MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
May 28, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:17 a.m. on Tuesday, May 28, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblywoman Dina Neal, Assembly District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Andrea Franko, Committee Secretary

OTHERS PRESENT:

Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Jim Hoffman, Nevada Attorneys for Criminal Justice

Samuel Bateman, Chief Judge, Henderson Township Justice Court, Department 1
Keith Lee, Nevada Judges of Limited Jurisdiction
John T. Jones, Jr., Nevada District Attorneys Association
Marc Newman, Surety Bail Agents of Nevada
Robert L. Langford, Robert L. Langford & Associates
Marc Schifalacqua, Office of the City Attorney, City of Henderson
Tyre Gray, American Bail Coalition
Shani J. Coleman, Municipal Court, City of Las Vegas
Marc Gabriel, eBAIL
Gary Peck
Daryl B. DeShaw, Surety Bail Agents of Nevada

CHAIR CANNIZZARO:
I will open the hearing of the Senate Committee on Judiciary with Assembly Bill (A.B.) 125.

ASSEMBLY BILL 125 (2nd Reprint): Revises provisions governing bail. (BDR 14-542)

ASSEMBLYWOMAN DINA NEAL (Assembly District No. 7):
We are fighting for what the community wants and what they have perceived to be a consistent injustice concerning bail. Assembly Bill 125 is the result of an effort to find some leeway and space where we can have a conversation about the definition of monetary bail.

Nationwide, there have been lawsuits over equal protection violations after people have been kept in jail because of their lack of money. Assembly Bill 125 deals with misdemeanors and nonviolent and nonsexual gross misdemeanors. It intends to establish a priority in the court that judges must look at the least-restrictive means before applying monetary bail. We know that just $250 can keep certain people in jail.

The court has always had the ability to release people on their own recognizance (OR). The question is when was that was triggered and how often. The conversation revolved around taking away the court's discretion to allow OR releases. We want the "shall" removed from section 5, subsection 4 of the bill to restore what is already allowed in *Nevada Revised Statutes* (NRS).

The question becomes whether judges can still release an offender for a misdemeanor, gross misdemeanor, nonsexual or nonviolent crime. There is no perfect system. Assembly Bill 125 gets us to the point where there are certain crimes for which a person should not be held in jail for a month. We need to ask ourselves whether a misdemeanor is something about which we want to just say, "I think they should all be in jail," or consider them a narrow subset of crimes that do not pose a safety risk.

The bill looks at the victim and safety concerns. I do not advocate allowing someone to be released who poses a safety risk to the community. We had to put victims' rights into the bill because of the passage of Ballot Question 1 in 2018, the measure known as Marsy's Law.

People who cannot make bail are not just black or brown, even though their numbers are the highest in the disparities in court. The community at large is saying we need to change the bail process. I am asking the Committee to reflect on what kind of changes Nevada needs for bail reform. How do we best serve communities through bail reform?

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):
The goal of A.B. 125 is to create uniformity in bail and pretrial release procedures to ensure fairness across Nevada. The bill enacts reforms to ensure equal treatment under the law while maintaining and protecting public safety.

The Office of the Public Defender, Washoe County, helped Assemblywoman Neal with A.B. 125. Section 1 is deleted by amendment. Section 2, subsection 5 is conforming language that is outlined and recreated in section 5, subsection 4. The goal is to create some form of automatic release for certain offenses outlined in section 2, subsection 5. Section 3 is also a conforming change with section 5 of the bill.

Section 4 deals with what happens when charges come to the court through grand juries. There are two ways a district attorney and prosecutor can charge an individual with a crime: through a criminal complaint or through a grand jury indictment. Section 4 deals specifically with grand jury indictments. Initially, a prosecutor will charge the individual through a criminal complaint and then proceed through the grand jury indictment.

Section 4 provides that if the case is presented to a grand jury and there are no new charges, the bail remains the same. If the court wants to change the bail or if there are additional charges, the court has the discretion to change or modify the bail. It must do so after a hearing to allow for due process.

Section 5 is the heart of the bill. Section 5, subsection 1 discusses the administrative order that should be adopted by the court. The purpose is to allow for a hearing to occur within 48 hours, including on nonjudicial days after an individual is taken into custody. Section 5, subsection 2 provides that a review hearing can occur in chambers or open court, whether or not the defendant is present.

The intent of section 5, subsection 2, paragraphs (a) and (b) is that people are innocent until proven guilty. Money should be the last priority because money does not make the community safer. The *Harvard Law Review 2018* article "Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing" argues that money bail is a poor tool for achieving pretrial justice. The money bail system jails poor people because they are poor, not because they have been convicted of a crime or are a danger to others.

Section 5, subsection 3 provides that a person arrested on a charge other than first-degree murder must be released pending trial with the least-restrictive conditions the court deems necessary.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
Clark County operates an initial arraignment court because of a working agreement whereby we review a person's custody status within 12 hours. Municipal courts are not on that same page yet, but Clark County Justice Court follows the practice. We would like to see initial arraignment courts across the State so that administrative orders can be developed. The Eighth Judicial District Court has an administrative order that people will be released on OR for certain offenses before seeing a judge.

