

**ENDANGERING THE WELFARE OF
A VULNERABLE ELDERLY PERSON OR
AN INCOMPETENT OR PHYSICALLY DISABLED PERSON
IN THE SECOND DEGREE¹
(E Felony)
(Physical Injury; Intent)
PENAL LAW 260.32(1)
(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 _____ 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]

an incompetent or physically disabled person

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.

with intent to cause physical injury to such person, he or she causes such injury to that person.

Some of the terms used in this definition have their own special meaning in our law. I will now give the meaning of the following terms: [“vulnerable elderly person,”] [“incompetent or physically disabled person,”] “caregiver,” “physical injury,” “serious physical injury,” and “intent.”

[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

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).

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause physical injury to another when that person's conscious objective or purpose is to cause physical injury to another.⁶

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 caused physical injury to (specify); and

4. That the defendant did so with the intent to cause physical injury to (specify).

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 Second Degree as charged in the _____ count.

⁶ See Penal Law § 15.05(1).

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 Second Degree as charged in the _____ count.