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

March 3, 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 9:05 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:

Judge Diana Sullivan, Justice of the Peace, Las Vegas Township Justice Court
Dr. James Austin, President, JFA Institute
Richard Suey, Retired Deputy Chief, Las Vegas Metropolitan Police Department
Ta'mara Silver, Analyst, Las Vegas Metropolitan Police Department
Lieutenant Corey Solferino, Washoe County Sheriff's Office
Jeff Clark, Chief Deputy of Detention, Washoe County Sheriff's Office
Captain Peter Petzing, Washoe County Sheriff's Office
A.J. Delap, Las Vegas Metropolitan Police Department
Lissette Ruiz, Officer, Las Vegas Metropolitan Police Department
Sergeant Jason Santos, Las Vegas Metropolitan Police Department
Marc Ebel, J.D., Director of Legislative Affairs, Triton Management Services, LLC

Marc Gabriel, Manager/Proprietor, eBAIL Cheap Bail Bonds
Kendra Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Evelyn Grosenick, Chief Deputy Public Defender, Washoe County Public Defender's Office
Nancy Lemcke, Deputy Public Defender, Clark County Public Defender's Office
Jason Frierson, Assistant Public Defender, Clark County Public Defender's Office
John Jones, Chief Deputy District Attorney, Office of the Clark County District Attorney
Adam Cate, Deputy District Attorney, Office of the Washoe County District Attorney
Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson
Robert L. Langford, Esq., Robert L. Langford & Associates

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

Good morning everyone. We're going to go ahead and open up this meeting as a subcommittee. We will be taking no action, but we'll be listening to testimony in that time as members arrive. We're going to go ahead and open up with some public comment, but before we begin public comment, I would like to acknowledge that we have staff who has reached out to several community groups to speak about pretrial release at our next meeting. The groups contacted were the ACLU (American Civil Liberties Union), Americans for Prosperity, Ivy Communications, the National Coalition of 100 Black Women, Nevada's Coalition to End Domestic and Sexual Violence, the Nevada Policy Research Institute, Nevada Student Power, PLAN (Progressive Leadership Alliance of Nevada), Unity Baptist Church. If there are any other community groups wishing to speak at the next meeting, please feel free to contact me or Committee staff. At this time, we will go ahead and open it up for public comment both here in Las Vegas and up north in Carson City. If you would like to make any public comment at this time, feel free to come forward. We don't bite. There's only two of us. Okay, seeing none, we will go ahead and close public comment at this time. I'm going to remind everyone that if you're feeling a little more outgoing, we will have another public comment opportunity at the end of our meeting.

At this time, I will now accept a motion to approve the minutes. Oh, we can't take action, so let me pause on that. We're going to go ahead and skip agenda item IV. At this time, I will go ahead and open up agenda item V, a presentation on the failure to appear in court for certain misdemeanor and low-level offenses and an overview of the pretrial release process in justice court. I'm going to go ahead and invite Judge Diana Sullivan, Justice of the Peace from the Las Vegas Township Justice Court, to the Committee. Thank you so much for being here.

Judge Diana Sullivan (Justice of the Peace, Las Vegas Township Justice Court):

Good morning, Chairwoman Harris and members of the Committee. A few introductory statements: I did provide a presentation at the request of LCB (Legislative Counsel Bureau) of the Las Vegas Justice Court's pretrial release processes (Agenda Item V). My

presentation includes a review of our administrative own recognizance release criteria and a description of our relatively new Initial Appearance Court. Please understand that I am not presenting on behalf of the Nevada Judges of Limited Jurisdiction organization, of which I am the current President. Our limited jurisdiction courts around the state are vastly different by ways of composite makeup of arrestees, the magnitude and types of criminal activity in their different locales, jail population and space constraints, pretrial service staffing and judicial resources, and social service resources, and while I can certainly try to answer questions specific to the Las Vegas Justice Court's processes, I want to refrain from offering opinion on policy matters. Also, just as an added note, my presentation outline, I tried to keep it very simple. I didn't want to kill anybody with a PowerPoint, so I kept it very simple with what I thought was a straightforward outline. I also used the term judge throughout the outline even though our title is actually justice of the peace, and many statutes refer to our title as magistrates. For ease, I simply used the term judge in my outline. I'm sure you all got a copy of the outline. I don't know if you read it, but I tried to keep it relatively simple. We sometimes use the term warrant and use the term arrest for various reasons, so at the very beginning of the outline I kind of went through the three primary reasons why people are arrested. The first was a warrantless arrest, or basically what is a probable cause arrest for a new crime. The second one was an arrest warrant, and I explained that that is when the district attorney has actually already filed a charge against somebody and they have sought a warrant for that person's arrest so that law enforcement can go out and find them and bring them in front of the magistrate to answer to the charge and start the proceedings. The term bench warrant we typically use when somebody has failed to appear in court or sometimes failed to comply with certain requirements that the judge has placed upon them. If you go into the outline under warrantless arrest, this is basically when somebody has been arrested for a new crime.

Probable cause review has to be done within 48 hours of arrest, and it can be done on paper. Other than probably the Las Vegas Justice Court, that review is done on paper in most of the lower jurisdiction courts. If no probable cause is found for the arrest then the arrestee is released, and after probable cause is found, if the arrestee continues to be detained, then the arrestee must be personally brought before the judge within 72 judicial hours of arrest. Obviously that excludes holidays and any days that the court is not operating. As you may be aware, some courts operate 5 days a week, some courts operate 4 days a week, and in the rurals, sometimes it's even less than that. If a person continues to be detained then a formal complaint must be filed forthwith initiating the formal charges.

I did want to explain how people are provided bail at the time of arrest. In Las Vegas Justice Court, at the time of the initial booking there is a bail schedule. The arresting officer uses it at the time of booking, and it is solely based upon the nature of the charge. Based upon the nature of the charge, an initial bail is provided to the arrestee. As soon as the booking process is complete, that person, if they can post that bail, if they have the ability to post whatever bail has been provided on the bail schedule, they can post that

bail and get out before any judicial oversight or before seeing any judge for any alternative conditions or an OR (own recognizance). But at the same time the booking process is happening, our pretrial service department is determining whether the arrestee is eligible for an administrative OR release without being scheduled for our Initial Appearance Court, and I'll speak about the Initial Appearance Court in a few minutes. If the person is not eligible for administrative own recognizance release then he or she is scheduled for the Initial Appearance Court. If somebody is arrested on a bench warrant, so a judge has issued a bench warrant for their failure to appear or failure to comply, or if somebody is arrested on an arrest warrant, the two other warrants that I mentioned earlier, they do not go through the Initial Appearance Court because an actual assigned judge that has been assigned to their case has issued that warrant for the arrest. The Initial Appearance Court is really meant for pre-complaint charged arrestees, and there are some exceptions about traffic warrants.

I now want to speak about the administrative own recognizance release in the Las Vegas Justice Court. We call that administrative order 18-04, and as you can see, it's been amended 4 times. It was first enacted in 2018 and it has since been amended 3 additional times. If qualified, an arrestee is released administratively by pretrial services usually within 4 hours of arrest with no conditions other than to remain trouble-free and without being scheduled for an Initial Appearance Court. The bullet points there in the outline discuss all the criteria where somebody can be released administratively own recognizance. Most misdemeanors, and there are some exclusions. I also believe our pretrial services excludes a stalking and harassment misdemeanor on this, but I have to double-check with them. Any nonviolent gross misdemeanors and felonies that are coupled with a low risk assessment score, they are eligible for an administrative OR, but of course it excludes crimes of violence and gun offenses. Drug possession, which is a felony charge, coupled with a low or moderate score on the risk assessment are administratively released, and then there are some exceptions if somebody is arrested on a bench warrant and they've only bench warranted one time, or in community court they've only bench warranted one time. They still are administratively released even though they have bench warranted in one of those cases. We also have Q cases, which are animal control citations. We release those administratively. There are some general exclusions and they are all listed there. Obviously some serious felony offenses such as home invasion, residential burglary, firearms, sex offender violations and sex offense cases. The catchall is if the pretrial service officer is concerned about the charge or the arrestee in any way or something that might be contained in the arrest report, they can certainly contact the signing judge and the signing judge makes the determination whether that person would qualify for an administrative OR or whether they should be scheduled to see the judge in Initial Appearance Court.

If the arrestee does not qualify for the administrative OR then they are scheduled for the Initial Appearance Court. Something that is not noted in my outline about the administrative own recognizance release is that these court release criteria have been set by the Las Vegas Justice Court, and the releases are in fact being granted by court

order. It's an administrative order issued by our chief judge after consultation and discussion with our bench. The beauty of having the release criteria in an administrative order from the bench is that as we track releases and future appearances and statistics on release types, we can modify the release criteria if need be very simply. For example, while our administrative release order currently releases all low-level quality-of-life misdemeanors and all arrestees for felony drug possession with low risk, those are two categories that also have a very high failure to appear rate, so while those releases are helping with jail population at the time of initial arrest, many of these offenders are subsequently getting bench warrants for failing to appear at arraignment and then eventually are being booked back into the jail on their warrants, which in the end is counterproductive. We have some offenders that—we have one particular misdemeanor offender that has been—he has 152 failure to appears. That person, believe it or not, does qualify for an administrative release every time he is booked in on a misdemeanor charge. As you can imagine with 152 failure to appears, he is getting released administratively within 4 hours but he has a very high percentage that he is not going to appear at arraignment at his next court date. Because of these reasons, we can continually review these statistics and easily adjust the administrative release order as appropriate. If they do not satisfy administrative release criteria, they are scheduled for the Initial Appearance Court.

I gave a dissertation of how the Initial Appearance Court came into being and I won't go through that unless somebody has some questions (Agenda Item V), but basically we combined the 48-hour probable cause review and the 72-hour appearance in front of the magistrate into one hearing. We went to various jurisdictions. We went to Maricopa County in Phoenix, we visited San Antonio and we've visited Milwaukee and looked at all of their initial appearance courts and took a little bit from each one of those jurisdictions that would help in our jurisdiction. It is very crucial to note that as this being the first priority of the Clark County Coordinating Council that this was a joint effort between all agencies. We commenced on January 7, 2019 and we operate 7 days a week, 365 days a year with 2 sessions a day. In order to implement the Initial Appearance Court, additional staffing was in fact required by all agencies that are involved, including the jail, the court, the courthouse, the district attorney, the public defender and the office of appointed counsel. It is pertinent to footnote here that what has been implemented in the Las Vegas Justice Court as the Initial Appearance Court and the speed in which the court operates is not practicable and probably not possible in most rural counties with current resources. I ask the Committee to keep in mind that pursuant to statute, the justices of the peace exist via population, not based upon caseload or other court needs. Thus, to the extent additional obligations and responsibilities are placed on the limited jurisdiction judiciary by Supreme Court order or legislation, there will not be additional JPs (justices of the peace) available to handle those additional obligations and responsibilities unless and until county population increases.

At the Initial Appearance Court hearing, the arrestee appears in front of the IA (initial appearance) judge. It is a public hearing. Victims can appear and speak with the district

attorney. Family members can appear. Family members of the arrestee can appear and speak with the district attorney or the defense counsel. No formal charges have yet been filed by the district attorney. It is far too soon for the district attorney to be able to make some charging decisions, but the beauty of our Initial Appearance Court is that the district attorney has staffed it with their very experienced screening deputies so they know at the time of initial appearance if they can charge this particular crime within a couple days or whether they need additional time for investigation, additional backup evidence, information from complaining witnesses, etc. Sometimes when people appear in Initial Appearance Court, it's oftentimes actually that when an arrestee appears in Initial Appearance Court, the district attorney tells the court right away, “We are not going to be ready to charge this case in 2 days. We are asking for 30 days, 60 days, 90 days.” Sometimes it depends on the lab, and so the arrestee is obviously released. There is no discussion of custody or custody conditions because there is not going to be any charges coming forthwith. The judge makes a probable cause determination and a custody or release determination. As you can see in my outline, those determinations range from a straight OR. Sometimes we put them on ISU, which is intense supervision. I want them to change that moniker because it is not intense. They just need to check in once a week at the kiosk, so we're going to start to call that check-ins, I think. Sometimes they're placed on electronic monitoring, and that is not supervised by our pretrial service department. It is supervised by the Metropolitan Police Department, which can create some problems when it is a court-ordered release and there can be other conditions such as curfew, no alcohol, etc. There are reasons to detain arrestees with no bail, and I listed those few reasons on the outline. Of course, if there is any possibility that they are going to remain in custody—for instance, cannot make a monetary bail that is set by the judge or might not be able to qualify for electronic monitoring, or of course if they are going to be detained with no release conditions, then they are given a 2-day court date in front of the assigned judge for filing of criminal charges. If they are released with little to no conditions then they are given a 30-day court return date for the district attorney to have 30 days to file charges.

I think that covers my presentation. If anybody has any questions, I would be more than happy to answer or try to answer them.

Chair Harris:

Thank you so much. I don't have any questions, but I want to ask the Committee members if they would like to ask any questions at this time.

Judge Sullivan:

I did want to give one last comment. I know you asked for statistics. That was really challenging for us, and I ended up not being able to provide any. The statistics that were asked were “certain misdemeanors” and “low-level crimes.” It was very challenging for my IT department in the short notice to be able to gather what we felt were accurate

statistics for you. We're more than willing to continue to work with you and provide statistics. We do provide statistics to the initial appearance subcommittee every other month and to the criminal justice coordinating council every other month on the opposite months, but we probably would need some better definition on exactly what type of failure to appear rates you're looking at, because "certain misdemeanors" is kind of in the eyes of the beholder and a little vague, and "low-level crimes" is a little vague as well. Does that include possession of a controlled substance, which is actually a felony charge? Does it include traffic? I can certainly be your point person with the Las Vegas Justice Court if you can narrow down the statistics you would like from my IT department, and the court would be more than willing to try to get those statistics.

Chair Harris:

Thank you so much. Actually, I do have one quick question. You have electronic monitoring as one of the possible conditions of release, is that right?

Judge Sullivan:

Correct.

Chair Harris:

Okay, so I know it's a Metro program. Do you have any idea how much that costs and who bears the cost of electronic monitoring if, let's say, you are released with that condition?

Judge Sullivan:

Well, the county eventually bears the cost regardless of what bucket it comes out of. There is no charge. Rich Suey I know is presenting later. He could definitely answer those questions. But I do not believe there is any charge to the offender, at least pretrial. There might be some sort of charge on house arrest if they're serving a sentence, I'm not sure, but pretrial there is no charge. The bracelets are very expensive. But Rich Suey can answer any of those questions, but it is supervised and maintained by the Metropolitan Police Department. In other jurisdictions, the pretrial service department of the court actually has that program and they have their own pretrial services that monitor the bracelets, but since we don't have that resource in our pretrial service department, Metropolitan Police Department oversees that program.

Assemblyman Tom Roberts (Assembly District No. 13):

I didn't have a question, but now I do. I know you implemented the Initial Appearance Court, now 7 days a week, twice a day. I was at Metro when we just started doing it on the weekends. Have you personally participated in that process is the first part of the

question, and the second would be are you seeing that we are releasing more people rather than they sit in jail for 12 or 48 hours under the old system, or are we getting people and evaluating people quicker with this process, and are we releasing people in a timely manner?

Judge Sullivan:

The first answer is yes, I've overseen Initial Appearance Court. In fact, my duty was last week—this was just 2 days ago—so yes, which was very challenging because the jail system's computer system was down for 12 hours, so that kind of threw a monkey wrench into everything. But yes, I have several times. When you say are we releasing more people, we are assessing people under the risk assessment obviously quicker. We are seeing more people much quicker. Before, when they would not see a judge for basically 3 to 5 days, we are seeing them within 8 to 22 hours of arrest, those people that actually get assigned into the Initial Appearance Court. Certainly I believe we are releasing more people through the administrative order process before they get to Initial Appearance Court, but I can't tell you if we are releasing more people out of the Initial Appearance Court. Certainly monetary bail is either being removed or modified from the standard bail schedule in which they are booked in, and different types of alternative conditions can be provided to them as well if they can't afford bail, such as check-ins or monitoring or something. The Initial Appearance Court is great because it gives judicial oversight of the case within hours of arrest. Some people find it very concerning that somebody who can afford bail and it's a very violent charge and maybe they have a criminal history a mile long, if they can afford the monetary bail that is assessed to them at booking, they can bond out with frankly no conditions, no judicial oversight at all. That is the way the system is currently set up, and before the Initial Appearance Court that was a 3- to 5-day time period where somebody could bond out with no judicial oversight. Now, because we've abbreviated that timeframe, if you will, the judicial oversight and decision making and analysis comes much quicker. Was I able to answer your question?

Assemblyman Roberts:

Do you find the assessment tool helpful and useful in your duties in that Initial Appearance Court in making the determination, or do you feel it hinders you? Just your opinion from doing your job.

Judge Sullivan:

Before, we didn't have anything. I mean, we had what was kind of a haphazard criminal history. It was a very difficult decision-making process, especially when we have so many cases on calendar in the Las Vegas Justice Court every day. I know there are two different tools throughout the country. I am a person that firmly believes in statistics, so to me it is just an additional tool that can help. My opinion is, in my training that I've helped provide to the judges statewide, sometimes it just seems to be counterintuitive just based upon

the charge or based upon the person's criminal history, but again, it's just a tool. It's just another tool for the judge to use, and if the judge wants to ignore it then the judge can ignore it, because if it's a low risk but the person has 15 felony convictions, the tool says because those felony convictions are so old they shouldn't be counted as risk and therefore they are low risk, but a judge might believe that's counterintuitive and if this person has 15 felony convictions that they're not a low risk to reoffend. So again, it's just another tool. I frankly embrace it because I would like any tools that we can—you go into the toolbox, you can ignore a few tools if you like, or you can pick a few up, try one, try another one, but I think it's just added information that we did not have prior to.

Assemblyman Edgar Flores (Assembly District No. 28):

Thank you, Madam Chair. I apologize to the Chair and Committee and members of the audience for being late. I was stuck in court this morning with some clients, and I hate asking questions when I walk in in the middle of a presentation because sometimes you may have touched it, and I apologize if that was the case with my line of questioning now. I know you indicated that you're having a hard time breaking down the data because we didn't give you enough direction. Do we have at a minimum an understanding of how many folk per year failed to appear, and then can we just break that down by felony, gross misdemeanor and misdemeanor? Is that something that your department could do?

Judge Sullivan:

Yes, that in fact is what we were trying to work on for your Committee, but I can tell you right now, we have some pretty good statistics that we provided the initial appearance subcommittee. Those statistics are focused on gross misdemeanor and felony charges that go through the Initial Appearance Court because we're trying to track the success of the Initial Appearance Court or the lack thereof, if you will, and so we are keeping track of risk, people that are arrested for certain felony offenses, what their risk is, were they released and did they make their court appearances. It's the misdemeanors that we haven't really been tracking very carefully because they don't go through the Initial Appearance Court. For the most part, they get released on the administrative order, most of them the quality-of-life nonviolent-type misdemeanors, so those are the misdemeanor FTAs are what my IT department is going to start working on.

Assemblyman Flores:

Perfect, and Madam Chair, just a follow up, and I think on behalf of the Committee that would be very helpful if we knew X amount of individuals had a charge this year or last year, better said, of a misdemeanor, X amount of folk had a gross misdemeanor charge, X amount of folk had a felony charge, and out of those amount of folk who had a charge, here's how many failed to appear, because that would give us a good indicator of how many folk out of the totality of the pool are not showing up and then we could break it down by, at a minimum, we know that the majority of the folk that are failing to appear are

in this bucket or that bucket. While it doesn't give us a perfect picture, it would give us a great starting point for us to maybe be more insightful with our questions as well.

Judge Sullivan:

We're going to continue to work on the misdemeanors. I know Rich Suey has statistics at his hands and he can probably answer part of your questions with what he has this morning.

Senator Melanie Scheible (Senatorial District No. 9):

And I just want to clarify that, I assume, we're talking about the highest charge on the complaint, because it wouldn't be very helpful for people who are charged with both felonies and misdemeanors to count them in the misdemeanants who are non-appearing if they also have felony charges on the same complaint.

Judge Sullivan:

Absolutely, and we track that throughout the statistics, the highest charge.

Senator Scheible:

I just mention it because then the numbers might not match up in terms of, if we say that we charged 100 misdemeanors this day but then we only have 50 people who are misdemeanor defendants because the other 50 were incorporated into felony complaints.

Chair Harris:

Any other questions from members? Thank you so much, Judge Sullivan.

Judge Sullivan:

Thank you very much.

Chair Harris:

We will go ahead and close out agenda item V, and at this time I believe we have a quorum. Assemblyman Flores, Senator Scheible and Senator Hammond have arrived throughout the presentation under agenda item V, and so we will go ahead and go back to agenda item IV and approve the minutes of the meeting held on January 21, 2020 (Agenda Item IV).

SENATOR SCHEIBLE MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON JANUARY 21, 2020.

ASSEMBLYMAN FLORES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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We will go ahead and open up agenda item VI, which is a presentation on the statistics and data used in developing the Nevada Pretrial Risk Assessment. At this time, I will invite up Dr. James Austin, who is President of the JFA Institute. Thank you for being here. Go ahead and begin whenever you are ready.

Dr. James Austin (President, JFA Institute):

This is probably a good segue to the last presentation. I'm going to explain to you how the risk assessment instrument was put together and what it looks like and what it does and what it doesn't do. Back in 2015, Justice Hardesty at the Supreme Court formed a committee to study evidence-based pretrial release, and as part of that effort they were able to secure some federal money to employ me to help develop a risk instrument for them (Agenda Item VI). They wanted to develop a risk instrument. The Committee, which consisted of a lot of policy people both local and state, what we did initially is we looked at all the risk instruments that are out there. There's several of them. The two that are most recognized is one by the Arnold Foundation called the PSA (Public Safety Assessment), then there's another one called the Virginia Model. We looked at all of those instruments and we decided that it would be best if we would develop a customized model for Nevada, and there's reasons to do that. Typically if you buy an instrument from another jurisdiction, it's been developed on other people, other criminal justice data, and generally if you develop your own instrument you'll get better results, so the decision was made to develop this prototype. We drew up the prototype and then we pilot tested it, some samples to see how it worked. We had meetings, feedback. We added factors, we deleted factors, and we ended up with this prototype system. We also collected a lot of other data that wasn't going to be necessarily in the prototype instrument, but we thought it would be interesting to see if this would work, so some exploratory work was going on as well. Then we went out and drew a rather large sample of defendants who had been released from the jail, and I'll go over that in just a second. We did training before we gave the instrument out to the staff and the counties where it was going to be pilot tested. We did what we call reliability testing, which is we would double-check the information that was coming in, and we did a lot of preliminary analysis. The overall result was that we had, we thought, a good customized instrument that looks like a lot of the other systems but it's customized for Nevada and it's been normed on the population here.

Here you can see the sample that we did (Agenda Item VI). We tested this in Clark County, drawing samples from people that were released from the detention center and municipal jail, Washoe County, and then we wanted to get a rural county, which is White Pine. They don't have a lot, but we wanted to incorporate them into the analysis. In 2014, those jurisdictions had released 18,636 people, so that's the universe, and then I drew a random sample, so it's a random sample of that 18,000. The data were hand collected. The staff were members of the pretrial services staff in Washoe County and also in Clark County. They manually check the criminal history records to record that information. We ended up with 1,057 defendants in the sample. At the same time for every one of these cases, we were looking at whether or not the person had gotten rearrested again since they had been released while they were under the jurisdiction of the court. That's what we're trying to predict is that risk, and also whether or not they failed to appear during the time that their cases were pending, so that information was recorded at the same time.

The factors that are in the instrument are as follows: age at first arrest, because the younger someone starts a criminal record the longer their career is, and it's known to be associated with recidivism; the number of FTAs that the person had in the past 24 months; whether or not they had a prior felony crime conviction; whether or not they had prior felony gross misdemeanor convictions; whether or not they had prior misdemeanor convictions; and whether they had a pending case at the time that they were arrested again. Then we looked at repeat prior arrests for drug crimes. We were trying to get at this issue of substance abuse because we have a lot of people coming in and out of the jail who suffer from addiction. The problem is that it's hard to get a good read on that person in a timely manner before they go see the judge. We tested this a couple ways. We tried interviews, but we found if we just recorded the number of arrests that they have had, it was a good predictor. The last is a category called stability factors, which is their employment history and their residency. Were they residents of Nevada or were they out-of-state residents? We had a third one that we tested that did work, which was kind of an interesting one, which is whether or not the person had a cell phone that belonged to them that was their number. With the advantage of texting, which is now coming into play in the courts now, being able to text to people, "You've got a court date tomorrow" like your dentist texts you and says, "You got an appointment today." People that have cell phones that you can get ahold of have lower FTA rates. But we couldn't get accuracy on whether or not that cell phone actually belonged to that defendant at the time that they were being booked into the jail, so it's a possible item that could be added but it's not on the instrument now.

There are two versions that are out there actually in play. Version 1 is the one that, I should add, was one that was relying more on prior arrests, and we'll get into this discussion, I'm sure, but arrests are problematic. They don't represent whether or not a person has actually been convicted of the crime. There's several research studies on bias in arrest practices by police agencies or certain police officers. We were collecting both prior arrests and prior convictions. A big shift of Version 2 in Version 3 is that we eliminated the prior arrest data. We don't use that. We use prior convictions only because

we got better prediction. We actually got much better prediction when we used the prior conviction data. It's got 10 scoring items, has these risk levels: low, moderate and higher. I'll talk about why I used that term higher, but it requires an interview. Version 3 uses the same basic information but there's a couple of items that require an interview, which is the employment and the residence factor. This one you don't need an interview, so it's very efficient. Both work quite well. Version 2 is in play in Washoe and White Pine; Version 3 is here in Las Vegas.