MS. BERTSCHY:
As Assemblywoman Neal discussed, individuals facing charges for nonviolent misdemeanors and nonviolent and nonsexual gross misdemeanors would receive an automatic OR release unless the crime involved a victim. Section 5, subsection 5 contains language partially in NRS. The goal of subsection 5 is to

ensure that individuals who are poor do not languish in custody if they cannot afford their bail according to the schedule.

MR. PIRO:
Section 5, subsection 6 addresses the administrative order. After discussions with Clark County District Attorney Steven Wolfson, we concluded that no matter if a defendant remains in custody an individualized review of the custody status must be conducted within 72 hours of the arrest, excluding nonjudicial days.

This gives a lot of leeway to courts in rural jurisdictions. If you get arrested in a rural jurisdiction, you may not see a judge for five days. We want to see custody status reviews within 48 hours, even if they happen in chambers or within 72 hours, excluding nonjudicial days, in front of a judge with a lawyer assigned to argue whether the person is fit for release. We are trying to get people in front of a judge as soon as possible so that they may be released as soon as possible.

MS. BERTSCHY:
There was a lot of discussion about when an individual should come before the judge for a bail hearing. Regardless of whether a criminal complaint is filed, that only happens within the 72-hour time frame pursuant to NRS 171.178. The correct, statutorily dictated timing of how long a person is in custody is extremely important.

Section 5, subsection 7 of A.B. 125 sets the order of priorities to address bail. The goal is for the judge to look at individuals with the presumption the person is innocent and should be released on OR. The only condition placed on an individual is a promise of good behavior and to appear in court as required. If the court finds there should be additional conditions, the next priority is OR with nonfinancial conditions like attending substance abuse classes and checking in with a pretrial service officer.

The next priority is release with secured financial conditions. However, to address the concerns of bail bondsmen, there is a provision that the court could use a different order of release if requested by the defendant. There are some instances in which bail may be the least-restrictive option. The defendant makes that request, but before it is considered, the court goes through the order of priority list I outlined.

Section 5, subsection 8 provides that every release order should contain the requirement that the release of the defendant is conditional upon his or her promise of good behavior and to appear in court. Section 5, subsection 8, paragraph (c) lists the factors relating to granting release to a defendant "to the extent that information about the factor is available and reasonably reliable." We did not change any of the factors in NRS.

Section 5, subsection 8, paragraph (d) provides how the judge should consider the possibility that an individual willfully fails to appear and how that may impact the safety of the alleged victim and the community. Again, the court shall impose the least-restrictive conditions necessary. Section 5, subsection 8, paragraph (e) states the court must make findings as to the reasoning when determining what the status should be of the release.

The purpose of section 5, subsection 9 is to prevent someone languishing in jail because he or she cannot afford a financial condition. For example, if the court rules someone should be released to house arrest, if the person cannot afford the global positioning system (GPS) monitoring device, if the person is in custody three days after the issuance of the release order, the issue must be brought back before the court for reconsideration.

Section 5, subsection 15 deals with how after an individual violates a condition of release, he or she can be remanded and placed back into custody. However, the defendant will have an opportunity for a hearing before that happens.

Section 5, subsection 17 provides for an agreement that an individual makes with the court acknowledging that he or she has received and understands the conditions the court has imposed. Section 5, subsection 19 defines "own recognizance release."

Section 6 of A.B. 125 provides that there must be a custody review so there is a hearing if new charges are filed. Section 7 states that if there are new charges, there should be a new hearing following the rules set forth in section 5. Section 8 describes how bail amounts are set. Bail must be tailored to a person's ability to pay, and he or she should not be held in custody simply because he or she is too poor to afford bail. Section 9 discusses the modification of bail.

SENATOR PICKARD:
I do not see any consideration of flight risk in A.B. 125. I recognize that courts' top priorities are to make sure we keep the community safe and that people will appear for their hearings.

MR. PIRO:
Section 5, subsection 8, paragraph (c), subparagraph (8) states "any other factors concerning the defendant's ties to the community or bearing on the risk that the defendant may willfully fail to appear."

SENATOR PICKARD:
Section 5, subsection 8, paragraph (c) lists the factors that are the least-restrictive means necessary to make a defendant return to court. How does this differ from what we are currently doing in terms of assessing that risk?

MR. PIRO:
This is a first step outlining the order of priorities. We are looking at some of the same factors in NRS, but the bill tells the court that cash bail should be the last priority unless the defendant requests it.

In regard to section 5, subsection 5, the Nevada District Attorneys Association would like defendants to have a review before a judge before bail is assigned. Our concern is some clients we represent are too poor and have bail set in unreasonable amounts, so they are in custody for unreasonable lengths of time.

SENATOR PICKARD:
The issue of cash bail does not make sense given the underprivileged population we are addressing. How will the judge determine whether a person is unable to make bail or is saying that because he or she does not want to give up something? How does the judge know the person is unable to make bail or pay the premium on the bond?

MR. PIRO:
To be assigned a public defender, defendants must fill out a financial worksheet under penalty of perjury. It has been my experience that if a person can afford bail and get out of jail immediately, he or she will do so. The problems our clients encounter is with judges assigning bail without inquiring whether our clients can make bail, have legitimate ties to the community and have counsel.

