

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session  
April 1, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:31 p.m. on Thursday, April 1, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Melanie Scheible, Chair  
Senator Nicole J. Cannizzaro, Vice Chair  
Senator James Ohrenschall  
Senator Dallas Harris  
Senator James A. Settelmeyer  
Senator Ira Hansen  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nicolas Anthony, Counsel  
Pat Devereux, Committee Secretary

**OTHERS PRESENT:**

John Piro, Office of the Public Defender, Clark County  
Erika Minaberry  
Jim Hoffman, Nevada Attorneys for Criminal Justice  
Kendra Bertschy, Office of the Public Defender, Washoe County  
Kailey Barnett  
Courtney Jones  
Marc Ebel, Affiliated Sureties  
Daryl DeShaw  
Yesenia Moya  
Holly Welborn, American Civil Liberties Union of Nevada  
Nat Hodgson III, CEO, Southern Nevada Home Builders Association  
Matthew Walker, Southern Nevada Home Builders Association  
Eva Segerblom, Nevada Justice Association

Senate Committee on Judiciary  
April 1, 2021  
Page 2

Charvez Foger, Ombudsman, Office of the Ombudsman for Owners in  
Common-Interest Communities and Condominium Hotels, Real Estate  
Division, Department of Business and Industry

Jameelah Lewis

Brandon Summers

Leslie Turner

John Jones, Nevada District Attorneys Association

Serena Evans, Nevada Coalition to End Domestic and Sexual Violence

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is [SenJUD@sen.state.nv.us](mailto:SenJUD@sen.state.nv.us).

We will open the hearing on Senate Bill (S.B.) 401.

**SENATE BILL 401**: Requires the reporting of certain information relating to pretrial detention. (BDR 14-378)

SENATOR DALLAS HARRIS (Senatorial District No. 11):

Senate Bill 401 would require the reporting of certain information concerning pretrial detention. As with S.B. 147, which I presented earlier this Session and relates to no-contact orders, S.B. 401 originated in the 2019-2020 Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases.

**SENATE BILL 147**: Establishes provisions relating to conditions of release that prohibit the contact or attempted contact of certain persons. (BDR 14-377)

Senate Bill 401 establishes important components of the five pretrial release bills arising from the Study. Initially, the reporting concept of people held in jail on a low-bail amount for longer than a week was brought to the Interim Committee by representatives of the Clark County Detention Center (CCDC). Accurate and complete pretrial release data impacts every aspect of the bail system.

Section 1 of S.B. 401 requires justice, municipal and district courts to maintain certain records concerning pretrial detention for submission to the Administrative Offices of the Court at least quarterly. Information to be included in the records is listed, including the offense with which the defendant was charged; whether the defendant was admitted to bail, denied admission to bail or released without bail; amount of bail set or conditions imposed for release without it; date the defendant was taken into custody; and whether the defendant had a hearing to determine admission to bail or release without it; whether the defendant failed to appear, was arrested for violation of a condition or committed a new offense while on bail.

Section 2 of S.B. 401 requires the Court Administrators to compile the total number of defendants based on information required to be maintained in section 1 for submission and to submit the information to the Director of the Legislative Counsel Bureau to transmit to the Legislature if in session or to the Advisory Commission on the Administration of Justice.

Sections 3 and 4 of S.B. 401 require the Clark County sheriff and Las Vegas Detention Center to notify the court with jurisdiction over a defendant in a criminal case if the defendant is in custody for longer than seven days after bail is set and if the bail is \$2,500 or less. This will alert the court if someone is sitting in jail because he or she simply cannot afford bail.

Senate Bill 401 will establish much-needed reporting to enable future policy decisions on pretrial release to be data-driven. For too long, Nevada has suffered from a lack of accurate data with which to make such decisions. The bill will help Legislators glean insight on how to most efficiently ensure community safety by learning who is in jail awaiting trial for which offenses and for how long.

SENATOR PICKARD:

When we endeavor to collect information on anything, the question is what information is being gathered and why. In section 1, subsection 7 of S.B. 401, does the list capture all data to know whether people in jail cannot afford bail? Is it that they cannot make bail or could not get someone to post for them? As opposed to bail affordability, maybe they just do not have friends or family willing to post bail.

SENATOR HARRIS:

I do not see a distinction between not being able to afford bail yourself and having someone bail you out. If you are in jail with bail of at least \$2,500 and it has been at least seven days, regardless of whether the question is whether you have any friends or family with that amount or you do not have it, someone else who could post that bail would be freed. That is what we are looking at.

