

**ENDANGERING THE WELFARE OF  
A VULNERABLE ELDERLY PERSON OR  
AN INCOMPETENT OR PHYSICALLY DISABLED PERSON  
IN THE FIRST DEGREE  
(D Felony)  
(Serious Physical Injury; Reckless)  
PENAL LAW 260.34(2)  
(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

he or she recklessly 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 you the meaning of the following terms: ["vulnerable elderly person,"] ["incompetent or physically disabled person,"] "caregiver," "serious physical injury," and "recklessly."

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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>

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>5</sup>

A person acts RECKLESSLY with respect to serious physical injury when he or she:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to a person will occur,

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<sup>2</sup> Penal Law § 260.31(3).

<sup>3</sup> Penal Law § 260.31(4).

<sup>4</sup> Penal Law § 260.31(1).

<sup>5</sup> Penal Law §10.00(10).

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.<sup>6</sup>

*[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.<sup>7]</sup>

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

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<sup>6</sup> See Penal Law §15.05(3); *People v. Boutin*, 75 N.Y.2d 692 (1996).

<sup>7</sup> See Penal Law §15.05(3).

4. That the defendant did so recklessly.

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