SENATOR SCHEIBLE:
Assembly Bill 125 does not lay out how to use criminal history as a consideration when setting bail. Is the idea that those factors would contribute to the likelihood of someone going back to the safety of the community?

MS. BERTSCHY:
Criminal history is addressed in section 5, subsection 8, paragraph (c), subparagraph (7): "The likelihood of more criminal activity by the defendant after release."

MR. PIRO:
At the start of this Session, the Nevada Supreme Court filed Administrative Docket 0539, which requires the use of the Nevada Pretrial Risk Assessment across the State. It includes scoring related to defendants' criminal histories. Everyone in court should know a defendant's criminal history in order to make arguments and decisions.

SENATOR HANSEN:
Assemblywoman Neal referred to a person with a misdemeanor who does not have the financial ability to make bail. Mr. Piro, you are talking about bail for crimes beyond misdemeanors. Later on in the bill, we are talking about felony releases on OR.

MR. PIRO:
Assemblywoman Neal was talking about the administrative order that each jurisdiction may craft. In Clark County, orders address low-level misdemeanors, but the bill addresses monetary bail for other crimes. We are not changing the murder standard, according to which a person can potentially be held without bail. We are saying that cash is a poor substitute for community safety.

Clark County has a multiple options release: people can give an oral promise to appear in court and stay out of trouble; they can leave with intensive supervision after agreeing to stay out of trouble and check in every week or wear secure continuous remote alcohol-monitoring bracelets to ensure they are not drinking. Also, people can be released using low-level electronics, which is GPS; mid-level electronics, which is GPS plus drug testing; and high-level electronic monitoring, which is the most serious level. While Clark County has a lot of release options, we understand other jurisdictions do not. Sometimes, that

is the difference between the poor or working poor getting out of custody and languishing within it.

SENATOR HANSEN:
What would be the cost to the State of implementing Clark County's measures in every jurisdiction? I do not want people held in jail. My biggest concern is that victim safety is too far down the priority list. I also have concerns with the bail provisions for higher-end crimes.

SENATOR OHRENSCHALL:
Assembly Bill 125 follows a national trend. I serve on a drafting committee for the national Uniform Law Commission on alternatives to cash bail. We are trying to promulgate a uniform act for guidelines for all states.

SENATOR SCHEIBLE:
In Clark County, mid-level monitoring does not mean defendants will necessarily be brought back to court if they commit another violation like break curfew, do drugs or something like that. Does this bill address nonmonetary alternatives to bail? Does it empower jurisdictions to create new programs to grant judges the authority to enforce them? Will we use the programs already in place?

MR. PIRO:
The bill does empower jurisdictions to create new programs, depending on their finances. We are concerned with the level of justice some people are receiving in the rural counties, as opposed to Clark or Washoe Counties, where some people may be staying in custody simply because there is a lack of options in their rural jurisdiction. If they were in Clark or Washoe Counties, they may have been released on electronic monitoring. That is why we want to create criminal justice coordinating committees in every county in order to find alternate solutions to monetary bail.

SENATOR HANSEN:
Some of our small counties are financially strapped. Due to financial and population realities, rural counties would not be able to meet the same standards that Clark County or Washoe County can.

MS. BERTSKY:
In Washoe County, we have a robust pretrial services division. It is different from Clark County in that we have pretrial officers whose sole job is to work

with individuals to ensure release conditions compliance. If someone violates one of the conditions, our officers have the ability to arrest the individual and bring him or her back to court to address the violation.

SENATOR PICKARD:
Nevada Judges of Limited Jurisdiction has submitted a proposed amendment (Exhibit C). It implies that we are intruding deeply into judges' space with A.B. 125. Can you outline why this bill is not an impermissible intrusion into limited jurisdiction courts and a violation of the separation of powers? Typically, we create definitive laws. We do not tell judges how to think and how to do their jobs.

MR. PIRO:
Here is an analogy: in family law, we tell judges to look at families' best interests using a nonexhaustive list of factors in no particular order except for domestic violence. I think we can find some common ground with limited jurisdiction courts by saying "the judge shall" versus "the judge may."

It is not any different than when we tell the judges to look at the best interests of children. When looking at release options, courts should consider the factors in section 5, subsection 8, paragraph (c). Look at the least-restrictive factors first, with liberty as the presumption. Pretrial, people are still considered innocent until proven guilty.

CHAIR CANNIZZARO:
Section 5, subsection 4 provides the administrative order shall provide for the release of defendants arrested without a warrant without the imposition of any conditions other than the promise of good behavior and to appear in the court as required. It provides for the release of any misdemeanor that does not involve the use or threatened use of force or violence against the victim. It also provides for the release of a defendant not charged with any crime greater than a gross misdemeanor, crime of violence or a sexual offense.

That is the way that I am reading the subsection, but I need some clarity because the rest of this section is a little unclear. Misdemeanors and gross misdemeanors that do not involve the use of force, nonsexual offenses and felonies that do not involve the threat of force would be an automatic release without any condition. Is that correct?

MR. PIRO:
Yes, the jurisdiction could create an administrative order that says as much.

