \_\_\_\_ count.