

No. 2016-111

AN ACT

HB 1581

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in assault, providing for the offense of strangulation.

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:

§ 2718. Strangulation.

(a) Offense defined.—A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by:

- (1) applying pressure to the throat or neck; or*
- (2) blocking the nose and mouth of the person.*

(b) Physical injury.—Infliction of a physical injury to a victim shall not be an element of the offense. The lack of physical injury to a victim shall not be a defense in a prosecution under this section.

(c) Affirmative defense.—It shall be an affirmative defense to a charge under this section that the victim consented to the defendant's actions as provided under section 311 (relating to consent).

(d) Grading.—

(1) Except as provided in paragraph (2) or (3), a violation of this section shall constitute a misdemeanor of the second degree.

(2) A violation of this section shall constitute a felony of the second degree if committed:

- (i) against a family or household member as defined in 23 Pa.C.S. § 6102 (relating to definitions);*
- (ii) by a caretaker against a care-dependent person; or*
- (iii) in conjunction with sexual violence as defined in 42 Pa.C.S. § 62A03 (relating to definitions) or conduct constituting a crime under section 2709.1 (relating to stalking) or Subchapter B of Chapter 30 (relating to prosecution of human trafficking).*

(3) A violation of this section shall constitute a felony of the first degree if:

(i) at the time of commission of the offense, the defendant is subject to an active protection from abuse order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a sexual violence or intimidation protection order under 42 Pa.C.S. Ch. 62A (relating to protection of victims of sexual violence or intimidation) that covers the victim;

(ii) the defendant uses an instrument of crime as defined in section 907 (relating to possessing instruments of crime) in commission of the offense under this section; or

(iii) *the defendant has previously been convicted of an offense under paragraph (2) or a substantially similar offense in another jurisdiction.*

(e) *Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:*

"Care-dependent person." An 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 any of the following:*

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

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

(iii) *An adult daily living center.*

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

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

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

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

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

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

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

"Private care residence."

(1) *A private residence:*

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

(ii) *which is not required to be licensed as a long-term care nursing facility, as defined in section 802.1 of the Health Care Facilities Act.*

(2) *The term does not include:*

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

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

Section 2. This act shall take effect in 60 days.

APPROVED—The 26th day of October, A.D. 2016

TOM WOLF