



Elder Neglect: Harmful to Society but No Actual Harm Required

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Over the past few decades, the U.S. has seen a dramatic rise in the number of elderly adults within its population. According to the 2020 Census, individuals over the age of 65 grew nearly five times faster than the total population during the 100 years from 1920 to 2020.¹ This means that, as of 2020, elderly adults accounted for approximately 16.8 percent of the total population in the U.S. and number more than 50 million.²

An unfortunate side effect of such a dramatic increase in the elderly population is an increase in the occurrence of abuse, neglect, and exploitation against elderly people. Sadly, statistics show that crimes against the elderly might be underreported due to a variety of factors, including isolation

of the elderly in skilled nursing facilities, health issues that prevent the individuals from reporting abuse/neglect, or a lack of access to resources that might help educate the elderly about options they have when they have been abused or neglected.³

Considering the factors that can prevent crimes against the elderly from being properly reported, the role of the Medicaid Fraud Control Unit (MFCU), as well as local law enforcement and local district attorneys' offices, in investigating and prosecuting these crimes is critical. And although elder abuse is a significant and troubling problem in our state, the crime of neglect is no less insidious and can be more difficult to identify. Often, the responsibility for reporting incidents of elder neglect falls on their friends and loved ones, so reducing the occurrence of elder neglect in our communities will require some understanding of what actions constitute neglect under Nevada law. This is especially true because Nevada is unique in what it does and does not require the state to prove to convict an individual of elder neglect.

Some statutory framework is helpful to understand the crime of elder neglect. Under Nevada Revised Statute (NRS) 200.5092(6), an "older person" is anyone over the age of 60.⁴ The crime of neglect of the elderly in Nevada is somewhat unique because two different statutes are at issue whenever a prosecutor is considering whether to criminally charge a neglect case. First, NRS 200.5092 provides all the definitions for what abuse, neglect, abandonment, isolation, exploitation, etc. are in Nevada. Then, once a prosecutor has determined that the elements of the crime of neglect are met, they must look to NRS 200.5099 for all the associated criminal penalties.

Different offense levels are at issue when determining criminal penalties for elder neglect because NRS 200.5099(2) includes both a felony and a gross misdemeanor component. This is because, prior to 2017, a first-time offender convicted of elder neglect could only be punished with a gross misdemeanor offense. Then, in 2017, the Nevada



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can work in tandem to demonstrate the duty of the provider to provide the older person with their specific level of care. Once the MFCU can show that there was a breakdown in that duty, then it is appropriate to look at the penalty provisions for neglect.

Importantly, proving the crime of elder neglect in Nevada does not require proof of actual harm to the individual. This is a very important distinction that is not always found in neglect statutes in other states. Rather, under NRS 200.5099(2), the prosecutor only needs to show that the elderly person was placed in a situation where they *may* be harmed. This is a powerful distinction, as it means the prosecutor does not need evidence of events like stage 5 pressure ulcers, signs of malnutrition, signs of dehydration, or other physical harm. Instead, the prosecutor simply needs to show enough evidence of neglectful living

conditions that the elderly person could have been harmed. Some of the most successful neglect cases the MFCU has prosecuted have been made by showing neglectful living conditions where there has been little or even no harm to the elderly person.⁶

Some examples of neglectful living conditions include, but are not limited to, improper wiring, no heat or air conditioning, nails protruding from

walls, no running water, lack of food, or unsanitary living conditions such as soiled bedding/clothing, urine smell, mice, cockroaches, and other vermin. Sometimes law enforcement, families, or state oversight agencies can intervene before the neglectful living condition results in actual harm to the older person. But the fact that Nevada law allows for a charge of criminal neglect based on the *potential* for harm is a very powerful tool because it can prevent bad actors from continuing to neglect the elderly individuals under their care until harm occurs. And these convictions can have widespread collateral consequences. A conviction of elder neglect can result in the loss of the state contract to run a

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Legislature amended the statute to add the felony level offense for first-time offenders.⁵ Now, even a first-time offender can be convicted of a Category C felony level offense for the crime of neglect of an older person. The court retains sole authority to determine whether the defendant will receive felony or gross misdemeanor treatment, no matter what a defense attorney or prosecutor might stipulate as part of a guilty plea. Additionally, if the neglect resulted in substantial bodily harm or death, then the statute provides for Category B felony level treatment. After the 2017 Legislative Session, the seriousness of the penalties for elder neglect now correspond to the seriousness of the offense.

Under NRS 200.5092(5), “neglect” is defined as “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.” The key focus in proving neglect is establishing the duty to provide care. In the MFCU’s cases, the state uses many different factors to prove that duty, whether it is contractual or statutory. For example, in a skilled nursing facility environment, a showing of duty might involve using the care plan for the resident of the facility to demonstrate what types of care or services should have been provided to the resident and then showing how the facility (or individual staff) failed to provide those services. The Nevada Administrative Code, as well as state licensing requirements and related applications/contracts can also establish the duty of care to facility residents. Additionally, care facilities have their own contracts with residents, staff, and Nevada Medicaid, all of which

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medical facility and in some cases can result in exclusion from participation in the Medicaid/Medicare program, in addition to civil lawsuits, fines, other monetary penalties, or jail time.⁷

The ability to shut down facilities, through these cases, and get elderly people out of facilities that are being run in a neglectful manner is important to ensuring the health and safety of those elderly residents going forward. Family and friends of elderly individuals should be aware of what type of conditions your loved one is in, and if there is any cause for concern, don't hesitate to report those conditions to law enforcement, Adult Protective Services, or the MFCU. Law enforcement agencies as well as prosecutorial bodies should be familiar with the important distinction Nevada law has regarding neglect of the elderly. Since actual harm does not need to be shown to prove a criminal elder neglect case, prosecutors and investigators should be mindful of the neglectful living conditions issue. If the evidence shows enough of those conditions to establish a pattern of neglect in a facility, then convicting someone of elder neglect before actual harm happens can go a long way in protecting our older population. These cases can also help ensure licensed medical facilities are being held accountable if they are running the facility in a way that harm could come to an elderly person.

ENDNOTES:

- <https://www.census.gov/library/stories/2023/05/2020-census-united-states-older-population-grew.html>
- <https://www.census.gov/library/stories/2023/05/2020-census-united-states-older-population-grew.html>
- https://ovc.ojp.gov/sites/g/files/xyckuh226/files/ncvrv2018/info_flyers/fact_sheets/2018NCVrw_OlderAdults_508_QC.pdf
- Of note, although the focus of this article is on older/elderly adults, anywhere this article references older adults, the same analysis would also apply to actions taken against vulnerable adults, who are individuals over the age of 18 who suffer a condition or mental handicap that restricts their ability to perform the activities of daily living. See NRS 200.5092(8).
- Assembly Bill 288, 2017 Nev. Stat. 2836-37
- https://ag.nv.gov/About/Criminal_Justice/Medicaid_Fraud/Facilities_Abuse/
- See NRS 449.174(1)(a)(9); see also <https://oig.hhs.gov/exclusions/authorities.asp>



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