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WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4433**

(By Mr. Speaker, Mr. Kiss, and Delegates Pino,  
Webb, Stemple, Schadler, Craig and Amores)



Passed March 13, 2004

In Effect Ninety Days from Passage

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## H. B. 4433

(BY MR. SPEAKER, MR. KISS, AND DELEGATES PINO,  
WEBB, STEMPLE, SCHADLER, CRAIG AND AMORES)

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AN ACT to amend and reenact §61-2-29 of the code of West Virginia, 1931, as amended, relating to abuse or neglect of an incapacitated adult; adding the crimes of abuse and neglect of an elder person age sixty-five years or older and the crime of misuse and misappropriation of the funds or assets of an elder person; and creating the crime of misuse or misappropriation of the funds or assets of an elder person through deception, intimidation, coercion, the infliction of bodily injury or the threat of bodily injury; and penalties.

*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 to read as follows:

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

**§61-2-29. Abuse or neglect of incapacitated adult; abuse or neglect of elder person; misappropriation or misuse of assets or funds of elder person; misappropriation or misuse of assets or funds of elder person through deception, intimidation, coercion, bodily injury or threats of bodily injury; penalties.**

1 (a) The following words when used in this section have the  
2 meaning ascribed, unless the context clearly indicates other-  
3 wise:

4 (1) “Abuse” means the infliction or threat to inflict physical  
5 pain or injury on an incapacitated adult or elder person;

6 (2) “Caregiver” means an adult who has or shares actual  
7 physical possession or care of an incapacitated adult or elder  
8 person on a full-time or temporary basis, regardless of whether  
9 such person has been designated as a guardian of such adult by  
10 any contract, agreement or legal proceeding. Caregiver includes  
11 health care providers, family members, and any person who  
12 otherwise voluntarily accepts a supervisory role towards an  
13 incapacitated adult or elder person;

14 (3) “Neglect” means: (i) The failure to provide the necessi-  
15 ties of life to an incapacitated adult or elder person; or (ii) the  
16 unlawful expenditure or willful dissipation of the funds or other  
17 assets owned or paid to or for the benefit of an incapacitated  
18 adult or elder person;

19 (4) “Incapacitated adult” means any person who by reason  
20 of physical, mental or other infirmity is unable to physically  
21 carry on the daily activities of life necessary to sustaining life  
22 and reasonable health;

23 (5) “Elder” means a person age sixty-five years or older;

24 (6) “Bodily injury” means substantial physical pain, illness  
25 or any impairment of physical condition; and

26 (7) “Custodian” means a person over the age of eighteen  
27 years who has or shares actual physical possession of care and  
28 custody of an elder person on a full-time or temporary basis,  
29 regardless of whether the person has been granted custody of  
30 the elder person by any contract, agreement or legal proceeding.

31 (b) Any person, caregiver, guardian or custodian who  
32 neglects an incapacitated adult or elder person, or who know-  
33 ingly permits another person to neglect said adult, is guilty of  
34 a misdemeanor and, upon conviction thereof, shall be fined not  
35 less than five hundred dollars nor more than fifteen hundred  
36 dollars, or imprisoned in the county or regional jail for not less  
37 than ninety days nor more than one year, or both fined and  
38 imprisoned.

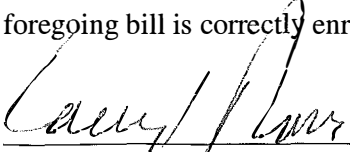
39 (c) Any person, caregiver, guardian or custodian who  
40 intentionally abuses or neglects an incapacitated adult or elder  
41 person is guilty of a felony and, upon conviction thereof, shall,  
42 in the discretion of the court, be confined in a state correctional  
43 facility for not less than two nor more than ten years.

44 (d) If any person, caregiver, guardian or custodian of an  
45 elder person or incapacitated adult, willfully misappropriates,  
46 or misuses the funds or assets of an incapacitated adult or elder  
47 person for the person’s, caregiver’s, guardian’s, or custodian’s  
48 personal use, advantage or wrongful profit or to the advantage  
49 or wrongful profit of another, he or she is guilty of a felony and,  
50 upon conviction thereof, shall be fined not more than five  
51 thousand dollars and incarcerated in a correctional facility not  
52 less than two nor more than ten years.

53 (e) If any person, caregiver, guardian or custodian of an  
54 elder person or incapacitated adult, by means of deception,  
55 intimidation, coercion, infliction of bodily injury or threats of  
56 the infliction of bodily injury, willfully misappropriates, or  
57 misuses the funds or assets of an incapacitated adult or elder  
58 person for the person's, caregiver's, guardian's, or custodian's  
59 personal use, advantage or wrongful profit or to the advantage  
60 or wrongful profit of another, he or she is guilty of a felony and,  
61 upon conviction thereof, shall be fined not more than five  
62 thousand dollars and incarcerated in a correctional facility not  
63 less than five nor more than fifteen years.

64 (f) Nothing in this article shall be construed to mean an  
65 adult is abused or neglected for the sole reason that his or her  
66 independent decision is to rely upon treatment by spiritual  
67 means in accordance with the tenets and practices of a recog-  
68 nized church or religious denomination or organization in lieu  
69 of medical treatment.

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.

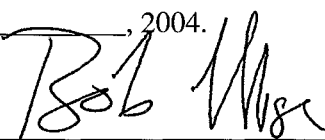
  
\_\_\_\_\_  
Clerk of the Senate

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

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

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

The within is approved this the 5<sup>th</sup>  
day of April, 2004.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

DATE 3/31/04

TIME 10:15 am