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

June 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 11:01 a.m. Pursuant to Governor Sisolak's Emergency Directive 006, the meeting took place via webconference and did not have a physical location.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Senator Scott Hammond, Senatorial District No. 18

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
Chuck Anderson, Supervisor, Broadcast and Production Services, Administrative Division, Legislative Counsel Bureau
Wakonda Carter, Video Technician, Administrative Division, Legislative Counsel Bureau

OTHERS PRESENT:

Christy Craig, Deputy Public Defender, Clark County Public Defender's Office
Nancy Lemcke, Deputy Public Defender, Clark County Public Defender's Office
Holly Welborn, Policy Director, ACLU of Nevada
Dr. Kristian Lum, Ph.D., Lead Statistician, Human Rights Data Analysis Group
Logan Koepke, Senior Policy Analyst, Upturn
M.J. Ivy, Pastor, Church of God in Christ
Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Leslie Turner, Progressive Leadership Alliance of Nevada

Tonja Brown

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

I'm going to go ahead and call this meeting to order. It appears we have a quorum. We're going to go ahead and jump into public comment, but before we do so, I just want to give a couple of instructions. Public testimony under this item may be presented by phone or written comment. Because of time considerations, each caller offering testimony during this period for public comment is going to be limited to no more than two minutes. A person may also have comments added to the minutes of the meeting by submitting them in writing, either in addition to testifying or in lieu of testifying. Written comments may be submitted by email at Jordan.Haas@lcb.state.nv.us or by fax at (775) 684-6761, and then of course you can also submit by mail to the LCB (Legislative Counsel Bureau) address: 401 South Carson Street, Carson City, Nevada 89701. You can do that any time before, after or during the meeting.

If you're interested in providing public comment, to dial in you're going to have to dial any time after 8:30 a.m., which we're well after. Dial the phone number (669) 900-6833. I'll repeat that one more time. That's (669) 900-6833. When prompted, you're going to want to provide the meeting ID. The meeting ID for this meeting is 9974831350. Again, the meeting number is 9974831350. It's going to ask you for a participant ID. Go ahead and just hit pound or hashtag, or whatever you prefer to call it, the number sign. To resolve any issues, if you're having technical issues dialing in, dial (775) 684-6990 and you may get some assistance there. At this time, I'm going to ask Broadcast if there is a caller in the queue who would like to provide any public comment at this time.

Chuck Anderson (Supervisor, Broadcast and Production Services, Administrative Division, Legislative Counsel Bureau):

Good morning, Madam Chair. The line is open and working. However, the public comment lobby is empty at this time.

Chair Harris:

Okay. Because there is a one-minute delay or so between our broadcast and the internet livestream, I'm going to give it just one minute to see if the queue fills up. If it doesn't, at that point we'll close out public comment. So, just hold on for a minute for me.

Has anyone joined the public comment queue at this time?

Mr. Anderson:

It is still empty, Madam Chair.

Chair Harris:

Okay, thank you so much. We are going to go ahead and just move on to agenda item IV then, which is approval of the minutes of the meeting held on March 3, 2020 (Agenda Item IV). I will now accept a motion to approve the minutes.

ASSEMBLYMAN FLORES MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON MARCH 3, 2020.

ASSEMBLYMAN ROBERTS SECONDED THE MOTION.

Chair Harris:

Is there any discussion on the motion? We will be taking a roll call vote, by the way, for transparency's sake while we're doing the virtual meetings so that everyone can hear and it's clear on the record. Please refer to yes or no as opposed to yea or nay. Due to the ambiguities in the sound, it is easier for everyone to understand who's watching. Ms. Hartzler, will you please call a roll vote on that motion?

THE MOTION PASSED UNANIMOUSLY.

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Chair Harris:

Thank you. That motion is approved. We can just move right along here to agenda item V. This is going to be an overview of the *Valdez-Jimenez and Frye v. Eighth Judicial District Court* Supreme Court case decision that was recently released (Agenda Item V). Some of you may be aware of it, some of you won't, but I thought it might be helpful that we get LCB's perspective on what that court case decision means for our Committee's work. At this time, I'd like to invite Mr. Anthony to go ahead and give his presentation.

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

Thank you, Madam Chair. My name is Nick Anthony, nonpartisan legal counsel for LCB. I'd like to quickly provide the Committee with a brief overview of the *Valdez-Jimenez* and *Frye* cases which were combined and decided by the Nevada Supreme Court this past

April, and then the next agenda item you'll hear from the legal experts, Ms. Craig and Ms. Lemcke, who actually litigated the case, and they can provide their view of it as well.

With that said, the facts of this case involve two defendants. They were separate cases, and out of an abundance of consistency the Court combined those two cases (Agenda Item V). You had Mr. Valdez-Jimenez, who was charged with a felony offense and had bail set at $40,000, and Mr. Frye, also arrested and charged with a felony offense and had bail set at $250,000, of which neither defendant could afford that amount of monetary bail. At the district court, they filed a motion for reduction in bail. The district court did not approve that reduction, and therefore both petitioners then filed a writ of mandamus to the Nevada Supreme Court. On appeal to the Nevada Supreme Court, the issue as the Court framed it is what process is constitutionally required when a court sets a defendant's bail, a pre-detention bail, at an amount that the defendant cannot afford. The preliminary procedural issues were again established by a writ of mandamus. There was a lengthy discussion by the Court as to whether this issue was in fact moot, meaning that it was not ripe for the Court to hear. The Court overcame that mootness and ran through a lengthy discussion. Even though both petitioners had already been convicted and pled guilty, the Court felt that this was a matter of such public importance and yet it was capable of repetition in the future, not necessarily by these petitioners but by others similarly situated. Therefore, the Court went ahead and considered this case on its merits and rendering its decision in April of this year. It is a very timely decision given the work of this Committee this interim.

Some of the rationale the Court outlined based on Article 1, Section 7 and Article 1, Section 6 of the Nevada Constitution. The Court found that the petitioners had a right to bail in a reasonable amount. This is further established by the fundamental liberty interest resulting in substantive due process considerations under the Constitution of Nevada. The Court found that a prompt, individualized bail hearing must be held within a reasonable time after arrest for defendants who remain in custody. Generally, such a hearing is held at initial appearance or arraignment. Currently there is no statutory time period for when arraignment must occur. Thus, the Court stressed the promptness of such a hearing. The Court also noted that there was heightened procedural due process when bail is set in an amount that a defendant cannot afford. To determine if bail is necessary, the Court wishes for the district court to consider the factors under NRS (Nevada Revised Statutes) 178.4853, which includes factors such as ties to the community, criminal history and the like. If the court then determines that bail is necessary, the court has to consider other factors for setting that amount in accordance with NRS 178.498, which includes among other things the financial ability of the defendant to pay bail.

The multiple holdings in summary I'll point out in five distinct sections. Number one: the Court found that bail may only be imposed where necessary to ensure the defendant's appearance and to protect the victim and community. Number two: if the state requests bail, then the defendant is entitled to a prompt, individualized hearing after arrest. At that

hearing, the defendant has a right to counsel, a right to testify and a right to present evidence. Number three: the state must prove by clear and convincing evidence that no less restrictive alternatives will satisfy its interest in ensuring the defendant's presence and community safety. Number four: a district court must make findings of fact and state its reasons in setting the bail amount. Number five, which is of importance to this Committee: the Court found that NRS 178.4851, which currently requires a defendant to show good cause before a person may be released without bail. The Court found that good cause provision in subsection 1 of NRS 178.4851 unconstitutional. This means that the Court severed the good cause showing from the remainder of the statute. As such, that good cause provision is no longer enforceable. It remains on the books subject to legislative change, if the Legislature so wishes to remove that provision, but as currently written it is not enforceable under the law.

With that, Madam Chair, I would be pleased to answer any questions.

Chair Harris:

Thank you. I don't see any questions from any members, but I will re-poll them shortly here. I have a couple of questions myself. Is there any guidance at all in the particular section of NRS as to what might a reasonable time after arrest be, or any of those other kind of ambiguous terms that we're likely going to have to tackle? Are they used in other places, someplace we might be able to start?

Mr. Anthony:

Thank you, Madam Chair. That's a great question. In this particular decision, the Court was silent as to the promptness and the reasonableness. I believe that Ms. Craig and Ms. Lemcke have further researched the issue and, in their presentation, they've looked at case law from other states as to what a reasonable time might be.

Chair Harris:

Okay, great. Thank you. Any questions from members?

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

I just have a couple of questions. One: is there anything in this ruling that would change our existing statutes that would cause us to want to codify that ruling into statute? Two: I know that in reading the opinion it directly correlates—they're referencing the district court a lot. Is there any ambiguity in how that is applied to other jurisdictions, like municipal court jurisdictions or justice court jurisdictions?

Mr. Anthony:

Thank you, Madam Chair. To Assemblywoman Nguyen, you are correct in that the opinion does reference district courts. It makes no mention of the lower court system. I would imagine the same would hold true in lower courts. Again, I'll let Ms. Craig and Ms. Lemcke, who are in and out of those courts every day, further elaborate on that point.

In terms of the legislative response, that is certainly up to you as the legislative body if you would like to codify the decision. As it's currently written, it would stand as case law. It would be binding authority upon the citizens of Nevada. Certainly I think the Court invited, perhaps, the Legislature to clarify and remove the good cause requirement, so that would be up to you in the next legislative session if you wanted to make those changes. In terms of further statutory procedure, it would be within the realm of the Legislature if they chose to codify, perhaps, timing requirements, etc., and I believe that will be covered by the next presenter.

Chair Harris:

Are there any other questions from any members at this time? Mr. Anthony, thank you so much. We'll go ahead and close out agenda item V and open up agenda item VI, which is, as Mr. Anthony indicated, a presentation on the *Valdez-Jimenez* case. At this time, we are fortunate enough to be joined by the people who actually litigated the case, Ms. Lemcke and Ms. Craig from the Clark County Public Defender's Office. Welcome to the committee. Thank you. Please begin when you're ready.

Christy Craig (Deputy Public Defender, Clark County Public Defender's Office):

Thank you. First, I'd like to say I thought Mr. Anthony did a great job in kind of laying out some of the issues and explaining where we're headed. Nancy and I are both thrilled to be here. I'm going to start off. I'm sure Nancy will jump in. Any of you that know her know that she is likely to do that.

I would answer one question that Mr. Anthony raised, and that's with regard to whether or not *Valdez-Jimenez* applies to lower courts, and yes, it does. It's constitutionally based, and the Court determined that this is what the Constitution requires and the Constitution applies to all the courts from top to bottom, so municipal court, justice court, district court, the whole shebang will have to follow the rules of *Valdez-Jimenez*.

If you have questions as I'm going through this, please just hop on and let me know. *Valdez-Jimenez* essentially requires three really important things: that there is a prompt detention hearing; that the court needs to determine and can detain people if it's necessary; and that it eliminates poverty-based detention, meaning that people who are too poor to pay even a little bit of bail are no longer going to languish in custody until they get a hearing (Agenda Item VI A-1). We provided a memo on what a prompt detention

hearing is (Agenda Item VI A-2). Nancy provided some of the law and the jurisprudence that's going on nationwide, so the cases are in there, and I think we'll talk about that just a little bit more when we get further down the road.

Well, here we are. So, what is prompt? We believe that at the very outside that the law will allow for a prompt detention hearing is 48 hours. That's at the outside. What has happened is that bail schedules are available inside the jails. The jails have sort of a standardized bail schedule that allows them to give a person who's been arrested, a pretrial detainee, a bail setting after they are arrested. They can then bail out if they have the money to do that based on that bail schedule, and that's before being seen by a judge. In this *Velda* case, *Pierce v. City of Velda*, what the Court said was that if a person who has money can have access to bail then a person who doesn't have money should have that same access to release.

In our opinion, here in Nevada most people are able to bail out between 6 and 12 hours after being arrested, so people who don't have that money should be in front of a judge between 6 and 12 hours, but at the very outside, 48 hours is the maximum amount of time before which a person who's been arrested should appear in front of a judge in order to have a prompt detention determination.

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

In discussing the prompt and the time limits, 48 hours was the outset, just so we're clear, that was decided by two federal circuit courts, and they were reviewing various state municipalities. One was a city in Alabama, the other one was a city in Georgia, and they set the 48 hours of an outer limit, and those jurisdictions, to my recollection, did not have standardized bail schedules. Therefore, the 48 hours that they set comes from the US Supreme Court case that requires 48 hours for probable cause determinations. What happens is when you have those standardized bail settings, then you have the ability of the wealthy to bond out pursuant to the standardized bail setting right away, and then you have poor people who are sitting in custody for up to 48 hours waiting for a bail hearing, and that's where the 48 hours may not work if you're in a jurisdiction that is offering immediate release to people who are wealthy enough to post the standardized or the scheduled money bail, if that makes sense. So, you've got 48 hours at the outset, but you've got 24 hours and maybe less if you are going to offer that standardized or that scheduled money bail to people who can afford it.

