

No. 1995-28

AN ACT

HB 247

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of neglect of care-dependent person; further providing for insurance fraud; and further prohibiting prostitution.

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

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section 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 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 results.

(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.

(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.

(c) Report during investigation.—*When in the course of conducting any regulatory or investigative responsibility, the Department of Aging, the Department of Health or the Department of Public Welfare has a reasonable cause to believe that a care-dependent person or care-dependent persons residing in a facility have suffered bodily injury or been unlawfully restrained in violation of subsection (a)(1) or (2), 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 to institute criminal proceedings for any violations of this section.

(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 any violation of this section or any series of such violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. 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 any such 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) Treatment in conformance with care-dependent person's right to accept or refuse services.—A caretaker or any other individual or facility may offer an affirmative defense to charges filed pursuant to this section if the caretaker, individual or facility can demonstrate through a preponderance of the evidence that the alleged violations result directly from:

(1) the caretaker's, individual's or facility's lawful compliance with a care-dependent person's advance directive for health care as provided in 20 Pa.C.S. Ch. 54 (relating to advance directive for health care);

(2) the caretaker's, individual's or facility's lawful compliance with the care-dependent person's written, signed and witnessed instructions, composed when the care-dependent person is competent as to the treatment he wishes to receive;

(3) the caretaker's, individual's or facility's lawful compliance with the direction of the care-dependent person's attorney-in-fact acting pursuant to a lawful durable power of attorney; or

(4) the caretaker's, individual's or facility's lawful compliance with a "Do Not Resuscitate" order written and signed by the care-dependent person's attending physician.

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

"Care-dependent person." Any adult who, due to physical or cognitive disability or impairment, requires assistance to meet his needs for food, shelter, clothing, personal care or health care.

"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, 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.

"Person." A natural person, corporation, partnership, unincorporated association or other business entity.

Section 2. Section 4117(k)(2) of Title 18 is repealed.

Section 3. Section 5902(c) of Title 18 is amended and the section is amended by adding subsections to read:

§ 5902. Prostitution and related offenses.

* * *

(a.1) Grading of offenses under subsection (a).—An offense under subsection (a) constitutes a felony of the third degree if the person who committed the offense was knowingly human immunodeficiency virus (HIV) positive or infected with the acquired immune deficiency syndrome (AIDS) virus.

* * *

(c) Grading of offenses under subsection (b).—

(1) An offense under subsection (b) constitutes a felony of the third degree if:

- (i) the offense falls within paragraphs (b)(1), (b)(2) or (b)(3);**
- (ii) the actor compels another to engage in or promote prostitution;**
- (iii) the actor promotes prostitution of a child under the age of 16 years, whether or not he is aware of the age of the child; [or]**
- (iv) the actor promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible[.]; or**
- (v) the person knowingly promoted prostitution of another who was HIV positive or infected with the AIDS virus.**

(2) Otherwise the offense is a misdemeanor of the second degree.

* * *

(e.1) Grading of offenses under subsection (e).—An offense under subsection (e) constitutes a felony of the third degree if the person who committed the offense was knowingly human immunodeficiency virus (HIV) positive or infected with acquired immune deficiency syndrome (AIDS) virus.

* * *

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

APPROVED—The 6th day of July, A.D. 1995.

THOMAS J. RIDGE