MINUTES OF THE 2019-2020 INTERIM
COMMITTEE TO CONDUCT AN INTERIM STUDY OF ISSUES RELATING TO PRETRIAL RELEASE OF DEFENDANTS IN CRIMINAL CASES

January 21, 2020

The meeting of the Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases was called to order by Chair Harris at 9:07 a.m. at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada.

Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Dallas Harris, Senatorial District No. 11; Chair
Assemblywoman Rochelle Nguyen, Assembly District No. 10; Vice Chair
Senator Scott Hammond, Senatorial District No. 18
Senator Melanie Scheible, Senatorial District No. 9
Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Tom Roberts, Assembly District No. 13

STAFF MEMBERS:

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Kathleen Norris, Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Holly Welborn, Policy Director, ACLU of Nevada
Tonja Brown
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Roy McCarter
Marc Ebel
Amber Widgery, Senior Policy Specialist, NCSL
John McCormick, Assistant Court Administrator, Administrative Office of the Courts
Leslie Turner
M.J. Ivy
Robert Langford

Senator Dallas Harris (Senatorial District No. 11; Chair):

This is the Committee to Conduct an Interim Study on Issues Relating to Pretrial Release of Defendants in Criminal Cases, authorized by Senate Concurrent Resolution (SCR) 11 from the 2019 Session. I have the pleasure of chairing this Committee during the interim. We will open up the floor for public comment, both here in Las Vegas and up north in Carson City.

Holly Welborn (Policy Director, ACLU of Nevada):

I will be very brief. I just wanted to state on the record just a small bit of background on this study. I presented the bill that established this study on behalf of Senator Cannizzaro during the last legislative session and I wanted to offer our support to this Committee to provide any kind of national resources that you may need in looking at both sides of the issue. I know that this is a very controversial issue and that you'll be hearing from multiple sides as you study this and you proceed through coming up with the best type of legislation or package of bills to address the issue of pretrial detention in this state. We have a network of services that can be provided in helping to assess legislation and different approaches that different states have looked at. Really what we look at as key models from the ACLU (American Civil Liberties Union) perspective is the legislation out of New Jersey. We have individuals that could speak to the Committee and provide written statements on that bill. There was also successful legislation in Colorado. So, if you have questions about that as you proceed through this process, I am available to you.

Tonja Brown:

Tonja Brown, advocates for the inmates and the innocent. You have been provided a 911 call. There's an issue with it, being able to put it up on the website. I strongly suggest that you actually listen to the 911 call. Mr. McCarter is down in Las Vegas. He will be testifying. This is a 911 call that pertains to him and his situation. He also has a copy of the transcripts of the 911 call. The thing is that if you read the transcripts and you don't listen to the 911 call, you don't have an understanding, an accurate understanding, of what actually transpired. The 911 call is very telling and actually supports Mr. McCarter, who was arrested, was in jail until he was able to bail out, and he's about to stand trial. Some of these charges, actually none of the charges, he should have been charged with. He can explain that because I'm going to have to leave here pretty soon.

Anyways, I've provided you with a copy, which I believe is instrumental in getting a better understanding of what we're dealing with, and I'll just briefly read it (Agenda Item III A). I based this on not just my personal situation but others' as well. It's dealing with discovery, and I think we need to change that. What I'd like to see is, once a defendant is arrested and charged with a crime, the reporting law enforcement agencies must provide to the defendant and to his or her representative with a copy of all the materiality and exculpatory evidence that was disseminated to the district attorney and is now in the

possession of the district attorney within 3 working days. Any additional copies, materiality and exculpatory evidence that is provided to the district attorney, whether it be the law enforcement agency or the district attorney's own investigator, the evidence must be provided to the defendant and his or her representative within 3 working days of receiving such evidence. Discovery is turned over after a person is charged and arrested, but there has been times where discovery is never turned over until just prior to the trial, the day of the trial, even years after the trial. This needs to stop. If you change the rules of discovery and allow the law enforcement agencies to turn over the evidence, the same evidence that was provided to the prosecution, it will level the playing field of any prosecutor withholding evidence from the defendant and it gives the defendant the opportunity to see the evidence prior to at trial, if he ever sees it at all. It will save the taxpayers' moneys because now we are not incarcerating a person in jail because they could deal with it a lot sooner, get them out sooner on bail, if bail at all, if not even exonerated, the individual. I refer to this as Nolan's law. I base it on what happened in my brother's situation so I refer to it as Nolan's law.

Chair Harris:

Thank you, Ms. Brown. I appreciate your time. Thank you so much. Just so you know, we do have that transcript (Agenda Item III B). It will be available online, and I believe the audio will be provided to members of the Committee. We will be going into a little further discussion about this later on in the day, but discovery may be slightly outside of the scope of what this Committee will be examining. But I appreciate your comments and we will take that into consideration.

Christine Saunders (Policy Director, Progressive Leadership Alliance of Nevada):

I'm glad I'm able to join you all in person today. Ending cash bail has been a priority of PLAN (Progressive Leadership Alliance of Nevada) members and we put a great deal of effort into it during the past legislative session. At PLAN, we believe that the closest to the issues are the closest to the solutions. It is important that directly impacted people from the community be an equal partner with this Committee. PLAN is happy to be a conduit for the Committee to engage community members as well as provide any additional resources, and we look forward to working with you on this process.

Roy McCarter:

I'm a veteran of the United States Army. I'm also a former California correctional peace officer. I moved to Las Vegas in 2013, started a business and turned my life around. Just recently, I have a daughter who's 25. She's mentally ill and she's also addicted to methamphetamine. About March 27, she and her boyfriend fabricated an incident that I had a knife and that I attacked them and threatened to kill them, and that's impossible because I called 911 at 11:07 and 13 seconds (Agenda Item III B). I'm on the phone with dispatch. She opens the door and I tell dispatch, "Ma'am, my daughter just opened the

door." They're asking me to leave the residence and wait outside for the police to make sure it don't escalate, so that's what I do. As I'm exiting the door, I see her boyfriend standing behind her. Now, he threatened to kill me, and I filed a police report and he's been trespassed from my residence. Nevertheless, when I went outside, I'm on the cellphone with 911. My daughter had called 911 after I did at 11:08 and 41 seconds, so it's impossible for the crime to have occurred. If it did, it would have been recorded. I'm on the phone with 911 from 11:07 and 13 seconds until they arrest me. I'm standing in front of my home talking to the dispatch when Metro pull up and that's when they shine a light on me, told me to hold my hands up. At that point, they seized me at gunpoint. I also sent you that video. It's petrifying to watch. I see men like myself murdered in the United States on the regular, and my daughter, this is what she intended to happen to me. I feel the police didn't do a good job at all investigating, because had they did, they would have discovered that this is a prank call. What Ms. Brown was suggesting, had this been in place, I wouldn't be here right now because that 911 tape would have been available at the preliminary hearing. It wasn't, so they found probable cause for what I called a "hashtag tooth fairy crime" because it's impossible for it to have occurred. That's all I'm asking this Committee to do is listen to that tape. Listen to the tape. There's nothing else to talk about, what he or she said, because the 911 tape is it. It's impossible for that crime to have occurred. I spent 6 months in jail and that's when I was in the kiosk and I discovered an article from the ACLU and it mentioned Ms. Brown's brother and that's how I reached out to her, and ever since then, when I bailed out, I went pro per, and when I went pro per, when I got that discovery, I discovered that I made the first call. They had told me that my daughter called first. They wouldn't get the evidence from California regarding her. She was in foster care there. When I went pro per, it took me one week to get those files. It took them 6 months and they never got it. So again, if that evidence is provided immediately to the defendant, I could have easily defended myself. I lost my home. I lost everything. I have nothing. I moved back to California to a friend's house now, and I drove here from Imperial California, about 3 1/2, 4 hours. I had no rest, but this was a very important meeting for me today and I really appreciate you giving me this time today.

Chair Harris:

Thank you for your time and for your service. I know we all appreciate it, and as I mentioned, we do have access to that information (Agenda Item III B). I appreciate you being here.

Marc Ebel:

I direct the legislative affairs for a holding company that operates Aladdin Bail Bonds and also the surety Seaview that underwrites those bail bonds. We operate here in Nevada, but we also operate across nine different states, heavily weighted in the west but also two states recently on the east coast. By virtue of operating across the US, it gives us the opportunity to see this issue from a very broad perspective, and I noticed on the agenda

national trends was on the topic today. The trend is that most if not all states are having this conversation but the trends sort of stop there because the conversation looks much different in all different states. Each state is unique, and so the solution that states are implementing is the whole spectrum of different solutions for this issue. The states that we see doing this successfully without intense public blowback or unintended consequences start from identifying what problem are you trying to solve for, and then is there data that exist that defines that problem. In my conversations here in Nevada, I understand that some of that data does exist and we just hope to be a partner in you guys' efforts going forward, if we can be of any use in terms of other conversations or the solutions that states have implemented. Happy to be of service.

