

**ENDANGERING THE WELFARE OF A VULNERABLE
ELDERLY PERSON OR AN INCOMPETENT OR
PHYSICALLY DISABLED PERSON IN THE SECOND
DEGREE¹**

**(Physical Injury; Reckless)
Penal Law § 260.32(2)**

**(Committed on or after Nov. 1, 1998
for Vulnerable Elderly Person)**

**(Committed on or after May 22, 2010
for Incompetent or Physically Disabled Person)**

The (*specify*) count is Endangering the Welfare of a Vulnerable Elderly Person, Or An Incompetent or Physically Disabled Person in the Second 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 Second Degree when, being a caregiver for

Select appropriate alternative(s):

a vulnerable elderly person

[or]

¹ The crime of “endangering the welfare of a vulnerable elderly person” was added by the Laws of 1998, chapter 381, effective Nov. 1, 1998. In 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, effective May 22, 2010. This charge was thereafter revised to account for the 2010 amendments. Thus, with respect solely to the crime of “endangering the welfare of a vulnerable elderly person,” this charge is applicable to any such crime committed on or after November 1, 1998. With respect to the crime of “endangering the welfare of a vulnerable elderly person” and/or “an incompetent or physically disabled person,” this charge is applicable to any such crime committed on or after May 22, 2010.

an incompetent or physically disabled person

he or she recklessly causes physical injury to such person.

The following terms used in that definition have a special meaning:

[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.²]

[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.³]

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.⁴

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁵

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

² Penal Law § 260.30(3).

³ Penal Law § 260.31(4).

⁴ Penal Law § 260.30(1).

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

engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to 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.⁶

[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.^{7]}

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 or about that date, (*specify*) was:

Select appropriate alternative(s):

a vulnerable elderly person

[or]

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

⁷ See Penal Law §15.05(3).

an incompetent or physically disabled person;

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

4. That the defendant did so recklessly.

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

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