If you look at the results of the system in figure 1—I'll read this across. If you look on the left side, this was called the composite failure rate. Let me start by saying this: if you ask the question of those 1,000 people that were representative of the people being released in 2014 whether any one of them had either an arrest or an FTA, the overall failure rate is 25 percent, which means 75 percent of the people didn't have an arrest and they didn't have a failure to appear. In my work, that's what we call a low base rate. So, without knowing anything about these people, we know that three out of four are going to appear in court and they're not going to get arrested. For those that got arrested, about 3 percent got arrested for a violent crime again, which means 97 percent did not, so we know from the get that this—in our world, this is a low-risk group. You can release them and the vast majority of them are going to appear in court. But we're trying to find amongst this low-risk group who has the higher risk. That's why I use that word higher. Even in the higher group, which you see on that left side, that's 41 percent of those people either had a rearrest and/or they had a failure to appear. But that means 60 percent did not, so they're not all high risk. They are at a higher risk level. The moderate risk is 31 percent and 15 percent is the low-risk group. You can see the instrument is doing a very good job of identifying these people by risk levels. You can look at the other columns there. I'll just point to the fact that on the arrest, those that are in the low-risk group have a very low probability of being arrested again, 4 percent. On the FTA it's higher, and FTAs are a little bit more difficult to measure. They've got more subjectivity in them, not as strong as an arrest, but you can still see that there is a strong correlation between the risk levels that are being produced by the instrument and the results.

Figure 2 shows what proportion of the defendants are falling into these risk categories. The vast, vast, vast majority of these people that are being screened are in either the low or the moderate group. That's 84 percent, 85 percent. Only 15 percent are in that higher group. Again, this should give the court confidence that most of the people they're seeing are suitable candidates for release, can be managed and will not pose a danger to public safety. Is it perfect? No, it's not perfect. No instrument is perfect, but it's doing a reasonably good job of identifying these people by risk levels.

In summary, it's a statistically valid pretrial risk instrument. It meets industry standards, which means it's using the same factors you'll see in other jurisdictions. It's been tested and proven to perform well on the populations in Nevada. It's designed to measure the probability of success or failure on the two legal reasons judges are looking for when they consider someone for release, which is appearance in court and community safety. It was

tested for racial and ethnicity bias. So, now you have an instrument that we think is set up so it can minimize unnecessary detention, but at the same time it's going to identify people that are in that higher-risk group. It's going to do that, and as was stated before, the judge now has a tool that is reliable, is produced quickly and is valid. It helps him or her make their decision, not so much as to whether to detain or not—certainly they'll use that—but also what conditions to impose on a person. It's well known in our business, someone that's low risk, you don't want to impose a great deal of conditions on them because they don't need it and you're wasting your resources. The supervision, like EM (electronic monitoring) or texting or requiring them to come in or drug test them, should be reserved for the higher group. That's the presentation and that's exactly how we did the instrument and that's what it looks like.

Chair Harris:

Thank you so much, Dr. Austin, for being here and for your presentation. That was very helpful. I have a couple of questions for you, if you don't mind. You noted that there are 10 scoring items in Version 2 and 8 scoring items in Version 3. What are the 2 that are not included in Version 3?

Dr. Austin:

The employment and the residency one. The ones that require an interview.

Chair Harris:

Okay, I also note here that we're using prior convictions and not prior arrests, but that doesn't apply for age at first arrest and for prior arrests for drug crimes, is that right? Those are based on arrest?

Dr. Austin:

Yes they are, and all of them are there because they were shown to be statistically associated with either rearrests or FTA. Age at first arrest is an item that you'll see has been used for 20 years in criminological research. This is someone that starts earlier in contact with the criminal justice system tends to have a longer career than someone who is starting later. We'll have people, their first arrest was 17; we'll have people that this is their first arrest and they're 55 years old. Those are very different people in terms of their trajectory of continuing to be involved in criminal conduct.

On the substance abuse, I agree. I would like to get a good measure on—we're trying to get at substance abuse, addiction, and we have a lot of people that are coming into your jail systems that are alcoholic or are addicts. We tried the interview thing but we just could not get a reliable measure of that through an interview process. It's just too difficult given the speed at which they need to do the interview and the quality of the interview. So, we

looked at arrests. It's one of the items that we collected. We didn't know we were going to use it, but we collected it, and when we ran it against rearrests and FTA it worked. It is what it is. It's not one of those things I would say is perfect, but it is a measure. You see someone who has 15, 20 arrests for substance abuse, they probably have a drug problem.

Chair Harris:

Is there any way to, I guess, try and mitigate the effects of any bias in arrest data that may be just kind of out there? Is there a way to try and filter that out so that it doesn't trickle down to, let's say, a higher score just kind of over time?

Dr. Austin:

Yeah, so the issue—and I don't know if you—there's quite a debate about racial bias in these risk instruments, and I try to explain it this way. There is bias. There is bias in our society. There is bias in the criminal justice system. The question is, what is the extent of that bias? How severe is it? On this instrument, black defendants score an average of about one point higher than white or Hispanic. Whites and Hispanics have exactly the same score, but blacks are scoring about one point higher. They are scoring one point higher because they are getting more points on the prior conviction factor. They have a longer number of prior convictions. Now, this is not huge differences, but it's there and you can see it, and they also have a higher percentage of them were already under another pending matter when they got arrested on this charge. So those two, prior record and current legal status factors, gives them more points, and that's—so if we have a bias in the conviction process in your criminal justice system, a certain level of bias going on, then that's going to introduce bias into the instrument, though the question that I can't answer is, how much bias does Nevada have in its conviction data? What we've done to try and control this is not to use the arrest data, use only the conviction data. Another thing you could consider doing is eliminate certain kinds of offense convictions, what we call lifestyle kinds, like drug possession, things that are not viewed as serious, and just look at what you all would agree would be serious prior convictions, and so it would be a refinement of the prior conviction so you are placing a higher standard to get points on the prior convictions. Those would be my two suggestions for minimizing that as much as you can.

We don't see much bias at all predicting rearrest of blacks, Hispanics and whites. Where we're seeing it is on the failure to appear matter. Blacks have a higher failure to appear. Now when I say again "higher," it's something like the overall rate is about 15 percent, and so blacks would be about 20, 21 percent. So it's higher, it's not a huge shift, but it's there and that starts pushing that score up a little bit.

Chair Harris:

Okay, are there any other questions?

Senator Scheible:

I have a series of questions, if you will allow me, Madam Chair. The first thing I want to ask you about is kind of the distinction between the FTA and the rearrest, because is the rearrest statistic based on being arrested for a new crime or could that be being arrested on the bench warrant for the FTA and being counted twice?

Dr. Austin:

No, it would be a new crime.

Senator Scheible:

It has to be a new crime, okay.

Dr. Austin:

They're separate. So, if you're being arrested for an FTA, that was not counted. All of my rearrests has a crime: robbery, murder, possession of drugs. It doesn't say "a warrant for" for an FTA, for failure to appear.

Senator Scheible:

Okay, and so then in terms of measuring the success of the tool, are we distinguishing between people who fail to appear and people who got rearrested?

Dr. Austin:

No, we're not. The tool is a composite. It's looking at a composite failure rate, and the reason we tested it looking at rearrest versus—and there are some tools that do that, like the PSA has a separate scale, that they are separate factors that they use where they try to predict just FTA and then another scale that they're trying to predict just rearrest. Now when I did this, I didn't see any difference so it complicates the assessment process. The factors are very closely related. People that have FTAs, their probabilities of failure, the factors that drive that look pretty much like the rearrest trajectories.

Senator Scheible:

Sorry, say that again. What is very similar in their trajectories?

Dr. Austin:

The factors and the weights. Those 8 factors or 10 factors, they equally predict well whether or not it's an FTA or whether it's going to be a rearrest. They predict it the same.

Senator Scheible:

Even though the rearrest rate is clearly lower for the moderate and low risks than the FTA rate?

Dr. Austin:

Yeah, that's just a failure rate. You have different rates. I've done several studies on recidivism. A lot of these factors also predict recidivism from prison. There you've got a rate of 66 percent. But these same factors are probably going to predict that phenomenon too, and so the factors are working equally well whether you're trying to predict the rearrest rate or the FTA rate or the composite rate. Well, for example—

Senator Scheible:

So basically what you're saying is that we don't have a good measure to distinguish between a person who is likely to not appear versus a person who is likely to commit another crime and be arrested again?

Dr. Austin:

It's just the opposite. We do. We do. This instrument predicts very well, as you can see in the charts. For FTA, you can see there's a strong association between these factors that we're using and FTA rates. You see the same association between rearrest rates. You see the same relationship and you put them together. You see the same relationship, so the instrument is predicting equally well rearrest, FTA or any one of those two.

Senator Scheible:

Okay.

Chair Harris:

Senator Scheible, do you mind if I try and ask the question? Did you get the answer you were looking for?

Senator Scheible:

Yes, I did. The next thing that I want to ask you—because I've used these assessments in court. I know hundreds of attorneys who have used them in court, and I don't think that there is an adequate understanding of the percentages, so I just want to make sure that I'm understanding this correct. So, like, I brought with me my calendar for tomorrow. I have 10 files here. These are 10 people who are on for preliminary hearings tomorrow, and so what you're telling me is that if all these 10 people were graded as low risk to reoffend, or low risk on the NPR (Nevada Pretrial Risk), that I should—and so all of them are low risk, all of them were released. I should expect that 7.5 of them will appear in court and 2.5 of them will not?

Dr. Austin:

No, because you don't have enough cases there to do that. Ten cases is not enough to do what you just said you want. You'd have to get a sample like I did, which is 1,000 cases. You can't do percentages on 10 cases. You can't do it.

Senator Scheible:

So then how is a prosecutor or a defense attorney who has a calendar of 15 or 20 cases supposed to utilize the tool if it doesn't scale down?

Dr. Austin:

Well, it does scale down. It's like when you go see your doctor and your doctor is going to draw blood and bodily fluids. She is going to ask you questions about your history, family. She's going to check your weight and she is going to do your blood pressure. She's doing a risk assessment on you, and she is going to look at you and say, "Hmm, okay, you are at risk for a stroke. So, what I'm going to do, I'm not going to admit you, or I may admit you to the hospital because it's so severe. I'm going to release you from here, but I'm going to put you on a supervision plan, which is diet and medication." She or he does not know if you're going to get a stroke. Your probability of getting a stroke probably is low, but you are in a higher class of people that are those characteristics. If your blood pressure is high, etc., you're in a class of people that have a higher probability. Doesn't mean that you are going to get a stroke, so it doesn't mean that these 10 people are going to fail to appear. It doesn't mean that they are or they're not. They are in a class of people that have these characteristics. If you look at enough of them, this is the way they behave and perform. That I can tell you. If you drew a random sample of all the cases you manage over a year, and that should be hundreds of them, I guess, and I scored them and I followed them, yeah, then I would say I would expect to see those outcomes.

Senator Scheible:

But then what you're saying is that the extrapolation to the individual level is exactly what we're not supposed to do with the tool. So when I open up this case and I look at his NPR and his score is a six, I'm not supposed to say, "Well, this person is a six. That means that he falls into the category where there is a 27 percent chance of not showing up, so I'm going to ask you to keep this person in custody because he's at a higher risk of not showing up for court again."

Dr. Austin:

You should never, never, ever, ever, ever, ever use these instruments to make that decision. They are not designed to make the decision to release or not release. That is a judicial decision. They will look at that score and they will look at other things. This is very clear in our training to all the attorneys. You should never say, "I'm detaining you because you are scoring higher risk." That is the wrong decision to make.

Senator Scheible:

So then what is the instrument for?

Dr. Austin:

The instrument is trying to—before they had these instruments, and you can see it now in courts, the person comes into court, the court asks the public defender, asks for information, and the public defender cherry-picks information about the person, asks the prosecutor, the prosecutor cherry-picks information and the judge has to make a decision about what to do with this person. With this system, we have scientifically done this analysis for the court to tell them this is the risk that this person poses to either get rearrested or to fail to appear and that judge can make that decision based on that and other information that he or she feels is relevant. It is simply a tool. We do know, we do know, that before these instruments were in place, the number of people being released on a nonfinancial basis was quite low. These instruments generally kick up the number of people that are getting out on a nonfinancial—that's why the bail industry does not like these instruments. They see it as a threat.

Senator Scheible:

And since we've started using the instruments, have we seen that judges have generally bet on the right horse and that people are not failing to appear and they're not picking up new cases while they're out?

Dr. Austin:

Well, there's an association. We've done one follow up with the Las Vegas court and we can tell that the judges are paying attention to the risk level and that the failure rates and rearrest rates are showing up the way we thought they would be. If you score low risk, you have a higher probability of being released or being put on own recognizance than if you are in the higher group. There's a higher probability going on there, and the people that go out in those categories are behaving like we thought they would.

Senator Scheible:

So is that to say that we are seeing fewer failures to appear or more failures to appear?

Dr. Austin:

That's a different question.

Senator Scheible:

But if the expectation is that they either will or won't appear, we should be able to say either "We were right, we successfully release people who come back to court. We successfully kept people in custody who did not come back to court," or we should be able to say "We did not get this right and we're releasing people who are getting rearrested."

Dr. Austin:

The only thing I can say is the crime rate has been going down since we've implemented this. The crime rates have dropped dramatically in Nevada. But since we've implemented this, statewide crime rates are down, crime rates are down in Clark County, they're down in Washoe County.

Senator Scheible:

May I, Madam Chair?

Chair Harris:

Please.

Senator Scheible:

Thank you. So why is the front sheet, the assessment, provided without all of the information that goes into it? If we know how many times somebody has been convicted

or if we go to these factors and you're saying that someone has looked up the number of pending cases pretrial and the repeat prior arrests for drug crimes and the stability factors, somebody determined whether or not this person was employed and had a residence, why isn't that information just included with the assessment?

Dr. Austin:

I'm not sure how that's being done, so you'd have to ask the pretrial services agencies. You can do that if you want. If you can hand out a sheet, you can hand out a sheet and say, "Here is how you're being scored on each of these items." You could do that.

Senator Scheible:

Okay.

Dr. Austin:

I'm not opposed to that.

Senator Scheible:

Okay.

Dr. Austin:

Or if you want to contest it, that way you can contest it if there is error, if you think there's an error. "He doesn't have any prior convictions but he's being scored for three or more prior convictions." That would be a good thing to have that available to all of the parties so everyone can see what's going on. This instrument is designed to be transparent. It's not an algorithm that you can't see. You can see it.

Senator Scheible:

I promise this is my last question. Does the Version 3 still have the override feature for who's doing the assessment?

Dr. Austin:

Yeah, it has it. That's again something that's an optional feature, because depending on the skill level of the assessor there are things that are not on the instrument. For example, we're not capturing mental health status, and so someone may be interviewing a defendant who clearly is not communicating very well. They can ask questions like "Are you on medication? Do you suffer from psychotropic, from schizophrenia?" They can ask some questions that says, "Hmm, you're scoring low but you seem to have some real

issues, so I'm going to elevate your risk level based on my professional experience." The override rates, we were monitoring them, are quite low, and they should be low because again, this is a quick deep dive into the same information I think the court wants to see, which is prior record kinds of information, prior FTA, anything else that they think is relevant. But yeah, the override is a feature that's there. You don't have to use it; it can be used.

Senator Scheible:

Okay.

Chair Harris:

Do you have any numbers on how strong the correlation is between what the risk assessment tool is suggesting and what judges are doing? That question comes because in responding to Senator Scheible, you mentioned that it should not be the determining factor. Have you done any assessment on whether that's in fact how it's being used?

Dr. Austin:

Well, I haven't looked at that, and maybe other folks who are testifying today can speak to that. I can say this: with all due respect—are there judges on the panel, in the audience? Okay, right behind me. With all due respect, with all due respect, it's hard to get the judges to use these instruments. That's why you'll see in a lot of the jurisdictions they'll implement these instruments and the jail population doesn't move, the release rate doesn't move. There's a judge, and I know him very well, and he says this proudly—which he's a judge in Broward County and he has a risk instrument that he gets in every case, and he says, "I do not pay any attention to it because I know what I need to do." If you ask him what he's looking at, it's the same stuff that's on the instrument, but he thinks that he doesn't need that instrument. I think that's part of the challenge in getting the confidence of the court to use it more. There are clearly people in the jail today pretrial who are low risk, and a good question is why are they there? There are people also that get released who are in a higher risk group, and we should be asking are they just being released without any kind of supervision? That's another good question. So, we are trying to accomplish both things, but I think we're making progress. I talked to the three pretrial service people. They believe things are going quite well. The courts are using them more and more. I think the more they have confidence in it, the better it will work, but it is an issue.

Senator Scott Hammond (Senatorial District No. 18):

Thank you, Madam Chair. I think I have a better understanding now of what the assessment is, how you developed it, how it's being used or not used. I think I understand that. I'm still a little fuzzy on your take on those who are under the influence of something,

drugs, alcohol. I just want to make sure I understand. It's your intent that that not be one part of the assessment that you then deliver, that it's not part of the toolbox that the judges use, because you don't think that there's, I don't know, a quality there? There's not enough quality or understanding of how that affects the—what'd you say?—FTA and also the rearrest. Is that correct?

Dr. Austin:

They're using it, but what we're using is—ideally you would use an interview and some collaborating information about the person. We did what we call this reliability test where we took random samples and we tried to get the pretrial services staff to be able to identify "this person has a substance abuse problem," however we want to try and classify that, and we couldn't get consistency. We would take a case and have two people look at that case and they would come up with different assessments on whether or not they had a substance abuse problem. In lieu of that, we looked at the number of prior arrests for drug—

Senator Hammond:

Sorry to interrupt, but that's the only case that you could think of where prior arrests and not conviction was probably necessary along with the interview?

Dr. Austin:

Yes, and it works. You'll see it clearly, someone that has—I think a case about a hundred and some prior FTAs—you'll see people that are frequent visitors of the jail. They are coming in and out and in and out and they are racking up a bunch of arrests, and when they get released they FTA and/or get rearrested again at a high level, so it works. It's using arrest data, which is not my preference, but it does work. It's one of those things I guess I would say, in my world, I would put as an item on probation. Let's see how it works, let's see how people like it. But to really do a good assessment of someone on their substance abuse and mental health, you need to spend some time, and they are processing lots of defendants quickly. They've got to get this information done quickly. Because of that urgency in time, you can't do certain things you'd like to in terms of investigating more about the person's background.

Senator Hammond:

I think I have a better understanding, but you're sort of silent on the idea of how long somebody that comes in under the influence of some drug or alcohol, you're sort of silent on how long that person should stay locked up or in custody before they're released. I don't think that you talked about that. I know some states actually have minimum numbers of hours that they should be in custody for detoxing purposes. I know we have one here as well, but you don't speak to that and it's not part of the assessment?

Dr. Austin:

I'm not that familiar with the process. Mr. Suey I'm sure can speak to that issue.

Senator Hammond:

And I'll probably ask a little bit along that line. Thank you very much.

Dr. Austin:

Thank you.

Chair Harris:

Is this data publicly available? The population that you drew, the statistical analysis that you ran, the regressions? Could you look at the associations, the p-values, things like that? Is that available for people to look at if you want to nerd out a bit?

Dr. Austin:

I'm not opposed to it, but because the data work was collected under the auspices of the US Department of Justice, they had rules because we have confidential information. We have people's names and stuff there. You might be able to get it, but you'd have to get it through the US Department of Justice.

Assemblyman Roberts:

Thank you, Madam Chair. Just two quick questions. The first one, you'd mentioned it a little earlier, the Version 2 and Version 3. On Version 3, an interview is not required but it is preferred. If it's not used, how does that skew the accuracy of that instrument, or does it at all? And then, why did we remove it, or why did you remove that requirement?

Dr. Austin:

For the interview?

Assemblyman Roberts:

Yeah.

Dr. Austin:

It's too time consuming. One of the features—there's a good side and a down side, because one is you can do what they call this machine processing stuff. I like to have a

human involved as much as possible, but I think the number one reason was because of the volume of cases. I think it just wasn't practical to get a good interview done.

Assemblyman Roberts:

The last question, Madam Chair, is—so when is the last time the assessment tool was assessed to see if you can improve the accuracy? Is it going up? Is it going down? Does it work? Does it not work? Is this something you continually do?

Dr. Austin:

I get a call occasionally from Justice Hardesty, and what I've been able to do thus far because it's automated now—this is a big plus. It's automated. These instruments are automated, so it's easy now to look at how people are being scored, look at the trends and the time. To do a revalidation, which you should do at some point, you have to wait a while to get a cohort of people who have been released who have been out at least 12 months. I think we were talking about trying to get a revalidation study started sometime this year because we do have people now that have been scored on the system and their cases have been disposed of, so we can get a good measure of did they fail to appear or get rearrested. That's one of the things I'd recommend that this Committee consider doing, because on the revalidation you'll find ways to improve it and that will be useful.

Assemblyman Roberts:

This was implemented in 2014, correct?

Dr. Austin:

No, I'm going to say 2018. It took us a couple years to design it, test it, and get it up and going.

Assemblyman Roberts:

Okay, thank you.

Assemblyman Flores:

Thank you, Madam Chair. I'm looking at the slide you have up there, "Summary and Key Takeaways" (Agenda Item VI). The only thing I—and I know you had a back and forth with our Chair and I think I missed it. When you put that last line there on the left-hand side, "has been tested for racial and ethnicity bias," does that mean that the risk assessment tool acknowledges that there is some bias in what we have now, or does that mean that in developing this risk assessment you took into account ethnicity or racial bias

and then you reformulated the formula or whatever the structure is so that you could try to eliminate as much of that bias as possible?

Dr. Austin:

When I say we tested it, what we do is we look at how people are scoring by race and also by their failure to appear rate. Blacks have a higher FTA rate than whites and Hispanics, about the same on the rearrest, so there's an escalation in that rate. The blacks are getting more points on the prior conviction factors, and on that one factor was were you under pretrial status when you got arrested for this crime. They get more points because they are getting scored more frequently on those two or three items. The reason they're getting more points is because of the prior record score. That means we all have to be looking at the prior conviction data. If the prior conviction data, which is what the courts produce—I don't do convictions. If the courts are behaving in a way towards blacks that is biasing their probability of being convicted, all things being equal, same crime, everything else is equal but the black person is more likely to be convicted than a white person for the same thing, then that's where the bias is going to get introduced. It's not the instrument; the instrument is just using data being produced by the courts. I think the issue here for your Committee is to look at is there a racial bias in conviction, in the conviction process for a defendant, and there's ways you can study that if you want to. You can study that.

Assemblyman Flores:

Madam Chair, if I could just quickly follow up. Obviously my concern is, number one—and I appreciate you saying that now, but when the risk assessment is being used, how often are the folk who are using the risk assessment taking into account the fact that there may be some bias there, because we're not getting into the weeds. If you're strictly looking at the fact that there was a prior arrest and/or at some point didn't appear in the past, but we're not getting into the weeds as to what is driving that, which is where I think the real bias is with underrepresented communities. I'm just concerned that the folk who are overly relying on this, and you've indicated that some folk don't even use it at all, but the folk who do may not be taking that into account. But I'm assuming that may go into your trainings. You talked about that when you talk about it in the trainings, the number one first thing you tell them is do not overly rely on this. You simply take it as a holistic into your approach. This is one of four elements or five elements that you're going to take into account. I'm just always concerned about that.

Dr. Austin:

And you should be. Yeah, I agree with that, and it's something we have to be diligent and looking at constantly. The pushback we got when we did this was that some of the prosecutors did not want to use prior conviction because they said you're underscoring people. There's a bunch of people out there who are getting arrested and should have

been convicted but they were not, and/or in the data system that there was a backlog of conviction data that was not being made available in your information system. There were people that actually had been convicted of crimes but it wasn't showing up in your criminal history reports. This goes both ways, both over-reporting and under-reporting, and I think we all would agree risk instruments are everywhere in our lives. It's how we drive, Google and stuff. It's all these algorithms, and the ability to get you in the right place is strictly the quality of the data. I think this is important for your Committee to start looking at the quality of the data. Criminal history data is key. It's being used all the time. People apply for a job, "Have you been convicted previously? What's your criminal history?" All sorts of jobs have restrictions. I think it's really important that this state, like all the states really, start looking at the accuracy of your criminal history information system. Given all that, it works. Still, given all that, there's noise there, but it still works, and this difference between blacks, whites—Hispanics and whites, they're the same. Blacks are scoring about one point more on average so it's not a huge difference, and it's a difference that does exist, so it's there.

Chair Harris:

I'm not a big math person, but is there no way to take into account the higher likelihood of particular persons to be convicted by offering a slightly lower weight in accordance with the difference in conviction rate that can then try to mitigate the inherent bias—that is not your fault, of course, but is there? Is that not something that could be done?

