

Amendment No. 969

Senate Amendment to Assembly Bill No. 288 First Reprint (BDR 15-724)

Proposed by: Senator Cannizzaro

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: Yes 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.

BAW



Date: 5/26/2017

A.B. No. 288—Revises provisions relating to the protection of older persons and vulnerable persons. (BDR 15-724)



ASSEMBLY BILL NO. 288—ASSEMBLYMEN JOINER, FRIERSON, BENITEZ-THOMPSON, CARRILLO, DIAZ; ARAUJO, CARLTON, FUMO, JAUREGUI, MONROE-MORENO, SPIEGEL AND SWANK

MARCH 14, 2017

JOINT SPONSOR: SENATOR CANNIZZARO

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the protection of older persons and vulnerable persons. (BDR 15-724)

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 the protection of certain persons; revising provisions governing the additional penalty that must be imposed for certain crimes of criminal violations of law committed against an older person or a vulnerable person; revising provisions relating to immunity from civil or criminal liability for certain acts; increasing the maximum term of imprisonment for a person who commits certain acts against an older person or a vulnerable person that result in substantial bodily or mental harm to or the death of the person; revising the penalties for committing certain acts against an older person or a vulnerable person or conspiring to commit certain acts against an older person or a vulnerable person; establishing provisions relating to certain ~~arbitration~~ clauses relating to dispute resolution included in contracts used by facilities for long-term care; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the imposition of an additional penalty upon a person who commits certain crimes or criminal violations of law against a person 60 years of age or older or a vulnerable person, and provides that the sentence prescribed runs consecutively with the sentence prescribed by statute for the crime or criminal violation. (NRS 193.167) **Section 1** of this bill provides that the additional sentence prescribed must not exceed the sentence imposed for the crime or criminal violation.

Existing law extends immunity from civil or criminal liability to every person who, in good faith: (1) participates in the making of a report concerning the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person; (2) submits information contained in such a report to a licensing board; or (3) causes or conducts an investigation of alleged abuse, neglect, exploitation, isolation or abandonment of an older

person or a vulnerable person. (NRS 200.5096) **Section 1.5** of this bill provides that such immunity does not extend to any person who abused, neglected, exploited, isolated or abandoned the older person or vulnerable person who is the subject of the report or investigation or any person who committed certain other acts relating to the abuse, neglect, exploitation, isolation or abandonment of the older person or vulnerable person.

Existing law establishes the penalties to be imposed upon a person who abuses, neglects, exploits, isolates or abandons an older person or a vulnerable person. Any person who has assumed responsibility to care for an older person or a vulnerable person and who neglects the older person or vulnerable person or commits certain other related acts, thereby causing substantial bodily or mental harm to or the death of the older person or vulnerable person, is guilty of a category B felony and is 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. (NRS 200.5099) **Section 2** of this bill increases the maximum term of imprisonment for the commission of such acts from 6 years to 20 years. **Section 2** also revises the penalties for certain offenses relating to the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person and provides that a person who commits any such offense is guilty of: (1) either a category C felony or gross misdemeanor, as determined by the court, for the first offense or, if the offense is exploitation, the monetary value involved is less than \$650 or cannot be determined; or (2) a category B felony for the second and all subsequent offenses or, if the offense is exploitation, if the monetary value involved is \$650 or more.

Existing law provides that a person who conspires with another to commit abuse, exploitation or isolation of an older person or a vulnerable person is punished: (1) for the first offense, for a gross misdemeanor; or (2) for the second and all subsequent offenses, for a category C felony. (NRS 200.50995) **Section 3** of this bill increases the penalty for the commission of a second or subsequent offenses to a category B felony punishable 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.

Section 4 of this bill: (1) provides that if a facility for long-term care wishes to include as part of any contract relating to the provision of care a clause ~~providing that~~ which specifies or restricts the means by which the parties to the contract ~~agree~~ are required to resolve any dispute, ~~through arbitration;~~ the clause must be included as an addendum to the contract; and (2) establishes requirements pertaining to the form and content of such an addendum.

Section 5 of this bill amends Senate Bill No. 360 of this session, which includes a provision that is identical to section 4, to ensure that the provisions in the two bills do not conflict with each other.