Chair Harris:

Seeing no additional public comment, I will go ahead and close agenda item III and open up agenda item IV, opening remarks. As I mentioned, my name is Dallas Harris, representing District 11. That's in the southwest part of Clark County, and it is my pleasure to chair this Committee. I'm hoping that some constructive solutions can be found and that we can find a way to make the system safer and overall operate just a little bit better, and by that I mean efficiency as well as accuracy. The goal is to make sure that those who don't need to be behind bars shouldn't be, and those that do need to be behind bars should be, and the closer we can get to making that happen, the better we all are off. So, that's what I'm looking forward to and my goals. At this time, I'm going to ask the Committee members to introduce themselves and, if they so choose, maybe discuss a little bit about what they're hoping to get out of the Committee.

Assemblywoman Rochelle Nguyen (Assembly District No. 10; Vice Chair):

I'm the Assemblywoman for District 10 here in Las Vegas and I am the Vice Chair of this Committee. I am looking forward to this. As many of you know, I do work privately in the field of criminal defense work, so I have personal and professional knowledge of some of the issues that we're hoping to tackle here, and I'm optimistic we will be able to come up with solutions.

Senator Scott Hammond (Senatorial District No. 18):

I represent Senate District 18. This is obviously an important issue enough that we've had several bills. Looking forward to kind of going through the data and really trying to find out what the purpose is, what do we want to accomplish and then look at what the data's telling us here in the State of Nevada and to find that balance that was spoken of by the ACLU representative this morning, Holly. So again, grateful to be here and serving with these fine folks.

Assemblyman Tom Roberts (Assembly District No. 13):

Assemblyman Tom Roberts, Assembly District 13 here in Southern Nevada. Thirty-four years of law enforcement, so I have been involved in the criminal justice system most of my life, so I hope to bring that experience and background to this process, and as mentioned before, there's a movement across the country to make changes to bail and pretrial release, and I think Nevada's no different. I think we need to be forward thinking on this and I'd love to come up with some solutions that will provide some safety and common sense and good for all. So, I look forward to it.

Senator Melanie Scheible (Senatorial District No. 9):

I'm also from Las Vegas, from Senate District 9, which is just a little further south and a little bit further west than Chairwoman Harris' district. In my day job I'm a prosecutor, so I also have extensive experience with the pretrial release statutes and with taking on those questions of how we allow people to exercise their freedom and liberty while they are awaiting trial and protect the community at the same time, so I'm looking forward to what I'm sure will be a robust conversation in this study, and hopefully we come up with some good outcomes and solutions for moving forward.

Assemblyman Edgar Flores (Assembly District No. 28):

I represent Assembly District 28. I just look forward to working with all the stakeholders. I in my private life practice immigration law, and the intersectionality between criminal law and immigration law is very unique and impacts folk in a very different way. Often some folk don't have an opportunity to conclude what happens in the criminal world because they may be removed from the country prior and sometimes for charges that they're not even ever found guilty of. I look forward to working with everybody and finding out how we can all work together and hopefully help some of these folk.

Chair Harris:

Thank you, Committee members. If you're familiar with the Nevada Legislature, you know we have an awesome staff at the Legislative Counsel Bureau (LCB), and we are very fortunate to have Nicolas Anthony, who is a Senior Principal Deputy Legislative Counsel, as my legal advisor here on this Committee. We also have Kathleen Norris, who is a Deputy Legislative Counsel, and our secretaries for this Committee will be Angela Hartzler and Jordan Haas, so thank you to LCB staff for all the work that you've already done and for the lot of work I anticipate you'll be doing moving forward. Thank you so much.

With that, I'll go ahead and close agenda item IV and open up agenda item V, which is an overview of SCR 11 and the Committee's duties and timelines. At this time, I'll turn it over to Mr. Anthony to give us an overview.

Nicolas Anthony (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair and members of the SCR 11 Committee. I'm nonpartisan staff from the Legal Division. It's my pleasure to serve as primary staff to this body this interim. As Chair Harris noted, we also have Kathleen Norris who will be assisting me, as well as our two secretaries, Ms. Haas and Ms. Hartzler, so members of the Committee may be getting emails from any or all of us with information and updates about the Committee, polling times, places, locations, etc. If you should have any questions, please feel free to reach out to me at any time. With that said, I'll quickly just provide a brief overview of SCR 11. That is the enabling legislation for this interim study. SCR 11 was brought forward last legislative session, the 2019 Session, and it created this six-member body of three Senators and three Assembly members (Agenda Item V). The duties of SCR 11 are spelled out in the legislation. They are ninefold. They are to study the timeliness and conduct of hearings for pretrial release; release on own recognizance (OR); the use of monetary bail; pretrial release to ensure the safety and appearance of the defendant in court; modifications of the conditions of pretrial release; the use of the Nevada Pretrial Risk Assessment Tool—which will be talked about a little bit later as it's currently being implemented by the courts—the impact of race, gender and economic status as it pertains to pretrial release; the fiscal impacts of any potential or recommended changes to pretrial release; and any other matters this body sees fit as it may relate to the pretrial release of criminal defendants.

Voting and requests for legislation: SCR 11 is very clear in that if this body chooses to move forward with a bill draft request (BDR), it does require a majority of the members from each house, so it would take two Senators and two Assembly members to move forward with a BDR. The Committee is allotted five bill draft requests this interim, so should you see the need to move forward with a bill draft request, this body does have five at their disposal. The deadline for those is they must be submitted to the Legislative Counsel by September 1 of 2020.

This body has a budget of approximately $6,000 which will take care of legislators, staff salaries, per diem, travel expenses, etc. It is anticipated that this will allow for four meetings this interim: today, an introductory meeting, with two substantive meetings followed by a work session to be scheduled sometime in the summer. Possible actions at that work session: typically that's when this body chooses to take action, and the actions are to request a BDR, to include a statement in the final report, or this body can direct staff to prepare a letter on behalf of this body to, say, an interested stakeholder, agency, another branch of government. During the fall and after the conclusion of this Committee's work, staff will work diligently to prepare a final report. We will draft up any potential BDR recommendations and submit those all to the 2021 Legislature. With that, Madam Chair, I'd be pleased to answer any questions.

Chair Harris:

Thank you, Mr. Anthony. Are there any questions from members at this time? Okay, great. We'll just keep it moving right along. We'll go ahead and close item number V and open up item number VI, which is an overview of pretrial release measures from the 2019 Legislative Session.

Kathleen Norris (Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair. This presentation is going to give you a 10,000-foot overview, a quick synopsis of 3 bills that did not pass in the 2019 Legislative Session (Agenda Item VI). Those bills are Assembly Bill (AB) 125, AB 203 and AB 325. I just want to note that these bills specifically deal with procedural policy relating to the pretrial release of defendants and don't deal with peripheral bail issues such as the licensing of bail agents, etc. Attached in your materials, you all should have gotten a chart that covers these bills in significantly more detail (Agenda Item VI), as well as the text is on NELIS (Nevada Electronic Legislative Information System) online for your view.

AB 203, that's what we're going to start with. It deals with releasing defendants on an unsecured bond. This bill states specifically that if a defendant can be released without seeing a magistrate, then the person must be released on an unsecured bond, and it specifically limits these defendants to those who are arrested for a misdemeanor or a gross misdemeanor that does not involve an act of violence, who was not arrested while on bail and who does not have a history of failing to appear while released on bail or released without bail.

The next two bills are AB 125 and AB 325. These bills I want to note overlap in some capacity, whether the provisions are verbatim or similar, so I will be noting those provisions in my discussion of AB 125. But these are not the same bills, so don't think that you can just read one and it's exactly the same as the other one.

AB 125, that's what we're going to start with. It prohibits the modification of an original determination of bail under certain circumstances and requires a prosecutor to file certain motions prior to wanting to modify the bail under those circumstances. AB 125 specifically talks about an administrative order and it requires courts to adopt an administrative order for the release of certain defendants. It covers the conditions of that release for gross misdemeanors, misdemeanors and felonies and how those individuals will be released, but it doesn't holistically cover who will be released, so crimes such as those involving domestic violence, etc., those are not covered under this automatic release for the administrative order, so you kind of need to read that in more detail. AB 125 specifically creates a rebuttable presumption that defendants should be released on their own recognizance and that monetary bail should not be imposed unless absolutely necessary. AB 125 requires defendants to be seen within 48 hours of being taken into custody for a

pretrial release hearing to determine the conditions of their release, and the bill sets forth the priority of conditions of release starting with OR and moving down to significantly more conditions of release being necessitated. AB 125 and AB 325 specifically remove monetary amounts of bail required for certain domestic violence offenses and certain violations of temporary and extended orders of protection. In the law now, it says certain monetary amounts. Those are completely deleted and it is up to the pretrial release hearing to determine those. In terms of revocation, revocation of bail can only be imposed for certain offenses, such as those involving domestic violence and violations of certain orders of protection. AB 125 also makes robust changes concerning magistrates and how they handle bail. So, for example, it authorizes magistrates to be allowed to modify bail. It also states that magistrates can only impose monetary bail if no other conditions will ensure the appearance of the defendant. The amount must be based on the financial resources of the defendant, and the magistrate makes specific findings of facts concerning community safety and the ability or the likelihood of appearance of the defendant. Finally, AB 125 prohibits detention of a defendant solely because they are unable to pay their monetary bail.

