

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1124 Session of 2017

INTRODUCED BY COX, BAKER, BIZZARRO, BOBACK, D. COSTA, DAVIDSON, DAVIS, DRISCOLL, EVERETT, FARRY, GILLEN, GODSHALL, GOODMAN, KAUFFMAN, MACKENZIE, McNEILL, MILNE, NEILSON, O'BRIEN, PASHINSKI, ROZZI, SAYLOR, WARD, WATSON, KORTZ AND JAMES, MAY 5, 2017

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, JUNE 18, 2018

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 for
4 the offense of abuse of care-dependent person.

5 The General Assembly finds and declares that it is the
6 legislative intent in enacting this act that a distinction
7 should be recognized between intentional acts and negligent
8 acts, particularly when this act is enforced against family
9 members of a care-dependent person who are not trained to
10 provide care.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 2713(a) and (b) and the definition of
14 "caretaker" in subsection (f) of Title 18 of the Pennsylvania
15 Consolidated Statutes are amended, THE SECTION IS AMENDED BY <--
16 ADDING A SUBSECTION and subsection (f) is amended by adding

1 definitions to read:

2 § 2713. Neglect of care-dependent person.

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

5 (1) Intentionally, knowingly or recklessly causes bodily
6 injury [or], serious bodily injury or death by failing to
7 provide treatment, care, goods or services necessary to
8 preserve the health, safety or welfare of a care-dependent
9 person for whom he is responsible to provide care.

10 (2) Intentionally or knowingly uses a physical restraint
11 or chemical restraint or medication on a care-dependent
12 person, or isolates a care-dependent person contrary to law
13 or regulation, such that bodily injury [or], serious bodily
14 injury or death results.

15 (3) Intentionally, knowingly or recklessly endangers the
16 welfare of a care-dependent person for whom he is responsible
17 by failing to provide treatment, care, goods or services
18 necessary to preserve the health, safety or welfare of the
19 care-dependent person.

20 (b) Penalty.--

21 (1) A violation of subsection (a)(1) constitutes a
22 misdemeanor of the first degree if the victim suffers bodily
23 injury.

24 (2) A violation of subsection (a)(1) constitutes a
25 felony of the first degree if the victim suffers serious
26 bodily injury or death.

27 (3) A violation of subsection (a)(2) constitutes a
28 misdemeanor of the first degree if the victim suffers bodily
29 injury.

30 (4) A violation of subsection (a)(2) constitutes a

1 felony of the first degree if the victim suffers serious
2 bodily injury or death.

3 (5) A violation of subsection (a)(3) constitutes a
4 misdemeanor of the second degree, except that where there is
5 a course of conduct of endangering the welfare of a care-
6 dependent person, the offense constitutes a felony of the
7 third degree.

8 * * *

9 (E.1) RECKLESS CONDUCT.--FOR PURPOSES OF THIS SECTION, A <--
10 PERSON ACTS RECKLESSLY WHEN THE PERSON CONSCIOUSLY DISREGARDS A
11 SUBSTANTIAL AND UNJUSTIFIABLE RISK TO THE CARE-DEPENDENT PERSON.

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

15 * * *

16 "Caretaker." Any person who:

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

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

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

28 (1) ~~is~~ IS an owner, operator, manager or employee of any <--
29 of the following LICENSED OR UNLICENSED ENTITIES: <--

30 (i) A nursing home, personal care home, assisted

1 living facility, private care residence or domiciliary
2 CARE home. <--

3 (ii) A community residential facility or
4 intermediate care facility for a person with mental
5 disabilities.

6 (iii) An adult daily living center.

7 (iv) A home health service provider whether licensed <--
8 or unlicensed.

9 (v) ~~An entity licensed under~~ A HEALTH CARE FACILITY <--
10 AS DEFINED IN SECTION 802.1 OF the act of July 19, 1979
11 (P.L.130, No.48), known as the Health Care Facilities
12 Act-; <--

13 (2) ~~Provides~~ PROVIDES care to a care-dependent person in <--
14 the settings described under paragraph (1)-; <--

15 (3) ~~Has~~ HAS an obligation to care for a care-dependent <--
16 person for monetary consideration in the settings described
17 under paragraph (1)-; <--

18 (4) ~~Is~~ IS an adult who resides with a care-dependent <--
19 person and who has a legal duty to provide care or who has
20 voluntarily assumed an obligation to provide care because of
21 a familial relationship, contract or court order-; <--

22 (5) ~~Is~~ IS an adult who does not reside with a care- <--
23 dependent person but who has a legal duty to provide care or
24 who has affirmatively assumed a responsibility for care, or
25 who has responsibility by contract or court order.

