

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 234

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

[H 1674]

Approved March 5, 2019

**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~~ *is* 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 and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) 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 18 years of age or older who is impaired by reason of mental illness, intellectual disability, 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.

"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.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person *that was given when he was not incapacitated* or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Health Care Decisions Act (§ 54.1-2981 et seq.) *that was given when he was not incapacitated* or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person *that were made known when he was not incapacitated* 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 are declaratory of existing law.**