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State of Minnesota

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HOUSE OF REPRESENTATIVES

Unofficial Engrossment

House Engrossment of a Senate File

EIGHTY-SEVENTH SESSION

S. F. No. 1586

Senate Author(s): Limmer, Harrington, Ortman, Sparks and Hann

House Action

03/19/2012 Companion to House File No. 1945. (Authors:Gottwalt, Lohmer, Peppin, Hilstrom and Huntley)

Read First Time and Referred to the Committee on Ways and Means

03/20/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act
1.2 relating to public safety; adding a felony-level penalty and affirmative defenses
1.3 to the vulnerable adult neglect crime; amending Minnesota Statutes 2010,
1.4 section 609.233.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 609.233, is amended to read:

1.7 609.233 CRIMINAL NEGLECT.

1.8 Subdivision 1. Gross misdemeanor crime. A caregiver or operator who
1.9 intentionally neglects a vulnerable adult or knowingly permits conditions to exist that
1.10 result in the abuse or neglect of a vulnerable adult is guilty of a gross misdemeanor. For
1.11 purposes of this section, "abuse" has the meaning given in section 626.5572, subdivision
1.12 2, and "neglect" means a failure to provide a vulnerable adult with necessary food,
1.13 clothing, shelter, health care, or supervision.

1.14 Subd. 1a. Felony deprivation. A caregiver or operator who intentionally deprives a
1.15 vulnerable adult of necessary food, clothing, shelter, health care, or supervision, when the
1.16 caregiver or operator is reasonably able to make the necessary provisions, is guilty of a
1.17 felony and may be sentenced as provided in subdivision 2a, if:

- 1.18 (1) the caregiver or operator knows or has reason to know the deprivation could
1.19 likely result in substantial bodily harm or great bodily harm to the vulnerable adult; or
1.20 (2) the deprivation occurred over an extended period of time.

1.21 Subd. 2. Exemptions. A vulnerable adult is not neglected or deprived under
1.22 subdivision 1 or 1a for the sole reason that:

- 1.23 (1) the vulnerable adult or a person with authority to make health care decisions
1.24 for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or 524.5-101 to

2.1 524.5-502, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent,
2.2 consistent with that authority and within the boundary of reasonable medical practice, to
2.3 any therapeutic conduct, including any care, service, or procedure to diagnose, maintain,
2.4 or treat the physical or mental condition of the vulnerable adult or, where permitted under
2.5 law, to provide nutrition and hydration parenterally or through intubation; this paragraph
2.6 does not enlarge or diminish rights otherwise held under law by:

2.7 (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an
2.8 involved family member, to consent to or refuse consent for therapeutic conduct; or

2.9 (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;

2.10 (2) the vulnerable adult, a person with authority to make health care decisions for the
2.11 vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means
2.12 or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu
2.13 of medical care, provided that this is consistent with the prior practice or belief of the
2.14 vulnerable adult or with the expressed intentions of the vulnerable adult; or

2.15 (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or
2.16 emotional dysfunction or undue influence, engages in consensual sexual contact with: (i) a
2.17 person including a facility staff person when a consensual sexual personal relationship
2.18 existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless
2.19 of whether the consensual sexual personal relationship existed prior to the caregiving
2.20 relationship.

2.21 Subd. 2a. **Penalties.** A person who violates subdivision 1a may be sentenced as
2.22 follows:

2.23 (1) if the conduct results in great bodily harm to the vulnerable adult, imprisonment
2.24 for not more than ten years or payment of a fine of not more than \$10,000, or both; or

2.25 (2) if the conduct results in substantial bodily harm to the vulnerable adult,
2.26 imprisonment for not more than five years or payment of a fine of not more than \$5,000,
2.27 or both.

2.28 Subd. 2b. **Affirmative defenses.** It shall be an affirmative defense to a prosecution
2.29 under subdivision 1 or 1a, if proven by a preponderance of evidence, that:

2.30 (1) the defendant is an individual employed by a facility or operator and does
2.31 not have managerial or supervisory authority, and was unable to reasonably make the
2.32 necessary provisions because of inadequate staffing levels, inadequate supervision, or
2.33 institutional policies;

2.34 (2) the defendant is a facility, operator, or an employee of a facility or operator in
2.35 a position of managerial or supervisory authority, and did not knowingly, intentionally,

3.1 or recklessly permit criminal acts by its employees or agents that resulted in the harm to
3.2 the vulnerable adult; or

3.3 (3) the defendant is a caregiver and failed to perform acts necessary to prevent the
3.4 applicable level of harm, if any, to the vulnerable adult because the caregiver was acting
3.5 reasonably and necessarily to provide care to another identified vulnerable adult.

3.6 For these affirmative defenses, a defendant bears only the burden of production. A
3.7 defendant's failure to meet the burden of production does not relieve the state of its burden
3.8 of persuasion as to all elements of the offense.

3.9 **EFFECTIVE DATE.** This section is effective August 1, 2012, and applies to crimes
3.10 committed on or after that date.