

Ala. Code 1975, § 13A-6-193(a)(3)

Elder Abuse and Neglect Second Degree
(Reckless & Prior)

The defendant is charged with elder abuse and neglect in the second degree.

A person commits the crime of elder abuse and neglect in the second degree if he/she recklessly abuses or neglects or emotionally abuses any elderly person, and the person has been previously convicted of elder abuse and neglect in the third degree in any court.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant abused or neglected or emotionally abused an elderly person **[insert name of person]**, by **[describe method of abuse or neglect]**;
- (2) The Defendant had been previously convicted of elder abuse and neglect in the third degree in a court; **(AND)**
- (3) The defendant acted recklessly.

Neglect is the failure of a caregiver to provide food, shelter, clothing, medical services, medication, or health care for an elderly person. [13A-6-191(7)]

Emotional abuse is the intentional or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication, or isolation as punishment or as a substitute for treatment of care of an elderly person. [13A-6-191(4)]

A *caregiver* is an individual who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, for pecuniary gain, by contract, or as a result of the ties of friendship. [13A-6-191(1)]

An *elderly person* is a person 60 years of age or older. [13A-6-191(3)]

A *person* is a human being. [13A-6-191(8)]

A person acts *recklessly* with respect to a result or to a circumstance described by a statute defining an offense when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]

[Read as appropriate]: A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of Section 13A-3-2, acts recklessly with respect thereto. [13A-2-2(3)]

[Read as appropriate]: A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

During the trial you heard evidence concerning whether the defendant had previously been convicted of elder abuse and neglect in the third degree in any court. The one and only reason you were permitted to hear that evidence is that one of the elements of the offense is a prior conviction of elder abuse and neglect in the third degree in any court. This is the only reason evidence about whether the defendant has previously been convicted of elder abuse and neglect in the third degree in any court was admitted, and that is the only purpose for which you may consider it. You are not to consider the evidence that the defendant may have been convicted of elder abuse and neglect in the third degree in any court on a previous occasion as evidence that he/she did commit the alleged elder abuse and neglect in the second degree with which he/she is charged in this case. The law of this state requires that when you are deciding whether the State has proved beyond a reasonable doubt that the defendant committed the alleged elder abuse and neglect in the second degree charged in this case, you cannot consider any evidence that the defendant may have previously been convicted of elder abuse and neglect in the third degree in any court.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of elder abuse and neglect in the second degree, then you shall find the defendant guilty of elder abuse and neglect in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of elder abuse and neglect in the second degree, then you cannot find the defendant guilty of elder abuse and neglect in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

No physician, as defined under Section 34-24-50.1, who is licensed to practice medicine in this state, shall be subject to Sections 13A-6-192, 13A-6-193, and 13A-6-194 for any acts or omissions constituting the practice of medicine. [13A-6-201]

The limiting charge concerning evidence of a prior conviction is based on the instruction used in 13A-5-40(a)(13).

[Approved 4-15-16.]