

SENATE BILL NO. 360—SENATORS CANNIZZARO, FORD, SPEARMAN,
WOODHOUSE, RATTI; ATKINSON, CANCELA, DENIS,
FARLEY, MANENDO, PARKS AND SEGERBLOM

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the protection of older persons, vulnerable persons and persons in need of a guardian. (BDR 15-965)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§7)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the protection of certain persons; revising the definitions of the terms “abuse” and “exploitation” as they relate to prohibited acts against an older person or a vulnerable person; revising provisions relating to immunity from civil or criminal liability for certain acts; increasing the maximum term of imprisonment for a person who commits certain acts against an older person or a vulnerable person that result in substantial bodily or mental harm to or the death of the person; revising the penalties for committing certain subsequent acts against an older person or a vulnerable person; establishing the Wards’ Bill of Rights; requiring each court having jurisdiction of the persons and estates of minors, incompetent persons or persons of limited capacity to perform certain actions to ensure the Wards’ Bill of Rights is available to the public; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law defines various terms for purposes of the provisions of law
- 2 relating to the abuse, neglect, exploitation, isolation or abandonment of an older
- 3 person or a vulnerable person. (NRS 200.5092) **Section 1** of this bill revises the



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4 definitions of the terms "abuse" and "exploitation" to include additional acts which
5 constitute an offense.

6 Existing law extends immunity from civil or criminal liability to every person
7 who, in good faith: (1) participates in the making of a report concerning the abuse,
8 neglect, exploitation, isolation or abandonment of an older person or a vulnerable
9 person; (2) submits information contained in such a report to the licensing board; or
10 (3) causes or conducts an investigation of alleged abuse, neglect, exploitation,
11 isolation or abandonment of an older person or a vulnerable person. (NRS
12 200.5096) **Section 2** of this bill provides that such immunity does not extend to any
13 person who abused, neglected, exploited, isolated or abandoned the older person or
14 vulnerable person who is the subject of the report or investigation or any person
15 who committed certain other acts relating to the abuse, neglect, exploitation,
16 isolation or abandonment of the older person or vulnerable person.

17 Existing law establishes the penalties to be imposed upon a person who abuses,
18 neglects, exploits, isolates or abandons an older person or a vulnerable person. Any
19 person who has assumed responsibility to care for an older person or a vulnerable
20 person and who neglects the older person or vulnerable person or commits certain
21 other related acts, thereby causing substantial bodily or mental harm to or the death
22 of the older person or vulnerable person, is guilty of a category B felony and must
23 be punished by imprisonment in the state prison for a minimum term of not less
24 than 2 years and a maximum term of not more than 6 years. (NRS 200.5099)
25 **Section 3** of this bill increases the maximum term of imprisonment for the
26 commission of such acts from 6 years to 20 years. **Section 3** also revises the
27 penalties for certain offenses relating to the neglect or exploitation of an older
28 person or a vulnerable person and provides that the commission of a second or
29 subsequent offense is punishable as a category B felony.

30 Existing law establishes provisions governing the appointment of a guardian for
31 a ward. (Chapter 159 of NRS) **Section 6** of this bill establishes the Wards' Bill of
32 Rights, which sets forth certain specific rights of wards. **Section 7** of this bill
33 requires each court having jurisdiction of the persons and estates of minors,
34 incompetent persons or persons of limited capacity to: (1) make the Wards' Bill of
35 Rights readily available to the public; (2) maintain a copy of the Wards' Bill of
36 Rights in the court for reproduction and distribution to the public; and (3) ensure
37 that the Wards' Bill of Rights is posted in a conspicuous place in the court and on
38 the court's Internet website.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 200.5092 is hereby amended to read as
2 follows:

3 200.5092 As used in NRS 200.5091 to 200.50995, inclusive,
4 unless the context otherwise requires:

5 1. "Abandonment" means:

6 (a) Desertion of an older person or a vulnerable person in an
7 unsafe manner by a caretaker or other person with a legal duty of
8 care; or

9 (b) Withdrawal of necessary assistance owed to an older person
10 or a vulnerable person by a caretaker or other person with an
11 obligation to provide services to the older person or vulnerable
12 person.



