

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4362**

BY DELEGATES BIBBY, HARDY, KUMP, WAXMAN,

ESPINOSA, HOUSEHOLDER, BARRETT, WILSON,

BARNHART, S. BROWN AND HANNA

[Introduced January 15, 2020; Referred to the  
Committee on Senior, Children, and Family Issues  
then the Judiciary.]



1 A BILL to amend and reenact §61-2-29 and §61-2-29a of the Code of West Virginia, 1931, as  
2 amended, all relating to penalties for neglect, emotional abuse or death caused by a  
3 caregiver; setting penalty for emotional abuse of an incapacitated adult; setting penalty for  
4 abuse, neglect or emotional abuse of nonverbal special needs child; setting penalty for  
5 causing death or allowing another to cause death of a nonverbal special needs child.

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

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

### **§61-2-29. Abuse or neglect of incapacitated adult or nonverbal, special needs child; definitions; penalties.**

*The amendments made to this section during the 2020 legislative session shall be known  
as Adri's and Owen's Law.*

1 (a) The following words, when used in this section and §61-2-29a and §61-2-29b of this  
2 code, have the meaning ascribed, unless the context clearly indicates otherwise:

3 (1) "Abuse" means the intentional infliction of bodily injury on an incapacitated adult or  
4 nonverbal special needs child. Abuse does not include caregiver defending themselves in  
5 management of the nonverbal special needs child.

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

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

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

17 (5) "Nonverbal special needs child" means a person under the age of 18 who has been  
18 determined to require special or added attention and specific necessities that other children do  
19 not.

20 (6) "Emotional abuse" means language or behavior that serves no legitimate purpose and  
21 is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and  
22 that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the  
23 incapacitated adult or nonverbal special needs child to whom the conduct or language is directed.

24 ~~(5)~~ (7) "Neglect" means the unreasonable failure by a caregiver to provide the care  
25 necessary to assure the physical safety or health of an incapacitated adult or nonverbal special  
26 needs child; and

27 ~~(6)~~ (8) "Serious bodily injury" means bodily injury which creates a substantial risk of death,  
28 which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged  
29 loss or impairment of the function of any bodily organ.

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

35 (c) A caregiver who abuses an incapacitated adult or nonverbal special needs child or who  
36 knowingly permits another person to abuse an incapacitated adult or nonverbal special needs  
37 child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100  
38 nor more than \$500 or confined in jail for not less than 90 days nor more than one year, or both  
39 fined and confined.

40 (d) A caregiver of an incapacitated adult or nonverbal special needs child who intentionally  
41 and maliciously abuses or neglects an incapacitated adult or nonverbal special needs child and  
42 causes the incapacitated adult or nonverbal special needs child bodily injury is guilty of a felony  
43 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and  
44 ~~imprisoned~~ confined in a state correctional facility not less than two years nor more than 10 years.

45 (e) A caregiver of an incapacitated adult or nonverbal special needs child who intentionally  
46 and maliciously abuses or neglects an incapacitated adult or nonverbal special needs child and  
47 causes the incapacitated adult or nonverbal special needs child serious bodily injury is guilty of a  
48 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and  
49 ~~imprisoned~~ confined in a state correctional facility not less than three years nor more than 15  
50 years.

51 (f) Nothing in this section or in §61-2-29a of this code shall be construed to mean an adult  
52 or nonverbal special needs child is abused or neglected for the sole reason that his or her  
53 independent decision is to rely upon treatment by spiritual means in accordance with the tenets  
54 and practices of a recognized church or religious denomination or organization in lieu of medical  
55 treatment.

56 (g) Nothing in this section or in §61-2-29a of this code shall be construed to mean an  
57 incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or other act  
58 has been provided for by the West Virginia Health Care Decisions Act, pursuant to §16-30-1 *et*  
59 *seq.* of this code.

**§61-2-29a. Death of an incapacitated adult or nonverbal special needs child by a caregiver.**

*The amendments made to this section during the 2020 legislative session shall be known as  
Emma's Law.*

1 (a) A caregiver who intentionally and maliciously neglects an incapacitated adult or  
2 nonverbal special needs child causing death is guilty of a felony and, upon conviction thereof,

3 shall be fined not more than \$5000 and be ~~imprisoned~~ confined in a state correctional facility for  
4 a definite term of not less than five nor more than 15 years.

5 (b) A caregiver of an incapacitated adult or nonverbal special needs child who causes the  
6 death of an incapacitated adult or nonverbal special needs child by knowingly allowing any other  
7 person to intentionally or maliciously neglect the incapacitated adult or nonverbal special needs  
8 child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5000 and be  
9 ~~imprisoned~~ confined in a state correctional facility for a definite term of not less than five nor more  
10 than 15 years.

11 (c) A caregiver of an incapacitated adult or nonverbal special needs child who intentionally  
12 and maliciously abuses an incapacitated adult or nonverbal special needs child which causes the  
13 death of the incapacitated adult or nonverbal special needs child is guilty of a felony and, upon  
14 conviction thereof, shall be ~~imprisoned~~ confined in a state correctional facility for a definite term  
15 of not less than five nor more than 40 years.

16 (d) A caregiver of an incapacitated adult or nonverbal special needs child who causes the  
17 death of an incapacitated adult or nonverbal special needs child by knowingly allowing any other  
18 person to intentionally and maliciously abuse an incapacitated adult or nonverbal special needs  
19 child is guilty of a felony and, upon conviction thereof, shall be ~~imprisoned~~ confined in a state  
20 correctional facility for a definite term of not less than five nor more than 40 years.

21 (e) The provisions of this section do not apply to any caregiver or health care provider  
22 who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to  
23 supply an incapacitated adult or nonverbal special needs child with necessary medical care when  
24 the medical care conflicts with the tenets and practices of a recognized religious denomination or  
25 order of which the incapacitated adult or nonverbal special needs child is an adherent member.

NOTE: The purpose of this bill is to establish penalties for emotional abuse of an incapacitated adult; to establish penalties for abuse, neglect or emotional abuse of a nonverbal special needs child; and to establish penalties for causing death of a nonverbal special needs child.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.