

Senate Bill No. 360—Senators Cannizzaro, Ford, Spearman, Woodhouse, Ratti; Atkinson, Cancela, Denis, Farley, Manendo, Parks and Segerblom

Joint Sponsors: Assemblymen Joiner, Frierson, Benitez-Thompson, Carrillo, Diaz; Araujo, Carlton, Fumo, Jauregui, Monroe-Moreno, Swank and Yeager

CHAPTER.....

AN ACT relating to the protection of certain persons; revising provisions relating to the imposition of an additional penalty upon a person who commits certain crimes or criminal violations of law 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 the abuse, neglect, exploitation, isolation or abandonment of 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; establishing provisions relating to certain arbitration clauses included in contracts used by facilities for long-term care; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the imposition of an additional penalty upon a person who commits certain crimes or criminal violations of law against an older person or a vulnerable person, and provides that the sentence prescribed runs consecutively with the sentence prescribed by statute for the crime or criminal violation. (NRS 193.167) **Section 1.5** of this bill additionally provides that the sentence prescribed must not exceed the sentence imposed for the crime or criminal violation.

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



Existing law establishes the penalties to be imposed upon a person who abuses, neglects, exploits, isolates or abandons an older person or a vulnerable person. Any person who has assumed responsibility to care for an older person or a vulnerable person and who neglects the older person or vulnerable person or commits certain other related acts, thereby causing substantial bodily or mental harm to or the death of the older person or vulnerable person, is guilty of a category B felony and must be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 6 years. (NRS 200.5099) **Section 3** of this bill increases the maximum term of imprisonment for the commission of such acts from 6 years to 20 years. **Section 3** also revises the penalties for the abuse, neglect, isolation or abandonment of an older person or a vulnerable person and provides that: (1) the commission of a first offense is punishable as a category C felony or a gross misdemeanor, as determined by the court; and (2) the commission of a second or subsequent offense is punishable as a category B felony. **Section 3** additionally revises the penalties for the exploitation of an older person or a vulnerable person and provides that a person who commits such an offense is guilty of: (1) either a category C felony or gross misdemeanor, as determined by the court, for the first offense, or if the monetary value involved is less than \$650 or cannot be determined; or (2) a category B felony for the second and all subsequent offenses, or if the monetary value is \$650 or more.

Existing law also establishes the penalties to be imposed upon a person who conspires with another to commit abuse, exploitation or isolation of an older person or a vulnerable person. Such a person must be punished for a gross misdemeanor for the first offense and for a category C felony for the second or subsequent offense. (NRS 200.50995) **Section 3.5** of this bill increases the penalty for the commission of a second or subsequent offense to a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not less than 20 years.

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

Section 7.5 of this bill: (1) provides that if a facility for long-term care wishes to include as part of any contract relating to the provision of care a clause providing that the parties to the contract agree to resolve any dispute through arbitration, the clause must be included as an addendum to the contract; and (2) establishes requirements pertaining to the form and content of such an addendum.



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

Section 1. (Deleted by amendment.)

Sec. 1.5. NRS 193.167 is hereby amended to read as follows:

193.167 1. Except as otherwise provided in NRS 193.169, any person who commits the crime of:

- (a) Murder;
- (b) Attempted murder;
- (c) Assault;
- (d) Battery;
- (e) Kidnapping;
- (f) Robbery;
- (g) Sexual assault;

(h) Embezzlement of, or attempting or conspiring to embezzle, money or property of a value of \$650 or more;

(i) Obtaining, or attempting or conspiring to obtain, money or property of a value of \$650 or more by false pretenses; or

(j) Taking money or property from the person of another,

↪ against any person who is 60 years of age or older or against a vulnerable person shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished, if the crime is a misdemeanor or gross misdemeanor, by imprisonment in the county jail for a term equal to the term of imprisonment prescribed by statute for the crime, and, if the crime is a felony, by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years.

2. Except as otherwise provided in NRS 193.169, any person who commits a criminal violation of the provisions of chapter 90 or 91 of NRS against any person who is 60 years of age or older or against a vulnerable person shall, in addition to the term of imprisonment prescribed by statute for the criminal violation, be punished, if the criminal violation is a misdemeanor or gross misdemeanor, by imprisonment in the county jail for a term equal to the term of imprisonment prescribed by statute for the criminal violation, and, if the criminal violation is a felony, by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years.

3. In determining the length of the additional penalty imposed pursuant to this section, the court shall consider the following information:



- (a) The facts and circumstances of the crime or criminal violation;
- (b) The criminal history of the person;
- (c) The impact of the crime or criminal violation on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

↳ The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

4. The sentence prescribed by this section ~~must run~~ :

(a) Must not exceed the sentence imposed for the crime or criminal violation; and

(b) Must run consecutively with the sentence prescribed by statute for the crime or criminal violation.

5. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

6. As used in this section, “vulnerable person” has the meaning ascribed to it in NRS 200.5092.

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

200.5096 ~~Immunity~~

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

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

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

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

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

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

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

(c) Aided and abetted in or was an accessory to the abuse, neglect, exploitation, isolation or abandonment of the older person or vulnerable person who is the subject of the report or



investigation or the conspiracy to commit abuse, exploitation or isolation of the older person or vulnerable person.

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

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

(a) For the first offense, of ~~{a-gross}~~ *either of the following, as determined by the court:*

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

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

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

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

2. Except as otherwise provided in subsection 7, any person who has assumed responsibility, legally, voluntarily or pursuant to a contract, to care for an older person or a vulnerable person and who ~~{}~~

~~{(a) Neglects}~~ *neglects* the older person or vulnerable person, causing the older person or vulnerable person to suffer physical pain or mental suffering ~~{}~~

~~{(b) Permits}~~ *, permits* or allows the older person or vulnerable person to suffer unjustifiable physical pain or mental suffering ~~{}~~ or

~~{(e) Permits}~~ *permits* or allows the older person or vulnerable person to be placed in a situation where the older person or vulnerable person may suffer physical pain or mental suffering as the result of abuse or neglect ~~{}~~

↳ is guilty :

(a) For the first offense, of ~~{a-gross}~~ *either of the following, as determined by the court:*

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

(2) A gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 364 days, or by



*a fine of not more than \$2,000, or by both fine and imprisonment;
or*

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

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

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

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

~~§(a)~~ (1) Is less than \$650, ~~for a gross~~ of either of the following, as determined by the court:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

7. A person who violates any provision of subsection 2, if substantial bodily or mental harm or death results to the older person or vulnerable person, shall be punished for a category B felony by



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

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

9. As used in this section:

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

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

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

Sec. 3.5. NRS 200.50995 is hereby amended to read as follows:

200.50995 *1.* A person who conspires with another to commit abuse, exploitation or isolation of an older person or a vulnerable person as prohibited by NRS 200.5099 shall be punished:

~~1-1~~ (a) For the first offense, for a gross misdemeanor ~~1-~~
~~2-1~~ *by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment; or*

(b) For the second and all subsequent offenses, for a category ~~C~~ B felony ~~as provided in NRS 193.130.~~
~~1-1~~ *by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.*

2. Each person found guilty of such a conspiracy is jointly and severally liable for the restitution ordered by the court pursuant to NRS 200.5099 with each other person found guilty of the conspiracy.

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

Sec. 5. *This section and section 6 of this act may be cited as the Wards' Bill of Rights.*



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

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

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

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

(d) Have a family member, an interested party, a person of natural affection, an advocate for the ward or a medical provider speak or raise any issues of concern on behalf of the ward during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian. As used in this paragraph, "person of natural affection" means a person who is not a family member of a ward but who shares a relationship with the ward that is similar to the relationship between family members.

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

(f) Participate in developing a plan for his or her care, including, without limitation, managing his or her assets and personal property and determining his or her residence and the manner in which he or she will receive services.

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

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

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

(j) Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting,



marrying or entering into a domestic partnership, traveling, working and having a driver's license.

(k) Be treated with respect and dignity.

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

(m) Maintain privacy and confidentiality in personal matters.

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

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

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

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

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

(s) Ask the court to:

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

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

(3) Replace the guardian.

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

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

Sec. 7. Each court shall:

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

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

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

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

(b) On the Internet website of the court.



Sec. 7.5. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a facility for long-term care wishes to include as part of any contract relating to the provision of care a clause providing that the parties to the contract agree to resolve any dispute through arbitration, the clause must be included as an addendum to the contract and:

(a) Be printed in large font on a separate page with a separate signature line;

(b) Fully explain the effect of signing the addendum, including, without limitation, that any dispute will be resolved through the arbitration process instead of in court; and

(c) Clearly state that the person signing the contract is not required to sign the addendum.

2. As used in this section, "facility for long-term care" means:

(a) A residential facility for groups;

(b) A facility for intermediate care;

(c) A facility for skilled nursing;

(d) A home for individual residential care; and

(e) Any unlicensed establishment that provides food, shelter, assistance and limited supervision to a resident.

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

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

2. Sections 4 to 7, inclusive, and 8 of this act become effective:

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

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

3. Sections 1 to 3.5, inclusive, and 7.5 of this act become effective on October 1, 2017.