Dr. Austin:

Well, you get into an interesting—that's a very interesting question, and this is what you start getting into, which is a risk instrument for blacks and a risk instrument for whites and Hispanics, and you're getting into a really kind of treacherous thing here. I think you see this on gender in risk instruments. You'll see that in other areas of criminal justice. They are building separate risk instruments for women versus men, but that's because there is a fundamental difference in participation in criminal conduct between men and women. Crime is a young man's game. You can go to jail and you're going to see it. It's young men. Women behave differently than men, and there are some women criminologists who have been suggesting we need to have separate risk assessment systems for women versus men. If you start going into—and this is a whole other conversation. Race to me is a social construct. I wouldn't want to—in a perfect society, we wouldn't even have race. You're just a human being and there's no bias going on, but we don't have that yet. I think when we do the revalidation, if we do that, we can look at some of these issues and see the extent to which we can control and minimize it as much as possible. Ultimately, it's the criminal history data system and the probability. Again, two people have been arrested for exactly the same crime, they have exactly the same record, but one has a different probability of conviction than the other, and that's not going to be happening certainly in all of the cases, but it's going to be happening in some cases and that introduces the bias.

Chair Harris:

I guess my question is, does it happen enough that it should require some type of—that it rises to the same level of differentiating between men and women? Although you've explained why it's a valid reason to have two separate tools for people who behave differently, I guess my question would be, why is it not as appropriate possibly to have separate tools for people who are treated differently?

Dr. Austin:

I get the question. How much is the bias going on? I will say this: almost all the people in his jail today are going to be convicted. They're going to be convicted, and a good chunk of them are going to go to state prison. We know that statistically. We don't know is the game going to be fair for who goes to prison and who doesn't go to prison. Is it going to be fair for people that get probation or credit for time served? Is that a fair thing? I don't know. I think it's fair to say most people that go to jail have been doing something, and it's a question of how the system treats that doing something. Do they treat that criminal conduct differently, and that's where a bias gets introduced. Who is your attorney? I don't know. I think you may have mentioned this. If you look at where the big racial ethnicity difference kicks in is at the police decision to arrest. I can look nationally, like the black population, 12 percent. The percent that are arrested, that jumps up to 30 percent, so that's the big jump. Then you look for other jumps, charge, convicted, length of stay, and you can see those other jumps at each stage. But we try to statistically analyze it to see, all things being equal, is race an independent thing. Now, it's not in the instrument, but if race is correlated with prior convictions, then that's how it becomes involved in the scoring process.

Chair Harris:

But shouldn't you—I guess I feel like you should know that. If this is the tool that we're using, isn't that a question that was asked in developing the tool, whether there is a larger bias in prior convictions, how much weight we should give it, whether the bias is large enough that it requires some type of mitigating factor by a lower weight or whether it's not a big enough factor? That wasn't even explored?

Dr. Austin:

Well, you have to measure the bias in the court process. In my study, I wasn't paid—that's a different study to measure bias in the court process. I can tell you it can be done. There's ways to do it if you so choose to do so. Very few courts choose not to look at that issue.

Senator Hammond:

Thank you, Madam Chair. Just one more question, and I'll see if I can get this correct. You've spent a lot of time in your study trying to come up with the right questions to ask. That's the assessments that then judges use as a tool. A lot of the information is given, and of course you can verify it, but in some cases, some of the information asked of those who are looking at arrest, some of it is occupation. You obviously can't just take their word for it.

Dr. Austin:

We don't use that. That's why we don't use occupation.

Senator Hammond:

Is there anything in your assessments that require an answer that you do have to verify?

Dr. Austin:

Just those two stability ones, like the residency and the employment one.

Senator Hammond:

Now, you don't handle that sort of redundancy. You're saying these are the questions that should be asked and this is the information you should get. I guess it would be up to the different jurisdictions to come up with redundancies to make sure that their verification process—to make sure that the answers given are verified because it helps with the accuracy of what—when you're saying use this assessment, that helps with the accuracies of that assessment by asking and getting the right answers to those questions, correct?

Dr. Austin:

All these items here, and I'm going to put them back on the screen, everything there, one through seven, is factual. It's coming off a criminal history report being generated, so there's nothing there that's an interview.

Senator Hammond:

That's with the eight questions?

Dr. Austin:

Then you get to eight, which is employment. There's no way if you're trying to verify this—let's say I'm working at Amazon. How do we verify that in 24 hours? How do we get that verified? Residency: I live at such and such a place. How do we get that verified? Those are the ones that are hard to verify. That's why those are the optional ones. But these one through seven, they're all factual. They're factual in the sense that they aren't coming off of a criminal history review.

Senator Hammond:

Right, and you were saying that Version 2, which is being used here, there are 2 more questions. There's 10 questions, correct?

Dr. Austin:

Both of the stability ones. There's three of them. There are seven and there's three. One is employment, residency and cell phone. They're not using cell phone, but the other two.

Senator Hammond:

So I'd have to ask the jurisdictions how they verify those two items then?

Dr. Austin:

Well, they make a call. It kind of gets into that area where they use some common sense. It's easy when someone says, "I don't have a job." That's easy. You know they wouldn't be lying about that, but if they say they have a job, then you ask them other follow-up questions. You may have time to call, depending on when the person is coming through the booking area. "I work at so-and-so. Here's his phone number. You can call him right now. He'll verify." That's a verification.

Senator Hammond:

I guess the only question I have was who does that verification. That's what I was asking you.

Dr. Austin:

Pretrial services.

Senator Hammond:

Pretrial, okay. Thank you.

Senator Scheible:

I'm sorry, that last line of questions did bring up another question. I appreciate that items one through seven are supposed to be fact-based and eliminate the bias and kind of the human element of it. But let's just take, for example, the FTAs in the past 24 months. Can you explain to us where you get that number from?

Dr. Austin:

I didn't get it. I sampled the cases. Each of the jurisdictions that participated, they were given a definition. "We want to know, does that person have—was an FTA bench warrant issued 24 months prior to them being booked into the jail for this offense?" They went and they looked at the court data that they have access to and they looked at did that person have that.

Senator Scheible:

Okay, so it's people for whom bench warrants have actually been issued and it's within the same jurisdiction, is that accurate?

Dr. Austin:

I would say it probably is not. I don't know. I can't say that was—certainly they were looking at that, but they may have had—I can't speak to it. Someone else may have to say. They have access to—like there's an FTA up in Washoe County and you're in Vegas. Was there an FTA in Washoe County? Were they able to identify that? I don't know.

Senator Scheible:

And not knowing that, is that across...

Dr. Austin:

Again, what they are doing, they're trying to say, "If we use this instrument, what do we have access to in terms of FTAs?" That was the standard, because we weren't going to say, "Okay, are we going to find out does he have an FTA anywhere in the United States?" We can't do that. It's not practical, so the instrument becomes unpractical. We go with things that are practical that are also shown to have a correlation with subsequent FTA or subsequent rearrest.

Senator Scheible:

And my question is, for every individual on whom we perform the assessment, are we using the same pool of data, or is it possible that when I get arrested, you're not going to

find my bench warrant from Washoe County because nobody checked Washoe County, but when Dallas gets arrested they're going to check Washoe County and find her bench warrant?

Dr. Austin:

Well, you'll have to ask the pretrial services agency people. I can't speak to how they operationally do everything. I can tell them what we did and how we created the instrument. I can't tell you what they're doing today.

Senator Scheible:

Okay, so the reliability of the instrument then depends on the quality of the data that pretrial services is using, and we don't have an accurate assessment of what data they're using, or where would we find it? How would we learn?

Dr. Austin:

We did a reliability test when we were building the instrument, and I give counsel to these agencies, "You should do reliability tests on a regular basis." In my recollection, I'm pretty sure Washoe is doing it. I think the municipal court is doing it. They do this testing. They've been pretty good about it. I'm not going to say they don't or they don't it, but we did take the pains certainly in building the instrument to do reliability testing.

Senator Scheible:

Okay, I appreciate that.

Chair Harris:

When you designed the tool, did the failure to appear rates—were those the data that you had based upon the same jurisdiction or was it based upon nationwide whether they had another failure to appear?

Dr. Austin:

I don't know if it's nationwide. I'm pretty sure it was within the State of Nevada. They had access to that information. Now, again, I don't know how good that information system is, but that's what we used and that's all I can say.

Chair Harris:

So the test was designed using data within the State of Nevada, whether you got another failure to appear, and so theoretically in order for the use of the test to be appropriate, we should be looking at the whole state.

Dr. Austin:

Ideally, you'd be looking at—there's a national database. Richard, do you have access to that? They have access to the national database.

Chair Harris:

Okay. Thank you, Dr. Austin. I really appreciate it. I'm going to go ahead and close out agenda item VI.

Dr. Austin:

Thank you.

Chair Harris:

Thank you. At this time, I will open up agenda item VII, which is presentations on pretrial jail populations, and I'll invite up Mr. Suey, who is a retired Deputy Chief, and Ta'mara Silver, analyst at the Las Vegas Metropolitan Police Department (LVMPD), for their presentation. Good morning and thank you for being here. Go ahead and start whenever you are ready.

Richard Suey (Retired Deputy Chief, Las Vegas Metropolitan Police Department):

Good morning, Madam Chair and Committee members. I'm a retired Deputy Chief for LVMPD. For the last 2 years I've been working with the MacArthur Foundation developing strategies for basically justice reform issues. I'll let Ms. Silver introduce herself before I go on.

Ta'mara Silver (Analyst, Las Vegas Metropolitan Police Department):

I am the analyst working in tandem with Rich. I work for LVMPD and I'm working with the Safety and Justice Challenge grant.

Mr. Suey:

Madam Chair, if you don't mind, I'd like to go back and answer—because supposedly I have all the answers. I was scratching my head back there.

Chair Harris:

You're very famous today, yes.

Mr. Suey:

I will try. The first question you asked was about the electronic monitoring program. Just to go back a little bit historically, we started that program in 2017. We worked with the DA (district attorney), the PD (public defender), the justice court judges, the Chief Judge, Justice Hardesty and county management. We're already running a post-conviction program for the sheriff, and at that time we were going through a renovation project, and due to the overcrowding they were trying to give the judges more options, like electronic monitoring, and we're trying to reduce the jail population. So, that's when we started that program, and as of this morning we have 800 people on that program. We've been as high as 950. For the pretrial, there is no cost. That cost, of course—its staffing is 100 percent funded by the county, but as far as the equipment itself, we pay for that through SCAAP funding, which is—I always get this wrong so I had to write it down—State Criminal Alien Assistance Program, and that's basically reimbursement by the federal government when we house illegal aliens at CCDC (Clark County Detention Center).

As far as post-convictions, you asked about that as well. They do have a rate that they pay, but we do not take people off the program for failure to pay, and we will scale payments. If they don't pay, they just don't pay, and the county ends up eating it. As far as the cost of that program, it's approximately $6 million a year. I hope I answered that question.

Chair Harris:

Very thoroughly, thank you.

Mr. Suey:

And then, Senator Hammond, I believe you had a question on intoxication. If somebody comes in for a DUI (driving under the influence), before they can be released back to the streets we actually do a PBT (preliminary breath test) test and they have to blow a .04 before they're released back to the streets. Even if they come in on an administrative OR under the Las Vegas Justice Court order, they are assessed by a sergeant, and if they are too intoxicated to make rational decisions, instead of going through the 4-hour process of an expedited booking releasing then they'll wait approximately 24 hours to go through that process.

Senator Hammond:

The follow up I would have to that is, is there a state statute that mandates how many hours regardless of whether or not they blow a certain percentage into the instrument? I was reading that there was a law we have on the books that says 12 hours, and so it sounds like to me that we're actually releasing them before that 12 hours.

Mr. Suey:

No, if it's NRS (Nevada Revised Statutes) that they have to wait for, 12 hours just like on a BDV (battery domestic violence), but then many times people are still over that legal limit, so 12 hours is a minimum.

Senator Hammond:

The minimum. Okay, so you're not releasing anybody under that? They have to be over that?

Mr. Suey:

No, but many times they are over that legal limit after 12 hours because when they're brought in they still may be going up.

Senator Hammond:

I've been told that you're the one with a lot of statistics, and I'm not going to tell you who told me that, but you've got a lot of the data. Is there a record of anyone being released before the 12 hours? If you don't have that now, I understand, but I'd like to know if there is a record of anybody being released under that and, I guess, what guidelines was the judge given or somebody given that said, "Yeah, release them. It's okay." That's kind of what I'm trying to get at.

Mr. Suey:

Senator, I don't have that information today, but we can look into that.

So, the statistics we put together of all of 2019, and when we looked at the average daily population—if you go back to 2018, our average daily population was 3,694, and that's basically an accumulation of how many people we have under the roof within a 24-hour period (Agenda Item VII A-1). In 2019 we went up to 3,706, which is a very small increase. The average length of stay—which to me is a more important matrix. We actually reduced the average length of stay, so on the average in 2018 was 20 days, and in 2019 we went down actually below 18 days. It was 17.8, which basically means that people are getting released sooner and, to me, the courts are running more efficiently. The graph below

there is basically just a visual of your average daily population, your average length of stay, and you can see how it goes up and down. That's basically based on releases for the month. Some months we've been down as low as 15, and then some months it will jump back up to 20. But overall, across the board, we had a reduction.

Then we look at bookings year to year. Since 2018 we've had an increase of 10.17 percent in bookings. Total bookings in 2018 was 68,222. In 2019, we're at 74,912. Why the increase in bookings? Pretty much we can trace it back to the amount of new officers that are out on the streets. Just some statistics on that: since July of 2015, Sheriff Lombardo has added 800 new police officer positions through the operating fund Crime Prevention Act and More Cops Initiative, and we've had approximately 1,700 new police officers go through our LVMPD Academy, and that's just LVMPD. That doesn't include the increases in Henderson and North Las Vegas. But as you all know, a felony, when it's remanded, they all come to CCDC, so that's considered a booking as well.

Onto the next slide, and the reason I put this slide in here is just to kind of prove a point (Agenda Item VII A-1). We wanted to look at multiple bookings and see the folks that—as you can tell, we only went to 20, basically because we ran out of slide. We stopped it at 20, but 2,804 individuals are accounting for almost 23 percent of all of our bookings, and this is just CCDC. We didn't go out to the city or Henderson to see how many bookings they've had out there as well. We stopped it at 20, but when you look at 2019, we had defendants at 72, 60, 30, 27, 26, and this is kind of the population we worry about because most of these folks are the ones who qualify for an expedited booking release under the administrative order in justice court.

One of our challenges is we arrest, they go through the process, are out in 4 hours, but we really don't have any services that we can provide them. One of the things we've done this year, we started doing a needs assessment at the end of this process. What our intent was, if anybody was asking for assistance, we would—at first we went to the Community Impact Center. They have LCSWs (licensed clinical social worker), LSWs (licensed social worker) that work out there, and we were sending them the needs assessment and then they were going to do outreach and reach out to these folks. We tried to get as much contact information as possible, and once again it came down to staffing, and they weren't able to do outreach. But during this timeframe, we were also providing them maps and contact information so they could go down there themselves. Then we went to the Clark County Social Services (CCSS) and we started working with them. We're actually sending them the risk assessments now and they have response teams that are going out and trying to make contact with these individuals. They can do an assessment on them, whether it's for homeless issues, co-occurring drug use, mental health issues, and they can do an assessment. We've only been working with Clark County Social Services for about a month now so we don't really have any data on its effectiveness, but the same thing before they leave CCDC. We give them as much contact information as we can and then we hope that CCSS can actually contact them. We should have more data the further along we go.

On the next slide, we wanted to break down the 2019 bookings by gender, race and ethnicity. Bookings in CCDC have increased by 10.17 percent since 2018, and these are the booking by race percentages for 2019: Asian population, 3.6 percent; black population, 38.7 percent; American Indian was less than 1 percent; and white was 55.5 percent. Bookings by ethnicity percentages for 2019: the Hispanic ethnicity is 17.7 percent, not Hispanic ethnicity or unknown is 82.3 percent. One thing, and correct me if I'm wrong, when we do the ethnicity, it can be black or white. If an individual comes in and they're booked and they're going through the process, the arresting officer will ask them, "Are you Hispanic?" After they write, we mark white, black, Asian, and they say they may be black, they may be white, and then they say, "Yes, I'm of Hispanic origin," and then that box is marked and that's what goes into our database. Bookings by gender, we also have a screen for that too. If you look at the bookings by gender—and I'll just give the percentages. Everybody can read for themselves. But almost 72 percent are males that are being booked into the facility and 28 percent are females that are being booked into the facility.

Then, pretrial population year to year. We again took 2018-2019. The pretrial population has increased 5.57 percent since 2018, and that is due to admissions, of course. Your increase in bookings, which was over 10 percent, is why the pretrial population is larger. On the next slide, we actually did the pretrial population on average per the month. As you can see, even though our population is about 3,700, you can see what percentage are actually pretrial population, and then anybody who is not in that pretrial population, that would be your post-conviction, that they're already sentenced to CCDC time, and it usually runs anywhere between 800 and a 1,000 and it varies.

Again, 2019 CCDC pretrial population by gender, race and ethnicity. Pretrial population at CCDC has increased by 5.57. Pretrial population by race percentages for 2019: Asian, 2.6 percent; black, 39.8 percent; American Indian, less than 1 percent; and White, 55.4 percent; and then for 2019 Hispanic ethnicities, 20.5 percent. Just to go back, so a pretty much identical slide, the first one was 2018. This was 2019, so there is a little bit of difference as far as the numbers. When you look at the pretrial population by gender, males make up 83 percent of the in-custody population at CCDC. Females are at 17 percent, which is pretty close to the national average, which is usually about 15 to 17 percent for females.

On the next slide (Agenda Item VII A-1), pretrial population charge severity. As you know, most people come in on multiple charges. When you look at felony charges for pretrial, 26,401, gross misdemeanor 520, and misdemeanor 4,035, those are of the pretrial. Severity for 2019: felony was 85.3, gross misdemeanors was 1.7 percent, misdemeanors was 13 percent. On the next slide, pretrial population charge severity, the top five felony pretrial offenses. People being arrested on conditions of probation was our number one charge for anybody pretrial. Possession schedule I, II, III and IV of a controlled substance was number two. Burglary, arrest fugitives from another state and assault with a deadly weapon was number five. Then we go into gross misdemeanors. The top five charges for

pretrial in custody was, number one, battery of unprotected persons; open and gross lewdness, number two; destroying property of another, number three; indecent/obscene exposure, number four; and then injuring or tampering with a vehicle damaged $250 to $5,000 was the fifth one. The next slide was the top five misdemeanors. Number one in custody, domestic battery; number two, contempt of court; number three, possession of drug not for interstate commerce; number four, trespass not amounting to burglary; and number five was DUIs.

On the second to last slide, we also look at people being held on bail under $2,500. The reason I put this slide in here is because these are usually the ones that will get you into trouble, if you look at the litigation that's going on down in Harris County in Texas. We send this bail report out. We run it after they have been in custody for 7 days, and if they're still in custody we send out this report every week. We send it to the Chief Judge, we send it to the DA and we send it to the PD. I put this down at $2,500, but the report we send out to them is at $5,000. They can actually go through and look at the individuals and see if there's any way that we can put them on calendar, because to me, after 7 days if you're still in on $2,500, you don't have the means. It doesn't matter if you had a dime, you're not getting out, so these are the people we're trying to focus on.

Then the last slide (Agenda Item VII A-1), this was just as far as population drivers, and the sources that we used were UNLV (University of Nevada, Las Vegas) on this. When we look at our average daily population of 3,706, one of the things we wanted to do was—when you look at the national rate of incarceration across the country, it's 223 per every 100,000 people in your community. I've always been just using Clark County Detention Center as metrics, and we usually sit about 154 per 100,000. I decided to go ahead and combine city detention, North Las Vegas because they're still using the same facility as of right now, and Henderson. Looking at their population, and even with all those local jails combined, we come out to 209, so we're still less than the national average as far as incarceration, which is a good thing. Going back, even on average length of stay in custody, when you look at the national average it's generally 23 days in custody. We're at 17.8, so I think we have a healthy criminal justice system here, but I think there's still a lot of room for improvement, and with that I'll take questions.

Chair Harris:

Thank you for that presentation. I appreciate it. I guess my question is, and I'll ask this I guess to anyone who is going to come up and present or wants to offer this information to the Committee, what do you think is the largest barrier in helping these persons who are held under bail get seen and get out if they don't have the means? Is there something you think the Legislature could do to make it easier to assess when people don't have the means, get them out and kind of make sure we don't keep people in jail just for being poor?

Mr. Suey:

Yeah, I think it should be a requirement that we assess each one of these, and one of these strategies that we're working on—we have a population manager right now at CCDC and we're asking for a second one so we have 7-day coverage, and what I'm trying to implement with this population manager, the current one—do it 7 days a week—is to actually evaluate each one of these cases and be able to send it up. I think we're shooting ourselves in the foot when we're just sending it off to the DA, PD. Do I think it gets the time it deserves? Probably not, but if we did all the pre-work for them and said, "This person's been in custody, they have no job," more of a breakdown of what their situation is and getting them back on calendar, and whether you do that in a weekly report, a daily report, I think that's something that should be looked at. Because we just started doing this, we only have one person who can do it, but it's surprising when you look at the numbers. So, 569 people spent more than 7 days in custody throughout the year because they don't have the financial means, and I think even with our expedited booking process there's no bail involved in that, so that's a no-bail process. I think we've made great strides with that, but at the same time you still look at these numbers, and I think that could easily be fixed if there was just a mechanism put in place to actually evaluate these cases daily.

Chair Harris:

Are there any other questions from the members of the Committee?

Senator Scheible:

I have a couple of questions, mostly about the population calculations. Does that include people who are transported from NDOC (Nevada Department of Corrections) for a court appearance?

Mr. Suey:

Yes.

Senator Scheible:

Okay.

Mr. Suey:

Because we actually book them in as a courtesy hold.

Senator Scheible:

Okay.

Mr. Suey:

Those are few and far between. We'll book them in for 1 day just so they can go to court, and that's usually on an order to produce. I know a lot of times if there's trial that we'll bring them down 3 weeks early before their trial, but the numbers are very small.

Senator Scheible:

And that was going to be my next question. Do those numbers get incorporated into the average daily population and the average length of stay calculations?

Mr. Suey:

Yes. If you're booked on a courtesy hold, anything booked into the facility under the roof, it is put in there.

Senator Scheible:

Okay, and so then my other question about the average length of stay is that it seems to me that we would have a couple of outliers, right? There are a handful of people in CCDC who have been there for the last 3 years awaiting their murder trials who will be there for another 2 years awaiting their murder trials, and so every year they're going to be increasing their length of stay by 365 days while we're still booking other people in on misdemeanors. Is that affecting our average length of stay calculation in a way that's maybe misleading, for lack of a better term?

Mr. Suey:

Well, that's why you see such a range where it will go down 15 days to 20 days, and that's when we recently had one that was settled that had been in custody for 10 years. The month that they actually were released to NDOC, that spikes your average length of stay up, that one person, because I believe they had 3,700 and something days in custody.

Senator Scheible:

So it seems like maybe, and I don't know who's in charge of developing the statistical model for this, but it seems like maybe we want a model that doesn't fluctuate by a factor of 50 percent when one person changes custody status, right?

Mr. Suey:

You could always take out those outliers, but then they are taking up bed space. To me, it's case processing. To be frank, I think it's ridiculous that anybody stays in CCDC for 10 years processing a case, and that's one of the strategies that we're working on is working

with criminal case management plans for justice court and district court, and we've been working with Justice Hardesty's Rules and Procedure Commission and he wants to do a statewide initiative. A lot of that is just with case processing, because when you look at the population of CCDC, the inefficiencies we find are really in case processing, not so much in justice court. But I'll give you an impact example. We did a study for district court and we looked at the average time from a guilty plea until they were actually sentenced, and it was 85.3 days. We actually started this study for Nevada Parole and Probation to see how long PSIs (presentence investigation) were taking and if it was impacting those times, and then we broke it down by each department, each judge, and we looked at those averages. We had some judges, even though the case filings were the same or close, to anywhere from 250 sentencings to 300. That's about the same range. It went from anywhere from 73 days on average with one judge to 93 days with another judge. The judge that was at 73 days, I went to him and I said, "Are you just working harder," and he said no. He gave me a full outline of every process he does as far as continuances and how he runs his court, and we actually shared that with the Chief Judges, Judge Villani and Judge Bell, and they brought it up at their judges' meeting, but that's part of the case processing.

But just to show you the impact on that, we actually did a little assessment. If they could just reduce that average by 5 days across the board, it's a difference of 66 additional people in custody every day, and when you look at the cost analysis of that—and I do my cost analysis different from this $190 per day, which is not a good analysis—it's $1 million savings, and even if you took it down to 10 days, that's 122 people in jail less every day and it's $2 million savings. When I do my analysis, I know a lot of people like to use this $190 per day, but those are all fixed costs. I think even though there's truth to it, it's misleading because if you reduce your population, say, 66, you're not going to see a $4.5 million savings. The only savings you're going to see is if you're using overtime, which CCDC does. You're going to see an overtime savings, you're going to see the contracted cost for meal savings and you're going to see the contracted cost for medical savings, and that's true savings. But those are my numbers. If we could just lower it 10 days, which is still 2 days more than the average for the lowest judge, we could save $2 million a year and you're getting people where they need to be, whether it's released, probation or NDOC.

Senator Scheible:

May I ask another question?

Chair Harris:

I think you're reaching your per meeting limit very quickly, but go ahead.

Senator Scheible:

Well, if it's a per meeting limit... I wanted to ask you on page—I'm not sure what slide it is, but the pretrial population charge severity, on the top five misdemeanors. It's towards the end, towards the middle. I noticed that it's misdemeanor DV (domestic violence), contempt of court, possession of drugs not to be introduced into interstate commerce, trespass and DUI. My question is about this contempt of court. Is that like a bench warrant?