The reason that that 24-hour standard comes from that *Pierce v. City of Velda* case is because there's an equal protection problem that arises if you say, "Okay, 48 hours for everybody. Wealthy, you get out sooner, but poor, you have to sit in custody for 2 days before you get a detention hearing." That's an equal protection problem that was not at issue necessarily in the Fifth and the Eleventh Circuit Court cases that decided 48 hours. I want you guys to understand that the 24- and 48-hour cases are not necessarily in conflict. They operate in tandem. It's just in the 24-hour case, you have that added issue

of a jurisdiction, that is the City of Velda in Missouri, where they were offering scheduled money bail much like we do in Clark County. That's why we want you to be cautious. We want you to know that 48 hours, and this is what I told the Supreme Court, 48 hours is the outset, but if you are going to offer standardized or scheduled money bail, you're going to have to confront an equal protection problem. You can't make poor people sit in custody for 48 hours to get a hearing when the wealthy can bond out right away.

Ms. Craig:

We would urge the Legislature to clarify and codify what prompt is. It would just be a wise choice to do it on the front end. The other important thing that *Valdez-Jimenez* did, and I think Mr. Anthony mentioned this or made it clear, was it was about the process. What process has to apply? For an appropriate process, there has to be a counseled adversarial hearing. Prior to *Valdez-Jimenez*, many jurisdictions were doing detention hearings outside the presence of the defendant, and no lawyers were present either. They were doing them attached to a probable cause determination. Now, the detention hearings have to—the defendant is entitled to have counsel and it's adversarial and both sides can present evidence.

More importantly, because the good cause was found to be unconstitutional, and *Valdez-Jimenez* made it very clear that the state now bears the burden of proof, it is not on the pretrial detainee to prove why he should be released. Instead, it's on the state to make some determinations. The state has to decide whether or not the person that's on that day is someone they think should be detained or not detained. They're going to have to make it clear to the court whether they want the person in custody or out of custody. If they want them in custody, then they're going to have to make their showing. They're going to have to show by clear and convincing evidence that no less restrictive means exists to assure community safety and return to court other than detaining that person, and they're going to have to make that burden. If, however, they don't think the person should be detained, then we're talking about what release conditions can be. Detention requires the proof by clear and convincing evidence of what those reasons are, and the state is going to have to prove them up. Any unattainable release conditions—high bail, having to live maybe in a certain place for homeless people—those things are unattainable conditions, and the Supreme Court has made clear that if a person remains in custody on unattainable conditions, it is a de facto detention order so it has to meet that higher burden. We are going to talk about all these one at a time.

Counseled adversarial hearing: the defendant has to be present, they have to have counsel, and most importantly, the defense has to be provided with all the same records that the court and the state has so that they are able to argue effectively. That wasn't happening. None of this was happening prior to *Valdez-Jimenez*, although justice court here locally had made some significant steps forward to having counseled adversarial hearings. Other jurisdictions—Henderson, North Las Vegas, Sparks—are not doing these counseled adversarial hearings and they are going to have to post-*Valdez-Jimenez*. The

state is going to have to bear this burden. They're going to have to decide right from the get-go and make it clear what it is that they want. They are either arguing for detention and proving it up by clear and convincing evidence or they are agreeing that the person should be released, and then we're discussing release conditions. The state bears that burden and they are going to have to decide what it is they're seeking so that when they are making their arguments it's clear to the court and clear to the defendant what it is they're arguing for and arguing against. They are going to have to specify this.

Detention: if they are arguing to keep somebody in custody, they are going to have to prove by clear and convincing evidence that detention, keeping someone in jail, is the least restrictive means of mitigating risk of flight and assuring community safety. They are going to have to make those arguments. They are going to have to stand up and make that clear, and then the court is going to have to make specific and clear findings about whether or not the state has met their burden and by what manner they met that burden. The Supreme Court in *Valdez-Jimenez* made clear that non-monetary conditions of release should be considered first. But once the court makes—assuming the state has asked for detention and not met their burden or the state has determined that they were not seeking detention, then we're talking about release conditions. The court has to set attainable release conditions, and the Supreme Court made clear that non-monetary release conditions should come first. If the court determines that money bail, which is separate from bail because bail is any release condition, but if money bail is required, the court has to make findings about whether or not money bail is required, and I forgot their exact phrase, that no combination of release conditions will ensure community safety and return to court other than cash bail. They are going to have to make those separate findings as well, then they're going to have to set and determine what amount of cash bail is appropriate. It has to be tailored to the defendant's ability to give bail. There is a separate statute, 178.498, which has existed for a long time that requires the court to consider the defendant's ability to give bail when they are setting a cash bail amount in the event that cash bail should become a requirement. The court is required to make those findings. If, however, those findings are unattainable, the court has to either reconsider those conditions, or if those unattainable conditions are set anyway, they operate as a de facto detention order and thus that higher standard. That is clear and convincing evidence, that no less restrictive means can assure community safety and return to court. The court has got to make those findings if a condition of release is going to detain somebody. I hope that's clear, because I kind of wound around it a couple of ways. Once the court has determined that someone is appropriate for release, the conditions cannot then act to hold somebody in custody unless the court makes specific findings that a person should remain detained.

Ms. Lemcke:

That is a tough one, because a lot of the judges, what they are doing now is they're just making a more elaborate record that money bail is appropriate. They're completely side-stepping what *Valdez-Jimenez* said, which is if you're going to set it as a detention order,

if you're going to set an amount that the defendant can't make, you have to know that you're doing that. There has to be a canvassing of the defendant by way of a financial affidavit or otherwise so that you know when you set a money bail whether or not it's going to amount to a release condition or whether or not it's going to operate as a detention order. If it's going to operate as a detention order because it is unattainable, then you have to be able to make the findings, judge, that detention is necessary. If you can't find that detention is necessary, then you have to set money bail or whatever other release conditions the court thinks are appropriate, fashion them in a way that it is attainable for that defendant, and that's a really critical point because a lot of the judges are still setting unattainable money bail and they're just saying, "Well, I find money bail is appropriate," and they're making a really long record and they're not addressing the core issue that was really what *Valdez-Jimenez* was all about, which is, is that money bail attainable or not? Everybody has to be transparent. The state needs to be transparent in their request, that they understand that a certain request may not be attainable for a particular defendant, and they need to acknowledge that what they're requesting is essentially detention and they need to make a showing that detention is necessary before a detention order can issue.

The court, likewise, they can't just set a money bail and say, "Well, Mr. Defendant, if you can make this, then blah, and if you can't, blah." That's not a thing. It's an equal protection violation. The court needs to be very clear in saying, "Look, I am going to set money bail at $10,000. I understand, Mr. Defendant, that you cannot make that based on a review of your financial circumstances, but I find that detention is appropriate here and here is why." Under that scenario, a judge can use money bail to operate as a de facto detention order. That's totally fine, but we need to be transparent about what's happening so that the court is making the findings that are necessary for a detention order to issue, and more importantly, the court is holding the state to their burden of showing that detention is necessary when they're asking for a money bail that a defendant cannot make.

Ms. Craig:

It's not just cash bail. Sometimes there are release conditions: for example, a mid-level electronic monitoring which requires a cellphone. If the defendant doesn't have a cellphone, they can't meet that condition, and I would point out that a couple of other jurisdictions, New Mexico primarily, have a legislative process in place that brings the defendant back to the court in the event a condition holds them in custody for longer than 24 hours after a court has determined that they should be released. That may be something that this Committee or the Legislature might want to consider, sort of an automatic back-into-court if some sort of condition is holding a person in custody after a court has determined they should be released.

Chair Harris:

Let me jump in and ask a question here, and I know Vice Chair Nguyen has a question as well. I originally was going to let you finish, but this is such an interesting topic. I kind of want to dive into it just a little bit. Put yourself in the seat of a judge. What scenarios would it be appropriate to set a monetary bail that is unattainable versus simply not providing bail at all and just detaining, kind of transparently, the defendant? Why would I choose to do one versus the other if I've got to make the same findings? When is one appropriate and when's the other appropriate?

Ms. Craig:

That's sort of a complicated question, because the Constitution requires and has a section that says all people should be bailable. Then the question becomes, does that mean you can set no-bail holds? It's our position that courts should be able to set no-bail holds on people if the state has met their burden and shown that there are no less reasonable conditions that will assure community safety and return to court.

Ms. Lemcke:

We are actually going to propose that when we get to the statutory revisions. We both agree that there should be a mechanism by which the court can just enter a transparent detention order. Judge Bonaventure in Initial Appearance Court does it on certain cases, and we can talk about that if you want to know the particulars of the cases in which he will do that, but it would be easier for everybody if there was a legislative mechanism by which the judges could just do a transparent detention order. There is some thinking in the DA's (district attorney) office and amongst some of the judges that they can't, and so what they'll do is they'll detain in the form of setting an unattainable release condition, which I think is really insidious because a lot of times they don't hold the state to their burden of showing that detention is necessary and they don't make the findings that are necessary for detention, so we would rather just have everybody be transparent about what's going on here, but we can talk about that as we get to the statutory revisions that we're going to propose, of which that will be one. Senator Harris, I do think that that is a really good question, and I think quite frankly, unfortunately, it speaks more to the issue of the convoluted, confusing nature of how the statute is currently written, and I think that if we had a framework that allowed for transparent detention orders then it would make it a lot easier for everybody, including the prosecutors, quite frankly. I think they could more easily elect to be transparent in their request when they're making a request of a judge regarding pretrial confinement.

Chair Harris:

I'm particularly interested in maintaining the constitutional right to bail and kind of getting rid of the artificial distinction between unattainable bail and detention, which it seems like

we're looking to do here as well, and so I want to go ahead and make that distinction as clear as possible where appropriate. If you're going to bail someone, bail them, and if you're not and going to detain them, then say so and meet the standard. I understand that's what you guys are asking for, and I'm with you on that.

Please continue. It seems like you've already answered Vice Chair Nguyen's question. Thank you.

Ms. Craig:

Our recommendation to the Legislature is to define prompt and to make sure that it's clear so that all the parties understand what standards they have to meet. Nancy has already explained what we believe that should mean. We believe that the statutory revision should also very clearly add in that it has to be a counseled adversarial hearing. That was an important part of *Valdez-Jimenez* and that it should outline the process. What *Valdez-Jimenez* makes clear is that the default under *Valdez-Jimenez* is to release somebody. Justice Hardesty talked a lot about how that process works, that most people who have ties to the community and aren't a danger or there's no real risk that they aren't going to come back to court, then they should be released on an OR (own recognizance) and that any bail would be excessive. The default in the process should be to release. The Legislature should clarify and statutorily clarify that the state has to meet its burden, what that burden is and that everything that's discussed in a detention hearing should relate to flight risk and danger to the community. That's what the *Valdez-Jimenez* case makes clear is the brust of a detention hearing, and finally, that the court has to make findings. Not only do they have to make findings about whether or not a person is being detained or being released and why, but they also have to make findings as to what the release conditions are, how they relate individually to the defendant and if they determine that a cash bail is appropriate, they have to make those findings as well. That's a separate finding that cash bail is necessary. Then the court also has to make findings that they've considered the defendant's ability to give bail pursuant to statute and pursuant to *Valdez-Jimenez* and that they've considered that amount in relation to the person's financial ability. Someone who earns $12,000 a year would have a much lower cash bail than someone who earns $500,000 a year. That's common sense, but it should be spelled out in statute.

We believe, as we talked about earlier, that there should be a statutory process that would allow the state to transparently ask for a detention order, that it's clear what that process would be so that the state can do it and everybody knows what the request is for. As I pointed out earlier, the default position is for release, and we think that that should be clear in the statutes. There are some cases, some presumptions, that favor detention: Somebody who is in on a parole hold, someone who's picked up new cases while they were out on a release on another case, somebody who's got a fugitive hold, those sorts of things. There are presumptions that we think should be created within the statutory framework that would favor a straight detention order—clear and transparent, but a

detention order—and that the burden of persuasion with regard to all of these revisions still remains with the state—

Ms. Lemcke:

So that even if you have a statutory presumption—for example, in the federal system, if a guy is out of custody or a girl is out of custody and has an open case and they pick up a new case, there is a presumption that operates in favor of detention at that point as to the new case, but the burden of persuasion, that is the burden of showing that detention is necessary, always remains with the government. We just want to be clear that even if there is a statutory presumption that operates to favor detention that it doesn't alleviate the government's burden of still showing by clear and convincing evidence that detention is necessary, but there are those instances in which detention very well may be appropriate, and we want the state to be able to be transparent in asking for it. We want the courts to be able to be transparent in setting it.

Ms. Craig:

The codification that we're recommending is to provide prompt bail hearings, prompt detention hearings, to allow detention when it's necessary and eliminate all wealth-based detention. No one should be in jail just because they can't afford their bail. We can no longer allow the courts and the state to come in and just say, "I think $50,000 is appropriate because the charges are really serious." That's not the way *Valdez-Jimenez* lays it out. That's not and is no longer allowable, and the courts need to be clear that that's not something that they can do anymore and that if the state is going to have to prove up, they're going to have to be clear about the fact that they want somebody detained. They're going to have to meet their burden, and then the court is going to have to be clear about what they relied on and what they're ordering. No more wealth-based detention.

