

Amendment No. 590

Assembly Amendment to Senate Bill No. 61 Second Reprint (BDR 15-427)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 61—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to exploitation involving the deposits or proceeds of an account held by an older person or a vulnerable person in joint tenancy. (BDR 15-427)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 crimes; providing that the holding of an account in joint tenancy does not, in and of itself, convey to the persons named on the account legal ownership of the account and the deposits and proceeds of the account in a manner that would preclude such a person from committing or being prosecuted for exploitation involving the control or conversion of any deposits or proceeds of the account; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth certain circumstances in which a deposit made in the names of two
2 or more persons creates an account held in joint tenancy. Existing law provides, with certain
3 exceptions, that the use by a depositor of the term “joint account,” or a similar term, in
4 designating the ownership of an account indicates the intent of the depositor that the account
5 be held in joint tenancy. If an account is intended to be held in joint tenancy, existing law
6 provides that the account or proceeds from the account are owned by the persons named on
7 the account. (NRS 100.085)

8 In 1996, the Nevada Supreme Court held that the status of a defendant as a joint account
9 holder under NRS 100.085 did not preclude her conviction for theft of money from the joint
10 account because the jury could have concluded that the criminal intent and actions of the
11 defendant arose before she placed the money into the joint account. (*Walch v. State*, 112 Nev.
12 25, 31-33 (1996)) In 2018, the Nevada Court of Appeals determined that NRS 100.085
13 establishes a presumption that a joint account holder has ownership of, and the authority to
14 use, money in a joint account. The Court held that, under the reasoning of the Nevada
15 Supreme Court, for a joint account holder to be convicted of theft based on the withdrawal or
16 misuse of money from a joint account, the State is required to establish that the criminal intent
17 of the joint account holder arose before the money was deposited into the joint account.
18 (*Natko v. State*, 134 Nev. 841, 843-44 (Nev. Ct. App. 2018))

19 Existing law imposes criminal penalties on a person who exploits or who conspires to
20 exploit an older person or vulnerable person. (NRS 200.5099, 200.50995) Existing law
21 defines “exploitation” to mean, in general, any act taken by a person who has the trust and
22 confidence of an older person or a vulnerable person or any use of the power of attorney or

23 guardianship of an older person or a vulnerable person to obtain control of or to convert the
24 person's money, assets or property with the intention of permanently depriving the person of
25 the ownership, use, benefit or possession of his or her money, assets or property. (NRS
26 200.5092) **Sections 1 and 5.5** of this bill provide that the mere fact that an account of an older
27 person or a vulnerable person is held in joint tenancy does not, in and of itself, convey to the
28 persons named on the account legal ownership of the account and the deposits and proceeds of
29 the account in such a way that would preclude any of those persons from committing or being
30 prosecuted for exploitation involving the control or conversion of any deposits or proceeds of
31 the account, regardless of when the intent to commit exploitation arose.

32 **Section 2-4 and 6** of this bill make conforming changes to indicate the proper placement
33 of **section 1** in the Nevada Revised Statutes.

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

1 **Section 1.** Chapter 200 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 1. *The mere fact that an account of an older person or a vulnerable person*
4 *is held in joint tenancy pursuant to NRS 100.085 does not, in and of itself, convey*
5 *to all persons named on the account legal ownership of the account and the*
6 *deposits and proceeds of the account in a manner that would preclude such a*
7 *person from committing or being prosecuted for exploitation involving the*
8 *control or conversion of any deposits or proceeds of the account if the facts and*
9 *circumstances demonstrate that exploitation has occurred, regardless of whether*
10 *the intent to commit exploitation arose before, during or after the creation of the*
11 *account.*

12 2. *Nothing in this section shall be construed to relieve the State of its*
13 *burden of proving beyond a reasonable doubt each element of the crime of*
14 *exploitation.*

15 **Sec. 2.** NRS 200.5092 is hereby amended to read as follows:

16 200.5092 As used in NRS 200.5091 to 200.50995, inclusive, *and section 1 of*
17 *this act*, unless the context otherwise requires:

18 1. "Abandonment" means:

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

21 (b) Withdrawal of necessary assistance owed to an older person or a vulnerable
22 person by a caretaker or other person with an obligation to provide services to the
23 older person or vulnerable person.

