MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
April 6, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:03 a.m. on Tuesday, April 6, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Selena Torres, Assembly District No. 3
Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel

Bonnie Borda Hoffecker, Committee Manager
Jordan Carlson, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Quentin Savwoir, Deputy Director, Make It Work Nevada
Lauren Pena, Attorney, Civil Law Self-Help Center, Las Vegas, Nevada
Bailey Bortolin, Statewide Advocacy, Outreach and Policy Director, Nevada Coalition of Legal Service Providers
Mackenzie Warren, representing Nevada State Apartment Association
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Holly Welborn, Policy Director, American Civil Liberties Union Nevada
Elizabeth Anderlik, Assistant City Attorney, City of Henderson
Chuck Callaway, Policy Director, Office of Intergovernmental Relations, Las Vegas Metropolitan Police Department
Corey A. Solferino, Lieutenant, Special Operations Bureau, Legislative Liaison, Washoe County Sheriff's Office
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Carlene Helbert, Deputy City Attorney, City of Las Vegas
Randi Thompson, State Director, National Federation of Independent Business
Nick Vander Poel, representing Reno + Sparks Chamber of Commerce
Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Ronald Najarro, State Director, Americans for Prosperity Nevada
Aaron Evans, Lieutenant, Division of Parole and Probation, Department of Public Safety
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence

Chairman Yeager:
[Roll was taken and Committee protocol was explained.] We are going to start today with the first bill listed on the agenda. Then, we are going to take the next two bills out of order, so we will finish with Assembly Bill 424. At this time, I will open the hearing on Assembly Bill 161. Assembly Bill 161 makes various changes relating to actions for summary eviction. Just by way of reminder, before I hand the presentation over, I noted yesterday in the meeting that there would be an amendment forthcoming on A.B. 161 that essentially turns the bill into an interim study. That amendment [Exhibit C] is available on the Nevada Electronic Legislative Information System as an exhibit. I think you all should have received that sometime yesterday by email. Assemblywoman Torres, welcome back to the Assembly Judiciary Committee. We will give you and any presenters the chance to make any opening remarks, and then I am sure we will have some questions.

Assembly Bill 161: Makes various changes relating to actions for summary eviction. (BDR 3-736)

Assemblywoman Selena Torres, Assembly District No. 3:
I would like to start by reminding the Committee, once again, that I do have a proposed amendment to replace the original bill with an interim study into Nevada's eviction laws, and I believe it has already been posted on the Nevada Electronic Legislative Information System (NELIS). Assembly Bill 161, as originally drafted, eliminates summary eviction. In Nevada, there are two eviction procedures: summary eviction and formal eviction. Summary eviction is unique to Nevada.

Nevada is the only state where the burden of initiating the eviction court case falls on the tenant instead of the landlord. In fact, it is the only legal proceeding of any kind that I am aware of that requires the defendant to initiate a court action by first filing an answer. It is akin to requiring someone to sue themselves for an opportunity to mount a defense. If a tenant does not file an answer with the court after they receive a seven-day notice, the landlord can get an order for eviction, summarily. Without the due process of a court hearing, that means that if within seven days a tenant does not correctly navigate the legal system amid the crisis of receiving an eviction notice to file an answer, no summons, complaint, lawsuit, filing, or hearing is required to evict, as it is in other states and in normal legal proceedings. The landlord can then move to get an order removing the tenant within 24 hours, and the family finds out when the lockout has been effectuated. In sum, summary eviction is an extremely expedited process which leaves tenants with very little time but all the burden to defend themselves.

The COVID-19 pandemic has highlighted this and many inequities in our eviction system. Too many people have slipped through the cracks of the eviction protections that were put in place because they did not have the benefit of a court hearing or assistance navigating the process. In 60 days, the eviction protections will expire and evictions will resume. We have every indication that there will be a flood of evictions, with thousands of cases already pending in the system.

Nevada will have the hardest time connecting people with resources, assistance, and relief because of the abnormal structure of our laws. We have no way to know how many eviction notices go out on any given day, but our best estimates come from process servers who have shared in the past that in normal times, they believe that for every 1,000 notices they send out, only 100 people file an answer. That means they do not have the benefit of a court hearing in the vast majority of eviction cases that could ensure landlords and tenants alike are connected to rental assistance and relief.

At the same time, when evictions resume, we will need to triage our response and find a path forward that will help most people stay in their homes. I recognize that this is not an ideal time to turn our eviction system on its head and attempt to implement something new. Instead, we need to focus on strengthening the protections that are already in place to respond to this immediate crisis.

Nonetheless, we do need to draw a line in the sand that now is the time for us to take up this important conversation on the merits of our eviction laws. That is why the amendment you have before you proposes a critical interim study on evictions. It will be informed by the lessons we have learned and will continue to learn from the pandemic, and it will give us the opportunity to thoroughly consider the interests of all sides, hear from all stakeholders, and come back with policy recommendations that are safe, smart, and equitable. I appreciate the Nevada Association of Realtors and the Nevada State Apartment Association for being willing to engage in this dialogue over the last few months. I look forward to an interim study so that we may continue this dialogue and develop a strategy that will work for the great state of Nevada. With that, I am going to ask Mr. Savwoir to say a few words, and then I am available for questions.

Quentin Savwoir, Deputy Director, Make It Work Nevada:
I am representing the Nevada Housing Justice Alliance today. Our coalition comprises more than two dozen organizations that work alongside the families who are firsthand staring down the threat of summary eviction. We know that this process is wholly unique to Nevada, where landlords are able to sidestep the judicial process to remove a family from their home. Our coalition is familiar with this process.

Some of us have experienced it, while others of us work directly with the families to help them maintain a sense of stability and security while enduring this inhumane and arguably unconstitutional process. We are familiar with the devastation in a mother's voice, fighting through tears while explaining that she has just been locked out and cannot gather her family's things until the following day. We are familiar with the last-minute scramble of trying to help a family find somewhere to stay that night so they are not sleeping in their cars. We are even familiar with trying to help families secure rental assistance, only to be met with upheaval when property managers and landlords do not provide tenants the necessary documentation to get said assistance.

Even prior to COVID-19, tenants' rights were especially lopsided in Nevada, giving an upper hand to landlords and property managers all over the state. During this global pandemic, we have watched them exercise this power by removing families from their homes, despite intermittent eviction moratoria over the year. The families that have borne the brunt the most are families like mine, led by Black women who are having to make it work with less and less. At Make It Work Nevada, we have fifteen families right now who need placement because they have been summarily evicted. We know who this is, we know whom this hurts, and we know the families. We know that mama and her children are in the background asking, What is wrong, mama, while they are tussling with one another over space in their temporary home while trying to distance learn.

During the 32nd Special Session of the Nevada Legislature, there was unanimous support to declare racism a public health crisis in this state. Assembly Bill 161, as amended, will reveal this crisis as it relates to summary evictions and bring to light the devastating stories and heartbreaking experiences of our neighbors. The Nevada Housing Justice Alliance urges bipartisan support of A.B. 161, and we look forward to participating in the study to ensure that our community members have a voice.

Chairman Yeager:
Are there any questions from Committee members on the conceptual amendment as presented in A.B. 161? Assemblyman O'Neill, please go ahead.

Assemblyman O'Neill:
Assemblywoman Torres, I understand the bill and this question I have is not necessarily directed towards the bill—it is a belief that I have. When we do these studies, they are heavily favored in the numbers. In your bill it would be four Democrats and two Republicans. Then you end up with six people trying to balance it out. I never believed in committees or studies where the numbers are even. I always thought you should have an unbalanced number. What I am getting to is, whether in this bill or in all future bills that are studies, I would really like to see if you would be willing to make the number skewed, three to two or four to three or something along that line, by adjusting the appointments—it is not political in the sense of Democrat versus Republican; it is whoever is there, if we start doing it that way and had those uneven numbers.

Assemblywoman Torres:
I think we are trying to model the study off of other legislative studies that have been done in the past, so that is why we have the makeup of this committee, but I am open to continuing to have a dialogue on how the composition of the committee should look. But my understanding is that the majority of studies that have been proposed not only this session, but in previous sessions, are similar to this. I do not know that it has been an issue in the past, so I am definitely open to consulting with Legal to see if that is an issue that has arisen and to see if there is a need for an amendment there.

Assemblyman O'Neill:
I appreciate that, and I am just bringing it forward. It is not against your bill specifically; it is just a feeling that I have in general. Mr. Savwoir, you said that you believe the current eviction law is unconstitutional, if I understood you correctly. I assume you mean in the state. Has an action been filed to address that issue?

Assemblywoman Torres:
I know the question was directed towards Mr. Savwoir, but I think it might be better answered by Ms. Pena.

Chairman Yeager:
I believe we have Ms. Pena on Zoom with us, so, Ms. Pena, if you want to answer that question, please go ahead.

Lauren Pena, Attorney, Civil Law Self-Help Center, Las Vegas, Nevada:
In response to the question from Assemblyman O'Neill, if you are asking has a constitutional contest ever been filed against the summary eviction statutes, to be frank, I would have to go back and look historically to see if that has actually been done before. I know that there have been challenges to it based on constitutionality and due process. However, I could not cite those exact cases at this moment.

Assemblyman O'Neill:
I was just curious because he made the comment. I am going to assume that the results would have been in favor of the landlord.

Lauren Pena:
I would not necessarily say that, Assemblyman O'Neill; however, I think that what has been challenged is the due process when it comes to the service of eviction notices. Prior to the 2019 Legislative Session, eviction notices were initiated by the service of a landlord or a landlord's agent on the tenant, and so there were definitely some questions about the lack of due process in regards to that, in addition to the lack of a hearing when a landlord was able to file a complaint without the tenant's appearance and obtain an eviction order.

Assemblyman Orentlicher:
I just wanted to respond to Assemblyman O'Neill on the number. I think that having an even number has some virtues in that if you have an odd number, it allows a bare majority to prevail, and sometimes it is good to have more than a bare majority when we are looking for recommendations from a study committee. I think it is fine to have an even number.

Assemblywoman Kasama:
When you talk about the committee makeup, it makes me think we should have one of the judges who handles a lot of these cases, because they have been doing it for years and have a lot of insight. I know that, at any time, a tenant can request a hearing and that stays the

eviction right away, and we have multiple processes where the tenant can request more time and do that. I think to have somebody who fully goes through the process would be a great asset to the committee as well.