CHAIR CANNIZZARO:
The way I read this is the court shall provide for an administrative order. I do not know if I am reading that as the court could provide an administrative order with those or similar conditions. Would it have to include those conditions because it says "the court shall"?

MR. PIRO:
That is language we could work on.

CHAIR CANNIZZARO:
My concern is there are misdemeanors that would require some sort of condition of release, like stalking, harassment and violations of protective orders. Those things would not fall under the category of threatened use of violence against someone nor within the provisions of a sex offense if it were a gross misdemeanor or a felony. That would allow release without any conditions whatsoever. Those are the kinds of circumstances in which conditional release would be more appropriate.

MR. PIRO:
We consider those violent misdemeanors that should not be subject to the administrative order in the bill. Section 5, subsection 14 talks about those types of crimes. It is not our intent in this bill to wrap those crimes into an administrative order.

CHAIR CANNIZZARRO:
Maybe there should be some sort of reference because the section reads the administrative order should include those crimes. The language in subsection 15 causes me concern.

Section 5, subsection 8 talks about flight risk; other areas in the bill also talk about it. Would in not be prudent to capture that within the same section? We seem to be considering flight risk in different ways. There is a presumption that there should just be automatic release without considering other things that are relevant when setting bail.

MR. PIRO:
We are not opposed to that.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
Nevada Attorneys for Criminal Justice supports A.B. 125. My office had a client who was arrested in Good Springs, a small town in Clark County that has its own justice court. The man was held without bail for three weeks because the judge did not convene court often.

We did not try to get bail as he had severe mental illness. We tried to get him transferred to the Clark County Detention Center, where there is a psychiatric facility. However, we could not do so because the judge was not hearing the case. Our client languished in jail unmedicated. Assembly Bill 125 would correct this situation. Our current system causes human suffering, and the bill is a reasonable, proportionate response to the problem.

SAMUEL BATEMAN (Chief Judge, Henderson Township Justice Court, Department 1):
I will discuss the proposed amendment to A.B. 125, Exhibit C, submitted by the Nevada Judges of Limited Jurisdiction and our letter in opposition (Exhibit D).

I was surprised to hear this bill was about misdemeanors, a huge group of crimes. There are more misdemeanor charges filed in Clark County than felonies. It is a significant action to OR all misdemeanors.

Ms. Bertschy said that Washoe County has a robust pretrial services program. Henderson is the second largest city in the State and probably the third biggest township—yet, we have no pretrial services. This situation does not only affect the rural counties; North Las Vegas and Henderson also lack pretrial services.

We are preparing for the Supreme Court-ordered use of the pretrial risk assessment. If we implement some of the things considered in the bill, that would require additional resources and changes. We have made improvements in the Henderson Township Justice Court in order to move things more quickly.

The Las Vegas initial arraignment court administrative orders were all done without the need for legislation. When Henderson Township Justice Court changed the detention of defendants to less than 72 hours and implemented administrative orders releasing defendants through the use of a pretrial risk

assessment, that was done without the need for legislation. Various provisions feel like the intent is to micromanage the courts. From an administration of court procedural standpoint, that is problematic. I do not know how I would implement the changes in my court.

Section 5, subsection 2, paragraph (a) contains a rebuttable presumption. The bill considers holding an individualized custody review potentially without a prosecutor and defense attorney. It is a good thing to have individualized assessments faster than what we are doing, but not when you include rebuttable presumption. A rebuttable presumption means that in an adversarial system, one side has the opportunity to rebut the presumption. If I hold someone in custody, am I rebutting the presumption? That is an untenable position for the court.

The rebuttal presumption language should be reserved for when courts hold hearings and take testimony. That is how we usually use presumptions in the criminal system. Rebuttable presumption language in a vacuum with no parties present does not work.

Section 5, subsection 2, paragraph (b) does not refer to public safety when it says monetary bail should be imposed as a condition of release only when the magistrate determines that no other conditions of release will reasonably ensure the defendant will appear in court if required. Elsewhere in the bill, it refers to public safety. Paragraph (b) is problematic, so we deleted it in Exhibit C.

We are concerned that section 5, subsection 4 of A.B. 125 establishes a violation of the separation of powers. It requires the court to issue an administrative order, which is something we and the Las Vegas Court already have the authority to do. Not only does the section require the court to issue an administrative order, it also dictates what must substantively be in the order. That is plainly invading the province of the court. Administrative matters of the court are within each court's discretion. Any intrusion on administration of the court would be considered a separation of powers issue.

It would be very hard for a group of judges to say they are going to OR all DUI defendants tomorrow without conditions. I would wait for someone to make an appeal to me and then decide.

One of our biggest issues is the language with an administrative order requiring the release of all misdemeanants and gross misdemeanants. That is another separation of powers issue. There is nothing stopping the Legislature from stating that itself. Legislators can take on that responsibility with the voters, rather than telling judges telling voters that we issued an administrative order, when it would not be our prerogative.

