

NEGLECT OF ELDERLY OR DISABLED PERSONS
[N.J.S.A. 2C:24-8]

(Defendant) is charged with neglect of **[SELECT AS APPROPRIATE]** [an] elderly or disabled person[s]. This conduct is prohibited by a statute providing:

A person having a legal duty to care for or who has assumed continuing responsibility for the care of a person 60 years of age or older or a disabled adult, who abandons the elderly person or disabled adult or unreasonably neglects to do or fails to permit to be done any act necessary for the physical or mental health of the elderly person or disabled adult, is guilty of a crime...

To find (defendant) guilty of violating this statute, the State must prove beyond a reasonable doubt each of the following elements:

1. That, on or about _____ (date), _____ [name] was **[CHOOSE AS APPROPRIATE]** [60 years of age or older OR a disabled adult];
2. That, on or about _____ (date), (defendant) knew that _____ [name] was **[CHOOSE AS APPROPRIATE]** [60 years of age or older OR a disabled adult];
3. That (defendant) **[CHOOSE AS APPROPRIATE]** [abandoned _____ (name) or unreasonably neglected to do or failed to permit to be done any act necessary for the physical or mental health of _____ (name).];
4. That (defendant) had a legal duty to care for, or had assumed continuing responsibility for the care of, _____ (name).

[CHARGE IF APPROPRIATE]

5. That the defendant's **[CHOOSE AS APPROPRIATE]** (abandonment of _____ (name) or unreasonable neglect to do or failure to permit to be done any act necessary for the physical or mental health of _____ (name) was not done solely for the reason of providing or permitting to be provided nonmedical remedial treatment by spiritual means by prayer alone in lieu of medical care, in accordance with the tenets and practices of _____ (name's) established religious tradition.

The first element that the State must prove beyond a reasonable doubt is that, _____ (name) was **[CHOOSE AS APPROPRIATE]**[60 years of age or older, OR a disabled adult].

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“Disability” means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.¹ An adult is any person 18 years of age or older.

The second element that the State must prove beyond a reasonable doubt is that (defendant) knew that _____ (name) was [**CHOOSE AS APPROPRIATE**][60 years of age or older, OR a disabled adult].

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of the high probability of their existence. A person acts knowingly as to a result of his conduct if he is aware that it is practically certain that his/her conduct will cause such a result. Knowing, with knowledge, or equivalent terms have the same meaning.

Knowledge or knowingly is a condition of the mind that cannot be seen and can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant’s acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that (defendant)

¹ N.J.S.A. 10:5-5q. See State v. Dixon, 396 N.J. Super. 329 (App. Div. 2007).

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[**CHOOSE AS APPROPRIATE**] abandoned _____ OR unreasonably neglected to do or failed to permit to be done any act necessary for the physical or mental health of _____ (name). “Abandon” means the willful desertion or forsaking of an elderly person or disabled adult.²

For purposes of this offense, with regard to the meaning of “abandon”, the terms “desertion” or “forsaking”, refer to a situation which was intended by the actor to be permanent as opposed to merely temporary.³ In the context of this charge, “willful” means knowingly or with knowledge.⁴ A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of the high probability of their existence. A person acts knowingly as to a result of his conduct if he is aware that it is practically certain that his/her conduct will cause such a result. Knowing, with knowledge, or equivalent terms have the same meaning.

Knowledge or knowingly is a condition of the mind that cannot be seen and can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he had a certain state of mind when he engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant’s acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances.

The phrase, “neglected to do,” means the same as the phrase, “fails to do.” In order to determine whether the alleged failure to care for, and/or failure to permit care for, _____ (name), was unreasonable, you need to understand that the failure to exercise reasonable care constitutes negligence, which is a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.

A person acts negligently with respect to a material element of an offense when he/she should be aware of a substantial and unjustifiable risk that the material element exists or will result

² N.J.S.A. 2C:24-8a.

³ Cf. State v. N.I., 349 N.J. Super. 299 (App. Div. 2002).

⁴ Id.

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from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

The fourth element that the State must prove beyond a reasonable doubt is that (defendant) had a legal duty to care for, or had assumed continuing responsibility for the care of _____ (name). A person having a legal duty for the care of a person, or who has assumed responsibility for the care of a person, includes any person who has assumed responsibility for the care, custody or control of another or upon whom there is a legal duty for such care. One who has assumed the responsibility for the care of a person includes anyone who assumes a general and ongoing responsibility for the person and who establishes a continuing or regular supervisory or caretaker relationship with the person.⁵

[CHARGE IF APPROPRIATE]

The fifth element that the State must prove beyond a reasonable doubt is that the defendant's [CHOOSE AS APPROPRIATE] (abandonment of _____ (name) or unreasonable neglect to do or failure to permit to be done any act necessary for the physical or mental health of _____ (name) was not done solely for the reason of providing or permitting to be provided nonmedical remedial treatment by spiritual means by prayer alone in lieu of medical care, in accordance with the tenets and practices of _____ (name's) established religious tradition. Again, "neglect to do" means "failure to do."

If you find that the State has proved every element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If you find the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find defendant not guilty.

⁵ See State v. Galloway, 133 N.J. 631 (1993).