

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session
March 21, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Thursday, March 21, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Thomas F. Pitaro, Attorney, Pitaro & Fumo, Las Vegas, Nevada
Robert L. Langford, Attorney, Robert L. Langford and Associates, Las Vegas, Nevada
Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice
Ralph E. Williamson, Senior Pastor, First African Methodist Episcopal Church; and President, Faith Organizing Alliance
Leslie Turner, Organizer, PLAN Action, Mass Liberation Project Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Evie Grosenick, Chief Deputy Public Defender, Washoe County Public Defender's Office
Wiselet Rouzard, Field Director, Americans for Prosperity – Nevada
Raymond L. Giddens, Sr., Senior Pastor, Unity Baptist Church
Jovan Jackson, Organizer, Mass Liberation Project Nevada
Jim Sullivan, representing Culinary Workers Union, Local 226
Louis Magriel, Organizer, Nevada Student Power
Zachary Khan, Organizer, Nevada Student Power
Shondra Summers-Armstrong, Private Citizen, Las Vegas, Nevada
Denise Hooks, Organizer, Mass Liberation Project Nevada
Scott L. Coffee, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice
Alex Goff, Private Citizen, Reno, Nevada
John D. Solomon, Private Citizen, Fallon, Nevada
Edward Coleman, Private Citizen, Reno, Nevada
Jesus Carvajal, Private Citizen, Las Vegas, Nevada
Tricia McLaurin, Founder and Pastor, Give It All You Got Ministries; and President, National Coalition of 100 Black Women, Las Vegas Chapter
Gary Peck, Private Citizen, Las Vegas, Nevada
John Tsarpalas, President, Nevada Policy Research Institute
Chris Giunchigliani, Private Citizen, Las Vegas, Nevada
Jason D. Woodbury, District Attorney, Carson City District Attorney's Office; and President, Nevada District Attorneys Association
Jessica A. Walsh, Chief Deputy District Attorney, Clark County District Attorney's Office
Marc M. Schifalacqua, Senior Assistant City Attorney, City of Henderson
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Daryl B. DeShaw, Director and Bail Agent, Surety Bail Agents of Nevada, Las Vegas, Nevada
Jose Manuel Ceballos, Bail Agent, Aztec Bail Bonds, Las Vegas, Nevada
Marc Gabriel, Bail Agent, Las Vegas, Nevada
Tom Clark, representing Nevada Judges of Limited Jurisdiction
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
Ryan Black, representing City of Las Vegas
Tyre Gray, representing American Bail Coalition
Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence
Bhreaajyt Bonds, Owner and Agent, Liberty Express Bail Bond Store, Inc., Las Vegas, Nevada.
Travis Moore, Owner and Bail Agent, Bail Bonds Unlimited, Reno, Nevada
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
Jessica Ferrato, representing Second Judicial District Court
Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada

Chairman Yeager:

[Roll was taken. Committee protocol was explained.] We have one bill on the agenda today. I will open the hearing on Assembly Bill 325, which revises provisions relating to bail.

Assembly Bill 325: Revises provisions relating to bail. (BDR 14-118)

Assemblyman Ozzie Fumo, Assembly District No. 21:

It is my privilege and honor to present Assembly Bill 325 to you today. Before we get started today, I do want to say this bill is not intended to end cash bail in Nevada. There is a provision in here where all we are asking for the judges to do is look to cash or to monetary conditions of release as the last alternative, not the first. Every person arrested enjoys the presumption of innocence. We have thousands of people in custody awaiting trial who cannot get out of jail simply because they are poor. The bail system in this country—especially in this state—disproportionately affects people of color and the poor. It continues to disenfranchise them. It is an unfair system as we currently have it. Nevada judges tend to default to bail or monetary conditions first. If you are wealthy, you can get out. If you can post 100 percent of your own bail and you go to court, at the end of your case you get 100 percent of it back. If you are poor and you have to go to a bondsman to get out, you lose that 10 percent; you lose 100 percent of the money you put down. The system we have continues to disenfranchise the poor.

This bill is not perfect. It has some issues that we are going to work out. There are some clauses in there that make it a four-hour hold for battery domestic violence. That will remain at 12 hours. That was either a typo or a misrepresentation in the bill. That is something we will change and put back at 12 hours. I have spoken with Ben Graham about that. I have spoken to William Horne about that, and that is the way we are going to do it. There are

other things in there we can work on. Without further ado, I would like to introduce my partner, Thomas Pitaro. He will go through a little bit of the history of bail in this country. Also, Robert Langford, who authored most of the bill, will go through the nuts and bolts of it with you.

Thomas F. Pitaro, Attorney, Pitaro & Fumo, Las Vegas, Nevada:

I have been practicing in Las Vegas since 1974, so I may have been practicing longer than some of the Committee members have been alive. The majority of my career has been all through the criminal justice system. I have seen the issue of bail as it has changed drastically over those years. I think one of the things that has to be done when you are talking about something as fundamental as bail is to put it in the perspective of where it came from and why it is there. Most of us are not attorneys or legal historians. Most of us do not understand how these things came about and their history. The function and issue of bail is as old as the *Magna Carta*: 1215 A.D. That is the fundamental concept of where it came from. That is 800 years that we have been dealing with bail. The same problems we are facing today have been faced historically. The impediments to bail have been thrown there, and legislators have tried to address them as you ladies and gentlemen are doing today.

Historically, the major issues with bail start out with incarceration. The fundamental proposition of the American and English criminal justice systems—especially in the United States—is that we have a presumption of innocence. That presumption of innocence fundamentally means we do not punish people for crimes until they are convicted. The way we punish people for crimes when they are convicted, in many cases, is incarceration. What has happened within the bail system is that incarceration is coming before conviction. That is the fundamental issue we have been dealing with. This is not a new issue. The Habeas Corpus Act of 1679 in England was enacted because of the fact that judges were holding people without establishing bail. The English Parliament—a precursor to our laws—had a Habeas Corpus Act which said judges had to let people out. Now, the Crown—the government, the judges—said, Well, sure, we will set a bail. We will just set that bail so high you cannot make it. Then the English Bill of Rights came up with the concept of excessive bail.

Those things get continued on into the United States. In the United States, there were two themes that went on. Let me explain them as it is very important when we look at some of the legal basis for bail and the decisions. The Eighth Amendment to the *United States Constitution*, part of the American Bill of Rights, was enacted and put forth by James Madison. What he did was copy the Virginia version. That was not the majority version in the colonies that became new states. Nevertheless, that ended up in the federal *Constitution*. There is another constitutional provision that the majority of the new states had and that is bail is an absolute right in America because it goes to the fundamental process of proof beyond a reasonable doubt for conviction and a presumption of innocence when you start. We had what was known as the "proof is evident and the presumption great" standard. That was in state constitutions that predated our federal *Constitution*.

The *Nevada Constitution* has both those provisions. In Nevada, we have an absolute right to bail under our constitutional scheme, save and except for crimes where a person faces life imprisonment without the possibility of parole. You can hold that person without bail. We also have the excessive clause portion of the Eighth Amendment that the bail cannot be set so high that you cannot make it. It is those two themes that have come up and many times have clashed.

Last session, Justice James Hardesty of the Nevada Supreme Court used the phrase, "Bail means jail." That is a fundamental truth of our system. When you start setting bail, the people cannot get out of jail. We have added another phrase, "If you have the financial clout, then you can get out." What we have in our system in Nevada is this concept whereby instead of defaulting toward release and then looking at the individual and placing terms and conditions if needed, we start at the opposite end and put the most punitive aspect on it, which is cash bail or monetary bail.

Anyone who has practiced law within Nevada has seen strange things happen. Just a few years ago, out of the blue, the justices of the peace decided they were going to double bails without any idea of what they were really doing. What we do know happened is they put the jail budget in crisis. The concept of bail has its way throughout the system. Keeping a person in custody is an expensive proposition. My understanding is that we are at about \$150 per day to keep a person incarcerated.

When we look at the people who are incarcerated, as Assemblyman Fumo stated, we know through statistical analysis, through studies that are being done, and court cases that are all over the country right now, bail is an important topic. A guide just came out of the Criminal Justice Policy Program of the Harvard Law School ([Exhibit C](#)) dealing specifically with bail reform. We have all heard what has happened—lawsuits in Texas and Missouri—where governments are now being sued for the deprivation of the basic right to bail. We know that a person who is incarcerated is more likely to plead guilty and is more likely to go to prison just by virtue of being incarcerated. You cannot defend yourself as easily in custody as you can out of custody. All you have to do is empirically go down and look at the people in custody in Las Vegas Township Justice Court, and you will see they are predominantly people of color or of low economic status. What we have created, then, is a system where not just poor, but working people and middle-class people are getting to the point that if you are arrested and charged with a crime, there is an incredible situation where families are mortgaging houses just to try to make bail, and many times they cannot. The poor stay in jail and the rich can get out. The average amount a family of four makes in Las Vegas is \$50,000 per year. It is common for judges to walk in on someone who is a casino worker and put bails of \$200,000, \$300,000, \$400,000, or \$500,000. Those bails are not related to worrying about danger; it is a mechanism to keep people in jail. That does cost us. Keeping people in jail costs us considerable amounts of money.

What this bill has attempted to do is start with the fundamental guide of the American judicial system, which is that you are presumed innocent and punishment follows conviction, it does not precede it. What this bill has done is set out the procedure that should be followed

starting at the bottom—that is, with the freedom interest, the default of freedom, then the judge making the decision to put on conditions as needed. You hear this phrase with bail, "the least onerous condition," which means you do not put conditions of bail on that are not needed to effect the dual concept of bail that is to show up in court.

In 45 years of practicing law, I think I can count on one hand the number of my clients who have ever absconded—that is "left." I have had clients who do not show up to court because they oversleep or they forget. They do not flee. In the 1980s we added this concept that bail then added danger to the community. The conditions in this bill are a systematic and commonsense approach for the courts to look at the conditions that may or may not be needed to make sure the person is not a person who may be out there committing another crime. If that person is very bad, if the judge has a really considerable concern, then cash bail is still available. The point is, we do not start with cash bail; we start with release.

Last night, I came across a 2013 statistical analysis by the United States Department of Justice, Bureau of Justice Statistics. The concern we hear all the time is that if we let people out on bail, they will go and commit crimes. According to this statistical analysis by the Bureau of Justice Statistics, only 8 percent of people who have been arrested for a felony crime are rearrested for another felony. In other words, 92 percent of the people are not. Yet, we have a system that seems to be going toward keeping the majority that do not need to be in jail in jail because we are worried about the few who may violate it. Under Nevada law as it exists today, if somebody commits a crime or a felony while out, that becomes an issue where the bail can be revoked and reviewed by the judge.

There is no sense in sticking our heads in the sand and saying these are not problems. One of the problems is that bail has become so politicized. If you are in favor of reforming bail—in essence, being a conservative and going back to the original purposes of it—what will happen is you will get attacked politically. Just yesterday, something was dropped off at my desk. It says, Help keep our community safe. I do not know if it can be seen, but nevertheless, it is a little flyer that has a number of the cosponsors of this bill claiming they want to release people with serious crimes for free, putting us all at risk. I do not believe the people on this Committee or the sponsors of this bill want to release people who have committed serious crimes for free so that everyone can be at risk. This is the hysteria and the absurdity that gets out there. The most offensive one, of course, is the lack of knowledge of bail as it exists and its purpose from a historical and a constitutional perspective. They have a picture of the October 1 shooter. It says he would have been released. That is offensive. That is a disgusting sort of attack upon people. To say that if you recognize the unfortunate way bail has gone, the overcrowding of jails, and the disproportionate effect on people of color or those of low economic means, and then put the picture of a mass murderer up there and say the Legislature wants to let him out, that is offensive. That is the hyperbole and that is what is out there.

But that is why we need this bill. We need this bill so there is, in fact, a systematic way that the courts go through it so we get to the correct decision. That correct decision is a default toward release, and if the state shows there are conditions that should be met to keep the

community safe or to mitigate a flight risk, then the courts place them on all the way up to bail. It is a systematic approach so we do not have to put up with this. A judge who lets someone out—then has an unfortunate thing happen because 1 out of 100 or 1 out of 1,000 does something—might get hit politically with a sort of "hit piece," like the one that came out yesterday. I think that is really why we need this bill. We have to legislatively put down the things that need to be considered all the way from release as the default up to monetary bail.

This bill will do two things: it will keep the community safe because the judge goes through all the factors and it will make sure the person shows up. Those are the two fundamental and only issues bail is supposed to address. We have to stop putting people in jail before they are convicted because they cannot make monetary bails that are so high. If you go down to justice court or district court and see the bails that are out there, you would have to be a millionaire to make these bails. If you have the money, you can, in fact, be a danger to the community. I ask the members of this Committee to look at this bill and understand what it attempts to do, which is to put a reasonable, systematic approach to the setting of bail. We can then get it so people who are low income can still have the freedom interests they are entitled to as American citizens. I would now like to turn it over to Mr. Langford.

Chairman Yeager:

I did want to note for the Committee and members of the public that Article 1, Section 7 of the *Nevada Constitution* as well as *Nevada Revised Statutes* (NRS) 178.484 specify that persons arrested for murder are not entitled to bail. Nothing in this bill can change that because it is in our *Constitution*. I want to make sure that is abundantly clear on the record. The assertion that someone who commits murder, and mass murder at that, would somehow be released to the streets for free if this bill were to pass, is just a patently false claim. I want to make sure that is abundantly clear. To anyone paying attention to this hearing, that is not what this bill seeks to do. It seeks to do some other things, but make no mistake about it, this would not apply to that situation or any situation regarding a murder charge. With that, Mr. Langford, if you want to take us through the bill itself, that would be much appreciated.

Robert L. Langford, Attorney, Robert L. Langford and Associates, Las Vegas, Nevada:

Even though Assemblyman Fumo said I authored this bill, I really have to say this was work that came together from a variety of different communities and philosophies. I would not say this is a nonpartisan bill, I would say this is a pan-partisan bill. You will hear today from many people with different backgrounds and philosophies as well as conservative and progressive. Many people are going to speak in favor of this bill and why it is a bill that is absolutely necessary.

We came together with two goals. The first was to find a way to make the community safer because cash bail is not safe. The second was to come together to figure out a way to make it cheaper, because mass incarceration, including pretrial detention, is one of the most expensive things we pay for as United States citizens. How can we do that? We also recognized that there was a broad swath of our community that was hurt every day by the

current bail system. We came together and created a system, recognizing that we cannot get rid of the concept of cash bail and that in some circumstances it is appropriate.

