

**ENDANGERING THE WELFARE OF AN INCOMPETENT OR
PHYSICALLY DISABLED PERSON IN THE FIRST DEGREE
Penal Law § 260.25
(Committed on or after Jan. 16, 2013)¹**

The (*specify*) count is Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree.

Under our law, a person is guilty of Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree when he or she knowingly acts in a manner 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.

The following term used in that definition has a special meaning:

A person KNOWINGLY acts in a manner 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 that person is aware that he or she is acting in such manner. ²

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

[The defendant's conduct need not be specifically directed

¹ Effective January 16, 2013, this section was amended by adding the words "in the first degree" to the title and reclassifying the crime from a class A misdemeanor to a class E felony (see L 2012, ch 501). Thus, this charge, except for the words "in the first degree," remains applicable for a crime committed on or after and between November 1, 1998 and January 16, 2013.

² See Penal Law § 15.05 (2).

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.

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)*, acted in a manner 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 knowingly.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

⁴ *Id.*