1 2. "Abuse" means willful:

2 (a) Infliction of pain or injury on an older person or a vulnerable
3 person;

4 (b) Deprivation of food, shelter, clothing or services which are
5 necessary to maintain the physical or mental health of an older
6 person or a vulnerable person;

7 (c) Infliction of psychological or emotional anguish, pain or
8 distress on an older person or a vulnerable person through any act,
9 including, without limitation:

10 (1) Threatening, controlling or socially isolating the older
11 person or vulnerable person;

12 (2) Disregarding the needs of the older person or vulnerable
13 person; or

14 (3) Harming, damaging or destroying any property of the
15 older person or vulnerable person, including, without limitation,
16 pets;

17 (d) Nonconsensual sexual contact with an older person or a
18 vulnerable person, including, without limitation:

19 (1) An act that the older person or vulnerable person is
20 unable to understand or to which the older person or vulnerable
21 person is unable to communicate his or her objection; or

22 (2) Intentional touching, either directly or through the
23 clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks
24 of the older person or vulnerable person; or

25 (e) Permitting any of the acts described in paragraphs (a) to (d),
26 inclusive, to be committed against an older person or a vulnerable
27 person ~~H~~; or

28 *(f) Permitting an older person or a vulnerable person to be*
29 *placed in a situation in which any of the acts described in*
30 *paragraphs (a) to (d), inclusive, are likely to occur.*

31 3. "Exploitation" means any act taken by a person who has the
32 trust and confidence of an older person or a vulnerable person or
33 any use of the power of attorney or guardianship of an older person
34 or a vulnerable person to:

35 (a) Obtain control, through deception, intimidation or undue
36 influence, over the older person's or vulnerable person's money,
37 assets or property with the intention of permanently depriving the
38 older person or vulnerable person of the ownership, use, benefit or
39 possession of his or her money, assets or property; ~~to~~

40 (b) Convert money, assets or property of the older person or
41 vulnerable person with the intention of permanently depriving the
42 older person or vulnerable person of the ownership, use, benefit or
43 possession of his or her money, assets or property ~~H~~; or



1 ***(c) Deny adequate food, shelter, clothing or services which are***
2 ***necessary to maintain the physical or mental health of the older***
3 ***person or vulnerable person.***

4 ➤ As used in this subsection, “undue influence” means the
5 improper use of power or trust in a way that deprives a person of his
6 or her free will and substitutes the objectives of another person. The
7 term does not include the normal influence that one member of a
8 family has over another.

9 4. “Isolation” means preventing an older person or a vulnerable
10 person from having contact with another person by:

11 (a) Intentionally preventing the older person or vulnerable
12 person from receiving visitors, mail or telephone calls, including,
13 without limitation, communicating to a person who comes to visit
14 the older person or vulnerable person or a person who telephones
15 the older person or vulnerable person that the older person or
16 vulnerable person is not present or does not want to meet with or
17 talk to the visitor or caller knowing that the statement is false,
18 contrary to the express wishes of the older person or vulnerable
19 person and intended to prevent the older person or vulnerable person
20 from having contact with the visitor;

21 (b) Physically restraining the older person or vulnerable person
22 to prevent the older person or vulnerable person from meeting with
23 a person who comes to visit the older person or vulnerable person;
24 or

25 (c) Permitting any of the acts described in paragraphs (a) and (b)
26 to be committed against an older person or a vulnerable person.

27 ➤ The term does not include an act intended to protect the property
28 or physical or mental welfare of the older person or vulnerable
29 person or an act performed pursuant to the instructions of a
30 physician of the older person or vulnerable person.

31 5. “Neglect” means the failure of a person or a manager of a
32 facility who has assumed legal responsibility or a contractual
33 obligation for caring for an older person or a vulnerable person or
34 who has voluntarily assumed responsibility for his or her care to
35 provide food, shelter, clothing or services which are necessary to
36 maintain the physical or mental health of the older person or
37 vulnerable person.

38 6. “Older person” means a person who is 60 years of age or
39 older.

40 7. “Protective services” means services the purpose of which is
41 to prevent and remedy the abuse, neglect, exploitation, isolation and
42 abandonment of older persons. The services may include:

43 (a) The investigation, evaluation, counseling, arrangement and
44 referral for other services and assistance; and



1 (b) Services provided to an older person or a vulnerable person
2 who is unable to provide for his or her own needs.

3 8. "Vulnerable person" means a person 18 years of age or older
4 who:

5 (a) Suffers from a condition of physical or mental incapacitation
6 because of a developmental disability, organic brain damage or
7 mental illness; or

8 (b) Has one or more physical or mental limitations that restrict
9 the ability of the person to perform the normal activities of daily
10 living.

