**T.P.I.-- CRIM. 29.16**

**NEGLECT OF *[AN ELDERLY] [A VULNERABLE]* ADULT *[OTHER THAN DUE TO ABANDONMENT OR CONFINEMENT ALONE WITHOUT INJURY]***

Any person who commits neglect of *[an elderly] [a vulnerable]* adult is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant was caregiver to *[an elderly] [a vulnerable]* adult;

and

(2) that the defendant **[only for offenses committed prior to 1/1/2020:** willfully and**]** knowingly neglected the *[elderly] [vulnerable]* adult so as to adversely affect *[his] [her]* health or welfare;

and

(3)(a) that the neglect was a result of the failure of the defendant to provide the care, supervision, or services necessary to maintain the physical health of the alleged victim;

or

(3)(b) that the neglect was a result of the failure of the defendant to make a reasonable effort to protect the alleged victim from neglect or financial exploitation by others;

or

(3)(c) that injury occurred.

[“Abandonment" means the knowing desertion or forsaking of *[an elderly] [a vulnerable]* adult by a caregiver under circumstances in which there is a reasonable likelihood that physical harm could occur.]

[**Only for offenses committed prior to 10/1/21:** “Caregiver” means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, “Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

**[Only for offenses committed on or after 10/1/21:** “Caregiver” means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

["Confinement" means the knowing and unreasonable restriction of movement of *[an elderly] [a vulnerable]* adult by a caregiver, including but not limited to *[placing a person in a locked room] [involuntarily separating a person from the person's living area] [the use of physical restraining devices on a person] [the provision of unnecessary or excessive medications to a person]*, unless these *[methods] [devices]* are used in a licensed facility in a manner that conforms to state and federal standards governing confinement and restraint.]

[“Effective consent” means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception or coercion if fairly raised in the proof]*;] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].]

[“Elderly adult” means a person seventy (70) years of age or older.]

[ “Financial exploitation” means:

(A) The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly or vulnerable adult's property with the intent to deprive the elderly or vulnerable adult of property;

(B) The breach of a fiduciary duty to an elderly or vulnerable adult by the person's guardian, conservator, or agent under a power of attorney which results in an appropriation, sale, or transfer of the elderly or vulnerable adult's property; or

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

"Injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.

"Neglect" means:

(i) The failure of a caregiver to provide the care, supervision, or

services necessary to maintain the physical health of an elderly or vulnerable adult, including, but not limited to, the provision of food, water, clothing, medicine, shelter, medical services, a medical treatment plan prescribed by a healthcare professional, basic hygiene, or supervision that a reasonable person would consider essential for the well-being of an elderly or vulnerable adult;

(ii) The failure of a caregiver to make a reasonable effort to protect *[an elderly] [a vulnerable]* adult from **[Only for offenses committed on or after 1/1/20:** abuse, sexual exploitation, **]** neglect or financial exploitation by others; (iii) Abandonment; or

(iv) Confinement.

Neglect can be the result of repeated conduct or a single incident.

**[Only for offenses committed prior to 10/1/21:** “Physical harm” means physical pain or injury, regardless of gravity or duration.**]**

or

**[Only for offenses committed on or after 10/1/21:** "Physical harm" means an action, regardless of gravity or duration, that causes pain or injury; or would cause a reasonable person to suffer pain or injury.**]**

[“Relative” means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.]

[“Vulnerable adult” means a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.]

“Willful” means voluntary and knowing.

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

[The requirement of “knowingly” is also established if it is shown that the defendant acted intentionally.]

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.