How do we reach a solution that maximizes the amount of supervision we can place on people so they are not a threat to the community to reoffend, and also ensure they are going to come back to court without having to impose cash bail? We came up with a system after reviewing best practices from across the United States. This is something that is on the forefront of criminal justice thinking and philosophy right now. We did not try to reinvent the wheel. In fact, that is probably how that four hours got in there. I would also note that we put four hours related to DUI, battery domestic violence, and a violation of a temporary protective order. That all should remain at 12 hours. It works best in Nevada as 12 hours. That will be a requested amendment at some point.

What the bill does is say you have to be brought into court in a reasonable time frame: no more than 48 hours. During that time, you are to be allowed a hearing. At that hearing, it will be determined by the magistrate or judge what the appropriate conditions of release are. It sets a hierarchy from an "own recognizance" (OR) release—basically your own personal promise that you will come back to court—all the way up to cash bail. Along that time frame, there is a rigorous due process. First, it allows the state to present why a person should be given a high cash bail. Second, the defense is able to respond and rebut that. The burden is on the state to show there are certain conditions that must be imposed. The defense attorney and the accused will then be allowed to give evidence to show that.

When I first came to Nevada as a prosecutor, it could be three or four days before you were first brought into court. I will tell you that today, in the Las Vegas Township Justice Court, they have created an early appearance court where people are regularly brought into court within 12 to 24 hours of being arrested. There was no new court created; it was just created out of the current court. No people were hired to create this court, they just moved up the timetable. This hearing could take just minutes, and most of the time it does. At that hearing, the state represents what the charges are and what kinds of conditions, up to and including bail, should be set in that particular hearing. Then, the accused is allowed a time, through his attorney, to also present evidence. This bill also says that evidence can be any kind of document. It can be any kind of support. We are not talking about the standard rules of evidence from a regular criminal case, which are much more rigorous. This is just for a pretrial detention. These hearings are oftentimes very quickly held within a matter of minutes. As I said, it is done each and every day, 365 days a year, twice a day, in the Las Vegas Township Justice Court. It is working. There is nothing that is happening in the early appearance court that is not included in this bill. What this bill does, in fact, is codify what is already taking place for free.

What is the benefit to having that early appearance? As Mr. Pitaro said, it is \$152 per day to keep somebody in the Clark County Detention Center. The early appearance court here is done within 24 hours. Let us say it is 48 hours, which is what this bill allows. If it were 48 hours, they hear approximately 60 to 70 cases per day. Let us take the lower number of 60. Let us say that of that number, 50 percent were able to get out on bail—although a

presumptive bail is unconstitutional. Of that group, to keep that group of 30 people in jail is \$4,500 per day, \$15,000 per month. It adds up. Having this kind of a system where people are brought before a magistrate is much cheaper.

Having this kind of bail system where a person who is accused of a crime is brought before a magistrate also allows the community to have input as to what the custody status should be. What are the conditions going to be? There are conditions such as, you should not be seeing this particular person; you should not go to this particular place. Those things are included as possible conditions for release from custody. Right now, under the current system, if you have the money to make the standard bail, there are no conditions set on you. You can go out and do whatever you would like, which then, in fact, makes the community less safe. We do not even have to talk about the people who are hurt by one or two extra days in jail before they are seen by a magistrate. The 48 hours is critical. The hearing is the best practice across the United States and conforms to traditional notions of what United States jurisprudence is: that you are brought to a court in front of an independent magistrate, and the state calls out the charges against you, and you have a right to be released from custody pending your adjudication. With that, Mr. Chairman, I would open it to any questions the Committee may have.

Assemblyman Roberts:

I did not catch any of the mechanics of the bill in the presentation, so I will go over a couple of concerns I noticed. Section 3, subsection 7, paragraph (g), talks about shackles and appearing in court. It requires a court order for anybody being shackled when they first appear at court. If the court orders them to be in shackles, would they do that before the hearing or during the hearing? Would that cause any complications for getting people to and from jail and court? Typically, there is one corrections officer with up to 12 defendants. How would that work? What was your intent, and whom did you consult when you put this in the bill?

Robert Langford:

Again, this is the best practices as required across the United States. I will also say it is pretty standard that people who are brought in on an early appearance or initial arraignment are brought in unshackled. There are exceptions, of course. Somebody who is very dangerous or who has acted out from a mental illness would be brought in in shackles. They generally say to the court they will bring that person in with shackles. It does not have to be a formal request. It can routinely be a matter of, This person is a problem and we are bringing him in that way. The best practices and what we typically do is bring those people in unshackled.

Assemblyman Roberts:

Is that the current practice at the Las Vegas court you mentioned earlier in the presentation?

Robert Langford:

Yes.

Assemblyman Fumo:

Where that language comes from is a United States Supreme Court case, *United States v. Sanchez-Gomez*, 138 S. Ct. 1532 (2018). It is now law in the United States that a judge must make a determination about whether a defendant is a danger before they can come into the courtroom. They will make that determination ahead of time. I cannot speak for Washoe County or other rural counties, but I can speak to Clark County. What happens is they come from Clark County Detention Center in a tunnel, they are usually brought in through the lower level, they are in a room with all the other inmates, and they are shackled. When they would have their appearance, they would be brought out. If a judge makes a determination that they should be free pursuant to this United States Supreme Court case, they would be unshackled at the time of their hearing. When they go back in through the tunnel, they would be reshackled. It is just for the hearing alone. It is a United States Supreme Court case that mandates that. That is something we cannot change.

Assemblyman Roberts:

So there are some mechanics as far as classifications and threat before they walk into the court room?

Assemblyman Fumo:

Absolutely.

Assemblywoman Backus:

My question is for Mr. Pitaro. I understand that during your entire career that commenced in 1974, five of your clients actually fled. About how many clients have you had since 1974 to look at that statistic? Of those who fled, what type of bail were they out on? I understand it has been a span of years with the changes we have had in our system.

Thomas Pitaro:

As I remember, a couple of them cut their ankle bracelet off and left. That said, I have lost track of how many cases I have done. I have spent almost every day of my life in justice or district court in Las Vegas. If you figure that there are 250 [business] days per year and multiple defendants during that, I have represented thousands of people through the system. The point I am making is that there is a difference between the person who flees—which is rare—and someone who misses their day in court. Most people who come in and hire me have to pay me, so they want to stick around and see if they get their money's worth. There are very few people who take off. The people who do not show and get the bench warrants are the people who cannot get up, and we have to file the next motion to go back into court and bring them in. There is a differentiation between taking off or fleeing and just being too damn lazy sometimes to get up or not being reminded. Within the bill, we talk about those areas.

There have been other jurisdictions where they have the courts notify the person they have a court date coming up. You have a notification process in there, and that has cut down considerably the amount of people who have not shown up. The point is, the true fleeing defendant is a rarity. I can think of maybe five guys that I have had during that time who

have actually fled versus not getting up in time for court, being late, or missing the bus. I have had people who have had to take hour-long bus trips to get into court at 8:30 a.m. or 9 a.m. It becomes very difficult for people. That is what we are talking about. I hope that answers your question. I have probably been in court as much or more than 95 percent of the attorneys in Clark County.

Chairman Yeager:

I noticed there is a proposed amendment from the Nevada Attorneys for Criminal Justice ([Exhibit D](#)). I am not sure if you have had a chance to look at that, but I wanted to ask Assemblyman Fumo whether that is a friendly amendment or whether he is still considering that.

Assemblyman Fumo:

I did not see that last night when I was working on this bill, but I am happy to work with anyone on this bill.

Chairman Yeager:

So that one is to be determined. There is an amendment from them on Nevada Electronic Legislative Information System (NELIS). I do not think it makes substantial changes to the bill, but I would encourage you to take a look at that when you get a chance. Working off the bill, where it talks about conditions that could be imposed if deemed necessary, in section 3, subsection 4, paragraph (a), it says "The requirement to commit no new crimes." It seems to me that would be a condition that would always be necessary. I wonder, was there an intent to put that there with the qualifying phrase of "except that if deemed necessary"? My thought was that should always be a requirement when someone is released, that they are not committing new crimes.

Assemblyman Fumo:

It is inherent in there. It comes from the federal statute. It is a condition that the judges or the magistrate must make in federal court. It puts the defendant on notice that if they do commit another crime, not only are they violating the terms of this and will be held in contempt of court, but they will be charged additionally with the other crime and enhanced penalties. I think that is a United States Supreme Court case that came down that says it must be in the terms of release federally.

Chairman Yeager:

I understand that. I just think the way the language reads, if you look at lines 37 and 38 on page 6, it says, "the following conditions may be imposed," and then it has, "The requirement to commit no new crimes." For that particular one, it seems like it should be a "shall." If you are going to be released, you should not be committing new crimes. It might just be a technical error. I think what you are saying is that should always be a condition. It is in the federal system, and I assume we do want to keep that the same way in the state system if we were to adopt this bill.

Assemblyman Fumo:

That is correct, and we will make that change.

Chairman Yeager:

I had one overarching question. I want to be aware of regional differences in our state, particularly between Washoe County and Clark County. I think Washoe County has a more robust pretrial division that supervises individuals, whereas in Clark County, we really do not have that. If a judge were to have this hearing and determine that certain conditions were going to be appropriate for a defendant, who is going to be monitoring that defendant for compliance? Obviously, hearing Mr. Pitaro speak, I know he is very involved in his clients' cases and can do some of that legwork, but I am particularly concerned about our institutional defenders who have extraordinary caseloads. If they are not going to be in a position to be able to make sure that defendants are complying with conditions, how do you envision that happening? Is there going to be some kind of supervision?

Assemblyman Fumo:

Say the judge determines that you are going to be released without conditions; however, he goes with intensive supervision. Intensive supervision in Clark County is kind of a hand scan located at the jail or at the courthouse. You come in daily, weekly, monthly, whatever the judge determines you are going to do, and you scan your hand. They will have a record of that at the court so when the defendant shows up for his next court date, the judge could say, Defendant A, I asked you to come in weekly and you missed one of your weekly check-ins; you are going back into custody. It could be done like that.

Say the judge orders them to go to daily Alcoholics Anonymous (AA) classes: This case involved alcohol; I am going to release you on your OR so you are going to go home, but you are going to go to AA every day. The defendant is required to keep a notebook and they will be told that. Although it is anonymous, they go there every day and the leader of the group can sign an attendance record for them. When they come back to court, they are required to bring that with them. It is really on the defendant, and I would put a lot of it on the defense attorney as well—remind your client. Like Mr. Pitaro said, some of these guys that do not show up, it is because they slept in, their boss would not let them off work, or they got a flat tire, things like that. They have to be monitored a little bit, and we take responsibility for that, but it is mainly on the defendant. I have told you to do XYZ; you better come back to court with XYZ done. If you do not, you are going back into custody.

Assemblywoman Miller:

Going back to when you began speaking about historical and constitutional precedence for bail, are there people in jail right now who will never be prosecuted or will be acquitted?

Thomas Pitaro:

Yes. Remember, you get to jail by being arrested; then the formal charging comes after that. You have numerous people who get arrested and no charges are filed. You have people who get arrested and they are acquitted, and you get numerous people who are arrested and then they plead to much less serious offenses. That is one of the evils that all the studies are

finding—people are being kept unnecessarily in a custodial situation that has nothing to do with court appearances or being a danger to the community. That is one of the things that is out there and that is what most of the studies are showing.

Assemblywoman Miller:

Are we punishing people for crimes they did not commit in those cases?

Thomas Pitaro:

Absolutely. Most of the studies that are out there, the groups that have been working on this, they all come to the conclusion that large numbers of people are being incarcerated who are never convicted of a crime or a much less serious crime, but they are kept in custody for no purpose other than to keep them in custody because they cannot afford the bail.

Assemblywoman Miller:

In addition to that, it seems for a person who did not commit a crime and is eventually released, there is an impact on that person's personal life. I am thinking of my fellow legislators right now and most of us had to go through some very specific hoops and processes in order to guarantee that our jobs would be there when we leave the Legislature. For the average person, if you are gone for four months from work, you no longer have that job. Often it is just a few days before you could lose your job, so the impact that this has on people's jobs—we know it is their livelihood. Do you see a cyclical relationship between loss of job and then propensity to commit a crime? I know there is a lot of research out there. I just want to hear what your thoughts are.

Thomas Pitaro:

Yes. Most employers expect you to show up to work, and as forgiving as they may want to be, if you do not show up for work for a day, they need somebody to do that job. The person that is in custody many times loses his job. Now you have a person who was gainfully employed, cannot make the bail, now loses his job, and if he ultimately gets out of jail, he now does not have the means of support to go on. That is one of the major issues that the studies have found, that the longer you keep a person in jail, the more difficult it is for that person to rebound. Just common sense tells us that if you work in a casino or a store and you are a no-show, your boss is not going to keep your job open while the criminal justice system works its way through for the next six months, year, or two years. It is a critical problem, especially with the poor.

Robert Langford:

The magic number is three days. In three days, you lose your house and you lose your job. That is what every study shows.

Assemblywoman Miller:

We are talking three days for individuals who potentially may be released because they are not going to be prosecuted to begin with. We are hearing many bills this session around the idea that people are being incarcerated in jail for traffic violations and such. We know that this bill is not about the violent offenses, but what are some of the least reasonable reasons

that you see individuals being put in jail? What is happening here in Nevada? I know that some states would throw individuals in jail for not paying child support. What types of offenses are the least dangerous to society or to other individuals for which we have people incarcerated in jail?

Robert Langford:

I have heard of a broken bicycle light or jaywalking. I also want to defer to the people who are going to be speaking in favor of this bill who can give you some of those outrageous circumstances where they were detained or incarcerated on incredibly minor things.

Thomas Pitaro:

I just want to add one thing to that and that is, this is commonplace. What you are talking about is not an aberration. This is and has been over the years a very common sort of thing—putting people in jail for absolutely minor infractions because of fines or bails.

Assemblywoman Tolles:

Thank you for clarifying that this does not apply to cases of murder. I would just second the comments made that exaggerated political attacks are just never appropriate when they are not based on the facts. I think no matter who we are, it is important that we deal with the facts, and I appreciate that being cleared up on the record. Data makes great decisions, and I think that there have been a number of stories given of minor infractions and cases where somebody just slept in and failed to appear. I imagine we are going to hear more stories of people who did flee and the opposite end of the spectrum. I think it would be helpful to have some real statistics—if we have those available, statewide—of exactly, historically, how often we do have people that flee. I do not know if that is available or if that is something we have, but to the extent that it is available beyond just one person's testimony versus another, if we do have any statistical data, I think that would help guide our discussion in an informed manner.

Robert Langford:

We do not have statistics. I am not privy to, specifically, Washoe County, but in Clark County and almost all of the rural counties that I am aware of, statistics are not kept as to recidivism, which means, does the person commit another crime while on pretrial release? They are not kept for failures to appear other than as to the individual person. We do not have those statistics. It would be interesting to have them, but all we can speak to is the anecdotal things that we are doing.