Assemblywoman Torres:
I definitely think that judges should be a part of it, but this is a legislative study, so it does have to be composed of legislative members. I am sure that the chair of this committee would be reaching out to the judges who do work with these programs and processes. Throughout the last couple of months, as we looked at this legislation, we considered the possibility of turning it into this conceptual amendment [Exhibit C], which is a study. I did speak with judges, specifically from southern Nevada, like Judge Melissa Saragosa, and I think they are very supportive of this; they recognize that this would be positive for us to open that dialogue and have this conversation throughout those months. I have no doubt that they will be a part of the process, but because it is a legislative commission, it does have to be composed of legislators.

Chairman Yeager:
I will add to that as well because I have served on a number of these committees. I would anticipate, on this study, that there would be interested persons attending and presenting at every meeting, including judges, folks representing landlords, and folks representing tenants. So, Assemblywoman Torres is right, in terms of the voting members, they would have to be legislators under the study committee. But I think this committee in particular would benefit from that expertise.

In fact, I think that is one of the reasons, in conversations with Assemblywoman Torres, we decided to go in this direction, because this is such a big topic that I think, given we are at deadline week, I do not think we could do it justice in this Committee this week. I really look forward to the work that will hopefully happen if this bill is to pass and be adopted, because I think it is important and there are a lot of voices that I think need to be heard. Hopefully, those voices can be heard in person and we can get back to something approaching normal in the interim.

I do not see additional questions, so I will ask the presenters to sit tight while we take some testimony on the bill, then we will have a chance for concluding remarks. At this time, I am going to open it up for testimony in support of A.B. 161. I see we have Ms. Bortolin with us on Zoom. I assume you would like to testify in support, so please go ahead.

Bailey Bortolin, Statewide Advocacy, Outreach and Policy Director, Nevada Coalition of Legal Service Providers:
This is a conversation that we have wanted to have for many years. My predecessor often says that he has been working on this issue for 40 years and has never gotten this far, so I hope we are able to have this conversation in the interim. In the interest of time, we have asked organizations that are supporting this—and we think you have heard from them throughout the session already—to sign on to a letter that I have submitted to NELIS. So, if you open that exhibit [Exhibit D], you will be able to see that there is a long list of

community organizations that have been working on the housing crisis, assisting community members in need, who look forward to having this continued dialogue. I just ask that you reference that for support to save us all a little bit of time.

Chairman Yeager:
Are there other folks who would like to testify in support of A.B. 161 as presented in the amendment? [There was no one.] Before I close supportive testimony, I did want to note that there is a second letter in support on behalf of the Culinary Workers Union Local 226 [Exhibit E] as well, so that is part of the record. I will now close testimony in support and open up for testimony in opposition. Can we go to the phone lines to see if there is any opposition there?

Mackenzie Warren, representing Nevada State Apartment Association:
The Nevada State Apartment Association is testifying in opposition today on Assembly Bill 161, but this is not without recognition of the decision to roll this concept into an interim study. Since COVID-19, the Apartment Association has lost an estimated $100 million in rent in Clark County and $108 million in Washoe County. Our tenants are also hurting. We are sensitive to their pain. But like them, we too have bills to pay.

To make matters worse for everyone is that, for going on four months now, rental assistance has been stalled. To be sure, this pain is shared, and it is felt in our affordability and access issues. To eliminate the summary evictions process without any analysis or assessment would be shortsighted. Such a decision could have been met with an unexpected result during this time of uncertainty. We testify in opposition today because we can only be cautiously optimistic that the Apartment Association will be meaningfully included in the proposed interim study, yet we represent 67 percent of all multifamily housing. Our data is always available on rent, vacancy, and evictions; it is here for you.

You have also heard that summary evictions are unique to Nevada, yet also unique is Nevada's housing industry, our tenant composition, and our transient state, which all play a role when it comes to evictions. You will hear me say this a lot this session, that the Apartment Association is simply not in the business of evicting our residents. We thrive when our residents thrive, and as this very Committee has already heard on at least one other landlord-tenant bill, the summary evictions process has been cited as an unfortunate tool in a landlord's toolbox. The realities of this pandemic have left many of us hurting. The more we lose, the less we have left to give to programs that seek to root out homelessness and provide creative solutions that keep our residents in units. Wiping out an entire evictions process without a hard look is not the answer, and we do have reservations about the true aim of this study.

Chairman Yeager:
Some of your testimony seemed to indicate that the summary evictions process is going to go away, but I want to note that what is being proposed here is a study of that process that would happen in the interim. This bill does not seek to get rid of summary evictions. I would expect and hope that the Apartment Association would participate if this bill were to be

adopted and the study is to happen. I would expect that to happen. Is there anybody else in opposition? [There was no one.] I will close opposition testimony and open neutral testimony. Can we go to the phone lines to see if there is anybody there to testify in the neutral position? [There was no one.] I will close neutral testimony. I will now hand it back to Assemblywoman Torres and Mr. Savwoir to make any concluding remarks on A.B. 161.

Assemblywoman Torres:
I want to reiterate the comment from the Chairman that this piece of legislation in no way ends summary evictions. I have extended the olive branch to both the renters association and the Apartment Association. I informed them of the study and that this was a piece of legislation moving towards a study so that we can have this dialogue and evaluate the eviction process. I think that is how we make good policy in the state of Nevada, regardless if you support the current system or not. In order for us to have these policy discussions, I think it is important for us to take the time to evaluate what would work here in the state of Nevada. I am sure this study will give us the opportunity to do so. I would hope that the associations would be at the table to be a part of this dialogue as well, so we can find a solution for Nevada.

I know that Assemblywoman Kasama had earlier asked about the makeup of the committee, and I just want to make it clear that the judiciary officers cannot make policy decisions, but they can definitely inform us about the administrative process during the committee. I want it to be clear for the record so as to ensure that they are not going to influence our political decisions, but rather they can help explain the processes so that we understand them better and might understand where some of the issues currently exist. I appreciate the Committee for taking the time.

Chairman Yeager:
Before I close the hearing on this, I wanted to let members know that we are working on some other solutions for the housing and eviction issue. Those efforts are ongoing. We do not have a bill in front of us, but I do suspect by the end of the session, we will have something that hopefully strikes the right balance between making sure that landlords can recoup some of their losses, but we are also aiming to protect tenants as well. I did not want Committee members or anyone listening in the public to think that this was all we were going to do this session. There are some other efforts underway, and I suspect that we will be able to hear another bill with a concept that is going to get us through these next several months in a way that works for everyone. So, stay tuned for that. That is probably several weeks down the road yet. I will now close the hearing on Assembly Bill 161.

At this time, I will open up the hearing on Assembly Bill 440. Assembly Bill 440 revises provisions relating to the issuance of certain citations. Committee members, as you can see, we have Assemblyman Flores here to present the bill, and I think he has Mr. Piro with him as well. We will give you a chance to present the bill, and I am sure we will have some questions after the presentation.

Assembly Bill 440: Revises provisions relating to the issuance of certain citations. (BDR 14-376)

Assemblyman Edgar Flores, Assembly District No. 28:
Before I get started, I wanted to walk you through the genesis of this bill and very candidly tell you that this bill came from the 2019-2020 Interim Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases. I say that only to make it abundantly clear that this bill did not originate with me. I also wanted to make it clear that, unfortunately, unlike other bills, I have not had an opportunity to work this bill, present the language, go back and forth with stakeholders, amend it, and then come to a place that, even if we disagreed, the language was at a place that I was very comfortable with.

Because I was a member of that interim committee chaired by Senator Dallas Harris, I agreed to step up and help with the bill's presentation today. But I start with that preface because I think it is important that I be fair to the opposition and say that I did not have the opportunity to sit down with them and work this bill out to address any kinks that we may have with the language or to address some of their concerns. That was not by design. Again, this was not something that I was prepared and expecting to present. I have committed now to making this bill work for everyone, and I am committed to working with the opposition for the next couple of days to get this bill to a place that a lot of us will like and agree with.

With that, I do want to get to the intent of this bill because I do think the intent is very strong, meaningful, and purposeful. If I can go back specifically to January 21, 2020—as I mentioned, the 2019-2020 Interim Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases convened. Specifically, on that particular date, we had a very meaningful presentation by the National Conference of State Legislatures (NCSL). One of the questions that was posed and some of the data that came about from that conversation is on citation in lieu of arrest.

As we know, nationwide, we are in a very specific movement to try to ensure that we are minimizing our de facto, put-people-in-jail, kneejerk reaction to the question of how to make sure folks show up to court. Are there other ways of ensuring that we can minimize the threat of jail and still ensure that we are moving away from the behavior we do not want, in this case a particular crime, without always yielding to arrests? And we all know the consequences of that. In that particular presentation, they talked about how there have been 23 new laws between 2012 and 2018 where they moved toward citation in lieu of arrest nationwide. They talked about how every single state gives some type of leeway and puts it on the officer, giving them the opportunity to say as they see it through their lens, if we should be arresting or just citing somebody. In some states, they went as far as allowing for citations even for instances of felonies, where they were not violent, and they thought it was appropriate for them to consider that.

In this particular bill, and in that interim committee, one of the conversations we had regarded misdemeanor offenses, nonviolent ones specifically. As a committee, we discussed the importance of saying, What about the very low-end, first-time offenders, should they ever

be in the scenario where they committed a particular violation that did not involve violence, and if it was a gross misdemeanor or felony, should that individual ever be subjected to the possibility of being arrested? I do not know that every single person on the committee agreed, but the general consensus from the committee was No, we should work in ensuring that we are not having a first-time, low-offense, misdemeanor offense, nonviolent individual be subjected to jail time.

That is where this bill is now. I will walk you slightly through the language, but I wanted to tell you about the benefits that we saw as an interim committee in pursuing this. Number one is increased officer efficiency. Obviously if an officer is issuing citations for these low offenders in lieu of arrest, that means they will be much faster. That same NCSL study that I referenced earlier talked about how the average citation can take around 24 minutes, but the average arrest is closer to 85 minutes. I wanted to make that point: number one, officers will be more efficient. Number two: we have also been talking about trying to enhance community policing relations.

When you know that an individual commits a misdemeanor offense and they are arrested, we can understand how that can have some devastating results with our relationship with the community when we are trying to just ensure we stop that conduct. A citation can very well achieve that purpose. More important is that it reduces criminal justice system costs. If somebody goes to jail, that means taking up a jail cell, that means having them present themselves before a court with all the staff and resources that go into that, on top of the detrimental impacts that an arrest would have on that individual.

