

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 AND KORTZ, MAY 5, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 11, 2017

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  
17 definitions to read:

1 § 2713. Neglect of care-dependent person.

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

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

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

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

19 (b) Penalty.--

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

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

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

29 (4) A violation of subsection (a)(2) constitutes a  
30 felony of the first degree if the victim suffers serious

1       bodily injury or death.

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

7       \* \* \*

8       ~~(e.1) Construction. Nothing in this section may be~~       <--  
9 ~~construed to impose criminal liability on a caretaker who makes~~  
10 ~~a good faith effort to provide care to a care dependent person.~~

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

14       \* \* \*

15       "Caretaker." Any person who:

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

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

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

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

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

1           home.

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

5           (iii) An adult daily living center.

6           (iv) A home health service provider whether licensed  
7           or unlicensed.

8           (v) An entity licensed under the act of July 19,  
9           1979 (P.L.130, No.48), known as the Health Care  
10          Facilities Act.

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

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

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

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

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

26          \* \* \*

27          "Private care residence."

28          (1) A private residence:

29                  (i) in which the owner of the residence or the legal  
30                  entity responsible for the operation of the residence,

1 for monetary consideration, provides or assists with or  
2 arranges for the provision of food, room, shelter,  
3 clothing, personal care or health care in the residence,  
4 for a period exceeding 24 hours, to fewer than four care-  
5 dependent persons who are not relatives of the owner; and  
6 (ii) that is not required to be licensed as a long-  
7 term care nursing facility, as defined in section 802.1  
8 of the Health Care Facilities Act.

9 (2) The term does not include:

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

13 (ii) A facility that provides residential care for  
14 fewer than four care-dependent adults and is regulated by  
15 the Department of Human Services.

16 Section 2. Title 18 is amended by adding a section to read:  
17 § 2713.1. Abuse of care-dependent person.

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

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

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

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

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

30 (iv) communicates repeatedly with the care-dependent

1 person at extremely inconvenient hours.

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

4 (b) Penalty.--

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

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

9 (c) Report during investigation.--When in the course of  
10 conducting a regulatory or investigative responsibility, the  
11 Department of Aging, the Department of Health or the Department  
12 of Human Services has reasonable cause to believe that a  
13 caretaker has engaged in conduct in violation of this section, a  
14 report shall be made immediately to the local law enforcement  
15 agency or to the Office of Attorney General.

16 (d) Enforcement.--

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

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

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

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

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

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

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