Mr. Suey:

No. Well, it would be a bench warrant for the contempt of court, whether they failed to follow through on their conditions. I think that's what you're mostly seeing here, and most of these are probably remanded in court because they were given specific instructions, whether it's community service, pay a fine, and they didn't do it and so they are remanded.

Senator Scheible:

But then wouldn't that be booked under the original charge that they pled to, like the possession of drugs not for introduction into interstate commerce? I'm just very confused because I recognize this charge, the possession of drugs not to be introduced. We call it an ITS, and that's a charge that is almost never charged out the gate. It's what we plead felonies down to, so I'm just very confused how we have 284 people in on ITS charges but then also 308 on contempt of court charges, because it seems like either we'd be charging them with contempt of court or with whatever it was they pled to, the ITS, the battery, the petty larceny. I don't know. If you have any insight?

Mr. Suey:

Ta'mara has an answer for you.

Ms. Silver:

Basically, that would measure people that were brought in again because they were re-brought back in and they're waiting to go to court. They're still waiting to go to court and that was their next charge is why they were brought in on that contempt, so they were brought in on a bench warrant for that contempt but they have to go now to court again. They represent a certain fragment of our population. We broke it down just for pretrial services. These are people waiting to go for their initial appearance, and that's why they're waiting. They haven't been seen yet.

Senator Scheible:

Okay.

Ms. Silver:

He has to go to court again, and then yes, of course it would go back under the original overarching charge.

Senator Scheible:

Okay, so the contempt of court, those 308 people are either going to be released or they're going to be rebooked when their time is imposed and categorized under the original charge. Okay, thank you. That did explain it.

Assemblyman Flores:

Thank you, Madam Chair, and thank you for the presentation. I know at the onset of the presentation you mentioned the undocumented population, and I had just a quick question. Right now, I don't believe we have folk who are being detained on ICE (Immigration and Customs Enforcement) detainers presently, correct? My question is, do we have any folk who are? Are there any type of detainers that are actually being issued right now that are being honored by CCDC?

Mr. Suey:

We do not have our 287G program running anymore. We don't have dedicated officers to do that screening. As far as cooperation with ICE, truthfully I couldn't tell you what their process is now. I don't know if ICE themselves—very much like they do at city detention where they come down and they place their own detainers, which might be the case, but I can get you that answer (Agenda Item VII A-2).

Assemblyman Flores:

Sure. I'd appreciate it. Thank you.

Chair Harris:

Are there any other questions from members of the Committee? Okay, thank you so much. We appreciate your time. At this time I will go ahead and invite up Jeff Clark, Chief Deputy of Detention for Washoe County Sheriff's Office, and I believe he will be appearing via video in Carson City. Welcome to the Committee, and you go ahead and just take your time and start whenever you're ready.

Lieutenant Corey Solferino (Washoe County Sheriff's Office):

Madam Chair, I wanted to wish you a good morning and make some introductions, and thank you for allowing us the opportunity to present before you today on behalf of Sheriff

Darin Balaam. To my right is Captain Pete Petzing over the Detention Bureau, and to his immediate right is Chief Deputy Jeff Clark.

Jeff Clark (Chief Deputy of Detention, Washoe County Sheriff's Office):

Good morning, Madam Chair. I'm going to let Captain Petzing—you will see a presentation on our jail statistics, and it's basically the empirical data for the previous 5 years (Agenda Item VII B), about 5 years when we started the NPRA (Nevada Pretrial Risk Assessment) here in Washoe County. Sheriff Balaam was elected in 2018. One of his primary focuses is on the jail population and certainly inmate services, including release services. Based on our jail statistics, you'll see that based on the data dating back to the implementation of the NPRA, our data remains relatively flat on average daily population, average length of stay and bookings. We are currently studying our intake process and the wait times and working directly with our court administrators here in Washoe County to reduce this time. Sheriff Balaam is passionate about the reduction of the wait time in our lobbies and before being released or housed, and with that I'll turn it over to Captain Petzing.

Captain Peter Petzing (Washoe County Sheriff's Office):

Good morning, Madam Chair. Captain Peter Petzing reporting for statistical data on the Washoe County Sheriff's Office, over roughly 4 to 5 fiscal years. Slide 1 is our annual bookings by fiscal year, and I also incorporated monthly booking rates. The Washoe County Sheriff's Office has maintained a stable arrest rate over the past 5 fiscal years. Our average arrest bookings equals 20,682. Fiscal Year 19-20 is tracking towards the 20,000 booking rate, which is on track with our 5 past fiscal years, so we are basically trending flat. Our 5-year monthly average for bookings is 56.65 arrests, which again in looking at all 5 fiscal years is a relatively flat rate.

Our inmate population declared by race is broken up as 55 percent Caucasian, 23 percent Hispanic, 10 percent African-American, 2 percent Asian-American, 1 percent Native American, 3 percent is other and 6 undeclared. That too is a stable rate over the past 5 fiscal years.

When looking at top percentage of arrests through fiscal years 15-16 through 19-20, the top charges of either felony or gross misdemeanor, as you can see, the margin of increase is minimal. Using Fiscal Year 15-16 as our baseline, Fiscal Year 16-17 jumped by 3.92 percent. Using Fiscal Year 17-18 had a modest increase from the 15-16 rate at 1.38 percent. Fiscal Year 18-19 was flat with Fiscal Year 17-18. Fiscal Year 19-20 is trending down from Fiscal Year 15-16 by 2.57 percent. However, the data utilized is only through January of 2020. We fully believe to see the increase in top charges by the completion of fiscal year to be flat right around the 73 percent mark as we get in towards our summer months.

The top 5 arrest charges from fiscal years 2014-15 through 2019-20: the pie chart reads clockwise beginning with PCS (possession of a controlled substance) schedules I through IV, which notes our largest block of arrests at 10,942. Domestic battery represents a second-largest block of arrest at 10,015. DUI is our third-largest block of arrests at 9,456. Failure to appear is our fourth-largest block of arrests at 9,257, and contempt of court is our fifth-largest block of arrests at 5,247.

Our average daily population for a 5-year average is 1,083 inmates. When comparing fiscal years 15-16 to 16-17, our facility has observed a 3.52 percent increase in population. When comparing fiscal years 16-17 to 17-18, our facility observed a 2.4 percent increase in population. Additionally, we saw a 0.27 drop in population from fiscal years 17-18 to 18-19, followed by our current 5.40 decrease from fiscal years 18-19 to 19-20. Approximately 80 percent of the individuals in our facility are male, with the remaining 20 percent as female, and on average the approximate 15 percent of our population is currently under sentence.

The average length of stay (ALOS) has remained relatively flat through the last 5 fiscal years (Agenda Item VII B). The dark green line represents our actual annual length of stay. The light green line represents a normal trend line. As you can see, our ALOS is very manageable and in-line with our facility bed space. Looking at Fiscal Year 15-16, we are at 14.51. We are currently looking at 15.10, so we're actually right around one-half the day additional, and again, just for clarification, we did undertake the bail reform process in 2016, so that does factor into some of our average daily population increase, however it is very minimal at best.

The next slide will represent booking data related to pre-imposed bail restructuring, December of 2015 through February of 2020, and it is broken up into 3-month intervals. The good news with this graph is the demonstration that booking and release patterns lay over the top of each other. This demonstrates an equal pace and movement in our facility. Such movement is a positive trend as it relates to facility bed space. It also demonstrates the current bail OR process virtually mirrors the pace of the release process, which really is a strong impact on how we're moving our folks in and out of the facility. If at any time we were seeing bookings outpacing releases, that would be of concern. Obviously, our goal would be to see releases outpacing bookings, which then creates more movable space in our facility and gets the folks introduced back into the community.

This slide goes through our types of releases both pre- and post-bail restructuring. Currently our court services completes the highest percentage of pretrial releases. Judge ORs and bails virtually mirror one another for inmate releases. Again, however, our facility has observed a consistent trend of bookings and releases. When you take a look at this and kind of delve into the numbers, you'll see if you go over to the September 2016 through November 2016, you'll see the breakdown of bail bonds were at 45 percent at that time followed by court services ORs at 17 percent and judge ORs at 39 percent. When the bail restructuring took place, you'll see a drastic reversal of that. Bail bonds

dropped 25 percent. Court services OR'd to 22 percent and judge ORs up to 53 percent. Since then, it has kind of switched to where court services ORs are doing the lion's share of the releases upfront coming out of our booking lobby, and then it goes to almost an even split between bail bonds and judge ORs.

Since the bail restructuring, our staff and pretrial service have worked hard to reduce our lobby arrest wait time and movement to the back or our housing areas. As you can see, we consistently move inmates to housing in a 24-hour period at a 2-to-1 ratio compared to those folks that are exceeding the 24 hours. Generally, if they are exceeding the 24-hour period it is due to the levels of intoxication, uncooperative behavior and trying to find the right fit for those folks, whether it be into a special watch cell, our mental health unit, as opposed to just putting them directly into an intake housing unit, so it really is strategically based on inmate safety.

Our last audit has shown our average movement time from our intake lobby to a classification housing unit is 9.43 hours. Our greatest opportunity for improvement comes from the bail review side of the house. That is to say, we have gaps of 10 to 14 hours respectively when it comes to bails being reviewed by our judges. They are doing a fantastic job. However, we would like to see—and I know it's the passion of our sheriff that when we have folks in our lobby that have the means to get out that we have additional review times for the courts to help out with a subsequent small but pointed bail program to get those folks out of our facility.

As we kind of go through this real quick, I did want to touch on—we have worked very closely with the judges in pretrial, and we did have some initial growing pains when it came to the change from universal bail schedule. However, with that partnership we have seen some great successes and we have not had any real strong impacts with regards to increase in jail population, etc. Our percentage of misdemeanor, gross misdemeanants have stayed the same throughout this process as well as in prior fiscal years. So, it truly has been a collaborative effort between our facility, the courts, and pretrial to make this process work successfully, and with that I conclude my presentation.

Mr. Clark:

The only thing I would add to that presentation is on page 6 of the average daily population, because it does show that so far we're at 5.40 percent decrease in our jail population (Agenda Item VII B). We have worked extremely hard over the last 12 to 18 months on trying to develop programs for inmate release services and programming working with community providers, and we continuously are trying to create those programs and work on those programs. This drop is a little too early to say that it's due to any one thing that we're doing or working with the courts, so I just wanted to give that caveat.

Captain Petzing:

Madam Chair, any questions from any of the folks?

Chair Harris:

I'm sure this information is widely available on the internet, but do you have any idea while you're here of what the kind of general ethnicity breakdown of the population that you serve is in Washoe County? I can see that 55 percent of inmates are Caucasian, but that means a little bit different if 40 percent of the population in Washoe County is Caucasian versus whether 70 percent of the population is Caucasian. So, in order to give these numbers some perspective, do you have any kind of general sense of what the ethnicity breakdown is?

Captain Petzing:

I do. Caucasians are currently roughly 62 percent, Hispanics roughly 24.8 percent, African-Americans 2.7 percent, Asian-Americans 5.8 percent, Native Americans 2.2 percent.

Chair Harris:

Okay, thank you. Are there any other questions? Okay, we'll go ahead and close this agenda item and take just a 5-minute break.

Captain Petzing:

Thank you, Madam Chair.

THE CHAIR CALLED FOR A BRIEF RECESS.

Chair Harris:

I believe we last closed agenda item VII, so we are going to go ahead and open up agenda item VIII, which is an overview of the LEAD (Law Enforcement Assisted Diversion) program in Clark County. Ms. Ruiz from the Las Vegas Metropolitan Police Department will be presenting, and if she could come on up, we'd appreciate it. Go ahead and start whenever you are ready. Thanks for being here.

A.J. Delap (Las Vegas Metropolitan Police Department):

Good morning, Madam Chair. I am here today to introduce two members of our agency, Sergeant Jason Santos on my far left and then Officer Liz Ruiz. They oversee and run the Law Enforcement Assisted Diversion Program known as LEAD, and we were

requested to provide information regarding that, and so these two are excellent at that. I'm mainly just here to be seen with them, because it's always good to roll with them. Anyway, I'm going to pass it off, and if you have any questions that I think I can answer then I'll jump in, but otherwise you're in good hands.

Lissette Ruiz (Officer, Las Vegas Metropolitan Police Department):

Good morning everyone and thank you for having us here. We're very excited to present our program to you. We're presenting the Law Enforcement Assisted Diversion Program, LEAD. LEAD, Law Enforcement Assisted Diversion, is a pre-booking diversion program developed with the community to address low-level, drug and prostitution crimes (Agenda Item VIII). The program allows law enforcement officers to redirect low-level offenders engaged in drug or prostitution activity to community-based services instead of jail or prosecution. By diverting eligible individuals to services, LEAD is committed to improving public safety and public order and reducing the criminal behavior of people who participate in the program. LEAD moves individuals away from the justice system without having entered it. It's an alternative to incarceration and it is still a pilot program and our vision for the near future is to have it fully operational department-wide.

What LEAD is not is a get out of jail free card. Arrest warrants will be completed by OCE, and OCE is Office of Community Engagement, where we work, LEAD officers. After 30 continuous days of participants failing to cooperate with the program, officer discretion will be used for filing arrest warrants on a case-by-case basis. Each participant's involvement with the program will be reviewed biweekly with a case manager and the LEAD officers.

Why LEAD? Why LEAD and why we need it, and this is an excerpt from the *Policing in Vulnerable Populations*, a publication by the International Association of Chiefs of Police. They said, "Criminal arrest and prosecution are appropriate remedies for criminal acts. Law enforcement agencies should empower police officers and deputies in circumstances for those with minor offenses and non-criminal behavior to use alternative remedies such as drug and alcohol treatment, hospitalization and other diversionary programs when appropriate as these outlets can simultaneously help citizens, save money and reduce recidivism." As we know, the US has the highest incarceration rate in the world. Substance use and mental health disorders are the driving factors in justice involvement. With LEAD, law enforcement initiates treatment engagement from a call for service. Charges are held in abeyance with the requirement for completion of treatment. It provides a tool for officers on patrol to respond to addiction and mental health when charges are present. Where there are no charges to be filed, a social referral is available for officers. The same treatment and resources are available for those individuals suffering with addiction disorders and/or mental health issues or both, and as we know, mental health disorders, addiction disorders and homelessness often present themselves together, so this program deals with all three of them.

What's the purpose of LEAD? The purpose is to save lives and rebuild families. LEAD reduces the amount of time officers are in the jail booking the subject. It reduces the inmate population in the jails, saving tax dollars. It reduces the number of lab requests submitted for narcotics testing. It decreases the caseload of the District Attorney's Office, reduces criminal activity, or recidivism, and it is a public health solution to better public safety. It means crime reduction. It is, after all, a tool for the officer. Just like Judge Sullivan said, we can just add more tools to our belt. Officers are better equipped with more options in their belt when they are dealing with folks that are not meeting exactly the arrest level or that we can just have another option to help them.

The process is when an officer encounters an individual, and the encounter can start through a consensual stop, through a Terry stop, which is reasonable suspicion, or a probable cause encounter. The officer determines whether the subject is a good candidate for the LEAD program, meaning they are a low-level nonviolent offender who suffers from a substance use disorder, and that officer makes a decision on whether this person is a candidate and makes the necessary phone calls to have the LEAD assessor or the LEAD case manager come and make the assessment.

The LEAD criteria: persons who have a known history of drug use will be eligible for diversion into LEAD when probable cause exists that the individual committed any of the following offenses. We listed some of the misdemeanors that make them eligible: nonviolent misdemeanors; nonviolent drug-related felonies, not to include PCS or possession of controlled substance with intent to sell; sale or transport of controlled substances or trafficking-related offenses; nonviolent county or city codes and/or ordinances and the individual committed the offenses in relation to the drug abuse. In cases where a victim exists, they must be willing to decline prosecution in order to allow the individual to access the LEAD program.

A person that cannot or should not be introduced to the LEAD program: if the person does not appear amiable to diversion; if the individual is unable to give consent; the suspected drug activity includes the sale of drugs and it is believed to sell for profit above a subsistence level; the individual exploits minors or other individuals; there is probable cause to believe the individual committed a violent offense; there is probable cause to believe the individual violated an order of protection or they committed a domestic violence-related offense or they were driving under the influence when contact was made; the individual is suspected of promoting prostitution; the individual is a registered sex offender; the individual needs acute emergency care due to being a danger to themselves or others; and without any limitation, the individual has been convicted of any of the following offenses: murder, arson, robbery, any form of assault or battery which would constitute as a felony, any violent crime that would constitute as a felony, or any sex crime.

What happens next? After the police encounter, the LEAD participant will go through an initial screening by a clinician, or an assessment, and they will gather basic information

about the person and identify any immediate needs. The case manager or clinician will try and meet those immediate needs, such as shelter, food or safety strategies. After the initial screening, the LEAD case manager will set up another meeting as soon as possible with the individual to get much more information about the individual, their needs and their goals. Social contact referrals will have the same intake process. Once the immediate needs have been addressed, the LEAD case manager together with the client will design an individual intervention plan. LEAD resources: we work with many community partners that help us with housing, with counseling, with treatment, family reconnection, mental health care, education, job training, child care, birth certificates or IDs, etc.

Our vision for LEAD's future is to expand the LEAD program department-wide, have a full staff of clinicians and case managers for 24/7 coverage, have more detox and residential facilities available for LEAD clients, and more LEAD officers/civilian personnel to sustain the program. Las Vegas Metropolitan Police Department is in the process of creating a behavioral health unit, and this unit will be a dedicated Las Vegas Metropolitan Police Department unit where the Crisis Intervention Team, the Homeless Outreach Team and LEAD will be housed. The resources, the community partners and the service providers will be shared. There will be more communication between teams regarding the same clients to avoid duplicating efforts.

That concludes my presentation. I will take any questions you have for me.

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

Thank you. Do you have any information about, I guess, any statistics or anything on—I guess what you would consider success or how you would measure success? So maybe it's a two-part question. How do you measure success, and two, do you have any information on it?

Ms. Ruiz:

So far, what we run is a pilot program. My partner and I went out on the street, basically. We chose Southeast Area Command, where there's a large incidence of drug use and sales of drugs, prostitution, etc. We basically targeted that area and we contacted the people ourselves, meaning—the LEAD program will be eventually reactive to calls for service and see if we encounter people that meet this requirement, but because we were running the pilot program, we were going out to the streets and trying to find these individuals that could be possible candidates for the LEAD program. We contacted about 320 people in a period of about 7 months, and all those folks we either encountered behind buildings, under bridges. I would say the majority of them would suffer from substance use disorders, were homeless and also had mental health issues, and so we went out there to find them to offer these resources to them. Out of the 320 people we encountered, about 50 of them decided to take our offer of not going to jail or taking the treatment, meaning those people that were candidates were committing a crime. The rest

of the folks were not committing a crime but were offered the resources that we offered to the same people, to those people that were committing a crime. Out of those 50, some individuals that did decide to take our offer and go into the LEAD program, about 25 or 26 continue to be on the program, meaning they did go and follow through the second meeting and the third meeting that they had with the clinician. About 12 of them remain in the program. Two of them I will say are extremely successful if you see the big picture, meaning they acquired a permanent residency, they're training for jobs, they have been clean since the very beginning, and clean meaning 1 person is 100 percent no substance and the other person is on a MAT, or medication-assisted treatment program, Methadone to be exact, and they continue to be successful without any illicit drugs, going through training for jobs, and hopefully very soon being complete productive members of society.

It's very difficult to prove a negative. We do know that those folks that we offered the program and decided to take it instead of arrest, we saved the jail about 50 people going into the jail, and as Chief Suey said, $190 per night is probably not the best amount. They say that figure to say for a person incarcerated, but it kind of gives us an idea of how much we're spending per person per night at CCDC, and that includes room and board, medical care without being advanced into psychotropic, or any advanced medical care where they have to go to the hospital or anything like that. So we're saving money at least, and we also know that these folks that go to jail for a few days, their tolerance for the drug that they're consuming goes down. When they leave the jail, there's 40 percent more chances of them—they go back to the same amount they were using before, so the chances of them overdosing goes up about 40 percent, meaning there is a lot of folks that are leaving the jails that are immediately going back to the drug that they were using, going to the same amount, and more than likely, or 40 percent more likely, to go on to overdose. So, we believe we are saving lives. We believe we are giving an option to officers that don't have any other reason to take these—or any other tool to help these folks, because we know that police officers arrest the same people over and over and they see them the next day for the same charges and the same reason that they were arresting them, and they don't see any result. We're not helping us with the amount which we're spending in the jail and we're not helping those folks that we're putting in jail. The DA is not prosecuting these charges because, most of the time, they're negotiated before they are released. So, overall, we see these programs as a win-win for everybody that's involved.

Assemblywoman Nguyen:

As a part of this pilot program, are you keeping any kind of data that might be available for the Committee to review, whether it's future recidivism, do they have other arrests, even? I know you have the two that have been successful, but are there other varying levels of success that we can use to measure?

Sergeant Jason Santos (Las Vegas Metropolitan Police Department):

Due to the infancy stages of this program right now, we're still in the data collection process. In approximately about 6 months—due to the fact that we just actually hired our case manager and that will be able to allow us to track the future success of those entering, the clients. But right now, not at this time. In about 6 months to a year we will be able to have a little bit more.

Ms. Ruiz:

If I may add, we have a partnership with UNLV, who is already in the process of running those stats for us.

Assemblyman Flores:

Thank you, Madam Chair. I think you just hinted at it, but I was curious to know for the pilot program, and I understand that's just two of you, but my first question is, what area of command were you operating at, out of what side of town, number one, and then number two, I'm curious to know, the assessment officer—so you go through the three-prong assessment, you make the determination, "I think this would be an ideal candidate," you make a phone call. That phone call, I'm assuming, is to an assessment officer. Was that somebody you hired specifically for that, or was that somebody who was already in the Department and you shifted that person from one place to the other? The reason I'm getting at this question is so that you could help me see if I'm correct in this assessment. I'm trying to understand if it's cheaper to the Department itself to have an assessment officer. In other words, that you may pay that person maybe less than you would pay you, or maybe you're all on the same pay scale, if through that lens it's also cheaper for you all to have individuals who are working on that assessment officer lane as opposed to individuals who are working under a different title.

Ms. Ruiz:

Okay, I hope I answer all the parts of the question. If not, remind me. We chose Southeast Area Command, which is near the Boulder Highway/Flamingo/Tropicana area, because of the amount of cases. We were operating out of headquarters because that's where our office is. The program that we modeled our program from is Seattle, Washington. The LEAD program in Seattle, Washington, it started in 2011 and they have a dedicated LEAD team that goes out there, and basically they're the ones that make the encounters, make the assessment and transport the individuals that are good candidates. With us, we started that way in the pilot program, meaning we were the ones that were encountering and we were taking them to two hubs. We were operating under the hub-and-spoke model, meaning we have Centers for Behavioral Health and Bridge Counseling which were the ones that we would transport to, and they had a clinician there that would make the first assessment for us, meaning we were making the very superficial assessment on

the street, meaning that this was a good candidate for LEAD, and then they were taken to these two hubs where an actual clinician would assess if they needed detox, what was best for them at the time, because this is a wraparound program that addresses people where they're at. For example, we had a domestic violence victim whose main priority was to, first of all, get away from her abuser; second of all, get her kids away from him as well; and third was the fact that she was a heroin user, and so obviously heroin use comes later on than taking care of those immediate needs. That's what the clinician will do, and then she would refer those needs in order of priority to the community partners that we have in the program. With us, we were kind of—we initially started out as the Seattle team, going to them, finding out and then us transporting. The way we envision the program to go after this—because we do want it to be department-wide. It is too difficult to have one dedicated LEAD team that will go to 10 area commands in the county, so the difference is that we're going to train every patrol officer on the street to recognize who is a good candidate for LEAD, and then the clinician/case manager that we have hired, they will transport that person to her for her to make the assessment and make the referrals.

I hope I answered your question.

Assemblyman Flores:

Thank you.

Assemblyman Roberts:

Thank you, Madam Chair. Just a quick question. So, you're in a pilot program. Your goal is department-wide implementation. What's the timeline for that and is that in next year's budget?

Ms. Ruiz:

I might not be able to answer. Maybe my Sergeant will help me with that. It's been a long process already, as I think you're familiar with how we started and how long it's taken to even get the basic needs that we have. Between two officers, one sergeant, and I would say a little pushback from the officers, from some of the subjects that we encounter, which it's not very easy to trust us when we're coming out in uniform in a patrol car and all the sudden we're there to help you, and so there's a little mistrust that we'll have to get over. So, the timeline now that we have the case manager. I hope that we can start training the first area command, which will be Southeast Area Command, within the next couple of weeks. As we go through that area command and see how it works, we'll go through the next area command and then move forward. We're hoping that by the end of the year we have every police officer on patrol trained for LEAD, but that also has to do with the fact that we will need more case managers and more clinicians, and for that we need money, and right now we only have money for one.

Senator Scheible:

I'm glad that you addressed some of the issues with arriving in a patrol car in uniform and trying to gain the community trust there. I just wanted to clarify, the hubs that you take them to, the Center for Behavior Health and Bridge Counseling, do they go back to those places to work the program, for lack of a better term?

Ms. Ruiz:

That's correct. It depends, because that plan is individual. The client and the case manager and the clinician make that individual plan for that subject, so I can't really say, "Well, you should go on Methadone," or "You should go completely drug free." They work on that plan and that hub figures out whether they're the ones that are most capable of dealing with those needs or if they need to refer them to somebody else. For example, Centers for Behavior Health, their main focus is MAT, or medication-assisted treatment. If that's what you want and that's what is decided for your plan, you'll probably stay with them and continue with them. If your plan is to have more mental health, if your problem is more mental health issues that are probably exacerbated by the drug use, you'll probably go to Bridge Counseling who meets more of the mental health needs and less of the MAT treatment.

