

**ENDANGERING THE WELFARE OF AN INCOMPETENT
OR PHYSICALLY DISABLED PERSON
SECOND DEGREE
(A Misdemeanor)
PENAL LAW 260.24
(Committed on or after Jan. 16, 2013)**

The _____ count is Endangering the Welfare of an Incompetent or Physically Disabled Person in the Second Degree.

Under our law, a person is guilty of Endangering the Welfare of an Incompetent or Physically Disabled Person in the Second Degree when he or she recklessly engages in conduct which is likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect.

A person acts RECKLESSLY with respect to conduct which is likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect, when he or she:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that injury to the physical, mental or moral welfare of a person will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.¹

¹ See Penal Law §15.05 (3).

[NOTE: Where there is evidence of voluntary intoxication on the part of the defendant, add:

A person also acts recklessly when he or she creates such a risk but is unaware of that risk solely by reason of voluntary intoxication.^{2]}

Actual harm to the incompetent or physically disabled person need not result.³

[The defendant's conduct need not be specifically directed at an incompetent or physically disabled person.]⁴

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 two elements:

1. That on or about [and between] (date[s]), in the County of (County), the defendant (defendant's name), engaged in conduct likely to be injurious to the physical, mental or moral welfare of (specify) who was unable to care for himself/herself because of physical disability, mental disease or defect; and
2. That the defendant did so recklessly.

Therefore, if you find that the People have proven, beyond a reasonable doubt, both of those elements, you must find the defendant guilty of the crime of Endangering the Welfare of an Incompetent or Physically Disabled Person in the Second Degree as charged in the _____ count.

² See Penal Law §15.05 (3).

³ See *People v Johnson*, 95 NY2d 368 (2000) which held that actual harm to a child is not an element of the crime of endangering the welfare of a child.

⁴ *Id.*

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of an Endangering the Welfare of an Incompetent or Physically Disabled Person in the Second Degree as charged in the _____ count.