Assemblywoman Nguyen:

I was reading an article last night from July 2018. I know that the Clark County Public Defender at the time, Mr. Kohn, had indicated when they did some internal looking at their recordkeeping, they estimated at the time that they had over 450 individuals who were incarcerated with bail amounts that were less than \$5,000. Can you explain to the Committee how that works and what that really means? Does that mean that they cannot come up with \$5,000? Under the current system, if they went to a bail bonds company, how much money would they actually need to be released from custody?

Thomas Pitaro:

It is my understanding that, by statute, the nonrefundable fee that a bondsman charges is 15 percent of the total premium. They are also supposed to put up collateral for the \$5,000, or whatever the bail is, to secure it. Basically, you are spending 15 percent of the bail amount or more, depending on the bondsman, and you are supposed to put the collateral up to get out. It highlights one of the problems—even with some of these lower bails, with the 15 percent of a few hundred dollars, that is beyond the means of a lot of people. We say it over and over again, but people live paycheck to paycheck. Even those amounts become very, very difficult to meet for some people, but that is the way the system works.

Assemblywoman Hansen:

Thank you for helping us to get an understanding of what we are looking to accomplish with the bill. Referring to section 3, subsection 1, there is mention that "must be released pending trial with the least restrictive conditions that the court finds necessary to ensure reasonably the appearance of the person" I am just thinking about Marsy's Law. What does the court take into consideration for that release—the victim's statement, have they been able to acquire the victim's statement, the victim's safety—as I am just wondering how that interplays with this proposed language.

Assemblyman Fumo:

That is a great question, Assemblywoman Hansen. What this bill would do is bring that defendant before a magistrate as soon as practicable. Clark County is doing it right now within hours. According to Marsy's Law, the victim would have the right to come into court and testify. It would be the job of the district attorney to notify the victim. The judge always has the arrest report with him and can read exactly what was said. The victim can tell the district attorney, I have already given my statement to the police; it is right in there and the judge can read and use it as well. What is odd about Marsy's Law is the person who was funding Marsy's Law was arrested in Las Vegas, and as I have said, bail means jail if you are poor but clout means you are out. Because he was a billionaire and he had copious amounts of drugs that would be a life sentence, he was allowed to have an OR walk-through, spent zero time in jail, no victim or person in society was able to testify at his bail hearing, he was just given a pass to come in and out. You can look up his picture online. Clout means you are out. The laws do not apply to him.

What we are talking about here is the poor, the disenfranchised. What we are asking the judge to do is to first look at non-cash alternatives; look at the house arrest, the hand scan. The judge's job is to determine if you are a flight risk or a danger to the community. If you are a flight risk, the judge can put conditions on you to reasonably ensure your appearance in court. But if you are a danger to the community, no amount of money should be able to do that. All we are saying is, if you have been arrested for murder, there must be a proof evident, presumption great hearing. This man would not get out. The cowards who put this on are just trying to incite violence and incite hysteria and what you are going to hear from the opposition is a lot of fearmongering. What they are doing here is, if you notice both parts of it, they say, "for free"; so what these bondsmen are saying is, If they can afford to pay us, let them out. Bail bonds amount to a \$2 billion-a-year industry, and that is what they are

fighting for. What I am fighting for is the poor and the disenfranchised. To answer your question, we are just asking the judges to look at the least restrictive means first, and I hope that answered your question.

Chairman Yeager:

Assemblyman Fumo, I want to also caution you that the rules apply to all of us, so I do not want personal attacks on anyone in this Committee including the opposition. I would like you to refrain from characterizing them as cowards. They have a right to be heard as well. I just want to make sure that everyone in this Committee knows that the rules go both ways. If we can keep our comments to the bill itself and to the question that is being asked, I think that will go a long way. Obviously, I know you are very passionate about this issue, but I just ask you not to do that in the future please.

Assemblyman Fumo:

Point taken, Mr. Chairman.

Assemblywoman Hansen:

I appreciate your passion, Assemblyman Fumo, and yes, unfortunately, many incorrect things are said about bills. I am in that same position myself. Because it sounds like in Clark County, in particular, the process is moving quickly, but does that take into account that the victim would be able to get the statement and be heard with this process? They have work, child care, and those sorts of concerns. That would just be a concern of mine.

Assemblyman Fumo:

Again, Assemblywoman Hansen, a great question. Like I said, the judge does have the police report with the victim's statement on it. What this bill also does is allow the state or the defense to ask for an additional 48 hours. So automatically the state could walk in there and say, Judge, I need 48 hours to get my person here.

Assemblywoman Krasner:

I am seeing this flyer for the first time and I do not like it. It is uncalled for. I did have some questions about how some of these sections would relate to Marsy's Law. I am just making sure that we can allow the victim of the crime to arrange to get off from their job or arrange for child care because, in some areas of the bill, it does say may be detained for four hours. I am specifically looking at section 3, subsection 11, where it says "for violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence . . . stalking, aggravated stalking or harassment," that they can only "be detained for up to 4 hours." Can you explain or tell me how you would work that through?

Robert Langford:

I apologize, it should be up to 12 hours, which is what the current existing law is. Marsy's Law would have to comply with that particular aspect of the bill, and again, I think Assemblyman Fumo pointed out that in some ways this is actually better for the victims because there is a certain time that they are already going to know of when a person is

arrested; the victims will know that within 48 hours somebody is going to be brought into court and they have the right to come in and address the court as to what they think the conditions of release should be. There is more predictability, in fact, with this particular bill than there is right now. When it is left up to the prosecutor, maybe the police officer will know when that person will be brought in. This bill gives some predictability and, in fact, enhances the ability to comply with Marsy's Law.

Assemblywoman Krasner:

In the verbiage it says, "may be detained up to 4 hours," but you are saying it is actually 12 hours, and then you said it is really 48 hours.

Robert Langford:

I apologize. We are asking that it be amended to be 12 hours before the person could be released under any circumstance—at least 12 hours—but under the bill it would be 48 hours maximum before a person was brought into court. If a person was able to make some kind of early release, the minimum amount of time that they would spend in custody would be 12 hours, but they would be brought before a magistrate no longer than 48 hours. I hope that answered your question.

Assemblywoman Torres:

I know that this is something I had several conversations with members of my community about during the campaign trail, as I do serve a large population of low-income families. I was wondering if you could speak to the impact the current bail bonds system has on low-income families. I have seen a little bit firsthand when a friend of my family's was incarcerated for unpaid tickets, of all things, and because he was in a situation where he was living paycheck to paycheck, paying that bond was impossible for him without the help of family members, neighbors, and our community.

Thomas Pitaro:

That is one of the major defects in our current system in that it does not take into account the fact of what happens to the people who live paycheck to paycheck. If you are in jail and cannot get out and you have a job, you lose your job. If you lose your job, you do not have any money. You do not have money; you cannot put food on the table. Those are the financial burdens and there are also psychological burdens. This is a common problem in the bail system in Nevada as well as the United States. What has led to this is the recognition that you cannot survive when you are in jail; your family cannot survive. You have to then make bail to get out to go to work, but then you have to divert other resources. When you are talking about diverting resources of the poor, there are not too many places where they can scrimp and save. They will go into debt to try to do that. It is a never-ending cycle that goes downward, and ultimately, we know the poor stay in jail more with cash bail as the default position versus the least restrictive conditions. This has long-term consequences, not only on the person in custody, but also on their families and the taxpayers. It broadens out so it is a serious problem and that is the reason it is being addressed all across the country—because it has become a critical mass.

Assemblywoman Torres:

Is there any evidence that our current bond system decreases recidivism or makes our communities any safer?

Robert Langford:

There is evidence all across the country that recidivism remains the same if a person has an OR release versus posting bond. Several months ago, I went back and looked at all of the studies that have been done since 1976 with regard to the effectiveness of cash bail on recidivism. All of the studies since 1976 show that it does nothing. Recidivism remains roughly the same with OR release and cash bail. A current experiment in Philadelphia was instituted by District Attorney Lawrence Krasner, which is essentially what this bill proposes, and that is a hierarchy of when you get a cash bail, if ever. Other jurisdictions have done away entirely with cash bail, and what they are finding over and over is on a long-term basis, recidivism remains the same. The failure-to-appear rate, that is, how many people are not coming back because they did not have to post a bond, also remains the same. The whole notion of why we have cash bail across the country—and it is difficult because Nevada has not done it—but the statistics for that are showing it is a flat no change.

Assemblywoman Cohen:

My question relates to section 11 and the warrant for failure to appear. I understand us not wanting to have people going to warrant because they missed a bus or they had to work or they even simply overslept, but that 48 hours does concern me. If you have someone who intentionally is skipping out on bail, 48 hours is a long time. You can get really far, and I know that does not happen often, but it does seem that when it would happen, those would be very big cases where we do not want somebody to be able to flee the jurisdiction. Could you please address that?

Robert Langford:

The 48 hours is actually intended to assist the court system because typically what happens is that, for the approximately 90 percent of people who are no-shows, once their attorney calls them, by 11 a.m., you are putting on a motion to quash the warrant which takes the time of the court system to process that paperwork, put the matter back on calendar, and get the person to court. In 48 hours, if the person intended to skip and they are really skipping, they skipped 48 hours before it was their court date. As I tell all of my clients, you can run but you cannot hide and eventually they are going to bring you back to Nevada. It is a cost saver to the court system to have that 48-hour buffer. Under this bill and the current policy of the Las Vegas Township Justice Court, they are taking the personal information of the person—email address, cell phone—and they are able to not only proactively call the person to remind them of court, but if they do not make court, they would have a way to get ahold of that person. The matter will automatically be brought on, which is much quicker than having to go through the paperwork. That is the reason for the 48 hours and that is how we arrived at that number.

Assemblywoman Cohen:

I appreciate that, Mr. Langford, but I am somewhat concerned because if the bill passes with the minor changes that have been discussed and someone is doing a daily check-in, they might not have skipped out 48 hours before they were due back in court because they might have wanted to do their check-in. I do think there does need to be further thought on this, maybe breaking it down between misdemeanors or felonies or certain felonies just to make sure we are keeping really bad people in our jurisdiction in order to get to their trial.

Robert Langford:

That is a good point. I certainly think you could break it up as to category A or B felonies.

Chairman Yeager:

Do we have further questions from Committee members? [There were none.] Committee members, if you have further questions, please follow up with Assemblyman Fumo. Thank you to the three of you for presenting. I will open it up for support testimony on A.B. 325. I have a number of people signed in for support testimony, so I am going to institute, on the support testimony, a two-minute limit on your testimony. I need to make sure we have adequate time for the opposition to be heard on the bill as well. Before we get started, just a couple of points: if you have written testimony, feel free to provide that to our Committee secretary and we can make sure that it is part of the record. I will be timing from up here, so when we get to that two minutes, I am going to ask you to please wrap up your comments. Again, if you are not able to say everything you would like, you can always submit something in writing as well.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:

I wanted to first of all comment on the proposed amendment ([Exhibit D](#)) that we sent over. It only deals with the situation where someone is charged with a complaint, the complaint is dismissed, and then they are indicted. The amendment points out that it should not be considered a new case. You can ignore the proposed amendment if you want. We just had that concern, but I certainly do not want this bill to be mired down in any way because of our proposed amendment.

We are wholeheartedly in support of this bill. The change to the system is really long overdue. It is a good bill and it addresses many of the problems that we have been complaining about for years in that there is a disparity as to the manner in which minorities and people of lower socioeconomic means are treated under our current system.

I want to specifically address the questions that were raised by Assemblywoman Hansen and Assemblywoman Krasner with regard to Marsy's Law. The current system does not address Marsy's Law at all because people just post bail and get out. Under this bill, a judge is going to be reviewing and then having the opportunity, like they do already, to say, As a condition of your release, you need to stay away from the victim. Judges are already doing this where they have someone appear before them versus just posting the cash bail. They are well aware of conditions that need to be specifically modified for a particular defendant and they often, in fact almost always, issue an order to stay away from the victim or they are told to have no

contact, which could also include the victim's family members—whatever is appropriate for that case. This already happens, when someone is brought before the court, and it will continue to happen under this bill. Where it sort of gets lost in the system is when people just post cash bail and get out and there is no one telling them to stay away from the victim. We, as defense lawyers, tell them not to have contact with the victim because we do not want our clients to have any problems going forward. I wanted to make sure that you understood that.

I wanted to point out that a lot of our members, like me, practice in federal court. In federal court, our clients often never have to post any kind of cash bail. In rare instances they sign a surety bond, but we do not have problems with people not returning to court. The system works, and I want you to all feel comfortable with the fact that this is very workable; it already happens in many instances. I wanted to address the 4 hours, 12 hours, versus 48 hours; I think we have all agreed that it is a minimum of 12 hours. It should read in the statute, but not every county is doing what Clark County is able to do right now which is to bring people before the court within 12 hours. The statute that says they must come before a court within 48 hours would apply to the other jurisdictions that do not have the resources to do what we are doing here in Las Vegas at the moment.

Assemblywoman Krasner:

I do appreciate that we do not want the law to apply differently to rich people or poor people. That is not the intent of the law. However, on this section you just brought up, when you mentioned you were trying to address my question earlier, you made the statement that the judge can ask the person or decide if the person might violate a protection order. But the specific question I am asking about—that you are trying to change in section 3, subsection 11—is regarding somebody who has already violated a restraining order or an injunction for stalking, aggravated stalking, and sexual assault, and so I am just a little concerned about that.

Lisa Rasmussen:

I understand what you are saying. I still think that these people who are accused of violating a protection order or any kind of order that was in place due to stalking are brought before the court. The court has the opportunity to determine that they present a danger to the community or to impose monitoring or any other condition including that they remain in custody once they are brought before the court. So I think that the concerns in a particular case that you are referencing in section 3, subsection 11, of the bill are all addressed to the court and the court gets to decide. We trust our judges to decide what keeps the community safe. I do not know if that answers your question, but I hope that it does.

**Ralph E. Williamson, Senior Pastor, First African Methodist Episcopal Church; and
President, Faith Organizing Alliance:**

I am here speaking on behalf of not only my two organizations, but most importantly, on behalf of individuals who I deal with on a regular basis. As a pastor, I hear from parishioners of the struggles they face on a day-to-day basis: one of the concerns is how family members are imprisoned and unable to get out of jail because they cannot afford to pay for their

release. I would like to read quickly something that I am currently dealing with on behalf of one of my parishioners.