As I said before, a few of these provisions are seen in AB 325, and those include prohibiting the modification of an original determination of bail, the orders of priority of release, deletion of the specified monetary amounts of bail for domestic violence offenses and those pertaining to protection orders. The revocation of bail is changed in AB 325 as well and those pertaining to magistrates.

Now we'll move on to AB 325. These provisions are only in AB 325, so I just want to note that for the record. AB 325 requires the pretrial release of those defendants who are constitutionally eligible with the least restrictive conditions necessary to ensure their appearance. It prohibits the imposition of financial conditions, arrest warrants or other contact with the criminal justice system beyond that of an unsecured or secured bond if absolutely necessary. With regards to misdemeanors, AB 325 requires that those defendants charged with a misdemeanor be released on their own recognizance and with no other conditions beyond stating that they can't commit a new crime, they have to give certain personal information to the court so that they can be contacted, and that they stay away from the victim, if that's applicable to their charged crime. For felonies, AB 325 requires a pretrial release hearing within 48 hours. It also necessitates that those charged with a felony be released on the least restrictive conditions necessary to ensure their appearance. With regards to this pretrial release hearing, it is an extensive list of the procedural posture of this hearing, the rights of the defendant and the duties of the prosecutor and the court. Those are all explicitly set out within AB 325. Within AB 325, law enforcement is also allowed to release a defendant prior to their pretrial release hearing and sets forth the conditions of that posture. With regards to offenses for being under the influence of alcohol or a prohibited substance, certain domestic violence offenses and violations of certain orders of protection, AB 325 limits the detention of these persons for 4 hours. This is limited from a 12-hour period, or there is a different period for being under the influence of alcohol or drugs, so this is changed to 4 hours across the

board for these offenses. Finally, AB 325 states that if a defendant fails to appear, the court must attempt to contact the individual with the contact information they were supposed to give to the court, and AB 325 also makes a number of changes relating to bail requirements for a material witness, which is kind of a peripheral issue to what this Committee is looking at. So as you can see, these are a lot of changes. I covered them very quickly, but I'm happy to answer any questions, if you have any.

Chair Harris:

Thank you so much, Ms. Norris. I appreciate your diligence. This is very helpful.

Vice Chair Nguyen:

If you recall—I don't recall—do you know if both the previous submitted bills that we just talked about, did they all utilize the pretrial risk assessment, or was that not included in some of these bills? I'm just trying to remember, if you remember.

Ms. Norris:

I don't recall. I don't think it was mentioned.

Chair Harris:

Are there any other questions from Committee members for Ms. Norris? Okay, thank you so much. We'll go ahead and close agenda item number VI and open up number VII, which is a presentation on national trends in pretrial release of criminal defendants. We have Ms. Widgery from the National Conference of State Legislatures (NCSL). Thank you so much for traveling here to Nevada to go ahead and give us this overview. We appreciate you coming all the way from Colorado.

Amber Widgery (Senior Policy Specialist, NCSL):

I'd like to thank the Committee for inviting me here today. I'm a senior policy specialist within the criminal justice program at the National Conference of State Legislatures. For those who may not know, NCSL is the bipartisan organization for the more than 7,000 legislators and more than 30,000 legislative staff from the states, commonwealths, D.C. and US territories. At NCSL, I track pretrial policy developments in addition to other criminal justice policy areas. Just to sort of frame the issue, the most recent data we have from the Bureau of Justice Statistics estimates that about 65 percent of jail inmates are actually individuals awaiting court action on a current charge or being held pretrial (Agenda Item VII). That same data has been examined by the Prison Policy Initiative, and when you eliminate individuals within that data who are being held not for the local jurisdiction but being held for another agency, that estimate pushes to around 76 percent of jail populations who are being held pretrial.

Pretrial policy can be broken down into a number of smaller subtopic areas. Those are listed on the screen. I highlight that because these are the areas of information where NCSL has 50-state data. We have webpages that are interactive that you can view on each of these pretrial policy subtopics, if you're interested. I'm not going to be covering each of these topics today because that would take an exceptional amount of time, but do know that we have those resources available online and I'm happy to answer any questions that you may have after today's hearing.

To briefly overview, NCSL started tracking pretrial legislation in 2012, and since that time there have been nearly 1,000 enactments in each of the 50 states. Preliminary 2019 analysis shows that we'll have an additional 160 enactments in 2019. Successful legislative efforts to change pretrial policy have largely been bipartisan, and recent polling supported by both the Charles Koch Institute and the Pretrial Justice Institute shows that a majority of Americans favor ending the practice of jailing people who cannot afford money bail in all but the most extreme cases. Overarching themes for legislation have centered on two things: one, reducing the number of individuals who end up in the pretrial system who might be better served outside of the criminal justice system or through another means other than the traditional booking process, and also on moving pretrial policy away from charge-based bail schedules and monetary decision-making frameworks towards decision-making models that focus on limiting detention and mitigating defendants' risk of nonappearance or rearrest. I put up that list earlier of sort of the complete areas of pretrial policy that NCSL has information on, on a 50-state basis, but today I will be focusing on sort of the national trends where we've seen the most legislative focus.

The first policy area that I want to address is pretrial risk assessment. Between 2012 and 2018, 29 states enacted 58 new laws related to the use of a pretrial risk assessment. Nearly every one of these enactments has regulated, promoted or required the use of a risk assessment. Iowa, as you see on the map, is the sole exception, where legislation this last year actually eliminated their pretrial risk assessment pilot programs. To give the national overview of where we stand currently, there are seven states that have legislatively required courts to adopt and/or consider a pretrial risk assessment in at least some cases. There are usually exceptions if a pretrial risk assessment would end up requiring a person to stay in an incarceration setting longer, then they'll skip the assessment and move beyond that. An additional eight states have passed legislation that authorizes or encourages but does not require the use of a pretrial risk assessment on a statewide basis. Note that California is not actually reflected on my slide because their enabling legislation was enacted in 2019, but California should be added to that middle list. An additional five states, including Nevada, have adopted a system of pretrial risk assessment on a statewide basis through judicial action. Not included on this list of the current status of risk assessment across the 50 states are states who have appropriated funds to assist in the development of pretrial risk assessment pilot programs or pretrial risk assessment tools themselves. There are more than a dozen pretrial risk assessment tools in use across the United States. The publication I've highlighted on the

screen is available online and is a good overview of the tools themselves and the best practices associated with implementing them. It also addresses key issues that have been raised when implementing pretrial risk assessments, and I highlight a few of those key findings from the report on my slide. The first finding that you see is that a risk assessment tool can inform but should not replace judicial discretion. Alaska is the only state that has ever tried to mandate through legislation strict adherence to a risk assessment tool, but that provision was repealed almost immediately before it was ever implemented. Other legislation has in fact done the inverse, which has required courts to consider more than just the result of a pretrial risk assessment when determining release and conditions for individuals. The last two considerations on the slide are about the quality of data, appropriate use of the tool and validation on the population for which the tool is going to be used. These considerations have also been of particular concern to lawmakers, and this is reflected in more recent legislative enactments addressing pretrial risk assessment. Recent actions have required that a tool be empirically developed, require that tools be validated and regularly revalidated. Actions have required courts develop guidelines for the use of an assessment. They have required standardized assessment use across the state. They have required that assessment data and validation data be publicly available. They have required that individual defendants have access to the data that was used for their assessment to ensure accuracy. They have reputed the use of proprietary tools, and most recently they have required that any tool adopted by a court be free from racial or gender bias. Here are a couple of recent examples. Legislation in California, Idaho and New York are all recent examples of sort of more current risk assessment legislation that has focused more on regulating the use of risk assessments and less on mandating the use of risk assessments.

In addition to addressing the use of risk assessment tools, state legislatures have also limited courts' ability to impose financial conditions of release in certain circumstances. Currently, every state statutorily authorizes the use of financial conditions of release in some, if not all, cases, even if the use of financial conditions has been essentially eliminated in practice. D.C. and New Jersey are both usually cited as examples of jurisdictions where the use of financial conditions in practice has been substantially limited. California is the only state that has legislatively tried to eliminate financial conditions in its entirety, but the fate of Senate Bill 10 will be decided by the voters in California this November so its implementation is currently on hold. As I mentioned, other legislative actions have limited but not eliminated financial conditions of release. This has included codifying presumptions of release on recognizance, codifying presumptions of release on the least restrictive conditions, limiting or prohibiting financial conditions in specified cases, requiring courts to consider ability to pay financial conditions of release and other supervision costs and fees that might be associated with other conditions, and creating or speeding up second-look or review situations in cases where a defendant has been set conditions but is unable to meet initial conditions as set. Nearly half the states now have a codified presumption of release on nonfinancial conditions.

