

Ala. Code 1975, § 13A-6-193(a)(2)

Elder Abuse and Neglect Second Degree
(Reckless & Serious Physical Injury)

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 any elderly person and the abuse or neglect causes serious physical injury to the elderly person.

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

- (1) The Defendant abused or neglected an elderly person **[insert name of person]**, by **[describe method of abuse or neglect]**;
- (2) The Defendant's abuse or neglect caused serious physical injury to the elderly person; **(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)]

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)]

Serious physical injury is physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. [13A-1-2(14)]

Physical injury is impairment of physical condition or substantial pain. [13A-1-2(12)]

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)]

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]

[Approved 4-15-16.]