This is a text I received this morning regarding an incident that involves a person who was locked up and the trickle-down effect on the marginalized individuals. It says:

Pastor, I know that you wake up early in the morning and I truly need you. I am about to lose my car and I know I have this under control. The insurance must be paid. If my license is suspended and there is no opportunity for me to get around and get to work, they will take my car and I will not be able to work or get around. Please help me and my two kids. Everything stems from my insurance. How am I supposed to look for another job, pay groceries, doctor's appointment, and have two kids? If I lose my car, my housing, my job, everything including my two kids, I will not be able to do. I have a game plan and I am following through and I can do this. Please, help me because I need your help. Just because I was not able to make bond, all of this has caused a problem which you well know.

I am saying to each of you, as I sit here today, that in Clark County, unfair and ineffective bail practices take a particularly heavy toll on people of color, low-income communities, and people with mental health and substance abuse issues. Since July 2018, an average of 129 individuals remain in custody for more than 7 days on bail less than \$5,000. The reality is poor Americans and people of color often cannot afford to come up with the money for bail, leaving them stuck in jail awaiting trial sometimes for months or years. This should not be happening. Small, minor infractions and nonviolent crimes where people are kept in custody because of their inability to make a cash bail pending a hearing is an injustice imposed upon people of color who are often the poor and the marginalized within our criminal justice system who are already living paycheck to paycheck, robbing Peter to pay Paul. That is why I am here, and I am in support of A.B. 325.

Leslie Turner, Organizer, PLAN Action, Mass Liberation Project Nevada:

I lost my voice but this is how important this issue is to me. I am here with a coalition of people who got together to fight against the unjust system of bail. The problem is that the cash bail system criminalizes poverty; it is that simple. If you have money, you have a different experience than if you do not. I am sorry, I cannot finish reading my statement. Reverend Williamson has agreed to finish reading my statement.

Ralph Williamson:

I am also part of the same coalition that Ms. Turner is working on. I will be reading her statement.

I am coming before you today as an organizer and person living in the community and fighting with the community while also being impacted by the same systems I am fighting against, and it is very hard. I am here before you because the issues have impacted me and I am here to lift up our stories and

uplift our voices. While many people are ready to admit that the bail system is unjust, how many are ready to do something about it? Doing something about it means listening to those impacted and considering us stakeholders in all discussions related to criminal justice reform. Take time to step down into communities maybe you have not, or if so, not in a while, and learn how we end up in debt with bail bonds industries, learn how mothers lose their homes, how industries profit off of pain. To understand the law completely, one must also understand how it is experienced. We are experts in that regard.

The problem with the cash bail system is simple. If you have money, you can enjoy the full package that the presumption of innocence offers. You may return to your home, to your family, to your job, and fight your case from outside a jail cell. You may sleep in a comfortable bed each night and dress in your best for court. On the other hand, those who cannot afford it, must stay in a cage where they are routinely robbed of their dignity and humanity, forced to perform labor, and taxed with extreme premiums for life's regular things such as toothpaste and making a phone call. People who cannot afford to pay sometimes amounts as low as \$65 are dragged into court in county blues, chained, with limited means to groom and limited communications with any support system, the odds continuously stacking against them. And suddenly that plea deal does not sound that bad because the person enters into a survival mode, no longer worried about future outcomes, just focused on the immediate relief, but relief at what cost?

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

I am committing to sitting in the woodshed from sun up to sun down with the sponsor, Mr. Jones, and Ms. Noble to fix this bill because the bail system is broken. I have heard numerous people on this Committee say that there should not be any unequal treatment based on what you can pay. But I will tell this Committee that there is no money given to a bail bondsman that makes our community any safer. That is really what this bill intends to do—make the cash part of the bail the last consideration of the judge. Right now, there are a lot of poor people sitting in jail simply because they cannot afford less than \$5,000 bail. I run into that situation every day as a public defender. You tell a homeless person, I am going to give you \$1,000 bail. Well, you might as well make it a million because that person cannot afford that bail. The only reason they are keeping them in the jail is because of that. But the judge can hide under the cover of it by saying, Well, I provided an opportunity for this person to be released. But really, it is a covert way to keep poor people in jail.

So this Committee knows, just to put some statistics to the face that you are going to see, 1 in 6 Latino men will be arrested in their lifetime. That is a statistic across the nation, and 1 in 3 black men will be arrested in their lifetime. They will sit in custody unable to get out simply because they are too poor to afford bail.

My office is doing a warrant quashing clinic and I will be working on it the weekend we go back in May. You should see how just a traffic ticket spirals somebody's life out of control. You cannot pay the ticket, so you are scared to come to court. Because you are scared to come to court and do not appear, you get a warrant. You get a warrant that adds another \$500 onto your ticket. Then you get arrested, and then we pay as taxpayers. All of the numbers you heard last time were wrong. The last time I talked to Mr. Delap, it is \$170 a day to keep somebody in the Clark County Detention Center. As taxpayers, that is what we pay to hold you there. Then you get released, but because you were in, you lost your job. Because you lost your job, you probably cannot pay for your house or apartment, and now you are homeless and living in one of our shelters. It is very hard to get back on your feet.

What we want to do is make conditions of release in a sensible way that protects the community, that ensures that somebody comes back to court, and that does not ruin the whole spectrum of their life should they either plead guilty to a lesser charge and get back in the community or not get convicted at all. I am committed to making this bill work. It is one of our top three priorities.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

I echo the sentiments of Mr. Piro. I want to give major kudos to Leslie Turner. She has put her heart and soul into this legislation. This has been a broad coalition that has come together to work on this language. As we know, we refer to the Legislature oftentimes as the "sausage factory." We know that we are going to see bills that get dropped on Tuesday and we have a hearing on Thursday morning. So, yes, we have some work to do on this bill. But the underlying premise of this is that we seek to create a new system of bail that begins with the assumption that innocent people should not be in jail, that people can be held only if their release poses an unacceptable flight risk or poses a danger to the community. That is the ultimate goal.

Throughout the drafting of this bill there was also what I would call another type of woodshed that occurred prior to the legislative session. People were eager to get language in and work through this and hear all of those concerns, but the ultimate goal was to follow the New Jersey model. We look at the New Jersey bail reform statute as one of the best in the country and that is the goal we were going for and looking toward and that we hoped to refine this bill to be. Assemblywoman Tolles earlier was talking about data. There is some great data that has come out of that state as far as enactment of those statutes. I just wanted to put on the record that prior to enactment, 8,899 people were sitting in jails, and there were only 499 pretrial detainees in 2015 with a population of 9 million. That put New Jersey's pretrial incarceration rate at 55 per 100,000 people. There are currently zero people in jail in New Jersey because they could not post money bail. Only 44 people were issued money bail, and all of them were released. I think that just shows an example of how this system can work and really serve those interests of justice and not detain people who cannot post bond. Also, we have seen some statistics in New Jersey that the crime rate since enactment has actually decreased. That is not a solid correlation, but the rate of violent crime has significantly decreased in New Jersey since cash bail reform was enacted. I think as we

proceed and have these conversations, we are committed in the same way as the Clark County Public Defender's Office.

Evie Grosenick, Chief Deputy Public Defender, Washoe County Public Defender's Office:

I supervise a team of attorneys who actually practice in the Washoe County Detention Facility every morning and represent inmates who are there on early appearances in their cases. That includes arraignments, initial appearances, 72-hour hearings, and warrant arraignments. I just want to emphasize a couple of things and add some things to the information that has already been provided to the Committee.

Unnecessary pretrial detention actually, in the long run, can increase the threat to public safety. This is based on the Laura and John Arnold Foundation's research published in November of 2013: *The Hidden Costs of Pretrial Detention* and *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. What these studies show is exactly how pretrial detention that is unnecessary can perpetuate the inequalities in our criminal justice system.

Individuals who are detained pretrial are more likely to be arrested on new charges after they are released pretrial if they are held for at least three days before release as compared to someone released after only one day. These individuals are more likely to receive a jail or prison sentence than their counterparts who are released pretrial. They are more likely to receive longer jail and prison sentences than individuals who are released pretrial. Most significantly, those who are detained pretrial are more likely than their released counterparts to recidivate or to commit new crimes after they have completed a sentence. That is a concrete way in which studies have shown that holding people pretrial can actually increase the threat to the community in the long run of incarceration.

Further, as we have discussed, incarceration costs money. That is money that could be better spent on providing services, rehabilitation, and access to treatment to the most vulnerable people in our community. As has already been stated, this is a growing trend nationally. There are multiple states that have enacted similar legislation in an attempt to address this inequality and the problems and the threat to safety that simple reliance on money bail can cause. Those states include New Hampshire, New York, California, New Mexico, New Jersey, and Washington, D.C.

Lastly, what I really want to emphasize is that this bill does not take away discretion from judges to find that an individual simply cannot be released into the community because there is too great a risk that they will not appear or too great a risk that they could reoffend or pose a danger to a victim. It does not take that discretion away from a judge. What it does is provide due process to the defendant who is in that position. We are a society based on foundations of liberty and that liberty cannot be taken away lightly. What this bill does is bring us into compliance with that requirement, and it says that if you are going to find that someone is too dangerous to release, you have to make a finding based on clear and convincing evidence with a full pan of plea and constitutional protections for that individual. For that reason, our office supports this bill.

Wiselet Rouzard, Field Director, Americans for Prosperity – Nevada:

We are the nation's largest grassroots organization dedicated to breaking barriers through opportunity ([Exhibit E](#)). On behalf of our activists across Nevada, I urge you to support A.B. 325, which would create a more just pretrial system for all Nevadans and make our communities safer. Assembly Bill 325 would help Nevada courts adopt smart, evidence-based pretrial policies to improve lives and protect our communities. The bill creates a presumption that most defendants can be released on an OR while still giving judges the discretion to keep riskier defendants behind bars—a system similar to successful reforms implemented in New Jersey, as Ms. Welborn mentioned.

Forcing someone to post bail or stay in jail before trial, even when they pose little flight risk or danger to others, is impractical, expensive, and unjust. Assembly Bill 325 focuses these consequences on higher-risk defendants through pretrial hearings designed to allow judges to weigh a variety of evidence to inform their decisions.

Making bail is a huge financial barrier for many low-income families. People stuck in jail for financial reasons before trial, even for as little as two or three days, can lose jobs and have their worlds turned upside down. Research in several states tells us that greater exposure to pretrial detention is associated with increased flight risk and recidivism, making law enforcement's job harder and our communities less safe. It is both right and smart to avoid disrupting lives absent a compelling risk-related reason.

Assembly Bill 325 shifts to a pretrial system based on someone's risk rather than their wallet and can end Nevada's two-tiered bail framework, which benefits the wealthy and well-connected and denies equal justice to those without means. For these reasons, on behalf of our 50,000-plus activists, I urge you to support A.B. 325.

Raymond L. Giddens, Sr., Senior Pastor, Unity Baptist Church:

I have over 500 parishioners, and down through the years, I have seen this antiquated system of bail affect my parishioners. Some of the statistics or cases in point would be that I had one young man who had parking tickets. Because of the parking tickets, he was arrested but could not afford to pay bail. I have had other parishioners who were so embarrassed for being arrested and unable to pay bail, but were afraid to come to the church and ask for help. I have had parishioners who have come forward that needed help. They had to put their pennies together and try to pay a bail bondsman to get them out of jail.

I think the most egregious case that I have seen as a pastor was an 80-year-old parishioner on a fixed income who had never before been arrested in his life. He was arrested on a Saturday night and he could not afford the \$3,000 bail. They charged him with a felony. Later on, we found out that the felony they charged him with was passed on to the district attorney's office. Their investigator reviewed the police report and indicated that the charge did not rise to the level of being a felony. Being charged with a felony, his bail was much more and he could not afford to pay it. The church went to bat for this 80-year-old senior citizen on a fixed income; we put the money together to pay his bail. That was the only reason he got out. Let me state this to you: on a Saturday night, trying to come up with \$3,000 cash when

the banks are closed, trying to bail someone out, and then you cannot pay the bail until 4 a.m.—that is an additional punishment on the people who are trying to assist the person who is in trouble. The system is flawed, antiquated, outdated, and I commend those who have stepped forward to infuse fresh blood into this system to make it work like it is supposed to work. We stand in support of A.B. 325, and we ask that you really consider this bill because it is desperately needed.

Jovan Jackson, Organizer, Mass Liberation Project Nevada:

According to Forbes and other sources, about 60 percent of Americans do not have \$1,000 saved up for emergency funds. That means most Americans live check to check. That is working people like me and you, teachers and soldiers, mothers and fathers, health care providers and drivers, who go to work every day to make a better living for themselves and their families. Now imagine this working American on a \$500 bail living check to check. Do I not pay my bail and possibly lose everything or do I pay my car insurance? Now I am driving with no insurance. I get pulled over and receive a ticket for no insurance, and now I am part of a revolving door that most Americans cannot afford.

At my agency, there are community needs. There is a high population of homeless and people suffering from mental health that we just do not have the funding for, but we do what we can to help these people.

I had a client who was in jail who could not post bail. During her incarceration, she was evicted from her house and she became homeless. It is almost impossible to get an apartment once you have been evicted. If you do find a place that takes evictions, the deposit is triple the amount of the rent; if the rent is \$1,000, your deposit is \$3,000. This is the same population who is living check to check. This lady went from having her own home to being homeless and living out of her Nissan Altima. I personally helped this woman move from a shelter located right down the street from the state building in Las Vegas to a bare room that she had to share with three other women for \$500 because that was her only option. This woman lost everything within weeks. She lost more than her home. She lost her peace of mind, she lost her sanity, and she lost her purpose. This is not justice. This is not equality. Please end cash bails.

Jim Sullivan, representing Culinary Workers Union, Local 226:

We support this bill because we need bail reform in Nevada to ensure that people are not held in jail after arrest simply because they cannot afford bail. The effect of this bill will be to ensure that people return to court as required and that the public is protected while ending the current bail system's cruel discrimination against low-income Nevadans and people of color. Nevada's current bail system is punishing whole families and communities. This is unfair and must end. This bill addresses the inherent unfairness of the current cash bail system for poor and working people and we fully support this bill.

Louis Magriel, Organizer, Nevada Student Power:

I am speaking today in firm support of the passage of A.B. 325. This bill is intended to fix what I view as a broken criminal justice system in our state. I know that "broken" is a strong

term, but I believe that I and others stand on firm ground to make the claim that this criminal justice system is deeply flawed due to the current standing of bail. We currently enforce a separate but unequal justice system which sees radically different processes and results for the wealthy and the poor. Far too many people are subjected to unfortunate and unfair treatment within the system due exclusively to their socioeconomic status and the fact that they do not have the means or the funds to make bail. I personally find this deeply unequal. As of now in Nevada and within the United States, we have codified and enforced this inequity. I do not see how this could be presented in any other way than an undeniable injustice to our fellow man and especially those who do not have the ability to make due as others can.

