



# Bail and Pretrial Release

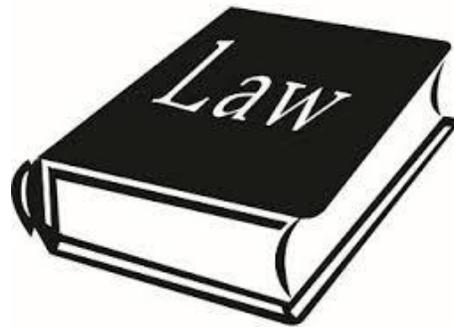
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# Principle

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- ❖ “The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” - *Coffin v. United States*, 156 U.S. 432, 453 (U.S. 1895)



# What is Bail for?

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- ❖ To ensure the defendant's appearance in court; and
- ❖ To protect public safety.



# Case Law

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- ❖ *Stack v. Boyle*, 342 U.S. 1 (1951) - Bail determinations must be:
  - ❖ Based on standards relevant to assure appearance; and
  - ❖ Individualized to each defendant.
- ❖ *Varden et. al. v. The City of Clanton* (2015)
  - ❖ “Criminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all.”
  - ❖ “Incarcerating individuals solely because of their inability to pay for their release, whether through the payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment.”



# Bail in Nevada

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- ❖ Defendant MUST be admitted to bail unless charged with murder (capital or life) per NV Constitution, Art. 1, Sec. 7.
- ❖ Felony parolee/probationer arrested for a different offense must not be admitted to bail.
- ❖ Mandatory 12-hour hold on DUI, DV, and PO violation arrestees.
- ❖ Non-unified judiciary so bail practices are not uniform across the State.
- ❖ Bail case currently before NV Supreme Court: Valdez-Jimenez vs. District Court – argued 09/04/19

# Types of Bail

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- ❖ Bail by surety/bond;
- ❖ Cash bail; and
- ❖ Release upon defendant's own recognizance (OR).
- ❖ Court may set bail conditions.



# Bail Schedules

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- ❖ Misdemeanor citation schedule allows inclusion of amount in citation/traffic ticket which lets people sign the back of the ticket to forfeit bail and send it into the court with payment.
- ❖ General schedule provides a suggested bail amount for various offenses, this amount must be reviewed on a case-by-case basis to tailor the amount/conditions of the individual defendant: indigence, etc.



# Presumption for Release

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- ❖ Twelve states, the District of Columbia, and the federal government have enacted a statutory presumption that defendants charged with bail-able offenses should be released on personal recognizance or unsecured bond unless a judicial officer makes an individualized determination that the defendant poses a risk requiring more restrictive conditions or detention. Six other states have adopted this presumption by court rule.

# Fairness

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- ❖ Defendants who are held in pretrial detention have less favorable outcomes than those who are not detained - regardless of charge or criminal history. In these studies, the less favorable outcomes include:
  - ❖ Greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases)
  - ❖ Greater likelihood of conviction
  - ❖ Greater likelihood of being sentenced to terms of incarceration
  - ❖ Greater likelihood of receiving longer prison terms.
- ❖ Data supports the proposition that pretrial detention has a coercive impact on a defendant's amenability to a plea bargain offer and inhibits a defendant's ability to participate in preparation of a defense.

# Public Safety

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- ❖ All categorizations of days spent in detention are associated with significant increases in the likelihood of new criminal activity (NCA) for low-risk defendants when compared to low-risk defendants detained for 1 day or less.
- ❖ The longer low-risk defendants are detained, the more likely they are to have new criminal activity pretrial (1.39 times more likely when held 2 to 3 days, increasing to 1.74 when held 31 days or more).
- ❖ For moderate-risk defendants, the lowest three categories of days spent in detention (2 to 3 days, 4 to 7 days, and 8 to 14 days) are associated with significant increases in the likelihood of NCA.
- ❖ None of the days-in-detention categories are significant predictors of NCA for high-risk defendants.

# Committee to Study Evidence-Based Pretrial Release

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- ❖ The Conference of State Court Administrators: 2012-2013 Policy Paper on Evidence-Based Pretrial Release:
  - ❖ “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755, 107 S. Ct. 2095, 2105, 95 L. Ed. 2d 697 (1987)
  - ❖ “...economic status (is) a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety.”
  - ❖ “In short, for the poor, bail means jail.”

# Committee's Creation

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- ❖ The Conference of Chief Justices: Resolution 3 “Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release”
- ❖ In June 2015, in response to the COSCA Policy Paper and the CCJ Resolution, the Judicial Council of the State of Nevada unanimously approved a resolution creating a Committee to Study Evidence-Based Pretrial Release in Nevada.

# Objectives

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- ❖ The Committee was convened, under the chairmanship of Justice James W. Hardesty, to study Nevada's pretrial release system and to examine alternatives and improvements to that system through evidence-based practices and current risk assessment tools.