Ms. Lemcke:

It's the wealth-based detention that is really at the heart of *Valdez-Jimenez* because the way we've operated—and it's easy for us to kind of go through this because we practice in the system, and I know that not everybody on the Committee necessarily does, but typically what happens is you walk into court, a prosecutor will look at a charge and they'll say, "Oh, we want a $10,000 money bail for this defendant," and the dialogue starts with a request for money bail without regard to whether or not that defendant can make it or not, and so what happens is when the court then just wholesale adopts a number, let's say they don't go with $10,000 but then they set $5,000, well, the wealthy person can bond out, the poor person sits in jail, and that is what has to stop, and that's what *Valdez-Jimenez*, I think hopefully, will put an end to. But the Legislature can have a very important and active and robust role in ending that very insidious practice by saying, "Okay, look, we need to all get on the same page. We need to be transparent, state, about your

request. Judges, you need to be transparent about what you're doing," and if you genuinely want a financial condition because you think that that's necessary—maybe the defendant has a history of failing to appear or there's some issues that would prompt the court or the state to think that a financial obligation is necessary—that's fine, but then we have to canvas that individual defendant to see what he or she can make. Maybe $500 for that defendant, which is attainable, will still be a very heavy hammer for that person, whereas a discussion amongst all of us who are lawyers, which is kind of typically how it's unfolded when we start with a dollar amount, we start talking about $10,000, $50,000, because that is something to which we can relate as a heavy hammer. We can eliminate that discussion and start with—look, there's three possibilities when you talk about pretrial confinement or pretrial release. It's detention, release with conditions or release without conditions. Setting a random money bail, just a completely random number that is pulled from I'm not sure where and allowing that to be a detention order for a poor person and a release condition for a rich person, that's not a thing other than it's an equal protection violation.

If we understand that there's three options—detention, release with conditions or release without conditions—and we start from that framework, "State, what do you want to do with this defendant? Do you want to detain him? If so, make your showing. If you want this person to have release conditions because you've got concerns about community safety or return to court, what conditions do you think are appropriate, and if you think a financial condition is genuinely necessary, then let's figure out what is a heavy enough hammer for this defendant that they can make and that is not going to result in wealth-based detention." Does that make sense, kind of?

Ms. Craig:

I will tell you, just yesterday I looked at the list of people that were in the Clark County Detention Center and there were 25 people that were on bail of $2,000 or less, and a couple of them were on bail of $250 or less. That's the kind of thing we need to avoid unless that's an amount they can make, but they weren't. They were sitting there because they could not afford a $2,000 bail.

With that, I think we'll take any questions you have.

Chair Harris:

I'm going to start with Senator Scheible.

Senator Melanie Scheible (Senatorial District No. 9):

Thank you so much, Senator Harris. I appreciate your presentation. I have a couple of questions, and I'll kind of work backwards from the end of the presentation to the beginning of the presentation. I would be interested, because you guys have been

practicing in this area longer than I have, if you've seen the trend that I think I've seen, which is that most people who have the financial ability to bail out at all do it before they even get to their initial arraignment. Whether it's that $5,000 bail on a PCS (possession of a controlled substance) charge or that $150,000 bail on an SA (sexual assault) charge, they are doing it before they even get to initial arrangement and they're not there to discuss their conditions. The people who are in custody, when they come in for their initial arraignment and we're talking about their bail, generally can't make money bail regardless of what it is, and so I think that from the get-go we set up this strange dichotomy where the only people whose money bail we actually talk about at an individualized level are the ones who are already so far down the ability-to-pay scale, and I kind of want to check that assumption or that observation and see if you agree or disagree before I continue on.

Ms. Lemcke:

I think it's a really good question, and I think in many respects you're right. However, I have been in Initial Appearance Court—and for the Committee, in Las Vegas in Clark County we have an Initial Appearance Court which is mechanically just a great process. An individual is arrested and they are brought before a Las Vegas justice of the peace within 12 to 24 hours of arrest for the sole purpose of determining their pretrial confinement. There's still a scheduled money bail that is offered for a lot of those folks. What I'm seeing when I go to court for Initial Appearance Court are those people who cannot afford to pay the scheduled money bail that's set at arrest, and there is a pretty healthy number of folks that cannot afford that scheduled number. Whether or not they could ultimately afford a number that is reduced after a hearing in that court, that's a very good question, Senator Scheible, but I will tell you that I'm seeing probably on average—we do 2 sessions a day, 7 days a week, including holidays, and I am seeing probably anywhere from 20 to 40 individuals a day who are not able to afford—I'm sorry, per session, anywhere from 40 to 80 people a day who are not able to afford that scheduled money bail. But some of those folks will have money bail set that they can then afford and they will bail out, and then those are going to be the people that you see move up to justice court for an actual arraignment.

Ms. Craig:

There is another interesting point which I think you eluded to, which is that the people who can make the bail have no conditions. They don't have stay-away orders. They don't have stay out of the court orders. There's a lot of different kinds of release conditions that can be applied, and because they can afford to pay that bail and never see a judge, they don't ever have those conditions. That's a problem, I think, that needs to be addressed.

Senator Scheible:

Actually, I think right now is an interesting time to be discussing this, because on the one hand I appreciate the desire for people who are arrested on low-level charges, like the

protesters that we are seeing arrested right now, to be able to be released in a matter of hours and not have to go before a judge first, but at the same time it is frustrating to see people arrested on very serious charges be released without having to go before a judge first, and I'm not sure how we develop a better mechanism for either ensuring that everybody goes in front of a judge first or we really make a carve-out for “these are the kinds of cases where we are comfortable with administrative releases or administrative bail settings that allow people to be released before they ever see a judge.”

Ms. Craig:

There's a couple of different things that happen in other jurisdictions, and I didn’t get to go on the trip, but some folks got to go to Wisconsin and other locations where they had a much faster process to get in front of a judge so that there was no bail release prior to seeing a judge, but they were also getting in front of a judge within a matter of hours. I think that there are ways of ameliorating that disparity with regard to conditions and no conditions without getting rid of bail altogether, but it requires, I think, a view towards speeding up the amount of how quickly someone can get in front of a judge.

Ms. Lemcke:

The other alternative, and I’m not advocating this, but it is something for the Committee to consider: if you did away with scheduled bail, that would eliminate your problem because then you put everybody in a position where they have to see a judge before there are any decisions made about pretrial release or confinement. That's a way to have some judicial control over that process. Again, I'm not necessarily advocating that. I would leave that at the Committee’s discretion, but that is a way to ensure that everybody has their case heard.

Ms. Craig:

I think that Mr. Lalli from the district attorney’s office may have gone on another trip to another jurisdiction, Milwaukee, and then I think New York does it the same way where they actually have district attorneys who are present in the jail to actually kind of make those—the process that I was discussing was the district attorneys are actually making charging decisions right at the time the person is arrested and making decisions about whether or not they’re going to hold somebody or not hold somebody or request detention or not request detention right at the time of arrest, which could speed things up. I think there are alternatives, and I would encourage the Legislature to look at what other jurisdictions are doing.

Senator Scheible:

Thank you. I think that is exactly what I was interested in hearing from you. I have two more questions, if the Committee doesn’t mind.

Chair Harris:

Go ahead.

Senator Scheible:

Thank you. The second one has to do with, I think that you laid out perfectly, the three options that the prosecutor should have. Either you're asking for detention, you're asking for a release with conditions or you're asking for release without conditions. In that middle one, when you're asking for release with conditions, what do we do in those cases where we want conditions? When I say we, I don't mean my office, I mean where the case calls for conditions of release but the court is not in a position to know whether or not those conditions are doable, and I'm thinking specifically of the SCRAM bracelets, which for those of you who don't know, are an ankle monitor, and they measure people'—basically it will alert the court if the person wearing the bracelet consumes any alcohol or any recreational drugs, and we run out of them on a regular basis. Sometimes the court will order that somebody be released with a SCRAM bracelet and then when they go to get released, there's no SCRAM bracelet. Back to my question is what do we do in those situations where we come up with the—we meaning the court, the state, the system, the powers that be—come up with the release condition and then that condition can't be fulfilled? We obviously have to come back to court, but how, when?

Ms. Lemcke:

Again, that's a very good question because there are going to be some situations where you genuinely don't want a person out of custody unless they can be supervised and some form of monitoring. In that case, the court's going to have to—well, ideally the court would pay for any costs that are associated with any kind of monitoring such as SCRAM, but in the absence of that, then what would happen is the court would say, "Look, I find that you need to have this release condition set. In the event that you cannot make that," or let's say that the court sets the release condition, defendant comes back in front of them because they can't afford it, they don't have a phone or they don't have the capacity to wear the bracelet or whatever the case may be, then the state has to make that request, that transparent detention request, and say, "Look, in the absence of this person being able to make these conditions, detention here is necessary and here's why." Then the court just simply has to make the findings. "Look, if you cannot make this particular condition, then the court finds detention is necessary, and here's why detention is necessary in your case." That is the critical step that has been missing from the way we've been handling bail and pretrial confinement issues in the past. It's just been like, "Well, here is your money bail. If you can make it, fine. If you can't, too bad," or "Here is your release condition. If you can make it, fine. If you can't, too bad." The court would have to make a finding that detention is actually necessary if the person couldn't make the condition. Otherwise, the court would have to adjust the release condition to be a condition that that individual defendant could make.

Ms. Craig:

I think you'll find that once courts start appropriately applying *Valdez-Jimenez*, particularly the part where Justice Hardesty noted that most people will be released on an OR, I think you'll find that more of those bracelets, those low-level monitoring bracelets or the mid-level, are available once courts are accurately and not just defaulting to release with an electronic bracelet. I think that is the best we can hope for.

Senator Scheible:

I think that makes sense, and I'll also just throw out as kind of a comment for this Committee as we're thinking about what to do that knowledge is power, and we want to get those people—if they are given a release condition that can't be met and they're coming back in front of the court, we want to do that as quickly as possible, but we also want as much information as possible because it's a lot easier to go from requesting a SCRAM bracelet to being comfortable with a person being released without the SCRAM bracelet if we have the knowledge that they have a place to go, that they are going to be doing AA (Alcoholics Anonymous), that they are going to be participating in a program, that they have a sponsor, versus coming back in front of the court with no new information and then forcing the state into a position of requesting detention because it is the least restrictive means that we know of to hold that person.

Ms. Craig:

I think I did point out that other jurisdictions have a built-in mechanism that brings the person back to court in the event they're not released because of an unattainable condition, and I think that's really an important thing to include in any statutory changes.

Senator Scheible:

Thank you.

Vice Chair Nguyen:

In some of these other jurisdictions that you've looked at, do they have specific carve-outs for misdemeanors or nonviolent misdemeanors, or is it just applied uniformly to all crimes from jaywalking and driving on a revoked license all the way up to murder charges?

Ms. Lemcke:

It's everything, and it's really interesting. If you do kind of a survey of the federal jurisprudence that kind of guides us on this issue, a lot of those cases derive from misdemeanor municipal court cases, and that litigation was varied. Some were class

action civil suits that were brought relative to unlawful detention practices even on misdemeanors, and then some were federal habeas actions challenging by way of a federal habeas petition that confinement in the state system. They were all challenges to various state and municipal practices, which I think is very interesting because I've had a lot of pushback on the federal authority as being, "Well, this is a federal case," and I'm like, "It is, but it's a federal court reviewing a state or a local jurisdiction." I would encourage the Committee to look at some of those cases, some of which I have submitted both with this presentation and my prior one. I'm more than happy to provide that jurisprudence again to the Committee if the Committee would like it, but it is kind of an interesting overview of what's going on in various locations throughout the country both in very rural small towns, where I think some of the mechanisms by which they do the speedy detention hearings is telephonically, and then in bigger jurisdictions like O'Donnell versus Harris County—that's Houston, Texas, and I misspoke earlier. That's one of the cases we have in the 48-hour prompt, one of our citations in that part of our presentation, and that was actually Harris County, Texas, which is Houston.

Vice Chair Nguyen:

I have another question. You had talked about that whether or not someone was financially able to—in making a determination, you wouldn't set the same bail for someone who makes $500,000 as opposed to someone who makes $10,000 a year. Are there other jurisdictions that have forms that allow the district attorney or judges to quickly assess that? Is it a percentage? How are those determinations made, because I can only imagine a bunch of judges up on the bench with their calculator trying to decide what is an appropriate amount for bail. I'm curious how that works in other places.

Ms. Craig:

Back when we first started litigating this issue, we used the federal poverty guidelines to help us determine—that's what they're supposed to be using to determine indigence. We tried to use that as a graph or a chart to help figure out. We determined we would ask for one percent of whatever their yearly salary was, but I think every jurisdiction has a different way of determining that. Some places use affidavits that they have the defendant fill out that talks about their financial ability. Other jurisdictions have an entire agency whose job it is to provide that court with the information about the defendant's financial ability. There is a whole range of things. The problem is, if the court does it, somebody's got to pay for them to do it. They've got to hire staff and they've got to do it in a very quick timeframe. You can't delay the prompt detention hearing in order to gather more evidence. You can't say, "Sorry, it's going to take us 8 days. You're going to have to wait until we figure it out." I think that the Legislature could use the federal poverty guidelines. They're established by the federal government, they're easy to understand, they're updated all the time—well, not all the time, but they are updated by the federal government and could fashion a sort of—I don't want to say a mathematical calculation, but could give the court some guidance.