Lastly, we have been talking about how we really need to move away from the de facto notion of arresting folks consistently. In fact, there is a study that goes all the way back to the 1960s. When we were issuing traffic citations, New York had a study where they said that it is too expensive and burdensome for the state to be arresting individuals for every single tiny violation. They were some of the pioneers in moving away from this notion that we needed to arrest for every violation. We do have to balance it.

The underlying question is, What is the purpose of arresting somebody? I would say that the idea is to ensure that they show up to court, that we are persuading individuals to not conduct unlawful activity, and we want to make sure that individuals show up to court and take care of their fines, because doing those things is important. So the question is, is a citation adequate? Will a citation help in achieving that purpose? That same NCSL study I referenced talked about how, in these low-level offenses and misdemeanor crimes, it is adequate.

I think it is powerful for us to see that. I think where we drop the ball as a society nationwide is that we put so much discretion in the hands of officers, and as I said, they have that now. You will hear from law enforcement talking about that, in a lot of these misdemeanor crimes, they already have that discretion to decide whether they should issue a citation in lieu of arrest. But I think if we can put some of that in statute, we send a consistent message; we ensure that two similar individuals who have committed the same, exact, low-level offense

are equally situated, and that one individual, because they happen to be in a particular jurisdiction, will not be subjected to arrest while another individual in a different jurisdiction will get a citation. I think as a state we can come to some consensus that, at the very lowest crimes, we should not be putting folks in jail in any scenario.

I will now very quickly walk you through the bill. I know there are some amendments that are being worked on. I, unfortunately, did not have an opportunity to be a part of that process. I do not believe we have an amendment now, so I am going to walk you through the bill as we have it now. As you may have noticed, the bill is about 25 pages. I do not intend to do it section by section as I think that is unnecessary, and I will explain why as I walk you through it. But I do want to make sure that I walk through the bill and do my due diligence with that. I am looking at page 3 now, specifically at sections 1 through 5. I wanted to explain the logic from when we had this conversation during the interim committee.

You will see that section 2 talks about an aggregate offense. This went to some of the concerns that were raised by law enforcement and other members of the community, along with some of the members of the actual committee itself. One of the concerns raised was, What if you have a low offense, like a misdemeanor trespass, but then that individual keeps doing it? You will see section 2 talks about an aggregate offense. That is what we were trying to capture there. We want law enforcement to issue a citation, but we do not want them to have to be concerned about saying, Every single time I have to come back to this particular situation, all I can do is a citation. We do not want to tie the hands of law enforcement. If it is a one-time, individual trespass, then sure, citation and done. But if we have to come back and there is another scenario there, then we wanted to capture that specifically.

In section 2 it references crimes of violence. I think some of the concerns raised by the committee, members of the community, and law enforcement were, What about crimes of violence? We know in the state of Nevada, unfortunately, domestic violence is horrible, and we wanted to ensure that in those scenarios, we were not just telling individuals that they could somehow walk away from those situations with just a citation from an officer when someone else could be in danger. In those scenarios, there is no mandatory citation in lieu of arrest.

I also want to make it abundantly clear that the discretion remains with law enforcement with felonies, gross misdemeanors, violent misdemeanors, or aggregate offenses. They still have the discretion that they have now. Whatever they think, based on their criteria, they will be able to continue to apply that discretion. What we are saying is, No more discretion and mandatory citations when it is a first-time, nonviolent crime that is not a gross misdemeanor or felony. That is the only time we are triggering the mandatory—the "must."

I will continue on in the same section. I want to make something clear, because one of the concerns I got was that there are some scenarios that may be a first-time misdemeanor where the officer still wants to make an arrest. Please look at page 3, lines 39 through 42, and also

on page 4, lines 1 through 6. I bring that up because it talks about when a citation must be issued in lieu of arrest. It says specifically,

> (a) The warrant is issued upon an offense punishable as a misdemeanor; (b) The peace officer has no indication that the defendant has previously failed to appear on the charge reflected in the warrant; (c) The defendant provides satisfactory evidence of his or her identity to the peace officer; (d) The defendant signs a written promise to appear in court for the misdemeanor offense; and (e) The peace officer has reasonable grounds to believe that the defendant will keep a written promise to appear in court.

So again, a citation does not have to be issued if this is not true. If you cannot identify the particular individual, if they have a history of not showing up to court, if there is an outstanding warrant, or if they refuse to sign a document saying they will show up to court, then the officer can say, Well you know what, an arrest is still necessary here. I just wanted to make that abundantly clear.

You will see that as we move through the bill itself, there are a whole host of sections referenced. The reason you will see so many sections referenced herein is because the bill goes into arrests done by officers, it goes into citations for traffic violations, it will go into crashes, it will go into watercraft issues—things that happen in nontraditional settings. That is why this bill is so lengthy. But in every single section, the intent is the same. If it is a misdemeanor, not in the aggregate and not a gross misdemeanor or felony, then a citation has to be issued in lieu of an arrest. With that, again I do not want to go through every section because it repeats itself. That is the objective of every section, but because we have so many different sections, it is repetitive. You will see in there, too, one of the questions I got relating to private arrest. You will see that on page 4 in section 7. That is referring to private officers and security officers. That is what that goes to, to make that clear. It is about when they can do arrests.

With that, Mr. Chairman and members of the Committee, I would like now to hand over the presentation to Mr. John Piro, who will provide a more concise breakdown of how this applies in the day-to-day, what he sees through his lens within the public defender's world, and then we will open it up for questions.

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

I just want to go over a few things that Assemblyman Flores touched on. In 2016, the International Association of Chiefs of Police did a nationwide survey that found that most police agencies widely embraced the citation in lieu of arrest policy. What this bill seeks to do is to codify that good policy, but still provide some constraints on when a citation should be given and when an arrest should occur. As Assemblyman Flores said, it is a time-saving measure. What they did find is that, even though most departments are doing this practice, they are not studying the data. This would also be a good way to collect data on the issue. It was heartening to know that Nevada is not the only place that has a lack of data.

As Assemblyman Flores said, some of the things, as in section 6, deal with city and county ordinances; those are generally low-level, nonviolent misdemeanors, so it would start with the "must" instead of the "may" for nonviolent misdemeanors and violations of the city and county ordinances—think possession of drug paraphernalia, disorderly conduct, things of that nature. Section 7 deals with, perhaps, an arrest at Walmart. I think most jurisdictions have a Walmart. But if the person has not given their identification or their proper information, which all of our agencies have ways to verify identification on name alone, then they can be arrested, or if the officer believes that the person is not going to appear for some reason. So there still is some discretion involved based on the circumstance.

A lot of the middle sections here, 9 and forward, eliminate the *Nevada Revised Statutes* (NRS) 200.408 references. And if you go to the beginning of the bill, section 3, that is what defines a "crime of violence." It will be referenced there, at the beginning of this statute. To clarify, a crime of violence is "any offense involving the use or threatened use of force or violence against the person or the property of another; or any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony." It talks about mandating citations for traffic, but not for serious traffic offenses like DUIs, reckless driving, or crashes that result in death.

I want to clarify for the Committee before I close out that Senator Harris sent me a conceptual amendment [Exhibit F] that would address some of the concerns of officers in the field when they are talking about, What if I get a person and I cite them for trespass and they still will not leave? Well then, they can make an arrest there. That will hopefully eliminate some of the concerns of law enforcement and business owners who may have a problematic person on their property and they do not think that they can just be cited and then continue to do the offending conduct. I hope that answers some concerns of the bill. I am available for questions.

Chairman Yeager:
Mr. Piro, I have a question for you. I know over the years we have talked quite a bit about what the cost is to hold someone, at least in the Clark County Detention Center, and I am wondering if you have updated numbers for what it costs to incarcerate for a day there.

John Piro:
After speaking with Director Delap, it was $190, but there is a request to this legislative body to raise the cost for when Clark County Detention Center is holding somebody from the state, to raise it to $200 a day. That request is pending, so if this body passes that, the updated cost would be about $200 a day to hold somebody.

Chairman Yeager:
I will go next to Assemblywoman Cohen.

Assemblywoman Cohen:
Toward the beginning of the presentation, you mentioned that the studies have shown that people do appear in court only when they are cited, that they are not required jail time to make sure they show up. Do we know why? Is it that people are afraid? Is it just that people inherently follow the rules?

Assemblyman Flores:
I want to make two points because you touched on something important. The data has two numbers that I saw. First, the likelihood of someone showing up and addressing a particular issue is higher if it is their first offense, which goes to the spirit of this bill. I wanted to make that point. Second, I do not know that they delineated why people show up, but what they have identified is that people do show up, and that is the point.

I think for a long time the notion was that the de facto status of arresting somebody was the only way to get folks to show up to address whatever issues they had pending; it has been proven that is not necessarily the case. People do show up. There are a lot of different ideas out there. In fact, some states will send out a text or email reminder. They have demonstrated that some of the strongest indicators of whether someone will show up is just that reminder, as opposed to having to do anything else. Understandably, when people are arrested, folks say, Yeah, but you committed that violation. We often forget what that entails, like missing your job that day or not picking up your kids from school. There are a whole host of other things that come attached to an arrest that are completely outside the spectrum of a court that we have to keep in mind, and that is what we are trying to avoid in the low-level offenses.

John Piro:
Assemblywoman Cohen, I believe we saw an increase in citations and not making arrests during the COVID-19 pandemic. The Las Vegas Metropolitan Police Department was doing a very good job of not over-arresting. To give some clarity, I have been on the Criminal Justice Coordinating Council since 2017 working with all criminal justice agency partners; the district attorneys, the police, the courts, and that is how we created the initial arraignment court. Part of the impetus for that was that our jail, the Clark County Detention Center, was overpacked.

In fact, we have two functions of the jail. We have the Clark County Detention Center main, and then we have the North Valley Complex. Our jail was so overpacked that anybody who worked in the North Valley Complex was overtime only, so that was costing a lot of money. The Pew Charitable Trusts and all these organizations came in and gave us money to work on this issue. They said, You need to hit a benchmark of reducing your jail population. No matter what we were doing, we were not hitting it until the COVID-19 pandemic happened; then we actually had lower numbers that let us hit the benchmarks that the grants were for. I think this policy does work in practice, and the COVID-19 pandemic, unfortunately, showed us a way to work it out.

Assemblywoman Kasama:
How many people would we not be putting in jail whom we would have, should this bill pass? How many people are we saving by not putting them in jail? And as you said, there is the cost of $190 or $200 a day. What would be the impact?

John Piro:
That may be a better question for Director Callaway. I apologize, Assemblywoman, I do not have the answer to that, but I am sure he will be on the line to testify.