SENATOR PICKARD:

When you are in jail, you cannot go to the bank for bail money. If no one can go to the bank on your behalf, the question remains whether you can post bail. Can you explain the bail-posting process?

SENATOR HARRIS:

Regardless of whether someone can go to the bank for you, sitting in jail for seven or more days with bail of \$2,500 or less is a good indication you simply do not have the resources.

SENATOR PICKARD:

Are you saying if the person in jail is able to go to the bank for the bail, the only reason he or she is still in jail is the lack of bank funds?

SENATOR HARRIS:

I am not saying lack of bail is the only factor; it is a decent indication the person lacks the funds. We must not eliminate the scenario of the defendant who has no friends or family to go to the bank. There is a strong correlation between sitting in jail for a week and the inability to make \$2,500 or less bail.

CHAIR SCHEIBLE:

Defendants can get bail bonds if they or anyone else cannot post it, even though they can afford it. There is a charge for that, of course. The defendant still in jail after seven days is in a narrow category of someone who can afford bail and a bondsman to post it.

SENATOR SETTELMAYER:

Why does the list in section 7 of S.B. 401 not include something like the defendant's prior history? Maybe the defendant was jailed out of state or in another jurisdiction and did not show up in court after posting bail.

SENATOR HARRIS:

In that case, the bail would likely be set higher. That is why the bill has the \$2,500 or less bail figure. The bail may be raised to account for previous avoidance of court.

SENATOR SETTELMAYER:

Is that not the exact point: the no-show risk should be part of the required record? The court can look at the history and say, "This guy has a \$2,500 bail, which is totally improper because, after all, he just stole a candy bar" because he was hungry. From that perspective, when deciding to add to the bail for priors, you could say, "Well, maybe the judge set the bail at this level due to the reality that he has fled bail three times." Without data about priors, how does the judge decide how much bail to impose?

SENATOR HARRIS:

I do not have the data on how often bail is set at \$2,500 or less based on a history of fleeing. It is probably not often. Nothing in S.B. 401 would preclude a judge from assigning a different bail based on a defendant's income, flight risk and danger to the community.

SENATOR SETTELMAYER:

Prior history should be included in the submitted data in order to make an informed bail decision.

SENATOR HARRIS:

Part of the issue is, regardless of how many times a defendant has fled, if someone has a similar flight record and the same bail but has the ability to pay it, he or she is freed. That is what the bill is concerned with. One man's bail is \$2,500 even though he has fled many times; another man whose bail is \$2,500 may still be in jail because he does not have the funds, not due to his flight risk.

SENATOR SETTELMAYER:

Still, it boils down to how much money do individuals have in bank accounts to make bail? I want judges to make informed decisions based on the whole picture, including flight risk.

CHAIR SCHEIBLE:

I have some history on bail-setting procedures. As per the Nevada Supreme Court decision *Valdez-Jimenez v. Eighth Judicial District Court*, 136 Nev. 155

(2020), when a court sets the bail a defendant cannot post, a de facto pretrial detention is created. That does not violate the Court's decision. It may be a hotly contested position, yet that was the Court's ruling. It enabled prosecutors to ask for a bail that could never be met as a means to hold someone in pretrial detention.

Senate Bill 401 aims to count the number of people for whom bail starts as a pretrial detention mechanism, whether intentional or not. The question of whether increased detention as the outcome of the bail process is an unintended consequence is another policy discussion. The bill asks how many people experience pretrial detention because they cannot make bail. We want to ask Senator Settlemeyer's question of whether we mean to increase pretrial detention with unattainable bail or whether that is an unintended consequence.

JOHN PIRO (Office of the Public Defender, Clark County):

The Office of the Public Defender, Clark County, supports S.B. 401. It is important that we study data on pretrial detention so we can make informed decisions going forward.

ERIKA MINABERRY:

I support S.B. 401. Please stop criminalizing the courts.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

Nevada Attorneys for Criminal Justice supports S.B. 401. Pretrial detention has been an unresolved issue before the Legislature for the past several sessions. Data on pretrial release is incomplete, so those on different sides of the issue often disagree about how it works in practice. Senate Bill 401 would allow us to collect that data so we can operate from a common understanding of the scope of the problem.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):

The Office of the Public Defender, Washoe County, supports S.B. 401. We support increased data collection in order to enact sound policy.