I've also highlighted a few recent examples of significant state action in this area. Last year, Colorado prohibited the use of financial conditions for most traffic and petty offenses unless payment of a financial condition would actually expedite the release of an individual. New York has perhaps been the most significant legislation restricting financial conditions of release by eliminating financial conditions for nearly all misdemeanors with a few specific carved out exceptions, and also most nonviolent felony cases, again with a few specific carved out exceptions. In other states like Connecticut or Texas, there has been a prohibition of the use of financial conditions of release for certain types of cases unless a defendant has requested a financial bond or if the court makes certain findings on the record that no other conditions of release would be sufficient to ensure a defendant's appearance.

As I mentioned earlier too, one of the trends has been considering a defendant's ability to pay when setting any financial conditions of release, and legislation in some cases has prohibited courts from imposing any condition of release that would result in detention because of inability to pay. A number of recent state examples are highlighted here, but this has certainly been a trend over the past 3 years. I should also highlight that New Mexico's recent constitutional amendment gave the courts the authority to detain individuals based on risk and not charge but also added a constitutional provision that prohibits a detention of defendants because of an inability to pay a monetary bond condition if the defendant has been determined to be neither dangerous nor a flight risk. Here are just a few more examples that are more recent of ability to pay consideration determinations. I also mentioned the trend of creating a presumption of release on the least restrictive conditions. This is a presumption that has been codified in 19 states. You'll notice that I say 19, not 18, which is what it says on my screen. The map on the screen does not yet reflect the 2019 New York enactment. An additional four states that you see in yellow also have created a hierarchy of release conditions in lieu of the presumption that would require courts to start with the least restrictive, usually a release on own recognizance condition, and then work up from there in terms of restrictiveness of conditions.

Another policy that has gained legislative attention is codifying a process for review of release conditions if a defendant has been unable to meet them. Specific process varies from state to state, but I've included a few recent examples here on this slide. Recent legislative trends have generally shortened the period that lapses before review occurs or has provided guidance on how to alter conditions that are preventing the release of an individual defendant. Legislative actions have also targeted conditions of release that have been codified in a state. Recent enactments have been largely diversifying conditions that are available to a court. Between 2012 and 2018, 43 states enacted 151 new laws modifying the statutorily listed conditions of release in some manner. On the screen you will find the majority of conditions that are listed in statute in all 50 states. In addition to these statutory conditions, all but a handful of states also authorize courts to impose any conditions necessary to ensure appearance or ensure public safety, allowing courts a considerable amount of discretion to tailor conditions to aid a particular defendant

in remaining compliant with pretrial procedures. If you are interested in statutory conditions across the 50 states, NCSL has an interactive database where you can go through each of the 50 states and look at the statutory conditions, including states that authorize any conditions the court deems necessary, and the link is available through my slides so you can click through on the online version (Agenda Item VII).

One increasingly common condition of pretrial release for moderate or high-risk defendants is supervision or check-ins with a pretrial services program. Between 2012 and 2018, 30 states enacted 87 new laws addressing pretrial services programs. Notable state legislation has created or authorized new statewide pretrial services programs to assess and supervise pretrial populations. State actions have also authorized local pretrial programs, incentivized the creation of local programs or authorized the use of state funding for pretrial programs. Alaska, Kentucky and New Jersey are all notable for having state-level agencies dedicated to pretrial services that assess and supervise defendants on a statewide basis.

The majority of states currently use pretrial services programs to some degree. The three statewide agencies are of note, but certainly local jurisdictions have been putting in place pretrial services programs on their own with or without state support. Recent legislation has also gone beyond supporting or creating infrastructure of pretrial services programs and has, as of last year, specified the use of certain pretrial supports. Legislation in 2019 in both New York and Colorado has required the implementation of statewide court reminder systems. Reminder calls are one part of pretrial services that can generally be implemented at low or no cost and have been supported by robust research as being highly effective in increasing pretrial success rates.

Recent legislation has altered frameworks of who is eligible for pretrial release. Between 2012 and 2018, 33 states enacted 84 laws that changed the substantial framework for who is initially eligible for release at pretrial. A good deal of this legislation has addressed those short-term holds or short-term denial of release. This includes cooling-off periods for domestic violence cases or other short-term holds where there are possibly substances that are involved and it would be unsafe to release a defendant. However, New Jersey and New Mexico have both amended their constitutional language in the last 10 years, substantially changing the foundation of who is eligible for release. Courts in each state are now authorized to detain individuals based on risk and not just charge.

The role of victims in the pretrial process has also been of great concern for policymakers. The majority of states give victims the right to be notified of a defendant's release pretrial, and the majority also have a law addressing victim participation in the pretrial release process. Whether that is the opportunity for input or the opportunity to consult with the prosecuting attorney varies by state. Between 2012 and 2018, 39 states enacted 106 new laws addressing the role that victims play in the pretrial process. A handful of states have also amended their constitutions by adopting Marsy's Law. Those states that have adopted those constitutional provisions, generally one of those provisions is that a court

or release authority has to consider a victim's safety when making a release determination, so that's another area that constitutional frameworks have been modified specific to a victim's role in the pretrial process.

Citation in lieu of arrest is of interest to states. There have been 23 new laws between 2012 and 2018, but possibly more significantly is that citation in lieu of arrest has been significantly expanded on a local law enforcement level. The use of citation in lieu of arrest is authorized in every state. Most state laws focus on low-level offenses only, but at least eight states allow the use of citations for at least some specified felonies. An additional seven states provide general authorization for the practice but do not specify any restrictions based on charge or type of crime. As I mentioned, even where legislation hasn't been changed, we've seen a substantial amount of focus at the local level to reduce the unnecessary use of jail for an individual who could easily be cited into court and successfully appear in court and abide by all conditions associated with the citation instead of proceeding through a traditional booking process.

In the same vein, states have also been looking to deflect individuals away from the pretrial system and the criminal justice system as a whole. Deflection is an emerging legislative trend that broadly reroutes individuals away from the justice system before even the first point of contact or before arrest. This is a more emerging area of the law for state legislative attention, whereas there has been a lot of local development on the ground at the agency and local level. Alternatively, states have also been looking to expand their pretrial statutory diversion programs. This can be in the form of treatment courts or other court-based options pre-adjudication where an individual who successfully completes the pretrial diversion program would then end up without a record, and then thereby increasing their chances of success going forward and also remaining out of the criminal justice system. 48 states and the District of Columbia have pretrial diversion programs in place, whether those are treatment courts or specific programs that are run by the courts, or generally prosecuting attorneys are the other administrative agency, and this is a well-established area of the law that recent trends have focused on broadening who is eligible and removing requirements for pretrial diversion.

I wanted to highlight a few examples of local deflection programs and give you a broad definition for deflection because it is such a new area of legislative focus. Sort of alphabet soup, everyone has a different acronym for their program that is designed to meet the needs of their local community, but some of the ones that you may have heard are, say, LEAD (law enforcement-assisted diversion) or the Angel Initiative which was implemented on a statewide basis in Kentucky but started in Massachusetts. There are a handful of legislative enactments that focus on deflection on a statewide level. Most of these have been appropriation of funds to assist the development of pilot programs or study the efficacy and effectiveness of pilot programs. Illinois is probably one of the more substantial pieces of legislation that we've seen that authorizes five separate deflection pathways on the front end of the system to divert individuals away from the criminal justice system and from the pretrial process as a whole.

If you have questions about pretrial diversion, statutory diversion, either diversion programs that address general populations without having specific requirements related to substance use, mental health, veteran status or other, NCSL has a database with that information. We also have a database that has information on specific pretrial diversion programs for those individual identified special populations as well. I think I will wrap up there and ask if you have any questions, because I think that is a lot of information that I have just put out there.

Senator Scheible:

Thank you for that presentation. It was very informative and very helpful. I kind of want to go back to something that we touched on at the very beginning. I'm trying to find which slide we were looking at, but it looks like about your third slide regarding the percentages of people who are in jail. If I'm understanding this right, this is jails and not prisons, right?

Ms. Widgery:

Correct.

Senator Scheible:

And so this is supposed to tell us how many people in the local jail are awaiting trial versus how many are serving a sentence?

Ms. Widgery:

Correct.

Senator Scheible:

And what is it that we're supposed to glean from a high number of pretrial detentions or a high number of people serving sentences, presumably on misdemeanors?

Ms. Widgery:

I'm not sure that NCSL has any sort of comment on the data in terms of what the takeaway is, other than growth nationally has largely been driven by the increase in pretrial populations. I maybe should have added a slide showing the increase over the years in jail populations, and the increase particularly in the pretrial population has driven jail growth. But I'm not sure NCSL would comment other than it's been driving the overall growth of jails nationally.

Senator Scheible:

So, that growth is both in terms of the number of people who are in jail and as a percentage? Is that what you're saying?

Ms. Widgery:

I believe so. I would have to double check the data, and I can certainly get that to you, but yes, overall jail growth and percentage overall.