11 **Sec. 2.** NRS 200.5096 is hereby amended to read as follows:

12 200.5096 ~~Immunity~~

13 *1. Except as otherwise provided in subsection 2, immunity*
14 *from civil or criminal liability extends to every person who,*
15 *pursuant to NRS 200.5091 to 200.50995, inclusive, in good faith:*

16 ~~1-1~~ (a) Participates in the making of a report;

17 ~~1-2~~ (b) Causes or conducts an investigation of alleged abuse,
18 neglect, exploitation, isolation or abandonment of an older person or
19 a vulnerable person; or

20 ~~1-3~~ (c) Submits information contained in a report to a licensing
21 board pursuant to subsection 4 of NRS 200.5095.

22 *2. The immunity provided in subsection 1 does not extend to*
23 *any person who has:*

24 (a) *Abused, neglected, exploited, isolated or abandoned the*
25 *older person or vulnerable person who is the subject of the report*
26 *or investigation as prohibited by NRS 200.5099;*

27 (b) *Conspired with another to commit abuse, exploitation or*
28 *isolation of the older person or vulnerable person who is the*
29 *subject of the report or investigation as prohibited by NRS*
30 *200.50995; or*

31 (c) *Aided and abetted in or was an accessory to the abuse,*
32 *neglect, exploitation, isolation or abandonment of the older person*
33 *or vulnerable person who is the subject of the report or*
34 *investigation or the conspiracy to commit abuse, exploitation or*
35 *isolation of the older person or vulnerable person.*

36 **Sec. 3.** NRS 200.5099 is hereby amended to read as follows:

37 200.5099 1. Except as otherwise provided in subsection 6,
38 any person who abuses an older person or a vulnerable person is
39 guilty:

40 (a) For the first offense, of a gross misdemeanor; or

41 (b) For ~~any~~ *the second and all* subsequent ~~offense~~ *offenses*
42 *or if the person has been previously convicted of violating a law of*
43 *any other jurisdiction that prohibits the same or similar conduct, of a*
44 *category B felony and shall be punished by imprisonment in the*



1 state prison for a minimum term of not less than 2 years and a
2 maximum term of not more than 6 years,
3 **↳** unless a more severe penalty is prescribed by law for the act or
4 omission which brings about the abuse.

5 2. Except as otherwise provided in subsection 7, any person
6 who has assumed responsibility, legally, voluntarily or pursuant to a
7 contract, to care for an older person or a vulnerable person and who
8 **†**

9 ~~—(a) Neglects†~~ **neglects** the older person or vulnerable person,
10 causing the older person or vulnerable person to suffer physical pain
11 or mental suffering **†**

12 ~~—(b) Permits†~~ , **permits** or allows the older person or vulnerable
13 person to suffer unjustifiable physical pain or mental suffering **†** or

14 ~~†(c) Permits†~~ **permits** or allows the older person or vulnerable
15 person to be placed in a situation where the older person or
16 vulnerable person may suffer physical pain or mental suffering as
17 the result of abuse or neglect **†**

18 **↳†** is guilty :

19 **(a) For the first offense, of a gross misdemeanor ; or**

20 **(b) For the second and all subsequent offenses, of a category B**
21 **felony and shall be punished by imprisonment in the state prison**
22 **for a minimum term of not less than 2 years and a maximum term**
23 **of not more than 6 years,**

24 **↳** unless a more severe penalty is prescribed by law for the act or
25 omission which brings about the abuse or neglect.

26 3. Except as otherwise provided in subsection 4, any person
27 who exploits an older person or a vulnerable person shall be
28 punished **†** :

29 **(a) For the first offense,** if the value of any money, assets and
30 property obtained or used:

31 ~~†(a)†~~ **(1)** Is less than \$650, for a gross misdemeanor by
32 imprisonment in the county jail for not more than 364 days, or by a
33 fine of not more than \$2,000, or by both fine and imprisonment;

34 ~~†(b)†~~ **(2)** Is at least \$650, but less than \$5,000, for a category B
35 felony by imprisonment in the state prison for a minimum term of
36 not less than 2 years and a maximum term of not more than 10
37 years, or by a fine of not more than \$10,000, or by both fine and
38 imprisonment; or

39 ~~†(c)†~~ **(3)** Is \$5,000 or more, for a category B felony by
40 imprisonment in the state prison for a minimum term of not less
41 than 2 years and a maximum term of not more than 20 years, or by a
42 fine of not more than \$25,000, or by both fine and imprisonment **†**
43 **; or**

