

## Amendment No. 912

Senate Amendment to Senate Bill No. 347 First Reprint (BDR 23-1075)

**Proposed by:** Senate Committee on Finance**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) *green bold italic underlining* is new language proposed 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 that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

DP/KEL



Date: 6/4/2011

S.B. No. 347—Confers the powers of a peace officer upon certain employees of the Aging and Disability Services Division of the Department of Health and Human Services for certain purposes.  
(BDR 23-1075)



## SENATE BILL NO. 347—SENATOR DENIS

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—~~[Confers the powers of a peace officer upon certain employees]~~  
Authorizes the Administrator of the Aging and Disability  
Services Division of the Department of Health and Human  
Services ~~[for certain purposes]~~ to administer oaths, take  
testimony and issue subpoenas under certain circumstances.  
(BDR ~~[23-1075]~~ 15-1075)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to older persons; ~~[conferring the powers of a peace officer upon certain employees]~~ authorizing the Administrator of the Aging and  
Disability Services Division of the Department of Health and Human  
Services ~~[for certain purposes]~~ to administer oaths, take testimony  
and issue subpoenas under certain circumstances; and providing  
other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires certain persons who have reasonable cause to believe that an older person or a vulnerable person has been abused, neglected, exploited or isolated to report the abuse, neglect, exploitation or isolation of the older person or a vulnerable person to the Aging and Disability Services Division of the Department of Health and Human Services, or a local office thereof, a police department, sheriff's office or a county's office for protective services. (NRS 200.5093, 200.50935) The exploitation of an older person or a vulnerable person consists of wrongfully depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property. (NRS 200.5092) ~~[Section 4 of this bill confers upon employees of the Division, as designated by the Administrator of the Division, the powers of a peace officer when performing duties relating to investigations of reports of abuse, neglect, exploitation or isolation of older persons or vulnerable persons.]~~

~~[Section 5 of this bill designates as category II peace officers employees of the Division, as designated by the Administrator of the Division, when performing duties relating to investigations of reports of abuse, neglect, exploitation or isolation of older persons or vulnerable persons.]~~

Section 6 of this bill authorizes the Administrator of the Division to administer oaths, take testimony and issue subpoenas requiring the attendance of witnesses and the production of certain materials in an investigation of the alleged abuse, neglect, exploitation or isolation of an older person or a vulnerable person.

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

**Section 1.** (Deleted by amendment.)

**Sec. 2.** (Deleted by amendment.)

**Sec. 3.** (Deleted by amendment.)

**Sec. 4.** ~~[NRS 289.240 is hereby amended to read as follows:~~

~~289.240 1. Forensic technicians and correctional officers employed by the Division of Mental Health and Developmental Services of the Department of Health and Human Services at facilities for offenders with mental disorders have the powers of peace officers when performing duties prescribed by the Administrator of the Division.~~

~~2. Employees of the Aging and Disability Services Division of the Department of Health and Human Services, as designated by the Administrator of the Division, have the powers of peace officers when performing duties pursuant to NRS 200.5091 to 200.50995, inclusive.] (Deleted by amendment.)~~

**Sec. 5.** ~~[NRS 289.470 is hereby amended to read as follows:~~

~~289.470 "Category II peace officer" means:~~

~~1. The Bailiff of the Supreme Court;~~

~~2. The bailiffs of the district courts, justice courts and municipal courts whose duties require them to carry weapons and make arrests;~~

~~3. Constables and their deputies whose official duties require them to carry weapons and make arrests;~~

~~4. Inspectors employed by the Nevada Transportation Authority who exercise those powers of enforcement conferred by chapters 706 and 712 of NRS;~~

~~5. Parole and probation officers;~~

~~6. Special investigators who are employed full time by the office of any district attorney or the Attorney General;~~

~~7. Investigators of arson for fire departments who are specially designated by the appointing authority;~~

~~8. The assistant and deputies of the State Fire Marshal;~~

~~9. The brand inspectors of the State Department of Agriculture who exercise the powers of enforcement conferred by chapter 565 of NRS;~~

~~10. The field agents and inspectors of the State Department of Agriculture who exercise the powers of enforcement conferred by NRS 561.225;~~