Senator Scheible:

If I could just follow up, and so then would they have repeated contact with the LEAD officer or the clinician? I'm just trying to get a better sense for what that program looks like for that person.

Sergeant Santos:

When we make the introduction with our case manager, they will set up an individual case plan for that individual based on if it's an opioid addiction or more of a mental health assessment or housing. Based on that case manager's professional opinion, he or she will direct that person for that successful whatever they need. In terms of the following up with that, they will have intermittent contact with their case manager maybe weekly, biweekly, depending on that individual case manager as they feel fit. For our interaction with those officers, we will have biweekly meetings with these case managers so we can assist in perhaps relocating individuals. If they missed an appointment, "Hey, we need to go talk to this individual," and that will be part of the process with the LEAD officers as well.

Senator Scheible:

Okay, so it sounds like, if everything is going according to plan, then someone who's enrolled in this program would be meeting with their case manager on a regular basis but they don't have to answer to a uniformed officer knocking on their door on a regular basis.

Sergeant Santos:

That is correct. No necessary contact after us. The only contact you would have from law enforcement is if they are failing to meet their necessary appointments.

Senator Scheible:

Thank you.

Chair Harris:

Are there any additional questions from members of the Committee? Okay. Officer Ruiz, Sergeant Santos, thank you so much. We'll go ahead and close out agenda item VIII and open up agenda item IX, which is a presentation on the operation of bail agencies in Nevada. At this time I'll invite up Marc Ebel, Director of Legislative Affairs with Triton Management Services. Thanks for being here.

Marc Ebel, J.D. (Director of Legislative Affairs, Triton Management Services, LLC):

Good morning Madam Chair and to members of the Committee. I am the Director of Legislative Affairs for Triton Management, which is a holding company for Aladdin Bail Bonds. In my role for the last 5 years, I really endeavor to stay current on the issues around pretrial release, bail reform, not only in the states that we operate in—currently here in Nevada as well as nine other states—but also nationally how the conversation goes, different issues, different perspectives to those issues. I try to stay as current on those as I possibly can and then bring those issues and data to states that are looking into it.

When I created this presentation, I did it with three things in mind, the first of which was to be responsive to specific questions from members of this Committee. The second was to be as solution-oriented as I can be and present solutions to the issues that I'll discuss, and the third was to address some questions at the last meeting that weren't addressed and answered. With that, I will dive into the very first slide and lead with the solutions that I see are best or I would offer to jurisdictions that are looking at it as being responsive to the issues that are out there in pretrial reform (Agenda Item IX A). The first is data collection. You heard that a lot today. You hear it nationally in all the states, that there is a lack of good data, there's a lack of integrated data systems. Pretrial risk tool evaluation: ensuring the risk tools are doing what they are supposed to be doing. Three is some

codification of some presumptions that could be laid down in the law. I'll come back to these three solutions in a bit. I just wanted to lead with them and I will flesh them out a bit more later on.

So again, as I mentioned, in my current role I am able to look at the different studies and data around these different issues. On this slide and on the next slide is a list of 26 different, independent, peer-reviewed studies that was conducted by some of the most respected institutions in this country: George Mason University, Georgetown University, the Yale Law Center. They were all produced—or the vast majority of them, with I think only the exception of two studies, were produced within the last 3 years, the bulk of which was last year in 2018. Without reading every single one them, I will just read some of the titles to those studies: "Racial Bias in Bail Decisions," "Algorithmic Bias: A Counterfactual Perspective," Danger Ahead: Risk Assessment and the Future of Bail Reform," Discrimination in the Age of Algorithms," and as you can tell by those titles, they all center around this topic of do risk assessments introduce more bias into the system or do they take bias out. I had the opportunity to read a vast majority of these, and the Cliffs Notes version to these, if there was such a thing, is that risk assessment tools from the researcher's perspective do three things. They exacerbate the racial disparity in the system, they actually drive up jail populations slightly by finding more detention than they were designed to find, and three would be to not do anything to address recidivism or in some cases make recidivism worse. I have the sites and links to those studies if anybody would care to dig into them further (Agenda Item IX A). That's the other half of that list, and you can see the dates. Very, very recent research on this topic.

The second piece that I wanted to bring to your attention is a statement by 27 different researchers written to the Supreme Court of Missouri when they were considering adoption of a risk assessment tool. They were from such institutions as MIT (Massachusetts Institute of Technology), Princeton, NYU (New York University), Columbia, Harvard, Berkley, and they wrote a cover letter that then was on top of their actual statement about risk assessment tools, and I will just read you the quote I have up there from their letter. "Although pretrial risk assessment tools are often promoted as an essential part of bail reform that can help judges make more informed and objective pretrial decisions, these tools suffer from serious methodological flaws that undermine their accuracy and effectiveness. As a result, pretrial risk assessments do not increase the likelihood of better pretrial outcomes, much less guarantee them." A very concise and very short interesting perspective on risk assessment tools.

The third perspective on risk tools I wanted to bring from those groups that are affected by them and those groups that have advocated and are knowledgeable about pretrial risk tools. The most recent is an updated position on risk assessment tools from the Pretrial Justice Institute. They have been the leader nationally in pretrial reform issues, and they just issued the first of last month a position reversal on risk assessment tools. A quote from their one-page statement: "We now see that pretrial risk assessment tools, designed to predict an individual's appearance in court without a new arrest, can no longer be a

part of our solution for building equitable pretrial justice systems." There is also a very good article by *Wired* magazine on that slide that gives context to their position change and some of the recent history around pretrial reform and risk tools.

Lastly on this topic is a statement, a joint statement that was produced, I believe, 2 years ago by 119 civil rights organizations and a list of 6 principles that should be followed. Well, they don't advocate for pretrial risk tool adoption, but they say in states that have already done it that there should be six principles that should be followed to make sure they're again not making things worse, and that is also a very instructive, I feel, read on risk assessment tools.

The second two slides, I did not put them together with the intent of being sort of fear mongering or obstructionist to reform, I merely—well, one is responsive to actual questions from this Committee about where bail reform had unintended consequences, and two, they give context to some of the solutions I do see as being appropriate for jurisdictions to look at. The first is New York undertook bail reform the first of this year. That had almost immediate adverse effects according to the New York police department commissioner, who found robberies went up 31.5 percent, burglaries went up 15, grand larceny 5.5, auto thefts which had been on the decline went up 67 percent, and all serious felonies was up 11 percent over 2019. The mayor there, Bill de Blasio, also linked the reform to increase in crime, and then the voters felt that and now the percentage of support for the bail reform has fallen to 59 percent no longer support the reform that was done and 33 percent still think that it's still a good idea. There is real consequences to changing the system, and I think that needs to be seriously looked at.

The second one there was Chicago, Illinois in Cook County undertook bail reform several years back. They implemented a pretrial risk assessment tool and they used a state of the art tool and they undertook a study of their own program and found that it did not drive up crime, it did not drive up recidivism. The University of Utah, their college of law, decided to look at the exact same data that they looked at and found that contrary to what their own program said that new crimes went up 45 percent, and maybe more concerning, violent crime went up 33 percent. I think that's also very instructive on looking at the data and who looks at the data and as an independent third party. New Jersey undertook a reform back in 2017 to go into effect in 2018. In 2019 they were at a fiscal cliff. They had already spent $181 million and needed still more. There was a study that was produced before the reforms were undertaken stating that pretrial, to implement the system that was in the bill, would cost an estimated $215 million. That was seen at the time as outlandish and that can't possibly be true, and as time has gone on it seems to be pretty accurate.

Lastly, Alaska enacted bail reform back in 2018. I got a chance to hear from a senator there at the last NCSL (National Conference of State Legislatures) conference and she said—I like the way she phased it, and I'll say it is, "If bail reform was a dinner menu, they ordered the entire menu," and then had some serious adverse consequences and rolled

everything back, so I think—again, I don't bring those up to be obstructionist, I just want to raise them for the Committee and to give again these areas for reform context.

I think the first area for critical reform is data collection. You heard from some of the researchers today, bad data, it produces a bad result. We need to understand who's in jail, why, for how long, pretrial processes, measuring success, how we define success. There's a number of bills, and there's one that was passed in Florida. Idaho is currently considering an integrated data system. New York is considering a data collection system. I think that is extremely useful for states to look at and highly productive to understand what's the baseline and then did we make things better or worse with the reforms that we did, or not, undertake.

The second one is a pretrial risk tool evaluation. I know in light of the research out there and from those affected by the pretrial risk tool and people that develop risk tools, I think Nevada already has a risk assessment tool and I think it should be seriously looked at to make sure it is not exacerbating the very problems of which it was designed to solve for, at the very least.

The third would be some codification of presumptions. I think there are two presumptions that I think is useful for legislatures to lay down and that is, one, that we should be releasing the maximum amount of people under the least restrictive means possible while also ensuring public safety and the integrity of the criminal justice system, and that there are probably categories of folks who fall into a presumption of OR release, so they're sort of low-level first-time misdemeanor defendants with a lot of exceptions. I think we can say that those folks should be OR released, and I think that's probably already happening here and should be probably laid down maybe in statute. Lastly, at the last meeting it was asked to what extent bail adds extra conditions on top of what the court imposes, and that wasn't clearly addressed at the last meeting. I can't speak for other actors in the bail industry, but at Aladdin we don't—well, we do require some extra conditions on top of what the court does. We require them to come in and check in in person. We ask them to contact us about their court dates and their next court date. If they happen to miss a court date, we want them to contact us so we can get them back on calendar and get their case resolved. Contact information updates: so if they change residency or employment or their contact info changes, we need to know about that, and then we have the indemnitor and the defendant both equally responsible for the bond, and that creates better outcomes for their case. With that, I would take any questions.

Chair Harris:

I have a couple of questions about the data that you presented on some of these unintended consequences. The first state that you referred to was New York, and I see here that there's a possible correlation between the increase in crimes and the bail reform, but have any studies been done to decipher whether it's actually a causation or do we only know that there's just some type of correlation going on?

Mr. Ebel:

It's a good question. Is there a correlation between the rise in crime and the reforms that took effect? That is so new in time, nobody has done a study yet of whether or not there is a strong correlation. Right now we're going off the information that the police commissioner provides. He is certain that the reforms are linked to increased crime, and then the mayor is certain as well. Right now we just have officials who are acting in the criminal space saying that it is increasing crime but not a sort of independent third-party study yet that has been done.

Chair Harris:

Is that based on their feelings? Do they know that it's causing it? I don't mean to second guess Mayor de Blasio's assessments, but I'm wondering, is that assessment based on a feeling or is that assessment based on data that he has, maybe that we don't have available, that is showing that it's a causation and not just a correlation?

Mr. Ebel:

Certainly, certainly. It is from the police commissioner's use of their own data, and so we're relying on him in his official capacity in law enforcement. I guess we could not believe him in his official capacity as law enforcement, but that's a whole different question.

Chair Harris:

Okay, I don't think I got across what I'm trying to get at here. I'm not questioning the numbers. What I'm wondering is, have they determined that bail reform caused the increase as opposed to, "I know we did bail reform here and there has been an increase in crime"? I'm not arguing with that premise. What I'm wondering is, do you know if they've actually done some type of study to be able to determine that it is a causal factor and maybe not other things? Do you know if they've done that or not?

Mr. Ebel:

The article I read from the police commissioner said he looked at his own internal data and determined that bail reform did cause the increase in crime. That's all I am aware of.

Chair Harris:

Okay. I guess I kind of have a similar question about bail reform in Illinois. The number of pretrial releases charged with committing new violent crimes increased by an estimated 33 percent. That number has no meaning without the corresponding number of what the increase in released persons were. If that increase in release is the same as the increase

in the number of pretrial releases charged then it's not as big of a deal, so do you know what the increase in people being released is and if there's some discrepancy between that, because if you're releasing way more people, the number is going to go up, but that's not—as long as, as a percentage, it's not going up, right?

Mr. Ebel:

Certainly, and that gets back at the issue of good data collection and laying out the parameters for what are we looking at, what are we discussing and how are we going to define success benchmarks for starting the conversation of, in relation to what? The number is sort of meaningless if it's not in relation to something, so good data collection. The study is very, very recent and I'm still going through it. I actually have it here. It would be a good—it's quite a lengthy study, but determining whether or not increases—well again, putting it into perspective. So, what was the rate before, what did it go up to? Those are all very relevant questions and why good data collection is important.

Assemblyman Flores:

Thank you, Madam Chair. Thank you for the presentation, by the way. When you started your presentation, you had mentioned that you were concerned that risk assessment tools were sometimes yielding more folk who perhaps should have been released being in custody. If you could expand a little bit on that, and then I want you to tell me if there is a correlation between what your company has seen, so Aladdin, and the folk that utilize your services, if you're saying that you've seen through your internal data that there's folk that should have been released but are not being released, and then I have a question that is completely unrelated to this topic.

Mr. Ebel:

So, taking the first part, you had asked, if I understand the question correctly, why there's a relation between pretrial risk tool use and increase in population?

Assemblyman Flores:

Correct, because I think, and if I understood what you indicated at the beginning of your presentation, was that the risk assessment was instead of having—I don't know, and you may fall on a different side of the argument, but regardless of what side of the argument you're on, I think what you implied was that the risk assessment is actually yielding more folk not being released as opposed to being released, is that correct? I may have misunderstood what you said.

Mr. Ebel:

The research indicates that—well, there's two different questions that could be asked around that question. First is what do risk tools do sort of in a vacuum, and then, maybe more practically, what do they do in the actual hands of a judge? How does a judge interact with the risk tool, and then what is the outcome based on the information of the risk tool? Again, the research indicates that judges use the tool information much differently than was intended, but then we heard today that they're not supposed to be used individually. But they end up recommending more detention I think than was envisioned that they would, and so we have judges following that and thus detaining more people based off the recommendation of the tool. I hope that answers the first part of the question, and the second part of the question was? I'm sorry.

Assemblyman Flores:

Okay, so I'm going to rephrase. It's your position that risk assessment tools, in comparison to when they did not exist, are actually yielding more folk being detained or not being allowed to be released, correct? And then the second part of my question was, now you're saying that through the articles, but I'm saying you—through the folk that go through your services, is that something that you're seeing on your end as well?

Mr. Ebel:

We're not collecting any data on jail populations going up or down. No, we're not collecting that data.

Assemblyman Flores:

Okay, and then, Madam Chair, if I could ask a different question in a different lane? You mentioned that you require that folk could do an in-person check-in. What happens if they don't do an in-person check-in?

Mr. Ebel:

As a condition of us posting the bond for them, they need to come in in person and check in with us. If they don't, then we start finding them.

Assemblyman Flores:

You said fining them?

Mr. Ebel:

Yeah. It sort of indicates an intention to abscond, and we need them to check in in person.

Assemblyman Flores:

Okay, and then what is that fine?

Mr. Ebel:

I'm sorry?

Assemblyman Flores:

You said you fine them. What do you fine them? How much is it per day?

Mr. Ebel:

Oh, no. Sorry, find them, not fine them.

Assemblyman Flores:

And does that mean that your company has somebody who'll go out there in person to try to do a check-in at their home, or what does finding them entail?

Mr. Ebel:

By virtue of having the liability of the bond, it allows us to deploy a lot of resources to find these folks that don't show up for court or don't check in or for whatever reason.

We deploy recovery teams to go out there and use the information that we have on our intake forms to try to locate them. There's sort of the image, I think, of bail just like kicking down your door and dragging you back to jail, and that's simply not what happens. There's instances where people truly intend to abscond, and that can happen, but for the vast, vast majority of our clients, they simply get overwhelmed by the criminal justice system. They often don't keep great calendars and so they just forget they have court, and so just contacting them and letting them know, "You had court, you missed it. Let's get you back on calendar," and using a phone number, an address or whatever information that we've taken about them to locate them and get them back to getting their case resolved.

Assemblyman Flores:

And if I could have one more follow up? Thank you, Madam Chair. I guess the only other question I have is, through the industry lens of pretrial risk assessments and all that good stuff, I'm trying to understand what—I'm trying to find where the balance is through your lens, through the industry lens is, to folk who are being released, and at the end of the day there's a business, and I'm not trying to paint the industry as being dirty or shady. It's a business and you have a model and you believe in what you're doing, and so I'm not

trying to paint it in any dirty light or play that game. I'm just trying to understand where your industry, through an industry lens, says, "All right, here's where we are, here's our business model," and if you genuinely saw that there were other models, and some of them may be a risk assessment tool that are better designed, that are improved from state to state, and you realize that model is actually very effective at ensuring that the folk who are released are in fact going to show up to jail and then the folk who are likely to abscond will likely be detained, where that will then yield and automatically mean that your industry will suffer from that through a financial lens. Not through a societal lens, but through just a financial lens, and that you all can say, "We're 100 percent comfortable with that because that is in the greater interest of all of us at the end of the day," and so I'm trying to understand, is that what you're saying now, that the industry is ready for that? The industry is a partner in ensuring that if we do find a much better mechanism in place that doesn't involve having folk post X amount of money and we know that will disproportionately impact lower-income communities, that there is other mechanisms in place and that you are all going to be a partner at the table in that conversation.

Mr. Ebel:

There was a lot in that question and I want to try to address it all, and I appreciate the question. The first is, we absolutely want to be a partner in creating solutions that make sense for society as a whole, not just from the business perspective. In the states that we operate in, we as a company advocate for what we feel is a hybrid model where you have a robust pretrial release mechanism for those who can't access their bail and their freedom, but then there is a vast majority of other folks who the judge is probably going to feel unease about releasing them just sort of OR but doesn't want to detain them either but wants some sort of surety that they're going to actually show up to court, and we believe that's where bail is most effective. You're right; that model will cut into our business ultimately, but we do feel genuinely, ultimately, that that is what's best for the system as a whole for most pretrial liberty predisposition of the case. I hope that addressed the question.

Senator Scheible:

I just have a quick question about Aladdin's practices. Does that company send a text or make a call or something the night before court to remind your clients that they have a court date?

Mr. Ebel:

Thank you, Senator Scheible, for the question. We have developed an internal app that you can download on your phone that reminds them of their court and has their court calendar schedule. It has limited effectiveness of whether or not it actually produces a lower failure to appear rate, but it is something that we offer to our clients to help them stay on calendar. We do call and remind them. We do a physical call, not just the app

notification but, “You’ve got court tomorrow and make sure you attend” to keep these people—because again, their lives are in disarray oftentimes and the criminal justice system can be very daunting and very complex, and to have somebody—we really try to act as a partner for them to help them navigate the different points of their case.

Chair Harris:

Okay, thank you very much. I appreciate your time.

Mr. Ebel:

Thank you all for the time.

Chair Harris:

All right, I will now ask Marc Gabriel to come forward from eBAIL Cheap Bail Bonds to go ahead and give his presentation. Thank you for being here.

Marc Gabriel (Manager/Proprietor, eBAIL Cheap Bail Bonds):

Ladies and gentlemen of the Committee, Madam Chair, I want to thank you for inviting us so that we can give you a glimpse into bail and bail bonds and also report to you from the front lines of what’s going on. I want to start out by setting the tone that there’s only three ways of getting out of jail within the first 12 hours or 72 hours (Agenda Item IX B-1). That’s bail or bail bond release, OR release without restrictions where you just open the doors, or an OR release with restrictions. The difference between those three is that bail or bail bonds, the family and community come together where they either post the full amount of the bail at the jail or they pay a percentage for a bail bond, and I’m going to get into that a little later. That puts them in the driver seat and they’re in control for this release, for the pretrial release. On an OR release with restrictions, it’s the state or a house arresting officer that’s in control.

What is bail? Bail is something of value that’s given to the court or to the jail for the release of a defendant, and it’s usually set within the first couple hours after arrest, and based on the charge, bail can be high or bail can be low. At this juncture, the community or the family has the option, if they have the means, to pay the full bail in cash at the jail or hire a bail bondsman like ourselves for a percentage of that bail amount.

So, bail bond, what is a bail bond? A bail bond is an insurance policy to the court that guarantees court appearance and enhances public safety, and we do this through cosigners, collateral and information. Collateral is not required all the times but sometimes is being put up. Information is provided by the cosigner and the whole transaction is guaranteed by the cosigner, who is usually considered the second party or/and a bail agent which is considered third party, or we call it also third-party responsibility, and

ultimately there is a surety or insurance agency behind the bail agent that guarantees the money to the court. This bail bond policy only has to pay out if there is an uncured no-show to court. If a defendant misses a court date, a warrant is issued and the court sends us either via email or directly by certified mail a notice, which is called the notice of failure to appear or a notice of intent, and this is where we are made aware that there was a no-show, there was a violation. We have 180 days from that date where the defendant didn't show to court to fix this. And how do we fix this? It's very easy. What we do is the defendant can get a new court date. They can do it by going to the court and filing a motion to quash. Ninety-nine percent of the time that's free. The court does not require any money for this, and within 3 to 4 days they a get a new court date, the warrant is quashed and everything moves forward.

The other option is to hire a lawyer. As a bail bondsman, when we get those notices, we make those phone calls. We're trying to find out what's going on, and like Mr. Ebel said before, it's an honest mistake. Life is hectic, and we help the defendant to get a new court date and we can guide them. A lot of them are scared. We give them the phone number to the court that says, "Talk to a clerk. They'll assure you you'll not be arrested." It's just a matter of filling out a motion and being filed and it doesn't cost anything. The other option is for the defendant to be surrendered back into custody. This is, again, where recovery agents are sent out to put that person back in custody. That's assuming they don't handle their business at all. They don't want to go to court, they abscond, we cannot get a hold of them, the cosigner tips us off saying, "Hey, we have a problem here," and that's where we get involved.

What does a bail bond cost? It's in the Nevada law. It used to be 10 percent. Now it's 15 percent or $50 dollars, which is greater. So, whatever the bail amount is that the jail sets, you take 15 percent of that and that is what we have to charge as bail agents. In Nevada last legislative session, if you remember, $5,000, that's the average bail that we deal with for most charges. So, 15 percent of that is $750, so you estimate a down payment to help clients out is $100, $200, $300, $400 down and then maybe payments of $50, $100, whatever they can do every week, every 2 weeks, every month. There's no finance charge. A lot of times a $0 down option is available if collateral is put up. For example, if the cosigner pledges a car that's worth in excess or up to $5,000 and says, "Hey, I'm going to get little Johnny out of jail and I'm giving up my car title for this. Can you set me on a payment plan?" We will totally assist with that.

How's a bail bond obtained? A cosigner or cosigners, multiple cosigners, is needed as guarantors. It's usually friends or family or part of the community, people that have a good knowledge of the defendant, so it's usually family or close friends, and they go through an interview and application process with the bail agent, and this is where we literally sit down over the phone, we interview them and we determine is the defendant a flight risk. We can ask the mom, the dad, the brother, the sister, the best friend, the girlfriend, "Does he have a criminal history?" They'll give us the criminal history. We verify based on court records also, so that's taken in consideration. We can look at failure to appear rates. It's

all in the court records. Is the defendant a danger to the community? We can find out through the cosigners, “Hey, who is this guy? What are the charges? Is that something we want to do? Does the defendant have a prior record of failure to appear?” That’s how we find that out, through the court record. Where does the defendant live, work, family and background, and is the cosigner—this is the big one—is the cosigner willing to take the responsibility of the bail bond, meaning being responsible for $5,000? Are you as the cosigner willing to take that on? The bail agent then would put the information on an application, and then we execute a bail bond agreement, and in this agreement the cosigner is ultimately responsible for the bail bond, which is in this example $5,000.

The cosigner is also responsible for the observance of court-ordered restrictions. The cosigner will feed back to us as a bail agency, “Little Johnny’s not going to rehab, or “He is going to rehab. He is staying away from this address,” or he has a curfew which is court-ordered. Usually parents love this because if their kids don’t comply with going to drug treatment or rehab or whatever it is, they call us up and let us know and says, “Hey, I want him back in jail because he’s not handling his business. He’s not going to school. He’s not going to rehab.”

Why cosigners? We established cosigners are family members, close friends, the community, because they have intimate knowledge, info of the defendant. The cosigner provides personal information about themselves and the defendant. They become the responsible party. They’re usually the second party or second-party accountability to this transaction and the bail bondsman is the third party. It’s almost like the bail agent is also a cosigner to this deal. It’s almost like somebody buying a car and needs a cosigner so you have mom or dad cosign, and you have a bail agent cosign, so that would be the third party.

We as bail agents then have minimum information on the application: home address, phone number, landline, cell, family, friends, references, documents that we ask to bring in like a phone bill, power bill, paystubs, registration, lease, etc. We can ask for whatever we deem necessary to effectuate this bail bond. Sometimes collateral is pledged, sometimes we execute a deed of trust on a property, sometimes we hold car titles. Some agents may hold valuables, rings they have to account for. We as bail agents then determine if this information is satisfactory, and then the bail bond agreement is executed where the cosigner is responsible for the defendant, observance of any court-imposed restrictions. They report the violations back to the bail agents who can then in return put the defendant back in custody. The cosigner is responsible to pay the full bond amount of the policy if the defendant does not return to court, so that would be $5,000 in the example. By the cosigner knowing that they’re responsible for the $5,000 bond, they will then—if the defendant absconds, they don’t want to pay, so they are going to help and assist the bail agent in locating the defendant, and as we established earlier, we have 180 days to do this.