Section 5, subsection 4 says judges shall issue an administrative order that provides for a release under certain circumstances. I do not know what those certain circumstances are for defendants arrested without a warrant. Such an administrative order must first consider the provisions of section 5, subsection 4, paragraphs (a) and (b). I do not how it considers those in an administrative order. The section then provides for the automatic release of misdemeanants and gross misdemeanants while excluding violent offenders. A jail staff member would determine if the crime was violent, not the court.

Section 5, subsection 5 violates the province of the court and sets up a system that does not make procedural sense. The court can issue an administrative order that ORs felons. It does not explicitly say that, so I do not know if we are still using the bail schedule. Those two provisions generally incorporate a pretrial risk assessment. I do not know what subsection 5 means.

Section 5, subsection 6 talks about 48-hour and 72-hour detention; subsection 7 has the hearings reversed. It talks about a judge who has released a defendant having to reconsider the bail using the procedures set forth in NRS 178.484. In his or her initial review, the magistrate shall conduct a review of the custody status as soon as is practical; in any case, the defendant must not be released until his or her custody status has been reviewed. That constitutes a new case.

In section 8, subsection 3, a defendant who is eligible for pretrial release must not be detained if he or she is unable to pay bail or bond. The entirety of the litigation will be about the provision in subsection 3: someone who cannot make bail regardless of the crime is released. Exhibit C removes subsection 3, since subsection 2 sets up the ability to pay bail.

We also have concerns about setting bail for first-degree murder. You can set bail on first-degree murder, but the judge has to go through a process before determining to withhold all bail on first-degree murder. On second-degree

murder, bail is usually set. Our judges would like to move forward on a more individualized pretrial risk assessment, but we must have language in a bill that we can review and understand.

SENATOR HAMMOND:
Assembly Bill 125 has no fiscal note, but it seems we are moving to a more government-run system. What do you think this bill will cost your court?

JUDGE BATEMAN:
We are in a difficult position trying to implement the pretrial risk assessment ordered by the Supreme Court. My court has no pretrial services. We will work with the counties to get more jail staff for when people are arrested. I utilize the Henderson Detention Center, a city-owned building with city employees. I have to have county employees available to conduct the risk assessment to make the individualized assessment.

Few other jurisdictions have the resources for the robust pretrial services that Washoe County and Las Vegas Justice Courts have. Las Vegas Justice Court can do an initial appearance because the Court has reached a critical mass of employees. Las Vegas has 40 pretrial services employees and many judges in the Las Vegas Justice Court. I have three and have deferred hiring a fourth.

Most State jurisdictions cannot do what Las Vegas Justice Court can do. We need more information to move quickly. We have to make judges comfortable about releasing people under the least-restrictive conditions. I would like to have pretrial officers who check on individuals to ensure they are not a threat to public safety. Judges across the State are reluctant to issue a blanket order to monitor a second-offense DUI defendant with no resources.

SENATOR HAMMOND:
It would be nice to know what we are up against monetarily.

KEITH LEE (Nevada Judges of Limited Jurisdiction):
We oppose A.B. 125. Nevada Judges of Limited Jurisdiction is not opposed to bail reform. Legislators make policy, and it is our job to implement it. Those of us implementing policy have concerns about A.B. 125.

In section 5, subsections 4 and 6 are mandates the Legislature is imposing on the courts. As per Exhibit D, we think those violate Article 6 in the Nevada

Constitution and the separation of powers. The Nevada Supreme Court can mandate those things; the Legislature cannot.

One size does not fit all. Neither rural nor urban courts not have the financial or personnel resources to comply with the provisions of this bill. All our municipal courts and justice of the peace townships, except for the Las Vegas Township, believe the bill's implementation time frames are not practical.

All courts must implement the risk assessment by December 31. Most rural and some urban courts do not have pretrial services to remind defendants to come to court. They do not have the services for drug testing or a means to ensure defendants are complying with curfew. Certain nonfinancial pretrial release conditions are only viable in larger counties and in certain townships unless those places are provided additional resources.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes A.B. 125. Exhibit C is a good place to start addressing the issues with the bill.

Proponents say that A.B. 325, which is now A.B. 125, was the original omnibus bail bill in the Assembly. You have heard the truism, "Bail means jail; clout means you're out." A person with means can make a standard bail before ever seeing a judge to determine what risk he or she poses to the community. There is little risk that they will not appear for future court dates. District attorneys believe that if you are a risk to the community but have means, a judge should assess the conditions of your release just like they would anyone else.

ASSEMBLY BILL 325: Revises provisions relating to bail. (BDR 14-118)

We want an end to bail schedules. A person should not be able to post bail prior to seeing a judge unless he or she is granted a release order that is generally applicable and applies to everyone.

Sections 8 and 9 of A.B. 125 state if a judge finds that a defendant is a risk to the community or a risk to himself or herself or is unlikely to appear, a high bail is reasonable. The language of sections 8 and 9 implies that a judge cannot set a high bail if a person cannot pay it. That is not appropriate. When no other conditions of release can reasonably protect the community, a high bail is

appropriate regardless of whether the defendant can pay it. Once a judge has conducted an individualized review, reviewed the factors laid out by this bill and determined a defendant is a risk, that judge should be able to set a high bail.

Section 5, subsection 9 allows the defendant to seek a review by a judge every three days if he or she cannot make bail, even without changed circumstances. Is the goal of this provision to wear down the judge until he or she agrees to an OR release?