24 2. "Abuse" means willful:

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

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

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

30 (1) Threatening, controlling or socially isolating the older person or
31 vulnerable person;

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

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

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

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

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

7 (e) Permitting any of the acts described in paragraphs (a) to (d), inclusive, to be
8 committed against an older person or a vulnerable person.

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

12 (a) Obtain control, through deception, intimidation or undue influence, over the
13 older person's or vulnerable person's money, assets or property with the intention
14 of permanently depriving the older person or vulnerable person of the ownership,
15 use, benefit or possession of his or her money, assets or property; or

16 (b) Convert money, assets or property of the older person or vulnerable person
17 with the intention of permanently depriving the older person or vulnerable person
18 of the ownership, use, benefit or possession of his or her money, assets or property.

19 ➤ As used in this subsection, "undue influence" means the improper use of power
20 or trust in a way that deprives a person of his or her free will and substitutes the
21 objectives of another person. The term does not include the normal influence that
22 one member of a family has over another.

23 4. "Isolation" means preventing an older person or a vulnerable person from
24 having contact with another person by:

25 (a) Intentionally preventing the older person or vulnerable person from
26 receiving visitors, mail or telephone calls, including, without limitation,
27 communicating to a person who comes to visit the older person or vulnerable
28 person or a person who telephones the older person or vulnerable person that the
29 older person or vulnerable person is not present or does not want to meet with or
30 talk to the visitor or caller knowing that the statement is false, contrary to the
31 express wishes of the older person or vulnerable person and intended to prevent the
32 older person or vulnerable person from having contact with the visitor;

33 (b) Physically restraining the older person or vulnerable person to prevent the
34 older person or vulnerable person from meeting with a person who comes to visit
35 the older person or vulnerable person; or

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

38 ➤ The term does not include an act intended to protect the property or physical or
39 mental welfare of the older person or vulnerable person or an act performed
40 pursuant to the instructions of a physician of the older person or vulnerable person.

41 5. "Neglect" means the failure of a person or a manager of a facility who has
42 assumed legal responsibility or a contractual obligation for caring for an older
43 person or a vulnerable person or who has voluntarily assumed responsibility for his
44 or her care to provide food, shelter, clothing or services which are necessary to
45 maintain the physical or mental health of the older person or vulnerable person.

46 6. "Older person" means a person who is 60 years of age or older.

47 7. "Protective services" means services the purpose of which is to prevent and
48 remedy the abuse, neglect, exploitation, isolation and abandonment of older persons
49 or vulnerable persons. The services may include:

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

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

1 8. “Vulnerable person” means a person 18 years of age or older who:

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

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

6 **Sec. 3.** NRS 200.50925 is hereby amended to read as follows:

7 200.50925 For the purposes of NRS 200.5091 to 200.50995, inclusive, *and*
8 *section 1 of this act*, a person:

9 1. Has “reasonable cause to believe” if, in light of all the surrounding facts
10 and circumstances which are known or which reasonably should be known to the
11 person at the time, a reasonable person would believe, under those facts and
12 circumstances, that an act, transaction, event, situation or condition exists, is
13 occurring or has occurred.

14 2. Acts “as soon as reasonably practicable” if, in light of all the surrounding
15 facts and circumstances which are known or which reasonably should be known to
16 the person at the time, a reasonable person would act within approximately the
17 same period under those facts and circumstances.

18 **Sec. 4.** NRS 200.5099 is hereby amended to read as follows:

19 200.5099 1. Except as otherwise provided in subsection 6, any person who
20 abuses an older person or a vulnerable person is guilty:

21 (a) For the first offense, of either of the following, as determined by the court:

22 (1) A category C felony and shall be punished as provided in NRS
23 193.130; or

24 (2) A gross misdemeanor and shall be punished by imprisonment in the
25 county jail for not more than 364 days, or by a fine of not more than \$2,000, or by
26 both fine and imprisonment; or

27 (b) For the second and all subsequent offenses or if the person has been
28 previously convicted of violating a law of any other jurisdiction that prohibits the
29 same or similar conduct, of a category B felony and shall be punished by
30 imprisonment in the state prison for a minimum term of not less than 2 years and a
31 maximum term of not more than 6 years,

32 unless a more severe penalty is prescribed by law for the act or omission which
33 brings about the abuse.

