

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 821

By Senators Rucker, Barrett, Chapman, Clements,
Deeds, Grady, Hamilton, Hunt, Karnes, Martin,
Oliverio, Queen, Smith, Stover, Stuart, Tarr, Taylor,
Weld, Woodrum, Woelfel, Plymale, and Maroney

[Introduced February 16, 2024; referred
to the Committee on 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 abuse or neglect of incapacitated adults; establishing gross
 3 neglect of an incapacitated adult as a felony with penalties to include a fine not exceeding
 4 \$3,000 and confinement to the custody of the Division of Corrections for not less than one
 5 nor more than five years; and removing the element of malice in felony charges of certain
 6 caregiver actions resulting in death of an incapacitated adult.

Be it enacted by the Legislature of West Virginia:

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 sections twenty -nine-a and twenty-
 2 nine-b of this article, have the meaning ascribed, unless the context clearly indicates otherwise:

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

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

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

11 (4) "Gross neglect" means reckless or intentional conduct, behavior or inaction by a parent,
 12 guardian or custodian that evidences a clear disregard for an incapacitated adult's health, safety
 13 or welfare.

14 (4)(5) "Incapacitated adult" means any person ~~eighteen~~ 18 years of age or older who by
 15 reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities
 16 of life necessary to sustaining life and reasonable health;

17 (5)(6) "Neglect" means the unreasonable failure by a caregiver to provide the care

18 necessary to assure the physical safety or health of an incapacitated adult; and

19 ~~(6)~~(7) "Serious bodily injury" means bodily injury which creates a substantial risk of death,
20 which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged
21 loss or impairment of the function of any bodily organ.

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

26 (c) A caregiver who abuses an incapacitated adult or who knowingly permits another
27 person to abuse an incapacitated adult is guilty of a misdemeanor and, upon conviction thereof,
28 shall be fined not less than \$100 nor more than \$500 or confined in jail for not less than ~~ninety~~ 90
29 days nor more than one year, or both fined and confined.

30 (d) A caregiver of an incapacitated adult who ~~intentionally and maliciously abuses or~~
31 neglects an incapacitated adult and causes the incapacitated adult bodily injury is guilty of a felony
32 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and
33 imprisoned in a state correctional facility not less than two years nor more than ~~ten~~ 10 years.

34 (e) A caregiver of an incapacitated adult who ~~intentionally and maliciously abuses or~~
35 neglects an incapacitated adult and causes the incapacitated adult serious bodily injury is guilty of
36 a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000
37 and imprisoned in a state correctional facility not less than three years nor more than ~~fifteen~~ 15
38 years.

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

43 (g) A caregiver of an incapacitated adult who abuses an incapacitated adult and causes

44 the incapacitated adult bodily injury is guilty of a felony and, upon conviction thereof, shall be fined
 45 not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility not less
 46 than two years nor more than 10 years.

47 (h) A caregiver of an incapacitated adult who abuses an incapacitated adult and causes
 48 the incapacitated adult serious bodily injury is guilty of a felony and, upon conviction thereof, shall
 49 be fined not less than \$1,000 nor more than \$5,000 and imprisoned in a state correctional facility
 50 not less than three years nor more than 15 years.

51 (i) A caregiver of an incapacitated adult who abuses an incapacitated adult and by the
 52 abuse creates a substantial risk of death or bodily injury to the incapacitated adult is guilty of a
 53 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 or
 54 imprisoned in a state correctional facility for not less than one nor more than five years, or both.

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

59 ~~(g)(k)~~ Nothing in this section or in section twenty-nine-a of this article shall be construed to
 60 mean an incapacitated adult is abused or neglected if deprivation of life-sustaining treatment or
 61 other act has been provided for by the West Virginia Health Care Decisions Act, pursuant to article
 62 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~~ neglects an incapacitated adult causing
 2 death is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 and be
 3 imprisoned in a state correctional facility for a definite term of not less than five nor more than
 4 ~~fifteen~~ 15 years.

5 (b) A caregiver of an incapacitated adult who causes the death of an incapacitated adult by
 6 knowingly allowing any other person to ~~intentionally or maliciously~~ neglect the incapacitated adult

7 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 and be
8 imprisoned in a state correctional facility for a definite term of not less than five nor more than
9 ~~fifteen~~ 15 years.

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

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

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

NOTE: The purpose of this bill is to establish the same criminal elements and criminal penalties for abuse or neglect of incapacitated adults as are applicable to abuse or neglect of children.

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