KAILEY BARNETT:

No one should be held in jail because he or she cannot afford bail. We should end cash bail. Anjeanette Damon of the *Reno Gazette-Journal* wrote an investigative story, "Death Behind Bars," about the recent increase in deaths in

the Washoe County Jail, including Justin Thompson, Niko Smith and Thomas Purdy.

COURTNEY JONES:

I support S.B. 401 because it would increase transparency, which has not happened in the history of this State or Country, despite what their governments tell us. Courts need to be held to standards; without this integrity, there is no responsibility for actions. There must be truth and accuracy in the reports submitted so the public can continue to understand what is going on, along with necessary policy changes. Pretrial detention is a tactic of mass incarceration, holding legally innocent people before trial. To improve the State, we must listen to the large body of citizens trying to figure out why our loved ones have to wait for trials while jailed for crimes they may not have committed. The public has the right to fair and speedy trials and to know how our taxes are being used. Community members must show restraint in the eyes of injustice, even when subject to pretrial detention. We cannot ask our communities to have faith in a system that continues to adversely affect us.

MARC EBEL (Affiliated Sureties):

I support S.B. 401. In most states, there is an absence of accurate data on who is in jail, why and for how long.

DARYL DESHAW:

I support S.B. 401 but am disturbed by the exchange between Senators Harris and Settlemeyer. There is a lack of understanding about a lot of things happening in local jails, including the negative effects of bail and having people just sitting in jail. Even though our jail population has dropped and more people are assigned low bail, that has nothing to do with their ability to make bail.

I had a call from a Henderson resident being held on two bails, \$1,200 cash and \$305 in bondable bail. He has two open felony cases in Las Vegas Justice Court with seven to eight Category A and B offenses. He has about 60 felony cases divided between the three courts in Las Vegas Valley. He has a long history of not showing up in court and is now in jail for absconding on bail. He wanted me to bail him out, even though he has the money. The problem is, if I bail him out on his misdemeanor charges, he will go to the Eighth Judicial District Court—where he was ordered to be on low-level monitoring—on a felony. He will cut the monitoring device off and, because he has many reasons to hide, I will end up paying his bond because I will not find him in time.

The value of a bond should have nothing to do with a person's ability to pay. It should be based on the amount of money the court is sure the defendant will not sacrifice. The bondsman must get a friend or family member to sign for the defendant. That creates shared responsibility and accountability; if people lack accountability to the person who signs for them, they will take off.

YESENIA MOYA:

The conversations I have heard between Senators are dehumanizing and destructive ways to address pretrial detention. It all comes down to defendants who want to pay bail but are unable to do so. Cash bail is inhumane and directly targets marginalized Black and Brown people. I support S.B. 401 because I have family whom I have had to bail out of jail, and they have returned the favor. If you lack the resources, you or your loved one is locked up. Now, you try and solve the problem of being locked up; I would like to see you try.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

The American Civil Liberties Union of Nevada supports S.B. 401. The requirement to maintain and report information on pretrial defendants is transparency the State needs to ensure bail is handled constitutionally.

CHAIR SCHEIBLE:

We will close the hearing on S.B. 401 and open the hearing on S.B. 257.

**SENATE BILL 257**: Revises provisions relating to insurance coverage for certain common-interest communities. (BDR 10-1019)

The purpose of the bill is to reduce homeowners' association (HOA) insurance payments for people who own single-family townhomes, condominiums and duplexes versus owners of freestanding homes. There is a proposed conceptual amendment (Exhibit B) from the Southern Nevada Home Builders Association.

NAT HODGSON III (CEO, Southern Nevada Home Builders Association):

You have my support statement (Exhibit C) for S.B. 257. The price of a home is a simple math problem: price of the land plus cost of materials plus cost of labor plus time equals house cost. For homebuyers, the math is also fairly straightforward: monthly income minus existing debt payments, balanced against anticipated monthly costs of the mortgage, taxes and HOA payment.



As CEO of the Home Builders Association for almost ten years, I have tried to keep costs down while also increasing the percentage of attached product. In 1995, southern Nevada's for-sale market was 21 percent attached product; from 2010 to 2017, it was 2 percent to 7 percent. In 2019, it went from 15 percent to 23 percent attached product. Due to escalating land costs, density is key to keeping market costs for a home as low as possible.

For too many Nevada families, the math is increasingly not working in their favor. Increased materials and land cost plus flat wages for middle-class buyers mean we are losing ground in the fight to preserve the American dream of homeownership.

