

**ENDANGERING THE WELFARE OF A VULNERABLE  
ELDERLY PERSON OR AN INCOMPETENT OR  
PHYSICALLY DISABLED PERSON IN THE SECOND  
DEGREE<sup>1</sup>**

**(Physical Injury; Criminal Negligence; Weapon)  
Penal Law § 260.32(3)**

**(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]

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<sup>1</sup> 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

with criminal negligence, he or she causes physical injury to such person by means of a deadly weapon [or a dangerous instrument].

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.<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>

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

CRIMINAL NEGLIGENCE is not the same as that type of negligence you may be familiar with that permits a person injured by ordinary negligence to obtain a monetary judgment in a civil lawsuit. The carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence.

A person acts with CRIMINAL NEGLIGENCE with respect to physical injury to another by means of a deadly weapon [or dangerous instrument] when

that person engages in conduct which creates or contributes to a substantial and unjustifiable risk that physical injury to another by means of a deadly weapon [or dangerous instrument] will occur, and

when he or she fails to perceive that risk,

and when that risk is of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.<sup>6</sup>

DEADLY WEAPON means:

*Select appropriate weapon:*

any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged.

a switchblade knife, defined as any knife having a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

a pilum ballistic knife, defined as any knife having a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

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<sup>6</sup> See Penal Law § 15.05(4); *People v. Boutin*, 75 NY2d 692, 696 (1990).

a metal knuckle knife, defined as a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

metal knuckles, defined as a metal object with multiple holes, through which individual places his or her fingers so that a metal bar rests atop the individual's knuckles.

a billy, defined as a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.

a dagger.

a blackjack.

plastic knuckles.<sup>7</sup>

[DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,<sup>8</sup> that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>9</sup> Under that

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<sup>4</sup> Penal Law § 10.00(12) defines "deadly weapon." See Penal Law § 265.00 for the definitions of "switchblade knife," "gravity knife," "pilum ballistic knife" and "metal knuckle knife"; *People v. Aragon*, 28 N.Y.3d 125 (2016) (for the definition of "metal knuckles"); *People v. Ocasio*, 28 N.Y.3d 178, 183 (2016) (for the definition of "billy").

There is no controlling statutory or decisional law definition of "plastic knuckles," albeit the legislative memorandum in support of adding that term equated it with "brass [metal] knuckles"; thus, for the definition of "plastic knuckles," a court may wish to consider using the definition of "metal knuckles," substituting "plastic object" for "metal object" and "plastic bar" for "metal bar."

<sup>8</sup> Penal Law § 10.00(13).

<sup>9</sup> Penal Law § 10.00(10).

definition, death or other serious physical injury need not, in fact, be caused.]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all 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]

an incompetent or physically disabled person;

3. That, on or about that date, in the county of (county), the defendant, (defendant's name), caused physical injury by means of a deadly weapon [or dangerous instrument] to (specify); and

4. That the defendant did so with criminal negligence.

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.