

29.22 NEGLECT OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.102(3), Fla. Stat.

To prove the crime of Neglect of [An Elderly Person] [A Disabled Adult], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) was a caregiver for (victim).
2. (Victim) was [an elderly person] [a disabled adult].
3. (Defendant)

Give as applicable.

- a. [willfully] [or] [by culpable negligence] failed or omitted to provide (victim) with the care, supervision, and services necessary to maintain (victim's) physical or mental health.
- b. failed to make a reasonable effort to protect (victim) from [abuse] [neglect] [or] [exploitation] by another person.

Give if the § 825.102(3)(b), Fla. Stat., is charged.

If you find the defendant guilty of Neglect of [An Elderly Person] [A Disabled Adult], you must then determine whether the State proved beyond a reasonable doubt that the defendant's failure or omission caused [great bodily harm] [permanent disability] [or] [permanent disfigurement] to (victim).

Definitions.

Give if applicable. § 825.101(3), Fla. Stat.

“Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

Give if applicable. § 825.101(4), Fla. Stat.

“Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Give in all cases. § 825.101(2), Fla. Stat.

“Caregiver” means a person who has been entrusted with or has assumed responsibility for the care or the property of [an elderly person] [a disabled adult]. “Caregiver” includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities. [“Facility” means any location providing day or residential care or treatment for elderly persons or disabled adults. The term “facility” may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental

health treatment center, or continuing care community.]

Give if “willfully” is charged within element 3a.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means knowingly, intentionally, and purposely.

Give if “culpable negligence” is charged within element 3a.

I will now define what is meant by the term “culpable negligence”: Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care for others. For negligence to be called culpable negligence, it must be gross and flagrant. The negligence must be committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily harm.

Give if element 3a is charged. § 825.102(3)(a), Fla. Stat.

“Care, supervision, and services necessary to maintain the [elderly person’s] [disabled adult’s] physical and mental health” include, but are not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the [elderly person] [disabled adult].

Give if “abuse” is charged within element 3b. § 825.102(1), Fla. Stat.

“Abuse” means the [intentional infliction of physical or psychological injury upon [an elderly person] [a disabled adult]] [commission of an intentional act that could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]].

§ 825.102(3), Fla. Stat.

Neglect of [an elderly person] [a disabled adult] may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or psychological injury, or a substantial risk of death, to [an elderly person] [a disabled adult].

If “exploitation” is charged within element 3b, insert the elements from Instruction 14.9. See § 825.103, Fla. Stat.

Lesser Included Offenses

NEGLECT OF [AN ELDERLY PERSON] [A DISABLED ADULT] CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] — 825.102(3)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Neglect of [An Elderly Person] [A Disabled Adult] Without Causing Great Bodily Harm, Permanent Disability, or Permanent Disfigurement		825.102(3)(c)	29.22
Culpable Negligence Inflicting Actual Personal Injury, if culpable negligence is charged		784.05(2)	8.9
Culpable Negligence Exposing Another Person to Personal Injury, if culpable negligence is charged		784.05(1)	8.9

Comment

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2016.