~~11. Investigators for the State Forester Firewarden who are specially designated by the State Forester Firewarden and whose primary duties are related to the investigation of arson;~~

~~12. School police officers employed by the board of trustees of any county school district;~~

~~13. Agents of the State Gaming Control Board who exercise the powers of enforcement specified in NRS 289.360, 463.140 or 463.1405, except those agents whose duties relate primarily to auditing, accounting, the collection of taxes or license fees, or the investigation of applicants for licenses;~~

~~14. Investigators and administrators of the Division of Compliance Enforcement of the Department of Motor Vehicles who perform the duties specified in subsection 2 of NRS 481.048;~~

~~15. Officers and investigators of the Section for the Control of Emissions From Vehicles and the Enforcement of Matters Related to the Use of Special Fuel of the Department of Motor Vehicles who perform the duties specified in subsection 2 of NRS 481.0481;~~

~~16. Legislative police officers of the State of Nevada;~~

~~17. The personnel of the Capitol Police Division of the Department of Public Safety appointed pursuant to subsection 2 of NRS 331.140;~~

~~18. Parole counselors of the Division of Child and Family Services of the Department of Health and Human Services;~~

~~19. Juvenile probation officers and deputy juvenile probation officers employed by the various judicial districts in the State of Nevada or by a department of juvenile justice services established by ordinance pursuant to NRS 62G.210 whose official duties require them to enforce court orders on juvenile offenders and make arrests;~~

~~20. Field investigators of the Taxicab Authority;~~

~~21. Security officers employed full-time by a city or county whose official duties require them to carry weapons and make arrests;~~

~~22. The chief of a department of alternative sentencing created pursuant to NRS 211A.080 and the assistant alternative sentencing officers employed by that department;~~

~~23. Criminal investigators who are employed by the Secretary of State; [and]~~

~~24. The Inspector General of the Department of Corrections and any person employed by the Department as a criminal investigator [.] ; and~~

~~25. Employees of the Aging and Disability Services Division of the Department of Health and Human Services, as designated by the Administrator of the Division, when performing duties pursuant to NRS 200.5091 to 200.50995, inclusive.} (Deleted by amendment.)~~

Sec. 6. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Administrator of the Aging and Disability Services Division of the Department of Health and Human Services or a representative designated by the Administrator may, for the purpose of investigating an alleged violation of NRS 200.5091 to 200.50995, inclusive:

(a) Administer oaths and take testimony thereunder; and

(b) Issue subpoenas requiring the attendance of witnesses before the Division at a designated time and place and the production of books, papers and records.

2. If a witness fails to appear or refuses to give testimony or to produce books, papers and records as required by the subpoena, the district court of the county in which the investigation is being conducted may compel the attendance of the witness, the giving of testimony and the production of books, papers and records as required by the subpoena.

Sec. 7. NRS 200.5092 is hereby amended to read as follows:

200.5092 As used in NRS 200.5091 to 200.50995, inclusive, *and section 6 of this act*, unless the context otherwise requires:

1. "Abuse" means willful and unjustified:

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

(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.

2. "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” does not include the normal influence that one member of a family has over another.

3. “Isolation” means willfully, maliciously and intentionally 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; or

(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.

➤ 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.

4. “Neglect” means the failure of:

(a) A person 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; or

(b) An older person or a vulnerable person to provide for his or her own needs because of inability to do so.

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

6. “Protective services” means services the purpose of which is to prevent and remedy the abuse, neglect, exploitation and isolation of older persons. The services may include investigation, evaluation, counseling, arrangement and referral for other services and assistance.

7. “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. 8. 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 6 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.

1       **Sec. 9. NRS 200.5096 is hereby amended to read as follows:**

2       200.5096 Immunity from civil or criminal liability extends to every person  
3 who, pursuant to NRS 200.5091 to 200.50995, inclusive, **and section 6 of this act,**  
4 in good faith:

- 5       1. Participates in the making of a report;
- 6       2. Causes or conducts an investigation of alleged abuse, neglect, exploitation  
7 or isolation of an older person or a vulnerable person; or
- 8       3. Submits information contained in a report to a licensing board pursuant to  
9 subsection 4 of NRS 200.5095.