District attorneys strongly oppose section 4, which prohibits a district attorney from requesting a higher bail when a return of an indictment is made in district court. The erroneous premise behind this seems to be that district attorneys always request a higher bail in district court. However, when we request a higher bail, a district court judge would have to authorize it.

Section 5, subsection 2 is the rebuttable presumption provision. It does not make sense when reading the bill as a whole. Section 5, subsection 2, paragraph (a) is a complete outlier with no context. It is inconsistent with other provisions that deal with factors a judge should look at prior to authorizing release.

Must a judge look at the factors listed in section 5, subsection 7, paragraph (c) from the start, or does he or she have the presumption first and then go to the factors in subsection 8, paragraph (c)? The two sections do not make sense taken together.

Does the presumption rebut itself if a judge conducts an in-chamber individualized review with no input? The bill does not reference conditions that go along with an administrative release. There is no regard to public safety. Section 5, subsection 4 mandates the release of misdemeanor offenders without taking regard of risk. This is inappropriate.

We have heard about the administrative order in Clark County by the Justice Court of Las Vegas. It details when defendants should be released automatically, when they should be detained or when they should see a judge. It contains factors other than the offense for which the individual was arrested and information such as whether the defendant was out on another offense when he or she committed the second offense.

What is the defendant's criminal history? There are more factors than those outlined in section 5, subsection 4 a judge should consider when writing a release order. Las Vegas Justice Court has a thoughtful order that does not indiscriminately release misdemeanants. If you are going to have a permissive order, something like the Las Vegas Justice Court model is appropriate.

Section 5, subsection 6 deals with how a court conducts individualized risk assessment reviews. This addresses rural jurisdictions more than urban ones. A judge can conduct an individualized order in chambers or in court. Forty-eight hours was set because the judge already conducts a probable cause review of the declaration of the arrest within 48 hours. However, the language that refers to 72 hours excludes nonjudicial days, which does not comport with the 48 hours listed in section 5, subsection 1.

Throughout the bill, several definitions are interchangeable, which has led to confusion. There are terms such as bail, admitted to bail, monetary bail and release. All of these individual terms seem to mean the same thing, but that is not clear.

In section 5, subsections 10 and 11 provide that if a defendant is arrested on probation, he or she cannot be admitted to bail—but can the defendant be released on house arrest? It is not clear. Provisions need to be cleaned up. District attorneys want something that protects public safety while providing parity for people with or without financial means in the bail system.

MARC NEWMAN (Surety Bail Agents of Nevada):
We oppose A.B. 125. Bail is not set by the bail bonds industry. We do not choose the price, and our insurance is regulated by NRS. Assemblywoman Neal said there is a problem with an industry that we did not create. It was created by legislation, but the industry is to blame.

The previously mentioned pretrial risk assessment tool was a factor in the murder of a 74-year-old man by a person out on bail with an ankle monitor. District Attorney Wolfson said that should not have happened; Assemblyman Steven Yeager said on March 21 that it would never happen.

Public safety should always be a priority. The judges we elect should not be handcuffed with bureaucracy. Some victims cannot speak for themselves. That victims are so far down on the priority list is reason enough to vote no on this

bill. Bail bonds agents are community partners who provide ancillary support to law enforcement.

ROBERT L. LANGFORD (Robert L. Langford & Associates):
We oppose A.B. 125. I agree with most of what Mr. Jones said on behalf of the District Attorneys Association. A coalition to discuss A.B. 125 included members of Americans for Prosperity—a Koch brothers-sponsored group—and the Nevada Policy Research Institute, a conservative libertarian organization. Everybody had one goal in mind: to make policy that is more mindful of civil liberties and provide for better public safety at an efficient cost.

Bail reform involves an individualized review of a person's circumstances and the nature of why he or she is in court. I oppose this bill because of the section about the judge changing the order of priority of release at the request of the defendant. That is unconstitutional because all people must be treated equally. If you can come into court and say, "I am wealthy so I should be treated differently," that it is unconstitutional.

I agree there is an issue with separation of powers. Let the Legislature decide what bail should be for a misdemeanor, a nonviolent misdemeanor or a charge involving the threat of violence. If the defendant has prior cases, he or she must go in front of a judge; but if an OR is issued, they should be released. That is cheaper and a better use of our jail facilities.

There should be an individualized review before a judge decides what public safety requires. Having that hearing in a short time frame is what the U.S. Constitution requires. The bill promotes bail reform by requiring an individualized review of a person's circumstances and the reason he or she is brought before the court.

MARC SCHIFALACQUA (Office of the City Attorney, City of Henderson):
We oppose A.B. 125. I would like to address releasing all misdemeanants without bail or conditions of release. Under that definition, a violation of a temporary protective order would allow a defendant to be released because the crime was not violent, but it is a crime that terrorizes the victim.

Because the defendant is not necessarily violent or constitutes threats of violence, he or she would be granted an immediate OR release. This is made

worse because the judge cannot order the defendant to avoid contacting the victim again.