Senator Scheible:

So, you're saying that 10 years ago it might have only been 50 percent of people in jail were awaiting trial while the other 50 percent were serving their misdemeanor sentence, and now we're seeing that 75 percent of people in jail are awaiting trial but only 25 percent are actually serving a misdemeanor sentence?

Ms. Widgery:

I would have to pull the data to be certain, and I would be happy to get that to you, but my understanding is yes.

Senator Scheible:

Okay, thank you.

Vice Chair Nguyen:

When I'm looking at some of these common statutory conditions of pretrial release, are there any links or do you have any data that suggests that any of those things are actually effective? I know that sometimes people use them, but I don't know if there's any data to suggest that having someone on house arrest or any of those electronic monitorings are even effective at keeping the community safe.

Ms. Widgery:

We unfortunately don't have a lot of robust research on which conditions are the most effective at ensuring either appearance or public safety. I mentioned court reminder calls because that is one of the few, not necessarily conditions of pretrial release, but one of the few pretrial release mechanisms where we do have data showing that there can be an increase in ensuring defendant compliance with pretrial conditions and making sure that they do appear. But unfortunately, there is not a lot of data, and in fact, some limited data showing that over-conditioning a defendant might in fact set them up to not succeed.

Senator Scheible:

I have a follow-up question about the reminder calls. Do we have data on how that is effective for pro per defendants as opposed to defendants represented by attorneys?

Ms. Widgery:

I'm not sure either of the studies that come to mind off the top of my head in Colorado or Nebraska differentiated between either of those populations, so I'm unaware that that has been something, but there might be. I can look at the data and get back to you.

Senator Scheible:

So, it may be possible that if attorneys called their clients before court more often that they would have better compliance?

Ms. Widgery:

Possible, but unaware that there was any differentiation in the data. I think the programs that have been studied call everyone, and so there's been no differentiation between populations to study that divergence that might exist.

Assemblyman Roberts:

Just a quick question. Thank you for the presentation. NCSL is a very good resource. Do you have any data to where some states implemented reform or some steps and then actually maybe went backwards and repealed some of the things, that it wasn't actually such a great idea? Do you have any of that to where things have kind of moved one way and kind of went backwards? Not necessarily backwards, but adjusted?

Ms. Widgery:

I think Alaska is the most recent example of a state that has put in place substantial pretrial reforms and then walked back some of those reforms. They maintained a majority of their pretrial reforms overall but certainly made some adjustments after recognizing that their system, for example, didn't take into account out-of-state convictions when evaluating defendants, and so there have certainly been states that have reevaluated and made changes to legislative reforms in the area of pretrial release, but overall, I would say the trend has not been for states to sort of walk back after implementation, but there have certainly been follow-up legislation in nearly every state. Colorado comes to mind, New Jersey comes to mind, Alaska also comes to mind, where there have had to have been follow-up legislation to ensure implementation was being carried out with the initial intent in mind of the initial legislation.

Vice Chair Nguyen:

Sorry, I have a lot of questions. In some of the studies, the data that you're pulling, are the collection of any of the data that we have, does it distinguish between felony pretrial arrests and misdemeanors? I know that we have a pretty strong municipal jurisdiction that only handles with misdemeanors, and in the past we've kind of carved them out, but I was wondering if these numbers and the statistics that you presented today include those.

Ms. Widgery:

I guess I would ask which specific statistics you're asking about, and I could look at that more individually. I know that other states are similarly situated and have sort of different courts with jurisdiction that address different levels of offense. Texas is one of those examples, and legislation has addressed each sort of different level of jurisdiction specifically with pretrial release. But I would ask for maybe additional clarification.

Vice Chair Nguyen:

That kind of answers my question. Thanks.

Assemblyman Flores:

Thank you for that presentation. I'm looking at the slide with figure 1, the Bureau of Justice statistics for 2017. I'm looking at this figure here and I'm trying to understand two things. Number one, it seems like it's pretty consistent, with the exception of 2007 and 2008. It looks like we had an increase in folk that were incarcerated or in jail. What I'm trying to understand is—I'm looking at 2016 and 2017. Now, this trend of trying to find alternatives rather than putting folk in jail, citations, that you indicated, different diversion programs, deflection. That trend started not in 2016, 2017, but prior, is that correct? Do you know what year it is that we started seeing this trend nationwide? That's my first question.

Ms. Widgery:

I think it's something that has been of concern for a long time. I started tracking legislation in 2012, and I would say that since that time, 2017, 2018 and 2019, we've seen a lot more substantive legislation, a lot more comprehensive systems-wide reform legislation addressing this portion of the criminal justice system in those recent years. I'm not sure I could correlate that sort of legislative tracking that I've done with the data that you see here from the Bureau of Justice Statistics, but I would say that 2017, 2018 and 2019 have been the more comprehensive years where we've seen substantial reforms, enactments.

Assemblyman Flores:

Perfect, and the reason I reference that is that it appears that if we look at 2015, 2016 and 2017 that the amount of individuals or inmates that we have, it appears that it's going up based on the data, and if that's when new legislation was implemented, I'm trying to find if there's a correlation, if the objective of the legislation was to decrease the amount of individuals that would be in jail, why we see that going up. Now, I do see that in 2015, 2016 and 2017 there appears to be a decrease in convictions, which is great, and the unconvicted rate dramatically went up based on the data that we're looking at in figure 1, but I'm just trying to understand why there is also more individuals that were in jail to begin with if that's when legislation was starting to be enacted, and it should have done something like this, is just what I'm presuming. I don't want you to have to answer that on the spot because I know you would have to go through it, but I would appreciate any insight into that.

Ms. Widgery:

Certainly. My only immediate comment that I would say is, oftentimes the enactment may have been put in place in 2017, but there is usually a delayed lag time for implementation and training, so it's going to take a while before everything is fully operationalized and you'll start seeing impacts. I will say that one of the important components of large systems change legislation has also been monitoring that progress in individual states. I know that New Jersey has some research out both from the Administrative Office of the Courts and also outside independent organizations who have evaluated their data on impacts that their changes have had on pretrial populations, and they have seen significant reductions. So, at the state level, you can maybe see some of those outcomes, but nationally—I'm not sure we can use the national numbers to reflect a handful of states that have made substantial pretrial changes.

Chair Harris:

I have just a couple of questions for you, and my questions relate to the states that are offering pretrial services. Does NCSL have any information on the average cost, let's say, to a defendant to participate in these pretrial services for the states that don't offer it as part of a state agency?

Ms. Widgery:

NCSL does not have that data because it's so hyper-localized. I could maybe put you in touch with a couple of local examples, and it would depend on level of services—well, I would imagine, but that's not something that NCSL has been able to collect, no.

Chair Harris:

Okay. Am I correct in understanding that, in the states where it's not offered by a state agency, that defendants are paying out-of-pocket for the service?

Ms. Widgery:

Not necessarily. That also varies pretty wildly by state and local jurisdiction depending on the administrative setup and where pretrial services is housed, whether or not it would be fee-based or not.

Chair Harris:

Okay. Thank you. Just kind of a high-level question. I know we've noticed there's a lot of trends in reforming pretrial release conditions. Have there been any corresponding trends in violent crime across the country or has NCSL ever been able to put together any type of correlation between these reforms and the occurrence of violent crime in the country?

Ms. Widgery:

NCSL does not have that data, Madam Chair. Certainly it's something that has been of issue and concern to lawmakers in states that have carried out pretrial reforms, but we could maybe at best provide a local state example or connections in a state.

Chair Harris:

Are there any other questions at this time? Okay, thank you so much, Ms. Widgery, for coming. We appreciate all of the information, and I'm sure we'll be on NCSL's website quite a bit.

Ms. Widgery:

Thank you for your time today.

Chair Harris:

Thank you so much. With that, we'll go ahead and close agenda item VII and we'll roll right into agenda item VIII, which is an overview of Nevada pretrial release including the bail process and bail schedules, the background of ADKT (administrative docket) 539 and the implementation of the Nevada Pretrial Risk Assessment. We have Mr. McCormick, who is the Assistant Court Administrator at the Administrative Office of the Courts. Thank you for being here.

John McCormick (Assistant Court Administrator, Administrative Office of the Courts):

Thank you, Madam Chair. You'll note on the slide that it advertised Jamie Gradick, who is our Rural Courts Coordinator, would be here, but she had another commitment that came up after we had agreed to present, so she is not available. Obviously, stop me and ask questions as we go here because I tried to cover a lot in this presentation, but I'd like to start with just sort of the principle that informs all of this, and it's found in a case from 1895 (Agenda Item VIII). But basically, there is a presumption of innocence in favor of the accused, and that is the foundation of our system, so I think we need to approach looking at bail and pretrial release through that lens.

What is bail for? Bail serves two purposes, basically to ensure the defendant's appearance in court and to protect public safety. Protecting public safety is a bit more of a problematic question, I think as you're all aware, and that's where a lot of the focus on pretrial release has been lately, nationally and in Nevada.