The presumption of innocence, which our criminal justice system is built on, should not allow for the stagnation of thousands of people for months and even years in jail cells, behind steel bars, not due to any legal conviction of crime, but simply due to poverty. In 2017, the Nevada jail population was 67 percent pretrial detainees. That is two-thirds of the jail population that were pretrial detainees. A staggering 75 percent of those pretrial detainees who have been charged with minor crimes—usually property crimes—are being detained because they cannot afford to make bail. Poverty should not be a crime. Being poor and being nonwhite, being mentally ill, or having substance abuse issues should not be a crime. Yet all of these conditions too often are treated as criminal.

Others have spoken in favor of this bill as an economic solution, as an efficiency solution, as a safety solution, and all of those facts are true and are deeply considered by this Committee. However, I would also like to remind this Committee that when we talk about the unfair and unjust detention of unconvicted people, people just like me, you, and many others who have spoken today, we must recognize this problem of bail as ultimately a moral issue. This bill presents a moral solution to the problem at hand. I hope this Committee is willing to acknowledge the current process of monetary bail as flawed and, with the passage of A.B. 325, move with some urgency towards finally mending this problem and mending our broken criminal justice system.

Zachary Khan, Organizer, Nevada Student Power:

I am here in support of A.B. 325. I wanted to echo many of the sentiments of the sponsors. I share much of the same passion as Assemblyman Fumo about this system. It is broken. It is punishing people more for being poor. It disproportionately affects people of color, people with substance abuse and mental issues. Frankly, it is wrong.

Shondra Summers-Armstrong, Private Citizen, Las Vegas, Nevada:

I am here in support of A.B. 325. I had the pleasure of sitting with the coalition members who have worked tirelessly to try to come up with legislation that addresses an issue that is so impactful to communities of color and to the poor. I am obviously a member of a community of color.

I have a personal story I would like to share with you. My son, Brandon Summers, is not here today but I am speaking and sharing his story with his permission. In 2011, our oldest

son, Brandon, who is a musician, decided that he needed a break from college and began playing the violin on the Strip. He was ticketed for something to do with the sidewalk and he was arrested. I want you to imagine the feeling I had, as his mother, getting a phone call late in the evening that my baby—even though he was a grown man—had been arrested. His dad and I went to the bank and we were able to bail him out. It cost \$450. He was in jail for 12 hours. I cannot tell you how my heart felt knowing that my child who had been raised by responsible parents and who had a good life, was just trying to pursue the thing that he loved, which is music and playing the violin. It is not dangerous, it is not a weapon, and it cannot hurt you except if he hit a bad note. He was in jail for 12 hours, and when he came home, I was so glad to see him. What was amazing was the stories that he told us. He was not in jail with people who had done horrible things; there were no murderers, rapists, or anybody you would fear. They were young people just like him who had tickets and they could not afford to pay them. That is why they were in jail. The folks in both Carson City and Las Vegas today are giving you statistics about who is being affected.

We know that the court has plenty of leeway to keep bad people in jail. That is the job of the judge and the prosecutors. What we are here telling you is that there are tons of people who are in jail who are regular folks, kids like mine who chose to do something that may be on the edge or who just have a moving violation. They are in jail and cannot afford bail. This whole notion that we need to be afraid that there is some boogeyman behind this, this is not the case. The reality is, we are advocating for sensible legislation that does not tax people who are already poor, who are already marginalized, and who are already living paycheck to paycheck. I was a single parent, and I cannot imagine if I had a moving violation or did not pay my insurance and got a ticket, who would have come to my rescue to pay my bail? We are blessed and highly favored, and we were able to pay our son's bail. I also want you to know that he was arrested and no charge was brought against him. No charge. He has been arrested twice, and he has never been convicted of anything. I think we need to consider that people need proper adjudication and fairness in the law. It should not be tainted toward those who have money and be horrible to those who do not. I do not believe that is the American way, and that is why I am here supporting A.B. 325.

Chairman Yeager:

I want to let everyone know that we have about another 10 to 15 minutes for support testimony and then I have to get to opposition testimony. I want everyone to be able to at least come up, say your name, and state on the record your support of the bill. I do want to ask the remaining folks who speak to please keep that in mind and keep your comments as brief as possible so the opposition can be heard as well.

Denise Hooks, Organizer, Mass Liberation Project Nevada:

I am a community therapist and someone who has been directly impacted by the bail money system in Nevada. I first want to address something that was brought up by Assemblywoman Miller. The Prison Policy Initiative just released their 2019 report, which indicated that 76 percent of people held by jails are not convicted of any crime. That is 462,000 people in comparison to the ones that are convicted of a crime, and that is 158,000 people. We are talking about 462,000 people nationwide who get into the criminal justice

system and are released and do not get charged with anything. Those are all people who are impacted by the money bail system who, in fact, are not criminals.

My personal experience is when I was 19 in 2011, I was arrested by the Henderson Police Department, racially profiled, and falsely charged with one count of domestic violence and two counts of battery. As a 19-year-old college student who did not have any record with the criminal justice system, my bail was set at \$5,000. Obviously that was something that I could not attain. Because I do hold a certain amount of privilege, I had support systems that were able to come through and we got the bail reduced to \$900. But \$900 for a 19-year-old college student is also something that is not attainable. The problem with that is that it is a direct failure to live up to the presumption of innocence before you are at trial. We are in direct violation of the Eighth Amendment when we are setting excessive bails that we know, through the court's assessment, that an individual cannot pay.

One other thing I wanted to mention was that we have to start beginning to dismantle the notion that any person that has a police encounter is now labeled a criminal. This is not just a question of determining if someone is a danger to society because right now the current money bail system does not determine that at face value.

Scott L. Coffee, Deputy Public Defender, Clark County Public Defender's Office; and representing Nevada Attorneys for Criminal Justice:

This may be the most important piece of legislation that you see this session in terms of creating equality for the poor with the rich. It is an important reform. I have personally represented people who are in custody for trespassing at the Fremont Street Experience, for possession of a small amount of marijuana, and misuse of a bus bench. These people stay in custody for sometimes weeks because they do not have the money to post bond. It is an absolutely ridiculous system. As a defender of the indigent, one of the ugly truths that I can tell you is that one of the first questions asked is, Is the person in custody? As a defender, we know that somebody being in custody changes the perspective of the case; it changes the calculus, and it changes the outcomes almost always for the worst. It puts pressure on people to enter pleas. People who are not ultimately convicted but who are actually innocent, at times, will plead guilty because freedom is more important than principle. In fact, freedom is more important than anything.

I think you are probably going to hear a justification that we need bond to keep the community safe and it gives people an incentive to show up. We have come to find out that is not proven to be true when we have looked at the numbers. The reason it is not proven to be true is freedom is more important than money. Bond does not make a difference for recidivism. The longer a person stays in custody, the more likely they are to reoffend. The Bail Project conducted by the Bronx Defenders Office has seen a 96 percent return rate on low-level offenses with bonds under \$5,000. They see that appearance rate because freedom is more important. Freedom should be free. It should be free for all of our people who are not a risk to society. We applaud the efforts of Assemblyman Fumo and all those who have worked on this important piece of legislation. We fully support the bill.

Alex Goff, Private Citizen, Reno, Nevada:

I would just like to lift up all of the voices of the people that we have heard from today and the people who were not able to come today. It is a privilege that I have a job that allows me to come here and use my voice to talk to all of you. I urge your support of the bill, and I would like to thank Assemblyman Fumo and the coalition that have worked so hard on this important issue.

John D. Solomon, Private Citizen, Fallon, Nevada:

I used to be a drug addict. I have been clean for 18 years and have been on the other side of this issue where what I have done on numerous occasions is plead guilty because I could not make bail. If I plead guilty, I walk. If I do not plead guilty, I might sit in jail for three to six months to go to trial. So, I pled guilty to crimes I did not commit so that I could walk. That is a very normal and daily occurrence in Churchill County where I live and everywhere in Nevada.

Edward Coleman, Private Citizen, Reno, Nevada:

I am here in support of A.B. 325. In a study by Will Dobbie that appeared in the *American Economic Review* in February 2018, it was concluded that pretrial release has a strong impact on the probability of being found guilty. Pretrial release decreased the probability of being found guilty by 14 percent. These individuals who have been released without bail had the penalty of sitting in jail until they either go to trial or come up with the funds for bail removal, and are obviously less likely to plea in order to simply get released. In a broader sense, bail can be seen as criminalization of the poor.

In their May 2017 "Report on the Economic Well-Being of U. S. Households in 2016," the Board of Governors of the Federal Reserve System noted that only 34 percent of U.S. households that made \$40,000 or less per year were able to pay \$400 in cash in an emergency. When this is broken out along racial lines, the disparate impact of bail becomes even more obvious. Only 20 percent of black households and 27 percent of Hispanic households could pay \$400 in cash in an emergency. The cash bail system places an undue burden on the poor and effects minority homes even more. The National Center for State Courts found that 75 percent of court cases heard at the state level were low-level misdemeanors that would have only resulted in fines and possible jail time of less than one year. The cash bail system ensures that individuals will remain in jail despite the nature of their offenses. The effect of locking someone up because they cannot afford bail can be substantial to the individual and their family.

The study done by Will Dobbie found that initial pretrial release increases the probability of employment in the formal labor market after the bail hearing by 9.4 percent, which is 24.9 percent higher than individuals who remain jailed. Pretrial release also increases the amount of unemployment insurance benefits and the amount of earned income tax credit benefits these individuals would receive. The cash bail system severely restricts an individual's ability to be a productive citizen.

Let us bring it home to Nevada. In 2017 there were roughly 14,000 people incarcerated in our state at a rate of \$60.74 per day. It is estimated that approximately 67 percent of these people were in jail because they could not afford bail. That is 9,380 people. This cost the state—if all of them were held for just one day—\$569,741.20. This is for the inability to pay bail bonds that could range anywhere from \$200 to \$1,000. The cash bail system in this country does not support the individuals who are forced to use it. It weakens the presumption of innocence, criminalizes the poor, and has a disparate impact on households of color. Seventy-five percent of the cases that have cash bail are for misdemeanors, and the longer someone stays incarcerated, the less likely they are going to be to find the means to become productive members of society. The taxes that Nevadans pay go to support this inhumane and unjust system. As the legislators of this state, you have the obligation to do the economical thing and abolish the cash bail system in this state. You also have a humane duty to ensure that all Nevadans have the tools and opportunities to be productive members of our state.

Jesus Carvajal, Private Citizen, Las Vegas, Nevada:

I am in support of A.B. 325 and any bill supporting criminal justice reform. On August 9, 2018, I was pulled out of my home by the Special Weapons and Tactics Bureau of the Las Vegas Metropolitan Police Department. As my home was flipped upside down, I was wrongfully accused of impersonating a police officer, several counts of assault with a deadly weapon, as well as several counts of sexual assault. During my bail hearing, my attorney, a private investigator, the prosecutor, and the judge went to the judge's chambers for 20 minutes. During those 20 minutes, my defense attorney provided compelling evidence that I was innocent. Once everyone returned to the court, the first thing the prosecutor did was humiliate me even after he saw the evidence and he started adding \$100,000, one after another. Right before he got to \$400,000, the judge stopped him. Keep in mind he would have continued to keep going higher, but due to the evidence, the judge said that he was releasing me on house arrest with no bail. If this judge would not have taken our evidence into consideration, I would not have been able to afford this bail and I would have been stuck in jail, in danger, due to the sexual assault charges that I was wrongfully accused of. It is sad to say that due to this situation that I was put in, I am still lucky. Every day there are people put in jail for small crimes or crimes they did not commit due to them not being wealthy enough to be able to afford these outrageous bail fees. They take deals incriminating themselves to get released fast versus pleading not guilty and staying in jail.

There is definitely a big problem in our system when people are being released faster by taking deals incriminating themselves versus being able to get a fair chance like the wealthy and bail out so that they can fight their cases free and take care of their families and keep their jobs. I just want to note that it does not take weeks, months, or years, like a lot of people say, for someone's life to be ruined. For someone who has been exonerated like myself, it only took about two days and I lost every single thing. So, definitely, we need to do some changes, and again, I support A.B. 325.

Tricia McLaurin, Founder and Pastor, Give It All You Got Ministries; and President, National Coalition of 100 Black Women, Las Vegas Chapter:

As my colleagues and community supporters have been so eloquent in delivering the facts that are pertinent to this bill, I would like to simply and emphatically state that the National Coalition of 100 Black Women stands in support of A.B. 325. We stand in support of any legislation such as this one which will support gender and race equity, and in treatment, support, and representation, make sure that we all receive the freedom that is due.

Gary Peck, Private Citizen, Las Vegas, Nevada:

I was part of that working group that included Mr. Langford and Assemblyman Fumo. I want to thank them for working so hard on this bill and bringing it forward. I think it is important to note that this is not a bill to end cash bail; it is not a bill that will be unduly costly; it will actually save taxpayers money; and it is not a bill that will result in people failing to appear. All of the data and research indicates it will actually increase appearance rates. It will not result in dangerous and violent offenders running wild in the streets. It will actually establish a better way than measuring a person's pocketbook or wallet to determine how they will be treated once they have been arrested. Most importantly, it will put an end to a broken system that is quite plainly an affront to core constitutional values; that is unduly costly; that does immeasurable damage to people in our community; and does not really operate to make us as safe as we would hope the criminal justice system would make us. My background is in social science and law. The data is overwhelmingly in.

This is not really a question of policy. I hope it does not simply devolve into a political fight that is not actually data-driven, but is driven by fearmongering by a handful of anecdotal tales rather than driven by what we know will make our system most workable and serve the purpose we hope our criminal justice system will serve. I emphatically support the bill. I agree with Mr. Coffee in that I think this may be the single most important bill that will be considered by the Legislature this session. Assembly Bill 325 goes to the heart of some of the most profound inequalities and inequities in our system. I really urge people to try to transcend the worst sort of politics and embrace what good policymaking would require—that is to say, pass this bill; do not chip away at it, do not turn it into something that really is not going to make for meaningful change, but is actually going to make us all better here in the state of Nevada. Let us be a leader, not just a follower.

John Tsarpalas, President, Nevada Policy Research Institute:

For us, this is about freedom. Freedom of people who are still presumed to be innocent. We all hear this wrong, the wrong that you cannot afford bail and therefore you are going to sit in jail. Your freedom has a cost and our system was never built on that. For those of us who are fiscal conservatives, this is about saving some money by having fewer people in jail. This is not a partisan issue, it is bipartisan. This is about doing what is right for everybody, left or right. This is about doing and correcting an injustice. I urge you to vote for A.B. 325.

Chris Giunchigliani, Private Citizen, Las Vegas, Nevada:

I support A.B. 325, and will provide my testimony in writing for the sake of time ([Exhibit F](#)).