Chairman Yeager:
Assemblywoman Kasama, we will see if he can address that question. He will probably join us by phone. Assemblywoman Kasama, did you have any other questions at this time?

Assemblywoman Kasama:
No, that is it. I do not know if I am asking the question correctly. How many people will we save from going to jail with this?

Chairman Yeager:
I think you are asking the question correctly. Hopefully, someone can give us an estimate, and if not, we will see if we can get that information following the hearing. Do we have other questions from Committee members? [There were none.] I do not see questions at the moment so, Assemblyman Flores and Mr. Piro, thank you for presenting. Assemblyman Flores, if you need to go back to your committee, we certainly understand that.

Assemblyman Flores:
Mr. Chairman, thank you. I wanted to say that I am committing to continuing to work with all the stakeholders. I am confident that there will be amendments. Again, unfortunately I did not have the opportunity to work the bill in the way that I wish I could have, but I am committed in the next couple of days to coming back to the Committee, having worked the bill, and providing you some insights in terms of the questions raised by the opposition and hopefully addressing some of their concerns. Mr. Chairman, with your permission, I do need to get back to the Government Affairs Committee, if I could be excused at this time.

Chairman Yeager:
Certainly, Assemblyman Flores; we appreciate your being here, and I am sure Mr. Piro can make concluding remarks when we get to that point. At this time, I am going to take testimony on the bill. I will open up for testimony in support of A.B. 440. Can we go to the phones to see if there is anybody there in support?

Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice:
The Nevada Attorneys for Criminal Justice supports A.B. 440. We know that the arrest process is subject to substantial racial disparities. For instance, Black children make up 15 percent of children in the U.S., but 35 percent of the arrested children. A 2015 study from San Francisco found that although Black women made up only 6 percent of the city's female

population, they accounted for 45 percent of female arrests. A 2018 study focusing on misdemeanor arrests found that for the U.S. as a whole, Black people were twice as likely as white people to be arrested for crimes like vandalism, theft, and disorderly conduct. They were five times as likely to be arrested for prostitution and ten times as likely to be arrested for illegal gambling.

We know that, by and large, these disparities are not because different racial groups commit crimes at different rates; white people and Black people use illegal drugs at the same rate, for instance, but there is still a substantial discrepancy in arrest rate. The Legislature should strike a balance. There is value in giving police officers some level of discretion to enforce the law. But we know on an empirical basis that if they have too much discretion, the law can get enforced in a racially biased manner. By limiting the use of arrests in misdemeanor cases, the Legislature can hopefully find this balance. The Nevada Attorneys for Criminal Justice, therefore, supports A.B. 440.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We support this bill, as it is another way to ensure that individuals are attending court while not necessarily requiring their arrest. As you have heard in other bills, there are huge issues regarding an arrest where someone is dehumanized and entered into the criminal justice system, whereas if we just had a citation, it would not impact their lives as negatively. We do believe that individuals would still come to court, as it has been evidenced in other studies. This is yet another way we can show our citizens that we do value them, and that if they made a mistake, that mistake does not have to dictate the rest of their lives.

Holly Welborn, Policy Director, American Civil Liberties Union Nevada:
For the sake of time, I will say ditto to my colleagues at the Nevada Attorneys for Criminal Justice. They made most of the points that I intended to make this morning. We thank the interim bail study committee for their hard work and look forward to working on the package of bills that came out of that interim study.

Chairman Yeager:
Let us take the next caller please. [There was no one.] I will close testimony in support. I will now open it up for testimony in opposition. Can we go to the phones to see if there is anyone who would like to testify in opposition?

Elizabeth Anderlik, Assistant City Attorney, City of Henderson:
We oppose A.B. 440 because misdemeanor crimes should not be minimalized or marginalized. An officer should have discretion to provide for the safety of the community. This is particularly true considering how A.B. 440 defines violent crimes and aggregate crimes. That definition leaves out, for example, the misdemeanor crime of violation of a temporary protective order. I think we can all agree that is a concerning offense and that the victim deserves protection.

With the way A.B. 440 is written, it would not matter how many times a person has shown up to the victim's home, the most the police could do is issue a citation. If the person refused to stop the behavior, the police could still not arrest them. As another example, as A.B. 440 is currently written, if a stranger walked through an unlocked door into your home, the police could not arrest the person. They could give them a citation for trespassing, but if they refuse to leave your home, there is nothing the police could do, because trespassing is not an aggregate offense as defined in the bill. The same would apply to a person who, for example, walked into the same small business every single day and stole $1,000 worth of merchandise each time. The police could issue a citation each day but could not arrest the person for petty larceny.

To be clear, a citation cannot stop conduct. If the officer cannot make a misdemeanor arrest for most charges no matter what, there is a likelihood that they will be called to the same situation again shortly thereafter. Assembly Bill 440 does not take into account the varying situations that we see day to day. Officers need discretion in order to determine how dangerous a situation is, regardless of the crime that they ultimately charge the suspect with. They need to have the discretion to make an arrest to prevent a situation escalating from a simple misdemeanor to a violent felony when the need arises.

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

We are here in strong opposition to this bill. This issue was not fully vetted in the interim pretrial committee. Testimony during that committee was given by jail staff regarding jail numbers and jail issues, but not police officers in the field who deal with misdemeanor crimes. This bill takes away police officers' discretion and their ability to deal with misdemeanor offenses that have a potential to escalate or where citations do not solve the issue.

Basically, this bill strips away law enforcement police power. Ninety percent of the time we do issue citations and, in fact, we have a department policy that a supervisor must approve a misdemeanor arrest, unless it is a DUI or domestic violence case. The problem is that sometimes an arrest is needed to solve a problem or prevent future trouble. There is no language in this bill that allows for arrest when a violation will continue or when a situation will escalate.

This bill will have a huge negative impact on public safety. It will impact businesses, the economy, and tourism. When people come to Las Vegas and feel unsafe, they are not going to want to come back. Many low-level misdemeanor crimes are quality of life issues when not addressed. An officer in the field, based on this language, will have to try to verify if a crime is an aggregate offense, crimes such as theft, harassment, or prowling.

Think of the case where someone is in your yard peeking through your window watching a family member undress, and an officer shows up and does not have the ability to make an arrest. Another is vehicular manslaughter: someone could kill someone in a vehicle accident and, depending on the circumstances, an arrest could not be made in that situation. If this bill

passes as written, a private citizen will have more police power than a police officer because a citizen can make a citizen's arrest; whereas an officer would not be able to make an arrest unless it was for a violent offense.

I am not sure what the purpose of this bill is and what it is trying to accomplish, but I would ask you to ask yourselves, If you were the victim of some of the crimes that were mentioned, and a police officer showed up to handle your call and an arrest could not be made, how would that make you feel as a citizen? I recently handled a constituent complaint from the county regarding a gentleman who came to visit Las Vegas and who stated that he is not coming back because of some of the crime that he witnessed on the Strip. This bill will only make our ability to control that much worse. For the reasons stated, I am in strong opposition to this bill.

To answer the question that was raised by the Committee, our capacity in the jail is about 4,000 inmates and we currently have around 2,800 inmates on average, which is way below capacity. We have seen around a 13 percent decrease in jail bookings since 2007. Our average daily population for misdemeanors is about 11 percent of our jail population. Most of those are DUIs or domestic violence cases where we are mandated to make an arrest. Officers are using discretion and are not arresting if possible, but taking away an officer's ability to make an arrest when needed is a bad decision and will lead to a decrease in public safety.

Corey A. Solferino, Lieutenant, Special Operations Bureau, Legislative Liaison, Washoe County Sheriff's Office:
We are opposed to A.B. 440 and want to thank the stakeholders for the opportunity to meet with them and to address our concerns. Assembly Bill 440, simply put, handcuffs law enforcement. For years, due to increasing jail populations, northern Nevada law enforcement has been given the discretion to take the least intrusive measure possible to correct the behavior regarding misdemeanor crimes. This was proven true during the COVID-19 pandemic where the average daily population in the Washoe County Detention Facility went from 1,123 to the low 900s and stayed that way for more than 12 months.

We continue to work with the courts, law enforcement, nonprofits, and inmate assistance programs to ensure that only those who need to be arrested are arrested. The newly created Detention Services Unit has on-site behavioral clinicians, social workers, discharge planners, and deputies dedicated to helping those who are routinely arrested to help curb recidivism. We want our community to be aware of the fact that we are listening to their concerns and addressing their needs. Assembly Bill 440 does not listen to their needs.

Law enforcement has the discretion currently to conduct a verbal counseling, a separation of parties, a written warning, a citation, or an arrest in those instances where reason and common sense are continually ignored. Crime is not always black and white, or violent or nonviolent. Persistent harassment, victim intimidation, and calls for service from our community beg for enforcement action. The public demands it and our oath of office confirms it. We are here to serve and protect. Law enforcement does not take arrests lightly.

Arrests are made when no other option is available. Consistently, the suspect's actions, demeanor, and mental well-being direct law enforcement on which path must be taken. While we appreciate what some portions of this bill are trying to accomplish, I can assure you it is already in practice and offers law enforcement the flexibility to take appropriate actions when needed and ensure public safety. We encourage your opposition to A.B. 440.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
I am here opposed to A.B. 440. Ditto to every single word of opposition testimony so far.

Jennifer P. Noble, Chief Deputy District Attorney, Legislative Liaison, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We would like to thank Senator Harris for sending us a conceptual amendment this morning [Exhibit F]. Looking at it in the context of the bill, it may alleviate some of our concerns regarding sections 6 and 7. However, we do have several remaining concerns. In sections 2, 16, and throughout the bill we suggest replacing the word "aggregate" with another term such as "subsequent." In Nevada criminal law, aggregation is a concept that applies to sentencing and we are concerned about the possibility of confusion.

Additionally, there is an ongoing challenge with the completeness of criminal histories that would have application throughout this bill. It is an issue that has been recognized by the Advisory Commission on the Administration of Justice's Subcommittee on Criminal Justice Information Sharing, on which I have had the privilege to sit in the last two interims, as well as other legislative committees. We have an issue with the disposition available in our current criminal histories. We cannot necessarily see if a person has actually been convicted of an offense. This means that a person could have committed the same crime they just committed any number of times, since the officers would not be able to verify that.

