§ 260.32 Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree.

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 a vulnerable elderly person, or an incompetent or physically disabled person:

1. With intent to cause physical injury to such person, he or she causes such injury to such person; or

2. He or she recklessly causes physical injury to such person; or

3. With criminal negligence, he or she causes physical injury to such person by means of a deadly weapon or a dangerous instrument; or

4. He or she subjects such person to sexual contact without the latter's consent. Lack of consent under this subdivision results from forcible compulsion or incapacity to consent, as those terms are defined in article one hundred thirty of this chapter, or any other circumstances in which the vulnerable elderly person, or an incompetent or physically disabled person does not expressly or impliedly acquiesce in the caregiver's conduct. In any prosecution under this subdivision in which the victim's alleged lack of consent results solely from incapacity to consent because of the victim's mental disability or mental incapacity, the provisions of section 130.16 of this chapter shall apply. In addition, in any prosecution under this subdivision in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree is a

class E felony.