

Amendment No. 435

Senate Amendment to Senate Bill No. 360	(BDR 15-965)
<b>Proposed by:</b> Senate Committee on Judiciary	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 360 (§ 7).

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.

MNM/NCA



Date: 4/20/2017

S.B. No. 360—Revises provisions relating to the protection of older persons, vulnerable persons and persons in need of a guardian.  
(BDR 15-965)





SENATE BILL NO. 360—SENATORS CANNIZZARO, FORD, SPEARMAN, WOODHOUSE, RATTI; ATKINSON, CANCELA, DENIS, FARLEY, MANENDO, PARKS AND SEGERBLOM

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the protection of older persons, vulnerable persons and persons in need of a guardian. (BDR 15-965)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 7)  
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 the definitions of the terms “abuse” and “exploitation” as they relate to prohibited acts 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 subsequent acts against an older person or a vulnerable person; establishing the Wards’ Bill of Rights; requiring each court having jurisdiction of the persons and estates of minors, incompetent persons or persons of limited capacity to perform certain actions to ensure the Wards’ Bill of Rights is available to the public; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law defines various terms for purposes of the provisions of law relating to the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person. (NRS 200.5092) **Section 1** of this bill revises the definitions of the terms “abuse” and “exploitation” to include additional acts which constitute an offense.

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 the 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 2** 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 must 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. (NRS 200.5099) **Section 3** of this bill increases the maximum term of imprisonment for the commission of such acts from 6 years to 20 years. **Section 3** also revises the penalties for certain offenses relating to the neglect or exploitation of an older person or a vulnerable person and provides that the commission of a second or subsequent offense is punishable as a category B felony.

Existing law establishes provisions governing the appointment of a guardian for a ward. (Chapter 159 of NRS) **Section 6** of this bill establishes the Wards' Bill of Rights, which sets forth certain specific rights of wards. **Section 7** of this bill requires each court having jurisdiction of the persons and estates of minors, incompetent persons or persons of limited capacity to: (1) make the Wards' Bill of Rights readily available to the public; (2) maintain a copy of the Wards' Bill of Rights in the court for reproduction and distribution to the public; and (3) ensure that the Wards' Bill of Rights is posted in a conspicuous place in the court and on the court's Internet website.

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

**Section 1.** NRS 200.5092 is hereby amended to read as follows:  
200.5092 As used in NRS 200.5091 to 200.50995, inclusive, 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 ~~††~~ ; or

*(f) Permitting an older person or a vulnerable person to be placed in a situation in which any of the acts described in paragraphs (a) to (d), inclusive, are likely to occur.*

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; ~~††~~

(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 ~~††~~ ; or

*(c) Deny adequate food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person.*

➤ 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. 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. 2.** NRS 200.5096 is hereby amended to read as follows:

200.5096 ~~Immunity~~

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

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

~~1-2~~ (b) Causes or conducts an investigation of alleged abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person; or

~~1-3~~ (c) Submits information contained in a report to a licensing board pursuant to subsection 4 of NRS 200.5095.

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

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

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

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

**Sec. 3.** 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~~ *the second and all* subsequent ~~offense~~ *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 ~~is~~

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

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

~~(c) Permits~~ *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~~

↳ ~~is~~ *is* guilty :

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

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

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

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

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

11 ~~HH~~ (1) Is less than \$650, for a gross misdemeanor by imprisonment in the  
12 county jail for not more than 364 days, or by a fine of not more than \$2,000, or by  
13 both fine and imprisonment;

14 ~~HH~~ (2) Is at least \$650, but less than \$5,000, for a category B felony by  
15 imprisonment in the state prison for a minimum term of not less than 2 years and a  
16 maximum term of not more than 10 years, or by a fine of not more than \$10,000, or  
17 by both fine and imprisonment; or

18 ~~HH~~ (3) Is \$5,000 or more, for a category B felony by imprisonment in the  
19 state prison for a minimum term of not less than 2 years and a maximum term of  
20 not more than 20 years, or by a fine of not more than \$25,000, or by both fine and  
21 imprisonment ~~HH~~ ; or

22 (b) *For the second and all subsequent offenses, regardless of the value of*  
23 *any money, assets and property obtained or used, for a category B felony by*  
24 *imprisonment in the state prison for a minimum term of not less than 2 years and*  
25 *a maximum term of not more than 20 years, or by a fine of not more than*  
26 *\$25,000, or by both fine and imprisonment,*

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

32 4. If a person exploits an older person or a vulnerable person and the  
33 monetary value of any money, assets and property obtained cannot be determined,  
34 the person shall be punished :

35 (a) *For the first offense*, for a gross misdemeanor by imprisonment in the  
36 county jail for not more than 364 days, or by a fine of not more than \$2,000, or by  
37 both fine and imprisonment ~~HH~~ ; or