Senate Bill 257 seeks to increase access to the most affordable townhome and duplex sale units on the market. By supporting key compromises in the Eightieth Session, Legislators preserved the ability of developers to build new attached homes. That growing segment of the market is a key access point to homeownership for working families.

Senate Bill 257 would lower the development cost and HOA payments for owners of townhomes and duplexes and help more Nevadans qualify to buy those units. It will be a win-win for homeowners, realtors and developers.

MATTHEW WALKER (Southern Nevada Home Builders Association):

The Southern Nevada Home Builders Association worked on the proposed amendment, [Exhibit B](#), with former Assemblywoman Shea Backus, who represented the Summerlin area. Her HOA homeowner constituents compare notes on their monthly assessment bills. Cost have increased for some smaller homes: townhomes and duplexes. People asked Assemblywoman Backus why their neighbors with larger and more expensive detached homes paid fewer HOA fees.

You have my chart of HOA insurance for attached home communities ([Exhibit D](#)). For townhomes and duplexes, HOAs are required to cover the same insurance for exterior common elements and the full interior of units. Several states that adopted the Uniform Common Interest Ownership Act of 1982 at around the same time as Nevada updated it to reflect lower HOA requirements when units only share vertical walls, not horizontal boundaries. We tried to copy that language in the proposed amendment, [Exhibit B](#).

In the proposed amendment, [Exhibit B](#), section 1, subsection 2 would create an insurance distinction between two unit categories. Traditional high-rise condominiums in which units share horizontal walls would remain unchanged, [Exhibit D](#). Homeowners of units only divided by vertical boundaries—townhouses and duplexes—may maintain lower levels of insurance because their floors, ceilings and other interior elements are not covered, [Exhibit D](#). This will reduce the overall insurance costs for HOA homeowners should their governing doctrines reflect the reduced coverage.

In the proposed amendment, [Exhibit B](#), section 1, subsection 3 of [S.B. 257](#), we strive to ensure everyone buying in HOA communities is aware of the rules and what insurance they may want to buy based on what the HOA covers.

In the proposed amendment, [Exhibit B](#), section 1, subsection 4 of [S.B. 257](#), we want to make sure there are no loopholes or gray areas about insurance when a townhome or duplex community is built. If the governing documents do not specify reduced insurance coverage of interior elements, the HOA will default to the status quo, [Exhibit D](#). There must be disclosure at purchase of exactly what the HOA will pay for.

SENATOR PICKARD:

When HOAs have multiple townhomes and duplexes with only vertical separation, some governing documents are designed to make it clear the HOA owns not only the exterior and interior surfaces of the units but also the common walls. Does section 4 of the proposed amendment, [Exhibit B](#), leave it up to the HOA to decide whether it will insure the common wall, even if the HOA owns it?

Mr. WALKER:

Section 2 of the proposed amendment, [Exhibit B](#), creates a clearer picture of which elements are not required to be insured by the HOA. The term "finished interior surfaces" connotes walls, floors and ceilings. The intention was to choose those nonstructural elements to steer clear of the controversy Senator Pickard identifies.

SENATOR PICKARD:

Section 2 of the proposed amendment, [Exhibit B](#), also includes the extent to which the insurance is available, which makes it optional. The intent of the bill is to include things hung on walls, like paint and decorations. If the HOA owns

the finished interior surfaces, it will insure them; homeowners' insurance companies typically will not include structural elements owned by the HOA in their assessments. I want to be sure we do not intend to leave any doubt in the bill.

MR. WALKER:

Yes, we intend to leave no understanding gaps, which is why it is important to require full disclosure. The declarant's—the HOA—governing documents must be customized as to the terms of the insurance: what features are in the HOA, and what are its architectural elements? The default would be *Nevada Revised Statutes* (NRS) 116.3113, which has been in place since 1991, in regard to insurance coverage for the elements named by Senator Pickard.

EVA SEGERBLOM (Nevada Justice Association):

The Nevada Justice Association supports S.B. 257 with the proposed amendment, [Exhibit B](#). The bill's disclosure language in section 3 will protect homeowners and HOAs.

CHARVEZ FOGER (Ombudsman, Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry):

The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is neutral on S.B. 257.

VICE CHAIR CANNIZZARO:

We will close the hearing on S.B. 257 and open the hearing on S.B. 369.

