

Amendment No. 516

Senate Amendment to Senate Bill No. 61 First Reprint	(BDR 15-427)
Proposed by: Senator Scheible	
Amends: Summary: No Title: No 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 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

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) ~~Section~~ **Sections 1 and 5.5** of this bill ~~provides~~ **provide** 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

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

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

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

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

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

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

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

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

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

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

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

30 (b) Physically restraining the older person or vulnerable person to prevent the
31 older person or vulnerable person from meeting with a person who comes to visit
32 the older person or vulnerable person; or

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

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

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

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

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

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

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

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

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

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

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

4 200.50925 For the purposes of NRS 200.5091 to 200.50995, inclusive, *and*
5 *section 1 of this act*, a person:

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

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

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

16 200.5099 1. Except as otherwise provided in subsection 6, any person who
17 abuses an older person or a vulnerable person is guilty:

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

19 (1) A category C felony and shall be punished as provided in NRS
20 193.130; or

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

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

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

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

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

41 (1) A category C felony and shall be punished as provided in NRS
42 193.130; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 9. As used in this section:

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

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

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

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

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

30 100.085 1. When a deposit has been made in the name of the depositor and
31 one or more other persons, and in a form intended to be paid or delivered to any one
32 of them, or the survivor or survivors of them, the deposit is the property of the
33 persons as joint tenants. If an account is intended to be held in joint tenancy, the
34 account or proceeds from the account are owned by the persons named, and may be
35 paid or delivered to any of them during the lifetime of all, or to the survivor or
36 survivors of them after the death of less than all of the tenants, or the last of them to
37 survive, and payment or delivery is a valid and sufficient release and discharge of
38 the depository.

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

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

51 4. For the purposes of this section, unless a depositor specifically provides
52 otherwise, the use by the depositor of any of the following words or terms in

1 designating the ownership of an account indicates the intent of the depositor that
2 the account be held in joint tenancy:

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

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

18 6. As used in this section:

19 (a) "Exploitation" has the meaning ascribed to it in NRS 200.5092.

20 (b) "Older person" has the meaning ascribed to it in NRS 200.5092.

21 (c) "Vulnerable person" has the meaning ascribed to in NRS 200.592.

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

23 162C.330 1. The provisions of this chapter must not be construed to affect
24 the requirement of any person to report the abuse, neglect, exploitation, isolation or
25 abandonment of an older person or a vulnerable person as provided in NRS
26 200.5091 to 200.50995, inclusive ~~H~~, **and section 1 of this act.**

27 2. As used in this section, the words and terms defined in NRS 200.5091 to
28 200.50995, inclusive, **and section 1 of this act** have the meanings ascribed to them
29 in those sections.