

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 188 Session of 2011

INTRODUCED BY DePASQUALE, BISHOP, JOHNSON, STABACK, BRENNAN,  
HORNAMAN, COHEN, FRANKEL, GEIST, GILLESPIE, GINGRICH,  
JOSEPHS, KORTZ, KULA, MUNDY, MURPHY, M. O'BRIEN, PYLE,  
SANTARSIERO, STURLA, SWANGER, VULAKOVICH AND WHITE,  
JANUARY 24, 2011

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 24, 2011

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in assault, further providing for the  
3 offense of neglect of care-dependent person; and providing  
4 for the offense of abuse of care-dependent person.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 2713(a) and (b) and the definition of  
8 "caretaker" in subsection (f) of Title 18 of the Pennsylvania  
9 Consolidated Statutes are amended and subsection (f) is amended  
10 by adding definitions to read:

11 § 2713. Neglect of care-dependent person.

12 (a) Offense defined.--A caretaker is guilty of neglect of a  
13 care-dependent person if he:

14 (1) Intentionally, knowingly or recklessly causes bodily  
15 injury [or], serious bodily injury or death by failing to  
16 provide treatment, care, goods or services necessary to  
17 preserve the health, safety or welfare of a care-dependent

1 person for whom he is responsible to provide care.

2 (2) Intentionally or knowingly uses a physical restraint  
3 or chemical restraint or medication on a care-dependent  
4 person, or isolates a care-dependent person contrary to law  
5 or regulation, such that bodily injury [or], serious bodily  
6 injury or death results.

7 (3) Intentionally or knowingly endangers the welfare of  
8 a care-dependent person for whom he is responsible to provide  
9 care by failing to provide treatment, care, goods or services  
10 necessary to preserve the health, safety or welfare of the  
11 care-dependent person.

12 (b) Penalty.--

13 (1) A violation of subsection (a)(1) constitutes a  
14 misdemeanor of the first degree if the victim suffers bodily  
15 injury.

16 (2) A violation of subsection (a)(1) constitutes a  
17 felony of the first degree if the victim suffers serious  
18 bodily injury.

19 (3) A violation of subsection (a)(2) constitutes a  
20 misdemeanor of the first degree if the victim suffers bodily  
21 injury.

22 (4) A violation of subsection (a)(2) constitutes a  
23 felony of the first degree if the victim suffers serious  
24 bodily injury.

25 (5) A violation of subsection (a)(1) or (2) constitutes  
26 a felony of the first degree if the victim suffers death, and  
27 upon conviction, shall be punishable by a term of  
28 imprisonment not to exceed 30 years, a fine of \$25,000, or  
29 both.

30 (6) A violation of subsection (a)(3) constitutes a

misdemeanor of the second degree. However, where there is a  
course of conduct of endangering the welfare of a care-  
dependent person, the offense constitutes a felony of the  
third degree.

\* \* \*

(f) Definitions.--As used in this section, the following  
words and phrases shall have the meanings given to them in this  
subsection:

\* \* \*

"Caretaker." Any person who:

(1) is an owner, operator, manager or employee of a  
nursing home, personal care home, private care residence,  
domiciliary care home, community residential facility,  
intermediate care facility for the mentally retarded, adult  
daily living center, home health agency or home health  
service provider whether licensed or unlicensed;

(2) provides care to a care-dependent person in the  
setting described in paragraph (1); or

(3) has an obligation to care for a care-dependent  
person for monetary consideration in the settings described  
in paragraph (1) or in the care-dependent person's home.

"Legal entity." Any individual, partnership, unincorporated  
association, corporation or governing authority.

\* \* \*

"Private care residence." A private residence:

(1) in which the owner of the residence or the legal  
entity responsible for the operation of the residence, for  
monetary consideration, provides, or assists with or arranges  
for the provision of, food, room, shelter, clothing, personal  
care or health care in the residence, for a period exceeding

1 24 hours, to less than four care-dependent persons who are  
2 not relatives of the owner; and

3 (2) which is not required to be licensed as a long-term  
4 care nursing facility, as defined in section 802.1 of the act  
5 of July 19, 1979 (P.L.130, No.48), known as the Health Care  
6 Facilities Act. The term does not include domiciliary care as  
7 defined in section 2202-A of the act of April 9, 1929  
8 (P.L.177, No.175), known as The Administrative Code of 1929.  
9 The term does not include a facility which provides  
10 residential care for less than four care-dependent adults and  
11 which is regulated by the Department of Public Welfare.

12 Section 2. Title 18 is amended by adding a section to read:

13 § 2713.1. Abuse of care-dependent person.

14 (a) Offense defined.--A caretaker is guilty of abuse of a  
15 care-dependent person if he:

16 (1) With the intent to harass, annoy or alarm a care-  
17 dependent person he:

18 (i) strikes, shoves, kicks or otherwise subjects or  
19 attempts to subject a care-dependent person to or  
20 threatens a care-dependent person with physical contact;

21 (ii) engages in a course of conduct or repeatedly  
22 commits acts which serve no legitimate purposes;

23 (iii) communicates to a care-dependent person any  
24 lewd, lascivious, threatening or obscene words, language,  
25 drawings or caricatures; or

26 (iv) communicates repeatedly with the care-dependent  
27 person at extremely inconvenient hours.

28 (2) Commits an offense under section 2709.1 (relating to  
29 stalking) against a care-dependent person.

30 (b) Penalty.--

1       (1) A violation of subsection (a)(1) constitutes a  
2       misdemeanor of the first degree.

3       (2) A violation of subsection (a)(2) constitutes a  
4       felony of the third degree.

5       (c) Report during investigation.--When in the course of  
6       conducting any regulatory or investigative responsibility, the  
7       Department of Aging, the Department of Health or the Department  
8       of Public Welfare has a reasonable cause to believe that a  
9       caretaker has engaged in conduct in violation of this section, a  
10       report shall be made immediately to the local law enforcement  
11       agency or to the Office of Attorney General.

12       (d) Enforcement.--

13       (1) The district attorneys of the several counties shall  
14       have authority to investigate and to institute criminal  
15       proceedings for any violations of this section.

16       (2) In addition to the authority conferred upon the  
17       Attorney General under the act of October 15, 1980 (P.L.950,  
18       No.164), known as the Commonwealth Attorneys Act, the  
19       Attorney General shall have the authority to investigate and  
20       institute criminal proceedings for any violation of this  
21       section. A person charged with a violation of this section by  
22       the Attorney General shall not have standing to challenge the  
23       authority of the Attorney General to investigate or prosecute  
24       the case, and, if any such challenge is made, the challenge  
25       shall be dismissed and no relief shall be available in the  
26       courts of this Commonwealth to the person making the  
27       challenge.

28       (e) Definitions.--As used in this section, the following  
29       words and phrases shall have the meanings given to them in this  
30       subsection:

1     "Care-dependent person." An adult who, due to physical or  
2 cognitive disability or impairment, requires assistance to meet  
3 the adult's needs for food, shelter, clothing, personal care or  
4 health care.

5     "Caretaker." This term shall have the same meaning given to  
6 it under section 2713 (relating to neglect of care-dependent  
7 person).

8     "Person." A natural person, corporation, partnership,  
9 unincorporated association or other business entity.

10     Section 3. This act shall take effect in 60 days.