

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 704 Session of 2021

INTRODUCED BY BAKER, MARTIN, VOGEL AND SANTARSIERO, MAY 21, 2021

REFERRED TO JUDICIARY, MAY 21, 2021

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
 2 Consolidated Statutes, in sexual offenses, further providing
 3 for the offense of institutional sexual assault.

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

6 Section 1. Section 3124.2(a.5) of Title 18 of the
 7 Pennsylvania Consolidated Statutes, added July 23, 2020
 8 (P.L.641, No.63), is amended and the section is amended by
 9 adding a subsection to read:

10 § 3124.2. Institutional sexual assault.

11 * * *

12 (a.5) Consent not a defense.--Consent is not a defense to a
 13 violation of subsection (a), (a.1), (a.2), (a.3) [or], (a.4) or
 14 (a.6).

15 (a.6) Caretakers.--

16 (1) Except as provided in paragraph (2) and in sections
 17 3121, 3122.1, 3123, 3124.1 and 3125, a caretaker commits a
 18 felony of the third degree if the caretaker engages in sexual
 19 intercourse, deviate sexual intercourse or indecent contact

1 with a care-dependent person who receives care, services or
2 treatment in or from a facility, private care residence or
3 the care-dependent person's residence.

4 (2) Paragraph (1) does not apply if the victim and
5 defendant are spouses, persons living as spouses or current
6 sexual or intimate partners whose relationship preexisted the
7 caretaker relationship.

8 (3) As used in this subsection, the following terms
9 shall have the meanings given to them in this paragraph:

10 (i) "Care-dependent person." An adult who, due to
11 physical or cognitive disability or impairment, requires
12 assistance to meet the needs for food, shelter, clothing,
13 personal care or health care.

14 (ii) "Caretaker." A person who is any of the
15 following:

16 (A) An owner, operator, manager or employee of a
17 facility or private care residence.

18 (B) An individual who provides care to a care-
19 dependent person in a facility, private care
20 residence or the care-dependent person's residence.

21 (C) An individual who has an obligation to
22 provide care to a care-dependent person for monetary
23 consideration in a facility, private care residence
24 or the care-dependent person's residence.

25 (D) An individual who does not reside with a
26 care-dependent person but who, with respect to the
27 care-dependent person, has:

28 (I) a legal duty to provide care;

29 (II) affirmatively assumed a responsibility
30 to provide care; or

1 (III) responsibility by contract or court
2 order to provide care.

3 (iii) "Facility." Any of the following:

4 (A) A health care facility, as defined in
5 section 802.1 of the act of July 19, 1979 (P.L.130,
6 No.48), known as the Health Care Facilities Act.

7 (B) A facility as defined in section 1001 of the
8 act of June 13, 1967 (P.L.31, No.21), known as the
9 Human Services Code.

10 (C) An intermediate care facility as defined in
11 section 801-C of the Human Services Code.

12 (D) A domiciliary care home as defined in 6 Pa.
13 Code, Ch. 21 (relating to domiciliary care services
14 for adults).

15 (iv) "Private care residence." A private residence:

16 (A) In which the owner of the residence or the
17 legal entity responsible for the operation of the
18 residence, for monetary consideration, provides or
19 assists with or arranges for the provision of food,
20 room, shelter, clothing, personal care or health care
21 in the residence, for a period exceeding 24 hours, to
22 fewer than four care-dependent persons who are not
23 relatives of the owner.

24 (B) That is not:

25 (I) required to be licensed as a long-term
26 care nursing facility, as defined in section
27 802.1 of the Health Care Facilities Act; and

28 (II) specified in subparagraph (iii)(A).

29 * * *

30 Section 2. This act shall take effect in 60 days.