34 2. Except as otherwise provided in subsection 7, any person who has assumed
35 responsibility, legally, voluntarily or pursuant to a contract, to care for an older
36 person or a vulnerable person and who neglects the older person or vulnerable
37 person, causing the older person or vulnerable person to suffer physical pain or
38 mental suffering, permits or allows the older person or vulnerable person to suffer
39 unjustifiable physical pain or mental suffering or permits or allows the older person
40 or vulnerable person to be placed in a situation where the older person or vulnerable
41 person may suffer physical pain or mental suffering as the result of abuse or neglect
42 is guilty:

43 (a) For the first offense, of either of the following, as determined by the court:

44 (1) A category C felony and shall be punished as provided in NRS
45 193.130; or

46 (2) A gross misdemeanor and shall be punished by imprisonment in the
47 county jail for not more than 364 days, or by a fine of not more than \$2,000, or by
48 both fine and imprisonment; or

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

52 unless a more severe penalty is prescribed by law for the act or omission which
53 brings about the abuse or neglect.

1 3. Except as otherwise provided in subsection 4, any person who exploits an
2 older person or a vulnerable person shall be punished:

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

5 (1) Is less than \$650, of either of the following, as determined by the court:

6 (I) A category C felony as provided in NRS 193.130; or

7 (II) A gross misdemeanor by imprisonment in the county jail for not
8 more than 364 days, or by a fine of not more than \$2,000, or by both fine and
9 imprisonment;

10 (2) Is at least \$650, but less than \$5,000, for a category B felony by
11 imprisonment in the state prison for a minimum term of not less than 2 years and a
12 maximum term of not more than 10 years, or by a fine of not more than \$10,000, or
13 by both fine and imprisonment; or

14 (3) Is \$5,000 or more, for a category B felony by imprisonment in the state
15 prison for a minimum term of not less than 2 years and a maximum term of not
16 more than 20 years, or by a fine of not more than \$25,000, or by both fine and
17 imprisonment; or

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

23 ↳ unless a more severe penalty is prescribed by law for the act which brought
24 about the exploitation. The monetary value of all of the money, assets and property
25 of the older person or vulnerable person which have been obtained or used, or both,
26 may be combined for the purpose of imposing punishment for an offense charged
27 pursuant to this subsection.

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

31 (a) For the first offense, of either of the following, as determined by the court:

32 (1) A category C felony as provided in NRS 193.130; or

33 (2) A gross misdemeanor by imprisonment in the county jail for not more
34 than 364 days, or by a fine of not more than \$2,000, or by both fine and
35 imprisonment; or

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

40 ↳ unless a more severe penalty is prescribed by law for the act which brought
41 about the exploitation.

42 5. Any person who isolates or abandons an older person or a vulnerable
43 person is guilty:

44 (a) For the first offense, of either of the following, as determined by the court:

45 (1) A category C felony and shall be punished as provided in NRS
46 193.130; or

47 (2) A gross misdemeanor and shall be punished by imprisonment in the
48 county jail for not more than 364 days, or by a fine of not more than \$2,000, or by
49 both fine and imprisonment; or

50 (b) For the second and all subsequent offenses, of a category B felony and shall
51 be punished by imprisonment in the state prison for a minimum term of not less
52 than 2 years and a maximum term of not more than 10 years, and may be further
53 punished by a fine of not more than \$5,000,

1 ↳ unless a more severe penalty is prescribed by law for the act or omission which
2 brings about the isolation or abandonment.

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

9 7. A person who violates any provision of subsection 2, if substantial bodily
10 or mental harm or death results to the older person or vulnerable person, shall be
11 punished for a category B felony by imprisonment in the state prison for a
12 minimum term of not less than 2 years and a maximum term of not more than 20
13 years, unless a more severe penalty is prescribed by law for the act or omission
14 which brings about the abuse or neglect.