Some background as far as case law: bail determinations have to be based on standards that are relevant to assure appearance and have to be individualized to each defendant, and I think that's where we've seen a lot of issues come up, as those sort of discussed in *Varden v. City of Clanton*, which is a case out of the US District Court for the Middle District of Alabama, but basically the idea is that it is a Fourteenth Amendment violation to incarcerate individuals pretrial simply because they cannot pay for their release. Indiscriminately forcing defendants to pay for their release is a constitutional violation, obviously, and just of note, there are a number of other cases sort of floating around in the federal system regarding bail. *Walker v. Calhoun, Georgia* jumps to mind. I would be remiss here to not say that the Fourteenth Amendment doesn't have an opt-out clause, so we have to keep that in mind as well.

In Nevada, a defendant must be admitted to bail unless that defendant is charged with basically first-degree murder or some murder that could result in a capital sentence or in life without, and that's in article, 1 section 7 of the Nevada Constitution. Another exception to bail in the state is felony parolee/probationer who are arrested for a different offense cannot be admitted to bail. There are some misdemeanor violations that have a mandatory 12-hour hold, i.e. the defendant cannot be admitted to bail before 12 hours. One of the difficult things in talking about our system in a number of facets, not just pretrial release, is that Nevada is a non-unified judiciary, so the local courts retain a great deal of discretion in how they handle various matters. Also of note, and this case is still under consideration by the Supreme Court, but in September a case was argued, *Valdez-Jimenez v. District Court*, which deals with cash bail in Clark County, and the Supreme Court as I said is still considering that, so we don't know what the outcome of that will be.

The statutes governing bail in Nevada can be found in NRS (Nevada Revised Statutes) 178.483 to 178.548, inclusive, and in there you will also find that there are some

mandatory bail amounts for domestic violence offenses and certain considerations that also have to be taken. In NRS 178.4853, a judge is required to estimate the probability of conviction when setting bail. That one struck me as kind of odd as I was refreshing my memory about these statutes. NRS 178.498 requires the judge to consider public safety in setting the amount, and also, as the representative from NCSL mentioned, Marsy's Law has an impact on this. It's article 1, section 8A of the Nevada Constitution. I don't remember the specific subsection, but it does require the safety of the victim and the victim's family to be taken into consideration when the court is considering setting bail or other conditions.

Types of bail, for lack of a better term: bail by surety/bond, and I think everybody is up to speed on that. You go to a bondsman, pay a certain amount, they bail you and then sort of watch out over the defendant, for lack of a better term, in the run up to the trial or other proceeding. Cash bail: obviously, your bail is set at a certain amount. You pay cash and the court holds that you're released. Release upon a defendant's own recognizance, and this is, I think particularly in listening to the NCSL presentation, a lot of states are going that cash bail is not necessarily the proper instrument and that a defendant should be released on their own recognizance, obviously with conditions, and I think Chair Harris' most recent question hits on that, that sometimes these pretrial conditions do have sort of a financial element attached to them if it's, say, like a GPS ankle bracelet, for lack of a better term, if there's payment there. As I hit on that, just to note that in Nevada, there is a limited amount of jurisdictions that do have a sort of pretrial services officer. You see that in Clark County, in Washoe County, Carson City, Lyon County, but a lot of jurisdictions don't have that availability of a pretrial services department or a department of alternative sentencing to kind of monitor those defendants before, so that's perhaps one impediment to doing more OR and setting conditions.

Bail schedules: this is where a lot of jurisdictions have found themselves getting in trouble or getting sideways with the federal court system, and I break this down here because we have misdemeanor citation bail schedule. That's a bail schedule basically that sets the presumptive sort of fine amounts for traffic tickets, so this is why—and I'm going to assume none of the members have ever received a traffic ticket, but when you do receive a ticket and it has an amount that you can pay, sign the back of the ticket, check "I forfeit" and send it in, that's that misdemeanor schedule that sets those amounts for citations generally, and we have done some work to unify those. If you get a ticket between Lovelock and Wendover on I-80, that group of courts has done a lot of work to sort of standardize their schedules so the ticket costs the same amount in each jurisdiction, but that's another topic I'll bring up. Then, we have sort of more that general bail schedule that the jail has, and this is the presumptive bail that is attached when a defendant is arrested for various offenses. However, as we've seen in the case law and as best practice, that amount has to be reviewed by a judge, ideally, and set after an understanding of all of the conditions of the defendants, including if that defendant is indigent, their ability to pay, because this kind of schedule and no flexibility or review is what we see when we're looking at sort of the most egregious examples of people being

in jail pretrial solely because they cannot afford to bail. I think that's where a lot of the focus nationally has been on this as far as what purpose is that serving. Does it advance the interests of society in terms of public safety? Also, another plug for NCSL, I just have to give this, we also discussed some of this bail schedule issue and particularly misdemeanor fines and fees at a recent consortium that I was invited to go to with Assemblywoman Backus, a couple judges and the Director of DMV (Department of Motor Vehicles). So again, I just want to kind of express appreciation for NCSL giving me that opportunity, so that's sort of an editorial comment while I have the floor.

Presumption of release, and the representative from NCSL kind of covered this, that there is a presumption for a release on own recognizance or unsecured bond unless the judicial officer makes an individualized determination. So again, we see that coming up, that that's a key element of this is the judicial officer has to make that individualized determination, and the federal government kind of started this ball rolling. Particularly in the federal system, there is that presumption going back to 1984.

Just a quick rundown of some statistics that I believe came from a study from the Arnold Foundation. I don't have the citation here, but I can provide that if you would like, but basically defendants who are held in pretrial detention have less favorable outcomes than those who are not detained, regardless of charge or criminal history. In less favorable outcomes, obviously there's a greater tendency to plead guilty to secure release. This is a significant issue in misdemeanor cases. The classic example of this, I think, in our state, and it dates back a few sessions, particularly before AB (Assembly Bill) 236 when our definition of burglary was entering anywhere with the intent to steal something. Someone goes into the gas station, steals some M&M's. Technically it's charged as a burglary. They sit in jail. It's a category B felony. They can't bail. They're offered a plea down to petty larceny, take it, time served and out. That obviously encourages folks to take that plea or plead guilty to get out of jail. There's a greater likelihood of conviction if a person is in jail pretrial because they cannot bail, a greater likelihood of being sentenced to terms of incarceration. Also, there's a likelihood of a longer prison term. There's a lot that goes with that pretrial detention and being in jail, and I think again, NCSL pointed out that about 75 percent of folks in jail are awaiting trial, and also, if the defendant's in jail, they can't really help with their defense as is key to that fair trial. Public safety, and this again is from the Arnold Foundation: the more time you spend in jail, the greater risk you are for new criminal activity, including low-risk defendants spend more time in jail, there's a greater risk that they may engage in future criminal activity. For high-risk defendants, though, days in detention categories are not predictors for new criminal activity for high-risk defendants, but those low and mid-level folks who are probably the targets of some of our efforts in finding out how to better use pretrial detention, better get people out, are impacted negatively by spending time in jail.

So, with all this in mind, the National Conference of State Court Administrators (COSCA) came out with a position paper based on evidence-based pretrial release encouraging states' judiciaries to look at implementing an evidence-based pretrial release system,

because again, as we've discussed, for poor people, bail means jail, and COSCA again thought that was inappropriate. The position paper issued by COSCA was endorsed by the Conference of Chief Justices. So again, the two prominent sort of national leadership groups for the court system have endorsed examining bail and implementing evidence-based pretrial release. Then in 2015, the Judicial Council endorsed creation of a committee to study evidence-based pretrial release in Nevada. When that committee was convened, Justice Hardesty was the chair of this, obviously. I think you're all aware that he has a substantive interest in criminal justice reform. The charge of the committee was to examine alternatives, improvements to the bail system through evidence-based practices and the role of risk assessment tools. The membership of the committee, again, as generally we do when the court has a committee or commission, try to make it up of interested stakeholders, so we have obviously urban and rural judges, limited jurisdiction and general jurisdiction, public defenders, district attorneys, the Nevada Association of Counties, pretrial service departments, particularly Washoe and Clark Counties, county managers, again to discuss this and see what sort of recommendations we could come up with. The committee obviously received a number of presentations regarding pretrial release, etc., and you can see those listed here. I will mention that Kentucky, which is a unified judiciary, their Administrative Office of the Courts actually handles pretrial release statewide and that's a substantial part of their operation, and the funding they receive is to handle that. Also during this, the commission heard presentations from representatives from the bail industry.

At this point, the Committee needed to select a pretrial risk assessment tool that would fit the need, and so the committee worked with the National Institute of Corrections to determine how we would come up with that, and then Dr. James Austin, the JFA Institute, a representative from OJP (Office of Justice Programs), etc., presented to the committee and also worked with the committee to create a Nevada-specific risk assessment tool, and that project was headed by Dr. Austin, and that's the Nevada Pretrial Risk Assessment tool (NPRA). That study and that instrument was created and it was validated, and the committee voted to implement it on a pilot program basis and provided training, and the pilot program launched in the Washoe County courts, so particularly the Reno Justice Court, the Reno Municipal Court, the Ely Justice Court is the rural pilot site, and select Clark County courts, including the Las Vegas Justice Court. I think one of the things to highlight here is in Washoe County, they have pretrial services, and in those Clark County courts they do. In Ely, they don't, and Judge Stephen Bishop of the Ely Justice Court actually ended up filling out the risk assessment himself, so you can see there's a variety of sort of resources in the way we can handle this across the state.

