

§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.

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

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

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

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

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

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

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

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

(b) A caregiver of an incapacitated adult who intentionally misappropriates or misuses the funds or assets of an incapacitated adult in the amount of \$1,000 or more in value for the caregiver's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 and imprisoned in a state correctional facility not less than one nor more than ten years.

(c) A caregiver of an incapacitated adult, who by means of intentional intimidation, infliction of bodily injury or threats of the infliction of bodily injury to an incapacitated adult, willfully misappropriates or misuses for the caregiver's personal use, advantage or wrongful profit or to the advantage or wrongful profit of another is guilty of a felony and,

upon conviction thereof, shall be fined not more than \$5000 and imprisoned in a state correctional facility not less than three nor more than fifteen years.