Chairman Yeager:

I will close support testimony on A.B. 325. I want to thank all of you who testified in support. If you did not get a chance to testify or you did not get to testify in as much detail as you would like, I urge you to submit written comments to our Committee secretary. At this time I will open it up for opposition testimony on A.B. 325 in Carson City or Las Vegas.

**Jason D. Woodbury, District Attorney, Carson City District Attorney's Office; and
President, Nevada District Attorneys Association:**

The district attorneys in our state oppose A.B. 325. With your permission, Chairman Yeager, I would like to introduce two prosecutors who will be providing additional testimony in opposition after my remarks. They are in Las Vegas. The first is Jessica Walsh. She works in the Clark County District Attorney's Office as the Assistant Team Chief of Case Assessment. Ms. Walsh was involved in the effort to establish the Las Vegas Township Justice Court's initial appearance court. She will share with the Committee the progress that court has made in regard to the expeditious review of custody status and her concerns about how this bill would disrupt that progress. At the table with Ms. Walsh is Marc Schifalacqua, who is the Senior Assistant City Attorney in Henderson. He will share with the Committee his concerns about the bill's impact in misdemeanor cases.

I would like to begin my remarks with an invitation. At the beginning of this session, Chairman Yeager and I had a conversation in which he expressed an idea that it might be beneficial for some, or maybe all, members of the Committee—especially those who may not have a lot of experience with the criminal justice system—to actually watch some of the proceedings that occur. The Carson City courthouse is about two blocks northeast of here, and I certainly do appreciate that your schedule is very packed. I can assure you, if you ever wanted to come watch a proceeding, my staff will work with you to maximize your time as best we can.

There are a variety of proceedings you might see at the Carson City courthouse, and, in fact, one of the proceedings that is probably just concluding occurs every day. That proceeding is what we call the "in custody arraignments and first appearances" for people who are in custody at the time. That proceeding is required by law to occur within 72 hours of a person's arrest. It occurs every day in the Carson City courthouse. People who bail out or are released prior to that go through the same proceeding; it just does not occur within 72 hours. At that proceeding, a prosecutor from my office would be in the courtroom, and there will be an attorney from the Office of the State Public Defender within the Department of Health and Human Services. Several things happen at that proceeding. The judge advises the defendant of the charges against him or her, advises the defendant of his or her rights, counsel is appointed if that person is indigent, and the next proceeding is scheduled. Almost always at that appearance there is a discussion about bail or the release of the defendant. The judge gathers information from the defendant and anyone who may be attending court on behalf of the defendant. The judge will review the criminal history of the defendant and accept input from the attorneys. If the victim is there, the victim is offered an opportunity to provide input, and if our office has had contact with the victim, we will provide that input on behalf of that person.

At that proceeding the bail amount is often reduced to an amount the defendant represents he or she can afford. It is not at all unusual at that proceeding for the defendant to be released without bail. Based on all of the information that the judge collects at that proceeding, the judge sometimes imposes conditions on the defendant's release that might include things like a requirement that the defendant regularly check in with our Department of Alternative Sentencing, a prohibition on the possession of weapons or drugs or alcohol, a curfew, or any number of other similar conditions.

My point in explaining this is to make sure that the Committee understands that Nevada has protections in place that enable a judge to address bail and release in a criminal case early and often. It is not as if the system assigns some arbitrary bail figure to people based only on the crime with which they have been accused and never revisits the issue—very much the contrary.

Bail, pretrial release, and conditions are the most treacherous decisions made in the criminal justice system. There is general consensus, as you have heard here today, that two overarching factors control these decisions: the presumption of innocence and public safety. Beyond that general guidance, there is no one "right" answer for these decisions in a criminal case. Deciding on the right bail amount and the right release conditions, if any, depends on the specific circumstances of each individual case. Every case is different and every defendant is different.

Because of these singularities, the fairest, most reliable means by which to strike the appropriate balance between the presumption of innocence and public safety is to trust our judges. A judge is going to be in the position to have the most information about the specific case and about the individual accused at the earliest possible time. In order to do the best job he or she can, the judge needs discretion. Under current law, our judges have discretion. The bail can be raised or reduced or waived altogether. Just as importantly, the judge has a toolbox full of conditions that can be imposed on release. Those tools are critical in fashioning individualized conditions that protect the accused's presumption of innocence without sacrificing the public's safety.

This bill drastically limits that discretion and takes away those tools. Let me offer a couple of examples. Except for people charged with domestic battery and violation of a protection order, anyone charged with a misdemeanor must be released without bail. That is in accordance with section 3, subsection 4 of the bill. This categorical requirement would cause the release of people charged with crimes like assault, simple battery, harassment, stalking, and others. This requirement applies even if the offender has a violent criminal history. It applies regardless of the accused's financial ability to post bail. And, most importantly, the unilateral release occurs without regard to the input of a victim in the case.

This bill also severely restricts a judge's ability to fashion individualized release conditions that can ensure the public's safety while the defendant remains out of custody. I am referring

to section 3, subsection 4, paragraphs (a) through (c). Those sections create a legal presumption that the only proper conditions a judge can place on release are:

- 1) That the person commits no new crimes;
- 2) That the person provides the court with contact information; and
- 3) That the person stays away from a victim who is a natural person.

Any other condition is presumptively improper regardless of the crime committed, the defendant's criminal history, and the danger to a victim.

This bill does create a mechanism to overcome that presumption and to include additional conditions of release, but that mechanism is flawed in several important ways. First, the judge is powerless to add conditions on his or her own. Under section 3, subsection 7, only the prosecution can seek to add new conditions. If the prosecution is disinclined to seek additional conditions or perhaps, more likely, lacks the resources necessary to complete the cumbersome process of doing so, there is nothing the judge can do about it.

Second, a hearing must be held even if everyone is in agreement on the conditions that should be imposed; a hearing must be held. The logistical requirements of the hearing imposed by the bill are frankly impossible. The requirements of section 3, subsection 7, take a pretrial discovery process that in normal circumstances takes weeks and maybe months to complete and condenses it to 48 hours. The requirements assume that our courts have scheduling capacity to schedule a hearing within 48 hours of notice and to conduct that hearing, which may take several hours. I can tell you that in Carson City, our justice and municipal courts just do not currently have that scheduling capacity.

Third, the prosecution is bound to a heightened burden of "clear and convincing evidence" in order to add a condition of release. Substantial evidence or even a preponderance of evidence would not be sufficient. Further, that evidence must establish a "high risk" of failing to appear. A moderate risk will not justify new conditions.

Fourth and most importantly, the bill as written effectively eliminates public safety as a justification for additional pretrial release conditions. Section 3, subsection 7, paragraph (j), subparagraph (2), says that additional conditions may be imposed if the state proves "by clear and convincing evidence, that the defendant has a high risk of failing to appear if no conditions of release are imposed." This language leaves no discretion to the court to add conditions that are designed exclusively to protect public safety as opposed to ensuring the appearance of the defendant. The result is a process that significantly constrains the judge's access to tools in the pretrial release condition toolbox.

The last point I want to make is in regard to Marsy's Law. As this Committee knows, Marsy's Law established a series of victim's rights. These rights are constitutional rights, meaning they are entitled regardless of where they came from, regardless of whose idea it was. These rights were approved by this Legislature and Nevada voters. They are in our *Constitution*. They are entitled to the same recognition under the law as a defendant's

constitutional rights. Just as this Legislature could not pass a law violating a defendant's constitutional rights, it cannot or should not pass a law that violates a victim's rights under Marsy's Law. As written, there are several provisions of this bill that are incompatible with those rights.

Section 3, subsection 1, requires that an accused be released under the "least restrictive conditions that the court finds necessary to ensure reasonably the appearance of the person and the safety of the community." Conspicuously absent from that language is anything that would require the court to consider the victim's safety in particular or any input from the victim, both of which are rights guaranteed by Marsy's Law.

Section 3, subsection 4, as I previously discussed, establishes a unilateral legal presumption that only three conditions can be imposed on a defendant's release. This presumption is established categorically in all cases, without consideration of the victim's safety or any input from the victim. This is also incompatible with Marsy's Law.

Section 3, subsection 7: I would not necessarily characterize this as a clear violation of Marsy's Law, but the requirements of having a hearing with only 48 hours of notice certainly creates concerns about whether that suffices as reasonable notice of a release hearing to a victim, which is a requirement of Marsy's Law. At a minimum, the requirement will result in a substantial hardship to many victims who wish to be heard on that issue

Section 3, subsection 7, paragraph (i): this provision allows a jail to unilaterally release a defendant without notice, without a court order, and without a determination of medical necessity. There is no provision requiring or allowing notice or an opportunity for input from the victim, which is, again, a clear violation of a victim's constitutional rights under Marsy's Law.

I will close my comments now and I want to say with perfect clarity that my association's opposition to A.B. 325 should not be interpreted as uncompromising opposition to the concept of bail reform. Scientific and technological advances provide new opportunities to fine tune and improve that balance between the presumption of innocence and public safety. The district attorneys in the state are committed to working in good faith with any proposal that includes public safety and the victim's voice as considerations in bail and release decisions.

Chairman Yeager:

It sounded like you wanted to go down to Las Vegas to have testimony from the two prosecutors there.

Jason Woodbury:

Yes, with the Chairman's permission.

Chairman Yeager:

We will take the testimony from the two prosecutors in Las Vegas. I will open it up for questions, and then ask the rest of you who are testifying in opposition to be patient for a moment as we get through it.

Jessica A. Walsh, Chief Deputy District Attorney, Clark County District Attorney's Office:

I want to highlight the impact this bill will have, not only on the progress made by the Las Vegas Township Justice Court with the implementation of their initial appearance court, but also on the court's standing administrative release order which allows for the automatic release of a number of misdemeanor offenders as well as a number of nonviolent offenders under certain circumstances provided for by the court before their initial appearance

The initial appearance court was implemented in the Las Vegas Township Justice Court starting January 7, 2019. This, however, was not done without any additional resources. Las Vegas Township Justice Court, Department 15, was created with the intent that it would be the initial appearance court and the district attorney's office and the public defender's office both received, in total, four attorney positions and two clerk positions with the intent to staff this new court. The purpose of initial appearance court is to bring defendants that have been arrested, when they do not qualify for any sort of administrative release, before the court in an expedited but realistic time frame to address their custody status. In light of that, only the crime alleged as standard bail would, but based upon who is alleged to have committed that crime, their criminal history, and the specific facts of that event as it relates to their ability to appear in the future or the safety of the community.

Although NRS 171.178 requires the initial appearance to be held within 72 hours, excluding nonjudicial days, defendants are having their initial appearance in Las Vegas Township Justice Court between approximately 8 to 20 hours after their arrest, seven days a week. Often these are held within 12 to 24 hours. In initial appearance court, an attorney is appointed to the defendant for the limited purpose of addressing their custody status and within approximately two hours before the hearing, the defense attorney and the state are provided with a copy of the pretrial risk assessment tool, the temporary custody record, the declaration of arrest, and the financial affidavit, when available. From there, the court hears arguments from the state and the defense regarding the defendant's custody status in light of all available information.

We would note that in the district attorney's office, we made the decision to staff this court with attorneys from the case assessment unit for a very specific reason. That is, as it runs right now, we often receive our entire submission packet from law enforcement and we are often able to have a charging decision available before initial appearance court. What that means is, we are making arguments regarding bail or release conditions or release only on those cases we know we are going to file charges on. If at that time we know we are not going to be proceeding, we need additional information, or we are not going to file a complaint, we notify the court, and the defendant is released at that time.

This bill would effectively derail the innovative efforts of the Las Vegas Township Justice Court as it relates to custody status. For example, between January 7 and January 31, 2019, over a 25-day period, the court reported holding 1,269 hearings in initial appearance court. At that initial appearance, 1,121 of those defendants received a release with either none or some sort of conditions, 515 were released on an OR release that did not include a condition of electronic monitoring or bail, 213 were released on electronic monitoring, and 393 were released with a condition of posting a bail or a bond. I would note that 341 of those received a bail modification off of standard bail.

Going forward under the complex and mandatory procedures implemented in this proposed bill, all 1,121 of these defendants and more would see their custody decisions delayed one to two additional days to allow for the pretrial release hearing. We also would need additional time to comply with the discovery requirements and investigation required by this statute that would be necessary to overcome the listed presumptions in this bill that are the state's burden. This bill would take us backwards from the progress we have made in the Las Vegas Township Justice Court thus far.

Additionally, this bill would impact all felony cases, including the most violent offenders. This bill does apply to murder, sexual assault, violent robberies, aggravated stalking, kidnapping, and the like. The hearing and its procedures still apply. The requirements still apply. Most importantly, there is a requirement that if the court cannot state that the defendant does not have a substantial hardship, financially, in posting bail, the court cannot assign monetary bail or bond. There is no consideration allowable for the violent nature of the crime or the specific facts of the case. Therefore, we are opposed to this bill.

Marc M. Schifalacqua, Senior Assistant City Attorney, City of Henderson:

My office prosecutes all misdemeanor offenses that occur in the City of Henderson. I want to thank the bill's sponsor, Assemblyman Fumo, as well as the Chairman. We had some discussions with city staff and emailed some concerns to Assemblyman Fumo. Thank you both for your kindness in considering that.

My opposition today starts in section 3, subsection 4, which talks about anyone arrested on a misdemeanor other than domestic violence or a temporary protection order violation must be given an OR release and that OR release can happen before he or she sees any judge. It is not only that, it is that there are restrictions on what we can allow judges to impose as conditions of release. Currently, a judge would have discretion to fashion any conditions of release that he or she would deem appropriate. This bill takes that away. I would suggest that is not proper policy.

There was some discussion earlier about the crime of stalking. I handle those types of cases in my office. These are crimes of control and manipulation, and they happen over a long period of time. Many times we have a defendant calling a victim, going to a victim's home, place of employment, or the children's schools. Under this bill, this would take away a judge's discretion to even tell or order that defendant who has done those things—and there is clear evidence he has done those things—not to go to her residence, her place of

employment, her children's school, or to her family members' homes, which happens sometimes to make a victim feel like her walls are closing in. We are not talking about jail space or bail; it is simply conditions of release. We are talking about people out of custody. I would suggest that taking away those tools from a judge on these important cases would not work.

This bill does not allow bail to ever be set on a DUI offense, or even a second offense of DUI, for someone who has proven to drink and drive and jeopardize others. The court would not even be allowed to say to the defendant, Do not drink. Do not do drugs. Wear a Secure Continuous Remote Alcohol Monitor (SCRAM) device so we know you are not drinking and getting behind the wheel of a car. Again, we are not talking about bail, we are not talking about someone sitting in a jail cell; we are talking about someone being released. I would recommend that judges be given more discretion certainly on important misdemeanor offenses. I do echo what Mr. Woodbury said about Marsy's Law in Article 1, Section 8A, Subsection 1(c) of the *Nevada Constitution*, "To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant." If they are limited, they really cannot consider that provision of the *Constitution*.

