

# WEST VIRGINIA CODE: §61-2-29

## **§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.**

(a) The following words, when used in this section and sections twenty -nine-a and twenty-nine-b of this article, have the meaning ascribed, unless the context clearly indicates otherwise:

(1) "Abuse" means the intentional infliction of bodily injury on an incapacitated adult;

(2) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(3) "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of an incapacitated adult, or has voluntarily assumed responsibility for the care of an incapacitated adult. The term includes a facility operated by any public or private agency, organization or institution which provides services to, and has assumed responsibility for the care of an incapacitated adult.

(4) "Incapacitated adult" means any person eighteen years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health;

(5) "Neglect" means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult; and

(6) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(b) A caregiver who neglects an incapacitated adult or who knowingly permits another person to neglect an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail for not more than one year, or both fined and confined.

(c) A caregiver who abuses an incapacitated adult or who knowingly permits another person to abuse an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail for not less than ninety days nor more than one year, or both fined and confined.

(d) A caregiver of an incapacitated adult who intentionally and maliciously abuses or neglects an incapacitated adult and causes the incapacitated adult bodily injury is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility not less than two years nor more than ten years.

(e) A caregiver of an incapacitated adult who intentionally and maliciously abuses or neglects an incapacitated adult and causes the incapacitated adult serious bodily injury is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and imprisoned in a state correctional facility not less than three years nor more than fifteen years.

(f) Nothing in this section or in section twenty-nine-a of this article shall be construed to mean an adult is abused or neglected for the sole reason that his or her independent decision is to rely upon treatment by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization in lieu of medical treatment.

(g) Nothing in this section or in section twenty-nine-a of this article shall be construed to mean an incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or other act has been provided for by the West Virginia Health Care Decisions Act, pursuant to article thirty, chapter sixteen of this code.