**SENATE BILL 369**: Revises provisions relating to criminal procedure.  
(BDR 14-375)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

Senate Bill 369 combines two recommendations by the defense and prosecutorial bars. The recommendations arose from the Nevada Supreme Court ruling in *Valdez-Jimenez v. Eighth Judicial District Court* which found various statutory provisions regarding bail and pretrial release unconstitutional. The recommendations are Recommendations Nos. 5 and 6 in the ruling ([Exhibit E](#)).

In *Valdez-Jimenez v. Eighth Judicial District Court*, the Court held requiring arrested persons to show good cause to be released without bail violated their

constitutional rights and constituted excessive bail for several reasons. Under the ruling, the court does not have to consider less-restrictive conditions of releases before deciding bail is necessary. The State is effectively relieved of its burden to prove bail is necessary in order to protect the community and ensure the arrested person will appear in court.

Senate Bill 369 seeks to correct this flaw and ensure NRS comports with the Nevada Constitution. Section 3 strikes the provisions found to be unconstitutional regarding the defense having to show good cause to release a defendant without bail. The section also provides a standard procedure for courts to follow when making pretrial custody determinations by consolidating separate procedures for releasing defendants with and without bail. Sections 1, 4, 5 and 6 contain conforming changes.

Section 3 requires prosecutors who wish to impose bail or other conditions of release to produce clear and convincing evidence the imposition is the least-restrictive means to protect public safety and ensure the defendant appears in court. A court is required to consider a prosecutor's request before imposing bail or any other condition of release. Senate Bill 369 will enable a more equitable and consistent pretrial release process based on the least-restrictive standard.

VICE CHAIR CANNIZZARO:

Senate Bill 369, section 3, subsection 4 talks about how reasonable conditions of release are imposed, including a list of limitations. Subsection 4, paragraph (e) includes, as a particular condition, the person who is arrested may have to surrender his or her passport to the court. A separate section of NRS allows the court to do so if the person is arrested for a felony. Why is that being removed from the other NRS and placed here as a condition? A passport surrender seems very much in the realm of the most-restrictive means, which means the person is at risk of leaving the Country, not just the State. That seems like something already within the court's discretion when someone is arrested on a felony. Why are we now putting it in this bill?

SENATOR SCHEIBLE:

Senate Bill 369 would not change the court's ability to impose passport surrender. The condition was previously allowed; courts would be allowed to impose it under the bill. The condition would be moved to a different NRS that contains other, more relevant provisions.

VICE CHAIR CANNIZZARO:

I interpret it as the prosecutor must now request the passport surrender after proving with clear and convincing evidence the defendant is a danger to the community or a flight risk. The prosecutor must also prove that request is the least-restrictive means, whereas under existing NRS, a court may ask at arraignment that the passport be surrendered.

SENATOR SCHEIBLE:

I am open to amending S.B. 369 so it retains the court's discretion to ask for the passport.

VICE CHAIR CANNIZZARO:

As in the *Valdez-Jimenez v. Eighth Judicial District Court* ruling, often bail will be considered prior to the opportunity for an adversarial hearing. The court may set the bail amount or impose conditions prior to the hearing. In other cases, bail has been addressed, but the court may readdress it. The court may release a defendant without bail upon showing of good cause. The good-cause portion was fundamental to the *Valdez-Jimenez v. Eighth Judicial District Court* decision because we are asking for a defendant to prove good cause before release. That speaks to his or her liberty interest versus when the court must show additional mechanisms.

The bill entirely removes not just the good-cause language but the court's ability to set bail at all or impose any condition. We are not premising that portion of NRS with only what bail condition is requested by the prosecuting attorney. We should allow the prosecutor to ask for bail as a condition of release at the arraignment and pretrial hearing. However, even if a court were to hear part of a preliminary hearing when someone says more information has come to light and he or she believes additional conditions should be imposed, absent that request from the prosecutor, the court has no authority to issue bail, set a condition or set a higher bail or additional conditions.

SENATOR HARRIS:

I do not read S.B. 369 as prohibiting but more as talking about what must happen when the prosecutor makes requests. I am definitely open to ensuring the court has the ability to impose reasonable restrictions, as per section 3, subsection 4. For the most part, when the prosecutor moves to impose restrictions, the bill outlines what evidence he or she must present.

VICE CHAIR CANNIZZARO:

Obviously, after *Valdez-Jimenez v. Eighth Judicial District Court*, a prosecutor wants to have adversarial hearings at which evidence is presented if bail is the question. I do not want the bill to be read as though we are stripping the court's right to set bail before the hearing occurs or making changes as the case evolves. That happens, sometimes not at the request of the prosecutor. I want to ensure the court still has discretion in those decisions.