I am somewhat unclear on what happens on a misdemeanor offense when somebody does not show up to court. They have demonstrated they will not appear on the court date that they have been given. Presumably a bench warrant can be issued after 48 hours, apparently, but then again, when that person is arrested and brought back to jail, if we go back to that section 3 of the bill, they must immediately be released. There is no requirement that they have to see a judge. Even if they do see a judge and plead not guilty, they would have to be released immediately even though they have not shown up on the case before. No bail could be set. It would get to a situation where a defendant may only go to court or to a trial date if he or she wanted to, and I would suggest that would not be appropriate.

I was happy to hear about the 12-hour requirement for domestic violence, protection order violation, and DUI remaining the same. That is very important for public safety and victim safety issues. I would say that it is somewhat unclear in the bill, though, what happens after that 12 hours. It says you can only be held up to 12 hours. If you are not in front of a judge at that 12 hours, and most courts in Nevada you would not be, I am still unclear as to what happens. They say this hearing happens at 48 hours, but what happens between 12 hours and 48 hours? It seems to me that person would have to be released at 12 hours without any bail or conditions.

I was also somewhat unclear if this excluded nonjudicial days. As you know, not all cities in Nevada operate on the weekends and most counties do not operate on the weekends. I do not know if that is excluding nonjudicial days for this hearing.

The last thing I would like to highlight is something that Ms. Walsh brought up in section 3, subsection 7, paragraph (j), subparagraph (4), in which no monetary bail or secured or unsecured bond for the pretrial release of the defendant may be imposed unless the court does a few things. One would be to make findings that the defendant has the present ability

to pay for the bail without incurring a substantial hardship. Substantial hardship is defined in numerous ways: being homeless for a period of time or being in jail once in the last six months are just a couple.

We heard a lot throughout the day about discretion that, on really bad cases, judges will have discretion. Reading that section, I am not so sure. It says that if there is a substantial hardship, frankly, bail cannot be imposed. I do not have to list terrible cases that happened in our community; you know them well enough. If someone is homeless and does something horrible to somebody on the street, they clearly do not have the ability to pay, they have a substantial hardship I would not quarrel with, but I do not see under the bill how any bail could be imposed. If that is not the intent of the bill, certainly perhaps that is something we could look at. But that would be a concern, and I do not think it would take away discretion to impose bail on very serious cases as long as there was some form of a hardship shown.

Assemblywoman Cohen:

Thank you for your presentation of the opposition. I am concerned, though. Is there anything from the new language in the bill which you could support?

Jason Woodbury:

As you know, this bill dropped on Monday, and other than getting a general consensus among the district attorneys that we had some very significant concerns about the bill as written, I have not been able to coordinate that kind of a conversation yet as to there being any language or provisions that we can support. We will certainly be having a more detailed conversation about the bill moving forward, and I will update the sponsor if there is anything that the association can support.

Assemblywoman Cohen:

In general, then, you mentioned a support for bail reform if the victim's rights and public safety are considered. Where do you see us going for now? If we do not pass the bill as drafted or substantially as drafted, where do you see that bail reform taking us? What should that look like?

Jason Woodbury:

My sense of things is that there were a lot of conversations and continue to be conversations about improving the bail system including the use of an objective assessment tool to measure scientifically the factors that data supports giving us clear, reliable, and impartial information about whether a person is likely to show up for future court proceedings and whether that person can be released safely into the community. Those are good conversations; conversations in which our association has been involved and actively engaged. Although it is not involved with this bill, we have some concerns about the tool that is out there. We support the idea of an assessment tool, but there may be some concerns about the type of tool that is used. That is something I think we can and should continue to talk about. The tool gives the judge the information, and what concerns me gravely about this bill is the judge needs the discretion to act based on that tool. If the tool indicates that we have a person here and, other than having a terrible alcohol problem and driving drunk, is a perfectly productive

member of society, that judge needs to have that tool to say, that SCRAM device that was mentioned—that it is an appropriate device to impose in this case. Whereas, if this person is released categorically on such an offense, I am concerned that the judge does not have that ability.

Assemblywoman Cohen:

From what the presenters said, I do not think they are against a SCRAM device. I think the cash bail and the people who cannot afford cash bail is the heart of their concerns. I guess I would ask that you please speak with him and work with them to provide solid possible reform that we can move forward with for the state.

Jason Woodbury:

I can assure you that my association will do that.

Assemblywoman Backus:

My question is directed to Mr. Woodbury, but I am going to take from the other district attorneys. I heard Mr. Schifalacqua cite Marsy's Law, in Article 1, Section 8A of the *Nevada Constitution*, that every victim is entitled to be a part of the bail situation. At the same time, I am hearing a criticism that right from the start, the wealthy are able to get out of jail right away by posting bail. Now I am feeling like Marsy's Law is only being applied to those who have to sit in jail because they cannot afford the quick bail to get out. That is not settling well with me. We are using Marsy's Law as a shield and a sword. I am curious how that is being distinguished by the district attorneys with respect to this new bill.

Jason Woodbury:

You have identified a critical challenge with respect to Marsy's Law in the current system. I do not have an answer for you today about how that particular problem gets fixed, about how a person with the means to post the bail that is established upon arrest, how the victim's concerns are considered there. I guess I view that as a different question from the question that we are addressing with respect to this bill. But it is a problem; I agree.

Chairman Yeager:

I think Assemblywoman Backus has identified what I think is something that has concerned me over the years: the so-called standard bail schedule where it just gets set when someone is booked based on what the charge is, but not so much set on what the facts of the case are. I think that is potentially where we have a gap because there is a standard bail set without anyone really looking at the case and that provides the person an opportunity to post and get out with effectively no judicial oversight, no prosecutor oversight, no defense attorney perspective, and no victim perspective. I think that is a bigger issue than what we can solve in the context of hearing this bill. It is something to keep in mind and I think Assemblywoman Backus brings up a really valid point, which is Marsy's Law is not being enacted when we talk about our current bail system, when it is just post and get out versus those who remain. I do not want to go too far down that rabbit hole because I know we will not solve it here this morning.

Are there any other questions from Committee members for our three prosecutors? [There were none.] I will open it up for additional opposition testimony on A.B. 325 in Carson City or Las Vegas.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We are here in opposition of A.B. 325. We did not have a chance to meet with Assemblyman Fumo over this but do want to get some of our concerns on the record. Specifically, section 3, subsections 9 and 10, place a time certain for our maximum hold of a person. I know there has been some discussion—working off the bill in front of you today—of possibly bumping that back up to 12 hours. We currently have some discretion whether or not it is safe to the public to release someone who might be spinning out of control, violent, high on bath salts, and was arrested for vehicular homicide. This bill says that our sheriffs will release that person regardless of the threat to public safety at the 4-hour time period. So you have someone who is completely out of control and we are going to push them out the front doors of the detention facility. There are a number of other issues with the bill before you today, and we are hopeful that we can be invited to be a part of the process going forward to arrive at a place of good public policy.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

While I share some of the concerns that have been previously raised, I come to you today with primary opposition to section 3, subsection 7, paragraph (g), which was alluded to by Assemblyman Roberts. I checked with three different sources—a marshal at the Regional Justice Center, a representative of judges, and a captain who transports prisoners on a routine basis from our jail—and all told me that, with the exception of jury trial, inmates who are brought into court proceedings are shackled and restrained. It is a very dangerous situation as stated. We have a 1 to 10 ratio for a correctional officer transporting prisoners from the jail to the Regional Justice Center. They are going into a building, in some cases into areas that are unsecured. The pretrial hearing process occurs early in the incarceration process where emotions are high; you may have family members of the defendant as well as victims and their family members in the courtroom.

Just to give you a couple of examples that I Googled this morning: in Albuquerque, New Mexico, they recently had an offender bite off the finger of an officer in the courtroom; in Tampa, Florida, an officer's gun was taken away by an offender in the courtroom; in Washington, a suspect was tased while trying to take an officer's gun away in the courtroom; and in Cleveland, Ohio, a defense attorney was severely attacked in the courtroom. In all of these cases I just mentioned, the offender was wearing shackles. Just imagine the danger if no shackles were in place.

I come to you with a concern about that section, and we are certainly willing to work with the bill's sponsor on it. I do hope you will consider removing that section of the bill.

Daryl B. DeShaw, Director and Bail Agent, Surety Bail Agents of Nevada, Las Vegas, Nevada:

We are opposed to this bill almost across the board. We are not opposed to changes in surety bail at all, and we are not opposed to changes in our release system. There are a lot of them. I am going to bend your ear for about two minutes on how some of these interrelate to each other and what a mess they create that no one is taking into consideration.

The story I will tell you is true, but the names were changed to protect the innocent. Freddie Felon got arrested, and the judge set a bond of \$20,000 for Freddie's release. Not having \$20,000, Freddie's family went to Bobby Bondsman. Bobby agreed to bond out Freddie at the state-mandated rate of 15 percent, which was \$3,000, plus the \$50 posting fee charged by the court for a total of \$3,050. However, Freddie's friends and family could not raise \$3,050 so Bobby agreed to take \$1,050 down and payments during the duration of Freddie's case of \$83.83 a month for 24 months with no interest or additional fees for the financing. The total cost to Freddie and family was \$3,050 with no collateral required, which is very difficult.

But Freddie's attorney had a different idea. He did not want Freddie spending that money on a bail bond. He wanted that money to be available to him and his law firm to be able to pick Freddie's pocket for more fees. Freddie's attorney had him put on house arrest instead. What the attorney did not take into account was the fiasco that house arrest is. Freddie was responsible for a \$350 deposit plus \$85 a week for the time that he was on house arrest for a total of \$9,190 over the same period. A difference of \$6,140 that Freddie could have used to support his family, pay his attorney, and live his life all while he defended himself. Additionally, Freddie lost his job because house arrest did not release him for two weeks after ordered by the court even though the judge sent over an expedited order for release. So Freddie was stuck at home with no job and no income to pay the \$85 for house arrest. His house arrest officer would not allow him to leave his home to seek new employment. Unable to make the payments for house arrest, the cost of Freddie's participation in the house arrest program became an expense that the county taxpayers ended up paying, putting the house arrest program even further into the negative. Unemployed, Freddie and his family also struggled to avoid eviction.

In Clark County, the sheriff's department's house arrest program takes up to two weeks to release a defendant depending upon the workload that particular week. The program is, in most instances, substantially more expensive than a bail bond, plus the program is significantly in the red, losing hundreds of thousands of dollars. Every week we are seeing defendants on domestic battery charges with no complaining victim and often no witnesses being released on house arrest with a stay away order from their significant other with whom they reside. These people are rushed into hearings within hours of arrest, appointed a public defender as temporary counsel for the purposes of their 72-hour hearing. They are effectually deprived of their right to choose counsel, their jobs are at risk as it takes days for them to be released, they have to find new accommodations as they are not allowed contact with the alleged victim, and they have to not only bear the costs of the new accommodations but also the cost of house arrest and an attorney.

A bail bond under normal circumstances would cost \$500 or less to post. Often as little as \$250 to \$300 down and the defendant would be released within 24 hours. Financially, that makes considerably more sense than \$85 a week and two weeks to get out. In the Las Vegas Township Justice Court, many of the defendants have had no charges even filed. I was not aware that Clark County was under martial law and habeas corpus had been suspended.

Chairman Yeager:

I am sorry to interrupt, sir, but I just want to confirm that we have some written comments ([Exhibit G](#)) from you on NELIS. It looks like you are reading from that and you are on about page 2 of 5. If that is indeed what you are reading from, I would just ask if you could summarize that, as we do have it in front of us as a Committee, so we have had the chance to review it. In the interest of getting to some others who are in opposition, could you please summarize the remainder of what you have there, please?

Daryl DeShaw:

If that is the way you would like it, Mr. Chairman, I am happy to let you read it. Everything that is in there is fact and is significant. I do feel it is inappropriate considering the number of people that you had speak on behalf of this bill—Mr. Pitaro took just short of an hour and a half—that I would be cut down to two minutes when I think I am the number one speaker, outside of the district attorney representatives, on this bill. I am probably the person with the most to speak on behalf of the bail industry.

Chairman Yeager:

Sir, you are well beyond two minutes. We are at least five minutes into your testimony. So it is clear, we are running this hearing in a way that we normally do. We give the presenters approximately one hour to present the bill. I grant that it was a little more in this case. We gave supporters an hour of testimony, and if my math is right, we are at about 50 minutes so far of opposition testimony. I think we will have equal time amounts on both sides. As I stated, we do have your written testimony. One of the benefits of having you appear in person is to summarize that, as we can read it. I will give you a chance to wrap up, but be assured that we do have it in front of us and it is posted on NELIS for the Committee and for members of the public as well. You can wrap it up with any final points you would like to make.

Daryl DeShaw:

I would recommend that the Committee read thoroughly what I have submitted on house arrest, its costs, and how it is not working effectively for defendants and how bail can be a cheaper option. Some of the problems are with bail schedules, where people are having excessive bails set, and I do understand that. But also, of the 61,000 people who were booked in and 61,000 releases that the Clark County Detention Center did, there were only 10,000 people posted out on bonds. Only 19 percent of the people in the jail were there for misdemeanors. I think bail is getting a bad rap against what is actually happening in the system. There are some other and better options than house arrest. Consider releasing people to us in a quick and timely manner; cut down your days in jail. If you read what I wrote, you will see where you can save 61,000 inmate days in the Clark County Detention

Center per year. There is a structure in there that your predecessors put in back in 1995. Some of them were farsighted enough to see, and that would be NRS 176A.300 through NRS 176A.370, which allows an option of house arrest and intensive supervision programs run by surety bail agents. The bail agents are subject to up to a \$15,000 fee for failing to do their job, in addition to the risk of the bond. Look at some of the options that are there for you instead of the narrow list that has been submitted to you.

Jose Manuel Ceballos, Bail Agent, Aztec Bail Bonds, Las Vegas, Nevada:

One of the things that I wanted to address that has not been addressed is the issue of statistical data. We do not have statistical data yet. We have asked for it. We have requested it in writing. We have called to request it and we can never get it. I think before anyone looks at this bill, the data should support what we are looking at. All we have is a document that shows what is going on throughout the country regarding bail and how it has drastically failed even in New Mexico and Alaska. But we do not have actual data for the state of Nevada, and I think we need that first before we can start passing this sort of bill. I know that there is also a bill that you will look at which will allow us, every time we request it without having to jump through hoops and being pushed aside, to possibly get that data.

That being said, because I also am a bail enforcement agent, I go out and look for people. Lately, everyone that I have been getting is on house arrest. They do not charge their monitor for three months and house arrest does not go out and find these people. We do. We do this at a zero cost to the taxpayer, but that ankle monitor costs us taxpayers' money. They are understaffed at the jail. You can talk to anyone and they will tell you that they do not go out and physically look for anyone anymore. It is just up to law enforcement to decide if they are going to catch them or wait for them to commit another crime.