15 8. In addition to any other penalty imposed against a person for a violation of
16 any provision of NRS 200.5091 to 200.50995, inclusive, *and section 1 of this act*
17 the court shall order the person to pay restitution.

18 9. As used in this section:

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

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

25 (c) "Substantial mental harm" means an injury to the intellectual or
26 psychological capacity or the emotional condition of an older person or a
27 vulnerable person as evidenced by an observable and substantial impairment of the
28 ability of the older person or vulnerable person to function within his or her normal
29 range of performance or behavior.

30 **Sec. 5.** (Deleted by amendment.)

31 **Sec. 5.5.** NRS 100.085 is hereby amended to read as follows:

32 100.085 1. When a deposit has been made in the name of the depositor and
33 one or more other persons, and in a form intended to be paid or delivered to any one
34 of them, or the survivor or survivors of them, the deposit is the property of the
35 persons as joint tenants. If an account is intended to be held in joint tenancy, the
36 account or proceeds from the account are owned by the persons named, and may be
37 paid or delivered to any of them during the lifetime of all, or to the survivor or
38 survivors of them after the death of less than all of the tenants, or the last of them to
39 survive, and payment or delivery is a valid and sufficient release and discharge of
40 the depository.

41 2. The making of a deposit in the form of a joint tenancy vests title to the
42 deposit in the survivor or survivors.

43 3. When a deposit has been made in the name of the depositor and one or
44 more other persons, and in a form to be paid or delivered to the survivor or
45 survivors of them, but one or more of the other persons is not authorized to
46 withdraw from the deposit during the life of the depositor or depositors, the person
47 or persons so restricted have no present interest in the deposit, but upon the death of
48 the last depositor entitled to withdraw, the deposit is presumed to belong to the
49 survivor or survivors. Unless written notice of a claim against the deposit has been
50 given by a survivor or a third person before payment or delivery, payment or
51 delivery to a survivor is a valid and sufficient release and discharge of the
52 depository.

1 4. For the purposes of this section, unless a depositor specifically provides
2 otherwise, the use by the depositor of any of the following words or terms in
3 designating the ownership of an account indicates the intent of the depositor that
4 the account be held in joint tenancy:

- 5 (a) Joint;
6 (b) Joint account;
7 (c) Jointly held;
8 (d) Joint tenants;
9 (e) Joint tenancy; or
10 (f) Joint tenants with right of survivorship.

11 ***5. As set forth in section 1 of this act, the mere fact that an account of an***
12 ***older person or a vulnerable person is held in joint tenancy pursuant to this***
13 ***section does not, in and of itself, convey to all persons named on the account***
14 ***legal ownership of the account and the deposits and proceeds of the account in a***
15 ***manner that would preclude such a person from committing or being prosecuted***
16 ***for exploitation involving the control or conversion of any deposits or proceeds of***
17 ***the account if the facts and circumstances demonstrate that exploitation has***
18 ***occurred, regardless of whether the intent to commit exploitation arose before,***
19 ***during or after the creation of the account.***

20 ***6. As used in this section:***

- 21 ***(a) "Exploitation" has the meaning ascribed to it in NRS 200.5092.***
22 ***(b) "Older person" has the meaning ascribed to it in NRS 200.5092.***
23 ***(c) "Vulnerable person" has the meaning ascribed to it in NRS 200.5092.***

24 **Sec. 6.** NRS 162C.330 is hereby amended to read as follows:

25 162C.330 1. The provisions of this chapter must not be construed to affect
26 the requirement of any person to report the abuse, neglect, exploitation, isolation or
27 abandonment of an older person or a vulnerable person as provided in NRS
28 200.5091 to 200.50995, inclusive ***H***, ***and section 1 of this act.***

29 2. As used in this section, the words and terms defined in NRS 200.5091 to
30 200.50995, inclusive, ***and section 1 of this act*** have the meanings ascribed to them
31 in those sections.