SENATOR HARRIS:

There is a way to clarify that. The intention of S.B. 369 is not to limit the court's ability to keep the public safe with impositions.

VICE CHAIR CANNIZZARO:

There is a strikeout in section 2, subsection 15 to eliminate the extradition clause if someone flees the State jurisdiction. We are asking courts to pay to bring the person back to the State while limiting the ability to recover those extradition costs from him or her. I do not see that anywhere else in the bill. When we are talking about imposing bail and conditions, a key factor is whether the person is going to flee the jurisdiction. Extradition occurs when that happens and a warrant is issued.

SENATOR HARRIS:

Mr. Anthony, can you tell us why the extradition cost provision was deleted?

MR. ANTHONY:

It is included in section 3, subsection 9. That language already exists in NRS 178.4851.

VICE CHAIR CANNIZZARO:

Senate Bill 369 does not address when someone is arrested for first-degree murder with no-bail status. When people violate their parole and probation or fail to appear in court, often they are arrested on a new offense and held without bail. I want to ensure that is still part of the bill. The situation is different for people being supervised who are arrested on a new offense and for those who violate their parole and probation and are held without bail until a hearing to determine if they are reinstated or revoked. If someone is arrested on a new felony charge, he or she is typically held without bail based on the outstanding felony. Is that still in the bill?

SENATOR SCHEIBLE:

In section 2, subsection 2, a person with a suspended sentence on a felony will not be admitted to bail. It is not our intention to remove or change NRS. If it is not contained within the bill, it should remain as is.

MR. ANTHONY:

The Senators are correct: it is not our intention to change that. In bill drafting, we attempted to streamline the process so it all appears in a single statute.

VICE CHAIR CANNIZZARO:

One thing that has come up in the context of *Valdez-Jimenez v. Eighth Judicial District Court* is if individuals commit offenses with firearms, should there be additional language in S.B. 369 because those people are more dangerous in public? We need to do everything we can to prevent gun violence from damaging our communities. Individuals who commit crimes with weapons pose more danger than those in a bad situation with drugs or making poor choices due to other things going on in their lives. Could we have a conversation about treating firearms offenders more seriously? That is not to say someone who commits a firearms offense should not necessarily be out on his own recognizance (OR) with no monetary prohibitions to ensure community safety. We see a lot of firearms-related offenses in our State.

SENATOR HARRIS:

I agree those offenses are different and should possibly be considered differently. Courts always have the discretion to take firearms circumstances into consideration. We can certainly have the discussion you asked about.

SENATOR SCHEIBLE:

I am open to having that conversation. With S.B. 369 and other bills this Session, we could perhaps codify bail and pretrial release penalties courts could apply to firearms offenses.

MR. PIRO:

The Office of the Public Defender, Clark County, supports S.B. 369 as written. Legislators know bail has been a hot-button issue for a long time. The *Valdez-Jimenez v. Eighth Judicial District Court* decision said it is axiomatic liberty is the norm, and bail or restrictions on liberty is the carefully delineated exception to that norm. We want to make sure it stays that way. People

accused of crimes are innocent until proven guilty; courts must treat them that way.

*Valdez-Jimenez v. Eighth Judicial District Court* also said some prosecutors cannot use monetary bail as a clandestine way to hold people in custody simply because they are too poor to afford bail. The decision set ground rules for hearings and how and what attorneys may argue for. It also established standards of clear and convincing evidence for bail decisions. We must maintain the strictures imposed by the Court.

JAMEELAH LEWIS:

I support S.B. 369 because I have been held on bail. I was incarcerated after a social justice protest in summer 2020. I was hauled off in a bus to the CCDC and put in a holding cell. I thought I would be released on OR, but I had to pay \$1,000 bail before being released ([Exhibit F](#)). I regularly do not have access to that much money, so with the support of my boyfriend and coworkers, I was able to post bail. That is not a blessing everyone enjoys. The bill may help end cash bail to ensure people can remain in the free world.

MS. WELBORN:

The American Civil Liberties Union of Nevada supports S.B. 369 as written. Every year, thousands are arrested and required to pay cash bail they cannot afford, separated from family and loved ones, and subjected to long incarceration based on the mere accusation of a crime. The *Valdez-Jimenez v. Eighth Judicial District Court* ruling made clear Nevada's practice of using cash bail as ransom to keep poor people in jail is blatantly unconstitutional. We must keep working to end wealth-based detention.