Ms. Lemcke:

I don't know if the Committee is aware of this, but also in Initial Appearance Court—and again, this is like our kind of gold standard here in Las Vegas Justice Court that we're using for new arrestees. Not all of them, unfortunately, but I would say about 50 percent of the arrestees in Las Vegas that are cycled through the county justice court system and have the benefit of having that 12- to 24-hour post-arrest appearance in front of a justice of the peace here, about 50 percent of those individuals are getting a financial affidavit that is typed up and submitted to the court. Again, it's an affidavit so it offers some protection in terms of the veracity of the information that the defendant is imparting because they're doing so technically under oath. If there was ever any later misrepresentation about their financial circumstances then the state would have some redress against them. Certainly, if they were to understate their financial conditions then the state could also, if they find out information to the contrary, later move to increase bail, still in an attainable amount, but increase it to reflect what the additional information that they have garnered about an individual's financial circumstances. But a financial affidavit, in my opinion, is a great tool. I know that Judge Bonaventure, he handles most of the Initial Appearance Court sessions, he uses it to great effect, and he will regularly set a $500 cash bail or a $250 cash bail, things that the financial affidavit reflects the defendant can make, in those rare circumstances where he thinks a financial condition is appropriate, just to give the Committee some insight as to a tool that has the possibility to work. That would be one. Again, how you would legislate that to occur on a broader scale obviously would be up to the Committee and ultimately the Legislature, but that is a tool that I found to be fairly effective.

Ms. Craig:

I would add that I think New Mexico and Arizona have legislated a process by which money bail can be posted. I think in New Mexico they start off with a promissory note so that the defendant doesn't really put up any money at all, but in the event that they don't come back to court or something like that then it gets turned over to a bill collector, that sort of thing. They've got a 5-step process where the last process then is putting up the 15 percent that's now required by the statute to be given to bail bondsman. It goes promissory note, then they can post the 15 percent, I think with the court directly, and they get that money back in the event they show up, whereas if you go to a bail bondsman you don't get that money back. You can post the entire amount. I would encourage the Legislature to look at New Mexico and Arizona to see other ways of making that in the event cash bail is a part of release, that there are other ways of doing it other than just going to a bail bondsman.

Vice Chair Nguyen:

I have one follow-up question to Senator Scheible. She'd mentioned it earlier. I know in practice you see a lot of times they do run out of house arrest bracelets or low-level

electronic monitoring or any one of these least restrictive means. I know that there are municipal court jurisdictions that don't even have the ability to set this up. What would stop these jurisdictions from just saying, “You know what, we're just not going to invest in this because ultimately it will come back,” and then state is in a position or the prosecutor is in a position to say, “Well, that was going to be our least restrictive means was to put them on house arrest,” but since this jurisdiction doesn't have house arrest or because they have no more ankle monitors they’re forced to ask for the next least restrictive or the next best, which is detention? Do other jurisdictions run into this problem or is this something that naturally kind of filters out as we start to default to an OR?

Ms. Craig:

I don't even think you need to look at other jurisdictions. You can just go back 15 years here when almost everybody that was in front of a justice court judge was released on an OR. It hardly ever happened that people were held on crazy bails. I mean, it did happen because there were standard bails that were set, but a lot of people were released. It’s only been, I think, in the last 4 years that the jail gave the courts the ability to use those monitors. The jail came up with that because they were trying to lower the census in the jail. Those are jail bracelets, and I think the judges frequently default to that because it’s safer because they aren’t having to make that decision and take, not the blame, but that’s what their job is. They have to make those decisions, and instead they were defaulting to low-level and mid-level ankle bracelets because it was easy. I think that *Valdez-Jimenez* lays out a process, and if a low-level ankle bracelet is not available then there’s intensive supervision. They can do check-ins, they can do other forms of house arrest, and I think any jurisdiction can do those things. I think that they would be opening themselves up to additional litigation if they said, “This person, she’s great for low-level electronic monitoring. She can be out on the street and it’s fine. She's homeless, but that will work. But if we don't have any more bracelets because we can’t afford them, then she’s got to remain in jail.” I think that that would be problematic. I’m not sure that that would rise to the level of clear and convincing evidence that no less restrictive means is available other than detention. I think that would be problematic, particularly when it’s based on “good to go if we have bracelets, not good to go because we can’t afford to pay for them.” I think that that would be an unwise choice by a jurisdiction to make that decision.

Chair Harris:

We have just a couple more questions. Thanks for hanging in there with us. We appreciate it.

Assemblyman Tom Roberts (Assembly District No. 13):

Thank you, Madam Chair. A lot of it was already kind of answered before, but I just want to make sure that I'm clear. Under your proposal, at the detention hearing you have three things that should happen: detain, conditional release or release. Is it my understanding

that bail would still apply from arrest up to the detention center under your recommendations?

Ms. Lemcke:

If you want to continue to have a scheduled money bail, sure, you can. As Senator Scheible pointed out, you run up against the issue of some people are going to bond out right away and not appear before a judge who might otherwise set some kind of additional release condition, maybe no contact with an alleged victim, maybe a stay-away order from a particular location or an order out from the Strip. There are various conditions beyond just monetary that the judges often use as part of the tools in their tool box. You won't be able to avail yourself of those if you continue with the standardized money bail schedule, but if you want to do that, yes, people are going to be able to post bond as soon as they have a money bail set either at the jail or—for example, in Henderson, what's happening is—I don't know if they actually set it up. They might actually set it at arrest at the jail, and then the judges in Henderson, what they'll do is they'll do a probable cause review in chambers, and then they may in chambers adjust that original scheduled setting. So, now you have a second kind of unilateral setting by somebody in the court system. If the defendant couldn't post it initially at arrest, maybe they could post what the court sets in chambers, and then ultimately, in our outlying area some point down the road, they get their detention hearing. It's well outside the 48 hours, so that's an issue for another day, but you can continue with that scheduled setting that would allow people the opportunity to bond out right away at the time of arrest, or you could adopt a more uniform procedure that would require that everybody be seen by a judge within a certain amount of time immediately after arrest or promptly after arrest and have the issue of pretrial release or confinement adjudicated.

Assemblyman Roberts:

Follow-up question, Madam Chair?

Chair Harris:

Please, go ahead.

Assemblyman Roberts:

You talked earlier about setting presumptive conditions for detention in certain circumstances where it might not default to bail automatically. Could you implement—is it even appropriate to, in that first 48 hours—you talk about bails or whatever, but if you had somebody that was out on conditional release or just on release and they reoffended, could that be something instead of offering bail that they would wait until a detention hearing, or is that not fair either? Just trying to figure that out.

Ms. Craig:

That's kind of how it works now.

Assemblyman Roberts:

Okay.

Ms. Craig:

If they violated probation, there is going to be a probation hold, so even if they had bail on the new case the probation hold is going to hold them. If they've picked up charges on a new case but they don't have a probation hold, they could potentially—

Assemblyman Roberts:

That's really where I'm going—

Ms. Craig:

They could if they have enough money.

Assemblyman Roberts:

In my experience, you arrest somebody for something, they get OR'd or whatever, and then you turn around and arrest them again 3 or 4 days later for the same type of offenses, and so if we did offer—and they may have means to bail on the second offense or whatever, but you don't want to have to do it a third time, right? I'm just asking, would that be a possibility, or would it be completely objectionable?

Ms. Craig:

I think that you could write in that if somebody—because there is already a statute that talks about people who already have picked up new charges when they are out on a bail can be held no bail. You could certainly add a section that would also prevent them from bailing out until they're in front of a judge if they pick up new charges. I think that when you look at the scheme of all the statutes that interconnect and intertwine with bail, I think you're going to have a lot to untangle and streamline, but I would encourage you to do it because there is a lot that needs to be exercised and cleared up in light of *Valdez-Jimenez*.

Ms. Lemcke:

To also address your question, I feel bad because I don't want this to turn into me bashing a standardized bail schedule because that was not my objective here. I want you all to leave in standardized bail or scheduled bail if you think it's appropriate to do so, but how you eliminate that problem that you just articulated is you do away with standardized bail so that they get arrested, they go to jail and then they are brought in front of a judge just like everybody else, and then the judge can look at that arrest history and see that open case and see that this is somebody who gets out, reoffends, gets out, reoffends, and then issue that detention order. I will tell you that Judge Bonaventure in Initial Appearance Court with regularity will detain without bail folks who are in the circumstance that you just described, and I certainly understand that. I don't begrudge him that detention order one bit. The way that you ensure that those folks don't secure immediate release and avoid going through that process is to do away with scheduled bail.

Ms. Craig:

But it also requires them prompt hearings, probably within 6 to 12 hours after arrest.

Assemblyman Roberts:

That would probably be clear and convincing if it's the third time they're through.

Ms. Lemcke:

You are exactly right. No, and the hypothetical that you pose almost always—and let me just say, Bonaventure is very fair and I'm not taking exception with his rulings, but that is a very, very compelling case for clear and convincing evidence of why the person shouldn't be out, and almost, I would say, 90 percent of the time, if not more, Judge Bonaventure rightly issues a transparent detention order, which is the right thing to do.

Assemblyman Roberts:

Thank you.

Senator Scheible:

Thank you, Senator Harris. I just wanted to give you—I don't want to throw another wrench in the plan or whatever, but like Nancy said—I think it was Nancy who said that there are so many different statutes that interconnect with bail—it might have been Christy—and we have to think about all of them, so something else I just wanted to make this Committee aware of that we should be thinking about because it is important to come up with good pretrial release conditions is that when a court orders something like a stay-away or a no-contact order, that order only exists in the court records. It's not

communicated to police departments or anything like that. If I am the victim of a crime and the person who has perpetrated the crime is going to be released without monetary bail or with monetary bail, a no-contact order only means that if that person contacts me, I can contact the prosecutor and the prosecutor can put it on calendar. It's not like an immediate sort of remedy for anything that might occur in violation of the order. I just want to make sure that people understand that a court order is not like a restraining order. It's not like being on house arrest. It's kind of a reactive measure, if that makes any sense.

Ms. Lemcke:

You are correct, with the exception of electronic monitoring. When they're on the various levels of monitoring, Metro will input an address a lot of times if there's a no-contact order, it's no-contact with the complaining witness, and we know what the address is and then that would be communicated to Metro as part of their release order, and then they are not allowed to go to a place by virtue of a GPS bracelet. They can't at least go to the address that is on file for the complaining witness in that particular case of the alleged victim. There is a mechanism by which Metro can actually monitor that, and I can say that even though I don't have a regular trial caseload. I actually helped out on a case recently where the defendant had been picked up on his GPS monitoring through the jail for going to the alleged victim's address. There is a way to monitor that. It doesn't have the legally operative power of like a TPO (temporary protective order) or TRO (temporary restraining order), and I think Senator Scheible is right in pointing that out. Just so the Committee is aware, there are some means by which you can try to enforce that no-contact obligation through monitoring.

Senator Scheible:

But what you're talking about is a GPS monitor. What I'm talking about is if someone's released without a GPS monitor and I'm the victim of a crime and they come to my home. When I call the police and say, "This person assaulted me last week. He was arrested. He was released. He's not supposed to be at my house," there's no way for the police to know whether or not I'm telling the truth, and so the police will not come out and arrest that person even if a judge has specifically told them, "You are not allowed to go to the victim's house," speaking from experience, and the victim has to call the prosecutor, the prosecutor has to put it on calendar. Then, maybe a week, 2 weeks, 3 weeks later, we're in front of a judge saying, "Look, 2 weeks ago he went to the victim's house," and sometimes by then the damage has already been done. It's partially a separate issue, but it's also partially related. I think if there were a way that we could tighten that up so that stay-away orders were more meaningful, then more people could be released without monitoring with the assurance that if they violate a stay-away order, there would be not just consequences but an immediate remedy for that violation.

Ms. Lemcke:

I think you raise a really good point again. If there was a way to codify communicating that to Metro or making that order legally operative the way a TRO or TPO would be in and of itself so that that goes into whatever database Metro has so that they are aware of that at the time there is a call placed to 911, that would be one way of remedying that kind of order, because I do think that is a very good point.

The other thing is, you brought up the issue of the length of time that it takes for the prosecutor to get the case on calendar. As the Committee I'm sure is well aware from having looked at *Valdez-Jimenez* and reviewing that, the obligation to have a prompt detention hearing really could go both ways in that, to the extent that you codify the constitutional obligation that a defendant have a detention hearing within a certain period of time, you can also codify the ability of the state to get an emergent request to modify release conditions or just to redo a detention inquiry if a defendant is out of custody and violates in the manner that Senator Scheible just articulated so that the state can have the opportunity to get a quick and expedited review of pretrial release or confinement, whatever the case may be, as needed.

Chair Harris:

I have a question myself, and then I don't think we have any more. Oh, except for Assemblyman Flores. Go ahead, please.

Assemblyman Edgar Flores (Assembly District No. 28):

Madam Chair, I apologize. I am having a difficult time connecting to the chat, and so I apologize for that. Thank you. I thank you all for the presentation. I know we've gone through so many different hypotheticals, and I appreciate you indulging us through that and kind of just giving us some perspective. Just so I can kind of bring it all back, if I could ask, if you were in a conference right now in any other state and they asked you, "Tell us one thing Nevada is doing right when we talk about bail or one thing a particular jurisdiction is doing perfect that we would say is a model for other states to follow," what would that one thing be?