# Membership

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- ❖ Committee membership consisted of members of the Nevada judiciary, lawyers practicing criminal law in Nevada, court services officers, and management staff from counties throughout Nevada.
  - ❖ Urban and Rural Judges
  - ❖ Clark Co. PD
  - ❖ Clark Co. DA
  - ❖ Washoe Co. PD
  - ❖ Washoe Co. DA
  - ❖ NACO Representatives
  - ❖ Pre-Trial Services Department Leadership
  - ❖ County Managers

# Efforts/Milestones

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- ❖ September 30, 2015 - The Committee held its initial meeting. Presentations were given by the Pretrial Justice Institute and Kentucky's Administrative Office of the Courts.
- ❖ November 05, 2015 - During the Committee's second meeting, Arizona Supreme Court staff presented on pretrial release reform taking place in Arizona.
- ❖ December 03, 2015 - Committee heard presentations regarding the federal pretrial system from representatives of the U.S. District Court, District of Nevada. Additionally, representatives from the Nevada bail industry presented.

# Efforts/Milestones

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- ❖ January 08, 2016 - The National Institute of Corrections provided key presentations on “Building a Pretrial Justice System: Elements of Effective Pretrial Programming” and “Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field.” The Committee unanimously adopted the performance and outcome measures as presented in “Measuring What Matters...”

# Efforts/Milestones

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- ❖ February 12, 2016 - The Committee heard presentations by Dr. James Austin, JFA Institute and Ms. Angela Jackson-Castain, Department of Justice, OJP Diagnostic Center. Based on these presentations, the Committee voted to move forward with the process of validating the Nevada-specific risk assessment (NPRA) created by Dr. Austin.
- ❖ May 23, 2016 - The Committee was presented with the results of the NPRA validation study and unanimously voted to implement the tool in a pilot site program.

# Efforts/Milestones

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- ❖ July 13, 2016 and August 08, 2016 Meetings - The Committee finalized plans for the pilot site program.
- ❖ August 18 - 19, 2016 - “NPRA Tool Training Sessions” were held in both Washoe County and Clark County for judges, pretrial services staff, public defenders, and district attorneys.
- ❖ September 01, 2016 - The NPRA Pilot Site Program launched in all Washoe County courts, Ely Justice Court, and in selected Clark County courts.

# Efforts/Milestones

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- ❖ August 15, 2018 - The Committee, based on the results of the pilot site program, unanimously voted to recommend that the Nevada Supreme Court adopt the use of a validated, pretrial risk assessment tool on a statewide basis.
- ❖ December 28, 2018 - Justice James W. Hardesty, as Committee chair, filed a petition to adopt a statewide requirement that all judges utilize a validated, risk assessment tool in pretrial decision-making.

# ADKT 0539: Statewide Implementation

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- ❖ On March 21, 2019, the Nevada Supreme Court filed an Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment:
  - ❖ The Administrative Office of the Courts (AOC) shall develop training materials for the implementation of the use of the NPRA.
  - ❖ The AOC shall provide assistance in educating judicial officers, court staff, and other interested individuals in the use of the NPRA.
  - ❖ The NPRA shall be implemented statewide within 18 months of the Order unless the AOC, in accordance with the Order, finds it necessary to grant an extension.

# NPRA: Two Choices

NEVADA PRETRIAL RISK (NPR) ASSESSMENT	
Assessment Date: ___/___/___	Assessor: _____ County: _____
Defendant's Name: _____	DOB: ___/___/___ Case/Booking #: _____
Address: _____ City _____ State _____ Zip _____	Contact Phone#: _____ # of Current Charges: _____
Most Serious Charge: _____	Initial Total Bail Set: \$ _____
Demographic Information (optional): Gender: Male _____ Female _____	
Race: Hispanic _____ White _____ Black _____ Asian _____ Nat. Amer. _____ Other/Unknown _____	
<b>SCORING ITEMS</b>	<b>SCORE</b>
1. Does the Defendant Have a Pending Pretrial Case at Booking?	_____
a. Yes - 2 pts. If yes, list case # and jurisdiction: _____	
b. No - 0 pts.	_____
2. Age at First Arrest (include juvenile arrests)	First Arrest Date: ___/___/___
a. 20 yrs. and under - 2 pts.	
b. 21-35 yrs. - 1 pt.	
c. 36 yrs. and over - 0 pts.	_____
3. Prior Misdemeanor Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One to five - 1 pt.	
c. Six or more - 2 pts.	_____
4. Prior Felony/Gross Misd. Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One or more - 1 pt.	
5. Prior Violent Crime Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One - 1 pt.	
c. Two or more - 2 pts.	_____
6. Prior FTAs (past 24 months)	_____
a. None - 0 pts.	
b. One FTA Warrant - 1 pt.	
c. Two or more FTA Warrants - 2 pts.	_____
7. Employment Status at Arrest	_____
a. Verifiable Full/Part-time Employment - 0 pts. (cg. Self-employed, Disabled and receiving benefits, Student, Retired, Military, Stay at Home Parent, etc.)	
b. Unemployed - 1 pt.	_____
8. Residential Status	Date of Residency: ___/___/___
a. Nevada Resident - living in current residence 6 months or longer - 0 pts.	
b. Nevada Resident - not lived in same residence 6 months or longer - 1 pt.	
c. Homeless or non-Nevada Resident - 2 pts.	_____
9. Substance Abuse (past 10 years)	_____
a. Other - 0 pts.	
b. Prior multiple arrests for drug use or possession/alcohol/drunkenness - 2 pts.	_____
10. Verified Cell and/or Landline Phone	_____
a. Yes - 0 pts. If yes, list #: _____	
b. No - 1 pt.	_____
<b>TOTAL SCORE:</b>	_____
Risk Level (Circle One): <b>LOW</b> (0-4 pts.) <b>MODERATE</b> (5 - 8 pts.) <b>HIGHER</b> (9+ pts.) <b>OVERRIDE?:</b> Yes _____ No _____	
Override Reason(s): Mental Health _____ Disability _____ Gang Member _____ Flight Risk _____	
Prior Record More Severe than Scored _____ Prior Record Less Severe Than Scored _____	
Other, explain: _____	
Final Recommended Risk Level: <b>LOW</b> _____ <b>MODERATE</b> _____ <b>HIGHER</b> _____	
Supervisor/Designee Signature: _____	Date: ___/___/___

