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MEMORANDUM

Date: April 15, 2003
To: Senate Committee on Judiciary
Mark E. Amodei, Chairman
From: Mark Kemberling, Senior Deputy Attorney General
Subject: Committee Meeting of April 15, 2003
Prepared Testimony
AB73 (originally BDR 15-357)

This testimony is to request the reinstatement of AB73 provisions authorizing the imposition of investigation and prosecution costs as part of a sentence.

Originally AB73 had two major provisions. First, it created criminal statutory uniformity regarding the threshold age of an "older person". It reduced the threshold age from 65 to 60 years of age or older for four criminal statutes. This conformed the age to what is already defined as an "older person" in NRS 200.5092(5) and the Federal Older Americans Act, 42 USC 3002(38). By closing the five year age gap in NRS 197.167 it addressed a misdemeanor form of elder battery/abuse that was lacking under the primary elder protection statutes NRS 200.5092(1) and 200.5099. This is a valuable tool for investigators and prosecutors.

Second, AB73 **attempted** to allow as a sentencing option (at the discretion of the sentencing judge) the imposition of investigation and prosecution costs in addition to existing penalties. This second provision was deleted during a February 25th work session of the Assembly's Committee on the Judiciary. At that work session the committee discussed concerns regarding the prioritizing of restitution over the reimbursement of enforcement costs.

There may not be a need for a specific restitution statute addressing AB73. Nevada has a general statute that authorizes restitution for all crimes, (See NRS 173.133(3)). NRS 174.063, RE: Guilty pleas; also addresses restitution on a general level. As noted in the third paragraph under the section titled "Consequences of the Plea", a court has the authority to order restitution not only for the crimes pled to but also for related offenses that have been dismissed or "nol pros'd". NRS 176A.430, Restitution; sets out the general mechanism for the processing of restitution payments for all crimes. An attempt to create a specific restitution statute addressing only AB73 could have the potential for interpretation that would restrict a court's general authority noted in NRS 174.063.

Both the ordering of restitution and AB73's imposition of costs is within the discretion of the sentencing judge. In every day court sessions information, argument and evidence is presented to a judge prior to the issuance of an order concerning restitution or costs. With this system in place it is highly logical that the payment of restitution will be addressed as a priority over the payment of enforcement costs.

Why should the imposition of investigation and prosecution costs be allowed? Elder protection statutes can be technical and costly to enforce. Medical and accounting experts are often required to assist in the investigation and prosecution of these cases. The criminal acts of abuse, neglect, exploitation, isolation and the failure to report these offenses often result in increased costs to detect correct or mend the problems caused by a defendant's actions. Companies as well as individuals can be found guilty of these offenses. These offenders should not be allowed to retain their profits or other assets when committing these crimes.

In the case of *Vallery v. State*, 118 Nev. Adv. Op. 37; 46 P.3d 66 (May 2002), our Supreme Court ruled upon a case of elder neglect committed in the Reno area (including neglect resulting in death). The defendant controlled a corporation that operated residential facilities for the elderly. The Court's opinion referenced four separate areas of the trial that required the use of expert testimony. These included specialized testimony in the areas of bed sores or pressure ulcers, exposure to extreme cold, security devices or door alarms, scalding and Alzheimer supervision issues. This is just one published example of the complexities of these types of investigations and prosecutions.

Other statutes authorize the imposition of investigation and prosecution costs as part of a criminal sentence. The State of Florida has a general statute that authorizes these costs for all crimes (See Fla. Stat. ch 938.27, in the accompanying exhibit package). The accompanying exhibit package contains copies of the following Nevada statutes that authorize these costs:

1. NRS 205.034, RE: Arson
2. NRS 616D.620, RE: Industrial Insurance Fraud
3. NRS 686A.292, RE: Insurance Fraud (passed at the 2001 legislative session)
4. NRS 581.450, RE: Weights and Measures
5. NRS 624.700, RE: Contractor's Board
6. NRS 453.575, RE: Controlled Substances (payment of analysis costs)
7. NRS 454.358, RE: Dangerous Drugs (payment of analysis costs)

AB73 was well supported in its original format. Supporters included AARP, Nevada Department of Human Resources-Division for Aging Services, National Alzheimer's Association, Nevada's Board of Examiners for Long Term Care Administrators and this office.

In today's uncertain financial climate many government agencies are trying to lessen their burden upon the taxpayer and increase their fiscal proficiencies. This is especially true for Nevada during this legislative session. AB73 as originally drafted would have availed itself to those goals. An order for costs, even if not payable in the present may

be capable of being reduced to judgment and collected at a future date. The deletion of the cost provisions dichotomizes what was believed to be a major concern of fiscal responsibility for this legislature and the agencies who are attempting to meet that concern. The citizenry of this state is deserving of this discretionary use option and it should be reinstated into this bill.

As presently drafted AB73 expands upon an existing class of victim, which in turn has resulted in a fiscal note. The fiscal note was based on an extrapolation of census figures and age categories. It did not take into account the potential for reductions/savings in other categories of crime if AB73 crimes are charged in lieu of generic or general crimes. The fiscal note also does not address the potential for offsets that could be obtained if the penalty provisions were enacted. Even without computing these issues the presently reported costs are reasonable and will not take full effect for approximately seven years. The fiscal note assumes AB73 will be successfully implemented; this in turn should act as deterrence to others from committing these crimes. Therefore the deterrence effect should justify the fiscal notes' costs.

As noted above AB73's original penalty cost provisions are common sense provisions that are in line with the needs of this State and the citizens it serves. They should be reinstated.

Any questions or concerns of the committee or any of its members may be addressed to me and I will endeavor to make a prompt reply.

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cc. Chief, AGO-Criminal Division
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