Ms. Craig:

Justice Court Initial Appearance Court. They took an unwieldy, private, in-chambers process after we started filing these writs and they turned it into a public, transparent, quick, efficient and appropriate process. They are essentially doing everything that's in *Valdez-Jimenez* before *Valdez-Jimenez* became law. They took our writs when we were filing them 2 years ago, took them to heart and put a process in place that meets the requirements of *Valdez-Jimenez*. So, kudos to justice court for doing it quickly, promptly and appropriately.

Ms. Lemcke:

We do have some unattainable money bail settings, but that's a discussion we can have on another day. That's why I said earlier, mechanically, in terms of the mechanics, it is the gold standard. It is fantastic. I almost always see—not almost always, but the defendants are still in their street clothes most of the time when I see them in Initial Appearance Court. That's how quickly they are going from arrest to having that hearing. Again, that is 7 days a week, including holidays, and it's counseled. We have access to the arrest report. We have access to the Nevada pretrial services report, which I'm sure the Committee is familiar with. If you're not, it's that document that kind of gives you an overview of a defendant's criminal history, if they have any other open cases, anything else pending, any other holds. It gives you a really good run-down of what their justice system issues are. I would say about half the time we get that financial affidavit, also very helpful, and so we are in a position as defense counsel to really do a meaningful hearing as to pretrial confinement. Mechanically, it is fantastic. On rare occasions we still have some process issues that derive from, in my opinion, a little lack of understanding of *Valdez-Jimenez*, but again, we can fix those as we go along, but just the mechanics of it are really great.

Assemblyman Flores:

Thank you. Thank you, Madam Chair.

Chair Harris:

Of course. As I mentioned, I have two questions, and in hopes of trying to make it as quick as possible, I'm going to ask both on the front end and then allow you to answer in whatever order you'd like. The first is on the less restrictive alternatives to detention. Let's say there's some disagreement as to, not whether there are less restrictive alternatives, but what the appropriate less restrictive alternatives are. Is there the similar less restrictive determinations requirement if I, as the prosecutor, am asking for, let's say, ankle monitoring? Do I have to then prove nothing less than that is warranted, or is there some other standard where the court is going to make this determination, or is it only—do I have to prove that there is no less restrictive alternative to detention and then some other kind of standard when we're arguing about everything in between?

Ms. Craig:

That's kind of a complicated question that I don't think *Valdez-Jimenez* answers clearly, clear and convincing evidence as to detention. With regard to what the standard is for conditions of release, *Valdez-Jimenez* doesn't speak to that. But if the condition is going to operate as a detention order, if it's going to hold somebody into custody, then it's got to be proven by clear and convincing evidence. I think ultimately what will happen is the

state is going to decide whether they want to detain or not, then it will just be up to a judge to make a decision about what the conditions of release should be.

Ms. Lemcke:

I think she's asking what is the evidentiary standard. Chair Harris, again, that's an interesting question because a liberty restriction is a liberty restriction, right? You're either completely restricting liberty in the form of a detention order or you're going to partially restrict it in the form of, "Well, you can't leave your house or you're going to have to wear this ankle bracelet," or "You're going to have to post money." All of those are various liberty restrictions, and I guess what we can say is that we know from the jurisprudence that governs this issue that when it's detention, there has to be a showing by clear and convincing evidence. As the Committee is probably well aware, a state is always free to give more constitutional protections, it can just never give less than what is required and obligated by the federal Constitution, so what I would suggest to the Committee and ultimately the Legislature is when you get ready to codify this, if you feel it's appropriate to give that protection in terms of that proof by clear and convincing evidence to any liberty restriction in addition to detention, do it. That's kind of de facto happening anyway, so it's not like you would be burdening the state in some really profoundly onerous way by obligating them to make a showing for any release condition they ask for. They really kind of do that anyway now. Unfortunately, the jurisprudence that we have only speaks to the issue of unattainable release conditions amounting to detention and detention requiring the showing, but I would certainly invite the Committee to obligate the state to meet a certain burden if they want to do any kind of liberty restriction.

Chair Harris:

Thank you. I said I was going to ask both questions and then I only asked one. I apologize. Let me go ahead and just ask, hopefully for you all, the last question. What resources of the state do you see strained if we properly implement this decision across the state?

Ms. Craig:

Well, I think that—you're talking about the rurals and what they will have to do?

Chair Harris:

Do we theoretically have enough judges? Do we have enough public defenders, enough DAs to be able to provide everyone the rights that are afforded to them under this decision?

Ms. Craig:

I think that the state, the government, is going to have to consider other alternatives to in-person. When you look at some of the counties up north where there's hundreds of miles between justice courts, maybe some of those hearings will be by way of Zoom, just like we're doing, or telephonically. That may be required. You may have to put a process in place where the defense attorney has digital access to all the information and private access to the defendant so that they can have a conversation that is private. Then they argue by way of video, especially in the winter. The same is true for judges who travel to different justice courts. I think that there may have to be some creativity with how these hearings occur, but I don't think you can get away from having them. They are absolutely going to have to occur. They should have been happening since April 9, since the day the opinion was released.

I think that jurisdictions—I know some of them aren't keeping good statistics. Some of them are going to have to start keeping good stats on how many people are really being arraigned every morning. If you call up Elko, they should be able to answer in each one of their justice courts how many people they arraign on a daily basis. What does that burden really look like? I think then the Legislature and the state can make some decisions about whether or not extra judges are needed, whether or not extra defense attorneys and prosecutors are actually needed or whether or not they can handle the current caseload using these other methods.

Chair Harris:

Thank you. I'm going to just canvas the Committee one last time to see if there's any additional questions before I let you go. No, it looks like we've exhausted all of our inquiries. Thank you both so much. Your expertise is really valued. I appreciate it.

Ms. Craig:

You're welcome.

Chair Harris:

We are going to go ahead and close out agenda item VI. Before I open up agenda item VII where we've got six presentations, I just wanted to let the Committee know where I'm thinking about heading. I'm thinking we might hear one or two presentations from ACLU (American Civil Liberties Union) and Upturn, and then likely we'll take a 10-minute break or so just to give everyone a little bit of relaxation from having to stare blankly at faces you don't know if they are staring back at you.

We're going to go ahead and open up agenda item VII and welcome Ms. Welborn from the ACLU to the Committee.

Holly Welborn (Policy Director, ACLU of Nevada):

Thank you, Chair Harris, for inviting me to come and present today. There are other advocates presenting today who will talk about the community impact and the need for pretrial reform, but I really want to focus my testimony on pretrial risk tools. At your last meeting you had a very lively discussion with Dr. Austin and others about a pretrial risk assessment tool adopted in 2019 by the Supreme Court. I had testified against the administrative docket establishing the statewide tool, noting that the primary consideration in any pretrial risk assessment should be whether a person is likely to appear. It should not be based on arbitrary demographics and arrests, that the tools are inherently biased and that it simply serves as a substitute for one form of wealth-based detention with another.

Even under the *Valdez-Jimenez* framework—which was such a wonderful presentation to watch Ms. Craig and Ms. Lemcke present and I congratulate them on their success with that in court for moving us forward on this issue—if we continue to utilize pretrial risk tools to make either a release determination or to determine what conditions of release are necessary, it's critical for lawmakers to demand transparency and oversight of these tools. We recommend that the Legislature monitor racial biases and ask that courts report that racial data to the Legislature in some form and would ask that the Committee consider a BDR (bill draft request) to that effect.

Of course, I could talk about this all day, but I'm not the data expert, and so I have with me today Kristian Lum, who is an Assistant Research Professor of Computer and Information Science at the University of Pennsylvania. She studies algorithmic bias with emphasis on criminal justice applications. Her presentation will be followed by Logan Koepke, a senior policy analyst at Upturn. His area of specialty is the design, governance and use of algorithmic decision-making systems, particularly in the public sector. Once he is done with his presentation, we can turn it over for questions, so now I will turn it over to them. Thank you.

Dr. Kristian Lum, Ph.D. (Lead Statistician, Human Rights Data Analysis Group):

Thank you. I just first wanted to check that it's okay that Logan and I go one after the other, since I believe it was just suggested that we take a long break between us. We are sort of tag-teaming on this presentation, so I think it probably makes the most sense for us to briefly speak each in succession prior to that.

Chair Harris:

No, that actually provides me with a lot of relief to know that the three of you are all going to go together, so please feel free to give your presentation. We'll ask questions. We'll take a break after the whole group concludes.

Dr. Lum:

Fantastic. Thank you. I just wanted to make sure on that. I am here to talk to you today about some of the concerns and issues with risk assessment. My understanding so far is that you all have decided to move forward with doing risk assessment, so I'm working under the impression that you have heard people speak in favor of risk assessment in the past. Again, my goal here is to speak to some of the issues and concerns in contrast to the arguments in favor of risk assessment. I should also give the caveat that I am not a Nevada local or native, and so I'm sort of giving and what I'm talking about is a little bit more of a general take on risk assessment rather than specific to Nevada.

One of the main reasons that risk assessments are touted as a good thing are because they're a way to make more objective decisions about risk, but risk assessments are only as objective as the data that's used to build and validate them. It's sort of a mouthful, because when we talk about data as not being objective that might strike some people as being a little bit of a contradiction, I think. When we think of data, it has this very sterile and scientific feel to that word and we think, okay, how could that not be objective? To get into why that's true, I think we need to think a little bit about how the data that is used to build risk assessment models is generated. Given the state that we find ourselves in in the world today where a lot of the conversations that are happening are about racially biased policing, that is the lens through which I want to talk about this today, but of course there are many dimensions along which a risk assessment tool might be biased. One of those sources of data that goes into building a risk assessment tool is data on past criminal history. Again, the reason this might not be objective is if there is discrimination going into making decisions about who gets arrested and what charges eventually end up sticking for those people. I think this was really well summarized by a colleague, Sandra Mayson, in her article "Bias In, Bias Out," and what she said, based on her experience in New Orleans as a public defender, "If a black man had three arrests in his past, it suggested only that he had been living in New Orleans. Black men were arrested all the time for trivial things. If a white man, however, had three past arrests, it suggests that he was really bad news." In that sense, the data itself really needs to be contextualized by who the person is. When you fit a model or you develop a risk assessment model, that context is often lacking.

How risk assessment models are developed are by looking for correlations between things like past criminal history, which itself is not an objective measure of a person's past behavior if you're willing to accept the premise that there is racially biased policing that goes into that. It looks for correlations between that past criminal history as recorded in the data and measures of outcomes of interest, things like will this person be rearrested, will they fail to appear for court. Sort of by the same argument, those measures themselves suffer from some of the same biases. One way I like to think about this is that one explanation for why you might find a positive correlation, for example between past criminal history and future rearrest, would be that if you were the sort of person who has been targeted by police in the past, you'll likely be targeted by police in the future. In that

sense, that correlation exists in the data. But the tools can't tell you why those correlations exist. Obviously, the sort of vignette I just gave you is a caricature. Obviously, what's going on is much more complicated than just that, but the tools can't tell you, for example, that a person is very likely to be rearrested because they are the sort of person that lives in a place that is over-policed. From the point of view of the data, a person being rearrested because of discriminatory practices is essentially the same as a person who is being rearrested because of serious criminal behavior. From the point of view of the tool, from the point of view of validation and from the point of view of the risk assessment itself, all those situations look the same.

I noticed in particular when I was looking through some of the materials in preparation for speaking to you all today that the particular tool that is being developed penalizes people for being homeless. Someone gets three additional points for being homeless. I've read the documentation about how the tool was developed—because of correlation between homelessness and those outcomes we've talked about, rearrest or failure to appear. But again, the tool doesn't really tell you much about why those correlations exist. For example, have police been specifically targeting homeless people for rearrest? Have homeless people not been receiving court date reminders due to their lack of permanent address, or maybe if a court appointment changes, have they been able to be reached? In that case, we have some issues of unfairness in the system where the system is not necessarily designed for these people to succeed, driving the correlations we see in the data, and then those relationships that exist in the data get propagated onto the tools. The tool learns those sorts of relationships without the additional context. What ends up happening then is the tool ends up essentially perpetuating people who have been discriminated against, have been targeted in the past, people who the system has not been set up to help succeed. The tool perpetuates those problems by putting those people in the higher risk group and sort of further punishing them for those reasons.

One last thing I wanted to say about that is that this is true even in variables like race, for example, or gender or any other sort of sensitive variable that you might be concerned about not discriminating with respect to, even if those are not explicitly included in the model. Even if you build a model and there's not some factor that says this person is black, this person is white, etc., those correlations can still sort of make their way in through a back door and perpetuate some of these problems.

There's two more things I wanted to say. One of those is that even within these risk groups, if we take them as given or as some sort of objective measure of a person's risk, even if we accept that the tool itself—the part that science does not tell us what to do about those people or what should happen to them. Even if someone falls into the highest risk group, there is always the option to dictate, for example, that the highest risk group still needs to be released under conditions that are very nonrestrictive.