Section 5, subsection 2 requires the use of a citation in a nontraffic context, even when a judge has issued a warrant for the person's arrest, unless the person has previously been convicted of the same offense. We have two issues with this. First, we are effectively invalidating a valid warrant issued by a judge, which we see as an infringement on judicial function. Judges should be able to issue a warrant for arrest when they believe that the totality of the circumstances coupled by a probable cause would merit the issuance of that warrant. While the crime at issue may be nonviolent, other factors in the person's criminal history, such as failures to comply, failures to appear, or a history of violent behavior, would make a warrant the best approach in lieu of a citation.

Additionally, there is a requirement that a person be cited in lieu of arrest for every misdemeanor criminal offense. When considering the sections, please keep in mind that all the offenses that were reduced from felonies to misdemeanors by the extensive criminal justice reform implemented by Assembly Bill 236 of the 80th Session. The Legislature raised the monetary bar for all theft and property offenses to $1,200. This includes destruction of property, obtaining money through false pretenses, larceny, theft, possession of stolen property, et cetera. So, a person could steal many thousand dollars' worth of items

from different stores in a shopping center, and they could know that they are not going to jail that day. We think we need to seriously consider if that is good policy, to allow a person to steal or destroy over $1,000 worth of property without fear of arrest. We submit that this is just not wise policy. For these reasons, the Nevada District Attorneys Association is in opposition to A.B. 440.

Carlene Helbert, Deputy City Attorney, City of Las Vegas:
We believe the discretion to arrest or cite an individual should be left to an officer. Oftentimes, an arrest is not only appropriate but necessary to stop criminal activity. We share the concerns set forth by the City of Henderson and the Las Vegas Metropolitan Police Department. We also want to note that risks of continuing criminal behavior are even more common when a person is clearly under the influence of narcotics or alcohol. An officer should be allowed to consider this when determining whether to cite or arrest an individual.

With regard to the concerns about holding a person, especially a first-time offender, I would like the Legislature to be aware that the courts do utilize a pretrial risk assessment. First-offense individuals would almost certainly be released absent any aggravating circumstances.

There are some additional administrative difficulties with how the bill is written. For example, if a defendant were to go and batter their ex-girlfriend, he could be arrested for that crime. But to the extent that he was also trespassing and perhaps had drug paraphernalia, he would still need to be issued a citation for those crimes. There should be a consolidation option available. Elimination of an officer's discretion to arrest an individual, particularly when the crime is committed in their presence, will have significant public safety and quality of life implications. Simply put, a citation can be ineffective in curing ongoing criminal behavior. We therefore oppose this bill.

Chairman Yeager:
Can we move on to the next caller in opposition, please? [There was no one.] We will now close opposition testimony. We will now go to neutral testimony. Is there anybody here to testify in the neutral position?

Randi Thompson, State Director, National Federation of Independent Business:
We have concerns about this bill that were very much expressed by the City of Henderson and Mr. Callaway, but we are neutral because Senator Harris did reach out to us with an amendment. Our concerns have been stated already, that someone is at a business and is not able to be removed from the business if they are harassing customers or trespassing. We want to be able to have the ability for small businesses to protect themselves.

On a personal note, my husband and I own a small business and we have nothing but female employees. It is a prenatal imaging center, where people get to look at their babies, and you would think it is the happiest place in the world. But people are emotional and, more times than I care to think of, we have had some very unhappy dads who have threatened our staff.

I have seen this personally. Not having the ability for an officer to come and intercede to remove someone from our premises could have resulted in some bad situations. From a personal note as well as representing small business, we really hope that is one issue that is addressed for this bill.

Nick Vander Poel, representing Reno + Sparks Chamber of Commerce:
As the Chairman recalls, the Reno + Sparks Chamber has been on the front lines for criminal justice reform, having strong dialogues and conversations. We are always willing to work with stakeholders when it comes to criminal justice reform. As it relates to A.B. 440, we do have concerns, but know about language and amendments that will hopefully fix the concerns of many. In this case we are here in neutral. We are looking forward to the forthcoming amendment.

Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce:
I want to say ditto to the sentiments of my business colleague who spoke just before me.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
Unfortunately, I did not get to hear the entirety of the bill, so I do not fully understand the ramifications. I do feel that my brother might possibly be alive today, since trespassing would not be an arrestable offense.

Chairman Yeager:
Are there additional neutral callers? [There were none.] I will close neutral testimony. Now would be the time for concluding remarks, so I will hand it over to Mr. Piro to make those remarks.

John Piro:
I think, as Assemblyman Flores has said, this bill is a work in progress and it needs some things worked out. A couple of things I will say, though, is the fear tactic is a common usage to identify "those" people; the "other" that we want to say, so that if you pass this bill, Oh my god, there will be so much more crime. The reality is that there will not. The reason Clark County Detention Center is so low—as Director Callaway pointed out at 2,800—is because officers during the time of COVID-19 pretty much implemented what this bill is asking to do, which was to use discretion more, to cite more, instead of arresting more. When you only have a hammer, everything looks like a nail. This bill seeks to change some of that. Some of the opposition testimony is well taken, as far as Ms. Noble's defining "aggregate" and "subsequent" to reduce confusion in legal terms.

However, I do want to point out the City of Henderson's testimony was wholly inaccurate. Walking into someone's house in a residential burglary frequently results in charges. Nobody is going to be cited with a trespass, and that person could not say, Oh, I am going to stay here. That would be arrestable. Walking into a shop and stealing things and then walking into another shop and stealing things is an aggregate offense under this bill; that person would be arrested. Temporary protection orders, extended protection orders,

prowling, and anything like that can easily be added into this bill because nobody wants to put anyone at risk here by issuing a citation and leaving a dangerous situation there. I think that can be changed, so some of those comments are well taken, but some are fairly inaccurate when addressing this bill.

Chairman Yeager:
Thank you, Mr. Piro. I do not want to put you on the spot, but I did want to ask a question. There is a proposed amendment that has been referenced from some of the testimony; that is a proposed conceptual amendment from Senator Harris. I will let members of the public know that it is available on the Nevada Electronic Legislative Information System under exhibits [Exhibit F]. It is not long. I wanted to check with you, Mr. Piro, if you knew whether that amendment was considered friendly and if it was something that is acceptable to Assemblyman Flores. Could you please address that so we have a clear record as to how things stand with that amendment?

John Piro:
It is my understanding that is most certainly a friendly amendment. It is meant to address the concerns of law enforcement and business.

Chairman Yeager:
Thank you, Mr. Piro, for being here and assisting Assemblyman Flores in presenting the bill. I am going to close the hearing on Assembly Bill 440. Moving along, we are going to go to our second bill listed on the agenda. I will now open the hearing on Assembly Bill 424. Assembly Bill 424 revises provisions relating to pretrial release. We have our own Assemblywoman Nguyen to present this bill today, and then I am sure we will have some questions afterwards.

Assembly Bill 424: Revises provisions relating to pretrial release. (BDR 14-374)

Assemblywoman Rochelle T. Nguyen, Assembly District No. 10:
I did have the privilege to serve on the previously mentioned Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases. As you heard before, our chairman was Senator Harris and I served as vice chairwoman; in addition to the two of us, Assemblyman Flores, Assemblyman Roberts, and Senator Hammond also served on that committee, along with Senator Scheible. It was a traditional makeup of these interim legislative studies. We did have the ability, and we did meet multiple times during the interim, and this is one of the recommendations that came out of it. I will tell you, unfortunately, there were a lot of people who reached out after we concluded in August of 2020. We voted on many of the recommendations that ultimately made their way into the five bills that were distributed between the Senate and the Assembly out of the committee. Many of those recommendations came out unanimously. I will try to go through some of those.

One of the big things that Assembly Bill 424 gets into is related to the decision by the Nevada Supreme Court in *Valdez-Jimenez v. Eighth Jud. Dist. Court*., 163 Nev. 155 (2020).

When the study was formed in 2019 as part of that Senate legislation, the decision had not yet been made. In fact, when we conducted some of our first hearings during the interim, a lot of the conversations and presentations that were made to us were around the ideas that were ultimately contained in this Nevada Supreme Court case.

After the Nevada Supreme Court came down with the *Valdez-Jimenez* decision, we had great discussions on whether we needed to even keep proceeding, because many of the discussions were already in that Nevada Supreme Court decision. We had to make decisions on whether there were other things that we wanted to include in statute and if there were recommendations that we wanted to take from that Nevada Supreme Court case and make it clear. We were able to hear testimony over the next couple of committee hearings over the interim on how *Valdez-Jimenez* was being implemented across our state. There is a final report to the Committee that is available on the Nevada Electronic Legislative Information System (NELIS).

I am just going to highlight some of the decisions on the *Valdez-Jimenez* case. This case was the result of a combination of two similar cases that were presented by the Clark County Public Defender's Office, with now-Judge Christy Craig, as well as the public defender at the time, Nancy Lemcke from the Clark County Public Defender's Office. They provided some of their insights. It was a situation where two individuals had their bail set and the central issue of the case was whether the process is constitutionally required when the court sets a cash bail amount that the defendant cannot afford. The court considered whether the petitioner's claims were moot, whether they had already been convicted, and they decided that it was a matter of public importance because of the repetition. This was a problem that was happening repeatedly. The Nevada Supreme Court said, This is something that we need to address.

Specifically, the Supreme Court examined Article 1, Section 7 of the *Nevada Constitution* and held that the petitioners, the defendants in this case, have a right to bail in a reasonable amount. The court noted that the fundamental liberty interest enshrined in the *Nevada Constitution* creates a substantial due process consideration and held that individualized bail hearings must be held within a reasonable time after arrest for defendants who remain in custody. That is one of the things that we looked at on here: what that reasonable time meant, what their meaning was, how the hearings for the individualized bail and pretrial custody determinations were going to be evaluated and assessed in light of this new Supreme Court decision. Luckily, there is a lot of guidance in this area because many states already do this. Our federal system essentially has this pretrial process in place. That is what we looked at in the committee.

I will tell you that, because of the last-minute introduction of this bill, it is still a work in progress. I imagine there will be lots of opposition and weird neutral testimony like you heard in the previous bill presentation for A.B. 440. Since this bill was introduced about

two weeks ago, the Clark County Public Defender's Office as well as the Clark County District Attorney's Office have reached out to explain some of their interests. I think we are very close, and it is just going to be the difference of a couple of things. I will highlight some of the recommendations and what the votes were coming out of the interim committee.

One of the first recommendations we had was the timing of bail hearings. We wanted to figure out how fast the word "reasonable" means. There were multiple different policies that were implemented, defining things like "prompt" bail hearings and "reasonable" hearings. When you look at case law across the country, it is somewhere within 24 hours and 48 hours of arrest. The motion did pass unanimously for the committee recommendation to look at these different standards of what "reasonable" and "prompt" meant. In the bill as cited, it just says "reasonable time." It is my intention to propose a conceptual amendment going forward. I am flexible to turn that into a 24-hour time period.

