

## DISCLAIMER

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- This change is needed is because the current definition of "exploitation" fails to achieve the protection that the law was originally designed to give to the elderly population of the State of Nevada.
- The exploitation law was aimed at protecting those seniors who, for reasons often beyond their control, find themselves in a position where they are no longer fully able to handle and manage their own finances. Once unable to adequately negotiate financial matters and protect themselves from being taken advantage of, many seniors turn to those closest to them and ask for help.
- They frequently hand over their income and assets to trusted family, friends or care givers so that someone will be able to manage their financial affairs on their behalf.
- Alternately the senior may have made prior arrangements in the event that they become unable to manage their affairs, such as a trust or living will with a family member or friend named as successor trustee.
- The current definition of "exploitation" requires that the person in a position of trust **acts or uses that position to obtain control**, through deception, intimidation or undue influence, over the assets of the senior.
- This effectively excludes all of the cases in which a trusted person is **given** control or possession of the assets belonging to the senior in a lawful fashion and **then** the trusted person simply disposes of those assets for their own benefit, depriving the senior of the ownership, use, benefit or possession of those assets.
- Below are two examples of common cases that demonstrate why the current definition of "exploitation" fails to meet the needs of these vulnerable seniors and explain why the proposed changes would result in a more effective exploitation law.

Example: A senior finds himself becoming more and more confused with the management of his financial affairs. He approaches an adult son, whom he trusts, and asks for help with balancing his check book and paying his bills.

The senior adds the sons name to his bank account to make this process easier. Everything seems to be going well for several months and slowly the senior allows the son to take over the responsibility of handling his finances and stops monitoring his statements or being involved in the daily chore of writing the checks and paying bills.

The son has not acted to obtain control over the assets belonging

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SUBMITTED BY: Colin Haynes

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to the senior.

If the son now starts to remove the seniors money from the account and spend it on his own needs without the knowledge of the senior, he would appear, on the surface, to be exploiting the senior by abusing his position of trust. However he is *not* committing any exploitation under the current definition of "exploitation" because he did not act to obtain this control through deception, intimidation or undue influence.

**Example:** A senior anticipates that one day she will not be able to manage her affairs so she creates a trust and places all of her assets into the trust. She is the trustee of her own trust but names her granddaughter as the successor trustee in the event that she becomes incapacitated due to physical or mental illness. This is fairly common with trusts.

After several years she is diagnosed with Alzheimer's disease and quickly becomes incompetent to manage her finances. The granddaughter, as successor trustee, takes over this responsibility. The terms of the trust allow the granddaughter, as trustee, to manage the finances in any way she sees fit, but always for the benefit of the trustor, the senior. The granddaughter uses the access she has to the senior's estate to remove money and spend it on her own needs, ignoring the needs of her grandmother and her fiduciary responsibility towards her grandmother.

Once again this would appear, on the surface, to be exploitive. However this activity would not meet the requirements of the current definition of "exploitation" because the granddaughter did not *act* to obtain control over the seniors assets, she was appointed at the request of the senior by the terms of the trust.

Both of these examples are fairly common scenarios that are reported to LVMPD as exploitation. Neither of them would meet the definition of the current "exploitation" law.