Chair Harris:

Mr. Gabriel?

Mr. Gabriel:

Yes?

Chair Harris:

I've noted you have about 11 slides left.

Mr. Gabriel:

Yes, I'm going fast.

Chair Harris:

And I'm hoping you can do them in about 5 minutes.

Mr. Gabriel:

I can, I can.

Chair Harris:

Thank you.

Mr. Gabriel:

This process is a vital process in creating accountability in the pretrial release process. It's also called third-party accountability, the cosigners and the bail agent. Sometimes cosigners do not want to be responsible, and it's a signal to the bail agent that, is this a bond that we want to do, and this is one of the biggest reasons why defendants with low bail amounts stay in jail. There's nobody that wants to come to aid them. They passed the risk assessment tool. They're not getting released by the judge, and now it comes into bail and nobody wants to step up to bail them out. It's usually a sign to us, as a bail bond agent, that this person may want to stay in jail.

So what happens after the defendant has been bailed out? They got to report to the bail agent. They have to sign the documents. We put them on a check-in, in person, by the phone, random checks. We also provide going to the home, work, or we call them up. The bail bond policy ends with the sentencing of a defendant or exoneration of the court. If the defendant doesn't show up to court, the cosigner is notified, and if it's a mistake

we'll help them get a new court date. If the defendant absconds, is on the run, we'll put them on notice, and $5,000 is the possibility you're having to pay, and then the cosigner assists. They don't want to pay. They will assist the bail agent in the apprehension of the defendant. We have 180 days to do that.

So we already know what? Why do we use a bail bond? Third-party accountability through cosigners, collateral information, fastest and least restrictive way back with the family and friends, affordable, guarantees court appearance, enhances public safety through information and cosigners. The defendants are monitored by cosigners and bail agents, guarantees compliance with court-ordered restrictions, does the feedback loop through the cosigners, violations can be remedied immediate by bail agents because we can literally rearrest the defendant on a whim if needed to be, zero cost to taxpayers and it preserves the presumption of innocence where no overbearing house arrest officers monitoring or restricting the accused.

What are the alternative releases besides a bail bond? There's only two other ones. It's OR release without restrictions or OR release with restrictions. OR release with restrictions: we have an exhibit one (Agenda Item IX B-2). That's from the Clark County Detention Center low- level, medium-level and high-level electronic monitoring program (EMP). A lot of times this is a release with a GPS monitor. It's monitored by an officer. Very limited movement. The cost is approximately $400 a month. Now, I have clients that pay this money so I'm not aware if they stop where they have to pay for this, but I have clients that have to pay for this. A lot of them don't, and it takes an additional 2 to 7 days in jail based on the availability of monitors or when house arrest gets around to them. They're staying in jail for an extra 2 to 7 days, sometimes longer until house arrest gets around to them to put the monitor on them.

Alternative jail release concerns: no knowledge of the defendant is fit to be released. House arrest officers do not, and I repeat, do not pursue offenders that cut off their GPS monitors. No third-party accountability or reason to show back up to court, no cosigners, no collateral, no reason to show up to court. GPS monitors are restrictive, degrading and susceptible to malfunction, and I think I have a picture there so you see what this apparatus looks like. On my exhibit two it shows what the monitor looks like on the foot. Sometimes they're too tight, cuts circulation, irritates the skin, and if the defendant is not deemed indigent, forced to pay the $400 a month for the EMP monitors. Another concern is possible civil rights violations. I'm not a lawyer, but there's a lot of EMP-monitored releases even with no charges being filed, and vegasjailwatch.com has examples of that where people are being put on monitors even though no charges have been filed. EMP-monitored house arrest is considered a form of incarceration. In the federal system they do that on post-trial, and now we're kind of bringing this into the pretrial and this could be a potential problem.

The EMP monitoring contract calls for signing away your Fourth Amendment rights. Exhibit four, which is a house arrest contract from the Clark County Detention Center, it's

part of the court records at the Las Vegas Justice Court. Number four on the first part on the first paragraph: “As a Clark County inmate, I realize this program is a privilege and at any time I may be returned to the Clark County Detention Center.” Number four says, “I agree and I’m responsible for the monitoring equipment for the entire duration of the program.” Then, number nine: “I understand that, prior to entering the monitoring program, I must waive my United States Constitutional Fourth Amendment right to search and seizure, my rights to the Privacy Act and my rights to contest extradition.” Number 10: “I understand by signing away my United States Constitution Fourth Amendment rights I agree to allow house arrest officers and all other law enforcement personnel to access into my residence at any time. It can occur day or night.” How’s that possible? I don’t know; I’m not a lawyer. I’m just raising the questions. I’m reporting from the front lines. Number four: EMP monitors could listen in and record conversations. Attached I have an ABA, American Bar Association, article on 4/9/2019: “GPS monitors can call and record people without consent due to violate the Fifth Amendment,” and that’s exhibit three.

Also, if people are being put on EMP there’s no more option for bail or bail bond once on EMP. The question is, we come across people that have the monitor to get out for free, they’re really happy, then to realize it’s so restrictive they can’t go to work, they can’t travel, they can’t do certain things. They ask us can we post bail, and we say, “No, you have to go to your lawyer and talk to them.” That might be an improvement in the system, if there’s a law that says there’s bail or bail bond option for the duration of the case. Every increasing cost to taxpayers to fund, maintain and expand the EMP-monitored house arrest program. Defendants are at the mercy of an officer and their biases.

I have an exhibit here. Mr. Melton, could you please come up? Mr. Melton is a client of mine. He is a defendant in a case, and can you show them the monitor so that they see what it looks like? So Mr. Melton, his family put up the bail amount, the bail money, and also put up their house because the bail was so high that he had to put up collateral. His family, his wife and daughter put up their house so that he can get out of jail. He also had a house arrest stipulation, which is where the monitor came from. It took an additional 5 days for you to get out of jail. Wendell, how long did it take you, was it longer? No, that was the first time you—and so it took approximately 5 days for him to get out. So, house arresting officer one was really nice, trying to help him. He came up with a job. He had to go beyond curfew. House arresting officer one allowed him to go beyond curfew. He keeps on checking in with house arrest, no problem. One day he checked in with house arrest, brand new house arresting officer kept him there. He would not release him, put him back in custody because he did not like him going beyond curfew. He didn’t care if house arresting officer number one allowed him to go beyond curfew because of his job. It took his lawyer almost 3 months to put him back out on the streets with his family, back with his family. The question always comes up, presumption of innocence. We’re in a pretrial situation. Where does the presumption of innocence come in?

Law enforcement being overwhelmed with arresting defendants on warrants instead of actively policing. Other concerns and considerations: the use of risk assessment tools, and we already went into all of this. I'm not going to rehash all this stuff, but civilrights.org says there's a problem with pretrial risk assessment. ACLU of Southern California, they didn't like that because it has inherent biases built in, and then just 25 days ago Pretrial Justice Institute said, and I'm going to quote this, that "pretrial risk assessment tools can no longer be part of our solution for building equitable pretrial justice systems." I'm not an expert. I don't know. I think originally it sounds like it's something good to have the pretrial risk assessment for an extra tool in the tool kit of a judge, but obviously it creates its own problems, and obviously we need more studies and maybe a better tool.

Chair Harris:

Mr. Gabriel, if I could ask you to wrap up. Thank you.

Mr. Gabriel:

Yes, I'm wrapping up right now. Thoughts and practical considerations on potential pretrial release reforms—so the courts have responded by custody status reviews within 12 hours. The use of risk assessment tools also over the last 10 years—10 years ago bail only represented about 25 percent of all the releases per year, and that's CCDC data that's available online on their annual report, and so within the last 5 years that number has shrunken down to 15 percent. So, 2020 is going to be really interesting, because I think it's going to be around 10 percent, so all releases from the Clark County Detention Center, which is the largest jail facility in the State of Nevada, as bail-only constitutes about 10 percent of all releases.

All three mechanisms of release: OR release with restrictions, without restrictions, bail or bail bond, they can coexist and are an improvement on the current pretrial. Consider legislation for maybe keeping bail or bail bond alive. The option for bail or bail bond for the entire duration of a case in case people change their mind. It's too restrictive. Where's the presumption of innocence? So, keep that alive for somebody if they have the means, where they say, "Hey, I want to switch over. I want to get a bond. I want to pay for bail." Bail release is in the hands of the defendant, the family, the community. OR release is in the hands of the state and house arresting officers.

I want to leave you with a final thought. If you had a family member arrested, would you want the option to post their bail or leave their release up to the government, which is also who prosecutes them? Thank you very much for your time.

Chair Harris:

Thank you.

Mr. Gabriel:

Any questions?

Chair Harris:

Let's see. Any questions from members at this time? Okay, thank you so much.

Mr. Gabriel:

Thank you very much.

Chair Harris:

We can go ahead and close out agenda item IX and open up agenda item X. I'm going to take it very slightly out of order and start with the public defenders and invite up Kendra Bertschy at the public defenders in Washoe County and Evelyn Grosenick, who is a Deputy Public Defender in Washoe County as well, up north. Here in Clark County I'll invite up Nancy Lemcke, who is a Chief Public Defender, and our own Speaker, Assemblyman Jason Frierson, who is also an Assistant Public Defender with the Clark County Public Defender's Office. We'll start with Washoe County since they were quick to sit.

Kendra Bertschy (Deputy Public Defender, Washoe County Public Defender's Office):

Thank you, Madam Chair. Thank you, Committee members. Joined with me today is Evelyn Grosenick. She is our Chief Deputy Public Defender who handles the misdemeanor team, who is the team that goes in and does all of our initial arraignments. With that, I'll turn to her. Thank you.

Evelyn Grosenick (Chief Deputy Public Defender, Washoe County Public Defender's Office):

Thank you for the opportunity this morning, and we will try to keep if brief given that it's no longer morning. As Ms. Bertschy stated, I do supervise the team of attorneys who appear at the Washoe County jail, 5 days a week except for holidays, to represent individuals who have been detained pretrial as well as individuals who are seeing a judge because of a warrant being issued, or they've been taken back into custody. I thought we were going to go after Clark County, but I did want to say that we do join with them in emphasizing the need for a constitutional statutorily enumerated process for determining who should be preventively detained pretrial and the conditions of release, if any, for those who are released. We do have an incarceration state. National statistics are that approximately two-thirds of each jail population is comprised of pretrial detainees, and it

sounds like based on the Washoe County Sheriff's Office presentation that our numbers are in line with that.

The negative effects of unnecessary pretrial detention for low-risk individuals have been well documented, and we have included some supporting documentation which is outlined in this slide right here (Agenda Item X A-1). Those documents are included with the materials that we submitted in support of our presentation (Agenda Item X A-2). But those negative effects of pretrial release do affect families, they affect jobs, they add to homelessness and it adds to the state's burden in unnecessary incarceration costs and court costs, which negatively impacts our entire community. We also need legislation on this issue because we need consistency. The inconsistencies between the different counties within our state, different courts within the same county and different judges within the same court are absolutely staggering, and if we want to ameliorate the inequalities and social impacts of unnecessary pretrial detention, we have to do so statewide. We need legislation dictating the process that needs to be followed, and to date, figuring out that exact process of who remains incarcerated and who's released and under what conditions has been left to each individual court or magistrate.

The current incarceration system does have real impacts on the community, and when I speak to this, I'm not just telling you individuals are affected because they are held pretrial. A couple times a week, I'm at our jail looking people in the eye saying, "You're not likely to go home today," and they're saying back to me, "But what about my rent? What about my kids? What about my pets?" This is a daily thing, a daily conversation that I have to have with people who are denied pretrial release and who do not pose a significant threat to the community or to a specific victim or a threat to not return to court and participate in that process. Our clients are indigent by definition. They usually don't have paid time off from work, a bank account or any other kind of safety net that will cover their bills while they sit in jail. They live day to day and paycheck to paycheck. Some of my clients are homeless and just starting to get on their feet, and going to jail and being preventively detained sets them back even further. Others are just on the edge of homelessness and missing even one day of work means there won't be enough money for their rent, either next week or next month, and for some, missing even a day or two of work means that they will lose their jobs, and all of these losses and all of this detention imposes financial and social costs on our community.

Now I'll turn it back over to Kendra Bertschy for some examples.

Ms. Bertschy:

For example, we had a client not too long ago who was arrested for child endangerment. She scored in the low-risk category in the Nevada Pretrial Risk Assessment sheet, but according to the probable cause sheet, the allegations included that she was out in public, she had been enjoying one of the wine walks that we have in Reno along the river, and she was with her child. The allegations were that she had a blood alcohol content of a .4,

so obviously very high, according to the allegations. She was in custody for over 11 days before we had our first mandatory status conference set where we then had to request another hearing providing the state with 48 hours of notice to then go before the judge to request for her to be released. Unfortunately, because of the timing of when this came to court, she wasn't transported for her next hearing, so she had to then remain in custody for another 3 days before we were able to finally get her before a judge where she was released, only to find out—so she spent more than 2 weeks in custody only to find out later that there was just a clerical error on her probable cause sheet, so she wasn't actually .4. It was much less than that. During the time that she spent in custody, she lost her job. Luckily, she had family who was able to help her with rent, and she had—her child was then in the custody of the state for much, much longer than necessary needed to.

More recently I had a case involving a veteran who I had before me for a probation hearing on a gross misdemeanor. We all were in agreement that this veteran was to go to a local inpatient treatment program where she was going to receive services for—she had, unfortunately, relapsed and was struggling with her mental health issues as well as her issues with controlled substances. On the record she had indicated that she had a U-Haul that she needed to—that while she was in custody, she unfortunately still had all of her belongings there because she was in the process of moving, and we'd all discussed that she was going to go bring that U-Haul, take care of that and then go to the facility because she had been OR'd in the district court. Unfortunately, during that process U-Haul had indicated that the vehicle had been stolen since she had not been able to pay or contact U-Haul while she was in custody. She was then arrested on the possession of a stolen motor vehicle. Luckily we have a jail ATM where she was able to contact me within the day in order to be able to let me know she was back in custody. She unfortunately then lost her bed at the Ridge House. The state had forgotten her and couldn't remember her name, but when I was able to contact them, we then tried to get an own recognizance release through the justice court, but because there was allegations of a parole hold, that request was denied. We later found out that there was no parole hold. We went back, and a total of almost 7 days later, we finally got her released. Unfortunately, in that time her bed spot had been provided to someone else.

That's just kind of some of the examples of how difficult it is right now for us to even get before the court to provide all the information necessary.

Ms. Grosenick:

This is why we need consistency. Right now there are dramatic inconsistencies between jurisdictions and different courts within the same jurisdiction. Now, Washoe County and Clark County justice courts handle initial appearances completely differently, and also justice courts within the same county, within Washoe County, also handle initial appearances completely differently. The Las Vegas justice courts have the Initial Appearance Court, which is the one that I believe a prior speaker was talking about

through an administrative order. In that court, every detainee has an initial appearance within 12 to 24 hours of arrest. At that initial appearance, they can address custody status. That Initial Appearance Court takes place every day, including weekends and holidays. All stakeholders, including district attorneys, defense attorneys, pretrial service officers and judges, participate in those court proceedings. In addition, some information that I did learn today is that detainees there are given a bail amount as they are being booked by the officer, and then that amount, it sounds like, can change when they go before that Initial Appearance Court. Also, it sounds like Las Vegas has some grant funding or perhaps county funding to cover the cost of electronic monitoring.

Washoe County justice courts operate quite differently. For both of our main justice courts here, Reno and Sparks, a judge reviews the probable cause and custody status twice per day, every day of the week, 365 days a year. However, the parties are not part of that process, and by parties I mean the District Attorney's Office, the public defenders and the pretrial services. They are not present while the judges are making those PC (probable cause) determinations and looking at risk assessments and deciding who to OR, who to set bail for and how much. The district attorneys do not appear or participate in the initial appearances at the Reno Justice Court and the pretrial services representatives also are not present in the courtroom. The Reno Justice Court does have initial appearances the next business day after arrest, so weekends and holidays are excluded. Generally it's 5 days a week that we appear in this court. Individuals arrested on a Friday or Saturday or Sunday don't see a judge until Monday, or Tuesday if Monday is a holiday. At these initial appearances in the Reno Justice Court, defense counsel is permitted to address custody status but only if the judge who is on the bench that morning was the one that reviewed the probable cause sheet initially. So, if a different judge performed the probable cause review over the weekend, for instance, then defense may not be permitted to address that individual's custody status. Sparks Justice Court does not have an initial appearance the next business day after arrest. The first time a person detained pretrial there sees a judge is on the third business day after arrest, which is at the 72-hour hearing. What that means is that a person arrested on the Wednesday before Thanksgiving will not see a judge for the first time until the following Wednesday. Whether or not defense counsel can address custody status at that 72-hour hearing seems to depend on the judge and the procedural posture of the case.

The justice courts in Henderson and North Las Vegas also don't have the same processes or protections as the Clark County Justice Court, which is what I've learned from Ms. Lemcke with the Clark County Public Defender's Office. What's not also included in this information or the table is information about the municipal courts (Agenda Item X A-1). I don't have that information.

The other significant difference is that even judges within the same court will treat people differently. Some judges will let us address custody status no matter where we are in the case. Other judges say, "No, you have to follow this policy that our court has," and there is no check on these inconsistencies. The significance of this is that whether my client is

released pretrial or not and whether I get to address a judge on my client's behalf depends on the justice court to which that person's case tracks and the judge who is on the bench that day, and that's just not fair.

I think I mentioned the house arrest in Las Vegas. There's a grant, I believe, to fund some of that. The county pays as well. However, in Washoe County, our clients pay for that themselves. You've got indigent people who are given house arrest and their only way of getting out of custody is to put up additional funds. That can be extremely costly. We have quotes from some house arrest companies saying that they can require up to $750 deposit for the equipment. In addition to that, there's an enrollment fee. If they enroll out of custody, it's a $75 fee. If they have to be enrolled at the jail, it's $350, and then the daily rate is about $13 per day. For our indigent clients, this is often completely unaffordable.

Last summer, I did want to let you know, that an assemblyperson came up to Reno. She met with attorneys from our office, she observed several aspects of the criminal process and she accompanied us to the jail to observe these initial appearance courts and 72-hour courts. I think it's fair to say she was fairly shocked at what she saw, and I would encourage and invite any other person on this Committee or any other legislator who wants to do the same thing to please contact us. We're happy to show you how things work so that you can see firsthand the problems with our system. There is hope, though, and I think we can fix it, and I applaud this Committee for putting in all this work outside of session to work on it.

The Las Vegas Justice Court does have the Initial Appearance Court, which is in session every day. It's, from what I can tell, the most progressive court in our state. It does include representatives from all the criminal justice stakeholders, including district attorneys, pretrial services, defense attorneys and the court staff and judges, of course. It has received some recent positive media attention not only because they have been able to effectively reduce their jail population, but the rate of individuals who are arrested for new offenses while their cases are pending pretrial has actually decreased, and that means more people are still at work taking care of their families and fewer people are committing new crimes while out on pretrial release. I'm not saying that the Las Vegas model is perfect, and I'm sure as you will hear from Clark County PD, it is far from that, but it does represent progress in our state and I think that it shows we can release more people. We just need to be releasing the right ones.

So, what does that need for legislation look like? For starters, we should recodify non-aggravated traffic offenses as traffic citations not punishable by jail time. I can't tell you how many speeding tickets I see in court. Now, this is probably because they're not appearing for their court, they're not appearing to take care of their ticket at court, but why are they spending up to 3 or 4 days in jail when they are arrested on a Friday, have to wait 3 days to see a judge on a speeding ticket, judge time-serves them and they're out? But that's 4 days that they don't have to be away from their families or their jobs.

Mandatory citation in lieu of arrest for certain misdemeanor crimes, and what I really want to emphasize is we need a presumption of release for arrestees, and that's really in line with the presumption of innocence. In addition, constitutionally the conditions of release must be the least restrictive conditions necessary to reasonably prevent imminent threat of serious bodily harm and reasonably ensure their return to court, and it also must be an individualized determination in each case. The other thing that I think is significant here is that we need to make sure that we don't just convert from an incarceration state to a supervision state. We have an awful lot of people released on enhanced supervision on electronic monitoring, and these are people who are moderate and low risk. I don't think that it necessarily addresses the issues of them coming back to court, adding all these conditions, causing them to miss work, imposing the cost of house arrest. That's not necessary in a lot of these cases, but enhanced supervision with daily testing and house arrest are being overused. There also should be a burden on the state to seek preventive detention where appropriate. If there are individuals who are too dangerous to release into the community then we need to have a full hearing on that and the state needs to be the one seeking to have that individual preventively detained.

Ideally, there should be a hearing 12 to 24 hours after arrest or within 48 hours of arrest at the very most for anyone for which the state seeks preventive detention. The individuals are entitled to due process protection in their preventive detention, and the constitutional standards include, at that full hearing, they need assistance of counsel, they have the right to present evidence, they have the right to cross-examine witnesses, the state must establish by clear and convincing evidence that preventive detention is the least restrictive condition that will reasonably prevent threat to the community and reasonably ensure their return to court. The court also should be required to make specific factual findings on the record to justify preventive detention. In addition, we need a 48-hour grace period after a missed court date to give a defendant the opportunity to reschedule without a warrant being issued. Some of our courts do practice this already in the sense that when a DA turns in an NCIC (National Crime Information Center) request for a warrant, often the court will hold it for a period of 2 to 7 days to see if that person does make an appearance or if we are able to contact them and get the case reset.

Our current system of pretrial detention is broken. It's unfair. We detain people based on their monetary ability to pay, not based on who poses a threat to the community or a risk of flight. It's costing our state millions of dollars to house individuals pretrial who do not need to be incarcerated, and when these individuals are released they often have to start completely over to find housing and employment. The social impacts on their family members, their children and our communities are even greater. We need legislation to provide more consistency across the state and within individual jurisdictions in courts, and we do appreciate the opportunity to be heard today.

Chair Harris:

Thank you so much, Ms. Grosenick and Ms. Bertschy. I'm going to go ahead and ask the Clark County Public Defenders to go and give their presentation as well so Washoe has to sit through yours, and then we'll kind of just do questions for the public defenders all together. Thank you.

Nancy Lemcke (Deputy Public Defender, Clark County Public Defender's Office):

Thank you, members of the Committee, for allowing me the time to speak to you today. The reason that I'm sitting here in front of you today is because I have been very heavily involved in doing a lot of the litigation that has been going on out of our office for the last almost 2 years now on the issue of money bail reform (Agenda Item X B-1), and to that end, the submissions that I provided to the Committee are briefing material, a lot of which went up to the Nevada Supreme Court, in two cases that I argued last fall in front of them on the issues that I'm going to be discussing today. There are amicus filings with that that are available for your review (Agenda Item X B-2). We had several amicus filers submit briefs on our behalf, including some law professors throughout the United States, who in their briefing material explained a lot of the constitutional basis for the claims that we were making. We had a brief submitted by a group of social scientists, and that brief in a very detailed fashion spells out some of the consequences to our clients when they are incarcerated due solely to their indigency, and then we also had another brief submitted by the Department of Pretrial Services. So, to the extent that you want to dig deeper into the details of some of the material that I'm going to cover, you are welcome to do that. Oh, and I might also add that one of the other documents that I provided you all is an excerpt from a federal habeas petition that our office is about to file. We filed one in the past and we're about to file another one, and it kind of very clearly sets forth the legal argument that underlies a lot of what I'm going to discuss with you today.

When we talk about the issue of bail reform, we're really talking about, at the end of the day, at least from our perspective, money bail reform. Those two terms have been used interchangeably throughout the years, but we're talking really about the issue of money bail and the issue of whether or not money bail is a mechanism by which people are being detained unnecessarily. The bail reform that we have sought and that we seek and that ultimately we would highly recommend that this Committee and this legislative body ultimately codify into law is a reform that would make sure that people are incarcerated pretrial who need to be incarcerated and that we would put an end to this kind of insidious practice of incarcerating folks simply because they're too poor to pay to get out of jail. With that in mind, we have basically three bail reform goals. They are to provide a prompt custody review for folks immediately after they're arrested and to provide a mechanism by which the government can actually detain folks when it's necessary for them to be detained, but at the same time make sure that people do not sit warehoused in custody simply because they cannot afford to pay their way out of jail.

It's important for me to kind of emphasize to this Committee what bail reform in our mind is not. It is not the wholesale elimination of money bail nor is it the wholesale release of everybody who's being detained pretrial in any detention facility throughout the State of Nevada, and I mention this because all bail reform is not entirely created equal. As I heard earlier today from some of the testimony that was given to the Committee, there's reference made to New York's bail reform and some other places in the United States, and I would caution you when you look at the statistics that derive from that reform to be mindful of what that reform actually is, because, for example, in New York which we discussed at some length earlier, you have mandated release, at least that's my understanding, for certain offenses regardless of the history of a particular defendant. That is unique in the fact that it really kind of did two things. For certain offenses, it did away with cash bail in its entirety and it mandated release for certain types of offenses and it took away discretion from some of the judges in making determinations as to who should be released.