I will go down to Recommendation No. 2, which has to do with standardized bail. Members and individuals from the community, along with stakeholders who are involved in our cash bail system, have reached out to me with some proposed recommendations. This also passed unanimously. For those people who are not familiar with cash bail, we have in practice standard bail. Certain crimes have certain monetary amounts associated with them.

Part of the unanimous recommendation was the fact that our prosecutorial agencies were concerned with the idea that if two people were arrested and were both charged with a battery domestic violence or a violent charge, standard bail will be set. If someone had resources and money, then they would just post the bail and get out; there would be no conditions, there would be no oversight, there would be no additional drug or alcohol monitoring, no house arrest, but they get out because they have money. On the flip side, an individual who did not have the financial resources to post standard bail would go before a judge and some of those added safety conditions that would protect our community and victims could be addressed. There is clearly a disparity, and I think that is why there was movement there.

As far as some of the other recommendations that are included in A.B. 424, they do take into consideration the recommendations from the committee. There are quite a few of them; it is a 58-page document, so I would encourage our members to go back if they would like to see the full policy conversation that took place during the interim, both in person and virtually, to discuss how we came up with these recommendations. There are many potential amendments floating around right now. As I said, I received a lot of these documents in the last day. In fact, some of the proposals I received less than 23 hours ago. I am continuing to work with stakeholders in order to get it right. I think that is the general intent of this. Some of the stakeholders that have not been at the table are some of the courts and how they will actually implement these new heightened time restrictions.

One of the major things that we are looking at doing is giving some flexibility to our courts to allow for virtual or telephonic hearings in these situations. I know that this is particularly of concern for some of our rural jurisdictions, where they do not have a 24-hour court like we

do in Clark County. The court in Clark County is open seven days a week, on holidays, and every situation where they are the gold standard for our state and where they are able to process people very quickly to have them appear before a judge to address custody standards.

I know that is not available for rural jurisdictions. We looked at rural jurisdictions in Georgia and they are getting all this done within 24 hours because they allow for telephonic communications, similar to the method used by police officers now to get search warrants. There are judges who are available 24 hours a day, seven days a week, in order to answer those calls. I would like to have an amendment proposed, because it was a recommendation out of the interim study, to look at these nontraditional methods to allow flexibility for our smaller jurisdictions to be able to hear these cases more quickly. I know that is a lot of conceptual talk and background, but I am open for any questions you might have.

Chairman Yeager:
Are there questions from Committee members?

Assemblyman Wheeler:
Does this not create an additional strain on the judicial system? You said that we have not really heard from them. So, you have all the people who would have been bailed out now added to the people who need prosecuting. I am wondering what kind of fiscal impact we are going to have, but more importantly, what kind of impact is it going to have with people coming before the judge so quickly, instead of their being able to take a schedule and say, Well, reasonable means 48 hours to me, but now the law says 24. Where they could do it before in 48 hours, now they have to jam stuff in like an assembly line.

Assemblywoman Nguyen:
There are a couple of things. First, the definition of "reasonable time" is not sure, it is in the process of being litigated. It has been litigated across the country. You will see that most places have landed somewhere under 48 hours. But we do have discrepancies. The Nevada Supreme Court issued the decision with the word "reasonable," and some jurisdictions think it is reasonable to bring someone in within 7 to 14 days. Before they are hearing from a judge, they are sitting in custody for 7 to 14 days in our own state right now. And some people think that is reasonable. Obviously, there are some jurisdictions that are getting people to court within 12 to 14 hours. I would like there to still be the discretion, because many of these jails are doing administrative orders where they are releasing people without bail on certain charges, and I want to make sure that they are able to continue to do that. Some people are being released in those circumstances automatically.

There potentially is some cost. I am not going to deny that there would not be a cost in bringing people to prompt due process. But I think that is where we are heading, and I think that we will either have to be a part of the conversation in determining what that looks like for our state; otherwise we are eventually going to be told by either the Nevada Supreme Court or the federal court on what that looks like. We will end up in a situation like the *Andersen* [*Andersen v. Eighth Judicial District Court*, 135 Nev. Adv. Op. 42 (2019)] decision where, right at the conclusion of a legislative session, there was a huge decision that

came down that needed to be implemented by all these courts and counties and municipalities, and they were not a part of how that was. So, they had to wait two years before they could come back to this legislative body to ask for those permissions.

I think we can allow flexibility. As I said, most places are already doing this because of the Supreme Court decision, and this just gives more guidance to those courts, those jurisdictions, those practitioners, whether it is defense attorneys or public defenders, law enforcement, and prosecutors, on how to implement this decision more efficiently.

Assemblyman Wheeler:
I believe that sometimes being told by the Judicial Branch how things are going to happen is exactly what their job is. That is why they are the Judicial Branch. More importantly, maybe seven days is reasonable in a certain jurisdiction, especially given COVID-19 restrictions right now where you cannot have as many people in a court room that may not have Zoom capability. That is why I think there needs to be a little discretion here instead of a firm time.

Assemblywoman Nguyen:
That is why it is my intention to allow for telephonic hearings as well as Zoom. I realize not everyone has virtual capabilities, but when you look at some rural jurisdictions—like in Georgia—that were implementing it, they were doing it via phone. I think that allows for some flexibility given some of the changes and time constraints.

Assemblywoman Krasner:
Does this bill intend to do away with bail schedules and someone's ability to post their own bail or use a bondsman?

Assemblywoman Nguyen:
It does not eliminate cash bail. The Supreme Court decision did not eliminate cash bail. Cash bail is still an option for the judges. What this decision told the courts to do is make sure that cash bail is the least restrictive. To be quite honest, cash does not ensure safety to the victim. If the courts want to add additional conditions like staying away from the victim of a case, if they want to put them on a house arrest monitor, if they want to give them intensive supervision, or any other layers of protection for the community, those are items they need to look at first. If the court determines that cash bail is one of those viable tools, they can still institute it.

It does eliminate standard cash bail. Every individual who is charged with a crime has to undergo that same individualized assessment. You cannot just buy your way out because you can post that bail quickly without going before a judge. This is something that I know the prosecutors feel brings equity and fairness, and I tend to agree with them. You should not be able to purchase your way out of any of those added conditions for our communities and victims.

Assemblywoman Cohen:
In section 8, subsection 4, I want to make sure I understand. If someone has the ability to pay for bail, can judges still let them choose to be put on bail and pay for the bail?

Assemblywoman Nguyen:
Yes, it covers relief without bail, with no additional conditions other than the promise of good behavior and the promise to appear in court as required; release without bail, with additional conditions upon release; or release with bail. It still clearly states in there that the judge just has to look at all of those circumstances, which I think most of them already do, to be quite honest, because their interest is in protecting our community and protecting potential victims in our community. This just gives them a priority on what they want to do, but yes, cash bail is definitely still an option. I am sure that every person who practices knows that cash bail is very much one of those important options for the court.

Assemblywoman Cohen:
In section 1, subsection 4 there is the use of the word "forthwith," as in "When a person arrested without a warrant is brought before a magistrate, a complaint must be filed forthwith." Do we have a definition of that? Is that in case law? Is that in statute somewhere, of what forthwith means?

Assemblywoman Nguyen:
I know what it is in practice, but I do not know if it is defined statutorily. I would ask any of the people presenting in testimony if they are able to answer that. That is a little bit different than the complaint, and when that is filed they have more leniency on that, but they do have to file that complaint within that time period; it varies across the state.

Assemblywoman Cohen:
I will ask the presenters if we have that in statute or case law anywhere.

Chairman Yeager:
I will jump in because I have this memory of the word forthwith. I do not remember which legislative session it was, it may have been 2013, but there was an effort to define forthwith and the bill was ultimately vetoed by Governor Sandoval. I do not think there is a definition, but maybe folks who are testifying on the bill could address, in practice, what courts are doing with that phrase. I think that would be helpful to answer that question. That is my recollection, but I could be mistaken about which legislative session it was.

Assemblywoman Hansen:
When you mentioned that on the interim committee, some of the recommendations were unanimous. Having served on an interim committee myself, many times the recommendations do not necessarily translate when they get put into bill form. Do we know in this bill if this recommendation reflects the unanimous support? In other words, did some of the recommendations morph into something different from what they were in the interim?

Assemblywoman Nguyen:
Oh, for sure. I can tell you that, for example, the two major stakeholders in this are the public defenders and district attorneys; they all have issues with the bill. They have all submitted various recommendations. I do not think it is on the policy, though. I think it is on the wordsmithing of what this bill looks like. I saw our legal counsel, Bradley Wilkinson, turning away just now because he knows that I am going to be reaching out to him shortly to find a way to incorporate what those changes are. Having now seen some of the proposed amendments, I think the district attorney's proposed amendment is on NELIS [Exhibit G]. I asked them to put that up for the Committee. I know the public defender's office also provided me with potential proposed amendments. I received those late last night. I did have the opportunity to view both of those and, obviously, I am privileged to see both of them and there is not a whole lot of difference between them.

There are a couple of sticking points that were left vague out of the recommendations, like what does "prompt" mean? Does that mean 24 hours or does that mean 7 days, or what does that mean in general? There is one sticking point, with full discretion, in section 8, subsection 1 of the proposed bill. It says if someone "within a reasonable amount of time . . . taken into custody;" that is where the reasonable time is. But there is also another section that talks about parole and probation. I think we unintentionally included some provisions that would not allow them to arrest a probationer who picked up new criminal charges while they were on probation. It is my intention to correct that section as well.

There is a section about how, if you are not released from the judge—let us say bail or a condition is set, and you are not released on house arrest or are unable to pay the cash bail amount, you are to be brought back within 24 hours. I think that is probably pretty unreasonable. I think a lot of the fiscal notes are based on that provision alone, because it makes it sound like they have to come back for court the very next day if they are not released. Those are some of the things that we are working on—what that time limit looks like and how we can make this easier for implementation. There are definitely concerns with the language as it came out. I do not think we are that far off on it. Obviously, we do have a lot of guidance from the Supreme Court in their decision, so I think that will help facilitate this as well.

Chairman Yeager:
Do we have additional questions from Committee members? [There were none.] Assemblywoman Nguyen, thank you for the presentation. We are going to open up for testimony to at least hear how folks perceive the bill as currently drafted. At this time, I will open up for testimony in support of A.B. 424. Do we have anybody who would like to testify in support of the bill?