44 **(b) For the second and all subsequent offenses, regardless of**
45 **the value of any money, assets and property obtained or used, for a**



1 *category B felony by imprisonment in the state prison for a*
2 *minimum term of not less than 2 years and a maximum term of*
3 *not more than 20 years, or by a fine of not more than \$25,000, or*
4 *by both fine and imprisonment,*

5 ↪ *unless a more severe penalty is prescribed by law for the act*
6 *which brought about the exploitation. The monetary value of all of*
7 *the money, assets and property of the older person or vulnerable*
8 *person which have been obtained or used, or both, may be combined*
9 *for the purpose of imposing punishment for an offense charged*
10 *pursuant to this subsection.*

11 4. If a person exploits an older person or a vulnerable person
12 and the monetary value of any money, assets and property obtained
13 cannot be determined, the person shall be punished :

14 (a) *For the first offense,* for a gross misdemeanor by
15 imprisonment in the county jail for not more than 364 days, or by a
16 fine of not more than \$2,000, or by both fine and imprisonment **H** ;
17 *or*

18 (b) *For the second and all subsequent offenses, for a category*
19 *B felony by imprisonment in the state prison for a minimum term*
20 *of not less than 2 years and a maximum term of not more than 20*
21 *years, or by a fine of not more than \$25,000, or by both fine and*
22 *imprisonment,*

23 ↪ *unless a more severe penalty is prescribed by law for the act*
24 *which brought about the exploitation.*

25 5. Any person who isolates or abandons an older person or a
26 vulnerable person is guilty:

27 (a) For the first offense, of a gross misdemeanor; or

28 (b) For any subsequent offense, of a category B felony and shall
29 be punished by imprisonment in the state prison for a minimum
30 term of not less than 2 years and a maximum term of not more than
31 10 years, and may be further punished by a fine of not more than
32 \$5,000 **H** ,

33 ↪ *unless a more severe penalty is prescribed by law for the act or*
34 *omission which brings about the isolation or abandonment.*

35 6. A person who violates any provision of subsection 1, if
36 substantial bodily or mental harm or death results to the older person
37 or vulnerable person, is guilty of a category B felony and shall be
38 punished by imprisonment in the state prison for a minimum term of
39 not less than 2 years and a maximum term of not more than 20
40 years, unless a more severe penalty is prescribed by law for the act
41 or omission which brings about the abuse.

42 7. A person who violates any provision of subsection 2, if
43 substantial bodily or mental harm or death results to the older person
44 or vulnerable person, shall be punished for a category B felony by
45 imprisonment in the state prison for a minimum term of not less



1 than 2 years and a maximum term of not more than ~~16~~ 20 years,
2 unless a more severe penalty is prescribed by law for the act or
3 omission which brings about the abuse or neglect.

4 8. In addition to any other penalty imposed against a person for
5 a violation of any provision of NRS 200.5091 to 200.50995,
6 inclusive, the court shall order the person to pay restitution.

7 9. As used in this section:

8 (a) "Allow" means to take no action to prevent or stop the abuse
9 or neglect of an older person or a vulnerable person if the person
10 knows or has reason to know that the older person or vulnerable
11 person is being abused or neglected.

12 (b) "Permit" means permission that a reasonable person would
13 not grant and which amounts to a neglect of responsibility attending
14 the care and custody of an older person or a vulnerable person.

15 (c) "Substantial mental harm" means an injury to the intellectual
16 or psychological capacity or the emotional condition of an older
17 person or a vulnerable person as evidenced by an observable and
18 substantial impairment of the ability of the older person or
19 vulnerable person to function within his or her normal range of
20 performance or behavior.

21 **Sec. 4.** Chapter 159 of NRS is hereby amended by adding
22 thereto the provisions set forth as sections 5, 6 and 7 of this act.

