

Assembly Bill No. 73—Assemblymen McClain, Claborn, Chowning, Parks, Conklin, Anderson, Andonov, Arberry, Atkinson, Buckley, Carpenter, Collins, Gibbons, Giunchigliani, Goldwater, Grady, Horne, Koivisto, Leslie, Manendo, McCleary, Mortenson, Ocegüera, Ohrenschall, Perkins, Pierce and Williams (by request)

CHAPTER.....

AN ACT relating to crimes; reducing the age of a victim that is used as the threshold for determining the applicability of certain crimes against older persons; revising the provisions concerning certain crimes against older persons; providing penalties; and providing other matters properly relating thereto.

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

Section 1. 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 money or property of a value of \$250 or more;
- (i) Obtaining money or property of a value of \$250 or more by false pretenses; or
- (j) Taking money or property from the person of another, against any person who is ~~65~~ 60 years of age or older shall be punished by imprisonment in the county jail or state prison, whichever applies, for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this subsection must run consecutively with the sentence prescribed by statute for the crime.

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 ~~65~~ 60 years of age or older shall be punished by imprisonment in the county jail or state prison, whichever applies, for a term equal to and in addition to the term of imprisonment prescribed by statute for the criminal violation. The sentence prescribed by this subsection must run consecutively with the sentence prescribed by statute for the criminal violation.

3. 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.

Sec. 2. 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 ~~[, causing the older person to suffer unjustifiable physical pain or mental suffering,]~~ is guilty :

(a) For the first offense, of a gross misdemeanor; or

(b) For any subsequent offense 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 and who:

(a) Neglects the older person, causing the older person to suffer physical pain or mental suffering;

(b) Permits or allows the older person to suffer unjustifiable physical pain or mental suffering; or

(c) Permits or allows the older person to be placed in a situation where the older person may suffer physical pain or mental suffering as the result of abuse or neglect,

is guilty of a gross misdemeanor 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 shall be punished, if the value of any money, assets and property obtained or used:

(a) Is less than \$250, for a misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment;

(b) Is at least \$250, 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) 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,

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 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 and the monetary value of any money, assets and property obtained cannot be determined, the person shall be punished for a gross misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment.

5. Any person who isolates an older person is guilty:

(a) For the first offense, of a gross misdemeanor; or

(b) For any subsequent offense, 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.

6. A person who violates any provision of subsection 1, if substantial bodily or mental harm or death results to the older 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, 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 6 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 if the person knows or has reason to know that the older 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.

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

Sec. 3. NRS 200.50995 is hereby amended to read as follows:

200.50995 A person who conspires with another to commit abuse, exploitation or isolation of an older person as prohibited by NRS 200.5099 ~~[]~~ shall be punished:

1. For the first offense, for a gross misdemeanor.

2. For the second and all subsequent offenses, for a category C felony as provided in NRS 193.130.

~~[In addition to any other penalty, the court shall order the person to pay restitution.]~~ 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. NRS 207.014 is hereby amended to read as follows:

207.014 1. A person who:

(a) Has been convicted in this state of any felony committed on or after July 1, 1995, of which fraud or intent to defraud is an element; and

(b) Has previously been two times convicted, whether in this state or elsewhere, of any felony of which fraud or intent to defraud is an element before the commission of the felony under paragraph (a) of this subsection,

is a habitually fraudulent felon and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, if the victim of each offense was ~~[65 years of age or]~~ *an older person* or a mentally disabled person.

2. The prosecuting attorney shall include a count under this section in any information or shall file a notice of habitually fraudulent felon if an indictment is found, if the prior convictions and the alleged offense committed by the accused are felonies of which fraud or intent to defraud is an element and the victim of each offense was:

(a) ~~[Sixty-five years of age or older;]~~ *An older person;* or

(b) A mentally disabled person.

3. The trial judge may not dismiss a count under this section that is included in an indictment or information.

4. As used in this section ~~[, "mentally"]~~ :

(a) *"Mentally disabled person"* means a person who has a mental impairment which is medically documented and substantially limits one or more of the person's major life activities. The term includes, but is not limited to, a person who:

~~[(a)]~~ (1) Is mentally retarded;

~~[(b)]~~ (2) Suffers from a severe mental or emotional illness;

~~[(c)]~~ (3) Has a severe learning disability; or

~~[(4)]~~ (4) Is experiencing a serious emotional crisis in his life as a result of the fact that he or a member of his immediate family has a catastrophic illness.

(b) *"Older person" means a person who is:*

(1) Sixty-five years of age or older if the crime was committed before October 1, 2003.

(2) Sixty years of age or older if the crime was committed on or after October 1, 2003.

Sec. 5. NRS 598.0933 is hereby amended to read as follows:

598.0933 "Elderly person" means a person who is ~~{65}~~ 60 years of age or older.

Sec. 6. NRS 599B.270 is hereby amended to read as follows:

599B.270 As used in NRS 599B.270 to 599B.300, inclusive, unless the context otherwise requires:

1. "Disabled person" means a person who:

(a) Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) Has a record of such an impairment; or

(c) Is regarded as having such an impairment.

2. "Elderly person" means a person who is ~~{65}~~ 60 years of age or older.