

CRIMES CODE (18 PA.C.S.) - OFFENSE OF NEGLECT OF CARE-DEPENDENT
PERSON AND OFFENSE OF ABUSE OF CARE-DEPENDENT PERSON

Act of Jun. 28, 2018, P.L. 371, No. 53

CL. 18

Session of 2018

No. 2018-53

HB 1124

AN ACT

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

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

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

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

§ 2713. Neglect of care-dependent person.

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

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

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

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

(b) Penalty.--

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

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

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

(4) A violation of subsection (a)(2) constitutes a felony of the first degree if the victim suffers serious bodily injury **or death**.

(5) A violation of subsection (a)(3) constitutes a misdemeanor of the second degree, except that 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.

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(e.1) Reckless conduct.--For purposes of this section, a person acts recklessly when the person consciously disregards a substantial and unjustifiable risk to the care-dependent person.

(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, 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.]

(1) is an owner, operator, manager or employee of any of the following licensed or unlicensed entities:

(i) A nursing home, personal care home, assisted living facility, private care residence or domiciliary care home.

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

(iii) An adult daily living center.

(iv) A home health service provider.

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

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

(3) has an obligation to care for a care-dependent person for monetary consideration in the settings described under paragraph (1);

(4) is an adult who resides with a care-dependent person and who has a legal duty to provide care or who has voluntarily assumed an obligation to provide care because of a familial relationship, contract or court order; or

(5) is an adult who does not reside with a care-dependent person but who has a legal duty to provide care or who has affirmatively assumed a responsibility for care, or who has responsibility by contract or court order.

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

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"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

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

(2) (i) that is not required to be licensed as a long-term care nursing facility, as defined in section 802.1 of the Health Care Facilities Act; and

(ii) that is not identified in paragraph (1) of the definition of "caretaker."

Section 2. Title 18 is amended by adding a section to read:
§ 2713.1. Abuse of care-dependent person.

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

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

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

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

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

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

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

(b) Penalty.--

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

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

(c) Report during investigation.--When, in the course of conducting a regulatory or investigative responsibility, the Department of Aging, the Department of Health or the Department of Human Services has reasonable cause to believe that a caretaker has engaged in conduct in violation of this section or section 2713 (relating to neglect of care-dependent person), a report shall be made immediately to the local law enforcement agency or to the Office of Attorney General.

(d) Enforcement.--

(1) The district attorneys of the several counties shall have authority to investigate and institute criminal proceedings for a violation of this section or section 2713.

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

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

"Care-dependent person." The term shall have the same meaning given to it under section 2713.

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

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

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

APPROVED--The 28th day of June, A.D. 2018.

TOM WOLF