In August of 2018, the committee, based upon the success of the pilot program, voted to go forward with suggestions to the Supreme Court that every court adopt the use of a pretrial risk assessment tool. That ADKT position—and when I say ADKT, I mean administrative docket petition, and I ask your indulgence if I say ADKT a bunch. But anyways, Justice Hardesty filed that petition requesting that. In March of 2019, the court issued an order under ADKT 539 requiring statewide implementation of a pretrial risk

assessment tool, and it said within 18 months of the date of this order, so that's roughly September 21 of this year. Each court in the state will have to use an evidence-based pretrial risk assessment tool unless the AOC (Administrative Office of the Courts) based on good cause finds it necessary to grant an extension. In this order, it also required AOC to develop training materials regarding the use and implementation of the NPRA and educating judicial officers, court staff and interested individuals in the use of the NPRA, and so we developed that online training and put it together, obviously with three distinct, I guess, modules for each of those audiences. If anybody on the Committee has an interest in reviewing that, go ahead and reach out and we'll see if we can get you a logon so you can go on and review one of those trainings. But that's been implemented and we're following up with courts to ensure that everybody is taking that training to understand this.

Here you can see not-the-greatest picture, because I jammed it into that slide and would be happy to provide the full-size documents, the two choices for the Nevada Pretrial Risk Assessment tool. The versions are very similar and equally predictive, and both allow for overrides. In reviewing this information, the judge can override one of these factors, but the idea here is to provide evidence-based information to the judge to use in setting conditions for pretrial release by obviously assessing the risk level of the defendant. There is an 8-question version and a 10-question version. The 8-question version has a few sort of—for lack of a better term—predictive factors in one question, including residential status, verified phone numbers and other stability factors, and the 10-question version has these as individual factors, so obviously it goes—in a low score, the instrument would indicate then to the judge that the individual is low risk of reoffending, low risk of failing to appear, can most probably be released on their own recognizance with limited conditions, and then we have mid and high-level scores as well.

The Committee to Study Evidence-Based Pretrial Release received a lot of TA, and recognize that here with the JFA, the Arnold Foundation, the Institute of Corrections, Pretrial Justice Institute and OJP, and if you're interested in more information on the specific Nevada assessment, you can find that on our Supreme Court website. It's on our committee and commission overview page. So, that's my sort of 10,000-foot overview of bail in Nevada as well as the work that the Supreme Court's committee has done as far as implementation of an evidence-based pretrial risk assessment.

Chair Harris:

Thank you, Mr. McCormick. We appreciate your presentation and the information on the current status of how bail reform is working in our state. Do any of the Committee members have questions for Mr. McCormick?

Senator Scheible:

I want to echo the Chairwoman's thanks to you for this comprehensive overview, and I want to get kind of to the NPRA and the process that the committee went through to develop it and to adopt it, and specifically I'm wondering about the feedback mechanism as somebody who uses the NPRA in daily life, because I noticed that it was in 2018 that the committee decided to recommend that all courts in Nevada use it, and then in 2019 they issued the order that we adopt it statewide, and I'm just wondering how did the committee determine that the NPRA was working or that the people who use them in the pilot programs liked them?

Mr. McCormick:

Thank you, Senator. That was determined particularly in a series of meetings as the pilot project went on in reports back from the pretrial services officers in Washoe and Clark County, and as well as feedback from Judge Bishop. I believe Dr. Austin re-verified the assessment during the time, so it was that feedback and information was provided by the pilot court sites to the commission for its consideration in making that recommendation.

Senator Scheible:

You might not know the answer to this question, but at the pilot court sites, did they get feedback from attorneys and judges?

Mr. McCormick:

It is my understanding they did. I know the judges of the Reno Justice Court and Reno Municipal Court were very involved in the pilot site and assessing it and how it’s worked and have provided that feedback. Unfortunately, I did not staff this commission, Jamie did, and so she would sort of be more knowledgeable in terms of the actual discussions there, but you can find the minutes, etc., on our website.

Senator Scheible:

Okay, thank you.

Vice Chair Nguyen:

I may have to follow up with her. I don't know if you have this information. I remember even before it was implemented as part of the recommendations from the office of the courts that things have changed, like I know that at one point you had to have a landline, and if you didn't, you were assessed a point, and I see that that has evolved. In some places it’s been taken out, or they've included cell phones and those kind of things, and

you had talked about how this was evidence-based. Where was this data taken from to show that this was effective in it being included in there?

Mr. McCormick:

Dr. Austin worked extensively on that, and I don't know the specific sort of machinations that were gone through to assess effectiveness, so honestly we'd have to kind of get back to you on that because I believe Jamie would be better equipped to answer that question, and I don't want to blather on and give you inappropriate information, so we'll get that and send it to you and the Committee.

Vice Chair Nguyen:

That would be great if we could get that online. I know I was a part of the presentation of the doctor when he presented the information, and I had concerns back then, and I think that was maybe 2015, 2016, but I think it would be helpful for the other members of the Committee to get that. Thank you.

Chair Harris:

Any additional questions from members? Okay, Mr. McCormick, I have just one question for you, and hopefully it won't be too detailed as well. Are you aware of any statistics on potential disparities that were revealed throughout the course of data collection, or do you know if it was considered or where I might be able to find any information on that?

Mr. McCormick:

I know bias was considered, and again, I don't have the specific data in front of me. We'll round that up and get it to Committee staff to share with everyone on the Committee. I know there was some contention that pretrial risk assessments in and of themselves may have an element of intrinsic bias because they consider previous convictions, and as we all know, people of color are disproportionately arrested, convicted, etc., so there is that element, but I will have to sort of dig into that and get back to you because I don't want to necessarily provide you with bad information.

Chair Harris:

Understood, thank you. One last call? Okay, thanks so much. We will go ahead and close out agenda item VIII and move on to IX, which is going to be a discussion of potential topics, dates and locations for future meetings. At this time, I wanted to just open it up to Committee members to discuss a little bit about other topics we might want to consider in our future meetings. For our next meeting, our very next meeting, it's my hope that we will be able to invite a majority of the stakeholders in this discussion who weren't able to present today, such as the district attorney's office, the Attorney General's Office, public

defenders, private counsel, law enforcement, ACLU, judges, the bail industry and any other individual in affected communities. I wanted to make sure that we hear from everyone and that we get all of the important perspectives. But at this time, if any Committee members have recommendations on other topics they want to make sure we hit on in future meetings, I'd be happy to hear that.

Assemblyman Roberts:

Thank you, Madam Chair. I'd be really interested in some data from our local jails. When I worked for Metro, jail space was a significant issue for us, and we worked diligently for an assessment tool, which actually was adopted in other places, and tried to just keep our most violent offenders in the jail and get as many people out as we could. A lot of people have done a lot of good work in this area. I'd like to see some data on where we are in Nevada and how we match up. We heard national trends, but maybe we're doing it right in a couple places and maybe there are some places that we're doing it wrong, and I'd be real interested in numbers and how it impacts us here in our state, if we could get that from jails or the folks that have that data.

Chair Harris:

Thank you so much. Yes, I agree that that would be extremely helpful, and we'll have LCB reach out and see if we can get those numbers, or if not, invite some people down who might have some of the information for us.

Senator Scheible:

I think that the co-responding programs are incredibly important, and I know that they're relatively new so we don't have a lot of data on how well they've been working, but while we were sitting here I did do some preliminary research into Colorado and some other communities that have started using them. I think it would be great if we could get a presentation from either a community that's using one or someone who has some best practices and think about whether that's something that could be effective in any of our communities here in Nevada.

Chair Harris:

And what was that that you wanted to look at again?

Senator Scheible:

Co-responding programs.

Chair Harris:

Co-responding programs, okay.

Senator Scheible:

Just to clarify, that's where law enforcement officers and mental health professionals respond to an emergency call at the same time so that if someone is having a mental health crisis, they can be diverted to services rather than being arrested.

Chair Harris:

I believe we have the LEAD program here, at least in the Metro area. Okay, great. Thank you.

Assemblyman Flores:

Thank you, Madam Chair. Some of the data that I'd be interested in looking at is in the areas where we don't now put folk in jail. For example, traffic tickets and some low-offender misdemeanors, if we can get the data of how many of those we have per year, and then out of those individuals who get that traffic citation and/or some of those misdemeanors where we're not putting folk in jail, if we can get data as to how often they show up to court so that we can link that correlation. There's areas where we can look at now where there's this idea that folk will only show up to court if you put them in jail, but I think we can look at other areas where we're not already putting folk in jail and we can see if that's actually true, because I think the last time I heard some data on that, folk in fact were showing up to court and were paying their tickets. So, I just was curious to see that, and if I had that data in front of me, I think it would be helpful. Thank you.

