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AB 73 – Amendment
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AB 73

Revises provisions concerning certain crimes committed against older persons.

Statute Affected: NRS193.167 Enhanced penalties for crimes against the elderly

Purpose: The current statute provides for increased penalties against people who commit specified crimes against people age 65 years or older. The revision lowers the age of the victim to 60 years

Attorney General Opinion No. 85-16: This opinion states that enhanced penalties do not affect the jurisdictional limits of misdemeanor and justice courts. "Our research has revealed no case authority in Nevada or elsewhere in direct support of the suggestion that the additional six month penalty by enhancement operates to convert the primary offense to a gross misdemeanor, thereby ousting a municipal or justice court of jurisdiction.

However, the opinion further states the following: However, because we believe that a right to a jury trial exists when the maximum possible penalty is in excess of six months, the municipal court would not be able to try such cases, since there is no right to a jury trial which is available in municipal court (emphasis provided).

Concern: Because municipal courts are not able to conduct jury trials, this statute is not used. Why is it on the books at all? Justice courts are empowered to conduct jury trials but due to resource issues, they are unlikely to prosecute these cases either. The statute whether it affects a victim age 65 and older or a victim age 60 and older has no effect on misdemeanor crimes against the elderly.

PROPOSED AMENDMENT

Solution: (1) Assault or battery against the elderly is more appropriately categorized as a felony. Add language to the bill (page 2 line 9) after "sentence prescribed by statute for the crime:" In the case of an assault or battery upon any person who is 60 years of age or older, the offense shall be deemed a felony violation of NRS 200.5099(1) rather than a misdemeanor violation of NRS 200.471 or 200.481; (2) Amend NRS 200.471 to exempt violations against older persons from the definition of misdemeanor assault and (3) Amend NRS 200.481 to exempt violations against older persons from the definition of misdemeanor Battery.

Justification: An assault or battery against a person who is 60 years or older should be a felony prosecuted under the elder abuse statute where the minimum penalty is 2 years in prison.