23 **Sec. 5.** *Section 6 of this act may be cited as the Wards' Bill of*
24 *Rights.*

25 **Sec. 6. 1.** *The Legislature hereby declares that, except as*
26 *otherwise specifically provided by law, each proposed ward has the*
27 *right to have an attorney before a guardianship is imposed to ask*
28 *the court for relief, and each ward has the right to:*

29 (a) *Have an attorney at any time during a guardianship to ask*
30 *the court for relief.*

31 (b) *Receive notice of all guardianship proceedings and all*
32 *proceedings relating to a determination of capacity unless the*
33 *court determines that the ward lacks the capacity to comprehend*
34 *such notice.*

35 (c) *Receive a copy of all documents filed in a guardianship*
36 *proceeding.*

37 (d) *Have a family member, an interested party or a medical*
38 *provider speak or raise any issues of concern on behalf of the*
39 *ward during a court hearing, either orally or in writing, including,*
40 *without limitation, issues relating to a conflict with a guardian.*

41 (e) *Be educated about guardianships and ask questions and*
42 *express concerns and complaints about a guardian and the actions*
43 *of a guardian, either orally or in writing.*

44 (f) *Participate in developing a plan for his or her care,*
45 *including, without limitation, managing his or her assets and*



1 *personal property and determining his or her residence and the*
2 *manner in which he or she will receive services.*

3 *(g) Have due consideration given to his or her current and*
4 *previously stated personal desires, preferences for health care and*
5 *medical treatment and religious and moral beliefs.*

6 *(h) Remain as independent as possible, including, without*
7 *limitation, to have his or her preference honored regarding his or*
8 *her residence and standard of living, either as expressed or*
9 *demonstrated before a determination was made relating to*
10 *capacity or as currently expressed, if the preference is reasonable*
11 *under the circumstances.*

12 *(i) Be granted the greatest degree of freedom possible,*
13 *consistent with the reasons for a guardianship, and exercise*
14 *control of all aspects of his or her life that are not delegated to a*
15 *guardian specifically by a court order.*

16 *(j) Engage in any activity that the court has not expressly*
17 *reserved for a guardian, including, without limitation, voting,*
18 *marrying or entering into a domestic partnership, traveling,*
19 *working and having a driver's license.*

20 *(k) Be treated with respect and dignity.*

21 *(l) Be treated fairly by his or her guardian.*

22 *(m) Maintain privacy and confidentiality in personal matters.*

23 *(n) Receive telephone calls and personal mail and have*
24 *visitors, unless his or her guardian and the court determine that*
25 *particular correspondence or a particular visitor will cause harm*
26 *to the ward.*

27 *(o) Receive timely, effective and appropriate health care and*
28 *medical treatment that does not violate his or her rights.*

29 *(p) Have all services provided by a guardian at a reasonable*
30 *rate of compensation and have a court review any requests for*
31 *payment to avoid excessive or unnecessary fees or duplicative*
32 *billing.*

33 *(q) Receive prudent financial management of his or her*
34 *property and regular detailed reports of financial accounting,*
35 *including, without limitation, reports on any investments or trusts*
36 *that are held for his or her benefit and any expenditures or fees*
37 *charged to his or her estate.*

38 *(r) Receive and control his or her salary, maintain a bank*
39 *account and manage his or her personal money.*

40 *(s) Ask the court to:*

41 *(1) Review the management activity of a guardian if a*
42 *dispute cannot be resolved.*

43 *(2) Continually review the need for a guardianship or*
44 *modify or terminate a guardianship.*

45 *(3) Replace the guardian.*



1 (4) *Enter an order restoring his or her capacity at the*
2 *earliest possible time.*

3 2. *The rights of a ward set forth in subsection 1 do not*
4 *abrogate any remedies provided by law. All such rights may be*
5 *addressed in a guardianship proceeding or be enforced through a*
6 *private right of action.*

7 **Sec. 7. Each court shall:**

8 1. *Make the Wards' Bill of Rights readily available to the*
9 *public;*

10 2. *Maintain a copy of the Wards' Bill of Rights in the court*
11 *for reproduction and distribution to the public; and*

12 3. *Ensure that the Wards' Bill of Rights is posted:*

13 (a) *In a conspicuous place, in at least 12-point type, in the*
14 *court; and*

15 (b) *On the Internet website of the court.*

16 **Sec. 8.** The provisions of NRS 354.599 do not apply to any
17 additional expenses of a local government that are related to the
18 provisions of this act.

19 **Sec. 9.** 1. This section becomes effective upon passage and
20 approval.

21 2. Sections 4 to 8, inclusive, of this act become effective:

22 (a) Upon passage and approval for the purpose of performing
23 any preparatory administrative tasks that are necessary to carry out
24 the provisions of those sections; and

25 (b) On January 1, 2018, for all other purposes.

26 3. Sections 1, 2 and 3 of this act become effective on
27 October 1, 2017.