26 "Legal entity." An individual, partnership, unincorporated
27 association, corporation or governing authority.

28 * * *

29 "Private care residence." <--

30 (1) A private residence:

1 ~~(i) in which the owner of the residence or the legal~~
2 ~~"PRIVATE CARE RESIDENCE." A PRIVATE RESIDENCE:~~ <--

3 ~~(1) IN WHICH THE OWNER OF THE RESIDENCE OR THE LEGAL~~
4 ~~entity responsible for the operation of the residence, for~~
5 ~~monetary consideration, provides or assists with or arranges~~
6 ~~for the provision of food, room, shelter, clothing, personal~~
7 ~~care or health care in the residence, for a period exceeding~~
8 ~~24 hours, to fewer than four care-dependent persons who are~~
9 ~~not relatives of the owner; and~~ <--

10 ~~(ii) that is not required to be licensed as a long-~~
11 ~~term care nursing facility, as defined in section 802.1-~~
12 ~~of the Health Care Facilities Act.~~

13 ~~(2) The term does not include:~~

14 ~~(i) Domiciliary care as defined in section 2202 A of~~
15 ~~the act of April 9, 1929 (P.L.177, No.175), known as The~~
16 ~~Administrative Code of 1929.~~

17 ~~(ii) A facility that provides residential care for~~
18 ~~fewer than four care dependent adults and is regulated by~~
19 ~~the Department of Human Services.~~

20 ~~(2) (I) THAT IS NOT REQUIRED TO BE LICENSED AS A LONG-~~ <--
21 ~~TERM CARE NURSING FACILITY, AS DEFINED IN SECTION 802.1~~
22 ~~OF THE HEALTH CARE FACILITIES ACT; AND~~

23 ~~(II) THAT IS NOT IDENTIFIED IN PARAGRAPH (1) OF THE~~
24 ~~DEFINITION OF "CARETAKER."~~

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

26 § 2713.1. Abuse of care-dependent person.

27 (a) Offense defined.--A caretaker is guilty of abuse of a
28 care-dependent person if the caretaker:

29 (1) With the intent to harass, annoy or alarm a care-
30 dependent person:

1 (i) strikes, shoves, kicks or otherwise subjects or
2 attempts to subject a care-dependent person to or
3 threatens a care-dependent person with physical contact;

4 (ii) engages in a course of conduct or repeatedly
5 commits acts that serve no legitimate purpose;

6 (iii) communicates to a care-dependent person any
7 lewd, lascivious, threatening or obscene words, language,
8 drawings or caricatures; or

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

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

13 (b) Penalty.--

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

16 (2) A violation of subsection (a) (2) constitutes a
17 felony of the third degree.

18 (c) Report during investigation.--When in the course of
19 conducting a regulatory or investigative responsibility, the
20 Department of Aging, the Department of Health or the Department
21 of Human Services has reasonable cause to believe that a
22 caretaker has engaged in conduct in violation of this section OR <--
23 SECTION 2713, a report shall be made immediately to the local
24 law enforcement agency or to the Office of Attorney General.

25 (d) Enforcement.--

26 (1) The district attorneys of the several counties shall
27 have authority to investigate and institute criminal
28 proceedings for a violation of this section OR SECTION 2713. <--

29 (2) In addition to the authority conferred upon the
30 Attorney General under the act of October 15, 1980 (P.L.950,

1 No.164), known as the Commonwealth Attorneys Act, the
2 Attorney General shall have the authority to investigate and
3 institute criminal proceedings for a violation of this
4 section. A person charged with a violation of this section by
5 the Attorney General shall not have standing to challenge the
6 authority of the Attorney General to investigate or prosecute
7 the case, and, if the challenge is made, the challenge shall
8 be dismissed and no relief shall be available in the courts
9 of this Commonwealth to the person making the challenge.

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

13 "Care-dependent person." The term shall have the same
14 meaning given to it under section 2713 (relating to neglect of
15 care-dependent person).

16 "Caretaker." The term shall have the same meaning given to
17 it under section 2713.

18 "Person." The term shall have the same meaning given to it
19 under section 2713.

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