

SENATE BILL NO. 347—SENATOR DENIS

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Authorizes the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services to administer oaths, take testimony and issue subpoenas under certain circumstances. (BDR 15-1075)

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

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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 older persons; authorizing the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services 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 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. (Deleted by amendment.)

Sec. 5. (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



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1 older person or vulnerable person of the ownership, use, benefit or
2 possession of his or her money, assets or property.

3 ➡ As used in this subsection, "undue influence" does not include
4 the normal influence that one member of a family has over another.

5 3. "Isolation" means willfully, maliciously and intentionally
6 preventing an older person or a vulnerable person from having
7 contact with another person by:

8 (a) Intentionally preventing the older person or vulnerable
9 person from receiving visitors, mail or telephone calls, including,
10 without limitation, communicating to a person who comes to visit
11 the older person or vulnerable person or a person who telephones
12 the older person or vulnerable person that the older person or
13 vulnerable person is not present or does not want to meet with or
14 talk to the visitor or caller knowing that the statement is false,
15 contrary to the express wishes of the older person or vulnerable
16 person and intended to prevent the older person or vulnerable person
17 from having contact with the visitor; or

18 (b) Physically restraining the older person or vulnerable person
19 to prevent the older person or vulnerable person from meeting with
20 a person who comes to visit the older person or vulnerable person.

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

25 4. "Neglect" means the failure of:

26 (a) A person who has assumed legal responsibility or a
27 contractual obligation for caring for an older person or a vulnerable
28 person or who has voluntarily assumed responsibility for his or her
29 care to provide food, shelter, clothing or services which are
30 necessary to maintain the physical or mental health of the older
31 person or vulnerable person; or

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

34 5. "Older person" means a person who is 60 years of age or
35 older.

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

41 7. "Vulnerable person" means a person 18 years of age or older
42 who:

43 (a) Suffers from a condition of physical or mental incapacitation
44 because of a developmental disability, organic brain damage or
45 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.

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

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

1. Participates in the making of a report;

2. Causes or conducts an investigation of alleged abuse, neglect, exploitation or isolation of an older person or a vulnerable person; or

3. Submits information contained in a report to a licensing board pursuant to subsection 4 of NRS 200.5095.

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

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

Sec. 11. 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 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



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1 more than 6 years, unless a more severe penalty is prescribed by law
2 for the act or omission which brings about the abuse.

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

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

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

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

15 ➤ is guilty of a gross misdemeanor unless a more severe penalty is
16 prescribed by law for the act or omission which brings about the
17 abuse or neglect.

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

22 (a) Is less than \$250, for a misdemeanor by imprisonment in the
23 county jail for not more than 1 year, or by a fine of not more than
24 \$2,000, or by both fine and imprisonment;

25 (b) Is at least \$250, but less than \$5,000, for a category B felony
26 by imprisonment in the state prison for a minimum term of not less
27 than 2 years and a maximum term of not more than 10 years, or by a
28 fine of not more than \$10,000, or by both fine and imprisonment; or

29 (c) Is \$5,000 or more, for a category B felony by imprisonment
30 in the state prison for a minimum term of not less than 2 years and a
31 maximum term of not more than 20 years, or by a fine of not more
32 than \$25,000, or by both fine and imprisonment,

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

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



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

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

4 (b) For any subsequent offense, of a category B felony and shall
5 be punished by imprisonment in the state prison for a minimum
6 term of not less than 2 years and a maximum term of not more than
7 10 years, and may be further punished by a fine of not more than
8 \$5,000.

9 6. A person who violates any provision of subsection 1, if
10 substantial bodily or mental harm or death results to the older person
11 or vulnerable person, is guilty of a category B felony and shall be
12 punished by imprisonment in the state prison for a minimum term of
13 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
15 or omission which brings about the abuse.

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

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

27 9. As used in this section:

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

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

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

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

42 178.571 1. Except as otherwise provided in subsection 2, in a
43 case involving any act of domestic violence pursuant to NRS
44 33.018, a violation of NRS 200.366, 200.368 or 200.373, a battery
45 with intent to commit a sexual assault pursuant to NRS 200.400, a



1 violation of any provision of NRS 200.5091 to 200.5099, inclusive,
2 *and section 6 of this act*, a violation of NRS 201.180, 201.210,
3 201.220 or 201.230 or an attempt or a conspiracy to commit any of
4 these offenses, a witness may designate an attendant who must be
5 allowed to attend the preliminary hearing and the trial during the
6 witness's testimony to provide support.

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

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

16 4. Except as otherwise provided in this subsection and
17 subsection 5, the attendant must not be a reporter or editorial
18 employee of any newspaper, periodical or press association or an
19 employee of any radio or television station. The provisions of this
20 subsection do not apply to an attendant to a witness in a case
21 involving a violation of any provision of NRS 200.5091 to
22 200.50995, inclusive.

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

28 6. The court:

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

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

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

42 8. A party may move to exclude a particular attendant for good
43 cause, and the court shall hear the motion out of the presence of the
44 jury, if any. If the court grants the motion, the witness may
45 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



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(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.