What we are seeking here is not the wholesale elimination of cash bail, and again, it is not the wholesale release of detainees who are detained pretrial, but what it is for us—and forgive my kind of whimsical giant font, but this is a really important point to us—is that it—for us, this is about a process, a process that treats everybody the same and that allows us to achieve, or at least get close to achieving, those goals of ensuring a prompt custody review, making sure that the state can detain folks who need to be detained, but at the same time ending this kind of awful practice of having people sit in custody because they are too poor to get out. Why do we need a process in Nevada? This is really interesting, because Nevada law tells the judicial officers what to consider. If you look at the Nevada statutes, the statutes very clearly delineate that you should consider the length of time in the community, the severity of the offense, maybe your prior record, history of FTAs, but what the statutes don't do is they don't tell the judges how or when to consider those things, and the result, as I'm going to kind of get into, is that you have oftentimes prolonged means-based detention for people who simply don't have the means to post a money bail.

Well, how does this happen? You have a defendant who is arrested. At some point there is usually a money bail set. Oftentimes that's pursuant to a standardized schedule at booking. When a defendant is arrested and booked into custody, sometimes it's done at a probable cause review, which many judges do in chambers without the presence of the defendant or defense counsel. Sometimes it's done, say, at an indictment return when an individual is indicted by a grand jury and there is a hearing following the return of a grand jury indictment at which the prosecutor is present and the judge is there but the defendant and counsel are not. So, suffice it to say there is a procedure that is widely utilized in the State of Nevada whereby an individual is arrested and there is a money bail set, and the result of that is quite obvious based on everything that we've talked about today. The wealthy people who can afford to post that money bail are going to get out and people who are too poor to post are going to stay in. What's really interesting about this, and this kind of goes unmentioned a lot when we talk about bail reform, is that you have folks who

can pay to secure their freedom even when maybe the nature of their case and their background and whatnot warrant some kind of liberty restriction or even a pretrial detention, but they're able to walk out of custody because they can afford to walk out of custody when they have that bail money or that bail amount set at that very early time just immediately following arrest. Conversely, you have poor folks who are sitting in custody simply for no other reason other than the fact that they can't pay to secure their release, and as Ms. Grosenick mentioned in her presentation a couple of minutes ago, a lot of times this comes at a great personal cost to the individual detainee. You're talking about a loss of income, maybe a loss of job, an inability to make a rent payment or a car payment, or oftentimes even at least temporarily, a loss of your kids or your pets because you're not there to be able to care for them, so the kids go to Child Haven. I will tell you, it has not been totally unusual for our office, some of the lawyers in our office, to actually take in pets of our folks who get arrested and booked and they can't afford to get out.

But that's not the only cost that they bare. We know, and if you want to again have a more detailed accounting of this, that based on studies that have been done, many of which are mentioned in the briefing materials prepared and submitted by the group of social scientists who filed that lovely amicus brief on our behalf on our Supreme Court litigation, that it also works a profound detriment on the cases of the individuals who remain in custody during the pendency of their criminal case, and let me give you kind of a very classic example but a very common one, which is an individual charged with a particular offense, let's say it's a low-level felony, and that particular defendant may have a really good defense to that particular offense. Let's say they get a relatively low money bail set but they're still too poor to post it, so they sit in custody during the pendency of their criminal case. Well, you get around to a preliminary hearing or maybe even an early offer situation after the state has actually filed a complaint and the proceedings begin, and maybe that individual is offered, "Well, if you plead guilty to this reduced offense, we will agree to release you, give you credit for time served," or maybe, "If you agree to plead guilty to a lower level felony or a gross misdemeanor, we'll release you after entry of plea," and so the folks who are in custody are much more likely to go ahead and take that negotiation, even if that doesn't necessarily reflect the worth of the case or, even worse, whether or not the person is actually innocent because they are so desperate to secure their release that they're willing to settle for a resolution that is not just not reflective of the case but also far worse than what somebody who's out of custody and had the resources and the means and the opportunity to fight the case all the way through trial might get once a jury comes back with a verdict on that particular case.

There is a personal cost and a case-related cost to all of these folks who are sitting in custody simply because they can't afford to pay to secure their release, but there is also a financial cost, like a dollar cost, to the taxpayers, and forgive me for the numbers that I used. I tried to access numbers that I could find that were most accurate, and I accept Officer Suey's representation that $190 a day is high by his accounting. I know that Officer Ruiz mentioned that there is a daily cost that you could calculate associated with detaining these folks pretrial. But what we used as a benchmark was $170 a day, and we utilize

that number considering a healthy detainee. Obviously, that number goes up exponentially depending on whether or not somebody is sick and in need of treatment. As I'm sure this Committee is well aware, the Clark County Detention Center is the single largest provider of mental health services in Nevada, so there's an argument to be made that this number is artificially low that I'm using, but I certainly understand and take at face value Mr. Suey's representation that maybe it's not entirely accurate. But at least for illustrative purposes, take the $170 a day that we're spending to warehouse people simply because they can't pay to get out. Well, how many people might this be? I used, and again, this is just for illustrative purposes, $5,000 money bail, folks who are in custody on that amount or less, and I used that number because it's relatively low. We see people in custody—I dealt with a case 2 weeks ago, a woman who was in custody on $250 money bail. We see it go all the way up to as high as $1 million, $2 million, and obviously to no-bail holds. So, relatively speaking, when you see a $5,000 money bail setting or a $3,000 or $1,000, you're talking about a relatively low number that connotes a few things that you can kind of draw from that, conclusions you can draw from that setting. You're talking about primarily low-level offenses with folks who are probably lower flight risks and lower risks in terms of community safety. If we had a process in place that I'm going to speak to in just a minute where we didn't default to this money bail setting out of the gate and instead focused on whether or not individuals should be detained or released and the prosecutors would be required to specify whether or not they want someone in or out and the judges would need to make findings as to whether or not somebody should be in or out, many of these folks who are in on these low-level money bail settings would probably be released with conditions that would minimally assure their return to court and ensure that they don't endanger the community. I would add to that that money bail could be one of those conditions, but it would have to be set in an attainable amount that is an amount that these folks could afford, but it would be one of the tools that the judges would have in their toolbox to ensure return to court and community safety.

So, how many people would we be talking about? Well, when I argued this in front of the Nevada Supreme Court last fall, we pulled the jail statistics. At the time I did my Supreme Court argument, we had 268 detainees in Clark County Detention Center on $5,000 money bail or less. Let's just say for the sake of argument that 200 of those, if we moved to a system that was away from setting a money bail number at the outset and to a system where we talked about detention versus release, let's assume that 200 of those folks would be released, either conditioned or otherwise, but they would be released from jail. That would be a savings for people who stay in custody for 2 weeks to the point of their preliminary hearing of about $500,000 a month. If you're keeping them in custody beyond their preliminary hearing, and again, we're talking folks in jail on $5,000 money bail or less, you're talking about $1 million a month. Now again, I understand that we can have some debate over the actual dollar amount that's involved in jailing these folks, but at the end of the day we're looking at significant costs to the taxpayers associated with warehousing people literally because they are too poor to pay to secure their release.

The other result that we get when we see this wealth-based detention deriving from the protocols that have been utilized forever in the State of Nevada is it outright violates federal law. The Federal Constitution mandates that certain processes be followed. Those processes require that prompt custody determination and that they be done in a way that they help prevent this wealth-based detention. Because Nevada is not doing that, our protocol, as I have argued extensively in federal court and now to the Nevada Supreme court, they're unlawful. What does the lawful process look like, and Ms. Grosenick touched on this just a little bit. Well, number one, you've got to have an adversarial hearing at which the defendant, defense counsel are present. No more setting money bails in an ex parte fashion where defense counsel and defendant are not there. You've got to have a hearing that's adversarial where the stakeholders, namely the defendant and defense counsel, are there to be heard. Secondarily, the burden must be on the prosecutor, not the defense. The other thing that results from the fact that we have these immediate money bail settings either at booking or at the probable cause review that the defendant doesn't have any input in is they more often than not come to court in custody, and then by default the burden falls to the defense to show cause why they should be released. That's not the way it works. If the government wants to restrain liberty, then the government via the prosecutor needs to get up and tell the court that they want to restrain liberty, explain why they want to restrain liberty, and if they want to seek an order of detention, they need to specify that that's what they want to do. They can't throw out a random number that in their mind correlates to an offense or a defendant's background without regard to what that bail number means for that defendant. They have to be explicit and transparent in what they're seeking. They have to stand up and explain to a judge that they want to seek an order of detention, why detention is necessary, and it can be necessary to deal with one of two concerns, flight risk and community safety, and then if an individual is to be detained, a court has to find that detention is necessary as opposed to defaulting again to a money bail setting, adopting a numerical calculation that for the poor is going to mean detention and for the wealthy is going to mean release.

Well, when must this occur? Here's what I can tell you: it's got to be prompt after arrest. I was asked this very question by Justice Hardesty. I think it's a good one. There are two federal circuit courts, and I would also point this out because I've dealt with this a lot in the lower courts when I've argued on this, is that the federal jurisprudence that I cite in the briefing materials that I provided to the Committee, it reviews state and various municipalities, their protocols for dealing with the issue of pretrial detentions. When you see a federal case, don't assume that it is dealing solely with a federal standard that isn't applicable in Nevada. They are federal courts looking at state protocols and saying, "Hey y'all, this does not pass constitutional muster and here's why," and most of those protocols, at least the ones that I cited in my briefing materials, are almost identical to what we have here.

What have two federal circuit courts of appeals said about the timeliness? Two of them, the Fifth and the Eleventh Circuits, have said you have to have a custody determination no more than 48 hours after arrest. However, we have some federal jurisprudence that

says if you're going to offer money bail immediately upon booking, like we do here with the standardized bail schedule, or when you have these judges in chambers doing probable cause reviews and unilaterally doing money bail settings, if you're going to offer that at an early time for folks who can take advantage of that, then you have to have a custody hearing for folks who can't take advantage of that at a timeframe that is commensurate with what it would take for somebody to be able to bail out if they can afford to bail out. What I'm telling you in terms of timing is that that custody determination has to be made, at least by the accounting of the Fifth and the Eleventh Circuit, no more than 48 hours after arrest, but really if we're going to have a process by which we offer an earlier release opportunity by way of money bail to wealthy folks, then we've got to have it sooner and it needs to be at a time frame that is consistent with the time that it would take somebody of means to post money bail.

When we do these kind of reforms which are pretty simple and they're pretty basic, we achieve these goals of making sure that people who are arrested get that prompt custody review to which they're entitled. We make sure, really importantly, that we're detaining the people that need to be detained and that we're not allowing people to walk free simply because they're wealthy, and we're not forcing people to sit in custody simply because they're poor. It's really a win-win all the way around in terms of community safety and in terms of ensuring that the needs of poor folks are met. It would eliminate this really awful practice that's gone on forever around here of incarcerating people simply because of their indigency, and I did mention that I've argued this in front of the Nevada Supreme Court. I've filed one federal habeas petition on this. We ultimately had to let it go because our defendant pled guilty and the issue was mooted, but I will say this: I think that this is really this body's opportunity to get ahead of the curve on this. I am very cautiously optimistic. I argued my money bail case, made these arguments to the Nevada Supreme Court back in September. I'm still awaiting a decision. I am very cautiously optimistic that that decision will be favorable to us and that the Nevada Supreme Court will say, "Hey State of Nevada, to get in line with what the Federal Constitution requires, here's what we're going to have to do." So, this is this body's opportunity to get ahead of that curve and codify into law the processes that we have described that we believe are important to ensuring not only the safety of the community but to ensuring that poor folks are no longer treated differently than their wealthy counterparts when they get arrested.

Jason Frierson (Assistant Public Defender, Clark County Public Defender's Office):

Thank you, Madam Chair. For the record, Jason Frierson, today in my capacity as Assistant Public Defender. I did not come here more than to be an aid to Ms. Lemcke, but I will state—and I worked with Ms. Lemcke in preparing the presentation. In layman's terms, no one is proposing to get rid of cash bail. We are simply proposing that if the state is seeking to detain someone that they say it, and that they say why and that the court make a determination. This is something that has been done and is being done in many places, including small towns where the argument might be made that there's a lack of resources, but when we're talking about an example, and I think a conservative one, of

$1 million a month, we have lots of things within the criminal justice system that we could use these resources to take care of, whether it's mental health or more anklets or other services. I think in Washoe they mentioned the impact that this has on child welfare, where you're in jail for a weekend, if you don't have a relative now your children are in foster care, you lose your job, you lose your apartment, and all of these things come back on the community to pay for.

But I also want to note that I think this whole concept is based on the notion of fairness and dignity, and I feel compelled to say, on this side of the dais, we fell short today, and I don't believe that we should, and need, to have someone paraded with an anklet to make a point. I think in the future, if that's the point they want to make, if we're trying to talk about fairness and dignity, put the anklet on yourself. I believe that what we are talking about is reasonable and I think it takes into account and certainly values protecting the public but being responsible with taxpayer dollars.

Chair Harris:

All right, thank you so much. I'll go ahead and open it up to any questions for Washoe or Clark County Public Defenders.

Senator Scheible:

Question for anybody who wants to answer, because we've talked about a lot of the factors that scientifically or not scientifically tend to indicate that somebody will or will not return to court. We've talked a lot about prior criminal history, prior arrest versus convictions. We've talked about whether they have a stable address and employment, things like that, and what we haven't talked a lot about is the second piece that was in the Clark County Public Defender's presentation, which is community safety. What are the kinds of factors that a new bail system should be looking at for determining whether somebody presents a safety risk to the community?

Mr. Frierson:

I will say that the factors are already there, and I think Ms. Lemcke pointed out that the point isn't creating new factors. Judges know what they're considering, but the law doesn't say when and how and where, and so we're saying take the factor that you already know and let's put something into place that's consistently applied throughout the state about when and how you look at those factors. But I think that the Senator may want precise examples, like failures to appear, prior record, level of harm. I think we're certainly talking about low-level offenses when we talk about $5,000 bail. That frequently are just the autopilot, without any thought, without any rationale, but if Ms. Lemcke has examples, I think that'd be helpful.

Senator Scheible:

Maybe I can put a finer point on this question and use an example of something, an argument that I have seen, and I'll be frank that I'm not sure that everybody in the Clark County Public Defender's Office is making the same representations in court that we've heard here today about the policy and about the direction that the office wishes to go. Something that I've argued in court before is we have somebody who's arrested on a PCS charge, technically a felony, likely to be reduced down to a misdemeanor at some point, but that person has prior convictions for robbery with a deadly weapon and battery resulting in substantial bodily harm. In that case, do those prior convictions come into the equation when we're arguing whether or not this person is a danger to the community who's been arrested on a PCS but has those prior violent convictions?

Mr. Frierson:

I will point out that, having been back at the Public Defender's Office for a couple of months, I don't think that anyone speaks for the entire office, as with the District Attorney's Office, so the arguments that folks make are going to depend on the individual attorneys, but I think Ms. Lemcke has something to elaborate on.

Ms. Lemcke:

I think you ask a really good question, and it's one that I've gotten asked a lot when I've been doing this litigation. Those factors are things that absolutely should be considered. They're a valuable, compelling, important part of the equation. The problem is we've got to change the equation. In other words, what we're saying is when a prosecutor comes to court and sees those things, as I'm sure you do on a very regular basis, and you're balancing a low-level offense with somebody who's got an extensive criminal history and you're trying to middle that ground. The answer, unfortunately, is not that we set a money bail number that for poor folks means they're going to go into jail and wealthy folks who can post that would get out. What we are asking is that the prosecutors stand up and be transparent about what they want. Let's take for example the hypothetical that you gave. If you as a DA make a determination that you want this person in because you think that, despite the nature of the charge as being relatively low-level, their history suggests they're not going to come back to court or they're going to be a flight risk, if you believe in your mind that you can establish by clear and convincing evidence that detention is the least restrictive way of managing whatever concerns you have about flight risk or community safety, you should make the argument that this person needs to be detained. If, however, you make a determination that, okay, well, the offense is nonviolent, it's not a high-level offense but the person has an extensive criminal history, then maybe you say, "I want a liberty restriction, Judge. The offense is not all that awful but the defendant's background I think warrants some kind of monitoring or some kind of other supervision in the form of house arrest or otherwise to ensure that this person doesn't continue to endanger the community and/or returns to court." That's the way we want to see the argument

fashioned, and maybe the judge says, “You know what? Yeah, this person is not necessarily entitled to unsupervised release. I’m going to set some release conditions that I think are minimally necessary to ensure return to court,” of which money bail could be one. We want that to be a tool in the toolbox of the judiciary who are deciding these issues, but then that money bail would have to be set in an amount that would be attainable for that defendant. So in other words, instead of talking about the money bail first when you look at those factors, that we talk about money bail after you have made a determination as to whether or not you want to seek a detention, and if the judge is considering the issue of whether or not detention is appropriate, if the judge—either you don’t elect to seek a detention order or the judge declines to find that it’s necessary, then we talk about money bail as an attainable release condition.

I know that’s a long-winded response, but I think it’s important to point out that we’re talking about a process that will take into consideration the factors that you pointed out but in a different way.

Senator Scheible:

Okay.

Chair Harris:

Any additional questions? Okay, thank you both so much, both down here in Las Vegas and up there in Carson City. We appreciate you all being here. At this time I just wanted to take a second and thank all of the members as well as our staff for hanging in there. I know it’s been a long afternoon and I think we can see the proverbial light at the end of the tunnel here, so just hang in here with me a little bit longer and we’ll get through it together. Thank you all for being patient.

At this time I’m going to go ahead and call up the district attorneys’ offices, John Jones here in Clark County and Ms. Noble, I believe, and Adam Cate up in Washoe County, to the table. I’ll go ahead and let Mr. Jones start since I started with Washoe on the public defenders and they do everything opposite, so here you go.

John Jones (Chief Deputy District Attorney, Office of the Clark County District Attorney):

Thank you, Chair Harris, members of the Committee. I know it’s been a very long day today so I’ll try to be as brief as possible. I want to start off by saying the district attorneys throughout this state do embrace reforms to the criminal justice system that promote and advance equity in the system and protect public safety (Agenda Item X C). We all benefit when people trust the system and everybody believes that the system is fair and treats people equally. We’re all safer when that happens. In listening to the public defenders’ presentation, I think we can agree on their bail custody goals. We agree that people

should have prompt custody reviews. We agree that poverty-based detention is bad. But if you want a quick fix right now to our bail system, from our point of view, that being the Clark County District Attorney's Office, the easy fix is to get rid of the use of standard bail schedules. In other words, when somebody gets booked into jail, they should not be able to bail out of custody before ever seeing a judge.

Now, we have in Clark County specifically worked together quite extensively. You've heard a lot this morning about our new Initial Appearance Court, and that was a brainchild that was a couple years in the making, and Judge Sullivan talked about it at length and there's more on it online with the other documents. It started as an idea in the Criminal Justice Coordinating Council that we have in Clark County. That is a council of DAs, judges, public defenders, defense attorneys, police officers, Parole and Probation. It's a whole mix of people in the criminal justice community who got together and over the course of years came up with this idea. Now, I'm not going to sit here and pretend that we agreed with everything that went on in that committee, but we all worked collectively and got to the Initial Appearance Court, which I want to take the opportunity to invite you all to come see. It really is interesting and I think it will help answer a lot of your questions about some of the bail practices specifically in Las Vegas Justice Court. But I want to hit, in talking with other jurisdictions as well, successful pretrial release reform has been a collaborative effort. In the jurisdictions in which we've had the most success is when everybody worked together to come up with a model that works for everyone.

We start off by focusing on what needs fixing. I have represented the DA's office at the Legislature now for almost 10 years and I've seen a lot of what I call national issue creep. In other words, there are bad practices throughout the United States that people see on TV or read about in articles, and people assume that those same practices are going on here in Nevada, and what I appreciate about this Committee is actually meeting with the local stakeholders to see exactly what's going on on the ground here, and I can tell you we're actually doing fairly well compared to where other states were when they initiated bail reforms in their various states. Talking to people in New Jersey, people were waiting weeks, a week or longer, in their jails before seeing a judge prior to bail reform there. We are nowhere near that in Las Vegas as justice courts specifically.

Again, the use of standard bail practices is one of the things that we need to be fixing. You've heard proponents of bail reform indicate that bail means jail, clout means you're out, indicating the person who can make bail before ever seeing a judge who can determine their risk to reoffend or reappear are out of custodies. We agree that this is an unfair practice. If you are at risk but have means, a judge should assess conditions on you and to mitigate your risk to the community or your risk to not appear in court just like they would anybody else. To that end, we have insisted on the end of bail schedules, but I will admit, and we'll talk about that soon, there is a tradeoff with respect to the end of bail schedules.

I also want to talk about the incorporations of Marsy's Law and victims' input into release decisions. It is now in our Constitution that the safety of the victim and the victim's family must be considered as a factor in both bail and release conditions. That is a constitutional requirement in Nevada and that has to happen, and that sort of leads me to what we're really after all along which is an individualized assessment of risk. Everybody who is arrested should have their individualized risk assessed prior to any implementation of bail. Now, how we do that in Clark County, specifically the Las Vegas Justice Court, is through our Initial Appearance Court, and this again is a contested hearing where defendants are provisionally appointed the public defender, the DA is there, the judge is there. We look at the pretrial risk assessment, the score on that, the nature of the charges contained in the declaration of arrest and any other factors that are outlined. Again, this is a contested bail determination. We're already above the curve at least in Las Vegas Justice Court with respect to making these release determinations. They're generally done within 24 hours. I think the goal is ultimately to get that to a 12-hour period, but right now from what I understand we're between 12 and 24 hours from arrest a defendant is in front of that judge in Initial Appearance Court, and I will point out that that 12 to 24-hour period is not a lot of time for a victim to then come and speak to a judge, to arrange for babysitting and things like that. It does happen very quickly from a victim's perspective as well.

We are getting some positive press for what has been happening in Initial Appearance Court, and again, this is a collaborative effort through all of the justice partners. This is something that's been hinted at, and DAs cannot stress enough, in every jurisdiction that we've talked to in which bail reform has taken place, everybody has said focus on pretrial services. Everybody has said it, in New Jersey and other states. Effective pretrial services is the key to making all this work, and some jurisdictions like the District of Columbia, D.C., focus on defendants' needs, so they have nurses and career counselors in their pretrial services that help get defendants to services quicker, which is a good thing. Additionally, active monitoring: if somebody is placed on house arrest then they should be actively monitored to see where they're going. Are they following the judge's direction?

I have this example here of somebody who was placed on house arrest, and again, this is generally, I believe, a month and a half period. He's supposed to be at his house, but you can see he literally traversed the entire valley during this time period, but nobody knew this was happening because the defendant was not being actively monitored. If we're going to engage in bail reform, we need a pretrial services that actively monitors defendants who are released, especially what I would call the marginal, the moderate risk to reoffend, where they're probably not going to remain in custody but yet we still should be keeping an eye on them for public safety.

Judicial discretion: some of the bail reform efforts that have not succeeded have been those that have tied the judges' hands the most, and the ones I'll point to are the Bail Reform Act of 1966 historically. Additionally, Georgia's mandatory minimum bail schedules where a judge had to set certain bail in certain cases, and again, as you've already discussed, New York's current bail reform effort which, again, granted there has

been no statistics yet from that, but we have anecdotally from listening to DAs and public safety officials there that it is not working the way people thought it would work. We cannot hamstring judges. Again, they need to make case-by-case individualized determinations and focus on risk.

Finally, I want to hit again, because it is so important, if we're going to endeavor to amend our bail statute we have to focus on resources. Again, jurisdictions that have undertaken this effort, all system partners have gotten increased resources to deal with this issue pretrial. System partners: so, public defenders, judges. This is not something that you can just slap on the criminal justice system and not expecting it to have an effect, especially if you're adding an additional contested hearing where the state has a high burden. In our office specifically, we already have some of the highest caseloads in the country, almost double Harris County, Texas and Maricopa County, which were our next closest counties in terms of felony caseload to attorney in the DA's office.

So with that, Chair Harris, I am happy to answer any questions. We are willing partners in this effort, but again, the easiest way to go about fixing bail right now is to get rid of standard bail. Thank you.

Chair Harris:

All right, thank you so much. We'll go ahead and go up to Carson City and invite Mr. Cate to give his presentation, and then we'll do a round of questions after that.

Adam Cate (Deputy District Attorney, Office of the Washoe County District Attorney):

Good afternoon, Madam Chair, members of the Committee. Ms. Noble had court this afternoon so she had to leave, so you guys are stuck with just me. With regard to what Mr. Jones said, it's mostly a me-too. The Washoe County District Attorney's Office agrees with much of what was said, and I just want to provide a kind of overview of how things operate here in Washoe County up north, and they are a little bit different from how it's done in Clark County, and so I'll just go over that process for you guys.

Unlike what's going on in Clark County, Washoe County does not use bail schedules (Agenda Item X D), so it simply does not exist in Washoe County that if you are arrested for a certain crime your bail is a certain amount regardless of how much you can afford. For instance, several years ago when I started at the District Attorney's Office, if you were arrested for burglary, your bail was $20,000 from the beginning. Whether you had $5 in your pocket or whether you had $1 million in your pocket, it didn't matter. That simply no longer exists in Washoe County. Each person who is arrested, an individualized determination regarding their bail is made by a judge, normally within 12, a maximum of 24, hours of their arrest, weekends included. It's not an in-court hearing, but a judge is

reviewing the person's pretrial risk assessment, the PC sheet and other information shortly after their arrest to make an individualized determination regarding their custody.

