

## Senate Bill No. 61–Committee on Judiciary

### CHAPTER.....

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:**

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))

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 1 and 5.5** of this bill 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.

**Sections 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:

*1. 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.*

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

**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

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

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

3. "Exploitation" means 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:

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

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

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

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

(a) Intentionally preventing the older person or vulnerable person from receiving visitors, mail or telephone calls, including, without limitation, communicating to a person who comes to visit the older person or vulnerable person or a person who telephones the older person or vulnerable person that the older person or vulnerable person is not present or does not want to meet with or talk to the visitor or caller knowing that the statement is false,



contrary to the express wishes of the older person or vulnerable person and intended to prevent the older person or vulnerable person from having contact with the visitor;

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

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

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

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

6. “Older person” means a person who is 60 years of age or older.

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

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

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

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

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

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

**Sec. 3.** NRS 200.50925 is hereby amended to read as follows:  
200.50925 For the purposes of NRS 200.5091 to 200.50995, inclusive, *and section 1 of this act*, a person:

1. Has “reasonable cause to believe” if, in light of all the surrounding facts and circumstances which are known or which



reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.

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

**Sec. 4.** 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 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 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 neglects the older person or vulnerable person, causing the older person or vulnerable person to suffer physical pain or mental suffering, permits or allows the older person or vulnerable person to suffer unjustifiable physical pain or mental suffering or 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 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:

(1) Is less than \$650, 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;

(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

(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, 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 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 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 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, *and section 1 of this act* 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. 5.** (Deleted by amendment.)

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

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

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

3. When a deposit has been made in the name of the depositor and one or more other persons, and in a form to be paid or delivered to the survivor or survivors of them, but one or more of the other persons is not authorized to withdraw from the deposit during the life of the depositor or depositors, the person 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. As set forth in section 1 of this act, the mere fact that an account of an older person or a vulnerable person 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 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.*

6. As used in this section:

(a) *“Exploitation” has the meaning ascribed to it in NRS 200.5092.*

(b) *“Older person” has the meaning ascribed to it in NRS 200.5092.*

(c) *“Vulnerable person” has the meaning ascribed to in NRS 200.5092.*

**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.