NEVADA PRETRIAL RISK (NPR) ASSESSMENT	
Assessment Date: ___/___/___	Assessor: _____ County: _____
Defendant's Name: _____	DOB: ___/___/___ Case/Booking #: _____
Address: _____ City _____ State _____ Zip _____	Contact Phone#: _____ # of Current Charges: _____
Most Serious Charge: _____	Initial Total Bail Set: \$ _____
Demographic Information (optional): Gender: Male _____ Female _____	
Race: Hispanic _____ White _____ Black _____ Asian _____ Nat. Amer. _____ Other/Unknown _____	
<b>SCORING ITEMS</b>	<b>SCORE</b>
1. Does the Defendant Have a Pending Pretrial Case at Booking?	_____
a. Yes - 2 pts. If yes, list case # and jurisdiction: _____	
b. No - 0 pts.	_____
2. Age at First Arrest (include juvenile arrests)	First Arrest Date: ___/___/___
a. 20 yrs. and under - 2 pts.	
b. 21-35 yrs. - 1 pt.	
c. 36 yrs. and over - 0 pts.	_____
3. Prior Misdemeanor Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One to five - 1 pt.	
c. Six or more - 2 pts.	_____
4. Prior Felony/Gross Misd. Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One or more - 1 pt.	
5. Prior Violent Crime Convictions (past 10 years)	_____
a. None - 0 pts.	
b. One - 1 pt.	
c. Two or more - 2 pts.	_____
6. Prior FTAs (past 24 months)	_____
a. None - 0 pts.	
b. One FTA Warrant - 1 pt.	
c. Two or more FTA Warrants - 2 pts.	_____
7. Substance Abuse (past 10 years)	_____
a. Other - 0 pts.	
b. Prior multiple arrests for drug use or possession/alcohol/drunkenness - 2 pts.	_____
8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)	_____
a. Employed, Student or Retired (-1) pt.	
b. Nevada Resident - Living in current residence 6 mos. or longer (-1) pt.	
c. Verified Cell Phone/Landline (-1) pt.	_____
<b>TOTAL SCORE:</b>	_____
Risk Level (Circle One): <b>LOW</b> (0-3 pts.) <b>MODERATE</b> (4 - 8 pts.) <b>HIGHER</b> (9+ pts.) <b>OVERRIDE?:</b> Yes _____ No _____	
Override Reason(s): Mental Health _____ Disability _____ Gang Member _____ Flight Risk _____	
Prior Record More Severe than Scored _____ Prior Record Less Severe Than Scored _____	
Other, explain: _____	
Final Recommended Risk Level: <b>LOW</b> _____ <b>MODERATE</b> _____ <b>HIGHER</b> _____	
Supervisor/Designee Signature: _____	Date: ___/___/___

# Technical Assistance

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- ❖ The Committee to Study Evidence-Based Pretrial Release received extensive assistance from several agencies and organizations including:
  - ❖ JFA Institute
  - ❖ Laura and John Arnold Foundation
  - ❖ National Institute of Corrections
  - ❖ Pretrial Justice Institute
  - ❖ U.S. Department of Justice, OJP Diagnostic Center

# Additional Information

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❖ Committee to Study Evidence-Based Pretrial Release:

[https://nvcourts.gov/AOC/Committees and Commissions/Evidence/Overview/](https://nvcourts.gov/AOC/Committees_and_Commissions/Evidence/Overview/)