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We want to state that we support the intent of the bill. We do understand that the language does need some adjusting. I want to be clear on a few things. We tried to get bail done in 2017 and did not get it done; we tried to get bail done in 2019 and the district attorneys

whittled it down so much that it was not bail reform, and the bill had to be killed. So then, we took our case to the Nevada Supreme Court where lawyers from my office litigated the case in front of the Supreme Court. A representative from the Clark County District Attorney's Office called bail reform a "pet project by a few lawyers" in front of the Supreme Court.

The Supreme Court did not feel the same way and decided, 7 to 1, the following things: that a person must be brought before a court and have an adversarial hearing in front of the judge; at that hearing, the defense must be presented with the evidence that is against the person; at that hearing, the state needs to prove by clear and convincing evidence—the second-highest standard under the law and which is used before we remove a child from their parents—that there is no reasonable way to detain a person, that the ruling the judge is making is the least restrictive means. That does not mean a judge cannot detain somebody; they just have to make findings of fact as to why they are doing it. What *Valdez-Jimenez* cleared up is prosecutors can no longer use a high amount of money as a clandestine way to detain somebody because they are too poor to afford bail.

I also wanted to talk about two words that were used. We have been litigating the word "forthwith" for years. If you take a textualist approach—as my more conservative members would recognize—looking at the word's plain meaning when you look in the dictionary, "forthwith" means immediate and without delay. "Prompt" means immediate and without delay.

What we have found throughout the state of Nevada is that judges are defining prompt in wildly different ways. In Sparks Justice Court, "prompt" for those judges is seven days. In Henderson, we are looking at three to seven days. In North Las Vegas, it is three to seven days. In Clark County, when you get arrested and go to Las Vegas Justice Court, you are actually getting a measure of justice because you are going before a judge within 12 to 24 hours to determine if there are conditions of release that would both protect the community and assure a future court appearance. That is what the bail bill is trying to accomplish: not to lose anything from the *Valdez-Jimenez* decision, but to strengthen that and actually get prompt to a way where the justice you get in Clark County is not less than the justice you get anywhere else in this state.

Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice:
I want to stress that this testimony is just about the bill as currently written. We do not have these conceptual amendments in front of us, so that might change this analysis. We support the bill. The bill as it is currently written is a pretty simple bill. It is almost exclusively things that are already part of Nevada law under *Valdez-Jimenez*. Only one thing would change under the bill as it stands right now. Section 5 requires the courts consider modifying bail if it turns out that a person is too poor to pay the original bail. In addition, the amendment that Assemblywoman Nguyen discussed to define "reasonable" would be a clarification of existing law. And obviously, other amendments might also be substantive changes. But in the bill as it stands right now, every single provision except section 5 is already the law.

This is a cleanup bill to make sure our statutes comply with *Valdez-Jimenez*. That decision was based on the due process clauses of the *U.S. Constitution* and the *Nevada Constitution*. These changes to statute are constitutionally required. The bill as currently written represents the bare minimum that we can do on bail. The Nevada Attorneys for Criminal Justice believes that we ought to go beyond the bare minimum, and that there is still a lot of work that can and should be done to make pretrial detention a more fair and efficient process. This bill is not a policy change. It is just bringing our statutes into compliance with our *Constitution*. We believe that is a commonsense step everyone should be in favor of, so we support the bill on those grounds.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
At the Progressive Leadership Alliance of Nevada, we seek to structurally transform Nevada's criminal justice system by organizing with people who have direct experience with the mass incarceration of their families. During the 2019 Legislative Session and the following interim, we worked closely with stakeholders to address Nevada's pretrial detention system. This morning we want to echo the sentiments for the previous testimony and express our support for the intent of this legislation as well.

Ronald Najarro, State Director, Americans for Prosperity Nevada:
On behalf of our activists all across Nevada, I urge you to support A.B. 424, which would create a more just pretrial system for all Nevadans and make our communities safer. Assembly Bill 424 continues to build on the correct ruling of the *Valdez-Jimenez* decision by ensuring that judges can still detain people who are a public safety risk, but also protect our country's core belief in the presumption of innocence. The bill continues to increase judicial discretion and removes the one-size-fits-all approaches that we know fail many Nevadans.

Every case is different, and every individual is unique. For that reason, we believe each pretrial detention and bail decision should be individualized based on the circumstances of the case, rather than an arbitrary rule that is applied to all cases for certain types of crimes. Forcing someone to post bail or stay in jail before trial, even when they pose little risk of flight or danger to others, is impractical, expensive, and unjust. Making bail is a huge financial barrier for many low-income families. People who are stuck in jail for financial reasons before trial for as little as two or three days can lose their job and have their world 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 difficult and our communities less safe.

It is both right and smart to avoid disrupting the lives of individuals absent of other compelling risk-related reasons. Assembly Bill 424 focuses these consequences on a higher-risk defendant for a pretrial hearing designed to allow judges to consider a variety of evidence to inform their decision. Pretrial detention should be solely based on whether someone is a flight risk or danger to their community, rather than their wallet. For the reasons I laid out, on behalf of our 96,000 activists, I urge you to support A.B. 424.

Holly Welborn, Policy Director, American Civil Liberties Union Nevada:
I am here to support the intent of A.B. 424, and we look forward to the continued conversation on this legislation in order to get a bill that follows the *Valdez-Jimenez* decision. Hopefully, we will continue to work toward ending the practice of wealth-based detention. If the state wants to jail someone prior to trial, they must show evidence for doing so in a rigorous legal proceeding and the jail time should be for the shortest time possible. Again, we look forward to continuing this conversation.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
I want to thank Assemblywoman Nguyen for bringing forward this extremely important bill through the interim committee. As you heard, we spent a lot of time in that interim committee vetting the different issues and, luckily, the *Valdez-Jimenez* decision came out in the middle of it. I want to focus my testimony on the issues regarding prompt or reasonable time for when someone should be brought for a bail hearing.

As you heard, even in Washoe County, that time really changes depending on which court that person is in. In Reno Justice Court, it is currently within 24 hours after arrest. As of right now, Sparks Justice Court is holding their bail hearings within three days, but that is not how it started out after the *Valdez-Jimenez* hearing. I do have to thank the Washoe County District Attorney's Office because we were able to get to three days instead of the original five days due to their help.

To protect their privacy, I will call this individual Sarah. She has given me permission to tell her story. She was arrested for misdemeanor charges that were in the municipal court after the *Valdez-Jimenez* hearing. At the time, she was 19 years old, she had never been arrested before, was a college student, and scored zero on the Nevada pretrial risk assessment. That means she had had no prior contact with law enforcement. She had a valid phone number, a valid address, and everything to ensure her safety and that she would return to court. But based on the probable cause sheet, which was not a crime of violence, the court decided that she should be held in custody on a no-bail hold. That meant that this college student with a zero on her pretrial risk assessment could not get out of custody until she appeared before court.

On that Monday, the judge decided that she did not want to hear that case that day and continued it to Tuesday. So this University of Nevada student missed class because she was not released until the Tuesday when she finally had her bail hearing. She had missed class and, more importantly, her case was dismissed. This is someone who should have had the presumption of innocence but, due to our broken bail system, was denied her access to be able to be released promptly.

I would note that we do appreciate the intent and we agree that an individual should have the *Valdez-Jimenez* requirement of an individualized pretrial determination through an adversarial process. We are concerned with some of the language in the bill that would keep individuals in custody longer. We do appreciate Assemblywoman Nguyen for continuing the

discussion. We will continue the discussion with all stakeholders to ensure that we do comply with *Valdez-Jimenez* and do not interject portions that were not adopted or were specifically rejected by the interim committee.

Chairman Yeager:
Do we have any more callers in support? [There was no one.] I will close testimony in support. I will now open up testimony in opposition. Do we have anybody in opposition?

Aaron Evans, Lieutenant, Division of Parole and Probation, Department of Public Safety:
Currently the Division is opposed to A.B. 424 as written. After Assemblywoman Nguyen's comments and presentation, it sounds like she is willing to fix the issue that we have identified. Section 7 of this bill amends NRS 178.484 where it removes language that says a person arrested on a felony who has been released on probation or parole for a different offense must not be admitted to bail unless granted by the court or the State Board of Parole Commissioners from the Division.

Currently that NRS statute allows the Division to place a no-bail hold on a parolee or probationer when they are arrested for a new crime. That gives us the time to investigate the facts and circumstances around that arrest so we can determine what the next step should be. If it is a minor or technical violation that was defined in statute through Assembly Bill 236 of the 80th Session, the Division will release the hold with no bail, have them report to us, we will apply graduated sanctions, and we will continue to supervise and help them integrate into society. If the new offense is serious, like a felony, gross misdemeanor, or a misdemeanor crime of violence, this no-bail hold that we have will remain in place until that parolee or probationer is brought back to the sentencing court or the Parole Board where they will have to answer for their behavior. Remember, they are already convicted of a crime and are being supervised under that sentence. It is important that they get back to those controlling authorities when they commit new criminal offenses.

If Assembly Bill 424 passes as written, the Division feels that we are going to lose that ability to hold these parolees and probationers when they commit serious violations under supervision. If they are able to post bail or be released prior to us returning them to court or to the Parole Board, you will run into public safety issues. People will be more inclined to not appear when they are already facing an underlying sentence.

I know our chief, Tom Lawson, has already provided some amended language to Assemblywoman Nguyen to amend section 7 of this bill, which reinstates section 2 of NRS 178.484 with some minor adjustments to the language that account for technical violations, since they now have a definition since A.B. 236 of the 80th Session. That will reinstate our ability to hold these violators accountable when they have committed serious offenses. It will also still allow the court or Parole Board to override our decision and grant bail if they see fit. There are still some checks and balances, and we still have that procedure

in place to protect the public for when someone who is already sentenced is arrested for a new criminal charge. Again, Assemblywoman Nguyen addressed that a little bit in her presentation, so I appreciate that. We look forward to working with her on getting this bill amended so that we do not lose this valuable tool.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
We are in opposition to A.B. 424 as it is currently drafted. I want to thank Assemblywoman Nguyen for listening to our concerns regarding this bill. We have proposed an amendment [Exhibit G] to the bill that is on NELIS, and we pledge to continue working with Assemblywoman Nguyen to get us to a position of support. [Call was dropped due to technical difficulties.]

