WEST VIRGINIA CODE: §61-2-29

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

(a) The following words and phrases have the meanings ascribed to them when used in this section and §61-2-29a and §61-2-29b of this code, unless the context clearly indicates otherwise.

"Abuse" means the intentional infliction of bodily injury on an incapacitated adult.

"Bodily injury" means substantial physical pain, illness, or any impairment of physical condition.

"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.

"Gross neglect" or “grossly neglects” means reckless or intentional conduct, behavior, or inaction by a caregiver that evidences a clear disregard for the health, safety, or welfare of an incapacitated adult.

"Incapacitated adult" means any person 18 years of age or older who, because of advanced age, physical, mental, or other infirmity, is unable to carry out the daily activities of life necessary to sustaining life and reasonable health.

"Neglect" means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult.

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

(b) Any person who neglects an incapacitated adult or any caregiver 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) Any person who grossly neglects an incapacitated adult or any caregiver who knowingly permits another person to grossly 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 less than 60 days nor more than one year, or both fined and confined.

(d) Any person who abuses an incapacitated adult or any caregiver who knowingly permits

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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 90 days nor more than one year, or both fined and confined.

(e) Any person who abuses, grossly neglects, or neglects an incapacitated adult and by that abuse, gross neglect, or neglect creates a substantial risk of serious bodily injury or death to the incapacitated adult is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(f) Any person who abuses, grossly neglects, 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 10 years.

(g) Any person who abuses, grossly neglects, 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 15 years.

(h) Nothing in this section nor in §61-2-29a of this code may 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.

(i) Nothing in this section nor §61-2-29a of this code may 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 §16-30-1 *et seq*. of this code.

(j) An offense under this section is a separate and distinct offense in addition to any other offenses set forth in this code.

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