10       **Sec. 10. NRS 200.5097 is hereby amended to read as follows:**

11       200.5097 In any proceeding resulting from a report made or action taken  
12 pursuant to NRS 200.5091 to 200.50995, inclusive, **and section 6 of this act** or in  
13 any other proceeding, the report or its contents or any other fact related thereto or to  
14 the condition of the older person or vulnerable person who is the subject of the  
15 report may not be excluded on the ground that the matter would otherwise be  
16 privileged against disclosure under chapter 49 of NRS.

17       **Sec. 11. NRS 200.5099 is hereby amended to read as follows:**

18       200.5099 1. Except as otherwise provided in subsection 6, any person who  
19 abuses an older person or a vulnerable person is guilty:

- 20       (a) For the first offense, of a gross misdemeanor; or
- 21       (b) For any subsequent offense or if the person has been previously convicted  
22 of violating a law of any other jurisdiction that prohibits the same or similar  
23 conduct, of a category B felony and shall be punished by imprisonment in the state  
24 prison for a minimum term of not less than 2 years and a maximum term of not  
25 more than 6 years, unless a more severe penalty is prescribed by law for the act or  
26 omission which brings about the abuse.

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

- 30       (a) Neglects the older person or vulnerable person, causing the older person or  
31 vulnerable person to suffer physical pain or mental suffering;
- 32       (b) Permits or allows the older person or vulnerable person to suffer  
33 unjustifiable physical pain or mental suffering; or
- 34       (c) Permits or allows the older person or vulnerable person to be placed in a  
35 situation where the older person or vulnerable person may suffer physical pain or  
36 mental suffering as the result of abuse or neglect,  
37 is guilty of a gross misdemeanor unless a more severe penalty is prescribed by  
38 law for the act or omission which brings about the abuse or neglect.

39       3. Except as otherwise provided in subsection 4, any person who exploits an  
40 older person or a vulnerable person shall be punished, if the value of any money,  
41 assets and property obtained or used:

- 42       (a) Is less than \$250, for a misdemeanor by imprisonment in the county jail for  
43 not more than 1 year, or by a fine of not more than \$2,000, or by both fine and  
44 imprisonment;
- 45       (b) Is at least \$250, but less than \$5,000, for a category B felony by  
46 imprisonment in the state prison for a minimum term of not less than 2 years and a  
47 maximum term of not more than 10 years, or by a fine of not more than \$10,000, or  
48 by both fine and imprisonment; or
- 49       (c) Is \$5,000 or more, for a category B felony by imprisonment in the state  
50 prison for a minimum term of not less than 2 years and a maximum term of not  
51 more than 20 years, or by a fine of not more than \$25,000, or by both fine and  
52 imprisonment,

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

6 4. If a person exploits an older person or a vulnerable person and the  
7 monetary value of any money, assets and property obtained cannot be determined,  
8 the person shall be punished for a gross misdemeanor by imprisonment in the  
9 county jail for not more than 1 year, or by a fine of not more than \$2,000, or by  
10 both fine and imprisonment.

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

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

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

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

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

29 8. In addition to any other penalty imposed against a person for a violation of  
30 any provision of NRS 200.5091 to 200.50995, inclusive, and section 6 of this act,  
31 the court shall order the person to pay restitution.

32 9. As used in this section:

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

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

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

44 **Sec. 12. NRS 178.571 is hereby amended to read as follows:**

45 178.571 1. Except as otherwise provided in subsection 2, in a case involving  
46 any act of domestic violence pursuant to NRS 33.018, a violation of NRS 200.366,  
47 200.368 or 200.373, a battery with intent to commit a sexual assault pursuant to  
48 NRS 200.400, a violation of any provision of NRS 200.5091 to 200.5099, inclusive,  
49 and section 6 of this act, a violation of NRS 201.180, 201.210, 201.220 or 201.230  
50 or an attempt or a conspiracy to commit any of these offenses, a witness may  
51 designate an attendant who must be allowed to attend the preliminary hearing and  
52 the trial during the witness's testimony to provide support.

2. In a case involving an offense in which a minor is a witness, the witness who is a minor may designate an attendant who must be allowed to attend the preliminary hearing and the trial during the witness's testimony to provide support.

