

Act 28 of 1995

The act is effective for conduct committed after September 6, 1995.

Who is protected by the Act? Individuals, 18 years of age and above, who due to physical or cognitive disability or impairment, require assistance to meet their needs for: food, shelter, clothing, personal care, or health care; and who reside in either a nursing home, domiciliary care home, community residential facility; or who receive home health services in their residence; or who receive services from another who has an obligation to care for the person for monetary consideration in either the care dependent person's home or in one of the previously described facilities; or who receives services from an adult daily living center.

Who is subject to prosecution under the Act? Caretakers are subject to prosecution under the Act. A caretaker is any person who: Owns, operates, manages or is employed in 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 who has responsibility to care for a care-dependent person. A caretaker is also any person who has an obligation to care for a care-dependent person in any described facility or the care-dependent's home and who receives monetary consideration for the care.

A caretaker can be a natural person, a corporation, a partnership, an unincorporated association or any other business entity. (This does not include governmental entities, boards or commissions).

What triggers prosecution? (a) Intentionally, knowingly, or recklessly causing bodily injury or serious bodily injury to a care-dependent person by failure to provide treatment, care, goods or services necessary to preserve the health, safety, or welfare of a care-dependent person for who he is responsible to provide care. (b) A caretaker may also be prosecuted if he intentionally or knowingly uses a physical restraint or a chemical restraint or medication on a care-dependent person, or isolates that person, contrary to law or regulation with resulting bodily or serious bodily injury.

What must be observed in order to implement the provisions of the Act? The care-dependent person must have suffered either bodily injury or serious bodily injury. Bodily injury is defined by the Crimes Code at §2301 as, "Impairment of physical condition or substantial pain." Serious bodily injury is defined by the Crimes Code at §2301 as, "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ."

Who must report? Personnel of PDA (or AAA's), DoH or DPW when they have reasonable cause to believe that a care-dependent person residing in a facility has suffered bodily injury or been unlawfully restrained in violation of the Act, shall report immediately to the local law enforcement agency or to the Office of the Attorney General. The Departments must make these reports when they become aware of care-dependent person's mistreatment in conducting regulatory or investigative responsibilities. (This would include licensure visits and inspections based on complaints.)

Act 13 of 1997

Purpose: Requires employee or an administrator of a facility who has reasonable cause to believe that a recipient is a victim of abuse to immediately report the abuse. The effective date was December 10, 1997.

Abuse: The occurrence of one or more of the following acts: (1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish; (2) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health; (3) Sexual harassment; and/or (4) Sexual abuse which is intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest. No older adult shall be found to be abused solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

Facility: The type of facilities impacted by the Act are: long-term care nursing facility, personal care home, domiciliary care home, home health agency and an adult daily living center.

Recipient: An individual who receives care, services or treatment in or from a facility.

Serious Bodily Injury: An injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

Serious Physical Injury: An injury that causes a person severe pain or significantly impairs a person's physical functioning, either permanently or temporarily.

Sexual Abuse: Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

Suspicious Death

Process: When an employee or administrator has reasonable cause to believe that a recipient is a victim of abuse they shall immediately make an oral report to the local AAA. Within 48 hours of making the oral report the employee or administrator shall make a written report to the AAA.

If the employee or administrator believes the abuse involves sexual abuse, serious physical injury, serious bodily injury or suspicious death they are also required to make an immediate oral report to law enforcement and to PDA in addition to the oral and written report to the AAA. Within 48 hours of making the oral report the employee or administrator shall follow-up with a written report to law enforcement officials.

Within 48 hours of receiving a report of abuse involving sexual abuse, serious physical injury, serious bodily injury, or suspicious death, the local AAA shall forward a written report to PDA.

When the local AAA receives a report concerning suspicious death, the AAA will make an oral report to the coroner and follow-up with a written report within 24 hours.

Failure to comply with Act 13 can result in administrative and criminal penalties. The licensing agency for the facility will have jurisdiction to determine any administrative violation and may issue a civil penalty up to \$2,500. Additional criminal fines and penalties of up to one year imprisonment are included for criminal violation of the Act.

Act 169 of 1996

Purpose: Requires criminal history background checks for employees of NH, PCH, Dom Care, Home Health and ADC. Employees with convictions for prohibitive offenses are precluded from working in these facilities. The Act takes effect July 1, 1998.

Prohibitive Offenses: Criminal Homicide, Aggravated Assault, Kidnapping, Unlawful Restraint, Rape, Statutory Sexual Assault, Involuntary Deviate Sexual Intercourse, Sexual Assault, Aggravated Indecent Assault, Indecent Assault, Arson and Related Offenses, Burglary, Robbery, Theft (Felony or 2 Misdemeanors), Forgery, Securing Execution of Documents by Deception, Incest, Concealing Death of a Child, Felony Drug Offense, Child Endangerment, Dealing in Infant Children, Intimidation of a Witness, Retaliation Against a Witness, Prostitution (Felony Offense), Obscene or Other Sexual Materials and Corruption of Minors.

Employees: An employee is defined as any applicant or new employee who has been hired since July 1, 1998. Includes contract employees with direct contact with residents or unsupervised access to their personal living quarters. Also includes persons employed or contracted to provide care to a care-dependent individual for monetary consideration in the individual's residence.

Facility: The types of facilities covered by the Act are as follows: domiciliary care homes, home health agencies, long-term care nursing facilities, adult day care facilities, and personal care homes. The Act also includes any private or public organization which provides care to a care-dependent person in their residence.

Process: An applicant/new hire who has been a resident of the state for the last two years uninterrupted needs to obtain a "Request for Criminal History Background Check" from the nearest PA State Police barracks. The applicant/new hire will complete the application and forward it with a money order or cashiers check for \$10 made payable to "Commonwealth of PA" to the State Police for processing. The Act does allow for the provisional hire of an employee for 30 days if the employee can provide proof they have applied for the background check. If there is no criminal history record, the PSP will forward a letter stating the same. If there is a criminal record, the PSP will forward a copy of the rap sheet to the requester.

If the applicant has not been a PA resident for the two years before application, they will need to have a PSP criminal history background check completed and an FBI Background Check. The applicant will obtain an FBI fingerprint card either from their prospective employer or by contacting PDA. After obtaining the fingerprint card the applicant will go to police to be fingerprinted. The completed card (fingerprints and requested information) will be forwarded to PDA along with a money order, cashier's check, or certified check for \$30.25 made payable to the "Commonwealth of Pennsylvania".

The fingerprints will be forwarded to the FBI for processing by PDA. The normal processing time is between 60 and 90 days. The Act does allow for the provisional hire of an employee who requires an FBI check for 90 days, if the employee can provide proof they have applied for the background check. When the application has been processed by the FBI, the results will be returned to PDA. When there is no criminal history record information recorded, a clearance letter will be sent to the applicant/employer. If there is an open disposition for a prohibitive offense, a letter will be sent to the applicant requesting the disposition of the case for determination of eligibility for employment. If there is a conviction for one of the prohibitive offenses, a prohibitive hire letter will be forwarded to the applicant/employer.