

Amendment No. 426

Senate Amendment to Senate Bill No. 61	(BDR 15-427)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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 ~~crimes~~ **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 or from being prosecuted for a crime involving the theft~~ of any deposits or proceeds of the account; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

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

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

~~Section 5 of this bill provides that the mere fact that an account is held 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 such a way that would preclude any of those persons from being prosecuted for a crime involving the theft of any deposits or proceeds of the account, regardless of when the intent to commit the crime arose.]~~

Existing law imposes criminal penalties on a person who exploits or who conspires to exploit an older person or vulnerable person. (NRS 200.5099, 200.50995) Existing law defines “exploitation” to mean, in general, any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to obtain control of or to convert the person’s money, assets or property with the intention of permanently depriving the person of the ownership, use, benefit or possession of his or her money, assets or property. (NRS 200.5092) ~~[Sections] Section 1 [and 5] of this bill [provide] provides~~ that the mere fact that an account of an older person or a vulnerable person is held 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 such a way that would preclude any of those persons from committing **or being prosecuted for** exploitation involving the control or conversion of any deposits or proceeds of the account, regardless of when the intent to commit exploitation arose.

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

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

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

*The mere fact that an account of an older person or a vulnerable person is held in joint tenancy pursuant to NRS 100.085 does not, in and of itself, convey to all 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 if the facts and circumstances demonstrate that exploitation has occurred, regardless of whether the intent to commit exploitation arose before, during or after the creation of the account.*

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

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

1. “Abandonment” means:

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

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

2. “Abuse” means willful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) Physically restraining the older person or vulnerable person to prevent the
38 older person or vulnerable person from meeting with a person who comes to visit
39 the older person or vulnerable person; or

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

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

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

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

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

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

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

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

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

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

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

11 200.50925 For the purposes of NRS 200.5091 to 200.50995, inclusive, *and*
12 *section 1 of this act*, a person:

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

18 2. Acts "as soon as reasonably practicable" if, in light of all the surrounding
19 facts and circumstances which are known or which reasonably should be known to
20 the person at the time, a reasonable person would act within approximately the
21 same period under those facts and circumstances.

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

23 200.5099 1. Except as otherwise provided in subsection 6, any person who
24 abuses an older person or a vulnerable person is guilty:

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

26 (1) A category C felony and shall be punished as provided in NRS
27 193.130; or

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

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

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

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

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

48 (1) A category C felony and shall be punished as provided in NRS
49 193.130; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (1) A category C felony and shall be punished as provided in NRS
51 193.130; or

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

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

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

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

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

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

25 9. As used in this section:

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

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

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

37 **Sec. 5.** ~~[NRS 100.085 is hereby amended to read as follows:~~

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

47 ~~2. The making of a deposit in the form of a joint tenancy vests title to the~~
48 ~~deposit in the survivor or survivors.~~

49 ~~3. When a deposit has been made in the name of the depositor and one or~~
50 ~~more other persons, and in a form to be paid or delivered to the survivor or~~
51 ~~survivors of them, but one or more of the other persons is not authorized to~~
52 ~~withdraw from the deposit during the life of the depositor or depositors, the person~~
53 ~~or persons so restricted have no present interest in the deposit, but upon the death of~~

~~the last depositor entitled to withdraw, the deposit is presumed to belong to the survivor or survivors. Unless written notice of a claim against the deposit has been given by a survivor or a third person before payment or delivery, payment or delivery to a survivor is a valid and sufficient release and discharge of the depository.~~

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

- ~~(a) Joint;~~
- ~~(b) Joint account;~~
- ~~(c) Jointly held;~~
- ~~(d) Joint tenants;~~
- ~~(e) Joint tenancy; or~~
- ~~(f) Joint tenants with right of survivorship.~~

~~5. The mere fact that an account is held in joint tenancy pursuant to this section does not, in and of itself, convey to all 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 being prosecuted for a crime involving the theft of any deposits or proceeds of the account if the facts and circumstances demonstrate that the crime has occurred, regardless of whether the intent to commit the crime arose before, during or after the creation of the account.] **(Deleted by amendment.)**~~

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

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

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