Stalking, animal cruelty, leaving the scene of an accident, peeping or spying through a window, loitering near a school, vehicular manslaughter all would merit ORs under A.B. 125. Courts could not apply reasonable conditions of release.

I understand the cash bail for lower-level crimes, but if we want judges to release folks on these, we should not take away their authority. It is problematic. Under this bill, I do not know what happens when someone does not comply with the court order. Court orders should mean something.

I have concerns with section 8 where it says a defendant eligible for pretrial release must not be detained solely for their inability to pay the amount. I do not know why someone would remain in jail other than the fact they could not pay the bail. Due process does not guarantee that an indigent defendant would never be subject to monetary bail. I support the amendment by the Judges of Limited Jurisdiction. We oppose the bill as it is currently written.

TYRE GRAY (American Bail Coalition):
We oppose A.B. 125. We have concerns with the language in this bill. Assemblywoman Neal has agreed to work with us, and we hope to work with other stakeholders for an opportunity to create further consensus on the bill.

SHANI J. COLEMAN (Municipal Court, City of Las Vegas):
We oppose for the same reasons provided by previous testifiers. We agree with the idea of bail reform. The way this bill is written and presented is not agreeable. We have concerns with judicial discretion.

In answer to Senator Hammond's question in reference to cost, we estimate the cost to be $511,000 for the City of Las Vegas to implement the provisions of this bill as stated.

MARC GABRIEL (eBAIL):
I oppose A.B. 125. The bill is an intrusion into the discretion of the judge by legislating a road map that forces a judge to look at bail as a last option. What if the judge decides that bail is the best option without following the road map? Please do not legislate the decision-making process for judges. Judges are on

the front line. They see the reports and the charges of the incident by the defendant. The judges have tremendous experience; do not take that away.

When a bail bond is placed with the court, the bail agent guarantees the defendant will appear with cosigners. Cosigners are people who are willing to go on the line for the full monetary value of the bond. This selection process guarantees court appearances 100 percent of the time. Flight risk is mitigated by the defendant and his or her family knowing that mom and dad have their finances on the line.

Other court options like house monitoring relies on the promise of a defendant making failure to appear a high risk. If a defendant does not get an OR, maybe he or she has to pay bail that ensures the court appearance. This bill will cause more problems than what it intends to solve. Please vote against this bill.

GARY PECK:
I oppose A.B. 125. I do not believe that this issue boils down to individualized reviews of people who are seeking pretrial release. That is a fraction of what we are trying to do with bail reform. We are trying to create a system that would ensure only a small number of people are subjected to cash bail as a condition of release. The same applies to people subjected to highly restrictive conditions as a basis for pretrial release if they are nonviolent alleged misdemeanants or gross misdemeanants.

This is an issue of critical constitutional importance. We have a system that is an affront to constitutional values and principles. The argument that we have to do what is best for bail bond businesses is not consistent with the way our constitutional democracy works. If you are innocent until proven guilty, there needs to be some reason why you are being detained or released subject to all sorts of conditions that restrict your liberty.

This bill is going to let every court develop its own administrative order which is inconsistent with uniformity and equal justice under the law. It does not establish any meaningful standard that judges need to meet when they are making decisions about the impositions of cash bail or restrictive conditions of pretrial release. It does not require judges to make findings on facts that are specific and precisely related to the conditions they impose.

This bill does not address language in NRS that 140 civil rights policy analysts, academics and other stakeholders have identified as biased against race, class or gender. I believe this bill is a mess, and you would be better off with a simpler bill that said that nonviolent misdemeanants and gross misdemeanants should be automatically administratively OR released.

I heard what one of the testifiers said about the need for exceptions. If there are exceptions, they should be limited. There is no data that says bail is an effective way of ensuring appearances in court or assuring that there will be no repeat offenses. The subtext that no one wants to talk about is the fact almost no cases in our system go to trial. I bet it is less than 3 percent.

The system is used to leverage plea deals from people who are fearful that their lives and the lives of their families will be irreparably damaged in lasting ways. Advocates are asking for change that other jurisdictions all over the Country are enacting now. They are enacting positive change with enlightened progressive prosecutors, law enforcement agencies and bail agents.

Nevada always seems to be behind the curve. This bill could be improved by simplifying and streamlining it. Do a study during the Interim that does not require a fiscal note. Come back and take another deep dive into these matters. The bill does not adequately fix the problem.

DARYL B. DESHAW (Surety Bail Agents of Nevada):
Bail agents were absent from the stakeholders group. We have a lot of information to add to the discussion. When a defendant is languishing in jail on a $5,000 bond, they are not necessarily languishing.

In the last month, I received phone calls from several people who say they have the $800 for their bond, it is $5,000. I ask, "How long have you lived in Nevada?" They reply, "All my life, I am 32." I ask, "Who will cosign for you?" They do not have anyone or they give you some family members and you call them and none will sign for the defendant.

No one wants to take responsibility for these individuals. Research the issue and see how many defendants are no-shows or have problems where probation is revoked. If I write the bond, I have to chase them around. I will make no money this way. This bill is written up as someone who is languishing in jail because he or she could not come up with the money. They are not languishing.

Look at the people who are not making child support payments. Child support has to be paid in cash because Nevada signed on with a federal agreement. The court has nothing to do with that.