MR. HOFFMAN:

Nevada Attorneys for Criminal Justice supports S.B. 369. This is a simple bill that does not change how court procedures work in practice. Its provisions are already law under the *Valdez-Jimenez v. Eighth Judicial District Court* decision, which was based on the Fifth Amendment due-process requirement. The bill puts constitutionally required caselaw into NRS. This is a commonsense step that deserves support.

BRANDON SUMMERS:

I support S.B. 369. In 2013, I was arrested on a misdemeanor charge related to street performing. My experience was not unique. The arresting officer



overcharged me in retaliation for filming him, and my bail was set at \$3,000. I do not have family members with \$3,000 on hand; instead, I paid a bondsman a \$450 nonrefundable fee to post my bail ([Exhibit G](#)). Had I not been bailed out that weekend, I would have sat in jail for 2 or 3 days instead of the usual 12 hours. When I went to court, my case was dismissed.

It is nonsensical that the CCDC held me for so long for a victimless crime. This is commonplace for people experiencing houselessness. A 2019 report on southern Nevada jails revealed 5 percent to 10 percent of the jail population is houseless at any given time. This should not be tolerated. Cash bail reinforces the reality that poverty is criminalized. We should do what we can to end two criminal justice systems: for the rich and for the poor.

MS. BERTSCHY:

The Office of the Public Defender, Washoe County, supports S.B. 369 as written. It would codify a section of the *Valdez-Jimenez v. Eighth Judicial District Court* decision to provide regularity and additional information about what happens after arrest that the clients served by my Office should know. One of our justice system's hallmark principles is innocent until proven guilty; the bill sets forth that framework. It will let defendants know what to expect at bail hearings and how long they will be in custody pending release.

LESLIE TURNER:

I support S.B. 369 because all facets of the criminal justice system should be investigated to alleviate its inevitable harms. When someone goes to a bondsman, the fee is not returned when your case is resolved, as happened to Mr. Summers. Bail-bonding is a for-profit industry; bondsmen are not part of the court system. We need to make the bail bond system equitable, regardless of who profits from it. Let us codify the *Valdez-Jimenez v. Eighth Judicial District Court* decision to make pretrial detention equitable for the community.

JOHN JONES (Nevada District Attorneys Association):

The Nevada District Attorneys Association and the Office of the Henderson City Attorney oppose S.B. 369. Assembly Bill 424 contains the bulk of the procedural recommendations from the 2019-2020 Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases.

**ASSEMBLY BILL 424:** Revises provisions relating to pretrial release.  
(BDR 14-374)

Some changes in S.B. 369 are different from those in Assembly Bill 424. The bills should be merged to provide a complete picture of which statutory changes are being made to the bail process.

Prosecutors acknowledge the *Valdez-Jimenez v. Eighth Judicial District Court* decision placed upon them the burden of proof with clear and convincing evidence the conditions requested are the least restrictive. Section 3 of S.B. 369 implies the court may only consider bail under these conditions argued by the prosecutor. We want to be clear judges may impose any conditions they consider appropriate if they find, after hearing arguments, the conditions are the least restrictive. A judge should not be bound by the prosecutor's request if he or she feels a different condition would suffice, as long as it is the least-restrictive finding. The language in S.B. 369 needs to state that with more clarity.

SERENA EVANS (Nevada Coalition to End Domestic and Sexual Violence):

While the Nevada Coalition to End Domestic and Sexual Violence understands the need for bail and criminal justice reform, we are neutral on S.B. 369. Survivors of domestic violence, sexual assault and harassment and stalking deserve the peace of mind of safety. Knowing perpetrators are in jail or released with certain bail conditions provides victims the comfort of knowing they are safe. Every sexual violence case is unique and requires a different response to keep victim survivors and their children and families safe.

We agree the burden of proof should rest with the State, but we are concerned establishing that burden as clear and convincing for assault crimes may increase the danger to victims of domestic and sexual violence. In some cases, there is little time for victims to express their safety concerns to prosecutors. Not every interpersonal violence case is black and white, and many victims are dependent on abusive partners. It is possible to end cash bail while ensuring the safety of victim survivors.

MR. EBEL:

Affiliated Sureties is neutral on S.B. 369. We have always supported reforms to the pretrial process to facilitate the goal of the maximum amount of people achieving pretrial release under the fewest restrictions as soon as possible. We

Senate Committee on Judiciary  
April 1, 2021  
Page 19

share the concerns of Vice Chair Cannizzaro about section 3 and protecting judicial discretion.