Most recently, I had a third offense domestic battery who cut his monitor off. I asked him what he did with it so I could take it back to the jail so they could put a new strap on it and use it. He indicated he threw it in the dumpster. I would urge everyone to please look at getting statistics from the courts and the jails. Also consider the fact that when someone goes to house arrest, they sit there for a minimum of 10 days to a maximum of 20 days before they even put that monitor on. So when that happens, they have lost their job, housing, and vehicle. Please get some data before we consider passing this bill.

Marc Gabriel, Bail Agent, Las Vegas, Nevada:

I wanted to bring up some points by other speakers. The defendant missing the bus was an example that was brought up as a reason the defendant missed a court appearance. Lawyers can schedule a new court date at that time without a warrant being issued. The lawyers also trail the court times so that for that morning, up to four hours later sometimes, the person who misses the bus can still show up to court without a warrant being issued.

Regarding the \$5,000 average bail that was brought up, 15 percent, the state-mandated fee that we have to charge, is \$750, and as a bail bond company, we can do this bond for as little

as \$100 down and a good cosigner or maybe collateral, which is not a prerequisite. There are many times that no collateral is required, and then we do payment plans on the balance.

On the subject matter of having statistics, the Pretrial Services Division of Clark County does have the statistics of failures to appear, however they are not willing to share that statistic with us. Regarding the jail fee of incarcerated people where it costs \$150 a day for each person in jail, the cost as far as the jail officers, power, and other bills are usually fixed costs, and they usually do not change regardless of the number of inmates in custody.

Based on my personal experience, over 95 percent of the bail set by judges is already reasonable and not excessive into the hundreds of thousands of dollars as stated. Typically, the average bail that I have experienced is between \$2,000 and \$20,000, so the 15 percent bail fee that we are supposed to charge is between \$300 and \$3,000, which any bail bondsman will finance with little or sometimes no money down and very often without collateral. The people who do stay in jail are not unable to make bail; it is because no family members or friends are willing to cosign for them, meaning they have burned all of their bridges and nobody wants to stick their neck out for them. At that point, a judge right now can make a determination and give them an OR release or put them on house arrest and let them out for free.

Commercial bail guarantees court appearance. Own recognizance releases do not guarantee court appearance. Currently, court receipts given to bail bondsmen and defendants, assuming we post bail prior to a hearing, already show a stipulation as far as a stay away order or any other stipulation that is required. Right now judges already OR poor people on minor offenses. The standard bail schedule in Nevada is already pretty low. Could it be revised? Absolutely it could.

Incarceration for more than one day on traffic warrants, for example, does cause the most damage to defendants, as you have heard from other testimony. I think a pretrial mechanism needs to be built in to allow defendants to be released within one or two days on those traffic warrants. No system is perfect. Assembly Bill 325 is well intentioned, but in states where bail reform has failed—Alaska, Colorado, Maryland, Washington, South Carolina, Missouri, Texas, or New Jersey—New Jersey has seen an increase in costs, increase in crime, lack of transparency, and a lack of results. In a letter from New Jersey Senator Bob Andrzejczak, he stated, "... it has been an absolute disaster. The public safety needs of citizens in New Jersey has suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed."

I encourage you to reach out to those states and others so that we can learn from them and make this bill or other bills better, and also bring the bail bonds professionals to the table to help you in this process.

Tom Clark, representing Nevada Judges of Limited Jurisdiction:

We are concerned with the stringent additional requirements put on the courts for (1) people who have reoffended while they are out on another case pretrial; and (2) people who have been released and fail to appear. We look forward to the woodshed.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:

I wanted to put on the record that the Pretrial Services Division in Washoe County enacted a pretrial risk assessment tool in determining bail in September 2016, and while it has evolved over the years, we are still utilizing it to this day. Even though we began as the pilot agency for the state, there are representatives here today from the court and I will let them speak more specifically to that. The risk assessment process has had no real impact on our average daily population. Our bookings and releases are trending evenly, meaning we are not booking more than we are releasing. Seventy-five percent of our current inmate population is being held for pretrial felony arrests. I will share the same sentiments of my colleagues, Mr. Spratley and Mr. Callaway, with respect to section 3, subsections 7, 9, and 11. We thank Assemblyman Fumo for putting on the record his issues with the 12-hour provision of release for domestic violence offenders, as we believe that is a very important tool for public safety.

Ryan Black, representing City of Las Vegas:

We are in opposition to this bill as written. Most all of our concerns have been stated on the record. We look forward to working with Assemblyman Fumo.

Tyre Gray, representing American Bail Coalition:

We want to thank the sponsor of the bill. We have had great discussions and we are both committed to working to smooth out the edges of this bill.

Susan Meuschke, Executive Director, Nevada Coalition to END Domestic and Sexual Violence:

We would like to thank the sponsor for taking a look at the 12-hour hold and putting it back in. We still have some questions around how all of that will work. We know that a bill was brought in 1997 that would have created the requirement that the defendant go before a judge for pretrial release and were told in misdemeanor cases you could not hold someone that long. I think we just need some clarification around how we might make sure that we can protect the safety of victims.

Bhreajgyt Bonds, Owner and Agent, Liberty Express Bail Bond Store, Inc., Las Vegas, Nevada:

I am the first female bail enforcement agent for Nevada. I would say that bail is a fundamental constitutional right. The United States Supreme Court has recognized the indemnity contracts for bail, meaning bail agents, are an extension of the Eighth Amendment. Only 48 percent of defendants in felony cases are required to post bail and even fewer are in misdemeanor cases to get released. Bail is also the least restrictive form of release and without it, we believe there will be every incentive to call for the expansion of supervision like in California, which is more restrictive in terms of liberty than the posting of bail. As

these bail funds around the country have shown, bail is a critical tool in challenging state power and overreaches by the state.

In data drawn from New York, of the 550,000 arrests between 2008 and 2013, 35 percent were for a violent crime including 12 percent for murder, rape, or robbery. Violent crimes were the largest single category. Drug misdemeanor cases were 12 percent. Most of the people arrested had prior interactions with the criminal justice system. On average, each arrested person had 3.2 prior felony arrests and 5 prior misdemeanor arrests. I would ask that this bill not be passed. I believe our Assembly will do their best and I hope you all reach the best conclusion.

Travis Moore, Owner and Bail Agent, Bail Bonds Unlimited, Reno, Nevada:

I did not know about this meeting until 11 p.m. last night. I read the bill and, just sitting through testimony today, it is just hours of factually incorrect information. So many people are missing the point of what service we actually provide. Asserting the narrative that only disenfranchised people are more affected by this is categorically false. I would encourage anybody to research what an actual bail bondsman does and the services we provide. The bill is saying that currently elected judges are not only incapable of showing prudence in setting a reasonable bail or pretrial release requirements of a defendant it is asserting that as a whole, the system is grossly negligent in its duties of fairness under the law. An algorithm for a risk is better than human judgment; I just do not think it makes a lot of sense. I really take care of our clients. You are not just purchasing a bond and sending your defendant out onto the streets. I am helping them through their issues and getting a game plan with their family members on the root causes of the crimes. We map out a game plan to assist that person and make sure they do not end up on the other side of our desk again.

Chairman Yeager:

I will close opposition testimony. I will now open it up to testimony in the neutral position to A.B. 325 in Carson City or Las Vegas.

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:

We are basically neutral on this situation because what you have is a trend that has been studied for a number of years. You may hear information from the courts and other people that may sound like opposition, but I think the main thing is concern. It is a good idea that we are having this conversation in the Legislature instead of what we might be facing with litigation, as a number of other states have experienced regarding the bail system. We are proud to be part of the conversation.

Jessica Ferrato, representing Second Judicial District Court:

The Washoe County Sheriff's Department implemented pretrial reform services in 2016. The Second Judicial District Court has a pretrial service department and they provide assessments at the jail for all courts in Washoe County. We would like to provide some information and statistics to the Committee as well as the sponsor about what we are doing in Washoe County and how this reform has changed services for defendants in Washoe County. I will get that information to your Committee staff.

Chairman Yeager:

Thank you, Ms. Ferrato. We would appreciate any data that you have from Clark County or any other counties. If you have data about what is happening now or about the success of these initiatives, I think it would be really helpful for our Committee. Thank you for that offer.

Jessica Ferrato:

We have both, and will get it to you as soon as possible.

Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada:

I just have a note about these proceedings that I would like to put on the record. There was a person here in Las Vegas who was intimidating speakers in support of the legislation, threatening them with arrest. Four people who were directly impacted by this bill left the proceeding before being able to exercise their right to speak.

[[\(Exhibit H\)](#), [\(Exhibit I\)](#), [\(Exhibit J\)](#), [\(Exhibit K\)](#), [\(Exhibit L\)](#), [\(Exhibit M\)](#), and [\(Exhibit N\)](#) were submitted but not discussed and will become part of the record.]

Chairman Yeager:

Is there any other testimony in the neutral position? [There was none.] I will invite Assemblyman Fumo with any brief concluding remarks.

Assemblyman Fumo:

What I am hearing from a lot of the opposition are things on which we can come to terms and work together. I commend Carson City for the way they operate their justice system. I do think judges need guidance, which is what I am hearing from the judges, that they would like more guidance, and this bill would do that. This does not end cash bail. It asks for the judges to look to cash bail as the most restrictive alternative and look at it last; look at other alternatives first. Under the Marsy's Law provision, this bill will actually more comport with it than our current bail standard does now. Right now, someone can get out on a standard bail and the victim has no say. In this bill, the defendant is brought to court within 48 hours. The victim has 48 hours, and most of the time the judge has the police report right in front of them where they can review the victim's statement. This law comports with Marsy's Law whereas the current standard does not. I look forward to meeting with anybody who wants to discuss it.

One of the things that was said about the Las Vegas Township Justice Court being created just for the bail court, is inaccurate. Justice Court Department 15 was created out of a population need and the judges determined that they would put one judge in the new court as a bail court. I want to congratulate Clark County, though, for the speed in which they do their bail hearings right now, and would just like other jurisdictions to follow suit. We can do this.

Some people were saying the most important thing was discussing the facts of the case. The United States Supreme Court stated in *United States v. Orta*, 760 F.2d 887 (9th Cir., 1985), that the least important factors a judge must consider are the facts of the current case. Standing in the community, employment, and relationships are the things that a judge must consider first, according to the United States Supreme Court.

With respect to the shackling restrictions, we can work reasonable restrictions in there so that it can both comport with the law and keep officers safe.

What I have heard from judges is the risk assessment tool gives them no guidance. What the risk assessment tool does not do is tell the judge this person is a high risk to reoffend; therefore, you must keep in custody. Or this person is a moderate risk to reoffend; therefore, you must do "X." What the judges are looking for is guidance and this bill will give them guidance. They can use the risk assessment tool as they formulate other factors for release. All we are asking for in this bill is to use cash bail as the last consideration.

One thing John Piro said, and I just want to close with this: It costs hardworking Nevadans \$150 a day to keep someone in custody. When I spoke to Director Dzurenda [Department of Corrections] about that, he said that was probably the bottom number if the person is healthy. If the person is sickly, the number goes significantly higher. John Piro's number was \$170 a day that we pay. That is \$62,050 a year, and if you multiply that out, Clark County Detention Center has 4,500 beds and is at critical mass; they are busting at the seams. If we were to implement this law—statewide 2,500 people could be affected by this—that is in excess of \$155 million a year that Nevadans could save. That is a significant amount of money. Just think about where we could put those dollars—teacher's salaries, smaller classrooms, mental health, more police, more firefighters, growth and infrastructure—that could be implemented right now. Take that number out five to ten years, and we are talking about billions.

I urge this Committee to support this bill. I look forward to meeting with all of the stakeholders on this legislation so that we can move it forward.

Chairman Yeager:

I will close the hearing on A.B. 325. Is there any public comment? [There was none.] Committee members, thank you for your attention this morning during this long meeting. We will be meeting tomorrow at 8 a.m. We will be starting with a brief work session and then we will have three bills. Just in case my mom is watching, I wanted to say happy birthday to my mother.

The meeting was adjourned [at 11:35 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Lucas Glanzmann
Recording Secretary

Traci Dory
Transcribing Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a publication dated February 2019, titled, "Bail Reform: A Guide for State and Local Policymakers" published by the Criminal Justice Policy Program of Harvard Law School, submitted by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

[Exhibit D](#) is a statement and proposed amendment in support of [Assembly Bill 325](#), dated March 20, 2019, submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice, presented by Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice.

[Exhibit E](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary in support of [Assembly Bill 325](#), dated March 21, 2019, submitted by Wiselet Rouzard, Field Director, Americans for Prosperity – Nevada.

[Exhibit F](#) is a letter to Chairman Yeager in support of [Assembly Bill 325](#), submitted by Chris Giunchigliani, Private Citizen, Las Vegas, Nevada.

[Exhibit G](#) is written testimony in opposition to [Assembly Bill 325](#), submitted and presented by Daryl B. DeShaw, Director and Bail Agent, Surety Bail Agents of Nevada, Las Vegas, Nevada.

[Exhibit H](#) is written testimony in support of [Assembly Bill 325](#), submitted by Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada.

[Exhibit I](#) is a scholarly legal work titled, "The Downstream Consequences of Misdemeanor Pretrial Detention," dated March 2017, authored by Paul Heaton, Sandra Mayson, and Megan Stevenson of University of Pennsylvania Law School; and submitted by Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada.

[Exhibit J](#) is a scholarly work titled, "The Heavy Costs of High Bail: Evidence from Judge Randomization," dated August 18, 2016, authored by Arpit Gupta, Columbia Business School; Christopher Hansman, Columbia University; and Ethan Frenchman, Maryland Office of the Public Defender; and submitted by Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada.

[Exhibit K](#) is a scholarly legal work titled, "Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail," dated February 17, 2019, authored by Aurelie Ouss, University of Pennsylvania; and Megan T. Stevenson, Antonin Scalia Law School, George Mason University; and submitted by Roger Pharr, Volunteer Activist, Mass Liberation Project Nevada.

[Exhibit L](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary in support of Assembly Bill 325, dated March 21, 2019, authored and submitted by Laura Martin, Executive Director, Progressive Leadership Alliance of Nevada Action Fund.

[Exhibit M](#) is written testimony in support of Assembly Bill 325, submitted by Allison Pharr, Activist, Mass Liberation Project Nevada.

[Exhibit N](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary in support of Assembly Bill 325, dated March 21, 2019, authored and submitted by Ronald Najarro, Deputy State Director, The LIBRE Initiative – Nevada.