I just want to sort of close, since we are splitting up our time here and I did say I would keep this brief, by coming back again to sort of the moment we find ourselves in and sort

of re-centering the issues of racial disparities and racial bias in these sorts of tools. I think the last thing that anybody wants is for these tools to be used to perpetuate racial disparities in the criminal justice system. In fact, a lot of what I hear when people are promoting these sorts of tools is that they see them as a solution to that. My view is that that's probably not a solution to racial bias, but we really need to be monitoring how this plays out in practice. What I've talked about so far is sort of in the abstract. It's about how racial bias can make its way through the data perpetuated by a tool that says nothing about how this interacts with the real system when judges are making decisions when they see the outputs of these tools. I think what's going to be really important is to make sure these tools don't exacerbate racial disparities as they exist today in ongoing monitoring and making sure that when the rubber hits the road, when the tools are deployed and judges are using them to make decisions, that we actually are seeing decarceration, we are seeing reductions in racial disparities going forward, and if we're not, we really need to rethink how all those factors are going into a tool and consider if risk assessment is going to continue being used, making explicit adjustments to further serve the cause of reducing racial disparities.

Logan, please go ahead.

Logan Koepke (Senior Policy Analyst, Upturn):

Thanks, Kristian. Hi everyone. Thanks for having me here today. I am a senior policy analyst at Upturn. You've probably never heard of Upturn. Upturn is a small nonprofit in Washington, D.C. Upturn's mission is to advance equity and justice in the design, governance and use of technology. To provide a bit more background about myself, as part of my work at Upturn I've studied the civil rights implications of pretrial risk assessment tools, specifically for almost 4 years now alongside Kristian Lum. Through that work alongside Kristian, we helped codirect the MacArthur Foundation's project on pretrial risk management. I helped write the shared statement of civil rights concern on the use of pretrial risk assessments that more than 100 civil rights and social justice groups signed on to, and I've published work on pretrial risk assessment tools in the *Washington Law Review*.

Today, in just a few minutes so we can get to a break and then Kristian and I can maybe answer questions, I want to try and share what I've learned from that work at the national level by attempting to answer two key questions. One: do pretrial risk assessment tools help advance the goals of bail reform? If I have time, and I'm happy just to pump this until after the break, if pretrial risk assessment tools must be used, what controls and policies should be in place to protect civil rights? On that first question, do pretrial risk assessment tools actually help advance bail reform, research on pretrial risk assessment tools largely can be divided into two kinds of tracks. The first research is on the tools' predictability themselves and the second is on the tools' impact on decision making and pretrial outcomes. The vast majority of research focuses on that first track. That track is about

determining if a tool can estimate the probability of failure to appear or rearrest at a statistically significant and politically acceptable rate.

However, the research based on evaluating whether outcomes are improved by incorporating algorithmic risk assessment into pretrial decision making is nascent and fairly small. That's important, as many will refer to pretrial risk assessment instruments and tools as an evidenced-based policy reform that can help us reform our mass incarceration and jailing problems, yet there have been relatively few methodologically rigorous investigations of the use of pretrial risk assessment tools in practice. As a result, their impact on pretrial decisions and outcomes is at best unclear and at worst worth serious pause. Although there is no evidence from that research that I can find that the use of pretrial risk assessment tools decreases public safety, I think it remains unclear whether these tools typically cause substantial and lasting reductions in jailing in a way that reduces racial and ethnic disparities at the same time. In fact, a recent systematic review of studies on this exact issue found that, "Although some researchers and policymakers have hypothesized that the adoption of these tools might reduce rates of incarceration, we found tenuous results. The overall strength of the evidence that tools reduce jailing as well."

This meta-analysis comports with what I've seen in a few states. I just want to run through a few examples that might be helpful in guiding your thinking here. One is Kentucky. One study on the 2013 introduction of a public safety assessment by Megan Stevenson found that pretrial release, especially nonfinancial pretrial release, increased following the implementation of a pretrial risk assessment tool. However, over time those effects eroded and the impact on failure to appear and rearrest rates was pretty much negligible, and more importantly, from my perspective, several years after the risk assessment tool was rolled out, the rate of pretrial release was actually lower prior to implementation. Things actually got quantifiably worse. Another study in Kentucky found that judges responded differently to risk assessment scores largely based on race. Specifically, this is a study by Alex Albright. She found that for individuals assessed as moderate risk, judges were more likely to override a recommendation in a punitive way for a black defendant assessed as medium risk compared to a similarly risky white felon.

New Jersey I think is another example that many individuals look towards as a potential success story for pretrial risk assessment tools. As background, in 2014 New Jersey passed a constitutional amendment that overhauled their entire system. Those reforms went into effect in 2017. The state uses the Public Safety Assessment (PSA). Of course, there are some positives. We see that the state went from a pretrial jail population of nearly 9,000 in 2015 to 5,000 in 2018. That's great news, but is pretrial risk assessment the thing that caused that 20 percent reduction in detention over time? It is really unclear, and if you look at the data, that 20 percent reduction was already present before the reforms were enacted. It's difficult to say and point to a pretrial risk assessment tool in that state to say this was the but-for cause. There are worrying trends in New Jersey. Compared to their plans, not as many individuals were released on their own

recognizance or released on PML (pretrial monitoring level) 1. For them, that's their lowest level of pretrial monitoring. There was a major uptick in electronic monitoring in their pretrial monitoring 3 plus, which is their highest level of conditions before electronic monitoring. Even after all these reforms, unfortunately, race and ethnic disparities inside the jail persist. In 2012, Hispanic defendants represented about 18 percent of the jail population. In 2018, it was 16 percent. Black defendants made up 54 percent of the jail population in 2012, and they remained at 54 percent of the population in 2018. I think that's really troubling. There is an administrative court report out of New Jersey noting those lasting disparities.

Finally, Mecklenburg County, North Carolina, Charlotte: they adopted the Public Safety Assessment in 2014 as well as a number of other policy reforms. There is a large education campaign and cultural reform that's going on inside the judiciary there. They saw an increase in release, less use of money bond and no increase in failure to appear or arrest. These are all seemingly positive steps and outcomes, and many had attributed the success to the Public Safety Assessment which Mecklenburg County uses. But there is a study by MDRC (Manpower Demonstration and Research Corporation) that found the following: because a good deal of the observed effects on bail setting and the initial detention occur at a stage in the process before the PSA report was generated, it's nearly certain that the factors other than the use of the PSA report contributed greatly to the observed effects. In other words, there were other policy reforms and cultural changes, not the pretrial risk assessment tool, that were the driving cause of the positive reductions in Mecklenburg that we've seen.

With that, I know it's been about 6 minutes and I'm sure everyone wants a break, so I'm happy to pause there and defer to questions later.

Chair Harris:

At this time, I'm going to invite the Committee to ask any questions that they may have of any of our three speakers, Ms. Welborn, Ms. Lum or Mr. Koepke. Any questions from the Committee? Was there any additional information that you all wanted to provide? My intention was not to rush you in informing that we were going to be taking a break, so please, if there is any additional information you want to provide, go ahead.

Mr. Koepke:

I would just really echo the last point that—I generally agree with everything Kristian says, but I really want to echo the last point that she made, specifically on this ongoing monitoring. I think this has been a major challenge for many jurisdictions who have implemented pretrial risk assessment tools. Jurisdictions really need to make it easy at a policy level to establish clear processes and mechanisms that allow the community to meaningfully and regularly evaluate the system for decarceral and racial equitables. Specifically here what I'm thinking about is regularly comparing the predictions of a

pretrial risk assessment tool against actual outcomes of interest. Without that data, there is no way to actually know whether the risk assessment data is systematically wrong about the risks posed by individuals. Such regular ongoing monitoring would allow jurisdictions to better evaluate how well their risk assessments will actually classify as risks and how reform efforts may be changing risk levels. That is really important as jurisdictions across the country, like yours, try and reform their systems and might be introducing new policies that have important effects on the actual "risks" that individuals might present.

Chair Harris:

Thank you so much. With that, everyone, as promised, we are going to go ahead and just take a 10-minute break. After that, we'll return with Ms. Ivy from the Church of God in Christ. We'll have two more presenters after that and then we will be well into our last couple of agenda items. With that, the Committee will stand in recess until 1:02 p.m.

THE CHAIR CALLED FOR A BRIEF RECESS.

Chair Harris:

We are on agenda item VII. If Broadcast could assist us in inviting Ms. Ivy to present to the Committee, it would be greatly appreciated. Welcome, Ms. Ivy.

M.J. Ivy (Pastor, Church of God in Christ):

No, it would be Pastor Ivy, and I'm definitely a man.

Chair Harris:

Pastor Ivy, I apologize. Welcome, Pastor.

Mr. Ivy:

I appreciate it. I appreciate this Committee. I appreciate my previous presenters, Lemcke, Craig, Mr. Anthony, even the ACLU is coming on. This has all been very good for me. It has, to be honest with you, helped calm me a little bit down, made me feel a little better in these troubling times that we are in today. This has been tough to deal with because obviously people's lives are most important to all of us but especially to me because I'm responsible for people, and that's very important. I'm a communications expert. My own company I've had for 11 years this month, Ivy's Communications. I'm the pastor of Kinship Community Church. I wanted to give you some vital statistics about me that you can see (Agenda Item VII A). I don't really want to go over too much, but I've been in public relations/ communications for over 20 years. I got my start in Desert Shield/Desert Storm as a veteran of the United States Air Force. I served logistically and then I served in public

relations over in Turkey. I am pursuing two master's degrees at the same time. If any of you know about that, you know why I'm busy. We want to keep going to get better educated. I am an ordained elder of the oldest African American church, which is the Pentecostal sect of the Church of God in Christ, and then of course I have been in this Las Vegas valley for the last 16 years and I have engaged with a number of people, some of your colleagues, by believing in civic engagement and things of that sort. I'm the former Las Vegas spokesperson for the Color of Change Public Action Committee, former vice president of the Southern Nevada Officials Association, which is those guys—if you have children, I'm that person, was that person—I was the opening official for your games. Former campaign manager, current board member and co-chairperson of the Guns and Safety Council for the Clark County School District, and recently just been named the Clark County and state convention delegate here and also up for the executive committee board there as well.

Now, I say all of that to you so you will get an understanding that I have been handcuffed, I have been arrested and detained, and I have been asked to make those same bail requests from the judges, and my cases have been dismissed and I did not get the money back because I had to go through a bondsman. My first time being even pulled over was at 16 years of age in 1988 while driving my dad's 280ZX—I'm dating myself now—and so with that being said, this criminal justice reform cash bail system affects people. It affects their jobs, their careers, their marriages, and it does give personal trauma. I am going to be speaking not only for others but for myself as well, for me. I'm going to humanize what has been said, because again, I appreciate Lemcke, Craig, the attorneys, Mr. Anthony, but I want to make sure that I probably address a couple of those things that were said in there. Particularly, let me address that the ankle bracelets and things of that sort come from Parole and Probation and they are magically always running out and don't have enough. The Metro Police Department has very little say to do with that. That is the Parole and Probation department. It falls under them. If you are on parole or probation, you can get picked up for new charges, and as my sister said from the ACLU said, it's usually because you are in a high place that is policed, a level that is policed all the time, and so there is that charge. I did make the statement to you that at the age of 16, and I am 48, that I have more than likely—I can sit back and count the numbers, and I stopped counting when I got to 50, in my lifespan I have been pulled over, detained by officers. When we use the word detained—and it is 9 times out of 10 not without a handcuff around the ankles, to be humiliated and put upon a police vehicle and to stand right there, to be dehumanized and talked to in a way that I would not allow anyone else to do as a basketball official of 26 years, and that's the only sport I've done, and I've done every level of basketball except Olympics. I've done NBA, I've done college on every level, I've done high school and the middle schools and the kids. I do the same thing every single time, and my authority is my authority, but I would never speak to and treat people the way that I have by police officers.

When you say people who are on parole or probation, most of the time they couldn't bail out. They could not get out of jail to defend themselves. They don't have the money to

hire an attorney that can represent them the way that they want to, and not that my brothers and sisters in the public defender's office are not good enough, but sometimes we just don't get the quality that we need in order to defeat the charges that the state has. Then on top of that, the state multiplies the charges so that bail is higher, so you come in and you have an attempted robbery but then we've added three or four different charges on top of that so that (a) if they can afford to bail out, they will, or (b) because they cannot and the scheduled bails are high and it's $10,000, $15,000, $20,000, and 15 percent of that you need to pay in order to get out, they can't get out. Therefore, they take a plea, and they have these plea deals, or wobblers as you would call them, and now they're sitting there possibly going to get out, possibly get on probation, and then they're not supposed to get in trouble again, and it's hilarious to me that we're talking in a way that this doesn't affect and takes people's lives and changes them and the dynamic of their homes, the dynamic of their marriages, dynamic of their jobs and careers. If a person cannot get out, that 24/48 hours that was talked about and thrown around—well, that 24/48 hours costs someone a job at their minimum wage or their menial wage job. They cannot get that job back, and so therefore they're stuck in a perpetual hole of economic negativity and they become angry, and with the trauma they become bitter. When we encounter police officers that seem to taunt—and I hope that this has not escaped me given the time that we are doing that. Four police officers have been charged—the person in the area of George Floyd in Minnesota—the officer with his neck on his—Mr. Floyd's knee—on the neck of Mr. Floyd went home. The officers that helped by not doing anything went home, and even though they were charged they were never arrested.

