

By Ms. Melconian, a petition (accompanied by bill, Senate, No. 1083) of Thomas F. Reilly, Attorney General of the Commonwealth, Linda J. Melconian, Lida E. Harkins, Steven A. Tolman and other members of the General Court for legislation relative to crimes against the elderly and persons with disabilities. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT RELATIVE TO CRIMES AGAINST THE ELDERLY AND PERSONS WITH DISABILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby
2 amended by striking all of section 72K, as appearing in the 2000
3 Official Addition and inserting in place thereof the following
4 section:—

5 Section 72K. (a) As used in this section, the following words
6 shall, unless the context clearly requires otherwise, have the
7 following meanings:— “Bodily injury”, substantial impairment of
8 the physical condition including, but not limited to, any burn,
9 fracture of any bone, subdural hematoma, injury to any internal
10 organ, or any injury which occurs as the result of repeated harm to
11 any bodily function or organ, including human skin. “Serious
12 bodily injury”, bodily injury which results in a permanent disfig-
13 urement, protracted loss or impairment of a bodily function, limb
14 or organ, or substantial risk of death.

15 “Sexual assault”, a violation or attempt to commit a violation of
16 section 13B, section 13F, section 13H, section 22, section 22A,
17 section 24, or section 24B of chapter 265 or section 3 of chapter 272.

18 (b) The attorney general may file a civil action against a person
19 who commits abuse, mistreatment or neglect of a patient or resident
20 or who misappropriates patient or resident property, or against a
21 person who negligently permits or causes another to commit abuse,

22 mistreatment or neglect of a patient or resident or who misappropriates
23 patient or resident property. The civil penalty for such abuse,
24 mistreatment, neglect or misappropriation shall not exceed: \$5,000 if
25 no bodily injury results; \$10,000 if bodily injury results; \$20,000 if
26 sexual assault or serious bodily injury results; and \$50,000 if death
27 results. Section 60B of chapter 231 shall not apply to an action
28 brought by the attorney general pursuant to this section. Nothing in
29 this section shall preclude the filing of any action brought by the
30 attorney general or a private party pursuant to chapter 93A or any
31 action by the department pursuant to this chapter.

1 SECTION 2. Section 13H of chapter 265 is hereby amended by
2 adding the following paragraph:—

3 Whoever commits an indecent assault and battery on an elder
4 or person with a disability, as defined in section 13K, shall be
5 punished by imprisonment in the state prison for not more than 10
6 years, or by imprisonment in the house of correction for not more
7 than 2½ years, and whoever commits a second or subsequent such
8 offense shall be punished by imprisonment in the state prison for
9 not more than 20 years; provided, however, that a prosecution
10 commenced under this section shall not be placed on file or con-
11 tinued without a finding.

1 SECTION 3. Paragraph (a) of section 13K of said chapter 265, as
2 so appearing, is hereby amended by inserting after the word “mean-
3 ings:—,” in line 3, the following definition:— “Abuse” physical con-
4 tact which either harms or creates a substantial likelihood of harm.

1 SECTION 4. Paragraph (a) of section 13K of chapter 265, as so
2 appearing, is hereby further amended by amending the definition
3 of “Caretaker” as so appearing by amending the phrase “physical
4 care” as it so appears in the first sentence of said definition by
5 deleting the word “physical” and by further amending said phrase
6 “physical care” as it so appears in sub-paragraphs (i), (iii) and (iv)
7 of said definition by deleting the word “physical”.

1 SECTION 5. Said paragraph (a) of section 13K of said chapter
2 265, as so appearing, is hereby further amended by inserting after
3 the definition of “Elder” the following 2 definitions:—

4 “Mistreatment”, the use of medications or treatments, isolation,
5 or physical or chemical restraints which harms or creates a sub-
6 stantial likelihood of harm.

7 “Neglect”, the failure to provide treatment or services neces-
8 sary to maintain the health and safety and which either harms or
9 creates a substantial likelihood of harm.

1 SECTION 6. Said paragraph (a) of section 13K of said chapter
2 265, as so appearing, is hereby further amended by adding the
3 definition of “person with a disability” as so appearing by deleting
4 said definition and placing in its stead the following:—

5 “Person with disability,” a person with a permanent or long-
6 term physical or mental impairment that prevents or restricts
7 the individual’s ability to provide for his or her own care or pro-
8 tection.

1 SECTION 7. Said section 13K of said chapter 265, as so
2 appearing, is hereby further amended by inserting after the defini-
3 tion of “Serious bodily injury” and before paragraph (b) the
4 following language:— (b) Whoever commits an assault and battery
5 upon an elder or person with a disability shall be punished by
6 imprisonment in the state prison for not more than three years or
7 by imprisonment in a house of correction for not more than two
8 and one-half years, or by a fine of not more than \$1,000, or both
9 such fine and imprisonment.

10 Said section 13K of said chapter 265, as so appearing, is hereby
11 further amended as follows:

12 By renumbering paragraph (b) as it now appears as paragraph
13 (c) and renumbering paragraph (c) as it now appears as paragraph
14 (d) and by inserting the following language after the renumbered
15 paragraph (d):— (e) Whoever, being a caretaker of an elder or
16 person with a disability, wantonly or recklessly commits or per-
17 mits another to commit abuse, neglect or mistreatment upon such
18 elder or person with a disability, shall be punished by imprison-
19 ment in the state prison for not more than three years, or impris-
20 onment in the house of correction for not more than 2½ years, or
21 by a fine of not more than \$5,000, or by both such fine and
22 imprisonment. Said section 13K of chapter 265, as so appearing,
23 is hereby further amended as follows:

24 By renumbering paragraph (d) as it now appears as paragraph
25 (f), renumbering paragraph (e) as it now appears as (g) and
26 renumbering paragraph (f) as it now appears as paragraph (h).

1 SECTION 8. Said chapter 265 is hereby further amended by
2 striking out section 38.