

**CHAPTER 175—S.F.No. 1586**

*An act relating to public safety; adding a felony-level penalty and affirmative defenses to the vulnerable adult neglect crime; amending Minnesota Statutes 2010, sections 609.233; 609.255, subdivision 3.*

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

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

**609.233 CRIMINAL NEGLECT.**

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

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

(1) the caregiver or operator knows or has reason to know the deprivation could likely result in substantial bodily harm or great bodily harm to the vulnerable adult; or

(2) the deprivation occurred over an extended period of time.

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

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or 524.5-101 to 524.5-502, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

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

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

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu

of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult; or

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

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

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

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

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

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

(2) the defendant is a facility, an operator, or an employee of a facility or operator in a position of managerial or supervisory authority, and did not knowingly, intentionally, or recklessly permit criminal acts by its employees or agents that resulted in the harm to the vulnerable adult; or

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

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

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

Sec. 2. Minnesota Statutes 2010, section 609.255, subdivision 3, is amended to read:

Subd. 3. **Unreasonable restraint of children.** (a) A parent, legal guardian, or caretaker who intentionally subjects a child under the age of 18 years to unreasonable physical confinement or restraint by means including but not limited to, tying, locking, caging, or chaining for a prolonged period of time and in a cruel manner which is excessive under the circumstances, is guilty of unreasonable restraint of a child and, except as provided in paragraph (b) or (c), may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) If the confinement or restraint results in demonstrable bodily harm, the person may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both.

(c) If the confinement or restraint results in substantial bodily harm, ~~that~~ the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

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

Presented to the governor April 16, 2012

Signed by the governor April 18, 2012, 10:15 a.m.