We get a sense that there is a them and then there is an us, and the us, whether they be black, whether they be brown, whether they be yellow, it also comes down to whether they be poor and they can't afford it, which affects every demographic under the sun. To me, I have to pay you to take my word that I'll come back is important to me. We've already talked about all these questions here that have been down, and I get that attorneys Craig and Lemcke talked about it, but this is what the problem is, is that my word is not good enough. So when I did have to take that piece of paper, I think as Ms. Lemcke had said, and give my affidavit of my ability to pay, no one would ask me my ability about my work, that I served in Desert Storm and served in Desert Shield, that I graduated from college and put myself through college, and I worked at night. I worked, I went to school at night and worked as a basketball official as well as working at AT&T. No one took my word that I sat down and had to study to put myself through school and receive that college diploma. That was important to me, that I am at work and my word that I would show up every day at my job—my white-collar job, mind you—that I would do it. No one asked me those questions. It was always, "Can you pay? Can you do what we want you to do," and "We need to have your money to take your word that you'll show up." As we say somewhere else, that's a bunch of crock, and the system has been dependent upon that so that these moneys can go to bail bondsman and then end up going into the county and state's pockets to pay the same law enforcement officials to lord over us and to keep putting this cycle back into the system. When the legislator asked if a person keeps getting arrested, well, they're not going to keep getting arrested as if

they're volunteering. They are not volunteering to be arrested. They get questioned. They get asked things, and if the questions are not suitable to the officer then the officer has the right to go ahead and just say, "We are going to go ahead and take you in and we're going to arrest you." We have to prove ourselves on the street just as well as we have to prove ourselves in the court. It's more than just bail, it's the systematic racism and classism against people of color and the poor in the justice system that makes up this question that we're doing today. Generations of poor and disenfranchised—this is one example. I'll let you read it for yourself. You're intelligent, smart people. You can see it for yourself that at the end of the day if you can't bail out and if you can't get a right attorney, you sometimes get put on death row wrongly. We have many cases from the ACLU that can bring up that there are wrong people on death row.

We have lacked in our generation that the tabernacle of change and the amount of leadership must be passed on generationally. Sadly, my generation has failed, and I say that as a person who is in lead, is in charge, but I have been sitting in the back because of shame and fear because I did not want anyone to know that I could not bail out or beat the system in itself, and no matter how high my voice went, no matter how loud my voice got to say I was innocent, it's not what I can say that makes me innocent, it's what I can prove in court, and most people don't have investigators, don't have the money to prove themselves innocent even though that is a lady who's blind that says you must be—justice is blind, and so therefore you're innocent before you're proven guilty. That is a crock, because when I was arrested—as the lady said, the state needs to make a true burden case for bail, that this person is a danger to society, and arrest records are not those things that we need to take into place to say they have. Just because I've been detained, there is record of my detainment with a 7- to 12-digit number to say, "This is the event number that happened to Mr. Ivy and this is what happened." I have evidence and documents that I have gone to just for a pull-over for a ticket for a license plate and that the officer stated of my demeanor and put it on his notes. Unfortunately, he gave me the wrong ticket with those notes on it and it bled in and he saw I could see what he said about me. It's a shame that these type of things happen.

This court case was crucial to me, and you can see the conclusion that was said in this court case. I really am very excited that I got to see these two attorneys be here and see them face to face for myself that they were a part of this, so I again thank you for that. You all know the system in itself so I'm not going to waste any more of this Committee's time about that, but I will say this and conclude even further that how long will it take for the right thing to be done? There is a classism. There is implied racial discrimination. There is more folks on the top that don't look like me and more folks at the bottom that do look like me. My mother had to call me and say, "When I saw the video, I thought it was you," because George Floyd is 6'5". I'm 6'2". I'm bald headed. He's a nice-looking young man. I'm a very good-looking young man, and we are similar in build. But we pose a threat not because we have a gun and not because we have put up our dukes and ready to fight, just because of the color of our skin. The color of my skin is the weapon against

harassing police officers that put us in a place that we have to bail out in order to prove that we are right citizens in this United States.

I really am thankful to you all to allow me to be here. I did not want to take up too much of your time, but I really mean this, that you have the power to change this criminal justice system with this first step. This is a first step in a larger set of steps that has to be taken in order to get things done. I'm an advocate for people, period. But I have to be honest and say that when it comes to bail reform, cash bail system and the ability to pay, it affects people of color, specifically African American men more than women because we are the ones that are put disproportionately in jail and prisons because we could not bail out. We could not afford very competent legal counsel because we are not economically in the same place as my other brothers and sisters that do not share my skin tone. I hope that we can change. I hope that you ask me questions that will allow the ability to change, but the ability to pay—I can't pay. Why can't I get out? I pose no threat. I am a citizen. I have a job. But these questions are not being asked. In other states, are they being done? Yes.

If you remember correctly, back in the day in the 80's going into the early 90's there was a show called *Night Court*, and so *Night Court* taught you that they were arrested, put in the holding tank and immediately received by a judge and a magistrate, then on the other side representing the prosecution had his records and on the right side he had the records and everybody was on the same page, and the judge asked, Judge Harry asked, "What do you do for a living? Can you pay this fine? Can you pay this bill? Can you pay to get out," and if his answer was no, then he says, "Well, I can sentence you to 30 days or $250." I'll take the 30 days, no problem. This is how we do—this is what we are doing to make it better, hopefully, but the system can work if we put the money towards it, and I have no doubt that taxpayers that look like me and similarly look like me who want a system set up that is fair to everyone, that is fair to everyone and what they're doing, and I think the fairness and the integrity of the system itself is at question, highly at question, not only in Nevada but in this country and around the world.

I really pray that you all come up with a better system and that this Committee will be enlarged to include other trial attorneys, other outside people like myself. I'm not advocating or campaigning for me because I'm far too busy, but if I was ever to be called, I'm here for it just as I have been since 10:30 this morning. It is important to me to be here to help make that change, and I hope I can make that change, but more importantly, it's all in your favor and in your power to do that. Thank you so much and God bless you, God keep you all as we go through this very turbulent time in our country, in our state and in our city.

Chair Harris:

Pastor Ivy, thank you so much for being here and sharing your personal experience and for your passion. At this time, I wanted to see if any of our Committee members have any questions for the Pastor before we let him go. It doesn't look like there's any questions at

this time. Again, thank you so much for hanging in there and for giving us that great presentation. At this time, I'd like to invite Ms. Serena Evans from the Nevada Coalition to End Domestic and Sexual Violence to the Committee to give her presentation. Welcome, Ms. Evans.

Serena Evans (Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence):

Good afternoon everyone. Thank you so much for inviting me. We are really excited to be part of this conversation and we thank you for having us here. I'd first like to just begin my presentation by offering a little bit of perspective. The Nevada Coalition recognizes that there is a need for criminal justice reform in our state, but as an organization our main concern is the safety of survivors (Agenda Item VII B-1). As we navigate pretrial release and bail reform in Nevada, we encourage you all to be mindful of the need for safety of survivors while also maintaining accountability for perpetrators. I would like to thank Senator Scheible for her comments earlier regarding stay-away orders and no-contact orders and the confusion around that and the need to protect victims of crime while also holding perpetrators accountable.

When considering criminal justice reform, survivor safety must be at the center of the conversation. For survivors in an abusive relationship, the most lethal time is after they leave or there is some sort of intervention such as an arrest. Of domestic violence murders, 70 percent happen after the victim has gotten out of the home and has tried to end the relationship. To put things into perspective here in Nevada, in 2016 Christina Franklin and her two young children were tragically shot outside of their daycare center by her estranged husband after he had been released from jail being held on domestic violence charges. She had applied for a protection order but unfortunately it wasn't granted, leaving her unprotected. Christina unfortunately passed away from the shooting. Her children were safe, however.

NCEDSV (Nevada Coalition to End Domestic and Sexual Violence): yearly we produce a homicide report that analyzes domestic violence and intimate partner homicides within the state. In 2016, there was 24 domestic violence incidences resulting in 33 deaths, and in 2017 there was 19 domestic violence incidents that resulted in 28 deaths. While we are seeing a national trend of domestic violence homicides declining over the years, Nevada still ranks in the top five states for women murdered by men. Most recently, in 2017 a report came out showing that Nevada ranks fourth.

The idea for centering survivor safety is not new to Nevada. The Nevada Legislature has historically prioritized the safety of survivors and has implemented measures to ensure safety and accountability for perpetrators when domestic violence arrests are made. In 1979, the Legislature introduced temporary protection orders to offer immediate protection for survivors, and then in 1993 the statute was expanded to include emergency temporary protection orders, which allows a survivor to file for an emergency protection

order by phone, whether it's afterhours, during the holiday or on the weekends, so that the perpetrator who has been arrested can be served the protection order while they are still in custody. In 1985, the Legislature then introduced another layer of protection for the safety of survivors by implementing a mandatory 12-hour hold for anyone arrested on domestic charges, and then in 1999 a bail schedule for domestic violence was introduced and the setting of the bail for domestic violence was implemented as a caution to kind of show that domestic violence is a serious crime and will be treated us such, taking away the jurisdictions' authority to decide their own bail amount for domestic violence crimes.

As many of you have been made aware, the Nevada Supreme Court recently last year ruled in *Anderson v. The Eighth Judicial District Court* that all domestic violence cases are entitled to the right to a jury trial. While courts across the state have been grappling with how to implement these changes and work within their courts, it has greatly lengthened the time between release and trial, which has also greatly increased the need to center survivor safety in pretrial release conditions. Another concern is that the longer the period of time that a survivor has to wait from arrest to trial, the longer the amount of time perpetrators and abusers have to harass or threaten a survivor to not participate in the trial or to drop charges. Then, of course, as you guys were aware, most of the presentations this morning focused on the *Valdez-Jimenez* case, so I won't go too much into detail on that for you guys.

As we move forward with navigating pretrial release and criminal justice reform in Nevada, there needs to be a conscious effort to ensure that survivor safety is at the center of these conversations. What that looks like is enhancing education around risk factors to survivors throughout various stages of the criminal justice process. It also looks like educating our court staff who makes decisions about evaluating risk and setting bail, making them educated on what the dynamics of domestic violence looks like and providing them with resources about information on victim/offender safety and things of that nature. It also looks like researching other states who have implemented various risk and lethality assessments. It also looks at researching the effectiveness of imposing additional conditions of release. This morning we talked about probation and parole, the ankle bracelets, the monitoring of a GPS system or monitoring their consumption of alcohol or drugs, as well as the mandatory stay-away/no-contact orders and how those can be put into effect for domestic violence cases, ensuring that survivors stay safe during that time that the perpetrator and the offender has been released from jail.

Unfortunately, there is no one-size-fit-all approach to survivor safety while also addressing criminal justice reform. The combination of domestic violence, survivor safety and pretrial release is complicated. There are many unknowns that exist. Before we can take any action for Nevada or implement anything that's going to be effective, we have to really focus on doing more research and including more stakeholders, and what that looks like is, of course, centering and elevating survivor safety and studying those different risk assessment tools. As a separate document I have submitted a little two-page document that focuses on two very popular risk assessments that are used throughout the nation

(Agenda Item VII B-2). It's the Ontario Domestic Assault Risk Assessment, also referred to as the ODARA, and then the Jackie Campbell Danger Assessment. The ODARA scales the likelihood of an offender to reoffend once they are released, and then the Jackie Campbell Danger Assessment assesses lethality risk assessments, so how likely a victim is to be murdered by their abuser. Both are used across the country. I know in Maine they just recently implemented the ODARA. The danger assessment tool is very—it's used a lot by advocates and healthcare professionals, so I just provided those as a little bit of information to provide you with more information of what exists instead of having to re-create the wheel for Nevada. Then, of course, as we move forward with our research, like I mentioned, engaging all those stakeholders across the state. We are a statewide organization and we work regularly with our program members in trying to understand the needs and wants of their clients and survivors throughout the state, but of course law enforcement must be brought into this, and all the other stakeholders through the criminal justice system need to have a say in what this could potentially look like.

I provided these helpful resources for you. I linked them in the presentation. If you guys have any trouble downloading them, please don't hesitate to reach out. They are really helpful for understanding pretrial release in the context of domestic violence and really focusing on the survivor safety piece of it. At this time, I just wanted to provide a little bit of background. I'm happy to answer any questions that you may have.

Chair Harris:

Ms. Evans, thank you.

Assemblyman Flores:

Thank you, Madam Chair. Thank you for that presentation. The only question I had is—and if you mentioned it, I apologize if I missed it—when we talk about that 70 percent, obviously that's a very telling number. The only thing that I don't know that we have data on is, do we know if there's a difference if somebody's released 12 hours after they were apprehended as opposed to a week later or several days later? I know sometimes I've heard the term cool-down period and things like that, but I just don't know if the data shows that. But if someone's released sooner, if we look at the numbers of the folk who after being released went on and committed this heinous crime, if we know that individuals that are released at a later date, say a day later or several days later, that that number then goes down? If you could talk a little bit about that.