38 (b) *For the second and all subsequent offenses, for a category B felony by*  
39 *imprisonment in the state prison for a minimum term of not less than 2 years and*  
40 *a maximum term of not more than 20 years, or by a fine of not more than*  
41 *\$25,000, or by both fine and imprisonment,*

42 *↪ unless a more severe penalty is prescribed by law for the act which brought*  
43 *about the exploitation.*

44 5. Any person who isolates or abandons an older person or a vulnerable  
45 person is guilty:

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

47 (b) For any subsequent offense, of a category B felony and shall be punished  
48 by imprisonment in the state prison for a minimum term of not less than 2 years and  
49 a maximum term of not more than 10 years, and may be further punished by a fine  
50 of not more than \$5,000 ~~HH~~ ,

51 *↪ unless a more severe penalty is prescribed by law for the act or omission which*  
52 *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. 4. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 5, 6 and 7 of this act.

Sec. 5. *Section 6 of this act may be cited as the Wards' Bill of Rights.*

Sec. 6. *1. The Legislature hereby declares that, except as otherwise specifically provided by law, each proposed ward has the right to have an attorney before a guardianship is imposed to ask the court for relief, and each ward has the right to:*

*(a) Have an attorney at any time during a guardianship to ask the court for relief.*

*(b) Receive notice of all guardianship proceedings and all proceedings relating to a determination of capacity unless the court determines that the ward lacks the capacity to comprehend such notice.*

*(c) Receive a copy of all documents filed in a guardianship proceeding.*

~~1(e)~~ *(d) Have a family member, an interested party or a medical provider speak or raise any issues of concern on behalf of the ward during a court hearing, either orally or in writing, including, without limitation, issues relating to a conflict with a guardian.*

~~1(d) Ask~~

*(e) Be educated about guardianships and ask questions and express concerns and complaints about a guardian and the actions of a guardian, either orally or in writing.*

~~1(e)~~ *(f) Participate in developing a plan for his or her care, including, without limitation, managing his or her assets and personal property and determining his or her residence and the manner in which he or she will ~~live~~.*

~~1(f)~~ *receive services.*

(g) Have due consideration given to his or her current and previously stated personal desires, preferences for health care and medical treatment and religious and moral beliefs.

~~##~~ (h) Remain as independent as possible, including, without limitation, to have his or her preference honored regarding his or her residence and standard of living, either as expressed or demonstrated before a determination was made relating to capacity or as currently expressed, if the preference is reasonable under the circumstances.

~~##~~ (i) Be granted the greatest degree of freedom possible, consistent with the reasons for a guardianship.

~~##~~ , and exercise control of all aspects of his or her life that are not delegated to a guardian specifically by a court order.

(j) Engage in any activity that the court has not expressly reserved for a guardian, including, without limitation, voting, marrying or entering into a domestic partnership, traveling, working and having a driver's license.

(k) Be treated with respect and dignity.

~~##~~ (l) Be treated fairly by his or her guardian.

~~##~~ (m) Maintain privacy and confidentiality in personal matters.

~~##~~ (n) Receive telephone calls and personal mail and have visitors, unless his or her guardian and the court determine that particular correspondence or a particular visitor will cause harm to the ward.

~~##~~ (o) Receive timely, effective and appropriate health care and medical treatment that does not violate his or her rights.

~~##~~ (p) Have all services provided by a guardian at a reasonable rate of compensation and have a court review any requests for payment to avoid excessive or unnecessary fees or duplicative billing.

~~##~~ (q) Receive prudent financial management of his or her property and regular detailed reports of financial accounting, including, without limitation, reports on any investments or trusts that are held for his or her benefit and any expenditures or fees charged to his or her estate.

~~##~~ (r) Receive and control his or her salary, maintain a bank account and manage his or her personal money.

(s) Ask the court to:

(1) Review the management activity of a guardian if a dispute cannot be resolved.

(2) ~~Terminate~~ Continually review the need for a guardianship or modify or terminate a guardianship.

(3) Replace the guardian.

(4) Enter an order restoring his or her capacity at the earliest possible time.

2. The rights of a ~~proposed~~ ward set forth in subsection 1 do not abrogate any remedies provided by law. All such rights may be addressed in a guardianship proceeding or be enforced through a private right of action.

Sec. 7. Each court shall:

1. Make the Wards' Bill of Rights readily available to the public;

2. Maintain a copy of the Wards' Bill of Rights in the court for reproduction and distribution to the public; and

3. Ensure that the Wards' Bill of Rights is posted:

(a) In a conspicuous place, in at least 12-point type, in the court; and

(b) On the Internet website of the court.

Sec. 8. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 9. 1. This section becomes effective upon passage and approval.

- 1           2. Sections 4 to 8, inclusive, of this act become effective:
- 2           (a) Upon passage and approval for the purpose of performing any preparatory
- 3           administrative tasks that are necessary to carry out the provisions of those sections;
- 4           and
- 5           (b) On January 1, 2018, for all other purposes.
- 6           3. Sections 1, 2 and 3 of this act become effective on October 1, 2017.