Senator Hammond:

Thank you, Madam Chair. I think the presentation today was helpful in sort of, in my mind, looking at the number of years that this movement has been in place and the number of laws that have been enacted across the many states, and then also talking about some of the walk-back that has occurred. As interesting as that might be, I'm sort of interested in knowing more of what have some states changed since then. I think because we are coming into this now and really getting focused, I think we're going to be the beneficiaries of what other states have done, and if we're talking about that balance between public safety as well as making sure that we're helping those who seem to be in need of help as well—they've committed something or may have committed something—we want to try and figure out what that is. There's a balance there that needs to be struck, and I think we might benefit. I like the fact that we talked about it today, but I'd like to know more about not necessarily—I'd like to know more about some of the laws that were rolled back,

but more so what changes, what minor changes, have occurred in many of the states since they enacted some of these provisions. I'd like to kind of do a deeper dive into that.

Chair Harris:

Thank you, Senator Hammond. Maybe there is an opportunity to explore whether there are any states who have felt like they went too far and wanted to curve back and then simultaneously take a look at any trends that you may see from states that have made particular changes, whether those trends be in a good direction or not, so that we have that information in front of us.

Senator Hammond:

Exactly, and of course the associated data that may have spurred that change or any kind of data that can say this is why we kind of looked at it. It's better than anecdotal stuff, I think.

Assemblyman Flores:

Thank you, Madam Chair. The other thing that I was interested in looking at, when we speak directly to the bail bond industry, one of the things that we—often it's anecdotal for me. I don't have any data on any of this—is the relationship between the bail bond companies and the individuals that utilize their services. I often hear that there's either these over-burdensome requirements that are imposed on the individuals that utilize the bail bond services by the bail bond company directly that goes beyond ensuring that they show up to court. It's anecdotal. I don't have any of that, so if I could just hear the practices from the bail bond companies. What are they doing? What requirements are they forcing individuals to go through? That would be very helpful.

Chair Harris:

Thank you for that. I agree, and as we reach out to stakeholders, I'll be sure to ask bail bonds representatives to address some of those conditions that they traditionally place on defendants before issuing bond. Okay, so one other item of business before we move to public comment, and that will be scheduling our next meeting. Rather than have all the members pull out their phones right now and schedule a time, I will ask the Committee secretary to send around an email and do an informal doodle-poll of sorts to the members so that we can get our next meeting on the schedule as soon as possible. I anticipate that it will be approximately 4 to 6 weeks from today, held here and videoconferenced into Carson City, so please be on the lookout for that email and go ahead and start scheduling some time for this Committee meeting in the future. We'll go ahead and close agenda item IX and open it back up for public comment.

Leslie Turner:

Leslie Turner, PLAN Action, the Mass Liberation Project. First of all, thank you for this Committee. The community explicitly asked for this Committee in our letter to the Senate in the legislative session, and I just wanted to say that this is not like the community versus the bail bonds industry at all. This is about systemic change and changing a system that inherently is designed to create this kind of disparity, and that is really the core of what we're trying to change. We've just entered a new decade. I think that we have the ability and the innovation and the creativity to really start thinking about how we define public safety, and that's why it's really important, and I thank you, Madam Chair, for including the community as a stakeholder, because historically I have not seen that here in Nevada where we're actually included in those discussions and those negotiations, because I think it's important that the community gives feedback on what keeps us safe and I think that we need to dig in a little deeper on how we define public safety and what it actually even means when we say that, because we're thinking about—because that seems to be the key thing everyone spoke on is keeping the community safe. Okay, well, talk to the community and see what actually keeps us safe. So, that's pretty much it. I just thank you. I'll be engaged. I definitely want impacted people to be able to have a seat at this table, so hopefully I'll see you guys all again soon. Thank you.

M.J. Ivy:

M.J. Ivy, Ivy's Communications, former Vice President of the Southern Nevada Official's Association, Pentecostal Assemblies of the World, Nevada State Director and a veteran of the United States Air Force serving in Desert Shield and Desert Storm. I am very happy that this Committee is here. I have a couple of questions in regards to why veterans are not being issued any type of understanding when it comes to the accession of a veteran that may be incarcerated. The reason it comes up is that, speaking to Kim Thomas, the deputy director for the state safety and our prisons, they have several veteran programs, but when they are getting there, they're not being assessed as veterans while they're in the local jail. So, they're not being recognized, and the possibility of a domestic violence situation that there may be some PTSD involved and some mental health official is there on the scene. Metro in my experience personally does not ask, even if it's been identified about being a veteran, is not on any particular pieces of paper when you're processed that you are a veteran. The DMV does a great job of doing this and recognizing that, even charging us $300 for a plate to let us know that we are veterans, but the Metro Police Department does not do that and the judicial system does not recognize it when we do a PSI (pre-sentence investigation) so they do not say anything about our service as to the 10, 15, 20, 30 years, retired, multiple service records, serving maybe even for the state and itself, no recognition at all so that when they get assessed their levels of having jail or having a sentence or even having bail is not even considered whatsoever. The only consideration that the veterans have is a drug court, which is a shame because 90 percent of all veterans don't do drugs. More commit suicide than drugs. They're homeless more than drugs. They're good citizens not being recognized, and most of the time, as Mr.

Flores then gave an example of, they steal a box of M&M's because they're hungry because they're homeless, and now we turn it into a B felony instead of getting the things that they need done, because most of them don't know where to go and how to get the services they need because we've intelligently put a hospital approximately 25 miles away from where they're living or located at and they don't have the resources to get there. So, I would like this Committee to take a look at exactly why veterans are not being considered, what can we do to help them be considered, and people like myself who have been touched by the criminal justice system, and I'm trying to be as polite as I possibly can, because a man of color who is 48 years of age who was previously touched by the justice system because I was a threat and I was told that, and I could not do anything but take a deal. This was in the State of Missouri, the same State of Missouri in which the Obama Administration had to shut down certain cities that were doing illegal things to make money, including the bail system. The same Missouri that is going through right now being sued for the St. Louis Police Department for racial injustices, because that's where I'm from, and I'm seeing some of that—not any at all, most, but seeing some of that here, and because I've been here 15 years going on 16 years and serving in the capacities that I have mentioned before, I am very much concerned for my citizens who look like me, as well as the young men and women who come after me and the men and women who served before me as veterans of the United States Air Force and the military itself. Thank you so much for letting me comment. I appreciate you.

Chair Harris:

Thank you, sir. We appreciate your time and your service, and I think I can speak for all the Committee members in saying that we will definitely be keeping veterans in mind as we think about reforms to the system. Thank you.

Robert Langford:

I'm a private practice attorney practicing here in Las Vegas. I also host a very broad base coalition of communities at my office. We meet at least once a month, and we're going to probably crank that up a bit. That coalition consists of PLAN Action and a couple of other communities of faith, alliance community, but also then on the very far right, Americans for Prosperity and the Nevada Policy Research Institute. I'm here today to say thank you for listening to the resources that you've already listened to, and just know that this, politically and philosophically, bail reform is supported by every think tank that has looked at it, save and except of course the bail community, and it's going to hit them in the pocketbook. But if you look philosophically, whether you're a fiscally conservative person who looks at this as just a huge waste of money that doesn't get us the results that we want as a community or whether you look at it from a community that is unfairly impacted by the current bail system, everybody says there is something wrong and it can be fixed. I would invite you to look particularly at those organizations that were cited by the Administrative Office of the Courts. They are fantastic resources dealing with this issue and they can tell you a lot of things about what other jurisdictions have done by way of

bail reform, how different Nevada is in a lot of ways from other jurisdictions and what Nevada specifically needs to do. There are good programs. As Assemblyman Roberts pointed out, there are good programs around the state that are headed in the right direction, but as the Administrative Office of the Courts pointed out, also we are not a unified judiciary, and at that point it's probably got to be something that the Legislature has to do. Again, thank you for holding the meeting and just know that there is a broad, broad support philosophically and politically in this particular area. Thank you.

Chair Harris:

Are there any others who would like to give public comment at this time? Okay, seeing none, we will go ahead and adjourn at 11:01 a.m. Please keep an eye out on our website for the next meeting date so that everyone is involved. Share the information widely, and we hope to see you all and a bit more at the next meeting.

RESPECTFULLY SUBMITTED:

_____
Jordan Haas, Secretary

APPROVED BY:

_____
Senator Dallas Harris, Chair

Date: _____

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III A	Tonja Brown	Public Comment
Agenda Item III B	Roy McCarter	Public Comment
Agenda Item V		Senate Concurrent Resolution No. 11 (2019)
Agenda Item VI	Kathleen Norris, Legislative Counsel Bureau	Pretrial-Related Measures from the 2019 Session
Agenda Item VII	Amber Widgery, National Conference of State Legislatures	Presentation on National Trends in Pretrial Release of Criminal Defendants
Agenda Item VIII	John McCormick, Administrative Office of the Courts	Pretrial Release Overview