Ms. Evans:

Great question. To be completely honest, I'm not sure if there is specific research on that. The 12-hour hold is a pretty common holding period. Like you mentioned, it is the cool-down period. It's really designed to give the victim/survivor time to find a place to stay,

enter shelter if they're able to or file for that emergency protection order. I would be happy to see if there's any research that exists that shows if the longer someone is held, specifically for domestic violence cases, if that reduces domestic violence homicides. But at this time, I don't have that information available.

Assemblyman Flores:

Again, thank you for the presentation.

Ms. Evans:

Thank you.

Chair Harris:

Do any other Committee members have questions for Ms. Evans at this time? Ms. Evans, thank you so much for your presentation. I am going to go ahead now and invite Leslie Turner from the Progressive Leadership Alliance of Nevada to come forward and present to the Committee. Welcome, Ms. Turner.

Leslie Turner (Progressive Leadership Alliance of Nevada):

I am here to basically bring the perspective of those that are impacted by the criminal justice system. We are also stakeholders in this conversation, and many of us are also survivors and victims of many different things, and so there really isn't a dichotomy between those impacted by the criminal justice system and those who stand often as defendants in front of court processes.

There is nothing that can bring us out of the darkness other than light, and although yes, 2020 has been a year of challenges, this crisis has shined a light upon the systemic failures we've been warning of, we've been speaking of, we've been testifying on. The gaps in the system which carry dire consequences for some—and usually it's society's most vulnerable. As we start phasing back into small doses of normalcy, we have to grapple with the lessons that are being learned right now and we have to accept that there is going to be a new normalcy. Things do not and they cannot feel nor be the same coming out of the other end of this pandemic, so the question that we should be asking ourselves right now is what are we going to build going forward? The Coronavirus has confirmed that there is a grave imbalance when we are told to shelter in place without shelter. Our most vulnerable are not even worthy of a place to sleep indoors. We are told to cover our faces with masks and at the same time denied masks. We are told to stay 13 feet away from people, although incarcerated people who are healthy are placed in the same cells as those who are sick. We recognize that there are ways to survive this virus, and yet people's current conditions within the state's control lessen that chance. Some of the lessons that we have to take into this new normal should be a commitment to preserve

life overall, a commitment to see humanity in all and to build new and innovative solutions for the future that reflect this commitment.

Particular gaps in our bail system have been exposed during this crisis, and I'm going to go over those things that we've come up against. This is specific here to Clark County. As many of you know, we've been raising money. We've been posting bails for folks that have not been convicted. We are posting their bail and we're also using a portion of the money that we raised to provide supportive services such as rent, shelter. We paid for housing, food, groceries, PPE (personal protective equipment) equipment, and some of the issues that we're seeing are—I'll start with the Clark County Detention Center. Judge Bell's ordered that there's a 10 percent cap on releases, which means that some people who are eligible for release based on the order will still sit behind bars when there's no clarification or justification on why they were excluded from the 10 percent pool other than the cap that has been met. This discretionary power is also inherently biased. I'm assuming that folks are familiar with that order, but basically what we're seeing is that there is only up to 10 percent of folks can be released, and there's far more people than 10 percent that would be eligible. So, they're eligible, but because the cap has been met they are going to continue to sit, and again, these are people pretrial, not convicted. The Clark County Detention Center's policies—they have a policy there that excludes people being released on house arrest or pretrial monitoring if they live in a weekly residence, which we know a lot of vulnerable people that ends up being their only option, and it's not affordable housing. I just want to be clear on that, but it is sometimes the only option for people to go to. If that is their only place to go, they're being kept inside even when their bails are being paid. We posted a $30,000 bond. That person was also on high-level house arrest and could not be released. They actually sat inside for an additional 30 days waiting on placement. That's another barrier that we're seeing.

Bail amounts continue to be higher than what people can afford despite the Supreme Court's ruling, and I understand the ruling was just issued April 9 so there's a lot of implementation work that's being done, and I do recognize that that's ongoing. As the public defenders talked about earlier, that decision is really rooted in the financial piece, the ability to pay, and so that's not being considered. If someone's sitting inside on a $50,000 bond that their day job is working at Jack in the Box, that clearly is not representative of what would be affordable to that person. We are also seeing many people who might have raised the bail money. They actually have nowhere to go. The pandemic is further exposing the lack of adequate shelter, which we already know this. We already know that sleeping on concrete outside is not a viable solution to the housing crisis, but this pandemic has really exposed the nexus between incarceration and housing and how both of the issues kind of pour into each other and perpetuate each other, and so basically it is up to us to disrupt that cycle.

What I want to really highlight is that pretrial, when we are thinking about the things that we do, that when we're considering pretrial detention, we have to consider more than just bail. It's not just bail. It's also thinking about what are the ways in which we can get people

back to their communities, back to work and resolve whatever issue that got them in front of the court system in the first place. When we're thinking about pretrial, we should really be thinking about divest/invest. So, divesting from the system of incarceration and investing in resources in communities most impacted by incarceration on the front end that would lead to true rehabilitation and healing, access to resources needed to thrive, lowering the chances of recidivism and gradually diminishing our societal reliance on imprisonment. I want to just make sure I say that this is gradual to the point that the prison system eventually should become obsolete if we're able to address these societal problems that lead to incarceration, and obviously this is going to be over a particularly long time. As much as we sit here and we know that building a new vision for the world will take a very long time, we also know that the time doesn't start until we do, so we have to begin to build a system that has never existed acknowledging that incarceration inflicts more trauma than it actually rehabilitates, and I think that everyone on this call knows that. Decreases in pretrial detention: we want to see that but we don't want to also see huge increases in community supervision, because then we're getting into a mass surveillance problem in which it continues to criminalize communities. We really have to reframe how we look at pretrial and approach it in a way that is holistic, and it is going to require the investment of resources.

Just some final points and I will wrap up. When we're looking at the Supreme Court decision, we definitely need to have clear rules around how this is going to be implemented, clear transparency, data accountability and create a mechanism for a community to actually be informed and give feedback. I don't know if that's like quarterly reports or what that can look like, but we need a mechanism of review. As far as the risk assessment goes, we want to make sure that the risk assessment tool is not being used as a justification for higher levels of supervision for folks. It should be a tool used for release, and also we have to look at individual scenarios and deconstruct the tool because the data doesn't give context for the human experience, which has been pretty much talked about by folks earlier on this call. We need to look at how the score is filtered into recommendations by the judge and just make it very clear for the public so that we understand how we're going to be impacted by this.

I will end by just saying that a few of the things that we've seen come out of the Supreme Court decision, the presumption of release, bail hearings where the burden is on the state to prove a person's dangerousness in the community, bail being a last resort and that other conditions have to be considered prior to issuing a bail, and then also that if bail is issued then it's based on someone's financial ability to pay. Those are all things that were in our bill in 2019, AB (Assembly Bill) 325. Those are all things that we were fighting for in the legislative session, and actually Christy Craig helped craft that bill. I think it would be maybe good to revisit it and take a look at it. Like I said, it does have a lot of the same benchmarks that are in the decision that came from the Supreme Court.

Lastly, I just want to end with saying thank you to everyone who has presented really useful information, and I just want to say that things are going to change. Things are going

to shift. They already are shifting, and the US is the only country right now that is currently in the midst of uprisings in every single state, and people are essentially saying that the structural racism is a bigger threat than Coronavirus at this time. People are gathering by the thousands and taking to the streets to really just demand that things have to be different going forward, so that's going to include how we handle cases that come into the criminal justice system and how we classify people who have not yet been convicted and then just in general how we handle the problem of incarceration, and we have to really start looking at alternatives and that's going to require working hand in hand with the community.

Chair Harris:

Ms. Turner, thank you so much for your presentation and for being here and kind of hanging in to be our last presenter there. It's really appreciated. I wanted to turn to the Committee members at this time to see if anyone has any questions for Ms. Turner? Seeing none, Ms. Turner, thank you again.

I will go ahead and therefore close out agenda item VII. We can open up VIII, which is a discussion of potential topics, dates and locations for future meetings. So the Committee is aware, it's my intention to hold at least one more meeting where the Committee is going to consider a vote of recommendations for the legislation for the 2021 Legislature. The Committee is authorized up to five bill draft requests. Those are going to be due September 1. I would go ahead and ask that if you all have suggestions for legislation or other recommendations for the Committee to consider, please go ahead and email those to Mr. Anthony, and CC me as well please, within the next week, if you can, so that staff can kind of compile all that information. We'll get a work session document together for the Committee's use at our next meeting. Also, as has been our tradition, I'll ask the Committee secretary to reach out to all of you to solicit a date and a time for our next meeting that everyone can make. Any discussion under agenda item VIII? We'll go ahead and close that out and open up IX, which is just another session of public comment.

Before this comment period we are going to take a three-minute break again to kind of allow the people online streaming to pick up on the delay and possibly call in if they'd like to make comments. We're going to take a three-minute break. Again, the dial number is (669) 900-6833, meeting ID 9974831350. I'll see you all back in about three minutes.

Broadcast, are there any people in the queue waiting for public comment?

Wakonda Carter (Video Technician, Administrative Division, Legislative Counsel Bureau):

Yes, Madam Chair. We have one person in the queue.

Tonja Brown:

I would like to thank everyone for their presentation.

There are some things that I'd like to bring up that haven't been touched on, and I don't believe that really any of you are familiar with some things, and I learned it the hard way. I will read this (Agenda Item IX). It says, "My daughter is a former manager of a domestic violence shelter here in Nevada. As part of her job, she was instructed to do the following. She states, 'There is an underground network that is to be contacted by domestic violence shelters in the event that an abuser is in law enforcement or in a position of power. After contacted by a domestic violence shelter, the abused person is referred to this network and basically treated like they are in the witness protection. There is no further knowledge passed to the original domestic violence contact point. The system was necessitated due to the threat of reporting to the institution of the abuser and being thus covered and ignored, causing further abuse.'"

I received from a manager—I won't say from what shelter—that there were other issues that came up which people are not familiar with, and that is the federal protection, witness protection. When the federal government relocates a witness to Nevada and there is domestic violence or other heinous crimes such as child molesting and sexual assault of your own child, they are not rearrested and they are not to be prosecuted. I think there should be something in law that states that if the federal government wishes to relocate their witness to our state that they will abide by the laws of our state and not have a free pass to do what they please. Also, I've spoken to some women. One was in law enforcement herself. Their concerns seem to be some type of reporting pertaining to domestic violence in a law enforcement agency. Some of the concerns I've heard from victims is that they won't be believed, fear of retaliation from other law enforcement officers, pressure from their abuser, that they will lose their job and pressure from their abuser to drop their complaint. Out of fear for their safety, they will drop their complaint.

Chair Harris:

If I can just interrupt you briefly, that's two minutes. If you could quickly wrap up your comments, and please keep in mind you can feel free to submit your comments in writing, email, fax, mail to the Committee. Please continue.

Ms. Brown:

Okay, I have submitted this letter that I read (Agenda Item IX), and I would also like to thank Mr. Ivy for his presentation and ask for changes to make it a reality, and that's on behalf of inmates, advocates for the inmates. Thank you.

Chair Harris:

Thank you, so much. Anyone else in the public comment queue?

Ms. Carter:

Madam Chair, that is all we have in the public comment queue at this time.

Chair Harris:

Thank you. I just want to give a quick shout-out to LCB, broadcast staff, to our legal staff. I don't know how you guys feel, but I think this Committee meeting went unbelievably smooth, and that is not on accident. There are a lot of really good people doing a lot of good work, and frankly, you all knocked it out of the park. Thank you so much for preparing us so well for this kind of first—at least it's my first—virtual meeting, and I think you guys did a great job as you always do. With that, we are adjourned at 2:02 p.m. Everybody have a great day.

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	Adrienne Michelson	Public Comment
Agenda Item IV	Jordan Haas, Secretary	Draft Minutes of the March 3, 2020 Meeting
Agenda Item V	Nicolas Anthony, Committee Counsel	Overview of *Valdez-Jimenez and Frye v. Eighth Judicial Dist. Court*
Agenda Item VI A-1	Christy Craig and Nancy Lemcke, Clark County Public Defender's Office	Presentation on *Valdez-Jimenez and Frye v. Eighth Judicial Dist. Court*
Agenda Item VI A-2	Christy Craig and Nancy Lemcke, Clark County Public Defender's Office	Memorandum on Time Limits for Adjudicating Post-Arrest Detention
Agenda Item VI A-3	Christy Craig and Nancy Lemcke, Clark County Public Defender's Office	Proposed Changes to Pretrial Motions
Agenda Item VI A-4	Christy Craig and Nancy Lemcke, Clark County Public Defender's Office	*Valdez-Jimenez v. Eighth Judicial Dist. Court*
Agenda Item VII A	M.J. Ivy, Church of God in Christ	Presentation
Agenda Item VII B-1	Serena Evans, NCEDSV	Presentation on Pretrial Release and Domestic Violence Concerns
Agenda Item VII B-2	Serena Evans, NCEDSV	Domestic Violence Risk Assessment Tools
Agenda Item IX	Tonja Brown	Public Comment