

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 31 Session of 2013

INTRODUCED BY GINGRICH, STEPHENS, SCHLOSSBERG, SAYLOR, HESS, MCGEEHAN, MAJOR, MILLARD, COHEN, KORTZ, BOBACK, KAUFFMAN, CUTLER, CONKLIN, SWANGER, WATSON, KULA, MUNDY, KAVULICH, O'NEILL, C. HARRIS, MARSICO, M. K. KELLER, FLECK AND PICKETT, JANUARY 4, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 4, 2013

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
 2 Consolidated Statutes, further providing for the offense of
 3 neglect of care-dependent person; and providing for the
 4 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 by failing
9 to provide treatment, care, goods or services necessary to
10 preserve the health, safety or welfare of the care-dependent
11 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 or death.

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 or death.

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

30 * * *

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

4 * * *

5 "Caretaker." Any person who:

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

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

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

17 (1) Is an owner, operator, manager or employee of any of
18 the following:

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

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

25 (iii) An adult daily living center.

26 (iv) A home health service provider whether licensed
27 or unlicensed.

28 (v) An entity licensed under the act of July 19,
29 1979 (P.L.130, No.48), known as the Health Care
30 Facilities Act.

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

3 (3) Has an obligation to care for a care-dependent
4 person for monetary consideration in the settings described
5 under paragraph (1).

6 (4) Is an adult who resides with a care-dependent person
7 and who has a legal duty to provide care or who has
8 voluntarily assumed an obligation to provide care because of
9 a familial relationship, contract or court order.

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

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

16 * * *

17 "Private care residence."

18 (1) A private residence:

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

26 (ii) which is not required to be licensed as a long-
27 term care nursing facility, as defined in section 802.1
28 of the act of July 19, 1979 (P.L.130, No.48), known as
29 the Health Care Facilities Act.

30 (2) The term does not include:

1 (i) Domiciliary care as defined in section 2202-A of
2 the act of April 9, 1929 (P.L.177, No.175), known as The
3 Administrative Code of 1929.

4 (ii) A facility which provides residential care for
5 fewer than four care-dependent adults and which is
6 regulated by the Department of Public Welfare.

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

8 § 2713.1. Abuse of care-dependent person.

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

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

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

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

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

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

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

25 (b) Penalty.--

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

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

30 (c) Report during investigation.--When in the course of

1 conducting any regulatory or investigative responsibility, the
2 Department of Aging, the Department of Health or the Department
3 of Public Welfare has a reasonable cause to believe that a
4 caretaker has engaged in conduct in violation of this section, a
5 report shall be made immediately to the local law enforcement
6 agency or to the Office of Attorney General.

7 (d) Enforcement.--

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

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

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

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

28 "Caretaker." The term shall have the same meaning given to
29 it under section 2713 (relating to neglect of care-dependent
30 person).

1 "Person." The term shall have the same meaning given to it
2 under section 2713 (relating to neglect of care-dependent
3 person).

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