3. The attendant may be designated by a party as a witness and, except as otherwise provided in this section, must not be excluded from the proceedings. If a party designates the attendant as a witness, the attendant must be examined and cross-examined before any other witness testifies.

4. Except as otherwise provided in this subsection and subsection 5, the attendant must not be a reporter or editorial employee of any newspaper, periodical or press association or an employee of any radio or television station. The provisions of this subsection do not apply to an attendant to a witness in a case involving a violation of any provision of NRS 200.5091 to 200.5095, inclusive.

5. The parent, child, brother or sister of the witness may serve as the attendant of the witness whether or not the attendant is a reporter or an editorial employee of any newspaper, periodical or press association or an employee of any radio or television station, but the attendant shall not make notes during the hearing or trial.

6. The court:

(a) Shall, if the witness requests, allow the attendant to sit next to the witness while the witness is testifying; or

(b) May, if the witness requests that the attendant be in another location in the courtroom while the witness is testifying, allow the attendant to be in that location while the witness is testifying.

7. Except as otherwise provided in this subsection, the court shall allow the attendant to have physical contact with the witness while the witness is testifying, if the court determines that such contact is reasonably appropriate or necessary to provide support to the witness. If the attendant attempts to influence or affect in any manner the testimony of the witness during the giving of testimony or at any other time, the court shall exclude that attendant and allow the witness to designate another attendant.

8. A party may move to exclude a particular attendant for good cause, and the court shall hear the motion out of the presence of the jury, if any. If the court grants the motion, the witness may designate another attendant.

**Sec. 13. NRS 449.188 is hereby amended to read as follows:**

449.188 1. In addition to the grounds listed in NRS 449.160, the Health Division may deny a license to operate a facility for intermediate care, facility for skilled nursing, residential facility for groups or home for individual residential care to an applicant or may suspend or revoke the license of a licensee to operate such a facility or home if:

(a) The applicant or licensee has been convicted of:

(1) Murder, voluntary manslaughter or mayhem;

(2) Assault with intent to kill or to commit sexual assault or mayhem;

(3) Sexual assault, statutory sexual seduction, incest, lewdness or indecent exposure, or any other sexually related crime that is punished as a felony;

(4) Prostitution, solicitation, lewdness or indecent exposure, or any other sexually related crime that is punished as a misdemeanor, within the immediately preceding 7 years;

(5) A crime involving domestic violence that is punished as a felony;

(6) A crime involving domestic violence that is punished as a misdemeanor, within the immediately preceding 7 years;

(7) Abuse or neglect of a child or contributory delinquency;

(8) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS, within the immediately preceding 7 years;



(9) Abuse, neglect, exploitation or isolation of older persons or vulnerable persons, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, and section 6 of this act or a law of any other jurisdiction that prohibits the same or similar conduct;

(10) A violation of any provision of law relating to the State Plan for Medicaid or a law of any other jurisdiction that prohibits the same or similar conduct, within the immediately preceding 7 years;

(11) A violation of any provision of NRS 422.450 to 422.590, inclusive;

(12) A criminal offense under the laws governing Medicaid or Medicare, within the immediately preceding 7 years;

(13) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years;

(14) Any other felony involving the use or threatened use of force or violence against the victim or the use of a firearm or other deadly weapon; or

(15) An attempt or conspiracy to commit any of the offenses listed in this paragraph, within the immediately preceding 7 years; or

(b) The licensee has, in violation of NRS 449.185, continued to employ a person who has been convicted of a crime listed in paragraph (a).

2. In addition to the grounds listed in NRS 449.160, the Health Division may deny a license to operate an agency to provide personal care services in the home or an agency to provide nursing in the home to an applicant or may suspend or revoke the license of a licensee to operate such an agency if the licensee has, in violation of NRS 449.185, continued to employ a person who has been convicted of a crime listed in paragraph (a) of subsection 1.

3. As used in this section:

(a) "Domestic violence" means an act described in NRS 33.018.

(b) "Medicaid" has the meaning ascribed to it in NRS 439B.120.

(c) "Medicare" has the meaning ascribed to it in NRS 439B.130.