Jamie Rodriguez, Government Affairs Manager, Office of the County Manager, Washoe County:
I want to be clear that I am testifying in opposition to the bill, not regarding the policy in any way, but regarding the fiscal impact for the legislation. Our fiscal note is posted, but I wanted to clarify that some of our courts were having a difficult time in putting together some costs. The impact to us is having to have the courts open seven days a week. For Sparks Justice Court, they were looking at $125,000 a year to have their court open. We do have four justice courts, so that would be times four, as well as additional staffing for the Washoe County District Attorney's Office, which would come out to about $1 million. Realistically, we are looking at a little over $1.5 million a year for the impact to the county to have the courts open for seven days a week. We are not here testifying against the policy, but against the impact to our budget at this point in time. I appreciate that this is not a money committee, but with the fiscal impacts to the counties and local governments, unfortunately, this is the only way we can get this on the record.

Chairman Yeager:
Committee members, as Ms. Rodriguez noted, we are a policy committee, so we are not to be concerned with the fiscal aspects of the bill. If the bill moves beyond this Committee, it would be up to the Assembly Committee on Ways and Means to decide to pull this bill in to address any potential fiscal note. Let us take the next caller in opposition, please.

Elizabeth Anderlik, Assistant City Attorney, City of Henderson:
We oppose A.B. 424 as it is currently written; however, we have worked with the Nevada District Attorneys Association to draft the amendment that they proposed [Exhibit G]. That amendment would address the concerns we have with the bill as it is currently drafted. I did want to take this opportunity to highlight one of our concerns, which is section 5 of the bill as it is drafted.

Section 5 would require a second bail hearing 24 hours after the first bail hearing if the person were still in custody. Our main concern with section 5 is that it is redundant and unnecessary because A.B. 424 already requires a hearing at which the judge would set

conditions of release or bail at the least restrictive means necessary to ensure the safety of the community and that the person would return for future court dates. It does not make sense that the court should bring that person back the very next day to readdress the same factors. The court would have already determined and ordered the least restrictive means, so there would be no need to automatically address bail again. To change the bail or conditions of release the very next day would contradict the court's findings that the prior day's order was for the least restrictive means.

Removing section 5 would still allow a person's attorney to bring the matter before the court again by motion if the circumstances changed that would warrant reconsideration. Holding a section 5 hearing would unnecessarily tax an already overburdened system, requiring an additional step of the process that is not meaningfully different from the initial prompt bail hearing. We believe that with the District Attorneys Association's proposed amendment, we could support this bill, and we look forward to working with the bill's sponsors and the Committee.

John Jones:
I will just pick up where I left off. When considering the time frames that we place in the bail statute, we must fully consider all of the jurisdictions in Nevada and their ability to comply with a new time frame. Not every jurisdiction has the resources of Las Vegas Justice Court, which has a 24-hour, seven-day-a-week arraignment court. Flexibility for these jurisdictions is essential, and we appreciate that Assemblywoman Nguyen has agreed to work with us on this issue.

Our amendment also seeks to retain a portion of section 7 that the Division of Parole and Probation is requesting that you retain. One of the most important aspects of this bill is the elimination of standard bail. District attorneys do support the elimination of standard bail. In other words, no person should have a bail amount assigned to them before seeing a judge. A person who is otherwise a danger to the community should not avoid potential detention or other release conditions by buying their way out of jail prior to seeing a judge. There are some circumstances in which a district attorney would need more time prior to these hearings occurring. We are requesting that a continuance process be built into A.B. 424.

Finally, there is a companion bill to this in the Senate and that is Senate Bill 369. Senate Bill 369 requires that prosecutors prove by clear and convincing evidence that any release condition imposed is the least restrictive means to both protect the public and ensure the defendant's appearance in court. When viewing both these bills, we feel it might be better to merge these two bills so we can get a complete picture of what the bail framework in Nevada will be.

I do want to address Assemblywoman Cohen's question with respect to the definition of "forthwith." The definition of forthwith is case- and fact-specific. For example, the more serious and complex a case, the more latitude that prosecutors get from courts with respect to

the filing of a criminal complaint. Sometimes we need lab reports or other information prior to making a filing decision and thus we typically ask the courts for more time. We look forward to continuing discussions on this bill.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are here opposed to A.B. 424. This affects all of our sheriffs' offices and jails in Nevada, so ditto to all the aforementioned testimony.

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
Even though this is not a policy committee, this is our only opportunity to express our concerns about the fiscal impact to Clark County. Therefore, Clark County opposes A.B. 424 as written due to the fiscal impacts only. Our position is only based on the fiscal impact to the county, and not the policy issues discussed today. We did submit a fiscal note based on the original bill; however, that fiscal note may change based on the acceptance of the Nevada District Attorneys Association's amendment and any future amendments to the bill.

Section 5 would require the court to hold hearings within 24 hours of an evidentiary pretrial release hearing and bail setting for any defendants unable to post bail. Section 8 requires evidentiary pretrial release hearings including witness testimony. We estimate that our justice courts will need to hold numerous evidentiary pretrial release hearings and bill review hearings per day, seven days per week. This means that the courts would need additional judges, hearing masters, marshals, and clerk support staff to oversee these hearings. During the pretrial release and presentation of evidence, both the public defender's office and the district attorney's office will need to increase staff to include additional deputy public defenders and deputy district attorneys to provide representation at the evidentiary prerelease hearings, as well as administrative support staff. Clark County Detention Center would also need additional field services corrections officers to transfer inmates to the additional hearings. However, that amount cannot be determined.

Chairman Yeager:
Can we go to the next caller, please? [There was no one.] I will close opposition testimony and I will now open neutral testimony. Can we go to the first testifier in the neutral position?

Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
I want to start by saying that the Nevada Coalition to End Domestic and Sexual Violence understands the need for bail and criminal justice reform, but as we do with everything, we approach bail reform through a victim-centered lens. That is what brings us here in the neutral position today. Every case of intimate partner violence is unique and requires a unique response to keep that victim-survivor, their children, and their families safe.

We know that in some cases there is little time for victims to be heard by a prosecutor, and we know that interpersonal violence is not black and white and that many of these relationships are complex. Victims can be dependent on their abusive partners, and it is only

with time and support that many victims feel safe to move forward with a prosecution. I would also be remiss if I did not acknowledge that true victim-survivors are often the ones who are arrested, so we approach this topic with the understanding of needing to balance that dynamic as well. We know it is possible to end cash bail while also ensuring the safety of victim-survivors, and we look forward to working with stakeholders to make sure that victim safety is paramount.

Chairman Yeager:
Do we have additional callers in neutral? [There were none.] I will now close neutral testimony. I will now hand it back over to Assemblywoman Nguyen to make any concluding remarks on A.B. 424.

Assemblywoman Nguyen:
I will keep this brief. I will continue to work with stakeholders and take into consideration some of the concerns and clarity issues moving forward with this bill. If any other members have questions, please feel free to reach out. I am taking input from everyone at this point. Thank you, and hopefully when this comes back before work session, it will be in a much more coherent place.

Assemblyman Wheeler:
I just have a point here. I understand that we are a policy committee and not a fiscal committee, but when we are talking about unfunded mandates, sometimes that is part of the policy and I wanted to make that clear.

Chairman Yeager:
I was going to note that, for those of you on the Committee last session, we did hear a bail bill and it took us about three and a half hours to get through that hearing. So, we have made some progress in refining what some of the issues are. I appreciate all the members of that interim committee because I think it helped get us to where we are today. There are obviously some things we need to work out, but we encourage folks to continue to have those discussions as we approach Friday. I will close the hearing on A.B. 424. That takes us to our last item on the agenda this morning, which is public comment. Could we please go to the first public commenter?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am the sister of Thomas Purdy, who was hog-tied and asphyxiated to death by Reno police and the Washoe County Sherriff's Office. I spoke about the Peppermill yesterday and urged members to go check out the videos because it is quite disturbing. Andrew Miller was the manager of security that night. It is clear that it is condoned and that the security that night, and probably every night, are looking to [unintelligible] patrons. And as I mentioned, my brother was a guest at the hotel.

Today, I want to talk about 22-year-old Junior Davis Lopez, who was shot and killed during a traffic stop three years ago today on April 6, 2018. Lopez's fiancé, Amber Bustillos, and friend, Kimberly Gonzalez, witnessed his shooting but were not properly interviewed by

homicide detectives. The police narrative claims that Junior picked up a gun and pointed it at the officers which prompted them to shoot, but the video is highly pixelated and unclear and at no point does Junior pick the gun up and point it at the officers. The police narrative directly contradicts the two eyewitnesses who were present who claimed that he never picked up the gun. Junior was hoping to become a police officer with the Las Vegas Metropolitan Police Department and had been scheduled for testing on May 30, 2020. I want to remind you that if law enforcement and the district attorneys oppose a bill, there is a good chance that it protects community members. Please support bills that promote transparency and accountability.

Chairman Yeager:
Are there additional callers for public comment? [There were none.] I will now close public comment. Is there anything else from Committee members? [There was nothing.] As previously stated, we will be meeting at 8 a.m. tomorrow. We did add a third bill to the agenda, so we have three bills. We will also have a work session with a handful of bills tomorrow. Then Thursday we have an 8 a.m. meeting with three bills. Friday, we do not yet have an agenda, but I do anticipate an 8 a.m. start and we are likely going to reserve that meeting for work session. I will let you know if anything changes. I know we all have a few long days ahead of us with meetings going very long, but please do not hesitate to reach out and ask questions if you have any about the Judiciary Committee. I will see you all tomorrow morning at 8 a.m. back in this Committee. This meeting is adjourned [at 10:44 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jordan Carlson
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed conceptual amendment to Assembly Bill 161, presented by Assemblywoman Selena Torres, Assembly District No. 3.

Exhibit D is a letter dated April 6, 2021, from Faith in Action Nevada, Make It Work Nevada, Progressive Leadership Alliance of Nevada, Nevada Coalition of Legal Service Providers, Nevada Homeless Alliance, and Nevada Women's Lobby, submitted by Bailey Bortolin, Statewide Advocacy, Outreach and Policy Director, Nevada Coalition of Legal Service Providers, in support of Assembly Bill 161.

Exhibit E is written testimony by Anthony Spinoza, submitted by Paul Catha, Political Lead, Culinary Workers Union Local 226, in support of Assembly Bill 161.

Exhibit F is a proposed conceptual amendment to Assembly Bill 440, dated April 6, 2021, submitted by Senator Dallas Harris, Senate District No. 11.

Exhibit G is a proposed amendment to Assembly Bill 424, submitted by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association.