

FILED

2009 MAY -7 PM 3:31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2009



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 2788**

(By Delegates Perry, Staggers, Williams, Ennis, Talbott,  
Perdue, Frazier, Fragale, Miley and Caputo)



Passed April 11, 2009

In Effect Ninety Days from Passage

HB 2788  
887e GH

**E N R O L L E D**

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SECRETARY OF STATE**

**H. B. 2788**

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**(BY DELEGATES PERRY, STAGGERS, WILLIAMS, ENNIS,  
TALBOTT, PERDUE, FRAZIER, FRAGALE, MILEY AND CAPUTO)**

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**[Passed April 11, 2009; in effect ninety days from passage.]**

**AN ACT to amend and reenact §61-2-29 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all relating to protecting incapacitated adults; providing criminal penalties for the offenses of abuse or neglect of incapacitated adults; providing definitions; establishing and revising criminal penalties for the unlawful misappropriation or misuse of funds or assets of an incapacitated adult by a caregiver; and providing exceptions.**

*Be it enacted by the Legislature of West Virginia:*

That §61-2-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be

amended by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

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

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

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

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

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

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

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

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

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

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

42 (d) A caregiver of an incapacitated adult who  
43 intentionally and maliciously abuses or neglects an  
44 incapacitated adult and causes the incapacitated adult  
45 bodily injury is guilty of a felony and, upon conviction  
46 thereof, shall be fined not less than \$100 nor more than  
47 \$1,000 and imprisoned in a state correctional facility not  
48 less than two years nor more than ten years.

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

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

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

**§61-2-29a. Death of an incapacitated adult by a caregiver.**

1 (a) A caregiver who intentionally and maliciously  
2 neglects an incapacitated adult causing death is guilty of a  
3 felony and, upon conviction thereof, shall be fined not  
4 more than \$5000 and be imprisoned in a state correctional  
5 facility for a definite term of not less than five nor more  
6 than fifteen years.

7 (b) A caregiver of an incapacitated adult who causes  
8 the death of an incapacitated adult by knowingly allowing  
9 any other person to intentionally or maliciously neglect the  
10 incapacitated adult is guilty of a felony and, upon  
11 conviction thereof, shall be fined not more than \$5000 and  
12 be imprisoned in a state correctional facility for a definite  
13 term of not less than five nor more than fifteen years.

14 (c) A caregiver of an incapacitated adult who  
15 intentionally and maliciously abuses an incapacitated adult  
16 which causes the death of the incapacitated adult is guilty  
17 of a felony and, upon conviction thereof, shall be

18 imprisoned in a state correctional facility for a definite  
19 term of not less than five nor more than forty years.

20 (d) A caregiver of an incapacitated adult who causes  
21 the death of an incapacitated adult by knowingly allowing  
22 any other person to intentionally and maliciously abuse an  
23 incapacitated adult is guilty of a felony and, upon  
24 conviction thereof, shall be imprisoned in a state  
25 correctional facility for a definite term of not less than five  
26 nor more than forty years.

27 (f) The provisions of this section do not apply to any  
28 caregiver or health care provider who, without malice, fails  
29 or refuses, or allows another person to, without malice, fail  
30 or refuse, to supply an incapacitated adult with necessary  
31 medical care when the medical care conflicts with the  
32 tenets and practices of a recognized religious denomination  
33 or order of which the incapacitated adult is an adherent  
34 member.

**§61-2-29b. Unlawful expenditure or dissipation of funds of an  
incapacitated adult by as caregiver.**

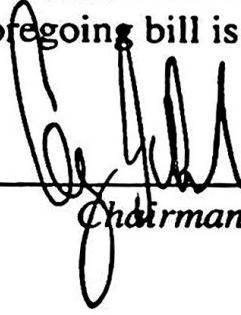
1 (a) A caregiver of an incapacitated adult who  
2 intentionally misappropriates or misuses the funds or assets  
3 of an incapacitated adult in the amount of less than \$1,000  
4 in value for the caregiver's personal use, advantage or  
5 wrongful profit or to the advantage or wrongful profit of  
6 another, is guilty of a misdemeanor and, upon conviction  
7 thereof, shall be fined not more than \$1,000 or confined in  
8 jail no more than one year, or both fined and confined.

9 (b) A caregiver of an incapacitated adult who  
10 intentionally misappropriates or misuses the funds or assets  
11 of an incapacitated adult in the amount of \$1,000 or more  
12 in value for the caregiver's personal use, advantage or

13 wrongful profit or to the advantage or wrongful profit of  
14 another, is guilty of a felony and, upon conviction thereof,  
15 shall be fined not more than \$5,000 and imprisoned in a  
16 state correctional facility not less than one nor more than  
17 ten years.

18 (c) A caregiver of an incapacitated adult, who by  
19 means of intentional intimidation, infliction of bodily  
20 injury or threats of the infliction of bodily injury to an  
21 incapacitated adult, willfully misappropriates or misuses  
22 for the caregiver's personal use, advantage or wrongful  
23 profit or to the advantage or wrongful profit of another is  
24 guilty of a felony and, upon conviction thereof, shall be  
25 fined not more than \$5000 and imprisoned in a state  
26 correctional facility not less than three nor more than  
27 fifteen years.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee


  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 7<sup>th</sup>  
day of May, 2009.

  
\_\_\_\_\_  
Governor



PRESENTED TO THE  
GOVERNOR

MAY - 6 2009

Time 3:48 p