

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 215 Session of 2015

INTRODUCED BY GINGRICH, BISHOP, KOTIK, GODSHALL, DAVIDSON, MILLARD, WATSON, SAYLOR, BOBACK, COHEN, DEASY, BAKER, KAUFFMAN, A. HARRIS, GOODMAN, PETRI, M. K. KELLER, DAVIS, FARRY, ROZZI AND MOUL, JANUARY 23, 2015

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, MARCH 22, 2016

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
4 for the 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 SECTION 1. THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT <--
12 IS THE LEGISLATIVE INTENT IN ENACTING THIS ACT THAT A
13 DISTINCTION SHOULD BE RECOGNIZED BETWEEN INTENTIONAL ACTS AND
14 NEGLIGENT ACTS, PARTICULARLY WHEN THIS ACT IS ENFORCED AGAINST
15 FAMILY MEMBERS OF A CARE-DEPENDENT PERSON WHO ARE NOT TRAINED TO
16 PROVIDE CARE.

17 SECTION 2. SECTION 2713(A) AND (B) AND THE DEFINITION OF

1 "CARETAKER" IN SUBSECTION (F) OF TITLE 18 OF THE PENNSYLVANIA
2 CONSOLIDATED STATUTES ARE AMENDED, THE SECTION IS AMENDED BY
3 ADDING A SUBSECTION AND SUBSECTION (F) IS AMENDED BY ADDING
4 DEFINITIONS TO READ:

5 § 2713. Neglect of care-dependent person.

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

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

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

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

23 (b) Penalty.--

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

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

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

1 misdemeanor of the first degree if the victim suffers bodily
2 injury.

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

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

11 * * *

12 (E.1) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE <--
13 CONSTRUED TO IMPOSE CRIMINAL LIABILITY ON A CARETAKER WHO MAKES
14 A GOOD FAITH EFFORT TO PROVIDE CARE TO A CARE-DEPENDENT PERSON.

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

18 * * *

19 "Caretaker." Any person who:

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

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

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

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

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

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

9 (iii) An adult daily living center.

10 (iv) A home health service provider whether licensed
11 or unlicensed.

12 (v) An entity licensed under the act of July 19,
13 1979 (P.L.130, No.48), known as the Health Care
14 Facilities Act.

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

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

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

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

28 "Legal entity." Any individual, partnership, unincorporated
29 association, corporation or governing authority.

30 * * *

1 "Private care residence."

2 (1) A private residence:

3 (i) in which the owner of the residence or the legal
4 entity responsible for the operation of the residence,
5 for monetary consideration, provides or assists with or
6 arranges for the provision of food, room, shelter,
7 clothing, personal care or health care in the residence,
8 for a period exceeding 24 hours, to fewer than four care-
9 dependent persons who are not relatives of the owner; and

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

14 (2) The term does not include:

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

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

21 Section ~~2~~ 3. Title 18 is amended by adding a section to <--

22 read:

23 § 2713.1. Abuse of care-dependent person.

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

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

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

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

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

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

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

10 (b) Penalty.--

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

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

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

22 (d) Enforcement.--

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

26 (2) In addition to the authority conferred upon the
27 Attorney General under the act of October 15, 1980 (P.L.950,
28 No.164), known as the Commonwealth Attorneys Act, the
29 Attorney General shall have the authority to investigate and
30 institute criminal proceedings for any violation of this

1 section. A person charged with a violation of this section by
2 the Attorney General shall not have standing to challenge the
3 authority of the Attorney General to investigate or prosecute
4 the case, and, if the challenge is made, the challenge shall
5 be dismissed and no relief shall be available in the courts
6 of this Commonwealth to the person making the challenge.

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

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

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

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

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

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