SENATOR HARRIS:  
We will close the hearing on S.B. 369.

CHAIR SCHEIBLE:  
We will open the work session on S.B. 32.

**SENATE BILL 32**: Makes various changes relating to offenders with substance use or co-occurring disorders. (BDR 16-327)

MR. GUINAN:  
Senate Bill 32, as referenced in the work session document ([Exhibit H](#)), would eliminate the term "therapeutic communities" and the requirement the Director of the Department of Corrections (DOC) establish such communities for offenders with substance use disorders. It would require the Director to establish treatment programs for such offenders. The bill would also revise the term "substance use disorder" to conform to the definition in the *Diagnostic and Statistical Manual of Mental Disorders*. The bill would also refine which programs are offered to substance use offenders.

SENATOR OHRENSCHALL MOVED TO DO PASS S.B. 32.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SCHEIBLE:  
We will close the work session on S.B. 32 and open the work session on S.B. 161.

**SENATE BILL 161**: Eliminates the Advisory Committee to Study Laws Concerning Sex Offender Registration and transfers its duties to the Advisory Commission on the Administration of Justice. (BDR 14-514)

Senate Committee on Judiciary  
April 1, 2021  
Page 20

MR. GUINAN:

Senate Bill 161, as referenced in the work session document ([Exhibit I](#)), would eliminate the Advisory Committee to Study Laws Concerning Sex Offender Registration and transfer its duties to the Advisory Commission on the Administration of Justice.

SENATOR PICKARD MOVED TO DO PASS S.B. 161.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SCHEIBLE:

We will close the work session on S.B. 161 and open the work session on S.B. 258.

**SENATE BILL 258**: Makes various changes relating to corrections. (BDR 16-825)

MR. GUINAN:

Senate Bill 258, as referenced in the work session document ([Exhibit J](#)), would require the DOC Director to adopt regulations prescribing standards for each DOC facility for the supervision, custody, care, security, housing and medical and mental health treatments for transgender, gender-nonconforming, gender-nonbinary and intersex inmates. The bill would require staff to be trained in cultural competency for interactions with such offenders and defines the above sexual identity terms.

CHAIR SCHEIBLE:

Mr. Anthony, would you define the term "transgender" as outlined in NRS?

MR. ANTHONY:

Transgender is not defined in NRS; thus, it will be given its plain and ordinary meaning. The reason the other sexual identity terms are defined in S.B. 258 is they do not appear anywhere else in NRS. "Transgender" appears 21 times in NRS; as a well-known, common term, it would be given its ordinary meaning by any court interpreting S.B. 258.

SENATOR HARRIS MOVED TO DO PASS S.B. 258.

SENATOR SETTELMAYER:

In our discussion of this bill, it was apparent it would affect a limited number of people—just four or five inmates. The concept of creating a Statewide plan for such offenders could be problematic. Individual DOC facility directors should be allowed to develop plans based on specific locations. I will vote no because the bill puts us in the position of micromanaging situations with which we are not necessarily familiar.

SENATOR HANSEN:

I will also vote no. We are putting too much of a burden on DOC to create those standards. Several states have enacted similar bills, and the policy changes have caused significant problems for men's and women's prison facilities.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HANSEN, PICKARD AND SETTELMAYER VOTED NO.)

\* \* \* \* \*

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Judiciary  
April 1, 2021  
Page 22

CHAIR SCHEIBLE:

We will close the work session on S.B. 258. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 3:26 p.m.

RESPECTFULLY SUBMITTED:

---

Pat Devereux,  
Committee Secretary

APPROVED BY:

---

Senator Melanie Scheible, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 257	B	1	Matt Walker / Southern Nevada Home Builders Association	Proposed Conceptual Amendment
S.B. 257	C	1	Nat Hodgson III / Southern Nevada Home Builders Association	Support Statement
S.B. 257	D	1	Matt Walker / Southern Nevada Home Builders Association	Chart: HOA Insurance for Attached Home Communities
S.B. 369	E		Senator Melanie Scheible	Recommendation on Bail and Pretrial Release After <i>Valdez-Jimenez</i> Nevada Supreme Court Ruling
S.B. 369	F	1	Jameelah Lewis	Cash Bond Acceptance Notice
S.B. 369	G	1	Brandon Summers	Bail Contract
S.B. 32	H	1	Patrick Guinan	Work Session Document
S.B. 161	I	1	Patrick Guinan	Work Session Document
S.B. 258	J	1	Patrick Guinan	Work Session Document