

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 796

An Act to amend and reenact § 18.2-369 of the Code of Virginia, relating to abuse and neglect of incapacitated adults; penalty.

[H 378]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-369 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section shall be guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this section shall be guilty of a Class 6 felony.

In any event, if a violation results in serious bodily injury or disease to another, conviction of an offense shall be punishable as a Class 6 felony. For purposes of this subsection, "serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life threatening internal injuries or conditions, whether or not caused by trauma.

B. For purposes of this section:

"Abuse" means (i) ~~malicious~~, *knowing and willful* conduct that causes physical injury or pain or (ii) ~~malicious~~, *knowing and willful* use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person eighteen years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the *knowing and willful* failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

C. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; ~~or~~ (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) *incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care.*

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.