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, or attempting or conspiring to embezzle, money or property of a value of \$650 or more;
- (i) Obtaining, or attempting or conspiring to obtain, money or property of a value of \$650 or more by false pretenses; or
- (j) Taking money or property from the person of another,

1 ↪ against any person who is 60 years of age or older or against a vulnerable person
2 shall, in addition to the term of imprisonment prescribed by statute for the crime, be
3 punished, if the crime is a misdemeanor or gross misdemeanor, by imprisonment in
4 the county jail for a term equal to the term of imprisonment prescribed by statute
5 for the crime, and, if the crime is a felony, by imprisonment in the state prison for a
6 minimum term of not less than 1 year and a maximum term of not more than 20
7 years.

8 2. Except as otherwise provided in NRS 193.169, any person who commits a
9 criminal violation of the provisions of chapter 90 or 91 of NRS against any person
10 who is 60 years of age or older or against a vulnerable person shall, in addition to
11 the term of imprisonment prescribed by statute for the criminal violation, be
12 punished, if the criminal violation is a misdemeanor or gross misdemeanor, by
13 imprisonment in the county jail for a term equal to the term of imprisonment
14 prescribed by statute for the criminal violation, and, if the criminal violation is a
15 felony, by imprisonment in the state prison for a minimum term of not less than 1
16 year and a maximum term of not more than 20 years.

17 3. In determining the length of the additional penalty imposed pursuant to this
18 section, the court shall consider the following information:

- 19 (a) The facts and circumstances of the crime or criminal violation;
20 (b) The criminal history of the person;
21 (c) The impact of the crime or criminal violation on any victim;
22 (d) Any mitigating factors presented by the person; and
23 (e) Any other relevant information.

24 ↪ The court shall state on the record that it has considered the information
25 described in paragraphs (a) to (e), inclusive, in determining the length of the
26 additional penalty imposed.

27 4. The sentence prescribed by this section ~~{must run}~~:

28 (a) *Must not exceed the sentence imposed for the crime or criminal violation;*
29 *and*

30 (b) *Must run* consecutively with the sentence prescribed by statute for the
31 crime or criminal violation.

32 5. This section does not create any separate offense but provides an additional
33 penalty for the primary offense, whose imposition is contingent upon the finding of
34 the prescribed fact.

35 6. As used in this section, "vulnerable person" has the meaning ascribed to it
36 in NRS 200.5092.

37 Sec. 1.5. NRS 200.5096 is hereby amended to read as follows:

38 200.5096 ~~Immunity~~

39 1. *Except as otherwise provided in subsection 2, immunity* from civil or
40 criminal liability extends to every person who, pursuant to NRS 200.5091 to
41 200.50995, inclusive, in good faith:

42 ~~{1-}~~ (a) Participates in the making of a report;

43 ~~{2-}~~ (b) Causes or conducts an investigation of alleged abuse, neglect,
44 exploitation, isolation or abandonment of an older person or a vulnerable person; or

45 ~~{3-}~~ (c) Submits information contained in a report to a licensing board pursuant
46 to subsection 4 of NRS 200.5095.

47 2. *The immunity provided in subsection 1 does not extend to any person*
48 *who has:*

49 (a) *Abused, neglected, exploited, isolated or abandoned the older person or*
50 *vulnerable person who is the subject of the report or investigation as prohibited*
51 *by NRS 200.5099;*

1 *(b) Conspired with another to commit abuse, exploitation or isolation of the*
2 *older person or vulnerable person who is the subject of the report or investigation*
3 *as prohibited by NRS 200.50995; or*

4 *(c) Aided and abetted in or was an accessory to the abuse, neglect,*
5 *exploitation, isolation or abandonment of the older person or vulnerable person*
6 *who is the subject of the report or investigation or the conspiracy to commit*
7 *abuse, exploitation or isolation of the older person or vulnerable person.*

8 **Sec. 2.** NRS 200.5099 is hereby amended to read as follows:

9 200.5099 1. Except as otherwise provided in subsection 6, any person who
10 abuses an older person or a vulnerable person is guilty:

11 (a) For the first offense, of ~~the gross~~ *either of the following, as determined by*
12 *the court:*

13 *(1) A category C felony and shall be punished as provided in NRS*
14 *193.130; or*