In 2017, Clark County Detention Center reported that approximately 61,000 people were booked in its facility. Surprisingly, 1 percent of those 61,000 people were released. Only 19 percent of those people were misdemeanors, and 10,000 of the 61,000 total people booked were released on bail bonds. Bail bonds are not the problem, but we can be part of the solution.

SENATOR OHRENSCHALL:
Does the system look at whether or not the accused has been proven guilty? Do we consider the reasons a defendant fails to appear, for example, whether he or she intentionally absconded or whether there were circumstances outside of his or her control that caused the history of a no-show?

MR. DESHAW:
Sometimes we do, but not always. A lot of the people we deal with are overgrown juvenile delinquents. The last paragraph in our bail agreement states that I am the first person a defendant calls if he or she cannot appear in court. I will talk them through the process of fixing this absence. They are not going back to jail, no one is chasing them and it is not costing anybody any money.

SENATOR OHRENSCHALL:
I appreciate the work you do with your clients. Do you know when the records show failure to appear? Do the records indicate whether the absence was something that occurred outside of the accused person's control?

MR. DESHAW:
Sometimes they do but not always. When we see a history of no-shows in the records, it is an issue.

MR. PIRO:
Proponents of bail reform do not agree on this bill. This bill is not bail reform, but it is a good first step toward it. Harvard University did a bail study. The study recommended that prosecutors prove by clear and convincing evidence that a defendant should be detained. As a compromise, this language was taken out of A.B. 325 and was not included in A.B. 125.

The prosecution should prove by clear and convincing evidence that the defendant should be detained. What Mr. Jones said about "Clout means you are out" is telling. Too often, money is used to keep people in jail. Would giving a bail bondsman $2,000 prevent the murder of an elderly person killed by a defendant who was on house arrest? No, it would not have. Would that gentleman have protected the community? No, he would not have.

Cash bail limits a poor person's ability to be released when they should be released. The purpose of the grand jury system is to give notice. It is not limiting the prosecutor's ability to raise bail. Clark County had a pattern of prosecutors taking the case to the grand jury and raising the bail because they did not like the bail set by a Justice of the Peace. This was done without the defendant or his or her attorney present.

When we craft an administrative order, we take temporary protection order (TPO) violations and things of that nature into consideration. It is not perfect, but we cannot list every crime that should not be subject to an administrative order. That is why the courts have permission to say these defendants are not appropriate for release without seeing the judge.

Claims that these type of people, TPO violators, would be out on bail is fearmongering and not accurate. While talking with the Las Vegas Municipal Court, we realized that the math is not always honest. When we are at this table, it costs the Clark County Detention Center $170 a day to keep someone in custody.

We should have the dangerous people in custody and we should be releasing the nonviolent people. While it will cost money to release and supervise defendants, it is cheaper to supervise people than to jail them for $170 a day.

MS. BERTSCHY:
As Mr. Piro indicated, the administrative order language was crafted in the woodshed meetings because we agreed there should be some allegations that warrant being automatically released. However, no one could agree on what those allegations should be. We discussed having an administrative order where all parties would come together to craft exactly what should take place for that automatic release.

During our discussions about the 48-hour and 72-hour time periods, we had discussed having a 48-hour hearing to address the custody status. If someone is still in jail without paying bail, there would be a hearing for the court to take a look at that individual person with the factors set forth in subsection 5 within 48 hours including nonjudicial days.

We understand that this may mean the hearing could occur on the weekend. To allow for the implementation of the bill, we agreed the hearing could occur on camera for those jurisdictions. The 72-hour provision is for hearings where the defendant is not present or where the court is unable to have an individualized hearing and where the defense counsel, prosecution or victims need to be present. That way, the latest a person would appear in court is 72 hours.

The intent of the bill is to make sure an individualized review hearing occurs as promptly as possible. As you hear from the opposition, it is disturbing how long someone may be in custody without being able to see a judge for a misdemeanor offense.

There was a lot of discussion about pretrial service officers and how officers are required to implement the rule changes from the Supreme Court. That implementation will have to be done. There will be some form of pretrial services supervision. That issue is something that is contemplated through this bill. However, I disagree that this bill will cause a huge fiscal impact.

Regarding the nonfinancial conditions like drug testing, the State does not pay for that. The defendants pays for it; at least, that is the case in Washoe County. The defendants pay $30 a month for pretrial supervision. If there is any form of house arrest, they are paying for that as well.

We know short stays in jail can have an adverse effect on a person and undermine safety. That is what the data proves; studies across the Country state that bail reform is needed. This bill is a good step forward.

CHAIR CANNIZZARO:
We will close the hearing on A.B. 125.

CHAIR CANNIZZARO:
Having no further business on our agenda, we will close the Senate Committee on Judiciary at 10:15 a.m.

RESPECTFULLY SUBMITTED:

_____
Andrea Franko,
Committee Secretary

APPROVED BY:

_____
Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
A.B. 125	C	13	Nevada Judges of Limited Jurisdiction Association	Proposed Amendment
A.B. 125	D	8	Nevada Judges of Limited Jurisdiction Association	Letter of Opposition