Now, how does this work? Washoe County has a robust pretrial supervision program. As Mr. Jones was talking about, this is one of the key components of how we can be in a situation where we can feel comfortable releasing people who may not be a minimum risk but they may prove as a moderate risk. Well, how can we feel comfortable releasing them from jail? It's with the fact that they can be supervised while they are awaiting continued hearings, and the program of pretrial services is important to any bail reform here in the State of Nevada. So, how does this work? If you get arrested in Washoe County, you get driven to the jail and you go through the booking process. You have your photograph taken, do your fingerprints. The next person you see is the nurse who sees if you have any medical conditions, and then after that the person you see immediately—almost 24 hours a day, there may be a couple hours in the middle of the night on certain nights where there's not a person there—is a representative from pretrial services, and they perform that interview with you that Dr. Austin was talking about. We use the Version 2 of the pretrial risk assessment tool. You are interviewed at the jail immediately after you are arrested, and they go through and they create that Nevada Pretrial Risk Assessment tool for the individual person. Now, on weekdays the judges review these risk assessments along with the PC sheet, the probable cause sheet, in chambers. On weekends, they're able to log in from their homes or wherever they may be, the judges, and make a determination. Twice a day judges are looking at new people who have been arrested and placed into custody and making a determination about what release conditions they should have.

So, initial arrest by law enforcement. This is an example of a PC sheet with the names and personal information redacted. You'll see here that they were arrested, it's difficult to read handwritten, but on February 13, 2020 just before 2 p.m. in the afternoon, and so that's the time they're actually placed into custody. They have to then be driven to the jail, go through the booking process and they meet with the court services personnel. The defendant is interviewed at the jail, and this is the assessment that was created in this particular case. As you'll see, ours has 10 questions. It does ask about the employment, the residential status and verified cell phone, and I know that in Washoe County the pretrial services officers who are doing this interview, they do take steps to verify this information by calling numbers that are provided by the arrestee to determine whether the information they're providing is valid. So, this person was arrested just before 2 p.m. By the time that they had been through the process at the jail and determined their risk assessment, probably that afternoon session on that day had already occurred for the judge's review, but the judge did—the pretrial risk assessment was completed within 24 hours certainly, and then the judge reviews it. In this particular case, the judge reviewed the pretrial risk assessment, the PC Sheet, and they made a determination to impose bail of $5,000 with enhanced pretrial supervision if the person was released. You can see that the judge made that decision at 8:29 a.m. the day following the suspect's arrest, and so this occurred within 24 hours of their arrest.

All that happens before any charges are filed by the District Attorney's Office. Charges are often filed by the District Attorney's Office within 48 hours of someone's arrest, certainly 48 business hours, and are required statutorily under most circumstances to be filed within 72 hours. The District Attorney's Office is not involved in that initial process. It's the judge in chambers based upon the information they have making an initial determination about the appropriate release conditions.

What happens if a defendant is not satisfied with the decision that the judge made initially? They can request a bail hearing, and bail hearings happen all the time in Washoe County. On a daily basis, we are arguing about the release conditions of suspects and defendants. At this point, they've been formally charged so they are defendants.

So, what do we do? We comply with Marsy's Law, and if a victim has requested notice of any changes of a bail then we notify the victim before the hearing. That's why there is a bit of a delay so that we have the opportunity to notify the victims pursuant to the Nevada Constitution. But after that, we have the contested hearing, an adversarial hearing. The defendant is present in court represented by counsel and a member of the District Attorney's Office is there to represent the state. In Washoe County, individuals who pose a low risk are quickly released without monetary conditions. You'll see this individual scored a 5, which actually puts them in the moderate range. Nonetheless, pursuant to the matrix, the court service personnel has the opportunity to simply release that individual without ever having the judge look at it to make a determination. In this case, the person was released the very same day they were arrested, and as you saw in the stats from Washoe County Sherriff's Office, this is happening on a regular basis. Every single day in Washoe County low-risk individuals are being released without monetary conditions or without having to go before a judge. But even Dr. Austin, who created the tool, will tell you that reliance upon the tool alone is misplaced. In this particular instance, the most serious charge was battery with a deadly weapon. The suspect scored a 6 on the pretrial risk assessment tool. In particular, this was a case of mine, the suspect shot someone in front of a Black Bear Diner at 11 a.m. on a Sunday while there were families having brunch. There was about 400 witnesses to this instance, and the judge made a determination that this pretrial risk assessment, in this case it's not accurate. This person poses a risk to the community, and so they were able to set a bail based upon the specific circumstances of this offense. There's been some discussion about judges making a decision about whether to detain or not detain, and I would just urge the Committee to review Article 1, Section 7 of the Nevada Constitution. It says we can't do that. Unless we're going to change the Constitution, you can't simply say, "This person is detained." Except for murder, they are always entitled to a bail.

For high-risk offenders, the bail amount should reflect the threat that the defendant poses to the safety of the victim and the community, as well as their risk of flight. This amount may be different based upon the financial circumstances of each defendant, and if we do—and it seems that everyone here agrees that certain individuals need to be detained based upon the certain circumstances of their offense or their past criminal history or

whatever the factors may be. If we do agree with that, then under our current system we must be permitted to be able to set bail at an amount that a person may not be able to afford, and that concludes the Washoe County presentation.

Chair Harris:

Thank you very much, Mr. Cate. Are there any questions from Committee members?

Vice Chair Nguyen:

I know Mr. Jones was really upset that I wasn't going to ask something. You had talked about some of the things that we're doing down here, and when I say we, I know I live down here, in the Las Vegas justice courts as far as wait times and trying to improve those and the things. Do you have any indication on what's going on in the Henderson Justice Court or the North Las Vegas Justice Court or some of these other areas?

Mr. Jones:

Thank you, Assemblywoman Nguyen. I know they are also engaging in efforts to expedite their release decisions. They may not be quite where Las Vegas Justice Court is. I will say they have a different resource level than Las Vegas Justice Court at this point, and that kind of takes me back to my slide about working together (Agenda Item X C). I think the best way we can go about this is to enable each jurisdiction to come up with some type of expedited bail and release determination that works for their particular jurisdiction. I think the state can set some parameters, including timeframes and the like, and then allow each jurisdiction to come up with a model that best works for them. We sort of started a framework of this at the Legislature last session and then sort of lost time there at the end, but I think that's the best way to go about this, especially in a state as diverse as Nevada where you have counties with literally one district attorney and you have Clark County with Las Vegas Justice Court where you have hundreds of attorneys. But I think working together, if we have coordinating councils in each jurisdiction that can come together and work collaboratively on a model for that jurisdiction, I think that's the best way to get these expedited decisions made in those jurisdictions.

Chair Harris:

Any additional questions? Okay, thank you all so much for being here. At this time I'm going to go ahead and invite up Marc Schifalacqua. Thank you so much for hanging in there and being with us.

Marc Schifalacqua (Senior Assistant City Attorney, City of Henderson):

Thank you, Chair Harris. I want to thank you very much for inviting me here today. I have the privilege of leading the Henderson City Attorney's Office's Criminal Division. We

handle all misdemeanor crime that occurs in the City of Henderson. I'm joined here today by Elizabeth Anderlik, who is also a prosecutor in the office, and David Cherry, who is one of our heads of governmental affairs, I'm sure you know, so thank them both for being here. I put a quote up when Ms. Anderlik and I were going through this, and I think it's a good one (Agenda Item X E-1). It's from Eleanor Roosevelt, and it says, "Justice cannot be for one side alone, but for both."

I think this whole discussion is a tough one. It may not be complicated, in a way. I think we all know where we want to go, but there is a lot of things to weigh here on both sides, and part of my point here today is just to show you what those weighty things may be. So, the balance we have: we have defendants' rights enshrined in our Constitution. We now have victims' rights as well enshrined in the Constitution. Their rights are not less than defendants'. They're right up there with them, so when we're considering these issues, we need to look at both sides. We also need to look at the fact that we have various public safety concerns when we're releasing people, but then again, we have presumptions of innocence. This is America, and you're not guilty until a judge or a jury says you're guilty.

In my opinion, the problem is somewhat straightforward. We have some defendants who pose a very low risk to reoffend or to appear who are being held in jail on a very modest amount of bail and that's really the only reason, and on the other side of the penny here, we also have another injustice going on and it's happening daily. We're having people who pose a significant risk to our community, a significant risk to victims and a significant risk to witnesses who are being released really without anything. They're posting bail very quickly upon being arrested. They're not being told to stay away from a victim. They're not being told anything. It's happening before a judge can review, and that's also somewhat of an injustice that's going on. So, those are our two issues I see.

I'll run through this quickly. This was also when I think the pendulum swung too far, and New York has had their laws for about 2 months now and it's had heavy backlash. It eliminated cash bail for most misdemeanor and some felony offenses. No matter the person's background, bail could not be instituted by a judge. A judge's hands were literally tied on many offenses, and so the support after certain cases came through in the last few months has really plummeted in New York. This was a poll by the *New York Post*. It had a lot of support, 55 percent support, now down to 38. More people oppose now than support in New York, and it's simply because certain rights weren't respected. People don't feel like victims' rights were put up there, so it's not turning out very well. This is an article in the *New York Times* from a few weeks ago discussing that, and also Mayor de Blasio, who was a strong proponent of this, has even acknowledged they have to go back and fix this. They have to give judges extra discretion. There are parts of this that are not working. This is a list of some of the offenses in New York where you can never impose bail. I just took some of them—this is from a CBS local news outlet in New York City—and you'll see on there that there's several hate crimes that are even—could never impose bail. Robbery was a hate crime, coercion is a hate crime, stalking, even if it's more

than one count, and a judge doesn't have the option, and so somebody arrested for one of these offenses currently in New York would simply be processed out without any opportunity to have bail regardless of that person's background, and frankly, regardless of the facts of the incident case.

This has been mentioned, but I wanted to put it up there so it's there, and it's funny. Many times we have constitutional amendments. They don't happen very often, but when they do there's always a statutory scheme that follows and says, "Here are the rights in the Constitution, but this is how we enforce those. Here's the mechanisms." We don't really have that in Nevada yet. We had Marsy's Law passed but we need some laws to really give them some meaning. Every person who's a victim of a crime is entitled to the following rights: to be treated with fairness and respect, to be reasonably protected from the defendant and the persons acting on the defendant's behalf, to have the safety of the victim and the victim's family considered as a factor in fixing bail and conditions of release, and a right upon request to bring these up to a court. The question is, is this part of the Constitution being respected right now? Functionally, it really isn't. The fact that somebody can get bail very quickly on a violent case, a victim-based case, and a victim really doesn't have much, if any, of a mechanism to express to a judge, "I need a no-contact order. Please don't have this person who's been stalking me come to my work, come to my kids' school." Without that opportunity at the beginning—and remember, it says fixing bail and conditions of release. That's the get-go, that's the start of the case, not some other time later on. We're really taking a voice away from a victim who has a constitutional right to do so.

I wanted to give a very quick example of something that happened to me. I'm the Chief Prosecutor of the City of Henderson. My name is on every criminal complaint in the City of Henderson. I was helping a newer attorney on a particularly difficult case. It was a battery/harassment type of a case, and so I went to court with her. We worked through it. We got to a very good resolution, I thought. This was on the day of trial. The victim of the crime didn't see it that way. He was angry. He was agitated. He was talking somewhat irrationally. He was talking about violence and guns throughout the proceeding. We went to lunch afterwards, me and my coworker, and I went to the men's room, washed my hands and came back, and he's sitting with my coworker at the same booth where I was just sitting. He was angry. He was upset. He eventually moved and somewhat blocked us in using a stool. When I explained to him that, "I really can't talk to you about this right now. I'm more than happy if you'd like to call the office, but we're at lunch now and this really isn't appropriate." He got very angry. He threatened me. He threatened my colleague, picked up the stool, threatened our safety, and it wasn't necessarily, frankly, about me. My coworker, who is African-American, was told that she was a racial slur at that point. It scared her, it scared me, and at that point he left. We reported it to police and the next day he was arrested. This was a Friday. He made bail on these accounts pretty quickly, within that same day. My coworker and I didn't have the opportunity at that point of the proceeding to really do much. We couldn't ask the judge for a no-contact order. I suppose I could have called the judge personally, they all know me, but I didn't

want to misuse my position. So, he's released. He could drive by my home. He could come to my kid's school. He could do the same to my colleague. I had been threatened before so I kind of dealt with it. My colleague had not, so we had to work on a safety plan so she felt safe at work. I reached out to the District Attorney's Office. They did a phenomenal job, particularly the prosecutor who argued the case. Ultimately, they put it on calendar and were able to get us a no-contact order, but that was 2 weeks removed. This isn't about me, but I did want to say that story because, as the Chief Prosecutor in Henderson who knows every judge, who knows every police officer, if I couldn't get a no-contact order right away, I don't know what hope there would be for somebody who doesn't know the system maybe like I do. So, I do ask when we're talking about this whole solution if we could try to work in some part of the victims' rights into this so they can have a voice before that bail release decision is made.

Long-term solutions: we spoke to some folks in New Jersey. I think they actually have a very good program there. It took a long time and they're a little different than us, but the first thing they did was change their constitution. Their constitution reads almost the same way ours currently reads in that all offenses are bailable. They changed that to allow a pretrial detention system, which I do think is a good system, frankly. I don't see how we could do it currently, but I certainly would support a change in our Constitution. All parties work together, more people are released under that system, but for the folks that we know are violent or know are going to reoffend, there is a mechanism to detain them pending trial, and it seems to be working and has the support of both the prosecutors and the defense bar as well as the ACLU.

That was a long process, though, so I don't know if we could do that this session. Let me recommend some things very quickly for this session and then I'll leave it back to you. We do agree with the quicker bail determinations. We do think the risk, the pretrial risk assessment tool, it must be used, so we do need to use it. I don't think it's appropriate though to ignore a defendant's prior criminal history or the facts of a case. That gives you so much insight as far as a judge. I know there's been a lot of discussion about low-level crimes. A lot of the crimes that we deal with, they may be considered low-level because they're at the misdemeanor level but they're certainly very important to the community: stalking, TPO (temporary protection order) violation, domestic violence, assault. What we could do, frankly, is we have the pretrial risk assessment being done, and we could not allow bail to be applied in any standard way until that is done, and as part of the pretrial risk assessment have that person who's looking into the case anyway and compiling this call the victim, see if they are requesting anything. "Are you requesting a no-contact order? Is there anything you want us to know about? Is this the first time or not?" We could do that and then the judge would have that information when he or she is making a bail decision, or we could allow simply a timeframe for a victim to directly contact a court. Overall though, if we go to New York and we simply agree to OR everybody coming in on certain crimes, I do think you're going to see a chilling effect on people wanting to report crime. Just because it's a certain level in our system doesn't mean it's not important to them.

That being said, I do want to thank you. I do think bail reform is needed, I'm just requesting that we work in some victim protections because it's not there right now. Thank you for your kindness and your time today.

Chair Harris:

Thank you. Are there any questions from Committee members?

Vice Chair Nguyen:

I know that Henderson hasn't yet incorporated the pretrial risk assessment, but I do see some representatives from the City of Las Vegas here and I know that they have been using the risk assessment. Is there any reason why you guys haven't done that, I guess, sooner rather than later, or are you looking to what they've done? I know they're collecting data so they have actual information on how that's working.

Mr. Schifalacqua:

Absolutely. A plan is being developed with both the court and the Henderson Police Department, who are really the main drivers, to do that. As far as I know, the City of Henderson will be on track to complete that by the deadline that the Supreme Court set.

Vice Chair Nguyen:

And then just another question. We had talked a lot about peoples' wait times, and I know Henderson tends to have complaints actually sometimes quicker than they can address pretrial bail. What kind of wait times do you have between the time someone is arrested and when they go before a judge or anyone in a contested hearing?

Mr. Schifalacqua:

Absolutely, thank you for the question. Anyone arrested today up until 9 p.m. will be seen tomorrow. That works every day of the week except the weekends. If you are arrested, say, Thursday, it will be the following business day, which would be Monday, but any arrest during the week up until 9 p.m., it's the following day. We have a goal of getting our criminal complaints filed at the same time so they can be arraigned then as well and any bail discussions can occur then.

Vice Chair Nguyen:

And then do you keep any kind of information, or would that be something we'd need to get from the Henderson Detention Center with respect to how many people are being held? Obviously you guys are dealing with misdemeanor crimes, so how many people are being held on $650 bail?

Mr. Schifalacqua:

Sure. I'd be more than happy to try to get those numbers for you (Agenda Item X E-2).

Vice Chair Nguyen:

Thank you.

Mr. Schifalacqua:

Of course.

Chair Harris:

Any other questions? All right, thank you so much. I'll go ahead and call up Robert Langford of Robert Langford & Associates. Thanks for sticking with us, and go ahead and start when you are ready.

Robert L. Langford, Esq. (Robert L. Langford & Associates):

Thank you very much. I'm a private practice attorney and I primarily do trial work, and I pace myself for the jury, so if the jury takes a bathroom break, I take a bathroom break; if the jury had something to eat, I get something to eat. That way I know what they're feeling. Right now I'm really hungry and I have to go to the bathroom really bad, so I'm going to be quick. First, let's talk about the question that was just asked about the timing in Henderson. Okay, so if you're arrested on Thursday, you don't even get into court until Monday, all right, and that's one of the reasons that universally, everybody, the first thing they talk about is how quickly are we getting people in to get that custody issue addressed, because the magic number is 3, 3 days. If you are in custody 3 days, the odds are astronomical that you're going to lose your house and lose your job, both your house and your job, and that is just something that cries out for immediate change. You already heard from Ms. Lemcke that that number at the most is 48 hours around the country, and then if you figure in once there's a custody determination made, then that person still has to be processed out of the jail, you're adding another day. That's why the Las Vegas Justice Court chose 12 to 24 hours every day, 7 days a week, and that's what the law in Nevada should be because that's what the United States Constitution requires.

Also, it's been said, "Oh, well, we can come up with several models of working this whole issue out that would help jurisdictions around the state." Wait, so I'm going to be treated differently if I'm arrested in Winnemucca than I would be if I'm arrested in Las Vegas? That should not be the standard. The standard should be that every citizen in the State of Nevada is given the same rights as any other citizen. You're not going to lay in a jail cell in wherever just because, well, they can't get around to it. Modern technology gives us the ability to do these hearings remotely and quickly. Also, be careful when you hear

someone say, “Focus on the resources,” because when somebody says, “Focus on the resources,” down the road they’re going to be saying, “Oh, this is going to cost way too much money for us to ever implement and so we can’t do that.” Judges in the United States of America have been dealing with custody issues every time they hold court in a criminal case. Every time they hold court, it always can come up any time and it can be modified at any time. This does not require a huge outlay of resources to fund this, not to mention the fact that there’s a tradeoff of resources. Las Vegas Metropolitan Police Department has told you what their current number is to house somebody every day, even as they say, as Mr. Frierson said, “Wouldn’t it be nice if we could take that money and spend it elsewhere?” Could spend it on the diversion program that Metro talked about earlier, which is a terrific program. Isn’t that a better use of our money than warehousing people?

Cash bail: there is no way that cash bail, cash money bail—there is no system you can come up with that’s going to be fair. So first off, when they say eliminate the standard cash bail, absolutely. Number one, it’s unconstitutional because it does not take into account a burden placed on one person being equitable to another person and so it’s a violation of the equal—I’m an attorney and I’m drawing a blank because I’m hungry. I want to get out of here. So, it’s a just a constitutional violation. Everybody, I think, agrees we got to get rid of the standard bail schedules wherever they’re used in the State of Nevada. I agree because I’m a citizen. I don’t want a system that’s not safe. Yes, I agree that judges should be reviewing the custody status and that we shouldn’t just have standard bails which says, “Oh, you got a lot of money? We don’t care. Go be whoever you are again, and here’s just the cash and so you are out.” No, we want a system that’s safe.

New York. New York. You’re going to hear New York, New York, New York. Okay, New York became effective January 1, 2020. They started complaining about it—the police started complaining about it, the bail industry started complaining about it—within about 3 weeks, and that’s when they came—3 weeks they came up with, “Oh, 47 percent increase in auto theft cases,” really? I got to tell you that if right now we went and cherry-picked police statistics and said, “Sherriff Lombardo, we’re only going to look at 3 weeks here of statistics,” okay, I promise you, he would accurately tell everybody, “Hey, crime statics—anybody will tell you crime statistics ebb and flow and you’ve got to look at crime statistics over a longer period of time,” and I’m not here to defend the New York statutory scheme. There might be problems with it. Thank goodness you can see those problems and come up with something that’s better than New York. Nevada, of course we’re better than New York. How many people move here from New York? My point being that—but don’t also fall victim to what’s happening there where the bail industry is funding a huge campaign against bail reform, and that’s what’s really happening. They’re cherry-picking cases. They’re anecdotally coming up with cases of this lady who went out and then committed 10 crimes right after. That is not something that we should be susceptible to here.

And so, my request is that you also look—lastly, wrapping it up, Pretrial Justice Institute. Interesting that the advocate for Aladdin Bail Bonds brought up the Pretrial Justice Institute and their philosophical rejection now of the risk assessment tool. That is huge. Pretrial Justice Institute has been around for 44 years and they have looked at this backwards and forwards, and they have looked at things like over-conditioning. They have the statistics. I absolutely would invite you to maybe even call somebody from Pretrial Justice Institute that can help with those kinds of things. They have statistics on how quickly somebody needs to get out to keep their house, how quickly we need to go back in and possibly revise something if there's too many conditions to where the person can't get out. They are an amazing resource. In fact, several judges from the Las Vegas Justice Court attended a boot camp prior to the implementation of the Early Appearance Court, and the judge who was judge for that court last year and the judge who was the judge for that court this year both attended and came away with some terrific ideas about it. Las Vegas is doing it right, and I hope that there's a statutory scheme that allows even somebody living in Pioche to get the same kind of rights and respect through the law that somebody in Las Vegas gets. Thank you.

Chair Harris:

Thank you, Mr. Langford. Are there any questions from the Committee? Okay, we appreciate your time. We'll go ahead and close out agenda item X and open up agenda item XI, which is just a quick discussion on some potential topics and dates for the next meeting. I just want to inform Committee members that for the next meeting we'll likely be talking a bit about jurisdictions who've repealed or walked back their pretrial release reforms, which we got a little bit of today. We will be receiving some presentations from community members and community groups and other concerned persons, and we also have a pending invitation to the San Francisco District Attorney who—he recently ended cash bail and kind of moved to a risk-based system, so we're hoping he might be able to come down and tell us a little bit about how that's working.

As far as the next date for the meeting, I believe April 21, April 28 and May 11 work for all members. Does anyone want to express a preference as to one of those three dates?

Assemblyman Flores:

I have a hearing on April 21 so I would prefer April 28. But again, that's just me being selfish.

Chair Harris:

Anyone else? Okay, we're going to go ahead and schedule the next meeting for April 28 at 9 a.m. I will make sure that this location is still available. If not, we may be in a different meeting room, but please keep an eye out on our interim committee website for that information, but we'll go ahead and say April 28 at 9 a.m.

With that, I'll close out agenda item XI and open it back up again for public comment. Is there anyone here or in Carson City who wishes to give public comment at this time? Thank goodness. All right, everybody have a great day. This meeting is adjourned at 2:19 p.m.

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	Mary Walker	Public Comment
Agenda Item IV	Jordan Haas, Secretary	Draft Minutes of the January 21, 2020 Meeting
Agenda Item V	Judge Diana Sullivan, Justice of the Peace, Las Vegas Township Justice Court	Overview of the Las Vegas Justice Court's Pretrial Release Process
Agenda Item VI	Dr. James Austin, President, JFA Institute	Presentation on the Design and Validation of the Nevada Pretrial Risk Assessment
Agenda Item VII A-1	Retired Deputy Chief Richard Suey and Ta'mara Silver, LVPMD	Presentation on the Pretrial Jail Population of the Clark County Detention Center
Agenda Item VII A-2	Martina Bauhaus, Assistant General Counsel, LVMPD	Follow-up Information from LVMPD
Agenda Item VII B	Captain Peter Petzing, Washoe County Sheriff's Office	Presentation on the Pretrial Jail Population
Agenda Item VIII	Lissette Ruiz, Officer, LVMPD	Presentation on Law Enforcement Assisted Diversion
Agenda Item IX A	Marc Ebel, Director of Legislative Affairs, Triton Management Services, L.L.C.	Presentation on the Operation of Bail Agencies in Nevada
Agenda Item IX B-1	Marc Gabriel, Manager, eBAIL Cheap Bail Bonds	Presentation on the Operation of Bail Agencies in Nevada
Agenda Item IX B-2	Marc Gabriel, Manager, eBAIL Cheap Bail Bonds	Additional Information on the Operation of Bail Agencies in Nevada

Agenda Item X A-1	Kendra Bertschy and Evelyn Grosenick, Washoe County Public Defender's Office	Presentation on Current Pretrial Release Processes
Agenda Item X A-2	Kendra Bertschy and Evelyn Grosenick, Washoe County Public Defender's Office	Additional Information on Current Pretrial Release Processes
Agenda Item X B-1	Nancy Lemcke and Jason Frierson, Clark County Public Defender's Office	Presentation on Current Pretrial Release Processes
Agenda Item X B-2	Nancy Lemcke and Jason Frierson, Clark County Public Defender's Office	Additional Information on Current Pretrial Release Processes
Agenda Item X C	John Jones, Chief Deputy District Attorney, Office of the Clark County District Attorney	Presentation on Current Pretrial Release Processes
Agenda Item X D	Adam Cate, Deputy District Attorney, Office of the Washoe County District Attorney	Presentation on Current Pretrial Release Processes
Agenda Item X E-1	Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson	Presentation on Current Pretrial Release Processes
Agenda Item X E-2	David Cherry, Government Affairs Manager, City of Henderson	Follow-up Information from the City of Henderson