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

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

23 *unless a more severe penalty is prescribed by law for the act or omission which*
24 *brings about the abuse.*

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

28 ~~(a) Neglects~~ *neglects* the older person or vulnerable person, causing the older
29 person or vulnerable person to suffer physical pain or mental suffering ~~is~~

30 ~~(b) Permits~~ *permits* or allows the older person or vulnerable person to suffer
31 unjustifiable physical pain or mental suffering ~~is~~ or

32 ~~(c) Permits~~ *permits* or allows the older person or vulnerable person to be
33 placed in a situation where the older person or vulnerable person may suffer
34 physical pain or mental suffering as the result of abuse or neglect ~~is~~

35 ~~is~~ *is* guilty:

36 (a) For the first offense, of ~~the gross~~ *either of the following, as determined by*
37 *the court:*

38 *(1) A category C felony and shall be punished as provided in NRS*
39 *193.130; or*

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

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

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

48 3. Except as otherwise provided in subsection 4, any person who exploits an
49 older person or a vulnerable person shall be punished ~~is~~:

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

52 ~~(a) (1)~~ *(1)* Is less than \$650, ~~for a gross~~ *of either of the following, as*
53 *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;*

~~[(b)]~~ (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

~~[(c)]~~ (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 ~~[(4)]~~; 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 ~~[(for a gross)]~~:

(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 ~~[(4)]~~; 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 ~~[(a gross)]~~ *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 ~~[(4)]~~ 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 ~~[(any)]~~ the second and all subsequent ~~[(offense)]~~ 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 ~~[(4)]~~.

↪ 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 ~~16~~ 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, 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. 3. NRS 200.50995 is hereby amended to read as follows:

200.50995 **1.** A person who conspires with another to commit abuse, exploitation or isolation of an older person or a vulnerable person as prohibited by NRS 200.5099 shall be punished:

~~1-1~~ (a) For the first offense, for a gross misdemeanor ~~1-~~
~~2-1~~ *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 ~~1-C~~ B felony ~~as provided in NRS 193.130.~~
~~1-1~~ *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.*

2. 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. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *If a facility for long-term care wishes to include as part of any contract relating to the provision of care a clause ~~providing that~~ which specifies or restricts the means by which the parties to the contract ~~agree~~ are required to resolve any dispute, ~~through arbitration,~~ the clause must be included as an addendum to the contract and:*

(a) Be printed in large font on a separate page with a separate signature line;

(b) Fully explain the effect of signing the addendum, including, without limitation, that any dispute ~~will~~ must be resolved exclusively through the ~~arbitration process instead of in court,~~ means authorized by the clause; and

1 (c) Clearly state that the person signing the contract is not required to sign
2 the addendum.

3 2. As used in this section, "facility for long-term care" means:

4 (a) A residential facility for groups;

5 (b) A facility for intermediate care;

6 (c) A facility for skilled nursing;

7 (d) A home for individual residential care; and

8 (e) Any unlicensed establishment that provides food, shelter, assistance and
9 limited supervision to a resident.

10 Sec. 5. Section 7.5 of Senate Bill No. 360 of this session is hereby
11 amended to read as follows:

12 Sec. 7.5. Chapter 449 of NRS is hereby amended by adding thereto a
13 new section to read as follows:

14 1. If a facility for long-term care wishes to include as part of any
15 contract relating to the provision of care a clause ~~providing that~~ which
16 specifies or restricts the means by which the parties to the contract ~~agree~~
17 are required to resolve any dispute, ~~through arbitration,~~ the clause must
18 be included as an addendum to the contract and:

19 (a) Be printed in large font on a separate page with a separate signature
20 line;

21 (b) Fully explain the effect of signing the addendum, including,
22 without limitation, that any dispute ~~will~~ must be resolved exclusively
23 through the ~~arbitration process instead of in court,~~ means authorized by
24 the clause; and

25 (c) Clearly state that the person signing the contract is not required to
26 sign the addendum.

27 2. As used in this section, "facility for long-term care" means:

28 (a) A residential facility for groups;

29 (b) A facility for intermediate care;

30 (c) A facility for skilled nursing;

31 (d) A home for individual residential care; and

32 (e) Any unlicensed establishment that provides food, shelter, assistance
33 and limited supervision to a resident.